

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
01/17/2014	<u>75</u>	4	MEMORANDUM by Ted Bernstein(an individual), Lisa Sue Friedstein, Jill Marla Iantoni, S.T.P. Enterprises, Inc., Adam M Simon, David B Simon, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 in Opposition to motion to disqualify counsel, <u>63</u> (Attachments: # <u>1</u> Affidavit Ex. 1-Affidavit of A. Simon, # <u>2</u> Exhibit Ex. A to Affidavit of A. Simon, # <u>3</u> Exhibit Ex B-v1 to Affidavit of A. Simon, # <u>4</u> Exhibit Ex. B-v2 to Affidavit of A. Simon)(Simon, Adam) (Entered: 01/17/2014)
01/22/2014	<u>77</u>	38	MINUTE entry before the Honorable Amy J. St. Eve: Cross-Plaintiff Eliot Bernstein must file proof of service of his cross-claims with the Court in accordance with Federal Rule of Civil Procedure 4(m) by no later than 1/31/14. Otherwise, his cross-claims may be dismissed pursuant to Rule 4(m). Mailed notice (kef, ) (Entered: 01/22/2014)
01/23/2014	<u>78</u>	39	ANSWER To AMENDED COMPLAINT by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein <u>73</u> (Attachments: # <u>1</u> Exhibit Jan 2012 P. Simon Letter to Simon with Attorney Letter)(Bernstein, Eliot) (Docket text modified by Clerk's Office.) Modified on 1/29/2014 (tlm, ). (Entered: 01/23/2014)
01/23/2014	<u>79</u>	191	MINUTE entry before the Honorable Amy J. St. Eve: Because Heritage Union Life Insurance Company is the named Defendant in this lawsuit despite Jackson National Life Insurance Company's allegations that Heritage is a predecessor in interest, the Court directs Jackson's attention to Federal Rule of Civil Procedure 25(c), which pertains to the substitution of parties.Mailed notice (kef, ) (Entered: 01/23/2014)
01/24/2014	<u>80</u>	192	MINUTE entry before the Honorable Mary M. Rowland:All matters relating to the referral of this action having been concluded, the referral is closed and the case is returned to the assigned Judge. Judge Honorable Mary M. Rowland no longer referred to the case.Mailed notice (gel, ) (Entered: 01/24/2014)
01/24/2014	<u>81</u>	193	MINUTE entry before the Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein's reply to his motion

			to disqualify counsel <u>63</u> shall be filed by 1/31/14. Mailed notice (kef, ) (Entered: 01/24/2014)
01/31/2014	<u>85</u>	194	MINUTE entry before the Honorable Amy J. St. Eve: Eliot Bernstein's second oral request for extension of time is granted. Eliot Bernstein's reply to his motion to disqualify counsel <u>63</u> shall be filed by 2/5/14. No further extensions. Mailed notice (kef, ) (Entered: 01/31/2014)
01/31/2014	<u>86</u>	195	MINUTE entry before the Honorable Amy J. St. Eve: Status hearing set for 2/6/14 is stricken and reset to 2/12/2014 at 08:30 AM.Mailed notice (kef, ) (Entered: 01/31/2014)
02/03/2014	<u>87</u>	196	MOTION by Defendant Heritage Union Life Insurance Company Leave to File Amend Appearances, Amended Notice of Removal, and For Extension of Time to File Responsive Pleading to Amended Complaint (Marks, Alexander) (Entered: 02/03/2014)
02/04/2014	<u>89</u>	202	MINUTE entry before the Honorable Amy J. St. Eve: The Court grants Heritage's motion to amend the attorney appearances in this matter and its notice of removal <u>87</u> . See 28 U.S.C. § 1653. The Court also grants Heritage's motion for an extension of time to respond to Plaintiffs' Amended Complaint. Heritage must answer or otherwise plead by 2/12/12. Mailed notice (kef, ) (Entered: 02/04/2014)
02/05/2014	<u>90</u>	203	REPLY by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein to memorandum in opposition to motion, <u>75</u> , 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>Ada 63 Adam Simon, Esquire (Bernstein, Eliot)</i> (Entered: 02/05/2014)
02/06/2014	<u>91</u>	356	ORDER Signed by the Honorable Amy J. St. Eve on 2/6/2014: The Court, in its discretion, denies pro se Cross-Plaintiff Eliot Bernstein's motion to disqualify Plaintiffs' counsel and to strike the pleadings <u>63</u> . [For further details, see attached Order.] Mailed notice(kef, ) (Entered: 02/06/2014)
02/11/2014	<u>93</u>	362	NOTICE of Removal from Circuit Court of Cook County, case number (2013-L-003498) filed by Heritage Union Life Insurance Company ( <i>amended</i> ) (Attachments: # <u>1</u> Exhibit)(Marks, Alexander) (Entered: 02/11/2014)
02/11/2014	<u>94</u>	371	MOTION by Defendant Heritage Union Life Insurance Company to dismiss (Marks, Alexander) (Entered: 02/11/2014)
02/12/2014	<u>96</u>	380	MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 2/12/2014 and continued to 4/22/2014 at 08:30 AM. The Court hereby lifts the stay on discovery. Written discovery shall be issued by 2/28/14. Fact discovery shall be completed by 6/13/14. Third-party defendants shall answer or otherwise plead to Eliot Bernstein's third-party complaint <u>35</u> by 2/18/14. Response to any motion to dismiss third-party complaint shall be filed by 3/11/14. Reply by 3/18/14. Mailed notice (kef, ) (Entered: 02/12/2014)
02/18/2014	<u>100</u>	381	MOTION by Third Party Defendants Tescher & Spallina, P.A., Robert L Spallina, Donald R Tescher to dismiss (Attachments: # <u>1</u> Notice of Filing)(Underwood, Thomas) (Entered: 02/18/2014)

02/18/2014	<u>101</u>	399	ORDER Entered by the Honorable Amy J. St. Eve on 2/18/2014: Pursuant to Heritage Union Life Insurance Company's notice of voluntary dismissal <u>97</u> , Bank of America, successor in interest to LaSalle National Trust, is hereby dismissed, with prejudice and without costs. Heritage's Rule 12(b)(6) motion to dismiss <u>94</u> is granted. Heritage Union Life Insurance Company is hereby dismissed as a party from this action, including dismissal of all claims against it, with prejudice. Heritage Union Life Insurance Company is discharged of all liability under the Policy. Mailed notice (tlm) (Entered: 02/19/2014)
02/26/2014	<u>102</u>	401	MOTION by Third Party Defendant JPMorgan Chase Bank, N.A. for judgment on the pleadings (Heilizer, Glenn) (Entered: 02/26/2014)
03/10/2014	<u>104</u>	405	RESPONSE by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernsteinin Opposition to MOTION by Third Party Defendants Tescher & Spallina, P.A., Robert L Spallina, Donald R Tescher to dismiss <u>100</u> <i>due to Fraud on The Court and more</i> (Bernstein, Eliot) (Entered: 03/10/2014)
03/12/2014	<u>105</u>	425	MINUTE entry before the Honorable Amy J. St. Eve: Motion hearing held on 3/12/2014. Third-party defendants Tescher & Spallina's motion to dismiss third-party complaint <u>100</u> is entered. Reply by 3/26/14. Third-party defendant JP Morgan Chase Bank's motion for judgment on the pleadings in its favor on the counterclaim and third-party complaint <u>102</u> is granted without costs. JPMorgan Chase Bank, N.A. terminated. Mailed notice (kef, ) (Entered: 03/12/2014)
03/17/2014	<u>106</u>	426	ORDER Signed by the Honorable Amy J. St. Eve on 3/17/2014: The Court grants the Third-Party Defendants' motion to dismiss and dismisses the Third-Party Defendants from this lawsuit <u>100</u> . Tescher & Spallina, P.A. (Professionally and Personally), Robert L Spallina and Donald R Tescher (Professionally and Personally) terminated. [For further details, see attached Order.] Mailed notice(kef, ) (Entered: 03/17/2014)
04/22/2014	<u>107</u>	430	MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 4/22/2014 and continued to 6/10/2014 at 08:30 AM. Any dispositive motions, with supporting memoranda, shall be filed by 7/14/14. Mailed notice (kef, ) (Entered: 04/22/2014)
06/05/2014	<u>110</u>	431	MOTION by Intervenor Benjamin P Brown to intervene <i>Pursuant to Fed. R.Civ. P. 24</i> (Stamos, James) (Entered: 06/05/2014)
06/05/2014	<u>112</u>	454	INTERVENOR complaint <i>for Declaratory Judgment</i> filed by Benjamin P Brown against Heritage Union Lfe Insurance Company, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95(Stamos, James) (Entered: 06/05/2014)
06/06/2014	<u>113</u>	471	Rule 26(a)(1) Additional Disclosure Response by Eliot Ivan Bernstein by Eliot Ivan Bernstein, Eliot Bernstein (Bernstein, Eliot) (Entered: 06/06/2014)
06/09/2014	<u>114</u>	563	Rule 26 Additional Disclosure Eliot Jackson National Lawsuit by Eliot Ivan Bernstein, Eliot Bernstein (Bernstein, Eliot) (Entered: 06/09/2014)
06/10/2014	<u>115</u>	594	MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 6/10/2014 and continued to 8/14/14 at 8:30 a.m. Motion to intervene by Benjamin Brown <u>110</u> is entered. Response by 7/1/14. Reply by 7/15/14. Any dispositive motions, with supporting memoranda, shall be filed by 8/8/14. Mailed notice (kef, ) (Entered: 06/10/2014)

**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**

**ADAM SIMON AND PLAINTIFFS'  
MEMORANDUM IN OPPOSITION  
TO ELIOT BERNSTEIN'S MOTION  
TO DISQUALIFY AND STRIKE  
PLEADINGS**

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. )

## INTRODUCTION

Eliot Bernstein's ("ELIOT") Motion to Disqualify and Strike Pleadings highlights the importance of adherence to the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Illinois. When a *pro se* or represented party files a motion that directly violates these rules, it prejudices the opposing party and makes a cogent response nearly impossible.

What makes ELIOT's motion even more difficult is that the motion contains reference what may be kernels of truth regarding certain alleged misconduct that appears to have occurred in the Probate proceedings in Palm Beach County, FL. The alleged misconduct appears to involve staff and/or attorneys at law the firm Tescher & Spallina. Donald Tescher and Robert Spallina were attorneys for Simon and Shirley Bernstein while they were living, and after their deaths, they were counsel for the Estates of Simon and Shirley Bernstein (the "Estate" or "Estates").

In virtually all of his pleadings in the instant action, ELIOT refers repeatedly to the probate proceedings for the Estates, and fails to comprehend that those proceedings are separate and apart from the instant litigation which involve only the Policy proceeds.

Plaintiffs brought this litigation in good faith and in furtherance of their efforts to collect what is rightfully theirs and *twenty-percent ELIOT'S*. I represent the original Plaintiff, the Bernstein Trust, and four out of five of the adult children of Simon Bernstein. All of my clients are in agreement that their claims are consistent with the stated intent of Simon Bernstein with regard to the Policy proceeds.

Plaintiffs and I, as their counsel, verily believe that the claims they are asserting for the Policy proceeds are being brought in good faith, and are well grounded in fact and law. One of the most important facts being that the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/1995 was actually named a beneficiary of the Policy proceeds pursuant to the Policy. (See Beneficiary Designation attached to Adam Simon's affidavit as Exhibit "A", bates #BT000029-030). ELIOT's purported claims made either on his own behalf or that of his children fail to include reference to any document recorded with the Insurer naming ELIOT, ELIOT's children, or any of Simon Bernstein's grandchildren as beneficiaries of the Policy.

Most importantly, however, I shall demonstrate in this memorandum that ELIOT has failed to assert any facts showing that a conflict exists with regard to my representation of my clients in this case. Neither has ELIOT provided any factual record showing the existence of a conflict or any misconduct on my part.

What makes the situation a bit more confusing is the fact that all of the pleadings for relief filed by my clients seek to claim the Policy proceeds on behalf of the Bernstein Trust or its beneficiaries, all FIVE children of Simon Bernstein. Our pleadings allege that ELIOT is a twenty percent beneficiary of the Bernstein Trust, so twenty percent of the Policy proceeds would inure to ELIOT. Conversely, ELIOT's pleadings fail to make any other coherent claim to the Policy proceeds on his own behalf or anyone else's for that matter.

My client's seek a court order which would allow for the distribution of the Policy proceeds according to the intent of Simon Bernstein. All of the potential ultimate beneficiaries of the Policy proceeds are represented in the instant litigation. Four of these ultimate beneficiaries are my clients, and the fifth, ELIOT, has chosen to represent himself and pursue his own agenda, *pro se*.

To avoid any appearance of a conflict and in furtherance of the goals of transparency, accuracy and finality, my clients and I would welcome having the ultimate distribution of the Policy proceeds occur under this court's supervision, i.e. with an accounting and vouchers being submitted to the court.

### **FACTUAL BACKGROUND**

ELIOT'S Motion to Disqualify contains no factual support which would lead this court to disqualify me as counsel. ELIOT has not attached his own Affidavit to his motion. ELIOT has not attached an Affidavit of the Plaintiffs, other parties to this litigation, or any other witness in support of his motion. With that being said, I submit the following factual background regarding my representation supported with my attached Affidavit:

- 1) I have been an attorney licensed in the State of Illinois and in good standing since November of 1990.
- 2) Since 1990, I have worked in a law firm with my brother, David B. Simon known as The Simon Law Firm. The Simon Law Firm has been named as a third-party defendant in the instant litigation by ELIOT.
- 3) I have also worked as assistant general counsel for a life insurance brokerage owned by David B. Simon and Pamela B. Simon named STP Enterprises, Inc. ("STP"). STP has been named as a third party defendant in the instant litigation by ELIOT.
- 4) I am currently representing the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 (the "Bernstein Trust"), Ted Bernstein, as Trustee and individually, Pamela B. Simon (my sister-in-law), Jill Iantoni, and Lisa Friedstein as Plaintiffs. I am also representing those parties as counter, cross, or third party defendants where they have



- been named as parties by either ELIOT or Heritage Union. I am also representing The Simon Law Firm and STP as they have been named as third-party defendants by ELIOT.
- 5) The goal of all Plaintiffs I represent is to prosecute their claims to the Policy proceeds as set forth in their First Amended Complaint (Dkt. #73).
  - 6) The goal of all cross, counter or third-party defendants I represent is to defeat the counter-claims, cross-claims and/or third-party claims made against them by ELIOT.
  - 7) I am unaware of the existence of any conflict among the parties I represent at this time. Should a conflict arise, I would advise my clients accordingly.
  - 8) I have had no involvement with ELIOT's inventions, patents, business or personal life, outside of a limited time he was selling life insurance as an agent of STP at the same time I was working for STP in the 1990's.
  - 9) I verily believe that ELIOT's third-party claims filed against me, David Simon and The Simon Law Firm were filed for the improper purpose of attempting to manufacture a basis for ELIOT's motion to disqualify.
  - 10) Despite these manufactured claims and because my interests as a third-party defendant are aligned with the parties I represent, I remain steadfast in my belief that there is no conflict in this case.
  - 11) I have had approximately three contacts with attorney, Robert Spallina and possibly one contact with attorney, Donald Tescher. Those contacts focused on obtaining a copy of Tescher and Spallina's file relating to the matters involved in the above-captioned litigation.

- 12) I had no involvement with Tescher and Spallina's representation of the Estates of Simon or Shirley Bernstein, or Tescher and Spallina's legal representation of Simon or Shirley Bernstein prior to their deaths.
- 13) I had no direct or indirect involvement whatsoever with regard to the alleged misconduct in the probate of the Estates of Simon or Shirley Bernstein.
- 14) It is my understanding that the alleged misconduct in the probate of the Estates involved document irregularities and/or notarial misconduct.
- 15) I have never met or spoken with the notary who was allegedly involved in such misconduct.
- 16) I did not draft any of the Wills or Trusts of Simon or Shirley Bernstein including the Bernstein Trust Agreement at issue in this litigation.
- 17) I never had custody or control of the Wills, Trusts or insurance policies of Simon or Shirley Bernstein including the Bernstein Trust Agreement.
- 18) I am unaware of the existence of any facts or circumstances which would prevent me from continuing my representation of all of my clients and myself, free from any conflict of interest or other disqualifying factor.

(See Affidavit of Adam M. Simon attached hereto and made a part hereof as Exhibit 1.)

#### **STANDARD OF REVIEW**

ELIOT has failed to set forth a standard of review in his motion. In case law cited herein, court's are required to base their findings of fact regarding a motion to disqualify on evidentiary hearings, or at a very minimum sworn affidavits. ELIOT has attached no sworn affidavit to his motion and has shown no reasonable cause for an evidentiary hearing. Thus, there are no facts of record regarding my representation nor any disqualifying factors. Absent a factual record, this

court cannot make the requisite finding of facts for ELIOT to prevail on his motion. For this reason alone, ELIOT's motion must be denied.

But, the following guidance is instructive regarding how a court should view a motion to disqualify:

"...we also note that disqualification, as a prophylactic device for protecting the attorney-client relationship, is a drastic measure which courts should hesitate to impose except when absolutely necessary. A disqualification of counsel, while protecting the attorney-client relationship also serves to destroy a relationship by depriving a party of representation of their own choosing. (citations omitted) We do not mean to infer that motions to disqualify counsel may not be legitimate and necessary; nonetheless, such motions should be viewed with extreme caution for they can be misused as techniques of harassment. *Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 721 (7<sup>th</sup> Cir. 1982)."

In a separate opinion, the court put it this way:

Disqualification is a drastic measure that courts should impose only when absolutely necessary. Mr. Weeks, as the movant, has the burden of showing facts requiring disqualification. *Weeks v. Samsung Heavy Industries Co., Ltd.* 909 F.Supp. 582 (N.D. Ill., 1996)

In *Freeman*, supra, the court rejected movant's motion to disqualify because the movant failed to provide a factual record to determine whether the attorney at issue in that case knew confidential information regarding the opposing party that would justify disqualification. In *Weeks*, supra, the court ultimately rejected movant's motion to disqualify because the movant's grounds for disqualification were based on "bald assertions unsupported by either an affidavit or evidence." *Weeks*, 909 F.Supp. at 583.

## **ARGUMENT**

### **A. ELIOT'S Third-Party claims and motion to disqualify violate Fed. R. Civ. Pro. 11 in that they were filed for improper purposes and are not well grounded in fact or law.**

Fed. R. Civ. P. 11(b) provides in pertinent part as follows:

**Representations to the Court.** By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigations or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

On December 22, 2013, I sent a letter to ELIOT reminding him that the court had previously admonished him regarding a motion to disqualify and the requirement for such a motion to comply with Rule 11. I further stated my belief that his motion to disqualify and strike pleadings violated Rule 11, and I provided an opportunity for him to withdraw the motion. Despite the warnings he received, ELIOT has chosen to pursue his motion.

**B. ELIOT’S motion is devoid of a factual record and thus his motion is not well grounded in fact.**

Although it is difficult to discern from his motion, ELIOT seems to be arguing that the complaint I filed on behalf of my clients is groundless and baseless. If that were so, ELIOT has opportunities to attack the pleading, but instead he has chosen to attack me.

ELIOT asserts that my involvement in alleged misconduct relating to the probate of his parents’ estates (the “Estates”) prohibit me from representing my clients. ELIOT’S motion is full

of libelous innuendo but devoid of any facts that illustrate misconduct or any participation in the probate proceedings on my part.

In contrast, my attached affidavit contains my sworn denials of any involvement in the probate matters in Palm Beach County, including any involvement in alleged misconduct.

Absent a factual record from which this court can render a decision, ELIOT'S motion must fail.

**C. ELIOT'S motion fails to set forth a legal standard or authority necessary for the court to grant the relief he has requested. Thus, his motion is not well grounded in law.**

ELIOT's third-party claims, counterclaims, and motion to disqualify and strike pleadings, merely recite ELIOT's theories and positions but fail to establish that there are a set of facts which exist that would entitle him to the relief he demands as a matter of law. Instead of setting out the facts and law for the court, he proffers theory and innuendo, stating that this is "my position" and then asking the court to investigate and figure out whether his "position" has any merit.

**D. ELIOT's counterclaim was manufactured for the improper purpose of disqualifying me and denying my client's their choice of counsel. In so doing, he is attempting to needlessly increase the expense of litigation.**

As noted in *Freeman*, supra, granting a motion to disqualify "destroys a relationship by depriving a party of representation of their own choosing". The clients I represent in this matter have chosen to act jointly, in large part, to efficiently prosecute their common claims while reducing the associated legal fees and costs. ELIOT's efforts appear to be targeted to increase the expense and time needed for all parties to resolve this matter.

**E. ELIOT'S counterclaim and motion were manufactured for the improper purposes of harassment and attempting to cause harm to my reputation and those of my clients.**

ELIOT is currently utilizing this same abusive litigation tactic in the Probate proceedings in Palm Beach County, FL. On or about January 2, 2014, ELIOT filed a motion in the probate estate of Simon Bernstein styled as follows:

**MOTION TO:  
(I) STRIKE ALL PLEADINGS OF MANCERI AND REMOVE HIM AS COUNSEL; (II) FOR EMERGENCY INTERIM DISTRIBUTIONS AND FAMILY ALLOWANCE; (III) FOR FULL ACCOUNTING DUE TO ALLEGED THEFT OF ASSETS AND FALSIFIED INVENTORIES; (IV) NOT CONSOLIDATE THE ESTATE CASES OF SIMON AND SHIRLEY BUT POSSIBLY INSTEAD DISQUALIFY YOUR HONOR AS A MATTER OF LAW DUE TO DIRECT INVOLVEMENT IN FORGED AND FRAUDULENTLY NOTARIZED DOCUMENTS FILED BY OFFICERS OF THIS COURT AND APPROVED BY YOUR HONOR DIRECTLY; (V) THE COURT TO SET AN EMERGENCY HEARING ON ITS OWN MOTION DUE TO PROVEN FRAUD AND FORGERY IN THE ESTATE OF SHIRLEY CAUSED IN PART BY OFFICERS OF THE COURT AND THE DAMAGING AND DANGEROUS FINANCIAL EFFECT IT IS HAVING ON PETITIONER, INCLUDING THREE MINOR CHILDREN AND IMMEDIATELY HEAR ALL PETITIONER'S PRIOR MOTIONS IN THE ORDER THEY WERE FILED**

(See excerpts from ELIOT'S 68 page motion in the Probate proceedings in Palm Beach County, attached to Adam Simon's Affidavit as Exhibit B, at p.2).

In the motion, ELIOT demands from the probate court a myriad of relief including not only disqualifications of a number of attorneys, but also the judge, himself. ELIOT's motions are designed to harass the court, and its officers. Where there has been alleged misconduct in the probate proceedings it is my understanding that such misconduct has been reported to both the authorities and the court.

One of the main reasons ELIOT files such motions is in an attempt to freely slander and libel anyone whom he confronts that does not do what he says when he says its. In his motion, ELIOT states about my client, Ted Bernstein, and Tescher and Spallina, the former attorneys for Simon and Shirley Bernstein and their Estates as follows:

12. That due to the Proven and Admitted Felony acts already exposed and being

prosecuted, the ongoing alleged criminal acts taking place with the Estates assets, the fact that Spallina and Tescher are responsible not only for their alleged criminal acts involving Fraud on this Court and the Beneficiaries but are wholly liable for the FELONY acts of Moran of FORGERY and FRAUDULENT NOTARIZATIONS, is just cause for all of the fiduciaries of the Estates and Trusts and counsel thus far be immediately removed, reported to the authorities and sanctioned by this Court. This disqualification and removal is further mandated now as Theodore, Spallina, Manceri and Tescher all have absolute and irrefutable Adverse Interests now with Beneficiaries and Interested Parties, *especially Petitioner who is attempting to have them prosecuted further for their crimes and jailed and all their personal and professional assets seized through civil and criminal remedies and their reputations ruined for their criminal acts against his Mother and Father's Estates and Trusts.*" (emphasis added.) (See Exhibit B attached to Adam Simon's Affidavit at par. 12).

ELIOT'S bold-faced, glaring description of his own malicious intent proves beyond doubt his contempt for the judicial system, officers of the court, and members of his own family. ELIOT even has the audacity to demand from the probate judge, that he rule on all of ELIOT'S previously filed and pending motions in the "order they were filed." (See Exhibit B at pg. 2 of 68, attached to Adam Simon's Affidavit).

In ELIOT's motion to disqualify and strike pleadings pending before this court, ELIOT states in pertinent part as follows:

Defendant, A. SIMON, can no longer be unbiased either 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." (Dkt. #58 at Par. 70).

ELIOT spews such false allegations with malicious intent and to cause harm. I, for one, can no longer permit ELIOT to wreak havoc in this litigation free from fear of any meaningful sanction. Which is why, if the court denies ELIOT's motion to disqualify me, I shall file a separate motion seeking sanctions from the Court that will include, but are not limited to, withdrawal of ELIOT's filing privileges absent leave of the court for each pleading and/or motion he desires to file in this matter in the future.

**G. ELIOT'S motion is styled as a motion to disqualify and strike pleadings actually seeks relief well beyond that.**

ELIOT, in his motion to disqualify and strike pleadings seeks a myriad of relief from this court far too extensive to regurgitate in full. Suffice to say however, that his demand for \$8 million from me, in a motion to disqualify, provides additional irrefutable evidence that he has filed this motion for an improper purpose. The number \$8 million is tossed about by ELIOT with total disregard for me or this court because he does so without a shred of evidence to support it.

ELIOT's prayers for relief also demand that this court order all children and grandchildren of Simon Bernstein to seek their own separate counsel. Such a demand is designed solely to increase the cost and expense of this litigation beyond the point of any rational economic sense. Again, ELIOT makes these demands purportedly on behalf of relatives whom are not represented in this litigation, because they were not named by the Insurer in its interpleader action nor by any other party to the litigation. Also, neither ELIOT nor any of the relatives purportedly represents can offer any evidence or documentation that would support a claim to the Policy proceeds. That would explain their absence in this case.

**H. ELIOT'S motion violates the Northern District's Local Rules, LR 7.1 in that it exceeds page limitations without leave of the court.**

**LR 7.1. Briefs: Page Limit**

Neither a brief in support of or in opposition to any motion nor objections to a report and recommendation or order of a magistrate judge or special master shall exceed 15 pages without prior approval of the court. Briefs that exceed the 15 page limit must have a table of contents with the pages noted and a table of cases. Any brief or objection that does not comply with this rule shall be filed subject to being stricken by the court.

ELIOT'S motion is over twice the length permitted by LR 7.1 and it was filed without leave of the court. In addition, the motion also contains over 125 pages of exhibits. Most of



ELIOT'S motion is devoted to the probate proceedings in Palm Beach County, Florida as opposed to the issues in the case at bar. In fact all of ELIOT's pleadings in this matter violate this rule. ELIOT's 34 page motion to disqualify with over 120 pages of exhibits is likely the shortest pleading he has filed in this matter to date. For violating LR 7.1, ELIOT's motion should be stricken by the court.

### **CONCLUSION**

ELIOT, as movant, had the burden of establishing the facts showing that the drastic remedy of disqualifying me as attorney for my clients is required in this instance. ELIOT failed to proffer any factual record in support of his motion. ELIOT also failed to articulate any legal authority supporting his motion and the myriad of relief he requests from this court. For all the foregoing reasons, this court should deny ELIOT'S motion to disqualify and strike pleadings, in its entirety.

**Dated:** January 17, 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, Adam M. Simon, David B.  
Simon, STP Enterprises, Inc., and The  
Simon Law Firm*

EXHIBIT 1

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

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. )

**AFFIDAVIT OF ADAM M. SIMON IN SUPPORT OF**  
**MEMORANDUM IN OPPOSITION TO ELIOT BERNSTEIN'S**  
**MOTION TO DISQUALIFY AND STRIKE PLEADINGS**

I, Adam M. Simon, Esq., pursuant to 28 U.S.C. § 1746, verify, depose and state under oath as follows:

1. I am over the age of twenty-one (21), and have knowledge of the facts set forth herein and could competently testify thereto if called as a witness.

2. I have been an attorney licensed in the State of Illinois and in good standing since November of 1990.

3. Since 1990, I have worked in a law firm with my brother, David B. Simon known as The Simon Law Firm. The Simon Law Firm has been as a third-party defendant in the instant litigation by ELIOT.

4. I have also worked as assistant general counsel for a life insurance brokerage owned by David B. Simon and Pamela B. Simon named STP Enterprises, Inc. ("STP"). STP has been named as a third party defendant in the instant litigation by ELIOT.

5. I am currently representing the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 (the "Bernstein Trust"), Ted Bernstein, as Trustee and individually, Pamela B. Simon (my sister-in-law), Jill Iantoni, and Lisa Friedstein as Plaintiffs. I am also representing those parties as counter, cross, or third party defendants where they have been named as parties by either ELIOT or Heritage Union. I am also representing The Simon Law Firm and STP as they have been named as third-party defendants by ELIOT.

6. The goal of all Plaintiffs I represent is to prosecute their claims to the Policy proceeds as set forth in their First Amended Complaint (Dkt. #73).

7. The goal of all cross, counter or third-party defendants I represent is to defeat the counter-claims, cross-claims and/or third-party claims made against them by ELIOT.

8. I am not of the existence of any conflict among the parties I represent at this time. Should a conflict arise, I would advise my clients accordingly.

9. I have had no involvement with ELIOT's inventions, patents, business or personal life, outside of a limited time he was selling life insurance as an agent of STP at the same time I was working for STP in the 1990's.

10. I verily believe that ELIOT's third-party claims filed against me, David Simon and The Simon Law Firm were filed for the improper purpose of attempting to manufacture a basis for ELIOT's motion to disqualify.

11. Despite these manufactured claims and because my interests as a third-party defendant are aligned with the parties I represent, I remain steadfast in my belief that I have no conflict in this case.

12. I have had approximately three contacts with attorney, Robert Spallina and possibly one contact with attorney, Donald Tescher. Those contacts focused on obtaining a copy of Tescher and Spallina's file relating to the matters involved in the above-captioned litigation.

13. I had no involvement with Tescher and Spallina's representation of the Estates of Simon or Shirley Bernstein, or Tescher and Spallina's legal representation of Simon or Shirley Bernstein prior to their deaths.

14. I had no direct or indirect involvement whatsoever with regard to the alleged misconduct in the probate of the Estates of Simon or Shirley Bernstein.

15. It is my understanding that the alleged misconduct that occurred in the probate of the estates of Simon and Shirley Bernstein involved document irregularities and/or notarial misconduct.

16. I have never met or spoken with the notary who was allegedly involved in such misconduct.

17. I did not draft any of the Wills or Trusts of Simon or Shirley Bernstein including the Bernstein Trust Agreement at issue in this litigation.

18. I never had custody or control of the Wills, Trusts or insurance policies of Simon or Shirley Bernstein including the Bernstein Trust Agreement.

19. I am unaware of the existence of any facts or circumstances which would prevent me from continuing my representation of all of my clients and myself, free from any conflict of interest or other disqualifying factor.


20. True and correct copies of (i) a submission cover letter dated November 10, 1995 from Patti Simosky to the Insurer; (ii) the enclosed beneficiary designation form sent to the Insurer of the Policy; and (iii) the Insurer's letter confirming receipt of the beneficiary designation form are attached hereto and made a part hereof as Exhibit A, Bates no. BT000028-BT000030.

21. True and correct copies of relevant excerpts cited from Eliot Bernstein's motion to disqualify filed in the Estate of Simon Bernstein in Palm Beach County, FL are attached hereto as Exhibit B.

22. I verify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements made by me are true and correct.



Dated: January 17, 2014

  
\_\_\_\_\_  
Adam M. Simon, Esq.

Subscribed and sworn to before me this  
17<sup>th</sup> day of January, 2014

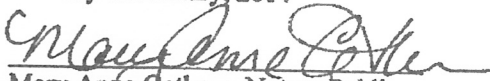
  
\_\_\_\_\_  
Mary Anne Cothorn, Notary Public



EXHIBIT A



**S.D. Lexington, Inc.**

600 WEST JACKSON BLVD. SUITE 800 CHICAGO, IL 60661 TEL (312) 993-0014 FAX (312) 993-0485

November 10, 1995

Capitol Bankers Life  
Attn: Policyholder Services  
735 North Water Street  
Post Office Box 2016  
Milwaukee, WI 53201

RE: Simon Bernstein  
Policy # 1009208

To Whom It May Concern:

Enclosed please find a change of beneficiary form for the above mentioned policy. Please process this form effective immediately.

Also, please send me an endorsed copy of this form so I know that the change has been made.

Sincerely,

Patti Simosky

**Capitol Bankers Life**

CAPITOL BANKERS LIFE INSURANCE COMPANY  
735 North Water Street P.O. Box 2016  
Milwaukee, Wisconsin 53201  
414-277-9998

**REQUEST LETTER**

TO: Capitol Bankers Life Insurance Co

Please comply with the request I have checked below in connection with Policy Number 1009208

Name of Insured SIMON BERNSTEIN

The Policy is not enclosed as instructed below  
(is or is not)

CHANGE MAIL ADDRESS TO (Do not send Policy)

(New Mail Address)

POLICY LOAN (Do not send policy)

I request a policy loan of \$ \_\_\_\_\_ or the maximum loan value, if less.

I request policy loan to pay current premium due.

CHANGE OF OWNERSHIP FROM \_\_\_\_\_ to \_\_\_\_\_  
(Print old owner name) (Print new owner name)

ADDRESS \_\_\_\_\_

EXTENDED TERM INSURANCE (Do not send Policy)

I request that the Extended Term Insurance provision be operative as a nonforfeiture value, if available; and any election by me for application of the automatic premium loan provision now on file with the Company is hereby revoked.

AUTOMATIC PREMIUM LOAN (Do not send Policy)

Make the Automatic Premium Loan provision effective, if provided in the policy

PAID-UP INSURANCE (Send Policy)

I request that the Paid-Up Insurance provision be operative as a nonforfeiture value, if available

CASH SURRENDER (Send Policy)

Pay all cash surrender equities to me and as consideration for such payment, I surrender my Policy

CHANGE OF NAME BY MARRIAGE OR OTHERWISE (Do not send Policy)

Change name of:  Insured  Owner

From \_\_\_\_\_ to \_\_\_\_\_  
(Print old name) (Print new name)

State reason for change: \_\_\_\_\_

(If the person whose name is to be changed is the policyholder, both the old and the new name of the policyholder must be signed at the bottom of this request letter on the line "Personal Signature of Policyholder")

CHANGE BENEFICIARY AS FOLLOWS: (Do not send Policy)

Beneficiaries (Give full name, age, and relationship to Insured)

Primary: (Payee at death of Insured)

LASALLE NATIONAL TRUST, N.A. TRUSTEE

Successor: (Substitute payee if no Primary payee living)

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED JUNE 21, 1995 TRUST

OTHER REQUEST (Write request and send policy, if it is to be changed )

Agent

Date

Personal Signature of Old Owner, if Ownership Change

11-7-95

By: LASALLE NATIONAL TRUST, N.A.  
Mila L. Stomber

Agent

Date

Personal Signature of Policyholder (Owner)



November 27, 1995

Capitol Bankers Life Insurance Company 803-322-3142 • 800-  
Box 19191 FAX: 803-292-4005  
Greenville, SC 29602-9191

LASALLE NATIONAL TRUST, N.A.  
AS SUCCESSION TRUSTEE  
C/O NATIONAL SERVICE ASSOC.  
600 W. JACKSON BLVD, SUITE 800  
CHICAGO , IL 60661

RE: SIMON BERNSTEIN  
Policy #1009208

Dear Sir/Madam:

The executed beneficiary change for the above mentioned policy is as follows:

PRIMARY-LASALLE NATIONAL TRUST,N.A.  
TRUSTEE  
CONTINGENT-SIMON BERNSTEIN INS.  
TRUST DATED 6/21/95.

This letter will serve as an endorsement to your policy.  
PLEASE ATTACH THIS LETTER TO YOUR POLICY.

Capitol Bankers Life Insurance Company is happy to be of service to you. If we can be of any further assistance, please feel free to contact our office at 1-800-825-0003.

Sincerely,  
CBL Service Center

EXHIBIT B

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

IN RE: THE ESTATE OF  
SHIRLEY BERNSTEIN,  
Deceased

CASE NO. 502011CP000653XXXXSB

HON. JUDGE MARTIN H. COLIN

ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL),  
ROBERT L. SPALLINA, ESQ., PERSONALLY,  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY,  
DONALD R. TESCHER, ESQ., PERSONALLY,  
DONALD R. TESCHER, ESQ., PROFESSIONALLY,  
THEODORE STUART BERNSTEIN, INDIVIDUALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
PERSONAL REPRESENTATIVE,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE PERSONALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE,  
PROFESSIONALLY  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR  
HIS CHILDREN,  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A  
BENEFICIARY,  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER  
CHILDREN,  
JILL MARLA IANTONI, INDIVIDUALLY AS A  
BENEFICIARY,  
JILL MARLA IANTONI, AS TRUSTEE FOR HER  
CHILDREN,  
PAMELA BETH SIMON, INDIVIDUALLY,  
PAMELA BETH SIMON, AS TRUSTEE FOR HER  
CHILDREN,  
MARK MANCERI, ESQ., PERSONALLY,  
MARK MANCERI, ESQ., PROFESSIONALLY,  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL)

**COPY**  
SOUTH COUNTY BRANCH OFFICE  
ORIGINAL RECEIVED

JAN 02 2014

SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

Motions (I) through (V)

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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  
JOHN AND JANE DOE'S (1-5000)

---

**MOTION TO:**

**(I) STRIKE ALL PLEADINGS OF MANCERI AND REMOVE HIM AS  
COUNSEL; (II) FOR EMERGENCY INTERIM DISTRIBUTIONS AND  
FAMILY ALLOWANCE; (III) FOR FULL ACCOUNTING DUE TO  
ALLEGED THEFT OF ASSETS AND FALSIFIED INVENTORIES; (IV) NOT  
CONSOLIDATE THE ESTATE CASES OF SIMON AND SHIRLEY BUT  
POSSIBLY INSTEAD DISQUALIFY YOUR HONOR AS A MATTER OF  
LAW DUE TO DIRECT INVOLVEMENT IN FORGED AND  
FRAUDULENTLY NOTARIZED DOCUMENTS FILED BY OFFICERS OF  
THIS COURT AND APPROVED BY YOUR HONOR DIRECTLY; (V) THE  
COURT TO SET AN EMERGENCY HEARING ON ITS OWN MOTION DUE  
TO PROVEN FRAUD AND FORGERY IN THE ESTATE OF SHIRLEY  
CAUSED IN PART BY OFFICERS OF THE COURT AND THE DAMAGING  
AND DANGEROUS FINANCIAL EFFECT IT IS HAVING ON PETITIONER,  
INCLUDING THREE MINOR CHILDREN AND IMMEDIATELY HEAR ALL  
PETITIONER'S PRIOR MOTIONS IN THE ORDER THEY WERE FILED**

COMES NOW, Eliot Ivan Bernstein ("Petitioner"), as Beneficiary and Interested Party both for himself personally and for his three minor children who may also be Beneficiaries and Interested Parties of the Estate of Shirley Bernstein ("Shirley") as Guardian



and Trustee, PRO SE<sup>1</sup>, and hereby files this his Motion to (I) STRIKE ALL PLEADINGS OF MANCERI AND REMOVE HIM AS COUNSEL; (II) FOR EMERGENCY INTERIM DISTRIBUTIONS AND FAMILY ALLOWANCE; (III) FOR FULL ACCOUNTING DUE TO ALLEGED THEFT OF ASSETS AND FALSIFIED INVENTORIES; (IV) NOT CONSOLIDATE THE ESTATE CASES OF SIMON AND SHIRLEY BUT POSSIBLY INSTEAD DISQUALIFY YOUR HONOR AS A MATTER OF LAW DUE TO DIRECT INVOLVEMENT IN FORGED AND FRAUDULENTLY NOTARIZED DOCUMENTS FILED BY OFFICERS OF THIS COURT AND APPROVED BY YOUR HONOR DIRECTLY; (V) THE COURT TO SET AN EMERGENCY HEARING ON ITS OWN MOTION DUE TO PROVEN FRAUD AND FORGERY IN THE ESTATE OF SHIRLEY CAUSED IN PART BY OFFICERS OF THE COURT AND THE DAMAGING AND DANGEROUS FINANCIAL EFFECT IT IS HAVING ON PETITIONER, INCLUDING THREE MINOR CHILDREN AND IMMEDIATELY HEAR ALL PETITIONER'S PRIOR MOTIONS IN THE ORDER THEY WERE FILED dated January 02, 2014 and in support thereof states, on information and belief, as follows:

### **BACKGROUND**

1. That first off, Judge Martin Colin may not be able to review these Motions herein, including requests for Emergency Hearings to be scheduled immediately, as possible

---

<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.

Disqualification of Judge Colin is asserted in Motion for valid legal reasons under law and it would appear improper under law for a Judge to adjudicate his own Disqualification Motion. As Emergency Hearings due to life threatening situations thrust upon Petitioner by Fiduciaries and Counsel in these matters, who have been proven to have committed criminal acts in and upon this Court and the Beneficiaries as fully defined herein and in prior unheard Motions and Petitions filed by Petitioner since May 2013 and largely unheard by this Court, ruling on these Motions herein must be had by NON CONFLICTED justices of the Court who are not involved in the nexus of events defined herein. That Petitioner is requesting this Court take Judicial Notice of the criminal acts proven of Officers of the Court and others and make on its own Motion an EMERGENCY HEARING FOR EMERGENCY RELIEF to Petitioner and his three minor children, which would have to be heard in a timely fashion as Emergencies.

2. That Petitioner prudently filed all of the following Motions and Petitions in the Estates of Shirley and Simon timely since May 2013 that remain largely unheard in particular to each Motion within the pleadings and languishing before the courts of Judge French and Your Honor and that have not been responded to by several of the Respondents since May 2013 and may impart their default as well;

**PRIOR MOTIONS AND PETITIONS FILED BY PETITIONER**

- i. That on May 6, 2013 Petitioner filed 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 SIMON/SHIRLEY BERNSTEIN AND MORE."** Filed in both estates.
  - [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, Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.

- ii. That on May 29, 2013, Petitioner filed a **"RENEWED EMERGENCY PETITION" in the estates of Shirley and Simon.**
  - [www.iviewit.tv/20130529RenewedEmergencyPetitionShirley.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionShirley.pdf)
- iii. That on June 26, 2013, Docket #39 Petitioner filed in both estates a **"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."**
  - [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseShirley.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseShirley.pdf)
- iv. That on July 15, 2013, Petitioner filed a **"MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS" in both estates.**
  - [www.iviewit.tv/20130714MotionRespondPetitionShirley.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionShirley.pdf)
- v. That on July 24, 2013, Petitioner filed a **"MOTION TO REMOVE PERSONAL REPRESENTATIVES" for insurance fraud and more in both estates.**
  - [www.iviewit.tv/20130724ShirleyMotionRemovePR.pdf](http://www.iviewit.tv/20130724ShirleyMotionRemovePR.pdf)
- vi. That on August 28, 2013, Petitioner filed a **"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" in both estates.**
  - [www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf](http://www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf)
- vii. That on September 04, 2013, ELIOT filed Docket #TBD, in the estate of Simon, a **"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."** Hereby incorporated by reference in entirety herein.
  - [www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf)
- viii. That on September 21, 2013 Petitioner filed in the IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT COURT ILLINOIS EASTERN DIVISION, Case No.. 13-cv-03643, an Answer and Cross Claim titled **"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."**

Motions (I) through (V)

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- [www.iviewit.tv/20130921AnswerJacksonSimonEstateHeritage.pdf](http://www.iviewit.tv/20130921AnswerJacksonSimonEstateHeritage.pdf)

ix. That on October 10, 2013 Petitioner filed in Shirley's estate case Motions titled,

- (I) **MOTION TO ORDER ALL DOCUMENTS BOTH CERTIFIED AND VERIFIED REGARDING ESTATES OF SHIRLEY AND SIMON (SIMON'S DOCUMENT ARE REQUESTED AS IT RELATES TO SHIRLEY'S ALLEGED CHANGES IN BENEFICIARIES) BE SENT TO ELIOT AND HIS CHILDREN IMMEDIATELY IN PREPARATION FOR THE EVIDENTIARY HEARING ORDERED BY THIS COURT**
- (II) **MOTION TO FOLLOW UP ON SEPTEMBER 13, 2013 HEARING AND CLARIFY AND SET STRAIGHT THE RECORD**
- (III) **MOTION TO COMPEL FOR IMMEDIATE, EMERGENCY RELIEF!!!, INTERIM DISTRIBUTIONS AND FAMILY ALLOWANCE FOR ELIOT, CANDICE & THEIR THREE MINOR CHILDREN DUE TO ADMITTED AND ACKNOWLEDGED FRAUD BY FIDUCIARIES OF THE ESTATE OF SHIRLEY AND ALLEGED CONTINUED EXTORTION**
- (IV) **MOTION TO CORRECT AND DETERMINE THE BENEFICIARIES OF THE ESTATE BASED ON PRIOR CLOSING OF THE ESTATE THROUGH FRAUD ON THE COURT BY USING FRAUDULENT DOCUMENTS SIGNED BY SIMON WHILE HE WAS DEAD AND POSITED BY SIMON IN THIS COURT WHEN HE WAS DEAD AS PART OF A LARGER FRAUD ON THE ESTATE BENEFICIARIES**
- (V) **MOTION TO ASSIGN NEW PERSONAL REPRESENTATIVES AND ESTATE COUNSEL TO THE ESTATE OF SHIRLEY FOR BREACHES OF FIDUCIARY DUTIES AND TRUST, VIOLATIONS OF PROFESSIONAL ETHICS, VIOLATIONS OF LAW, INCLUDING BUT NOT LIMITED TO ADMITTED AND ACKNOWLEDGED FRAUD, ADMITTED AND ACKNOWLEDGED FRAUD ON THE COURT, ALLEGED FORGERY, INSURANCE FRAUD, REAL PROPERTY FRAUD AND MORE**
- (VI) **MOTION FOR GUARDIAN AD LITUM FOR THE CHILDREN OF TED, P. SIMON, IANTONI AND FRIEDSTEIN AND ASSIGN A TRUSTEE AD LITUM FOR TED FOR CONFLICTS OF INTEREST, CONVERSION AND MORE**
- (VII) **MOTION TO RECONSIDER AND RESCIND ORDER ISSUED BY THIS COURT "ORDER ON NOTICE OF EMERGENCY MOTION TO FREEZE ASSETS" ON SEPTEMBER 24TH FOR ERRORS AND MORE AND**
- (VIII) **MOTION TO RECONSIDER AND RESCIND ORDER ISSUED BY THIS COURT "AGREED ORDER TO REOPEN THE ESTATE AND APPOINT SUCCESSOR PERSONAL REPRESENTATIVES" ON SEPTEMBER 24TH FOR ERRORS AND MORE**

- [www.iviewit.tv/20131010MotionCompelFreezeYouHavetheRighttoRemainSilent.pdf](http://www.iviewit.tv/20131010MotionCompelFreezeYouHavetheRighttoRemainSilent.pdf)

x. That on October 10, 2013 Petitioner filed in Simon's estate, a "PETITION TO DETERMINE AND RELEASE TITLE OF EXEMPT PROPERTY."

- [www.iviewit.tv/20131010PETITIONDETERMINERELEASETITLEOFEXEMPTPROPERTYJOSHUA KIA.pdf](http://www.iviewit.tv/20131010PETITIONDETERMINERELEASETITLEOFEXEMPTPROPERTYJOSHUA KIA.pdf)

- xi. That on December 08, 2013 Petitioner filed in the IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT COURT ILLINOIS EASTERN DIVISION, Case No.. 13-cv-03643, a motion titled, **“(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)
- xii. That on December 10, 2013 Petitioner filed in the estate of Shirley, an Objection titled **“BENEFICIARY AND INTERESTED PARTY ELIOT BERNSTEIN OBJECTIONS TO SUCCESSOR PERSONAL REPRESENTATIVE'S OBJECTIONS TO FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS PROPOUNDED BY ELIOT BERNSTEIN”**
  - [www.iviewit.tv/20131210PetitionerObjectionToObjectionsToDiscovery.pdf](http://www.iviewit.tv/20131210PetitionerObjectionToObjectionsToDiscovery.pdf)
- xiii. That on December 10, 2013 Petitioner filed in the estate of Shirley, a **“MOTION TO TAX ATTORNEY' S FEES AND COSTS AND IMPOSE SANCTIONS.”**
  - [www.iviewit.tv/20131210TaxAttorneyFees.pdf](http://www.iviewit.tv/20131210TaxAttorneyFees.pdf)
- xiv. That on December 17, 2013 Petitioner filed in the estate of Simon, a **“OBJECTION TO MOTION TO STRIKE PETITION TO DETERMINE AND RELEASE TITLE OF EXEMPT PROPERTY”**
  - [www.iviewit.tv/20131217ObjectionToMotionReKIAFrench.pdf](http://www.iviewit.tv/20131217ObjectionToMotionReKIAFrench.pdf)

3. That the following Motions and Petitions were filed by Petitioner in the courts that remain unheard other than limited items by this Court, including Motions for all of the following,

- i. MOTION TO FREEZE ESTATE ASSETS,
- ii. MOTION TO APPOINT NEW PERSONAL REPRESENTATIVES,
- iii. MOTION TO INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES,
- iv. MOTION TO RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN,
- v. MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS,
- vi. SECOND MOTION TO REMOVE PERSONAL REPRESENTATIVES,
- vii. MOTION FOR INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES,
- viii. MOTION FOR FAMILY ALLOWANCE,
- ix. MOTION FOR LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES,
- x. MOTION FOR REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS,
- xi. SECOND 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

Motions (I) through (V)

Thursday, January 2, 2014 @ 1:32:49 AM

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, January 22, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Cross-Plaintiff Eliot Bernstein must file proof of service of his cross-claims with the Court in accordance with Federal Rule of Civil Procedure 4(m) by no later than 1/31/14. Otherwise, his cross-claims may be dismissed pursuant to Rule 4(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 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. )

----- )  
ELIOT IVAN BERNSTEIN, )

Case No. 13-cv-03643

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

Answer Amended Complaint

**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>:**

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<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 note of this, especially



**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**

**ANSWER – 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 (“Lost or Suppressed Policy”) on the life of Simon L. Bernstein (“SIMON”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” (“Lost or Suppressed Trust”), a “Simon

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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.

Bernstein Trust, N.A.” (“Lost or Suppressed Trust 2”) and the Estate and Trusts of Simon Bernstein, all parties to these matters and makes the following ANSWER – AMENDED COMPLAINT.

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>.

**ANSWER – AMENDED COMPLAINT**

1. “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 LANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, (“HERITAGE”) states as follows:”

**ANSWER:**

Deny. That ELIOT states “where comes the trust?” when it does not legally and validly exist and no executed copies exist of this “SIMON BERNSTEIN IRREVOCABLE

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<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.

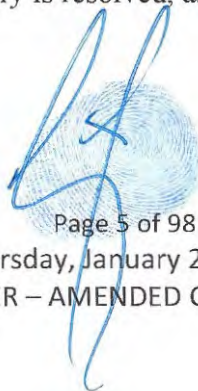
INSURANCE TRUST dtd 6/21/95” (“Lost or Suppressed Trust”) and no evidence of its existence was attached to the Original Complaint or Amended Complaint.

That the Amended Complaint therefore comes to this Court as a figment of one’s imagination not filed by a qualified legal entity with standing, bolstered by shoddy on the fly parole evidence to attempt to evince the imagination to believe that there is now clear and convincing proof of an actual legal trust with terms and designating who the trustees and beneficiaries are, which also seems to be determined on the fly depending on the account being told.

That to support the existence of what does not exist legally, one new witness statement is added in the Amended Complaint from defendant David B. Simon, Esq. (“D. SIMON”) who puts forth that some twenty years ago he saw this ALLEGED trust and that it was signed, no other affirmation regarding the language, beneficiaries, trustees or anything else is put forth by him and where defendant D. SIMON has a financial interest in the outcome and this offers no proof of an actual legal binding trust today.

That most importantly, the Amended Complaint attempts to establish that this ALLEGED Lost or Suppressed Trust is an ALLEGED Contingent Beneficiary of a Lost or Suppressed Life Insurance Policy and that this NONEXISTENT trust with imaginary trustees has legal standing to sue.

That ELIOT states that the alleged Primary Beneficiary still exists, despite the allegation that it does not in the Amended Complaint and this renders moot the Contingent Beneficiary claims, until the Primary Beneficiary is resolved, as further defined herein.



That according to HERITAGE the Contingent Beneficiary of the Lost or Suppressed Policy is the "SIMON BERNSTEIN TRUST, N.A." aka Lost or Suppressed Trust 2 and not the Lost or Suppressed Trust that has sued alleging to be the Contingent Beneficiary.

That where forth comes "Ted Bernstein" whose legal name is believed to be Theodore Stuart Bernstein ("THEODORE") and despite it being a minor technicality in the pleading it remains another misrepresentation of the 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 upon this Court is allowed to continue further.

That as for the claim in the Amended Complaint that THEODORE is factually "Trustee" of the Lost or Suppressed Trust, in addition to the fact that NOTHING in the Lost or Suppressed Trust can be proven, as there is no executed legal and binding trust contract put forth evidencing their claims and only hokey parole evidence that has recently been manufactured for this Lawsuit that may indicate further Fraud is offered as "proof."

That there is now also contradictory evidence of THEODORE'S claim to Trusteeship provided to the Court, in that defendant Robert Spallina, Esq. ("SPALLINA")<sup>3</sup> stated he was "Trustee" for the Lost or Suppressed Trust when filing an alleged fraudulent insurance claim with HERITAGE that this Lawsuit is predicated upon, only weeks earlier.

That further information confirming the fallacy of this claim by Adam Simon, Esq. ("A. SIMON") A. SIMON and THEODORE that THEODORE is "Trustee" of the Lost or

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<sup>3</sup> That this Court should note that counsel in the Probate Court of Simon L. Bernstein, the insured of the policy in question in this matter, Mark R. Manceri, Esq., representing both Robert Spallina, Esq. and Donald Tescher, Esq. as Co-Personal Representatives / Executors of the Estate Simon, has submitted a motion to withdraw as counsel to his clients on January 10, 2014. See, EXHIBIT 1

That this Court should note that Donald Tescher tendered his resignation to represent any parties of the Bernstein family and is withdrawing as counsel in all capacities and withdrawing as Co-Personal Representative / Executor / Trustee of the Estates of SIMON. See EXHIBIT 2.

Suppressed Trust, as falsely stated as fact in both the Original Complaint and the Amended Complaint, comes from a Jackson National Life Insurance Company (“JACKSON”) request to Affirm or Deny, 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]**

That finally, this Breach of Contract Lawsuit will be evidenced herein to be based upon a FRAUDULENT INSURANCE CLAIM signed illegally by the Attorney at Law, SPALLINA, who filed the claim. Therefore, this Breach of Contract Lawsuit is alleged to be based upon the denial of a FRAUDULENT INSURANCE CLAIM that was DENIED by the insurance carrier for good and just cause.

That the denial of a Fraudulent Insurance Claim cannot be grounds to sue upon for a Breach of Contract, in essence their argument states the insurance carrier should pay for a breach of contract for failing to pay an insurance claim that is based upon Fraud and failure to provide evidence of beneficial interests and was therefore denied.



2. "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."

ANSWER:

Deny. That 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. "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")."

ANSWER:

Deny. That no evidence of the "Capitol Bankers Life Insurance Company as policy number 1009208" the Lost or Suppressed Policy exists at this time.

That similar to the Lost or Suppressed Trust the Lost or Suppressed Policy is lost or missing and has not been produced for this Lawsuit by any party and so nothing can be stated about the policy other than it is lost and NONEXISTENT at this time.

That all parties responsible for maintaining a true and legally binding life insurance contract or copy of the contract regarding the Lost or Suppressed Policy, including the insurance carriers or reinsurers involved thus far, HERITAGE, JACKSON, Reassure America Life Insurance Company ("RALIC"), Annuity & Life Reassurance America, Inc. ("ALRA") and Cologne Life Reinsurance Company ("CLRC") have failed to produce an actual signed legally binding executed copy of the Lost or Suppressed Policy on SIMON'S life at this point from the production submitted by JACKSON and Plaintiffs.

That the Plaintiffs have claimed that the legally binding executed insurance policy of SIMON is lost and was not in their possession or the estate possessions of SIMON and have put forth no signed and executed copy of the Lost or Suppressed Policy at this point.

That ELIOT states that the Lost or Suppressed Trust and Lost or Suppressed Policy are being DENIED and SUPPRESSED by Plaintiffs and others, to create a situation to deny the True and Proper Beneficiaries of the Lost or Suppressed Policy their benefits through a series of fraudulent activities described and evidenced further herein, in efforts to convert the proceeds to Plaintiffs, some of who were disinherited from the Estate of SIMON.

That certain members of the Plaintiffs and their legal counsel were also involved in the maintenance, sale and administration of both the Lost or Suppressed Trust and the Lost or Suppressed Policy issued to SIMON at various times over the lifetime of the contract.

That ELIOT states that this Amended Complaint suffers not only from a Lost or Suppressed Trust but also a Lost or Suppressed Policy, therefore the contract that this Lawsuit and Amended Complaint are based upon are not present, along with the suing party, the Lost or Suppressed Trust. This equates to a nonexistent litigant, the Lost or Suppressed Trust, acting through an imaginary trustee and suing a life insurance company for breaching a contract that does not exist and where both parties claim such life insurance contract and life insurance trust do not exist at this time.

4. "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."

ANSWER:

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Thursday, January 23, 2014

ANSWER – AMENDED COMPLAINT

Deny. That the “BERNSTEIN TRUST” aka the Lost or Suppressed Trust does not legally exist and therefore the “initial Trustee” does not legally exist and is an unknown and therefore this is not a statement of legal fact, simply imagination predicated on desire.

Affirm. That Shirley Bernstein (“SHIRLEY”) did pass away of December 08, 2010, predeceasing SIMON.

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

ANSWER:

Deny. That since no legally binding Lost or Suppressed trust exists to show who the “Trustee” was, who the Successor Trustee is would also be an unknown and again this claim is not a factual statement but conjecture of what a nonexistent Lost or Suppressed Trust is claimed to have said.

That THEODORE was disinherited, along with his sister Pamela Simon (“P. SIMON”), from the Estates and Trusts of SIMON and SHIRLEY, which in the instance of a lost beneficiary at the time of death of the insured according to law the death benefits would be paid to the Insured’s Estate.

That further confounding the baseless claim that THEODORE is the “Trustee” is the fact that Robert L. Spallina, Esq. (“SPALLINA”) of Tescher & Spallina, P.A. acted knowingly as “Trustee/Successor Trustee” of the Lost or Suppressed Trust when signing with HERITAGE on November 01, 2012 an alleged fraudulent insurance claim form and signing the claim as the “Trustee” of the Lost or Suppressed Trust. See EXHIBIT 3 – SPALLINA INSURANCE CLAIM SIGNED AS TRUSTEE OF THE LOST OR SUPPRESSED TRUST aka “SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95.”





Trust and Lost or Suppressed Policy scheme at the time the claim was made, neither should this Court.

That now before this Court, Plaintiffs are attempting through this Amended Complaint and prior pleadings, to build a case for the Lost or Suppressed Trust's existence, through new evidence that was not provided prior to the breach of contract suit to any parties involved in paying the claim. That when making the claim, SPALLINA failed to provide HERITAGE with the newly manufactured evidence put forth in this Lawsuit recently, denying HERITAGE of this alleged parole evidence while making their determination that led to a denial of the claim.

That this Court should act upon its own motion to Join the insurer RALIC as an indispensable party to the action, as they appear materially involved, acting as the reinsurer of the claim and the party who denied the claim, thus sparking this Breach of Contract Lawsuit.

That this Lawsuit was instigated on April 5, 2013 in the Cook County Circuit Court after the claim was DENIED by RALIC, as requests for additional items to prove proof of beneficial interests and more were made by HERITAGE to the claimant SPALLINA, who was acting as alleged Trustee of the Lost or Suppressed Trust and who failed to provide adequate proof of the claim or provide a requested Probate court order approving the beneficiary scheme they proposed to HERITAGE.

That RALIC requested that a Probate court order from Simon's Estate case judge, the Honorable David E. French, favoring their claims that their POST MORTEM TRUST SCHEME SPALLINA was proposing to replace the Lost or Suppressed Trust was legal. Yet, this Probate court order was never sought from Judge French by Plaintiffs to satisfy

HERITAGE'S request, as no legal valid beneficiary was established to pay the claim by SPALLINA.

That instead of the Probate court order requested, this Breach of Contract lawsuit was filed instead by THEODORE, who suddenly begins acting as "Trustee" of the Lost or Suppressed Trust, despite the fact that SPALLINA had claimed to be the "Trustee" of the Lost or Suppressed Trust only weeks earlier when filing the alleged fraudulent insurance claim that caused the DENIAL of the claim that this Breach of Contract suit is then based upon.

That if THEODORE were the "Successor Trustee" in fact, as ALLEGED in the Amended Complaint, why did he not file the insurance claim acting as Trustee, instead of having his close personal friend and business associates SPALLINA file a fraudulent insurance claim as "Trustee" instead?

That when filing this Lawsuit, THEODORE acting in his new alleged fiduciary capacity as the brand new "Trustee" of the Lost or Suppressed Trust, once he had knowledge of the Fraud that SPALLINA had committed when attempting to secure the death benefit from HERITAGE acting illegally as Trustee did absolutely nothing legally required of a Trustee with fiduciary responsibility when evidence of insurance fraud is found like reporting it to the proper authorities and this Court when filing his breach of contract Lawsuit.

That instead, THEODORE further Conspired with and Aided and Abetted SPALLINA et al. by filing this fraudulent Breach of Contract Lawsuit based on SPALLINA'S denied claim, by creating a new scheme to convert the proceeds to improper parties without proving beneficial interests first and facilitating this new fraud by misusing a court to enable the conversion.

That once this Lawsuit was filed, it is apparent that SPALLINA is attempted to be removed from the scene before anyone caught on that he was not and could not be the Trustee of the Lost or Suppressed Trust and therefore the insurance claim was fraudulent.

That when filing this Lawsuit, A. SIMON and THEODORE failed to notify this Court and further concealed from this Court, ELIOT and the Authorities, the fact that SPALLINA had acted in a falsified fiduciary capacity as "Trustee" to the Lost or Suppressed Trust in efforts to fraudulently convert and comingle the death benefits to his law firm Trust account, as he gave HERITAGE his law firm trust account and numbers for deposit to him as the Trustee of the Lost or Suppressed Trust.

That now in this Lawsuit they attempt to convert and comingle the death benefits through this Court, facilitated by a Fraud on this Court through a baseless Breach of Contract Lawsuit after the insurance fraud scheme failed to have the benefits paid to the improper parties and attempting to evade the need to prove beneficial interests to the insurer and hoping to fool this Court instead into believing that the Lost or Suppressed Trust has standing and is a qualified legal beneficiary of the Lost or Suppressed Policy.

That if A. SIMON believes that his client THEODORE is the "Trustee" as he represents to this Court when filing this Lawsuit, then he had legal obligations under Attorney Conduct Codes and State and Federal Law to notify this Court, the State Bar and the State and Federal Authorities of SPALLINA'S fraudulent insurance claim, acting fraudulently as alleged "Trustee" of his client the Lost and Suppressed Trust, when he believes the "Trustee" to be his client THEODORE.

That this reporting of SPALLINA by A. SIMON and THEODORE is legally and ethically mandated, especially for A. SIMON acting as an Officer of this Court, as they knew

this information when filing this Lawsuit and chose to instead conceal it and further try to cover it up through the Amended Complaint with knowingly false and misleading statements.

That when an Attorney at Law or Judge knows of alleged criminal acts of another Attorney at Law they must report the alleged or suspected criminal and/or ethical violations to all the proper criminal / ethical authorities.

That A. SIMON and THEODORE instead try to cover up SPALLINA'S tracks and the fraudulent insurance claim he filed acting as "Trustee" by now claiming in this Amended Complaint that SPALLINA filed the claim acting as "counsel" to the Lost or Suppressed Trust, a brand new assertion added to the Amended Complaint that is materially and factually false and misleading information presented to this Court as part of a continuing and ongoing Fraud on this Court, the True and Proper Beneficiaries and the insurance carriers.

That there are also now NEW UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED copies of the Lost or Suppressed Trust that recently were put forth by A. SIMON, after over a year after SIMON'S death and after the insurance claim was DENIED, as if they fell from the sky mysteriously, right after Your Honor in a September 25, 2013 hearing demanded that A. SIMON put something forth to prove the existence of the Lost or Suppressed Trust. That this newly manufactured alleged parole evidence is far from legally binding or even admissible.

That this new alleged parole evidence was submitted in the Lost or Suppressed Trust's Production under Rule 26 in this Lawsuit.

That at no time prior to the Rule 26 disclosure did these documents exist in the records and in fact it was claimed that no copies existed of this Lost or Suppressed Trust both when

SPALLINA filed his fraudulent insurance claim with HERITAGE and when this Lawsuit was filed.

That these UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED drafts of a Lost or Suppressed Trust cannot be proven to show clear and convincing evidence that they are copies of an executed trust agreement and therefore should NOT be referred to as the "BERNSTEIN TRUST" before this Court, as again these are not legally binding copies of an executed trust and thus cannot be used as evidence proving its existence as a qualified legal entity with standing.

That for future reference, instead of identifying these legally void documents as evidence of the Lost or Suppressed Trust and confused as such legal trust entity in motions or hearings as having any legal relevance, this Court should mandate that they only be referred to as what they are, UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS of a Lost or Suppressed Trust that is NONEXISTENT. That by referring to the "BERNSTEIN TRUST" as such to this Court, instead of defining it more apropos, as the "LEGALLY DEVOID OF STANDING, LEGALLY NON-EXISTENT 'BERNSTEIN TRUST' BASED UPON UNSIGNED, UNEXECUTED, UNDATED, UN-AUTHORED ALLEGED DRAFTS" prejudices ELIOT and others, as it appears to give these worthless unexecuted, undated and un-authored alleged drafts of a NONEXISTENT "BERNSTEIN TRUST" standing before the Court.

That these UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED drafts of a Lost or Suppressed Trust were created on an unknown date, at an unknown place by an unknown author and prove no existence of the Lost or Suppressed Trust and what legal language it contained.

That from a hearing before Your Honor on January 13, 2014, it was learned from JACKSON that the only successor trustee designation possible of the UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED drafts of the Lost or Suppressed Trust was a corporate trustee and THEODORE did not qualify in that capacity to be Trustee. That is if this Court gives the language of the LEGALLY DEVOID OF STANDING, LEGALLY NON-EXISTENT 'BERNSTEIN TRUST' BASED UPON UNSIGNED, UNEXECUTED, UNDATED, UN-AUTHORED ALLEGED DRAFTS of the Lost or Suppressed Trust any legal value at all.

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

ANSWER:

Deny. That since no legally valid or executed copy of the "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95" aka Lost or Suppressed Trust aka the LEGALLY DEVOID OF STANDING, LEGALLY NON-EXISTENT 'BERNSTEIN TRUST' BASED UPON UNSIGNED, UNEXECUTED, UNDATED, UN-AUTHORED ALLEGED DRAFTS exists, this claim is not a factual statement but instead based on nothing legally binding, just more conjecture steeped in imagination, yet claimed as fact to this Court by A. SIMON.

That ELIOT quotes SPALLINA in an email sent to ELIOT stating,

**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

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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. [emphasis added] 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.

That 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 Amended Complaint to try and make this “educated guess” a statement of fact to Your Honor, despite knowing it is only a best guess as no legally valid trust document exists to prove the claim.

That A. SIMON does not qualify his claim to this Court of who the beneficiaries in the Amended Complaint are as an “educated guess” to Your Honor but instead states it as fact here to mislead this Court to believe there is such a legal entity and these misstatements in both the Original Complaint and this Amended Complaint attempt to further prejudice the Lawsuit with misstatements of fact.

7. “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.”

ANSWER:



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Deny in part, Affirm in part. That ELIOT affirms in part that Simon Bernstein died on September 13, 2012.

That ELIOT denies that "Ted Bernstein" is legal name of a child of SIMON as already stated herein.

8. "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."

ANSWER:

Deny. That ELIOT states that if the beneficiaries of the Lost or Suppressed Trust are a best guess than what percentages these alleged beneficiaries would possess of the NONEXISTENT entity are also based on a best guess and if the entity is found not to legally exist, their percentages drop to 0% of a legal entity with standing to make any claims to this Court.

That in a letter from THEODORE he states the following,

From: Ted Bernstein [mailto:tbernstein@lifecinsuranceconcepts.com]  
Sent: Friday, January 18, 2013 6:04 PM  
To: 'Jill Iantoni'; Lisa Friedstein (lisa.friedstein@gmail.com); Eliot Bernstein (ivicwit@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 [emphasis added]** to pay the proceeds, based on the large face amount of the policy (\$1.7MM) [actually nothing to do with the face amount but on the deficient claim submitted by SPALLINA failing to prove beneficial interests]. 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

That from the above email one can see that THEODORE has not followed any of the statements in the letter regarding doing a new one of a kind POST MORTEM trust to replace the Lost or Suppressed Trust to then have the Lost or Suppressed Policy death benefit proceeds paid into the new trust and distributed by THEODORE after a Probate court order approving the scheme.

That in this Lawsuit, the new Breach of Contract angle to convert the benefits appears not to create a new trust to replace the Lost or Suppressed Trust and then fund the new one but now to instead, with shoddy parole evidence inserted into the record, try and now claim that the Lost or Suppressed Trust is a qualified legal entity/trust to have the proceeds paid into. Nothing similar to what they claimed they were doing to HERITAGE, ELIOT or ELIOT'S children's counsel, which was that they were creating this new trust and agreement based on their claim that trust did not exist at the time of the insured's death and the trust was

NONEXISTENT at that time as well and a Probate court order was going to be issued approving this scheme.

That ELIOT notified Plaintiffs that after review by Attorneys at Law that their scheme appeared flawed as when no beneficiary legally exists at the time of death of the insured, then the benefits are paid to the insured's estate and other problems.

That as his email claims, THEODORE was to act as Trustee to the new trust created under their proposed Settlement and Mutual Release Agreement ("SAMR") and was not to act as the Trustee of the Lost or Suppressed Trust as THEODORE now does in this Lawsuit.

That according to their story at the time of the email they stated that the trust was lost and no copies of an executed copies existed and therefore a new POST MORTEM trust had to be created where THEODORE would then act as Trustee of the NEW SAMR TRUST, not the Lost or Suppressed Trust, as no one knew who or what the Lost or Suppressed Trust said.

The premise that THEODORE was Trustee of the Lost or Suppressed Trust and therefore would be Trustee of the new SAMR Trust was based only on his belief at the time of what he thought he remembered of the trust document, since no document existed to prove his claim that he was Trustee.

That the scheme referred to in the email was further based on preparing a SAMR and a new trust and then getting the Probate court judge in SIMON'S Estate case in Palm Beach County, FL, the Honorable Judge David E. French, to approve the SAMR POST MORTEM trust and beneficiary scheme. That this process was necessary due to their initial fraudulent insurance claim with SPALLINA acting and signing as Trustee of the Lost or Suppressed Trust being DENIED by HERITAGE and then RALIC'S mandating a Probate court order approving the scheme proposed in order to pay the benefits.

That the court approval demanded was not from this Court and Your Honor but “the judge” of the Probate court in Florida, where this matter should have legally proceeded to once there was no legal beneficiary at the time of the insured’s death.

That this SAMR scheme and the court order demanded by RALIC was evaded by A. SIMON and THEODORE through this cleverly disguised Breach of Contract and THEODORE and SPALLINA never sought to comply with HERITAGE’S request for the Probate court, while simultaneously telling ELIOT and his children’s counsel that they were going to seek the Probate court order to approve their scheme, never mentioning this backdoor Breach of Contract scheme when filing it, noticeably without ELIOT included as it was filed with the blessing of only 4/5<sup>th</sup> of SIMON’S children according to the Original Complaint. How sneaky.

That this whole Probate court order process was to satisfy requests from HERITAGE and RALIC, not ELIOT, requesting proof of a legally valid and qualified beneficiary with proven beneficial interests and instead of complying with RALIC’S request, this Lawsuit was done secretly behind ELIOT and his children’s counsel backs and as learned in the January 13, 2014 hearing before Your Honor, this Lawsuit came as quite a shock to JACKSON who was also under the impression they were seeking the Probate court order approving their first scheme to convert the benefits.

That THEODORE et al. then purposely failed to do anything they claimed they were going to do in the email concerning attempting to create a new POST MORTEM SAMR trust for SIMON to replace the alleged Lost or Suppressed Trust and seeking court approval of the scheme when filing this Lawsuit and instead they skipped the requested Probate court order HERITAGE demanded and tried to hide all that information from this Court and others when

filing this fraudulent Lawsuit claiming HERITAGE was refusing to pay a valid claim, when actually HERITAGE and RALIC were under the impression as was ELIOT that they were going to provide the proof they had offered and stated they were seeking.

That the Plaintiffs now attempt to claim that HERITAGE, JACKSON and RILAC have breached their insurance contract by failing to pay them the proceeds after they have made repeated demands and yet not telling the whole truth to this Court as to why their demands were denied as legally deficient to pay a claim and that they failed to provide the requested information to prove beneficial interests and more to the carrier that are legally necessary for the carrier to pay a claim.

The Court should know that THEODORE knew the grandchildren were potential beneficiaries of the Lost or Suppressed Policy if the benefits were paid to Estate of SIMON and the SAMR was to be signed by their adult children or for the minor children their parent guardians would sign, releasing their parents of liabilities or future claims against them if it was later found their parents were not the true and proper beneficiaries.

That further THEODORE knew of the conflict this SAMR scheme created for all the children of SIMON competing for the benefits with their children and intentionally left them out of the Lawsuit as potential Plaintiffs with rights to the death benefits to deprive them of their rights to the proceeds.

That had the grandchildren been added to this Lawsuit they would have had to either waive their rights legally to the benefits or have a defense of their claims presented in this Lawsuit.

That when filing this Lawsuit, A. SIMON and THEODORE dispensed of the grandchildren as parties entirely, including even notifying them that a Lawsuit was filed on

anyone's behalf for the benefits and this was further concealed from ELIOT and his children's counsel.

That the reason to hide this suit from the True and Proper beneficiaries and interested parties in the death benefits, 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 and then later sue them and on information and belief they conspired to secret this information from their own children, ELIOT and ELIOT'S children's counsel.

That conflicts for the insurance proceeds were created between ELIOT, THEODORE, IANTONI, P. SIMON and FRIEDSTEIN with their children due to the ALLEGED Lost or Suppressed Trust and the ensuing need they claimed for a SAMR POST MORTEM TRUST SCHEME as proposed by SPALLINA, his partner Donald R. Tescher, Esq. ("TESCHER"), P. SIMON, D. SIMON and THEODORE, which would pay SIMON'S children the proceeds instead of his grandchildren.

That this conflict forced ELIOT'S counsel at the time, Tripp Scott, to state that ELIOT could not act as a trustee for his children and waive their rights to the benefits and then convert the benefits directly to himself without running into legal and ethical problems and perhaps committing criminal acts as a fiduciary acting as Trustee for his children as alleged beneficiaries of the Estate of SIMON while converting the proceeds directly to himself instead.

That a retainer with Tripp Scott that initially was for both ELIOT and his children had to be rewritten to remove ELIOT and the children retained Tripp Scott separately and ELIOT represented himself without counsel due to these conflicts.

That again the motive for these continuous and evolving 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 as is the case when no beneficiary is legally present at the time of death of the insured, as THEODORE, P. SIMON and their lineal descendants, were wholly disinherited by their parents for compensation received while alive, in the form of multimillion dollar businesses and more, whereas the other children had not received such living gifts of long established family businesses worth tens of millions of dollars.

9. "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."

ANSWER:

Deny. That this statement is factually incorrect, as it again assumes there is a valid and legally binding Lost or Suppressed Trust aka "BERNSTEIN TRUST" aka LEGALLY DEVOID OF STANDING, LEGALLY NON-EXISTENT 'BERNSTEIN TRUST' BASED UPON UNSIGNED, UNEXECUTED, UNDATED, UN-AUTHORED ALLEGED DRAFTS that defines valid and legal beneficiaries and their interests.

That again however, the truth is that these claims are conjecture based on an "educated guess" of who the beneficiaries are, figments of the imagination and these claims are not legal facts as posited in the Amended Complaint to this Court.

That this False Statement of Fact in is intended to mislead the Court and another attempt to pepper the record with False Statements in Official Proceedings by A. SIMON and

THEODORE to establish a false fact pattern based on legally void premises that lead to legally erroneous and false conclusions.

That this statement is also factually incorrect as ELIOT did not choose to pursue his own purported claims Pro Se. ELIOT was instead forced to pursue his claims in this matter when he was notified by JACKSON that this fraudulent Lawsuit initiated behind his back was in progress when JACKSON sued ELIOT as a Third Party Defendant and forced him to respond legally.

That further, ELIOT would love to hire counsel to protect he and his children's interest but due to delays in the Estates distributions from other problems and this policy in part, ELIOT has been denied all inheritance monies for over three years in his mother's Estate and close to a year and a half in his father's Estate, which would more than adequately cover the legal expenses caused by others skullduggery, such as admitted and acknowledged FORGERY, FRAUDULENT NOTARIZATIONS, IDENTITY THEFT of a deceased person and allegations of a host of other criminal acts, he has been prevented from these critical funds for his family through a never ending stream of fraudulent acts to convert the assets of the Estates of SIMON and SHIRLEY to improper parties.

That up until the time of 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 he and his children's counsel, who believed that the Probate court order RAJIC requested to approve the SAMR POST MORTEM TRUST SCHEME was being sought to approve the fraudulent insurance claim filed by SPALLINA as Trustee that was DENIED by HERITAGE.



10. "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."

ANSWER:

That 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. "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."

ANSWER:

That 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.

12. "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."

ANSWER:

That 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. "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."

ANSWER:

That 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.

14. "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."

ANSWER:

That 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. "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."

ANSWER:

Deny. That ELIOT states that no "primary beneficiary" or "contingent beneficiary" of the Lost or Suppressed Policy can be factually ascertained as the Lost or Suppressed Policy does not factually exist to fact check this statement and this statement again appears an attempt to mislead the Court that policy actually exists and the terms are somehow known.

That despite what is alleged in 1995 as the Contingent Beneficiary, at this time, according to JACKSON'S production documents, the Contingent Beneficiary is the "SIMON BERNSTEIN TRUST, N.A." the Lost or Suppressed Trust 2 and not BERNSTEIN TRUST aka the Lost or Suppressed Trust aka the LEGALLY DEVOID OF STANDING, LEGALLY NON-EXISTENT 'BERNSTEIN TRUST' BASED UPON UNSIGNED, UNEXECUTED, UNDATED, UN-AUTHORED ALLEGED DRAFTS.

That the parole evidence submitted in the form of the 1995 Beneficiary change form produced is questioned at this time as to its authenticity. The alleged beneficiary change

form is not attached to the Lost or Suppressed Policy as required, as the Policy is lost and again verification that the Beneficiary change was made is impossible at this time.

16. "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"."

ANSWER:

Deny. That ELIOT states that if the VEBA controlled the beneficiary designation of the participants as with qualified plans, than the participants would not have an individual member's beneficiary listed as a Contingent Beneficiary on the Policy, when the primary and contingent beneficiaries of the VEBA plan designated to receive the VEBA plan proceeds is an INSTITUTIONAL TRUST COMPANY who pays the VEBA plan and the death benefits for the participants and their primary and contingent beneficiaries are instead determined by the "VEBA Plan and Trust Beneficiary Designation" form designating the beneficiaries and not listed on the insurance company beneficiary form or policy.

That the parole evidence submitted in the form of the 1995 "VEBA Plan and Trust Beneficiary Designation" form produced is questioned at this time as to its authenticity and the name designated as Primary Beneficiary on it does not match the alleged Contingent Beneficiary on the Lost or Suppressed Policy as claimed by HERITAGE to be the Lost or Suppressed Trust 2 aka the SIMON BERNSTEIN TRUST, N.A., another major hurdle in their claims asserted to this Court.

17. "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."

ANSWER:

Deny. That ELIOT states that this is another False and Misleading statement of fact, in that factually what is evidenced by this ALLEGED "VEBA Plan and Trust Beneficiary Designation" form is that the beneficiaries of the VEBA plan were elected and the Primary Beneficiary of the VEBA plan would have then been the alleged Suppressed or Lost Trust and would not prove anything about the beneficiaries listed on the Lost or Suppressed Policy. That the VEBA plan would not have had the Lost or Suppressed Trust as beneficiary of the Lost or Suppressed Policy as this would defeat the VEBA plan.

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

ANSWER:

That 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.

19. "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."

ANSWER:

That 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.

20. "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.”

ANSWER:

Deny. That 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.

April 23, 2010

SIMON BERNSTEIN  
7020 LIONS MEAD  
BOCA RATON, FL 33496

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09885608

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.

If you have any questions, please call the Client Service Center at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

That ELIOT states that the SIMON BERNSTEIN TRUST, N.A. aka the Lost or Suppressed Trust 2, is another trust that appears lost or suppressed in efforts to convert the proceeds to improper beneficiaries.

That 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 P. SIMON and others, with insiders at their “friendly insurance carrier” that was willing, according to SPALLINA’S email evidenced herein, to pay the insurance claim without a legally binding valid trust agreement proving beneficial interests, expeditiously no less. As stated in SPALLINA’S email cited already herein, “Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument.”

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 on September 25, 2013 that the Lost or Suppressed Trust and now the Lost or Suppressed Policy, both essential to the lawsuit having any basis, be produced and that they be legally valid and binding executed documents or copies of legally binding executed documents and if they cannot be produced and authenticated than a Default Judgment in favor of ELIOT should be granted instantly.

That if this Court determines, as HERITAGE did, that beneficial interests and trusteeship have NOT been established, than the proceeds, once the Lost or Suppressed Policy is found to verify the amount and type of death claim to be paid, should be returned by this Court to HERITAGE and then after determining what to do in the event of the carrier losing the insurance contract the proceeds should be turned over to the Probate court by HERITAGE to be paid to the SIMON’S Estate as is required under Florida law when a beneficiary is not present at time of death and let the Probate court then determine the beneficial interests of the Estate of SIMON and distribute the proceeds accordingly.

21. "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."

ANSWER:

Deny. That the sole surviving Contingent Beneficiary according to the records provided by JACKSON, is "SIMON BERNSTEIN TRUST, N.A." and not the "BERNSTEIN TRUST" and not the "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95" aka the Lost or Suppressed Trust and so the "BERNSTEIN TRUST" has no legal standing in any case, as it is NOT listed on the Lost or Suppressed Policy according to JACKSON as a contingent beneficiary.

That instead of stating the facts to Your Honor, A. SIMON tries to twist these non-realities as truth and pepper the record with the continuous drumbeat of False Statements that the beneficiary is a known factual legal entity entitled to the benefits and it is factually not as it is a NONEXISTENT Lost or Suppressed Trust where the true beneficiaries are unknown and where SIMON could have changed them at any time prior to his death.

That this Court should note that "LaSalle National Trust, N.A." the alleged PRIMARY BENEFICIARY is still an active surviving Primary Beneficiary of the Lost or Suppressed Policy that needs to be joined in this Lawsuit by this Court's own motion as the PRIMARY BENEFICIARY and an indispensable party that has been cleverly carved out of the picture in the Amended Complaint with further False and Misleading information to this Court and others, further defined herein.

That False and Misleading Statements appear in the Amended Complaint regarding the status and fate of "LaSalle National Trust, N.A." as discussed further herein and if they exist

as the PRIMARY BENEFICIARY then the discussion of who the Contingent Beneficiary is moot at this time.

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

ANSWER:

Deny. ELIOT states the insured under the Lost or Suppressed “Policy” cannot be proven as the policy is lost or suppressed and therefore factually NONEXISTENT at this time to prove the voracity of the claim that the Lost or Suppressed Policy was in force on the day SIMON died or even that SIMON was in fact the insured under it or any other terms claimed thereunder.

23. “22. Following Simon Bernstein’s death, the BERNSTEIN TRUST, **by and through its counsel in Palm Beach County, FL [emphasis added]**, submitted a death claim to HERITAGE under the Policy including the insured’s death certificate and other documentation.”

ANSWER:

Deny. That this statement is factually incorrect as SPALLINA filed and SIGNED the insurance claim form as “Trustee” of the alleged lost “Simon Bernstein Irrevocable Trust dtd 6/21/95” and NOT acting as “counsel” to the Lost or Suppressed Trust as already evidenced herein and in exhibit.

That the Lost or Suppressed Trust is a trust that SPALLINA has made written statements that he has never seen or had copies of as evidenced herein and in prior pleadings and thus his claim that he is “Trustee” is alleged part of a larger fraudulent insurance scheme. As an Attorney at Law acting as “Trustee” or “counsel” to a Trust that he claims not to have ever



possessed or seen, further appears suspect and ELIOT wonders if he billed for work on the Lost or Suppressed Trust that he never possessed or saw but claims he was alleged “Trustee” for when filing the alleged fraudulent insurance claim that was denied.

That the claim now asserted in the Amended Complaint is that SPALLINA was acting as “counsel” to the Lost or Suppressed Trust when he filed the insurance claim with HERITAGE and allegedly acted in that legal capacity according to A. SIMON and THEODORE, despite A. SIMON and THEODORE knowing this claim was false when filing this Lawsuit based on SPALLINA’S fraudulent insurance claim he signed as “Trustee” of the Lost or Suppressed Trust and did not signed as “counsel” for the Lost or Suppressed Trust.

That according to JACKSON’S counter complaint, THEODORE also was advised by counsel that he had no basis to file this baseless and fraudulent Breach of Contract Lawsuit and yet somehow recruited A. SIMON to file it without basis.

That one look at the alleged fraudulently signed insurance claim form submitted will prove to this Court that SPALLINA filed the insurance claim form impersonating himself as the alleged “Trustee” of the Lost or Suppressed Trust when signing the claim form.

That ELIOT alleges this was done with intent to defraud HERITAGE to pay SPALLINA the benefits acting as the alleged “Trustee” of the Lost or Suppressed Trust.

That SPALLINA’S fraudulent actions get much worse than impersonating the Lost or Suppressed Trust “Trustee” that is claimed to be the Contingent Beneficiary of the Lost or Suppressed Policy.

That in fact, SPALLINA also attempted to impersonate the Primary Beneficiary, LaSalle National Bank, N.A., an INSTITUTIONAL TRUST COMPANY and further acted falsely as

a TRUSTEE for LaSalle National Bank, N.A. during his communications with the carrier, as evidenced further herein.

That this statement in the Amended Complaint is further a False Statement of Fact when it refers to the “Policy” as if it exists when the Policy is LOST OR SUPPRESSED at this point and no legal valid and binding copy has been made a part of the Original Complaint or the Amended Complaint or in any other pleading or in any production by any party to this Lawsuit to make any claims in regards to the factual language contained therein.

That the Lost or Suppressed Policy is claimed lost by many of those involved in this Lawsuit, including the insurance carriers and Plaintiffs who have fiduciary obligations to maintain executed copies of the Lost or Suppressed Policy necessary to pay an insurance claim legally.

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 Amended Complaint. SPALLINA claims in an email the following,

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** [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 [Albert Gortz is a Proskauer Rose partner and the first partner accused in ELIOT'S RICO of stealing his Intellectual Properties] 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

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.

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," and yet despite this he then willing signs an insurance claim form as if the 1995 trust said he was the Trustee.

That it is hard to imagine that A. SIMON can now represent with legal authority to this Court anything about what the Lost or Suppressed Trust said stated now as facts when

everything in such Lost or Suppressed Trust is an “educated guess” and not a legally binding fact.

That A. SIMON fails to state the truth to this Court that nobody knows what the Lost or Suppressed Trust states or who the beneficiaries or trustees are and instead claims these are factual assertions based on something in the real world that is legally valid.

That for these and other reasons, SPALLINA’S insurance claim that was filed with him acting as “Trustee” and not “counsel” of the Lost or Suppressed Trust was DENIED, as no proof of the True and Proper Beneficiaries or Trusteeship could be made to the carrier to legally pay the benefits to.

That the beneficiaries on the Lost or Suppressed Policy according to HERITAGE do not even name the BERNSTEIN TRUST aka the Lost or Suppressed Trust at the time of SIMON’S death as either a named primary or contingent beneficiary and again once must rely on imagination to make their assertion true.

That the claim was further not paid when none of the information requested and legally necessary to pay the claim by HERITAGE was provided by either the Primary or Contingent Beneficiaries allegedly listed as beneficiaries on the Lost or Suppressed Policy that proved beneficial interests and the trusteeship claimed by SPALLINA in his fraudulent insurance claim form. Therefore, without satisfactory proof of SPALLINA’S claims or the requested Probate court order approving the scheme, there was no way for HERITAGE to legally pay the benefits to the “educated guess” beneficiaries and trustees of a NONEXISTENT trust.

That in correspondences included in JACKSON’S production for this Lawsuit we find shocking new information that implicate that SPALLINA not only impersonated the Trustee of the Lost or Suppressed Trust but fraudulently IMPERSONATED AN INSTITUTIONAL

TRUST COMPANY and IMPERSONATED HIMSELF AS TRUSTEE OF THE INSTITUTIONAL TRUST COMPANY in efforts to convert the insurance proceeds illegally. 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, where 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.”**

Heritage Union Life Insurance Company  
P.O. Box 1600, Jacksonville, FL 32251  
Phone 800-825-0003 Fax 803 353 1936  
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 33431

Check out  
Spallina's title at  
LaSalle National  
Trust N.A.

Insured Name: SIMON PERINSCHIN  
Policy Number: 1009208  
Correspondence Number: 49765315

Dear Trustee:

- ii. Again on Bates #JCK001281, in a letter dated November 05, 2012 from HERITAGE to SPALLINA, where 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.”**

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PO Box 1147, Jacksonville, FL 32251-1147  
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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:

- iii. Again on Bates # JCK001290, in a letter dated November 29, 2012 from HERITAGE to SPALLINA, where 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.”

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November 29, 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: 09801925

Dear Trustee:

- iv. Again on Bates # JCK001301, in a letter dated December 07, 2012 from HERITAGE to SPALLINA, where 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 4 – LETTERS TO  
SPALLINA FROM HERITAGE ADDRESSED TO SPALLINA AS TRUSTEE OF  
LASALLE NATIONAL TRUST, N.A.

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, FL 32251

Phone 800 825-0003 Fax 803-333-4936

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December 7, 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: C9808194

Dear Trustee:

That from JACKSON’S production in HERITAGE’S internal company notes we find that QUESTIONS and RED FLAGS arose almost immediately when SPALLINA contacted HERITAGE in these fraudulent fiduciary capacities with no proof or legal contract produced to validate his claims for the death benefits.

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]

That this further disproves the False Statements in the Amended Complaint that SPALLINA filed the claim acting as Attorney at Law to the Lost or Suppressed Trust and shows that A. SIMON did not truthfully state to this Court that SPALLINA acted as "Trustee" of the Lost or Suppressed Trust that he signed the claim form acting as, or that SPALLINA acted as the INSTITUTIONAL TRUST COMPANY the "LaSalle National Trust, N.A." at an improper address, or that SPALLINA acted as "Trustee" of the INSTITUTIONAL TRUST COMPANY the "LaSalle National Trust, N.A." also at an improper address.

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.

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. Evidence of this claim can be found online @ <http://www.ctlandtrust.com/#!/successorships-h-l/ctsk> , incorporated by reference herein.

That the Amended Complaint and the Original Complaint both claim erroneously that “LaSalle National Trust, N.A.” the PRIMARY BENEFICIARY was acquired by Bank of America, N.A. and then according to Plaintiffs account then mysteriously disappears. However, ELIOT was unable to find records of Bank of America, N.A. acquiring LaSalle National Trust, N.A. ever or Chicago Title Land Trust Company ever purchasing it from Bank of America, N.A. as successor.

That on information and belief, Bank of America, N.A. did acquire LaSalle National Bank.

That on information and belief, LaSalle National Trust, N.A. was acquired by Chicago Title Land Trust Company who currently acts as successor to LaSalle National Trust, N.A., and is the existing alleged Primary Beneficiary of the Lost or Suppressed Policy according to HERITAGE.

That in the letters from HERITAGE addressing SPALLINA as “TRUSTEE” of the INSTITUTIONAL TRUST COMPANY the “LaSalle National Trust, N.A.,” addressed to “LaSalle National Trust, N.A.” at his business office, one finds that **SPALLINA IS IMPERSONATING NOT ONLY A “TRUSTEE” OF LASALLE NATIONAL TRUST, N.A. AT HIS ADDRESS BUT ALSO**

**IMPERSONATING THE ACTUAL INSTITUTIONAL TRUST  
COMPANY AT HIS OFFICE ADDRESS.**

That SPALLINA then had HERITAGE send insurance claim forms to him in such imposter legal capacities, at his erroneous address for “LaSalle National Trust, N.A.” and the number of felony criminal code violations these acts impart is staggering from,

- (i) **ILLEGALLY IMPERSONATING AN INSTITUTIONAL TRUST COMPANY THE “LASALLE NATIONAL TRUST N.A.” LOCATED AT THE ADDRESS OF SPALLINA’S LAW FIRM,**
- (ii) **TO ILLEGALLY IMPERSONATING A TRUSTEE OF AN INSTITUTIONAL TRUST COMPANY AT “LASALLE NATIONAL TRUST, N.A.” AT SPALLINA’S ADDRESS,**
- (iii) **TO ILLEGALLY ACTING AS TRUSTEE FOR THE LOST OR SUPPRESSED TRUST,**
- (iv) **TO COMMITTING INSURANCE FRAUD BY SIGNING A FRAUDULENT CLAIM FORM, AND FINALLY,**
- (v) **TO FRAUD ON THE TRUE AND PROPER BENEFICIARIES.**

That these letters from HERITAGE and other evidence implicate that SPALLINA and a one Kimberly Moran (“MORAN”) gave SPALLINA’S address to HERITAGE as the address for “LaSalle National Trust, N.A.” while impersonating to HERITAGE that SPALLINA was a “TRUSTEE” of that INSTITUTIONAL TRUST COMPANY at his law firms address, while also fraudulently claiming to be Trustee of the Lost or Suppressed Trust when he

signed the claim form, all allegedly with intent to defraud HERITAGE and the True and Proper Beneficiaries.

That to be clear, it is alleged that 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 intended for SIMON’S beneficiaries into his Law Firm, defendant Tescher & Spallina P.A.’s, trust account, while acting in false fiduciary capacities to achieve such conversion.

That SPALLINA, from October 09, 2012 through December 07, 2012, through several letters and correspondences to HERITAGE further fails to ever notify the carrier,

- i. that he is NOT “LaSalle National Trust, N.A.” located at his office, or
- ii. that he is NOT the “TRUSTEE” of the INSTITUTIONAL TRUST COMPANY “LaSalle National Trust, N.A.” at his office, or
- iii. that the address for “LaSalle National Trust, N.A.” and the title “Trustee” HERITAGE addresses him as in the letters are wholly factually and legally incorrect, or
- iv. that he is not the Trustee of the Lost or Suppressed Trust.

That as an Attorney at Law SPALLINA knew this information was untrue when he received and replied to the HERITAGE letters and then continued filing a fraudulent claim under these illegal aliases.

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.

That if SPALLINA'S false claims were accepted as true by HERITAGE that he was the Trustee of LaSalle National Trust, N.A. then SPALLINA would have been paid the claim fraudulently by impersonating the alleged legal Primary Beneficiary of the Lost or Suppressed Policy.

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, acting as "Trustee" for that NONEXISTENT entity that he never saw when signing the claim form in the imaginary fiduciary capacity of Trustee. Again, to be clear he did not file this insurance claim form as "counsel" for the Lost or Suppressed Trust, as A. SIMON attempts to falsely assert in his Amended Complaint and instead intentionally misled HERITAGE.

That because A. SIMON contends that the Lost or Suppressed Trust is the named Contingent Beneficiary of the Lost or Suppressed Policy, despite that it is not according to HERITAGE, who claims it is "SIMON BERNSTEIN TRUST, N.A." aka the Lost and Suppressed Trust 2, however, if these false claims that SPALLINA was the Trustee of the Lost or Suppressed Trust as Contingent Beneficiary were accepted as true by HERITAGE, SPALLINA would have then been paid the claim fraudulently as the purported legal Contingent Beneficiary.

That with SPALLINA impersonating both the Trustee of the “LaSalle National Trust, N.A.” and as Trustee of the Lost or Suppressed Trust, had HERITAGE accepted his claims as stated in the fraudulent insurance claim form at face value and not demanded legally valid proof, they would have paid SPALLINA as either the alleged Primary or the Contingent Beneficiary on the Lost or Suppressed Policy.

That these are not one off mistakes made by an Attorney at Law but implicate that SPALLINA and MORAN were acting deliberately with intent to defraud HERITAGE in these multiple IMPOSTER Legal and Fiduciary capacities they claimed, the almost perfect crime.

That these efforts to defraud HERITAGE were further Aided and Abetted by MORAN who coordinated the communications between SPALLINA and HERITAGE in effort to try and secure the death benefits with SPALLINA acting as either the Primary or Contingent Beneficiary and claiming to HERITAGE to be Trustee of both, in order to convert and comingle the death benefits to Tescher & Spallina, P.A. law firm’s trust account and deprive the True and Proper Legal Beneficiaries of their death benefits.

That ELIOT alleges this was all done knowingly and with scienter in conspiracy between THEODORE, P. SIMON, SPALLINA, TESCHER, A. SIMON, D. SIMON, MORAN and others.

That this newly added claim by A. SIMON in the Amended Complaint that SPALLINA acted as “counsel” to the Lost or Suppressed Trust is again merely a new attempt to cover up for SPALLINA’S fraudulent insurance claim with new false statements made to this Court.

That this misleading information to this Court attempts to conceal the facts regarding SPALLINA’S prior fraudulent claim and vindicate him by changing the role he played in

filing the claim and by LYING to this Court to cover up SPALLINA'S involvement and then replace him with THEODORE acting as the new "Trustee" for the Lost or Suppressed Trust forward in this Lawsuit scheme.

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 legal capacity as "Trustee" he acted under when filing the fraudulent insurance claim.

That A. SIMON intentionally concealed these material facts and further misrepresented the TRUTH when filing this Amended Complaint.

That the Court should note this change to the Amended Complaint regarding SPALLINA is made after A. SIMON learned through ELIOT'S filings with the Court that SPALLINA was busted for filing his fraudulent insurance claim form as Trustee of the Lost or Suppressed Trust.

That when was the Lost or Suppressed Trust's counsel changed from allegedly SPALLINA to A. SIMON from the time of the filing of the claim to weeks later when the Lawsuit was filed must be investigated and determination made of who hired A. SIMON as counsel, who fired SPALLINA as alleged counsel and do they both have retainer agreements to prove their authority to act as counsel to the Lost or Suppressed Trust in the first place.

That another important switch of fiduciary roles occurs on the way to this Federal Court, as THEODORE becomes the "Trustee" of the Lost or Suppressed Trust when filing this fraudulent Breach of Contract Lawsuit and defendant SPALLINA is mysteriously replaced in that capacity.

That SPALLINA then attempts to disappear from the scene of the crime during this next step of this continuing and ongoing Fraud when this Federal Breach of Contract Lawsuit is filed with Your Honor.

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 such false and misleading information to this Court.

That SPALLINA is not even mentioned in the Original Complaint or the Amended Complaint as the 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.

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 for ELIOT'S Cross Claim 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 for they are central parties to this Lawsuit.

That perhaps the Court can take it on its own Motion to immediately compel Attorneys at Law SPALLINA and TESCHER and their law firm to Join this Lawsuit 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 of submitting a fraudulent insurance claim are the basis of this alleged fraudulent Breach of Contract Lawsuit. Never has ELIOT heard of lawyers fearing a lawsuit and dodging service.

That MORAN who is central to this fraud on HERITAGE was also recently arrested by the Palm Beach County Sheriff's Office and is awaiting sentencing and has admitted to FORGING and FRAUDULENTLY NOTARIZING six documents in the Estate of SIMON'S PRE-DECEASED SPOUSE SHIRLEY, including FORGING a document for SIMON POST MORTEM.

That MORAN committed the crimes acting as the legal assistant for Tescher & Spallina, P.A. and again she acts on behalf of Tescher & Spallina, P.A. and SPALLINA directly in perpetrating the insurance fraud scheme and signing letters to HERITAGE on his behalf, making calls to the carrier and transmitting across state lines the fraudulent insurance claim form. A growing Pattern and Practice of further Conspiratorial Criminal Acts emerges of egregious bad faith by those already with unclean hands in the Estates of SIMON and SHIRLEY attempting to convert assets of the Estates to improper parties.

That it was learned in a September 13, 2013 Probate Hearing and an October 28, 2013 Probate 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'S 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 THEODORE their Miranda Warnings, twice.

That the closed estate of SHIRLEY was then reopened and remains open today by Hon. Judge Colin.

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.

That MORAN'S FORGED and FRAUDULENTLY NOTARIZED documents were then filed ILLEGALLY by SPALLINA and TESCHER in official proceedings before the Florida Probate court for SIMON acting as Personal Representative / Executor knowing SIMON was DECEASED at the time and unable to serve as Personal Representative / Executor and file documents with the Court POST MORTEM.

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.”

That this statement of MORAN'S 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.

That this lie about the documents not being Forged was also echoed by MORAN'S employer, Attorney at Law 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.

That these statements by SPALLINA to Hon. Judge Martin H. Colin contradict the statements 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 that court by SPALLINA, yet SPALLINA tries to convince the Judge that they were identical documents that MORAN just innocently placed a Fraudulent Notarization on for six separate people, further evidencing a Pattern and Practice of Egregious Bad Faith Acts by MORAN and SPALLINA et al. and anything they have done or say must be questioned.

That Moran's later confession proves this claim that the documents were identical as false and SPALLINA knew of her confession while stating this LIE that they were identical to the Probate court and attempting to continue to conceal the truth from the record and Hon. Judge Martin H. Colin.

That this Fraud in the Probate Court is similar to what is occurring in this Courtroom and the same cast of characters is involved, just different crimes to steal off with different assets of the Estates of SIMON and SHIRLEY.

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 as the Attorney at Law responsible for her actions.

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 to act 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 to achieve this.

That the reason this POST MORTEM scheme to close the Estate with SHIRLEY with SIMON acting as if he were alive is alleged to have been done is because they needed SIMON to appear alive at the closing of SHIRLEY'S Estate, to then make it look like he was alive while changing her beneficiary designations, the problem was SIMON was dead and SHIRLEY'S Estate had not yet closed and no changes were ever made by SIMON to his or SHIRLEY'S beneficiaries and thus he could not make changes to her Estate dead without a

little POST MORTEM fraud and forgery and a series of ALLEGED POST MORTEM DOCUMENTS, including an alleged Will and Amended & Restated Trust of SIMON that are being challenged by ELIOT as further POST MORTEM fraudulent documents, signed allegedly on days before he died.

That in an October 28, 2013 Evidentiary Hearing in the re-opened Estate of SHIRLEY it was learned that THEODORE had been acting in false fiduciary capacities that he did not have legal standing to act as, including acting as Personal Representative / Executor and Trustee for the estate of SHIRLEY for over a year.

That no Letters of Administration had been issued to THEODORE and where he took no legally required steps to notify any beneficiaries of his alleged fiduciary roles he undertook and of transactions he was making for both SHIRLEY'S Estate and her Trusts, and THEODORE proceeded to transact multiple alleged fraudulent transactions in this fabricated role as Trustee. Again, similar to what is transpiring in this Court with THEODORE'S claims that he is "Trustee" of the NONEXISTENT Lost or Suppressed Trust.

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, as should have been the case if SPALLINA and TESCHER had notified the Court that SIMON had passed and elected successors, which would have been the legally required course.

That at now four hearings in Hon. Judge Colin's court that ELIOT has attended no one has legally represented the Estate as Personal Representative / Executor, as no Successors were legally chosen prior to the hearings due to this Fraud on that Court using SIMON to close the estate while deceased.

That SPALLINA acted for SIMON POST MORTEM and posited fraudulent documents on behalf of SIMON as if he were alive, while failing to notify the court that SIMON, the Personal Representative / Executor and Trustee allegedly filing these closing documents, was in fact DECEASED.

That this identity theft of a deceased person to deposit documents with a court was continued for four months by TESCHER and SPALLINA who used SIMON to file documents on his behalf while dead to close SHIRLEY'S Estate, instead of simply notifying that court of his death and electing successors to legally to close the estate.

That all of these criminal events in the Probate court 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 now playing itself out in this Court in this fraudulent insurance trust and beneficiary scheme gone awry and then converted into this fraudulent Breach of Contract Lawsuit as a Fraud on this Court.

That Judicial Notice should be taken at this point by this Court to the Fraudulent activity described and Prima Facie evidence given 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 alleged,

- i. FALSE AND MISLEADING STATEMENTS TO THIS COURT,
- ii. IMPROPER FILING OF PLEADINGS,
- iii. IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY FRAUD,
- iv. IMPERSONATION OF A "TRUSTEE" OF AN INSTITUTIONAL TRUST COMPANY,

- v. INSURANCE FRAUD,
- vi. FRAUD ON A FEDERAL COURT BY AN OFFICER OF THE COURT A.  
SIMON,
- vii. FRAUD ON ELIOT,
- viii. FRAUD ON OTHER MINOR AND UNREPRESENTED BENEFICIARIES, AND
- ix. TORTUROUS INTERFERENCE WITH AN EXPECTED INHERITANCE AND  
MORE.

That this Court must instantly put a stop to these vexatious, frivolous and fraudulent series of pleadings and this whole baseless Lawsuit fraught with False Statements of Fact to build a fictitious story and causing huge wastes of time, money and effort by the injured parties and this Court, who have all had to sift through this proverbial “bull honky” and web of lies in efforts to cover up the fact that they are caught in act, thanks to the insurance company JACKSON notifying ELIOT prior to distributions being made to any party by this Court.

That the True and Proper Legal Beneficiaries have been damaged and continued to be damaged daily by the delay of the receipt of the death benefits for now over a year through this smorgasbord of various attempts to fraudulently obtain the benefits to the wrong parties by SPALLINA et al.

That this Court should not wait for ELIOT acting in a Pro Se legal capacity to formulate proper pleadings for these alleged state and federal crimes that are taking place on and in Your Honor’s Court by Officers of Your Honor’s Court and against several institutions, especially when the pleadings that originated this Lawsuit and those now in the Amended Complaint are steeped in Fraud and False Statements to this Court, giving more probable

cause for this Court to take swift and just action and notify the proper State and Federal Authorities of these matters.

COUNT I BREACH OF CONTRACT

24. "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."

ANSWER:

Deny. That 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 with clear and convincing evidence as stated in their claim form, submitted by legitimate legal parties to the proceeds and not just because the insured was proven dead by Plaintiffs, where anyone can prove death of an insured but nobody can collect based upon that proof.

That no insurance carrier ELIOT knows would pay a claim to a NONEXISTENT Lost or Suppressed Trust with claims made by people impersonating Trustees and Beneficiaries, especially when no valid legally binding proof of their claims to the death benefits were made.

That proof of death is not sufficient legal reason to pay a claim to an alleged beneficiary and failure to pay a claim based on proof of death is not a legal reason for a Breach of Contract to follow upon.

That the claim was DENIED allegedly due to the fraudulent nature of the assertions made by SPALLINA and when clarification and legal proof was not tendered back to HERITAGE and the requested Probate court order RALIC demanded was not even attempted to be secured, this ploy of a Breach of Contract Lawsuit was initiated to instead try and force

HERITAGE to pay the claim without first proving to HERITAGE legally that their beneficiary and trustee schemes were legitimate by securing the requested Probate court order or providing proof of a legal beneficial interest.

25. “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.”

ANSWER:

Deny. That 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, which again is not sufficient legal cause to pay a claim in and of itself but it sounds good when that is all you have to make a claim based upon.

26. “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.”

ANSWER:

Deny. That ELIOT states that this statement is untrue, as after a failed and DENIED claim was submitted by an imposter Trustee of the Primary Beneficiary and an imposter Trustee of the ALLEGED Contingent Beneficiary, HERITAGE demanded SPALLINA prove the beneficial interest in the claim form with an executed copy of the Lost or Suppressed Trust or in the alternative a Probate court order approving the Lost or Suppressed Trust



scheme, as would be required for them to legally pay the claim and this was never done. No matter how many times Plaintiffs allege they demanded payment, HERITAGE could not pay without legal proof of beneficial interests.

That when a beneficiary does not exist at the time of death, Florida law mandates the proceeds be paid to the Insured, which would then flow into the Estate of the Insured and in this instance flow further into a pour over insurance provision within the alleged dispositive documents of the Estate of Simon.

That ELIOT claims that HERITAGE could not pay the Lost or Suppressed Policy proceeds to this Court legally either, as no legal and valid policy or executed copy of the Lost or Suppressed Policy existed at the time they paid this Court. The carriers HERITAGE, JACKSON and RALIC at this time have failed to produce a signed and executed insurance policy that defines how much the proceeds actually are, how the proceeds should be paid, to whom they should be paid and what the payout provisions stated in the actual contract.

That therefore, HERITAGE should not have deposited the money with the Court and the Court should not have accepted it and the Court should further return it until it is determined what to do when the insurance carriers have lost the contract and who should be paid and how much, etc.

That without an actual Policy to pay under, ELIOT is shocked this Court accepted such proceeds on no certain terms of what the actual contract stated and based solely on JACKSON'S claim that the amount paid to the Court was the amount stated in a Lost or Suppressed Policy that does not exist currently to prove or disprove the death benefit amount and terms.

27. “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.”

ANSWER:

Deny. That ELIOT states HERITAGE had a right to refuse to pay the proceeds on SPALLINA’S fraudulent insurance claim, especially without the demanded Florida Probate court order approving the trustee and beneficiary designations claimed by SPALLINA and without any executed legally binding trust documents to support his claims.

That the Plaintiffs have not proved to HERITAGE or this Court that the death benefits should be paid to them despite their strong desire to make it appear so with smoke and mirror trickery formed apparently in a “pipe dream.”

28. “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.”

ANSWER:

Deny. That ELIOT states that the BERNSTEIN TRUST aka the Lost or Suppressed Trust aka the LEGALLY DEVOID OF STANDING, LEGALLY NON-EXISTENT ‘BERNSTEIN TRUST’ BASED UPON UNSIGNED, UNEXECUTED, UNDATED, UN-AUTHORED ALLEGED DRAFTS and the Plaintiffs should receive no proceeds of the NONEXISTENT Lost or Suppressed Policy. Especially, since the Lost or Suppressed Trust is alleged to be the contingent beneficiary and proof that the Primary Beneficiary still exists

as a qualified legal beneficiary now exists, despite the misleading information stated to this Court on its whereabouts in both the Original and Amended Complaint.

That this matter involving a lost beneficiary at the time of death should be handled by the Florida Probate court through the Estate of the Insured, SIMON, and A. SIMON knew all these facts when filing his Fraudulent Breach of Contract Lawsuit based on a series of False and Misleading statements conjured up with intent to commit fraud.

COUNT II DECLARATORY JUDGMENT

29. "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."

ANSWER:

That 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.

30. "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."

ANSWER:

Deny. That this statement of the Amended Complaint that DEFENDANT D. SIMON, who has a financial interest in the Lawsuit, saw with his own eyes a final version of the signed "BERNSTEIN TRUST" suffers from not having any legal standing as parole evidence due to D. SIMON'S financial conflicts.

That this statement is again an effort to pepper the file with False Statements now based on a hearsay account by defendant A. SIMON'S brother, defendant D. SIMON, who has a

direct financial interest in making such claims, as he is a 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 if the scheme is successful through this Court and 0% if the proceeds are paid to SIMON'S Estate as should be the case when a legal beneficiary cannot be found at the time of death.

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

ANSWER:

Deny. That ELIOT states that this statement in the Amended Complaint almost blends with the prior statement to appear together as a continuing affirmation of D. SIMON to make it appear that he saw the final signed "BERNSTEIN TRUST" and the children were the beneficiaries. Yet, on closer inspection of the two independent statements they do not claim this, instead stating only that D. SIMON saw a signed final copy and not that he saw who the BENEFICIARIES were and this is more legal debauchery to confuse and confound this Court and others and now attempt to bolster their Original Complaint, which suffers from any legal valid binding evidence of their stream of False Statements regarding a NONEXISTENT trust and what it stated.

That the UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS of the Lost or Suppressed Trust were submitted after the filing of the Original Complaint when the Court demanded something be produced.

That at no time prior to this Lawsuit were these UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS sent to any parties as parole evidence of the Lost or Suppressed Trust, and yet, suddenly when something is demanded by

Your Honor they mysteriously drop from the sky after supposed exhaustive searches had already been made for the Lost or Suppressed Trust, as stated in the both the Original and Amended Complaint by the Plaintiffs and others.

That these UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS offer proof of nothing.

That defendant A. SIMON claims in the 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 these miraculously appearing UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS submitted to this Court recently by A. SIMON attempt to validate the claim of a legal trust's existence when it remains factually NONEXISTENT.

That the problem here is that the UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS that were submitted to this Court by A. SIMON, Bates # BT000003 through BT000021 are basically BLANK paper as legal documents for any purpose, with absolutely no identifying marks of when, how and who created them and as they are unexecuted.

That 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 listed, no file number stated, no date, no cover letter accompanying the document, just words on UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS produced allegedly by their law firm.

That the UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS could have been done by anyone, anywhere, at any time and one would think if A. SIMON had retained these alleged drafts, why did his law firm not retain the original signed and executed agreements or copies that his brother states he reviewed?

That since exhaustive efforts were alleged made to search for these documents according to Plaintiffs own claims, where then did these documents turn up from and when.

That why did A. SIMON wait until the Court demanded some kind of proof that the Lost or Suppressed Trust existed to produce these worthless documents as alleged parole evidence.

That these UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS in no way prove the assertion made of a Lost or Suppressed Trust existence and that the legal language contained therein was the same language in the NONEXISTENT Lost or Suppressed Trust and may instead prove instead evidence of the continuing and ongoing Pattern and Practice of Fraud on the Court and the True and Proper Beneficiaries.

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

ANSWER:

Deny. That again, there is no copy of the “final version” of the NONEXISTENT Lost or Suppressed Trust and therefore the beneficiaries, trustees and successor trustees are at best an “educated guess” according to SPALLINA’S emails exhibited herein.

That A. SIMON and THEODORE cannot now try and state with authority that this claim that THEODORE was “successor Trustee” is a fact to this Court, again with no legally binding parole evidence.

That if A. SIMON and THEODORE knew THEODORE was successor trustee all along, then why did SPALLINA file his claim impersonating the Trustee of the Lost or Suppressed Trust and not THEODORE?

That again, this statement appears another attempt to pepper the record of this case with False Statements of Fact, in hopes Your Honor is duped and fooled to believe this fictional story and distribute the proceeds to improper beneficiaries based on a hoax, fraught with, imaginary and fraudulent alleged Trustees and Beneficiaries who change on the fly, a fraudulent INSTITUTIONAL TRUST COMPANY at a fictitious address with an imposter Trustee SPALLINA, a NONEXISTENT Lost or Suppressed Trust, a Lost or Suppressed Policy and now to add further fodder UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS to support the claims.

That the whole fictional story appears based on False Statements of Fact in an Official proceeding made by an Officer of the Court, A. SIMON and THEODORE, knowingly and with scienter.

That these acts are creating a Tortious Interference of an Inheritance Expectancy to the True and Proper beneficiaries, including ELIOT and his three minor children.

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

ANSWER:

Deny. That 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.

That the alleged 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 according to HERITAGE the beneficiaries of the Lost or Suppressed Policy are, "LaSalle National Trust, N.A." as the Primary beneficiary and the "SIMON BERNSTEIN TRUST, N.A.," as the alleged Contingent Beneficiary and no matter how many times the Amended Complaint tries to pound this misstatement that the "BERNSTEIN TRUST" was the sole beneficiary at the time of SIMON'S death into the record as a fact, it in fact fails to prove the claim, as no valid binding contract can be fact checked to prove the assertion and the carriers records indicate it is not even listed as contingent beneficiary.

That since the "Chicago Title Land Trust Company," as Successor to "LaSalle National Trust, N.A." still exists and is surviving and 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 being the Lost or Suppressed Trust would then be moot at this time.

That it appears that no searches were conducted of SIMON'S possessions for the "SIMON BERNSTEIN TRUST, N.A." or with any party to find the alleged named Contingent Beneficiary on the Lost or Suppressed Policy according to HERITAGE.

34. "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."



ANSWER:

That 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.

35. "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.

ANSWER:

Deny. That allegedly a series of searches was 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.

That SPALLINA let others search the files of SIMON whose interests in suppressing and denying information to benefit themselves at the expense of others is evident, especially where THEODORE and P. SIMON have no interests in the Estate or Trusts of SIMON after being wholly disinherited.

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 after their exhaustive search and no copies of it existed.

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 she brought them to the hospital to THEODORE minutes after SIMON was pronounced dead.

That these documents stolen off the Estate 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.

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.

That from an email exhibited below from SPALLINA, one can see he claims allegedly to never have seen the Lost or Suppressed Trust or Policy but then 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 Lost or Suppressed Policy and the Lost or Suppressed Trust or have SIMON write a letter stating who the Beneficiaries were or any other steps necessary to insure the beneficiary designations as are the duties of a qualified estate planning attorney.

That since SPALLINA did not allegedly possess the Lost or Suppressed Trust and Lost or Suppressed Policy, the Beneficiaries he claims to have known about that SIMON allegedly told him, were then not protected in the estate plan he drafted and executed for SIMON and SHIRLEY in 2008 or when he did the alleged Will of SIMON and alleged Amended & Restated Trust of SIMON he claims to have done only days before SIMON'S death in 2012. So allegedly for 4 years of knowing that he did not have proof of beneficial interests in an estate asset, he did absolutely nothing to protect the beneficiaries he claims SIMON told him.

That the alleged Will of SIMON and the alleged Amended and Restated Trust of SIMON done in 2012 have been formally challenged in the Probate court as allegedly Fraudulent and

obtained under physical and emotional duress and other problems in the drafting, executing and notarizations.

That SPALLINA and TESCHER'S failure to properly document the beneficiaries of the trusts and an insurance policy they claim to have knowledge of indicates a mass of liabilities caused by this failure that have led to this circus of Fraud in and upon this Court, Fraud on an Insurance Carrier, Fraud on ELIOT and Fraud on the True and Proper Beneficiaries, which are all directly related to SPALLINA and TESCHER'S incompetent or purposeful criminal actions in failing to protect the True and Proper Beneficiaries. 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. 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.**  
**[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

That SPALLINA'S email above reveals and insurance company records provided in JACKSON'S discovery documents support the claim that SIMON was requesting change of Beneficiaries form very 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" SIMON not to change the Beneficiaries to.

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 Amended Complaint?

That on information and belief, Foley & Lardner may have claimed to have sent all the documents to Proskauer Rose LLP who also claimed to not have executed copies or originals in their records.

That Proskauer's Albert Gortz further stated to SPALJINA that Proskauer had fired SIMON as client after doing alleged estate planning work.

That why did Plaintiffs not have Albert Gortz or attorneys from Foley & Lardner / Hopkins Sutter come to testify as to what the Lost or Suppressed Trust and Lost stated as they were in possession of the documents and drafted them.

That the reason ELIOT believes Albert Gortz and Proskauer 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.

That Albert Gortz of Proskauer was the first Attorney in the Proskauer firm to learn of the inventions, ground floor and then directed and worked with others to convert ELIOT'S inventions as their own.

That the final search for the Lost or Suppressed Trust and Lost or Suppressed Policy according to defendant A. SIMON'S statement in the 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 The Simon Law Firm's offices are located within companies started by SIMON that P. SIMON received from SIMON worth millions of dollars 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.

That this search of A. SIMON'S law firm further supports ELIOT'S claims in his  
**"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 for any parties, due to their financial interest with the matters and their adverse interests.

That 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 to where and what they searched in their offices and where and why the documents have disappeared to.

That as alleged administrators of the VEBA, under the alleged company they are counsel too, National Service Association (“NSA”), The Simon Law Firm is alleged to have had copies of the Lost or Suppressed Policy and the Lost or Suppressed Trust.

That ELIOT states that A. SIMON, D. SIMON, P. SIMON and The Simon Law Firm have direct financial interests in suppressing the Lost or Suppressed Trust and the Lost or Suppressed Policy, which if successful in suppressing these contracts may inure benefits directly to their family members and their law firm that make it prohibitive of A. SIMON to further represent any parties in this Lawsuit without bias, other than himself as a Pro Se defendant.

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

ANSWER:

Deny. 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 MORAN provided this information to HERITAGE and they are not Plaintiffs in these matters.

That 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.

37. "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.”

ANSWER:

Deny Relief. That this Court should deny all relief requested and instead report all those involved in this Insurance Fraud Scheme and Fraud on a US Federal Court to the proper criminal authorities for investigation both State and Federal for the crimes that Prima Facie evidence has been presented herein and in ELIOT'S prior pleadings.

That all prayers for relief from Plaintiffs should rest on deaf ears and this Court in no way should order or consider any pleadings filed steeped in False Statements with premises that do not make sound legal argument and conclusions and therefore refuse to let this Court be host any longer to the Fraud this Lawsuit attempts to use it for.

COUNT III RESULTING TRUST

38. “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."

ANSWER:

Deny. 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 Plaintiffs' 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.

That 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.

That this would then establish that the True and Proper Beneficiaries of the Lost or Suppressed Policy would be the Estate Beneficiaries and not the children of SIMON, despite what percentage of them believe they are beneficiaries based on superficial evidence and false claims stated in the Amended Complaint.

39. "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."

ANSWER:

Deny. That ELIOT states that this "unexecuted draft" of the NONEXISTENT Lost or Suppressed trust is a further hoax, as the trust was done by law firm Hopkins & Sutter and drafts created by their Law Firm, as mentioned earlier, would be identifiable and the draft submitted as part of the Plaintiffs alleged "proof" offers very little in legal proof of anything,

as it has no author, no dates, no executed signatures and could have been done the morning it was sent to this Court by A. SIMON.

That this UNIDENTIFIED, UN-AUTHORED, UNDATED, UNEXECUTED, ALLEGED DRAFTS prove 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.

That suddenly, UNIDENTIFIED, UN-AUTHORED, UNDATED, UNEXECUTED, ALLEGED DRAFTS are produced for this Lawsuit that were not submitted to HERITAGE or others when the fraudulent insurance claim was filed by SPALLINA and when HERITAGE requested proof.

That if Plaintiffs had this alleged parole evidence all along they not submit it to the carrier for approval to prove their fraudulently applied for claim as they now try and claim and instead chose to ignore HERITAGE'S demands for proof of beneficial interest and trusteeship, they not seek a Probate court approval of these newly manufactured documents and they did they not submit them when they filed the Original Complaint. Now suddenly in this Amended Complaint they attempt to claim that these documents that were inserted into the record for the first time in their Rule 26 disclosure documents to this Court were given to HERITAGE as part of the fraudulent claim form SPALLINA submitted.

That HERITAGE'S rule 26 disclosure documents do not evidence that these documents were ever tendered to them as proof of beneficial interest and in fact were told all the trust documents were lost and did not exist.

That instead of proving their beneficial interests or get a Probate court order when HERITAGE demanded such proof, Plaintiffs instead favored using this Court as host to a new fraud in efforts to thwart the insurance claim form process and the requests from

HERITAGE to prove the beneficial interests or seek a court order, which were necessary for HERITAGE to pay a legal claim to any party.

That when filing this Lawsuit they did not include these UNIDENTIFIED, UN-AUTHORED, UNDATED, UNEXECUTED, ALLEGED DRAFTS as exhibits to show legal standing and did not produce them as stated in the Amended Complaint to HERITAGE as proof of anything as they did not appear in the record until this Court demanded something be produced in a September 25, 2013 hearing, long after the HERITAGE claim was denied. That in fact, it appears that the UNIDENTIFIED, UN-AUTHORED, UNDATED, UNEXECUTED, ALLEGED DRAFTS were never sent to HERITAGE and were sent instead to JACKSON as part of production.

These UNIDENTIFIED, UN-AUTHORED, UNDATED, UNEXECUTED, ALLEGED DRAFTS parole evidence submitted are basically worthless other than as further evidence of alleged, INSURANCE FRAUD, FRAUD ON THE BENEFICIARIES OF THE ESTATE OF SIMON, FRAUD ON A US FEDERAL COURT AND MAIL AND WIRE FRAUD.

40. "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."

ANSWER:

Deny. That no evidence produced obviously met the tests to pay the proceeds on SPALLINA'S fraudulent insurance claim after review of the "other evidence" submitted to HERITAGE.

41. "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.”

ANSWER:

Deny. That this statement of intent is stated with force and authority by A. SIMON, yet whom did SIMON express this intent to, as it was not to his estate planners who would have then secured the trust or documented evidence of his intent or have mass exposure for their lack of duty and care.

That this alleged intent of SIMON was not expressed to HERITAGE in 2012, as even when sent a letter to confirm the Primary and Contingent Beneficiaries evidenced already herein, SIMON did not make any changes in reply to those now claimed by HERITAGE, which do not match Plaintiffs claims that the Lost or Suppressed Trust is the contingent beneficiary.

That to attempt to establish the beneficiary of the Lost or Suppressed Trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the beneficiary on the Lost or Suppressed Policy was changed to the Lost or Suppressed 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 was confirming the beneficiaries of the Policy and 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.

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

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.

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

ANSWER:

Deny. That 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, allegedly "LaSalle National Trust, N.A." as Primary and the Contingent was "Simon Bernstein Trust, N.A." at the time of his death.

That the beneficiary on the Lost or Suppressed Policy is NOT the BERNSTEIN TRUST aka SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95" as A. SIMON falsely asserts as fact.

That with no actual executed insurance policy contract to fact check these claims, it will be virtually impossible to make any claims of who the named legal beneficiaries stated on the NONEXISTENT Lost or Suppressed Policy are.

44. "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.”

ANSWER:

Deny. That if an express trust cannot be established then no beneficiary exists at the time of the Insured's death, then according to Law, this Court must demand the money be paid to the Estate of the Insured by HERITAGE, not this Court and legally this Court's decision has nothing to do with the intent of SIMON, which cannot be proven.

That again, still more confounding to this false premise regarding the contingent beneficiary is the fact that the Primary Beneficiary exists and has obligations and records and must be Joined by this Court instantly as an indispensable party to review their records and find why they have not responded to service as learned in the January 13, 2014 Hearing before Your Honor. Service evasion by Attorneys at Law seems to happening a lot in this case but an INSTITUTIONAL TRUST COMPANY now dodging service, when it is mainly a company composed of lawyers and contracted law firms is remarkable to say the least.

That efforts have been made in this Amended Complaint to run a “Three Card Monte” of “Now You See it Now You Don't” illusionary claims, one of the most magical is the attempt to focus your attention away from the Primary Beneficiary and misdirect the Court to the Contingent Beneficiary by magically asserting that “LaSalle National Trust, N.A.” vanished into thin air when “Bank of America, N.A.” acquired them, poof.

That this Court must make the existing Primary Beneficiary magically reappear and cite those Attorneys at Law that advanced these false claims regarding LaSalle National Trust, N.A. with NO FACT CHECKING or perhaps intentionally concealing and misrepresenting what happened to them to this Court, in efforts to continue the ongoing frauds to convert the

benefits illegally through these false and misleading statements of fact regarding the Primary Beneficiary.

That ELIOT states if this Court dislikes reading these Pro Se, Inventor/Poet poetic justice pleadings that suffer from legalese, as much as ELIOT HATES writing them, then wave your magic wand and return us to reality, give these fake and fraudulent documents and lawsuit scheme no further ado.

45. "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."

ANSWER:

Deny. That A. SIMON did not check his alleged facts before putting "Bank of America, N.A." as successor to LaSalle National Trust, N.A. into the mix of parties in their Lawsuit, intentionally concealing that LaSalle National Trust, N.A. is still the alleged legal and active Primary Beneficiary of the Lost or Suppressed Policy.

That this statement is a smoke and mirror illusion of words that are both untrue and carefully crafted to sell a story to this Court that the death benefit should be paid to THEODORE or SPALLINA and then distributed to THEODORE and P. SIMON per their intent and desires, NOT SIMON'S, as SIMON had wholly disinherited THEODORE and P. SIMON from his Estate and Trusts. SIMON having been in the insurance business for most of his life would have made his intentions clear and this is why ELIOT alleges the documents that would make his intentions clear are purposely being denied and suppressed to change those intentions to benefit PLAINTIFFS.

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



ANSWER:

That 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.

47. “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.”

ANSWER:

Deny. That ELIOT may actually agree with this statement, except ELIOT like Your Honor cannot see the Policy to confirm or deny this statement with authority, as it is Lost or Suppressed or Denied and ELIOT will let Your Honor pick a card on how to proceed when the contract necessary to prove such claim is lost or suppressed.

48. “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.”

ANSWER:

Deny. That 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.

That 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 instead another 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 appears in any records search conducted by ELIOT for this INSTITUTIONAL TRUST COMPANY, "Chicago Title Land Trust Company" or LaSalle National Trust, N.A.

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 not only LaSalle National Trust, N.A. but also 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.

That A. SIMON tries to advance this false statement that "Bank of America, N.A." was successor when a simple records search would have afforded him the same information about "Chicago Title Land Trust Company" as successor, again making this Amended Complaint a further abuse of process and a house of cards of fraud.

That this Court should further act on its own Motion to Join under Federal Rule 19, LaSalle National Trust, N.A. and its Successor Chicago Title Land Trust Company to this action as indispensable parties that have been concealed from the Court and ELIOT, through False Statements in the pleadings, with intent and scienter to mislead this Court and others that it no longer exists.

49. "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."

ANSWER:

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Thursday, January 23, 2014

ANSWER – AMENDED COMPLAINT

Deny. That ELIOT states here we go again with on information and belief and this Court and ELIOT must have a lot of faith in magic for if Bank of America, N.A. has disclaimed interest in a Lost or Suppressed Policy that they have nothing to do with, then ELIOT is unclear what kind of parole evidence this is, other than as a useless claim that a non-interested party has no interest in the matters before the Court. Bank of America, N.A. may have disclaimed any interest in the Lost or Suppressed Policy, the question is did they make that statement acting in a false fiduciary capacity as Successor Trustee to LaSalle National Trust, N.A. as the Amended Complaint attempts to claim.

50. "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."

ANSWER:

Deny. That ELIOT states this statement is merely conjecture as there is nothing legally valid in the Amended Complaint to prove Plaintiffs should receive the benefits as it is made mainly of knowingly False Statements of Fact made in an Official Proceeding by an Officer of this Court, A. SIMON while representing these claims while having adverse interests and conflicts as counsel and whom is also a Defendant in the matters.

That this patchwork effort to now amend their Original Complaint in order to craft further False Statements of Fact into the record and further attempt to cover up evidence of the fraudulent insurance claim that the Lawsuit is based on and now attempt to put forth evidence that has suddenly and magically appeared, to enhance their Original Complaint's legal deficiencies and plug the holes by attempting to change their original statements. Contrary to their claims in their Motion to Seek Leave to Amend that states,

“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”

the Court, after review of the proposed amendments to the Original Complaint, will see that this is not all what they are trying to do in the Amended Complaint but that they are factually trying to change the pleading in significant other ways defined herein to pepper the record with False and Misleading statements to further an ongoing and continuing fraud against the True and Proper Beneficiaries of the Estate of SIMON and to intentionally defy his last wishes and intents to favor, including but not limited to, A. SIMON, D. SIMON, THEODORE and P. SIMON.

51. “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.”

ANSWER:

Deny. That ELIOT again states that this Court return the money to HERITAGE immediately as it was paid under no certain legal terms to the Court and was not held for the benefit of the children of Simon by HERITAGE and instead was held for the benefit of the legally qualified beneficiaries, which still needs to be determined by HERITAGE and not this Court.

That ELIOT wonders how the insurance carriers have lost the policy but on information and belief the Lost or Suppressed Policy and all copies may have been removed from the

records of HERITAGE and SIMON'S records and are being suppressed and denied at this time by Plaintiffs and others involved in this scheme.

That in fact, a good place to start looking for the Policy would be for this Court to haul in SPALLINA and P. SIMON and demand to know what they meant when they stated they had a "friendly" carrier willing to pay swiftly with no fact checking a death benefit claim without a policy or trust to their proposed SAMR scheme and who very well may have had access to the records of HERITAGE'S Lost or Suppressed Policy and may be the parties responsible for removing the policy from the records with intent.

That just who are the friends at the friendly carrier HERITAGE or Capital Bankers Life and just how friendly are they and with whom and again this Court may have to haul them all in for questioning or turn them over to criminal authorities for questioning, for ELIOT is certain that removing insurance policy records from a carrier violates a few felony statutes of State and Federal Law.

That this Court must question if JACKSON has started an insurance fraud investigation already on the fraudulent insurance claim form submitted by SPALLINA.

That this Court must question if JACKSON, HERITAGE and RALIC have searched for the whereabouts of the Lost or Suppressed Policy and its contract terms.

That this Court must question why JACKSON has rushed to pay this Court's Registry on a NONEXISTENT LOST OR SUPPRESSED POLICY before knowing the exact payment terms elected by SIMON in the legal binding insurance contract.

That JACKSON'S claim in the January 13, 2014 Hearing that they had no "horse/pony in this race" or "dog in this fight" or words to that effect, is factually not the case, as one would state they have a big stake in finding out what and how the Lost or Suppressed Policy

became lost or suppressed and what their liabilities are for this loss and what the resulting damages to the True and Proper Beneficiaries is legally.

That ELIOT has not sued JACKSON or HERITAGE or RALIC at this point but without a legal binding contract that is proven in force at the time of SIMON'S death and factual assertions of what the actual contract states, ELIOT will seek leave to Amend and Add New Defendants and Interested Parties, including but not limited to,

- i. ANNUITY & LIFE REASSURANCE AMERICA, INC. - 1275 Sandusky Road  
Jacksonville, IL 62650-1155.
- ii. Reassure America Life Insurance Company - 12750 Merit Drive Suite 500 Dallas,  
TX 75251.
- iii. Heritage Union Life Insurance Company - PO Box 114 7, Jacksonville, Il. 62651-  
1147.
- iv. Jackson National Life Insurance Company - I Corporate Way Lansing, MI 48951.
- v. Chicago Title Land Trust Company (part of the Fidelity National Financial family  
of companies) - 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603.
- vi. LaSalle National Trust, N.A. - 10 South LaSalle Street, Suite 2750 Chicago,  
Illinois 60603.

That ELIOT states that the Court should join all these parties as indispensable parties to this action.

That ELIOT suggests to Your Honor, prior to any dismissal from this Lawsuit of JACKSON or any party, force them in to the Courtroom to explain what exactly is going on with the Lost or Suppressed Policy and what they have done to protect their policyholders and the beneficiaries of the Lost or Suppressed Policy from the massive liabilities and

damages this is causing and demand to know what they have done procedurally to investigate what appears insurance fraud.

That JACKSON, nor any other party, should be allowed by this Court to leave this Lawsuit and certainly not just because they claim to have paid the alleged face amount of the Lost or Suppressed Policy and so their obligations are over, as at this point the value of the policy is still in question.

That from the piecemeal parole evidence submitted to this Court, ELIOT cannot figure out any of the terms of the Lost or Suppressed Policy and will definitely need to see a copy of the executed policy to determine if the correct amounts were paid to this Court, as the math appears in the parole evidence submitted not to add up.

52. "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."

ANSWER:

Deny Relief. That PLAINTIFFS' should pray to G-d that this Court does not wake up from the illusions of Wonderland steeped in fraud and call in the guards and haul them all off for the frauds described herein already and in prior pleadings and award ELIOT damages

sought. ELIOT has sought eight million dollars of damages, as the Lost or Suppressed Policy Appears to be \$2,000,000.00.

That since no policy has been provided to prove this amount for certain it is only an assumption at this time and since no beneficiaries can be claimed proven as that information appears suppressed and denied to intentionally deny the True and Proper Beneficiaries of the death benefits, ELIOT has concluded that the beneficiary may be him alone for two million or any of his children alone for the whole two million and thus since no one can legally prove otherwise these seem to be the extent of the damages caused by losing the policy and trusts from sloppy record keeping or alleged fraud by all of those involved in this frivolous Breach of Contract Lawsuit and responsible for these damages. Therefore, Eliot plus his children each could have been the sole beneficiary and thus each has been damaged for at least two million and thus 2 million times 4 is eight million dollars, which is the relief sought.

That ELIOT has sought more for pain and suffering and this macabre scene created has cost ELIOT and his family much grief and sadness and financial distress and when it is family like this, it is treble damages emotionally.

-----  
53. By: s/Adam M. Simon

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Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: 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

ANSWER:



Deny. That further A. SIMON'S claims to the Court in the Motion for Leave to Amend are untrue, for example the claim,

“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.”

That the Amended Complaint does prejudice parties to this Lawsuit by attempting to pepper the record with a stream of further False Statements and alleged parole evidence submitted in Official proceedings and pled as statements of fact to this Court that are prejudicial as they are wholly false and misleading with intent.

That the Amended Complaint may also invoke the Probate Exception to Federal Jurisdiction in this matter and this Court may not be the proper venue to determine 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.

That for the all the reasons stated herein ELIOT prays this Court STRIKE THE AMENDED COMPLAINT AND RULE A DEFAULT JUDGMENT IN FAVOR OF ELIOT DUE TO EVIDENCE OF, 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 ON

BENEFICIARIES OF SIMON'S ESTATE, IMPROPERLY FILED LEGAL PLEADINGS,  
FALSE STATEMENTS TO A COURT AND MORE

Wherefore, for all the reasons stated herein, ELIOT prays this Court STRIKE the Amended Complaint and award a Default Judgment in favor of ELIOT 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 T. Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

Dated: Thursday, January 23, 2014

**Certificate of Service**

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, and E-mail on Thursday, January 23, 2014 to the following parties:

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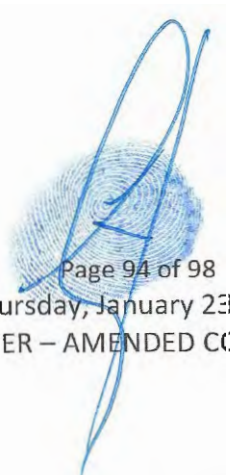


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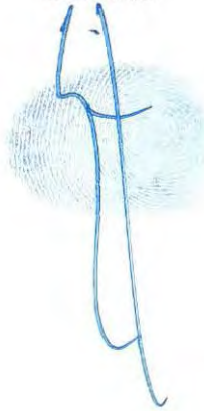


/s/ Eliot Ivan Bernstein

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**EXHIBIT 1 – MARK R. MANCERI WITHDRAWAL AS COUNSEL IN THE ESTATE  
OF SIMON AND SHIRLEY BERNSTEIN AND WILLIAM STANSBURY CREDITOR  
CLAIM.**



**IN THE CIRCUIT COURT FOR  
PALM BEACH COUNTY, FLORIDA**

**PROBATE DIVISION  
FILE NO.: 502012CP004391XXXXSB IY  
DIVISION: COLIN**

**IN RE: ESTATE OF  
  
SIMON BERNSTEIN  
  
Deceased.**

---

**MOTION TO WITHDRAW AS COUNSEL OF RECORD**

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein (hereinafter the "Clients") to represent them in these proceedings.

2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.

3. Professional consideration(s) has arisen which prevent(s) the continued representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

FILE NO.: 502012CP004391XXXXSB IY

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: dtescher@tescherspallina.com; telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: rspallina@tescherspallina.com; telephone number (561) 997-7008.

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems **just, equitable and proper.**

MARK R. MANCERI, P.A.  
Attorney for Donald R. Tescher and Robert L.  
Spallina, as Co-Personal Representatives  
2929 East Commercial Blvd., Suite 702  
Ft. Lauderdale, FL 33308  
Telephone: (954) 491-7099  
E-mail: mrm1aw@comcast.net  
mrm1aw1@gmail.com

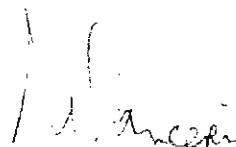
By: 

Mark R. Manceri, Esq.  
Florida Bar No. 444560

FILE NO.: 502012CP004391XXXXSB IY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. mail, as noted, to all parties on the following Service List, this 10<sup>th</sup> day of January, 2014.



---

Mark R. Manceri, Esq.

SERVICE LIST

Peter M. Feaman, Esq. (e-mail)  
Peter M. Feaman, P.A.  
3615 West Boynton Beach Blvd.  
Boynton Beach, Florida 33436

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

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

Lisa Sue Friedstein (U.S. mail)  
2142 Churchill Lane  
Highland Park, IL 60035

Pamela Beth Simon (U.S. mail)  
950 North Michigan Avenue, Suite 2603  
Chicago, IL 60611

Jill Iantoni (U.S. mail)  
2101 Magnolia Lane  
Highland Park, IL 60035



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

CIVIL DIVISION

Plaintiff,

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

vs.

TED S. BERNSTEIN; DONALD TESCHER  
and ROBERT SPALLINA, as Co-Personal  
Representatives of the ESTATE OF SIMON  
L. BERNSTEIN and as Co-Trustees of the  
SHIRLEY BERNSTEIN TRUST AGREEMENT  
dated May 20, 2008; LIC HOLDINGS, INC.;  
ARBITRAGE INTERNATIONAL  
MANAGEMENT, LLC, f/k/a ARBITRAGE  
INTERNATIONAL HOLDINGS, LLC;  
BERNSTEIN FAMILY REALTY, LLC,

Defendants.

MOTION TO WITHDRAW AS COUNSEL OF RECORD

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty LLC (hereinafter the "Clients") to represent them in these proceedings.
2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.
3. Professional consideration(s) has arisen which prevent(s) the continued

FILE NO.:502012CA013933 MB AA

representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com); telephone number (561) 997-7008.

Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Senior Vice President & Compliance Office, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932, e-mail: [Janet.Craig@opco.com](mailto:Janet.Craig@opco.com); telephone number (973) 245-4635..

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ.. hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.  
Attorney for Donald R. Tescher and Robert L.  
Spallina, as Co-Personal Representatives and  
Bernstein Family Realty, LLC  
2929 East Commercial Blvd., Suite 702  
Ft. Lauderdale, FL 33308  
Telephone: (954) 491-7099  
E-mail: [mrmlaw@comcast.net](mailto:mrmlaw@comcast.net)  
[mrmlaw1@gmail.com](mailto:mrmlaw1@gmail.com)

By: 

Mark R. Manceri, Esq.  
Florida Bar No. 444560

502012CA013933 MB AA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10<sup>th</sup> day of January, 2014.

---

Mark R. Manceri, Esq.

**SERVICE LIST**

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3615 West Boynton Beach Blvd.  
Boynton Beach, Florida 33436

Alan B. Rose, Esq.  
Page, Mrachek, Fitzgerald, et.al.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401

Donald R. Tescher, Co-Personal Representative  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Robert L. Spallina, Co-Personal Representative  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Bernstein Family Realty, LLC  
c/o Janet Craig, CTFA  
Senior Vice President & Compliance Office  
Oppenheimer Trust Company  
18 Columbia Turnpike  
Florham Park, NJ 07932

- 3 -

**EXHIBIT 2 – DONALD TESCHER, ESQ. RESIGNATION AS COUNSEL IN ALL  
BERNSTEIN RELATED MATTERS AND WITHDRAWAL AS PERSONAL  
REPRESENTATIVE / EXECUTOR / TRUSTEE TO THE ESTATE OF SIMON  
BERNSTEIN**

A blue ink signature and a circular fingerprint impression are visible. The signature is a stylized, cursive 'D' with a vertical line extending downwards. The fingerprint is a circular impression with a central core and radiating ridges.

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

January 14, 2014

**VIA U.S. MAIL AND EMAIL**

Ted S. Bernstein  
880 Berkeley Street  
Boca Raton, FL 33487

Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434

Lisa S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035

Pamela B. Simon  
950 North Michigan Ave.  
Suite 2603  
Chicago, IL 60606

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035

**Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein**

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted

Bernstein Family  
January 14, 2014  
Page 2

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lincal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,



DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.

**EXHIBIT 3 – SPALLINA INSURANCE CLAIM SIGNED AS TRUSTEE OF THE LOST  
OR SUPPRESSED TRUST.**

A handwritten signature in blue ink, appearing to be a stylized 'L' or 'S' followed by a vertical line and a small flourish at the top.

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

BIUCA VILLAGE CORPORATE CENTER I  
10355 TECHNOLOGY WAY, SUITE 700  
BUCA RATON, FLORIDA 33432

ATTORNEYS  
ROBERT H. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GILMAN

TEL: 561-997-7000  
FAX: 561-997-7008  
TOLL FREE: 888-997-7008  
WWW.TESCHERLSPALLINA.COM

SECRET  
PAGE THREE  
KIMBERLY MORAN  
DURAN TESCHER

November 1, 2017

VIA FEDERAL EXPRESS  
Claims Department  
Heritage Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32201

Re: Insured: Simon L. Bernstein;  
Contract No.: 1809208

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, 1996, 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

RJ/Skm

Enclosures

km = Kimberly  
Moran



## CLAIMANT STATEMENT

### Heritage Union Life Insurance Company

Mailing Address

P.O. Box 1600  
Jacksonville, FL 32261-1600

Proof of Loss



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 8 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 status of the application for the policy or reinstatement application of the insured 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 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

**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.

CL 09125 The Claimant Statement No. RA-3 12/07/2011

Page 2

JCK001293

CLAIMANT STATEMENT

CG008080-00000110

**DECEASED INFORMATION**

1. Name of Deceased (Last, First, Middle): Benjamin Simon Lowy

2. Last 4 Digits of Deceased's Social Security No.: 0977

3. If the Deceased was known by any other names, such as maiden name, married name, nickname, derivative name, or other name, please provide them below:

4. Date of Death: 1009208

5. Age of Deceased at Date of Death: 30 years

6. Cause of Death: natural causes

7. Manner of Death:  Accidental  Suicide  Homicide  Pending

**CLAIMANT INFORMATION**

8. Name of Claimant: Simon Benjamin Lowy

9. Social Security No. of Claimant: 1009208

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. How does the claimant know the deceased?  I am the individual who is named as a beneficiary under the policy.  I am a trustee of a Trust which is named as a beneficiary under the policy.  I am a beneficiary of a Trust which is named as a beneficiary under the policy.

18. Are you a U.S. Citizen?  Yes  No

19. If "No", please list country of citizenship: \_\_\_\_\_

20. Policy Subject to Vesting?  Yes  No

21. If "Yes", please provide the name of the receiver or administrator of the estate of the decedent, the name of the insurance company, a list of all surviving family members, and the name of the individual or individuals who are named as a beneficiary or beneficiaries of the policy.

**CLAIMANT INFORMATION (to be completed by 2<sup>nd</sup> claimant, if any)**

22. Street Address: \_\_\_\_\_

23. City: \_\_\_\_\_

24. State and Zip: \_\_\_\_\_

25. Daytime Phone Number: \_\_\_\_\_

26. Date of Birth: \_\_\_\_\_

27. Social Security or Tax ID Number: \_\_\_\_\_

28. Relationship to Deceased: \_\_\_\_\_

29. How does the claimant know the deceased?  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 an estate which is named as a beneficiary under the policy  Other \_\_\_\_\_

30. Are you a U.S. Citizen?  Yes  No

31. If "No", please list country of citizenship: \_\_\_\_\_

32. Policy Subject to Vesting?  Yes  No

33. If "Yes", please provide the name of the receiver or administrator of the estate of the decedent, the name of the insurance company, a list of all surviving family members, and the name of the individual or individuals who are named as a beneficiary or beneficiaries of the policy.

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.

CLAIMANT STATEMENT

**SETTLEMENT OPTIONS**  
 This is a simplified explanation of more settlement options, such as lump-sum payments, installments for a specified period, or a benefit life annuity with period certain, which starts after the death of the annuity owner. If any of these options are a lump-sum payment, you will receive settlement funds available in the policy under what 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 preferred selection by name (not by number) on the line below after you have carefully reviewed the option 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 USA Patriot Act has placed additional requirements on financial institutions. You may be required to provide additional information, such as your identity, address, and other information, which we will use to verify the names, addresses or other address (for P.O. Boxes), date of birth and social security number or other tax identification number of all individuals named.

**SUBSTITUTE FOR IRS FORM W-9**  
 The information being collected on this form is the same as the IRS form W-9 and will be used for backup withholding for the amount you receive from the IRS. Under penalty of perjury, you certify that (1) the tax ID number and date of birth reporting for a number to be used to file; (2) you are not subject to backup withholding because (A) you are exempt from backup withholding, or (B) you are not required to file; or (3) you are subject to backup withholding as a result of a failure to report all interest or dividends, or (4) the IRS has notified you that you are no longer subject to backup withholding; and (3) I am a U.S. citizen (or other U.S. resident alien). Please check, through Form 2049 you have been notified by the IRS that you are subject to backup withholding has just you have failed to report all interest, dividends, or other income.

**SIGNATURES**  
 I/we do hereby state that to said signature declare that the answers reported above are complete and true, and agree that the attaching and accompanying documents form do not constitute an admission by this company that there was any insurance in force on the life or persons mentioned or 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 issue or reinstatement of a claim containing any material false information, or provides for the purpose of obtaining information concerning any other person's status, name, or beneficial interest in an insurance policy, which is false, and such act shall be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each violation.

**For Residents of All Other States:** See the laws and regulations of this state for details.

The Internal Revenue Service does not require your consent to any provision of this document other than the signature required to avoid backup withholding.

Signature of Grantor/Insured: \_\_\_\_\_ Date: 10/1/11  
 Signature of Beneficiary/Insured: \_\_\_\_\_ Date: \_\_\_\_\_

00363600 00000000 00000000 00000000 00000000 00000000

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

00000000.00007110

TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)

FORM-LETTREB (2012) IS ONLY TO BE FILLED BY A TRUSTEE CLAIMING PROCEEDS. Please attach a copy of the trust agreement and including the signature page to the trust agreement.

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 PART 6014

I/We the undersigned, as trust, deposes and states as follows with respect to the possible application of the Generation-Skipping Transfer (GST) tax to the death benefit payment (Make the appropriate entry)

- 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 of basic use of the trust or beneficiaries of non-trust property.
- 4. The GST tax does not apply because of the reasons set forth in the attached Attachment (Please attach documents set up in this reason when 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 Ljubcicak Insurance Trust</b>	Date of Trust Agreement 01/01/2005
Date of Settlement	Trust Tax ID Number 62-2878960
Trustee (Print Name) <b>Robert L. Spallina</b>	Signature
a. _____	
b. _____	
c. _____	
d. _____	

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

JCK001263

AWB History for Work object key 2017-10-04-10.38.59.016241T01

TYPE - OTHER - ILLEGAL - CLIENT - Updateable

- 100000 - BERNSTEIN - JIMM - 19 - SRDC00014031

Social Security Num: [REDACTED]

Policy Number: 1003206

Agent Number: [REDACTED]

Insured's Last Name: BERNSTEIN

Printed on Tuesday, May 07, 2013 at 3:01:53PM

Queue: CLIPNT  
User Name: MCDONALD, JIM L  
JCM Description:  
Comments:

Begin Date: 2013-01-17  
Begin Time: 16:49:34  
User Id: SMCDONL  
Workstation Id:  
Business Area:  
Type:  
Status:  
Queue:  
User Name: MCDONALD, JIM L  
Flags:  
JCM Job Name:  
JCM Return Code:  
JCM Task Name:  
JCM Next Task:  
End Date: 2013-01-17  
End Time: 16:49:34

JCM Description:  
Comments: Received a call from attorney Spallina. He wants to talk to in-house counsel about not filing del. petition 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: SMCDONL  
Workstation Id:  
Business Area: JLLIF  
Type: OTHER  
Status: CLIENT  
Queue: CLIENT  
User Name: MCDONALD, JIM L  
Flags: 06000  
JCM Job Name:  
JCM Return Code:  
JCM Task Name:  
JCM Next Task:  
End Date: 2013-01-17  
End Time: 16:48:22

Begin Date: 2013-01-15  
Begin Time: 11:50:00  
User Id: JMSLKN  
Workstation Id:  
Business Area:  
Type:  
Status:  
Queue:  
User Name: WALKER, KEELIE  
Flags:  
JCM Job Name:  
JCM Return Code:  
JCM Task Name:  
JCM Next Task:  
End Date: 2013-01-15  
End Time: 11:50:00

JCM Description:  
Comments: faxed client letter to Robert Spallina and advised of court order required. faxed to 361-997-1308

ESC-JS-2012 04:37PM FROM:TESCHER & SPALLINA +5619377308 T-354 P 001/008 F-330

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

BOCA VILLAGE CORPORATE CENTER I  
9855 TECHNOLOGY WAY, SUITE 220  
BOCA RATON, FLORIDA 33431

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

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

SUPPORT STAFF  
DIANE JUSTIN  
KIMBERLY MORAN  
SUZANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936  
Attn: Brec  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32231

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:

Kimberly Moran  
authors.

Kimberly Moran  
signs.

JCK001297



From: (541) 591-7008  
Kinoshita, Meier  
HERSCHER & SPALLING  
4956 Technology Way  
Suite 720  
BOCA RATON, FL 33431

Original PHKA

PHKA

Ship Date: 2/26/2014  
Analysis: 1.6 LB  
CAD: 15-007/IN/ET/300



SHIP TO: (504) 525-0203

BILL NUMBER

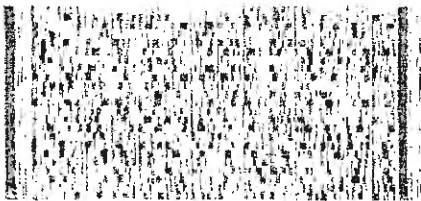
Claims Department  
Heritage Union Life Insurance Compa  
1275 Sandusky Road

Name: Barnstein  
Invoice #  
PO #  
Dept. 6

JACKSONVILLE, FL 32251

MON - 24 DEC AA  
STANDARD OVERNIGHT

PK# 7943 7521 3307  
(20)



SH SPIA

62651  
11-365  
STL



SHIP TO: (504) 525-0203

00000000



**EXHIBIT 4 – 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: 09765215

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

## 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 CLAIMS**

**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

DECEASED 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, nicknames, 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.**  
 CL-G012P Life Claimant Statement No RAA 12/23/2011



## CLAIMANT STATEMENT

### SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Direct Payments, Installment 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.

### Backup Withholding

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

If we do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and I 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, 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	Date of Trust Agreement
Date of all Amendments:	Trust Tax ID Number
Printed Name of Trustee(s)	Signature(s)
a _____	_____
b _____	_____
c _____	_____
d _____	_____

Page 1 of 2

From: (24) 3873208  
From: Miss.  
TEACHERS SPAIN  
WEST Tennessee Hwy  
302 300 11341

Exp: 11/11/14

Food



POST OFFICE  
PO BOX 11341  
MEMPHIS TN 38111



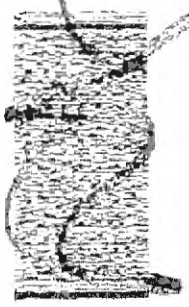
POSTAGE WILL BE PAID BY ADDRESSEE

Claims Department  
Heritage Union Life Insurance Co.  
1275 SARDISKY RD  
JACKSONVILLE, IL 62650

7935 9244 9555

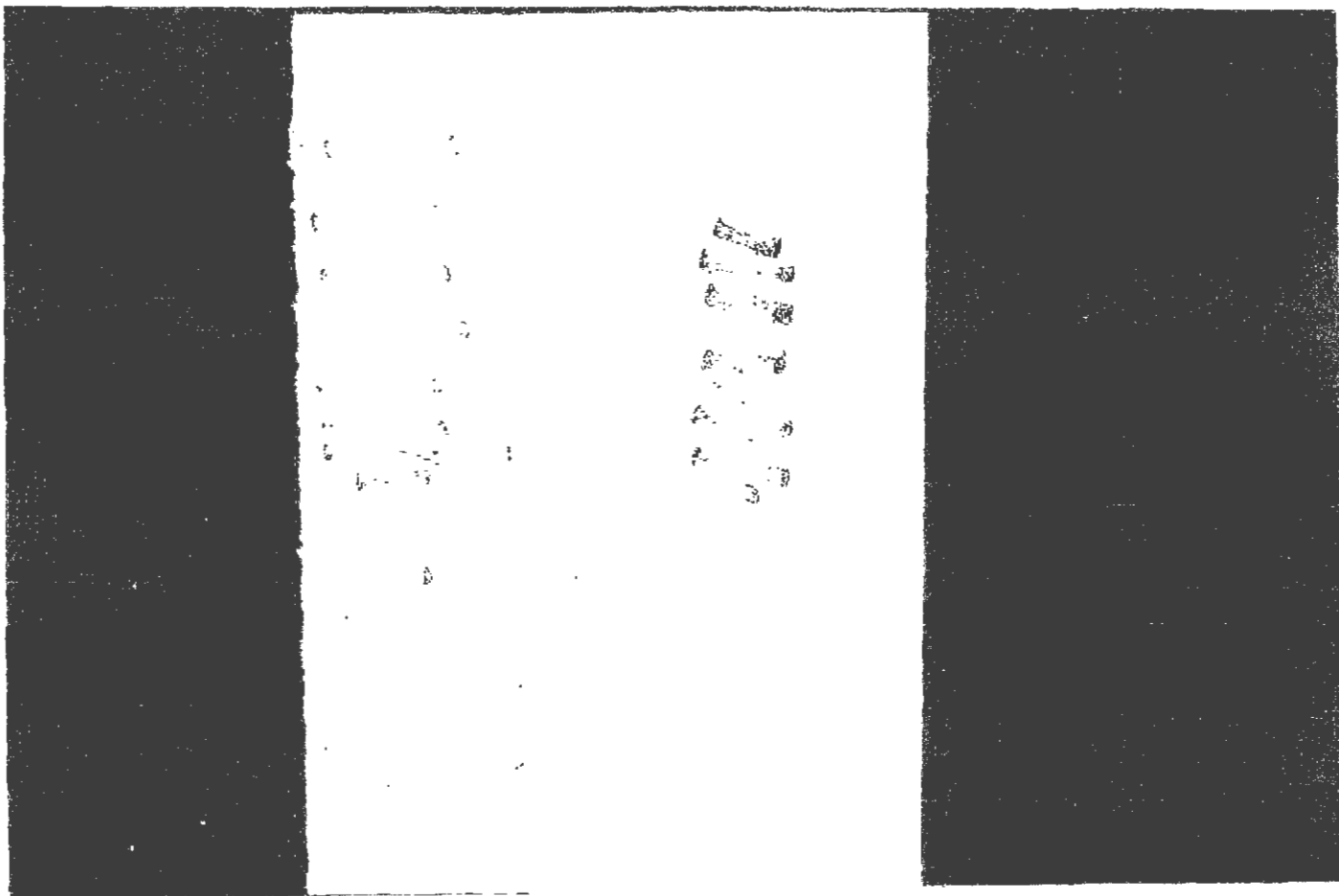
FRI - 02 NOV AA  
STANDARD OVERNIGHT

52650  
STL



XX-SPIA





A handwritten signature in blue ink is located at the top center of the page. Below the signature, the number '2' is written in blue ink and enclosed within a hand-drawn circle.

LETTER 2 - 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)

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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,

BREE 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 160 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 IN CONNECTION WITH AN INSURANCE CLAIM

**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>DECEDENT 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, nicknames, derogative 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 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 checkbook 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 703-481-5266 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 terrorist 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

**STATEMENT 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.

**STATEMENT**

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 not insured)**

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 B-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 3 - HERITAGE TO SPALLINA AS TRUSTEE OF LASALLE NATIONAL  
TRUST, N.A., DATED NOVEMBER 29, 2012

A handwritten signature in blue ink is written over a circular stamp. The signature is a stylized, cursive name. The stamp is a circular embossed seal, likely a corporate seal, with some illegible text around the perimeter. The signature is written in a fluid, connected script.

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, FL 32251  
Phone 800-825-0003 Fax 904-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

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November 29, 2013.

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: 1005708  
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.

V07091806

Sincerely,

D. Henderson  
Claims Services

Enclosure(s): II. Department of Insurance Notification  
Life Claimant Statement No RAA



**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**

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 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

### FALSE 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

DECEASED 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.**  
 CL0012F Life Claimant Statement No RA# 12/23/2011 Page 3

## CLAIMANT STATEMENT

### SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as *Cash* 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.

### SENDER IDENTIFICATION NUMBER (SIN)

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, in 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, 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	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

A blue ink signature is written over a circular fingerprint. The signature consists of a large, stylized letter 'S' with a vertical line extending downwards from its base. The fingerprint is a standard ten-print pattern, showing clear ridge details.

**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)

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December 7, 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: C9808196

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 329 West Washington Street, Springfield, Illinois 62767.

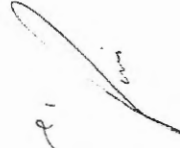
January 2012

Dear Dad:

Please read the attached letter and information. I am hopeful that you truly just don't know how much cutting me, Scott, Milly, and Ted's family out of your will hurts us. It has nothing to do with money. In fact, I think you're

to take care of Eliot, using a trustee,  
first and foremost.

The act of disempowering a child is  
unheard of and unimaginable. It is  
outrageous and considered psychologically  
violent. I am hopeful you are not  
aware of this and that you will  
make the changes necessary.

Love,  


## Heriaud & Genin, Ltd.

Attorneys At Law

161 North Clark Street - Suite 3200

Chicago, Illinois 60601

Fax: (312) 616-1808

Tamar S.P. Genin  
(312) 616-1806  
tspg@hgtrustlaw.com

November 28, 2011

Ms. Pamela B. Simon  
950 North Michigan Avenue  
Apt. 2603  
Chicago, Illinois 60611

Dear Pam:

Please accept my apologies for my delay in sending you this letter. I had meant to send it to you soon after we spoke about my discussions with your parents' estate planning attorney, Robert Spallina. I know that it came as a shock when I told you that I was informed by Mr. Spallina that you, Ted and your respective family lines have not been provided for under your parents' estate plan and that your other three siblings have been provided for. Therefore, I thought that this follow-up letter was important.

As you may recall, I wrote to Mr. Spallina to request copies of your mother's Will, Trust and related financial information so that we could factor in a projected value of your remainder interest in your mother's Trust and analyze whether we should make any revisions to your and Scooter's estate plan in light of your mother's passing. We followed up with him after not receiving the requested information. In the end, I received an email from him in which he wrote "Please call me."

During my discussions with Mr. Spallina, he told me that you, Ted and your family lines were treated as "deceased" under your mother's trust because you and Ted were active in the businesses, and that each of you received a business as a gift from your parents. Mr. Spallina went on to say that your parents thought that they had adequately provided for you and Ted as a result of the gift of the business interests and that they wanted to provide for the other three children under their estate plan. I listened to what Mr. Spallina said. However, I knew based on our series of discussions over the years that, in fact, you did not receive any gift of a business interest from your parents.

*So to Pam FREE*

Following is my understanding of the circumstances under which you obtained your father's interest in S.T.P. Enterprises, Inc. ("STP"), which I understand can be supported by documentation:

- You and Scooter "stepped-in" and took over the running of Si's businesses (including SB Lexington, Cambridge Associates and others) following your father's open heart surgery at Northwestern in February of

*all B/S*

Ms. Pamela B. Simon

November 28, 2011

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1987, where he also contracted Hepatitis C and was told that he could no longer work full time. Following this, Si moved full time to Florida. He traveled to Israel later that year and contracted pneumonia.

- Upon reviewing the books, you and Scooter realized that Si's businesses were failing, an employee was stealing money and Si owed millions of dollars in unpaid bills and unpaid debt. In addition, you were receiving call after call from various banks asking for repayment.
- At that time, the ALPS was in its infancy. The promoter/agency was Cambridge Associates, owned 50% by Dov Kahana and 50% by Si with the positive arbitrage owned 25% by each of Cambridge, KGN, Bruce Nickerson and Scooter.
- In August 1988, Dov was exposed by you, and you and Scooter bought out Dov's 50% share for \$3,300/month for 3 years and re-formed STP to own and market the ALPS.
- The first ALPS funding was on October 25, 1988. Even though your father was not involved in the day-to-day operations of STP, and you and Scooter were buying out Dov, your father insisted on owning a 50% share in STP, with each of you and Scooter receiving a 25% share.
- To protect your reputation and save Si from bankruptcy, you and Scooter decided to work 7 days a week and to forgo receiving most of your share of the net income from the business for a number of years to turn Si's situation around. During this time, however, your father continued to receive his 50% share of the net income and had his debt re-financed and re-paid by STP.
- Ultimately you and Scooter were compelled to buy your father out because he was doing business in Florida on behalf of others in a manner that was jeopardizing the relationships that you and Scooter had made through your efforts. You and Scooter paid top dollar (\$6.5 million) to buy out your father's interest after the two of you had turned STP into a success. Although neither you nor Scooter thought that such a large sum was reasonable, you felt good knowing that it should take care of him and your mother for life.
- Just months after you purchased your father's interest in STP, you discovered that your father was doing business in direct competition with STP and utilizing STP information on his web page.

In addition, I recall based on our discussions that you and Scooter decided to help your parents by purchasing their Chicago condominium after they decided to move to St. Andrews. I understand that the two of you paid above full price with no

November 28, 2011

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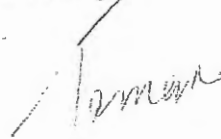
sales commission during a time when units were not selling at all, much less at full price. I also recall that the condo's furnishings were included in the purchase price even though your parents ultimately took an antique bench with them.

I do not see how either of these transactions with your parents could in any way be viewed as gifts that they made to you, and thus, justify their decision to cut you, Molly and future descendants of your family line out of receiving assets under their estate plan. I suggest that you talk this over with your father. Perhaps a review of the facts of the transactions will help his recollection about what actually occurred during the period when he was ill.

It is not the natural course to cut out certain family lines (Mr. Spallina agreed with me on this), and doing so could result in rifts between family lines for generations to come. I expect that this is not the type of legacy that your father would like to leave behind. In my experience, a child and that child's line are cut out only in extreme circumstances.

It is not too late for your father to change the current course. Since each of you, Ted, Lisa and Jill have your own independent wealth, perhaps at death your father could provide for your brother, Eliot, who is in need of financial assistance, and then divide the remainder of your parents' assets (after any debts, taxes and expenses) between the grandchildren so that each grandchild feels that he or she has been treated the same as his or her cousins. Obviously generation-skipping transfer ("GST") taxes would need to be considered, but under current tax law, potentially up to \$10 million could be transferred between your parents to the grandchildren's generation without triggering a GST tax.

Sincerely,



=====  
IRS CIRCULAR 230 NOTICE: To comply with requirements imposed by the IRS, we inform you that any federal tax advice contained in this letter (including any enclosures) is not intended or written to be used, and cannot be used, for the purposes of avoiding penalties under the Internal Revenue Code. If this letter contains federal tax advice and is distributed to a person other than the addressee, each subsequent reader is notified that such advice is being delivered to support the promotion or marketing by a person other than Heriaud & Génin, Ltd. Each such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent adviser.

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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, January 23, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Because Heritage Union Life Insurance Company is the named Defendant in this lawsuit despite Jackson National Life Insurance Company's allegations that Heritage is a predecessor in interest, the Court directs Jackson's attention to Federal Rule of Civil Procedure 25(c), which pertains to the substitution of parties. 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.

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, January 24, 2014:

MINUTE entry before the Honorable Mary M. Rowland: All matters relating to the referral of this action having been concluded, the referral is closed and the case is returned to the assigned Judge. Judge Honorable Mary M. Rowland no longer referred to the case. Mailed notice(gel, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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 24, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein's reply to his motion to disqualify counsel [63] shall be filed by 1/31/14. 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.

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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 31, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Eliot Bernstein's second oral request for extension of time is granted. Eliot Bernstein's reply to his motion to disqualify counsel [63] shall be filed by 2/5/14. No further extensions. 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.

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1  
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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, January 31, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing set for 2/6/14 is stricken and reset to 2/12/2014 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 a minute order or other document is enclosed, please refer to it for additional information.

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

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

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. )

**HERITAGE'S COMBINED MOTION TO: (1) AMEND ATTORNEY APPEARANCE; (2) AMEND NOTICE OF REMOVAL; AND (3) FOR ADDITIONAL TIME TO RESPOND TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant, Heritage Union Life Insurance Company ("Heritage"), by and through Jackson National Life Insurance Company ("Jackson") as successor in interest to ReAssure America Life Insurance Company, reinsurer of Heritage's subject policy, and as administrating and servicing agent for Heritage, moves this Court for leave to: (1) amend the attorney

appearances filed on behalf of Heritage/Jackson; (2) amend the notice of removal; and (3) for additional time to file a responsive pleading to Plaintiffs' amended complaint. In support of the motion, Heritage states:

1. On January 23, 2014, this Court ordered Jackson to address allegations that defendant Heritage was its predecessor in interest, including, if necessary, filing a Rule 25(c) motion to substitute parties. [D.E. 79].

2. That order led the undersigned counsel to conduct further inquiry into information that it was previously provided. Eventually it was determined that due to the complexities of Jackson's series of business combinations and mergers in the recent past, the information previously provided to the undersigned was incorrect.

3. Accordingly, the proper relationship between the parties is set out below, and such clarification necessitates this motion.

4. This litigation, which was removed to federal court, involves a dispute over the proper beneficiaries of the death benefit proceeds of a life insurance policy (the "Policy") originally issued by Capitol Bankers Life Insurance Company ("Capitol").

5. On or about May 30, 2000, Capitol and ReAssure America Life Insurance Company ("ReAssure") entered into an administrative reinsurance agreement whereby Capitol ceded to ReAssure and ReAssure accepted on a reinsurance basis certain rights, obligations, liabilities and risks of all Capitol policies and plans of insurance and annuity contracts, including the Policy. Under the agreement, ReAssure would collect premiums and pay out policy benefits, and otherwise assume additional administrative services for Capitol, including processing, investigating and paying claims, as well as handling claims litigation.

6. Subsequently, Capitol, through a series of mergers, became part of Heritage.

7. On May 17, 2011, Heritage Union, LLC ("HUC"), Heritage's parent, entered into a purchase agreement to sell all of HUC's shares to Wilton Reassurance Company, Inc. ("Wilton Re"), a Minnesota domestic life insurance corporation with its principal place of business in Connecticut.

8. Heritage is now a wholly owned, operating subsidiary of Wilton Re, and is also a Minnesota domiciled corporation with its principal place of business in Connecticut.

9. Finally, effective December 31, 2012, ReAssure merged with and into Jackson, including Jackson assuming all of the obligations under ReAssure's above-mentioned reinsurance contract with Capitol (now Heritage).

10. Accordingly, Jackson, as the successor in interest to ReAssure, is the reinsurer of Heritage's Policy, and is serving as the administrating and servicing agent for Heritage in prosecuting this interpleader action and defending against Plaintiffs' claims against Heritage.

11. As such, Heritage, by and through Jackson, requests leave to amend both the appearances filed by its attorneys in this matter and the notice of removal filed to confer jurisdiction with this Court, in order to correct the previous misstatements.

12. Importantly, diversity jurisdiction has always existed in this case and remains. Therefore, such amendment does not affect the jurisdiction of this Court.

13. In addition, on January 13, 2014, Plaintiffs filed a first amended complaint. Heritage's responsive pleading is due on February 3, 2014.

14. Heritage, through Jackson, anticipates filing a motion to dismiss because, among other things, it has fully satisfied its obligations as interpleader, including already tendering the Policy death benefit proceeds to the registry of this Court and joining all parties with potential claims to and/or interest in the Policy.

15. Prior to filing any such dismissal motion, Heritage, through Jackson, determined it prudent to first spread of record the correction to the proper party entities, and seek further direction from this Court whether any further action beyond that proposed in this motion is necessary.

16. Accordingly, in conjunction, Heritage requests additional time to file its responsive pleading to the amended complaint.

WHEREFORE, Defendant, Heritage Union Life Insurance Co., by and through Jackson National Life Insurance Company, as successor in interest to ReAssure America Life Insurance Company, reinsurer of Heritage's subject Policy, and as administrating and servicing agent for Heritage, respectfully requests that this Court enter an order granting Heritage: (1) leave to file amended attorney appearances; (2) leave to file an amended notice of removal; (3) for an extension of time to file its responsive pleading to the amended complaint, and (4) for 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 on February 3, 2014 he caused to be filed electronically with the Clerk of the United States District Court for the Northern District of Illinois a copy of the foregoing Combined Motion for Leave to File Amended Appearances, Amended Notice of Removal, and for an Extension of Time to File Responsive Pleading to Amended Complaint, a copy of which is served electronically upon the following:

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

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

John M. O'Halloran  
McVey & Parsky, LLC  
30 North LaSalle Street  
Suite 2100  
Chicago, IL 60602

/s Alexander D. Marks

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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, February 4, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: The Court grants Heritage's motion to amend the attorney appearances in this matter and its notice of removal [87]. See 28 U.S.C. § 1653. The Court also grants Heritage's motion for an extension of time to respond to Plaintiffs' Amended Complaint. Heritage must answer or otherwise plead by 2/12/12. 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

Reply to Response to Motion to  
Remove Counsel

**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>:**

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<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 note of this, especially

**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;**

**REPLY TO RESPONSE TO MOTION TO REMOVE COUNSEL**

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 (“Lost or Suppressed Policy”) on the life of Simon L. Bernstein (“S. BERNSTEIN”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” (“Lost or Suppressed Trust”), a “Simon Bernstein Trust, N.A.” (“Lost or Suppressed Trust 2”) and the Estate and Trusts of S. BERNSTEIN, all parties related to these matters and makes the following “Reply to Response to Motion to Remove Counsel.”

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>.

---

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.

<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.

**REPLY TO RESPONSE TO MOTION TO REMOVE COUNSEL**

**ELIOT'S COMMENTS ON A. SIMON'S INTRODUCTION**

1. That A. SIMON claims,

Eliot Bernstein's ("ELIOT") Motion to Disqualify and Strike Pleadings highlights the importance of adherence to the Federal Rules of Civil Procedure and the Local Rules of the Northern District of Illinois. When a *pro se* or represented party files a motion that directly violates these rules, it prejudices the opposing party and makes a cogent response nearly impossible."

2. That this statement and the rest of A. SIMON'S reply does point out well the problems associated and acknowledged by the Courts of Pro Se Litigants, in particular where they may "directly" violate the rules that they are often unaware of and the Court can remedy and aid the Pro Se litigant as so stated in footnote 2 of the pleading. Where ELIOT is also unclear of what a nearly impossible cogent response means and what rules have been broken by ELIOT that so prejudice the opposing parties, as nothing is proffered as evidence of what makes it impossible to respond to and this appear a tactic to avoid answering the Motion's salient points against him.
3. That ELIOT states that while the problems of Pro Se pleadings are pled well by A. SIMON, there is NO EXCUSE for an Attorney at Law acting as an Officer of this Court to be violating a few pleading rules as ELIOT is and fraudulent and deficient pleadings, which are alleged to be part of an insurance fraud scheme and a fraud facilitated through this Court through violations of State and Federal Law. Where A. SIMON is the ringmaster of this circus before this Court, as the counsel who filed this fraudulent action. Where the violations of law in filing this lawsuit with no basis, no legal Plaintiff and no true cause of action, in

order to commit fraud, is the gravamen of ELIOT'S request of the Court to remove A. SIMON, not merely conflicts of interest or adverse interests or a violation of Federal Bar Codes of Conduct but for ALLEGED FELONY CRIMINAL VIOLATIONS OF STATE AND FEDERAL LAW.

4. That ELIOT states that A. SIMON can respond to the allegations alleged in his Response to the Motion to remove A. SIMON as counsel but he does not want to and would rather attack, quite rudely, ELIOT as a Pro Se Litigant as his primary defense.
5. That A. SIMON claims,

What makes ELIOT's motion even more difficult is that the motion contains reference what may be kernels of truth regarding certain alleged misconduct that appears to have occurred in the Probate proceedings in Palm Beach County, FL. The alleged misconduct appears to involve staff and/or attorneys at law the firm Tescher & Spallina. Donald Tescher and Robert Spallina were attorneys for Simon and Shirley Bernstein while they were living, and after their deaths, they were counsel for the Estates of Simon and Shirley Bernstein (the "Estate" or "Estates"[]).

6. That while acknowledging "kernels" of truth in ELIOT'S pleadings regarding the Estates of S. BERNSTEIN and his wife Shirley Bernstein ("SHIRLEY") the "kernels" refer to all of the following facts regarding criminal misconduct admitted and acknowledged thus far in the Probate proceedings, including but not limited to,
  - i. admitted and acknowledged FORGERY of S. BERNSTEIN'S signature POST MORTEM,
  - ii. admitted and acknowledged FORGERY of ELIOT'S signature,
  - iii. admitted and acknowledged FORGERY of four other signatures,

- iv. admitted and acknowledged FRAUDULENT NOTARIZATION of S. BERNSTEIN'S FORGED SIGNATURE ON A WHOLLY RECREATED DOCUMENT POST MORTEM,
  - v. admitted and acknowledged FRAUDULENT NOTARIZATION of ELIOT'S FORGED SIGNATURE ON A WHOLLY RECREATED DOCUMENT,
  - i. admitted and acknowledged FRAUDULENT NOTARIZATION of four other FORGED SIGNATURE ON WHOLLY RECREATED DOCUMENTS,
  - ii. admitted and acknowledged filing with a Florida State Probate Court of six separate FORGED and FRAUDULENTLY NOTARIZED DOCUMENTS to close the Estate of SHIRLEY filed by a deceased S. BERNSTEIN, who was made to appear alive through a POST MORTEM IDENTITY THEFT, where he allegedly filed the Fraudulent documents acting as Personal Representative / Executor of SHIRLEY'S estate at the time, while technically deceased,
  - iii. admitted and acknowledged submission of Fraudulently filed documents used to close the Estate of Shirley over a fourth month period where S. BERNSTEIN was deceased, where such identity theft of S. BERNSTEIN was committed by Attorneys at Law, Donald R. Tescher, Esq. ("TESCHER") and Robert L. Spallina, Esq. ("SPALLINA"), who knowingly and with scienter closed the Estate of SHIRLEY with a deceased Personal Representative as if alive, in efforts to change the Beneficiaries POST MORTEM.
7. That A. SIMON fails to state to this Court that SPALLINA and TESCHER were not only counsel to S. BERNSTEIN and SHIRLEY while they were alive but fails to notify the Court that in the Estate of S. BERNSTEIN they are the ACTING PERSONAL



REPRESENTATIVES / EXECUTORS and SPALLINA is acting as Counsel to both himself and Tescher as the Co-Personal Representatives.

8. That A. SIMON fails to notify the Court that TESCHER, SPALLINA and Mark Manceri, Esq. ("MANCERI") have all resigned as counsel to the Bernstein family due to irreconcilable differences and professional concerns and submitted to be withdrawn as counsel in both S. BERNSTEIN and SHIRLEY'S Estates in their multiple fiduciary and legal capacities in each on February 18, 2014<sup>3</sup>.
9. That A. SIMON fails to notify the Court that TESCHER and SPALLINA have sought to be discharged as Co-Personal Representatives in the Estate of S. BERNSTEIN, coinciding with the arrest of their Legal Assistant and Notary Public employee, Kimberly Moran ("MORAN"), who was arrested<sup>4</sup> for her part in the fraud and forgery in the Probate Court and fraud on the True and Proper Beneficiaries of SHIRLEY'S estate.
10. That the alleged and proven Probate Court crimes were all in efforts to change beneficiaries of the Estate of SHIRLEY and S. BERNSTEIN, POST MORTEM. These crimes have caused the Estate of SHIRLEY to be reopened, after Honorable Judge Martin Colin found evidence of enough Fraud in and on his court by Officers of his court and stated to Theodore Stuart Bernstein ("THEODORE"), SPALLINA, TESCHER and MANCERI that he had enough at that point to read them all their Miranda rights.
11. That A. SIMON fails to notify this Court how SPALLINA filed an alleged fraudulent insurance claim form on November 11, 2012 with Heritage Union Life Insurance Company

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<sup>3</sup> TESCHER, SPALLINA, MANCERI RESIGNATION, WITHDRAWAL AS COUNSEL, WITHDRAWAL AS PERSONAL REPRESENTATIVES / EXECUTORS  
[www.iviewit.tv/TescherSpallinaManceriResignationWithdrawalCounselExecutors.pdf](http://www.iviewit.tv/TescherSpallinaManceriResignationWithdrawalCounselExecutors.pdf)

<sup>4</sup> Kimberly Moran Arrest Docket  
<https://docs.google.com/file/d/0Bzn2NurXrSkialpCVjdEWDhHTWc/edit?pli=1>

(“HERITAGE”) while acting as the Personal Representative of the Estate of S. BERNSTEIN and signing as the TRUSTEE OF THE LOST OR SUPPRESSED TRUST, as illustrated below and in Exhibit 1- Spallina Insurance Claim Form.

12. That the Signature Page of the fraudulently filed insurance claim form filed with HERITAGE that this Lawsuit is based upon shows the following,

Name of Trust: Simon Bernstein Irrevocable Insurance Trust	Date of Trust Agreement: 08/01/1945
Date of all Amendments:	Trust Tax ID Number: 125-6178912
Printed Name of Trustee(s): a. Robert L. Spallina	Signature(s): [Handwritten Signature]
b.	
c.	
d.	

Spallina signs as trustee = FRAUD

13. That SPALLINA acted in other alleged fraudulent fiduciary roles when filing this fraudulent insurance claim with HERITAGE that this Lawsuit is based upon and allegedly, IMPERSONATED AN INSTITUTIONAL TRUST COMPANY and IMPERSONATED AN INSTITUTIONAL TRUST COMPANY TRUSTEE, as well as, IMPERSONATED THE TRUSTEE OF THE LOST OR SUPPRESSED TRUST.

14. That SPALLINA acted in concert with THEODORE, P. SIMON, D. SIMON, TESCHER and MORAN to file the claim.



15. That the DENIAL by HERITAGE of this fraudulently filed insurance claim by SPALLINA is the alleged cause of the Breach of Contract alleged by A. SIMON in his frivolous and meritless breach of contract claim against HERITAGE before this Court.
16. That A. SIMON attempts to claim to this Court that the two legal actions, the Estate of Simon Probate court action and this Lawsuit are unrelated, which in fact is untrue, as they are intimately and inextricably bound together in that the insurance policy is an asset of S. BERNSTEIN'S Estate and therefore the beneficiaries of the Estates and Trusts of S. BERNSTEIN that legally exist, would be the beneficiaries of the Lost or Suppressed Policy proceeds without this insurance fraud scheme.
17. That since the beneficiary according to their story, is an alleged "BERNSTEIN TRUST" aka the Lost or Suppressed Trust, that was not legally in existence at the time of S. BERNSTEIN'S death over a year ago and was in fact claimed to be lost by the Plaintiffs and the Co-Personal Representatives TESCHER and SPALLINA, all claiming that no executed copies of the Lost or Suppressed Trust existed to prove its legal existence for over a year and when filing both the insurance claim and this Lawsuit.
18. That the Lost or Suppressed remains lost today and attempts now to prove its existence did not come until this Court demanded proof of its existence to qualify it as a Plaintiff with legal standing.
19. That HERITAGE had demanded the same proof of a legally qualified trust and trustee when processing the fraudulent insurance claim filed by SPALLINA and part of their reason to deny the claim was that the proof was never proffered.
20. That with this Court's brilliant questioning of A. SIMON in the September 2013 hearing and demanding proof of an executed trust, did suddenly their story of a Lost or Suppressed Trust

and no copies change and newly manufactured UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS of the Lost or Suppressed Trust appeared in the record of this Court through A. SIMON'S Rule 26 Production documents.

21. That this worthless parole evidence manufactured offers no legal proof of the Lost or Suppressed Trusts existence or what it said, as they are not the copies of an EXECUTED LEGALLY BINDING TRUST that this Court demanded A. SIMON produce in the September 25, 2013 hearing before Your Honor. These documents are a baseless attempt to create the appearance that a Lost or Suppressed Trust existed, again using unsigned, undated and un-authored documents that could have been manufactured the night before they were sent to this Court.
22. That at the time of an Insured's death, if no legally qualified beneficiary exists, the benefits should legally be paid to the Insured and not this Court, to then be distributed to the True and Proper Estate Beneficiaries. 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.
23. That A. SIMON claims,

In virtually all of his pleadings in the instant action, ELIOT refers repeatedly to the probate proceedings for the Estates, and fails to comprehend that those proceedings are separate and apart from the instant litigation which involve only the Policy proceeds.

24. That again, the Policy proceeds are an asset of the Estate of S. BERNSTEIN since allegedly no beneficiary existed at the time of the insured's death. That factually this instant litigation was filed by a NONEXISTENT Trust with no legal standing to file a Lawsuit as it does not

legally or otherwise exist. Therefore, the Lawsuit should be terminated by this Court instantly and the Policy proceeds returned to HERITAGE for proper processing of the claim after a thorough investigation for insurance fraud. Since at the time of the insured's death no beneficiary legally existed the benefits are paid to the Estate of the Insured and A. SIMON fails to comprehend this fact.

25. That the Beneficiaries of the Estates at this time are all in question due to criminal acts, alleged criminal acts and now further admitted errors, all caused by defendants TESCHER and SPALLINA, all in effort to change the Beneficiaries of the Estates POST MORTEM through fraud on the Probate Court, Fraud on the True and Proper Beneficiaries and more. According to the last uncontested Wills and Trusts that SIMON and SHIRLEY did together in 2008, the beneficiaries would be ELIOT, IANTONI and FRIEDSTEIN only.
26. That while these two legal actions may sound like separate matters they are intricately bound and have only fallen into this Court's lap through this wholly baseless Breach of Contract Lawsuit that ELIOT alleges A. SIMON filed in efforts to continue a yearlong attempt to fraudulently convert the Lost or Suppressed Policy, which is an asset of the Estate of S. BERNSTEIN, to improper parties through a mass of on the fly frauds, including Fraud on an Insurance Carrier, Fraud on an Institutional Trust Company, Fraud on this Court and Fraud on the Estate of S. BERNSTEIN'S beneficiaries.
27. That initially this insurance fraud scheme began with an initial life insurance death benefit claim form filled out illegally by Attorney at Law, Robert L. Spallina, Esq. ("SPALLINA") who filed the form impersonating the Trustee for the "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95" aka the Lost or Suppressed Trust.

28. That the claim was subsequently DENIED by Heritage Union Life Insurance Company (“HERITAGE”) and Reassure America Life Insurance Company (“RALIC”) for failure to prove beneficial interest and trusteeship and SPALLINA was requested by RALIC to obtain a Probate court order in Florida from S. BERNSTEIN’S Estate, approving the beneficiary designation scheme proposed to HERITAGE by SPALLINA.
29. That a full account of these insurance fraud schemes has already been pled and exhibited with Prima Facie evidence in ELIOT’S Answer and Cross Claim and ELIOT’S Answer to the Amended Complaint both filed with this Court and both fully incorporated by reference herein.
30. That a proposal for a POST MORTEM replacement trust for the Lost or Suppressed Trust was then proposed to those alleged to have beneficial interests and according to SPALLINA and THEODORE who proposed this plan they were seeking a Probate court order to approve the new scheme.
31. That instead of seeking the Probate Court order for a POST MORTEM TRUST scheme that would never work, A. SIMON filed this instant Lawsuit for a Breach of Contract behind the back of ELIOT and his children’s counsel, Tripp Scott in Fort Lauderdale, FL., intentionally concealing the action from ELIOT, illustrated when A. SIMON states in the Original Complaint that only 4/5<sup>th</sup> of S. BERNSTEIN’S children agreed with the scheme.
32. That this Lawsuit was filed instead of seeking the Probate Court order by THEODORE on April 05, 2013, with THEODORE now acting as Trustee for the Lost or Suppressed Trust, mysteriously replacing SPALLINA who had acted as Trustee for the Lost or Suppressed Trust only a few months earlier when filing the alleged fraudulent life insurance death benefit claim form.

33. That it is important to note that this Breach of Contract Lawsuit was filed based on the denial of the fraudulent insurance claim form filed by SPALLINA acting as Trustee, so why then did SPALLINA not file this Breach of Contract Lawsuit as the Trustee of the Lost or Suppressed Trust when it was the claim form that he submitted that was denied with him acting as Trustee at the time.
34. That A. SIMON failed to notify this Court and the authorities that SPALLINA had filed a fraudulent claim form as Trustee on behalf of his alleged client the Lost or Suppressed Trust and THEODORE as Trustee.
35. That A. SIMON in his Amended Complaint falsely states to this Court that SPALLINA filed the claim form acting as counsel to the Lost or Suppressed Trust, despite the fact that the claim form submitted was signed by SPALLINA as Trustee, not counsel for the Trustee or the Lost or Suppressed Trust.
36. That how did A. SIMON get retained by the Lost or Suppressed Trust if it did not legally exist at the time of filing this Lawsuit? This would indicate that A. SIMON had no legal right to act on behalf of a NONEXISTENT entity that could not authorize his actions and thus the filing was deficient since inception.
37. That THEODORE was advised by counsel according to Jackson National Life Insurance Company (“JACKSON”) when filing their Counter Claim that he had no legal standing to file the present Lawsuit.
38. That once ELIOT was notified by service of this Lawsuit, as a Third Party Defendant by JACKSON that this Lawsuit was in progress, ELIOT was stunned, as he was waiting for a Probate court order that RALIC demanded and that SPALLINA, his partner Donald R. Tescher, Esq. (“TESCHER”) and THEODORE all stated was being sought to approve the

POST MORTEM TRUST replacement scheme. Up until this time ELIOT had no idea a legal action had been filed seeking the life insurance proceeds through a Breach of Contract Lawsuit scheme instead.

39. That on April 5, 2013, A. SIMON filed his complaint for Breach of Contract against Heritage Union Life Insurance Company in the Law Division of the Circuit Court of Cook County, Illinois, docket number 2013-L-003498.
40. That from April 5, 2013 when the Breach of Contract Lawsuit was filed, to 5/16/2013 when the case was transferred to this Court, to ELIOT'S service of the complaint on July 01, 2013, almost three months into Lawsuit, all of this information was intentionally secreted from ELIOT and his children's counsel Tripp Scott with scienter by A. SIMON et al.
41. That at ELIOT'S first appearance on September 25, 2013 at a hearing before Your Honor, it was learned that no valid legal binding copy of an executed Lost or Suppressed Trust was submitted in the Lawsuit and Your Honor demanded that A. SIMON produce something to show that the Plaintiff in fact existed almost six month after filing.
42. That A. SIMON then attempting to comply with this Court's demand for a qualified legal entity to be produced as a legitimate Plaintiff then scrambled to produce brand new evidence, which he produced in his Rule 26 disclosure documents. This "proof" came in the form of UNSIGNED, UNEXECUTED, UNDATED and UN-AUTHORED ALLEGED DRAFTS of a Lost or Suppressed Trust that were created on an unknown date, at an unknown place by an unknown author and the legally deficient alleged drafts do not all prove the existence of the Lost or Suppressed Trust and what legal language it contained therein.
43. That had ELIOT not become joined to the action by JACKSON it appears that this Fraud on US District Court to have a NONEXISTENT Plaintiff secure the life insurance death benefits



from the Court was almost complete, already having JACKSON rush to deposit the death benefits into this Court's Registry, despite the fact that the policy also somehow is LOST.

44. That amazingly, the insurance carriers and reinsurers alike appear to have LOST all executed and binding copies of Policy # 1009208 the Lost or Suppressed Policy and coincidentally and bizarrely the insurers and reinsurers have no copies of the executed Lost or Suppressed Trust either.

45. That according to SPALLINA in an email he sent,

**From:** Robert Spallina [rspallina@tescherspallina.com](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. [emphasis added] 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.

46. That this Lawsuit is based on nothing more than hot air, as it was filed with a NONEXISTENT PLAINTIFF THAT FILED A US FEDERAL LAWSUIT AGAINST A LIFE INSURANCE CARRIER THAT ALSO APPEARS TO NO LONGER EXIST FOR FAILURE TO PAY A DEATH CLAIM TO A NONEXISTENT TRUST ON A NONEXISTENT INSURANCE CONTRACT.

47. That the strange thing is the carrier paid the claim to this Court in a hurry, without giving ELIOT or others involved in the Lawsuit opportunity to protest such transfer, which should have never happened without a legally existing contract that the Court could assess the terms and conditions legally contained therein regarding the death benefit proceeds.
48. That JACKSON should not have paid the claim to the Court and instead started and immediate FRAUD investigation when they discovered insurance fraud and a missing Life Insurance Policy and then determined what and who the proper beneficiaries were and paid the claim accordingly.
49. That this mishandling of an insurance policy and an insurance trust appears no coincidence, especially when defendants A. SIMON, his brother defendant D. SIMON, their law firm The Simon Law Firm and his sister-in-law P. SIMON, were all responsible at various times to maintain the records of both the Lost or Suppressed Trust and the Lost or Suppressed Policy. THEY sold the policy, THEY maintained and administered the policy and trusts, THEY did an exhaustive search of their law firm's offices for the records, THEY searched their insurance agency records and ALLEGEDLY, after this exhaustive search THEY determined that the Lost or Suppressed Trust was LOST and no legal binding copies existed. THEY maintained this story when filing the fraudulent insurance claim and when filing this Lawsuit.
50. That ELIOT states that because THEODORE and P. SIMON were disinherited in the Estates and Trusts of S. BERNSTEIN, they have purposefully suppressed and denied the Lost or Suppressed Trust and the Lost or Suppressed Policy, in order to change the True and Proper Beneficiaries, which did not include them.

51. Now that Your Honor demands proof of the Lost or Suppressed Trust, magically documents appear that were never tendered to any party prior to Rule 26 disclosure in this Court, months after filing the Lawsuit.
52. That now their story attempts to shift and they claim there is legally qualified trust that has rights to death benefits, however we now must believe that documents that were discovered long after they claimed they had searched high and low for them and they did not exist appeared when the Court demanded proof of a qualified legal trust. What they produced are UNEXECUTED EXECUTED, UNDATED ALLEGED DRAFTS of the still Lost or Suppressed Trust, that have names handwritten in blank spots for D. SIMON to be a trustee and again these are unexecuted, undated and un-authored and provide very little in the way of legal validation of the Lost or Suppressed Trust that remains NONEXISTENT.
53. That this manufacturing of insufficient and highly questionable evidence may be more criminal acts by A. SIMON et al., created to cover up the fact that the Plaintiff did not exist at filing and still does not.
54. That the allegations against A. SIMON et al. regarding the fraudulent filing of this legally deficient Lawsuit are FELONY crimes, not merely attorney misconduct claims, including but not limited to, Insurance Fraud, Fraud on a US District Court, Fraud on an Illinois Circuit Court, Fraud on an Institutional Trust Company, Fraud on the Estate of S. BERNSTEIN'S Beneficiaries, Misprision of Felony and the filing of fraudulent pleadings with this Court that are technically within the Court's page limits but far outside State and Federal Law.
55. That if the benefits flowed to the True and Proper Beneficiaries or the Estate of S. BERNSTEIN when the beneficiaries are missing at the time of death, according to Florida law and therefore A. SIMON, D. SIMON, P. SIMON and THEODORE would get

NOTHING and ELIOT would get significantly more if it were passed through Estate to his family.

56. That A. SIMON claims,

Plaintiffs brought this litigation in good faith and in furtherance of their efforts to collect what is rightfully theirs and twenty-percent ELIOT'S. I represent the original Plaintiff, the Bernstein Trust, and four out of five of the adult children of Simon Bernstein. All of my clients are in agreement that their claims are consistent with the stated intent of Simon Bernstein with regard to the Policy proceeds.

57. That A. SIMON filed this baseless lawsuit hoping no one would catch on and the money would flow from HERITAGE to this Court, leaving them without having to prove beneficial interest or trusteeship to the carriers HERITAGE, JACKSON and RALIC, which was demanded or provide the requested Probate court order. With this Lawsuit and the transfer of the death benefit proceeds to this Court, all they had left to do was convert the monies from this Court's Registry to a NONEXISTENT Lost or Suppressed Trust and they were home free.

58. That A. SIMON in his Response now spends a lot of time stating ELIOT has shown no beneficial interest for him or his children in this Lawsuit to Your Honor. However, A. SIMON must know, as his Response tells how well he personally knows the life insurance business in a legal sense that in the event of a lost or missing policy the death benefits transfer to the Insured and are thus part of the Estate, where both ELIOT and his children are BENEFICIARIES and thus would be the legal beneficiaries of the Lost or Suppressed Policy proceeds. Again, if the proceeds flow to the Estate of S. BERNSTEIN then P. SIMON, D. SIMON and THEODORE and their lineal descendants are wholly excluded and therefore it

is the Plaintiffs of the NONEXISTENT trust that have shown no real legal beneficial interests.

59. That P. SIMON was so enraged with S. BERNSTEIN for disinheriting her that P. SIMON retained a lawyer, a one Tamar S. P. Genin, Esq. ("GENIN") at the law firm Heriaud & Genin, Ltd., to write her father a letter requesting she be put back into the Estates and Trusts and telling him what a bum he was and how she saved him, see Exhibit 2 - P. SIMON NOTE AND LAWYER LETTER TO HER FATHER.
60. That P. SIMON'S demand comes despite her receiving a living GIFT of the long established family businesses and properties worth millions of dollar that the other children did not get, which is the basis SPALLINA claims to GENIN for P. SIMON'S disinheritance.
61. That P. SIMON states in fact in her handwritten note,

January 2012

Dear Dad,

Please read the attached letter and information. I am hopeful that you truly just don't know how much cutting me, Scoot [David Simon, Esq. proper name], Molly and Ted's family out of your will hurts us. **It has nothing to do with money.** [emphasis added] In fact, I think you need to take care of ELIOT, using a trustee, first and foremost.

The act of disinheriting a child is unheard of and unimaginable. It is outrageous and considered psychologically violent. I am hopeful you are not aware of this and that you will make the changes necessary.

Love Pam

62. That in the GENIN letter there is no mention of P. SIMON'S interest in the Lost or Suppressed Policy and in fact it is expressed that P. SIMON is to be considered pre-deceased

in the estate plans of her parents entirely. THIS WAS THE INTENT OF S. BERNSTEIN as of November 2011 and in fact GENIN states in her letter,

During my discussions with Mr. Spallina, he told me that you, Ted and your family lines were treated as "deceased" under your mother's trust because you and Ted were active in the businesses, and that each of you received a business as a gift from your parents. Mr. Spallina went on to say that your parents thought that they had adequately provided for you and Ted as a result of the gift of the business interests and that they wanted to provide for the other three children under their estate plan.

And later in the letter GENIN claims,

It is not the natural course to cut out certain family lines (Mr. Spallina agreed with me on this), and doing so 'could result in rifts between family lines for generations to come. I expect that this is not the type of legacy that your father would like to leave behind. In my experience, a child and that child's line are cut out only in extreme circumstances.

63. That P. SIMON and THEODORE, according to GENIN'S letter are depicted as having "independent wealth" and yet the letter fails to mention how P. SIMON, D. SIMON and A. SIMON all "worked" for S. BERNSTEIN straight out of college, for their WHOLE lives working in companies S. BERNSTEIN built and had virtually no other jobs. THEODORE had his own companies but it is believed those were lost when he filed for Bankruptcy<sup>5</sup> in 2004.
64. That GENIN'S strange account of P. SIMON'S life fails to state that it was S. BERNSTEIN'S inventive life insurance products that he invented and pioneered, for example, VEBA'S and Arbitrage Life Payment System, that led to the sales of a billion dollars in premiums through his companies, which gave THEODORE and P. SIMON their

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<sup>5</sup> THEODORE BANKRUPTCY INFORMATION  
<http://www.iviewit.tv/Theodore%20Bernstein%20Bankruptcy%20Information.pdf>

SILVER SPOONED LIVES, including a Glencoe, Il. mansion to grow up in, limos to school, free rides on college for them and their kids, free cars, trips around the world, etc.

65. That S. BERNSTEIN is alleged in the GENIN'S letter to basically be destitute and a bum, who steals P. SIMON'S antique furniture to boot on his way to pasture in Florida and claims it was P. SIMON and her husband D. SIMON who built the company creating their "independent wealth."
66. That the story P. SIMON paints through her attorney at law's eyes is in fact delusional to the realities of P. SIMON'S life, where her father and mother spoiled her and all their children and gave P. SIMON the moon while living, not the other way around. Yet, the story is telling of the anger and hostility P. SIMON felt and may explain why she and THEODORE were demanding changes to the Beneficiaries be made shortly before his death or perhaps there are more dubious reasons as evidenced further herein.
67. That even when S. BERNSTEIN was considering making changes to stop the stresses heaped upon him by THEODORE and P. SIMON in May of 2012, the proposed changes still wholly excluded both THEODORE and P. SIMON from the Estate plans, in favor of their other children and therefore his intent again appears clear, to cut P. SIMON and THEODORE out of any estate plans, including any trusts and insurance.
68. When the Beneficiary changes were not made prior to S. BERNSTEIN'S death, it appears S. BERNSTEIN'S "intent" began to be changed POST MORTEM with a little help from his friends who FORGED and FRAUDULENTLY NOTARIZED documents in the Estate of SHIRLEY and allegedly FORGED and FRAUDULENTLY NOTARIZED documents in the Estate of SIMON. All of these alleged crimes were enabled and aided and abetted with the

help of THEODORE'S close business and personal friends, TESCHER and SPALLINA, whom THEODORE introduced to SIMON and SHIRLEY for Estate planning work.

69. That in this insurance fraud scheme now before this Court, TESCHER and SPALLINA initially were going to be aided in collecting the proceeds by P. SIMON'S friends at the insurance carrier who appeared willing to pay a claim expeditiously, without proof of beneficial interests, trusteeship and a valid legal trust document, as evidenced in SPALLINA'S correspondences already exhibited earlier herein.
70. That from the handwritten notes of S. BERNSTEIN on GENIN'S letter it is clear what S. BERNSTEIN thought of the account being told by GENIN, when he wrote alongside her account, "All B/S" thereby disputing all of her claims, including that P. SIMON was not gifted the companies in large part.
71. That P. SIMON desperately has her attorney GENIN claim for her that her father did not gift her and D. SIMON the company and GENIN claims,

However, I knew based on our series of discussions over the years that, in fact, you did not receive any gift of a business from your parents. Following is my understanding of the circumstances under which you obtained your father's interest in S.T.P. Enterprises, Inc. ("STP"), which I understand can be supported by documentation:"

S. BERNSTEIN writes emphatically in response to GENIN'S claim on the side her letter, "50% to Pam FREE!"

72. That GENIN'S letter also fails to state that S. BERNSTEIN was to be paid an additional consulting and non-compete agreement for \$4,000,000.00<sup>6</sup> to be paid over a number of years

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<sup>6</sup> September 28, 2001 Consulting Agreement S. BERNSTEIN and STP.  
<http://www.iviewit.tv/20010928%20CONSULTING%20AGREEMENT%20SIMON%20AND%20STP.pdf>



and that P. SIMON and D. SIMON breached this agreement and that it was this breach that led to bad blood with her parents permanently.

73. That when S. BERNSTEIN did not get paid his consulting agreement and non-compete, which were an additional component of the buyout and was stiffed by P. SIMON and D. SIMON, they then told S. BERNSTEIN to sue them for his monies, as they already had the stock.
74. That at this point it is alleged that S. BERNSTEIN and SHIRLEY washed their hands of them until the day they died and considered them predeceased basically while alive but for brief encounters thereafter to see their granddaughter.
75. That in Estate plans from 2001 done by Proskauer Rose LLP ("PROSKAUER"), after failing to pay S. BERNSTEIN for the consulting agreement / non-compete, S. BERNSTEIN and SHIRLEY disinherited P. SIMON and her family in their Estate Plans. From PROSKAUER'S alleged 2001 alleged Will that was mysteriously inserted by an unknown party into the Probate court record in 2012, the following language is found,

ELEVENTH: The term "descendants" as used in this Will shall specifically exclude my daughter PAMELA BETH SIMON and her descendants. Except as provided in Article SECOND of this Will, I have not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

76. That despite what A. SIMON claims the intent of S. BERNSTEIN was in 1995, it is apparent that his intent changed over the years and the last known information regarding his intent was to wholly exclude THEODORE and P. SIMON from the estate plans.
77. That A. SIMON claims,

Plaintiffs and I, as their counsel, verily believe that the claims they are asserting for the Policy proceeds are being brought in good

faith, and are well grounded in fact and law. One of the most important facts being that the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/1995 was actually named a beneficiary of the Policy proceeds pursuant to the Policy. (See Beneficiary Designation attached to Adam Simon's affidavit as Exhibit "A", bates #BT000029- 030).

78. That A. SIMON is still trying to sell this Court a baseless story about a NONEXISTENT Trust that once upon a time may have been a beneficiary and even if it does not exist today to make a claim legally and that even if it did exist it is not listed according to the insurance carrier as a beneficiary at the time of S. BERNSTEIN'S death.
79. That A. SIMON fails to state that despite his claim that this Lost or Suppressed Trust once existed as a Beneficiary, none of that can be legally proven now, as not only is the trust lost or suppressed but because the Policy also is lost or suppressed and therefore no parties have produced to this point a legal or binding life insurance contract to prove or disprove his alleged claims he states are "well grounded in fact" of who the beneficiaries that are listed on the Lost or Suppressed Policy.
80. That the "well-grounded fact" appears to be based on the belief of what SIMON'S intent was in 1995 and not what it was when he passed, which either way is of little significance as his alleged intent is not what matters when the beneficiary is lost at the time of death according to Florida law.
81. That while A. SIMON and his clients, including a NONEXISTENT LEGALLY DEVOID OF STANDING AND LOST OR SUPPRESSED TRUST may "verily" believe they are Beneficiaries, their belief is not legally qualified and their standing is wholly in question as no documents legally support anything but that THEODORE and P. SIMON were considered

predeceased regarding the estate plans of S. BERNSTEIN, a further reason they should not be considered as eligible beneficiaries.

82. That A. SIMON claims,

ELIOT's purported claims made either on his own behalf or that of his children fail to include reference to any document recorded with the Insurer naming ELIOT, ELIOT's children, or any of Simon Bernstein's grandchildren as beneficiaries of the Policy.

83. That A. SIMON fails to inform the Court that when there is no legal beneficiary at the time of death of an insured in the state of Florida, the insurance proceeds are paid to the Insured's Estate and thus ELIOT does not need to name the Beneficiaries or have them listed on the Lost or Suppressed Policy to have claims to the proceeds via the Estate.

84. That the to be determined Beneficiaries of the Estates, in all possible scenarios, are ELIOT and/or his children or both. In every scenario of the Estate Beneficiaries, P. SIMON and THEODORE are wholly disinherited and their children may or may not have beneficial interests in the Estate based on the effects of the FORGED and FRAUDULENTLY NOTARIZED DOCUMENTS and other document problems that are contested in the Wills and Trusts at this time and finally are further called into question due to recently admitted document problems claimed in TESCHER'S recent resignation letter that further confound matters for THEODORE and P. SIMON'S children.

85. That in defendant TESCHER'S resignation as Counsel letter in the Estates of S. BERNSTEIN and SHIRLEY, TESCHER has now suddenly identified two first amendments to the dispositive documents of SHIRLEY, one that has language in it regarding SHIRLEY'S Beneficiaries and one that only removes a beneficial interest of THEODORE'S wife, Deborah Bernstein's child, Matthew Logan. TESCHER claims he only knew of the one that

removed THEODORE'S wife's child and had never before seen the other one until January 2013, over two years after her death and did nothing about it until his resignation letter in January 2014 three years later. That this evidences again that two sets of documents may have existed, one that was the original documents signed by S. BERNSTEIN and SHIRLEY and another manufactured set attempting to change the Beneficiaries.

86. That TESCHER acknowledges the liabilities this creates in his resignation letter and he attempts to claim that this error is his reason for resignation but his reason will be shown to make no sense in light of new information discovered and evidenced herein.
87. That ELIOT has contested all of the documents that attempt to change the Beneficiaries in the Estates due to the FORGERY and FRAUDULENT NOTARIZATIONS already found, including a POST MORTEM FORGERY and other evidence that document tampering and other crimes have occurred in multiple other documents in the estates, including but not limited to, an Alleged 2012 Will and Amended Trust of S. BERNSTEIN allegedly signed only days before S. BERNSTEIN passed away.
88. That A. SIMON is the one that has not proved beneficial interest for his clients or proved a trusteeship in the Lost or Suppressed Trust and has shown no legally binding proof that the Lost or Suppressed Trust even exists and thus his clients and their opinions have no basis or standing to make any representations before this Court.
89. That to further their lack of basis and standing, the Lost or Suppressed Trust they claim is the CONTINGENT BENEFICIARY is not even the named Contingent Beneficiary on the Lost or Suppressed Policy according to JACKSON.
90. That furthering their lack of basis and standing is that ELIOT alleges that the PRIMARY BENEFICIARY still exists and this further limits and denies at the time of the filing of this

Lawsuit a claim being made by a Contingent Beneficiary. ELIOT claims the PRIMARY BENEFICIARY according to JACKSON is the SIMON BERNSTEIN TRUST N.A. aka Lost or Suppressed Trust 2.

91. That A. SIMON claims,

Most importantly, however, I shall demonstrate in this memorandum that ELIOT has failed to assert any facts showing that a conflict exists with regard to my representation of my clients in this case. Neither has ELIOT provided any factual record showing the existence of a conflict or any misconduct on my part.

92. That ELIOT has proven to this Court and this Court has acknowledged on its own that this Lawsuit was filed with a NONEXISTENT entity as Plaintiff, which is the beginning of the misconduct in this Lawsuit that merits A. SIMON'S disqualification as counsel and removal of the pleadings he filed. As to this date no legally binding evidence exists of a binding legal trust and thus the case must be dismissed on this basis alone and A. SIMON disqualified as an Attorney at Law that should have fact checked his "client" better before filing or not filed this baseless, vexatious, frivolous Lawsuit that attempts to convert assets of the Estate of S. BERNSTEIN to improper parties.

93. That A. SIMON has adverse interest in the matters, as he, his brother defendant D. SIMON and his law firm The Simon Law Firm will all be material and fact witnesses to the whereabouts of the Lost or Suppressed Trust and the Lost or Suppressed Policy. That he claims as well to be General Counsel for Defendant STP as well, may also render him incapable of impartial representation for any party.

94. That A. SIMON is alleged to have filed this fraudulent Breach of Contract Lawsuit to fraudulently abscond with the proceeds of the Lost or Suppressed Policy without giving notice to ELIOT, and ELIOT'S children's counsel, Tripp Scott that they were filing this

- Lawsuit. ELIOT had already demanded from SPALLINA, TESCHER, THEODORE and P. SIMON that any attempt to collect the proceeds in any proposed plan, since they claimed they had lost everything and were creating a POST MORTEM replacement trust, be made with the consent of himself and his children's counsel before insurance claims were filed.
95. That knowing that ELIOT wanted to review their scheme and have counsel approve it, A. SIMON, THEODORE, P. SIMON, SPALLINA, TESCHER and others filed this Lawsuit and intentionally secreted the filing from ELIOT and his children's counsel with intent to remove the asset from the Estate and convert and comingle it to themselves.
96. That ELIOT states that A. SIMON is not only conflicted and has adverse interests in the Lawsuit that make him a material and fact witness and participant in the matters with direct financial interest to gain for his family members, who would otherwise be excluded from the Lost or Suppressed Policy Proceeds but more the reasons he should be removed is that A. SIMON has allegedly participated in a Fraud on the Court, Fraud on an Insurance Carrier, Fraud on the Beneficiaries of the Estate of S. BERNSTEIN and more, all based on Prima Facie evidence of FELONY violations of State and Federal Laws that provide enough just cause to remove him immediately and report his conduct thus far to all the proper authorities both State and Federal, ethical and criminal, as required of Your Honor under Judicial Cannons and Attorney Conduct Codes.
97. That this Court can bet that with this much on the line personally and a possible prison sentence for the crimes, A. SIMON will now say or do anything to sway this Court from seeing the truth of what is now exposed as Fraud and in a last desperate attempt to avoid the germane issues, instead begin a smear campaign on ELIOT, which has already begun, exhibited by this toxic Response to the Motion to remove him as counsel and this is again

further cause for A. SIMON'S removal from representing any parties further in this baseless litigation that he filed to further a fraudulent Conversion and Comingling of Estate Assets to improper parties, including but not limited to, the benefit of his brother's brother-in-law THEODORE, his sister-in-law P. SIMON and he and his brother's law firm.

98. That another area A. SIMON has transgressed his oath as an Officer of this Court and law, is that he failed to report SPALLINA for filing a fraudulent insurance claim acting as the Trustee of the Lost or Suppressed Trust and this may be considered MISPRISION OF FELONY, as he was required to report such felony misconduct of another attorney at law to the proper authorities.
99. That this reporting to authorities seems pertinent when it is revealed that SPALLINA had filed a fraudulent claim that was DENIED by HERITAGE and which denial of the claim now serves as the breach of the insurance contract that A. SIMON claims in this Court. One must wonder why A. SIMON has neither sued SPALLINA for this alleged criminal insurance fraud nor reported him as required under Ethic Rules and Regulations and State and Federal Law.
100. That not only does A. SIMON fail in his duties as an Attorney at Law to report knowing felony misconduct of another Attorney at Law but he in fact, furthers the fraud by filing this Lawsuit and then claiming that SPALLINA and TESCHER have nothing to do with the Lawsuit, attempting to Aid and Abet SPALLINA and TESCHER'S crimes by covering them up in the Lawsuit. This again is just cause to REMOVE A. SIMON from representing any parties in this Lawsuit any further and force all the Plaintiffs to retain independent non-conflicted counsel to file further pleadings on their behalf or on behalf of the Lost or Suppressed Trust.

101. That ELIOT believes that once A. SIMON is removed from this Lawsuit, as an insider with direct interests for his immediate family in the outcome of this Lawsuit, the Plaintiffs will NOT be able to hire an independent law firm with no skin in the game tied to the Lost or Suppressed Policy that will continue this hoax of a Lawsuit and represent a Plaintiff that DOES NOT EXIST LEGALLY and continue this fraud.

102. That A. SIMON claims,

What makes the situation a bit more confusing is the fact that all of the pleadings for relief filed by my clients seek to claim the Policy proceeds on behalf of the Bernstein Trust or its beneficiaries, all FIVE children of Simon Bernstein. Our pleadings allege that ELIOT is a twenty percent beneficiary of the Bernstein Trust, so twenty percent of the Policy proceeds would inure to ELIOT. Conversely, ELIOT's pleadings fail to make any other coherent claim to the Policy proceeds on his own behalf or anyone else's for that matter.

103. That it is clear from P. SIMON'S note and GENIN'S letter that according to SPALLINA, in November 2011, P. SIMON and her lineal descendants were excluded 100% from the Estates and Trusts of both her mother and father and there is no mention of her interests to the Lost or Suppressed Policy or the Lost or Suppressed Trust and SPALLINA at that time in November 2011 makes no mention that she is an alleged 1/5<sup>th</sup> beneficiary of anything, in fact, according to GENIN'S account of P. SIMON'S life, she was told that P. SIMON and her lineal descendants were DISINHERITED entirely.

104. That it is clear that in the November 2011 conversations between P. SIMON'S attorney GENIN and SPALLINA, that only 3/5<sup>th</sup> of S. BERNSTEIN'S children were to be benefactors of the Estates and Trusts of S. BERNSTEIN and SHIRLEY, according to SPALLINA.



105. That what is not clear from SPALLINA'S conversations with GENIN is exactly why SPALLINA was informing P. SIMON'S attorney she had been disinherited and if this was done with the express consent of S. BERNSTEIN, whose heavy underlining of SPALLINA'S name in the GENIN letter may indicate he was perturbed by this possible violation of attorney/client privilege that may have enraged P. SIMON who then felt abused psychologically by this.
106. That SPALLINA'S informing P. SIMON of her disinheritance ended up so enraging P. SIMON and THEODORE that they began a boycott and abuse of S. BERNSTEIN to make him change his beneficiaries.
107. That SPALLINA may have intentionally caused this anger by informing P. SIMON'S counsel that she and THEODORE were cut of the Estates, as is evidenced in P. SIMON'S note that she feels this was an act of "Psychological Violence" against her and THEODORE and she demanded changes. It certainly appears strange that S. BERNSTEIN was not involved in these calls or referenced in the GENIN letter as being cognizant that SPALLINA was informing them of his last wishes and desires prior to any reading of the Will or his death. In fact by his notes on GENIN'S letter he was unaware of this conversation and what had been discussed at all.
108. That there is no evidence that the five children of S. BERNSTEIN were to be Beneficiaries of the Policy and in fact, the evidence that does exist after 1995 indicates that only 3/5<sup>th</sup> of the Bernstein children were to be Beneficiaries of the entire Estates and Trusts.
109. That A. SIMON claims,

My client's seek a court order which would allow for the distribution of the Policy proceeds according to the intent of Simon Bernstein. All of the potential ultimate beneficiaries of the Policy

proceeds are represented in the instant litigation. Four of these ultimate beneficiaries are my clients, and the fifth, ELIOT, has chosen to represent himself and pursue his own agenda, pro se.

110. That A. SIMON fails to see that the distribution of Policy proceeds which would allow for S. BERNSTEIN'S intent to be carried out cannot legally be proven any longer, as he and his clients claim the documents necessary to prove S. BERNSTEIN'S legal intent are lost or suppressed at this time. Therefore, where the beneficiary is not present at the time of death, it is not the intent of the Insured that directs the proceeds but rather they are paid to the Insured and then are facilitated through the estate of the insured to the Beneficiaries.
111. That since S. BERNSTEIN could have changed his mind and his intent on who the beneficiaries were up until death and the insurance carrier and SPALLINA claim he was considering changing the beneficiaries shortly before his unexpected and untimely death, his intent is murky even shortly before his death.
112. That ELIOT states that the intent of S. BERNSTEIN is not known, as the even in their account the beneficiary is lost and does not exist so the true intent of S. BERNSTEIN cannot be proven legally and thus is not sufficient to pay a death claim or award any proceeds to nonqualified nonexistent parties no matter what percentage of S. BERNSTEIN'S children want it to be in their favor, in efforts to deprive the Estate Beneficiaries who are legally entitled to the proceeds and which do not include THEODORE and P. SIMON.
113. That as for the statement that all the ultimate Beneficiaries are being represented in this Lawsuit, once again we return to why SPALLINA, the Estate Co-Personal Representative and Executor filed a claim on behalf of S. BERNSTEIN with HERITAGE in the first place, if the Beneficiaries of the Estate are not involved?

114. That the grandchildren of S. BERNSTEIN are not represented here at all and in a LOST beneficiary situation they would be possible Beneficiaries via the Estate of S. BERNSTEIN. Again, this is a false statement of fact by A. SIMON that attempts to make wholly unsupported claims of what A. SIMON believes to be the beneficiaries, not supported by any facts or legal documentation.
115. That those not represented with intent by A. SIMON include all TEN of S. BERNSTEIN'S grandchildren. That ELIOT states his children and the other seven grandchildren were intentionally left out of this Lawsuit when it was filed, to intentionally conceal the fact that they could be direct beneficiaries and not certain of their parents until after THEODORE and P. SIMON had absconded illegally with the proceeds from them. A. SIMON as an Attorney at Law knew and knows that the Estate of S. BERNSTEIN and the TBD Beneficiaries of the Estate were entitled to the benefits unless this Fraud on a US District Court using a NONEXISTENT ENTITY and more was successful in converting the Estate's life insurance asset to them outside the Estate and Estate Beneficiaries. That this False Statement of Fact that all parties are represented who have potential interests in the Lost or Suppressed Policy continues a Pattern and Practice of False Statements to this Court, with scienter.
116. That ELIOT did not choose to represent himself and his own agenda in this Lawsuit as A. SIMON claims, as ELIOT was not included in the parties represented in this Lawsuit originally and was purposefully misled and the information intentionally withheld from him by SPALLINA, THEODORE, P. SIMON and A. SIMON.
117. That A. SIMON in the last prior statement quoted above stated all parties were represented in these matters, yet ELIOT and his children were excluded and only 4/5<sup>th</sup> of S. BERNSTEIN'S children were part of this Lawsuit to begin with.

118. That ELIOT was sued as third party defendant by JACKSON and that is how he became represented in this Lawsuit, not through A. SIMON'S including him, as A. SIMON would have this Court now believe.
119. That in prior pleadings A. SIMON has stated that ELIOT owed the Estate monies that would somehow have been charged back against his interests in the Lost or Suppressed Trust, indicating they had intentions of taking the insurance monies of ELIOT'S and his children and using it as some form of **payback** to themselves, as if ELIOT was somehow a creditor of the Estate. ELIOT most likely would have received nothing after their deductions but a long road to recovering the monies.
120. That A. SIMON claims,

To avoid any appearance of a conflict and in furtherance of the goals of transparency, accuracy and finality, my clients and I would welcome having the ultimate distribution of the Policy proceeds occur under this court's supervision, i.e. with an accounting and vouchers being submitted to the court.

121. That the Policy proceeds should NOT be distributed under this Court's supervision at all and should be returned to HERITAGE who should then determine what to do with the proceeds according to Law, in the event of a Lost or Suppressed Trust and then further what to do when they have a Lost or Suppressed Policy.
122. That this Court should take no direction from A. SIMON, nor care what he wants done with the proceeds for he and his clients have established no beneficial interest in the Lost or Suppressed Policy.

**ELIOT COMMENTS ON A. SIMON'S FACTUAL BACKGROUND**

123. That A. SIMON claims,

“ELIOT’S Motion to Disqualify contains no factual support which would lead this court to disqualify me as counsel. ELIOT has not attached his own Affidavit to his motion. ELIOT has not attached an Affidavit of the Plaintiffs, other parties to this litigation, or any other witness in support of his motion. With that being said, I submit the following factual background regarding my representation supported with my attached Affidavit.”

124. That ELIOT states, as already cited herein and in prior pleadings, A. SIMON should first and foremost be DISQUALIFIED, SANCTIONED and reported to the proper ethical and legal authorities for filing this baseless, meritless, frivolous, toxic pleading and Lawsuit with no Plaintiff that legally exists.
125. That this FELONY MISCONDUCT to FRAUDULENTLY CONVERT and COMINGLE INSURANCE POLICY PROCEEDS to his clients, who lack standing, beneficial interest and trusteeship, and are not qualified legal beneficiaries of the Lost or Suppressed Policy insuring the life of S. BERNSTEIN and have delayed and stymied distribution of proceeds to the True and Proper Beneficiaries through these ongoing insurance fraud schemes, now using a US District Court to facilitate the crimes for over a year of failed attempts is more than sufficient evidence provided by ELIOT to disqualify A. SIMON and imprison him if found guilty.
126. That these allegations are not without merit, as the Court can plainly see, for approximately eight months this meritless Lawsuit has been without a qualified legal Plaintiff and A. SIMON has known this, especially as an Attorney at Law but he had not anticipated ELIOT finding out about his carefully concealed Lawsuit and challenging him on these matters before he could abscond with the proceeds for he and his family’s benefit.
127. That the Court should note that without this Fraud via the Court as host to the crime, wrapped in a legally devoid of standing Lawsuit, A. SIMON and his family members, brother D.

SIMON and sister-in-law P. SIMON would get NOTHING from the proceeds of the Lost or Suppressed Policy, as S. BERNSTEIN INTENDED.

128. That A. SIMON claims,

2) Since 1990, I have worked in a law firm with my brother, David B. Simon known as The Simon Law Firm. The Simon Law Firm has been named as a third-party defendant in the instant litigation by ELIOT.

129. That ELIOT states that The Simon Law Firm has been named as a third-party defendant in this matter for good and just cause, including but not limited to, for filing this fraudulent Lawsuit to commit a Fraud on the Estate Beneficiaries of S. BERNSTEIN, Insurance Fraud and more.

130. That A. SIMON, D. SIMON and P. SIMON, all work out of the same offices of STP Enterprises ("STP"), a company founded by S. BERNSTEIN and all worked for S. BERNSTEIN from the day they graduated college and all made boat loads of monies from S. BERNSTEIN'S insurance products he created, including but not limited to, VEBA 501(c)(9) Voluntary Employee Death Benefit Association plans that he was a Pioneer of and Arbitrage Life Payment System another product he pioneered and had intellectual property claims over.

131. That these innovative insurance products S. BERNSTEIN created led to him being one of the most successful insurance agents in the nation, having sold hundreds of millions of dollars of premium, making millions upon millions of commissions for the companies he owned and founded and was the largest producer of sales for, allowing him to provide for his children and grandchildren in extravagant style their entire lives.

132. That A. SIMON claims,

3) I have also worked as assistant general counsel for a life insurance brokerage owned by David B. Simon and Pamela B.

Simon named STP Enterprises, Inc. ("STP"). STP has been named as a third party defendant in the instant litigation by ELIOT.

133. That ELIOT states, this should also be cause for A. SIMON'S disqualification and sanctioning as he is **General Counsel** to a defendant STP in the Lawsuit **and** should have disqualified himself, as well as, he himself is a defendant and he also will be a material and fact witness to relevant matters in the Lawsuit and should **not** therefore be representing any other parties interests other than his own as a defendant.
134. That A. SIMON, out of respect for all that S. BERNSTEIN did for him from his youth onward should properly state that the company owned by his brother and sister-in-law was founded out of the hard work of S. BERNSTEIN who later abandoned STP when he gifted 50% of STP to P. SIMON and D. SIMON and arranged a buyout for the other 50%, which is alleged to have not been fully honored by P. SIMON and D. SIMON, leading, along with other issues to be discussed further herein, to the dissolution of a meaningful relation between P. SIMON, D. SIMON and both S. BERNSTEIN and SHIRLEY who felt betrayed by the breach of contract and washed their hands of them.
135. That S. BERNSTEIN may have considered their default on his consulting agreement and burning him for \$4,000,000.00 was a gift of the remaining interests in the business and further reason to exclude them from inheritance.
136. That A. SIMON claims,

4) I am currently representing the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 (the "Bernstein Trust"), Ted Bernstein, as Trustee **and** individually, Pamela B. Simon (my sister-in-law), Jill Iantoni, and Lisa Friedstein as Plaintiffs. I am also representing those parties as counter, cross, or third party defendants where they have been named as parties by either ELIOT or Heritage Union. I am also representing The Simon Law Firm **and** STP as they have been named as third-party defendants by ELIOT.

137. That ELIOT asks how A. SIMON is representing a NONEXISTENT ENTITY the Lost or Suppressed Trust aka “Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95” and under what terms was his retainer agreement signed to prove he is qualified to represent that which does not exist? Who is paying him and how?
138. That ELIOT asks how is A. SIMON representing “Ted Bernstein” who does not exist legally, as his legal and proper name is alleged to be Theodore Stuart Bernstein.
139. That ELIOT states that where the NONEXISTENT PLAINTIFF, the Lost or Suppressed Trust DOES NOT LEGALLY EXIST, how A. SIMON can claim to represent a “Trustee,” “Ted,” of that NONEXISTENT LEGAL ENTITY. Under what terms and conditions has “Ted,” who does not legally exist, operate under as Trustee if the terms are lost?
140. That ELIOT has exhibited in prior pleadings that THEODORE has been operating in numerous false fiduciary capacities in the Estate of SHIRLEY and transacting dealings without proper authority for over a year, as was learned in the September 13, 2013 Hearing and the October 28, 2013 Evidentiary Hearing before Honorable Judge Martin Colin.
141. That ELIOT states that A. SIMON knew that SPALLINA impersonated himself as “Trustee” for the Lost or Suppressed Trust when filing his fraudulent insurance claim that this fraudulent Breach of Contract Lawsuit is based upon and SPALLINA acted in the fiduciary capacity of A. SIMON’S alleged client “Ted” and the Lost or Suppressed Trust and yet A. SIMON failed to notify this Court or the proper criminal authorities of this slight fraud on the alleged Lost or Suppressed Trust and the insurance company by SPALLINA.
142. That A. SIMON knew that “Ted” was not qualified to be Trustee of the Lost or Suppressed Trust when he filed his Lawsuit, as SPALLINA and THEODORE knew prior to filing that



the Trustee and Beneficiaries were at best an “educated guess” and as such not legally qualified.

143. That the fact that the Plaintiffs knew the Lost or Suppressed Trust had no legal standing is why the Plaintiffs and SPALLINA proposed creating a NEW POST MORTEM trust prior to filing this Lawsuit, where THEODORE stated he would volunteer to be “Trustee” of the NEW TRUST, based on his belief that he was Trustee of the Lost or Suppressed Trust.
144. That now suddenly A. SIMON tries to claim the Lost or Suppressed Trust does in fact have legal standing when factually it still does not because he was caught in the act in this Lawsuit by this Court, ELIOT and JACKSON, for not having a qualified legal Plaintiff when filing the Lawsuit and now he attempts to change the story and attempt to cure his deficiencies by claiming this Lost or Suppressed Trust somehow exists based on newly manufactured shoddy parole evidence that is not legally sufficient to qualify the Lost or Suppressed Trust as a Plaintiff.
145. That if Pro Se’r ELIOT were to have filed a Lawsuit with a non-existent Plaintiff and representing improper legal names of a Plaintiff, this Court and others could all laugh at ELIOT’S expense for his lack of legalese as a non-attorney and lack of fact checking, but when these deficiencies are accomplished by a self-proclaimed seasoned Attorney at Law, as A. SIMON self-professes to be in his Response, there again can be no excuse for these glaring pleading deficiencies, as even ELIOT knows that the Plaintiff must legally exist to be a qualified party to a lawsuit and to use proper legal names when filing a Lawsuit.
146. That A. SIMON claims,

5) The goal of all Plaintiffs I represent is to prosecute their claims to the Policy proceeds as set forth in their First Amended Complaint (Dkt. #73).

147. That A. SIMON represents Plaintiffs that do not legally exist in certain circumstances discussed already herein and the other Plaintiffs' claims lie under that NONEXISTENT LEGAL ENTITY too and thus DO NOT LEGALLY EXIST IN THESE MATTERS EITHER and thus have NO CLAIMS to the Lost or Suppressed Policy.

148. That A. SIMON claims,

6) The goal of all cross, counter or third-party defendants I represent is to defeat the counter-claims, cross-claims and/or third-party claims made against them by ELIOT.

149. That A. SIMON should also mention here that he also represents himself in these matters, Pro Se, purportedly both professionally and personally, if that is ethically possible and he represents all other Plaintiff's while a defendant in multiple capacities, which also includes his law firm as defendant.

150. That ELIOT is glad that the legally non-existent Plaintiffs A. SIMON represents, where two of them are also considered predeceased for all matters in the Estate of S. BERNSTEIN and thus should not be here as they are considered dead in these matters, are aligned to defeat ELIOT'S claims, yet they are not apparently aligned in defeating the claims of JACKSON, who also finds their lawsuit legally deficient as stated in the September 25, 2013 Hearing before this Court (the transcript fully incorporated by reference herein) and in their Counter Complaint.

151. That A. SIMON claims,

8) I have had no involvement with ELIOT's inventions, patents, business or personal life, outside of a limited time he was selling life insurance as an agent of STP at the same time I was working for STP in the 1990's.

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D. SIMON and P. SIMON'S involvement in ELIOT'S inventions in this "limited time" that

ELIOT did have involvement them their actions had a profound and dangerous effect on both ELIOT, S. BERNSTEIN and the whole Bernstein family ever since. That ELIOT will now have to burden this Court with the truth to this apparently innocuous and out of place false statement to this Court by A. SIMON to set the record straight.

**THE FIRST BETRAYAL OF ELIOT BY FAMILY – THE P. SIMON FAMILY AND FOLEY CONNECTIONS**

153. That contrary to A. SIMON'S denial of extensive involvement with ELIOT'S inventions and stating to this Court that D. SIMON, A. SIMON, P. SIMON and The Simon Law Firm were in fact integrally involved with Iviewit's Intellectual Properties and given a large volume of highly confidential and highly sensitive information by both S. BERNSTEIN and ELIOT.
154. That this HIGHLY CONFIDENTIAL AND HIGHLY SENSITIVE information was shared it pertained to a moment in history when it was discovered that the Intellectual Properties of Iviewit's were attempting to be stolen by primarily the law firms S. BERNSTEIN and ELIOT had contracted and retained as Intellectual Property Counsel for Iviewit, namely PROSKAUER and their referred friends at Foley & Lardner LLP ("FOLEY").
155. That this HIGHLY CONFIDENTIAL and HIGHLY SENSITIVE information contained not only information regarding the thefts and other criminal acts but also contained information regarding the criminal, civil and ethical complaints ELIOT was filing in both State and Federal, Criminal and Civil venues against the rogue law firms. That D. SIMON and The Simon Law Firm were given this information to evaluate and help secure representative

counsel and work with authorities to prosecute the crimes and criminals and secure back the Intellectual Properties.

156. That ELIOT then tendered this highly privileged information to D. SIMON and The Simon Law Firm and here begins a betrayal that puts the entire Bernstein family at risk to this date and caused both S. BERNSTEIN and ELIOT to sour further in their relations with D. SIMON, A. SIMON, P. SIMON and The Simon Law Firm.
157. That D. SIMON stated he had good friends at the Hopkins & Sutter law firm from S. BERNSTEIN'S contacts there. Hopkins & Sutter had done volumes of work and enormous billable hours for S. BERNSTEIN in developing and protecting his innovative insurance programs, including the intellectual property work for the Arbitrage Life program, which required a mass of legal documentation necessary for these complex insurance plans and D. SIMON stated he would have his friends take a look at what could be done, including Intellectual Property work to protect Iviewit.
158. That ELIOT had started the Iviewit companies with S. BERNSTEIN. Initially, S. BERNSTEIN was a 30% shareholder in the Companies and Intellectual Properties and ELIOT was a 70% stake holder.
159. That alleges that Hopkins & Sutter (where President Barrack Obama worked for a time) then was sold or were otherwise acquired by FOLEY and both ELIOT and S. BERNSTEIN feared that with the acquisition of Hopkins & Sutter went all the private and confidential information of Iviewit regarding FOLEY that ELIOT and S. BERNSTEIN had given to D. SIMON and The Simon Law Firm.
160. That D. SIMON and P. SIMON then began an unexplained at the time course of action against both S. BERNSTEIN and ELIOT that with intent cost them their relationships with S.

BERNSTEIN and SHIRLEY and severely economically impacted both S. BERNSTEIN and ELIOT.

161. That ELIOT and S. BERNSTEIN were further dismayed at the possibility that D. SIMON had provided FOLEY with this inside information through HOPKINS, as suddenly, P. SIMON and D. SIMON have a surge in Net Worth and are alleged to have become high rolling Internet Stock Players, yet both reveling at the time in the fact that they did not believe in computers and did not have one on their desks, boasting of this to clients and bankers alike. Suddenly they were big in the stock market making amassing vast fortunes on many companies that were using ELIOT'S technologies, without paying royalties to ELIOT, as those royalties are alleged converted to both PROSKAUER and FOLEY illegally since that time.
162. That P. SIMON and D. SIMON, after FOLEY had acquired Hopkins & Sutter, further stopped paying ELIOT under his contract with defendant STP. When ELIOT stated he would notify clients and carriers of the breach of their contract and the risks STP had in failing to pay a six and half million dollar liability to ELIOT that could put STP out of business and cause the clients insurance policies to be jeopardized through lapse if the financing was ceased and instead of paying or working things out, STP, D. SIMON and The Simon Law Firm sued ELIOT instead for Defamation. The Lawsuit filed was titled,

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

**CASE No. 50 2004A002166XXXXMB**

**“S.T.P. ENTERPRISES, INC. AND DAVID B. SIMON,  
PLAINTIFF,**

**VS.**

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Wednesday, February 5, 2014

Reply to Response to Motion to Remove Counsel

**ELIOT I. BERNSTEIN AND "IVIEWIT," TECHNOLOGIES, INC.  
DEFENDANT."**

For the initial complaint please visit the URL @

<http://www.iviewit.tv/STP%20LAWSUIT/2004%2003%2004%20STP%20Lawsuit.pdf> ,

fully incorporated by reference herein.

163. That this Court should note here that the Simon Law Firm and D. SIMON and A. SIMON as partners filed this Lawsuit regarding the insurance business relation they had with ELIOT but then for some strange reason sued Iviewit, ELIOT's technology company that had nothing to do with the insurance agency breach of contract / defamation lawsuit matter, a small but relevant fact A. SIMON leaves out of his claim of limited involvement with Iviewit.
164. That when they breached ELIOT'S contract for no reason at the time, ELIOT stated he would notify Arbitrage related insurance carriers, clients and agents that D. SIMON and P. SIMON had violated an agreement with ELIOT where he was to be paid ¼ percentage point on ALL Arbitrage Life Premium sold in perpetuity, for his 20 year contribution to the family's business growth through his sales, marketing and computer systems efforts and the fact he was the largest salesman for the company, behind his father of course but it was close.
165. That at that time, S. BERNSTEIN was selling the business to P. SIMON and D. SIMON trusting that they would manage it well and take care of his long standing companies, his employees and agents, which slowly they drove everyone out that had built the company with S. BERNSTEIN.
166. That P. SIMON and D. SIMON were getting the stock and ownership of STP for administering and managing the businesses, basically counting the monies brought in by ELIOT, S. BERNSTEIN and their field forces and ELIOT was getting his ¼ pt. override and

sales agreement paid to his independent companies that guaranteed him a percentage of all funding raised for the Arbitrage program sold by any agent anywhere as his interest in the STP, as ELIOT had his own separate companies in California and really did not want to be a part of STP, other than selling for them and collecting what was agreed upon on the funding.

167. That from STP'S website, "S.T.P. Enterprises originated the A.L.P.S.™ in 1988 and has since funded over a billion dollars of premium. Headquartered in Chicago, S.T.P. Enterprises provides service to clients throughout the United States." That ELIOT'S ¼ pt. therefore would equate to approximately \$2,500,000 owed as of this date on the override and most of these funds were raised through ELIOT'S introductions from his close personal friends and business relations.

168. That P. SIMON and D. SIMON breached the contract it was thought initially, in order to drive ELIOT out of the family business and retain his interest and it worked. ELIOT lost all respect for D. SIMON, A. SIMON, The Simon Law Firm and P. SIMON and at this time it was not yet known that FOLEY had acquired Hopkins & Sutter.

169. That instead of paying ELIOT or settling the matter, ELIOT was forced to file on March 18, 2004 an Answer and Counter Complaint to their Defamation lawsuit against he and Iviewit Technologies, Inc., which can be found at the URL <http://www.iviewit.tv/STP%20LAWSUIT/2004%2003%2018%20STP%20Answer%20to%200Complaint%20Filed.pdf>, fully incorporated by reference herein. ELIOT was wholly surprised that they would bring Iviewit into the lawsuit, again ELIOT did not know quite yet that Hopkins & Sutter had folded in FOLEY.

170. That ELIOT had also inked the deal with STP with the anticipation of honoring his agreement with a one, John E. Cookman, Jr. ("COOKMAN") who was a Frank B. Hall agent

who led S. BERNSTEIN, ELIOT and STP, into top Wall Street banks at the TOP of the corporate hierarchy, COOKMAN'S father having been the CFO of Phillip Morris<sup>7</sup> for decades.

171. That COOKMAN introduced S. BERNSTEIN to the heads of ABN, CHASE, FIRST INTERSTATE BANK and many others who ended up doing hundreds of millions of dollars of premium funding for STP and the Arbitrage Life Plan. COOKMAN too anticipated getting paid ¼ pt in the funding dollars he raised with S. BERNSTEIN and trusted S. BERNSTEIN when these deals were made for STP between them.
172. That once P. SIMON and D. SIMON took control of the companies however and breached their contract with ELIOT, COOKMAN also was deprived of his anticipated percentage of ½ of ELIOT'S ¼ point override.
173. That ELIOT was to get this percentage in perpetuity in addition to all his contracted commissions for his nationwide sales force that were created wholly from his own company that was initially run from his college garage and moved thereafter to his garage in California where he set up shop after college. That this small sales force then sold California's Billionaires and Multimillionaires to boot, see URL @ <http://www.iviewit.tv/inventor/clientlisting.htm> for ELIOT'S client list, giving great name recognition to the STP products and all of this provided a massive growth for STP. This factual account of events is quite opposite the unsupported claims that P. SIMON'S lawyer GENIN recants in her letter of how STP grew due to P. SIMON'S and D. SIMON'S administrative skills in basically counting the money others made and acquiring S. BERNSTEIN'S company.

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<sup>7</sup> <http://www.nytimes.com/1982/08/22/obituaries/john-e-cookman72-is-dead-was-a-philip-morris-executive.html>



174. That ELIOT Counter Claimed for approximately the six and a half million dollars owed him to date at that time and after review of the Complaint and Counter Complaint, the Judge hearing the case advised D. SIMON'S counsel that he should negotiate a settlement with ELIOT as ELIOT had provided the Court with adequate proof of a contract and that it appeared he would win a judgment for their breach and they should settle.
175. That it should be noted that the amount that was owed to ELIOT was the amount P. SIMON and D. SIMON, according to GENIN'S letter, paid S. BERNSTEIN for his interest in STP.
176. On or about that same time, S. BERNSTEIN contacted ELIOT and asked that he withdraw the Counter Complaint, which S. BERNSTEIN had advised ELIOT to file in the first place to get his contract honored and now S. BERNSTEIN asked ELIOT to cease pursuing the lawsuit.
177. That S. BERNSTEIN claimed to ELIOT, as SHIRLEY'S health was of concern at the time and stated the family fighting was killing her. ELIOT promptly ceased further action and washed his hands of D. SIMON, P. SIMON and A. SIMON.
178. That S. BERNSTEIN promised ELIOT that he would leave him ample amounts through his inheritance to cover his losses and that he would pay ELIOT amounts he needed as necessary while alive, if necessary and later when it became necessary S. BERNSTEIN honored his agreement with ELIOT.
179. That on or about this same time, P. SIMON and D. SIMON breached their Consulting and Non-Compete with S. BERNSTEIN that was part of his buyout of STP and left him, like they did ELIOT with the option of suing them to recover or walk away from them. The resulting rift between the Simon family and S. BERNSTEIN lasted until both S. BERNSTEIN and SHIRLEY died, with almost no contact or business dealings thereafter.

180. That both ELIOT and S. BERNSTEIN washed their hands and S. BERNSTEIN tore his cloth and disinherited them, stating they were to be disinherited as if predeceased, where in Orthodox Judaism the disinheriting of a child is to mourn ones child as if deceased, strikingly the language both S. BERNSTEIN and SHIRLEY used in their dispositive estate documents when disinheriting P. SIMON and THEODORE and their lineal descendants as predeceasing them in 2008 and stating they had given them enough.
181. That the real reason for the baseless Defamation Lawsuit became apparent as ELIOT learned of FOLEY'S acquisition of Hopkins and Sutter after ELIOT was pressing D. SIMON to know what had happened with the HIGHLY CONFIDENTIAL and HIGHLY SENSITIVE INFORMATION that D. SIMON had brought them and once learning of the acquisition asking who had the information and where it went brought on this sudden and inexplicable breaching of both S. BERNSTEIN and ELIOT'S contracts with STP for no apparent other reason. D. SIMON refused to tell ELIOT where the information went or return the information on request.
182. That the Defamation Lawsuit was to smear ELIOT and make him out to be slandering and defaming them and the language used in the Defamation Lawsuit was similar to the language their new friends at FOLEY and PROSKAUER were using at that same time, as they were trying the same slander / defamation defense against ELIOT in defense of the criminal and civil actions ELIOT had taken against their law firms in both state and federal venues once he discovered their Intellectual Property and other crimes.
183. That this whole Defamation Lawsuit scheme blew up in their faces and The Simon Law Firm, A. SIMON and D. SIMON gave up their frivolous and slanderous claims against ELIOT when the judge told them that ELIOT would prevail in Court and they had better

settle, after the judge had reviewed ELIOT'S Counter Complaint and the accompanying factual evidence submitted with it and reviewed their claim of Defamation as deficient.

184. That despite ELIOT having the judge in his court, he walked away from the Lawsuit due to his father's request due to his mother's health concerns and they did not pursue their cause of action because like this Breach of Contract Lawsuit it was baseless and their Defamation Lawsuit was dismissed.
185. That once aligned with FOLEY, D. SIMON, P. SIMON and A. SIMON'S motives to breach their contracts with S. BERNSTEIN and ELIOT were cleverly concealed and it was not until ELIOT and SIMON learned of FOLEY'S acquisition of Hopkins & Sutter and that all of the HIGHLY SENSITIVE AND HIGHLY CONFIDENTIAL information that had been tendered to Hopkins Sutter partners is presumed to have been acquired as well.
186. That shortly thereafter, death threats were made to ELIOT and he and his wife CANDICE had to flee Florida overnight, literally, taking the grandchildren from SIMON and SHIRLEY overnight and going into hiding for months living in hotels incognito in California and Las Vegas, to prepare the Federal and State Complaints.
187. That ELIOT and S. BERNSTEIN did not know that FOLEY and PROSKAUER may have acquired a wealth of information about their intentions from their own family members actions and that this is how they learned of ELIOT'S intentions and were compelled to levy a death threat to him if he continued to pursue civil and criminal actions against PROSKAUER and FOLEY.

**THE SECOND BETRAYAL OF ELIOT & S. BERNSTEIN BY FAMILY --  
THEODORE BERNSTEIN SELLOUT AND FRIENDING OF PROSKAUER**

188. That Iviewit took a dramatic and overnight destruction of sorts and suddenly a whole new direction was taken in a fight to secure the Intellectual Properties and protect ELIOT from life threatening danger heaped upon him for his efforts to expose the corruption of these firms and their crimes that wages on today and may have a hand in these proceedings as well.
189. That ELIOT was informed when seeking to secure \$25 Million for the Private Placement Memorandum and Investment from AOLTW/Warner Bros. that the patents on file with the patent office were not the patents that Iviewit's patent attorneys and others had distributed to AOLTW/Warner Bros. as part of the patent disclosures. That it appeared according to AOLTW/Warner Bros. counsel that Iviewit's former patent counsel was patenting patents for Iviewit inventors in their own names and other unauthorized persons names and misleading potential investors with what was on file at the US Patent Office.
190. That this information regarding the USPTO filings was further found to be true and ELIOT began to formulate criminal and civil actions against the perpetrators from the law firms, when a one, Brian G. Utley ("UTLEY"), former President of Iviewit who was referred by PROSKAUER, came unannounced to visit ELIOT in California and threatened ELIOT that if he exposed the crimes committed by him and the attorneys from PROSKAUER and FOLEY they would kill him and to watch out for he and his family's backs when he returned to Florida. That ELIOT filled out complaints with the Long Beach FBI and the Rancho Palos Verdes, Ca. PD after the threats were made.
191. That UTLEY made the threat on behalf of his friends at FOLEY and PROSKAUER and the question became who tipped them off that ELIOT was on to them and formulating complaints and at this time D. SIMON refused to speak with ELIOT, refusing to answer what

had happened with his “friends” at Hopkins and Sutter that he had taken this highly sensitive material to and began instead to harm ELIOT in business and more.

192. That UTLEY and Christopher Clarke Wheeler (“WHEELER”) of PROSKAUER brought into Iviewit, their good friend from their IBM day’s together, FOLEY’S patent counsel, a one William Dick (“DICK”), former head of IBM’S far eastern patent pooling division to fix the patents that were found deficient that were previously done by Rubenstein and his partner, a one Raymond Anthony Joao, Esq. (“JOAO”), who simultaneously put approximately 90+ patents in his name after taking disclosures from ELIOT.
193. That instead of fixing the Intellectual Properties as they were retained to do, FOLEY was found furthering the fraud and putting IP now into UTLEY’S name and creating two sets of virtually identical patents with different inventors and creating identically named companies to create a corporate shell and patent shell scheme to steal the Intellectual Properties<sup>8</sup>.
194. That FOLEY’S patent applications have been suspended by the USPTO for several years pending USPTO Office of Enrollment and Discipline investigations<sup>9</sup> in combination with FBI investigations that have all turned into corruption stalled investigations<sup>10</sup> with missing agents and files and more.

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<sup>8</sup> April 21, 2004 Letter to Iviewit Shareholders and Directors regarding the Fraud Uncovered at the United States Patent & Trademark Office and the Corporate Fraud discovered.  
<http://www.iviewit.tv/CompanyDocs/2004%2004%2021%20Director%20Officer%20Advisory%20Board%20and%20Professionals%20.pdf>

<sup>9</sup> Iviewit Patent Suspension Notice  
<http://www.iviewit.tv/CompanyDocs/USPTO%20Suspension%20Notices.pdf>

<sup>10</sup> May 20, 2013 IVIEWIT LETTER TO US DOJ OFFICE OF INSPECTOR GENERAL MICHAEL E. HOROWITZ  
<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/2013-0520%20FINAL%20Michael%20Horowitz%20Inspector%20General%20Department%20of%20Justice%20SIGNED%20PRINTED%20EMAIL.pdf>

195. That it was also learned from AOLTW/Warner Bros. attorneys that Iviewit was in an Involuntary Bankruptcy<sup>11</sup> and a Billing Litigation<sup>12</sup> with PROSKAUER for a billing dispute before Judge Jorge Labarga<sup>13</sup> that was in progress and no one had mentioned this to AOLTW/Warner Bros. when soliciting investment funds or to Wachovia who was soliciting

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<sup>11</sup> Involuntary Bankruptcy Files

<http://www.iviewit.tv/CompanyDocs/Utley%20Reale%20Hersh%20RYJO%20Bankruptcy%20nonsense.pdf>

<sup>12</sup> Proskauer v Iviewit CA 01 04671 AB

<http://www.iviewit.tv/Proskauer%20v%20Iviewit%20CA%2001%2004671%20AB%20Case%20Files.pdf>

<sup>13</sup> ELIOT notes to this Court that the Probate Court Judge Martin Colin, states in his Florida Bar resume that he Labarga was his mentor and ELIOT has been pursuing Labarga since the early 2000's when he allowed the fraud on his Court to continue and favored PROSKAUER in a lawsuit that will soon be appealed based on newly discovered evidence of Fraud on the Court that took place in that lawsuit. <http://www.palmbeachbar.org/judicial-profiles/judge-martin-colin> , fully incorporated by reference herein.

That for the docket of this Lawsuit "PROSKAUER ROSE LLP V IVIEWIT.COM,INC" Case No. 502001CA004671XXCDAB and please note the docket entry at the end of the case files removed from Court @ [www.courtcon.co.palm-beach.fl.us/pls/jiwp/ck\\_public\\_qry\\_doct.cp\\_dktrpt\\_frames?backto=P&case\\_id=502001CA004671XXCDAB&begin\\_date=&end\\_date=](http://www.courtcon.co.palm-beach.fl.us/pls/jiwp/ck_public_qry_doct.cp_dktrpt_frames?backto=P&case_id=502001CA004671XXCDAB&begin_date=&end_date=)

It should be noted that somehow Judge Labarga has been replaced on the case by, JUDGE THOMAS H BARKDULL III.

That ELIOT further states that Labarga was the beginning of ALL the problems ELIOT has had with the legal system since, as attempts to cover up the Labarga Lawsuit and the many legal problems with how the case was handled, it was then found that the Florida Bar and New York Disciplinary Departments had been infiltrated by PROSKAUER lawyers who acted illegally in blocking complaints against their law firms and well, from there, the rest of the story is online at [www.iviewit.tv](http://www.iviewit.tv) and the headlines recently posted at the Iviewit site homepage speak for themselves about the recent discovery that ELIOT'S RICO and ANTITRUST lawsuit and other related cases have been intentionally interfered with to OBSTRUCT JUSTICE and DENY ELIOT and Other Related Cases Due Process and these crimes are alleged to have occurred in the recent press articles by the heads of the New York Supreme Court Department Disciplinary Departments and other high ranking public officials. For the full recent articles, see the URL @ [www.iviewit.tv/20140205EXPOSECORRUPTCOURTARTICLES.pdf](http://www.iviewit.tv/20140205EXPOSECORRUPTCOURTARTICLES.pdf)

That ELIOT is not stating Judge Martin Colin is involved in these matters or has had conversations at any time with Labarga regarding Iviewit and the Estates of SIMON and SHIRLEY, ELIOT is just pointing out the apparently coincidental relationship discovered and ELIOT will be asking Judge Colin to answer these questions about if he was being mentored during the Iviewit years with Labarga or has spoken to him ever about it and to declare if he now has adverse interests with the Estate cases of SIMON and SHIRLEY due to the fact that the FORGERY and FRAUDULENTLY NOTARIZED documents and those posited with his Court by SIMON while dead by Officers of his Court, now makes him a material and fact witness as his name is also on documents admitted to the Court by SIMON while deceased.

That one could say that Labarga's rise to recently elected Chief Justice of the Florida Supreme Court on January 30, 2014, started after the Proskauer v. Iviewit case was thrown and after his involvement in the Florida Recount of Bush v. Gore and may owe much of his rise to ELIOT.

the PPM without even a footnote regarding a Billing Lawsuit or Involuntary Bankruptcy action.

196. That ELIOT, the Board of Directors and Management had never heard of these legal actions and even more shockingly it appeared that these Iviewit companies were somehow represented by counsel that no one knew of or had retained. It was not learned until later that all of the following companies had been formed, some with Iviewit's consent and others without any knowledge of the real Iviewit companies and where involved in these actions;

- i. Iviewit Holdings, Inc. – DL,
- ii. Iviewit Holdings, Inc. – DL (yes, two identically named)
- iii. Iviewit Holdings, Inc. – FL (yes, three identically named)
- iv. Iviewit Technologies, Inc. – DL
- v. Uviewit Holdings, Inc. - DL
- vi. Uview.com, Inc. – DL
- vii. Iviewit.com, Inc. – FL
- viii. Iviewit.com, Inc. – DL
- ix. I.C., Inc. – FL
- x. Iviewit.com LLC – DL
- xi. Iviewit LLC – DL
- xii. Iviewit Corporation – FL
- xiii. Iviewit, Inc. – FL
- xiv. Iviewit, Inc. – DL
- xv. Iviewit Corporation

197. That later it would turn out that there were duplicate named corporations that were in possession of Intellectual Properties that were almost identical to Iviewit's but better and in the wrong parties names, filed with the USPTO by FOLEY and PROSKAUER and the real Iviewit companies that had IP filed intentionally deficient.

198. That in both the Involuntary Bankruptcy and the Proskauer Billing Lawsuit discovered both Plaintiffs filed these legal actions with no contracts or retainers signed with the companies they sued, in effect they sued the wrong companies it appeared. Only later was it learned that

the companies they sued were mirror companies to the real Iviewit companies and stolen Intellectual Properties had been assigned to them. Proskauer for example, sued several companies and their retainer was not with any of them. All they had to do was get rid of the real Iviewit companies, get rid of ELIOT and his family and they were home free, until like in this Lawsuit, they were caught in the act arm deep in the cookie jar. Once they were discovered a campaign of terror was begun on ELIOT to deny him due process wherever he had gone and obstruct any chance of Justice, a do or die situation for them.

199. That PROSKAUER had worked on the Wachovia Private Placement exclusively with UTLEY and FOLEY and they had failed to mention these legal actions in the PPM and these dual Intellectual Properties in others names to investors, potential investors or the Board of Directors.
200. That ELIOT then went to war in the courts to protect his and S. BERNSTEIN'S Intellectual Properties to stop the royalties being converted to the rogue lawyers and law firms and they definitely had a monetary advantage from ELIOT'S technology royalties that they instantly began collecting as their own through a variety of patent pooling schemes that tie and bundle ELIOT'S technologies in Violation of Sherman and Clayton and all those Antitrust Laws and where these law firms were composed of thousands of lawyers who stood, and still stand, in risk of losing everything if ELIOT is successful in prosecuting them and gaining the royalties owed now for a decade and half and sweeping their ill-gotten gains in his RICO.
201. That FOLEY and PROSKAUER now however had inside information regarding whom ELIOT and S. BERNSTEIN had been working with at State and Federal Agencies across the country, what legal strategies were being laid and with what agencies and whom within them



were working on the cases and this severely comprised their efforts to prosecute

PROSKAUER and FOLEY and put everyone involved at risk.

202. That ELIOT filed a host of criminal and civil actions, for a listing of actions, see the URL @ <http://iviewit.tv/CompanyDocs/INVESTIGATIONS%20MASTER.htm> and due to the inside information that had been obtained by FOLEY, suddenly all of their efforts became corruption stalled. Then it was discovered that several of the attorney ethics complaints filed by ELIOT had been illegally handled by Proskauer partners who had infiltrated state agencies, including The Florida Bar and the New York Supreme Court Disciplinary Departments, in efforts to deny due process by obstruction through directly handling the complaints filed against their firms.
203. That after exposing PROSKAUER attorneys at law in rigging bar complaints in Florida and New York, which led to a Court Order<sup>14</sup> for Investigation of the deceased PROSKAUER Partner Steven C. Krane (former New York Bar Association President and Departmental Disciplinary Kingpin), PROSKAUER Partner Kenneth Rubenstein (head of PROSKAUER'S Patent Department founded after learning of ELIOT'S technologies and Rubenstein is also the sole Patent Evaluator for the largest infringer of ELIOT'S technology, MPEGLA, LLC) and former Chief Counsel of the New York Supreme Court Departmental Disciplinary Committee First Department, Thomas Cahill, things really heated up.

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<sup>14</sup> Court Order for Investigation of Krane, Cahill and Rubenstein

<http://iviewit.tv/CompanyDocs/2005%2001%2010%20DiGiovanna%20Krane%20NY%20SUPREME%20COURT%20SECONDD%20DEPT%20CERT.pdf>

204. That ELIOT at this time was then elevating the Florida Public Office corruption complaints involving Judge Jorge Labarga and the Florida Bar straight into the United States Supreme Court<sup>15</sup>.

205. That on the way to file such Supreme Court challenge of the Public Office corruption that had ensued, a very real car BOMB<sup>16</sup> went off in the Minivan of ELIOT'S family vehicle only a few hours before ELIOT'S wife and children were to take possession of it.



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<sup>15</sup> For the Supreme Court Filing regarding these matters please reference the following URL @ <http://iviewit.tv/supreme%20court/index.htm>

**IN THE SUPREME COURT OF THE UNITED STATES**

ELIOT I. BERNSTEIN, Petitioner,

v.

THE FLORIDA BAR, et al.,\*

Respondents.

On Petition for Writ of Certiorari to the Florida Supreme Court

Petition's FOR: WRIT OF CERTIORARI; EXTRAORDINARY WRIT; HABEAS corpus; writ of prohibition and writ of mandamus

In Forma Pauperis

Eliot I. Bernstein - Pro Se

<sup>16</sup> FBI Letter re Minivan's "SPONTANEOUSLY COMBUSTING" and blowing up ELIOT'S MINIVAN and cars next to it @ <http://iviewit.tv/Image%20Gallery/auto/Auto%20Theft%20and%20Fire%20Master%20Document.pdf>



206. That the second alleged selling out of ELIOT by a family member of ELIOT and S.

BERNSTEIN begins with the car bombing where THEODORE was the last person to have had possession of the vehicle and had it towed when the battery died to the first auto body shop where the Minivan was first robbed and stripped of all the wiring in the vehicle, yet as the pictures show at the URL

<http://www.iviewit.tv/Image%20Gallery/auto/Auto%20Theft%20and%20Fire%20Master%20Document.pdf> (pages 11 & 12), the radio and tv were left in the vehicle and only the wiring was stripped, indicating possible removal of listening devices that had been planted in the vehicle, as the FBI had recently begun investigating the Iviewit matters.

207. That as indicated in the attached recently published articles regarding the wiretapping of ANDERSON and the legally related cases to hers in efforts to obstruct justice, including the illegal wiretapping of sitting Judges and Attorneys at Law who were involved in cases exposing the corruption, the theory gains more probable cause.

208. That after learning that Senator John Sampson, former head of the New York Democratic Party and Chairman of the NY Senate Judiciary Committee was threatened and then took bribes to cover up corruption in the courts, after holding hearings with ELIOT, ANDERSON and many others, including sitting Judges, regarding their complaints against Public

Officials, all of these surreal events make sense, especially for ELIOT, his wife and his children, who are at the center of all this.

209. That after the robbery of the Minivan, it was then strangely towed to another shop where it was to be repaired and left ELIOT'S wife CANDICE filing with the Supreme Court of the United States to expose the corruption on her bicycle in the pouring FLORIDA rain with two banker boxes full of filings for the Supreme Court and no car to deliver them or do anything else.
210. That when CANDICE was contacted finally to pick up the Minivan after months in the shops, only hours before Candice and the babies were to be in the car, it blew up and it is alleged by fire investigators that a police officer's radio frequency when passing by the vehicle in the early hours of the morning may have inadvertently set off the bomb prematurely, that it was stated that that the officer videotaped much of the after effects of the explosion and resulting car fires.
211. That THEODORE'S involvement was further learned to be strange when ELIOT told FBI and other investigators that THEODORE had the vehicle towed by AAA to the first shop but it was later learned from AAA who called ELIOT directly after being contacted by the authorities and claimed that on the way to pick up the vehicle after dispatching a tow truck, THEODORE had called AAA and cancelled his membership and cancelled the tow request and had changed the tow operator, who turned out to be a large client of a one, Gerald R. Lewin, CPA ("LEWIN"), who was the person who had referred Iviewit's technologies to PROSKAUER and his close personal friend, the estate planner for the Boca Raton, FL office of PROSKAUER, a one Albert Gortz ("GORTZ").

212. That LEWIN and GORTZ are two of the central alleged RICO conspirators who started this whole mess for ELIOT, his entire family and this world and it was later learned that ELIOT was not first inventor who this ring had attempted to heist Intellectual Properties from and that PROSKAUER'S WHEELER, FOLEY'S DICK and IBM'S UTLEY had worked together in efforts immediately prior to joining Iviewit to attempt to steal inventions from a billionaire Florida philanthropist, a one Monte Friedkin, of Diamond Turf Equipment Company.

213. That most of the Iviewit allegations against the PROSKAUER and FOLEY law firms and their past history of attempted IP theft can be found in ELIOT'S Amended Complaint in his RICO and ANTITRUST @

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf> , fully incorporated by reference herein.

214. That ELIOT further states that PROSKAUER was contracted to do estate plans for S. BERNSTEIN and ELIOT prior to learning of the Intellectual Property thefts to put the Iviewit stocks they owned directly into their children's names and S. BERNSTEIN'S grandchildren's names, prior to the anticipated IPO, so that the growth would accumulate in the children and grandchildren's names, instead of in ELIOT and S. BERNSTEIN'S names who would then have the burden of transferring the stocks to the children at death or sooner at the higher value.

215. That in that estate planning work that S. BERNSTEIN did, way back in 2000-2001 with PROSKAUER, P. SIMON and her lineal descendants were already considered to be predeceased and disinherited, as about this time D. SIMON and P. SIMON had breached

their buyout terms with S. BERNSTEIN and he again was done with them financially after they breached their agreements with him in the transfer of the companies.

216. That strangely enough and you thought it could not get stranger, an “EXHIBIT 1” is inserted into the record of S. BERNSTEIN’S Estate in 2012, along with an alleged 2012 Will he allegedly signed only days before his death, yet they are not bound together in any way and this alleged “Exhibit 1 Will” (see URL @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121010%20WILL%20EXHIBIT%20DATED%202000%20DONE%20BY%20PROSKAUER%20ROSE.pdf> , fully incorporated by reference herein) is prepared ALLEGEDLY by PROSKAUER on August 15, 2000.

217. That the exhibited and docketed PROSKAUER 2000 S. BERNSTEIN Will is not attached or referenced in the 2012 alleged Will prepared by SPALLINA and TESCHER and has absolutely NO relation to any other document in the docket<sup>17</sup>, but yet, it clearly shows that P. SIMON had already been disinherited way back then. Further, it raises the brow as to why this was inserted into the 2012 Estate record in the first place and by whom, as the filing party is mysteriously not listed in the docket or on the document.

218. That no such Exhibit is in SHIRLEY’S docket<sup>18</sup>, which is strange since S. BERNSTEIN and SHIRLEY apparently did mirror Wills and Trusts in 2008.

219. That it should be noted here that PROSKAUER and TESCHER and SPALLINA apparently are closely related in business and personally with PROSKAUER Partners directly tied to the

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<sup>17</sup> Simon Bernstein Docket, Judge David E. French @

<http://www.iviewit.tv/Simon%20Bernstein%20Docket%20Judge%20David%20E%20French.htm> , fully incorporated by reference herein.

<sup>18</sup> SHIRLEY Docket, Judge Martin Colin @

<http://www.iviewit.tv/SHIRLEY%20BERNSTEIN%20DOCKET%20JUDGE%20MARTIN%20COLIN.htm>, fully incorporated by reference herein.

Iviewit matters, see the URL @ <http://www.jewishboca.org/news/2012/03/04/pac/caring-estate-planning-professionals-to-honor-donald-r.-tescher-esq.-at-mitzvah-society-reception-on-march-27/> and [http://blacktiemagazine.com/Palm\\_Beach\\_Society/David\\_Pratt.htm](http://blacktiemagazine.com/Palm_Beach_Society/David_Pratt.htm) , both fully incorporated by reference herein.

220. That it is alleged that S. BERNSTEIN was horrified by the possibility of THEODORE'S possible involvement in the car bombing. After the bombing, while S. BERNSTEIN and SHIRLEY were doing their replacement of PROSKAUER'S estate plans with Tescher & Spallina, P.A., who THEODORE brought into S. BERNSTEIN and SHIRLEY'S lives claiming that if S. BERNSTEIN did his estate planning work with them, THEODORE, who was just recovering from a bankruptcy he filed, would get substantial amount of referrals of insurance clients from Tescher & Spallina, P.A. and he did. S. BERNSTEIN and SHIRLEY then disinherited THEODORE and again P. SIMON and their lineal descendants in the 2008 plans.
221. That TESCHER sits on Boards of Charities THEODORE started and recently dissolved.
222. That it is alleged that SPALLINA and TESCHER who are close personal friends with THEODORE tipped off THEODORE of his disinheritance, in breach of S. BERNSTEIN and SHIRLEY'S attorney client privileges with them and again as with P. SIMON'S attorney GENIN, by disclosing this fact they may have enraged THEODORE.
223. That THEODORE on or about the time of the bombing became suddenly an overnight millionaire and went from filing bankruptcy to a four million dollar home on the intercostal and ocean in Boca Raton, FL., "new car, caviar, four star daydream" of sorts.
224. That ELIOT alleges this was THEODORE'S payoff from his new best friends LEWIN and the estate planner at PROSKAUER, GORTZ, in return for selling out ELIOT. Similar to

what D. SIMON and P. SIMON had done with their close friends at Hopkins Sutter that then got acquired strangely by FOLEY with all of ELIOT'S evidence and information against FOLEY leading to their new found "independent wealth."

225. That immediately after S. BERNSTEIN was deceased, in the first estate meeting with ELIOT, his siblings and TESCHER and SPALLINA, THEODORE and SPALLINA both boasted of their tight friendship with GORTZ and LEWIN and volunteered to call them regarding some missing estate documents and the IVIEWIT stock ELIOT had immediately began asking where it was.
226. That THEODORE introduced S. BERNSTEIN to the Sir Allen Stanford banking group, now infamous for the second largest PONZI scheme in the United States, only second to the Bernard Madoff Ponzi.
227. That ELIOT states that behind both alleged "Ponzi" schemes is PROSKAUER who had the most clients in Madoff<sup>19</sup> and where recently many of the alleged client victims of Madoff are now being found to have been co-conspirator feeder funds and the courts are allowing suits to proceed against them.
228. That PROSKAUER was also found behind the scenes in the SEC and other investigatory failures to prosecute both Madoff and Stanford.

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<sup>19</sup> Madoff Proskauer Group Discussion – Greg Mashberg et al.  
<http://www.proskauer.com/files/Event/1e0d8a8c-e42f-436c-a89f-2128cbccfb30/Presentation/EventAttachment/aec49c40-363c-4e75-b536-2355d2233897/MadoffCaseDiscussion.pdf>



229. That PROSKAUER is being sued by the Court Appointed Receiver in the Stanford matters for Conspiracy and more for PROSKAUER'S part in the architecting of the Stanford "Ponzi."<sup>20</sup>
230. That ELIOT alleges and interceded in the Stanford SEC action<sup>21</sup> claiming that both Stanford and Madoff are actually elaborate MONEY LAUNDERING schemes that were set up by PROSKAUER and others to launder the stolen royalties of ELIOT and other monies these law firms were making from other schemes they are involved in.
231. That in efforts to save his family it is alleged that S. BERNSTEIN contacted LEWIN and others and negotiated some form of peace agreement based on if you attempt to murder my son or harm his or our family again, S. BERNSTEIN would, along with others similarly situated, expose them and their crimes.
232. That S. BERNSTEIN was then introduced to the Stanford Ponzi bankers, whom he may have already known from Iviewit's dealings with Wachovia Securities, who PROSKAUER and others brought to Iviewit and where some are alleged to have transferred to Stanford, then to JP Morgan and Oppenheimer and S. BERNSTEIN stayed with these brokers throughout their transitions.
233. That S. BERNSTEIN and THEODORE are suddenly healthier on their net worth's to the tune of tens of millions and ELIOT is rescued by S. BERNSTEIN where he was living with his mother-in-law, as ELIOT, CANDICE and their three boys moved in with Ginger Stanger

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<sup>20</sup> February 08, 2012 "Stanford Trial Drags Former Proskauer, Chadbourne Partner Back into Spotlight" The AmLaw Daily.

<http://amlawdaily.typepad.com/amlawdaily/2012/02/tom-sjoblom.html>

<sup>21</sup> February 29, 2009 Intervener in Stanford

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/2009-0225%20USDC%20Northern%20TX%20Filing%20RE%20SEC%20STANFORD%20I.pdf>

and her daughter, in a less than a 500 ft. sq apartment located in Red Bluff, CA, yes, 7 people in a two bedroom, one shower shoe box, after the car bombing and while S. BERNSTEIN tried to work things out.

234. That for a few years while things were starting to pick up in ELIOT'S RICO and ANTITRUST, as the Honorable Shira A. Scheindlin related ELIOT and other public office corruption cases to a WHISTLEBLOWER lawsuit of a HEROIC and PATRIOTIC, Attorney at Law, yes, there actually are fabulous brave attorneys at law left and she qualifies as one of most powerful Whistleblowers of our time. That her whistleblowing exposed how Wallstreet melted down due to systemic corruption by Attorneys at Law, at the highest levels of the Court system and why none of them have been arrested and the money they have stolen has not been recovered. A criminal network operating inside government and penetrating virtually the entire judicial system, from US Attorneys, to DA'S, to ADA'S, to heads of the Departmental Disciplinary Committees, to Governor's and Attorney General's, all in a massive corruption scheme that had disabled JUSTICE. Her name, Christine C. Anderson, Esq. ("ANDERSON") and prior to meeting ANDERSON at her hearing and testifying with her before the New York Senate Judiciary Committee in hearings held on Public Office corruption and where all of this was engraved in the Federal Court Record and Judiciary Committee record for history. ELIOT, prior to ANDERSON, considered himself brave and heroic but this woman, this ethical and morally upright woman was a disciplinary ethics marvel, a role model for attorneys at law who blew ELIOT and CANDICE'S minds and the whole courtroom at the hearing with her detailed revelation of the corruption.
235. That the transcript of ANDERSON Hearing from her Lawsuit in the Southern District that ELIOT'S RICO is related to, Case No. 07cv09599 "Anderson v The State of New York, et

al.” hereby incorporated by reference herein, proves beyond fascinating as ANDERSON peels the onion reaching deep into the heart of the corruption by naming names, including the “CLEANER” from the New York Supreme Court attorney regulatory agency the First Department Departmental Disciplinary Committee, a one Naomi Goldstein, who whitewashed complaints for favored lawyers and law firms and lawyers in a variety of government outposts. ANDERSON exposes Thomas Cahill, one of the defendants ELIOT was pursuing for denying him due process and obstructing his complaints to aid and abett PROSKAUER, Chief Counsel of the disciplinary department, who ELIOT had filed a complaint against and he was ordered for investigation by a panel of five Justices of the New York Supreme Court Appellate Division First Department.

236. That ANDERSON states the corruption scheme operated with a select group of corrupted law firms, whose lawyers revolved through government offices to cover any crimes that were alleged against them. At the top of prosecutorial and ethics offices these criminals disguised as attorneys at law in government posts seized control of these departments and no complaints against them or their friends received due process from anywhere the public citizen harmed by them turned. Wonder why no one has gone to jail for Wallstreet crimes that have been committed almost wholly by corrupted lawyers who architected these crimes against our nation and populace and other countries worldwide and none of the guilty parties arrested and jailed and not a dollar of the stolen monies recovered by the soft, if not wholly overtaken and impotent Department of Injustice. Monies stolen from little old ladies and babes mouths through complex legal schemes to rig markets and more and virtually every American through their schemes have been harmed in significant ways, including but not limited to, deflated homes where they took a 50% loss in home values from intentional

rigging of the home markets, intentional market crashes that have wiped out half of peoples retirement accounts, libor and prime rate fixing that manipulated loan rates on virtually every loan on the books, subprime crap sold worldwide as AAA grade investments, derivatives (should be called delusionals) inflating asset values over 30 times in some instances and parceling them to unsuspecting investors and virtually all of these legally complex schemes required Attorneys at Law to create them. Attorneys at Law were behind the schemes and profiting off the destruction of our country, betting against the country to fail after rigging it to fail and where they are guilty and now the whole world knows it and people are starting to demand their monies. Yet, no courts or prosecutors have been successful in recovering these trillions of dollars from stolen by a handful of what appear to be CRIMINALS DISGUISED AS ATTORNEYS AT LAW and PUBLIC OFFICIALS, including a handful of corrupt judges and politicians, at the top in most instances.

237. That if this Court wants answers to these questions of why there is no JUSTICE in certain courts and regulatory agencies in America today and discover how they disabled then ask ANDERSON and Hon. Judge Scheindlin and dig deeper than the surface of the Iviewit and ANDERSON Lawsuits, read the transcripts of her trial, learn why she is one of the most significant Whistleblowers in history, a true super hero and Scheindlin my other for allowing it into recorded history. These women represent Lady Justice to ELIOT and “whose consciences are as true to duty as the needle to the pole”<sup>22</sup> in defending the Justice system.

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<sup>22</sup> Ellen G. White – “The greatest want of the world is the want of men—men who will not be bought or sold, men who in their inmost souls are true and honest, men who do not fear to call sin by its right name, men whose conscience is as true to duty as the needle to the pole, men who will stand for the right though the heavens fall.” Education, p. 57, c 1903, 1952, The Ellen G. White Publications; Pacific Press Publishing Association.

238. That after ANDERSON lost her trial, most Honorable Judge Scheindlin came back into the court after the jury had disbanded and shockingly read into the record that the main defendant in ANDERSON'S case, the Chief Counsel of the Departmental Disciplinary Committee of the New York Supreme Court First Department, Thomas Cahill, had perjured his testimony in court in a dramatic ending twist. Yet, what an opening for ANDERSON and the related cases for appeal, combined now with the fact that they were targeted and their rights violated to OBSTRUCT JUSTICE and DENY THEM DUE PROCESS, of course, appeals will be made once the cancer can be removed from the courts, in order to allow fair and impartial due process. Scheindlin's dismissal was not the end for ANDERSON and the related cases, just the beginning of the end of the corruption.
239. That the recent revelations that contracts taken out by the heads of the Disciplinary Departments of the Supreme Court of New York on ANDERSON, the related cases and others, that MISUSED JOINT TERRORISM TASK FORCE FUNDS AND RESOURCES to target these civilian non-combatants and through VIOLATIONS OF THE PATRIOT ACT, for political agendas began total surveillance, wiretapping, email tapping and more with the INTENT to shut down their efforts at DUE PROCESS and PROCEDURE through OBSTRUCTION OF JUSTICE and interfering with their rights to preclude them from being prosecuted is all UNBELIEVABLE but true. Until of course you throw the "E Factor" or "Eliot Factor" into the equation, which explains everything when nothing makes sense.
240. That further UNBELIEVABLE but true is that it was also learned that illegal wiretapping and obstructions were being made against sitting Judges who, perhaps like Scheindlin, were allowing cases to move forward that exposed the internal corruption. That with the threats on US Senator Sampson who also was exposing this MASS OF GOVERNMENT

CORRUPTION by rogue Attorneys at Law and other high ranking government officials and the admission that he then took bribes to cover it up, well perhaps one can better understand why Scheindlin may have been forced to dismiss the cases or bribed but ELIOT believes the former is true for it appears she has unshakeable integrity, ELIOT witnessed it in her Court at the ANDERSON trial.

241. That after the CAR BOMBING, S. BERNSTEIN and ELIOT had agreed that ELIOT would distance himself from family and friends while S. BERNSTEIN tried to work something out to take the heat off their family and find out what was going on.
242. That ELIOT states S. BERNSTEIN and he then spoke and S. BERNSTEIN had arranged an Advanced Inheritance Agreement and as mentioned it had conditions, where ELIOT had to promise certain items in return for steady income to provide for his family.
243. That after being off the grid and working to prepare the Federal RICO and ANTITRUST and with no way to contact family and friends for help without putting them and their families in harm's way, except for some other brave/crazy/patriotic/heroic souls who became toxic helping ELIOT survive, there were not many options, as car bombs scare off even the most rational and make getting a job damn near impossible. In fact, when each time you start your car with your wife and children in the car, you can't imagine, it's a stressful job in and of itself.
244. That S. BERNSTEIN then did an alleged deal to save ELIOT'S life and S. BERNSTEIN gets Stanford accounts and has ELIOT sign the Advanced Inheritance Agreement that then protected ELIOT and his children with a steady income and a fully paid for home in the children's names and all expenses paid. The conditions, ELIOT must pull out references to THEODORE, D. SIMON, IANTONI, and FRIEDSTEIN'S husband Jeffrey Friedstein ("J.

FRIEDSTEIN”) of Goldman Sachs (“GOLDMAN”) from all web references (other than already so named in filed criminal and civil actions) and pull them out of future actions.

245. That S. BERNSTEIN also asked ELIOT to do the same for LEWIN. Further, ELIOT had to promise not to sue his family members in the RICO, including D. SIMON, P. SIMON, THEODORE, FRIEDSTEIN & GOLDMAN regarding the information he had regarding their involvement leading up to the bombing and again, at this time, ELIOT had been eating food scraps and avoiding help from friends or family, except those brave few who acted patriotically in support without concern to the risks and there was very little choice.
246. That for example of what happens when one tries to help and support ELIOT and his family, one only need to look at a recent Ninth Circuit Court Case Nos. 12-35238, 12-35319 and its predecessor case, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON Case No. 3:11-cv-00057-HZ, The Honorable Marco A. Hernandez, OBSIDIAN FINANCE GROUP, LLC, ET AL., Plaintiffs-Appellees and Cross-Appellants, v. CRYSTAL COX, Defendant-Appellant and Cross-Appellee, to see how the courts are being misused against anyone trying to help ELIOT and expose the court and public office corruption.
247. That Cox has been reporting on the Ivewit story and ANDERSON Lawsuit and related cases for several years now and has become the victim of mass smear campaign that has harassed and defamed her, the posse headed by Attorneys at Law.
248. That the recent reversal of the lower court in favor of Cox illustrates how a win for Cox and Free Speech in the Appeals Court had a very negative impact on Cox, as the court used the pulpit to make slandering and defamatory statements about Cox, without a single shred of evidence to support their claims stating she had committed the crime of extortion, which Cox has never been accused of, tried for or convicted of.

249. That Cox's attorney, the esteemed Eugene Volokh, requested a rehearing<sup>23</sup> to clarify and set straight the record and get the defamatory statement of the Ninth Circuit stricken from the opinion. That Cox had prepared a Pro Se submission that included more details of how this defamation has spread to now hundreds, if not thousands of different sources from blogs to mainstream media in just a few short weeks since the decision, which can be found at the URL, <https://docs.google.com/document/d/1Sfa6KPy3ur6pBOcUF64CfvRfKM-n0ASMWhpUPC4G43Q/edit> , fully incorporated by reference herein.
250. That the Court should note that the Ninth Circuit stated she "apparently" was involved in extortion in the past, with no proof or conviction of such, yet when Reuter's reported on the decision they left off the word apparently so as to publish that the Ninth Circuit stated she had committed extortion, not "apparently" had.
251. That the Court should note that the Obsidian Attorneys attempted to then add ELIOT as a DEFENDANT in the case, months after the case was decided against Cox and already was on appeal, which Judge Hernandez dismissed only hours after receiving the Motion to include ELIOT. Yet, ELIOT remains on the docket<sup>24</sup> listed as a Defendant, making it appear he has a judgment of \$2,500,000.00 against him too, as if he lost the case that he was never entered into legally or a part of. Yes, just more strange events around the historically epic

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<sup>23</sup> In the United States Court of Appeals for the Ninth Circuit Nos. 12-35238, 12-35319  
OBSIDIAN FINANCE GROUP, LLC, ET AL., Plaintiffs-Appellees and Cross-Appellants, v. CRYSTAL COX, Defendant-Appellant and Cross-Appellee.

Eugene Volokh, Mayer Brown LLP UCLA School of Law

<https://docs.google.com/file/d/0Bzn2NurXrSkib1NraEFFb1Rac2M/edit?pli=1>

and

<https://docs.google.com/file/d/0Bzn2NurXrSkiVy02aEJN0VWZig/edit?pli=1>

<sup>24</sup> Obsidian Docket @

<http://ia600403.us.archive.org/9/items/gov.uscourts.ord.101036/gov.uscourts.ord.101036.docket.html> (Docket Entries 136-138)



inventions deemed "The Holy Grail" by others, some foolish enough to then try and steal them, more evidence of the "E Factor" at work.

252. That with the signing of the Advanced Inheritance Agreement, SHIRLEY and S. BERNSTEIN again had medical malady news and ELIOT and CANDICE who were set to buy a home in EUREKA, CA (as this was an additional gift that came to the children with the terms of the AIA inked) asked S. BERNSTEIN and SHIRLEY if they thought it safe to return to Boca Raton, FL to be with them so that SHIRLEY and S. BERNSTEIN could be with their grandchildren again, as it would be very difficult for them to fly out often and visit their grandchildren so far away with their health conditions.
253. That despite the inherent dangers to ELIOT, CANDICE and the grandchildren moving back to the lions den and despite everyone agreeing that it was not safe, ELIOT and CANDICE decided it was more important to bring the grandchildren back to SHIRLEY and SIMON, as these CRAZY events, including attempted and threatened MURDER of ELIOT and his family had already ripped the grandchildren away from them overnight each time and with no warning, due first to the DEATH THREATS and then the CAR BOMB.
254. That upon returning to Florida, SHIRLEY and S. BERNSTEIN were so overwhelmed that ELIOT and CANDICE would risk so much to bring them their grandchildren back they arranged for a home to be purchased for ELIOT'S children and family, owned through an LLC that S. BERNSTEIN set up in the children's names. A home that ELIOT'S children own to protect it from ELIOT'S many enemies. SHIRLEY, who was very sick at the time well she just flipped lid, forgot her cancer and totally remodeled the home from ground up, inside and out, fully decorated in her exquisite style and made it ready to live in from the

moment ELIOT and family moved in, from engraved towels for the kids, beds, furniture, it was perfect.

255. That ELIOT had never taken very much from his FATHER and MOTHER that was not earned or a loan through his 100% owned companies, all loans repaid. ELIOT rejected the silver spoon seeing it as poison and wanted to build a kingdom of his own for his princess, like his FATHER had, building from ground zero up. With the Iviewit inventions S. BERNSTEIN and SHIRLEY could not have been prouder, as mentioned, S. BERNSTEIN was the Chairman of the companies and spent much of his time at Iviewit offices.
256. That when moving back to Florida, instead of choosing a much larger more expensive home that they were considering, ELIOT and CANDICE chose a much lower priced home behind a beautiful private school, Saint Andrews, which again, weeks before school started S. BERNSTEIN and SHIRLEY had another surprise, for taking the smaller home came tuition paid school for the three boys at Saint Andrews through high school, a gift to the boys who had just come from almost four years of Top Ramen, Food Stamps, WIC and tight quarters.
257. That later S. BERNSTEIN and SHIRLEY would notify ELIOT, CANDICE and others that they had prepaid college for all three boys and fully funded their educations for four years of college but that appears missing from the Estate, at the moment.
258. That after returning home to Florida everything seemed to be going incredibly well, whatever S. BERNSTEIN worked out with LEWIN et al., ELIOT was left alone for the most part by the lions all around him. That is up until the Sir Robert Allen Stanford Ponzi ("STANFORD PONZI") blew wide open and the Bernard Madoff links to PROSKAUER were exposed.
259. That here is where this epic piece of history takes yet another turn and S. BERNSTEIN and SHIRLEY become outraged that much of their investment funds were suddenly frozen in

STANFORD and panic set in that this could have devastated the family like the Madoff victims.

260. That ELIOT filed an intervener in Case Name: "Securities and Exchange Commission v. Stanford International Bank Ltd et al Case Number: 3:09-cv-00298-N" and S. BERNSTEIN called him shortly thereafter and stated that if ELIOT would remove his pleading and withdraw as Trustee of his children's Stanford accounts then things might get better for the family sooner than later but ELIOT had to act fast.
261. That ELIOT agreed to remove his STANFORD PONZI pleading in part, the part that stated ELIOT was suing on behalf of his children's accounts but it was agreed that ELIOT would leave in his claims with the court that the STANFORD PONZI was actually a money laundering scheme architected by PROSKAUER to launder ELIOT and others stolen royalties and monies, already at that time the royalties converted were in the tens to hundreds of billion dollars and the Madoff and the STANFORD PONZI'S were only two of the Ponzi's they were running.
262. That it was learned that STANFORD and MADOFF were also being used to buy off politicians and other government insiders, who had overnight accounts in the STANFORD and MADOFF PONZI schemes for doing "favors."
263. That shortly after ELIOT withdrew his STANFORD PONZI interpleader through a formal filing with the Court, S. BERNSTEIN recovered almost all his monies back instantly, which were primarily his blue chips and other safe investments that were brokered through STANFORD.
264. That the only monies he lost and are still frozen were from bogus Certificate of Deposits that were the bane of the STANFORD PONZI and litigations were started by S. BERNSTEIN to

recover these funds and supposedly the litigations are assets in the Estate of S. BERNSTEIN, although not listed on the inventories supplied by SPALLINA and TESCHER.

265. That it is believed that S. BERNSTEIN lost 1-2% of his portfolio holdings in the CD'S of STANFORD, approximately two million dollars, although SPALLINA and TESCHER have failed to provide any information to the beneficiaries regarding the litigations, again failing Probate Rules and Statues as ALLEGED Co-Personal Representatives of the Estate of S. BERNSTEIN and soon to be officially REMOVED as Co-Personal Representatives and Counsel in all Bernstein related matters.

266. That it is believed that S. BERNSTEIN began to speak with state and/or federal authorities regarding STANFORD and the relations to Iviewit and here is where trouble may have begun for S. BERNSTEIN.

**THE THIRD BETRAYAL OF ELIOT AND S. BERNSTEIN BY FAMILY – THE FRIEDSTEIN FAMILY AND THE GOLDMAN CONNECTION**

267. That Lisa Friedstein's husband, Jeffrey Friedstein ("J. FRIEDSTEIN") and his father, Sheldon Friedstein ("S. FRIEDSTEIN") were at ground floor when the Iviewit's inventions were discovered. J. FRIEDSTEIN was in fact an inventor listed on a patent application with ELIOT for remote controlled low bandwidth video, similar to that used in today's drone and surveillance military applications.

268. That J. FRIEDSTEIN signed an NDA for GOLDMAN and took all information of Iviewit's Intellectual Properties to them and began introducing clients to Iviewit, many who signed various stages of contracts with Iviewit.

269. That GOLDMAN was preparing for the anticipated IPO after the Wachovia PPM was secured and everything was going well, in fact, the FRIEDSTEIN'S and IANTONI'S were

initial investors in Iviewit both with a 5% interest. That IANTONI and her husband both worked for Iviewit until it was blown apart after discovering the Intellectual Properties were being stolen.

270. That when it was discovered that FOLEY was involved in the Intellectual Property thefts things took a turn for the worse with ELIOT'S relation with J. FRIEDSTEIN and he abandoned Iviewit and later it was learned that S. FRIEDSTEIN had close ties to FOLEY and suddenly GOLDMAN and the FRIEDSTEIN'S shut ELIOT down, refusing to even take calls regarding the royalties their clients owed, who were almost all using the technologies already and the breaches of contract this constituted.
271. That later, ELIOT sent GOLDMAN letters demanding they honor their contracts with Iviewit and demanded their clients that were using Iviewit's technologies after disclosures with ELIOT and other agreements cease and desist and GOLDMAN refused to even return the calls and letters and ELIOT was preparing complaints against them for their breaches.
272. That ELIOT'S contacting GOLDMAN was to also try and prevent their inclusion in criminal and civil actions ELIOT was filing at the time and when J. FRIEDSTEIN and S. FRIEDSTEIN would not respond to ELIOT, ELIOT contacted the heads of GOLDMAN and demanded a response.
273. That after being barraged with whining from FRIEDSTEIN and J. FRIEDSTEIN to S. BERNSTEIN and SHIRLEY about ELIOT'S contacting Goldman's senior management and auditors, ELIOT'S parents asked him to pull GOLDMAN out of any further actions and protect his sister's family from backlash from GOLDMAN and ELIOT so complied with his parents' wishes in efforts to maintain peace in the family and backed away from GOLDMAN until this day.

274. That S. BERNSTEIN and SHIRLEY were gravely disappointed with J. FRIEDSTEIN and S. FRIEDSTEIN'S betrayal of ELIOT and the Ivewit companies and from that point forward S. BERNSTEIN, SHIRLEY'S and ELIOT'S relationship with the entire Friedstein family became strained forward.
275. That one cannot understand how this can happen by one's own family, until one lives through events such as these but it became obvious that PROSKAUER and FOLEY are the ones pulling the strings and making allies with ELIOT'S siblings to turn against him but money can buy off a lot of people and ELIOT does not blame his siblings for their actions but rather pities them.

**THE FOURTH BETRAYAL OF ELIOT AND S. BERNSTEIN BY FAMILY**

**THEODORE, P. SIMON AND FRIEDSTEIN ATTEMPT TO STEAL THE INHERITANCE OF ELIOT'S FAMILY AND DISMANTLE THE ESTATE PLANS OF S. BERNSTEIN AND SHIRLEY.**

**THE ALLEGED, NOT BY ELIOT BUT BY THEODORE, MURDER OF S. BERNSTEIN**

276. That S. BERNSTEIN may have been set up from the point the STANFORD PONZI was exposed, to get rid of him before he talked to the authorities by the same folks who wanted to get rid of his son.
277. That the series of events leading up to and immediately after his death speak volumes to this theory and how ELIOT'S enemies, FOLEY and PROSKAUER, may have recruited further THEODORE and P. SIMON to aid in their efforts to silence and destroy S. BERNSTEIN and then ELIOT and his wife and children.
278. That the question of if S. BERNSTEIN was murdered was raised shortly before he died and immediately thereafter THEODORE and others accused S. BERNSTEIN'S companion of

MARITZA of murdering him. Was S. BERNSTEIN murdered and if so was it by his companion who had nothing to gain or was it premeditated and planned to make it look like Murder if something came back or anyone caught on and have already in the waiting a patsy to hang.

279. That P. SIMON'S note to her father, attached to her letter written by her attorney GENIN, recanting P. SIMON'S delusional account of her and S. BERNSTEIN'S lives together, it is asserted that P. SIMON, THEODORE, IANTONI and FRIEDSTEIN, in November 2011 all had "independent wealth" and both the note and letter to S. BERNSTEIN state that ELIOT needed to be protected first and foremost in the Estates and Trusts of S. BERNSTEIN and SHIRLEY.
280. That further, GENIN claims that P. SIMON and D. SIMON built the companies from S. BERNSTEIN saving this poor dilapidated man from ruins and since they took over the businesses were doing great. Yet, "it's strange it's so very very very strange"<sup>25</sup> that just months later, in a May 2012 meeting, THEODORE and P. SIMON were trying to force SIMON to change the Estate plans and asking ELIOT to give up his interests in the Estates to include their children and ELIOT agreed to go along with whatever S. BERNSTEIN wanted but those demands to change the Beneficiaries never appear to have legally taken place and the abuse by ELIOT'S siblings of S. BERNSTEIN heated up after May 2012 and lasted until his dying day.
281. That P. SIMON and THEODORE in the May 2012 meeting to discuss the proposed agreement stated and SPALLINA confirmed that THEODORE and P. SIMON were both suddenly doing horrible in the businesses they had acquired due to this or that market

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<sup>25</sup> Terry Reid - Season Of The Witch Lyrics | MetroLyrics

condition and therefore why they were demanding to be re-inherited in the Estates of S. BERNSTEIN and SHIRLEY.

282. That if ELIOT, IANTONI and FRIEDSTEIN were willing to share their inheritances in the Estates with the grandchildren first needed to be assessed and in principal they agreed to do anything their father decided to do and this would end the abuse of S. BERNSTEIN, such a deal.
283. That in exchange for be re-inherited they would stop their campaign of terror on S. BERNSTEIN that had started almost immediately after he lost SHIRLEY, the love of his life and the torture of their father by withholding their children, his grandchildren from him, with their “tough love” aka elder abuse scheme would end and they would leave him and his companion, a one Maritza Rivera Puccio (“MARITZA”) alone from further abuse.
284. That if THEODORE and P. SIMON had “independent wealth” at the time GENIN wrote the letter in November 2011, only six months earlier what happened by January 2012 to change them to needing to be included in an Estate that they claim is only a few million dollars, what happened to their “independent wealth” in such a short time.
285. That according to P. SIMON’S lawyer GENIN’S unsupported by documentation account of S. BERNSTEIN, he was nothing without P. SIMON when she saved him from ruins and put him to pasture with enough to retire on years earlier, so sick he could no longer work according to her lawyer GENIN’S account of the events. So what was P. SIMON really after at that time since she had “independent wealth” and claimed it was not about the money?
286. That the account written from GENIN’S perspective of P. SIMON’S life with her father were claimed to be a factual account of event but GENIN prequalified her factual account of the events by starting her letter with the following caveat, “Following is my [GENIN’S]



understanding of the circumstances under which you [P. SIMON] obtained your father's interest in S.T.P. Enterprises, Inc. ("STP"), **which I understand can be supported by documentation.**" [Emphasis Added] In other words, the facts expressed were based on NO documentation or evidence that the attorney at law had seen or reviewed, so they are assumed facts with no evidence to back them up or not really a factual account at all.

287. That ELIOT states that P. SIMON is clearly attempting to establish a false record of fact through her attorney at law's eyes, so as to give it legal authority despite that the account is not based on evidence, in efforts to claim she was not gifted anything and thus should be included back into the Estates.
288. That P. SIMON'S intent appears clear, to claim that she was gifted nothing, her father was a bum that she took of care and therefore she was not compensated while S. BERNSTEIN and SHIRLEY were living and attempting to establish a legal right back into the Estates distribution claiming she was not gifted anything but forgetting to state that she owed S. BERNSTEIN four million dollars that she breached her contract on.
289. That ELIOT does say a "kernel" of truth emerges when she claims that S. BERNSTEIN, after the failed buyout and loss of his \$4,000,000.00 in consulting fees, began to sell insurance in Florida and competed with STP by selling Arbitrage Life through his own deals, with his agents, wholly excluding P. SIMON. S. BERNSTEIN claiming they had breached the contract and therefore had no legal rights thereunder to stop him from competing. However, it is interesting how GENIN'S account of S. BERNSTEIN and P. SIMON'S business dealings fails to mention this and instead states he was pilfering their clients because he was a low life of sorts.

290. That in year 2007 S. BERNSTEIN took in addition to a salary of \$252,622.00 a shareholder share of current income of LIC Holdings, Inc. of 33% of \$11,601,040.00 (86% cash distribution) or \$3,867,013.33 for a total \$4,119,635.33. Not bad for a bum who P. SIMON'S attorney GENIN accuses of stealing P. SIMON'S antique furniture and being to ill to work.
291. That in year 2008 S. BERNSTEIN took a salary of \$3,756,298.00. Not bad for a retired bum with a bad heart and hepatitis according to GENIN'S letter who was living off the fat and gratuity of P. SIMON'S good graces.
292. That in 2007-2008 S. BERNSTEIN took home a total **\$7,875,933.33**. Yet, according to THEODORE and SPALLINA in hearings before Hon. Judge Colin, only four years later the entire net worth of the Estates was only ESTIMATED at four million dollars, again, estimated because no accountings of the Estate and Trust values have been provided to the beneficiaries, in violation of Probate Rules and Statutes.
293. That in the May 2012 meeting SPALLINA stated that THEODORE was suddenly needing to be re-inherited because his businesses were not doing well, despite his having "independent wealth" according to GENIN only months earlier, again SPALLINA selling the story to ELIOT, IANTONI and FRIEDSTEIN.
294. That THEODORE in the year 2007 THEODORE took in addition to a salary of \$2,274,632.00 a shareholder share of current year income of 45% of the \$11,601,040.00 (86% cash distribution) or \$5,220,468.00 for a total of \$7,495,100.00.
295. That in 2008 THEODORE took a salary of \$5,225,825.00.
296. That in 2007-2008 THEODORE took home a total of **\$12,720,925.00**. That THEODORE then claiming in May of 2012 that he was broke seems that THEODORE either is a

spendthrift, drug addict or gambler, who lost it all and he suddenly needed back into the Estate or does he have another more sinister motive.

297. That in 2007-2008 ELIOT took home a total of \$0.00, lives in a \$350,000.00 home that his children own and his children received \$10,000.00 to \$15,000.00 a month stipend from S. BERNSTEIN that initially was tied to the Advance Inheritance Agreement to support basic living expenses, all necessary due to the harassment and attempted murder of ELIOT and his family that has made their lives hell since.
298. That these funds kept ELIOT supported to work on protecting S. BERNSTEIN and his Intellectual Properties and protect his family from harm and another BOMB by pursuing those trying to harm him. ELIOT has worked night and day, twenty hours every day as if in a trench war fighting the dirty bastards to protect his family and so giving them hell in the process.
299. That what is true from P. SIMON'S lawyer GENIN'S account is that after his recovery from his quadruple bypass in 1987 and other heart fixes, S. BERNSTEIN was on full disability and could no longer act in the same capacity in his companies as an executive and he invited P. SIMON and D. SIMON into the companies to take over the day to day management and operations that he had done for years in addition to his sales capacity.
300. That S. BERNSTEIN then focused on primarily sales and raising capital and traveled the country closing insurance sales and massive banking Arbitrage deals that made him and the companies millions annually and S. BERNSTEIN continued to feed his flock well, including A. SIMON, D. SIMON and P. SIMON who had marble offices with full staff and high paying salaries straight out of college. When he sold out the companies to P. SIMON and D. SIMON he never anticipated their total betrayal.

301. That unlike GENIN'S account of how the family business grew, it was primarily from ELIOT, his college buddies and his agents nationwide efforts, who did most of the sales, did all the marketing packages, wrote the insurance comparison software, wrote the underwriting system software, did the banking introductions that brought in hundreds of millions dollars and more.
302. That S. BERNSTEIN frequented California from Florida quite often from 1987-1997 during his alleged "retirement" and sickness to close some of ELIOT'S biggest clients and deals, he never left a meeting without an Application Signed or Financing Secured and he traveled incessantly throughout the country closing accounts for his entire field force and mentoring them all.
303. That after ELIOT introduced S. BERNSTEIN to COOKMAN they closed hundreds of millions of dollars of Arbitrage Premium Financing from the largest banks in the world, which again produced massive revenues for the companies P. SIMON was gifted in large part and the MASSIVE GROWTH of STP was from ELIOT and S. BERNSTEIN'S closing of the Jumbo Banking Deals and the ensuing sales of the insurance financed with these dollars. STP was soon managing nearly a billion dollars of premium and making a pretty penny on the spread of the total arbitrage pool of funds, plus the insurance premium commissions and trust fees charged.
304. That this breadwinner and leading insurance agent in the nation who earned millions a year in income through the 2000's, as he had done in the 90's, 80's and 70's, is the same poor, un-reputable, antique furniture stealing, client pilfering, disabled with heart disease and hepatitis, put out to pasture and retired by his loving daughter's good graces father of P. SIMON, GENIN describes, with no supporting documentation of her claims. This wretch of

a man whose loving daughter also further purchased his MAGNIFICENT MILE condominium on Oak and Michigan Avenue in the heart of the Chicago as a favor to him when he moved to Florida and where she even paid top dollar from her “independent wealth.”

305. That it is alleged that S. BERNSTEIN changed his beneficiaries prior to death in both he and SHIRLEY’S Estates from ELIOT, IANTONI and FRIEDSTEIN to his ten grandchildren but ELIOT claims these proposed changes in May of 2012 were never completed and that the abuse of S. BERNSTEIN by his 4 other children and 7 other grandchildren that was to cease when the changes were made never in fact ceased to his dying day and therefore that deal was breached before it was ever made and S. BERNSTEIN appears never to have legally made any changes, until after he was deceased with a little a help from POST MORTEM forged and fraudulently notarized documents that he posited with the court while dead.
306. That ELIOT alleges when the changes were not made, THEODORE and P. SIMON became more enraged, when only weeks before S. BERNSTEIN died, THEODORE was still demanding that the changes be made and fights ensued over this only weeks before he died, with SPALLINA being called in to try and further leverage S. BERNSTEIN to make the changes.
307. That S. BERNSTEIN only weeks before his death, at the same time he is alleged to have made the changes to he and SHIRLEY’S beneficiaries, was sued by a one, William Stansbury (“STANSBURY”), now a creditor to the Estate of S. BERNSTEIN who has tried to intervene in this Lawsuit and whose main complaints in his Lawsuit are from the acts of THEODORE not S. BERNSTEIN. STANSBURY claims THEODORE took millions of

dollars owed to him and swindled him out of stock in a company he owned shares of with THEODORE and S. BERNSTEIN.

308. That ELIOT alleges that S. BERNSTEIN thought STANSBURY had been paid and was very hurt by the Lawsuit filed only weeks before his sudden and unexpected death. However, upon closer inspection of the books, it is alleged that S. BERNSTEIN found that not only had THEODORE taken STANSBURY'S money that was supposed to be reserved but that THEODORE might have been taking his money too and this may have led to his seeking audits of OPPENHEIMER accounts and more.
309. That it is alleged that fights broke out over the STANSBURY Lawsuit and S. BERNSTEIN'S refusal to make changes to the Estate plans between THEODORE and S. BERNSTEIN and that weeks before his death, S. BERNSTEIN suddenly and overnight uprooted from the offices he shared with THEODORE and opened a new venture with his secretary, Diana Banks' ("D. BANKS") husband, Scott Banks ("S. BANKS") and created a new company he was in the process of funding with \$250,000.00 of startup capital called Telenet Systems LLC ("TELNET"), another assets of the Estate of S. BERNSTEIN that was not inventoried or handled properly according to Probate Rules and Statutes.
310. That S. BERNSTEIN called ELIOT and CANDICE to come help set up TELNET and offered them a piece of the pie if they would get the sales force going and his companion MARITZA was also to share in the company and work there.
311. That S. BERNSTEIN expressed that he was afraid of THEODORE and expressed that THEODORE may have taken the money from both him and STANSBURY and he was fearful of THEODORE'S violent behavior and increasing pressure on him to make changes to his Estates.

312. That on or about the time of the STANSBURY Lawsuit and the alleged changes to the Beneficiaries, only a few weeks before his death, S. BERNSTEIN began having a strange brew of health problems that were inexplicable according to several of his doctors that he saw during that time, all who began giving him new medications and altering his other daily medications and running test after test, with no diagnosis determined prior to his death.
313. That S. BERNSTEIN began a death spiral of sorts, suddenly hallucinating and swelling up like balloon with screaming headaches that drove him to have a brain scan only a few weeks prior to his death and again no one could figure out why he was melting down, what the source of the problem was.
314. That on September 12, 2012 S. BERNSTEIN was brought to the hospital in the early morning and throughout the day his condition was undetermined. First he was diagnosed as possibly having had a heart attack. After extensive testing for a heart attack it was determined that he did not have a heart attack. By nightfall, the doctor handling his case stated that he absolutely did not have a heart attack, there were no markers indicating such from the tests and instead thought he might have West Nile Virus or some other unknown infectious disease, as S. BERNSTEIN'S readings on certain of his tests were still off the chart, indicating that something was still wrong but again no specific diagnosis was offered.
315. That the Doctor stated S. BERNSTEIN was however stable, his heart was fine and that he would have to spend a day or two in the hospital being tested by the infectious disease folks and the family should all go home and get some rest and he would see us in the morning. MARITZA stayed with him to comfort him.

316. That very early the next morning of September 13, 2012, only a few hours after leaving S. BERNSTEIN, ELIOT was woken by a call from the hospital to come over immediately as his father was being resuscitated.
317. That five minutes later ELIOT showed up at the hospital to find MARITZA in the waiting room crying, she had been escorted out of his room as someone had told the hospital that S. BERNSTEIN may have been being poisoned and that it may have been MARITZA.
318. That ELIOT went to the ICU door and at first they refused to let him in while S. BERNSTEIN lay dying feet away until security arrived due to the alleged murder through poison that was called in.
319. That ELIOT was then let in to the room but it was too late, S. BERNSTEIN despite several attempts to revive him then died within the hour, never regaining consciousness.
320. Most bizarre is that when ELIOT'S brother THEODORE and sisters IANTONI and FRIEDSTEIN arrived and P. SIMON was called in Israel, they all decided that no more lifesaving efforts should be made, claiming that S. BERNSTEIN would not want to be revived and tried to have the doctors cease working to revive their father.
321. That since S. BERNSTEIN had put ELIOT in charge at the hospital that day, ELIOT refused to give up on his father, as he was not on life support and a decision to pull the plug being made seemed inappropriate as this was far from that scenario, these were lifesaving efforts not life support decisions. That ELIOT'S siblings claimed that S. BERNSTEIN would have wanted them to give up as he had nothing left to live for, it truly was surreal.
322. That ELIOT refused and allowed the doctor and nurses to continue their life saving efforts until the doctor determined that it was over, not his siblings. In fact his siblings were chanting to S. BERNSTEIN as he lay dying that he should he die and join SHIRLEY where



he would be happier than alive, ELIOT and the attending nurse were so outraged with this bizarre behavior that the nurse had them escorted out of the room until after he was pronounced dead.

323. That MARITZA was threatened at the hospital as S. BERNSTEIN lay dying by ELIOT'S siblings who were there, who told her that she had better be gone from S. BERNSTEIN'S home before they arrived or else. ELIOT was sent by THEODORE immediately after S. BERNSTEIN died to his home, claiming MARITZA was there alone and could be robbing S. BERNSTEIN'S home and to go watch over her. That when ELIOT and CANDICE arrived at S. BERNSTEIN'S home, MARITZA had packed a small bag of her clothes and was sitting crying, afraid to stay at the home and despite ELIOT telling her to stay, she felt her life in danger from ELIOT'S siblings and left without most of her personal possessions.
324. That as ELIOT was leaving the hospital he ran into Rachel Walker ("WALKER") in the parking lot and she was returning from S. BERNSTEIN'S house with a large parcel of documents that she stated she was bringing to THEODORE and stated they were Estate Documents that THEODORE sent her to get from the home. These documents were never inventoried and perhaps may explain why Trusts and Insurance Policies are now missing, when ELIOT requested copies from THEODORE and SPALLINA they refused to give him an inventory of them or provide copies.
325. That part of the documents THEODORE and SPALLINA claimed to have from the documents WALKER removed was a contract of sorts and a check for MARITZA that they stated they would never pay and would not turn it over to ELIOT or MARITZA. In fact, when the Sheriff arrived later and they accused MARITZA of Murder, THEODORE did not

mention or turn over this contract, which could have provided a motive for their allegation that she murdered him???

326. That immediately following S. BERNSTEIN'S death early that morning, THEODORE demanded that an autopsy<sup>26</sup> be conducted and then later contacted the Palm Beach County Sheriff's Office to report a possible MURDER<sup>27</sup> of S. BERNSTEIN, allegedly according to THEODORE, WALKER and others, the Murder was committed by MARITZA who was poisoning S. BERNSTEIN by switching the pills in his medication with unknown substances.
327. That it should be noted that recently the Coroner has reopened the autopsy after ELIOT contacted him and questioned some of the basis of his report and recently began a heavy metal poison screening and the results are still in processing at this time as indicated in his report exhibited herein.
328. That it should be noted that the Palm Beach County Sheriff's office has been contacted regarding the fact that the alleged Murder they responded to that day was wrongly classified<sup>28</sup> in the intake report as exhibited herein.
329. That after seizing Dominion and Control of the Estates the day S. BERNSTEIN died, SPALLINA and THEODORE immediately sealed off the premises of S. BERNSTEIN and

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<sup>26</sup> SIMON BERNSTEIN AUTOPSY INFORMATION

<http://www.iviewit.tv/SIMON%20BERNSTEIN%20AUTOPSY%20INFORMATION%20CASE%20NUMBER%2012-0913%20Michael%20Bell.pdf>

<sup>27</sup> PALM BEACH COUNTY SHERIFF OFFICE REPORT OF POSSIBLE MURDER OF S. BERNSTEIN, note the case is booked as medical records check???

<http://iviewit.tv/20120913%20Palm%20Beach%20County%20Sheriff%20Office%20Incident%20Report%20-%20Sim.pdf>

<sup>28</sup> CORRESPONDENCES WITH PALM BEACH COUNTY SHERIFF AND FLORIDA STATE ATTORNEY REGARDING QUESTIONS IN HANDLING OF ALLEGED MURDER CASE AND ESTATE CRIMES ALLEGED.

<http://iviewit.tv/20120913%20Sheriff%20Report%20Alleged%20Simon%20Murder%20and%20Follow%20Up.pdf>

began operating as fiduciaries but refused to provide the Estate documents to prove their fiduciary capacities to the Beneficiaries.

330. That this refusal to tender documents to the Beneficiaries became a cat and mouse game, whereby ELIOT for several months tried to get the documents owed to him and/or his children as Beneficiaries but was unsuccessful.
331. That ELIOT was then forced to retain counsel just to get documents and when they arrived in January of 2013 they were incomplete and evidence of FORGERY and FRAUD was apparent in many of the documents.
332. That in May 2013, after reviewing the documents, ELIOT filed a Petition<sup>29</sup> in the Estates of both SIMON and SHIRLEY claiming that the Estate was being looted and that there appeared to be FORGED and FRAUDULENTLY NOTARIZED documents.
333. That it was later discovered that documents in the Estate of SHIRLEY had been forged and fraudulently notarized by Tescher & Spallina's legal assistant/notary public, a one Kimberly Moran ("MORAN"). MORAN has been arrested and awaits sentencing.
334. 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.

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<sup>29</sup> "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 SIMON/SHIRLEY BERNSTEIN AND MORE." Filed in both estates. [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, Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.

335. 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.
336. 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.
337. 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 successor Personal Representatives or Executors were elected or appointed by the court after SIMON died and therefore at the September 13, 2013 and October 28, 2013 hearings before Judge Colin, no one represented the estate, as no Successors were chosen after the DECEASED SIMON closed the Estate.

338. That Tescher & Spallina P.A. acting as SIMON'S counsel for him POST MORTEM posited these fraudulent documents on behalf of SIMON and failed to notify the court that SIMON, the Personal Representative / Executor and Trustee was DECEASED. This identity theft of a deceased person continued for four months, using SIMON to file documents to close SHIRLEY'S 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 seize Dominion and Control of the Estates to begin looting the Estates of SIMON and SHIRLEY and deny the True and Proper Beneficiaries their inheritances.
339. That in an October 28, 2013 Evidentiary Hearing and September 13, 2013 Hearing in the Florida Probate Court, THEODORE and SPALLINA claimed that the ESTIMATED total net worth of the estates was FOUR MILLION DOLLARS, as they have never provided full and accurate accountings and inventories.
340. That in the October 28, 2013 Evidentiary Hearing, Judge Colin released to ELIOT an Inventory<sup>30</sup> in S. BERNSTEIN'S estate that had not been published to the Beneficiaries and sealed in the Court record of Judge French's court. Immediately thereafter TESCHER and SPALLINA amended S. BERNSTEIN'S Inventory<sup>31</sup> to include a missing approximately million dollars of assets.
341. That these adjustments were made after ELIOT filed criminal and civil complaints for millions of dollars of SHIRLEY and SIMON'S personal property that has gone missing and

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<sup>30</sup> SIMON INITIAL INVENTORY  
<http://www.iviewit.tv/20130611%20Inventory%20Simon.pdf>

<sup>31</sup> SIMON AMENDED INVENTORY  
<http://www.iviewit.tv/20131230%20Amended%20Inventory%20Simon.pdf>

was not inventoried, including \$700,000.00 of Jewelry and a paid in full BENTLEY that were not inventoried in her Estate. Mysteriously, these assets do not appear on either SHIRLEY or S. BERNSTEIN'S inventory, vanishing into thin air.

342. That ELIOT has filed grand theft reports on the missing jewelry and insurance claims may also have to me made against the homeowner's policy for the losses, although it is believed that P. SIMON, IANTONI and FRIEDSTEIN removed the items from the home of S. BERNSTEIN shortly after SHIRLEY'S death when S. BERNSTEIN was still heavily grieving and medicated. That while he was unaware of what they were doing they took the SHIRLEY'S jewelry and her other personal property and shipped it to their homes in Chicago, later claiming they were protecting the assets from people who they thought would steal them.
343. That when they were confronted about where the jewelry went after S. BERNSTEIN passed away, they then claimed S. BERNSTEIN now had given all the jewelry to them as gifts, yet the jewelry was not listed on the inventory of SHIRLEY or SIMON as required by Probate Rules and Statutes, then transferred to S. BERNSTEIN who could have then gifted it as he saw fit. S. BERNSTEIN stated it was only borrowed by them and would have to be returned when he died as assets of the Estate to be distributed to the True and Proper Beneficiaries and those he and SHIRLEY bequeathed certain items to, which again did not include P. SIMON who orchestrated the theft of the jewelry, the last time she saw her father before he died almost two years later.
344. That the estimated net worth of the Estates is only an estimate as no financials have been tendered to the Beneficiaries in violation of Probate Rules and Statutes and the four million dollar estimate appears far short of known assets, including but not limited to,

- i. a fully paid for Condominium that S. BERNSTEIN had listed at \$2,195,000.00 when he died,
- ii. a fully paid for home residence, which had an alleged minimal line of credit and was listed at \$3,200,000.00 by S. BERNSTEIN shortly before he died in 2012,
- iii. life insurance worth at minimum from the Lost or Suppressed Policy of allegedly \$1,700,000.00,
- iv. IRA's of another approximate \$2,000,000.00, and,
- v. JP Morgan accounts with another minimum amount of \$2,500,000.00 in just one account.

345. This Court can see already that the estimates stated in the hearings before the Probate court were far short of factual data already known and estimates from other sources have revealed that the net worth of S. BERNSTEIN was between 42-100 MILLION dollars.

346. That in the Amended Inventory, they now claim that ELIOT'S children's house is suddenly an asset of S. BERNSTEIN'S that somehow was forgotten to be included in the original inventory. This claim that there is a mortgage owed to S. BERNSTEIN that was unknown somehow before when they did the original inventory comes despite the fact that SPALLINA and TESCHER had done all the real estate transactional work for the home including the mortgage and therefore they knew about the mortgage.

347. That ELIOT claims that S. BERNSTEIN took the mortgage to himself as a line of protection on the home from ELIOT'S enemies that TESCHER and SPALLINA were to abandon and forgive the mortgage after his death.

348. That once arrests were being made of TESCHER and SPALLINA'S Legal Assistant / Notary Public MORAN and TESCHER and SPALLINA were being accused by Judge Colin of

committing enough crimes to be bestowed with Miranda Warnings, they began a campaign that continues to today to EXTORT ELIOT, in efforts to shut him down before he further exposes them and works with authorities and this Court to have them imprisoned.

349. That this mortgage to S. BERNSTEIN now became a tool to try and deny ELIOT of his home by misusing the mortgage and making the threat that if ELIOT did not cooperate with them and take what they gave him with no questions or counsel and continued to demand documents and accountings and contacted attorneys and make further waves they would foreclose on his home and evict him and reclaim his home.
350. That even more bizarre, is that a Mortgage on ELIOT'S home does exist with a one, Walter Sahm ("SAHM"), who had sold the home to S. BERNSTEIN as part of a business buyout S. BERNSTEIN did with SAHM so as SAHM and his wife Patricia could retire and the deal involved SAHM keeping a \$100,000.00 note on the home, as further protection against ELIOT'S enemies.
351. That interest was paid annually for years and when ELIOT received his inheritance in total, SAHM was to be paid off according to S. BERNSTEIN.
352. That when ELIOT demanded documents and retained counsel, SPALLINA told ELIOT'S children counsel that ELIOT needed to take the insurance monies now subject to this Lawsuit as they intended or else his children's house would be foreclosed on by SAHM, who SPALLINA stated was threatening foreclosure if his \$100,000.00 was not paid in full.
353. That SAHM was not threatening foreclosure, in fact, he was trying for months to simply get paid his annual interest or have it rolled over to the next year but was avoided by THEODORE and SPALLINA, who he believed were the Managers of BFR as he was not informed by them that CRAIG of OPPENHEIMER was acting as Manager at the time.



354. That SAHM became distraught at the avoidance and was forced to retain counsel to try and collect and prior to being forced to foreclose, he contacted ELIOT and informed him that SPALLINA and THEODORE were avoiding him and forcing him into a foreclosure situation. SAHM sent ELIOT over the information and correspondences<sup>32</sup> regarding the mortgage interest and when ELIOT confronted CRAIG, THEODORE and SPALLINA, it appears that in a matter of days the issue was resolved.
355. That SPALLINA claimed there was a \$365,000.00 mortgage on the home that also had to be paid to prevent foreclosure and when pressed to disclose what bank the Mortgage was with and where the foreclosure documents were, SPALLINA at first claimed he was unsure who it was with.
356. That ELIOT pressed SPALLINA on the phone with others present to find out who this mortgage was with and when he got the file, he stated it was a mortgage to S. BERNSTEIN and again, what was strange was that Tescher & Spallina P.A. had done the Mortgage through their law firm so how did he act initially like he did not know who the mortgage holder was.
357. That ELIOT'S children home is owned by Bernstein Family Realty, LLC ("BFR") a company S. BERNSTEIN formed for ELIOT'S children<sup>33</sup> and then wrapped it further in trusts for the children, again protecting the asset over and over.
358. That BFR has been hijacked<sup>34</sup> since S. BERNSTEIN passed away by THEODORE, SPALLINA and employees of Oppenheimer Trust Company ("OPPENHEIMER").

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<sup>32</sup> SAHM MORTGAGE INFORMATION AND LETTER TO JANET CRAIG OF OPPENHEIMER

<http://www.iviewit.tv/20130927%20Walter%20Sahm%20Letter%20and%20Note%20information%20Craig%20Letter.pdf>

<sup>33</sup> BFR OPERATING AGREEMENT, ETC.

<http://www.iviewit.tv/BFR%20BFH%20BFI%20RECORDS.pdf>

OPPENHEIMER is alleged to be involved through former employees of the STANFORD PONZI who are THEODORE'S close personal friends and they transferred to J.P. Morgan and OPPENHEIMER after the arrest of the STANFORD PONZI employees began.

359. That it was learned that S. BERNSTEIN may have contacted OPPENHEIMER shortly before his death, demanding accountings of his accounts, as he felt monies were missing and ELIOT has requested information from OPPENHEIMER but has received no reply.
360. That Janet Craig ("Craig") of OPPENHEIMER was nominated as Manager of BFR by SPALLINA, after it was learned that SPALLINA had been directing the use of BFR funds out an account that was in S. BERNSTEIN'S name, months after he was dead. After ELIOT notified the bank that S. BERNSTEIN was deceased, the bank, shocked to find out and more shocked that S. BERNSTEIN'S accounts were being accessed POST MORTEM, froze the account and demanded to speak with the Personal Representatives / Executors, TESCHER and SPALLINA.
361. That SPALLINA did not follow the operating agreement of BFR, which would have forced a vote of the Members (ELIOT'S children and ELIOT as Guardian) to elect a new Manager and with no authority, SPALLINA directed her to become Manager.
362. That SPALLINA then told ELIOT that the monies in the Legacy Bank account that was frozen was being transferred to a new BFR account with OPPENHEIMER and CRAIG would be acting as Manager of BFR to pay the bills and expenses of his family as intended by S. BERNSTEIN and had being paid for years prior.

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<sup>34</sup> Reply to letters from THEODORE and TESCHER regarding the hijacking of BFR and the EXTORTION of ELIOT.  
<http://www.iviewit.tv/20131229EIBResponseToTedBernsteinandDonaldTeschereEmergencyDistributions.pdf>

363. That SPALLINA shortly thereafter stated that there was only a little money left in the BFR account and SPALLINA again directed CRAIG to now use Trust funds that had been set aside by S. BERNSTEIN and SHIRLEY while living for ELIOT'S children's education to now pay the bills and expenses from. Again, ELIOT alleges SPALLINA had no authority to so direct CRAIG to misuse these school trust funds or appoint her Manager of BFR and when pressed for accounting of the Legacy account to evaluate what had been taken after S. BERNSTEIN'S death ELIOT was refused this information regarding his children's company BFR.
364. That SPALLINA stated that this misuse of the children's trusts that were funded while S. BERNSTEIN and SHIRLEY were alive was a temporary fix while he organized the Estate assets for distribution and that monies used from the children's trusts would be replaced and replenished when the monies from the Estates were available and the money would then flow into BFR from the Estate and Trust Funds that were to be established to pay the bills and expenses as intended by his parents.
365. That SPALLINA bled these accounts dry and when CRAIG requested that SPALLINA replenish and replace the funds, at about the same time authorities were knocking on his door about the FORGED and FRAUDULENTLY NOTARIZED documents and more, he said no and virtually cut funds off from ELIOT and his family overnight, which has caused continuing and ongoing severe financial and emotional hardships for ELIOT and his three minor children for the last five months. These funds paid for groceries, medical supplies, school, school supplies and more that overnight were all ceased and ELIOT was then told he either take the monies from their schemes and give up his complaints or else he would basically starve.

366. That this leveraging of ELIOT despite the fact that the alleged dispositive documents state,

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

6. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "Welfare" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

367. That ELIOT would not need Welfare or Education Support if the assets of the Estates were distributed timely and without evidence of FORGERY and FRAUD that now delays the final distributions and the delays caused by this insurance fraud scheme before this Court, each

crime alleged and those proven are wholly due to the acts of the fiduciaries responsible to the beneficiaries who have intentionally caused these delays with scienter. Yet, even though these financial problems have been caused by their acts directly, they still have refused to continue the payments to ELIOT'S family, despite having been requested repeatedly to distribute EMERGENCY interim distributions until the matters can be resolved, when the monies could then be deducted from final distributions. There is more than enough monies in the Estates and Trusts to fully cover these expenses for several years but instead they have chosen without warning or notice to play games with the expenses, cutting off food and utilities and hoping they would starve ELIOT and his family in order to force them to drop their claims against them.

368. That CRAIG then allegedly resigned as Manager of BFR and upon THEODORE and SPALLINA'S request turned over the Manager position to THEODORE who volunteered for the job, again, despite the fact that the Operating Agreement of BFR calls for a vote by the Members, which would be ELIOT'S three children or their Guardian, which never happened.
369. That CRAIG turned over the Manager position to THEODORE already knowing of the allegations ELIOT was levying against THEODORE & SPALLINA in the courts.
370. That THEODORE recently has begun claiming to vendors that despite being copied on a letter from CRAIG stating she turned the BFR Manager position over to THEODORE that he does not know what she is talking about and he is not the Manager, yet continues to open the BFR bills that are sent to his address and paying those he determines necessary when he wants and if he is not the Manager what authority is he acting under in so doing this.

371. That SPALLINA had no business making CRAIG Manager or directing her to use the children's school trust funds to pay expenses and both of them refuse to answer under what authority they acted.
372. That once in control of BFR, THEODORE and SPALLINA instantly began to apply financial pressure to ELIOT and his family, despite the fact that the dispositive documents call for Welfare payments to beneficiaries when needed and despite the fact that the delays in inheritance is due to the alleged criminal acts of the alleged fiduciaries of the Estates, TESCHER, SPALLINA and THEODORE, aided and abetted by MORAN and others.
373. That in fact, recently the home security was shut off first and then the homeowners insurance<sup>35</sup> was not paid and for an asset of the estate that they now claim on the Amended Inventory of S. BERNSTEIN via the mortgage to S. BERNSTEIN as a personal property asset of SIMON'S to be divided by the five children. SAHM'S note when renewed in 2013 by CRAIG and paid had a stipulation that homeowners insurance was required, again perhaps they are attempting to force SAHM to foreclose or take other action to protect his investment and all in efforts to harm ELIOT and his three minor children.
374. That this lack of duty and care by the ALLEGED fiduciaries of ELIOT'S home, which they now claim an personal property assets of S. BERNSTEIN and failure to maintain insurance and security of the premises puts the Estate Beneficiaries at massive risk if the home was robbed, burnt down or someone got hurt. Is this neglect as fiduciaries or is this calculated to further harm ELIOT and his family, including his three minor children?

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<sup>35</sup> January 25, 2014 Oppenheimer and Theodore Letters regarding homeowners insurance.  
<http://www.iviewit.tv/20140125OPPENHEIMER%20CRAIG%20RE%20LAPSE%20HOMEOWNERS%20UPDATE.pdf>

375. That in fact, ELIOT has been shut down from his \$10,000.00-\$15,000.00 a month for expenses to virtually \$0.00 since THEODORE hijacked BFR.
376. That the reason SPALLINA, THEODORE and P. SIMON want to now lowball the Estates and Trusts and SUPPRESS AND DENY ALL FINANCIAL INFORMATION OWED TO THE BENEFICIARIES is to further loot the Estates of the assets and claim there was nothing there by the time anyone figured out their schemes. This is why they have suppressed and denied virtually all of the financial and other information in the Estates from the True and Proper Beneficiaries for now over three years in SHIRLEY'S Estate and approximately sixteen months in S. BERNSTEIN'S Estate, in total disregard of Probate Rules and Statutes.
377. That ELIOT states that the intent of TESCHER, SPALLINA, THEODORE, P. SIMON, D. SIMON, A. SIMON and FRIEDSTEIN is to thwart the last wishes of S. BERNSTEIN and SHIRLEY and convert the monies that they have NO interests in otherwise to themselves. Not because they are in need of the monies but specifically to interfere with ELIOT'S inheritance and harm ELIOT'S efforts regarding monetizing his Intellectual Properties and pursuing those that have converted the royalties through a mass of criminal acts.
378. That their plan it is alleged, once S. BERNSTEIN died, was to seize Dominion and Control of the Estates through a series of alleged Fraudulent and Forged documents and attempt to change the Beneficiaries of the Estates POST MORTEM to include THEODORE, P. SIMON and their lineal descendants and dilute ELIOT and deny him of his inheritance.
379. That to achieve this they committed a series of frauds on the Beneficiaries of the Estate and Fraud on the Probate Court to try and change the Beneficiaries and thereby dilute ELIOT'S inheritance and steal off with as much of the assets as they could, leaving ELIOT and his

family nothing or a very small amount, all while providing no accountings. That for over a year and half they have looted the Estates through their ALLEGED fiduciary roles, failing virtually all Probate Rules and Statutes and at the same time trying to sell the story that S. BERNSTEIN and SHIRLEY, who gave their children the world were bums and had nothing but for what P. SIMON'S good graces had afforded them.

380. That P. SIMON and THEODORE are not doing this because they need the monies, as GENIN claims they have "independent wealth" as of November 2011 and P. SIMON claims in her note to S. BERNSTEIN in January 2012 that "Dad... it is not about the money." So what is it really about then, if not the money? The whole scheme is about further harming ELIOT and suppressing and harassing him for their friends and bedfellows at PROSKAUER and FOLEY, who THEODORE and P. SIMON have sided with against their own family for their own self-interests and further harm ELIOT and his children and deny him his inheritance to further hamper his efforts at bringing them all to Justice.

381. That the pressure is on and with the revelations about the Obstruction of Justice, Wiretapping of Judges, Misuse of Joint Terrorism Task Force Funds and Resources and Violations of the Patriot Act in the ANDERSON and related cases, it is only a matter of time until the cases are appealed properly. Since the time the stories were released and the crimes exposed the pressures on ELIOT'S family has magnified greatly and they are in even more danger.

382. That once THEODORE, TESCHER and SPALLINA seized Dominion and Control of the Estates they systematically began to unravel the Estate plans of S. BERNSTEIN and SHIRLEY designed mainly to protect ELIOT and his children and this Breach of Contract Lawsuit is one of those assets trying to be stolen off with.



383. That this unwinding of Estate plans is part of how they are trying to unwind S.

BERNSTEIN'S Lost or Suppressed Trust and Lost or Suppressed Policy in this Court and prior with the insurance carriers involved, all in efforts to thwart the true Beneficiaries of S. BERNSTEIN'S policy and his intent, which was to give everything to ELIOT, who had never asked for much until his life was in danger and to protect ELIOT and his grandchildren from the forces S. BERNSTEIN knew were trying to murder him.

384. That ELIOT contacted the Palm Beach Sheriff Office to investigate a boatload of State and Federal offenses being committed in the Estates by the Alleged Fiduciaries, starting with the FORGED and FRAUDULENTLY NOTARIZED documents in the Estate of SHIRLEY and the Fraud on the Probate Court and True and Proper Beneficiaries. These are some of the "kernels" of truth A. SIMON refers to as "document irregularities and/or notarial misconduct" and ELIOT refers to them more accurately and truthfully as ADMITTED FORGED and FRAUDULENTLY NOTARIZED DOCUMENTS, SIX COUNTS to be exact, including one document that was FORGED and NOTARIZED POST MORTEM for S. BERNSTEIN that he then while still deceased allegedly posited with the Probate Court as if alive.

385. That ELIOT has asserted all of the following criminal and civil acts to State and Federal authorities regarding the activities of the Plaintiffs, SPALLINA, TESCHER, MANCERI, MORAN, BAXLEY and others for investigation and ruling,

- i. Alleged Murder of S. BERNSTEIN. That THEODORE on the day S. BERNSTEIN died ordered the Sheriff to the home of S. BERNSTEIN, CASE NUMBER 12121312 PALM BEACH COUNTY SHERIFF and on information and belief the Sheriff contacted was referred to THEODORE by his "lawyers." The incident was listed in

the Official Report as a call for a “395.3025(7)(a) and/or 456.057(7)(a)”<sup>36</sup> Medical information.” ELIOT has recently sought clarification of how either of these codes applies to what the Officers responded to, which was an alleged MURDER of S. BERNSTEIN. ELIOT was also amazed by the lack of care and failure to secure evidence in the matter by PBSO and THEODORE informed ELIOT that his “friends” at the law firms he contacted would take care of these matters at the higher up levels at PBSO later and this was just an initial intake.

That THEODORE also contacted the Coroner’s office on the day S. BERNSTEIN died, again through referrals from his “lawyer friends” to report that S. BERNSTEIN was POISONED and MURDERED by his companion and demanded an Autopsy.

Where recently the autopsy, CASE NUMBER: 12-0913 Palm Beach Medical Examiner Office, has been reopened to run a poison screening heavy metal tests on S. BERNSTEIN over a year after he died. The tests are still in processing and what is fascinating is that poison tests were not initially run by the Coroner’s office, despite the fact that they had been notified that S. BERNSTEIN may have been poisoned by his companion MARITZA. Again, THEODORE initially claimed that his friends he contacted at the law firms he was working with would make sure everything was done properly.

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<sup>36</sup> Title XXIX PUBLIC HEALTH Chapter 395 HOSPITAL LICENSING AND REGULATION 395.3025 Patient and personnel records; copies; examination. —

(7)(a) If the content of any record of patient treatment is provided under this section, the recipient, if other than the patient or the patient’s representative, may use such information only for the purpose provided and may not further disclose any information to any other person or entity, unless expressly permitted by the written consent of the patient. A general authorization for the release of medical information is not sufficient for this purpose. The content of such patient treatment record is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

ii. Extortion of ELIOT. That Plaintiffs and others have been involved in attempts to hijack companies of ELIOT'S family left as part of his and his children's inheritance, which companies have paid the home and expenses of ELIOT and his family for many years. That recently THEODORE and SPALLINA have fraudulently taken over the Companies, which receive the bills and expenses for ELIOT'S family home and started a campaign of terror and extortion of ELIOT and his children, tampering with the bills and shutting down utilities, food and schooling of ELIOT'S family, without notice or authorization. As ELIOT does not get the bills, they are sent to THEODORE'S address and ELIOT is not Manager of BFR, he has no authority to even contact the vendors, leaving ELIOT and his family helpless and in the dark for almost five months as to what bills THEODORE would pay and which he would not, leaving ELIOT with no notice when utilities were being shut off for lack of payment and no recourse to do anything about it.

See ELIOT Letters to THEODORE and SPALLINA et al. at the URL @

<http://www.iviewit.tv/2013/12/29/EIBResponseToTedBernsteinandDonaldTescherReEmergencyDistributions.pdf> , these letters provide in detail what is going on regarding the Extortion of ELIOT by his own siblings.

That on September 04, 2013, ELIOT filed Docket #TBD, in the estate of Simon, a

**“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.”**

[www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf), hereby incorporated by reference in entirety herein.

- iii. That A. SIMON leaves out of his account the FELONY misconduct of TESCHER, SPALLINA, THEODORE and MANCERI, that Judge Martin Colin stated he had enough evidence at the hearing of their criminal acts to read them Miranda Warnings, for their filing months of closing documents in SHIRLEY’S Estate with S. BERNSTEIN acting as Personal Representative/Executor while he was dead and other Felony acts Judge Colin became aware of through the hearings. Where ELIOT is pursuing criminal charges with State and Federal authorities currently for these and a host of other crimes related to the looting of S. BERNSTEIN and SHIRLEY’S Estates of an estimated Forty Million Dollars or more.
- iv. Perjury and False Statements in Official Proceedings. ELIOT has notified authorities of several counts of perjury and false official statements against Moran for conflicting statements in official investigations regarding her forgeries and fraudulent notarizations, with different stories in her sworn statement to the Florida Governor Rick Scott’s Notary Public Investigators, her statements to PBSO and her lawyer’s statement on her behalf at the October 28, 2013 Evidentiary Hearing held in her honor in the Probate court proceedings,

- v. That SPALLINA and MANCERI also made false statements to Judge Colin in the hearings and ELIOT is working with authorities regarding these crimes.
- vi. Forgery. ELIOT filed charges against Moran and later she admitted she forged documents for six parties, including one for S. BERNSTEIN POST MORTEM. While the Florida State Attorney and PBSO failed to file charges of FORGERY against MORAN initially, despite her confession of such crime, after learning of other crimes, including the alleged Insurance Fraud taking place upon this Court, new reviews of the investigation and charges are underway currently.
- vii. Fraudulent Notarizations. ELIOT filed charges against MORAN and later she admitted she had fraudulently notarized documents for six parties, including one for S. BERNSTEIN POST MORTEM.
- viii. Fraudulent Notarizations and alleged Forgery, against a one, Lindsay Baxley ("BAXLEY").
- ix. Fraud on the Probate Court.
- x. Filing False official documents filed in the Probate Court and Obstruction. ELIOT is working with authorities regarding these crimes committed by SPALLINA and TESCHER.
- xi. Personal and Real Property Theft and Conversion. ELIOT is working with authorities and filed charges against SPALLINA, TESCHER, MANCERI, THEODORE, MORAN, BAXLEY, P. SIMON, IANTONI and FRIEDSTEIN for these crimes, including but not limited to, new evidence in approximately \$1,000,000.00 of jewelry stolen from the Estates that was not reported in inventories

of SIMON and/or SHIRLEY and were removed from the estate by THEODORE, P.  
SIMON, IANTONI and FRIEDSTEIN.

- xii. Conspiracy. ELIOT is working with authorities regarding Conspiracy charges against SPALLINA, TESCHER, MANCERI, THEODORE, MORAN, BAXLEY, P. SIMON, D. SIMON, A. SIMON, CRAIG, MANCERI, IANTONI and FRIEDSTEIN.
- xiii. Identity Theft. ELIOT is working with authorities regarding the Identity Theft of SIMON POST MORTEM, against SPALLINA, TESCHER and MORAN.
- xiv. Mail and Wire Fraud. ELIOT is working with authorities regarding Mail and Wire Fraud against SPALLINA, TESCHER, MORAN and BAXLEY.
- xv. Insurance Fraud. ELIOT is working with this Court and has contacted authorities to file formal charges for Insurance Fraud against SPALLINA and MORAN.
- xvi. Fraud on an Institutional Trust Company. ELIOT has contacted authorities to file formal charges for Institutional Trust Company fraud by SPALLINA and MORAN.
- xvii. RICO Conspiracy. That ELIOT will relate all of these crimes to ELIOT'S RICO and ANTITRUST Lawsuit when he appeals the case due to the Obstructions recently uncovered, as the main defendants in that case are involved in all of these new criminal acts in the Estates and ELIOT alleges this is all in efforts to shut down ELIOT and cause harm upon his wife and three minor children and deny them of funds that will be used to help further expose and topple the RICO defendants.
- xviii. Tax Fraud – as THEODORE signed tax forms for the sale of the Condominium as the Personal Representative / Executor of the Estate when at the time he was not appointed as such and had no authority to transact the sale in this capacity.

386. That this Court must see that this Lawsuit is not about a Lost or Suppressed Trust and Policy but about the possible MURDER of S. BERNSTEIN, possibly SHIRLEY, and of torturous interference with an expected inheritance in efforts to further harm and destroy ELIOT, CANDICE and their three children.
387. That the inventions that A. SIMON claims he has little involvement in are actually the ELEPHANT IN THIS COURTROOM that A. SIMON wears atop his head and brought into this three ring circus in this Courtroom that HE created. A. SIMON'S denial of his involvement other than in a limited scope is yet another false and misleading claim to this Court and where ELIOT does not recall having accused A. SIMON of involvement in Iviewit in this Court, so what prompted his making this claim to this Court is unknown and perhaps it was a confession of sorts. ELIOT thanks A. SIMON for opening this portal here, as it exposes what this Lawsuit is really about and suddenly the Elephant atop his head is apparent to everyone but A. SIMON and the Plaintiffs.
388. That ELIOT understands sibling rivalry, envy and jealousy well, as ELIOT is a proud recipient of three decades of psychoanalysis primarily with a one Dr. Erwin Angres<sup>37</sup>, who studied under Anna Freud and other greats, whom also did over four decades of psychoanalysis of both S. BERNSTEIN and SHIRLEY five days a week for virtually all of it.

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<http://www.psychiatrictimes.com/articles/memoriain>

[http://books.google.com/books?id=MSpMJzNSepwC&pg=PA413&lpg=PA413&dq=dr+erwin+angres&source=bl&ots=bj8NAA\\_87t&sig=BrJCshzi2xsBnx-LPcM9bEJCX4Y&hl=en&sa=X&ei=eePoUri-FMXokQe82oCgBw&ved=0CEwQ6AEwBQ#v=onepage&q=dr%20erwin%20angres&f=false](http://books.google.com/books?id=MSpMJzNSepwC&pg=PA413&lpg=PA413&dq=dr+erwin+angres&source=bl&ots=bj8NAA_87t&sig=BrJCshzi2xsBnx-LPcM9bEJCX4Y&hl=en&sa=X&ei=eePoUri-FMXokQe82oCgBw&ved=0CEwQ6AEwBQ#v=onepage&q=dr%20erwin%20angres&f=false) (his works in Autism were of special concern to him, having a son who is highly savant)

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Wednesday, February 5, 2014

Reply to Response to Motion to Remove Counsel

389. That why is this important? Because the therapy sought by S. BERNSTEIN and SHIRLEY for almost five decades of their lives and three of ELIOT'S, is because they have a mental disease that runs through the family genealogy, called mental abuse.
390. That when SHIRLEY was only 19, mental abuse from her mother was causing her mental breakdowns, newly married and pregnant with THEODORE, she became over traumatized by her mother, who had mentally abused her throughout her childhood and blamed her and her sister for the untimely death of their father and abused them every day after he passed, a real "Mommy Dearest" who SHIRLEY often referred to her as. Her mother constantly berating her further for marrying S. BERNSTEIN was driving her insane.
391. That SHIRLEY and S. BERNSTEIN both had abusive and restrictive families and both vowed to break the bad bloodlines and not spread the disease to their children and so began their long road of analysis not only to emerge from the damaged child psyches one inherits, as with the old adage, one who was abused will most likely become the abuser that it hates and they vowed to shield and protect their children from this disease.
392. That through analysis they began to learn psychotherapeutic Judo of sorts and began combatting the disease by learning to cope with past abuse, distancing themselves from further abuse, going to therapy to control the abuse so they did not harm their children, not letting the abusers (their mothers) near the children to abuse them without close supervision, arming their children with therapy so that if they cracked and the abuse came out the children would not be affected, provide tools to understand and combat the disease so as not internalize it and MOST IMPORTANTLY, provide UNCONDITIONAL LOVE to nurture them.



393. That THEODORE, P. SIMON, ELIOT, IANTONI and FRIEDSTEIN were all afforded this luxury of therapy with the best individual therapists to make sure they did not catch the disease ELIOT'S parents wanted stamped out of their bloodline.
394. That ELIOT went voluntarily for over three decades to therapy and was never diagnosed with any neurosis or psychosis or took any pill or treatment other than analysis and loved it so much he studied it and got his degree in Psychology. THEODORE went for a few years and then never returned. IANTONI went to therapy for a few years and is well adjusted. FRIEDSTEIN went for a while and later for other treatments. P. SIMON never went and actually abhorred that her parents went and she despised their best friend and ELIOT'S, Dr. Angres, constantly belittling him, as P. SIMON denied that the family had any problems or abuse in their past and she considered herself fine and above the need for therapy, often referring to therapists as quacks.
395. That both THEODORE and P. SIMON spent considerable time with their grandmothers and by the time the younger children were born both S. BERNSTEIN and SHIRLEY had ceased contact with their mothers but it may have been too late for THEODORE and P. SIMON and they may have been effected in their early years.
396. That S. BERNSTEIN and SHIRLEY at the end of their lives were saddened by the turn of events with THEODORE and P. SIMON, especially in regards to their close relations with Ivewit defendants and other acts they had done to harm ELIOT. Both of ELIOT'S parents stated to ELIOT that the fault was their own for not mandating that all of their children had gone to therapy.
397. That SHIRLEY feared her mother may have poisoned THEODORE and P. SIMON with the abuse disease in the early years of their lives, before SHIRLEY learned psychoanalytical

Judo to combat her mother and protect her children from them. SHIRLEY did not learn to completely distance her children from her mother until after ELIOT was born, when SHIRLEY had completely broken down and her therapist suggested almost a total break from her mother and to not let the children near her either. ELIOT recalls virtually no interaction with his grandmothers other than for High Holiday events, where S. BERNSTEIN and SHIRLEY hovered over whenever her mother approached at these limited family functions.

398. That this is important information to this Lawsuit because this Court can better see how the actions of THEODORE and P. SIMON against their father, mother and brother happened, yet it is not truly their fault, it is a bloodline thing and the only way to cure it is thorough analysis. This theorem if true, that therapy can free one from this mental molestation that starts in infancy and manifests later in life with a strong dose of unconditional love that can replace the abuse, then the theory would be proven that one can therefore pave the way to a bloodline free of mental madness and thereby erase it from the bloodline.

399. That this disease does not leave bruises on the body as it is transmitted insipidly through abusive mental acts that destroy infant psyches retarding the growth of the individual mentally and the effects are exhibited in mean and incomprehensible acts done to one's family members and others.

400. That in ELIOT'S parents case, a real test case of this strategy to combine Therapy and Unconditional Love to stamp out the disease, in two out of five of the children the abusive bloodline seems to be broken and that is not bad odds. That this unique way of curing the problem may in fact have created the genius of ELIOT that has now affected the entire world and brought us into a new and fabulous information age through G-d given technologies,

which he owes all to his father and mother, who protected him from the monsters of the past and allowed him to be free of the disease that had taken so much from them.

401. That this break in the diseased bloodline allowed ELIOT to see further a better future for all people, to help those suffering from abuse by learning from and scribing the journey of his parents out of their hells, ELIOT'S mother and father request ELIOT to document these events for the world.
402. That ELIOT also scribed the effect it had on him, which appeared to make him unique as well and he learned to help many others who are similarly situated in childhood hells and in honor of his parents gift of a life free of abuse and filled with Unconditional Love (and trust me ELIOT tested more than any child ever) ELIOT created a Thought Journal, a mini-internet of sorts, long before the Internet existed and using wormed facsimile machines built into computer boards so that people could fax their Thoughts on how to change the world and save the planet for the children of all creatures by coming together as one planet, one people, one resource in efforts to offset the damages that their greed infested blinded parents were doing with disregard to their futures and the future of all generations.
403. That in fact, long before Iviewit, THEODORE had threatened to sue ELIOT with his close friend and bedfellow Kenneth Solomon, Esq. ("SOLOMON") if ELIOT did not cease and desist with the dissemination of the Thought Journal<sup>38</sup>, as THEODORE felt it was about him somehow. SOLOMON shortly thereafter was blamed almost exclusively for the collapse of Laventhol & Horwath, the 9<sup>th</sup> largest accounting firm in the world at the time, which caused a massive loss to thousands of CPA's who had sold their firms to Laventhol and whose lives

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<sup>38</sup> THOUGHT JOURNAL

<http://iviewit.tv/Thought%20Journal.htm>

were shattered when the pensions and retirements were seized in the collapse due to his fraudulent activities with young boys in the Chicago area.

404. That finally in this long retort to what appeared an innocuous claim by A. SIMON regarding ELIOT'S inventions, ELIOT claims that therapy can be proven to work, as when his father died, the first thing ELIOT did was to contact SPALLINA and TESCHER and demand to know where S. BERNSTEIN'S Iviewit stock holdings<sup>39</sup> and patent interests were and the claims in the ongoing RICO & ANTITRUST Lawsuit, as well. ELIOT wanted to know how they were being distributed to the family, as S. BERNSTEIN had stated to ELIOT that SPALLINA and LEWIN had all the necessary information.
405. That ELIOT specifically recalled that S. BERNSTEIN'S last wishes expressed to ELIOT were that his grandchildren and children, including THEODORE and P. SIMON were to share equally his original 30% interest.
406. That ELIOT had persuaded his father to make all of his family a part of the inventions and share in the royalties when they are recovered and not continue any bad blood. This three decades of psychoanalytic therapy and unconditional love combination, tied to a B.S. in Psychology from Madison, WI., is what makes the difference in the mental health of one who has an abusive gene in his past that does not let it affect him and that cannot draw him in.
407. That ELIOT is proud to report that his three children appear unaffected by the abusive gene that used to run through the bloodline, they have never seen it or felt, yet ELIOT would love to give them the gift of the therapy one day, just in case and because it is something everybody benefits from. Today's rival to this treatment plan is to just dope up children on

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<sup>39</sup> ELIOT and SPALLINA IVIEWIT STOCK CORRESPONDENCES.  
[www.iviewit.tv/SPALLINA IVIEWIT CORRESPONDENCES.pdf](http://www.iviewit.tv/SPALLINA%20IVIEWIT%20CORRESPONDENCES.pdf)

pharmaceuticals and numb them of the pain, making them less resilient to the abuse, more exposed to the abuser and just cover up of the pain allowing it to still rule one's life just in a haze.

408. That SPALLINA then denied any knowledge of Iviewit and stated he hardly knew a thing about ELIOT despite having made intricate estate plans with S. BERNSTEIN for ELIOT. SPALLINA claimed he called both LEWIN and GORTZ and they knew nothing about Iviewit either. As the exhibited correspondences between SPALLINA and ELIOT show however, LEWIN and GORTZ knew everything about Iviewit, including their being defendants in the RICO and ANTITRUST and had far more involvement then they claimed, including have created the companies, distributed the stock in certain cases and more.
409. That ELIOT would typically not pursue his siblings with these trite trivialities in the wake of the Billion Dollar battles<sup>40</sup> he is in, against much larger monsters but ELIOT was not the one who manufactured any of these current legal actions, including in this Court or the Probate courts and thus he is forced to respond and with the whole truth, including this part of the dirty family secret, exposing it for what it is and how it has enabled the events before this Court.
410. That ELIOT'S technologies now over a decade and half old are the backbone technologies to over 90 PERCENT of Internet Traffic in the form of video and graphics transmitted that would not be possible without them. From a recent Cisco report,

Highlights

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<sup>40</sup> AT&T Settlement Offer Proposal  
<http://www.iviewit.tv/20120412%20Settlement%20Offer%20ATT%20Floyd%20Joao.pdf>

It would take an individual over 5 million years to watch the amount of video that will cross global IP networks each month in 2017. Every second, nearly a million minutes of video content will cross the network in 2017.

Globally, consumer Internet video traffic will be 69 percent of all consumer Internet traffic in 2017, up from 57 percent in 2012. This percentage does not include video exchanged through peer-to-peer (P2P) file sharing. The sum of all forms of video (TV, video on demand [VoD], Internet, and P2P) will be in the range of 80 to 90 percent of global consumer traffic by 2017.

Internet video to TV doubled in 2012. Internet video to TV will continue to grow at a rapid pace, increasing fivefold by 2017. Internet video to TV traffic will be 14 percent of consumer Internet video traffic in 2017, up from 9 percent in 2012.

Video-on-demand traffic will nearly triple by 2017. The amount of VoD traffic in 2017 will be equivalent to 6 billion DVDs per month.

Content Delivery Network (CDN) traffic will deliver almost two-thirds of all video traffic by 2017. By 2017, 65 percent of all Internet video traffic will cross content delivery networks in 2017, up from 53 percent in 2012.

Globally, mobile data traffic will increase 13-fold between 2012 and 2017. Mobile data traffic will grow at a CAGR of 66 percent between 2012 and 2017, reaching 11.2 exabytes per month by 2017.

Global mobile data traffic will grow three times faster than fixed IP traffic from 2012 to 2017. Global mobile data traffic was 2 percent of total IP traffic in 2012, and will be 9 percent of total IP traffic in 2017.

Annual global IP traffic will surpass the zettabyte threshold (1.4 zettabytes) by the end of 2017. In 2017, global IP traffic will reach 1.4 zettabytes per year, or 120.6 exabytes per month. Global IP traffic will reach 1.0 zettabytes per year or 83.8 exabytes per month in 2015.

Global IP traffic has increased more than fourfold in the past 5 years, and will increase threefold over the next 5 years. Overall, IP traffic will grow at a compound annual growth rate (CAGR) of 23 percent from 2012 to 2017.

([http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white\\_paper\\_c11-481360\\_ns827\\_Networking\\_Solutions\\_White\\_Paper.html](http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360_ns827_Networking_Solutions_White_Paper.html), fully incorporated by reference herein.)

411. That without ELIOT'S technology these numbers would be approximately 90% less and that equates to enormous royalties for Internet Video alone. Without ELIOT'S technology, low bandwidth cell video would be 0% and even this royalty owed ELIOT and S. BERNSTEIN is not the end of the total owed, as the technologies apply to virtually the entire video and imaging content creation and distribution software and hardware made universally.

412. That A. SIMON claims,

9) I verily believe that ELIOT's third-party claims filed against me, David Simon and The Simon Law Firm were filed for the improper purpose of attempting to manufacture a basis for ELIOT's motion to disqualify.

413. That ELIOT claims that for the mere fact that A. SIMON filed the complaint with all the following defects to begin with before ELIOT arrived on the scene, this Court has enough reasons and violations to disqualify him on these alone on this Court's own motion, for filing,

- i. without a qualified legal Plaintiff, the Lost or Suppressed Trust,
- ii. without a legal Trustee of the NONEXISTENT Trust,
- iii. with an improperly named ALLEGED Trustee "Ted" of the Lost or Suppressed Trust,
- iv. with an apparently NONEXISTENT Defendant HERITAGE, which Your Honor so eloquently pointed out in the January 13, 2014 hearing before this Court,
- v. on behalf of an ALLEGED Contingent Beneficiary, while knowing the Primary Beneficiary exists and making efforts to conceal this from this Court and ELIOT and others,
- vi. for a breach of a contract filed with this Court based upon the denial of an alleged fraudulent insurance claim filed by SPALLINA and MORAN, with SPALLINA acting as Trustee for A. SIMON'S clients the Lost or Suppressed Trust and "Ted,"
- vii. for failing to notify all the known possible beneficiaries of the Lost or Suppressed Policy of this Lawsuit and instead secreting it with intent to perpetrate a fraud on the True and Proper Beneficiaries,

viii. for failing to notify authorities of SPALLINA and MORAN'S felony misconduct constituting alleged MISPRISION OF FELONY(IES) and more.

That these reasons were all manufactured by A. SIMON, not ELIOT.

414. That A. SIMON claims,

10) Despite these manufactured claims and because my interests as a third-party defendant are aligned with the parties I represent, I remain steadfast in my belief that there is no conflict in this case.

415. That ELIOT claims this statement appears to state that while he admits that he is conflicted because as a defendant he aligns with other defendants, he therefore is not conflicted in representing the other defendants his interests are aligned with making his representation impartial and conflicted and ELIOT is missing something here or this is an admission and denial in the same breath.

416. That A. SIMON claims,

11) I have had approximately three contacts with attorney, Robert Spallina and possibly one contact with attorney, Donald Tescher. Those contacts focused on obtaining a copy of Tescher and Spallina's file relating to the matters involved in the above captioned litigation.

417. That ELIOT questions why he would not have contacted SPALLINA regarding the fraudulent insurance claim filed by him impersonating his client and since he based his breach of contract on the failed claim it seems questionable as to why he was not more familiar with this aspect of his Lawsuit before filing it.

418. That A. SIMON claims,

12) I had no involvement with Tescher and Spallina's representation of the Estates of Simon or Shirley Bernstein, or



Tescher and Spallina's legal representation of Simon or Shirley Bernstein prior to their deaths.

419. That ELIOT states he never said A. SIMON did.

420. That A. SIMON claims,

14) It is my understanding that the alleged misconduct in the probate of the Estates involved document irregularities and/or notarial misconduct.

421. That this false statement to cover the arrest of the Notary Moran for FELONY misconduct in creating FORGED documents etc. tries to minimize the truth instead of embrace what is already factual information that these were FELONY crimes. That further, the misconduct he is aware of through ELIOT'S pleadings is far greater than these six documents that were forged, in fact they are only a part of much larger fraud on the Estate Beneficiaries as already described herein and in ELIOT'S prior pleadings.

422. That A. SIMON claims,

17) I never had custody or control of the Wills, Trusts or insurance policies of Simon or Shirley Bernstein including the Bernstein Trust Agreement.

423. That ELIOT states that A. SIMON would not have searched his Law Firms Offices for these documents as stated in his Amended Complaint if he never had possession, these are more reasons he will be called as a material and fact witness in these matters creating Adverse Interests.

424. That A. SIMON claims,

18) I am unaware of the existence of any facts or circumstances which would prevent me from continuing my representation of all of my clients and myself, free from any conflict of interest or other disqualifying factor.

(See Affidavit of Adam M. Simon attached hereto and made a part hereof as Exhibit I.)

425. That ELIOT states it would be hard for one to find oneself guilty and turn oneself in, so I am not sure what his belief matters to this Court and this sounds like a self-vindication of sorts and ELIOT will await Your Honor's call on any other disqualifying factors present.

**ELIOT COMMENTS ON A. SIMON'S STANDARD OF REVIEW**

426. That A. SIMON claims,

ELIOT has failed to set forth a standard of review in his motion. In case law cited herein, court's are required to base their findings of fact regarding a motion to disqualify on evidentiary hearings, or at a very minimum sworn affidavits. ELIOT has attached no sworn affidavit to his motion and has shown no reasonable cause for an evidentiary hearing. Thus, there are no facts of record regarding my representation nor any disqualifying factors. Absent a factual record, this court cannot make the requisite finding of facts for ELIOT to prevail on his motion. For this reason alone, ELIOT's motion must be denied.

But, the following guidance is instructive regarding how a court should view a motion to disqualify:

"...we also note that disqualification, as a prophylactic device for protecting the attorney/client relationship, is a drastic measure which courts should hesitate to impose except when absolutely necessary. A disqualification of counsel, while protecting the attorney/client relationship also serves to destroy a relationship by depriving a party of representation of their own choosing. (citations omitted) We do not mean to infer that motions to disqualify counsel may not be legitimate and necessary; nonetheless, such motions should be viewed with extreme caution for they can be misused as techniques of harassment. Freeman v. Chicago Musical Instrument Co., 689 F.2d 715, 721 (7th Cir. 1982)."

In a separate opinion, the court put it this way:

Disqualification is a drastic measure that courts should impose only when absolutely necessary. Mr. Weeks, as the movant, has the burden of showing facts requiring disqualification. Weeks v. Samsung Heavy Industries Co., Ltd. 909 F.Supp. 582 (N.D. Ill., 1996)

In Freeman, supra, the court rejected movant's motion to disqualify because the movant failed to provide a factual record to determine whether the attorney at issue in that case knew confidential information regarding the opposing party that would justify disqualification. In

Weeks, supra, the court ultimately rejected movant's motion to disqualify because the movant's grounds for disqualification were based on "bald assertions unsupported by either an affidavit or evidence." Weeks, 909 F.Supp. at 583.

427. That whether ELIOT filed his Motion properly or not is not of concern until this Court determines if A. SIMON filed this Lawsuit properly in the first place. The Court should act on its own Motion to dismiss this Lawsuit and award a default judgment against Plaintiffs for filing a frivolous Lawsuit. That if this Court needs an Affidavit, please so state and ELIOT will waste more time and money responding to this hoax of a Lawsuit.

428. That A. SIMON claims,

A. ELIOT'S Third-Party claims and motion to disqualify violate Fed. R. Civ. Pro. 11 in that they were filed for improper purposes and are not well grounded in fact or law. Fed. R. Civ. P. 11(b) provides in pertinent part as follows: Representations to the Court. By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it  
an attorney or unrepresented party certifies that to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:  
(1) It is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;  
(2) the claims, defenses and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law;  
(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigations or discovery;  
and  
(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

429. That ELIOT has filed his claims based on factual information chalk full of evidentiary support evidencing that this Lawsuit is a Fraud on this Court and Fraud on the Beneficiaries

of S. BERNSTEIN'S Estate. That ELIOT will also rely on the entire arguments for dismissal of Defendant JACKSON'S well stated legal grounds at the January 13, 2014 Hearing and hereby incorporates that Hearings transcript and Alexander "Alex" David Marks, Esq. brilliant and reasons and rational for tossing this Lawsuit stated in perfect legalese and of course, Your Honor's own demand for proof of a valid Plaintiff, Trustee and Defendant in the Lawsuit as solid grounds for dismissal and disqualification.

430. That A. SIMON claims,

On December 22, 2013, I sent a letter to ELIOT reminding him that the court had previously admonished him regarding a motion to disqualify and the requirement for such a motion to comply with Rule 11. I further stated my belief that his motion to disqualify and strike pleadings violated Rule 11, and I provided an opportunity for him to withdraw the motion. Despite the warnings he received, ELIOT has chosen to pursue his motion.

431. That ELIOT does not recall the Court admonishing him regarding a motion to disqualify and perhaps the Court can refresh ELIOT'S memory. ELIOT does however remember Your Honor admonishing A. SIMON for filing a lawsuit without a legally qualified Plaintiff and growing weary at the attempts to now manufacture one from thin air. Again, since A. SIMON is conflicted in his multiple roles, acting as a defendant, counsel and self-counsel, his self-aggrandized opinions matter little and his "warnings" and veiled threats matter less. ELIOT threw the letter in the garbage after reading it, for what it was worth.

432. That A. SIMON claims,

B. ELIOT'S motion is devoid of a factual record and thus his motion is not well grounded in fact. Although it is difficult to discern from his motion, ELIOT seems to be arguing that the complaint I filed on behalf of my clients is groundless and baseless. If that were so, ELIOT has opportunities to attack the pleading, but instead he has chosen to attack me.

ELIOT asserts that my involvement in alleged misconduct relating to the probate of his parents' estates (the "Estates") prohibit me from representing my clients. ELIOT'S motion is full of libelous innuendo but devoid of any facts that illustrate misconduct or any participation in the probate proceedings on my part.

In contrast, my attached affidavit contains my sworn denials of any involvement in the probate matters in Palm Beach County, including any involvement in alleged misconduct.

Absent a factual record from which this court can render a decision, ELIOT'S motion must fail.

433. That ELIOT has not attacked A. SIMON, he has stated multiple grounds for his disqualification and reporting to State and Federal Authorities for a host of Felonious acts.

434. That A. SIMON claims,

C. ELIOT'S motion fails to set forth a legal standard or authority necessary for the court to grant the relief he has requested. Thus, his motion is not well grounded in law.

ELIOT's third-party claims, counterclaims, and motion to disqualify and strike pleadings, merely recite ELIOT's theories and positions but fail to establish that there are a set of facts which exist that would entitle him to the relief he demands as a matter of law. Instead of setting out the facts and law for the court, he proffers theory and innuendo, stating that this is "my position" and then asking the court to investigate and figure out whether his "position" has any merit.

435. That ELIOT has established that when there is no beneficiary at the time of death, the law mandates the proceeds of the insurance policy are paid to the Insured and therefore all the Estate Beneficiaries are established as beneficiaries and would have been paid long ago without these continued and ongoing schemes to defraud HERITAGE, JACKSON, this Court and the Estate Beneficiaries, through scheme after failed scheme.

436. That A. SIMON claims,

D. ELIOT's counterclaim was manufactured for the improper purpose of disqualifying me and denying my client's their choice of counsel. In so doing, he is attempting to needlessly increase the expense of litigation.

As noted in Freeman, supra, granting a motion to disqualify “destroys a relationship by depriving a party of representation of their own choosing”. The clients I represent in this matter have chosen to act jointly, in large part, to efficiently prosecute their common claims while reducing the associated legal fees and costs. ELIOT’s efforts appear to be targeted to increase the expense and time needed for all parties to resolve this matter.

437. That it appears A. SIMON is admitting that he is conflicted but claiming ELIOT made the conflicts somehow.
438. That ELIOT does intend to deprive Plaintiffs of conflicted counsel and does not think they will be able to retain non-conflicted counsel that will pursue this frivolous, vexatious, felonious and harassing Lawsuit. That the Court should bear in mind that THEODORE, according to JACKSON, was advised by counsel prior to A. SIMON that he had no basis in law to file this action and this is why he turned to his conflicted brother-in-laws law firm who has substantial interest to gain from this Lawsuit.
439. That A. SIMON claims,

E. ELIOT’S counterclaim and motion were manufactured for the improper purposes of harassment and attempting to cause harm to my reputation and those of my clients. ELIOT is currently utilizing this same abusive litigation tactic in the Probate proceedings in Palm Beach County, FL. On or about January 2, 2014, ELIOT filed a motion in the probate estate of Simon Bernstein styled as follows:

**MOTION TO:**

- (I) **STRIKE ALL PLEADINGS OF MANCERI AND REMOVE HIM AS COUNSEL;**
- (II) **FOR EMERGENCY INTERIM DISTRIBUTIONS AND FAMILY ALLOWANCE;**
- (III) **FOR FULL ACCOUNTING DUE TO ALLEGED THEFT OF ASSETS AND FALSIFIED INVENTORIES;**
- (IV) **NOT CONSOLIDATE THE ESTATE CASES OF SIMON AND SHIRLEY BUT POSSIBLY INSTEAD DISQUALIFY YOUR HONOR AS A MATTER OF LAW DUE TO DIRECT INVOLVEMENT IN FORGED AND FRAUDULENTLY NOTARIZED DOCUMENTS FILED BY OFFICERS OF THIS COURT AND APPROVED BY YOUR HONOR DIRECTLY;**

(V) **THE COURT TO SET AN EMERGENCY HEARING ON ITS OWN MOTION DUE TO PROVEN FRAUD AND FORGERY IN THE ESTATE OF SHIRLEY CAUSED IN PART BY OFFICERS OF THE COURT AND THE DAMAGING AND DANGEROUS FINANCIAL EFFECT IT IS HAVING ON PETITIONER, INCLUDING THREE MINOR CHILDREN AND IMMEDIATELY HEAR ALL PETITIONER'S PRIOR MOTIONS IN THE ORDER THEY WERE FILED.**

(See excerpts from ELIOT'S 68 page motion in the Probate proceedings in Palm Beach County, attached to Adam Simon's Affidavit as Exhibit B, at p.2).

In the motion, ELIOT demands from the probate court a myriad of relief including not only disqualifications of a number of attorneys, but also the judge, himself. ELIOT's motions are designed to harass the court, and its officers. Where there has been alleged misconduct in the probate proceedings it is my understanding that such misconduct has been reported to both the authorities and the court.

440. That ELIOT'S efforts to remove the conflicted and feloniously acting counsel in the estate courts has paid off, as Attorneys at Law, SPALLINA, TESCHER and MANCERI have all resigned as counsel and submitted Withdrawal of Counsel papers to the courts. SPALLINA and TESCHER are further withdrawing as Co-Personal Representatives / Executors.

441. That the FELONY misconduct discovered was only reported to authorities through ELIOT and CANDICE'S excellent forensic work and discovery of FORGERY and FRAUDULENT NOTARIZATIONS, it is not like anyone came forward and confessed.

442. That A. SIMON claims,

One of the main reasons ELIOT files such motions is in an attempt to freely slander and libel anyone whom he confronts that does not do what he says when he says its. In his motion, ELIOT states about my client, Ted Bernstein, and Tescher and Spallina, the former attorneys or Simon and Shirley Bernstein and their Estates as follows:

12. That due to the Proven and Admitted Felony acts already exposed and being prosecuted, the ongoing alleged criminal acts

taking place with the Estates assets, the fact that Spallina and Tescher are responsible not only for their alleged criminal acts involving Fraud on this Court and the Beneficiaries but are wholly liable for the FELONY acts of Moran of FORGERY and FRAUDULENT NOTARIZATIONS, is just cause for all of the fiduciaries of the Estates and Trusts and counsel thus far be immediately removed, reported to the authorities and sanctioned by this Court. This disqualification and removal is further mandated now as Theodore, Spallina, Manceri and Tescher all have absolute and irrefutable Adverse Interests now with Beneficiaries and Interested Parties, especially Petitioner who is attempting to have them prosecuted further for their crimes and jailed and all their personal and professional assets seized through civil and criminal remedies and their reputations ruined for their criminal acts against his Mother and Father's Estates and Trusts." (emphasis added.)

(See Exhibit B attached to Adam Simon's Affidavit at par. 12). ELIOT'S bold-faced, glaring description of his own malicious intent proves beyond doubt his contempt for the judicial system, officers of the court, and members of his own family. ELIOT even has the audacity to demand from the probate judge, that he rule on all of ELIOT'S previously filed and pending motions in the "order they were filed." (See Exhibit B at pg. 2 of 68, attached to Adam Simon's Affidavit).

443. That ELIOT neither retracts nor redacts any of these claims as they are true but notes that A. SIMON is defaming and slandering him by stating this is ELIOT'S intent when defamation and slander are defensible with TRUTH and ELIOT has only told the truth in these matters and all matters to the best of his ability. A. SIMON as with this whole Lawsuit has provided nothing but hot air, false statements and insufficient pleadings and now seasoned with an assault on ELIOT.
444. That ELIOT does intend on dragging those involved in the heist of the Estates assets through their violations of their Attorney Conduct Codes and State and Federal Law through the mud and further have them incarcerated for their felonious misconduct and disbarred to prevent this from happening to others.



445. That ELIOT claims if A. SIMON feels defamed or slandered as an Attorney at Law why has he not taken legal action against ELIOT. Otherwise this claim is more hot air and an attempt to slander and defame ELIOT without reason or merit and further cause for removal.

446. That A. SIMON claims,

In ELIOT's motion to disqualify and strike pleadings pending before this court, ELIOT states in pertinent part as follows: Defendant, A. SIMON, can no longer be unbiased either 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." (Dkt. #58 at Par. 70). ELIOT spews such false allegations with malicious intent and to cause harm. I, for one, can no longer permit ELIOT to wreak havoc in this litigation free from fear of any meaningful sanction. Which is why, if the court denies ELIOT's motion to disqualify me, I shall file a separate motion seeking sanctions from the Court that will include, but are not limited to, withdrawal of ELIOT's filing privileges absent leave of the court for each pleading and/or motion he desires to file in this matter in the future.

447. That A. SIMON should worry not about sanctioning ELIOT with his superpowers but worry more about being sanctioned for filing a Lawsuit so void of legal standing as to make it precedent setting as an example of what not to do when filing a Lawsuit taught in Law School 101. That this Lawsuit may also be precedent setting and model for the Law School 201 class on Ethics and how Lawsuits can be misused for criminal acts by Attorneys at Law through toxic, frivolous, vexatious abuse of process pleadings that may land them in jail. A. SIMON should worry more that this Fraud on a US District Court to commit Insurance Fraud will land him in prison soon than ELIOT'S filing privileges he so desperately wishes to revoke and avoid.

448. That the Court should note that what spews from A. SIMON throughout his response has not one factual example of anything he claims, while he dodges all allegations in the ELIOT'S

filing to remove him for his wrongdoings in filing this Lawsuit that is filled with factual Prima Facie evidence of the crimes alleged against A. SIMON and other defendants.

449. That A. SIMON claims,

G. ELIOT'S motion is styled as a motion to disqualify and strike pleadings actually seeks relief well beyond that. ELIOT, in his motion to disqualify and strike pleadings seeks a myriad of relief from this court far too extensive to regurgitate in full. Suffice to say however, that his demand for \$8 million from me, in a motion to disqualify, provides additional irrefutable evidence that he has filed this motion for an improper purpose. The number \$8 million is tossed about by ELIOT with total disregard for me or this court because he does so without a shred of evidence to support it.

450. That ELIOT has sought eight million dollars of damages, as the Lost or Suppressed Policy Appears to be \$2,000,000.00. Since no policy has been provided to prove this amount for certain it is only an assumption at this time and could in fact be much larger. Since no beneficiaries can be proven on the actual Policy, as that information appears suppressed and denied, again apparently to intentionally deny the True and Proper Beneficiaries of the death benefits, ELIOT has concluded that the beneficiary may be him alone for two million or any of his children alone for the whole two million and thus since no one can legally prove otherwise these seem to be the extent of the damages caused by losing the policy and trusts from sloppy record keeping or alleged fraud by all of those involved in this frivolous Breach of Contract Lawsuit and responsible for these damages. Therefore, Eliot plus his children each could have been the sole beneficiary and thus each has been damaged for at least two million and thus 2 million times 4 is eight million dollars, which is the relief sought, I guess S. BERNSTEIN could have left it all to CANDICE, as SPALLINA claims immediately prior to his death S. BERNSTEIN had requested beneficiary change forms and was intending to

change the beneficiary to an unknown party. ELIOT will consider seeking leave to amend the complaint another \$2,000,000.00 for this potential.

451. That ELIOT has sought more for pain and suffering and this macabre scene created has cost ELIOT and his family much grief and sadness and financial distress and when it is family issues like this, it is treble damages emotionally and for the disgrace to ELIOT'S parents good name and good fortunes blessed upon their children, damaged by this toxic Lawsuit filed by A. SIMON and beyond what money damages can repair or relief this Court can grant.

452. That A. SIMON claims,

ELIOT's prayers for relief also demand that this court order all children and grandchildren of Simon Bernstein to seek their own separate counsel. Such a demand is designed solely to increase the cost and expense of this litigation beyond the point of any rational economic sense. Again, ELIOT makes these demands purportedly on behalf of relatives whom are not represented in this litigation, because they were not named by the Insurer in its interpleader action nor by any other party to the litigation. Also, neither ELIOT nor any of the relatives purportedly represents can offer any evidence or documentation that would support a claim to the Policy proceeds. That would explain their absence in this case.

453. That A. SIMON again fails to see that the Estate of the Insured is paid the proceeds when no beneficiary is present at time of death and here we are over a year after time of death and A. SIMON fumbles in Court to try and build a legally qualified beneficiary and has failed again and again to put forth any legal proof of his clients beneficial interests in the Lost or Suppressed Policy. With no legal Plaintiff and no legal Defendant in his Lawsuit the clients claims are WORTHLESS and ELIOT and the grandchildren who are beneficiaries of the Estates would be the beneficiaries of the Policy without such nonsense and paid long ago.

454. That A. SIMON knew all this being a seasoned Attorney at Law but choose to conceal these facts from the Court and the Estate beneficiaries with scienter.

455. That A. SIMON claims,

H. ELIOT'S motion violates the Northern District's Local Rules, LR 7.1 in that it exceeds page limitations without leave of the court.

LR 7.1. Briefs: Page Limit

Neither a brief in support of or in opposition to any motion nor objections to a report and recommendation or order of a magistrate judge or special master shall exceed 15 pages without prior approval of the court. Briefs that exceed the 15 page limit must have a table of contents with the pages noted and a table of cases. Any brief or objection that does not comply with this rule shall be filed subject to being stricken by the court.

ELIOT'S motion is over twice the length permitted by LR 7.1 and it was filed without leave of the court. In addition, the motion also contains over 125 pages of exhibits. Most of

ELIOT'S motion is devoted to the probate proceedings in Palm Beach County, Florida as opposed to the issues in the case at bar. In fact all of ELIOT's pleadings in this matter violate this rule.

ELIOT's 34 page motion to disqualify with over 120 pages of exhibits is likely the shortest pleading he has filed in this matter to date. For violating LR 7.1, ELIOT's motion should be stricken by the court.

456. That ELIOT prays that this is not the only defense, for he should not worry about page length violations when his whole Lawsuit is a violation not only of this Court's rules but of STATE and FEDERAL FELONY LAWS and based upon an Insurance Fraud Scheme.

#### **ELIOT'S COMMENTS ON A. SIMON'S CONCLUSION**

457. That A. SIMON claims,

ELIOT, as movant, had the burden of establishing the facts showing that the drastic remedy of disqualifying me as attorney for my clients is required in this instance. ELIOT failed to proffer any factual record in support of his motion. ELIOT also failed to articulate any legal authority supporting his motion and the myriad of relief he requests from this court. For all the foregoing reasons,

this court should deny ELIOT'S motion to disqualify and strike pleadings, in its entirety.

458. That ELIOT has said enough to have A. SIMON disqualified and arrested for FELONY FRAUD and more.
459. That if this Court so deems it necessary for ELIOT to more formally file a proper legal pleading to remove A. SIMON, than ELIOT seeks guidance from the Court in what is necessary to formalize and fix his Motion and allow time to Amend properly and fit all these crimes alleged into the page limits.

Wherefore, for all the reasons stated herein, ELIOT prays this Court remove A. SIMON from any legal representations for others before this Court and Disqualify him and remove all pleadings as improperly filed on behalf of a nonexistent legal entity, demand proof of his retainer agreement with the Lost or Suppressed Trust to act on its behalf and the rule a Default Judgment in favor of ELIOT. 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  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

Dated: Wednesday, February 5, 2014

**Certificate of Service**

The undersigned certifies that a copy of the foregoing Reply to Response to Motion to Remove Counsel was served by ECF to all counsel, and E-mail on Wednesday, February 5, 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)  
[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 a circular blue ink stamp. The signature is stylized and appears to be 'P. Simon'. The stamp is a circular pattern of fine lines.

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 FORM**





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

BOKA VILLAGE CORPORATE CENTER I  
1055 TECHNOLOGY WAY, SUITE 720  
BOKA RATON, FLORIDA 33431

ATTORNEYS  
DOMINIC R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GAZVANI

TEL: 561-997-7008  
FAX: 561-597-7338  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DUNN  
KIMBERLY MORAN  
SUZANN TESCHER

November 1, 2012

**VIA FEDERAL EXPRESS**  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32251

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*  
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

<b>FRAUD INFORMATION</b>
<p><b>For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:</b> 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.</p>
<p><b>For Residents of California:</b> 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.</p>
<p><b>For Residents of Colorado:</b> 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.</p>
<p><b>For Residents of Florida:</b> 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.</p>
<p><b>For Residents of Kentucky, Ohio and Pennsylvania:</b> Any person who knowingly &amp; 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 &amp; subjects such person to criminal and civil penalties.</p>
<p><b>For Residents of Maine, Tennessee and Washington:</b> 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.</p>
<p><b>For Residents of Minnesota:</b> A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.</p>
<p><b>For Residents of New Jersey:</b> Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.</p>
<p><b>For Residents of New Mexico:</b> 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.</p>
<p><b>For Residents of New York:</b> Please see the Signature section of this form.</p>
<p><b>For Residents of Puerto Rico:</b> 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 aggravating 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.</p>
<p><b>For Residents of All Other States:</b> 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.</p>

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, hypothetical name, no maiden, 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: Unavailable - no locate, policy is 30 years old

6. Deceased's Date of Death 04/12/12

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 2nd 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.

CGS012F Life Claimant Statement, 06/18/14, 1025/2014 Page 1

00086600 00002713

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 provisions in the policy or contact us at the trailing 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 reported 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 certification required to avoid backup withholding.

*[Signature]* Signature of Claimant and Title Date *11/1/12*  
Signature of Second Claimant, if any, and Title Date

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

30086860 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.

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**

(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 2006) for submission to the Internal Revenue Service.

Name of Trust <b>Simon Bernstein Irrevocable Insurance Trust</b>	Date of Trust Agreement <b>02/10/1995</b>
Date of all Amendments	Trust Tax ID Number <b>605-64-7890</b>
Printed Name of Trustee(s) <b>a Robert L. Spallina</b>	Signature(s)
b	
c	
d	

Spallina signs as trustee = FRAUD

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, FL 32251

Phone 800-825-0003 Fax 803-333-4936

Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

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October 9, 2012

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's 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



AWD History for Work object key 2012-10-14-10.38.59.016241T01

LIFE - DTHCLM - CLLEGAL - CLIENT - Updateable

- 1009208 - - BERNSTEIN - SIMON - 18 - SRD300014031

Social Security Num: [REDACTED] Policy Number: 1009208

Agent Number:

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: SMCD00L      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: 00000  
 Begin Time: 16:47:32      DTM Job Name:  
 User Id: SMCD00L      DTM Return Code:  
 Workstation Id:      DTM Task Name:  
 Business Area: LIFE      DTM Next Task:  
 Type: DTHCLM      End Date: 2013-01-17  
 Status: CUREVIEW      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: JWALKR      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

LASALLE 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 requested 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) P. Department of Insurance Notification  
Life Claimant Statement No RAA

JCK001290

DEC-15-2012 04:34PM FROM:TESCHER & SPALLINA #5616977208 T-834 P.001/003 F-336

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

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

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

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUZANN TESCHER

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

December 6, 2012

VIA FACSIMILE: 803-333-4936  
Attn: Broc  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32031

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

From: (351) 397-7008  
Kinross Motor  
TESSCHER & SPALLINI  
4855 Technology Way  
Suite 120  
BOCA RATON, FL 33431

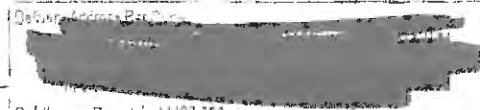
Origin ID: PHKA

FedEx



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Ship Date: 21DEC13  
A-1 Wgt: 1.9 LB  
CAD: 1344276/NET3300



SHIP TO: (800) 825-0603

BILL SENDER

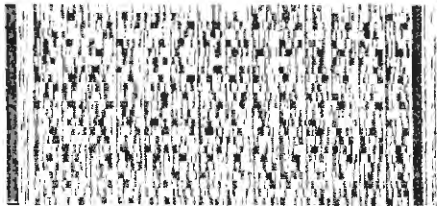
Claims Department  
Heritage Union Life Insurance Compa  
1275 Sandusky Road

JACKSONVILLE, IL 62651

Ref # Bernstein 11187 508  
Invoice #  
PO #  
Dept #

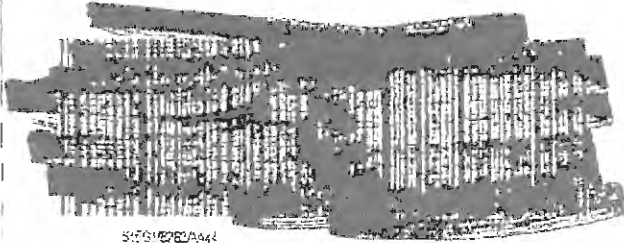
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62651  
IL US  
STL



5/5/14 12:23:44


JFK001308

**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)

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**EXHIBIT 2 --  
P. SIMON NOTE AND LAWYER LETTER TO HER FATHER**



TEXT OF PAM'S NOTES 1 & 2

January 2012

Dear Dad,

Please read the attached letter and information. I am hopeful that you truly just don't know how much cutting me, Scoot [David Simon, Esq. proper name], Molly and Ted's family out of your will hurts us. It has nothing to do with money. In fact, I think you need to take care of ELIOT, using a trustee, first and foremost.

The act of disinheriting a child is unheard of and unimaginable. It is outrageous and considered psychologically violent. I am hopeful you are not aware of this and that you will make the changes necessary.

Love Pam

January 2012

Dear Dad,

Please read the attached letter and information. I am hopeful that you truly just don't know how much cutting me, Scott, Milly, and Ted's family out of you will hurt us. It has nothing to do with money. In fact, I think you need



to take care of Eliot, using a trustee,  
first and foremost.

The act of disempowering a child is  
unheard of and unimaginable. It is  
outrageous and considered psychologically  
violent. I am hopeful you are not  
aware of this and that you will  
make the changes necessary.

Love,  
Jim

# Heriaud & Genin, Ltd.

Attorneys At Law

161 North Clark Street - Suite 3200

Chicago, Illinois 60601

Fax: (312) 616-1808

Tamar S.P. Genin  
(312) 616-1806  
tspg@hgtrustlaw.com

Simon's hand notes and underlines on the document.

November 28, 2011

Ms. Pamela B. Simon  
950 North Michigan Avenue  
Apt. 2603  
Chicago, Illinois 60611

Dear Pam:

Please accept my apologies for my delay in sending you this letter. I had meant to send it to you soon after we spoke about my discussions with your parents' estate planning attorney, Robert Spallina. I know that it came as a shock when I told you that I was informed by Mr. Spallina that you, Ted and your respective family lines have not been provided for under your parents' estate plan and that your other three siblings have been provided for. Therefore, I thought that this follow-up letter was important.

As you may recall, I wrote to Mr. Spallina to request copies of your mother's Will, Trust and related financial information so that we could factor in a projected value of your remainder interest in your mother's Trust and analyze whether we should make any revisions to your and Scooter's estate plan in light of your mother's passing. We followed up with him after not receiving the requested information. In the end, I received an email from him in which he wrote "Please call me."

During my discussions with Mr. Spallina, he told me that you, Ted and your family lines were treated as "deceased" under your mother's trust because you and Ted were active in the businesses, and that each of you received a business as a gift from your parents. Mr. Spallina went on to say that your parents thought that they had adequately provided for you and Ted as a result of the gift of the business interests and that they wanted to provide for the other three children under their estate plan. I listened to what Mr. Spallina said. However, I knew based on our series of discussions over the years that, in fact, you did not receive any gift of a business interest from your parents.

*So to Pam FREE*

Following is my understanding of the circumstances under which you obtained your father's interest in S.T.P. Enterprises, Inc. ("STP"), which I understand can be supported by documentation:

- You and Scooter "stepped-in" and took over the running of Si's businesses (including SB Lexington, Cambridge Associates and others) following your father's open heart surgery at Northwestern in February of

*all B/S*

Ms. Pamela B. Simon  
November 28, 2011  
Page 2

1987, where he also contracted Hepatitis C and was told that he could no longer work full time. Following this, Si moved full time to Florida. He traveled to Israel later that year and contracted pneumonia.

- Upon reviewing the books, you and Scooter realized that Si's businesses were failing, an employee was stealing money and Si owed millions of dollars in unpaid bills and unpaid debt. In addition, you were receiving call after call from various banks asking for repayment.
- At that time, the ALPS was in its infancy. The promoter/agency was Cambridge Associates, owned 50% by Dov Kahana and 50% by Si with the positive arbitrage owned 25% by each of Cambridge, KGN, Bruce Nickerson and Scooter.
- In August 1988, Dov was exposed by you, and you and Scooter bought out Dov's 50% share for \$3,300/month for 3 years and re-formed STP to own and market the ALPS.
- The first ALPS funding was on October 25, 1988. Even though your father was not involved in the day-to-day operations of STP, and you and Scooter were buying out Dov, your father insisted on owning a 50% share in STP, with each of you and Scooter receiving a 25% share.
- To protect your reputation and save Si from bankruptcy, you and Scooter decided to work 7 days a week and to forgo receiving most of your share of the net income from the business for a number of years to turn Si's situation around. During this time, however, your father continued to receive his 50% share of the net income and had his debt re-financed and re-paid by STP.
- Ultimately you and Scooter were compelled to buy your father out because he was doing business in Florida on behalf of others in a manner that was jeopardizing the relationships that you and Scooter had made through your efforts. You and Scooter paid top dollar (\$6.5 million) to buy out your father's interest after the two of you had turned STP into a success. Although neither you nor Scooter thought that such a large sum was reasonable, you felt good knowing that it should take care of him and your mother for life.
- Just months after you purchased your father's interest in STP, you discovered that your father was doing business in direct competition with STP and utilizing STP information on his web page.

In addition, I recall based on our discussions that you and Scooter decided to help your parents by purchasing their Chicago condominium after they decided to move to St. Andrews. I understand that the two of you paid above full price with no

**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 CO., )

Defendant. )

---

HERITAGE UNION LIFE INSURANCE CO., )

Counter-Plaintiff, )

v. )

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

Counter-Defendant, )

FIRST ARLINGTON NATIONAL BANK, et al., )

Third-Party Defendants. )

---

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff, )

v. )

TED BERNSTEIN, )

Cross-Defendant, )

PAMELA B. SIMON, et al., )

Third-Party Defendants. )

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Case No. 13 C 3643

Judge Amy St. Eve

## **ORDER**

The Court, in its discretion, denies pro se Cross-Plaintiff Eliot Bernstein's motion to disqualify Plaintiffs' counsel and to strike the pleadings [63].

## **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 their First Amended Complaint, Plaintiffs allege a breach of contract claim against Defendant based on Defendant's failure to pay Plaintiffs proceeds from the life insurance policy of decedent Simon Bernstein. Before the Court is pro se Cross-Plaintiff Eliot Bernstein's ("Eliot") motion to disqualify Plaintiffs' counsel and to strike the pleadings. For following reasons, the Court, in its discretion, denies Eliot's motion.

## **BACKGROUND**

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit, the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are all of Simon Bernstein's children, including Eliot, although Eliot did not consent to being a Plaintiff in this lawsuit. (*Id.* ¶¶ 5, 8.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

On June 26, 2013, Jackson filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. 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.) Meanwhile, it is undisputed that no one has been able to locate a fully executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

On September 22, 2013, Eliot filed pro se Cross-Claims against Ted Bernstein and Plaintiffs' counsel Adam Simon, among others. (R. 35, Cross-Claim.) Construing his pro se allegations liberally, *see Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013), Eliot alleges claims of fraudulent conversion, breach of fiduciary duty, legal malpractice, abuse

of the legal process, common law conversion, civil conspiracy, and negligence in connection with the administration of Simon Bernstein's Estate in the Probate Court of Palm Beach County, Florida.

## **I. Motion to Disqualify Plaintiffs' Counsel**

### **A. Legal Standard**

When determining a motion to disqualify counsel, courts must strike a balance between two important considerations — “the sacrosanct privacy of the attorney-client relationship (and the professional integrity implicated by that relationship) and the prerogative of a party to proceed with counsel of its choice.” *Schiessle v. Stephens*, 717 F.2d 417, 419-20 (7th Cir. 1983). Disqualification of an attorney is a “drastic measure which courts should hesitate to impose except when absolutely necessary.” *Id.* at 420. Motions to disqualify should be “viewed with extreme caution for they can be misused as techniques of harassment.” *Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 722 (7th Cir. 1982). The moving party has the burden to establish facts warranting attorney disqualification. *See Black Rush Min., LLC v. Black Panther Min.*, 840 F.Supp.2d 1085, 1090 (N.D. Ill. 2012). Moreover, district courts have broad discretion in determining whether to disqualify counsel. *See Hutchinson v. Spanierman*, 190 F.3d 815, 822 (7th Cir. 1999).

### **B. Analysis**

In his motion, Eliot argues that the Court should disqualify Plaintiffs' counsel Adam Simon and his law firm because it “appears” that counsel has personal feelings and emotions involving Eliot that interfere with counsel's ability to act independently and without malice toward Eliot. Also, Eliot bases his disqualification argument on the fact that he has named Adam Simon and his law firm as Cross-Defendants in the present matter. Eliot's claims against these Cross-Defendants are based on Adam Simon filing the present lawsuit instead of submitting this dispute to the Probate Court of Palm Beach County in conjunction with Simon Bernstein's Estate.

Typically, motions to disqualify are premised on an attorney's prior representation of a client in relation to counsel's present representation of another client and whether the matters are “substantially related.” *See Westinghouse Elec. Corp. v. Gulf Oil. Corp.*, 588 F.2d 221, 223 (7th Cir. 1978) (“Where an attorney represents a party in a matter in which the adverse party is that attorney's former client, the attorney will be disqualified if the subject matter of the two representations are ‘substantially related.’”). More specifically, “‘substantially related’ boils down to whether the lawyer could have obtained confidential information in the first representation that is potentially relevant in the second.” *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263, 1266 (7th Cir. 1983).

Here, Eliot's disqualification motion is based on Adam Simon's conduct in the present lawsuit as it relates to Simon Bernstein's Estate — not any previous representation of Eliot —

which calls into question whether Eliot has standing to bring the present motion to disqualify because he is a third-party to the attorney-client relationship at issue. Although district courts in this Circuit have concluded that a third-party to the attorney-client relationship has standing to bring a motion to disqualify, the third-party must provide evidence “clearly calling into question the fair or efficient administration of justice.” See *Tizes v. Curico*, No. 94 C 7657, 1997 WL 116797, at \*2 (N.D. Ill. Mar. 12, 1997) (Williams, J.); see also *Rudzinski v. Metropolitan Life Ins. Co.*, No. 05 C 0474, 2007 WL 3171338, at \*4 (N.D. Ill. Oct. 25, 2007) (“courts in this Circuit largely have ... found that a third party has standing to move to disqualify opposing counsel only if it has ‘evidence clearly calling into question the fair or efficient administration of justice.’”); *Emmis Operating Co. v. CBS Radio, Inc.*, 480 F.Supp.2d 1111, 1116 (S.D. Ind. 2007) (collecting cases).

Eliot has not presented any evidence that calls into question the fair or efficient administration of justice in the present matter to support his motion to qualify. Instead, Eliot attaches various unauthenticated documents concerning the Bernstein Trust, the life insurance policy, emails, and other materials regarding the probate proceedings in Palm Beach County. See *Devbrow v. Gallegos*, 735 F.3d 584, 587 (7th Cir. 2013); Fed.R.Evid. 901. Moreover, none of these documents speak to Adam Simon or his representation in this matter. In addition, Eliot’s motion and legal memoranda are not verified pursuant to 28 U.S.C. § 1746, therefore, Eliot bases his motion on bare-boned allegations that Adam Simon facilitated insurance fraud in connection with bringing this lawsuit. Without more, Eliot has not provided sufficient evidence that clearly calls into question the fair or efficient administration of justice, and thus he does not have standing to bring the present motion to disqualify. Therefore, the Court denies his motion to disqualify Plaintiffs’ counsel.

## **II. Motion to Strike the Pleadings**

### **A. Legal Standard**

Next, Eliot moves to strike Plaintiffs’ pleadings, which is governed by Federal Rule of Civil Procedure 12(f). “Rule 12(f) provides that a district court ‘may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.’” *Delta Consulting Group, Inc. v. R. Randle Const., Inc.*, 554 F.3d 1133, 1141 (7th Cir. 2009) (quoting Fed.R.Civ.P. 12(f)). District courts have considerable discretion to strike allegations under Rule 12(f). See *id.* at 1141-42.

### **B. Analysis**

In support of his motion to strike the pleadings, Eliot gives his version of the proceedings in the Probate Court of Palm Beach County, including the proceedings regarding his mother’s estate. According to Eliot, the alleged misconduct in probate court involves Robert Spallina, his parent’s estate planner and attorney, as well as Spallina’s law firm and its staff. In this context, Eliot maintains that because the Bernstein Trust is lost, the insurance policy proceeds should be paid to the Simon Bernstein Estate in the Probate Court of Palm Beach County. In essence,

Eliot's motion to strike is a motion to dismiss this lawsuit and remand it to the Probate Court of Palm Beach County. Not only does the Court lack jurisdiction to remand this matter to the Florida probate court, but Eliot's motion seeks a final determination of the merits of Plaintiffs' claims, which is a remedy the Court cannot grant at this procedural posture. To clarify, Eliot's pro se status does not absolve him from complying with the federal and local procedural rules. *See Pearle Vision, Inc. v. Romm*, 541 F.3d 751, 758 (7th Cir. 2008). As the Supreme Court instructs, "we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. United States*, 508 U.S. 106, 113, 113 S.Ct. 1980, 124 L.Ed.2d 21 (1993). Accordingly, Eliot, just like other civil litigants, must follow the procedural rules and bring the proper dispositive motions at the appropriate time. In addition, Eliot must follow the Northern District of Illinois Local Rules, such as Local Rule 7.1, in which he must ask for leave of court before filing a brief over fifteen pages long. His memorandum in support of the present motion is over 60 pages long and his reply brief is approximately 132 pages long.

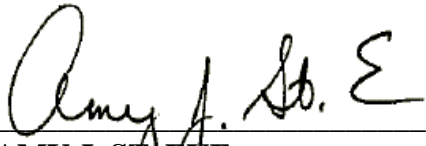
Moreover, Eliot's memoranda in support of the present motion is filled with accusations and allegations that he has also brought in the Probate Court for Palm Beach County regarding the Simon Bernstein Estate and his mother's estate. (R. 35, Ex. 1, Probate Hr'g Tr.; R. 75-3, Ex. B, 1/04/14 Probate Motion.) As discussed, the Federal Rules of Civil Procedure apply to the present proceedings, including Rule 11, which grants the Court discretion to sanction a litigant's misconduct, including a pro se litigant's misconduct. *See Cooney v. Casady*, 735 F.3d 514, 518, 523 (7th Cir. 2013). Conduct that warrants Rule 11 sanctions includes filing claims that are frivolous or malicious, filing legally baseless claims, or bringing claims for an improper purpose, such as for the purpose of harassing parties or counsel. *See Fabriko Acquisition Corp. v. Prokos*, 536 F.3d 605, 610 (7th Cir. 2008); *Brunt v. Serv. Emp. Int'l Union*, 284 F.3d 715, 721 (7th Cir. 2002); *Independent Lift Truck Builders Union v. NACCO Materials Handling Grp., Inc.*, 202 F.3d 965, 968-69 (7th Cir. 2000). Rule 11 sanctions can include monetary fines, fees, expenses, or non-monetary sanctions. *See Fed.R.Civ.P. 11(c)(4)*; *United States Bank Nat'l Ass'n, N.D. v. Sullivan-Moore*, 406 F.3d 465, 471 (7th Cir. 2005) ("The district court has wide latitude to determine what sanctions should be imposed for a Rule 11 violation, and may impose non-monetary sanctions when appropriate to deter repetition of the offending conduct.").

In addition to Rule 11, "federal courts have the inherent power to impose a wide range of sanctions upon parties for abusive litigation," in "cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 799 (7th Cir. 2013) (citation omitted). In other words, "[s]anctions imposed pursuant to the district court's inherent power are appropriate where a party has willfully abused the judicial process or otherwise conducted litigation in bad faith." *Tucker v. Williams*, 682 F.3d 654, 661-62 (7th Cir. 2012). Under these circumstances, the sanction of dismissal is well within the district court's discretion. *See Salmeron v. Enterprise Recovery Sys., Inc.*, 579 F.3d 787, 793 (7th Cir. 2009).



As this case proceeds, the Court expects the litigants to act according to their Rule 11 obligations.

**Dated:** February 6, 2014

  
\_\_\_\_\_  
**AMY J. STEVE**  
**United States District Court Judge**

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

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

Case No. 13-cv-3643

**SECOND AMENDED NOTICE OF REMOVAL OF DEFENDANT  
HERITAGE UNION LIFE INSURANCE**

Defendant, Heritage Union Life Insurance Company ("Heritage"), by and through Jackson National Life Insurance Company ("Jackson") as successor in interest to ReAssure America Life Insurance Company, reinsurer of Heritage's subject policy, and as administrating and servicing agent for Heritage, by and through its undersigned attorneys, files this Second 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 in the Law Division of the Circuit Court of Cook County, Illinois, docket number 2013-L-003498.

2. Heritage was served with the Complaint on April 17, 2013. Heritage'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 alleged as the trustee of the trust. Mr. Bernstein is a resident and citizen of Florida.

4. Heritage is a Minnesota corporation with its principal place of business in Wilton, Connecticut.

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. Heritage, through Jackson, 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, Heritage Union Life Insurance Company, by and through Jackson National Life Insurance Company as successor in interest to ReAssure America Life Insurance Company, reinsurer of Heritage's subject policy, and as administrating and servicing agent for Heritage, respectfully requests that this action proceed in this Court as an action properly removed hereto.

**Heritage Union Life Insurance Company,  
by and through Jackson National Life  
Insurance Company as successor in  
interest to ReAssure America Life  
Insurance Company, reinsurer of  
Heritage's subject Policy, and as  
administrating and servicing agent for  
Heritage,**

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 on February 11, 2014, he caused a copy of the foregoing Amended Notice of Removal 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

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue  
Suite 1304  
Chicago, Illinois 60602

/s/ Alexander D. Marks

1595825.1

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

2013 MAY -5 11:15 AM  
Clerk of Court  
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.

Case: 1:13-cv-03643 Document #: 1-1 Filed: 05/16/13 Page 3 of 5 PageID #:6

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

Case: 1:13-cv-03643 Document #: 1-1 Filed: 05/16/13 Page 5 of 5 PageID #:8

2120 - Served  
2220 - Not Served  
2320 - Served By Mail  
2420 - Served By Publication  
SUMMONS

2121 - Served  
2221 - Not Served  
2321 - Served By Mail  
2421 - Served By Publication  
ALIAS - SUMMONS

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

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

(Name all parties)

\_\_\_\_\_  
\_\_\_\_\_  
y.  
\_\_\_\_\_



ATTEST  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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: 5/17 2013  
(To be inserted by officer on copy left with defendant or other person)

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**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, )

Plaintiffs, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

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

----- )  
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. )

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. )

**HERITAGE'S RULE 12(b)(6) MOTION TO DISMISS**

Defendant/Interpleader Counter-Plaintiff, Heritage Union Life Insurance Company ("Heritage"), by and through Jackson National Life Insurance Company ("Jackson"), as successor in interest to ReAssure America Life Insurance Company, reinsurer of Heritage's subject policy (the "Policy"), and as administrating and servicing agent for Heritage,<sup>1</sup> hereby

<sup>1</sup> The Policy, as further set forth below, was issued for insured Simon L. Bernstein, and a determination of the proper Policy beneficiaries is the subject of this dispute. Further, the relationship of the parties is set forth more fully in Heritage's Motion for Leave to Amend. [D.E. #87].

moves pursuant to Rule 12(b)(6) to be dismissed from this litigation having fulfilled all of its obligations as an interpleader, namely (a) joining all necessary parties with potential claims to the Policy's death benefit proceeds, and (b) depositing those proceeds with the registry of the Court. In support of this Motion, Heritage states as follows:

### **PROCEDURAL BACKGROUND**

The original plaintiff to this matter is the Simon Bernstein Irrevocable Insurance Trust Dtd, 6/21/95 (the "Bernstein Trust"). Ted S. Bernstein, who is one of several children of Simon Bernstein (the decedent and owner/insured of the Policy), has asserted that he is the Trustee of the Bernstein Trust. Upon Simon Bernstein's death (then a Florida resident), the Bernstein Trust asserted a claim as the purported beneficiary of the Policy. However, no executed copy of the Bernstein Trust could be located, raising proof issues as to the appropriate payee legally entitled to the proceeds, and issues as to who is the proper Trustee. In addition, Eliot Bernstein, another of Simon Bernstein's children, asserted a conflicting claim to the Policy proceeds on behalf of himself and his children.

On April 5, 2013, the Bernstein Trust preempted Jackson's discussed filing of an interpleader action in Florida and instead filed its complaint in the Law Division of the Circuit Court of Cook County, Illinois, case number 2013-L-003498, alleging breach of contract against Heritage for failing to pay it the policy death benefit as the alleged Policy beneficiary.<sup>2</sup> Heritage, through Jackson, timely removed the case to Federal Court.

On June 25, 2013, Heritage, through Jackson, tendered to the registry of the Court the Policy's death benefit proceeds, \$1,703,567.09, which included contractual interest at a rate of 4% from Simon Bernstein's date of death through June 25, 2013. [D.E. 16]. On June 26, 2013, Heritage, through Jackson, answered the complaint and filed a counterclaim and third-party

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<sup>2</sup> This resulted in Heritage serving as the interpleader counter-claimant, rather than, in most interpleader cases, as the plaintiff.

complaint for interpleader. [D.E. 17]. On October 16, 2013, Jackson produced over 1,300 pages of records (its entire file) relating to the Policy as part of its Rule 26(a) disclosures. Finally, on January 13, 2014, Plaintiff's complaint was amended [D.E. #73] to add counts for declaratory judgment (Count II), seeking a declaration as to proper policy beneficiaries, and for a resulting trust (Count III), including naming Simon Bernstein's remaining children as additional Plaintiffs as the purported beneficiaries of the purported resulting trust and as an alternative basis for the purported Bernstein Trust's entitlement to the Policy proceeds. Heritage now seeks dismissal from the suit.

### ARGUMENT

#### A. Heritage Has Satisfied Its Duties As Interpleader.

"Interpleader is an equitable procedure used when the stakeholder is in danger of exposure to double liability or the vexation of litigating conflicting claims. Courts have recognized two distinct stages for resolution of interpleader cases. During the first stage, the court determines whether the interpleader complaint was properly brought and whether to discharge the stakeholder from further liability to the claimants. During the second stage, the court determines the respective rights of the claimants to the interpleaded funds." *Metropolitan Life Ins. Co. v. Johnson*, -- F.Supp.2d --, 2012 WL 2192283, \*2 (N.D. Ill. June 13, 2012) (internal citations omitted). "Under Federal Rule of Civil Procedure 22(a) ..., '[p]ersons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.' ... A stakeholder may file an interpleader action to protect itself against potential, as well as actual claims." *Id.* (internal citations omitted).

Importantly, "an interpleader action permits a 'stakeholder who has no claim to the money in the accounts and is willing to release it to the rightful claimant, to put the money ... in

dispute into court, *withdraw from the proceeding*, and leave the claimants to litigate between themselves the ownership of the fund in court." *Id.* (citing *Commercial Nat'l Bank of Chicago v. Demos*, 18 F.3d 485, 487-88 (7th Cir. 1994) (emphasis in original). "The result is that the competing claimants are left to litigate between themselves, while *the stakeholder is discharged* from any further liability with respect to the subject of the dispute." *Id.* (internal citations omitted) (emphasis added).

In *Metropolitan*, MetLife received conflicting claims to the death benefits from a life insurance policy. After depositing the subject funds with the Clerk of the Court, the Court dismissed Met Life from the interpleader action and awarded it its reasonable costs. *Id.* Similarly, here, Heritage, through Jackson, has joined all necessary parties with potential claims (including Eliot Bernstein and various banks in their potential roles as trustee of the purported Bernstein Trust) and deposited the subject funds with the Clerk of the Court. Thus, it has satisfied all of its obligations as an interpleader and should be dismissed from the interpleader action.

B. Plaintiffs' Counterclaims Do Not Preclude Heritage's Dismissal.

Plaintiffs' amended complaint contains three counts: (1) breach of contract; (2) declaratory judgment; and (3) resulting trust. Count II seeks a declaration that the Bernstein Trust is entitled to the Policy death benefit proceeds (the same issue the Court will decide pursuant to Heritage's interpleader), and Count III seeks in the alternative, and based on there being no evidence of an executed Bernstein Trust, a declaration that a resulting trust was established that is entitled to the same Policy proceeds. Accordingly, only Count I, breach of contract, is directed at Heritage. That count alleges Heritage breached the Policy contract by failing to pay the Bernstein Trust the Policy proceeds. [Am. Compl., ¶¶26-27].

"When an interpleader is properly asserted, counterclaims seeking payment of the interpleaded funds are disallowed." *Metropolitan Life Ins. Co. v. Yitao Sun*, 2013 WL 4759586, \*6 (N.D. Ill. Sept. 4, 2013); *see also Daniels v. Equitable Life Assurance Soc. of the U.S.*, 35 F.3d 210, 214-15 (5th Cir. 1994) ("if the state court found that Equitable's interpleader was appropriate, Equitable cannot now be found to have breached a duty to Daniel by interpleading the funds"); and *Abstract & Title Guar. Co. v. Chi. Ins. Co.*, 2006 WL 1343860, \*4 (S.D. Ind. May 12, 2006) ("CIC cannot be liable to ATG for breach of contract because of its lawful commencement of the interpleader action").

In *Lutheran Brotherhood v. Comyne*, 216 F.Supp.2d 859 (E.D. Wis. 2002), an annuity holder filed an interpleader action to resolve its liability as to two competing potential beneficiaries. After depositing the annuity funds in dispute with the Clerk, the Court dismissed the holder, despite pending counterclaims against it:

The court recognizes that dismissing the plaintiff from this action will have the effect of also dismissing the counterclaims that the defendants have asserted. Such a result is justified. ... [T]he counterclaims of each defendant essentially object to the plaintiff's not having automatically paid the annuity proceeds to him or to her. Put differently, those counterclaims are essentially based on plaintiff's having opted to proceed via an interpleader complaint rather than having chosen from among competing adverse claimants. Courts have *consistently rejected such counterclaims* where, as here, the plaintiff was entitled to pursue interpleader relief.

*Id.* at 862-63 (emphasis added).<sup>3</sup>

Similarly, here, Plaintiffs' breach of contract claim (which preemptively was filed after Heritage, through Jackson, indicated it intended to file an interpleader), essentially objects to Heritage not having automatically paid the Policy proceeds to the alleged Bernstein Trust, instead opting to file an interpleader and joining all necessary parties with potential claim

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<sup>3</sup> *See also Williams v. Teachers Ins. and Annuity Assoc.*, 15 Ill.App.3d 542, 544 (1st Dist. 1973) (insurance company, after depositing funds with court, was dismissed from interpleader suit involving claim of a resulting trust).



interests, including Eliot Bernstein and various banking institutions (in their roles as potential trustees of the purported Bernstein Trust). Thus, like in *Lutheran Brotherhood*, such claim should be dismissed and does not prevent Heritage's dismissal as a party.

C. Heritage Owes No Further Interest Under the Policy

It is anticipated that Plaintiffs will object to such dismissal by arguing that Heritage may owe additional statutory interest under the Policy. Specifically, in the agreed order in which the Policy proceeds were tendered to the Court, Plaintiff retained "its rights to raise any further interest issues, including under the Illinois Insurance Code, 215 ILCS 5/224." [D.E. #16]. However, Heritage can owe no further interest under that statute because no determination has yet been made as to who the proper payee is, the existence of any purported Bernstein Trust, and the authority of any purported Trustee of that Trust, all of which serve as a predicate to statutory interest being owed.

Under Section 5/224(l), "[i]nterest shall accrue on the proceeds payable because of the death of the insured, from the date of death, at the rate of 10% annually on the totally amount payable ... *unless* payment is made within 31 days from the *latest of the following to occur*:

\*\*\*

- (2) the date that the company receives sufficient information to determine its liability, the extent of the liability, *and the appropriate payee legally entitled to the proceeds*; or
- (3) the date that legal impediments to payment of proceeds that depend on the action of parties other than the company are resolved and sufficient evidence of the same is provided to the company ... [including] ... the *appointment and qualification of trustees*...

215 ILCS 5/224(l)(2-3) (emphasis added). Here, this Court will determine who the appropriate payee is that is legally entitled to the proceeds, including resolving Plaintiffs' resulting trust count and associated issues regarding the existence of the Bernstein Trust and any corresponding

trustee. Thus, the condition(s) precedent to trigger Heritage's obligations under the statute the have not been met, and as the Policy proceeds have already been tendered to the Court, such eventual distribution from the Clerk to the proper payee pursuant to Court order will occur within 31 days of the Court making the aforementioned determinations.

**CONCLUSION**

WHEREFORE, Defendant / Interpleader Counter-Plaintiff Heritage Union Life Insurance Company, by and through Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, reinsurer of Heritage's subject Policy, and as administrating and servicing agent for Heritage, respectfully moves this Court to enter an order: (1) dismissing it as a party from this action, including dismissal all claims against it, with prejudice; (2) discharging it of all liability under the Policy; (3) awarding it its reasonable costs; and (4) providing such other and further relief as the Court deems just and proper.

**Heritage Union Life Insurance Company, by and through Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, reinsurer of Heritage's subject Policy, and as administrating and servicing agent for Heritage, Defendant/Interpleader Counter-Plaintiff,**

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)  
1584782.2

CERTIFICATE OF SERVICE

The undersigned, an attorney, states that on February 11, 2014 he caused to be filed electronically with the Clerk of the United States District Court for the Northern District of Illinois a copy of the foregoing Motion to Dismiss which is served electronically upon the following:

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

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue  
Suite 1304  
Chicago, Illinois 60602

/s Alexander D. Marks

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, February 12, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing held on 2/12/2014 and continued to 4/22/2014 at 08:30 AM. The Court hereby lifts the stay on discovery. Written discovery shall be issued by 2/28/14. Fact discovery shall be completed by 6/13/14. Third-party defendants shall answer or otherwise plead to Eliot Bernstein's third-party complaint [35] by 2/18/14. Response to any motion to dismiss third-party complaint shall be filed by 3/11/14. Reply by 3/18/14. 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).

4754/YK054

**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, )

Plaintiffs, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant. )

**Case No.: 13 CV 3643**

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HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Counter-Plaintiff, )

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

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 )  
 BENEIFT 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. )

**MOTION TO DISMISS THIRD-PARTY COMPLAINT**

Now come Third-Party Defendants Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina (collectively “Tescher & Spallina”), and respectfully move pursuant to Rule 12(b)(1), (2), and (6), to dismiss with prejudice the Third-Party Complaint filed by Eliot Ivan Bernstein (“Eliot”), and in support thereof state as follows:

**I. INTRODUCTION**

Despite attempting to file multiple pleadings in two probate proceedings in the Circuit Court of Palm Beach County, Florida, *In re Estate of Shirley Bernstein*, cause number

502011CP000653XXXXSB, and *In re Estate of Simon L. Bernstein*, cause number 502012CP004391XXXXSB (“the Florida Probate Actions”), Eliot has filed a rambling 70-page, 163-paragraph Third-Party Complaint against Tescher & Spallina and others in this interpleader action filed by Defendant/Third-Party Plaintiff Jackson National Life Insurance Company (“Jackson”), as successor in interest to Heritage Union Life Insurance Company (“Heritage”). Eliot’s pleading should be dismissed as to Tescher & Spallina because it is not a true third-party complaint at all under Rule 14, but simply a wrongful attempt to expand the scope of this interpleader action to encompass matters that come within the probate exception to federal subject-matter jurisdiction, as well as parties who do not come within the scope of this Court’s personal jurisdiction, such as Florida attorneys Tescher & Spallina. Moreover, even if the Court had jurisdiction over the matters and parties in Eliot’s pleading, his claims should be dismissed pursuant to the doctrine of *Colorado River* abstention because he improperly seeks to litigate matters that are pending in the Florida Probate Actions. Finally, despite its bulk, Eliot’s pleading fails to state a claim upon which relief can be granted as to Tescher & Spallina.

## **II. BACKGROUND**

Heritage had issued a life insurance policy to Simon Bernstein, who is deceased. (Doc. 17, ¶ 15.) The Simon Bernstein Irrevocable Insurance Trust and four of decedent Simon Bernstein’s five adult children filed this suit seeking the proceeds of the Heritage life insurance policy. (*See generally* Doc. 17, Doc. 73.) Jackson, which was responsible for administering the life insurance policy after inheriting it from Heritage, did not dispute that it owed someone the proceeds of the insurance policy. (Doc. 17, ¶¶ 23–27.) Rather, Jackson alleged that it did not know who was entitled to receive the proceeds. (*Id.*) Jackson therefore deposited the insurance proceeds with the Clerk of the Court and sought to be dismissed from this matter. (Doc. 94.)

Eliot, one of Simon Bernstein's sons, is among the potential beneficiaries of the policy, either as a beneficiary of the purported Bernstein Trust or as a named beneficiary of the policy. (Doc. 73, ¶ 8; Doc. 35, ¶ 5.) Rather than joining as a plaintiff or simply properly answering Jackson's interpleader action, Eliot filed his own cross-claims and third- or fourth-party claims against a number of persons including, but not limited to, his siblings, his siblings' attorney, and Tescher & Spallina. (*See generally* Doc. 35.) Eliot alleges a multitude of imagined claims relating to the administration of the Florida Probate Actions. (*Id.*) Eliot's claims should be dismissed because they are not proper third-party claims, do not come within this Court's subject-matter or personal jurisdiction, seek to litigate matters already before the courts hearing the Florida Probate Actions, and fail to state a claim upon which relief can be granted.

### **III. THIS COURT SHOULD DISMISS TESCHER & SPALLINA FROM THIS LAWSUIT**

#### **A. Eliot's Third-Party Complaint Is Unrelated To The Original Complaint**

This Court should dismiss Eliot's Third-Party Complaint pursuant to Rule 12(b)(6) because it is not a proper third-party claim. Rule 14 governs when a defendant seeks to assert claims against third-party defendants, providing in relevant part: "A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it." Fed. R. Civ. P. 14(a)(1). A third-party complaint presupposes liability on the part of the original defendant which it is attempting to pass onto the third-party defendant. *Parr v. Great Lakes Express Co.*, 484 F.2d 767, 769 (7th Cir. 1973); *MetLife Investors USA Ins. Co. v. Zeidman*, 734 F.Supp.2d 304, 310 (E.D.N.Y. 2010).

This case is exactly like *Zeidman*, where the court denied a defendant permission to file a third-party complaint in an interpleader action. Here, Jackson filed an interpleader action against Eliot, and therefore, Eliot is not facing any liability. Rather, as the *Zeidman* court observed, Eliot



“has the opportunity to seek to be awarded to the interpleaded funds,” *Zeidman*, 734 F.Supp.2d 304, 310, and therefore Tescher & Spallina cannot be said to be liable for the claims asserted against Eliot. *Id.* As a result, Eliot’s Third-Party Complaint must be dismissed.

### **B. There Is No Subject-Matter Jurisdiction**

This Court should dismiss Eliot’s Third-Party Complaint against Tescher & Spallina pursuant to Rule 12(b)(1) because federal courts have no jurisdiction to probate a will or administer an estate. *Marshall v. Marshall*, 547 U.S. 293, 308 (2006); *Markham v. Allen*, 326 U.S. 490, 494 (1946). Even a case that meets the requirements of diversity jurisdiction cannot be heard by the federal court if it is a probate matter. *Storm v. Storm*, 328 F.3d 941, 943 (7th Cir. 2003). The probate exception applies when the matter is actually part of a probate proceeding or ancillary to a probate proceeding. *Id.* See also *Struck v. Cook County Public Guardian*, 508 F.3d 858, 859–60 (7th Cir. 2007). Excluding probate matters from federal jurisdiction ensures that the outcomes of such disputes will be consistent by limiting their litigation to a single court system. *Storm*, 328 F.3d at 944. State courts have nearly exclusive jurisdiction over such probate and probate-related matters, and therefore state judges develop a greater familiarity with such legal issues. *Id.* The probate exception also avoids unnecessary interference with the state system of probate law. *Id.*

Here, one of the few matters that is possible to decipher from Eliot’s pleading is that he is seeking to litigate in this Court matters relating to the administration of the estates of his parents, Simon Bernstein and Shirley Bernstein, and that he already has raised in the Florida Probate Actions. For instance, Eliot cites to various pleadings that he filed in the *Estate of Simon L. Bernstein* matter, as well as to testimony in a hearing from the *Estate of Shirley Bernstein* matter (Doc. 35, ¶¶ 17(i)–17(vii), 18–20, Ex. 1), to support his criticisms about how the estates are being handled, how the proceeds are being divided among the heirs, and whether certain persons

were (or should be) disinherited (Doc. 35, ¶¶ 40, 57–74). In fact, Eliot believes that the proceeds of the insurance policy at issue should flow to one of the estates where “the Probate court would then rule on whom [sic] the final beneficiaries of the insurance proceeds would be.” (Doc. 35, ¶ 94; *see also* Doc. 35, ¶¶ 92–93, 110.) What’s more, Eliot seeks, among other things, the removal of Tescher & Spallina and others from their responsibilities in the Florida Probate Actions. (Doc. 35, pg. 69 at ¶ (iii).) In sum, the goal of Eliot’s Third-Party Complaint is to have this Court involve itself in the administration of his parents’ estates and the existing Florida Probate Actions, which is a role outside the jurisdiction of the federal courts. Therefore, this Court should dismiss the Third-Party Complaint.

**C. This Court Should Abstain From Hearing the Third-Party Complaint**

Even assuming Eliot presented a proper third-party complaint over which the Court had jurisdiction, this Court should decline to invoke that jurisdiction pursuant to *Colorado River* abstention, named for *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). In that case, the Supreme Court reviewed the principles that make it appropriate for district courts to abstain from exercising jurisdiction “in situations involving the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts. These principles rest on considerations of ‘[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.’ ” *Id.* at 817 (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)); *see also Caminiti & Iatarola, Ltd. v. Behnke Warehousing, Inc.*, 962 F.2d 698, 700 (7th Cir. 1992).

Drawing from *Colorado River* and subsequent Supreme Court cases such as *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 23–26 (1983), the Seventh Circuit has developed a two-part test for courts to determine whether abstention is appropriate. First, the court must determine whether the state and federal suits are parallel: that is, whether

they include substantially the same parties and are contemporaneously litigating substantially the same issues in another forum. *Ingalls v. AES Corp.*, 311 Fed.Appx. 911, 914 (7th Cir. 2008); *Caminiti*, 962 F.2d 698, 700. Second, if the suits are parallel, the court must balance several non-exclusive factors to determine if the circumstances exist to justify abstention, including (1) whether the state has assumed jurisdiction over property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent forums; (5) the source of governing law, state or federal; (6) the adequacy of state-court action to protect the federal plaintiff's rights; (7) the relative progress of state and federal proceedings; (8) the presence or absence of concurrent jurisdiction; (9) the availability of removal; and (10) the vexatious or contrived nature of the federal claim. *Ingalls*, 311 Fed.Appx. 911, 914; *Caminiti*, 962 F.2d 698, 700. The *Colorado River* Court also emphasized the importance of considering the extent to which there is any overriding federal policy in favor of or against abstention. 424 U.S. at 819. No one factor is necessarily determinative, and abstention should be based on weighing these considerations "in a pragmatic, flexible manner with a view to the realities of the case at hand." *Caminiti*, 962 F.2d at 702.

Considering the policies underlying *Colorado River* and the relevant factors demonstrates that abstention is appropriate in this case. The bedrock principles that are the foundation of *Colorado River*—conservation of judicial resources and providing for comprehensive disposition of litigation—support abstention, as Eliot is merely recycling the meritless allegations that he has already made against Tescher & Spallina and others in the Florida Probate Actions. Litigating those matters here would be an unnecessary waste of judicial resources, not to mention Tescher & Spallina's resources in defending against Eliot's claims. Moreover, exercising jurisdiction here would give rise to the possibility of a decision inconsistent with the Florida Probate Actions,

undercutting the desire for comprehensive disposition. These concerns dovetail with courts' desire to avoid piecemeal litigation, which "occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *LaDuke v. Burlington Northern R.R. Co.*, 879 F.2d 1556, 1560 (7th Cir. 1989). The results of simultaneous litigation of identical issues in state and federal courts "may be both unseemly and a grand waste of the efforts of the parties and the courts." *Id.* (quotations omitted).

Additionally, the order in which each court obtained jurisdiction and the source of governing law heavily favor abstention. The Florida Probate Actions were filed prior to the improper third-party complaint in this case, and the Florida courts have exercised jurisdiction over the matters and parties in those actions. Even assuming this Court had jurisdiction over those same matters and parties, it would have acquired jurisdiction after the courts in the Florida Probate Actions, and this Court should refrain from exercising jurisdiction. Moreover, the Florida courts will decide the matters before them in accord with Florida law, as probate matters arise under state law and are a special proficiency of state courts. *Struck v. Cook County Public Guardian*, 508 F.3d 858, 860 (7th Cir. 2007). The Florida courts are substantially more familiar with the application of Florida law relating to probate and estate planning—and, more particularly, with the long history of Eliot's attempts to assert the meritless claims of his Third-Party Complaint—and are therefore in the best position to decide the issues within the Florida Probate Actions.

The vexatious and contrived nature of Eliot's claims also weighs heavily in favor of abstention. In light of the prior pendency of the Florida Probate Actions, it is difficult to conceive of this proceeding as anything other than reactive or vexatious. Only after having filed several pleadings in the Florida Probate Actions did Eliot bring his Third-Party Complaint here, which

appears to be little more than a transparent attempt to gain leverage. Courts have noted a number of questionable desires that may motivate such reactive litigation, such as delaying the progress of a case, imposing travel burdens on one's adversary, and seeking to obtain strategic advantages based on forum-shopping. *See Lumen Constr., Inc. v. Brandt Constr. Co.*, 780 F.2d 691, 693–94 (7th Cir. 1985). As stated in *Lumen*, judicial economy is not the only casualty of such suits: “The legitimacy of the court system in the eyes of the public and fairness to the individual litigants are also endangered by duplicative suits that are the product of gamesmanship or that result in conflicting adjudications.” *Id.* at 694.

Eliot already has burdened Tescher & Spallina (as well as the entire Bernstein family) with his abuse of the legal system in Florida. This Court should not allow him to do the same here, but should dismiss Eliot's Third-Party Complaint based on *Colorado River* abstention.

#### **D. No Personal Jurisdiction Over Tescher & Spallina**

Pursuant to Rule 12(b)(2), this Court should dismiss the Third-Party Complaint because there is no personal jurisdiction over Tescher & Spallina who, as Eliot alleges, are residents and citizens of Florida. (Doc. 35, ¶¶ 7–9.) The Court must turn to the laws of Illinois to determine whether there is personal jurisdiction over a defendant. *See, e.g., Kinslow v. Pullara*, 538 F.3d 687, 690 (7th Cir. 2007). The Illinois long-arm statute, 735 ILCS 5/2-209, permits the exercise of jurisdiction on any basis permitted by the Constitutions of Illinois and the United States. 735 ILCS 5/2-209(c). A court may exercise personal jurisdiction over a party only when it is fair, just and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant's acts which occur in Illinois or which affect interests located in Illinois. *Rollins v. Ellwood*, 141 Ill.2d 244, 275, 565 N.E.2d 1302, 1316 (1990).

There are two bases for establishing personal jurisdiction: general and specific. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–16 (1984). Eliot offers no

suggestion that Tescher & Spallina have such extensive contacts with Illinois so as to render it permissible to exercise general jurisdiction. *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1277 (7th Cir. 1996). Eliot therefore is left with attempting to establish specific jurisdiction.

A non-resident defendant cannot be forced to litigate in a jurisdiction as a result of some random contacts with the forum or the unilateral activity of the plaintiff. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985). Rather, the court must review the defendant's acts directed toward the forum state because the court may assert specific jurisdiction over a non-resident defendant only if that defendant has certain minimum contacts with the state such that the suit does not offend the traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The court may exercise jurisdiction over a defendant only if it is fundamentally fair to require the defendant to submit to the court's jurisdiction with respect to the present litigation. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). Crucial to this analysis is proof that the defendant purposefully availed itself of the privilege of conducting activities in the forum state such that it should reasonably anticipate being haled into the state's courts. *Kinslow*, 538 F.3d 687, 690–91.

Eliot fails to offer any allegations to support Tescher & Spallina's connections with the State of Illinois. Rather, Eliot (himself a resident and citizen of Florida (Doc. 35, ¶ 5)) alleges that Tescher & Spallina are citizens and residents of Florida who practice law in that state. (Doc. 35, ¶¶ 7–9.) All of Tescher & Spallina's imagined wrongful acts relate to the Florida Probate Actions pending in Palm Beach County, Florida. As a result, Eliot cannot satisfy the due-process requirements for personal jurisdiction over Tescher & Spallina, and the Third-Party Complaint should be dismissed.

**E. Eliot's Third-Party Complaint Does Not State a Claim  
Upon Which Relief Can Be Granted**

Finally, Eliot fails to state a proper cause of action against Tescher & Spallina. When deciding a motion to dismiss pursuant to Rule 12(b)(6), all well-pleaded facts in the complaint must be taken as true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007). The court need not, however, accept as true conclusions of law. *Id.* “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555. A complaint will not suffice if it merely contains naked assertions devoid of factual enhancement: “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A motion will be granted where the pleadings do not “plausibly give rise to an entitlement to relief.” *Id.* at 679.

Additionally, where a claim for fraud is made the pleading requirements are heightened. Fed. R. Civ. P. 9(b). The circumstances surrounding the fraud must be pled with particularity, including the identity of the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff. *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 680 (7th Cir. 1992). Simply stated, to plead with particularity, the “who, what, where, when and how” of the fraud must be contained in the pleading. *DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990).

Here, despite the irrelevant, pernicious rhetoric found throughout Eliot’s Third-Party Complaint, Eliot fails to state a claim for which this Court can grant him relief. For example, he fails to allege how Tescher & Spallina owed him any professional or fiduciary duties, much less how they breached those duties or caused him any injury. He also fails to explain with particularity how, when, and in what way he was defrauded by any act of Tescher & Spallina, or

how he was injured. Instead, Eliot presents nothing more than his own rambling speculations, which cannot satisfy the Court's pleading requirements. The Third-Party Complaint should therefore be dismissed with regard to Tescher & Spallina.

#### **IV. CONCLUSION**

For the reasons stated, this Court should dismiss Eliot's Third-Party Complaint against Tescher & Spallina. Eliot's pleading is not a proper third-party complaint under Rule 14 because he is not facing any liability in the interpleader action. Additionally, even assuming Eliot's pleading stated a proper third-party complaint, this Court has no subject-matter jurisdiction over the claims under the probate exception to federal subject-matter jurisdiction or personal jurisdiction over Tescher & Spallina who are citizens of Florida. Further, this Court should dismiss Eliot's claims pursuant to the doctrine of *Colorado River* abstention because Eliot improperly seeks to litigate matters that are pending in the probate court of Palm Beach County, Florida. Finally, for all of its bulk, Eliot's rambling 70-page, 163-paragraph pleading fails to state a claim upon which relief can be granted.

WHEREFORE, Third-Party Defendants Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina respectfully move this Court to enter an order dismissing the Third-Party Complaint as to them with prejudice, and granting them such other further relief that the Court deems proper.



Respectfully Submitted,

By: /s/ Thomas B. Underwood  
Thomas B. Underwood, Esq.

Thomas B. Underwood, Esq.

Michael D. Sanders, Esq.

Richard J. VanSwol, Esq.

**PURCELL & WARDROPE CHTD.**

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
By Ted S. Bernstein, its Trustee, Ted Bernstein, )  
an individual, Pamela B. Simon, an individual, )  
Jill Iantoni, an individual, and Lisa S. Friedstein, )  
an Individual, )

Plaintiffs, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant. )

**Case No.: 13 CV 3643**

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HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Counter-Plaintiff, )

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

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 )  
 BENEIFT 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. )

**NOTICE OF FILING**

TO: See attached Service List.

YOU ARE HEREBY NOTIFIED that on **February 18, 2014**, we electronically filed in the United States District Court for the Northern District of Illinois, Eastern Division, **Appearances by Thomas B. Underwood and Michael D. Sanders** on behalf of Third-Party Defendants Tescher & Spallina, P.A., Donald Tescher and Robert Tescher and their **Motion to Dismiss Third-Party Complaint**, a copy of which is attached hereto and hereby served upon you electronically.

/s/Thomas B. Underwood  
Thomas B. Underwood

Thomas B. Underwood



**SERVICE LIST**  
**Bernstein v. Simon, et al.**  
**USDC Court No. 13-cv-3643**

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*(Plaintiff)*

Theodore Stuart Bernstein and  
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tbernstein@lifeinsuranceconcepts.com  
*(Third-Party Defendant)*

**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 CO., )

Defendant. )

---

HERITAGE UNION LIFE INSURANCE CO., )

Counter-Plaintiff, )

v. )

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

Counter-Defendant, )

FIRST ARLINGTON NATIONAL BANK, et al., )

Third-Party Defendants. )

---

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff, )

v. )

TED BERNSTEIN, )

Cross-Defendant, )

PAMELA B. SIMON, et al., )

Third-Party Defendants. )

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Case No. 13 C 3643

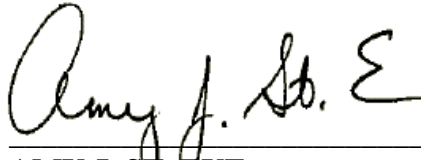
Judge Amy St. Eve

**ORDER**

Pursuant to Heritage Union Life Insurance Company's notice of voluntary dismissal [97], Bank of America, successor in interest to LaSalle National Trust, is hereby dismissed, with prejudice and without costs. Heritage's Rule 12(b)(6) motion to dismiss [94] is granted. Heritage Union Life Insurance Company is hereby dismissed as a party from this action, including dismissal of all claims against it, with prejudice. Heritage Union Life Insurance Company is discharged of all liability under the Policy.

**Dated:** February 18, 2014

**ENTERED**

Handwritten signature of Amy J. St. Eve in black ink, written over a horizontal line.

**AMY J. ST. EVE**

**United States District Court Judge**



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

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

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE  
COMPANY,

Defendant.

Honorable Amy I. St. Eve

No. 13 cv 3643

-----  
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 JUDGMENT ON THE PLEADINGS**

Third-Party Defendant JPMorgan Chase Bank, National Association ("JPMorgan Chase Bank"), by one of its attorneys, Glenn E. Heilizer, pursuant to Fed. R. Civ. P. 12(c), respectfully moves for judgment on the pleadings as to the counterclaim and third-party complaint for interpleader by Jackson National Life Insurance Company. In support of this motion, JPMorgan Chase Bank states as follows.

1. This lawsuit concerns the disposition of certain life insurance proceeds that have been deposited with the Clerk of Court by Jackson National Life Insurance Company.

2. Jackson National Life Insurance Company, now a dismissed party, previously filed a counterclaim and third-party complaint for interpleader with respect to the subject proceeds.

3. In its counterclaim and third-party complaint, Jackson named First Arlington National Bank as a party because First Arlington National Bank allegedly was, at one point, and the purported trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust." (Countercl./Third Party Cplt. ¶ 6 Dkt. #17.) Jackson further alleged it was unclear if such trust was properly established. (Id.)

4. Following the filing of its counterclaim and third-party complaint, Jackson moved to substitute JPMorgan Chase Bank for First Arlington National Bank as third-party defendant, on the ground that First Arlington National Bank possibly had an indirect relationship to JPMorgan Chase Bank through a succession of mergers. (Motion to Substitute Dkt. #41.)

5. JPMorgan Chase Bank has appeared in this lawsuit and has answered Jackson's counterclaim and third-party complaint, disclaiming any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit. (Answer passim #61.)

6. No other party has contested JPMorgan Chase Bank's answer, or has filed any pleading or motion directed at JPMorgan Chase Bank.

7. Rule 12(c) provides a party may move for judgment on the pleadings "after the pleadings are closed" and "early enough not to delay trial." Under well-established standards, a motion for judgment on the pleadings may be granted where the complaint's well-pleaded facts fail "to raise the possibility of relief above the speculative level, assuming that all well-pleaded allegations in the complaint are true." Simonian v. Allergan, No. 10 C 02414, 2011 WL 1599292, at \*1 (N.D. Ill. April 28, 2011) (citations omitted).

8. Here, the counterclaim and third-party complaint merely questions whether JPMorgan Chase Bank, as indirect successor to First Arlington National Bank, may have some interest in the subject insurance proceeds. JPMorgan Chase Bank's answer disclaims any such interest. No other party has contended JPMorgan Chase Bank has any interest in the subject proceeds, or any potential role in this litigation. Because the pleadings demonstrate that JPMorgan Chase Bank lacks any interest in the subject matter of this lawsuit, in sum, a judgment on the pleadings in favor of JPMorgan Chase Bank, thus excusing JPMorgan Chase Bank from further participation in this

lawsuit, is appropriate. See Fox and Grove v. Miller, No. 88 C 3741, 1989 WL 95810, at \*1 (N.D. Ill. Aug. 11, 1989) (interpleader defendant dismissed where he "disclaim[ed] any interest in the fund and does not assert any adverse claim for purposes of interpleader jurisdiction").

Wherefore, JPMorgan Chase Bank, National Association respectfully requests judgment on the pleadings in its favor on the counterclaim and third-party complaint, without costs, and such further relief as is just and appropriate.

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION

By:     /s/ Glenn E. Heilizer      
One of its attorneys

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
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Suite 1304  
Chicago, Illinois 60602  
312-759-9000  
ARDC No. 6196412

Dated: February 26, 2014

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT ILLINOIS

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 )

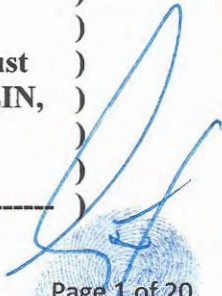
Dtd. 6/21/95, and ELIOT BERNSTEIN, )

Third-Party Defendants. )  
----- )

Case No. 13-cv-03643

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

Reply to Tescher and Spallina  
Motion to Dismiss



**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>:**

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<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 note of this, especially

**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;**

**REPLY TO MOTION TO DISMISS FILED BY TESCHER AND SPALLINA**

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 (“Lost or Suppressed Policy”) on the life of Simon L. Bernstein (“S. BERNSTEIN”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” (“Lost or Suppressed Trust”), a “Simon Bernstein Trust, N.A.” (“Lost or Suppressed Trust 2”) and the Estate and Trusts of S. BERNSTEIN, all parties related to these matters, some that do not legally exist at this time and makes the following “Reply to Response to Motion to Remove Counsel.”

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>.

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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.

<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.

**REPLY TO MOTION TO DISMISS FILED BY TESCHER AND SPALLINA**

**REPLY TO I. and II. INTRODUCTION & BACKGROUND**

1. That Robert L. Spallina, Esq. (“SPALLINA”) and Donald R. Tescher, Esq. (“TESCHER”), waste more time, energy and resources of this Court, ELIOT’S and other collateral damage parties to this vexatious, frivolous, fraudulent and toxic lawsuit that is part of a continuing and ongoing Pattern and Practice of FRAUD, committed by TESCHER, SPALLINA, Theodore Stuart Bernstein (“THEODORE”) and others. Crimes involving the recent arrest and prosecution of Tescher & Spallina, P.A. (“TSPA”) Legal Assistant and Notary Public, Kimberly Moran (“MORAN”) for admitted FORGERY (including POST MORTEM FORGERY of S. BERNSTEIN’S name) and admission of ALTERING DOCUMENTS in the Estate of SHIRLEY, POST MORTEM, by Attorney at Law SPALLINA. Crimes enacted to change beneficiaries of S. BERNSTEIN’S Estate and Convert and Comingle funds to improper beneficiaries. See exhibits at the following URL’S, fully incorporated by reference herein.

i. Palm Beach County Sheriff Office (“PBSO”) Supplemental Report – SPALLINA ADMITS ALTERING TRUST DOCUMENTS

[www.iviewit.tv/20140131PBSOReport.pdf](http://www.iviewit.tv/20140131PBSOReport.pdf)

ii. Palm Beach County Sheriff Office – FORGERY AND FRAUDULENT NOTARIZATION, INCLUDING POST MORTEM FOR S. BERNSTEIN – MORAN ARRESTED AND CONVICTED.

[www.iviewit.tv/20140122MoranCriminalCaseDocs.pdf](http://www.iviewit.tv/20140122MoranCriminalCaseDocs.pdf)

iii. TSPA and TESCHER RESIGNATION LETTER @



<http://www.iviewit.tv/20140114%20Teschler%20and%20Spallina%20Resignation%20Letter%20as%20PR%20in%20estates%20of%20Simon%20and%20Shirley.pdf>

- iv. Orders Dismissing TESCHER and SPALLINA as counsel and as Executors / Personal Representatives of the Estate of S. BERNSTEIN and SHIRLEY and DENIAL OF THEODORE AS SUCCESSOR EXECUTOR AND PR IN THE ESTATE OF S. BERNSTEIN –

[www.iviewit.tv/20140218SignedOrdersDischargeTeschlerSpallinaRejectionTedSuccessor.pdf](http://www.iviewit.tv/20140218SignedOrdersDischargeTeschlerSpallinaRejectionTedSuccessor.pdf)

- v. MOTION TO: (I) HALT "YE OLE HAT TRICK "FOR DESIGNATION OF SUCCESSOR PERSONAL REPRESENTATIVES, APPOINT CURATOR IN INTERIM, APPOINT CORPORATE TRUSTEE AND PR AND PETITIONER AS CO-CURATOR, CO-PERSONAL REPRESENTATIVE AND COTRUSTEE IN ESTATES AND TRUSTS

(II) EXTEND TIME TO CHOOSE SUCCESSORS, AND

(III) MOTION FOR EMERGENCY HEARING FOR EMERGENCY DISTRIBUTIONS TO THREE MINOR CHILDREN IN COURT'S CUSTODIAL CARE AND PETITIONER AND HIS WIFE CANDICE

[www.iviewit.tv/20140224MotionforAppointmentSuccessorPRSimon.pdf](http://www.iviewit.tv/20140224MotionforAppointmentSuccessorPRSimon.pdf)

2. That SPALLINA and TESCHER have been removed from the Estates and Trusts of S. BERNSTEIN and SHIRLEY and have been involved and admitted to involvement in, **FORGERY, FRAUD, FRAUDULENT NOTARIZATIONS, ALTERING DOCUMENTS POST MORTEM IN THE ESTATES TO CHANGE BENEFICIARIES** and more.
3. That SPALLINA and TESCHER make claims that they do not belong in this lawsuit and seek to dismiss the cross complaint based on lots of mumbo jumbo citing this or that law or case, yet this whole lawsuit begins with the FELONY CRIMINAL ACT of INSURANCE FRAUD committed by SPALLINA who filed a FRAUDULENT INSURANCE CLAIM (see URL @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf> , hereby incorporated by reference in

entirety) while IMPERSONATING A CORPORATE TRUST COMPANY, IMPERSONATING A CORPORATE TRUST COMPANY TRUSTEE and IMPERSONATING A TRUSTEE/BENEFICIARY of the Lost or Suppressed Trust, in efforts to CONVERT and COMINGLE the life insurance policy proceeds to his law firms trust account, as all evidenced in the URL above. SPALLINA was AIDED and ABETTED BY MORAN and others in filing the FRAUDULENT CLAIM with HERITAGE, all evidenced in ELIOT'S prior pleadings.

4. That SPALLINA filed a FRAUDULENT INSURANCE CLAIM, acting in a variety of FRAUDULENT ROLES as evidenced, including acting an alleged Trustee of an alleged Lost or Suppressed Trust claimed to be the Contingent Beneficiary of the insurance policy and simultaneously acting as the Primary Beneficiary by impersonating a corporate trust company, LaSalle National Trust, N.A. and acting as Trustee of LaSalle National Trust, N.A.
5. That the Court should note that no party to date has produced a copy of the Lost or Suppressed Trust that filed this lawsuit as Plaintiff and thus the Lawsuit continues without a legal entity as Plaintiff having filed the action.
6. That the alleged Trustee of the Lost or Suppressed Trust was originally SPALLINA when the FRAUDULENT INSURANCE CLAIM was filed and then when this FRAUDULENT BREACH OF CONTRACT lawsuit was instigated the Trustee of the Lost or Suppressed Trust changed from SPALLINA to THEODORE.
7. That the Amended Complaint submitted now tries and change the Plaintiffs from the Lost or Suppressed Trust and Theodore of Trustee of such Lost or Suppressed Trust, to individual

Plaintiffs, due to the lack of a legal Plaintiff with standing originating the Original Complaint and in efforts to cover the Fraud uncovered by ELIOT in the filing of the Lawsuit by a non-existent entity.

8. That the Court should note again that no party has produced a copy of the life insurance policy that is the subject CONTRACT in this BREACH OF CONTRACT Lawsuit, including the insurance companies. In other words, what we have here is a precedence setting Breach of Contract Lawsuit filed without a contract put forth that was breached and filed by a non-existent Plaintiff.
9. That in the last hearing before this Court, Attorney at Law Alexander Marks, Esq. ("MARKS") on behalf of Jackson National Life Insurance Company ("JACKSON") claimed that they tendered a Sample Contract for production in this Lawsuit but admitted that they failed to provide the actual life insurance contract to ELIOT and this Court. Instead they provided a sample contract that does not provide ELIOT or this Court with information necessary to ascertain if the death benefit amount tendered to this Court is correct or if the beneficiaries alleged by the parties, which varies according to JACKSON and Plaintiffs are correct or if in fact the language in the Lost or Suppressed Policy was in fact breached.
10. That SPALLINA'S FRAUDULENT claim was denied by the carrier and reinsurer and SPALLINA was directed to seek a Florida Probate Court Order to approve the beneficiary scheme he was proposing to the carrier, as the proceeds according to Florida law should legally flow to the Estate of S. BERNSTEIN in the event there is no legal beneficiary at the time of the insured's death, which there was not.
11. That these efforts to CONVERT and COMINGLE funds to improper beneficiaries is similar to the Fraud, Conversion, Comingling and more that SPALLINA already has admitted to in

the Estate of SHIRLEY, as admitted to by SPALLINA in the Palm Beach County Sheriff Office ("PBSO") Report exhibited already herein, whereby SPALLINA alleges to PBSO that he altered Trust Documents to change beneficiaries POST MORTEM of S. BERNSTEIN and SHIRLEY to favor he and his legal Partner Tescher's business partner and close personal friend, THEODORE, who had been excluded from the Estates of S. BERNSTEIN and SHIRLEY along with his sister P. SIMON.

12. That this Lawsuit for Breach of Contract is based on the DENIAL of the FRAUDULENT CLAIM filed by SPALLINA and his felony convicted Legal Assistant/Notary Public MORAN with HERITAGE UNION LIFE, which was filed via MAIL and WIRE from Boca Raton, FL to Jacksonville, IL. This would appear to make TESCHER and SPALLINA and MORAN indispensable parties to this Lawsuit and the alleged crimes that took place in IL.
13. That TESCHER and SPALLINA are now **FORMER** Co-Personal Representatives/Executors of the Estate of S. BERNSTEIN and where they should have been a party to this case all along on behalf of the Estate beneficiaries. Instead, knowing of this Lawsuit and the attempt to Convert the proceeds to improper parties and having alleged fiduciary powers over the Estate of S. BERNSTEIN, they instead hid this Lawsuit from certain beneficiaries with intent, to the disadvantage of certain beneficiaries and to the advantage of others. Once this Lawsuit was filed they tried to distance themselves and hide as if they knew nothing about this Lawsuit, even refusing to accept a Waiver of Service and forcing more resources to be extended hunting them down. As alleged former Executors/Personal Representatives for S. BERNSTEIN'S Estate they did not voluntarily join this Lawsuit on behalf of the Estate beneficiaries who are alleged to be six minor children and others to protect their beneficial interests or protect the interests of the Estate of S. BERNSTEIN.

14. That there is now a new interim Curator that was appointed by Judge Martin Colin for the Estate of S. BERNSTEIN, a one Benjamin Brown, Esq. ("BROWN"). ELIOT believes that BROWN will be making an appearance in this matter shortly on behalf of the Estate of S. BERNSTEIN. The Estate the legal beneficiary according to the State of Florida, whereby if there is no beneficiary at time of death, the proceeds are paid to the Insured's Estate.
15. That SPALLINA and TESCHER make false and defamatory claims to this Court about ELIOT personally and ELIOT'S intents and actions in this Lawsuit that are both insulting and untrue and based on lies. This appears to be there Modus Operandi in the courts at first, similar to how they acted while perpetrating Fraud on the Florida Probate Court and the Estate of S. BERNSTEIN beneficiaries. For instance, after hiding from service they now claim to this Court that ELIOT is trying to merge the Estates of SHIRLEY and S. BERNSTEIN into this Lawsuit in the Federal Court to somehow compensate for what they claim is ELIOT'S losses in the probate court as a part of their Motion to Dismiss. However, ELIOT has made no such claims or efforts in his pleadings to try and merge the Probate cases of SHIRLEY and S. BERNSTEIN into this Court and factually instead has tried to have this Lawsuit dismissed and the insurance matters returned to the proper Probate Court for adjudication as an Estate asset.
16. That ELIOT has only brought to light in this Lawsuit through his pleadings, supplanted with Prima Facie evidence to his claims, the multiple felony criminal acts, prosecuted in some instances, admitted to in others and under ongoing investigations done by TESCHER, SPALLINA, MORAN et al.
17. That these FELONY ACTS committed in the Probate Courts are directly related to the LOOTING of the Estates of S. BERNSTEIN and SHIRLEY and have relevance to this

Lawsuit by exhibiting an Ongoing Pattern and Practice of CRIMINAL ACTIVITY taking place with assets of the Estate of S. BERNSTEIN through a variety of crimes, including this Fraudulent Breach of Contract Lawsuit attempting to Convert and Comingle a life insurance benefit to the Plaintiffs of this Lawsuit and not the true and proper beneficiary of the life insurance policy, which again in a missing beneficiary situation as claimed by the Plaintiffs, the beneficiary would be the Estate of S. BERNSTEIN and not the Plaintiffs.

18. That the insurance contract is an asset of the Estate of S. BERNSTEIN, which has been attempted to be Converted in no less than three fraudulent attempts to Convert the policy to improper parties, now in part through this FRAUD ON A US DISTRICT COURT by using a Breach of Contract Lawsuit steeped in Fraud that has already illegally Converted and Comingled the death benefit of the Policy into this Court's Registry versus into the Estate of S. BERNSTEIN.
19. That the Estate of S. BERNSTEIN and the Beneficiaries of the Estate are indispensable parties to this action that should have been represented from the start, if not for the fact that those who were charged with representing the Estate (TESCHER and SPALLINA) were directly involved in the nexus of the crimes, as is the case in the instant Lawsuit.
20. That these insurance matters of the Estate of S. BERNSTEIN are before this Court due to SPALLINA, MORAN, THEODORE, A. SIMON, P. SIMON, D. SIMON, IANTONI and FRIEDSTEIN attempting to move the Estate asset, the Insurance Policy on the life of S. BERNSTEIN outside the Estate and failing to notify or represent the Estate Beneficiaries in efforts to Convert and Comingle the proceeds before they were aware of this Lawsuit. The Court should note that ELIOT had nothing to do or any knowledge of this Lawsuit or the

filing of this Lawsuit as claimed in TESCHER and SPALLINA'S baseless Motion to Dismiss.

21. That ELIOT did not try to bring these matters to a US District Court in a Breach of Contract Lawsuit as TESCHER and SPALLINA claim to this Court, it was the ILLEGAL actions of their law firm TSPA, TESCHER, SPALLINA, MORAN, THEODORE et al. that has caused these matters to come before this Court and ELIOT has every right to file a Cross Claim and seek damages, as he and his children are alleged beneficiaries of the Estate of S. BERNSTEIN who have been deprived for over a year and half of this asset.

**REPLY TO III. THIS COURT SHOULD DISMISS TESCHER & SPALLINA FROM THIS LAWSUIT**

**A. Eliot's Third-Party Complaint Is Unrelated To The Original Complaint**

22. That ELIOT has liabilities to both him and his children who are entitled to the policy proceeds through the Estate of S. BERNSTEIN and not through Plaintiffs FRAUDULENT BREACH OF CONTRACT lawsuit, which in fact currently has no legal valid Plaintiff or legal valid Contract that has been made part of the Lawsuit and whereby the Lawsuit is instead based on a FRAUDULENT INSURANCE CLAIM filed by TESCHER, SPALLINA, TSPA, MORAN et al.
23. That for their alleged criminal misconduct in filing the FRAUDULENT INSURANCE CLAIM that forms the basis of this FRAUDULENT BREACH OF CONTRACT Lawsuit, TESCHER, SPALLINA, TSPA, MORAN et al. all were properly served this Lawsuit and should be parties based on their direct involvement in the matters that occurred in the State of Illinois that they instigated.
24. That ELIOT has claimed that HERITAGE paid this Court funds in their interpleader action based on the Lost or Suppressed Policy that has not been produced at this time by any party

and therefore while ELIOT appreciates HERITAGE'S willingness to pay death benefits on a policy they have failed to produce, this payment that subverts the Estate beneficiaries is not acceptable. ELIOT has demanded this Court to return the funds immediately to HERITAGE as they were Converted and Comingled into this Court's Registry improperly and perhaps illegally and without a valid contract with which to pay upon, making this Lawsuit even more surreal.

25. That ELIOT would not take the interpleader funds as this would be to participate knowingly in fraudulent activities and this Fraud is why ELIOT has a right to Cross Claim against the parties who participated in this FRAUDULENT ACTIVITY.

**REPLY TO - B. There Is No Subject-Matter Jurisdiction**

26. That ELIOT is not asking this Court to Probate a Will or Administer an Estate as claimed by TESCHER and SPALLINA and this is more false and misleading information. ELIOT is merely asking this Court to return the Estate asset of the life insurance policy death benefit back to HERITAGE, who should not have paid any funds without a contract and to improper beneficiaries. Without this FRAUDULENT BREACH OF CONTRACT Lawsuit architected by SPALLINA, MORAN, THEODORE et al. the asset would be safely in the Estate to be distributed according to the Estate plans of S. BERNSTEIN to the true and proper beneficiaries, not the Plaintiffs in this ludicrous and baseless Lawsuit.
27. That ELIOT is not certain if TESCHER and SPALLINA are sane in the rest of their claims regarding ELIOT'S assertions against them in the Probate Courts of S. BERNSTEIN and SHIRLEY in FLORIDA, as ELIOT'S efforts to remove these criminals disguised as Attorneys at Law has resulted in,



- i. the ARREST of their legal assistant and notary public for admitted FORGERY and FRAUDULENT NOTARIZATIONS, made POST MORTEM in efforts to change beneficial interests in the Estates to improper and illegal parties,
- ii. the discovery that SPALLINA and TESCHER used S. BERNSTEIN POST MORTEM to act as Executor of the Estate while dead, failing to notify the Court he was deceased, leading Judge Martin Colin to claim from this Fraud on his Court that he had enough evidence to read THEODORE, SPALLINA and TESCHER their Miranda Warnings and where criminal complaints remain ongoing in these matters,
- iii. the admission by SPALLINA to the Palm Beach County Sheriff that he FRAUDULENTLY altered Estate documents to change the beneficiaries illegally,
- iv. the removal of SPALLINA and TESCHER as Counsel in ALL capacities in the Estate matters of both S. BERNSTEIN and SHIRLEY and
- v. the removal of SPALLINA and TESCHER as Executors / Personal Representatives in the Estate of S. BERNSTEIN.

**REPLY TO - C. This Court Should Abstain From Hearing the Third-Party Complaint**

28. That ELIOT did not file this Lawsuit and his Cross Claim has nothing to do with the parallel litigation filed by A. SIMON and THEODORE based on HERITAGE'S failure to pay on the FRAUDULENT INSURANCE CLAIM filed by SPALLINA, MORAN et al., in efforts to Convert the proceeds outside of the Estate of S. BERNSTEIN, where they were directed to get a Court Order from the Probate Court to approve of their beneficiary scheme proposed on the Fraudulent Insurance Claim form and therefore the proper parties should be charged with bringing this Lawsuit fraudulently and parallel to the Estate litigation.

29. That ELIOT still has rights to sue those parties who contrived and participated in the FRAUD ON A US DISTRICT COURT, INSURANCE FRAUD and FRAUD ON THE ESTATE OF S. BERNSTEIN'S BENEFICIARIES for the damages caused thus far.
30. That ELIOT did not file his complaint in relation to his pending actions before the Florida Probate Courts, which have already DESTROYED THE INTEGRITY OF TESCHER, SPALLINA, THEODORE et al. for a number of alleged and proven CRIMINAL ACTIVITIES in those courts but instead filed his Cross Claim after he was served this Lawsuit as a Third Party Defendant by HERITAGE and JACKSON. The reason ELIOT did not know of this Lawsuit when it was filed was because of the INTENTIONAL ACTS of SPALLINA, TESCHER, THEODORE, Pamela Beth Simon ("P. SIMON"), Adam M. Simon, Esq. ("A. SIMON"), Jill Marla Iantoni ("IANTONI") and Lisa Sue Friedstein ("FRIEDSTEIN") to SECRET the Lawsuit from ELIOT and his children's counsel with INTENT to DEFRAUD THEM.
31. That once ELIOT was notified of this FRAUD ON A US DISTRICT COURT in efforts to CONVERT and COMINGLE an asset of the Estate of S. BERNSTEIN, ELIOT replied timely and filed his Cross Complaint seeking damages against those involved in this FRAUD.

**REPLY TO - D. No Personal Jurisdiction Over Tescher & Spallina**

32. That this Court has jurisdiction over TSPA, TESCHER and SPALLINA, as the Lawsuit begins with a fraudulent insurance claim TSPA, TESCHER, SPALLINA, MORAN et al. submitted to HERITAGE in Jacksonville, Illinois, via Mail and Wire. The Breach of Contract claim is based on the DENIAL of this FRAUDULENT INSURANCE claim filed in

Jacksonville, Illinois, so it is hard to imagine how their argument works legally that they have no involvement in Illinois in these matters.

33. That this Court has jurisdiction over TSPA, TESCHER and SPALLINA because the Fraudulent Breach of Contract Lawsuit was filed in US District Court in the Northern District of Illinois in conspiratorial efforts to evade a Florida Probate Court. That at the time of filing of this Lawsuit both TESCHER and SPALLINA were alleged Executors/Personal Representatives before that Court and knew the Insurance Policy was an asset of the Estate of S. BERNSTEIN that they were supposed to be protecting. Instead, they committed criminal acts in Illinois to complete the FRAUD without noticing the Florida Probate Courts or beneficiaries and therefore as these acts were all done in Illinois it would appear they are under the jurisdiction of this Illinois Court.
34. That TESCHER and SPALLINA are indispensable parties to this Lawsuit as they are central alleged conspirators of the alleged FRAUD on this Court, the Florida Probate Court, Fraud on the Estate Beneficiaries of S. BERNSTEIN, Insurance Fraud on HERITAGE, Fraud on LaSalle National Trust Company, N.A. and more.

**REPLY TO - E. Eliot's Third-Party Complaint Does Not State a Claim  
Upon Which Relief Can Be Granted**

35. That ELIOT states that he has provided this Court enough Prima Facie Evidence and other exhibits in his prior Motions, which more than beyond a reasonable doubt prove his assertions and claims that a variety of FRAUDS have taken place in both the Insurance Claim filed by TSPA, TESCHER, SPALLINA, MORAN et al. and in the filing of this FRAUDULENT US DISTRICT COURT BREACH OF CONTRACT LAWSUIT emanating from the original FRAUDULENT INSURANCE CLAIM.

36. That ELIOT will rely on this Court to determine if he has properly stated enough claims and put forth enough valid and true evidence to support those claims to put those who have committed these FRAUDS, with knowledge and scienter, in prison and award ELIOT damages.
37. That if this Court does not think ELIOT, acting PRO SE, has not filed a proper pleadings and a proper Cross Claim or failed to state a claim properly, that this Court allow ELIOT to seek leave to amend where necessary.
38. That this Court can act on its own motion to award ELIOT counsel in these matters forward, as ELIOT is informia pauperis and severely economically impacted by the delay of over a year and half of these insurance proceeds and his family's inheritances directly due to the actions of those involved in this FRAUD ON YOUR HONOR'S COURT, FRAUD ON HERITAGE and FRAUD ON THE BENEFICIARIES OF THE ESTATE OF S. BERNSTEIN and these costs can later be paid through damages and surcharge by the responsible parties who instigated this FRAUDULENT LAWSUIT in the first place.
39. That due to these criminal acts already acknowledged and admitted to by Attorneys at Law involved in the Estate of S. BERNSTEIN and SHIRLEY to change beneficiaries illegally, bonding should also be forced on the parties involved in perpetrating this Fraud.

**REPLY TO - IV. CONCLUSION**

40. That ELIOT could go on for hundreds of pages with more evidence than already submitted in prior pleadings illustrating INSURANCE FRAUD and FRAUD ON CORPORATE TRUSTEES by SPALLINA in his original claim form but fears the ire of this Court in violating page limits or failing to state a claim or perhaps more aptly stating way to many claims, taking note that he has been chastised by the Court for these minor court infractions,

while Officers of this Court and Defendants (where many are Attorneys at Law) are breaking numerous FELONY CRIMINAL ACTS, INCLUDING FRAUD IN AND UPON THIS US DISTRICT COURT BY CRIMINALS DISGUISED AS ATTORNEYS AT LAW, FRAUD ON INSURANCE COMPANIES, FRAUD ON TRUST COMPANIES and filing WHOLLY IMPROPER PLEADINGS with NON EXISTENT PLAINTIFFS, IMAGINARY TRUSTEE PLAINTIFFS, IMAGINARY CONTRACTS SUED UPON in efforts to commit FRAUD UPON THE TRUE AND PROPER BENEFICIARIES OF THE ESTATES AND TRUSTS OF S. BERNSTEIN and more.

41. That ELIOT on the other hand has broken some page rules and violated some legalese in filings as he is Pro Se but can assure this Court that first and foremost he has followed the Ten Commandments and has been truthful, acted with integrity and put forward legitimate documentation and exhibits to the best of his Pro Se abilities to prove his claims. With superior knowledge of the law, the attorneys at law and others on the other side of this Baseless, Vexatious, Frivolous and Fraudulent Lawsuit, have acted in egregious bad faith and with unclean hands, violating a number of Commandments, masses of civil torts, criminal acts and ethical violations in the filing of this Lawsuit.
42. That ELIOT will trust Your Honor's honor and know that TSPA, these two rogue attorneys at law, TESCHER and SPALLINA to disgrace my Father and Mother last wishes, acting in conspiracy with THEODORE and P. SIMON who were disinherited, absolutely need to be indispensable party and defendants in this Lawsuit, as they are the central conspirators who initiated this whole FRAUD and are liable for much of the damages to those they have committed this fraud upon and thus in essence they are the life of the party too.

Wherefore, for all the reasons stated herein, ELIOT prays this Court reject TESCHER and SPALLINA'S FRIVOLOUS and VEXATIOUS Motion to Dismiss. Further, ELIOT requests this Court Sanction and Report TESCHER and SPALLINA for their violations of Attorney Conduct Codes and State and Federal Laws. 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. Finally, while not properly pled, ELIOT requests this Court act on its own Motion, after taking Judicial Notice of the Criminal Activities of Attorneys at Law TESCHER and SPALLINA in creating this mess in both of my parents Estates and this Court, along with others acting as Officers of this Court (i.e. A. SIMON) and consider Ordering ELIOT Counsel on a Pro Bono basis if everyone does not want him to violate rules he does not know about being that he is not a lawyer. Otherwise, ELIOT apologizes in advance for not knowing all the rules of filing pleadings, which if he did, he would be a lawyer.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.  
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(561) 245-8588

Dated: Monday, March 10, 2014

**Certificate of Service**

The undersigned certifies that a copy of the foregoing REPLY TO MOTION TO DISMISS FILED BY TESCHER AND SPALLINA was served by ECF to all counsel, and E-mail on Monday, March 10, 2014 to the following parties:

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Monday, March 10, 2014

REPLY TO MOTION TO DISMISS FILED BY TESCHER AND SPALLINA

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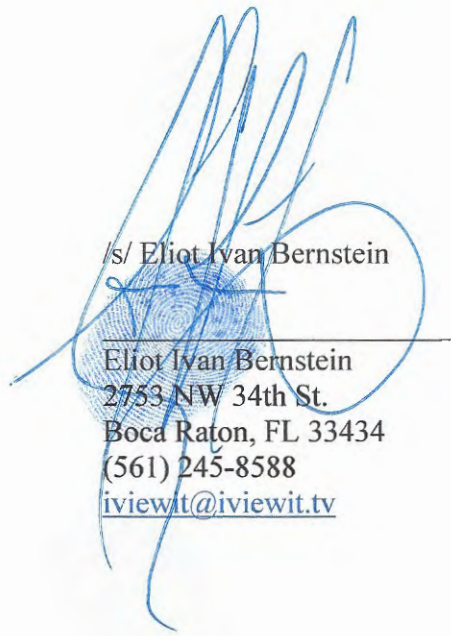
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/s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
Eastern Division**

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

Plaintiff,

v.

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

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, March 12, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Motion hearing held on 3/12/2014. Third-party defendants Tescher & Spallina's motion to dismiss third-party complaint [100] is entered. Reply by 3/26/14. Third-party defendant JP Morgan Chase Bank's motion for judgment on the pleadings in its favor on the counterclaim and third-party complaint [102] is granted without costs. JPMorgan Chase Bank, N.A. terminated. 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 CO., )  
 )  
Defendant. )  
 )  

---

HERITAGE UNION LIFE INSURANCE CO., )  
 )  
Counter-Plaintiff, )  
 )  
v. )  
 )  
SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
 )  
Counter-Defendant, )  
 )  
 )  
FIRST ARLINGTON NATIONAL BANK, et al., )  
 )  
Third-Party Defendants. )  
 )  

---

ELIOT IVAN BERNSTEIN, )  
 )  
Cross-Plaintiff, )  
 )  
v. )  
 )  
TED BERNSTEIN, )  
Cross-Defendant, )  
 )  
PAMELA B. SIMON, et al., )  
 )  
Third-Party Defendants. )  
 )  

---

Case No. 13 C 3643

Judge Amy St. Eve

## **ORDER**

The Court grants the Third-Party Defendants' motion to dismiss and dismisses the Third-Party Defendants from this lawsuit [100].

## **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). 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. On September 22, 2013, Eliot Ivan Bernstein, a Third-Party Defendant to Jackson's interpleader claim, filed a Third-Party Complaint against Third-Party Defendants Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina (hereinafter "Third-Party Defendants" or "Tescher and Spallina"). Before the Court is Tescher and Spallina's motion to dismiss the Third-Party Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), (2), and (6). For the following reasons, the Court grants the Third-Party Defendants' motion to dismiss pursuant to Rule 12(b)(6) and dismisses the Third-Party Defendants from this lawsuit.

## **BACKGROUND**

In their First Amended Complaint filed on January 13, 2014, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit, the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are all of Simon Bernstein's children, including Eliot, although Eliot did not consent to being a Plaintiff in this lawsuit. (*Id.* ¶¶ 5, 8.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

On September 22, 2013, Eliot filed a pro se Third-Party Complaint against Tescher and Spallina, who are Florida probate attorneys. Construing his pro se allegations liberally, *see Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013), Eliot alleges claims of fraudulent conversion, breach of fiduciary duty, legal malpractice, abuse of the legal process, common law conversion, civil conspiracy, and negligence in connection with the administration of Simon Bernstein's Estate in the Probate Court of Palm Beach County, Florida.

## LEGAL STANDARDS

“A motion under Rule 12(b)(6) tests whether the complaint states a claim on which relief may be granted.” *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012). Under Rule 8(a)(2), a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must “give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citation omitted). Under the federal notice pleading standards, a plaintiff’s “factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Put differently, a “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570). “In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true.” *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013).

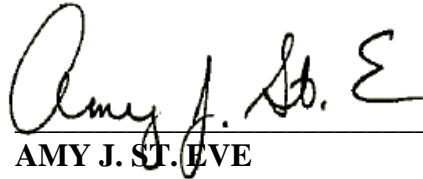
## ANALYSIS

The Third-Party Defendants move to dismiss the Third-Party Complaint as improper under Rule 14(a). *See Mizuho Corp. Bank (USA) v. Cory & Assoc. Inc.*, 341 F.3d 644, 649 (7th Cir. 2003). Rule 14(a) sets forth the circumstances in which a defendant may bring a third party into a lawsuit and states in relevant part: “A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Put differently, bringing in a third party “presupposes liability on the part of the original defendant which he is attempting to pass on to the third-party defendant.” *Parr v. Great Lakes Exp. Co.*, 484 F.2d 767, 769 (7th Cir. 1973); *see also* 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 1441 (“Impleader, or third-party practice as it is called in Rule 14, is the procedure by which a defendant can bring in as a third-party defendant one alleged to be liable to defendant for all or part of plaintiff’s claim against defendant.”).

Here, Eliot is not an original Defendant to Plaintiffs’ First Amended Complaint in which they bring a breach of contract claim based on Simon Bernstein’s life insurance policy against Jackson. Instead, Eliot is a Third-Party Defendant in Jackson’s interpleader action. More importantly, because Eliot is a Third-Party Defendant to the interpleader claim, he is not facing any liability in this lawsuit. *See MetLife Investors USA Ins. Co. v. Zeidman*, 734 F.Supp.2d 304, 310 (E.D.N.Y. 2010) (“Rule 14 limits a defendant to joining third parties that share or supersede the defendant’s liability to the plaintiff.”). Instead, Eliot is seeking damages against Tescher and Spallina for other claims, namely, fraudulent conversion, breach of fiduciary duty, legal malpractice, abuse of the legal process, common law conversion, civil conspiracy, and negligence in connection with the administration of Simon Bernstein’s Estate in the Probate

Court of Palm Beach County, Florida. Rule 14(a) does not authorize Eliot to seek any such relief in the present lawsuit because Eliot is not facing any liability in the first instance. The Court therefore grants Tescher and Spallina's motion to dismiss.

**Dated:** March 17, 2014

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

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1  
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

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, April 22, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing held on 4/22/2014 and continued to 6/10/2014 at 08:30 AM. Any dispositive motions, with supporting memoranda, shall be filed by 7/14/14. 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.

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

Case No. 13 cv 3643

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

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

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

Counter-Plaintiff, )

v. )

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

Counter-Defendant )

and, )

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

Third Party Defendants )

ELIOT IVAN BERNSTEIN, )

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

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



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

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

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

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

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

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

(Dkt. No. 17 at ¶20).

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

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

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

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

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

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

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

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

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

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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

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

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

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LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

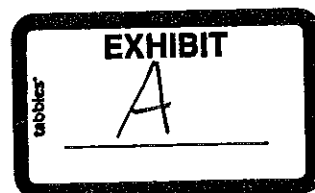
WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

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

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

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

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



Illinois),

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

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

SIGNED & DATED

Martin Colin, Circuit Judge

MAR 11 2014  
JUDGE MARTIN H. COLIN

Copies furnished to:

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

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

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

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391LXXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

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

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

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

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

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

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

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

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

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

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

*[Signature]*  
Circuit Judge

cc: Parties on attached service list

*Wtk*  
*THE COURT NEEDS TO ENFORCE THIS ORDER.*



SERVICE LIST

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

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

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

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

---

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

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

ORDERED and ADJUDGED:

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

EXHIBIT "B"

2/25/14

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

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

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

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

*Copies to:*

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

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

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

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

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

LAW OFFICES

TESCHER & SPALLINA, P.A.

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

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

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

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

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

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

Dear Bree:

As per our earlier telephone conversation:

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

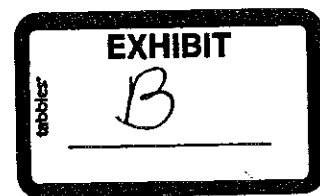
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

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

RLS/km

Enclosures





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

IN RE:

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

ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

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

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

ORDERED and ADJUDGED that


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



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

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

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

  
MARTIN COLIN  
Circuit Court Judge

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

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

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE
COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE
COMPANY,

Counter-Plaintiff,

v.

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95

Counter-Defendant

and,

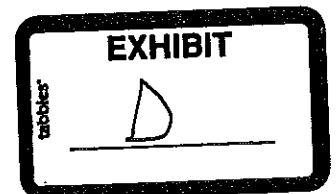
FIRST ARLINGTON NATIONAL BANK,
as Trustee of S.B. Lexington, Inc. Employee
Death Benefit Trust, UNITED BANK OF
ILLINOIS, BANK OF AMERICA,
successor in interest to "LaSalle National
Trust, N.A., TED BERSTEIN, individually
and as alleged Trustee of the Simon
Bernstein Irrevocable Insurance Trust Dtd.
6/21/95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

Third Party Defendants

Case No. 13 cv 3643

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

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



ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and )

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

Third Party Defendants )

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

Intervenor. )

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



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

### **INTRODUCTION**

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

### **PARTIES AND JURISDICTION**

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

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

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

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

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

### BACKGROUND

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

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

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

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

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

(Dkt. No. 17 at ¶20).

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

12. Plaintiff cannot prove the existence of a Trust document; cannot prove that a trust was ever created; thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy proceeds are payable to Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent’s estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent’s estate for administration and distribution).

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

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

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

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

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE
COMPANY,

Defendant,

Case No. 13 cv 3643

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., TED BERSTEIN, individually
and as alleged Trustee of the Simon
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Third Party Defendants

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually and as )  
alleged Trustee of the Simon Bernstein )  
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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 )  
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IANTONI, S.B. LEXINGTON, INC., )  
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INC., S.B. LEXINGTON, INC., )  
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(OF ILLINOIS) AND JOHN AND )  
JANE DOE'S )

Third Party Defendants )

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

Intervenor. )

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

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

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

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



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

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

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

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

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

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

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

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

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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

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

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

LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

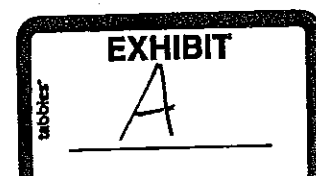
WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

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

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

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

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



Illinois),

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

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

SIGNED & DATED

Martin Colin, Circuit Judge

MAR 11 2014  
JUDGE MARTIN H. COLIN

Copies furnished to:

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

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

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

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

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IX (COLIN)

Petitioner

vs.

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

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

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

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

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

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

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

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

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

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

*[Signature]*  
Circuit Judge

cc: Parties on attached service list

*WTR*  
"THE COURT RESERVE THE RIGHT TO ENFORCE THIS ORDER."



SERVICE LIST

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

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

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

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

Pamela Beth Simon (U.S. Mail)  
950 North Michigan Avenue, Suite 2603  
Chicago, Illinois 60611

Jill Iantoni (U.S. Mail)  
2101 Magnolia Lane  
Highland Park, Illinois 60035

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

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

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

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

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

---

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

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

ORDERED and ADJUDGED:

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

EXHIBIT "B"

2/25/14

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

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

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

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

*Copies to:*

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

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

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

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

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

LAW OFFICES

TESCHER & SPALLINA, P.A.

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

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

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

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

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

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

Dear Bree:

As per our earlier telephone conversation:

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

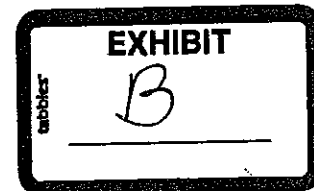
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

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

RLS/km

Enclosures



FROM: Peter M. Feaman P.A. 7345554 TO: 2741418 05/23/2014 10:43:47 #17697 P.003/006



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

IN RE:

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

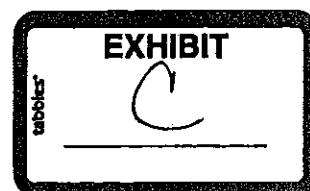
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

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

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

ORDERED and ADJUDGED that

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





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, )  
by )

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 Additional Disclosures

Eliot Ivan Bernstein

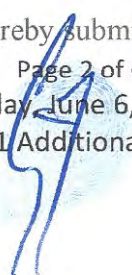
ELIOT IVAN BERNSTEIN, )  
 )  
 Cross-Plaintiff, )  
 )  
 v. )  
 )  
 TED BERNSTEIN individually and )  
 as alleged Trustee of the Simon )  
 Bernstein Irrevocable Insurance Trust )  
 Dtd. 6/21/95 )  
 )  
 Cross-Defendant )  
 )  
 and )  
 )  
 PAMELA B. SIMON, DAVID B. SIMON )  
 both Professionally 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) ADDITIONAL 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 additional disclosures:

Page 2 of 6  
 Friday, June 6, 2014  
 Rule 26(a)1 Additional Disclosures





**(i) Relevant documents to be used as proof in Eliot's possession**

1. Eliot hereby produces the following documents attached as Exhibit A.
2. Eliot hereby produces documents located at the following URL, hereby incorporated in entirety by reference herein @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140602EstateFiles>

[BenBrownCuratorDelieveredByTeschlerAndSpallina.pdf](#) The file is 240MB so

patience is a virtue and please download and print these files for the Court

Record. Bates #TS000001 through Bates TS007421.

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  
2733 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

Dated June 06, 2014

EXHIBIT A

A handwritten signature in blue ink is superimposed over a circular fingerprint. The signature is stylized and appears to be the initials 'SF' or similar. The fingerprint is a standard ten-print pattern.

SIMON BERNSTEIN  
2000 INSURANCE TRUST

DATED: *August 15, 2000*

PROSKAUER ROSE LLP

Attorneys at Law  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431-7360

TRUST AGREEMENT dated this *15* day of *August*, 2000, between SIMON BERNSTEIN, as Settlor, and SHIRLEY BERNSTEIN and ALBERT W. GORTZ, as Trustees.

1. As and for a gift, the Settlor hereby assigns and transfers to the Trustees and their successors (together, the "Trustees") the life insurance policies set forth in Schedule A annexed hereto, and the Settlor agrees to execute all such assignments and changes of beneficiary and to do such other acts and things as may be necessary in order to make the Trustees irrevocable absolute assignees of said life insurance policies. The Trustees shall hold said policies, together with any other property which may be received by them, in trust upon the terms and conditions set forth herein. This trust shall be known as the "SIMON BERNSTEIN 2000 INSURANCE TRUST."

2. (a) During the Settlor's lifetime, the Trustees shall hold the trust property, shall invest and reinvest the same, and shall pay so much of the income therefrom to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the Settlor's descendants, living from time to time, in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine, accumulating any balance of the income and adding the same to principal.

(b) During the Settlor's lifetime, the Trustees are further authorized and empowered, from time to time, to pay to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the

THE ORIGINAL OF THIS DOCUMENT IS BEING  
HELD FOR SAFEKEEPING BY  
PROSKAUER ROSE LLP  
2255 GLADES ROAD  
BOCA RATON, FLORIDA 33431

*54*  
TS003893

Settlor's descendants, living from time to time, such sums out of the principal of the trust (even to the extent of the whole thereof), in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine; provided, however, that the Trustees shall notify the Settlor's wife and each of the Settlor's descendants of their intention to make any distribution pursuant to this subdivision, whereupon the Settlor's wife and each of said descendants shall have the right (prior to such distribution) to withdraw principal pursuant to subdivision (c) of this Article 2 within thirty days after receipt of such notice.

(c) In each calendar year (including the year in which the trust is first funded), with respect to any addition to principal,

(1) The Settlor's spouse is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to the fair market value of the property added to principal (valued as of the date the addition is made),

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to the Settlor's spouse (determined on the date the addition is made, after taking into



account all prior gifts to the Settlor's spouse by such individual and assuming that in the case of any such individual other than the Settlor, his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code,

and

(B) the amount from prior years (if any) that remains subject to his or her power of withdrawal.

(2) If the aggregate additions to the trust made in said year exceed the amount that the Settlor's spouse may withdraw pursuant to paragraph (1) of this subdivision (c), each of the Settlor's descendants, living from time to time, is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to,

(I) a) the fair market value of the property added to principal (valued as of the date the addition is made),

reduced by,

b) the amount subject to the power of withdrawal of the Settlor's spouse pursuant to paragraph (1) of this subdivision (c),

divided by,

(II) the number of the Settlor's descendants having a power of withdrawal under this paragraph (2) immediately after the addition is made,

or,



(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to such descendant (determined on the date the addition is made, after taking into account all prior gifts to said descendant by the individual making that addition and assuming that his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code),

and

(B) the amount from prior years (if any) that remains subject to said descendant's power of withdrawal.

(3) Said rights of withdrawal may be exercised only by written notice to the Trustees and any such withdrawals shall be made out of additions to principal made during the current year, and, to the extent that those additions are insufficient, out of the balance of the principal. The Trustees shall notify the Settlor's spouse and each of the Settlor's descendants, living from time to time, in writing of his or her power of withdrawal with respect to each addition within fifteen days after the date the addition is made.

(4) (A) Each beneficiary's power of withdrawal in any calendar year shall lapse at the end of that year to the extent of,

(i) the amount described in Section 2514(e) of the Code (which, if expressed as a percentage of the fair market value of trust principal, shall be that percentage determined as of the end of the year in question), combining, for this purpose, the fair market

values of the principal of the trust under this Agreement and of all other trusts as to which the beneficiary may have a power of withdrawal,

reduced (but not below zero) by,

- (ii) the amounts by which the beneficiary's powers of withdrawal with respect to each such trust shall have lapsed at the end of that year (assuming that, with respect to each beneficiary, his or her powers of withdrawal as to each such trust, including this trust, shall lapse in the order in which the trust granting such power was created).

(B) Each beneficiary's power of withdrawal shall lapse in its entirety, (i) upon the beneficiary's death, or (ii) upon the Settlor's death if any part of the principal of the trust is includable in the Settlor's gross estate for Federal estate tax purposes.

(5) Notwithstanding the foregoing, any individual making an addition to the principal shall have the right, by written instrument delivered to the Trustees when the addition is made, with respect to any power of withdrawal that otherwise would be created as a result of said addition, (A) to exclude any beneficiary from exercising his or her power of withdrawal that would otherwise be created, (B) to increase (but not exceeding the amount of his or her addition) or decrease the amount subject to any beneficiary's power of withdrawal, or (C) to change the period during which any beneficiary's powers of withdrawal may be exercised.





3. Upon the death of the Settlor, the then principal of the trust shall be held by the Trustees in further separate trust to pay the income therefrom in quarterly or more frequent installments to the Settlor's wife during her life.

The Trustees are authorized and empowered, from time to time, to pay to the Settlor's wife such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees, in their absolute discretion, deem in her best interests.

Upon the death of the Settlor's wife, the then principal of the trust shall pass to such of one or more of the Settlor's descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as the Settlor's wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon the Settlor's death if the Settlor's wife predeceases the Settlor, said principal shall be divided into shares, per stirpes, for such of the Settlor's children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, provided, however, that any share so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty shall be disposed of as provided in Article 4 of this Agreement.



4. All shares or portions above or below directed to be set aside for a grandchild or more remote descendant of the Settlor and directed to be disposed of as provided in this Article 4 shall be held by the Trustees in further separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as the Trustees deem necessary or advisable, accumulating any balance of the income and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

The Trustees are authorized and empowered, from time to time, to pay to the beneficiary such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees shall deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for the beneficiary's then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of the Settlor and who has



descendants then living, or, in default thereof, for the Settlor's then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of the Settlor who is then the beneficiary of a trust under this Article 4 shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article 4 shall be disposed of as provided in this Article 4.

5. The Trustees shall have the power, in their absolute discretion, at any time or from time to time: to apply for and to purchase contracts of insurance on the life of the Settlor; to make premium payments out of the income or principal on any policy of life insurance held by them hereunder; to exercise any of the rights or options with respect to any policy of life insurance held by them hereunder, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy, applying dividends against premiums or purchasing paid up additions, and exercising options with respect to conversion, surrender or payment of death proceeds.

6. If ALBERT W. GORTZ ceases to be qualified as a Trustee hereunder, the Settlor's daughter PAMELA BETH SIMON shall be entitled to qualify as successor Trustee in his place.

The Trustees from time to time qualified hereunder are authorized and empowered to designate one or more co-Trustees and, subject to the foregoing, a sole surviving Trustee at any time qualified hereunder is authorized and empowered to designate one or more successor Trustees to succeed himself or herself; provided, however, that the Settlor may not serve as a Trustee hereunder and that the Settlor's wife may not serve as a sole Trustee hereunder, and, provided further, that JEANNIE BERNSTEIN shall never be designated as or serve as a Trustee of any trust created hereunder.

An individual Trustee shall cease to be qualified as Trustee hereunder if he or she is under a legal disability or if by reason of illness or mental or physical disability, in the written opinion of two doctors then practicing medicine, he or she is unable to manage his or her affairs. Each Trustee acting hereunder hereby waives any doctor-patient privilege that may exist and authorizes said doctors to release all medical information that may be requested by the Trustees acting hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.



No bond or other security shall be required for any reason whatsoever of any Trustee named herein or designated as herein provided.

7. The Trustees hereunder shall have the following discretionary powers in addition to those conferred by law:

(a) To make any payment or distribution (required or authorized under this Agreement) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard to the income tax basis of property allocated to any beneficiary.

(b) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article, so long as they, in their absolute discretion, deem it advisable.

(c) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable, without regard to any duty to diversify or, except with respect to any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.



(d) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but the Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to any trust hereunder.

(e) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(f) Severally to resign, by delivering to any successor or co-Trustee written notice of such resignation, to take effect at such date as said resigning Trustee may specify in said notice, without necessity for prior accounting or judicial approval.

(g) Severally to authorize, by instrument in writing, any person or corporation, including any co-Trustee, bank or trust company, to act in the place of said Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Trustee.

(h) To credit to principal or income or to apportion between them in such manner as they deem advisable any distributions from partnerships, any extraordinary, wasting or liquidating dividends, any dividends payable in the stock of the corporation paying the dividend or payable in the stock of another corporation and any so-called "capital gains dividends" declared by investment companies or investment trusts.

(i) To charge to principal or income or to apportion between them any ordinary or extraordinary expenses in such manner as they deem advisable.

(j) To determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money.

(k) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute and extending beyond the duration of the trusts herein), exchange, grant options to lease or to

buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder.

(l) To borrow such sums as they deem advisable for the proper administration of the trusts and to give security therefor.

(m) With respect to any property distributable absolutely to an infant remainderman: in their absolute discretion, to retain possession of and manage the same during his or her minority, with all the rights, powers and compensation of Trustees hereunder, and from time to time to apply so much of the income and principal thereof to the use of said infant as they deem advisable, accumulating any balance of the income and adding the same to principal at convenient intervals; upon said infant's attaining majority (or sooner death), the then principal and any accumulated income shall be distributed to said infant (or his or her estate); this power shall not affect the vesting of said property in said infant.

(n) In determining the amount of income or principal applicable to the use of an infant, to disregard the duty or ability of the parent or parents of said infant to support said infant; and to make payment of any income or principal, applicable to the use of or payable to an infant, (1) to the Guardian (qualified in any jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her Guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act and to select age twenty-one for termination of custodianship, or (4) to apply the same for his or her benefit; the receipt of such Guardian, parent or Custodian or the evidence of the application of such income or principal shall be a full discharge to the Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of the Settlor's grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(o) To remove any of the property held hereunder to or from any jurisdiction; to change the situs of administration of any trust hereunder from one jurisdiction to another and to elect the law of such other jurisdiction to govern the same.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held hereunder in exchange for securities thereof.

(q) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts



own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as the Trustees, in their absolute discretion, shall deem advisable.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make all necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person or by proxy.

(t) To the extent permitted by law, to register any of the property held hereunder in their names as Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(u) To lend such sums out of the income (other than of any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or State law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that under no circumstances may any loan be made to the Settlor.

(v) To exercise any settlement option with respect to the proceeds of any policy of life insurance payable to them as beneficiaries and, in the event of any controversy concerning the payment of such proceeds (or any other controversy with the insurer), to compromise any claim they may have, without the necessity of court approval; to receive such sums as may become payable to them as beneficiaries of any policy of life insurance, with authority to execute all necessary receipts and releases to the insurer, and, upon being advised of the death of the insured, to make efforts to collect such sums as may appear to be due them, without any obligation to institute suit or maintain any litigation to collect the proceeds of any such policy unless in possession of funds sufficient for that purpose or unless indemnified to their satisfaction for attorneys' fees, costs, disbursements and other expenses and liabilities to which they may be subjected by reason of such action; provided, however, that the Trustees may utilize any property held by them hereunder to pay expenses incurred in connection with enforcing the payment of any such sums due them. Any insurer issuing such policy shall, upon payment of the proceeds to the Trustees, be released



and discharged of any obligation to see that such proceeds are applied as provided in this Agreement and of any further liability to the Trustees or to any beneficiary hereof.

(w) To guarantee loans made to any beneficiary hereunder.

(x) To trade on margin (but only with the approval of the Settlor's spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, the Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

8. (a) All the powers granted in this Agreement may be exercised after the termination of the trusts in connection with the proper administration and distribution thereof.

(b) Except as otherwise provided in subdivision (o) of Article 7 of this Agreement, this Agreement shall be governed by and its validity, effect and interpretation determined by the laws of the State of Florida.

(c) This Agreement shall be irrevocable.

(d) In any judicial proceeding involving any trust hereunder and in any non-judicial settlement of the account of a Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(e) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether said life beneficiary or said person died first, then, for the purposes of this Agreement, said person shall be deemed to have died before said life beneficiary.

(f) Upon the commencement of the trusts herein and upon the death of an income beneficiary, or any other termination of the trusts herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which the Trustees are authorized in their discretion to accumulate shall be added to principal.



(g) Any income or principal payable to a beneficiary hereunder may, in the discretion of the Trustees, be applied by them for the benefit of said beneficiary.

(h) Notwithstanding any provision in this Agreement to the contrary, any power (including discretionary powers) granted to the Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause the Settlor's estate to lose all or part of the tax benefit afforded the Settlor's estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to any trust for the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, (1) subdivisions (h), (i), (j), (p), and (q) of the preceding Article of this Agreement and subdivision (f) of this Article shall not apply, and (2) the Settlor's spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(i) Any Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Trustee(s).

(j) With respect to any Trustee who is interested, in his or her individual capacity, in any firm or corporation in which the Settlor's estate or any trust hereunder may have an interest, said Trustee may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but, if one or more of said Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of said trust shall be made by said disinterested Trustee(s).

(k) A person from time to time qualified as Trustee hereunder shall not be disqualified from purchasing assets of the trust, provided (1) said purchaser shall not participate as Trustee in the decisions of the Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Trustee(s); and (2) in fixing said price, conditions and terms said other Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Trustee.

(l) The Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of said Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of said Trustees has no such interest, then as to all such matters the decision of the trusts hereunder shall be made by said disinterested Trustee(s).

(m) During the minority of any beneficiary, notice of his or her right to withdraw principal from a trust hereunder shall be given to and such right shall be exercisable on his or her behalf by his or her natural or legal guardian, his or her conservator, or his or her committee (in each case, other than the Settlor); provided, however, that no such notice shall be given to or exercisable by JEANNIE BERNSTEIN in any capacity as such beneficiary's natural or legal guardian, conservator, committee, parent or Custodian.

(n) The Settlor or any other person may from time to time add assets to the principal of the trusts hereunder, provided only that said assets are acceptable to the Trustees.

(o) All testamentary powers of appointment granted in this Agreement shall be exercisable only by specific reference to this Agreement and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the power holder or his or her estate or his or her creditors or the creditors of his or her estate.

(p) Notwithstanding the provisions of Article 4 of this Agreement, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article 4.

(q) Whenever property is directed to be held in a trust hereunder, the Trustees are authorized and empowered to establish two or more separate trusts for such property, with said trusts to have identical provisions, to the end that the



Federal generation-skipping transfer tax inclusion ratio, as defined in Section 2642(a) of the Code, of each trust will be either zero or one after allocation of the Settlor's available GST exemption pursuant to Section 2631 of the Code. The Trustees are further authorized and empowered to make different tax elections with respect to each such separate trust (including the allocation of the Settlor's available GST exemption), to invest such trusts in the same or different manners, to exercise any and all discretionary powers granted to them hereunder with respect to such separate trusts in the same or different manners, and to take any and all other actions consistent with the fact that such trusts are separate entities. The Settlor recommends (but does not direct) that no distribution of principal be made to a beneficiary from his or her trust(s) with a generation-skipping transfer tax inclusion ratio of zero until the trust(s) for his or her benefit with a generation-skipping transfer tax inclusion ratio of one shall first have been exhausted.

(r) Wherever in this Agreement property is directed to be added to an existing trust for a descendant of the Settlor hereunder, the Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(s) If, at any time, there shall be a trust created under the Settlor's Will, the Will of the Settlor's spouse or a trust created by the Settlor or the Settlor's spouse (or both of them) during the Settlor's lifetime, for the same beneficiaries and subject to the same provisions as a trust under this Agreement (or as a trust intended to be created under this Agreement), or if there shall be more than one trust under this Agreement for the same beneficiaries and subject to the same provisions, the Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code) to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the



provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(t) Wherever the context permits, the word "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(u) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being the Settlor's intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(v) In no event shall any addition to the trust be made less than thirty days before the end of any calendar year.

(w) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of this Agreement) in effect at the date of this Agreement, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(x) In determining whether or not to exercise any discretionary power to pay income or principal of any trust hereunder, the Trustees may, but shall not be required to, (1) with respect to the trust created under Article 3 of this Agreement, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) The Trustees must own each policy of insurance purchased by the Trustees or contributed to the trust. The Trustees shall have no liability or responsibility for any loss resulting from the failure of any insurance company and inability to pay its claim under any insurance policy purchased by the Trustees. The Trustees shall have the power to borrow any sum in accordance with the provisions of any such insurance contracts; however, the Trustees shall be under no obligation to invest any cash value accumulated in any life insurance policy owned by the trust regardless of the investment yield on such value within the policy as compared to the net investment yield which could be

obtained outside the policy. Except as expressly provided otherwise herein, the Trustees shall be under no duty or obligation to exercise any benefit, option or privilege granted by any insurance policy and the Trustees shall not be liable or accountable to anyone for the exercise or non-exercise of any such benefit, option or privilege, including the ability to borrow against the cash values to obtain a higher investment yield outside the policy.

(z) The Trustees shall be responsible for the proceeds of the policies only when, as and if collected by them, and the Trustees shall not be liable or accountable to anyone if, because of default in premium payments, failure of the insurance company or for any other reason whatsoever, the policies, or any of them, shall lapse or be otherwise uncollectible. The Trustees shall not be deemed, because of this trust, to have entered into any covenant to keep any insurance policies in force.

(aa) In determining the amount of any power to withdraw principal that may lapse under this Agreement, the Trustees may rely upon the written statement of the Trustees of any other trust to which this Agreement refers as to the fair market value of the principal thereof at the end of any year and shall have no duty to inquire as to the correctness of such statement.

(bb) Wherever reference is made in this Agreement to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

9. The term "descendants" as used in this Agreement shall specifically exclude the Settlor's daughter PAMELA BETH SIMON and her descendants. The Settlor has not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

10. The Trustees hereby accept the trust herein and

A handwritten signature in blue ink, appearing to be 'A', is written over a circular blue ink fingerprint or stamp.

agree to carry out the provisions hereof and faithfully to perform and discharge all of their duties as Trustees.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Settlor

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

*[Signature]* (L.S.)  
SIMON BERNSTEIN, Settlor

Print Name 183 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

*[Signature]*  
Robert Jacobowitz  
Print Name  
2415 NW 32nd St.  
Address  
Boca Raton, FL

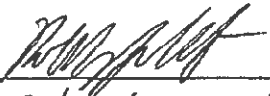


Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Trustee

George D. Karibjanian  
GEORGE D. KARIBJANIAN

 (L.S.)  
SHIRLEY BERNSTEIN, Trustee

Print Name 1133 S.W. 20TH STREET  
Address BOCA RATON, FLORIDA 33486

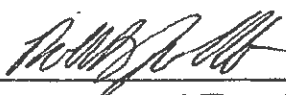
  
Print Name Robert Jacobowitz  
2415 NW 32nd St  
Address Boca Raton, FL

Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Trustee

George D. Karibjanian  
GEORGE D. KARIBJANIAN

Albert W. Gortz (L.S.)  
ALBERT W. GORTZ, Trustee

Print Name 1133 S.W. 20TH STREET  
Address BOCA RATON, FLORIDA 33486

  
Print Name Robert Jacobowitz  
2415 NW 32nd St.  
Address Boca Raton, FL

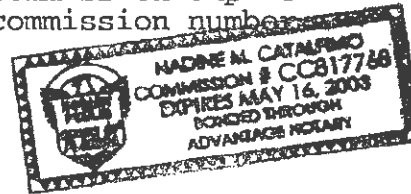




STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by SIMON BERNSTEIN, who is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

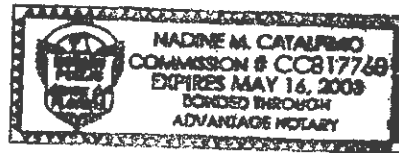
*Madine M. Catalano*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by SHIRLEY BERNSTEIN, who is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

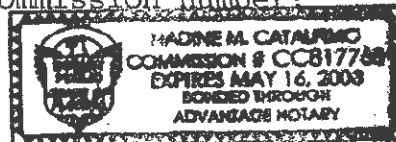
*Madine M. Catalano*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by ALBERT W. GORTZ, who is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

*Madine M. Catalano*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



*AS*  
TS003914

**SCHEDULE A**  
**TRUST AGREEMENT dated the 4th day**  
**of August, 2000, between**  
**SIMON BERNSTEIN, as Settlor,**  
**and SHIRLEY BERNSTEIN AND**  
**ALBERT W. GORTZ, as Trustees**

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

Capitol Bankers Life Insurance Company,  
Policy No.: 1009208



T3003915

**Donald Tescher**

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**From:** Donald Tescher  
**Sent:** Tuesday, April 30, 2013 12:16 PM  
**To:** Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** Bernstein Estate

Do you communicate with your siblings other than Pam and Scooter? Below is an email to Robert from Jill and Lisa. In addition to being factually inaccurate, clearly indicates that they are not being kept in the loop. As a reminder, you were to obtain an appraisal from the jeweler as the one he gave you is inadequate. Also, you were to provide us with an accounting. How is that coming?

It has been over a month since we last heard any update on the Bernstein Estate, the insurance proceeds, the real estate, the law suit(s) and jewelry. It is our understanding that everything EXCEPT for the jewelry and insurance proceeds is under your jurisdiction as the Executor, so I am not clear on where that jewelry is or the appraisals I had asked for. I shared with my siblings, that once we have those appraisals I have several strong contacts that we will use to sell it, unless anyone of us wants to purchase it. We understand your Partner, Don has resigned from his duties regarding my Dad's estate. We would like to know why, so we fully understand what is going on. Please send us the sale information of the condo and where that money is going for our beneficiaries and the latest update with the insurance company and the proceeds.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@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)

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4/30/2013



TS004429

**Robert Spallina**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 2:18 PM  
**To:** David (Scooter) Simon; Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** RE: Heritage Union

Scooter, as per my telephone conversation with you where I advised you of my subsequent telephone conversation with Heritage's counsel, please revise the message as modified below and have it typed on your letterhead, signed and addressed to Scott D. Welling, Associate General Counsel, Jackson National Life Insurance Company, One Corporate Way, Lansing, Michigan 48951. Email is [scott.welling@jackson.com](mailto:scott.welling@jackson.com). Please copy us also. Thank you.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@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)

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---

**From:** David (Scooter) Simon [<mailto:dsimon@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Welling:

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]  
**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein



TS004430

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** Ted Bernstein [mailto:[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

See below

Sent from my iPhone

Begin forwarded message:



**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)**



TS004432

**Robert Spallina**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:03 PM  
**To:** 'Cheryl Sychowski'  
**Cc:** Donald Tescher; Adam Simon; Adam Simon; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

**Importance:** High

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [mailto:cheryl@stpcorp.com]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** dtescher@tescherspallina.com; Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498



TS004433

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)



TS004434



**Robert Spallina**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** Welling, Scott; Robert Spallina  
**Cc:** asimon21@att.net; David (Scooter) Simon; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@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)

Pursuant to the provisions of Internal Revenue Service Circular 230 that apply to written advice provided by Federal Tax practitioners, please be advised (a) that if any advice herein relating to a Federal tax issue would, but for this disclaimer, constitute a "reliance opinion" within the meaning of Circular 230, such advice is not intended or written to be used, and cannot be used by the affected taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer, and (b) any written statement contained herein relating to any Federal tax issue may not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

**From:** adam simon [<mailto:asimon21@att.net>]  
**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498



TS004435

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Tstee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.



**From:** Cheryl Sychowski [mailto:[cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)]

**Sent:** Friday, April 19, 2013 3:48 PM

**To:** Welling, Scott

**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)



**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:43 AM  
**To:** Ted Bernstein  
**Cc:** Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Ted – I'm done with this matter. I have bent over backwards for YOU to try to keep things in order out of respect for your father and mother but your family has gotten to the point of completely dysfunctional and I do not need the aggravation in my life. Handle the insurance matter as you please (or as your in-laws please which seems to be the case). I cannot and will not help people that do not want to help themselves. Don is a much more patient man than I so he may continue to assist you but I will not. Sorry.

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:31 AM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** adam simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Tuesday, April 16, 2013 9:28 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

---

**From:** adam simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:26 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; David (Scooter) Simon; Donald Tescher  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:



TS005252

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank 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  
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---

**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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)

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TS005253

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon



T6005254

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:36 AM  
**To:** 'Adam Simon'; David (Scooter) Simon  
**Cc:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Problem is that you NEVER did speak with us before you did what you did...shame on you guys!

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:31 AM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** adam simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Tuesday, April 16, 2013 9:28 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

---

**From:** adam simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:26 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; David (Scooter) Simon; Donald Tescher  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM



**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

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**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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)

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TS005256



---

**From:** Welling, Scott [mailto:scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

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

May 10, 2013

*Personal & Confidential*

FEDERAL EXPRESS

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

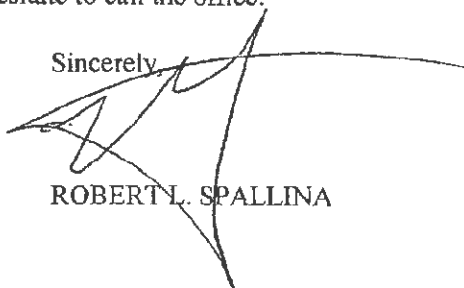
**Re: Simon Bernstein Estate**

Dear Adam:

Enclosed for your records is a copy of the Heritage Union Life Insurance file for the above referenced Estate.

If you have any questions, please do not hesitate to call the office.

Sincerely,



ROBERT L. SPALLINA

RLS/ac  
Enclosure



TS006542



## Shipment Receipt

**Address Information****Ship to:**

Adam Simon, Esq.  
The Simon Law Firm  
303 E. Wacker Drive  
Suite 210  
CHICAGO, IL  
60601  
US  
312-819-0730

**Ship from:**

Lauren Galvani  
4855 Technology Way  
Suite 720  
Boca Raton, FL  
33431  
US  
5619977008

**Shipment Information:**

Tracking no.: 799732615270  
Ship date: 05/10/2013  
Estimated shipping charges: 33.50

**Package Information**

Service type: Standard Overnight  
Package type: FedEx Pak  
Number of packages: 1  
Total weight: 2 LBS  
Declared Value: 0.00 USD  
Special Services:  
Pickup/Drop-off: Drop off package at FedEx location

**Billing Information:**

Bill transportation to: MyAccount-343  
Your reference: e/o Bernstein - 11187.006  
P.O. no.:  
Invoice no.:  
Department no.:

Thank you for shipping online with FedEx ShipManager at [fedex.com](http://fedex.com).

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FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Friday, May 03, 2013 6:41 PM  
**To:** Welling, Scott  
**Cc:** Donald Tescher  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Scott there is no trust instrument to be found. That was what the Dec action was all about.

Sent from my iPhone

On May 3, 2013, at 5:58 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Hello,

Can you gentlemen pdf me a copy of the trust?

Thanks.

Scott

---

**From:** Donald Tescher [<mailto:dtescher@tescherspallina.com>]  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** Welling, Scott; Robert Spallina  
**Cc:** [asimon21@att.net](mailto:asimon21@att.net); David (Scooter) Simon; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@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)

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TS006544

be imposed on the taxpayer, and (b) any statement contained herein relating to any Federal tax issue not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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---

**From:** Welling, Scott [mailto:scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

**From:** adam simon [mailto:asimon21@att.net]  
**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Tstee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <scott.welling@jackson.com> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to

resolve this matter by for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]

**Sent:** Friday, April 19, 2013 3:48 PM

**To:** Welling, Scott

**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)



TS006546

Bernstein - Life Ins.

**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** 'Welling, Scott'; Robert Spallina  
**Cc:** 'asimon21@att.net'; 'David (Scooter) Simon'; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

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Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
dtescher@tescherspallina.com

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---

**From:** Welling, Scott [mailto:scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

---

**From:** adam simon [mailto:asimon21@att.net]

4/19/2013



TS006547

**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Tstee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

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Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

4/19/2013



TS006548



Please give this matter your prompt attention.

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
P: (312) 819-0730  
F: (312) 819-0773  
E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013



TS006549

**Donald Tescher**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:03 PM  
**To:** 'Cheryl Sychowski'  
**Cc:** Donald Tescher; Adam Simon; Adam Simon; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498  
**Importance:** High

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

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I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

---

**From:** Cheryl Sychowski [mailto:cheryl@stpcorp.com]  
**Sent:** Friday, April 19, 2013 3:48 PM

4/19/2013



T5006550

**To:** Welling, Scott

**Cc:** dtescher@tescherspallina.com; Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company-  
Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013



TS006551

## THE SIMON LAW FIRM

303 EAST WACKER DRIVE  
SUITE 210  
CHICAGO, IL 60601-5210  
PHONE: (312) 819-0730 • FAX: (312) 819-0773

April 19, 2013

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951

RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life  
Insurance Company, Case Number 2013L003498

Mr. Welling:

This email confirms that the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Very truly yours,  
THE SIMON LAW FIRM



Adam M. Simon



**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 2:18 PM  
**To:** 'David (Scooter) Simon'; Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** RE: Heritage Union

Scooter, as per my telephone conversation with you where I advised you of my subsequent telephone conversation with Heritage's counsel, please revise the message as modified below and have it typed on your letterhead, signed and addressed to Scott D. Welling, Associate General Counsel, Jackson National Life Insurance Company, One Corporate Way, Lansing, Michigan 48951. Email is [scott.welling@jackson.com](mailto:scott.welling@jackson.com). Please copy us also. Thank you.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** David (Scooter) Simon [<mailto:dsimon@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Welling:

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]

4/19/2013



TS006553

**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** Ted Bernstein [mailto:[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

4/19/2013



TS006554

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)**

4/19/2013



TS006555

**Donald Tescher**

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Tescher,

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time for filing an answer or other responsive pleading in the Cook County matter.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

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Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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4/19/2013



TS006556



avoiding penalties that may be imposed on the taxpayer, and (b) any written statement contained herein relating to any Federal tax issue may not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

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Ted Bernstein  
561-988-8984  
tbernstein@lifeinsuranceconcepts.com

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <scott.welling@jackson.com>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <rspallina@tescherspallina.com>  
**Subject:** Bernstein

Hi Bob,

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Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

4/19/2013



TS006557

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to  
[@jackson.com](mailto:)**

4/19/2013



TS006558

Donald Tescher

**From:** Robert Spallina  
**Sent:** Thursday, April 18, 2013 9:19 PM  
**To:** Donald Tescher  
**Cc:** TBernstein@lifeinsuranceconcepts.com  
**Subject:** Fwd: Bernstein

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

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I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951  
Phone: (517) 367-4337  
Fax: (517) 706-5517

30 days  
[ - helps ~~write~~ out next week ]

Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)

4/19/2013



TS006559

**Donald Tescher**

---

**From:** Alexa Collevecchio  
**Sent:** Thursday, April 18, 2013 3:09 PM  
**To:** Donald Tescher  
**Subject:** David Simon "Scooter" 312-819-0730

*dsimon@stp corp.com*

Ted Mentioned to him that you called him and left him a voicemail but has no recollection of that happening

**Alexa Collevecchio, Receptionist**  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561.997.7008  
Facsimile 561.997.7308

4/19/2013



**Robert Spallina**

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, April 15, 2013 6:34 PM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

No, still not.

Ted Bernstein  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union  
**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**CC:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

Have you spoken to them now? We want the filing in Cook County withdrawn ASAP.

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, April 15, 2013 12:27 PM  
**To:** Robert Spallina  
**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

Hmmm - haven't spoken with him since being on phone in your office.

Ted  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** FW: Simon Bernstein Irrv Trust v Heritage Union  
**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**CC:** FW: Simon Bernstein Irrv Trust v Heritage Union



Ted – see below. Instructions from ~~his~~ clients??? Convenient how he didn't copy you.

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 15, 2013 12:01 PM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina:

I am trying to get final instructions from my clients, and will be back to you as soon as I can.

Thank you.

Adam Simon

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Adam Simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Monday, April 15, 2013 10:53 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Please advise timing as we have not received a response on the below email.

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed



TS006565

Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank 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 <http://www.tescherspallina.com/>

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**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this



trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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)

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**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]

**Sent:** Monday, April 08, 2013 12:47 PM

**To:** 'Adam Simon'; Robert Spallina

**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.



TS006567



Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon



TS006568

**Robert Spallina**

---

**From:** Adam Simon [asimon21@att.net]  
**Sent:** Monday, April 15, 2013 12:01 PM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina:

I am trying to get final instructions from my clients, and will be back to you as soon as I can.

Thank you.

Adam Simon

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Adam Simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Monday, April 15, 2013 10:53 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

Robert L. Spallina, Esq.  
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4855 Technology Way, Suite 720  
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---

**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

**Robert Spallina**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 2:01 PM  
**To:** Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Appreciate it Bob. My assistant was actually assembling the file to send to outside counsel to file an interpleader.

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** Adam Simon  
**Cc:** Welling, Scott; Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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---

**From:** Welling, Scott [mailto:scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union



TS006573

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon



**Robert Spallina**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon



TS006575

**Robert Spallina**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 12:58 PM  
**To:** Robert Spallina  
**Subject:** FW: Simon Bernstein Irv Trust v Heritage Union  
**Attachments:** COMPLAINT AT LAW-heritage union.pdf

Hello,

Did you know anything about this?

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:19 PM  
**To:** Welling, Scott  
**Subject:** Fw: Simon Bernstein Irv Trust v Heritage Union

I believe the complaint may have been missing from the prior email. Here it is. Thanks.

----- Forwarded Message -----

**From:** Adam Simon <asimon21@att.net>  
**To:** "scott.welling@jackson.com" <scott.welling@jackson.com>  
**Sent:** Monday, April 8, 2013 11:14 AM  
**Subject:** Simon Bernstein Irv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon



- FREE Disc. Pen.

- Ours - 1/1 X

- The last known date  
11 4

- SCOTT, WALTER @ JFCLEAN.COM



**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Thursday, March 14, 2013 7:17 AM  
**To:** Pam Simon  
**Cc:** David (Scooter) Simon; Ted Bernstein  
**Subject:** Re: Simon Bernstein

Waiting for carrier to clear up title and beneficiary designation. Did you get the email I sent everyone from the carrier last week? Scooter knows where we are in process.

Sent from my iPhone

On Mar 14, 2013, at 12:41 AM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Next step? By who? Or is it whom?

On Mar 13, 2013, at 7:42 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

Thanks.

Sent from my iPhone

On Mar 13, 2013, at 6:02 PM, "David (Scooter) Simon" <[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)> wrote:

last of the docs we can dig up.

**Very Truly Yours,**  
**David B. Simon**  
**The Simon Law Firm**  
303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730  
Fax: (312) 819-0773  
E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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**From:** Cheryl Sychowski  
**Sent:** Wednesday, March 13, 2013 4:32 PM  
**To:** David (Scooter) Simon  
**Subject:** Simon Bernstein

<DOC (9).PDF>



TS006579

**Robert Spallina**

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, March 08, 2013 11:21 AM  
**To:** Robert Spallina  
**Subject:** LaSalle

Robert,

The policy was originally bought by a 501(c)(9) Death Benefit VEBA Trust. LaSalle was a successor Trustee and the last Trustee before the VEBA was dissolved. SB Lexington, the corporation that established the VEBA Trust was also dissolved. Simon, as sole owner of SB Lexington at the time of dissolution, became the owner of the policy and he named the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as beneficiary. LaSalle has also since been dissolved or merged into Bank of America.

**Very Truly Yours,**

**David B. Simon**

**The Simon Law Firm**

303 East Wacker Drive, Suite 210

Chicago, IL 60601

Phone: (312) 819-0730

Fax: (312) 819-0773

E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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**Robert Spallina**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, March 08, 2013 1:44 PM  
**To:** Robert Spallina  
**Subject:** Bernstein; Policy No. 1009208

Hi Bob,

First, let me thank you for discussing this matter with me, and for your continued cooperation in helping ensure that the \$1 – million – plus proceeds of this policy are paid correctly.

As I noted during our conversation, Jackson recently acquired Reassure Life Insurance Company, and is now responsible for administering this policy. I have been working with former Reassure personnel to obtain the necessary documentation confirming the last-named owner and beneficiary of the policy. Unfortunately, due to the age of this policy, this is proving to be a difficult task.

My assistant, who is quite thorough, went through the policy file and prepared a detailed outline noting all policy activity, including owner changes and beneficiary changes. This outline revealed instances where letters were sent confirming ownership and/or beneficiary changes, for which no valid ownership change or beneficiary change directive could be found. I have sent the Reassure folks several emails pointing out these issues and I have asked them to provide all documentation substantiating the confirmation letters.

Clearly, Jackson wants to pay the proceeds of this policy to the correct beneficiary as swiftly as possible. If we need to seek the court's determination of who that beneficiary is, it is vitally important that we name in any pleading all entities which may have a claim to the proceeds. Hence the need to confirm, to the extent possible, all beneficiary designations which may (rightly or wrongly) have been recorded against the policy.

At this point, my hope is to resolve this matter by way of a Petition which (i) names all possible beneficiaries/claimants, and (ii) specifically asks for an order directing Jackson to pay a specific beneficiary. As I noted, the Petition should name Jackson as a party, so we will be bound by the Order. Assuming no hostile allegations are made against Jackson, I will not oppose the entry of the Order, but will simply await entry of the final Order, at which time payment can be made.

I will help you draft the Petition and Order.

Alternately, Jackson could simply interplead the funds and let the court decide who is entitled to the proceeds. I would like to avoid this if possible, as it would prove to be more expensive for both your clients and Jackson.

I pledge to work with you to resolve this matter as swiftly and economically as possible.

Please let me know if you need anything else.

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951  
Phone: (517) 367-4337  
Fax: (517) 706-5517

Please note: Jackson's email address has changed to @jackson.com



**Robert Spallina**

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, March 08, 2013 11:21 AM  
**To:** Robert Spallina  
**Subject:** LaSalle

Robert,

The policy was originally bought by a 501(c)(9) Death Benefit VEBA Trust. LaSalle was a successor Trustee and the last Trustee before the VEBA was dissolved. SB Lexington, the corporation that established the VEBA Trust was also dissolved. Simon, as sole owner of SB Lexington at the time of dissolution, became the owner of the policy and he named the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as beneficiary. LaSalle has also since been dissolved or merged into Bank of America.

**Very Truly Yours,**

**David B. Simon**

**The Simon Law Firm**

303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730

Fax: (312) 819-0773

E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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TS006582

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Wednesday, March 06, 2013 5:26 PM  
**To:** 'Ted Bernstein'; 'Pam Simon'; lisa.friedstein@gmail.com; Jill lantoni  
**Cc:** Donald Tescher  
**Subject:** Dec Action and Waivers  
**Attachments:** Declaratory Action to Establish a Lost Trust.pdf; Jill Waiver Consent and Joinder.pdf; Lisa Waiver Consent and Joinder.pdf; Pam Waiver Consent and Joinder.pdf

All – attached is the petition we intend to file along with the waivers that each of you will need to sign. We have not heard from the attorney at Heritage but as discussed we intend to file the attached on Monday regardless. We did check with his office and he is out until tomorrow so we will reach out to him again to see if he has any comments as a courtesy prior to filing. Please sign your waivers and send us the originals in the overnight mail so I can receive them on Friday. Ted does not need to sign a waiver as he is signing the petition.

If we need to have a call on any of this I am available tomorrow afternoon or on Friday most of the day.

Thanks,

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)

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TS006583

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Wednesday, March 06, 2013 5:32 PM  
**To:** 'Scott.welling@jackson.com'  
**Subject:** Simon Bernstein Trust - Policy #1009208  
**Attachments:** Declaratory Action to Establish a Lost Trust.pdf

Scott – I understand you are out of the office until tomorrow. We sent this to you previously and in error addressed it to the wrong email address. We would like to file this on Monday so if you could take a few minutes to review it would be greatly appreciated. We have not attached a copy of the Order but it will obviously be in the form of the relief requested.

Thanks,

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)

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: SIMON BERNSTEIN PROBATE DIVISION  
IRREVOCABLE INSURANCE  
TRUST dated JUNE 21, 1995 FILE NO.:

**DECLARATORY ACTION TO ESTABLISH A LOST  
TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

COMES NOW TED BERNSTEIN, son of SIMON BERNSTEIN ("SIMON"), deceased, and alleges the following:

Parties, Jurisdiction and Venue

1. This is an action to establish the terms of a lost trust, including the determination of a successor trustee, pursuant to Florida Statutes 86.011, 86.041 and 736.0201(2) and (4).
2. Florida Statutes 86.736.0201 provides, in part, for the Court to intervene in the administration of a trust when invoked by an interested person relating to the validity, administration or distribution of a trust, appoint or remove a trustee and ascertain beneficiaries.
3. Petitioner, TED S. BERNSTEIN ("TED"), is of legal age and a resident of Palm Beach County, Florida, and the former Personal Representative and current trustee of the FAMILY TRUST F/B/O SIMON BERNSTEIN under the SHIRLEY BERNSTEIN REVOCABLE TRUST.
4. SHIRLEY BERNSTEIN is the predeceased spouse of SIMON, who upon information and belief was the Trustee of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST (the "ILIT"), an irrevocable trust established by SIMON on June 21, 1995 .
5. SIMON died on September 13, 2012 and his estate is now being probated in the Circuit Court for Palm Beach County, Florida. SIMON is survived by the following adult children:





TED S. BERNSTEIN, resident of Palm Beach County, Florida ;  
PAMELA BERNSTEIN, resident of Chicago, Illinois;  
ELIOT BERNSTEIN, resident of Palm Beach County, Florida;  
JILL IANTONI, resident of Highland Park, Illinois; and  
LISA S. FRIEDSTEIN, resident of Highland Park, Illinois (hereinafter sometimes referred to as the "Children").

All of the Children are sui juris and have either executed and filed Consents to the relief sought or have been served with this Petition.

6. Venue of this proceeding is proper in this Court pursuant to Florida Statutes 737.0204 and Chapter 47 because the ILIT's principal place of administration and Trust situs was and remained in Palm Beach County, Florida.

General Allegations

7. Attached as Exhibit "A" is a copy of the Form SS-4, Application for Employer Identification Number, reflecting the name of the ILIT and signed by SHIRLEY as the Trustee and dated June 21, 1995.
8. Diligent search for the ILIT or a copy of it has been made, including inquiry with the insurance carrier, HERITAGE UNION LIFE INSURANCE COMPANY ("HERITAGE"), search of SIMON'S and SHIRLEY'S papers and documents, lawyer files and accountant files, and no original or copy has been located.
9. Upon information and belief, the Petitioner, TED, was named as the successor Trustee to SHIRLEY of the ILIT. (See Affidavit of David Simon, Esq., son-in-law of SIMON and SHIRLEY, attached hereto as Exhibit "B").
10. Upon information and belief, the beneficiaries of the ILIT were the children of SIMON and SHIRLEY, in equal shares and per stirpes. (See Affidavit of Robert L. Spallina, Esq., personal attorney to SIMON and SHIRLEY during their lifetimes, attached hereto as Exhibit "C").
11. HERITAGE has advised counsel for the Petitioner that their records reflect the owner of the life insurance policy to be SIMON and the beneficiary to be the ILIT. (See copy of communication from carrier dated \_\_\_\_\_ attached hereto as Exhibit



“D”),

12. HERITAGE will not settle and pay the death benefit under policy #1009208 until receipt of a court order identifying the successor trustee of the ILIT.
13. In order to avoid delays occasioned by the need to open new banking arrangements for the ILIT to process and distribute the insurance proceeds, TED wishes to authorize HERITAGE to disburse the death benefit proceeds to Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

WHEREFORE, Petitioner respectfully requests this Court to determine that

A. TED S. BERNSTEIN is the successor trustee to SHIRLEY BERNSTEIN of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995;

B. The remainder beneficiaries of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995 are the five (5) children of SIMON and SHIRLEY, in equal shares, per stirpes;

C. HERITAGE UNION LIFE INSURANCE COMPANY be directed to distribute the death benefit proceeds to the Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

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 \_\_\_\_\_, 2013

\_\_\_\_\_  
TED S. BERNSTEIN

\_\_\_\_\_  
Donald R. Tescher, Esq.  
Attorney for Petitioner  
Florida Bar No. 121086  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: (561) 997-7008  
Fax: (561) 997-7308

N:\WPDATA\estates\Bernstein, Simon\Life Insurance Trust\Declaratory Action to Establish a Lost Trust.wpd



TS006587

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served via U.S.

Mail to the following individuals on this \_\_\_\_ day of \_\_\_\_\_, 2013:

TESCHER & SPALLINA, P.A.

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

Donald R. Tescher, Esq.  
Attorney for Petitioner  
Florida Bar No. 121086  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: (561) 997-7008





IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995      FILE NO.:

\_\_\_\_\_ /

**WAIVER, CONSENT AND JOINDER TO  
DECLARATORY ACTION TO ESTABLISH A LOST TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

The undersigned, a surviving child of SIMON BERNSTEIN and SHIRLEY BERNSTEIN, acknowledge receipt of the captioned pleading, waive formal service and join in and consent to the relief requested.

Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
ELIOT BERNSTEIN



TS006590

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995

FILE NO.:

\_\_\_\_\_ /

**WAIVER, CONSENT AND JOINDER TO  
DECLARATORY ACTION TO ESTABLISH A LOST TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

The undersigned, a surviving child of SIMON BERNSTEIN and SHIRLEY BERNSTEIN, acknowledge receipt of the captioned pleading, waive formal service and join in and consent to the relief requested.

Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
JILL IANTONI



TS006591

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995

FILE NO.:

\_\_\_\_\_ /

**WAIVER, CONSENT AND JOINDER TO  
DECLARATORY ACTION TO ESTABLISH A LOST TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

The undersigned, a surviving child of SIMON BERNSTEIN and SHIRLEY BERNSTEIN, acknowledge receipt of the captioned pleading, waive formal service and join in and consent to the relief requested.

Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
LISA S. FRIEDSTEIN



TS006592

2/25/13 Bernstein

6/21, 1995 Trust execution date

Chapter 86 F.S.

~~Illinois resident~~  
~~Trust executed there~~

736.0108 Principal place of admin.

736.0201

736.0204(3) principal place of admin - FL.

INS - Heritage

- 1995 Trust reflected as bene in INS. Co docs

Both were FL residents

Sey owned policy died 9/13/12

Shirley was Trustee died 12/8/10

Pam, Jill, Lisa - all Illinois residents  
Eliot, his minor children & Ted - FL residents

SS-4 6/21/95 - 65-6178916



**Certificate of Service**

The undersigned certifies that a copy of the foregoing Rule 26 Additional Disclosure was served by ECF and by E-mail on June 06, 2014 to the following parties:

**Email**

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)

James J. Stamos  
Partner  
Stamos & Trucco LLP  
1 E. Wacker Drive, 3rd Floor  
Chicago, IL 60601  
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E-mail: [jstamos@stamostrucco.com](mailto:jstamos@stamostrucco.com)

Kevin P. Horan  
Associate  
Stamos & Trucco LLP  
1 E. Wacker Drive, 3rd Floor



Chicago, IL 60601

1-312-630-1208

E-mail: [khoran@stamostrucco.com](mailto:khoran@stamostrucco.com)



/s/ Eliot Ivan Bernstein

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



Certificate of Service

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, )  
by )

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 Additional Disclosures

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) ADDITIONAL 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 additional disclosures:

Page 2 of 6  
 Monday, June 9, 2014  
 Rule 26(a)1 Additional Disclosures

**(i) Relevant documents to be used as proof in Eliot's possession**

1. Eliot hereby produces the following documents attached as Exhibit A.
2. Eliot hereby produces documents located at the following URL, hereby incorporated in entirety by reference herein @  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140602EstateFilesBenBrownCuratorDelieveredByTeschAndSpallina.pdf> The file is 240MB so patience is a virtue and please download and print these files for the Court Record. Bates #TS000001 through Bates TS007421.

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: June 09, 2014

EXHIBIT A



**Robert Spallina**

**From:** Robert Spallina  
**Sent:** Monday, December 03, 2012 1:36 PM  
**To:** 'Pam Simon'  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** RE: Proceeds

Yes – but Eliot’s counsel will probably hold things up

**From:** Pam Simon [mailto:pambsimon@icloud.com]  
**Sent:** Monday, December 03, 2012 12:12 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** Re: Proceeds

Hi Robert - scooter will send you but can you send out for signatures? Thanks

On Dec 3, 2012, at 9:48 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

Please have him send me the document for my review and copy all. I want to make sure we have an agreement among all before I speak to the carrier.

**From:** Pam Simon [mailto:pambsimon@icloud.com]  
**Sent:** Sunday, December 02, 2012 7:39 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Simon David Scooter; Simon Pam  
**Subject:** Re: Proceeds

Hi Robert - can you call Scooter as he has a copy of the document you can circulate for signatures to release the proceeds. 312-909-0369 Thx

On Nov 19, 2012, at 12:14 PM, "David (Scooter) Simon" <dsimon@stpcorp.com> wrote:

May be available to achieve Si's intended results through waiver and settlement agreement.

Please have Mr. Spallina call my cell phone 312 909 0369

On Nov 19, 2012, at 1:11 PM, "Pam Simon" <pambsimon@icloud.com> wrote:

Is the 2000 trust an irrevocable trust?

On Nov 19, 2012, at 11:57 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

We are not responding to them with the document from 2000. We discussed that and you are carved out under that document. We need to find the 1995 trust ASAP

What 2000 Trust, they hid this from Carrier, Federal Court, Probate Court and Beneficiaries, with intent apparently. Holy Cow Batman!!!

**From:** Pam Simon [mailto:pambsimon@icloud.com]  
**Sent:** Monday, November 19, 2012 12:56 PM  
**To:** Ted Bernstein

**Cc:** Robert Spallina  
**Subject:** Re: Proceeds

Pls send the executed trust document before u respond to heritage

On Nov 19, 2012, at 9:13 AM, Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Highly unlikely they will use another trust - what is SOP when doc can't be found?

Ted Bernstein  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

Subject: RE: Proceeds  
From: Robert Spallina  
<[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
To: Pam Simon  
<[pambsimon@icloud.com](mailto:pambsimon@icloud.com)>  
CC: RE: Proceeds

Holy Cow, this is FRAUD!!!! and put in writing, are they nuts???

Who is carving up these email headers and pasting parts and hiding header info and why???

Heritage responded back that they need a copy of the trust instrument. We do not have a copy and the only executed trust document that we have in which the policy is listed as an asset is the 2000 trust prepared by Al Gortz.

-----Original Message-----

From: Pam Simon  
[<mailto:pambsimon@icloud.com>]  
Sent: Friday, November 16, 2012 2:35 PM  
To: Robert Spallina  
Cc: Bernstein Ted  
Subject: Proceeds

Hi Robert - any word on the proceeds ?  
Need help? Pam



TS005473



**Robert Spallina**

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, October 19, 2012 12:32 PM  
**To:** Robert Spallina; Pam Simon  
**Subject:** RE: Update

Robert,

We believe we have a solution to the life insurance policy which provides the desired result. We would like to discuss this with you at your earliest convenience. Until we have this conversation, please do not process anything further with the insurance company as we would like to avoid any unnecessary confusion for them. Pam, her husband Scooter, and I would like to have this initial conversation with you.

Let me know what is good for you and I can coordinate with Pam and Scooter.

Take care...

-----Original Message-----

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Friday, October 19, 2012 7:19 AM  
**To:** Pam Simon  
**Cc:** Ted Bernstein  
**Subject:** Re: Update

Carrier knew and did not say anything in lawsuit or notify anyone?????

→ Pam - My office is processing the claim as your father was the owner of the policy and the proceeds will likely be paid to the estate in the absence of finding the trust. As I mentioned previously there was a discussion with the carrier about possibly using the 2000 trust (the one you are carved out of but would be split 5 ways according to Ted) but I'm not sure that we will achieve that result. 11:00 on Tuesday your time is my lunch hour. I am out of the office all day and will reach out to you on Monday as my calendar is fairly packed next week and a status call will have to be later in the day sometime next week. Have a nice weekend.

Sent from my iPhone

On Oct 19, 2012, at 6:32 AM, "Pam Simon" <pambsimon@me.com> wrote:

> Hi Robert - I have the ss4 on the 1995 irrevocable trust so we should be able to take care of getting the payment. If you already have the death claim package from the carrier can you overnight it to me and we will take care of the payout? If you don't have the package, can you send me an original death certificate and I will request it from the carrier?

> Also, we would like to do a family status call Tuesday at 11 am  
> chicago time. Pls let us know if that works for you? Have a nice  
> weekend - Pam Simon

>  
> Thanks  
> Pam

> On Oct 15, 2012, at 10:12 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

>> Call me now  
>>

>> -----Original Message-----

>> From: Pam Simon [mailto:pambsimon@me.com]



TS004965

>> Sent: Monday, October 15, 2012 11:11 AM  
>> To: Robert Spallina  
>> Subject: Re: Call 10/ 16/12 Tuesday 3:30 pm Chicago time  
>>  
>> I have some on the trust - should only be a few minutes  
>>  
>> On Oct 15, 2012, at 8:36 AM, Robert Spallina  
>> <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:  
>>  
>>> There are no updates at this time  
>>>  
>>> Sent from my iPhone  
>>>  
>>> On Oct 15, 2012, at 8:40 AM, "Pam Simon" <[pambsimon@me.com](mailto:pambsimon@me.com)> wrote:  
>>>  
>>>> Hi all - do you have time for status?



TS004966

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Tuesday, November 13, 2012 10:16 AM  
**To:** 'Pam Simon'  
**Cc:** Bernstein Ted; Kimberly Moran  
**Subject:** RE: Update

No need for a status call. We will follow-up on the claims later this week and report back

-----Original Message-----

**From:** Pam Simon [mailto:pambsimon@icloud.com]  
**Sent:** Monday, November 12, 2012 9:05 PM  
**To:** Robert Spallina  
**Cc:** Bernstein Ted  
**Subject:** Re: Update

hi robert - should we do a quick status call ? how is the insurance claim going? do you want our claims personnel to follow up? thanks pam

On Oct 19, 2012, at 5:32 AM, Pam Simon <pambsimon@me.com> wrote:

> Hi Robert - I have the ss4 on the 1995 irrevocable trust so we should be able to take care of getting the payment. If you already have the death claim package from the carrier can you overnight it to me and we will take care of the payout? If you don't have the package, can you send me an original death certificate and I will request it from the carrier?  
> Also, we would like to do a family status call Tuesday at 11 am  
> chicago time. Pls let us know if that works for you? Have a nice  
> weekend - Pam Simon

>  
> Thanks  
> Pam

> On Oct 15, 2012, at 10:12 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

>> Call me now

>> -----Original Message-----

>> **From:** Pam Simon [mailto:pambsimon@me.com]  
>> **Sent:** Monday, October 15, 2012 11:11 AM  
>> **To:** Robert Spallina  
>> **Subject:** Re: Call 10/ 16/12 Tuesday 3:30 pm Chicago time

>> I have some on the trust - should only be a few minutes

>> On Oct 15, 2012, at 8:36 AM, Robert Spallina  
>> <rspallina@tescherspallina.com> wrote:

>>> There are no updates at this time

>>> Sent from my iPhone

>>> On Oct 15, 2012, at 8:40 AM, "Pam Simon" <pambsimon@me.com> wrote:

>>>> Hi all - do you have time for status?



**Robert Spallina**

---

**From:** Pam Simon [pambsimon@me.com]  
**Sent:** Tuesday, October 30, 2012 1:15 PM  
**To:** Robert Spallina  
**Cc:** Bernstein Ted  
**Subject:** Re: Simon Bernstein SS-4

No but we process death claims as part of our business. Thx

On Oct 30, 2012, at 6:50 AM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

Are you speaking to the carrier?

Sent from my iPhone

On Oct 29, 2012, at 9:00 PM, "Pam Simon" <[pambsimon@me.com](mailto:pambsimon@me.com)> wrote:

They said a few more weeks as of today - however the carrier doesn't care Thx

On Oct 29, 2012, at 3:33 PM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

The death certificates we have say pending investigation as to cause of death. Has this been cleared up?

---

**From:** Pam Simon [<mailto:pambsimon@me.com>]  
**Sent:** Monday, October 29, 2012 9:57 AM  
**To:** Robert Spallina; Bernstein Ted  
**Subject:** Re: Simon Bernstein SS-4

Was the insurance claim filed yet? Do you need an original death certificate?

On Oct 28, 2012, at 6:40 AM, Pam Simon <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Begin forwarded message:

**From:** "Pam Simon"  
<[psimon@stpcorp.com](mailto:psimon@stpcorp.com)>  
**Date:** October 24, 2012, 2:58:46 PM  
CDT  
**To:** "Robert L. Spallina"  
<[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Cc:** "Ted Bernstein"  
<[TBernstein@lifeinsuranceconcepts](mailto:TBernstein@lifeinsuranceconcepts)>



com>

**Subject: Simon Bernstein SS-4**

Dear Mr. Spallina,

Here is the SS-4 on the Simon Bernstein Irrevocable Insurance Trust dated 1995. The # is 65-6178916. I understand you have spoken with the Carrier and the proceeds are being paid out to the beneficiary as the Simon Bernstein Irrevocable Insurance Trust which I believe Ted Bernstein is getting the wire transfer instructions for the Carrier to send the proceeds to, as Trustee.

Thanks so much,

Pamela B. Simon

*Pam Simon*

**STP Enterprises, Inc.**

**"A.L.P.S.™ (A.L.P.S.™ = Arbitrage Life Payment System)**

The nation's only client-driven life insurance payment plan"

303 East Wacker Drive, Suite 210

Chicago, IL 60601

Direct: (312) 819-7474, ext. 414

Fax: (312) 819-0773

E-mail: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

[www.stpcorp.com](http://www.stpcorp.com)

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TS004525

be transmitted via the Internet, as there can be no assurance of actual or timely delivery, receipt and/or confidentiality.

<DOC.PDF>



**Robert Spallina**

---

**From:** Pam Simon [pambsimon@me.com]  
**Sent:** Monday, October 29, 2012 9:00 PM  
**To:** Robert Spallina  
**Cc:** Bernstein Ted  
**Subject:** Re: Simon Bernstein SS-4

They said a few more weeks as of today - however the carrier doesn't care Thx

On Oct 29, 2012, at 3:33 PM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

The death certificates we have say pending investigation as to cause of death. Has this been cleared up?

---

**From:** Pam Simon [<mailto:pambsimon@me.com>]  
**Sent:** Monday, October 29, 2012 9:57 AM  
**To:** Robert Spallina; Bernstein Ted  
**Subject:** Re: Simon Bernstein SS-4

Was the insurance claim filed yet? Do you need an original death certificate?

On Oct 28, 2012, at 6:40 AM, Pam Simon <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Begin forwarded message:

**From:** "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)>  
**Date:** October 24, 2012, 2:58:46 PM CDT  
**To:** "Robert L. Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Cc:** "Ted Bernstein" <[TBernstein@lifeinsuranceconcepts.com](mailto:TBernstein@lifeinsuranceconcepts.com)>  
**Subject:** Simon Bernstein SS-4

Dear Mr. Spallina,

Here is the SS-4 on the Simon Bernstein Irrevocable Insurance Trust dated 1995. The # is 65-6178916. I understand you have spoken with the Carrier and the proceeds are being paid out to the beneficiary as the Simon Bernstein Irrevocable Insurance Trust which I believe Ted Bernstein is getting the wire transfer instructions for the Carrier to send the proceeds to, as Trustee.

Thanks so much,

Pamela B. Simon

*Pam Simon*  
STP Enterprises, Inc.  
"A.L.P.S.<sup>™</sup> (A.L.P.S.<sup>™</sup> = Arbitrage Life Payment System)  
The nation's only client-driven life insurance payment plan"



303 East Wacker Drive, Suite 210  
Chicago, IL 60601  
Direct: (312) 819-7474, ext. 414  
Fax: (312) 819-0773  
E-mail: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)  
[www.stpcorp.com](http://www.stpcorp.com)

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**Robert Spallina**

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, March 04, 2013 10:14 AM  
**To:** Robert Spallina  
**Subject:** Re: Proceeds

How is after 4 today for quick call with sibs?

Ted Bernstein  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** Re: Proceeds  
**From:** Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**To:** Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)>  
**CC:** Re: Proceeds

I will reach out to you tomorrow.

Sent from my iPhone

On Mar 3, 2013, at 10:38 AM, "Ted Bernstein" <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Robert,

I don't think any of us are thinking that you have taken too long. We realize what is causing delay.

Regarding where proceeds are paid, we cannot put them in jeopardy. It appears unwise to us to pay them to any receptacle connected to your firm. It is tempting fate. It impossible to predict all the things Eliot could allege so it seems prudent to separate them completely. We don't see any downside to directing them to an account unrelated to your firm.

It's probably a good idea to arrange a call with you and the 4 of us, Monday or Tuesday?

Ted  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Mar 1, 2013, at 5:49 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

We will be filing the declaratory action shortly. It needs approval from the carrier as does the judges order. There is no commingling issue and the delay rests with the missing trust and Eliot. We are almost there and Eliot is supposedly hiring



TS004449

counsel for himself. As fast as everyone wants to move we will be on the courts schedule. We are almost there.

Sent from my iPhone

On Mar 1, 2013, at 1:56 PM, "Ted Bernstein"  
<[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Robert?

**From:** Pam Simon [<mailto:pambsimon@icloud.com>]  
**Sent:** Friday, March 01, 2013 11:18 AM  
**To:** Ted Bernstein  
**Cc:** Spallina Robert  
**Subject:** Re: Proceeds

Theo- if Robert already has the 'form' approved by the carrier to file with the courts then why don't we just direct the proceeds to a lawyer outside of Roberts firm to avoid co-mingling. If Robert has not gotten this form, should we hire another attorney either in fla or illinois to get this done immediately. It has been nearly 6 months and there is too much at stake. What are your thoughts?

On Mar 1, 2013, at 8:23 AM, Ted Bernstein  
<[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

פנינה

I think this a point very well taken. We should not do anything that would have a remote chance of placing the life insurance proceeds in jeopardy. I have not received any kind of invoice from Robert's firm relating to the insurance policy or their work as estate reps. I am not sure what the billing procedure is and I agree that we should ask Robert to explain how they work so there are no misunderstandings.

I do think we should move as soon as possible at this point. There is no reason to delay this process and we should be pressing to get into court and get the document needed to pay those proceeds.



Ted

**From:** Pam Simon  
 [mailto:pamsimon@icloud.com]  
**Sent:** Wednesday, February 27, 2013 7:04 AM  
**To:** Ted Bernstein  
**Cc:** Simon David Scooter  
**Subject:** Proceeds

Theo- I've been thinking that maybe we should use another firm on Dad's life insurance proceeds as it seems Robert may have a difficult time with Eliot and other lawsuits in the mix getting this done.

Maybe if we remove it entirely from the firm and separate it, it will be less likely to get caught up in what we see is happening. I think it was said that the insurance company is waiting for a court order and Robert is working on a draft to get pre-approved from the carrier first. Then Robert would file it in palm beach and then have the proceeds paid to his trust account. Again having the funds at that firm where they are executors of some of the estates makes me nervous as the money will be at the same firm as "creditors " and trouble makers having nothing to do with the proceeds.

Spallina is supposed to be protecting estate and its creditors and instead he is acting as Ted counsel to hide trusts and move assets, how many felonies state and federal and mail and wire, etc???



Also, please get a bill from Robert up to this point - he had said he wasn't charging for the insurance stuff earlier but we should know where we stand at this point. Unless you having been paying his bills all along in your course of managing this nightmare, I think we need to know.

Talk to you soon,

משלו

Pam פוינה

Yes, his bill for committing fraud is important and was like 23,000. Do not forget Spallina falsified a claim for on 11.11.12 to the carrier stating he was trustee of the lost trust and trustee of the Primary Bene LaSalle National Trust. Fraud Fraud Fraud!!!!

TS004451

**Robert Spallina**

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Wednesday, March 06, 2013 4:28 PM  
**To:** Robert Spallina  
**Subject:** call

Robert,

I am on call with Lisa, Jill, Pam and Scooter. It has been for the better part of 2 hours. They want me to send an email summarizing the concerns about the proceeds, the process, Eliot, etc. They are preparing it now and they will either send it to you or send it to me to. Scooter feels it should come from me since I will be the person you are representing. I am going to be in 2 meetings starting at 4. I won't be done until 7 or so. I think they are clarifying our understanding of our call today, your emails and procedure going forward.

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)

Spallina representing Ted when he is PR for estate, why, let me count the conflicts, they are working together these emails look like a cover story and cut and paste job of desperate people caught with their hands in cookie jar of felony crimes.

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A handwritten signature in blue ink, appearing to be "TS", with a circular stamp or seal around it.

TS004452

**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Monday, February 04, 2013 11:48 AM  
**To:** 'Lisa Friedstein'  
**Subject:** RE: still not clear

I will get it distributed to my trust account and his share will sit there until he makes a decision and signs the waiver and release. He should be ashamed of how he has conducted himself. Christine Yates should be reprimanded for her poor counsel. They have turned this into a circus. An agreement must be among all the parties that are heirs/beneficiaries. The money would escheat to the State only if a claim is not filed which is not the case.

-----Original Message-----

**From:** Lisa Friedstein [mailto:lisa.friedstein@gmail.com]  
**Sent:** Monday, February 04, 2013 11:45 AM  
**To:** Robert Spallina  
**Subject:** still not clear

Yes we are ashamed that Robert has admitted he altered estate docs to change bene's to benefit Ted and Pam and himself and his firm forged my deceased father's name. Hindsight I bet he wishes not said this.

Robert,  
Why do we need all five of us to sign...and if eliot decides not to sign where does the money go? i thought i heard you say "to the state"  
Is that true?

Lisa Friedstein



TS004493

**Robert Spallina**

---

**From:** Pam Simon [pambsimon@icloud.com]  
**Sent:** Monday, February 04, 2013 11:42 AM  
**To:** Robert Spallina  
**Subject:** Re: policy and accounting on the premium/withdrawals from heritage life for elio

he is very ill and perhaps counsel can reason with him but i dont suspect that so we really should consider what will happen when we cant get an answer from him so that the 4 of us can proceed without him. hopefully, i am wrong. thanks

On Feb 4, 2013, at 9:38 AM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

> I will request it. Does anyone have any ability to talk to him. If I  
> were his sibling I would have blasted him by now and guilted him into  
> moving forward with the plan.

>

> -----Original Message-----

> From: Pam Simon [mailto:[pambsimon@icloud.com](mailto:pambsimon@icloud.com)]

> Sent: Monday, February 04, 2013 11:38 AM

> To: Robert Spallina

> Subject: policy and accounting on the premium/withdrawals from  
> heritage life for elio

>

> are you requesting or should we? thanks

Eliot ill and they are  
mentally and criminally  
insane!!!!



**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Monday, February 04, 2013 11:34 AM  
**To:** 'Christine Yates'  
**Subject:** Your client

Christine - Your client needs to get control over his paranoia. Everything he does costs the estate more money and accomplishes nothing. My partner and I had a candid conversation with you about your client and his idiosyncrasies at the time you were engaged. He has turned this entire matter into a circus. Providing counsel to him means walking him off the ledge at certain times. This is one of those times. Please counsel him to go along with the planning that his father intended. Both Si and Shirley Bernstein are rolling around in their graves at this point.

Thank 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)

Counsel him to go along with fraud!!!!

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.iescherspallina.com](http://www.iescherspallina.com)

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**Robert Spallina**

---

**From:** Pam Simon [pambsimon@icloud.com]  
**Sent:** Monday, February 04, 2013 11:42 AM  
**To:** Robert Spallina  
**Subject:** Re: policy and accounting on the premium/withdrawals from heritage life for elio

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>

> -----Original Message-----

> From: Pam Simon [mailto:pambsimon@icloud.com]  
> Sent: Monday, February 04, 2013 11:38 AM  
> To: Robert Spallina  
> Subject: policy and accounting on the premium/withdrawals from  
> heritage life for elio

>

> are you requesting or should we? thanks

Pam who is cut out the estates and trusts by my parents writes this, how apropos, no wonder they cut her and Ted out of their lives entirely.





**Robert Spallina**

---

**From:** Robert Spallina  
**Sent:** Thursday, November 15, 2012 8:13 AM  
**To:** lisa friedstein  
**Subject:** Re: trust document and disbursements

I don't share your concern as everyone will be signing a release as is typical when a distribution is made.

Sent from my iPhone

On Nov 15, 2012, at 8:10 AM, "lisa friedstein" <[lisa@friedsteins.com](mailto:lisa@friedsteins.com)> wrote:

Robert... jeff and I never heard from you about this...could you please respond...thanks...lisa and jeff

----- Forwarded message -----

From: "lisa friedstein" <[lisa@friedsteins.com](mailto:lisa@friedsteins.com)>  
Date: Oct 23, 2012 8:36 PM  
Subject: Re: trust document and disbursements  
To: <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>

Robert,

We do not know what the 1995 trust says but are concerned about repercussions to us and the trustee if the insurance policy is distributed equally among the children and eventually the trust is found and it states the policy should be split among 4 of the 5 children or something similar. What are your thoughts

Thank you  
Lisa

Suppressed and Denied Trust. Hidden from carriers, beneficiaries, Federal Court and State Court. Document turns up in production Tescher and Spallina forced by Court to turn over to new Curator.

SIMON BERNSTEIN  
2000 INSURANCE TRUST

DATED: August-15, 2000

PROSKAUER ROSE LLP

Attorneys at Law  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431-7360



TS003892

TRUST AGREEMENT dated this *15* day of *August*,  
2000, between SIMON BERNSTEIN, as Settlor, and SHIRLEY BERNSTEIN  
and ALBERT W. GORTZ, as Trustees.

1. As and for a gift, the Settlor hereby assigns and transfers to the Trustees and their successors (together, the "Trustees") the life insurance policies set forth in Schedule A annexed hereto, and the Settlor agrees to execute all such assignments and changes of beneficiary and to do such other acts and things as may be necessary in order to make the Trustees irrevocable absolute assignees of said life insurance policies. The Trustees shall hold said policies, together with any other property which may be received by them, in trust upon the terms and conditions set forth herein. This trust shall be known as the "SIMON BERNSTEIN 2000 INSURANCE TRUST."

2. (a) During the Settlor's lifetime, the Trustees shall hold the trust property, shall invest and reinvest the same, and shall pay so much of the income therefrom to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the Settlor's descendants, living from time to time, in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine, accumulating any balance of the income and adding the same to principal.

(b) During the Settlor's lifetime, the Trustees are further authorized and empowered, from time to time, to pay to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the

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BOCA RATON, FLORIDA 33431

  
TS003893

agree to carry out the provisions hereof and faithfully to perform and discharge all of their duties as Trustees.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Settlor

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

*[Signature]* (L.S.)  
SIMON BERNSTEIN, Settlor

Print Name 193 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

*[Signature]*  
Robert Jacobowitz  
Print Name  
2415 NW 32nd St.  
Address  
Boca Raton, FL



Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

*[Signature]* (L.S.)  
SHIRLEY BERNSTEIN, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

*[Signature]*  
Robert Jacobowitz

Print Name 2415 NW 32nd St

Address Boca Raton, FL

Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

*Albert W. Gortz* (L.S.)  
ALBERT W. GORTZ, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

*[Signature]*  
Robert Jacobowitz

Print Name 2415 NW 32nd St

Address Boca Raton, FL

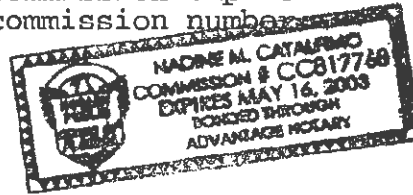


STATE OF FLORIDA )  
 )  
 ) ss.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by SIMON BERNSTEIN, who is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

*Nadine M. Catalano*

Notary Public (Affix Seal)  
My commission expires:  
My commission number:

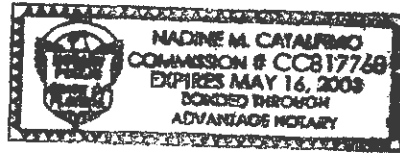


STATE OF FLORIDA )  
 )  
 ) ss.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by SHIRLEY BERNSTEIN, who is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

*Nadine M. Catalano*

Notary Public (Affix Seal)  
My commission expires:  
My commission number:

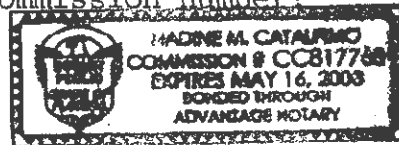


STATE OF FLORIDA )  
 )  
 ) ss.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2000 by ALBERT W. GORTZ, who is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

*Nadine M. Catalano*

Notary Public (Affix Seal)  
My commission expires:  
My commission number:



*[Handwritten Signature]*  
TS003914

**SCHEDULE A**  
**TRUST AGREEMENT dated the 4th day**  
**of August, 2000, between**  
**SIMON BERNSTEIN, as Settlor,**  
**and SHIRLEY BERNSTEIN AND**  
**ALBERT W. GORTZ, as Trustees**

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

Capitol Bankers Life Insurance Company,  
Policy No.: 1009208



**Certificate of Service**

The undersigned certifies that a copy of the foregoing Rule 26 Additional Disclosure was served by ECF and by E-mail on June 09, 2014 to the following parties:

**Email**

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The Simon Law Firm  
303 East Wacker Drive  
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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.  
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Chicago, IL 60611 -3607  
312-840-7000  
[amarks@burkelaw.com](mailto:amarks@burkelaw.com)

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Chicago, IL 60601

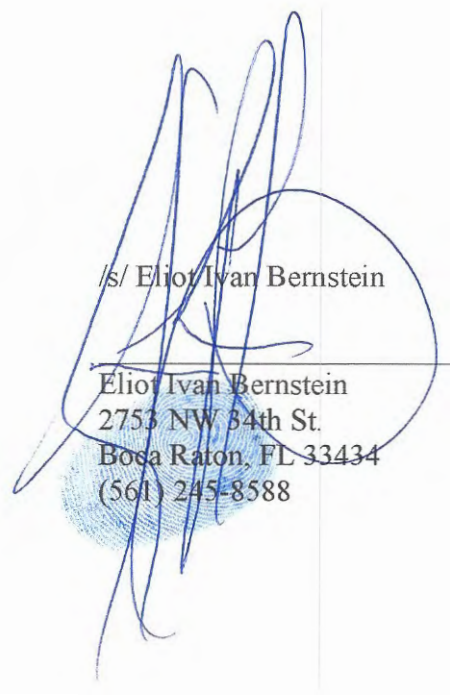
1-312-630-1208

E-mail: [khoran@stamostrucco.com](mailto:khoran@stamostrucco.com)



/s/ Eliot Ivan Bernstein

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



Certificate of Service

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1  
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

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, June 10, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing held on 6/10/2014 and continued to 8/14/14 at 8:30 a.m. Motion to intervene by Benjamin Brown [110] is entered. Response by 7/1/14. Reply by 7/15/14. Any dispositive motions, with supporting memoranda, shall be filed by 8/8/14. Mailed notice(kef, )

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