

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
03/27/2015	<u>150</u>	4	RULE 56 (a) Statement by Ted Bernstein(an individual), Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 regarding motion for summary judgment, <u>148</u> <i>Undisputed Material Facts</i> (Attachments: # <u>1</u> Appendix Appendix to Statement of Facts, # <u>2</u> Exhibit Ex. 1, # <u>3</u> Exhibit Ex. 2, # <u>4</u> Exhibit Ex. 3, # <u>5</u> Exhibit Ex. 4, # <u>6</u> Exhibit Ex. 5, # <u>7</u> Exhibit Ex. 6, # <u>8</u> Exhibit Ex. 7, # <u>9</u> Exhibit Ex. 8, # <u>10</u> Exhibit Ex. 9, # <u>11</u> Exhibit Ex. 10, # <u>12</u> Exhibit Ex. 11, # <u>13</u> Exhibit Ex. 12, # <u>14</u> Exhibit Ex. 13, # <u>15</u> Exhibit Ex. 14, # <u>16</u> Exhibit Ex. 15, # <u>17</u> Exhibit Ex. 16, # <u>18</u> Exhibit Ex. 17, # <u>19</u> Exhibit Ex. 18, # <u>20</u> Exhibit Ex. 19, # <u>21</u> Exhibit Ex. 20, # <u>22</u> Exhibit Ex. 21, # <u>23</u> Exhibit Ex. 22, # <u>24</u> Exhibit Ex. 23, # <u>25</u> Exhibit Ex. 24, # <u>26</u> Exhibit Ex. 25, # <u>27</u> Exhibit Ex. 26, # <u>28</u> Exhibit Ex. 27, # <u>29</u> Exhibit Ex. 28, # <u>30</u> Exhibit Ex. 29, # <u>31</u> Exhibit Ex. 30, # <u>32</u> Exhibit Ex. 31, # <u>33</u> Exhibit Ex. 32, # <u>34</u> Exhibit Ex. 33, # <u>35</u> Exhibit Ex. 34, # <u>36</u> Exhibit Ex. 35, # <u>37</u> Exhibit Ex. 36)(Simon, Adam) (Entered: 03/27/2015)
03/27/2015	<u>151</u>	447	MEMORANDUM of Law in Support of Summary Judgment (Simon, Adam) (Entered: 03/27/2015)
03/27/2015	<u>153</u>	472	MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Jill Marla Iantoni, Lisa Sue Friedstein, Pamela Beth Simon, Ted Bernstein for summary judgment <i>AMENDED MOTION</i> (Simon, Adam) (Entered: 03/27/2015)
04/03/2015	<u>154</u>	479	MOTION by Intervenor Plaintiff Brian M. O'Connell for extension of time to complete discovery (Horan, Kevin) (Entered: 04/03/2015)
04/04/2015	<u>155</u>	487	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiff Eliot Bernstein for extension of time to file response/reply (Bernstein, Eliot) (Entered: 04/04/2015)
04/06/2015	<u>157</u>	491	RESPONSE by Ted Bernstein(an individual), Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable

			Insurance Trust Dtd 6/21/95in Opposition to MOTION by Intervenor Plaintiff Brian M. O'Connell for extension of time to complete discovery <u>154</u> (Attachments: # <u>1</u> Notice of Filing CERT. OF SERVICE AND NOTICE OF FILING)(Simon, Adam) (Entered: 04/06/2015)
04/06/2015	<u>158</u>	502	MINUTE entry before the Honorable John Robert Blakey: Intervenor's motion to stay discovery <u>154</u> is denied, as discovery closed on 1/9/15 (see <u>123</u> , <u>133</u> ). Motion by Third-Party Defendant/Counter-claimant Eliot Bernstein for an extension of time to file a response to Plaintiffs' motion for summary judgment <u>155</u> is granted. Third-Party Defendant/Counter-claimant Eliot Bernstein shall file his response on or before 5/15/15. Plaintiffs shall file their reply on or before 5/27/15. The notice of motion date set for 4/9/15 is stricken, the parties need not appear. The case is already set for a status hearing on 4/13/15 at 9:45 a.m. in Courtroom 1725, and that date stands. Mailed notice (gel, ) (Entered: 04/06/2015)
04/07/2015	<u>159</u>	503	MOTION by Intervenor Plaintiff Brian M. O'Connell to set a briefing schedule – <i>Unopposed</i> (Attachments: # <u>1</u> Text of Proposed Order)(Horan, Kevin) (Entered: 04/07/2015)
04/07/2015	<u>161</u>	510	MINUTE entry before the Honorable John Robert Blakey: Intervenor's unopposed motion to set a briefing schedule <u>159</u> is granted. Intervenor shall file any response to Plaintiffs' motion for summary judgment on or before 5/15/15. Plaintiffs shall file their reply, if any, on or before 5/27/15. The notice of motion date set for 4/13/15 is stricken with regard to the intervenor's motion <u>160</u> . However, this matter is already set for a status hearing on 4/13/15 at 9:45 a.m. in Courtroom 1725 [see 143]. That date stands and the parties shall appear in court at that time. Mailed notice (gel, ) (Entered: 04/07/2015)
04/13/2015	<u>162</u>	511	MINUTE entry before the Honorable John Robert Blakey: Status and motion hearing held on 4/13/2015. Oral motion to reopen discovery to permit the depositions of Ted Bernstein and Don Sanders is granted. The depositions shall be completed on or before 4/27/2015. Status hearing set for 5/6/2015 at 9:45 AM in Courtroom 1725. Mailed notice (gel, ) (Entered: 04/13/2015)
04/17/2015	<u>163</u>	512	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiff Eliot Bernstein for extension of time to file response/reply (Bernstein, Eliot) (Entered: 04/17/2015)
04/18/2015	<u>165</u>	520	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiff Eliot Bernstein to amend/correct MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiff Eliot Bernstein for extension of time to file response/reply <u>163</u> (Bernstein, Eliot) (Entered: 04/18/2015)
04/20/2015	<u>166</u>	533	MINUTE entry before the Honorable John Robert Blakey: Third-party defendant Eliot Bernstein's motion for additional extension of time <u>163</u> and amended motion for additional extension of time <u>165</u> are granted. Third-party defendant's response to plaintiffs' summary judgment motion is now due 6/5/15, and plaintiffs' reply is now due 6/26/15. The Court is unlikely to grant additional extensions on this briefing schedule. The 4/21/15 Notice of Motion date is stricken; the parties need not appear. Mailed notice (gel, ) (Entered: 04/20/2015)

			04/20/2015)
04/21/2015	<u>167</u>	534	MOTION by Intervenor Plaintiff Brian M. O'Connell to set a briefing schedule <i>and extend time to complete deposition</i> (Attachments: # <u>1</u> Exhibit)(Horan, Kevin) (Entered: 04/21/2015)
04/22/2015	<u>169</u>	544	RESPONSE by Ted Bernstein(an individual), Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95in Opposition to MOTION by Intervenor Plaintiff Brian M. O'Connell to set a briefing schedule <i>and extend time to complete deposition</i> <u>167</u> (Simon, Adam) (Entered: 04/22/2015)
04/23/2015	<u>171</u>	551	MINUTE entry before the Honorable John Robert Blakey: Motion hearing held on 4/23/2015. ProSe third party defendant, Eliot Bernstein failed to appear by telephone. Eliot Bernstein is ordered to appear by telephone or in person at the next court date. If Eliot Bernstein fails to appear at the next Court date he is warned that his case can be dismissed for want of prosecution. Plaintiff intervenor's motion to set a briefing schedule and extend time to complete deposition <u>167</u> is granted. Plaintiff's motion for summary judgment is briefed as follows: Defendant's response is due on or before 6/5/2015; reply, if any, is due on or before 6/26/2015. Deposition of Ted Bernstein shall be taken on or before 5/7/2015. No further extension will be granted. Status hearing previously set for 5/6/2015 is stricken and reset for 5/12/2015 at 9:45 AM in Courtroom 1725. Mailed notice (gel, ) (Entered: 04/23/2015)

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

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

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

**MOVANTS’ STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT**

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. )  
 \_\_\_\_\_ )

Movants, pursuant to Local Rule 56.1, submit the following statement of uncontested material facts, including an appendix of exhibits hereto, in support of their motion for summary judgment.

**I. THE PARTIES**

The following is a review of the Parties (and entities named as potential parties) listed on the Civil Docket for this matter:

1. Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counterdefendant to Eliot’s Claims. The Bernstein Trust is represented by counsel, Adam M. Simon. **(Ex. 30, Aff. of Ted Bernstein, ¶21)**

2. Bank of America, N.A. (“Bank of America”), was named a party to Heritage’s counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014. **(Dkt. #97; Ex. 30, Aff. of Ted Bernstein, ¶22)**

3. Eliot Bernstein (“Eliot”) was named a Party by virtue of Heritage’s counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well (“Eliot’s Claims”). Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter. **(Ex. 30, Aff. of Ted Bernstein, ¶23)**

4. United Bank of Illinois, now known as PNC Bank, was named as a Third-Party Defendant in Heritage’s counterclaim for Interpleader. PNC Bank was served on August 5, 2013, and has never filed an appearance or answer. **(Dkt. #25; Ex. 30, Aff. of Ted Bernstein, ¶24)**

5. “Simon Bernstein Trust, N.A.” was named a Party to Heritage’s counterclaim for interpleader. “Simon Bernstein Trust, N.A.”, however, is merely a misnomer by the Insurer as a

result of a data entry error in the database of the Insurer. There is no evidence that any entity exists or was formed under the name “Simon Bernstein Trust, N.A.” No one submitted a claim to the Policy Proceeds with the Insurer on behalf of an entity named “Simon Bernstein Trust, N.A.” **(Ex. 29, Aff. of Don Sanders, ¶69 and ¶78)**

6. Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff’s counsel and initiated the filing of this Action. Ted Bernstein, is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to Eliot’s Claims. Ted Bernstein is the eldest of the five adult children of Simon Bernstein. Ted Bernstein is represented by counsel, Adam M. Simon. **(Ex. 30, Aff. of Ted Bernstein, ¶25)**

7. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage’s counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank’s alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. **(Dkt. #44; see also JP Morgan Chase Bank at Par. 12 below; Ex. 30, Aff. of Ted Bernstein, ¶26)**

8. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot’s Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon. **(Ex. 34, Aff. of Lisa Friedstein, ¶2, ¶3, ¶6 and ¶23)**

9. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot’s Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon. **(Ex. 33, Aff. of Jill Iantoni, ¶2, ¶3, ¶6 and ¶23)**

10. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon. **(Ex. 31, Aff. of Pam Simon, ¶2, ¶3, ¶6 and ¶38.)**

11. Heritage is the successor Insurer to Capitol Banker Life Insurance Company that originally issued the Policy in 1982. Heritage was terminated as a party on February 18, 2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court pursuant to an Agreed Order. The amount of the Policy Proceeds (plus interest) on deposit with the Registry exceeds \$1.7 million. **(Dkt. #101 and Ex. 30, Aff. of Ted Bernstein, ¶30 and Ex. 2.)**

12. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan, as a successor to First Arlington National Bank (described above). J.P. Morgan filed an appearance and answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation, and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014. **(Dkt. #105; Ex. 30, Aff. of Ted Bernstein, ¶31)**

13. William Stansbury filed a motion to intervene in this action, but his motion to intervene was denied, and he was terminated as a non-party intervenor on January 14, 2014. **(Dkt. #74; Ex. 30, Aff. of Ted Bernstein, ¶32)**



14. Adam M. Simon is counsel for the Bernstein Trust and four of the five adult children of Simon Bernstein. Adam M. Simon is not counsel for the fifth adult child, Eliot Bernstein whom has chosen to represent himself *Pro Se* in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims. Adam M. Simon is the brother-in-law of Pam Simon, and the brother of David B. Simon. **(Ex. 30, Aff. of Ted Bernstein, ¶33);**

15. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. There is no record of Eliot having obtained service of process upon National Service Association, Inc. because it is dissolved and has been for over 7 years. **(Ex. 30, Aff. of Ted Bernstein, ¶34; Ex. 21)**

16. Donald R. Tescher, Esq. was named a Third-Party Defendant to Eliot's Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's claims on March 17, 2014. **(Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶35)**

17. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims. **(Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶36)**

18. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M . Simon.

19. David B. Simon is the husband of Pam Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon. **(Ex. 32, Aff. of David Simon, ¶20 and ¶29)**

20. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was dissolved on April 3, 1998. **(Ex. 30, Aff. of Ted Bernstein ¶39; Ex. 35; Dep. of David Simon, p. 51:13-18 and Ex. 9)**

21. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant by virtue of Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 concurrently with the dissolution of S.B. Lexington, Inc. **(Ex. 35, Dep. of David Simon, p. 51:13-18 and Ex. 9; Ex. 30, Aff. of Ted Bernstein, ¶40)**

22. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014. **(Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶41)**

23. S.T.P. Enterprises, Inc. was named a Third-Party Defendant to Eliot's Claims. S.T.P. Enterprises, Inc. has filed an appearance and responsive pleading and is represented by counsel, Adam M. Simon. **(Dkt. #47; Ex. 31, Aff. of Pam Simon, ¶25)**

24. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation formed by Simon L. Bernstein. National Service Association, Inc. (Florida) was named a Third-Party Defendant in Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) dissolved in 2012. **(Ex. 30, Aff. of Ted Bernstein, ¶42; Ex. 22)**

25. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation. **(Dkt. #121)**. Subsequently, Brian O'Connell as successor Curator and *Administrator Ad Litem* of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014. For purposes of this motion, Movants refer to this party as the "Estate of Simon Bernstein" or the "Estate". **(Dkt. #126; Ex. 30, Aff. of Ted Bernstein ¶43-¶44)**

## **II. THE POLICY AND POLICY PROCEEDS**

26. In 1982, Simon Bernstein, as Insured, applied for the purchase of a life insurance policy from Capitol Bankers Life Insurance Company, issued as Policy No. 1009208 (the "Policy"). A specimen policy and a copy of the Schedule Page of the Policy are included in Movant's Appendix to the Statement of Facts. **(Ex. 29, Aff. of Don Sanders at ¶38, ¶39, ¶48, ¶52; Ex. 5)**. The amount of the Policy Proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. **(Dkt. #101 and Ex. 30, Aff. of Ted Bernstein, ¶30 and Ex. 2.)**

27. The Capitol Bankers Life Insurance Application, dated March 2, 1982 designates Simon Bernstein, as the Insured and lists S.B. Lexington as his employer. On page one of the Application, the Owner of the Policy is designated as follows:

“First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”. (Ex. 29, Aff. Don Sanders, ¶48; Ex. 3)

28. Also, on page one of the Application the beneficiary was designated as follows: “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”. (See Ex. 3--Part 1 of application); and (ii) Premium notices were to be sent to S.B. Lexington Inc. Employee Death Benefit Plan and Trust c/o National Service Association, Inc., 9933 Lawler Ste. 210, Skokie, IL 60077; and (iii) Simon Bernstein’s occupation was listed as an Executive with S.B. Lexington, Inc.; (iv) Simon Bernstein was the insured and on the application his residence address was in Glencoe, Illinois and he was a citizen of the state of Illinois; and (v) Simon Bernstein was the listed as the selling agent on the application; (vi) the application was signed in Illinois; and (vii) the Policy would have been delivered by the Insurer via its agent to the initial Policy Owner. (Ex. 29, Aff. Don Sanders, ¶48, Ex. 31; Aff. Pam Simon, ¶¶21-¶23; Ex. 3)

### **III. THE S.B. LEXINGTON EMPLOYEE DEATH BENEFIT TRUST (THE “VEBA”)**

29. The S.B. Lexington Employee Death Benefit Trust was a Voluntary Employee Benefit Trust (“VEBA”) established by S.B. Lexington, Inc. to provide death benefits to the beneficiaries of its employees. The Policy was purchased by the VEBA, with the VEBA listed as both owner and beneficiary of the Policy on the application. The Policy would have been delivered by the agent (Simon Bernstein) to the Owner at the offices of its Bank trustee in Illinois. (Ex. 3; Ex. 31, Aff. Pam Simon, ¶21-¶23); Ex. 30, Aff. Ted Bernstein, ¶56 and ¶57; Ex. 29, Aff. Don Sanders ¶48)

30. Part 1 of the application for the Policy indicates that First Arlington National Bank, was acting as Trustee of the VEBA. As part of the application and underwriting process, a company named Equifax conducted an interview with Simon Bernstein about his application for the Policy. The Equifax report states that Simon Bernstein told the investigator the Policy would be owned by the VEBA, that (i) the insurance [benefits] would be paid to the VEBA, (ii) the VEBA would determine to whom the benefits are paid, and (iii) the benefits are normally paid to family members. **(Ex. 29, Aff. Don Sanders ¶¶48, ¶74-¶75; Ex. 3 and Ex. 20)**

31. On June 5, 1992, Sandy Kapsa (an employee of S.B. Lexington and an affiliated company, National Service Association, Inc.) submitted a letter to Capitol Bankers Life Insurance Company informing them that LaSalle National Trust was being appointed successor trustee of the VEBA. On June 17, 1992, the Insurer acknowledged the change of trustee listing the owner of the Policy as LaSalle National Trust, N.A., as Successor Trustee. **(Ex. 31, Aff. of Pam Simon, ¶31, and Ex. 7)**

32. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named 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 Adoption Form adopted by my Employer.” **(Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)**

33. On or about November 27, 1995, Capitol Bankers received a “Request Letter” signed by LaSalle National Trust, N.A. in their capacity as Trustee of the VEBA which owned the Policy, and the following policy changes were made a part of the Policy by way of endorsement issued by the Company: LaSalle National Trust, N.A. as Trustee (the “VEBA”) was designated as the Primary Beneficiary of the Policy; and The Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 (the “Bernstein Trust”) was designated the contingent

beneficiary. According to the Insurer's records, the VEBA and the Bernstein Trust were the primary and contingent beneficiaries of record on the date of death of the Insured. **(Ex. 29, Aff. of Don Sanders, ¶56, ¶64 and Ex. 8)**

34. On November 27, 1995, Capitol Bankers sent correspondence acknowledging the change in beneficiary referenced above in Par. 33, and that correspondence was sent to "LaSalle National Trust, N.A., as Successor Trustee". **(Ex. 29, Aff. of Don Sanders, ¶60 and Ex. 8)**

35. The records above establish that First Arlington National Bank, N.A., and LaSalle National Trust, N.A. were original and successor trustees of the VEBA, respectively. This is confirmed by Pamela B. Simon who worked on the VEBA insurance program for both S.B. Lexington and NSA. **(Ex. 31, Aff. of Pam Simon, ¶22 and ¶31)**

36. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved by its shareholder(s), and the VEBA was likewise terminated at this time. **(Ex. 9)**. As a part of the dissolution, ownership of the Policy was changed from the VEBA to Simon Bernstein, individually. **(Ex. 31, Aff. of Pam Simon, ¶36; Ex. 9 and Ex. 10)**

37. Neither First Arlington National Bank nor LaSalle National Trust, N.A. have made any claim to the Policy proceeds. First Arlington National Bank's successor-in-interest, J.P. Morgan Bank filed a responsive pleading and then a motion for judgment on the pleadings disclaiming any interest in the Policy Proceeds and requesting to be dismissed from the litigation. J.P. Morgan's motion was granted and it was dismissed as a party on March 12, 2014. **(Dkts. #60 and 105)**

38. None of the Bank Parties whose names appear on the docket have tendered a claim to the Insurer for the Policy proceeds. **(Ex. 29, Aff. of Don Sander, ¶77(b))**

39. The docket also reflects that none of the Bank Parties whose names appear on the docket in this matter have filed a claim in this litigation for the Policy Proceeds.

**IV. MOVANTS' CLAIMS TO THE POLICY PROCEEDS**

40. On or about June 21, 1995, Simon Bernstein as Grantor formed the Simon Irrevocable Insurance Trust dtd 6/21/95. Simon Bernstein, appointed his wife, Shirley Bernstein, as Trustee of the Trust. **(Ex. 32, Aff. of David B. Simon, ¶30; Ex. 19)**

41. On June 21, 1995, the date of the Trust Agreement, David Simon assisted Shirley Bernstein to obtain a tax identification number for the Bernstein Trust. The tax identification number for the Bernstein Trust is X5-XXXX916. In order to obtain the tax identification number David Simon completed an IRS SS-4 form. Shirley Bernstein is identified as trustee of the Bernstein Trust and Shirley's signature, and the name of the Bernstein Trust also appear on this SS-4 form. **(Ex. 32, Aff. of David Simon at ¶30; Ex. 19)**

42. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named 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 Adoption Form adopted by my Employer." Simon Bernstein's signature and the name of the Bernstein Trust appear on this document. **(Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)**

43. As of August 26, 1995, the VEBA was the owner and primary beneficiary of the Policy, and on August 26, 1995, Simon Bernstein's execution of the VEBA Beneficiary Designation form evidenced his intent that the Policy proceeds flow through the VEBA to the Bernstein Trust. **(Ex. 31, Aff. of Pam Simon, ¶32 and ¶35; Ex. 30, Aff. of Ted Bernstein; ¶65-¶67; Ex. 4)**

44. The next Policy change in November of 1995, as described in Par. 32 above, again confirmed Simon Bernstein's intent with regard to the death benefit proceeds. The primary beneficiary he named was the VEBA and Simon Bernstein's beneficiary of the VEBA was the Bernstein Trust. In addition, the Bernstein Trust was designated as contingent beneficiary of the Policy. **(Ex. 29, Aff. of Don Sanders, ¶56, ¶57 and ¶62; Ex. 8)**. Movants have included a diagram, explained in the Aff. of Ted Bernstein illustrating Simon Bernstein's intent with regard to the ultimate beneficiaries of the Policy Proceeds. **(Ex. 30, Aff. of Ted Bernstein ¶106; Ex. 17)**.

45. The Policy Records indicate that on April 23, 2010, Heritage sent Simon Bernstein a letter in response to Simon Bernstein having contacted Heritage. **(Ex. P. 36)**. The letter provides confirmation to Simon Bernstein that the primary beneficiary is the VEBA, listed as LaSalle National Trust as Trustee, and the letter states that the contingent beneficiary is "Simon Bernstein Trust, N.A."

46. According to the Policy records as confirmed by the testimony of Don Sanders, the misnomer "Simon Bernstein Trust, N.A." was an error or abbreviation of the name of the actual Contingent Beneficiary, "Simon Bernstein Insurance Trust dated 6/21/95". Don Sanders also confirmed that there is no change of beneficiary in the Policy records that was submitted by an Owner designating Simon Bernstein Trust, N.A. as a primary or contingent beneficiary of the Policy. **(Aff. of Don Sanders, ¶71-¶72, and Ex. P. 36)**

47. In 2011, the Policy had lapsed for non-payment of premium, and Simon Bernstein executed the paperwork necessary and paid the required premium to the Insurer to reinstate the Policy without making any change to the beneficiary of the Policy. **(Ex. 29, Aff. of Don Sanders, ¶56, ¶57 and ¶62; Ex. 30, Aff. of Ted Bernstein, ¶91-¶93; Ex. 13 and Ex. 14)**



48. That no party to this litigation, including movants and the Insurer, have been able to locate an executed original or copy of the Bernstein Trust Agreement. However, two unexecuted drafts of the Bernstein Trust have been located and produced by Movants in this litigation. **(Ex. 30, Aff. of Ted Bernstein, ¶¶97-¶98; Ex. 32, Aff. of David Simon, ¶28 and ¶29; Ex. 31, Aff. of Pam Simon, ¶37; Ex. 15 and Ex. 16)**

49. In 1995, David B. Simon, Ted S. Bernstein, Pam Simon, and Simon L. Bernstein all shared common office space at 600 West Jackson Blvd., Ste. 800, Chicago, IL 60606, and all were engaged in the life insurance business. Simon Bernstein was a licensed life insurance agent for at least 30 years and owned and operated several insurance brokerages. **(Ex. 30, Aff. of Ted Bernstein, ¶88; Ex. 32, Aff. of David Simon, ¶19, ¶20, and ¶24; Ex. 31, Aff. of Pam Simon, ¶33)**

50. In 1995, David and Pamela Simon created irrevocable insurance trusts with the assistance of attorneys from the Chicago firm of Hopkins and Sutter. **(Ex. 31, Aff. of Pam Simon, ¶34, Ex. 32, Aff. of David Simon, ¶23; Ex. 35, Dep. Of David Simon, p.41:7-41:10)**

51. David B. Simon and Simon Bernstein discussed Simon Bernstein's desire to form a similar irrevocable insurance trust to protect his family. **(Ex. 32, Aff. of David Simon, ¶24)**

52. One unexecuted draft of what would become The Simon Bernstein Irrevocable Trust dated 6/21/95 include David Simon's handwritten notations which he made to show Simon Bernstein where his name and others would go in the trust. According to David Simon, Simon Bernstein went to the firm of Hopkins and Sutter and executed the Bernstein Trust Agreement. **(Ex. 32, Aff. of David Simon, ¶28; Ex. 35, Dep. Of David Simon, p.40:17-41:1, and Ex. 16)**

53. According to the terms of this draft of the Bernstein Trust Agreement, the proceeds in the trust were to be split into as many separate Trusts as there were “children of mine who survive me and children of mine who predecease me leaving descendants who survive me.” **(Ex. 32, Aff. of David Simon, ¶28; Ex. 16 at §7)**

54. On David Simon’s law firm database, David and Adam Simon located a computer file named “SITRUST” and the file date on the metadata for the file is June 21, 1995, the date of the Bernstein Trust. This draft contains virtually identical language to Ex. 16, and also directs that all proceeds be split by the surviving children of Simon Bernstein. **(Ex. 32, Aff. of David Simon, ¶29; Ex. 15 at §7)**

55. On September 13, 2012, the date of Simon Bernstein’s death, he had five adult children whom survived him, Ted S. Bernstein, Pamela B. Simon, Eliot I. Bernstein, Jill Iantoni, and Lisa Friedstein. **(Ex. 30, Aff. of Ted Bernstein, ¶102)**

56. Simon Bernstein’s five children had a total of ten children of their own, so Simon Bernstein had ten grandchildren that survived him, whose names and year of birth are set forth in Ted Bernstein’s Affidavit. **(Ex. 30, Aff. of Ted Bernstein, ¶103)**

57. In Ex. 16, Simon Bernstein names his wife Shirley Bernstein, as Trustee, and he was going to name either David Simon, or Ted Bernstein or Pam Simon as successor trustee. **(Ex. 32, Aff. of David Simon, ¶25; Ex. 16)**

58. At a meeting in 1995 prior to Simon Bernstein executing the trust, David Simon recalls discussing the fact that for various reasons involving family dynamics, Ted Bernstein should be the first successor trustee to Shirley Bernstein rather than David Simon. **(Ex. 32, Aff. of David Simon, ¶25)**

59. On or about June 21, 1995, David Simon assisted his mother-in-law, Shirley Bernstein, as Trustee of the Bernstein Trust, with obtaining a tax identification number from the Internal Revenue Service. Prior to obtaining the Tax Identification number, David Simon saw the executed Bernstein Trust Agreement with Simon Bernstein's signature on it. By this time, David Simon also confirmed that Shirley was the initial Trustee and Ted Bernstein was the successor trustee. I then completed an SS-4 form indicating the name of the trust, and the tax identification number issued by the Internal Revenue Service. The SS-4 document contains the signature of Shirley Bernstein, as trustee of the Bernstein Trust. **(Ex. 32, Aff. of David Simon, ¶30, Ex. 35, Dep. of David Simon, p.42:6-p.43:9, p. 88:17-89:22; Ex. 19)**

60. The executed Bernstein Trust Agreement like the drafts referenced above designated the five surviving children of Simon Bernstein as the beneficiaries to the Trust in equal shares. **(Ex. 32, Aff. of David Simon, ¶25, ¶26, ¶28, ¶29 and ¶30; Ex. 15 at §7; Ex. 16 at §7)**

61. Four of five of the adult children (the "Consenting Children") have executed Affidavits indicating their stipulation to the following:

- a. That Simon Bernstein formed the Bernstein Trust on June 21, 1995;
- b. That the five surviving children of Simon Bernstein were named as beneficiaries;
- c. That Ted S. Bernstein is authorized to act as Trustee of the Bernstein Trust, and with the assistance of counsel, Adam Simon, Ted Bernstein is authorized to cause the release and distribution of the Policy proceeds from the Registry of the Court for deposit to The Simon Law Firm, and to distribute the Policy proceeds (less legal fees and costs associated with this litigation) to the five adult children of Simon Bernstein in equal shares, and to obtain vouchers of receipt therefore;

62. Prior to his death, Simon Bernstein was also the insured under a separate Policy of insurance issued by Lincoln Benefit Life Insurance Company, as Policy No. U0204204 (the “Lincoln Policy”). **(Ex. 30, Aff. of Ted Bernstein, ¶108; Ex. 31, Aff. of Pam Simon, ¶26-¶27)**

63. The Lincoln Policy lapsed in 2006 six years prior to Simon Bernstein’s death. **(Ex. 30, Aff. of Ted Bernstein, ¶108; Ex. 31, Aff. of Pam Simon, ¶27)**

64. While the Lincoln Policy was in force and less than two months after the formation of the Bernstein Trust, Simon Bernstein, as Lincoln Policy owner transferred his ownership interest in the Lincoln Policy to the Simon Bernstein Irrevocable Insurance Trust on August 8, 1995. This form contains the name of the Bernstein Trust, the same tax identification number that appears of the IRS Form SS-4 form signed by the trustee, the name and address of the trustee, Shirley Bernstein, and the signature of Simon Bernstein. **(Ex. 31, Aff. of Pam Simon, ¶27; Ex. 18)**

**V. ELIOT’S CLAIMS**

65. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation the (“Eliot’s Claims”). **(Ex. 26)**

66. The pleading setting forth Eliot’s Claims—not including exhibits—is seventy-two pages long and consists of one hundred and sixty-three separate paragraphs. **(Ex. 26)**

67. No Owner of the Policy ever submitted any change of beneficiary forms which were received by the Insurer that designated Eliot, or any of Eliot’s children as a beneficiary of the Policy. **(Ex. 29, Aff. of Don Sanders, ¶65-¶68)**

**VI. INTEVENOR CLAIMS BY ESTATE OF SIMON BERNSTEIN**

68. In its intervenor complaint, the Estate of Simon Bernstein, asserts that it has an interest in the policy because “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 the Petitioner [Estate].....”. **(Ex. 26 at ¶12)**

69. The Estate of Simon Bernstein produced no documents pursuant to Fed. R. Civ. P. 26 indicating that the Estate of Simon Bernstein was ever designated as a beneficiary of the Policy.

70. The Policy Records contain no documents indicating that the Estate of Simon Bernstein was ever designated a beneficiary or contingent beneficiary of the Policy. **(Ex. 29, Aff. of Don Sanders, ¶70)**

71. The Will of Simon L. Bernstein which was duly executed on July 25, 2012 and has been admitted to Probate in Palm Beach County, Florida. The Will of Simon L. Bernstein was filed in this action as an Exhibit to William Stansbury’s motion to intervene (*See Dkt. #56-2*). A true and correct copy of the Will of Simon L. Bernstein is included in Movant’s Appendix to their Statement of Undisputed facts as **(Ex. 24.)** A true and correct copy of the Palm Beach County Death Certificate for Simon Bernstein is included in Movant’s Appendix of Exhibits. **(Ex. 30, Aff. of Ted Bernstein, ¶96; Ex. 12)**

72. A copy of Plaintiff’s Amended Complaint is included in Movant’s Appendix to its Statement of Undisputed Facts as **(Ex. 25.)**

73. A copy of the Estate of Simon Bernstein's Intervenor Complaint is included in Movant's Appendix to its Statement of Undisputed Facts attached hereto as **(Ex. 27.)**

74. A copy of Eliot's Counterclaims, Cross-claims and Third-Party Claims is included in Movant's Appendix to its Statement of Undisputed Facts as **(Ex. 26.)**

**VII. THE INSURER'S INTERPLEADER ACTION**

75. A copy of the Insurer's Interpleader Action is included in Movant's Appendix to its Statement of Undisputed Facts as **(Ex. 28)**. In its Interpleader Action, the Insurer alleges that it failed to pay the Bernstein Trust's death claim because the claimants could not produce an original or copy of an executed trust agreement, and because the Insurer received a letter from Eliot setting forth a conflicting claim. **(Ex. 28 at ¶22)**

Dated: March 27, 2015

Respectfully submitted,

/s/ Adam Simon  
Adam Simon, Esq.  
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303 East Wacker Drive  
Suite 2725  
Chicago, Illinois 60601  
(312) 819-0730  
Attorney for Plaintiffs-Movants

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

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

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

**APPENDIX TO PLAINTIFFS'  
STATEMENT OF UNDISPUTED  
MATERIAL FACTS IN SUPPORT OF  
THEIR MOTION FOR  
SUMMARY JUDGMENT**

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. )  
 \_\_\_\_\_ )

Movants, pursuant to Local Rule 56.1, submit the following appendix to their statement of uncontested material facts in support of their motion for summary judgment:



<b>EXHIBIT #</b>	<b>DESCRIPTION</b>
1	Financial Activity from Issue Bates No. JCK001252-1259
2	Receipt from Registry of the Court for Policy Proceeds Bates No. BT000106
3	Part I of Application Bates No. JCK00419
4	VEBA Beneficiary Designation Bates No. BT000001
5	Specimen Policy Bates No. JCK001098-1117
6	Statement of Policy Cost and Benefit Info. Bates No. JCK001023-24
7	NSA Letter regarding change of VEBA Trustee Bates No. JCK000365
8	Capitol Bankers Request Letter, Confirmation and Cert. of Coverage Bates No. JCK000370, 372, 514 and 554
9	Secretary of State Database Screenshot-S.B. Lexington, Inc. Bates No. BT00027
10	Owner Change Confirmation Bates No. JCK000560
11	Capitol Bankers Request Letter and Owner Confirmation Bates No. JCK000566 and 563
12	Certificate of Death of Simon Bernstein Bates No. JCK001311
13	Application for Reinstatement Bates No. JCK00213-217
14	Confirmation of Reinstatement Bates No. JCK000294

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>
15	Draft of Bernstein Trust with Meta Data Bates No. BT000002-000012
16	Draft of Bernstein Trust with handwritten notes Bates No. BT000014-000022
17	Diagram of Beneficiaries
18	Lincoln Benefit Policy Transfer of Ownership Bates No. BT000112
19	SS-4 Form for Bernstein Trust Tax I.D. Bates No. BT000104
20	Equifax Report Bates No. JCK001084
21	National Service Association, Illinois Secretary of State Screenshot
22	National Service Association, Florida Secretary of State Screenshot
23	Heritage Union Life Insurance Company Rule 12(b)(6) Motion to Dismiss
24	Will of Simon L. Bernstein Dated July 25, 2012
25	Plaintiff's First Amended Complaint
26	Eliot Bernstein's Answer, Counterclaims, Cross-Claims, and Third-Party Claims
27	Estate of Simon Bernstein's Intervenor Complaint
28	Insurer's Interpleader Complaint
29	Affidavit of Don Sanders

30	Affidavit of Ted Bernstein
31	Affidavit of Pam Simon
32	Affidavit of David Simon
33	Affidavit of Jill Iantoni
34	Affidavit of Lisa Friedstein
35	Transcript of Deposition of David Simon
36	Heritage Letter to Simon Bernstein Dated April 23, 2010

**EXHIBIT 1**

10/04/12 CSI39  
PSR1-USR19

AP0012 - TRANSACTION TERMINATED

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	FIXED1	09/27/12	0.00	31,574.47			01H
CHRG ADJ	01	GRACE	09/27/12	7,657.88	23,916.59	6.000	A	01H
UNAP CSH OUT			09/05/12	36,000.36	36,000.36		A	00H
UNAP CSH IN			08/31/12	36,000.36	36,000.36		A	00H
REG PRM	F	01	FIXED1 08/28/12	36,000.36	31,320.31	4.500	AC	01H
CHRG DEDUCT	01	FIXED1	08/27/12	7,768.52	139.06		A	01H
	01	GRACE	08/27/12	0.00	7,629.46	6.000		01H
CHRG DEDUCT	01	FIXED1	07/27/12	7,732.68	139.06		A	01H
	01	GRACE	07/27/12	0.00	7,593.62	6.000		01H
CHRG DEDUCT	01	FIXED1	06/27/12	7,697.18	139.06		A	01H
	01	GRACE	06/27/12	0.00	7,558.12	6.000		01H
CHRG DEDUCT	01	FIXED1	05/27/12	0.00	23,973.66			01H
CHRG ADJ	01	GRACE	05/27/12	7,662.02	16,311.64	6.000	A	01H
LOAN PAYMENT	01	FIXED1	05/21/12	23,023.97	23,770.43	4.500	A	01H
ADVANCE INT				746.46				
REG PRM REV	01	FIXED1	05/21/12	36,800.35				01H
REG PRM	RV	01	FIXED1 05/21/12	36,800.35	32,016.30	4.500	AC	01H
CHRG DEDUCT	01	FIXED1	04/27/12	7,626.96	226.41		A	01H
	01	GRACE	04/27/12	0.00	7,400.55	6.000		01H
CHRG DEDUCT	01	FIXED1	03/27/12	7,592.33	226.41		A	01

PSR1-USR19

AP0011 - TRANSACTION CONTINUED

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	GRACE	03/27/12	0.00	7,365.92	6.000		01H
CHRG DEDUCT	01	FIXED1	02/27/12	0.00	16,143.94			01H
CHRG ADJ	01	GRACE	02/27/12	7,558.03	8,585.91	6.000	A	01H
REG PRM	01	FIXED1	02/13/12	18,296.01	15,917.53	4.500	AC	01H
CHRG DEDUCT	01	FIXED1	01/27/12	7,597.70	226.41		A	01H
	01	GRACE	01/27/12	0.00	7,371.29	6.000		01H
ADVANCE INT	01	GRACE	12/27/11	3,209.98	0.00	6.000	A	01H
CHRG DEDUCT	01	FIXED1	12/27/11	0.00	28,628.43			01H
CHRG ADJ	01	GRACE	12/27/11	7,563.34	21,065.09	6.000	A	01H
REG PRM	F	01	FIXED1 12/01/11	32,662.94	28,416.76	4.500	AC	01H
REIN PAYMENT	01	FIXED1	12/01/11	0.00	0.00	4.500	A	01H
I-L PAYOFF				58,152.26				
ADVANCE INT				249.61				
INTERN SURR	RV	GRACE	12/01/11	21,024.83	0.00		A	00H
I-L PAYOFF				58,152.26				
ADVANCE INT				249.61				
CHRG DEDUCT	01	FIXED1	11/27/11	6,993.34	214.62		A	01H
	01	GRACE	11/27/11	0.00	6,778.72	6.000		01H
CHRG DEDUCT	01	FIXED1	10/27/11	6,964.26	214.62		A	01H
	01	GRACE	10/27/11	0.00	6,749.64	6.000		01

PSR1-USR19

AP0011 - TRANSACTION CONTINUED

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	FIXED1	09/27/11	6,935.47	214.62		A	01H

	01 GRACE	09/27/11	0.00	6,720.85	6.000	01H
CHRG DEDUCT	01 FIXED1	08/27/11	6,906.92	5,980.08	A	01H
	01 GRACE	08/27/11	0.00	926.84	6.000	01H
LOAN PAYMENT RV	01 FIXED1	08/02/11	76,255.00	78,143.29	4.500	A 01H
ADVANCE INT			1,888.29			
LOAN PAY REV	01 FIXED1	08/02/11	76,255.00			01H
ADVANCE INT			1,888.29			
CHRG DEDUCT	01 FIXED1	07/27/11	6,878.61	6,878.61	A	01H
CHRG DEDUCT	01 FIXED1	06/27/11	6,850.53	6,850.53	A	01H
CHRG DEDUCT	01 FIXED1	05/27/11	6,822.66	6,822.66	A	01H
CHRG DEDUCT	01 FIXED1	04/27/11	6,795.02	6,795.02	A	01H
CHRG DEDUCT	01 FIXED1	03/27/11	6,767.59	6,767.59	A	01H
CHRG DEDUCT	01 FIXED1	02/27/11	6,740.38	6,740.38	A	01H
CHRG DEDUCT	01 FIXED1	01/27/11	6,713.38	6,713.38	A	01H
ADVANCE INT	01 GRACE	12/27/10	3,504.11	0.00	6.000	A 01H
CHRG DEDUCT	01 FIXED1	12/27/10	0.00	10,190.71		01H
CHRG ADJ	01 GRACE	12/27/10	6,686.60	3,504.11	6.000	A 01H
CHRG DEDUCT	01 FIXED1	11/27/10	0.00	16,643.84		01H
CHRG ADJ	01 GRACE	11/27/10	6,086.40	10,557.44	6.000	A 01
AP0011 - TRANSACTION CONTINUED						
PSR1-USR19						

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE						
TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV GN VPH
REG PRM REV	F	01 FIXED1	10/28/10	76,255.00		00H
LOAN PAYMENT		01 FIXED1	10/28/10	76,255.00	76,913.72	4.500 A 01H
ADVANCE INT				658.72		
REG PRM	RV F	01 FIXED1	10/28/10	76,255.00	66,341.85	AC 00H
REIN PAYMENT		01 FIXED1	10/28/10	0.00	0.00	4.500 A 01H
I-L PAYOFF				145,883.68		
ADVANCE INT				1,260.20		
INTERN SURR RV		GRACE	10/28/10	6,121.52	0.00	A 00H
I-L PAYOFF				145,883.68		
ADVANCE INT				1,260.20		
CHRG DEDUCT		01 FIXED1	10/27/10	0.00	10,210.98	01H
CHRG ADJ		01 GRACE	10/27/10	6,064.51	4,146.47	6.000 A 01H
REG PRM		01 FIXED1	10/15/10	11,180.00	9,726.60	4.500 AC 01H
CHRG DEDUCT		01 FIXED1	09/27/10	6,080.32	484.38	A 01H
		01 GRACE	09/27/10	0.00	5,595.94	6.000 01H
CHRG DEDUCT		01 FIXED1	08/27/10	6,058.45	484.38	A 01H
		01 GRACE	08/27/10	0.00	5,574.07	6.000 01H
CHRG DEDUCT		01 FIXED1	07/27/10	6,036.77	2,685.97	A 01H
		01 GRACE	07/27/10	0.00	3,350.80	6.000 01H
CHRG DEDUCT		01 FIXED1	06/27/10	6,015.27	6,015.27	A 01
AP0011 - TRANSACTION CONTINUED						
PSR1-USR19						

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE						
TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV GN VPH
CHRG DEDUCT		01 FIXED1	05/27/10	0.00	8,448.24	01H
CHRG ADJ		01 GRACE	05/27/10	5,993.93	2,454.31	6.000 A 01H
REG PRM		01 FIXED1	05/17/10	18,000.00	15,660.00	4.500 AC 01H
CHRG DEDUCT		01 FIXED1	04/27/10	6,033.25	3,590.67	A 01H
		01 GRACE	04/27/10	0.00	2,442.58	6.000 01H
CHRG DEDUCT		01 FIXED1	03/27/10	6,011.78	6,011.78	A 01H
CHRG DEDUCT		01 FIXED1	02/27/10	5,990.46	5,990.46	A 01H
CHRG DEDUCT		01 FIXED1	01/27/10	5,969.31	5,969.31	A 01H
REG PRM		01 FIXED1	01/07/10	16,500.00	14,355.00	4.500 AC 01H
ADVANCE INT		01 GRACE	12/27/09	6,867.38	0.00	6.000 A 01H
CHRG DEDUCT		01 FIXED1	12/27/09	0.00	12,871.16	01H

CHRG ADJ	01 GRACE	12/27/09	6,003.78	6,867.38	6.000	A	01H
CHRG DEDUCT	01 FIXED1	11/27/09	5,476.43	5,476.43		A	01H
CHRG DEDUCT	01 FIXED1	10/27/09	5,458.92	5,458.92		A	01H
REG PRM	01 FIXED1	09/29/09	21,984.37	19,126.40	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	09/27/09	5,509.17	5,509.17		A	01H
CHRG DEDUCT	01 FIXED1	08/27/09	0.00	20,712.14			01H
CHRG ADJ	01 GRACE	08/27/09	5,491.42	15,220.72	6.000	A	01H
REG PRM	01 FIXED1	08/05/09	38,555.11	33,542.95	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	07/27/09	5,592.34	459.14		A	01

AP0011 - TRANSACTION CONTINUED PSR1-USR19

U1DA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35  
 FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01 GRACE	07/27/09	0.00	5,133.20	6.000		01H
CHRG DEDUCT	01 FIXED1	06/27/09	5,573.95	459.14		A	01H
	01 GRACE	06/27/09	0.00	5,114.81	6.000		01H
CHRG DEDUCT	01 FIXED1	05/27/09	5,555.71	729.92		A	01H
	01 GRACE	05/27/09	0.00	4,825.79	6.000		01H
CHRG DEDUCT	01 FIXED1	04/27/09	5,537.63	5,537.63		A	01H
CHRG DEDUCT	01 FIXED1	03/27/09	5,519.67	5,519.67		A	01H
CHRG DEDUCT	01 FIXED1	02/27/09	5,501.85	5,501.85		A	01H
REG PRM	01 FIXED1	02/19/09	15,000.00	13,050.00	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	01/27/09	5,530.30	5,530.30		A	01H
ADVANCE INT	01 GRACE	12/27/08	6,509.59	0.00	6.000	A	01H
CHRG DEDUCT	01 FIXED1	12/27/08	0.00	12,021.98			01H
CHRG ADJ	01 GRACE	12/27/08	5,512.39	6,509.59	6.000	A	01H
CHRG DEDUCT	01 FIXED1	11/27/08	5,038.92	5,038.92		A	01H
CHRG DEDUCT	01 FIXED1	10/27/08	5,024.22	5,024.22		A	01H
REG PRM	01 FIXED1	10/06/08	19,521.62	16,983.81	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	09/27/08	5,064.68	5,064.68		A	01H
CHRG DEDUCT	01 FIXED1	08/27/08	5,049.81	5,049.81		A	01H
CHRG DEDUCT	01 FIXED1	07/27/08	5,035.03	5,035.03		A	01H
CHRG DEDUCT	01 FIXED1	06/27/08	5,020.35	5,020.35		A	01

AP0011 - TRANSACTION CONTINUED PSR1-USR19

U1DA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35  
 FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
REG PRM	01 FIXED1	06/26/08	15,000.00	13,050.00	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	05/27/08	5,048.09	5,048.09		A	01H
CHRG DEDUCT	01 FIXED1	04/27/08	5,033.33	5,033.33		A	01H
CHRG DEDUCT	01 FIXED1	03/27/08	5,018.66	5,018.66		A	01H
REG PRM	01 FIXED1	03/24/08	15,000.00	13,050.00	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	02/27/08	5,046.42	5,046.42		A	01H
CHRG DEDUCT	01 FIXED1	01/27/08	5,031.66	5,031.66		A	01H
LOAN INT	01 FIXED1	12/27/07	6,888.19	0.00	4.500	A	01H
ADVANCE INT			6,888.19				
REG PRM	F 01 FIXED1	12/27/07	31,131.25	27,084.19	4.500	AC	01H
REG PRM REV	01 FIXED1	12/27/07	38,019.44				01H
REG PRM	RV 01 FIXED1	12/27/07	38,019.44	33,076.91	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	12/27/07	5,017.01	5,017.01		A	01H
CHRG DEDUCT	01 FIXED1	11/27/07	4,633.52	4,633.52		A	01H
CHRG DEDUCT	01 FIXED1	10/27/07	4,621.19	4,621.19		A	01H
CHRG DEDUCT	01 FIXED1	09/27/07	4,608.94	4,608.94		A	01H
REG PRM	01 FIXED1	09/14/07	4,600.00	4,002.00	4.500	AC	01H
CHRG DEDUCT	01 FIXED1	08/27/07	4,608.63	4,608.63		A	01H
CHRG DEDUCT	01 FIXED1	07/27/07	4,596.46	4,596.46		A	01H
REG PRM	01 FIXED1	07/17/07	2,000.00	1,740.00	4.500	AC	01

AP0011 - TRANSACTION CONTINUED PSR1-USR19

ULDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	FIXED1	06/27/07	4,589.53	4,589.53		A	01H
CHRG DEDUCT	01	FIXED1	05/27/07	4,577.48	4,577.48		A	01H
CHRG DEDUCT	01	FIXED1	04/27/07	4,565.52	4,565.52		A	01H
CHRG DEDUCT	01	FIXED1	03/27/07	4,553.63	4,553.63		A	01H
REG PRM	01	FIXED1	03/20/07	13,668.69	11,891.76	4.500	AC	01H
CHRG DEDUCT	01	FIXED1	02/27/07	4,577.08	4,577.08		A	01H
CHRG DEDUCT	01	FIXED1	01/27/07	4,565.11	4,565.11		A	01H
CHRG DEDUCT	01	FIXED1	12/27/06	4,553.23	4,553.23		A	01H
LOAN INT	01	FIXED1	12/19/06	6,888.19	0.00	4.500	A	01H
ADVANCE INT				6,888.19				
CHRG DEDUCT	01	FIXED1	11/27/06	4,147.56	4,147.56		A	01H
CHRG DEDUCT	01	FIXED1	10/27/06	4,137.94	4,137.94		A	01H
REG PRM	01	FIXED1	10/06/06	5,000.00	4,350.00	4.500	AC	01H
CHRG DEDUCT	01	FIXED1	09/27/06	4,140.21	4,140.21		A	01H
CHRG DEDUCT	01	FIXED1	08/27/06	4,130.65	4,130.65		A	01H
CHRG DEDUCT	01	FIXED1	07/27/06	4,121.14	4,121.14		A	01H
CHRG DEDUCT	01	FIXED1	06/27/06	4,111.69	4,111.69		A	01H
CHRG DEDUCT	01	FIXED1	05/27/06	4,102.31	4,102.31		A	01H
CHRG DEDUCT	01	FIXED1	04/27/06	4,092.98	4,092.98		A	01H
REG PRM	01	FIXED1	03/29/06	5,000.00	4,350.00	4.500	AC	01

AP0011 - TRANSACTION CONTINUED

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ULDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	FIXED1	03/27/06	4,095.54	4,095.54		A	01H
CHRG DEDUCT	01	FIXED1	02/27/06	4,086.26	4,086.26		A	01H
CHRG DEDUCT	01	FIXED1	01/27/06	4,077.04	4,077.04		A	01H
REG PRM	01	FIXED1	01/16/06	11,400.00	9,918.00	4.500	AC	01H
LOAN INT	01	FIXED1	01/16/06	6,888.19	7,266.79	4.500	A	01H
ADVANCE INT				378.60				
ADVANCE INT	01	GRACE	12/27/05	7,266.79	0.00	6.000	A	01H
CHRG DEDUCT	01	FIXED1	12/27/05	0.00	11,361.66			01H
CHRG ADJ	01	GRACE	12/27/05	4,094.87	7,266.79	6.000	A	01H
CHRG DEDUCT	01	FIXED1	11/27/05	3,783.76	3,783.76		A	01H
CHRG DEDUCT	01	FIXED1	10/27/05	3,775.99	3,775.99		A	01H
CHRG DEDUCT	01	FIXED1	09/27/05	3,768.26	3,768.26		A	01H
CHRG DEDUCT	01	FIXED1	08/27/05	3,760.58	3,760.58		A	01H
CHRG DEDUCT	01	FIXED1	07/27/05	3,752.94	3,752.94		A	01H
CHRG DEDUCT	01	FIXED1	06/27/05	3,745.36	3,745.36		A	01H
CHRG DEDUCT	01	FIXED1	05/27/05	3,737.82	3,737.82		A	01H
CHRG DEDUCT	01	FIXED1	04/27/05	3,730.32	3,730.32		A	01H
CHRG DEDUCT	01	FIXED1	03/27/05	3,722.88	3,722.88		A	01H
CHRG DEDUCT	01	FIXED1	02/27/05	3,715.48	3,715.48		A	01H
CHRG DEDUCT	01	FIXED1	01/27/05	3,708.12	3,708.12		A	01

AP0011 - TRANSACTION CONTINUED

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ULDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
LOAN INT	01	FIXED1	01/17/05	6,888.19	7,266.79	4.500	A	01H
ADVANCE INT				378.60				
ADVANCE INT	01	GRACE	12/27/04	7,266.79	0.00	6.000	A	01H
CHRG DEDUCT	01	FIXED1	12/27/04	0.00	10,967.64			01H
CHRG ADJ	01	GRACE	12/27/04	3,700.85	7,266.79	6.000	A	01H
CHRG DEDUCT	01	FIXED1	11/27/04	3,414.62	3,414.62		A	01H



CHRG DEDUCT	01	FIXED1	10/27/04	3,408.81	3,408.81		A	01H
CHRG DEDUCT	01	FIXED1	09/27/04	3,403.03	3,403.03		A	01H
CHRG DEDUCT	01	FIXED1	08/27/04	3,397.29	3,397.29		A	01H
CHRG DEDUCT	01	FIXED1	07/27/04	3,391.59	3,391.59		A	01H
REG PRM	01	FIXED1	07/06/04	21,834.50	18,996.01	5.000	AC	01H
CHRG DEDUCT	01	FIXED1	06/27/04	3,430.10	3,430.10		A	01H
CHRG DEDUCT	01	FIXED1	05/27/04	3,424.19	3,424.19		A	01H
CHRG DEDUCT	01	FIXED1	04/27/04	3,418.32	3,418.32		A	01H
REG PRM	01	FIXED1	04/06/04	21,834.50	18,996.01	5.000	AC	01H
CHRG DEDUCT	01	FIXED1	03/27/04	3,456.66	3,456.66		A	01H
CHRG DEDUCT	01	FIXED1	02/27/04	3,450.58	3,450.58		A	01H
CHRG DEDUCT	01	FIXED1	01/27/04	3,444.54	3,444.54		A	01H
REG PRM	01	FIXED1	12/29/03	21,834.50	18,996.01	5.000	AC	01H
ADVANCE INT	01	GRACE	12/27/03	8,649.24	0.00	6.000	A	01

AP0011 - TRANSACTION CONTINUED PSR1-USR19

U1DA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35  
 FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	FIXED1	12/27/03	0.00	12,131.95			01H
CHRG ADJ	01	GRACE	12/27/03	3,482.71	8,649.24	6.000	A	01H
CHRG DEDUCT	01	FIXED1	11/27/03	3,188.92	3,188.92		A	01H
CHRG DEDUCT	01	FIXED1	10/27/03	3,183.84	3,183.84		A	01H
REG PRM	01	FIXED1	10/07/03	20,667.10	17,980.38	5.000	AC	01H
CHRG DEDUCT	01	FIXED1	09/27/03	3,217.14	3,217.14		A	01H
CHRG DEDUCT	01	FIXED1	08/27/03	3,211.88	3,211.88		A	01H
CHRG DEDUCT	01	FIXED1	07/27/03	3,206.66	3,206.66		A	01H
CHRG DEDUCT	01	FIXED1	06/27/03	3,201.47	3,201.47		A	01H
REG PRM	01	FIXED1	06/16/03	20,667.10	17,980.38	5.000	AC	01H
CHRG DEDUCT	01	FIXED1	05/27/03	3,234.66	3,234.66		A	01H
CHRG DEDUCT	01	FIXED1	04/27/03	3,229.30	3,229.30		A	01H
CHRG DEDUCT	01	FIXED1	03/27/03	3,223.97	3,223.97		A	01H
CHRG DEDUCT	01	FIXED1	02/27/03	3,218.67	3,218.67		A	01H
CHRG DEDUCT	01	FIXED1	01/27/03	3,213.41	3,213.41		A	01H
ADVANCE INT	01	GRACE	12/27/02	8,083.40	0.00	6.000	A	01H
CHRG DEDUCT	01	FIXED1	12/27/02	0.00	11,291.58			01H
CHRG ADJ	01	GRACE	12/27/02	3,208.18	8,083.40	6.000	A	01H
CHRG DEDUCT	01	FIXED1	11/27/02	2,928.63	2,928.63		A	01H
CHRG DEDUCT	01	FIXED1	10/27/02	2,924.44	2,924.44		A	01

AP0011 - TRANSACTION CONTINUED PSR1-USR19

U1DA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35  
 FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
REG PRM	01	FIXED1	10/14/02	17,857.30	15,535.85	5.000	AC	01H
CHRG DEDUCT	01	FIXED1	09/27/02	2,950.57	2,950.57		A	01H
CHRG DEDUCT	01	FIXED1	08/27/02	2,946.25	2,946.25		A	01H
CHRG DEDUCT	01	FIXED1	07/27/02	2,941.95	2,941.95		A	01H
CHRG DEDUCT	01	FIXED1	06/27/02	2,937.68	2,937.68		A	01H
CHRG DEDUCT	01	FIXED1	05/27/02	2,933.44	2,933.44		A	01H
CHRG DEDUCT	01	FIXED1	04/27/02	2,929.23	2,929.23		A	01H
CHRG DEDUCT	01	FIXED1	03/27/02	2,925.03	2,925.03		A	01H
CHRG DEDUCT	01	FIXED1	02/27/02	2,920.87	2,920.87		A	01H
CHRG DEDUCT	01	FIXED1	01/27/02	2,916.73	2,916.73		A	01H
LOAN INT	01	FIXED1	01/15/02	7,554.59	8,083.40	5.000	A	01H
ADVANCE INT				528.81				
ADVANCE INT	01	GRACE	12/27/01	8,083.40	0.00	6.000	A	01H
CHRG DEDUCT	01	FIXED1	12/27/01	0.00	10,996.04			01H
CHRG ADJ	01	GRACE	12/27/01	2,912.64	8,083.40	6.000	A	01H
CHRG DEDUCT	01	FIXED1	11/27/01	2,649.40	2,649.40		A	01H

CHRG DEDUCT 01 FIXED1 10/27/01 2,646.44 2,646.44 A 01H  
 MISC ACCOUNT 10/19/01 A 00H  
 DB-2412600 34,606.30  
 CR-2416300 34,606.30 10/04/12 CSI39  
 AP0011 - TRANSACTION CONTINUED PSR1-USR19

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
REG PRM	01 FIXED1	09/28/01	17,303.15	15,053.74	6.000	AC	01H
CHRG DEDUCT	01 FIXED1	09/27/01	2,670.34	2,670.34		A	01H
CHRG DEDUCT	01 FIXED1	08/27/01	2,667.24	2,667.24		A	01H
CHRG DEDUCT	01 FIXED1	07/27/01	2,664.17	2,664.17		A	01H
NET LOAN REV	01 FIXED1	07/25/01	17,797.59				00H
NET LOAN	RV 01 FIXED1	07/25/01	17,797.59	17,303.15	6.542		00H
CHRG DEDUCT	01 FIXED1	06/27/01	2,661.11	2,661.11		A	01H
REG PRM	F 01 FIXED1	06/23/01	17,303.15	15,053.74	6.000	AC	01H
NET LOAN	01 FIXED1	06/23/01	17,903.20	17,303.15	6.542	A	01H
ADVANCE INT			600.05				
CHRG DEDUCT	01 FIXED1	05/27/01	2,684.81	2,684.81		A	01H
CHRG DEDUCT	01 FIXED1	04/27/01	2,681.62	2,681.62		A	01H
REG PRM	F 01 FIXED1	04/04/01	17,303.15	15,053.74	6.000	AC	01H
NET LOAN	01 FIXED1	04/04/01	18,172.81	17,303.15	6.542	A	01H
ADVANCE INT			869.66				
CHRG DEDUCT	01 FIXED1	03/27/01	2,705.18	2,705.18		A	01H
CHRG DEDUCT	01 FIXED1	02/27/01	2,701.85	2,701.85		A	01H
CHRG DEDUCT	01 FIXED1	01/27/01	2,698.54	2,698.54		A	01H
REG PRM	F 01 FIXED1	01/15/01	17,303.15	15,053.74	6.000	AC	01H

AP0011 - TRANSACTION CONTINUED

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
MISC ACCOUNT		01/15/01				A	00H
DB-2412600			17,303.15				
CR-2416300			17,303.15				
NET LOAN	01 FIXED1	01/03/01	18,489.54	17,303.15	6.542	A	01H
ADVANCE INT			1,186.39				
ADVANCE INT	01 GRACE	12/27/00	3,984.91	0.00	6.000	A	01H
CHRG DEDUCT	01 FIXED1	12/27/00	0.00	6,706.90			01H
CHRG ADJ	01 GRACE	12/27/00	2,721.99	3,984.91	6.000	A	01H
CHRG DEDUCT	01 FIXED1	11/27/00	2,488.83	2,488.83		A	01H
CHRG DEDUCT	01 FIXED1	10/27/00	2,486.08	2,486.08		A	01H
CHRG DEDUCT	01 FIXED1	09/27/00	2,483.34	2,483.34		A	01H
CHRG DEDUCT	01 FIXED1	08/27/00	2,480.62	2,480.62		A	01H
REG PRM	F 01 FIXED1	08/10/00	17,303.15	15,053.74	6.000	AC	01H
CHRG DEDUCT	01 FIXED1	07/27/00	2,502.36	2,502.36		A	01H
CHRG DEDUCT	01 FIXED1	06/27/00	2,499.52	2,499.52		A	01H
CHRG DEDUCT	01 FIXED1	05/27/00	2,496.70	2,496.70		A	01H
MISC ACCOUNT		05/18/00				A	00H
DB-2412600			17,303.15				
CR-2416300			17,303.15				
REG PRM	F 01 FIXED1	05/08/00	17,303.15	15,053.74	6.000	AC	01

AP0011 - TRANSACTION CONTINUED

UIDA,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
NET LOAN	01 FIXED1	05/05/00	18,067.38	17,303.15	6.542	A	01H

ADVANCE INT				764.23				
REG PRM	F	01	FIXED1	05/05/00	17,303.15	15,053.74	6.000	AC 01H
CHRG DEDUCT		01	FIXED1	04/27/00	2,542.76	2,542.76		A 01H
CHRG DEDUCT		01	FIXED1	03/27/00	2,539.66	2,539.66		A 01H
CHRG DEDUCT		01	FIXED1	02/27/00	2,536.58	2,536.58		A 01H
CHRG DEDUCT		01	FIXED1	01/27/00	2,533.51	2,533.51		A 01H
ADVANCE INT		01	GRACE	12/27/99	2,542.25	0.00	6.000	A 01H
CHRG DEDUCT		01	FIXED1	12/27/99	0.00	5,072.72		01H
CHRG ADJ		01	GRACE	12/27/99	2,530.47	2,542.25	6.000	A 01H
CHRG DEDUCT		01	FIXED1	11/27/99	2,310.17	2,310.17		A 01H
GROSS LOAN		01	FIXED1	10/31/99	36,318.16	35,898.06	7.407	A 01H
ADVANCE INT					420.10			
CHRG DEDUCT		01	FIXED1	10/27/99	2,307.77	2,307.77		A 01H
REG PRM	F	01	FIXED1	10/25/99	17,303.15	15,053.74	6.000	AC 01H
CHRG DEDUCT		01	FIXED1	09/27/99	2,327.69	2,327.69		A 01H
CHRG DEDUCT		01	FIXED1	08/27/99	2,325.16	2,325.16		A 01H
CHRG DEDUCT		01	FIXED1	07/27/99	2,322.64	2,322.64		A 01H
REG PRM	F	01	FIXED1	06/27/99	17,303.15	15,053.74	6.000	AC 01H
CHRG DEDUCT		01	FIXED1	06/27/99	2,320.14	2,320.14		A 01

AP0011 - TRANSACTION CONTINUED PSR1-USR19

,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

FINANCIAL ACTIVITY FROM ISSUE

TRANSACTION	CPH	FUND	AS-OF	GROSS	NET	CIR/UV	GN	VPH
CHRG DEDUCT	01	FIXED1	05/27/99	2,339.99	2,339.99		A	01H
CHRG DEDUCT	01	FIXED1	04/27/99	2,337.38	2,337.38		A	01H
REG PRM	F	01	FIXED1	03/27/99	17,303.15	15,053.74	6.000	AC 01H
CHRG DEDUCT	01	FIXED1	03/27/99	2,334.79	2,334.79		A	01H
CHRG DEDUCT	01	FIXED1	02/27/99	2,354.54	2,354.54		A	01H
CHRG DEDUCT	01	FIXED1	01/27/99	2,351.84	2,351.84		A	01H
REG PRM	F	01	FIXED1	12/27/98	17,303.15	15,053.74	6.000	AC 01H
ISS ROLLOVER	F	01	FIXED1	12/27/98	100,394.30	100,394.30	6.000	AC 01H
CHRG DEDUCT	01	FIXED1	12/27/98	2,349.15	2,349.15		A	01H

AP0010 - REQUESTED TRANSACTION SUCCESSFULLY COMPLETED

10/04/12 CSI39  
PSR1-USR19

,1009208 ; . AS-OF 10/04/12;. BERNSTEIN, SIMON M-47 12/03/35

NEW MONEY INTEREST RATE	4.500%	INVESTMENT METHOD	POLICY YEAR PORT
TOTAL CASH VALUE	37,773.91	SUS-STAT-ENT-ASN/O-MEC-RE-LAST MVP-ACT	
LOANED AMOUNT	37,841.42	DTH 22 DC NO /9 N 0 09/27/12 M N	
SURRENDER VALUE	386.21	PLAN- CVLOA	OPTION INCLUDES CV
COI REFUND	.00	DIR-Q	27238.00 REQ MAT **/**/**
MAXIMUM LOAN AVAILABLE	.00	BILLING	ON SCHED BILLED TO 12/27/12
LOAN PAYOFF	37,387.70	VALUE	37742.06 ISSUE 12/27/82
NET AMT AT RISK (INS)	1,637,485.79	RISK	1637485.79 LAST FIN 09/27/12
SPECIFIED AMOUNT (INS)	1,689,070.00	SEAMT	1689070.00 LAST BILL 09/27/12
OTHER INSURANCE	.00	LOAN	37841.42 LAST ACCT 09/27/12
DEATH BENEFIT	1,689,070.00	SUSP	.00 LAST OTHR 09/05/12
INTEREST CREDITED	101,461.74	INTEREST EARNED AT GIR	92,023.95
PREMIUMS PAID	1,376,387.57	WITHDRAWALS	.00

COST BASIS

1,376,387.57

AP0010 - REQUESTED TRANSACTION SUCCESSFULLY COMPLETED

10/04/12 CSI39  
PSR1-USR19

**EXHIBIT 2**

Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, IL 62650

CLERK US DISTRICT COURT  
219 S DEARBORN  
CHICAGO, IL 60601

POLICY NUMBER - 1009208  
INSURED - SIMON BERENSTEIN  
- \$37,274.26 OUTSTANDING POLICY LOAN  
+ \$1,689,070.00 FACE AMOUNT  
+ \$51,771.35 INTEREST FROM: 09/13/2012 - 06/25/2013 AT  
TOTAL DISBURSEMENT AMOUNT \$1,703,567.09

37,274.26  
1,689,070.00  
51,771.35

0000325320

Court Name: Northern District of Illinois  
Division: 1  
Receipt Number: 4624102327  
Cashier ID: djozwia  
Transaction Date: 06/26/2013  
Payer Name: HERITAGE UNION LIFE

COMM REG MONEY MARKET  
For: HERITAGE UNION LIFE  
Case/Party: D-ILN-1-13-CV-003643-001  
Amount: \$1,703,567.09

CHECK  
Check/Money Order Num: 325320  
Amt Tendered: \$1,703,567.09

Total Due: \$1,703,567.09  
Total Tendered: \$1,703,567.09  
Change Amt: \$0.00

MONEY POSTED TO THE COURT REGISTRY  
PER ORDER OF JUDGE ST.EVE DATED  
06/25/13, 13CV3643.

Only when bank clears the check,  
money order, or verifies credit of  
funds is the fee or debt officially  
paid or discharged. A \$53 fee will  
be charged for a returned check

CMAA 08

BT000106

**EXHIBIT 3**



**PART I OF APPLICATION TO**

**Capitol Bankers Life**

**CAPITOL BANKERS LIFE INSURANCE COMPANY**  
 Home Office: Minneapolis, Minnesota  
 Administrative Office: 736 North Water St. P.O. Box 2016  
 Milwaukee, Wisconsin 53201 (414) 277-9998

(For an Annuity "Proposed Insured" means "Annuitant")

PERSONS TO BE INSURED (Print First Name, Middle Initial, Last Name)		Sex	Age	Birthdate	State of Birth	Ht.	Build	Wt.	Social Security Number
PROPOSED INSURED <i>Simon Bernstein</i>		<i>M</i>		<i>12/3/35</i>	<i>Mich</i>	<i>5'7 1/2</i>	<i>180</i>		
SPOUSE (if to be insured or Payor)									
DEPENDENT CHILDREN IF TO BE INSURED	NAME	Age	BIRTHDATE Mo, Day, Yr.	NAME	Age	BIRTHDATE Mo, Day, Yr.			
Residence Address <i>620 SHERIDAN DR.</i> Employer <i>S.B. LEXINGTON, INC.</i>									
City <i>Galena, IL</i> State <i>IL</i> Zip _____ Business Address <i>9933 LAWLER SUITE 210</i>									
County _____ Telephone No. _____ Occupation <i>SKOKIE, ILL. CHAIRMAN OF BOARD</i>									
Proposed insured will be owner of policy unless otherwise indicated.									
Owner's Name <i>First Arlington National Bank Trustee of S.B.</i> Social Security Number _____									
Mailing Address <i>Lexington, Inc. Employee Death Benefit Trust</i>									
Relationship to Proposed Insured _____									

- |  |                              |  |   |                              |  |
|--|------------------------------|--|---|------------------------------|--|
| 1. Is this insurance intended to replace or modify any insurance or annuity now carried?                       | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | 4. Ever participated in sky diving, skin diving, scuba diving, auto racing, mountain climbing or any avocation of a similar nature? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Are there any other applications now pending for Life or Health Insurance?<br>Has any person to be covered? | <input type="checkbox"/>     | <input checked="" type="checkbox"/>    | 5. Had drivers license suspended or revoked?<br>Drivers license number _____  | <input type="checkbox"/>     | <input checked="" type="checkbox"/>    |
| 3. Flown in past 3 years other than as a fare paying passenger or is such contemplated?                        | <input type="checkbox"/>     | <input checked="" type="checkbox"/>    | 6. Do you now smoke cigarettes?   | <input type="checkbox"/>     | <input checked="" type="checkbox"/>    |
|  |                              |  | 7. If no, have you ever smoked cigarettes?  | <input type="checkbox"/>     | <input type="checkbox"/>               |
|  |                              |  | 8. If yes, when did you stop? _____   |                              |  |

**LIFE INSURANCE OR ANNUITY APPLIED FOR:**

Plan *CVL*  
 Amount *\$2,000,000*  
 Level Term for \_\_\_\_\_ Yr. \$ \_\_\_\_\_  
 Reducing Term for \_\_\_\_\_ Yr. \$ \_\_\_\_\_  
 Waiver of Premium  G.P.O. \_\_\_\_\_ Units  
 ADB  Other \_\_\_\_\_

If available, automatic premium loan provision?  
 Yes  No   
 Premiums  Ann.  Qtr.  List Bill  Other  
 Payable  S.A.  PAC  Allotment

Total insurance in force? *0*  
 (If space is insufficient, enter under Remarks.)

Name of Company	Coverage (Life)	Amount of Acc. Death	Year of Issue

Beneficiaries: (Full names and relationship. If minor, give date of birth.) *First Arlington National Bank Trustee*  
 Primary? *of S.B. Lexington, Inc. Employee Death*  
 Contingent? *Benefit Trust*

Send Notices to: *see below*  
 Proposed Insured at Address Above  
 Or to Owner at Address Above  Business Address Above

Remarks/Amendments *S.B. Lexington, Inc. Employee Death Benefit Plan*  
*c/o National Service Assoc.*  
 Please send list billing to: *9933 Lawler, Suite 210*  
*Skokie, Ill. 60077*

I represent that the statements and answers given in this application are true and complete to the best of my knowledge and belief. I understand and agree that insurance upon this application will not become effective (A) unless this application is accepted by the Insurance Company during my lifetime and the lifetime of each dependent listed above and (B) unless the first premium is paid in full during my lifetime and the lifetime of each dependent listed above.

**ACKNOWLEDGEMENT AND AUTHORIZATION**

I hereby acknowledge receipt of a notice titled "Notice to Applicants for Insurance" respecting the filing and distribution of medical information concerning myself and receipt of a notice respecting the Fair Credit Reporting Act, Public Law 91-508.  
 I hereby authorize any licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility, insurance company, the Medical Information Bureau or other organization, institution or person that has any records or knowledge of me or my health to give to the Capitol Bankers Life Insurance Company or its insurers any such information. A photographic copy of this authorization shall be as valid as the original.

Is there a replacement involved in this transaction?  Yes  No  
 \_\_\_\_\_  
 Lic. Agent Date *10/12/02*

Signed at *Chicago, Illinois*  
 Signature of Proposed Insured \_\_\_\_\_  
 Signature of Applicant \_\_\_\_\_



**EXHIBIT 4**

S.B. Lexington, Inc.

(Employer)

EMPLOYEE DEATH BENEFIT PLAN AND TRUST

"PLAN AND TRUST"  
BENEFICIARY DESIGNATION

Simon L. Bernstein

(PLEASE PRINT OR TYPE NAME OF MEMBER OR AUXILIARY MEMBER)

I hereby designate, in accordance with the terms of said Plan and Trust as it is or may be amended:

NAME OF BENEFICIARY  
Simon Bernstein Irrevocable Insurance Trust

RELATIONSHIP

as Primary Beneficiary

as Contingent Beneficiary/ies

as the person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by my Employer.

Signature: [Signature]

MEMBER OR AUXILIARY MEMBER

Date: 8-26-95

Instructions:

- (1) This form should be filed by the Trustee. A photo copy should be retained by the Member or Auxiliary Member.
- (2) This recommendation of beneficiary shall be effective upon receipt by the Trustee.
- (3) Where more than one beneficiary is designated, the proportion to be paid to each should be indicated, and if desired, provision for a contingent beneficiary if a first-named beneficiary predeceases the Member or Auxiliary Member can be included.
- (4) This designation of beneficiary may be changed or revoked at any time by written instruction to the Trustee or by filing a new designation with the Trustee.
- (5) This designation of beneficiary shall be disregarded if received by the Trustee after the death of the Member or Auxiliary Member.

BT000001

**EXHIBIT 5**

**Policy Number  
1009208**

**Specimen Policy**

# Capitol Bankers Life

CAPITOL BANKERS LIFE INSURANCE COMPANY

A Stock Company

Home Office: Minneapolis, Minnesota

Business Office: Milwaukee, Wisconsin



Policy Number

Sum Insured

Insured

Age & Sex

Plan

Policy Date

Dear Policy Owner:

This policy has been written in readable language to help you understand its terms. As you read through the policy, remember the words "we", and "our" refer to Capitol Bankers Life Insurance Company. Similarly, the words "you" and "your" refer to you, the Owner of this policy.

We will, subject to the terms of this policy, pay the death benefit to the Beneficiary when due proof of the Insured's death is received at our Business Office. The terms of this policy are contained on this and the following pages.

A Policy Summary is on the other side of this page. A Table of Contents is inside the back cover.

For service or information on this policy, contact the agent who sold the policy, any of our agency offices or our Business Office.

**YOU HAVE A RIGHT TO RETURN THIS POLICY.** If you decide not to keep this policy, return it within ten days after you receive it. It may be returned by delivering or mailing it to our Business Office or to any of our authorized agents. Upon return, the policy will be as though it had never been issued. We will promptly refund any premium paid for it.

Signed for Capitol Bankers Life Insurance Company at Milwaukee, Wisconsin.

Sincerely yours,

President

Vice President

### CURRENT VALUE LIFE

Whole Life Insurance for an Initial Term - Renewable Annually during Life of Insured -  
Cash Surrender Values - Options to Change Premiums and Sum Insured -  
Premiums Payable during Life of Insured - Nonparticipating

Premiums, benefits and policy values may vary from those illustrated on the Issue Date. See Part 4, "Renewal Options" and Part 10, "Basis of Our Computations."

**POLICY SUMMARY**

**About this Summary**

This summary briefly highlights some of the major policy provisions. Since this is a summary, only the detailed provisions of the policy will control. See those provisions for full information and any limits or restrictions that apply. To locate this policy's provisions, use the Table of Contents on the inside of the back cover. Your policy is a legal contract between you and us. You should, therefore, **READ YOUR POLICY CAREFULLY.**

**The Type of Policy**

This policy may be continued in force until the Insured dies. It is issued for an initial term of one year, but you have the right to renew it. The benefits and premiums may be changed at the end of each Policy Year. We will pay a death benefit if the Insured dies while the policy is in force.

**Guaranteed and Current Rates**

We guarantee a rate basis for calculating premiums for the benefits under this policy. If our current rate basis is lower, we will charge lower premiums for the same benefits. We may change our current rate basis at the end of any Policy Year. If we increase our current rate basis, your premium will be higher, but never more than the premium on the guaranteed basis.

**Lifetime Benefits**

There are other rights available while the Insured is living. These include:

- \* The right to assign this policy.
- \* The right to change the Owner or any Beneficiary.
- \* The right to surrender this policy for its value.
- \* The right to make loans.

**Payment Options**

The policy also includes a number of Payment Options. These provide alternate ways to pay the death benefit or the amount payable upon surrender of the policy.

**Exclusions**

Payment of benefits may be affected by other provisions in this policy. For example, see the provisions in Part 1 about suicide, contestability and misstatement of age or sex.

**Premium Payments and Grace Period**

Premiums are payable in advance during the lifetime of the Insured. We allow a 31-day grace period for payment of each premium after the first one. If a premium is not paid by the end of the grace period, the policy will lapse as of the due date of that premium. Even if the policy lapses, some benefits may be available as described in Part 5. In any event, you will have the right to reinstate this policy, subject to the requirements stated in Part 5.

**Riders**

This policy may contain riders which include added benefits or

### Part 1. Definitions and Basic Provisions

**The Parties Involved—  
Insured, Owner,  
Beneficiary, Irrevocable  
Beneficiary**

The Insured is the person whose life this policy insures. The Insured may be the Owner of this policy, or someone else may be the Owner.

The Owner is the person named as Owner of this policy in the application, unless later changed as provided in this policy. The Insured will be the Owner if no other person is named as Owner. If more than one person is named as Owner, they must act jointly unless they and we agree otherwise. Whenever the words "you" and "your" are used, they refer to the Owner.

A Beneficiary is any person named on our records to receive proceeds of this policy after the Insured dies. There may be different classes of Beneficiaries, such as Primary and Contingent. These classes set the order of payment. There may be more than one Beneficiary in a class.

Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order:

- a. Primary Beneficiaries.
- b. Contingent Beneficiaries, if any, provided no Primary Beneficiary is living at the death of the Insured.
- c. The Owner, or the Owner's executor or administrator, provided no Primary or Contingent Beneficiary is living at the death of the Insured.

Any Beneficiary may be named an Irrevocable Beneficiary. An Irrevocable Beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in Part 2.

**Policy Date, Issue Date,  
Renewal Date, and  
Policy Year**

Two important dates (shown on the Schedule Page) are the Policy Date and the Issue Date. Usually they are the same date.

The Policy Date is the starting point for determining premium due dates, Renewal Dates and Policy Years. The first Renewal Date is one year after the Policy Date. The period from the Policy Date to the first Renewal Date, or from one Renewal Date to the next, is called a Policy Year. A Policy Year does not include the Renewal Date at the end of the year.

This policy is issued for an initial term of one Policy Year. It may be renewed for additional terms of one Policy Year while the Insured is alive. We discuss renewal in Part 4.

The Issue Date is used to determine the start of the suicide and contestability periods. We discuss contestability and suicide below. The Issue Date will be earlier than the Policy Date only if this policy includes a rider which provides temporary term life insurance for a period before the Policy Date.

**Policy a Legal Contract**

This policy is a legal contract between you and us. The entire contract consists of the application and the policy, which includes any attached riders. We have issued this policy in return for the application and the payment of premiums. Any change or waiver of its terms must be in writing and signed by our President, a Vice President, our Secretary or an Assistant Secretary to be effective.

**Limits on Our Right to Contest This Policy**

We rely on all statements made by or for the Insured in the written application. These statements are considered to be representations and not warranties. We can contest the validity of this policy for any material misrepresentation of a fact. To do so, however, the misrepresentation must be contained in the written application and a copy of the application must be attached to this policy when it is issued.

We cannot contest the validity of this policy, except for failure to pay premiums, after it has been in force during the lifetime of the Insured for two years from its Issue Date.

**Suicide Exclusion**

If within two years from the Issue Date the Insured dies by suicide, whether sane or insane, the amount we pay will be limited to the premiums paid less any policy debt.

**Misstatement of Age or Sex**

If the date of birth or the sex of the Insured has been misstated in the application, we will adjust the benefits under this policy. If the benefits purchased by the premiums paid would have been lower at the correct age and sex, we will recalculate the benefits so that the Endowment Benefit for each Policy Year is not changed. If the benefits purchased by the premiums paid would have been higher at the correct age and sex, we will recalculate the benefits so that the amount at risk for each Policy Year is not changed. (Endowment Benefit and amount at risk are defined in Part 4.)

**Meaning of In Full Force, Lapse and In Force**

This policy will be "in full force" from the Issue Date, provided the first premium due is paid while the Insured is alive. It will continue "in full force" as long as all premiums are paid when due. We discuss premium due dates in Part 3. It also continues in full force for 31 days after the due date of an unpaid premium. If the unpaid premium is not paid by then, this policy will "lapse" as of that due date. Then, it will no longer be in full force.

Lapse is not necessarily the same as termination. When a policy lapses, the insurance may terminate or it may continue for a limited time or amount. If insurance continues after lapse, we say that the policy remains "in force", but no longer in full force. We discuss lapse in Part 5.

**Home Office and Business Office**

We are chartered by the State of Minnesota and have a legal office, known as our Home Office, in Minneapolis, Minnesota. Our operations are conducted at our Business Office, 735 N. Water Street, Milwaukee, Wisconsin. Our mail address is P.O. Box 2016, Milwaukee, Wisconsin 53201.

**Part 2. Ownership**

**Rights of Owner**

While the Insured is living, you may exercise all rights given by this policy or allowed by us. These rights include assigning this policy,



changing Beneficiaries, changing ownership, enjoying all policy benefits and exercising all policy options.

The consent of any Irrevocable Beneficiary is needed to exercise any policy right except the right to:

- Change the frequency of premium payments.
- Change between regular premiums and alternate premium plans.
- Change the renewal option.
- Borrow on this policy to pay a premium on this policy.
- Reinstate this policy after lapse.

**Assigning This Policy**

This policy may be assigned. But for any assignment to be binding on us, we must receive a signed copy of it at our Business Office. We will not be responsible for the validity of any assignment.

Once we receive a signed copy, your rights and the interest of any Beneficiary or any other person will be subject to the assignment. An assignment is subject to any policy debt. We discuss policy debt in Part 7.

**Changing the Owner or Beneficiary**

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

**Part 3. Premium Payments**

**When Premiums Are Due**

Premiums are the payments needed to keep this policy in full force. Premiums for each Policy Year are payable in advance during the Insured's lifetime until the end of the Policy Year. The first premium is due on the Policy Date. The first premium for a renewal Policy Year is due on the Renewal Date. Each subsequent premium is due when the period covered by the preceding premium ends. Each premium is due on the same day of the month as the day shown in the Policy Date.

**Regular Premium Payments**

Regular premiums may be paid annually, semiannually, quarterly or monthly. The frequency of payments may be changed by giving us advance written notice. A change may also be made as of any premium due date, without notice, by paying the regular premium for the frequency wanted. However, no premium may be paid for a period beyond the next Renewal Date. Our consent is needed if any change will result in a regular premium of less than \$20.

A semiannual premium is \$0.22 plus 51.5% of the annual premium. A quarterly premium is \$0.52 plus 26.5% of the annual premium. A monthly premium is \$0.70 plus 9% of the annual premium.

**Alternate Premium Plans**

We provide a number of alternate premium plans. These include a pre-authorized check payment plan. These plans are governed by the rules and rates we set. Our consent is needed to participate in any available plan.

	<p>If an alternate premium plan is terminated, regular monthly premiums will then be payable.</p>
<b>Grace Period</b>	<p>After the first premium has been paid for any Policy Year, we allow a 31 day grace period to pay each following premium. This means that each premium after the first can be paid within 31 days after its due date. During this grace period the policy remains in full force. If a premium is not paid by the end of this grace period, the policy will lapse as of the premium due date. We discuss lapse in Part 5.</p>
<b>Premiums for Renewal Policy Years</b>	<p>Premiums for the first Policy Year are shown on the Schedule Page. The premiums for a renewal Policy Year may differ from the premiums for the prior Policy Year. We discuss your Renewal Options in Part 4. The way we compute renewal premiums for the policy, excluding any attached rider, is described in Part 10. The premium for continuing any rider is shown on the Schedule Page. We will notify you of the renewal premiums before each Renewal Date.</p>
<b>Where to Pay Premiums</b>	<p>Each premium after the first one is payable at our Business Office. A receipt for premium payments signed by one of our officers will be given upon request.</p>

#### **Part 4. Renewal Options**

<b>Right to Renew</b>	<p>If this policy is in full force on a Renewal Date, it may be renewed for an additional Policy Year by paying a renewal premium. Payment must be made within 31 days of the Renewal Date. If the Insured dies within that 31 day period, this policy will be renewed automatically, but a renewal premium at the regular monthly frequency will be deducted from the death benefit.</p>
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The benefits and premiums for a renewal Policy Year may change from those in the prior term. They will depend on the Renewal Option selected. Renewal Options are discussed below. Also, we may use a rate basis which is more favorable to you than the rate basis we guarantee in this policy. Rate bases, and the way we compute renewal benefits and premiums, are discussed in Part 10.

<b>Endowment Benefit</b>	<p>An Endowment Benefit will be payable at the end of the Policy Year. If the policy is not renewed, the Endowment Benefit, less any policy debt, will be paid in one sum to the Owner.</p>
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If the policy is renewed, the Endowment Benefit will not be paid, but a new Endowment Benefit will be payable at the end of the new Policy Year. The Endowment Benefit for the first Policy Year is shown on the Schedule Page. Our procedure for computing the Endowment Benefit for renewal Policy Years is discussed in Part 10. We will notify you of the renewal Endowment Benefit before each Renewal Date.

<b>Electing a Renewal Option</b>	<p>You may choose a Renewal Option by notifying us in writing while the insured is alive and not later than 31 days after the Renewal Date. Any option you choose will apply until another option is elected. If no option has been chosen, Option B will apply.</p>
----------------------------------	--

- Amount at Risk** In discussing Options D, E and F, we use the phrase "amount at risk." The amount at risk for a Policy Year is the Sum Insured less the Endowment Benefit.
- Option A** **Minimum Premium Option.** The Sum Insured for the new Policy Year will be the prior Sum Insured less any policy debt repaid from the Endowment Benefit. However, the new Sum Insured will not be less than the Endowment Benefit at the end of the new Policy Year. The premium for the new Policy Year will be the smallest level premium which would permit the policy to be renewed for the new Sum Insured for the life of the Insured. In computing this premium, we will assume that the rate basis used for the renewal Policy Year will also be used for future renewal Policy Years.
- Option B** **Guaranteed Premium Option.** The Sum Insured for the new Policy Year will be the prior Sum Insured less any policy debt repaid from the Endowment Benefit. However, the new Sum Insured will not be less than the Endowment Benefit at the end of the new Policy Year. The premium for the new Policy Year will be the smallest level premium which would permit the policy to be renewed for the new Sum Insured for the life of the Insured. In computing this premium, we will assume that the guaranteed rate basis will be used for future renewal Policy Years.
- Option C** **Specified Premium Option.** The premium for the new Policy Year may be any amount you select, but not less than the premium required under Option A. The Sum Insured for the new Policy Year will be the prior Sum Insured less any policy debt repaid from the Endowment Benefit. The new Sum Insured will not be less than the Endowment Benefit at the end of the new Policy Year, however.
- Option D** **Increasing Benefit Option.** The Sum Insured for the new Policy Year will be changed so that the amount at risk for the new Policy Year will be the amount at risk for the prior Policy Year. The premium for the new Policy Year will be the smallest level premium which would permit the policy to be renewed for the new Sum Insured for the life of the Insured. In computing this premium, we will assume that the rate basis used for the renewal Policy Year will also be used for future renewal Policy Years.
- Option E** **Extra Premium Option.** The premium for the new Policy Year may be any amount you select, but not less than the premium required under Option D. The Sum Insured for the new Policy Year will be changed so that the amount at risk for the new Policy Year will be the amount at risk for the prior Policy Year.
- Option F** **Change in Benefit Option.** The Sum Insured may be changed to any amount you select. The premium for the new Policy Year may be any amount you select, but not less than the premium required under Option A for the new Sum Insured. When this option is chosen, you may also specify changes to be made on later Renewal Dates. Any change which would increase the amount at risk may be made only with our consent, however. We may require a written application, giving evidence of insurability of the Insured, to increase the amount at risk. If an application is required, we will have the same rights to contest the validity of the in-

crease, or to limit the amount of the increase we will pay in the event of suicide, as if we had issued a separate policy for the increase in the amount at risk.

**Annual Report**

Before each Renewal Date while this policy is in full force, we will give you an Annual Report for this policy. This report will show the following items:

- The Sum Insured, Endowment Benefit and premium for the current Policy Year.
- The Renewal Option in effect and the Sum Insured, Endowment Benefit and premium for the next Policy Year under this option.
- Any policy debt as of the date the report is prepared.
- The minimum level renewal premium under our current rate basis (Option A) and under the guaranteed rate basis (Option B).
- Any change in our current rate basis for the next Policy Year, and its effect on values for the next Policy Year.

**Illustrations**

This policy includes a Table of Illustrative Values. The Table follows the Schedule Page. It is based on the Renewal Option in effect when this policy was issued. The Table shows values which would apply if the guaranteed rate basis were used for all renewal Policy Years. If you pay the premiums shown in this Table and do not change the Sum Insured, then the actual policy values will be at least as large as those shown in the Table. If you choose to pay smaller premiums, however, then the policy values may be smaller than those illustrated.

Upon request, we will provide an illustration as of the next Renewal Date of future premiums, Sums Insured and Endowment Benefits under any Renewal Option.

**Part 5. Lapse and Reinstatement**

**What Happens if This Policy Lapses**

If any premium is not paid within 31 days after its due date, this policy will lapse as of the due date of that premium. We call this premium due date the date of lapse.

Several things can occur when this policy lapses. First, this policy is no longer "in full force." If there is no cash surrender value as of the date of lapse, the insurance will terminate. But if there is a cash surrender value, it will automatically be used as a net single premium at the attained age of the Insured to provide either extended term insurance or paid-up life insurance and the policy will continue "in force."

These two types of insurance are explained below. Either will begin as of the date of lapse.

**Extended Term Insurance**

This is a level amount of insurance for a limited period of time. The amount of insurance is the Sum Insured on the date of lapse less any policy debt. The cash surrender value on the date of lapse determines the period of time that extended term insurance will be provided. The insurance terminates at the end of this period.

<b>Paid-Up Life Insurance</b>	This is a level amount of insurance for the lifetime of the Insured. The cash surrender value on the date of lapse determines the amount of paid-up life insurance that will be provided. The amount of paid-up life insurance may not exceed the Sum Insured on the date of lapse less any policy debt, however. If the cash surrender value is larger than the value of the maximum paid-up life insurance, then the paid-up insurance will be endowment insurance for the maximum amount.
<b>Which Type of Insurance Applies</b>	<p>We automatically provide extended term insurance. But in the following situations, we provide paid-up life insurance instead:</p> <ul style="list-style-type: none"> <li>• The amount of paid-up life insurance equals or is more than the amount of extended term insurance that would be provided, or</li> <li>• The amount of paid-up life insurance is at least \$1,000 and a written request for paid-up life insurance is received at our Business Office before the end of 62 days after the date of lapse, or</li> <li>• This policy is in a special premium class. The policy is in a special premium class only if shown on the Schedule Page.</li> </ul> <p>If paid-up life insurance is requested and the Insured dies within 62 days after the date of lapse, we will provide extended term insurance if it provides a larger death benefit on the date of death. But, this will happen only if the extended term insurance could have been elected on the date of lapse.</p>
<b>Riders Not Included</b>	Extended term insurance and paid-up life insurance benefits do not apply to any rider attached to this policy, unless specifically provided in that rider.
<b>Policy Rights After Lapse</b>	While this policy is in force as extended term insurance or paid-up life insurance, all the rights granted by it are still available, unless this policy states otherwise.
<b>Reinstatement</b>	<p>After this policy has lapsed, it may be reinstated — that is, put back in full force. However, the policy cannot be reinstated if it has been surrendered for its cash surrender value. Reinstatement must be made within five years after the date of lapse and during the Insured's lifetime. Also, all policy debt must be repaid or reinstated with interest, from the date of lapse to the date of reinstatement. Interest will be at the rate used for policy loans. Further requirements depend on when this policy is reinstated.</p> <p><b>Prompt Reinstatement</b> — This is reinstatement within 62 days after the date of lapse. Evidence of insurability is not required. All overdue premiums must be paid.</p> <p><b>Later Reinstatement</b> — This is reinstatement more than 62 days after the date of lapse. Evidence of insurability satisfactory to us is required. All overdue premiums must be paid with interest from their due dates to the date of reinstatement. Interest will be at the rate used for policy loans.</p>

## Part 6. Policy Loans

### Right to Make Loans

After the first Policy Year, loans can be made on this policy at any time while it is in full force. Loans can also be made if it is in force after lapse as paid-up insurance. However, the policy must be properly assigned to us before any loan is made. No other collateral is needed. We may delay granting any loan for up to six months, except for a loan to pay premiums on this policy or any other policy we issue. We refer to all outstanding loans less unearned interest as "policy debt."

### Maximum Loan Available

The maximum policy loan is an amount equal to the cash surrender value on the next Renewal Date less any premiums due before then. Any amount due us on the date of the loan will be subtracted from the loan. Interest due on the loan will also be subtracted. We will pay the balance.

### Interest

The interest rate for loans is stated on the Schedule Page. Interest to the next Renewal Date is due in advance when a loan is made. If interest is not paid when due, it will be added to the policy debt and will bear interest at the same rate.

If any policy debt is repaid, any unearned interest on the amount repaid will be credited to the loan amount. Any unearned interest will be added to the death benefit if the Insured dies. It will be added to the cash surrender value if the policy is surrendered or lapses.

### Repayment

Policy debt may be repaid anytime while this policy is in force. It may not be repaid after the Insured dies. If there is any policy debt on a Renewal Date, it will be repaid out of the Endowment Benefit. In lieu of this automatic repayment, any policy debt outstanding on a Renewal Date may be repaid in cash within 31 days after the Renewal Date, but interest must be paid to the date of repayment. If this is done, we will calculate the benefits and premiums for the next Policy Year as if repayment had been made on the Renewal Date.

### Policy Debt Limit

Policy debt may not equal or exceed the policy value. If this limit is reached, we can terminate this policy. To terminate for this reason we must mail written notice to the Owner and any assignee shown on our records at their last known addresses. This notice will state an amount that will bring the policy debt back within the limit. If we do not receive payment within 31 days after the date we mailed the notice, this policy will terminate at the end of those 31 days.

## Part 7. Cash Surrender

### Right to Surrender

This policy may be surrendered for its cash surrender value any time before the Insured dies. Surrender will be effective on the date we receive this policy and a written surrender request, satisfactory to us, at our Business Office. A later effective date may be elected in the surrender request.

### Policy Value

The policy value on any Renewal Date is the Endowment Benefit if the policy is in full force. The policy value on the first Renewal Date is shown

on the Schedule Page. The policy value on any later Renewal Date will depend on the renewal option elected. This is discussed in Part 4.

The policy value can be computed at any time during a Policy Year. In that case allowance will be made for the period of time since the last Renewal Date and for any premiums paid for any part of that Policy Year.

If this policy is in force after lapse, the policy value at any time is the reserve for the insurance provided. See "Part 10. Basis of Computations."

**Cash Surrender Value**

The cash surrender value is the policy value less any policy debt.

We compute all the amounts that go into the cash surrender value as of the effective date of surrender. However, in two situations the policy value is computed as of an earlier date. First, if this policy is surrendered within 62 days after the due date of an unpaid premium, the value will not be less than it was on that due date. Second, if the policy is surrendered within 30 days after a Renewal Date while extended term insurance or paid-up life insurance is in effect, the value will not be less than it was on that Renewal Date. We use these earlier dates only if a higher cash surrender value results.

**How We Pay**

The cash surrender value may be paid in one sum, or it may be applied under any payment option elected. See "Part 9. Payment of Policy Proceeds." We may delay paying the cash surrender value for up to six months from the date the request and this policy are received at our Business Office. If payment is delayed for 30 days or more, we will add interest to it. The amount of interest will be the same as would be paid under Option 4 of the payment options for that period of time.

**Part 8. The Death Benefit**

**Amount of the Death Benefit**

The death benefit is the amount of money we will pay when due proof of the Insured's death is received at our Business Office. The amount of the death benefit will be determined as of the date of death. Any amounts paid to us after that date will be refunded. Any payments made by us after that date will be deducted from the death benefit.

If the Insured dies while this policy is in full force, the basic death benefit is the Sum Insured for the Policy Year in which death occurred. If the Insured dies while this policy is in force after lapse, the basic death benefit will be the amount of extended term insurance or paid-up life insurance. The death benefit is the basic death benefit with certain additions and deductions. We add the part of any premium paid for a period beyond the Policy Month of death. We deduct any policy debt. We also deduct a premium on the regular monthly frequency, if death occurs within 31 days of the due date of an unpaid premium.

**Interest on the Death Benefit**

If the death benefit is paid in one sum, we will add interest from the date of death to the date of payment. The amount of interest will be the same as would be paid under Option 4 of the payment options for that period of time. See "Part 9. Payment of Policy Proceeds" for a description of Option 4.

If the death benefit is applied under a payment option, interest will be paid from the date of death to the effective date of that option. It will be paid in one sum to the Beneficiary living on that effective date. The amount of interest will be the same as would be paid under Option 4 for that period of time.

## **Part 9. Payment of Policy Proceeds**

### **Availability of Options**

The proceeds of this policy will be paid in one sum unless otherwise provided. As an alternative to payment in one sum, all or part of the proceeds may be applied under a payment option. However, our consent is required for the election of a payment option by a fiduciary or any entity other than a natural person. If this policy is assigned, any amount due to the assignee will be paid in one sum. The balance, if any, may be applied under any payment option.

### **Electing a Payment Option**

To elect any option, we require that a written request, satisfactory to us, be received at our Business Office. You may elect an option during the Insured's lifetime. If the death benefit is payable in one sum when the Insured dies, the Beneficiary may elect an option. The Beneficiary must make this choice before we have paid the proceeds and within three months after we receive due proof of the Insured's death.

Unless we agree otherwise when the option is elected, all payments under any option chosen will be made to the designated payee or to his or her executor or administrator. We may require proof of age of any person or persons on whose life payments depend as well as proof of the continued survival of any such person(s).

### **Minimum Amounts**

If the amount to be applied under any option for any payee is less than \$5,000, we may pay that amount in one sum instead. If the payments to any person under any option come to less than \$50 each, we have the right to make payments at less frequent intervals.

### **Description of Options**

This section provides a brief description of the various payment options that are available. Any other payment option agreed to by us may be elected. The payment options are described in terms of monthly payments. Annual, semiannual, or quarterly payments may be requested instead. The amount of these payments will be determined in a way which is consistent with monthly payments and will be quoted on request.

At the end of this Part you will find tables illustrating the guaranteed monthly payment provided by several of the options described in this section. The amounts shown for Option 1, Option 2 and Option 5 are the minimum monthly payments for each \$1,000 applied. The actual payments will be based on the monthly payment rates we are using when the first payment is due. They will not be less than those shown in the tables.

### **Option 1 CVL 160**

**Fixed Time Payment Option.** Equal monthly payments will be made for

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any period selected, up to 30 years. The amount of each payment depends on the total amount applied, the period selected and the monthly payment rates we are using when the first payment is due. The rate of any payment will not be less than shown in Payment Option Table 1.

**Option 2**

**Lifetime Payment Option.** Equal monthly payments are based on the life of a named person. Payments will continue for the lifetime of that person. The variations are:

Payments guaranteed for 10 or 20 years. Payments stop at the end of the selected guaranteed period or when the named person dies, whichever is later.

Payments guaranteed for amount applied. Payments stop when they equal the amount applied or when the named person dies, whichever is later.

The amount of each payment depends on the total amount applied, the variation selected, the age and sex of the named person and the monthly payment rates we are using when the first payment is due. The rate of any payment will not be less than shown in Payment Option Table 2.

**Option 3**

**Fixed Amount Payment Option.** Each monthly payment will be for an agreed fixed amount. The amount of each payment may not be less than \$15 for each \$1,000 applied. Interest will be credited each month on the unpaid balance and added to it. This interest will be at a rate determined by us, but not less than the equivalent of 4% per year. We may change the rate from time to time, but not more than once per year. Payments continue until the amount we hold runs out. The last payment will be for the balance only.

**Option 4**

**Interest Payment Option.** We will hold any amount applied under this option. Interest on the unpaid balance will be paid each month at a rate determined by us. This rate will be not less than the equivalent of 4% per year. We may change the rate from time to time, but not more than once per year. Upon death of the payee, we will pay the amount held by us along with any accrued and unpaid interest.

**Option 5**

**Joint Lifetime Payment Option With Reduced Payments.** Monthly payments are based on the lives of two named persons. Payments will continue while both are living. When one dies, payments are reduced by one-third and will continue for the lifetime of the other. Payments stop when both persons have died.

The amount of each payment depends on the total amount applied, the ages and sexes of the named persons and the monthly payment rates we are using when the first payment is due. The rate of any payment will not be less than shown in Payment Option Table 3.

**Option 6**

**Single Premium Life Annuity Purchase Option.** Any single premium immediate life annuity being issued by us on the effective date of the option may be purchased at a reduced premium rate. The premium rate for the annuity will be 4% less than our then published premium rate.

**Effective Date and  
Payment Dates**

The effective date of an option is the date the amount is applied under that option. For a death benefit, this is the date that due proof of the Insured's death is received at our Business Office. For the cash surrender value, it is the effective date of surrender.

The first payment is due on the effective date, except the first payment under Option 4 is due one month later. A later date for the first payment may be requested in the payment option election. All payment dates will fall on the same date of the month as the first one. No payment will become due until a payment date. No part payment will be made for any period shorter than the time between payment dates.

**Withdrawals and Changes**

If provided in the payment option election, all or part of the unpaid balance under Option 3 or 4 may be withdrawn or applied under any other option. If the cash surrender value is applied under either option, we may delay payment of any withdrawal for up to six months after the date of surrender. Interest at the rate in effect for Option 4 during this period will be paid on the amount withdrawn.

Payments under Options 1, 2 and 5 may not be anticipated, withdrawn before due, or applied under any other option.

**Income Protection**

To the extent permitted by law, each option payment and any withdrawal shall be free from legal process and the claim of any creditor of the person entitled to it. No option payment and no amount held under an option can be taken or assigned in advance of its payment date, unless the Owner's written consent is given before the Insured dies. This consent must be received at our Business Office.

**Supplementary Contract**

We will issue to the payee a supplementary contract stating the terms of settlement under the payment option elected.

PAYMENT OPTION TABLES - Minimum Monthly Income Guaranteed For \$1,000 of Pensions

TABLE 1  
 INSTALLMENT PAYMENTS  
 FOR A SPECIFIED PERIOD OF TIME

TABLE 2  
 LIFE INCOME PAYMENTS WITH INSTALLMENT PAYMENTS FOR A SPECIFIED PERIOD OF TIME  
 The amount of income is shown on the left and the percentage of the pension on the date of the first payment

No. of Pymts	Monthly Pymt	No. of Yrs.	Monthly Pymt	PAYMENTS GUARANTEED FOR		Age at 10 Years	PAYMENTS GUARANTEED FOR		Age at 20 Years	PAYMENTS GUARANTEED FOR		Age at 30 Years	PAYMENTS GUARANTEED FOR	
				Male Female	Male Female		Male Female	Male Female		Male Female	Male Female		Male Female	Male Female
1	8484	15	7.00	3.44	3.44	34	3.51	3.46	36	4.22	4.00	41	4.22	4.00
2	4242	17	6.71	3.55	3.48	37	3.71	3.47	37	4.26	4.01	42	4.26	4.01
3	2828	18	6.44	3.58	3.46	38	3.74	3.47	38	4.31	4.07	43	4.31	4.07
4	2121	19	6.21	3.57	3.50	39	3.75	3.50	39	4.35	4.10	44	4.35	4.10
5	1822	20	6.00	3.58	3.51	40	3.76	3.51	40	4.40	4.14	45	4.40	4.14
6	1555	21	5.81	3.59	3.52	41	3.76	3.52	41	4.45	4.18	46	4.45	4.18
7	1355	22	5.64	3.58	3.53	42	3.77	3.53	42	4.51	4.22	47	4.51	4.22
8	1212	23	5.49	3.57	3.54	43	3.77	3.54	43	4.57	4.27	48	4.57	4.27
9	1092	24	5.35	3.55	3.55	44	3.77	3.55	44	4.63	4.32	49	4.63	4.32
10	1008	25	5.22	3.52	3.57	45	3.76	3.55	45	4.69	4.36	50	4.69	4.36
11	931	25	5.10	3.67	3.58	46	3.75	3.58	46	4.76	4.42	51	4.76	4.42
12	869	27	5.00	3.69	3.59	47	3.74	3.59	47	4.83	4.47	52	4.83	4.47
13	817	29	4.90	3.71	3.60	48	3.73	3.60	48	4.90	4.53	53	4.90	4.53
14	772	29	4.80	3.73	3.61	49	3.72	3.61	49	4.97	4.59	54	4.97	4.59
15	734	30	4.72	3.74	3.64	50	3.71	3.62	50	5.05	4.65	55	5.05	4.65
Annual Payment of 11,787 equals the monthly amount.														
Quarterly Payment of 2,990 times the monthly payment.														

TABLE 3  
 JOINT AND TWO THIRDS TO THE SURVIVOR LIFE PAYMENT

The amount of income is shown on the left and the percentage of the pension on the date of the first payment

Age of Male	AGE OF FEMALE PAYEE					Age of Male	AGE OF FEMALE PAYEE					Age of Male	AGE OF FEMALE PAYEE								
	50	55	60	65	70		50	55	60	65	70		50	55	60	65	70	50	55	60	65
45	4.52	4.70	4.88	5.06	5.23	5.39	5.57	5.75	5.93	6.10	6.28	6.46	6.64	6.82	7.00	7.18	7.36	7.54	7.72	7.90	8.08
46	4.56	4.74	4.92	5.10	5.28	5.46	5.64	5.82	6.00	6.18	6.36	6.54	6.72	6.90	7.08	7.26	7.44	7.62	7.80	7.98	8.16
47	4.60	4.77	4.95	5.13	5.31	5.49	5.67	5.85	6.03	6.21	6.39	6.57	6.75	6.93	7.11	7.29	7.47	7.65	7.83	8.01	8.19
48	4.65	4.83	5.01	5.19	5.37	5.55	5.73	5.91	6.09	6.27	6.45	6.63	6.81	6.99	7.17	7.35	7.53	7.71	7.89	8.07	8.25
49	4.69	4.88	5.07	5.25	5.43	5.61	5.79	5.97	6.15	6.33	6.51	6.69	6.87	7.05	7.23	7.41	7.59	7.77	7.95	8.13	8.31
50	4.73	4.92	5.11	5.29	5.47	5.65	5.83	6.01	6.19	6.37	6.55	6.73	6.91	7.09	7.27	7.45	7.63	7.81	7.99	8.17	8.35
51	4.77	4.97	5.16	5.34	5.52	5.70	5.88	6.06	6.24	6.42	6.60	6.78	6.96	7.14	7.32	7.50	7.68	7.86	8.04	8.22	8.40
52	4.81	5.01	5.20	5.38	5.56	5.74	5.92	6.10	6.28	6.46	6.64	6.82	7.00	7.18	7.36	7.54	7.72	7.90	8.08	8.26	8.44
53	4.85	5.05	5.24	5.42	5.60	5.78	5.96	6.14	6.32	6.50	6.68	6.86	7.04	7.22	7.40	7.58	7.76	7.94	8.12	8.30	8.48
54	4.89	5.09	5.28	5.46	5.64	5.82	6.00	6.18	6.36	6.54	6.72	6.90	7.08	7.26	7.44	7.62	7.80	7.98	8.16	8.34	8.52
55	4.93	5.13	5.32	5.50	5.68	5.86	6.04	6.22	6.40	6.58	6.76	6.94	7.12	7.30	7.48	7.66	7.84	8.02	8.20	8.38	8.56
56	4.97	5.17	5.36	5.54	5.72	5.90	6.08	6.26	6.44	6.62	6.80	6.98	7.16	7.34	7.52	7.70	7.88	8.06	8.24	8.42	8.60

## Part 10. Basis of Our Computations

### Guaranteed and Current Rate Basis

You determine both the Sum Insured and the premium for each renewal Policy Year when you choose the Renewal Option. (See Part 4.) From these, we calculate the Endowment Benefit for the new Policy Year. (See "Amount of Endowment Benefit" below). We call the combination of the mortality table, the interest rate and the expense charges used in this calculation our "rate basis." Our "guaranteed rate basis" consists of the actuarial assumptions set out below and an expense charge equal to the factor times the annual mode premium. This expense charge factor is stated on the Schedule Page. This rate basis cannot be changed.

Our "current rate basis" is a different combination of mortality table, interest rate and expense charges which we use for policies of this class. We may change our current rate basis from time to time. Any change will take effect on the next Renewal Date. We will change our current rate basis only to reflect changes in expected future mortality experience, interest return and level of expenses for policies of this class. We will not change our current rate basis to reflect past profits or losses. Our current rate basis will not be affected by any adverse change in the risk class of the insured.

When this policy is renewed, we will use our current rate basis to calculate the Endowment Benefit for the new Policy Year if this will give you a larger Endowment Benefit. In this case, the larger Endowment Benefit will be guaranteed for the new Policy Year and all calculations of the policy values during the year will be based on that Endowment Benefit. If our current rate basis is used to compute the Endowment Benefit for a Policy Year, we will also use this basis to compute the minimum premium needed to renew the policy. (See "Minimum Renewal Premium" below.)

### Actuarial Assumptions

This section discusses the mortality and interest rates we use to compute benefits, premiums and reserves for this policy. Except as otherwise stated above, we use the Commissioners 1958 Standard Ordinary Mortality Table, an interest rate of 4½% per year and curtable functions. For extended term insurance calculations we use the Commissioners 1958 Extended Term Mortality Table. If the Insured is female, the mortality rates for ages 18 and older are the rates for a male 6 years younger. For females ages 12 through 17, we use the male mortality rate for age 12. Below age 12, the female mortality rates are the same as the male rates.

### Special Premium Class

This policy is in a special premium class only if shown on the Schedule Page. While this policy is in a special premium class, we will increase the mortality rates used in calculating the Endowment Benefits and the minimum premiums for renewal Policy Years. These increases in the mortality rates are guaranteed from the Issue Date and may not be increased thereafter. Upon request, we will furnish you with a copy of any special premium class mortality rate increases used for this policy.

**Amount of Endowment Benefit**

The Endowment Benefit for the first Policy Year is shown on the Schedule Page.

The Endowment Benefit for any renewal Policy Year is calculated as follows. We take the annual mode premium elected for the new Policy Year. We deduct the expense charge from this premium. We add the Endowment Benefit for the prior Policy Year. We deduct any portion of the prior Endowment Benefit used to repay policy debt on the Renewal Date. We deduct the one year term net single premium for the new Sum Insured. We divide the result by the net single premium for a one year pure endowment of one. The quotient is the Endowment Benefit at the end of the new Policy Year.

**Minimum Renewal**

We take the present value at the attained age of the Insured for an amount of whole life insurance equal to the Sum Insured for the new Policy Year. We subtract the Endowment Benefit at the end of the prior Policy Year. We add any policy debt repaid from that Endowment Benefit. We divide by the present value at the attained age of the Insured of a life annuity due of one minus the expense charge factor per year. The minimum renewal premium is the quotient, but not less than zero.

**Reserves and Policy Values**

The reserve is the amount of money which, according to our assumptions, must be held and invested to provide future benefits guaranteed under this policy. The policy value is the cash surrender value if there is no policy debt. Reserves and policy values are always computed using the assumptions stated under "Actuarial Assumptions" above.

We have filed a detailed statement of the method we use to calculate reserves, policy values and paid-up insurance benefits with the state where this policy is delivered. All these values and benefits are not less than those required by the laws of that state.

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Any riders and endorsements, and a copy of the application for the policy, follow page 15.



**CURRENT VALUE LIFE**

Life Insurance for an Initial Term  
Renewable Annually Life of  
Insured

Cash Surrender Value

Options to Change Premiums and  
Sum Insured

Premiums Payable during Life  
of Insured

Nonparticipating

**Capitol Bankers Life**

CAPITOL BANKERS LIFE INSURANCE COMPANY

Home Office: Minneapolis, Minnesota

Business Office: Milwaukee, Wisconsin

Please read your policy and the copy of your application which is attached. If there is any feature of the policy you do not understand, you should ask the agent who sold the policy or write us. Should you find any error or omission in your application, we urge you to write us, so that we may give immediate consideration to the error or omission.

When writing to our Business Office, please use the number of your policy.

CVL1801

JCK001117

SCHEDULE PAGE

THIS PAGE SHOWS SPECIFIC INFORMATION ABOUT THIS POLICY AND IS REFERRED TO THROUGHOUT THE POLICY.

POLICY NUMBER: 1009208 \$2,000,000 SUM INSURED  
 INSURED: SIMON BERNSTEIN 47 MALE AGE AND SEX  
 PLAN: CURRENT VALUE LIFE DEC 27, 1982 POLICY DATE

THE OWNER AND BENEFICIARY ARE AS STATED IN THE APPLICATION UNLESS LATER CHANGED. THIS POLICY IS IN A PREFERRED PREMIUM CLASS. THE ISSUE DATE OF THIS POLICY IS DEC 27, 1982.

EXPENSE CHARGE FACTOR FOR GUARANTEED RATE BASIS (SEE PART 10): 0.15258  
POLICY LOAN INTEREST RATE (SEE PART 6): 7.40% PER YEAR (IN ADVANCE).

THE CHARGE FOR ANY ADDITIONAL BENEFITS WHICH ARE PROVIDED BY RIDER IS SHOWN BELOW. ONLY A BRIEF DESCRIPTION IS GIVEN. THE COMPLETE PROVISIONS ARE INCLUDED IN THE RIDER.

RIDER NUMBER	BENEFITS PROVIDED	ANNUAL PREMIUM
.....	.....	.....
	-NONE-	NO CHARGE

ENDOWMENT BENEFIT AT END OF FIRST POLICY YEAR: NONE

TOTAL PREMIUMS FOR FIRST POLICY YEAR, INCLUDING ANY RIDER PREMIUMS:

ANNUAL	SEMIANNUAL	QUARTERLY	MONTHLY
\$24,235.00	\$12,481.24	\$6,422.79	\$2,181.85

PREMIUMS FOR RENEWAL YEARS MAY DIFFER, SEE PART 4 - RENEWAL OPTIONS. YOU WILL BE NOTIFIED OF RENEWAL PREMIUMS BEFORE EACH RENEWAL DATE.



**EXHIBIT 6**

JCK001023

C U R R E N T V A L U E L I F E  
 STATEMENT OF POLICY COST AND BENEFIT INFORMATION  
 AN ILLUSTRATION OF PROJECTED VALUES AND BENEFITS

SIMON BERNSTEIN  
 MALE, AGE 47, NONSMOKER  
 INITIAL DEATH BENEFIT: \$2,000,000  
 CASH VALUE OBJECTIVE: WHOLE LIFE, MINIMUM PREMIUMS

TARGET BASIS: CURRENT  
 EXTRA VALUES INCREASE CASH VALUES

POL YR	ATT AGE	SUMMARY OF END OF YEAR VALUES				(GUARANTEED BASIS AFTER YEAR 1)				
		CURRENT BASIS (CONTINUES)		GUARANTEED VALUES		CURRENT BASIS AFTER YEAR 1		GUARANTEED VALUES		
		SUM INSURED	ANNUAL PREMIUM	CASH VAL INCREASE	CASH VALUE	POL YR	SUM INSURED	ANNUAL PREMIUM	CASH VAL INCREASE	CASH VALUE
1	48	2000000	24235.00	0	0	1	2000000	24235.00	0	0
10	52	2000000	24235.00	20135	75759	15	2000000	24235.00	39287	153333
15	57	2000000	24235.00	25425	190575	10	2000000	24235.00	41866	357923
20	62	2000000	24235.00	29739	332046	15	2000000	24235.00	42975	571256
	67	2000000	24235.00	31156	481679	20	2000000	24235.00	42174	784720
AGE	60	2000000	24235.00	28358	273279	13	2000000	24235.00	42741	485395
AGE	65	2000000	24235.00	29997	419913	18	2000000	24235.00	42739	699993
AGE	70	2000000	24235.00	33453	579366	23	2000000	24235.00	40178	907498

THE VALUES SHOWN IN THIS PROPOSAL ARE FOR ILLUSTRATION PURPOSES ONLY, AND WILL APPLY ONLY IF A POLICY CONTAINING THE GUARANTEED VALUES IS ISSUED. ACTUAL VALUES AFTER THE FIRST POLICY YEAR WILL DEPEND ON YOUR RENEWAL OPTION, AND ANY CHANGES IN THE CURRENT RATE BASIS.

SURRENDER COST INDEX		CURRENT BASIS CONTINUES		GUARANTEED BASIS AFTER YEAR 1	
10 YEARS	20 YEARS	10 YEARS	20 YEARS	10 YEARS	20 YEARS
4.90	12.12	13.12	26.67	16.15	27.45
5.18	12.12	13.12	26.67	16.15	27.45

EXPLANATION OF THE INTENDED USE OF THESE INDICES IS PROVIDED IN THE LIFE INSURANCE BUYER'S GUIDE.  
 A CURRENT RATE BASIS IS GUARANTEED IN ADVANCE FOR EACH POLICY YEAR. IT MAY CHANGE AT THE START OF ANY POLICY YEAR. THE CURRENT RATES REFLECT 11.00% INTEREST, SELECT MORTALITY, AND CURRENT ADMINISTRATIVE EXPENSES. GUARANTEED RATES ARE BASED ON 4.50% INTEREST, 1958 C.S.O. MORTALITY, AND THE EXPENSE CHARGE FACTOR STATED IN THE POLICY. THE POLICY LOAN INTEREST RATE IS 7.40%, PAID IN ADVANCE.

PRESENTED BY: S B LEXINGTON, INC  
 9935 LAWLER AVENUE  
 SKOKIE IL 60077  
 312-677-4400  
 REPRESENTING: CAPITOL BANKERS LIFE INSURANCE CO.  
 735 NORTH WATER STREET  
 MILWAUKEE, WISCONSIN 53201

CURRENT VALUE LIFE... FAIR CURRENT VALUE  
 YEAR BY YEAR, ALWAYS LOOKING FORWARD

JCK001024

ILLUSTRATION  
 NO. 82-89867

CURRENT VALUE LIFE  
 STATEMENT OF POLICY COST AND BENEFIT INFORMATION  
 AN ILLUSTRATION OF PROJECTED VALUES AND BENEFITS

TABLE OF END OF YEAR VALUES

CURRENT VALUES (IF CURRENT BASIS CONTINUES)		GUARANTEED VALUES (GUARANTEED BASIS AFTER YEAR 1)								
POL YR	ATT AGE	SUM INSURED	ANNUAL PREMIUM	CASH VAL INCREASE	CASH VALUE	POL YR	SUM INSURED	ANNUAL PREMIUM	CASH VAL INCREASE	CASH VALUE
1	48	2000000	24235.00	0	0	1	2000000	24235.00	0	0
2	49	2000000	24235.00	17789	17789	2	2000000	24235.00	37337	37337
3	50	2000000	24235.00	18595	36384	3	2000000	24235.00	38031	75368
4	51	2000000	24235.00	19240	55624	4	2000000	24235.00	38478	114046
5	52	2000000	24235.00	20135	75759	5	2000000	24235.00	39287	153333
6	53	2000000	24235.00	20952	96711	6	2000000	24235.00	39862	193215
7	54	2000000	24235.00	21673	118384	7	2000000	24235.00	40437	2374652
8	55	2000000	24235.00	22220	141704	8	2000000	24235.00	40930	2774612
9	56	2000000	24235.00	24046	165150	9	2000000	24235.00	41444	316056
10	57	2000000	24235.00	25425	190576	10	2000000	24235.00	41866	357923
11	58	2000000	24235.00	26616	217191	11	2000000	24235.00	42222	400145
12	59	2000000	24235.00	27730	244921	12	2000000	24235.00	42509	442655
13	60	2000000	24235.00	28358	273279	13	2000000	24235.00	42741	485355
14	61	2000000	24235.00	29028	302307	14	2000000	24235.00	42886	528281
15	62	2000000	24235.00	29739	332046	15	2000000	24235.00	42975	571236
16	63	2000000	24235.00	28535	360580	16	2000000	24235.00	42927	614253
17	64	2000000	24235.00	29336	389317	17	2000000	24235.00	42941	657194
18	65	2000000	24235.00	29997	419913	18	2000000	24235.00	42799	699933
19	66	2000000	24235.00	30609	450622	19	2000000	24235.00	42553	742546
20	67	2000000	24235.00	31156	481678	20	2000000	24235.00	42174	784720
21	68	2000000	24235.00	31777	513455	21	2000000	24235.00	41645	826365
22	69	2000000	24235.00	32458	545913	22	2000000	24235.00	40934	867319
23	70	2000000	24235.00	33193	579366	23	2000000	24235.00	40178	907498
24	71	2000000	24235.00	33986	6149230	24	2000000	24235.00	38654	945531
25	72	2000000	24235.00	34845	6531436	25	2000000	24235.00	36524	9812088
26	73	2000000	24235.00	35676	694107	26	2000000	24235.00	34109	1014013
27	74	2000000	24235.00	36484	7375706	27	2000000	24235.00	31598	10480384
28	75	2000000	24235.00	37265	78410195	28	2000000	24235.00	29130	10822877
29	76	2000000	24235.00	38028	8346020	29	2000000	24235.00	26885	11172088
30	77	2000000	24235.00	38776	889107	30	2000000	24235.00	24907	11520000
31	78	2000000	24235.00	39504	9475706	31	2000000	24235.00	23109	11870013
32	79	2000000	24235.00	40215	1010195	32	2000000	24235.00	21598	12222877
33	80	2000000	24235.00	40908	1076620	33	2000000	24235.00	20285	12588077
34	81	2000000	24235.00	41584	2000000	34	2000000	24235.00	19097	12965000

**EXHIBIT 7**



**National Service Association**

600 WEST JACKSON BLVD. • SUITE 600 • CHICAGO, IL 60606 (312) 993-0537

00000000000000000000000000000000

June 5, 1992

Terri Holfert  
Capitol Bankers Life  
205 E. Wisconsin Avenue  
P.O. Box 2016  
Milwaukee, WI 53201

Re: Change of Trustees  
Simon Bernstein #1009208

Dear Terri:

Enclosed are copies of the removal of First of America Trust Company as trustee, and the appointing of the LaSalle National Trust, N.A. as Successor Trustee for Simon Bernstein/S.B. Lexington, Inc. policy at Capitol Bankers Life Insurance Company.

Please change all records to show LaSalle National Trust, N.A. as Trustee for the above policy.

I have also enclosed a letter from LaSalle National Trust, N.A. accepting the above cases.

If you need any additional information, please let me know.

Sincerely yours,

  
Sandy Kapsa

Enclosure(s)

JUN 09 1992



Capitol Bankers Life

Capitol Bankers Life Insurance Company 414-277-9449 • 800-825-6303  
225 East Wisconsin Avenue PC Box 2016 FAX: 414-277-7626  
Milwaukee, Wisconsin 53221-2016

June 17, 1992

Simon Bernstein  
620 Sheridan Road  
Glencoe, IL 60022

Dear Mr. Bernstein:

Re: Policy #1009208

The enclosed ownership change for the policy referenced above is as follows:

Lasalle National Trust, N.A. as Successor Trustee  
c/o National Service Association  
600 West Jackson Boulevard, Suite 800  
Chicago, IL 60661

Capitol Bankers Life Insurance Company is happy to be of service to you. If I can be of any further assistance, please feel free to contact me at extension 564.

Sincerely,

*Kathy H. Cambridge*  
Kathy H. Cambridge  
Policy Services Department

tlf  
Enc.

A member of the North American Life Assurance Company  
Family of Companies

JCK000690

**EXHIBIT 8**

**Capitol Bankers Life**

CAPITOL BANKERS LIFE INSURANCE COMPANY  
413 North Water Street P.O. Box 2018  
Milwaukee, Wisconsin 53201  
414-277-5984

REQUEST LETTER

JLY NOV 27 1995

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 <u>11-7-95</u>	Personal Signature of Old Owner, if Ownership Change <u>LASALLE NATIONAL TRUST, N.A.</u>
Agent _____	Date _____	Personal Signature of Policyholder (Owner) <u>Simon Bernstein</u>

PHS1 (11/79)





Capitol Bankers Life Insurance Company 803-322-3142 • 800-825-0003  
Box 19191  
Greenville, SC 29602-8191 FAX: 803-292-4005

00003

November 14, 1995

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

RE: SIMON BERNSTEIN  
Policy #1009208

Dear Sir/Madam:

I am writing this letter in response to your request. The above mentioned policy has been paid to November 27, 1995 by a premium loan.

The status of the loan is as follows:

Net Loan	\$5,139.05
Interest	\$66.46
Total Gross Loan	\$5,205.51

Total Outstanding Loan Balance to 27NOV1995: \$26,503.35

If the loan is not repaid by the next anniversary date, the cash value and face amounts will be reduced by the amount of the loan. The premium may increase so that the cash value will equal the policy face amount at the policy target age.

Capitol Bankers Life Insurance Company enjoys serving you. If you have any questions, feel free to contact our office at 1-800-825-0003.

Sincerely,

CBL Service Center

A member of the North American Life Assurance Company  
Family of Companies

JCK000371

POLI CODE: N CERT # 1009208 R# 01 DATE 15JUN1992 PRINT (S,T,F)  
CODE: Q=ALL S=SHORT V=CSV A=AGT B=BILL N=N&A F=FIN C=CVRG H=HST P=SPC PRD L=LOAN

POLICY 1009208 NAME SIMON BERNSTEIN GRP STATUS 1  
INSURED R# L# NAME AA BIRTH-DTE S S.S.N.  
1009208 01 1 SIMON BERNSTEIN 03DEC1935 M [REDACTED]  
TYPE NAME HIRED-DTE

OWNER SIMON BERNSTEIN  
MAIL SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON FL33496

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

Ready



Capitol Bankers Life Insurance Company 803-825-0003  
PO Box 19191 FAX: 864-609-4005  
Greenville, South Carolina 29602-0191

**CERTIFICATE OF COVERAGE**

with

**Capitol Bankers Life Insurance Company**

A Stock Company (herein called "the Company")  
Business Office: Greenville, South Carolina

The Company certifies that it has issued a Current Value Life policy and that it has agreed to pay the benefits provided thereunder subject to the terms, conditions, and limitations therein.

The policy is a contract between the Owner and the Company. It may be changed or terminated only by those parties.

This certificate is merely evidence of coverage provided under the policy.

1009208  
*Policy Number*

\$1,705,773.00  
*Sum Insured*

None  
*Rider Name and Amount*

None  
*Rider Name and Amount*

**Simon Bernstein**  
*Insured*

**Simon Bernstein**  
*Owner*

**Lasalle National Trust, N.A.**  
*Primary Beneficiary*

**Simon Bernstein Ins. Trust**  
*Contingent Beneficiary*

Signed for the Company on December 12, 1982

Kevin Lengyell  
Secretary  
Capitol Bankers Life Insurance Company

JCK000554

**EXHIBIT 9**

WWW.CYBERDRIVEILLINOIS.COM

JESSE WHITE  
SECRETARY OF STATE



**CORPORATION FILE DETAIL REPORT**

<b>Entity Name</b>	S. B. LEXINGTON, INC.	<b>File Number</b>	50241858
<b>Status</b>	DISSOLVED		
<b>Entity Type</b>	CORPORATION	<b>Type of Corp</b>	DOMESTIC BCA
<b>Incorporation Date (Domestic)</b>	05/17/1973	<b>State</b>	ILLINOIS
<b>Agent Name</b>	DAVID B SIMON	<b>Agent Change Date</b>	05/17/1990
<b>Agent Street Address</b>	600 W JACKSON BLVD	<b>President Name &amp; Address</b>	SIMON BERNSTEIN 600 W JACKSON #800 CHGO 60606
<b>Agent City</b>	CHICAGO	<b>Secretary Name &amp; Address</b>	VOLUNTARY DISSOLUTION 04 03 98
<b>Agent Zip</b>	60661	<b>Duration Date</b>	PERPETUAL
<b>Annual Report Filing Date</b>	00/00/0000	<b>For Year</b>	1998

[Return to the Search Screen](#)

BACK TO CYBERDRIVEILLINOIS.COM HOME PAGE

BT000027

**EXHIBIT 10**

Capitol Bankers Life

April 3, 1998

Capitol Bankers Life Insurance Company  
Box 19191  
Spartanburg, SC 29007-0191  
800-825-0303  
FAX 804-609-4205

SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON, FL 33496

RE: SIMON BERNSTEIN  
Policy #1009208

Dear SIMON BERNSTEIN

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

SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON, FL 33496

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,  
Capitol Bankers Life Insurance Company

DONNA HADLEY  
Policyowner Service Department

cc: CAPITOL BANKERS LIFE INSURANCE Agent #0000735

JCK000560

**EXHIBIT 11**



04/03/88 FRI 10:23 FAX 1 312 810 0773

S.T.P.

002

03/30/88 11:22 312 810 0780  
 MAR 27 '98 01:45PM LIBERTY INSURANCE SERVICES

SIP ENTERPRISES

002

P.2

**Capitol Bankers Life**

Capitol Bankers Life Insurance Company  
 Box 10191  
 Greenville, South Carolina 29603-0191  
 864-609-2142 • 800-321-0003 • FAX: 864-609-4006

**REQUEST LETTER**

Use this form to: change address, premium mode, name, beneficiary, or owner; request duplicate policy, surrender, or non-foreclosure option; effect release of interest.

**Instructions**

- a. A separate request form must be completed for each policy.
- b. Please print or type all information except signatures.
- c. If applicable, the term "insured" also means "beneficiary," and the term "policy" also means "contract."

**Required Signatures**

- a. Owner must sign ALL requests.
- b. If policy is collectively assigned, assignees must sign if request number 8 is made.
- c. If beneficiary was designated without right of revocation, beneficiary must sign if request number 8 or 9 is made.
- d. If owner resides in a community property state, the spouse of the owner must sign if request number 4 is made.
- e. If owner is a partnership, each partner must sign if request number 6 or 7 is made.
- f. If owner is a corporation, only an authorized officer other than the insured may sign. A resolution of authorization by the corporation's board of directors must be attached to this form if request number 6 or 7 is made.
- g. "Witness Signatures" and "Additional Required Signatures" apply to any and all requests within this form.

Insured Simon Bernstein / S.B. Lexington Policy Number 1009208  
 Owner Lasalle National Trust Telephone Number of Owner (312) 904-2486  
 Mailing Address of Owner 135 South LaSalle Street Chicago IL 60674

1.  **ADDRESS CHANGE (Owner Only).** The "Mailing Address of Owner" indicated above is a change of address. Change policy records and send all future correspondence and notices to the new address.
2.  **ADDRESS CHANGE (Other than Owner).**  
 For:  Insured  Assignee  Payor (Billing Address)  Other  
 New Address: \_\_\_\_\_  
Number and Street City State Zip Code
3.  **MODE OF PREMIUM PAYMENT CHANGE**  
 Change Mode to:  Annual  Semi-Annual  Quarterly  Pre-Authorized Check (attach complete authorization form and voided check)  
 NOTE: One of the premium due dates of the new mode must be a policy anniversary.
4.  **BENEFICIARY CHANGE**  
 I hereby revoke all previous beneficiary designations and settlement options for the above policy. The beneficiary shall be as shown below. The rights of the beneficiary will be subject to the rights of any assignee of record.  

FULL NAME OF BENEFICIARY	RELATIONSHIP	% OF PROCEEDS
PRIMARY _____	_____	_____
CONTINGENT _____	_____	_____

 Note: If beneficiary is being changed to a trust, give date of Trust Agreement: \_\_\_\_\_
5.  **NAME CHANGE FOR:**  Insured  Owner  
 From \_\_\_\_\_ to \_\_\_\_\_  
(Print old name) (Print new name)  
 Reason for change:  Marriage  Divorce  Other: \_\_\_\_\_  
 (If the person whose name is to be changed is the policyowner, both the old and the new name must be signed at the bottom of this form on the line "Owner's Signature.")
6.  **OWNERSHIP CHANGE - ABSOLUTE ASSIGNMENT.**  
 For the value received, I hereby give all benefits, rights, and privileges incident to ownership of the above policy to:  
 New Owner: Simon Bernstein Soc. Sec./Tax I.D. No. \_\_\_\_\_  
 Mailing Address: 1029 Lion's Head BCA Redon IL 33496  
Number and Street City State Zip Code  
 If ownership is being transferred to a trust, give date of Trust Agreement: \_\_\_\_\_

2-3 (11-84) 0161



April 3, 1998

Capitol Bankers Life Insurance Company  
Box 19191  
Greenville, SC 29602-9191

800-825-0003  
FAX 864-609-4005

SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON , FL 33496

RE: SIMON BERNSTEIN  
Policy #1009208

Dear SIMON BERNSTEIN

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

SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON , FL 33496

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,  
Capitol Bankers Life Insurance Company

DONNA HADLEY  
Policyowner Service Department

cc: CAPITOL BANKERS LIFE INSURANCE Agent #0000735

JCK000563

**EXHIBIT 12**

STATE OF FLORIDA

THIS DOCUMENT HAS A LIGHT BACKGROUND OR TRUE WATERMARKED PAPER. HOLD TO LIGHT TO VERIFY FLORIDA WATERMARK.

OFFICE of VITAL STATISTICS

CERTIFICATION OF DEATH

STATE FILE NUMBER: 2012256765

DATE ISSUED: December 20, 2012

DECEDENT INFORMATION

STATE FILE DATE: September 17, 2012

NAME: SIMON LEON BERNSTEIN

DATE OF DEATH: September 13, 2012

SEX: MALE

SSN: [REDACTED]

AGE: 070 YEARS

DATE OF BIRTH: December 2, 1935

BIRTHPLACE: FLINT, MICHIGAN

PLACE OF DEATH: INPATIENT

FACILITY NAME OR STREET ADDRESS: DELRAY MEDICAL CENTER  
LOCATION OF DEATH: DELRAY BEACH, PALM BEACH COUNTY

SURVIVING SPOUSE, DECEDENT'S RESIDENCE AND HISTORY INFORMATION

MARITAL STATUS: WIDOWED

SPOUSE: NONE

RESIDENCE: 7020 LIONS HEAD LANE, BOCA RATON, FLORIDA 33498

COUNTY: PALM BEACH

OCCUPATION, INDUSTRY: SALES, LIFE INSURANCE

RACE:  White  Black or African American  Asian Indian  Chinese  Filipino  Native Hawaiian  Japanese  Korean  
 American Indian or Alaska Native-Tribe:  Vietnamese  Other Asian  
 Dominican or Cheworo  Samoan  Other Pacific Is:  Other  Unknown

HISPANIC OR HAITIAN ORIGIN? NO, NOT OF HISPANIC OR HAITIAN ORIGIN

EDUCATION: HIGH SCHOOL GRADUATE OR GED

EVER IN U.S. ARMED FORCES? NO

PARENTS AND INFORMANT INFORMATION

FATHER: THEODORE BERNSTEIN

MOTHER: NORA UNKNOWN

INFORMANT: TED STUART BERNSTEIN

RELATIONSHIP TO DECEDENT: SON

INFORMANT'S ADDRESS: 880 Berkeley Street, BOCA RATON, FLORIDA 33487

PLACE OF DISPOSITION AND FUNERAL FACILITY INFORMATION

PLACE OF DISPOSITION: THE GARDENS MEMORIAL PARK  
BOCA RATON, FLORIDA

METHOD OF DISPOSITION: ENTOMBMENT

FUNERAL DIRECTOR/LICENSE NUMBER: GARRETT JACOBS, F019844

FUNERAL FACILITY: BOCA RATON FUNERAL HOME F040122  
19785 HAMPTON DRIVE, BOCA RATON, FLORIDA 33434

CERTIFIER INFORMATION

TYPE OF CERTIFIER: MEDICAL EXAMINER

MEDICAL EXAMINER CASE NUMBER: 121500913

TIME OF DEATH (24 hr): 0227

CERTIFIER'S NAME: MICHAEL D BELL

CERTIFIER'S LICENSE NUMBER: ME54359

NAME OF ATTENDING PHYSICIAN (if other than Certifier): NOT APPLICABLE

CAUSE OF DEATH AND INJURY INFORMATION

PROBABLE MANNER OF DEATH: NATURAL

CAUSE OF DEATH - PART I - and Approximate Interval: Onset to Death:

a MYOCARDIAL INFARCT

b SEVERE CORONARY ATHEROSCLEROSIS

d

PART II - Other significant conditions contributing to death but not resulting in the underlying cause given in PART I:  
BRONCHOPNEUMONIA, CIRRHOSIS

AUTOPSY PERFORMED? YES

AUTOPSY FINDINGS AVAILABLE TO COMPLETE CAUSE OF DEATH? YES

DATE OF SURGERY:

DID TOBACCO USE CONTRIBUTE TO DEATH? NO

REASON FOR SURGERY:

IF FEMALE, WAS SHE PREGNANT WITHIN THE PAST YEAR? NOT APPLICABLE

DATE OF INJURY: NOT APPLICABLE

TIME OF INJURY (24 hr):

INJURY AT WORK?

LOCATION OF INJURY:

DESCRIBE HOW INJURY OCCURRED:

PLACE OF INJURY:

IF TRANSPORTATION INJURY, Status of Decedent:

Type of Vehicle:

*C. [Signature]*

State Registrar

REQ: 2013376149

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.  
THIS DOCUMENT IS PRINTED ON PHOTOCOPIED OR SECURITY PAPER WITH WATERMARKS OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARKS. THE DOCUMENT FACE CONTAINS A LIGHT COLORED BACKGROUND, GOLD EMBOSSED SEAL, AND THERMOCHROMIC FL. THE BACK CONTAINS SPECIFIC LINES WITH TEXT. THIS DOCUMENT WILL NOT PRODUCE

DH FORM 1047 (11/11)

CERTIFICATION OF VITAL RECORD

HEALTH

VOID IF ALTERED OR ERASED

VOID IF ALTERED OR ERASED

**EXHIBIT 13**

Annuity & Life Reassurance America, Inc.

Service Bureau: P O Box 1147 Jacksonvle, IL 62651 (609) 825-0003

Home Office: Hartford, CT 06103 ("The Company") POLICYOWNER PLAN CHANGE/ REINSTATEMENT REQUEST PART 1

INSTRUCTIONS: Check [ ] for service desired. Indicate in what address items should be returned. Mail form (and policy if required) to Sending Office. For Change of Beneficiary, complete separate form. SIGNATURE REQUIREMENTS: Insured, U age 18 or older. Owner, if other than the Insured. Assignee, if policy assigned. Generally effective date is U policy's expiration date.

Policy Number: 1009208 Insured (Last name, first initial): Simon Bernstein Date of Birth: 12.2.35 Insured's Social Security Number: [Redacted] Owner's Social Security Number: [Redacted] Agent's Name: [Redacted] Agency Code: [Redacted]

TRADITIONAL [ ] UNIVERSAL LIFE [ ] Old Plan: Old Benefit Amount \$ New Plan: New Benefit Amount \$

Do you currently take any tobacco products? [ ] Yes [ ] No If YES, what form of tobacco do you use? [ ] Cigarettes [ ] Chews [ ] Pipes [ ] Smokeless Have you smoked any tobacco products? [ ] Yes [ ] No If YES, what was the date on which you last used tobacco?

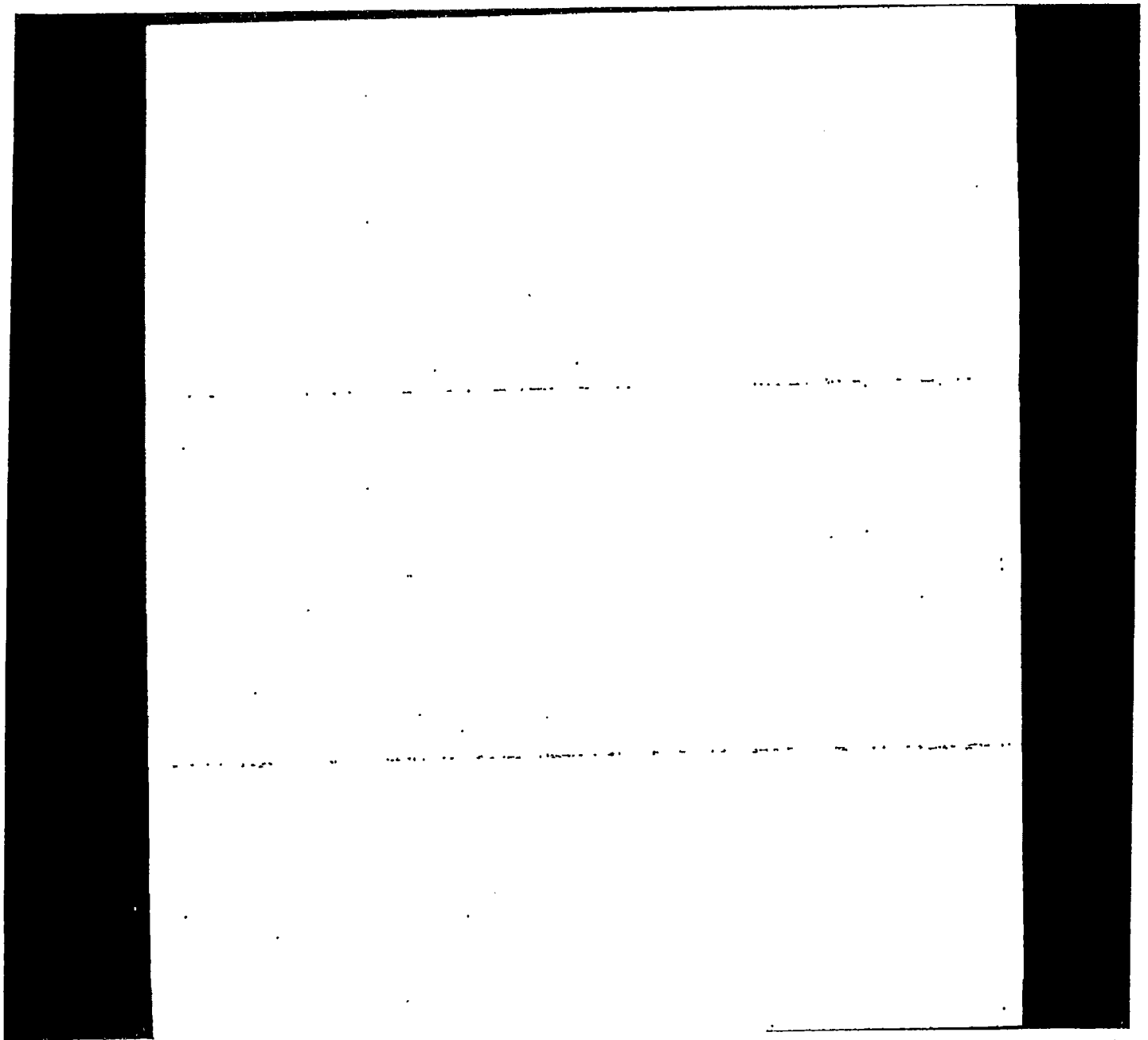
Table with columns: Benefits, Currently on Policy (Check Answer), Add, Debit, Increase, Decrease, New Amount. Rows include: Accidental Death, Waiver of Premium (or CD/LLTA), Monthly Disability Benefit (IL ONLY), Guaranteed Purchase Option, Riders (Spouse's Level Term Rider, Child's Term Rider, Primary Insured Term Rider, Other Insured Term Rider, Other Riders (Specify)).

BILLING INSTRUCTIONS: MODE [ ] Annual [ ] Semi-Annual [ ] Quarterly [ ] Monthly [ ] Non-Inv BILLING TYPE: [ ] Direct [ ] Bill03 [ ] PAC [ ] Government Assignment

New Planned Periodic Premium \$ Amount Enclosed \$

SPECIAL INSTRUCTIONS:

AL-A-01



**PAR. II APPLICATION FOR**  Increase \$25,000 or less  Final Statement  Add Rider or Benefit  
 Preferred Non-Smoker  Select Non-Smoker  Term Conversion  Policy Number

(Print full name, middle initial, and last name) **Sharon Bernstein**

Proposed Insured	Occupation	Relationship to Proposed Insured	Date of Birth	Age	Sex	State	Home	Mobile	Weight
<b>Sharon Bernstein</b>		NA	<b>12/2/75</b>	<b>35</b>	<b>F</b>	<b>MI</b>	<b>414</b>	<b>313</b>	<b>116</b>

Consent for Family Plan, Spouse Rider, Other Insured Rider or Children's Term

Spouse			
Children			

Over 65% in "Comments" section adopting the requirements for any "YES" answers to questions 1 through 8 and 10 through 14.

- Within the past 10 years, has any person proposed for coverage?
  - Been examined by or consulted a physician or other practitioner?  Yes  No
  - Been under observation or treatment in a hospital or any other form of health care facility?  Yes  No
  - Had an X-ray, electrocardiogram, blood test, urine or other laboratory test?  Yes  No
- Within the past 10 years, has any person proposed for coverage had or been tested for?
  - Received benefits or compensation for sickness or injury, or had life or disability insurance modified, rejected, not renewed, or issued as a substitute issue?  Yes  No
  - Bought smoke or treatment for, or been arrested for or been addicted to, the use of alcohol or drugs?  Yes  No
  - Had any disease of the reproductive organs, genital organs, breasts, or any impaction or body abnormality, hernia or rupture, hemorrhoids or enlarged veins?  Yes  No
  - Been advised to have any diagnostic test, hospitalization, or surgery which was not completed?  Yes  No
- Within the past 10 years, has any disease or disorder of the eyes, ears, nose, throat, or thyroid gland?  Yes  No
- Any stenosis or disorder of the back, spine, muscles, bones or joints?  Yes  No
- Chest pain, heart murmur, high blood pressure, or any other disease or disorder of the heart, circulatory system, blood or blood vessels?  Yes  No
- Diabetic ulcer, indigestion, or other disease of the stomach, intestines, spleen, liver, pancreas, spleen, or enlarged lymph glands?  Yes  No
- Tuberculosis, syphilis, rheumatism, or any other disease of the chest or lungs?  Yes  No
- Abnormal, pus, blood or eggs in urine, urinary stones, or other disease of the kidneys, bladder or prostates?  Yes  No
- Severe headaches, ringing in ears, dizziness, vertigo, tinnitus, epilepsy, cataplexy, paralysis, mental disorder, depression, or any other disease or disorder of the head or nervous system?  Yes  No
- Phthoriosis of other feet, diabetes, cystitis, gonorrhea, syphilis, cancer tumor or disorder of the lymph nodes?  Yes  No

7. In the past 7 years in the last 10 years, has any person proposed for coverage had or been tested by a medical professional, or by test, an infectious disease or disorder, AIDS or HIV-related Complex (ART)?  Yes  No

8. Is any person proposed for coverage now pregnant? If "YES", provide the child's expected due date in "Comments".  Yes  No

9. Is any person proposed for coverage now taking medical treatment or taking any prescription drugs?  Yes  No

10. To the best of your knowledge, are all persons proposed for coverage now in good health? (If "NO" provide details in "Comments".)  Yes  No

11. Has any person proposed for coverage within the past two years flown as a pilot, student pilot or crew member of intent to do so?  Yes  No

12. Has any person proposed for coverage engaged in, or intend to engage in, underwater diving, hang gliding or parachuting?  Yes  No

13. Has any person proposed for coverage engaged in, or intend to engage in, competitive racing of any kind?  Yes  No

14. Has any person proposed for coverage had a driver's license suspended or revoked, or been convicted in the last 5 years of a moving violation or of driving while impaired, intoxicated or under the influence of drugs or alcohol?  Yes  No

15. Has any person proposed for coverage ever been convicted of a felony?  Yes  No

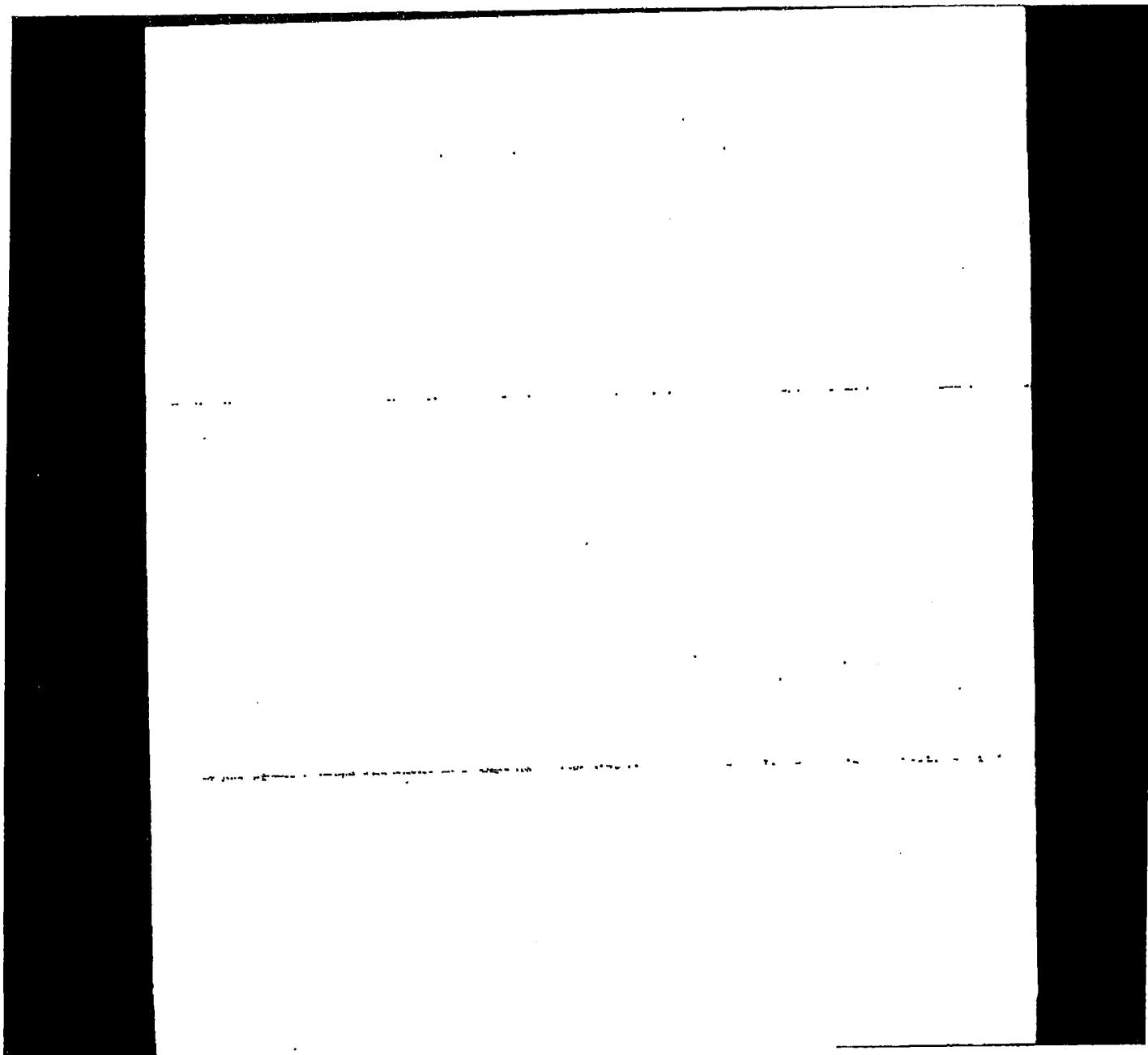
Please list Question Number and date(s) that you are referring to: Disposition, Date(s), Physician Name and Address, and name of the Health Care Facility.

**Dr. Bauer** StL: 367-8155  
**Dr. Hammer** StL: 491-8148

(6) Family History	Age (if living)	Condition of Health	Age at Death	Cause of Death
Wife (Mother)	75	MI	75	MI
Son (I)	30	MI	30	MI
Son (II)	25	MI	25	MI
Son (III)				

\* If not answered "Good" give details above.





AGREEMENT AND SIGNATURE FOR PART I & II  
(See "Notice to Applicant" on reverse side)

The undersigned hereby declares that to the best of his knowledge and belief the foregoing statements and answers are complete and true and have been made to induce the Company to change the above numbered policy. The undersigned agrees that the policy shall not be so changed until the Company has received payment of all arrears and has formally approved the application at its Home Office and further agrees to accept a return of any payments made in connection with this application for change, should the Company decline to approve it. The undersigned further agrees that if the Company approves this application for change, such approval shall be based upon the above statements and answers which shall be deemed to be representations and not warranties. The undersigned further agrees as an express condition of such change, that if any such representation is untrue in whole or in part, and if material, the Company shall be under no liability by reason of the change, except to return all premiums paid in connection with and subsequent to such change; but on the condition that the change shall be incontestable after the same period following such change and with the same conditions and exceptions as provided in the policy with respect to the incontestability thereof. If it is understood that, unless otherwise provided, the reinstatement of a policy shall not be subject to any assignment, beneficiaries or annuities. The undersigned understands that if making a policy change, unless the change will be to the same plan of insurance, no disability benefits will be allowed for any condition existing at the present time. If the above policy is to be surrendered with this service request, the undersigned hereby warrants the policy for cancellation and agrees that this request together with the application for the original policy, shall constitute the application for any new policy and that the original application shall be changed only in the extent provided.

The undersigned requests that you cause any printed above to be completed by the Company and agree to pay all (arrearages), debts, beneficiaries and all others claiming under the above policy to release, indemnify and hold the Company harmless from any liability incurred because of completing the above conditions. The undersigned expressly warrants that all persons signing below are of legal age and that no person is being coerced in any way in signing against any of them.  
Dated at (City and State) Doon Kabin FL this 30 Day of Nov 2010

Witness (not related) or Agent \_\_\_\_\_  
Signature (not related) or Agent \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

AUTHORIZATION FOR PART II

The undersigned authorizes any licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility, insurance company, the Medical Information Bureau or other organization, institution or person, that has any records or knowledge of me or my health or the health of my family dependent upon applying for insurance, to give to the Company, or its representatives, any such information. A photostatic copy of this authorization shall be as valid as the original. I agree that this authorization shall be valid for two and one-half years from the date I sign this application.

Dated at (City and State) Doon Kabin FL this 30 Day of Nov 2010

Proposed (if age 18 or over) \_\_\_\_\_  
Signature (if age 18 or over) \_\_\_\_\_  
Witness (not related) or Agent \_\_\_\_\_  
Telephone Number (if age 18 or over) \_\_\_\_\_  
Spouse (if to be insured) or Successor Proposed Insured (if T.W.L.) \_\_\_\_\_  
Signature (if not Proposed Insured) and Relationship \_\_\_\_\_  
Telephone Number \_\_\_\_\_

**EXHIBIT 14**

**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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August 3, 2011

SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON, FL 33496

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09445909

Dear SIMON BERNSTEIN:

We are writing to inform you that your reinstatement application has been approved.

- Your policy has been fully reinstated.
- In order to complete the reinstatement process, your payment of \$ must be received by the Company at the address shown above during the lifetime of the insured and within 30 days from the date of this letter. Your policy will remain terminated until the requested premium payment is received in our office. If payment is not received as indicated above, your reinstatement approval will be considered void, and a new reinstatement application will be required.
- Enclosed is a copy of your completed Policy Owner Plan Change/Reinstatement Application for your records.

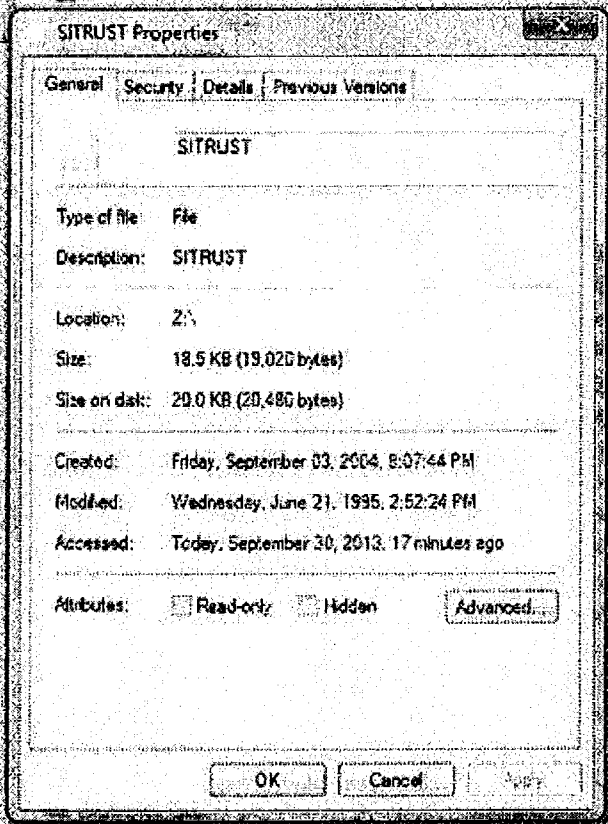
**PLEASE PLACE THIS COPY WITH YOUR INSURANCE RECORDS FOR FUTURE REFERENCE.**

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.

Sincerely,

Client Services

**EXHIBIT 15**



SITRUST 6/21/1995 2:52 PM File 19 KB

SITRUST Date modified: 6/21/1995 2:52 PM Date created: 9/3/2004 8:07 PM Offline status: Online  
File Size: 18.5 KB Offline availability: Not available



IRREVOCABLE TRUST AGREEMENT

I, Simon L. Bernstein, am entering into this Agreement at Boca Raton, Florida on June 1, 1995 with my wife, Shirley Bernstein, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "Simon Bernstein Irrevocable Insurance Trust, dated June 1, 1995". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

**BT000003**

**ARTICLE THREE**

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

**ARTICLE FOUR**

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000004**



4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

**ARTICLE FIVE**

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

**ARTICLE SIX**

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

**ARTICLE SEVEN**

7.01 Upon my death, the Trustee shall divide the property

**BT000005**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

BT000006

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have five children living, namely: Ted S. Bernstein, Pamela B. Simon, Jill Bernstein, Lisa Bernstein Friedstein, and Eliot Bernstein.

#### ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had

BT000007

collected after the termination of such interest. The Trustee may charge any such income with any accrued taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000008

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$10,000.00 in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign

BT000009

the policies for such purposes;

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

#### ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Bernstein does not continue to act as Trustee, David B. Simon is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital,

BT000010

surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

**ARTICLE TWELVE**

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

**ARTICLE THIRTEEN**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_ day of \_\_\_\_\_, 199\_.

**BT000011**

\_\_\_\_\_  
Notary Public

**BT000012**



**EXHIBIT 16**

IRREVOCABLE TRUST AGREEMENT

I, Si, am entering into this Agreement at \_\_\_\_\_, \_\_\_\_\_ on \_\_\_\_\_, 199\_ with my wife, Shirley, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "Si Irrevocable Insurance Trust, dated \_\_\_\_\_, 199\_". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

BT000013

**ARTICLE THREE**

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

**ARTICLE FOUR**

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000014**

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

**BT000015**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

BT000016

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have \_\_\_\_\_ children living, namely:

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had collected after the termination of such interest. The Trustee may charge any such income with any accrued

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taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$\_\_\_\_\_ in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign the policies for such purposes;

BT000019



5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

#### ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley David, et al? does not continue to act as Trustee, Kim, Ted is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital, surplus and undivided profits of at least fifty million dollars.

BT000020

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

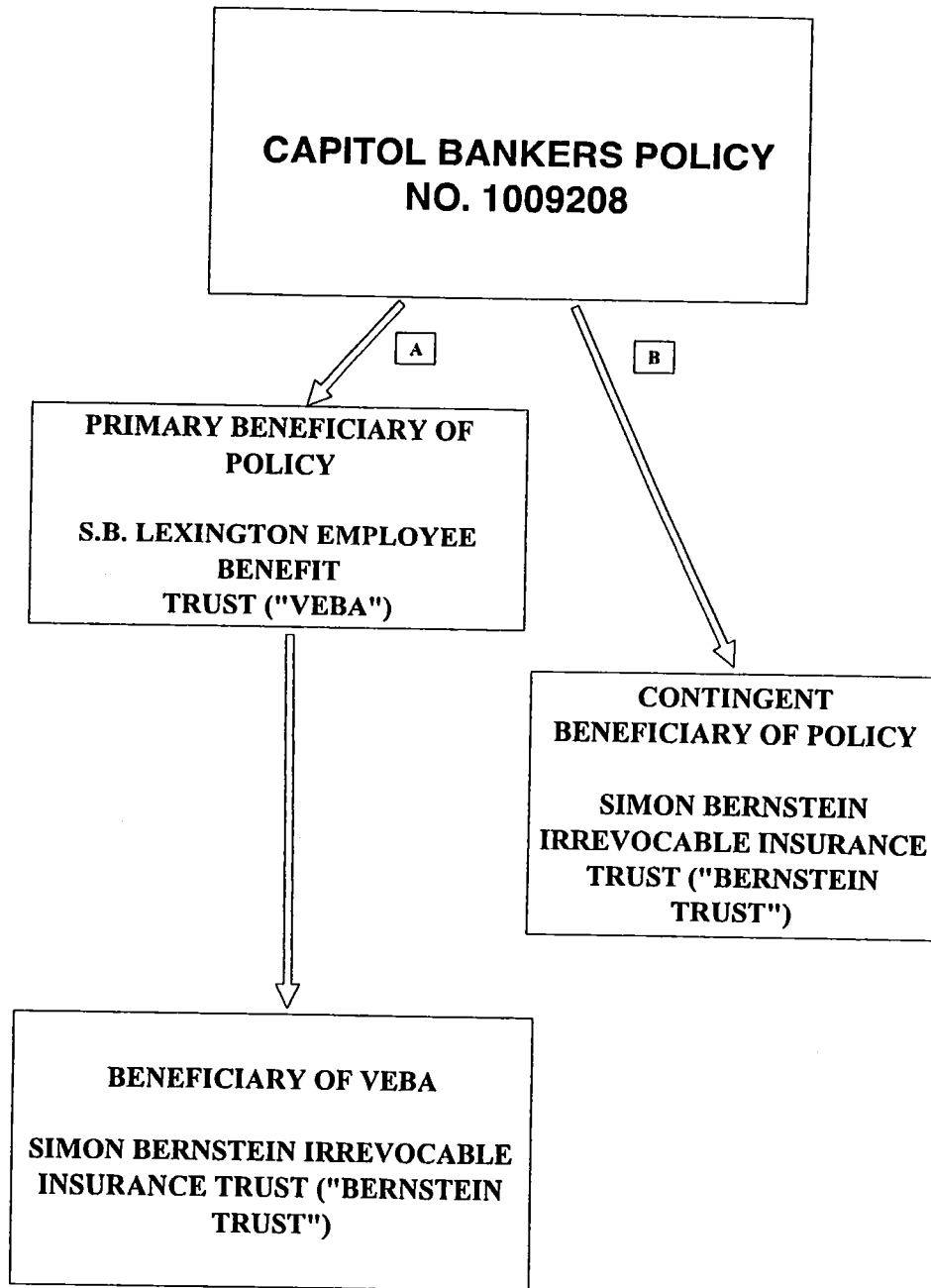
IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT 17**



**EXHIBIT 18**

MEMBER OF THE SEARS FAMILY  
P.O. Box 80469, Lincoln, Nebraska 68501

### REQUEST FOR SERVICE

Policy # U0204204 Insured Simon Bernstein Owner Simon Bernstein

1. TRANSFER OF OWNERSHIP:

I request that all rights of ownership of the policy be vested in the new owner named below. I represent that I am not a party in a pending bankruptcy. PLEASE PRINT IN INK FULL NAME OF NEW OWNER, RELATIONSHIP TO INSURED, SOCIAL SECURITY NUMBER AND ADDRESS OF NEW OWNER.

Primary	New Owner <u>Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95</u>	Relationship to Insured	Date of Birth
Contingent			
Social Security Number or Tax ID Number of New Owner: <span style="background-color: black; color: black;">XXXXXXXXXX</span>			
Address of New Owner: <u>Shirley Bernstein, Trustee</u> <u>7020 Lions Head, Boca Raton, FL 33496</u>			

2. CHANGE OF NAME: From \_\_\_\_\_ To \_\_\_\_\_  
Reason for Change:  Marriage  Divorce  Correction  Court Order  Adoption  
If reason is Court Order or Adoption, attach copy of legal evidence.

3. BILLING CHANGE:  
 PLACE ON NON-BILLING (For Universal Life policies, placing a policy on a non-billing basis results in monthly charges for life insurance protection and administrative expenses to be drawn from the available cash value of the policy. Should the cash value become insufficient to cover these charges, the policy will terminate.)  
 INCREASE/DECREASE PREMIUM to \$ \_\_\_\_\_  
 CHANGE BILLING TO: \$ \_\_\_\_\_  Quarterly  Semi-Annual  Annual  
 MONTHLY BILLING Amount to be drafted \$ \_\_\_\_\_ Draft Date \_\_\_\_\_  
(Use Form LBL-869 for Change of Banks or to begin Automatic Monthly Payments)

4. BENEFICIARY CHANGES: Use Form LBL-425 for changing the beneficiary(ies) under this policy.

5. CHANGE OF ADDRESS:  
Old Address: \_\_\_\_\_  
New Address: \_\_\_\_\_  
New Phone #: ( ) \_\_\_\_\_

#### SIGN HERE FOR ALL REQUESTS

I direct that the requested amendment to the policy be effective upon filing with the Company; that the Company is requested to waive any policy provision requiring presentation of the policy for endorsement, but may require such presentation if desired.

Date: 8-8-95  
CHICAGO, IL  
Dated at (City & State)  
Altkie Marsh  
Witness

[Signature]  
Signature of Insured  
\_\_\_\_\_  
Signature of Owner (if other than Insured)

#### — FOR HOME OFFICE USE ONLY —

#### ACKNOWLEDGMENT OF REQUEST FOR CHANGE — PLEASE ATTACH TO POLICY

Lincoln Benefit Life Company has recorded the change requested and retained the original of the request.  
Dated at Lincoln, Nebraska Aug 8 19 95 By [Signature]

**EXHIBIT 19**

08/21/95 10:48

983 0486

58 LEXINGTON

SI

6/22/95

Form **SS-4**  
(Rev. August 1989)  
Department of the Treasury  
Internal Revenue Service

### Application for Employer Identification Number

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

EIN

OMB No. 1545-0043  
Expires 7-31-91

1 Name of applicant (True legal name) (See instructions.)  
Simon Bernstein Irrevocable Insurance Trust

2 Trade name of business, if different from name in line 1  
Shirley Bernstein

3 Executor, trustee, "care of name"  
Shirley Bernstein

4a Mailing address (street address) (room, apt., or suite no.)  
7020 Lions Head

4b City, state, and ZIP code  
Boca Raton, FL 33496

5a Address of business (See instructions.)

5b City, state, and ZIP code

6 County and state where principal business is located

7 Name of principal officer, grantor, or general partner (See instructions.)  
Simon Bernstein

8a Type of entity (Check only one box.) (See instructions.)

Individual SSN  
 REMIC  
 State/local government  
 Other nonprofit organization (specify)  
 Other (specify)

Estate  
 Plan administrator SSN  
 Other corporation (specify)  
 Federal government/military  
If nonprofit organization enter GEN (if applicable)

Trust  
 Partnership  
 Farmers' cooperative  
 Church or church controlled organization

8b If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated

Foreign country \_\_\_\_\_ State \_\_\_\_\_

9 Reason for applying (Check only one box)

Started new business  
 Hired employees  
 Created a pension plan (specify type)  
 Banking purpose (specify)

Changed type of organization (specify)  
 Purchased going business  
 Created a trust (specify) Insurance Trust  
 Other (specify)

10 Date business started or acquired (Mo., day, year) (See instructions.)  
JUNE 1, 1995

11 Enter closing month of accounting year. (See instructions.)  
December 31

12 First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year)

13 Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."

Nonagricultural \_\_\_\_\_ Agricultural \_\_\_\_\_ Household \_\_\_\_\_

14 Does the applicant operate more than one place of business?  
If "Yes," enter name of business.

Yes  No

15 Principal activity or service (See instructions.)

16 Is the principal business activity manufacturing?  
If "Yes," principal product and raw material used

Yes  No

17 To whom are most of the products or services sold? Please check the appropriate box.

Public (retail)  Other (specify)  Business (wholesale)  N/A

18a Has the applicant ever applied for an identification number for this or any other business?  
Note: If "Yes," please complete lines 18b and 18c.

Yes  No

18b If you checked the "Yes" box in line 18a, give applicant's true name and trade name, if different than name shown on prior application.

True name \_\_\_\_\_ Trade name \_\_\_\_\_

18c Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.

Approximate date when filed (Mo., day, year) \_\_\_\_\_ City and state where filed \_\_\_\_\_ Previous EIN \_\_\_\_\_

I/we certify that the information furnished on this application, and to the best of my knowledge and belief, is true, correct, and complete.

Telephone number (include area code)  
407-477-9991

Name and title (Please type or print clearly) Shirley Bernstein, Trustee

Signature X Date JUNE 21, 1995

Please leave blank

Qtr. \_\_\_\_\_ Ind. \_\_\_\_\_ Class \_\_\_\_\_ Size \_\_\_\_\_ Reason for applying \_\_\_\_\_

BT000104



**EXHIBIT 20**

Page

7

Agent No.

414-519

NS

Continuation  
of Report on

BREWSTER, STONE L.

Identification

the past seven years indicate no record.

**BENEFICIARY-PURPOSE OF INSURANCE:** The beneficiary of this policy is the First Arlington National Bank, trustee of the S. D. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members.

**EXHIBIT 21**

**FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS****Detail by Entity Name****Florida Profit Corporation**

NATIONAL SERVICE CORPORATION

**Filing Information**

<b>Document Number</b>	P06000095137
<b>FEI/EIN Number</b>	363307282
<b>Date Filed</b>	07/18/2006
<b>State</b>	FL
<b>Status</b>	INACTIVE
<b>Effective Date</b>	05/15/1984
<b>Last Event</b>	ADMIN DISSOLUTION FOR ANNUAL REPORT
<b>Event Date Filed</b>	09/28/2012
<b>Event Effective Date</b>	NONE

**Principal Address**

950 PENINSULA CORPORATE CIRCLE  
3010  
BOCA RATON, FL 33487

Changed: 02/26/2007

**Mailing Address**

950 PENINSULA CORPORATE CIRCLE  
3010  
BOCA RATON, FL 33487

Changed: 02/26/2007

**Registered Agent Name & Address**

BERNSTEIN, TED  
950 PENINSULA CORPORATE CIRCLE, STE. 3010  
BOCA RATON, FL 33487

Name Changed: 04/16/2010

Address Changed: 02/26/2007

**Officer/Director Detail****Name & Address**

Title D

BERNSTEIN, SIMON L  
950 PENINSULA CORPORATE CIRCLE, STE. 3010  
BOCA RATON, FL 33487

**Annual Reports**

<b>Report Year</b>	<b>Filed Date</b>
2009	01/16/2009
2010	04/16/2010
2011	03/16/2011

**Document Images**

<u>03/16/2011 -- ANNUAL REPORT</u>	<a href="#">View image in PDF format</a>
<u>04/16/2010 -- ANNUAL REPORT</u>	<a href="#">View image in PDF format</a>
<u>01/16/2009 -- ANNUAL REPORT</u>	<a href="#">View image in PDF format</a>
<u>01/18/2008 -- ANNUAL REPORT</u>	<a href="#">View image in PDF format</a>
<u>02/26/2007 -- ANNUAL REPORT</u>	<a href="#">View image in PDF format</a>
<u>12/15/2006 -- Name Change</u>	<a href="#">View image in PDF format</a>
<u>07/18/2006 -- Domestic Profit</u>	<a href="#">View image in PDF format</a>

**EXHIBIT 22**

WWW.CYBERDRIVEILLINOIS.COM

JESSE WHITE  
SECRETARY OF STATE



### CORPORATION FILE DETAIL REPORT

Entity Name	NATIONAL SERVICE ASSOCIATION, INC.	File Number	53460313
Status	DISSOLVED		
Entity Type	CORPORATION	Type of Corp	DOMESTIC BCA
Incorporation Date (Domestic)	05/15/1984	State	ILLINOIS
Agent Name	DAVID B SIMON	Agent Change Date	01/15/2003
Agent Street Address	303 E WACKER DR #210	President Name & Address	SIMON L BERNSTEIN 7020 LIONSHEAD BOCA RATON FL 33498
Agent City	CHICAGO	Secretary Name & Address	INVOLUNTARY DISSOLUTION 10 02 06
Agent Zip	60601	Duration Date	PERPETUAL
Annual Report Filing Date	00/00/0000	For Year	2006

[Return to the Search Screen](#)

[BACK TO CYBERDRIVEILLINOIS.COM HOME PAGE](http://www.cyberdriveillinois.com)

**EXHIBIT 23**



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, )

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 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

<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(1), "[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(1)(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

## **Exhibit 24**

502012C.P004391XXXXSB

I2

WILL OF

SIMON L. BERNSTEIN

2012 OCT -2 AM 9:32  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

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TESCHER & SPALLINA, P.A.

**WILL OF**

**SIMON L. BERNSTEIN**

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

**ARTICLE I. TANGIBLE PERSONAL PROPERTY**

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

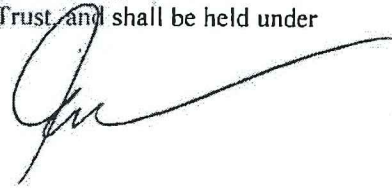
**ARTICLE II. EXERCISE OF POWER OF APPOINTMENT**

Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

**ARTICLE III. RESIDUE OF MY ESTATE**

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust and shall be held under

LAST WILL  
OF SIMON L. BERNSTEIN



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

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

**ARTICLE IV. PERSONAL REPRESENTATIVES**

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

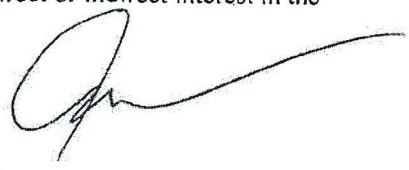
c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL  
OF SIMON L. BERNSTEIN

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estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

LAST WILL  
OF SIMON L. BERNSTEIN

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

**ARTICLE IV. PERSONAL REPRESENTATIVES**

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL  
OF SIMON L. BERNSTEIN

estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the





operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

LAST WILL  
OF SIMON L. BERNSTEIN

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TESCHER & SPALLINA, P.A.



k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

LAST WILL  
OF SIMON L. BERNSTEIN

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LAW OFFICES

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interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

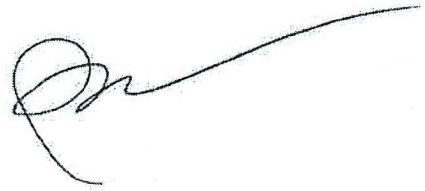
6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

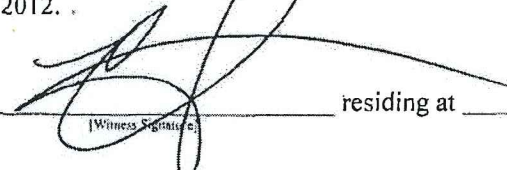
*[remainder of page intentionally left blank]*



I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.

  
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 27 day of July, 2012.

  
[Witness Signature]

residing at

**ROBERT L. SPALLINA**  
**7387 WISTERIA AVENUE**  
**PARKLAND, FL 33076**

[Witness Address]

  
[Witness Signature]

residing at

**Kimberly Moran**  
**6362 Las Flores Drive**  
**Boca Raton, FL 33433**

[Witness Address]

LAST WILL  
OF SIMON L. BERNSTEIN

-7-

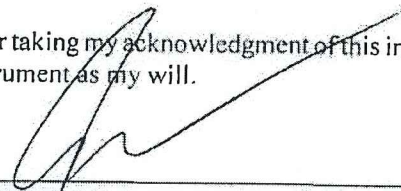
LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

State Of Florida

SS.

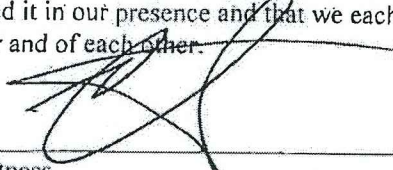
County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

  
SIMON L. BERNSTEIN, Testator

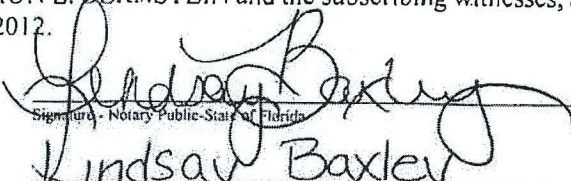
We, Robert L. Spallina and Kimberly Moran,

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.


  
Witness

Kimberly Moran  
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

  
Signature - Notary Public-State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA  
 Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

LAST WILL  
OF SIMON L. BERNSTEIN

## **Exhibit 25**

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, its Trustee, Ted )  
Bernstein, an individual, )  
Pamela B. Simon, an individual, )  
Jill Iantoni, an individual and Lisa S. )  
Friedstein, an individual. )

Plaintiff, )

**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. )

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ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

Third-Party Defendants. )

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**PLAINTIFFS' FIRST AMENDED COMPLAINT**

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

**BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### COUNT I

#### **BREACH OF CONTRACT**

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

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

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

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

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

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

## COUNT II

### DECLARATORY JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

iv) the offices of The Simon Law Firm.

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

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

a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;

b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;

c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

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

### COUNT III

#### RESULTING TRUST

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

WHEREFORE, PLAINTIFFS pray for an Order as follows:

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

**By: s/Adam M. Simon**

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Attorneys for Plaintiffs and Third-Party

Defendants

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



**Exhibit 26**

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. )

Case No. 13-cv-03643

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

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

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,** )

**Cross-Plaintiff,** )

**v.** )

**TED BERNSTEIN individually and )  
as alleged Trustee of the Simon )  
Berustein 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.**

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

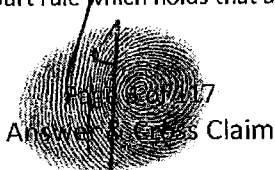
ELIOT a third party defendant and an alleged beneficiary of a life insurance policy Number 1009208 on the life of Simon L. Bernstein ("Policy(ies)"), a "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" and a "Simon Bernstein Trust, N.A." that are at dispute in the Lawsuit, makes the following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

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

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

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

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

  
Answer to Cross Claim

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

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

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

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

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

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

**ELIOT ANSWER:** ELIOT admits that Ted S. Bernstein ("TED") is a resident of Florida. ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the

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

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

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





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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- i. May 6, 2013 ELIOT filed Docket #23 an "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL

REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE" ("Petition 1").

- a. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
- b. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582
- ii. May 29, 2013, ELIOT filed Docket #28 "RENEWED EMERGENCY PETITION" ("Petition 2")
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- vi. August 28, 2013, ELIOT filed Docket #TBD "NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS" ("Petition 6")

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

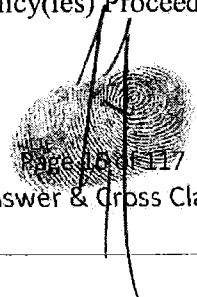
**ELIOT ANSWER:** ELIOT admits in part and denies in part and lacks sufficient information and knowledge in part to form a belief as to the truth of the remainder of the allegations of this paragraph and therefore denies the same. ELIOT admits that he and/or his children are the beneficiaries. ELIOT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

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

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

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

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

  
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Answer & Cross Claim

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

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

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

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

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

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

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

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

#### **RELIEF**

**WHEREFORE,** ELIOT prays that:

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

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

**CROSS CLAIM / COUNTER CLAIM**

**INTRODUCTION**

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

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

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

**himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing of the admitted criminal misconduct before his Court, twice in fact.**

- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court as further defined herein is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from further representing any parties, sanctioned and all Cross Defendants and Third Party Defendants forced to retain non conflicted counsel further in these proceedings.
- v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.
- vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.
- vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions during this time period and ELIOT thanks Your Honor for the additional extensions in light of these medical maladies.



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

### **JURISDICTION**

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

### **PARTIES AND VENUES**

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

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

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

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

**FACTS**

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

17. That the alleged criminal acts defined herein are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate ("Probate Court") case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:

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Answer & Cross Claim

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

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

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

10 of death.

11 THE COURT: Well, how could that happen

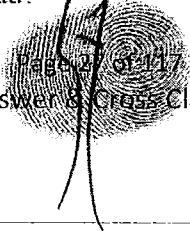
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve

15 a petition after he's dead?

Answer to Cross-Claim



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

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

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

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

13 MR. MANCERI: Okay.

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

17 MR. MANCERI: April 9th, right.

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

5 MR. MANCERI: Okay.

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

9 MR. MANCERI: Okay.

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

12 MR. SPALLINA: I'm sorry?

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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





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

A handwritten signature in black ink is written over a circular fingerprint. The signature is stylized and appears to be the name 'P. Simon'. The fingerprint is a standard ten-print pattern.

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

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

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

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

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

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

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

61. That even after the near deathbed changes allegedly made by SIMON under duress or perhaps made post mortem, as now TSPA's Notary Public Kimberly Moran has admitted to notarizing documents in his name, months after his death, TED and P. SIMON were again wholly disinherited from the estates of SIMON and SHIRLEY and only their adult children are alleged beneficiaries.
62. That from the alleged July 25, 2012 "Simon L. Bernstein Amended and Restated Trust Agreement" the language is as follows,

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

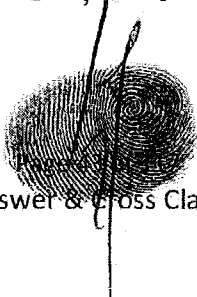
descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge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

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

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



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



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

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

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

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

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



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

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

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

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As Claim

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

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

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

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Answer to Cross Claim

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

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

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

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

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

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

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

Answer to Claim

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

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

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

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

Answer to Simon's Claim



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

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

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

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

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

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Answer to Cross Claim

- b. "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"
- c. "United Bank of Illinois"
- d. "LaSalle National Trust, N.A."
- e. "LaSalle National Trust, N.A., Trustee of the VEBA trust"
- f. "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"
- g. "Simon Bernstein Trust, N.A." the final "contingent beneficiary" according to Jackson that is listed on the Policy(ies) at the time of SIMON's death.

105. That according to Jackson at the time of SIMON's death the Primary Beneficiary is "LaSalle National Trust, N.A." and the Contingent Beneficiary is the "Simon Bernstein Trust, N.A."<sup>6</sup> Paragraph 15-16 of their response.

106. That TED claims to this Court that the lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" aka "Bernstein Trust" was the "sole" beneficiary of the Policy(ies) at the time of SIMON's death to this Court.

107. That TED, TSPA, SPALLINA, TESCHER and P. SIMON have similarly given this allegedly misleading information regarding the beneficiary at the time of death to the beneficiaries of the estate and counsel for certain beneficiaries, while suppressing, denying and secreting the

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

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

108. That Jackson claims in Paragraph 18,

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

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

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

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

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

111. That an old beneficiary designation of a “lost” trust is now being used to make claims for the Policy(ies) proceeds in this Lawsuit, instead of the beneficial designation with the insurance carriers at SIMON’s death, namely the “Simon Bernstein Trust, N.A.”

112. That therefore, despite whether the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” is “lost” or not or what it is called, **it was not the Beneficiary at the time of SIMON’s death according to Jackson** and therefore, would not be entitled to make a claim for the Policy(ies) proceeds. Perhaps this is why all of the records of the Policy(ies) and trusts have been secreted from certain estate beneficiaries and their counsel by TSPA, TESCHER, SPALLINA and TED, so as to hide from them whom the beneficiaries under the “Simon Bernstein Trust, N.A.” trust are to the advantages of some and disadvantage of others and mislead everyone by misrepresenting the real beneficiary(ies) and converting the Policy(ies) proceeds.

113. That ELIOT claims that Jackson, Heritage and RALIC should have copies of the “Simon Bernstein Trust, N.A.,” as well as, TSPA, SPALLINA and TESCHER and possibly P. SIMON and others named in the Lawsuit.

114. That ELIOT and others were misinformed, allegedly with intent, by TSPA, TESCHER, SPALLINA, TED and P. SIMON, that the beneficiary of the Policy(ies) was “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” at the time of SIMON’s death. Where they stated they had spoken to the carriers and were “friendly” with

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

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

116. That Jackson further asserts in Paragraph 20, “**Jackson is not aware whether the Bernstein Trust even exists,** and if it does whether its title is the ‘Simon Bernstein Insurance Trust dated 6/21/1995, Trust’ as captioned herein, or the ‘Simon Bernstein Trust, N.A.’, as listed as the Policy’s contingent beneficiary **(or otherwise)**, and/or if Ted Bernstein is in fact its trustee.” [emphasis added].

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

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

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

119. That TED then claims through his brother-in-law counsel that TED is the “trustee” of the “Bernstein Trust” and therefore trustee of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” Let this Court read their response without renaming the alleged “lost” “Simon Bernstein Insurance Trust dated 6/21/1995” as the renamed “Bernstein Trust” or any other abbreviation given, in order to clarify the matters and it then becomes apparent that a “lost” trust with no executed copies is attempting to make a claim for the Policy(ies), and where the lost trust was not even the beneficiary on the Policy(ies) at the time of SIMON’s death.

120. That this Court should note that no matter the name of the trust, if the trust is “lost” as alleged, how can anyone claim to be the “trustee” or be a “beneficiary” or know what the terms of the trust are with any certainty and why it is believed a “court order” was requested by the life insurance company HERITAGE.

121. That in their Answer to Jackson, in response to Jackson’s assertion 1, TED claims, “Ted Bernstein and “The Bernstein Trust” [emphasis added and note that The is within the quotations] admit that Jackson has tendered the death benefit to the court.” ELIOT states the “The Bernstein Trust” cannot make any claims or assertions in the pleadings when it has not been defined in the pleadings and thus does not exist.

122. That even if this "The Bernstein Trust" is a grammatical error in name used in the pleadings and it refers to the allegedly lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" defined as "Bernstein Trust" not "The Bernstein Trust" it would be unable to assert anything on anyone's behalf, as there are no apparent records of it and just best guesses as to who the trustees and beneficiaries are and where it is not even the final beneficiary according to Jackson.

123. That with all these confusing names and baseless claims asserted in this Lawsuit, Jackson did not just pay the claim on demand for breach of contract but instead filed a counter complaint and thus the third attempt to convert the Policy(ies) proceeds to the wrong beneficiaries has hit another "bump in the road."

124. That both D. SIMON and A. SIMON and the SLF law firm are conflicted from handling this Lawsuit and pleading in these matters, as D. SIMON would directly benefit from this scheme through conversion of the Policy(ies) proceeds to his wife and family directly, therefore neither his law firm or his brother, for similar conflicts, would be able to legally file this Lawsuit and thus may represent a knowing Abuse of Process.

125. That the failure to properly know whom the beneficiaries of the Policy(ies) are is primarily a result of TSPA, TESCHER and SPALLINA's failure to legally document the beneficiaries of the Policy(ies) and maintaining copies of the trusts and Policy(ies) or other necessary documents to prove the beneficial interests in lieu of not possessing the key documents when preparing and executing the estate plans of SIMON and SHIRLEY.



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

**COUNT I**

**FRAUD**

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



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

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

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

**COUNT II**

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

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

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

**COUNT III**

**LEGAL MALPRACTICE**

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

**COUNT IV**

**ABUSE OF LEGAL PROCESS**

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

  
Answer to Cross Claim

149. That this is a supplemental action for other civil claims for abuse of legal process by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

150. That Cross Defendant and Third Party Defendants have abused legal process to defraud Cross Plaintiff by misleading this court and others and filing this case without knowledge of Cross Plaintiff and against the advice of counsel and with knowledge of a different beneficiary designation than that they filed a death benefit claim for.

151. That as a result of the Cross Defendant and Third Party Defendants acts to Abuse Legal Process in order to perpetrate an alleged insurance fraud, Cross Plaintiff now suffer and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

**COUNT V**


**CIVIL CONSPIRACY**

152. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "151", as though fully set forth herein.

153. That this is a supplemental action for other civil claims for civil conspiracy by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

154. That Cross Defendant and Third Party Defendants have conspired together to defraud Cross Plaintiff by misleading this court and others regarding the beneficiary(ies) of the Policy(ies) , who they knew had direct beneficial interests in the Policy(ies)and filing this case without

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Answer to Cross Claim



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

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

### COUNT VI

#### CONVERSION OF PROPERTY

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

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

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

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

### COUNT VII

**NEGLIGENCE**

160. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "159", as though fully set forth herein.

161. At all times relevant herein, the Cross Defendant and Third Party Defendants, acting as trustees and representatives of Trusts and Insurance policies, had a duty to exercise reasonable care and skill to maintain the estate and to discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing of the state on behalf of SIMON and the beneficiaries.

162. In taking the actions alleged above, and in failing to take the actions as alleged above, the Cross Defendant and Third Party Defendants breached their duty of care and skill towards maintenance of the estate. Cross Defendant and Third Party Defendants have mismanaged the estate of SIMON and fraudulently created documents and allegedly forged them without having the legal authority and/or proper documentation to do so.

163. As a direct and proximate result of the negligence and carelessness of the Cross Defendant and Third Party Defendants as set forth above, Cross Plaintiff suffered general and special damages in an amount to be determined by this Court or at trial.

**RELIEF**

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

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

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

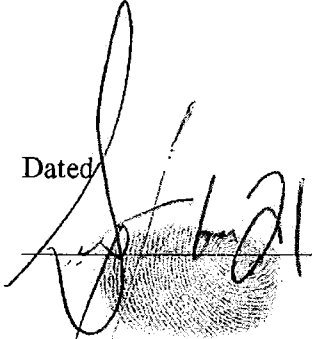




further representing any parties, sanctioned and forced to retain non conflicted counsel further in these proceedings.

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

Dated

  
\_\_\_\_\_  
2013

Respectfully submitted,

  
/s/ Eliot I. Bernstein

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

  
\_\_\_\_\_  
137-0117  
Answer & Cross Claim

**Certificate of Service**

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

**US Mail and Email**

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

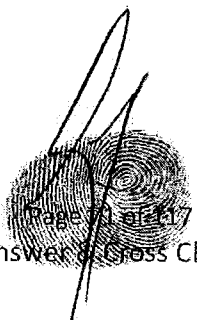
Donald Tescher, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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

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

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

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

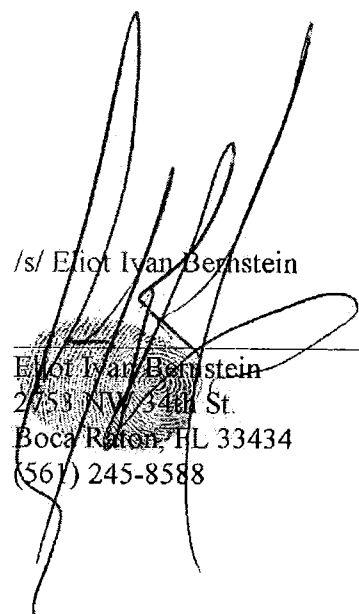
  
Page 72 of 117  
Answer & Cross Claim

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

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

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

/s/ Eliot Ivan Bernstein



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

## **Exhibit 27**

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Counter-Plaintiff, )

v. )

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

Counter-Defendant )

and, )

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

Third Party Defendants )

Case No. 13 cv 3643

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

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and )

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

Third Party Defendants )

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

Intervenor. )

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

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

### INTRODUCTION

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

### PARTIES AND JURISDICTION

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

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

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

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

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

## BACKGROUND

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

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

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

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

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



(Dkt. No. 17 at ¶20).

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

12. Plaintiff cannot prove the existence of a Trust document; cannot prove that a trust was ever created; thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy proceeds are payable to Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent's estate for administration and distribution).

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

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

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

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

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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

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

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

LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

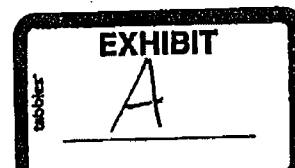
WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

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

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

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

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



Illinois),

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

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

**SIGNED & DATED**

Martin Colin, Circuit Judge  
March 1, 2014

**JUDGE MARTIN H. COLIN**

Copies furnished to:

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

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

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

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

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: 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. ~~Whereas the co-Personal Representatives, from the date of this order to the appointment of a successor fiduciary,~~ <sup>BY MARCH 4, 2014</sup> <sup>(AKC)</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.

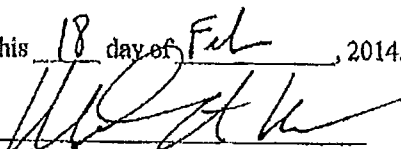
3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

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.

  
Circuit Judge

cc: Parties on attached service list

*WAK*  
"THE COURT RESERVES 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.

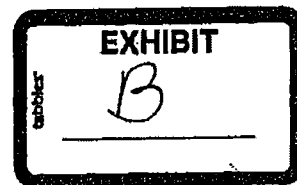
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

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

RLS/km

Enclosures





FROM: Peter M. Feaman P.A, 7345654 TO: 2741418 05/23/2014 10:43:41 #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.




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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:
- Alon Rose, Esq., PAGE, MRACHIEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com)
  - John Pankowski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [john@pankowskilawfirm.com](mailto:john@pankowskilawfirm.com)
  - Peter M. Forman, Esq., PETER M. FBAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@pformanlaw.com](mailto:service@pformanlaw.com)
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  - 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)

**Exhibit 28**

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

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

Plaintiff, )

v. )

Case No. 13 cv 3643

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

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

Defendant. )

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

Counter-Plaintiff, )

v. )

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

Counter-Defendant, )

and, )

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

Third-Party Defendants. )

**JACKSON'S (1) ANSWER TO COMPLAINT AND (2) COUNTERCLAIM  
AND THIRD-PARTY COMPLAINT FOR INTERPLEADER**

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

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

**ANSWER**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: Jackson admits the allegation of this paragraph.

12. Following Simon L. Bernstein's death, the Bernstein Trust, by and through its counsel in Palm Beach County, FL, submitted a death claim to Heritage under the Policy including Simon L. Bernstein's death certificate and other documentation.

ANSWER: Jackson admits the allegation of this paragraph.

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

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

14. Heritage has breached its obligations under the Policy by refusing and failing to pay the Policy's death benefits to the Bernstein Trust as beneficiary of the Policy despite Heritage's receipt of due proof of the Insured's death.

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

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

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

16. As a direct result of Heritage's refusal and failure to pay the death benefits to the Bernstein Trust pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.

ANSWER: Jackson denies the allegation of this paragraph.

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

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

### INTRODUCTION

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

### PARTIES AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **FACTS**

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

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

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

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

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

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

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

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or the "Simon Bernstein Trust, N.A.", as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

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

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

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

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

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

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

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

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

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

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

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY,**

By: /s/ Alexander D. Marks

One of Its Attorneys

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



**CERTIFICATE OF SERVICE**

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

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

/s/ Alexander D. Marks

1434759.1

**Exhibit 29**

**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 )

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

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. )  
\_\_\_\_\_ )

**AFFIDAVIT OF DON SANDERS**

1. I, Don Sanders, am a resident of the City of Mansfield, County of Tarrant, State of Texas and am over the age of 18. If I were called and sworn as a witness in this matter I could competently and voluntarily testify to the facts set forth in this Affidavit.
2. When I use the term Capitol Bankers, I mean Capitol Bankers Life Insurance Company.
3. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
4. When I use the term "Jackson" I mean Jackson National Life Insurance Company.
5. When I use the term "Insurer", I mean the life insurance company that was the insurer of the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
6. When I use the term "Policy" herein, I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
7. When I use the term "Insured", I mean Simon Bernstein.
8. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
9. When I use the term "Policy Proceeds", I mean either the amount that was payable by the Insurer under the Policy upon the death of the insured and/or the amount that was actually paid by the Insurer to the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
10. When I use the term "Policy records", I mean the records of the Insurer relating to the Policy as produced by Jackson during the Litigation.
11. When I use the term "Litigation", I mean the above-captioned litigation.
12. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
13. I am currently employed as Assistant Vice-President of Operations for Jackson.
14. I have been employed in Jackson's operations department for the past 11 years, and have been employed in the life insurance industry for approximately 32 years.

15. In my role as Assistant Vice President of Operations with Jackson, I have personal knowledge regarding the policy administration and death claim practices and procedures Jackson utilizes with regard to the Capitol Bankers Life Insurance Policy at issue.
16. I am aware that I am being presented as a witness pursuant to Fed. R. Civ. P. 30(b)(6), on behalf of Jackson in response to a Subpoena for Deposition served upon Jackson by the Plaintiffs in the above-captioned matter.
17. I am aware that pursuant to Rule 30(b)(6) my statements and this Affidavit shall be relied upon as the statements of Jackson, itself.
18. I have had access to counsel for Jackson with regard to my testimony and affidavit prior to having signed this Affidavit.
19. I understand that since Heritage paid the Policy Proceeds to the Registry of the Court, Heritage has been dismissed and is no longer a party to the Litigation.
20. I have no personal or business interest in the outcome of the Litigation including no interest in the determination by the court of the beneficiary(ies) of the Policy Proceeds.
21. No one from Jackson has any interest in the outcome of this Litigation including determination by the court of the beneficiary(ies) of the Policy Proceeds.
22. I have received no compensation from any party to the Litigation in exchange for my testimony.
23. The Policy was issued by Capitol Bankers in 1982.
24. In June 1998, Capitol Bankers was acquired by Swiss Re Life & Health America, Inc.
25. In May of 2000, Capitol Bankers entered into a one hundred percent Coinsurance/Administrative Reinsurance Agreement with Reassure America Life Insurance Company.
26. In May 2000, one hundred percent of stock of the Capitol Bankers was sold to Annuity & Life Reassurance.
27. In December of 2000, Capitol Bankers changed its name to Annuity & Life Reassurance America, Inc.

28. In August 2005, Annuity & Life Reassurance America, Inc. was acquired by Wilton Re Group.
29. In August 2008, Annuity & Life Reassurance America, Inc. changed its name to Heritage Union Life Insurance Company.
30. In 2012, Jackson acquired and merged Reassure America Life Insurance Company into Jackson, and as a result, Jackson became administrator and reinsurer of the Policy.
31. Since at least 2000, Jackson (and/or its predecessor Reassure America Life Insurance Company) has been in possession of the Policy records.
32. I have personal knowledge regarding the record-keeping procedures and practices utilized by Jackson with regard to its administration of the Policy and others like it.
33. I have reviewed and made myself familiar with the Policy records.
34. The Policy records start with bates no. JCK000001 and end at bates no. JCK001275. I have reviewed these bates-stamped records, and can attest that the bates-stamped records are a true, accurate and complete set of the Policy records in Jackson's possession pertaining to the Policy.
35. The Policy records do not contain an original or executed duplicate of the Policy, which was issued in 1982.
36. The Policy records do include a specimen policy form, a copy of the Insured's application, and copies of the schedule pages that were included with the original Policy.
37. Also, the Policy records do not include:
  - (a) an original or copy of the "S.B. Lexington Employee Death Benefit Trust"; or
  - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
  - (c) any purported trust named the "Simon Bernstein Trust, N.A."
38. Bates no. JCK001099 to JCK001117 is a Capitol Bankers Life Insurance Company specimen policy form of the Capitol Bankers whole life insurance product referred to as "Current Value Life". This specimen policy is a sample of the policy form issued on the life of Simon Bernstein as Policy No. 1009208 (the "Policy").
39. This specimen policy form contains the same policy language that is contained in Policy No. 1009208. The only pages that are different are pages that relate to the variable policy

specifications that pertain primarily to Simon Bernstein's age, underwriting classification, sum insured and statement of policy costs and benefits.

40. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million.
41. The Policy is a whole life, flexible premium, life insurance contract, which is a type of policy that builds cash value as premium payments are made.
42. The Insurer will deduct the monthly cost of insurance charges from any existing cash value in the Policy, but when the cash value is insufficient to cover the cost of insurance, then the Policy will go into a grace period and eventually lapse if no premium payment is made. A brief summary description of these features of the Policy are contained in a letter from the Insurer dated November 9, 2010, to the Owner. (Bates No. JCK000131).
43. If premium payments are not made according to schedule, or Policy loans are taken against the cash value, this reduces the cash value which negatively impacts the Policy's performance and eventually results in a reduction in the Policy proceeds.
44. The Policy records indicate that premiums were not made according to schedule, and Policy loans occurred with regard to the Policy such that at the time of the Insured's death, the net death benefit payable by the Insurer was \$1,689,070.00 (the "Policy Proceeds").
45. Bate stamp no. JCK001252-JCK001258 is a financial history report that is titled "Financial Activity from Issue."
46. On page JCK001258, the financial history report indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00.
47. I have reviewed the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry"), and according to the receipt the Policy Proceeds, a total of \$1,703,567.09, was deposited by the Insurer to the Registry on June 26, 2013. This deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. (Bates No. BT000106)
48. Part I of the Policy application is contained in the Policy records as Bates No. JCK000419. The owner and beneficiary sections of Part I set forth the initial policy owner and beneficiary(ies) of the Policy.



49. According to Part I of the application, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".
50. Also according to Part I of the application, the beneficiary was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".
51. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (JCK000419).
52. Bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy No. 1009208 was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million.
53. Bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982.
54. On or about November 7, 1989 the Insurer acknowledged a change of ownership designating United Bank of Illinois as trustee. (JCK000811). This first change of trustee likely occurred as early as July 6, 1983, because the Insurer received and recorded a Request Letter making this same change in trustee. (JCK000935)
55. On or about June 5, 1992, a letter submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (Bates No. JCK000365).
56. On or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
  - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
  - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary.

57. Though the name of the Trust on the Request Letter was set forth as stated in Par. 30(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (Bates No. JCK000370, JCK000372, JCK000514, JCK000554, 599, 601).
58. As a matter of standard policy and procedures at Jackson and as set forth in the Policy itself, the designation of the Owner and Beneficiary is governed by the Request Letter or Direction of the Owner and not by how the name of the owner or beneficiary is input by employees into the Insurer's systems as part of policy administration.
59. In my experience in operations, Insurers' systems require employees to abbreviate names of owners and/or beneficiaries at times when the names contain too many characters for the Insurer's systems capabilities.
60. On November 27, 1995 Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries as referenced in Par. 56 above.
61. In April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (Bates No. JCK000560).
62. After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (Bates No. JCK000370).
63. Capitol Bankers Life Insurance Company acknowledged receipt of the "executed beneficiary change" in its correspondence to the Owner of the Policy dated November 27, 1995. (JCK000372).
64. According to Jackson's records, following the death of Simon Bernstein, Heritage or Jackson received competing claims to the death benefit proceeds. Jackson or Heritage received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a competing claim in the form of a letter from Eliot Bernstein either on his own behalf or on behalf of his children.

65. According to Jackson's records on the Policy, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
66. According to Jackson's records on the Policy, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
67. According to Jackson's records on the Policy, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
68. According to Jackson's records on the Policy, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
69. According to Jackson's records on the Policy, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy.
70. According to Jackson's records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary.
71. From my review of the records, and my experience in the industry and with Insurer database systems, it is evident that the name Simon Bernstein Trust, N.A. was either entered by an employee of the Insurer either as an abbreviation for the actual contingent beneficiary or in error. In any case, the document that contains the Owner's actual last beneficiary designation prior to the death of the insured is Bates No. JCK000601. In this document, the Owner designates Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as the contingent (or successor) beneficiary.
72. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Bates No. JCK000370 and JCK000372).
73. According to Jackson's records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (JCK000563 and 566).
74. According to Jackson's records, a company named Equifax conducted an interview in connection with the application and underwriting for the Policy. The Equifax report indicates that Simon Bernstein was interviewed on March 25, 1982. The report says on

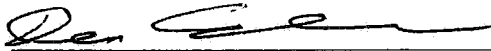
its face that it was prepared for Life Insurance Underwriting purposes only.  
(JCK001074).

75. Contained in the Equifax Report from Simon Bernstein's interview is the following description of the intended purpose of the insurance:  
"BENEFICIARY-PURPOSE OF INSURANCE: The beneficiary of this policy is First Arlington National Bank, S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (JCK001084).
76. Since the death of Simon Bernstein, Jackson (and "Heritage") has received notices of potential claims from the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95, and from Eliot Bernstein, purportedly on his own behalf and on behalf of his children. I am aware that a person named William Stansbury filed a petition to intervene in the above-captioned litigation but that his petition to intervene was denied by the court. I am aware that in Plaintiff's First Amended Complaint, that Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein have filed claims seeking imposition of a Resulting Trust and as such First Amended Complaint does represent additional potential claims to the Policy Proceeds.
77. The Policy records do not include any notices of claims from any of the following individuals or entities:
- a) The VEBA;
  - b) Any Bank Trustee of the VEBA;
  - c) Adam Simon;
  - d) David Simon;
  - e) The Simon Law Firm ; or
  - f) STP Enterprises, Inc.

78. I am unaware of any claims having been received by Jackson or Heritage as to the Policy proceeds from any persons or entities, other than those described in Par. 76 above.

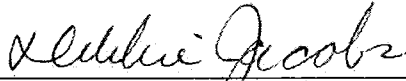
*FURTHER AFFIANT SAYETH NAUGHT.*

Dated: April 8, 2014

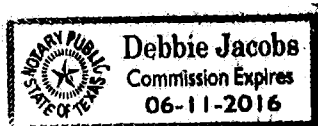


Don Sanders, Assistant Vice-President  
Jackson National Life Insurance Company

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 8th DAY OF APRIL, 2014.



NOTARY PUBLIC  
County of Dallas, TX



**Exhibit 30**

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 John Robert Blakey**  
**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 TED BERNSTEIN**



I, Ted Bernstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Boca Raton, County of Palm Beach, State of Florida and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My legal name is Ted Stuart Bernstein. I most often go by the name Ted Bernstein. I am also known as Ted S. Bernstein. I have also been referred to by the nickname "Theo" by friends and family.
3. I have been employed in the life insurance industry since 1980. I have been a licensed life insurance agent in Illinois since at least 1980, and in Florida since 2000.
4. When I use the term "Affidavit of Don Sanders" I mean that certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term “Policy Proceeds”, I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term “Proceeds on Deposit”, I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers’ Complaint for Interpleader.
15. When I use the term “Policy Records”, I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term “Litigation”, I mean the above-captioned litigation.
17. When I use the term “VEBA”, I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I am currently employed as President of Life Insurance Concepts, Inc. (“LIC”), a life insurance brokerage based in Boca Raton, FL.
19. I have been employed by LIC (or its predecessor) for the past 15 years, and have been employed in the life insurance industry for approximately 30 years.
20. From 2001 to 2012, my father, Simon Bernstein and I worked together at LIC, and shared office space in Boca Raton, FL.
21. Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (“Bernstein Trust”), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counter-defendant to the EB Claims. The Bernstein Trust is represented by counsel, Adam M. Simon.
22. Bank of America, N.A. (“Bank of America”), was named a party by virtue of Heritage’s counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014.
23. Eliot Bernstein (“Eliot”) was named a Party by virtue of Heritage’s counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well. Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter.

24. United Bank of Illinois, was named as a Third-Party Defendant in Heritage's counterclaim for Interpleader. United Bank of Illinois has never filed an appearance or answer.
25. I, Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. I am is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to the Eliot's Claims. I am the eldest of the five adult children of Simon Bernstein. I am represented by counsel, Adam M. Simon.
26. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (See ¶31 below).
27. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to the Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon.
28. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon.
29. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to the EB Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon.
30. Heritage is an Insurer as defined above. Heritage was terminated as a party on 2/18/2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court.
31. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan Chase Bank, N.A., as a successor to First Arlington National Bank (described above). J.P. Morgan Chase Bank, N.A. filed an answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation as party and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014.

32. William Stansbury filed a motion to intervene in this action, but his Motion to Intervene was denied and he was terminated as a non-party intervenor on January 14, 2014.
33. Adam M. Simon is counsel for the Bernstein Trust and the Consenting Children as defined below. Adam M. Simon is not counsel for Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims, and represents himself with regard to Eliot's claims. Adam M. Simon is the brother-in-law of Pamela Beth Simon, and the brother of David B. Simon.
34. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein and was named a Third-Party Defendant to Eliot's Claims. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. (*See Ex. 21*)
35. Donald R. Tescher, Esq. was named a Third-Party Defendant by virtue of the EB Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
36. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims on March 17, 2014.
37. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.
38. David B. Simon is the husband of Pamela Beth Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon.
39. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was voluntarily dissolved on April 3, 1998. (*See Ex. 9*).

40. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant to Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 upon dissolution of S.B. Lexington, Inc.
41. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
42. National Service Association, Inc. (Florida) was named a Third-Party Defendant to Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation and was dissolved in 2012. (*See Ex. 22*)
43. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation.
44. Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014.
45. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
46. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
47. Following the death of Simon Bernstein, I participated in and conducted diligent searches of Simon Bernstein's home, office and condominium all located in Palm Beach County, Florida. All of the records I located pertaining to the Policy and/or Bernstein Trust were turned over to Simon Bernstein's attorneys, whose names are Robert Spallina and Donald Tescher.
48. I am aware that the documents produced by Plaintiffs in this matter also contain documents located by David Simon and Pamela Simon in their offices in Chicago, Illinois.

49. As of the date of this Affidavit, no documents that I am aware of have been located and/or produced in this Litigation by any Party that appear to be the original Policy contract.
50. As of the date of this Affidavit, no documents that I am aware of have been produced in this Litigation by any Party that appear to be executed originals or executed copies of:
- (a) the "S.B. Lexington Employee Death Benefit Trust"; or
  - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
  - (c) any purported trust named the "Simon Bernstein Trust, N.A.".
51. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million. (*See Ex. 5 at Schedule Page, bates no. JCK001021*).
52. The Insurer produced a document that is titled "Financial Activity from Issue" and references the Policy number. (*See Ex. 1.*)
53. The financial activity report produced by Insurer indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00. (*See Ex. 1, at bates no. JCK0010201*).
54. Plaintiffs have submitted a copy of the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry") which reflects a deposit of the Policy Proceeds, a total of \$1,703,567.09 deposited by the Insurer on June 26, 2013. (*See Ex. 2*).
55. According to the receipt, this deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. I concur with the calculation of the Policy Proceeds and that the amount reflected on the receipt evidences the Insurers payment of the Policy proceeds pursuant to its Interpleader Action. (*See Ex. 2*)
56. According to the Part I of the application for the Policy, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (*See Ex. 3*)
57. According to Part I of the application, the beneficiary at issuance was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (*See Ex. 3*)
58. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (*See Ex. 3*)

59. During the application process, the Insurer conducted a routine underwriting investigation of Simon Bernstein prior to approving his policy. Part of that investigation was conducted by a company called Equifax, which is a company widely used in the insurance industry for underwriting investigations. In the Equifax report, the purpose of the insurance being provided by the Policy was stated as follows: "The beneficiary of this policy is the First Arlington National Bank, trustee of the S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (See Ex. 20)
60. In 1982, the year the Policy was issued, I shared office space with Simon Bernstein in Chicago, IL and can confirm that at that time, Simon Bernstein was employed by S.B. Lexington, Inc., which was a life insurance brokerage located in Chicago, IL.
61. In the early 1980's, while I was sharing office space with Simon Bernstein and S.B. Lexington, Inc., I was a licensed insurance agent and participated in the marketing of qualified employee benefit plans for closely held corporations. The plans were qualified as Voluntary Employee Benefit Associations under I.R.S. Code Sec. 501(c)(9). The S.B. Lexington VEBA was designed to insure the lives of S.B. Lexington employees and the ultimate beneficiaries of the death benefit was each insured employee's designated beneficiary.
62. Simon Bernstein whom was also a licensed insurance agent also marketed the VEBA Plans on behalf of S.B. Lexington, Inc.
63. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer to the insurance agent whom would then deliver it to the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
64. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.

65. A document produced by Plaintiffs is a copy of a form entitled S.B. Lexington, Inc. Employee Death Benefit Plan and Trust Beneficiary Designation for plan member, Simon Bernstein (the "VEBA Beneficiary Designation"). (See Ex. 4)
66. Having worked for my father and with my father for many years, I have seen his signature on a multitude of occasions and am very familiar with it. I recognize the two signatures on Ex. 4 as the signatures of my father, Simon Bernstein.
67. The VEBA Beneficiary Designation form is dated "8-26-95", and in it Simon Bernstein designates the "Simon Bernstein Irrevocable Insurance Trust" as his beneficiary to receive the death benefit under the VEBA. (See Ex. 4)
68. A document bearing bates no. JCK1098-JCK1117 produced by the Insurer is a specimen policy form for the Policy. On page JCK001099, the specimen policy includes the product name "CURRENT VALUE LIFE". A document produced by the Insurer bearing bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million. (See Ex. 5).
69. A document produced by the Insurer bearing bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982. (See Ex. 6).
70. On or about June 5, 1992, a letter was submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (See Ex. 7).
71. The Policy records indicate that on or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
- (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
  - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary. (See Ex. 8)



72. Though the name of the Trust on the Request Letter was set forth as stated in Par. 69(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (*See Ex. 8*)
73. On November 27, 1995, Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries. (*See Ex. 8*)
74. On April 3, 1998, S.B. Lexington was voluntarily dissolved. (*See Ex. 9*)
75. Upon the dissolution of S.B. Lexington, Inc., the VEBA was also dissolved and the ownership of the Policy was changed in April of 1998. According to the Policy Records and the Aff. of Don Sanders, in April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (*See Aff. of Don Sanders at ¶61 and Ex. 10*)
76. After reviewing the Policy Records, and the Affidavit of Don Sanders, I concur with Don Sanders that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (*See Ex. 8 and Aff. of Don Sanders, ¶56*)
77. According to the Insurer's pleading of its Interpleader Action, following the death of Simon Bernstein, the Insurer received conflicting claims to the death benefit proceeds. The Insurer received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a conflicting claim in the form of a letter from Eliot Bernstein. (*See Ex. 25 at p. 3*)
78. Eliot Bernstein's wife is named Candice Bernstein, and they have three children named Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein.
79. According to the Policy Records and Aff. of Don Sanders, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (*Aff. of Don Sanders at ¶65*)
80. According to the Policy Records and Aff. of Don Sanders, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (*Aff. of Don Sanders at ¶66*)
81. According to the Policy Records and Aff. of Don Sanders, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (*Aff. of Don Sanders at ¶67*)

82. According to the Policy Records and Aff. of Don Sanders, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (**Aff. of Don Sanders at ¶68**)
83. According to the Policy Records and Aff. of Don Sanders, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy. (**Aff. of Don Sanders at ¶69**).
84. According to the Policy Records, no Owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate”, “the Estate of Simon Bernstein” or “the Estate” as beneficiary.
85. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is “LaSalle National Trust, N.A., Trustee”, and the contingent beneficiary is “Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995”. (*See Aff. of Don Sanders at ¶72 and Ex. 8 all 4 pages*).
86. According to the Policy Records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (*See Aff. of Don Sanders and Ex. 11*).
87. According to the Policy Records and the Aff. of Don Sanders, the Insurer received no notices of claims from any of the following individuals or entities:
- a) The VEBA;
  - b) Any of the Bank Trustees of the VEBA;
  - c) Adam Simon;
  - d) David Simon;
  - e) The Simon Law Firm ; or
  - f) STP Enterprises, Inc.

(**See Aff. of Don Sanders at ¶77**).

88. In 1995, I was sharing office space with Simon Bernstein in Chicago, IL. My sister, Pam Simon, and brother-in-law, David Simon also shared office space with us. In the summer of 1995, Simon Bernstein discussed with me that he was forming a life insurance trust for the Policy, and that I would be named one of the trustees for the life insurance trust. He also indicated that my mother, Shirley Bernstein would be named the initial trustee.

89. Prior to Shirley Bernstein's passing on December 8, 2010, I had never been asked to exercise any powers on behalf of the Bernstein Trust as Trustee, and I believed that Shirley Bernstein was then acting as Trustee.
90. My father, Simon Bernstein, passed away less than two years after my mother, and during that time prior to Simon Bernstein's passing, I was not asked or required to exercise any powers as Trustee of the Bernstein Trust.
91. A copy of the Death Certificate of Simon Bernstein is attached hereto. (*See Ex. 12*).
92. In 2011, the Policy lapsed due to a missed premium payment.
93. In 2011, I assisted my father with completing the necessary paperwork and underwriting required by the Insurer to reinstate the Policy. (*See Ex. 13*).
94. Approximately one year before his death, my father took the necessary administrative steps and paid the required premium, and the Policy was reinstated by the Insurer. (*See Ex. 14*).
95. During the reinstatement process in 2011, my father reinstated the Policy without making any changes to the Owner and Beneficiary of the Policy.
96. On or about July 25, 2012, my father executed his last Will which has been filed and is being administered in Probate Court in Palm Beach County, Florida. A true and accurate copy of the Will as filed with the Clerk of the Court in Palm Beach County is included in Movant's Appendix to its Statement of Undisputed Facts. In his Will at ¶9, Simon Bernstein expressly reaffirmed his beneficiary designations made under any insurance contract. (*See Ex. 24 at ¶9*).
97. Following the death of my father, my sister, Pamela Simon, and brother-in-law, David Simon conducted searches of their office files and records, and David Simon located two unexecuted drafts of the Bernstein Trust in their offices. One of the unexecuted drafts was found on David Simon's computer database which dates back to 1990's when David Simon, Pamela Simon, and Simon Bernstein shared office space in Chicago, Illinois. **Ex. 15** includes a printout of metadata from the computer file for this draft of the Bernstein Trust indicating it was last modified on June 21, 1995. (*See Ex. 15 and Aff. of D. Simon*),
98. A second draft of the Bernstein Trust was located as a hard copy inside a file folder within the stored files of David Simon. (*See Ex. 16 and Aff. of D. Simon*).

99. According to the drafts of the Bernstein Trust, and the facts surrounding the execution of the Bernstein Trust by Simon Bernstein, as told to me by David Simon, I was appointed as successor trustee of the Bernstein Trust. (See **Ex. 15**, and **Ex. 16**, and **Aff. of D. Simon**.)

100. I am willing and competent and have been acting as Trustee of the Bernstein Trust in accordance with the intent of the Grantor, Simon Bernstein and with the authorization and consent of the Consenting Children.

101. Both drafts of the Bernstein Trust at Article Seven have virtually identical provisions regarding the distribution of the Policy Proceeds upon the death of Simon Bernstein. Both drafts of the Bernstein Trust provide as follows: "Upon my death, the Trustee shall divide the property of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These trusts shall be designated respectively by the names of my children." One of the drafts goes on to identify the five children by name. (See **Ex. 15** and **Ex. 16 at Article Seven**)

102. Simon Bernstein had five children, and all of them survived him. The five adult children of Simon Bernstein are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein.

103. The Five Children had a total of ten children, and as a result Simon Bernstein had ten grandchildren whose names, year of birth, and parent are as follows:

	<u>D.O.B.</u>	<u>PARENT</u>
i) Alexandra Bernstein	1988	Ted
ii) Eric Bernstein	1989	Ted
iii) Molly Simon	1990	Pam
iv) Michael Bernstein	1992	Ted
v) Max Friedstein	1996	Lisa
vi) Joshua Bernstein	1997	Eliot
vii) Carly Friedstein	1998	Lisa
viii) Jacob Bernstein	1999	Eliot
ix) Julia Iantoni	2001	Jill
x) Daniel Bernstein	2002	Eliot

104. In the draft of the Bernstein Trust attached hereto as **Ex. 15**, at Article Eight, the Five Children are each identified by name. None of the ten grandchildren's names appear in the document.

105. I have attached a diagram that illustrates Simon Bernstein's intention and plan to ensure that the Policy Proceeds were ultimately for the benefit of the Bernstein Trust. The diagram (**Ex. 17**) illustrates that in **Option A** had the Primary Beneficiary continued to exist at the time of Simon Bernstein's death, then by virtue of the VEBA Beneficiary Designation Simon Bernstein executed which named the Bernstein Trust as beneficiary of the VEBA Trust (**Ex. 4**), the Policy proceeds would have been paid from the Insurer to the VEBA Trust and distributed by the VEBA Trustee to the Bernstein Trust. (*See Ex. 17*)

106. In this case, as explained in ¶71 and ¶72 above, the VEBA ceased to exist in 1998, long before Simon Bernstein passed away. As a result there was no primary beneficiary in existence at the time the Insured's death. At the time of Simon Bernstein's death, the contingent beneficiary of the Policy was the Bernstein Trust. By naming the Bernstein Trust as Contingent Beneficiary, Simon Bernstein ensured that the Policy Proceeds would be paid to the Bernstein Trust whether or not the VEBA continued to exist. (*See **Option B** on Ex. 17*).

107. In addition to records relating to the Policy at issue, my sister Pamela Simon, located records relating to another life insurance policy issued by Lincoln Benefit Life on the life of Simon Bernstein in 1994 (the "Lincoln Policy"). This Policy was purchased through a life insurance brokerage known as STP Enterprises, Inc. which in the 1990's was co-owned by Simon Bernstein, Pamela Simon and David Simon.

108. This second policy was issued by Lincoln Benefit Life as policy no. U0204204 in June of 1994 with Simon Bernstein as the initial owner and insured (the "Lincoln Policy"). In August of 1995, the ownership of the Lincoln Policy was changed by Simon Bernstein to the Bernstein Trust. The Lincoln Benefit Life policy lapsed several years prior to Simon Bernstein's death. The transfer of ownership form contained the name of the Bernstein Trust and its tax identification number, identified Shirley Bernstein as trustee, and also contains the *witnessed signature* of Simon Bernstein. The Lincoln Policy lapsed in 2006 for non-payment of premium approximately six years prior to my father's passing.

109. The Consenting Children are all in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy and Policy proceeds:

- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
- b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children--Ted, Pam, Eliot, Jill and Lisa--to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:  
  
"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";
- l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:
  - i) First to the payment of attorney Adam M. Simon's fees and costs;
  - ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional

expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares;

- iii) The balance to be split equally among the five adult children of Simon Bernstein;
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received; and
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

110. Plaintiffs, the Bernstein Trust, Ted Bernstein as Trustee and the Consenting Children submit the following evidence of the existence and terms of the trust:

- a) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and the signature of the initial trustee, Shirley Bernstein. (*See Ex. 19*);
- b) The VEBA Beneficiary designation form containing the name of the Bernstein Trust and the signature of the grantor, Simon Bernstein. (*See Ex. 4*);
- c) The Policy beneficiary designation form designating the Bernstein Trust as the contingent beneficiary. (*See Ex. 8*);
- d) A copy of two unexecuted drafts of the Bernstein Trust Agreement (*See Ex. 15 and Ex. 16*).
- e) My Affidavit and the Affidavits of David Simon, and each of the four consenting children.
- f) The Affidavit provided by the Insurer, of Don Sanders, also references Policy records that confirm the designation of the Bernstein Trust as contingent beneficiary of the Policy.

g) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

h) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report, “normally those benefits are paid to family members.” (See Ex. 20).

111. Plaintiffs submit the following evidence of the terms of the Bernstein Trust, including its designated beneficiaries and trustees:

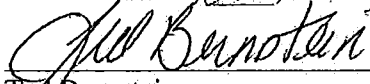
- a) The two unexecuted copies (one of which contains contemporaneous handwritten notes) of the Bernstein Trust Agreement;
- b) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).
- c) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and identifying the initial trustee, Shirley Bernstein. (See Ex. 19);
- d) Declarations or Affidavits of Ted Bernstein, David Simon, Pam Simon, Jill Iantoni, and Lisa Friedstein.
- e) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report of Simon Bernstein, “normally those benefits are paid to family members.” (See Ex. 20).



112. I agree to waive and do not claim any compensation for acting as Trustee of the Bernstein Trust, but I do reserve the right to claim reimbursement for any costs I incur such as legal, or accounting fees in connection with the final distribution.

***FURTHER AFFIANT SAYETH NAUGHT.***

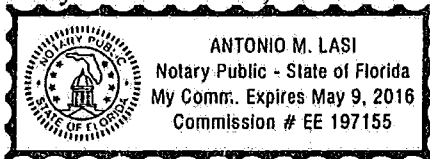
Dated: February 22<sup>th</sup>, 2015

  
\_\_\_\_\_  
Ted Bernstein

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 22<sup>nd</sup> DAY OF FEBRUARY, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC

County of Palm Beach, FL



## **Exhibit 31**

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 John Robert Blakey
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 PAM SIMON**

I, Pam Simon, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Chicago, County of Cook, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Pamela Beth Bernstein. My married name is Pamela Beth Simon or Pam Simon.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.

14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have reviewed the Affidavit of Don Sanders.
20. I have been a licensed insurance agent in the State of Illinois for at least 35 years. In the 1980's and early 1990's, I was located in the same business office as my father, Simon Bernstein.
21. In the early 1980's, I along with my father, Simon Bernstein and brother, Ted Bernstein, marketed and sold VEBA Death Benefit Plans wherein corporate benefit plans would purchase life insurance on employees, and the employees would name the ultimate beneficiary of their death benefit by completing a Plan and Trust Beneficiary Designation Form.
22. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer of the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
23. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.
24. In late December of 1982 at the time of Policy issuance and delivery, Simon Bernstein, the insured, resided and was domiciled in Glencoe, Illinois.

25. In the late 1980's my father, Simon Bernstein, my husband, David Simon and myself, co-owned a life insurance brokerage named STP Enterprises, Inc. ("STP") that was located in offices in Chicago, Illinois. I am currently the president of STP. STP was named a third-party defendant to Eliot's claims. STP is represented by counsel, Adam M. Simon.
26. One of the life insurance companies, STP represented was Lincoln Benefit Life Insurance Company. In the 1990's my father, Simon Bernstein applied for and purchased a life insurance policy issued by Lincoln Benefit Life. During a search of records located at our Chicago offices following the death of my father, Simon Bernstein, we located a file containing documents relating to the Lincoln Benefit Life Policy and Plaintiff has produced those documents in this litigation. (See Ex. 18).
27. Ex. 18 is Lincoln Benefit Life Request for Service form for Lincoln Policy #U0204204 (the "Lincoln Policy"). This form indicates that the insured and owner was Simon Bernstein and that ownership of the Lincoln Policy was being transferred to the "Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95", and includes the Tax ID for the trust, and the name of Shirley Bernstein as trustee. The document also contains the signature of my father, Simon Bernstein. I recognize my father's signature and have seen it on many occasions. Also, his signature was witnessed by former STP employee, Debbie Marsh, whose signature I also recognize. The document indicates it was received at Lincoln's Home Office and recorded on August 8, 1995. The Lincoln Policy lapsed for non-payment of premium in 2006, six years prior to Simon Bernstein's passing.
28. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
29. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
30. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.

31. On June 5, 1992, Sandy Kapsa (an employee of S.B. Lexington and an affiliated company, National Service Association, Inc.) submitted a letter to Capitol Bankers Life Insurance Company informing them that LaSalle National Trust was being appointed successor trustee of the VEBA. On June 17, 1992, the Insurer acknowledged the change of ownership listing the owner as LaSalle National Trust, N.A., as Successor Trustee. (*See Ex. 7*)
32. I concur with the statement of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995".
33. In 1995, David B. Simon, Ted S. Bernstein, Pam Simon, and Simon L. Bernstein all shared common office space at 600 West Jackson Blvd., Ste. 800, Chicago, IL 60606.
34. In 1995, my husband, David Simon and I created irrevocable insurance trusts with the assistance of attorneys from the firm of Hopkins and Sutter.
35. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named 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 Adoption Form adopted by my Employer." I recognize the signature on the VEBA Beneficiary Designation form as that of my father, Simon Bernstein. (*See Ex. 4*).
36. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved by its shareholder(s), and the VEBA was likewise terminated at this time. As a part of the dissolution, ownership of the Policy was changed from the VEBA to Simon Bernstein, Individually (*See Ex. 9*).
37. After the death of Simon Bernstein, David Simon and I, with the assistance of our employees, conducted a search of my offices and business records in Chicago, Illinois. We located two unexecuted drafts of the Bernstein Trust were located. We were unable to locate an executed original or copy of the Bernstein Trust. (*See Ex. 15 and Ex. 16*).
38. Based on the foregoing, I am in agreement regarding the following facts, and the intent of my father, Simon Bernstein, with regard to the Policy proceeds:
  - a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
  - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;



- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:
- “The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”.

l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

- i) First to the payment of attorney Adam M. Simon's fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

***FURTHER AFFIANT SAYETH NAUGHT.***

Dated: FEBRUARY 24<sup>TH</sup>, 2015

  
\_\_\_\_\_  
PAMELA SIMON

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 24<sup>th</sup> DAY OF FEBRUARY, 2015.

  
NOTARY PUBLIC  
County of Lake, IL



## **Exhibit 32**

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 John Robert Blakey  
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 DAVID SIMON**

I, David Simon, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Chicago, County of Cook, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My name is David B. Simon. I am also known by the nickname "Scooter". I am married to Pamela Simon and am the brother of Adam Simon. I am also the owner of The Simon Law Firm and a Co-Owner of STP Enterprises, Inc. I am represented by Adam Simon as is my wife, Pam Simon, The Simon Law Firm and STP Enterprises, Inc.
3. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
4. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
5. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
6. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
7. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
8. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
9. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
10. When I use the term "Insured", I mean Simon Bernstein.
11. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
12. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.

13. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
14. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
15. When I use the term "Litigation", I mean the above-captioned litigation.
16. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
17. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
18. I have also reviewed the Affidavit of Don Sanders.
19. I am an attorney licensed to practice in the States of California and Illinois. I have been a licensed insurance agent in the State of Illinois for over 25 years. In the late 1980's and early 1990's, I was located in the same business office as my father-in-law, Simon Bernstein.
20. In the late 1980's my father-in-law, Simon Bernstein, my wife, Pam Simon and myself, co-owned a life insurance brokerage named STP Enterprises, Inc. ("STP") that was located in offices in Chicago, Illinois.
21. One of the life insurance companies, STP represented was Lincoln Benefit Life Insurance Company. In the 1990's my father-in-law, Simon Bernstein applied for and purchased a life insurance policy issued by Lincoln Benefit Life. During a search of records located at our Chicago offices following the death of my father-in-law, Simon Bernstein, we located a file containing documents relating to the Lincoln Benefit Life Policy and Plaintiff has produced those documents in this litigation. (See Ex. 18).
22. Ex. 18 is a Lincoln Benefit Life Request for Service form for Lincoln Policy #U0204204 (the "Lincoln Policy"). This form indicates that the insured and owner was Simon Bernstein and that ownership of the Policy was being transferred to the "Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95", and includes the Tax ID for the trust, and the name of Shirley Bernstein as trustee. The document also contains the signature of my father-in-law, Simon Bernstein. I recognize my father in-law's signature and have seen it on many occasions. Also, his signature was witnessed by former STP employee, Debbie Marsh, whose signature I also recognize. The document indicates it was received at Lincoln's Home Office and recorded on August 8, 1995. (See Ex. 18)


23. In 1994, my wife and I retained an attorney at the law firm of Hopkins and Sutter in Chicago to help us prepare and execute an irrevocable insurance trust for our own estate planning purposes.
24. In 1995, Simon Bernstein came to me and expressed an interest in creating a life insurance trust for himself.
25. I created a sample insurance trust for Simon Bernstein and reviewed it with him. We agreed that Simon Bernstein should also use Hopkins and Sutter to finalize and execute his insurance trust. We also discussed that the insurance trust was for the benefit of his wife, and then his five children, and that he wanted to name his wife, Shirley as Trustee, and then either me, Ted or Pam as Successor Trustee. I suggested that he appoint Ted as the next trustee.
26. Simon Bernstein took a copy of the draft of the trust I provided and went to Hopkins and Sutter to execute his insurance trust.
27. I met again with Simon Bernstein after he had signed the trust, and I reviewed the executed Bernstein Trust Agreement and saw that he had removed me as a Successor Trustee. I also assisted Simon Bernstein with preparing forms for Lincoln Benefit Life to put ownership of the Lincoln Policy in the name of the Bernstein Trust.
28. After the death of Simon Bernstein, I conducted a search of my offices and records in Chicago, Illinois. I was able to locate a hard copy draft of the Simon Bernstein Irrevocable Insurance Trust in one folder, and this document contains some of my handwritten notes from one of my conversations with Simon Bernstein referenced above. (See Ex. 16).
29. With the help of my brother, Adam Simon, we also located a file on our computer database entitled "SITRUST". We were able to print this draft and the metadata of the file. The metadata indicated was last modified on June 21, 1995. The metadata also includes a "date created" date of September of 2004, but I know that the September of 2004 date relates to the creation of our new database when my offices updated our database servers. The SITRUST file was a pre-2004 file that was uploaded to our new database servers when we purchased and installed them in September of 2004. (See Ex. 15).
30. Once Simon Bernstein formed and executed the Simon Bernstein Insurance Trust Agreement, I assisted him and his wife, Shirley with obtaining a tax identification number for the Bernstein Trust. During the process of obtaining the tax identification number I prepared an IRS SS-4 form, which contains the name of the trust, the name of the trustee, the tax identification number, and the signature of Shirley Bernstein. (See Ex. 19).



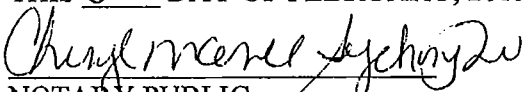
31. To the best of my knowledge and belief, Simon Bernstein took the original Bernstein Trust Agreement with him at the time he moved his offices from Chicago to Florida.

***FURTHER AFFIANT SAYETH NAUGHT.***

Dated: FEBRUARY 25, 2015

  
\_\_\_\_\_  
DAVID SIMON

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 25<sup>th</sup> DAY OF FEBRUARY, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC  
County of Cook, State of Illinois



## **Exhibit 33**

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 )

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

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. )

AFFIDAVIT OF JILL IANTONI

I, Jill Iantoni, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Highland Park, County of Lake, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Jill Bernstein. My married name is Jill Iantoni.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have also reviewed the Affidavit of Don Sanders.
20. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.
21. I concur with the statements of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995".
22. I concur with Ted Bernstein and the documentation submitted by Plaintiffs in support of our motion for summary judgment with regard to the existence and terms of the Bernstein Trust, and Ted Bernstein's role as trustee.

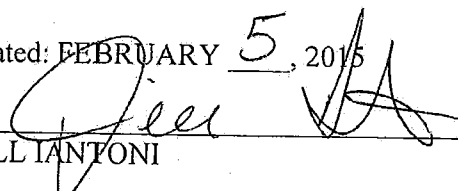
23. Based on the foregoing, I am in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy proceeds:
- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
  - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;
  - c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
  - d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
  - e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
  - f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
  - g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
  - h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
  - i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
  - j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee.
  - k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

“The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”.

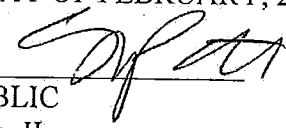
l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

- i) First to the payment of attorney Adam M. Simon’s fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

**FURTHER AFFIANT SAYETH NAUGHT.**

Dated: FEBRUARY 5, 2015  
  
\_\_\_\_\_  
JILL IANTONI

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 5 DAY OF FEBRUARY, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC  
County of Lake, IL





## **Exhibit 34**

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 )

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

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. )

**AFFIDAVIT OF LISA FRIEDSTEIN**

I, Lisa Friedstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Highland Park, County of Lake, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Lisa Bernstein. My married name is Lisa Friedstein.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have also reviewed the Affidavit of Don Sanders.
20. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.
21. I concur with the statements of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995".
22. I concur with Ted Bernstein and the documentation submitted by Plaintiffs in support of our motion for summary judgment with regard to the existence and terms of the Bernstein Trust, and Ted Bernstein's role as trustee.

23. Based on the foregoing, I am in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy proceeds:
- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
  - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;
  - c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
  - d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
  - e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
  - f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
  - g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
  - h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
  - i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
  - j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee.
  - k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

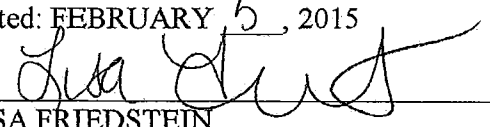
"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995".

l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

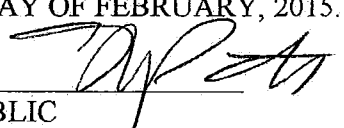
- i) First to the payment of attorney Adam M. Simon's fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

***FURTHER AFFIANT SAYETH NAUGHT.***

Dated: FEBRUARY 5, 2015

  
LISA FRIEDSTEIN

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 5 DAY OF FEBRUARY, 2015.

  
NOTARY PUBLIC  
County of Lake, IL



## **Exhibit 35**



THE UNITED STATES DISTRICT COURT  
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, )

)  
vs. ) No. 13 CV 3643

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

The deposition of DAVID SIMON, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Vicki L. D'Antonio, a certified shorthand reporter of the State of Illinois, at One East Wacker Drive, Chicago, Illinois, on the 5th day of January, 2015, at the hour of 2:18 p.m.

Reported by: Vicki L. D'Antonio, CSR, RPR  
License No. 084-004344

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APPEARANCES:

STAMOS & TRUCCO, LLP, by  
MR. JAMES J. STAMOS  
MR. KEVIN P. HORAN  
One East Wacker Drive  
Third Floor  
Chicago, Illinois 60601  
(312) 630-7979  
jstamos@stamostrucco.com  
khoran@stamostrucco.com

Representing the Plaintiff;

THE SIMON LAW FIRM, by  
MR. ADAM M. SIMON  
203 East Wacker Drive  
Suite 2725  
Chicago, Illinois 60601  
(312) 819-0730  
asimon21@att.net

Representing the Defendant.

ALSO PRESENT VIA TELEPHONE:

Ms. Joielle Foglietta  
Mr. Bill Stansbury  
Mr. Eliot Bernstein  
Honorable Amy J. St. Eve

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I N D E X

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NOTE: Exhibits retained by Mr. Adam Simon.

1 (Whereupon, the witness was duly  
2 sworn.)

3 DAVID SIMON,  
4 having been first duly sworn, was examined and  
5 testified as follows:

6 EXAMINATION

7 BY MR. STAMOS:

8 Q. Will you state your name, please.

9 A. David Bruce Simon.

10 Q. Have you been deposed before?

11 A. I have.

12 Q. And how many times?

13 A. I believe one or two.

14 Q. The first one that comes to mind -- the  
15 first one that -- bringing to mind the first  
16 deposition you can remember, what was it -- what  
17 did it involve?

18 A. I think I was deposed in a case  
19 revolving around a suit for disparagement in  
20 Kentucky.

21 Q. What was the name of the case?

22 A. Ernie -- David Simon and S.T.P.  
23 Enterprises versus Ernie Sampson and Kentucky  
24 Financial, I think, is the -- something like

1 that.

2 Q. What year was that?

3 A. I want to say the late '80s, early

4 '90s.

5 Q. Someone had said something unpleasant

6 about you and you sued them?

7 A. Not about me, no.

8 Q. About the company?

9 A. About the program.

10 Q. Was that litigation resolved?

11 A. It was.

12 Q. And how was it resolved?

13 A. Well, we lost at summary judgment, we

14 appealed, we lost, and then we entered into an

15 agreement with the individual to correct his

16 misassumptions about the program.

17 Q. Okay. When you said the program, what

18 are you referring to?

19 A. The Arbitrage Life Payment System.

20 Q. Is that something that still continues?

21 A. It does.

22 Q. And how -- who is it administered or

23 offered by?

24 A. S.T.P. Enterprises, Inc.

1 Q. There was a second deposition, was  
2 there?

3 A. ING -- Security Life of Denver.

4 Q. There was a lawsuit involving Security  
5 Life of Denver?

6 A. Correct.

7 Q. Who was the plaintiff and who was the  
8 defendant?

9 A. Life Plans, Inc. is the plaintiff.  
10 Security Life of Denver is the defendant.

11 Q. Is it a pending litigation?

12 A. It is.

13 Q. Where is it pending?

14 A. Northern District of Illinois.

15 Q. What is the nature of that case?

16 A. Breach of contract and tortious  
17 interference.

18 Q. Who is the plaintiff?

19 A. Life Plans.

20 Q. How are you related to Life Plans?

21 A. I'm on their board.

22 Q. And you're a party or you're just a  
23 member -- as a person with knowledge, you were  
24 deposed?

1 A. I'm also the general counsel. I don't  
2 own any of the company, though.

3 Q. Where are you currently employed?

4 A. S.T.P. Enterprises, Inc.

5 Q. Who owns that?

6 A. Fifty percent of it is owned by a trust  
7 that I control. Fifty percent of it is owned by  
8 a trust that Pam Simon controls.

9 Q. Pam Simon is who?

10 A. My wife.

11 Q. How long have you had that interest,  
12 the 50 percent interest that you control in  
13 S.T.P.?

14 A. I believe 2000.

15 Q. All right. And how did you come to  
16 possess that interest?

17 A. Bought it.

18 Q. From whom?

19 A. Which part?

20 Q. You tell me.

21 A. The first part was bought in from Dov  
22 Kahana, and the second part was bought from  
23 Simon Bernstein.

24 Q. 25 percent each part? I want to

1 know -- I'll back up.

2 The 50 percent that you control, was  
3 that -- was that obtained at the same time that  
4 Pam control -- obtained her 50 percent?

5 A. Yes.

6 Q. And each of you obtained what portion  
7 of your 50 percent from which of those people?

8 A. Half of it from Dov Kahana, half of it  
9 from Simon Bernstein.

10 Q. And what was the compensation paid for  
11 it?

12 A. For Dov Kahana?

13 Q. Okay.

14 MR. SIMON: I'm going to object as relevance.

15 THE WITNESS: I don't know the exact numbers,  
16 but it was six figures and release from any  
17 debts and obligations.

18 BY MR. STAMOS:

19 Q. How about to Mr. Bernstein?

20 MR. SIMON: Same objection.

21 THE WITNESS: Several million dollars.

22 BY MR. STAMOS:

23 Q. All right. When did you first start  
24 working with Mr. Bernstein?



1 A. In what capacity? Do you mean with --

2 Q. Any. Any capacity.

3 Okay. So did you -- at one point, were  
4 you in business with Simon Bernstein in any  
5 capacity?

6 A. Yes.

7 Q. When was the first time you were in any  
8 way associated with him?

9 A. Well, associated with him the first  
10 time was -- I don't know what you mean by  
11 associated, but the first time I was associated  
12 with him was that his daughter sold my father  
13 life insurance in, I believe, 1978. I was --

14 Q. His daughter Pam?

15 A. Yes.

16 Q. Okay.

17 A. When she updated the life insurance  
18 plan, that's the first time I met Simon  
19 Bernstein.

20 Q. Were you employed elsewhere at that  
21 time?

22 A. I was.

23 Q. Where were you employed?

24 A. I was employed at that -- I was

1 self-employed.

2 Q. Doing what?

3 A. Law.

4 Q. When did you graduate law school?

5 A. 1984.

6 Q. And what did you do following

7 graduation from law school?

8 A. Law.

9 Q. Where did you law [sic]?

10 A. First in California, and then within

11 about six months, Illinois.

12 Q. All right. When you came to work as a

13 lawyer in Illinois, where did you work?

14 A. For myself.

15 Q. What kind of law did you practice?

16 A. General corporate, mostly litigation.

17 Q. And have you ever been associated as a

18 lawyer with other lawyers?

19 A. When I first started in California,

20 yes.

21 Q. Other than that, have you always been

22 on your own?

23 A. I've had other lawyers work with me and

24 for me, but yes.

1 Q. Do you continue to practice law today?

2 A. I do.

3 Q. What kind of law do you practice?

4 A. Mostly, I would say I -- my practice is  
5 structured finance. However, I also service a  
6 handful of clients in whatever their needs are.  
7 I will maybe find another attorney to partner  
8 with if their expertise is needed or will handle  
9 it in-house.

10 Q. Are you on any boards of directors?

11 A. Yes.

12 Q. What boards of directors are you on?

13 A. For-profit companies?

14 Q. Any boards.

15 A. S.T.P. Enterprises, Life Plans, Inc.,  
16 Intervivos Foundation, Institutional Longevity  
17 Assets.

18 Q. What's that?

19 A. It's a limited liability company.  
20 And Institutional Pooled Benefits.

21 Q. The last one, what does that company  
22 do?

23 A. That owns a patent that pools death  
24 benefit.

1 Q. The entity you named before, that --  
2 the LLC, what does that company do?

3 A. That's the asset that promotes that  
4 pooling.

5 Q. And the company that was in litigation  
6 that you were on the board of, which one was it?

7 A. Life Plans?

8 Q. That's the last one you mentioned? Had  
9 you mentioned that in the list of boards? I  
10 didn't -- I didn't catch it. Okay.

11 A. Yes.

12 Q. What is its business, Life Plans?

13 A. Insurance agency.

14 Q. How much of your time do you currently  
15 spend practicing law as opposed to the other  
16 ventures in which you're involved?

17 A. The Simon Law Firm, I probably spend  
18 now probably 25 percent of my time.

19 Q. Did there come a time when you became  
20 professionally associated with Simon Bernstein?

21 A. As his attorney? Yes.

22 Q. I don't -- I don't -- I'm not sure what  
23 you're intending to leave out, but in any  
24 capacity, when is the first time you became

1 associated professionally with Simon Bernstein  
2 in any way?

3 A. 1986.

4 Q. And what was -- in what capacity was  
5 that?

6 A. Attorney.

7 Q. And how long did you serve as his  
8 attorney?

9 A. About ten years.

10 Q. So that would be about to '96?

11 A. Yes.

12 Q. At some point, did you become involved  
13 with him in the insurance business?

14 A. Yes.

15 Q. When was that?

16 A. 1987.

17 Q. In what capacity did you become  
18 involved with him in the insurance business in  
19 1987?

20 A. I wrote a documentation for a life  
21 insurance sales concept that had been originated  
22 by his brother.

23 Q. Who was his brother?

24 A. Norman Bernstein.

1 Q. Were they in business together at the  
2 time?

3 A. I believe they did share one common  
4 business.

5 Q. At some point, I take it you married  
6 his daughter?

7 A. I did.

8 Q. When was that?

9 A. July 3, 1988.

10 MR. STAMOS: Let's go off the record for a  
11 second.

12 (Whereupon, a discussion was had  
13 off the record.)

14 BY MR. STAMOS:

15 Q. All right. We were talking about his  
16 brother Norman, I guess, when he was -- you --  
17 you assisted him in preparing a document that  
18 defined a product he was going to offer? Is  
19 that what that was?

20 A. I prepared some transactional documents  
21 for a unique program to sell life insurance and  
22 a manner to pay for it.

23 Q. And did there come a time when you  
24 became involved in the actual life insurance or

1 insurance business as opposed to simply serving  
2 as a lawyer for his business?

3 A. Yes.

4 Q. When was that?

5 A. 1988.

6 Q. In what -- in what capacity did you --  
7 did you participate?

8 A. Owner of S.T.P. Enterprises.

9 Q. Right. What does that do? What do you  
10 do as the owner of S.T.P.?

11 A. Promote the Arbitrage Life Payment  
12 System as well as general life insurance  
13 brokerage.

14 Q. Can you describe for me this Arbitrage  
15 program you're talking about?

16 MR. SIMON: Object, relevance and --

17 BY MR. STAMOS:

18 Q. I don't need a long explanation. I  
19 just want to -- when you say it, I want to know  
20 what you're talking about.

21 A. It's a way to pay for life insurance  
22 using leverage.

23 Q. Okay. For example?

24 A. Borrow from a bank to pay the premiums.

1 Q. I see.

2 A. Although the individual doesn't borrow  
3 and there's some nuances to the program that are  
4 unique compared to standard premium finance.

5 Q. Now, in the course of your association  
6 with Mr. Bernstein, I know we're here talking  
7 about this life insurance policy. I want to  
8 designate it correctly so we don't get ourselves  
9 confused.

10 The Capitol -- was originally the  
11 Capitol Bankers Life policy, you know what  
12 I'm -- you know what policy I'm talking about,  
13 correct?

14 A. I do.

15 Q. Are you aware of any other insurance  
16 policies that ever existed that insured the life  
17 of Simon Bernstein or his wife?

18 A. I am.

19 Q. Okay. Tell me what other policies  
20 you're aware of.

21 A. Lincoln Benefit Life, Inter-Ocean Life.

22 Q. And were benefits paid on those two  
23 policies after his death?

24 A. Not to my knowledge.



1 Q. Were they in force at the time of his  
2 death?

3 A. Not to my knowledge.

4 Q. And how are you aware that they  
5 existed?

6 A. The Lincoln Benefit Life was paid for  
7 through the Arbitrage Life Payment System, so I  
8 participated in the closing of that policy.

9 Q. What was the benefit on that?

10 A. I believe \$200,000.

11 Q. And the Ocean, Inter-Ocean Life policy,  
12 how were you aware of its existence?

13 A. From Simon.

14 Q. He told you it existed?

15 A. Yes.

16 Q. What was the -- what was the benefit on  
17 that policy?

18 A. I'm not a hundred percent sure, but it  
19 is my belief that it was a million dollars.

20 Q. And what years -- what year was it  
21 initiated?

22 A. I don't know. Sometime in the '70s or  
23 early '80s, I believe.

24 Q. Was it a term policy?

1 A. I don't know.

2 Q. How did you come to learn about it?

3 A. Discussing with him his life insurance.

4 Q. When did you first become aware of the  
5 Capitol life policy?

6 MR. SIMON: Objection just to form. I think  
7 we need to --

8 BY MR. STAMOS:

9 Q. Capitol Bankers Life policy. I'm  
10 sorry.

11 I'll restate the question.

12 When did you first become aware of the  
13 Capitol Bankers Life policy?

14 A. I believe sometime in the mid '80s.

15 Q. Do you know what year it was initiated?

16 A. The policy?

17 Q. Yeah.

18 A. I know only from looking at records.

19 Q. And so what do you know from looking at  
20 records?

21 A. 1982.

22 Q. Okay. What -- when was the first time  
23 you ever discussed that policy with Simon?

24 A. I don't know if a first time I remember

1 discussing it with Simon is so much as learning  
2 about the VEBA, because one of the things that  
3 was done was file the 5500s for the death  
4 benefit VEBA at S.B. Lexington, and so sometime  
5 in the mid '80s, I became aware of the 5500, and  
6 that it had to do with the policy, I believe I  
7 learned through Richard Klink, who was Simon  
8 Bernstein's partner in S.B. Lexington.

9 Q. Tell me what the 5500 is.

10 A. It's a form, tax filing form.

11 Q. And that's filed in order to obtain the  
12 tax benefits that relate to the VEBA?

13 A. It's a -- yes, in part.

14 Q. What is it --

15 A. It's some -- it's a -- you know, just  
16 like any benefit plan. You file a 5500.

17 Q. I'm not asking very good questions.

18 What was your role in dealing with that  
19 is, I guess, what I'm trying to get at. Why did  
20 you -- why did you become aware of it?

21 A. Mr. Klink showed it to me, told me  
22 about the process he went through to file the  
23 form. My father's company also had to do the  
24 same thing for his policy.

1 Q. Was your father's company in any way  
2 related to Mr. Bernstein's companies?

3 A. Not at all.

4 Q. What did you learn about the policy at  
5 that time when you first learned its existence  
6 when Mr. Klink showed you the 5500?

7 A. It was a policy on Simon's life, owned  
8 by the VEBA, and the beneficiary was the VEBA.

9 Q. What's the next thing you -- strike  
10 that.

11 After being told about its existence by  
12 Mr. Klink, what's the next time you ever  
13 conversed with anyone about it?

14 A. Well, probably conversed annually about  
15 the policy because we would get annual  
16 statements.

17 Q. What was the face policy -- I'm sorry.

18 What was the face amount of the policy?

19 A. When originally applied for?

20 Q. Yeah.

21 A. I believe \$2 million.

22 Q. Did it ever change?

23 A. There was borrowings against the  
24 policy, so the death benefit was reduced.

1 Q. Did the face amount ever -- ever  
2 change?

3 A. Face amount changes.

4 (Whereupon, a discussion was had  
5 off the record.)

6 THE COURT: Let's go on the record, then, so  
7 this is clear.

8 So Mr. Simon, what is the basis of your  
9 objection to having Mr. Stansbury present? Is  
10 he physically present or listening in?

11 MR. SIMON: This is Adam Simon. Our  
12 objection is he's a nonparty to this case and  
13 he's a potential witness, and I believe under  
14 the witness exclusion rules, I think it's 615,  
15 he should not be permitted to listen in on this  
16 deposition, much less participate.

17 THE COURT: And is he physically there or  
18 listening in on the phone?

19 MR. STAMOS: Listening in, Judge.

20 THE COURT: Okay.

21 MR. STAMOS: Yeah. Actually, what we -- what  
22 we did was we asked him if we could exclude him,  
23 pending your call, which we've done, so he  
24 hasn't -- he hasn't heard any of the deposition.

1 THE COURT: Okay.

2 MR. STAMOS: And he -- if I may say, Judge,  
3 he became involved because he asked the -- my  
4 client, the estate, if he could attend, and they  
5 were willing to have him attend, and I don't  
6 think that witness exclusion rules would apply  
7 to a -- to a deposition, which, of course, he  
8 could read when it's done anyway, so I don't --  
9 I don't think that there are any rules that  
10 would prevent him from listening, and he  
11 certainly may not participate. We don't -- we  
12 don't -- he won't be allowed to participate.

13 THE COURT: And Mr. Simon, what's the  
14 prejudice of having him present?

15 THE WITNESS: I just don't believe he's  
16 entitled to be present, and from my quick  
17 reading online, the witness exclusion rules do  
18 apply to depositions, and I don't want his  
19 testimony to be tainted by listening in or  
20 possibly, you know, participating with counsel's  
21 questioning of our witness.

22 THE COURT: If that's the basis of your  
23 objection, that is overruled because the witness  
24 exclusion under Rule 615 does not apply to

1 depositions. Rule 30C specifically says that.  
2 It provides that deposition testimony should  
3 proceed as if at trial, and the Federal Rules of  
4 Evidence apply except for Rules 103 and 615, so  
5 Rule 615 does not apply.

6 Your objection is overruled and he may  
7 be present. He, of course, may not participate.  
8 I will accept your representation with that, but  
9 he may be present, listening in on the  
10 deposition.

11 MR. SIMON: Okay.

12 THE COURT: So you should proceed forward and  
13 he can listen in.

14 MR. SIMON: Thank you, your Honor.

15 MR. STAMOS: Thanks, your Honor.

16 THE COURT: Thank you.

17 MR. STAMOS: Appreciate it.

18 THE COURT: Bye.

19 (Whereupon, a discussion was had  
20 off the record.)

21 BY MR. STAMOS:

22 Q. What I'm asking is the -- I understand  
23 that the -- maybe I'm not using the terminology  
24 correctly.

1           Was there ever a time that the stated  
2           benefit of the policy was other than \$2 million?  
3           I understand that the amount to be paid would  
4           have varied based upon loans, but was there ever  
5           a time that it was other than \$2 million or  
6           greater than \$2 million?

7           A. I don't think I can answer the  
8           question.

9           Q. Why not?

10          A. Because I don't understand what you're  
11          saying.

12          Q. Okay. I buy an insurance policy. It  
13          says a million dollars on it, a million dollars  
14          of life insurance. I understand that there are  
15          instances in which the payment of a million upon  
16          someone's death might be reduced due to  
17          intervening events, but the million -- piece of  
18          paper still says a million on it, right?

19          Okay. Now, my question is: With  
20          regard to the policy of '82, which is policy  
21          No. 1009208, I think we can all agree that's  
22          what it is, was there ever a time that the face  
23          amount of that policy was ever greater than  
24          2 million?



1 A. Not to my knowledge.

2 Q. All right. Are you aware at any point  
3 at which an application was made to increase the  
4 benefit amount from 2 million to 3 million?

5 A. Not to my knowledge.

6 Q. All right. So back to the -- you said  
7 that there would be a discussion, likely  
8 annually, about the -- about the policy. I take  
9 it that would be because you'd have to file an  
10 annual 5500?

11 A. Yes.

12 Q. All right. Other than that, when is  
13 the next time you recall a -- strike that.

14 When was the first time you talked to  
15 Simon Bernstein about the existence of that  
16 policy, other than Mr. Klink?

17 A. 1987.

18 Q. All right. Who was present for that  
19 conversation?

20 A. Dov Kahana, myself, and Mr. Bernstein.

21 Q. And Dov Kahana was Mr. Bernstein's  
22 business partner?

23 A. In one of his businesses, yes.

24 Q. Okay. In which business?

1 A. Cambridge Associates.

2 Q. What was the business of Cambridge  
3 Associates?

4 A. General insurance brokerage, I believe.

5 Q. Okay. What was the occasion for  
6 discussing the 1982 policy?

7 A. Simon Bernstein was significantly in  
8 debt and did not have the money to pay the  
9 premium.

10 Q. Okay. What was the premium? Do you  
11 recall?

12 A. No.

13 Q. And who said what to who in that  
14 conversation about that topic?

15 A. Simon said to Dov we have to pay the  
16 premium.

17 Q. Anyone else say anything in that  
18 conversation?

19 A. I'm sure, but that was the gist of the  
20 conversation.

21 Q. All right. What -- what came from  
22 that?

23 A. I believe either the premium was paid  
24 or they started to borrow against the cash value

1 to pay the premium.

2 MR. STAMOS: Bill, is that you?

3 MR. STANSBURY: I'm here.

4 MR. STAMOS: Got it.

5 MR. STANSBURY: Thank you.

6 BY MR. STAMOS:

7 Q. And at that time when you first spoke  
8 to him -- Mr. Bernstein about it, were you aware  
9 of who the beneficiary was? Was it still the  
10 VEBA as far as you knew?

11 A. Yes.

12 Q. Did you become aware at any point of a  
13 change in beneficiary?

14 A. Yes.

15 Q. When was that?

16 A. Sometime around 1995.

17 Q. And from whom and to whom was the  
18 beneficiary changed?

19 A. Beneficiary was still the VEBA and a  
20 contingent beneficiary was named as the  
21 irrevocable life insurance trust.

22 Q. How did you become aware of that in  
23 1995?

24 A. Saw the change of beneficiary forms,

1 helped Mr. Bernstein design the trust, and  
2 signed off on the change of forms.

3 Q. Do you do trust work? Do you prepare  
4 trusts?

5 A. I have. I don't regularly, no.

6 Q. All right. You're aware that there was  
7 a -- that the claim here is that a 1995 trust  
8 existed, correct?

9 A. I know a 1995 trust existed.

10 Q. Did Mr. -- prior to the -- to 1995 or  
11 prior to the date designated as the date of the  
12 reported trust of '95, did Mr. Bernstein ever  
13 have another trust, prior trust?

14 A. Yes.

15 Q. Okay. What year was that trust?

16 A. The VEBA trust was, I believe, in the  
17 early '80s.

18 Q. Did he ever have any other trusts that  
19 you're aware of?

20 A. Subsequent to that or prior?

21 Q. Prior to 1995.

22 A. Not that I'm aware of.

23 Q. Tell me the first time you ever had a  
24 conversation with Mr. Bernstein about a trust in

1 1995.

2 A. We discussed his making application for  
3 additional death benefit. My wife and I had  
4 just completed our own irrevocable life  
5 insurance trusts and made applications to  
6 Lincoln Benefit. He wished to get more  
7 insurance. That was the first time.

8 Q. Okay. And when you say more insurance,  
9 what insurance are you talking about? Are you  
10 talking about adding the Lincoln Benefit policy?

11 A. More death benefit.

12 Q. On the Capitol Bank -- Bankers policy?

13 A. No. No, a new policy. More death  
14 benefit for himself --

15 Q. Okay.

16 A. -- for -- on his life.

17 Q. All right. Did he do that?

18 A. Yes.

19 Q. And what company did he obtain that  
20 insurance from?

21 A. Lincoln Benefit Life.

22 Q. Okay. That's the one you told me about  
23 earlier?

24 A. Yes.

1 Q. Okay. And that's -- when you say he  
2 owned another policy, you're saying that's a  
3 policy that he -- that he initiated in 1995?

4 A. I believe that's the date.

5 Q. All right. And that's the policy that  
6 you believed was not in force at the time of his  
7 death?

8 A. I believe that's correct.

9 Q. And you think he added \$200,000 to the  
10 death benefit?

11 A. I think the policy had a face amount of  
12 \$200,000.

13 Q. Okay. Why did he want -- if he had a  
14 policy that paid 2 million, why did he -- why  
15 did he want 10 percent more?

16 MR. SIMON: Objection for speculation.

17 BY MR. STAMOS:

18 Q. Why?

19 A. I know he was trying to get as much  
20 death benefit as he could. He was uninsurable  
21 up until that point, and I believe this was a  
22 highly rated policy also.

23 Q. All right. So tell me the first time  
24 you and Mr. Bernstein had a conversation about

1 the trust. What did you say to him and what did  
2 he say to you?

3 MR. SIMON: Can I just make a general point?

4 MR. STAMOS: Yeah.

5 MR. SIMON: There's -- there's so many

6 Mr. Bernsteins here that I think it's best if

7 you --

8 MR. STAMOS: That's fine.

9 MR. SIMON: Yeah.

10 MR. STAMOS: I have no problem.

11 BY MR. STAMOS:

12 Q. With regard to the 1995 trust that is  
13 referred to in the complaint, in your complaint,  
14 when was the first time you ever had a  
15 conversation with Simon Bernstein about that?

16 A. 1995.

17 Q. And what did you say to him and what  
18 did he say to you in the course of that  
19 conversation?

20 A. It's privileged. I was acting as his  
21 attorney at that time.

22 Q. So you were acting as his attorney with  
23 regard to the trust?

24 A. In the first conversation, yes.

1 Q. Now, wait a minute.

2 A. Subsequently, I do not, but --

3 Q. Now, wait a minute. Let's get

4 organized here.

5 There's a complaint that's filed

6 describing your interactions with Mr. Bernstein

7 about that trust, which I assume you plan to

8 testify about?

9 A. Absolutely.

10 Q. But you're going to not testify about

11 the start of those conversation -- the first of

12 those conversations?

13 A. You know, in general, you asked me very

14 specific questions about what did he say and

15 what did I say.

16 Q. Right.

17 A. So in the first conversation, yes, he

18 came to me as an attorney, so I -- it's

19 privileged conversation.

20 Q. When did it stop being privileged?

21 A. Right after the first conversation.

22 Q. What made it stop being privileged?

23 A. I said I wouldn't act as his attorney

24 regarding the trust.



1 Q. Isn't what you told me just now  
2 privileged?

3 A. No.

4 Q. Why not?

5 A. Because I said it after we discussed  
6 it.

7 Q. Who else was present for this  
8 conversation?

9 A. Just himself and I.

10 Q. Well, I take it you're going to refuse  
11 to answer questions with regard to that  
12 conversation, based upon privilege?

13 A. The first conversation.

14 Q. I'm sorry, I don't mean to be clever,  
15 but explain to me again how that remains  
16 privileged and -- and --

17 A. It's where I'm not acting as an  
18 attorney for him, it's not privilege. It's his  
19 privilege to assert.

20 Q. Does it -- does it survive his death?

21 A. As far as I understand, it does.

22 Q. And it can be waived by the estate?

23 A. Don't know.

24 MR. STAMOS: Does the estate have an

1 objection to Mr. Simon testifying about that  
2 conversation?

3 MS. FOGLIETTA: Can you repeat that? It's a  
4 little hard to hear.

5 MR. STAMOS: Yes. I've asked Mr. Simon about  
6 the first conversation he had with Simon  
7 Bernstein about the trust alleged to exist in  
8 the complaint, and Mr. Simon has asserted a  
9 privilege based upon -- an attorney-client  
10 privilege with Mr. Bernstein regarding that  
11 first conversation.

12 I don't frankly remember the law on  
13 whether that privilege survives his death, but  
14 assuming that it does, I believe the estate can  
15 waive it, the estate controls it, so I asked  
16 whether the estate has an objection to his  
17 testimony about that first conversation.

18 MS. FOGLIETTA: No, no objection.

19 MR. SIMON: I will sus- -- or reassert the  
20 objection, based on privilege. It's my  
21 understanding that privilege does survive when  
22 it is involved with an individual but not a  
23 corporation. I don't think the estate has the  
24 right to waive that privilege. I think

1 Mr. Simon has a duty to assert the privilege up  
2 to the point where he was no longer acting as  
3 the attorney with regard to the trust, and from  
4 a practical standpoint -- well, I'll just leave  
5 it at that.

6 MR. STAMOS: But who does control the  
7 privilege if not the estate?

8 MR. SIMON: It just survives.

9 MR. STAMOS: Well, but I mean, it can't be  
10 waived by anybody?

11 MR. SIMON: I don't believe it can.

12 MR. STAMOS: Well, I certainly think it can,  
13 and the estate -- if the estate doesn't control  
14 it, nobody controls it. It's not a -- it  
15 doesn't -- I know --

16 MS. FOGLIETTA: I agree, and the estate  
17 controls it.

18 MR. STAMOS: Yeah. So based upon the estate  
19 having waived the privilege with regard to that  
20 answer, I ask you to answer the question.

21 MR. SIMON: Could we go off the record for a  
22 moment?

23 MR. STAMOS: Sure.

24

1 (Whereupon, a discussion was had  
2 off the record.)

3 MR. STAMOS: Back on the record.

4 So we'll certify the question, deal  
5 with it at a later time.

6 BY MR. STAMOS:

7 Q. Let's move on to the -- so following  
8 this conversation with Mr. Bernstein that you  
9 don't contend was privileged, what's the next  
10 conversation or the continuation of that  
11 interaction about the trust?

12 A. So I showed him the trust that I  
13 received from Hopkins & Sutter. We discussed  
14 how he would want that trust changed for him. I  
15 mocked one up. I gave it to him and told him he  
16 had to go to Hopkins & Sutter to have it  
17 executed.

18 Q. All right. So when you say you showed  
19 him the ones from -- the one from Hopkins &  
20 Sutter, is that the one Hopkins & Sutter had  
21 prepared for you?

22 A. Yes.

23 Q. And when you say you mocked it up, how  
24 was that not practicing law for him?

1 A. I was not doing it as his attorney. I  
2 was filling it in almost as a secretary for him  
3 to change some of the names.

4 Q. Who was the lawyer at Hopkins & Sutter?

5 A. Jim Hammond, I believe.

6 Q. Say what?

7 A. James Hammond.

8 Q. James Hammond?

9 A. Yeah.

10 Q. Is he still -- I know Hop- -- I know  
11 Hopkins is no longer in existence, but is he  
12 still practicing?

13 A. No, he does not.

14 Q. How do you know?

15 A. He died.

16 Q. All right. Who is the lawyer at  
17 Hopkins & Sutter -- strike that.

18 Did you -- did -- to your knowledge,  
19 did Simon then -- Mr. Bernstein then interact  
20 with Hopkins & Sutter?

21 A. I believe so.

22 Q. With whom?

23 A. I don't know.

24 Q. Was it Mr. Hammond?

1 A. I don't know.

2 Q. To your knowledge, was Hopkins & Sutter  
3 involved in the execution of his trust?

4 A. I believe so.

5 Q. What makes you believe that?

6 A. Si said that Hopkins & Sutter or an  
7 attorney at Hopkins & Sutter helped him execute  
8 the will -- I mean the trust.

9 Q. Well, we'll get to that conversation in  
10 a second, okay, and -- but you never learned who  
11 it was there?

12 A. No.

13 Q. Did you ever tell Mr. Hammond I'm  
14 sending over my father-in-law to do for him what  
15 you did for me?

16 A. I did not. Simon had his own  
17 relationships at Hopkins & Sutter.

18 Q. And with whom did he have  
19 relationships?

20 A. Several folks.

21 Q. Who?

22 A. Henry Lawrie.

23 Q. Is Henry still alive?

24 A. I believe so.

1 Q. Okay. Who else?

2 A. Brad Ferguson.

3 Q. Okay. Who else?

4 A. I don't know.

5 Q. And of that -- of those two, do you  
6 believe either of them participated with him in  
7 creating this trust you talked about?

8 A. Be pure speculation.

9 MR. STAMOS: Off the record for a second.

10 (Whereupon, a discussion was had  
11 off the record and a short  
12 break was taken.)

13 MR. STAMOS: All right. We're back on.

14 BY MR. STAMOS:

15 Q. Well, in the declaratory judgment  
16 portion of your complaint, it states that --  
17 Paragraph 29: On or about June 21, 1995, David  
18 Simon -- that's you, right? -- an attorney, and  
19 Simon Bernstein's son-in-law met with Simon  
20 Bernstein before Simon Bernstein went to the law  
21 offices of Hopkins & Sutter in Chicago, Illinois  
22 to finalize and execute the Bernstein trust  
23 agreement.

24 You're familiar with that allegation?

1 A. I am.

2 Q. All right. Tell me what the facts are  
3 surrounding the allegations in that  
4 Paragraph 29.

5 A. Gave him a draft of the document to go  
6 to Hopkins & Sutter to have it finalized and  
7 executed.

8 Q. All right. And this is a document that  
9 you had taken, the one that had been prepared  
10 for you, and changed it to give effect to what  
11 Simon -- for Simon. That's your testimony?

12 A. Yes.

13 Q. And was it in final form?

14 A. No.

15 Q. In what form was it?

16 A. Near final form.

17 Q. All right. And tell me what you and  
18 Simon said to each other on the 21st before he  
19 went to this meeting.

20 A. I believe I spoke to him the day before  
21 and said I would make changes. I took notes on  
22 another draft of the document and then utilized  
23 those notes to have the document modified to  
24 reflect those additional desires, and I handed



1 it to him.

2 Q. What was it that Mr. Simon told you  
3 what he wanted the trust to do?

4 MR. SIMON: Strike -- objection on form.

5 MR. STAMOS: I'm sorry. You're right.

6 BY MR. STAMOS:

7 Q. What was it that Mr. Bernstein told you  
8 he wanted the trust to do in that conversation  
9 the day before the 21st?

10 A. Take care of his wife and children.

11 Q. And did you draft terms that would do  
12 that, to the best of your ability?

13 A. Yes.

14 Q. Any other conversation you had with  
15 Mr. Bernstein?

16 A. Yes.

17 Q. What did you say to him and what did he  
18 say to you?

19 A. He asked me to be the trustee after  
20 Shirley, and at first, I said yes, but at that  
21 night, I thought about it and asked him to  
22 remove me as trustee, and instead, replace it  
23 sequentially with his children.

24 Q. And did you make changes to the form of

1 it at that point to give effect to that change?

2 A. No.

3 Q. What happened about that?

4 A. He took the draft that I had given him

5 and left.

6 Q. And then in Paragraph 30, it says after

7 the meeting, you reviewed the final version.

8 You recall those -- that allegation?

9 I'm paraphrasing, but that's what it says,

10 correct?

11 A. Yes.

12 Q. Was it that day?

13 A. I believe the day I reviewed it was the

14 day of the 21st, but it could have been the

15 22nd.

16 Q. All right. What did you say to him and

17 what did he say to you after that -- after that

18 meeting? Did you have -- strike that.

19 Did you have a conversation with him

20 after the meeting took place, whenever you first

21 had occasion to converse with, him about the

22 trust?

23 A. Thank you, and thank you for removing

24 me and replacing me with Ted, sign these forms

1 here and this form here and this form here.

2 Q. So when he brought it back to you, it  
3 was not yet signed?

4 A. His was signed. I'm talking about the  
5 change of owner -- I mean the change of  
6 beneficiary forms that we would submit, as well  
7 as the change of beneficiary forms for Lincoln  
8 Benefit as -- and any other form that would need  
9 to be submitted to the insurance carriers.

10 Q. So if we got the records of Lincoln  
11 Benefit, we would see a beneficiary form  
12 indicating that funds from that policy were to  
13 be paid to a 1995 trust?

14 MR. SIMON: Objection, assumes facts not in  
15 evidence, form.

16 THE WITNESS: I believe so.

17 BY MR. STAMOS:

18 Q. Have you ever tried to do that? Has  
19 anyone on behalf of your family ever undertaken  
20 to do that, to investigate the records of  
21 Lincoln?

22 A. I know we called and asked to see if  
23 they had a copy of the trust, but that's all  
24 that I'm -- believe we've done.

1 Q. Did they have a copy of the trust?

2 A. Not to my knowledge.

3 Q. Now, what other documents -- strike

4 that.

5 He had already -- so when he came back  
6 from Hopkins & Sutter, he had a signed document,  
7 correct?

8 A. Correct.

9 Q. And he'd obviously left a copy with  
10 Hopkins & Sutter, correct?

11 A. No idea.

12 Q. Now, we're both lawyers. We've both  
13 been in the business a long time. I've never,  
14 ever, ever heard of a -- of a firm that drafts a  
15 trust and doesn't keep a copy, in the word  
16 processor, if no place else, but executed copy.

17 Did you call Hopkins & Sutter to see  
18 whether there's a -- there's a document -- a  
19 copy of this document in their files?

20 A. Well, Hopkins & Sutter no longer  
21 exists, but we did follow up with their  
22 successor firm, as well as some of the attorneys  
23 who broke away from Hopkins & Sutter and started  
24 their own firm.

1 Q. Okay. And what did you find?

2 A. Neither had a copy of the executed

3 trust.

4 Q. Who did you talk to? And who did the

5 talking for you if not you?

6 A. Yeah, I don't know.

7 Q. You don't know who you talked to -- I'm

8 sorry.

9 You don't know who was spoken to at --

10 for those lawyers?

11 A. Right.

12 Q. Who made the contact with them?

13 A. I'm not sure. I'd have to look.

14 Q. What are the -- what are the choices?

15 A. Anybody in our offices.

16 Q. Well, probably not anybody in your

17 office.

18 I mean, who do you think are the likely

19 candidates to have done the investigation to

20 determine whether the trust existed?

21 MR. SIMON: Objection, asked and answered.

22 THE WITNESS: Could be anyone that's in our

23 office that was just assigned to make the phone

24 call. I mean, I don't know.

1 BY MR. STAMOS:

2 Q. Who asked them to do it?

3 A. Might have been Pam, might have been  
4 me, might have been Adam.

5 Q. So when the complaint says -- refers  
6 to the -- let me see if I can pull up the  
7 correct page here.

8 MR. SIMON: Can we get a copy of the  
9 complaint?

10 MR. STAMOS: I don't know if we have a copy  
11 here. I don't -- I don't intend to make it an  
12 exhibit, but I could make you a copy if you need  
13 to.

14 BY MR. STAMOS:

15 Q. So where the complaint says in  
16 Paragraph 35, as diligent searches were made of  
17 Ted Bernstein and the other Bernstein family  
18 members; of Simon Bernstein's home and business;  
19 the law offices of Tescher & Spallina; the  
20 offices of Foley & Lardner, successor to  
21 Hopkins & Sutter; and the office of the Simon  
22 Law Firm, who -- who is it who investigated,  
23 first of all, with respect to the offices of  
24 Foley & Lardner?

1 A. I don't know the person's name off the  
2 top of my head. I'd have to look.

3 Q. I don't mean to be clever, but that  
4 sounds like an awful important issue for this  
5 whole litigation. I find it kind of astonishing  
6 that it could have been a secretary that called  
7 and gave -- came up with the answer. I mean, is  
8 that really what might have happened?

9 A. I don't find it astonishing. We work  
10 in the business, so it's not a big deal to make  
11 a phone call, so it's very possible.

12 Q. Okay. But you don't know who was  
13 spoken to at the -- at Foley & Lardner?

14 MR. SIMON: Objection, asked and answered.

15 THE WITNESS: Not as I sit here today.

16 BY MR. STAMOS:

17 Q. Okay. Who made the -- who investigated  
18 the -- in the offices of the Simon Law Firm to  
19 see whether a copy existed?

20 A. Myself, Adam Simon, and Cheryl  
21 Sychowski.

22 Q. And the law offices of Tescher &  
23 Spallina, who investigated there?

24 A. I don't know.

1 Q. And how about Ted Bernstein -- about  
2 Ted Bernstein and Simon Bernstein's home and  
3 business office?

4 A. I don't know.

5 Q. Who would I -- whose deposition would I  
6 take to find out about that, to find out the  
7 answers to those questions?

8 A. I don't know.

9 Q. So nobody might know?

10 A. Well, I would -- I would assume that in  
11 Tescher & Spallina, you would ask Tescher &  
12 Spallina --

13 Q. That's the easy way.

14 A. -- and Ted Bernstein, you would ask Ted  
15 Bernstein, and for Simon Bernstein, you would  
16 probably ask Tescher & Spallina.

17 Q. All right. And after you have this  
18 conversation with Mr. -- with Simon Bernstein  
19 when he came back from the office, what's the  
20 next time you had a conversation with him about  
21 his -- about that trust?

22 A. After we changed the beneficiaries, I  
23 don't believe I had a subsequent conversation  
24 until he mentioned it in 2012.



1 Q. Okay.

2 A. Actually, he didn't mention the trust.

3 He mentioned the insurance policy.

4 Q. All right. We'll get to that in just a

5 second.

6 At the time that -- in 1995, were you

7 and he working in the same office, physically?

8 A. He had an office there. He seldom came

9 to Chicago. He was living in Florida.

10 Q. Okay. Was there a time when he stopped

11 coming to Chicago?

12 A. He no longer had an office in Chicago

13 in 1996, but he has family here.

14 Q. You've seen this 2000 trust, correct?

15 MR. SIMON: Objection. You're referring to

16 some other trust. We'd like to see it.

17 MR. STAMOS: Do you have a copy?

18 MS. FOGLIETTA: It's a little hard to hear.

19 Would you mind speaking up a little?

20 MR. STAMOS: Yeah, I will.

21 BY MR. STAMOS:

22 Q. Well, before I show that to him, let --

23 let me ask you this: Did you have any

24 conver- -- when's the next -- after 1995,

1 this -- the June 1995 event we've been  
2 discussing, what's the next time you had a  
3 conversation with Simon Bernstein about any  
4 trust?

5 A. Well, I don't know how long it took to  
6 complete the change of beneficiary forms and  
7 have them come back, but after that process?

8 Q. Yes.

9 A. I don't believe I spoke to him about  
10 the trust again.

11 Q. Okay.

12 A. Until the 2012, and again, the  
13 reference was more to the policy and not the  
14 trust.

15 Q. Okay. So let's talk about that, then.  
16 So if we're thinking about two -- two concepts,  
17 the existence of the insurance policy that we're  
18 all litigating about and the existence of the  
19 trust, what you're telling me is, after whatever  
20 took place in this -- 1995 took place with  
21 regard to a new beneficiary and so forth, you  
22 never had a conversation with him about either  
23 thing until 2012, and at that time, you had a  
24 conversation about the insurance policy?

1 A. Did have a conversation with him about  
2 the policy, yes.

3 Q. Okay. And when in 2012?

4 A. No, no. In 1998.

5 Q. Oh.

6 A. But I didn't have another conversation  
7 about...

8 Q. All right. '98's a new year for us, so  
9 let's talk about that.

10 What -- who was present for the  
11 conversation in 1998?

12 A. Myself and Mr. Bernstein.

13 Q. And what did you say to him and what  
14 did he say to you?

15 A. Let's voluntarily dissolve the S.B.  
16 Lexington VEBA and S.B. Lexington Corporation.

17 Q. Okay.

18 A. And I voluntarily dissolved them.

19 Q. All right. Was there a discussion  
20 about the wisdom of that or why do it? Why do  
21 it?

22 A. There was a discussion about the wisdom  
23 of that.

24 Q. Okay. I'd like you to tell me what you

1 said to him and what he said to you in that  
2 conversation.

3 A. I said let's dissolve S.B. Lexington  
4 and you've got a lot of tax issues that you need  
5 to bury, and the quicker we do it, the better.

6 Q. Okay. Did he agree to that?

7 A. Yes.

8 Q. All right. What did he say to you in  
9 that conversation?

10 A. Dissolve the corporation.

11 Q. Did you perform the work necessary to  
12 achieve that?

13 A. I did.

14 Q. And other than discussing the  
15 dissolution of the VEBA, what other conversation  
16 was there, if any, about the insurance policy?

17 A. That the death benefit would now go to  
18 the contingent beneficiary, which is the 1995  
19 irrevocable life insurance trust.

20 Q. And was there any other discussion at  
21 that time?

22 A. No.

23 Q. Was there ever another discussion about  
24 the insurance policy before he died?

1 A. 2012.

2 Q. All right. And where did that  
3 conversation take place?

4 A. I was on the telephone.

5 Q. And did you call him or did he call  
6 you?

7 A. I believe he arranged a conference  
8 call. I don't remember if everyone was called  
9 or we called in to a number, but there was a  
10 conference call amongst the children, some of  
11 the spouses, Mr. Spallina, and Simon Bernstein.

12 Q. Okay. And what -- who said what to  
13 whom in that conference call?

14 I'm sorry. Let me interrupt myself for  
15 a second.

16 What was the date of that call, the  
17 best you can recall?

18 A. A few months before he died. I don't  
19 know.

20 Q. All right. And he was in Florida at  
21 that time?

22 A. I wasn't there, but I believe he was in  
23 Florida.

24 Q. Okay.

1 A. He was on the phone, so I can't tell  
2 you really where he was.

3 Q. Okay. And tell me what everybody said  
4 in that conversation to the best you can recall.

5 A. The gist of it was that Simon was going  
6 to change his will and estate to leave his  
7 estate and trust to the ten grandchildren, that  
8 the life insurance policy proceeds would go to  
9 the five children, and that he hoped this would  
10 end some of the acrimony within the family.

11 Mr. Spallina introduced Simon and  
12 introduced the reason for the call, then each of  
13 the children were asked to agree, and each of  
14 the children agreed, even though, in my mind,  
15 they didn't have to agree anyway.

16 Q. When you say that he was referring to  
17 disputes in the family, what was that about?

18 A. He felt that there was a lot of  
19 acrimony within the family.

20 Q. About what?

21 A. A whole number of things, as far as I  
22 know. His girlfriend, his treatment of some of  
23 the children and grandchildren.

24 Q. In what way treatment? Financially?

1 MR. SIMON: Object, relevance.

2 THE WITNESS: You're asking my opinion? I

3 would say emotionally, but financially, if, you

4 know, if you mean two of the children had a

5 clause inside of a trust that if in certain

6 instances, they would be disinherited, and that

7 translated down to the lineal descendants of the

8 two.

9 BY MR. STAMOS:

10 Q. And who were the children who would

11 have been disinherited?

12 A. In this narrow exception, it would have

13 been Pam and Ted and their children.

14 Q. And what would have -- what was the

15 narrow exception?

16 A. All for distributions made under a

17 trust.

18 Q. Was there any further discussion in

19 that conversation about the insurance policy

20 beyond what you've described?

21 A. Just that it was left to the five

22 children.

23 Q. At the time that you were involved in

24 that conversation, were you aware of whatever

1 trusts existed at that time?

2 A. I was aware of the 1995 trust. I was

3 not aware of any other trusts.

4 Q. When did you become --

5 A. Other than -- you're talking about

6 Simon's life in- -- are you talking about life

7 insurance trusts?

8 Q. No, no. Just trusts.

9 A. I was aware -- I was aware of Shirley's

10 trust.

11 Q. You've since learned of a series of

12 trusts that Simon Bernstein executed, correct?

13 A. Some. I don't know if I'd call it a

14 series, but --

15 Q. Well, you're aware that he -- that

16 after 19 -- that after the year 1995, his

17 signature appears on trusts in a number of

18 successive -- succeeding years, not in -- not

19 years in a row, but a number of years -- start

20 again.

21 After the year 1995, you're aware

22 that -- you are now aware that there are trusts

23 dated in various years between 2000 and 2012,

24 right?



1 MR. SIMON: Object, speculation.

2 THE WITNESS: I'm aware of one other trust,  
3 yes.

4 BY MR. STAMOS:

5 Q. Which other trust are you aware of?

6 A. I saw it in the litigation. I think it  
7 was drafted by somebody at Proskauer Rose.

8 Q. And what year was that trust?

9 A. I'd have to see it. If you showed it  
10 to me, I would --

11 Q. Okay. I guess what I'm asking is: Are  
12 you currently aware, beyond the trust that was  
13 drafted by the Proskauer firm, are you aware  
14 today of any other trusts that Mr. -- that Simon  
15 Bernstein executed prior to his death?

16 A. Yes. There is the Simon Bernstein  
17 Trust that has to do with his, you know, last  
18 will and trust.

19 Q. All right. Are you aware of any  
20 intervening trusts before then -- between 1995  
21 and before the trust that you believe you're  
22 aware of?

23 A. And the 2000 one I spoke about?

24 Q. Right. Any others?

1 A. No.

2 Q. All right. What's your understanding  
3 of the significance of the -- of the trust the  
4 Proskauer firm prepared?

5 MR. SIMON: Objection, calls for speculation.

6 THE WITNESS: I'm not aware of any  
7 significance.

8 BY MR. STAMOS:

9 Q. Have you ever made any analysis of its  
10 relevance to this litigation or to your position  
11 or your family's position in this litigation?

12 A. No.

13 Q. Am I correct, if you're successful in  
14 this litigation, your wife will receive  
15 roughly a -- a fifth of whatever the proceeds  
16 are that are -- have been paid into court,  
17 correct?

18 A. Yes.

19 Q. What does that calculate out to about,  
20 350,000, 300,000, something like that?

21 MR. SIMON: Object, speculation.

22 MR. STAMOS: Well, it's math. It's  
23 arithmetic.

24

1 BY MR. STAMOS:

2 Q. Have you ever done the math? I've got  
3 334,000. Does that sound about right?

4 A. It could be correct, yes.

5 Q. All right. That's all I'm asking.

6 But that's how much she would receive,  
7 correct?

8 MR. SIMON: Object to speculation.

9 THE WITNESS: Pre-fees, yes, I believe so.

10 BY MR. STAMOS:

11 Q. Okay. All right. Now, have you ever  
12 had conversations with -- well, strike that.

13 When did you first become -- when was  
14 the first attempt made to locate the 1995 trust  
15 document?

16 A. I believe some times in the winter of  
17 2012, 2013.

18 Q. And what was the first steps taken to  
19 locate it?

20 A. I don't believe I took the first steps.  
21 I believe --

22 Q. Who did?

23 A. Whoever had Si's documents and  
24 materials. Somebody in Florida.

1 Q. Who?

2 A. I don't know, but I -- you know, I  
3 would guess Donald Tescher and Robert Spallina.

4 Q. Okay. And do you recall being advised  
5 that they were unable to locate such a document?

6 A. Yes.

7 Q. When did Spallina first become aware  
8 that there was a -- that there was purportedly a  
9 1995 document?

10 A. I don't know.

11 Q. He must have -- according to your  
12 testimony, he must have been aware of that prior  
13 to the conversation or certainly during the  
14 conversation, the conference call you described,  
15 correct?

16 A. I assume, but I don't know when that  
17 happened. He may have become aware of it in  
18 2005 or 2000 --

19 Q. Truly.

20 A. I have no idea.

21 Q. Truly. But certainly no later -- when  
22 that conversation started, it wasn't your  
23 impression that as Simon Bernstein was  
24 describing the policy that that was the first

1 time Spallina ever heard about it, correct?

2 A. I was unaware if it was under that  
3 trust or any other trust during that  
4 conversation.

5 Q. I see. So at that point, that  
6 conversation, you would have been unaware  
7 whether the trust that Simon Bernstein was  
8 referring to as being the beneficiary for the  
9 policy would have been a 1995 trust or some  
10 other trust?

11 MR. SIMON: Objection. It's facts not in  
12 evidence.

13 MR. STAMOS: That's a speaking objection.  
14 There aren't facts in evidence because we're  
15 talking -- we're getting the evidence now here,  
16 so --

17 THE WITNESS: But I don't believe I said what  
18 you said. I --

19 BY MR. STAMOS:

20 Q. I misunderstood you, then.

21 A. Yeah. I don't think he referred to a  
22 trust in the phone conversation. I think he  
23 referred to the proceeds of the policy.

24 Q. Okay. And when is -- to your

1 knowledge, when is the first time that  
2 Mr. Spallina would have become aware that there  
3 was a purported 1995 trust?

4 MR. SIMON: Objection, speculation.

5 THE WITNESS: No idea.

6 BY MR. STAMOS:

7 Q. Who was the principal contact with  
8 Mr. Spallina after Simon Bernstein died, on  
9 behalf of the family?

10 A. I assume Ted Bernstein, but I don't  
11 know for sure.

12 Q. Did you have any conversations with  
13 Mr. Spallina?

14 A. Right after his death, no. Have I had  
15 conversations with Mr. Spallina, yes.

16 Q. And did Mr. Spallina ever -- did you  
17 ever have conversations with him about the trust  
18 itself?

19 A. Yes.

20 Q. And about its creation?

21 A. I believe so.

22 Q. When was the first time you had such a  
23 conversation?

24 A. Be the winter of '12-'13.

1 Q. Was there ever a discussion with him  
2 about this trust that was executed in 2000 --

3 MR. STAMOS: What's the date of that trust?

4 MR. HORAN: August 15th.

5 MR. STAMOS: Of what year?

6 MR. HORAN: 2000.

7 BY MR. STAMOS:

8 Q. Did you ever have a conversation with  
9 Mr. Spallina about a trust that was executed by  
10 Mr. Simon Bernstein in August of 2000 --  
11 August 15th of 2000?

12 A. I'm not sure.

13 Q. When did you first become aware that  
14 such a document might exist?

15 A. During the course of the litigation.

16 Q. And did you have any conversations with  
17 Mr. Spallina once you learned of its existence?

18 A. I'm not sure it was Mr. Spallina.

19 Q. Who did you talk to?

20 A. I believe it was Alan Rose.

21 Q. Who's Alan Rose?

22 A. He's an attorney.

23 Q. With who?

24 A. I don't remember the firm.

1 Q. Why Mr. Rose?

2 A. Oh, he was representing Ted Bernstein,  
3 and during the course of the conversation, Eliot  
4 Bernstein had brought up the 2000 trust in one  
5 of his pleadings, and Mr. Rose said it was  
6 unfunded, and it's very possible Mr. Spallina  
7 echoed that sentiment.

8 Q. Unfunded in what sense?

9 A. That there's no res in the trust.

10 Q. Were there any -- was there ever any  
11 discussion of the fact that that trust had  
12 indicated that one of its assets was a -- the  
13 1982 insurance policy?

14 A. I think that was the conversation I  
15 just referred to.

16 Q. Right. And did anyone -- I mean, it  
17 wasn't funded, but did anyone discuss the  
18 significance or the relevance of the  
19 relationship of that trust to the proceeds of  
20 the '82 policy?

21 A. Just that it was to be ignored.

22 Q. Because -- because it had never been  
23 made a beneficiary of the -- of the policy?

24 A. Because it was unfunded.



1 Q. I don't know what that means.

2 A. No race.

3 Q. I know that. That wasn't my question,  
4 though.

5 There would be a race if the proceeds  
6 of the policy were paid into it, correct?

7 MR. SIMON: Objection, facts not in evidence.

8 THE WITNESS: Not necessarily. Probably it  
9 would have been held in constructive trust for  
10 the beneficiary, but because it was never named  
11 a beneficiary of the policy, it was --

12 BY MR. STAMOS:

13 Q. That's what I'm getting at. All I'm  
14 trying to -- I'm not trying to be tricky. All  
15 I'm -- my only point is your understanding was  
16 the 2000 trust was not relevant here because it  
17 had never been made a beneficiary of the policy  
18 from '82?

19 A. And that Simon didn't wish it to be.

20 Q. How did you conclude that?

21 A. That's what I was told.

22 Q. By whom?

23 A. I believe either Mr. Rose or  
24 Mr. Spallina.

1 Q. They told you that Mr. Simon had told  
2 them something about the -- about the -- his  
3 desires about the 2000 trust?

4 A. Correct.

5 Q. Had he told them that he had intended  
6 it to be paid to the '95 trust?

7 A. To the five children.

8 Q. So just so we're clear, at no point --  
9 I think this is what you're telling me: At no  
10 point did Mr. Spallina say Simon Bernstein told  
11 me that the proceeds of the '82 policy would be  
12 paid to a '95 trust. He never said that,  
13 correct?

14 A. I don't know.

15 Q. Well, you don't -- you don't remember  
16 him saying that, do you?

17 A. I remember him saying something like  
18 that he talked about Mr. Bernstein contemplating  
19 changing the beneficiary to his girlfriend at  
20 the time, and that instead, he decided to leave  
21 it as the five children through the trust, but I  
22 don't know that he used the word 1995 at that  
23 point.

24 Q. All right. Because if Mr. Bernstein --

1 if Mr. Spallina had been aware of the existence  
2 of a 1995 trust, you would agree with me a  
3 prudent attorney would have asked to obtain a  
4 copy of that trust, correct?

5 A. I believe he did.

6 Q. He asked Mr. Bernstein for that?

7 A. It's my understanding.

8 Q. And what -- and what became of that?

9 A. I don't know.

10 Q. He never received it, though, did he?

11 A. I assume not, but I don't know because  
12 he didn't produce it.

13 Q. Who are you aware heard Mr. Spallina  
14 say anything that referred to the existence of a  
15 1995 trust?

16 A. All of the children.

17 Q. In what conversation?

18 A. Discussing how to have the proceeds of  
19 the trust paid to the --

20 Q. This was after death?

21 A. Pardon me?

22 Q. Was this after Simon's death?

23 A. Yes.

24 Q. Okay. Go on. I'm sorry. I wasn't --

1 A. That's the winter of '12-'13.

2 Q. Right. But --

3 A. He died in September, so all the

4 conversations I'm talking about --

5 Q. Are all after death.

6 A. -- are all during that period.

7 Q. But just to revisit it, prior to Simon

8 Bernstein's death -- I don't usually get --

9 sound so formal, Simon Bernstein, but just to

10 keep it clear, I'm going to do that.

11 Prior to Simon Bernstein's death, you

12 are unaware of any conversation in which

13 Mr. Spallina reported or said anything that

14 implied that he was aware that a 1995 trust

15 existed; am I correct?

16 A. Just the conversation that I referred

17 to in the preceding months.

18 Q. Okay. But I don't think -- but I

19 think -- I thought I understood you to say in

20 that conversation you don't remember him saying

21 the word "trust"?

22 A. Correct.

23 Q. All right. Now, you're aware, I take

24 it, that the 2000 trust, the terms of that

1 trust, if it were given effect, would have

2 excluded your wife, correct?

3 A. I have not read the trust.

4 Q. Why not?

5 A. No reason to read it.

6 Q. Why not?

7 A. There's just no reason to read it.

8 Q. Okay. Let's go to a different topic.

9 Do you know Don Sanders?

10 A. Don Sanders?

11 Q. Yes.

12 A. No, I do not.

13 Q. Okay. And how -- do you know how it

14 came to be his affidavit was prepared?

15 A. I do know, yes.

16 Q. How?

17 A. Attorney representing the trust sought

18 to seek the deposition of someone from the

19 servicer for the insurance company and served a

20 notice of deposition and that in the course of

21 negotiating that deposition, they agreed to

22 provide an affidavit.

23 Q. Who drafted the affidavit?

24 A. I don't know.

1 Q. Who do you think drafted the affidavit?

2 MR. SIMON: Objection, speculation.

3 BY MR. STAMOS:

4 Q. I'm not asking you to speculate, but do  
5 you have a -- you have a -- did you ever talk to  
6 find out any --

7 MR. SIMON: He said he didn't know -- and he  
8 said he didn't know, and then you said who do  
9 you think. You're definitely asking him to  
10 speculate. He doesn't know.

11 MR. STAMOS: No. There are all sorts of  
12 things I think things about that aren't  
13 speculation, but I also don't know. I mean,  
14 there are gradations to knowledge.

15 THE WITNESS: I would be guessing, but  
16 there's --

17 MR. SIMON: Don't guess.

18 BY MR. STAMOS:

19 Q. Okay. Let's see. Aside from  
20 discussions regarding a trust in 1995, did you  
21 do any other -- did you assist Simon Bernstein  
22 in any other way in his personal affairs from  
23 1995 forward?

24 A. Yes.

1 Q. Like what?

2 A. Bill paying, litigation, day-to-day  
3 operation of his companies, and occasionally  
4 purchasing gifts for some of his family members,  
5 and tickets for himself.

6 Q. Did you practice law for him after  
7 1995? Obviously litigation. I assume that  
8 would be practicing law for him.

9 A. Yes.

10 Q. What kind of litigation would you help  
11 him with?

12 A. Depends what came up. Litigation  
13 mostly with 1995 would be ex-business partner.

14 Q. Who was that?

15 A. Joseph Flanagan.

16 Q. Was that just litigation over payouts  
17 from the business or was there some other issue  
18 involved? Money out of the business?

19 A. Yes.

20 Q. Were you aware of the handwritten will  
21 that Simon Bernstein prepared?

22 A. No.

23 Q. You're not aware of that now?

24 A. Nope.

1 Q. Have you had occasion to review the  
2 records of that -- that were produced by the  
3 insurance company in this case? Have you seen  
4 any of them?

5 A. I might have.

6 Q. Do you think you did?

7 A. I think so.

8 Q. Did you ever assist -- other than 1995  
9 as you've described, was there ever another  
10 occasion in which you were aware of another  
11 beneficiary designation form being sent to or  
12 from the insurance company regarding the 1982  
13 policy?

14 MR. SIMON: Objection as to form.

15 THE WITNESS: I'm not sure I understand what  
16 you asked just now.

17 BY MR. STAMOS:

18 Q. Well, if a policy is going to have a  
19 beneficiary change, there's usually a form that  
20 has to be filled out, correct?

21 A. Correct.

22 Q. And where someone requests to change a  
23 beneficiary, the insurance company might send  
24 out the form to them to fill out, correct? To



1 prepare?

2 A. Sure. I guess.

3 Q. And likewise, if someone wants to  
4 effect a change of beneficiary and they have the  
5 form, they fill it out and send it to the  
6 insurance company. That's one of the things  
7 they could do, correct?

8 A. Sure.

9 Q. All right. Are you aware of any such  
10 communications between the insurance company and  
11 Mr. Bernstein about the 1982 policy following  
12 1995?

13 A. Other than the 1998 dissolution of the  
14 VEBA trust, I'm not aware of any other forms.

15 Q. And I take it that you -- were you  
16 aware that there were a number of instances in  
17 which the policy lapsed and had to be revived,  
18 so to speak, reinstated?

19 A. I'm aware of one.

20 Q. Did you participate in any of the  
21 documentation with regard to any instance of  
22 reinstatement?

23 A. I did not.

24 Q. Who did?

1 A. I don't know. I assume Mr. Bernstein,  
2 Simon Bernstein.

3 Q. When -- which reinstatement were you  
4 aware of?

5 A. I don't know. I didn't know there was  
6 multiple. I'm only aware of one, so I can't  
7 tell you --

8 Q. Well, but I mean, which -- what year  
9 was that?

10 A. Oh, I don't know when it was. I just  
11 knew that it had lapsed once, then needed to be  
12 reinstated.

13 Q. Do you know where the insurance company  
14 would send forms or communications regarding the  
15 policy -- well, strike that.

16 To your knowledge, would the -- would  
17 the insurance company send communications about  
18 the insurance policy to your office at any time?

19 A. Up until 1996, I believe so.

20 Q. Okay. How about after that?

21 A. Probably not.

22 Q. If a communication were sent by the  
23 insurance company to your office, that would  
24 come to your attention, wouldn't it?

1 A. Not necessarily, no.

2 Q. Whose attention would it go to?

3 A. Depends if it -- who it was addressed

4 to. If it was addressed to him, it may have

5 just been -- come to our office and forwarded

6 from our offices. If it was addressed to

7 something more general, then it probably would

8 have been opened by Pam Simon.

9 Q. Okay. It's fair to say, though, that

10 if you had come into possession of

11 communications that could bear on the continuing

12 existence of the policy, you would want to make

13 sure that was dealt with, correct? You wouldn't

14 want the policy to lapse because, as far as you

15 were concerned, your wife was a one-fifth --

16 one-fifth indirect beneficiary of that policy,

17 correct?

18 A. Not correct.

19 Q. Why not? What's not correct about

20 that?

21 A. I would be indifferent as to whether

22 the policy lapsed, just as I was when the policy

23 lapsed.

24 Q. When did you first learn it lapsed?

1 A. I want to say after he passed away.

2 Q. So you weren't -- so during his  
3 lifetime, you were unaware of it having lapsed?

4 A. Correct.

5 Q. Oh, okay. So when you say it was --  
6 you were indifferent to it, you never had the  
7 occasion to be indifferent to it when there was  
8 still something to be done about it, right?

9 A. Well, I know I was indifferent about it  
10 because it was a discussion about how to pay for  
11 it during the time and he had no other assets,  
12 and so this was the way he wanted to take care  
13 of his wife, and at that time, I was not  
14 indifferent to it.

15 Q. I see. I'm not following. So --

16 A. Well, I thought with no other assets,  
17 that his wife needed to be taken care of, and  
18 that should be a priority, along with repaying  
19 his debt.

20 Q. Okay. Two things. When you say  
21 repaying his debt, to whom was the debt?

22 A. Several people.

23 Q. Who?

24 A. Exchange Bank, Harris Bank Glencoe,

1 Boulevard Bank, Capitol Bankers Life, Fidelity  
2 Union, and there were a couple of others that  
3 I -- I'm not -- off the top of my head but I  
4 believe had to do with condominiums owed that  
5 were under water, and I can't tell you the exact  
6 names.

7 Q. I think I might have missed -- I might  
8 have -- might be misunderstanding what you said.

9 Were you aware during his lifetime that  
10 the policy had lapsed?

11 A. No.

12 Q. Okay.

13 A. While he was alive was I --

14 Q. Yes.

15 A. No.

16 Q. All right. But you're saying that  
17 after he died, you learned that it had lapsed  
18 and it had to be paid?

19 A. No.

20 Q. So what could all of that have to do  
21 with taking care of his wife? She was dead by  
22 then, right?

23 A. Yeah. You asked me if I was ever  
24 indifferent, and during the early '90s, I was

1 not indifferent.

2 Q. Oh, I'm sorry. I thought -- I meant  
3 you were indifferent to it at having lapsed.  
4 That's what I was referring to. I'm sorry. I  
5 confused myself.

6 A. Okay. I was speaking of decades  
7 before.

8 Q. Got it, got it.

9 MR. STAMOS: Let me step outside just for a  
10 second with Kevin.

11 (Whereupon, a discussion was had  
12 off the record and a short  
13 break was taken.)

14 MR. STAMOS: All right. We're going to go  
15 back on. We just have a few more questions.

16 BY MR. STAMOS:

17 Q. When -- to your knowledge, what -- who  
18 made the first approach to the insurance company  
19 with regard to the policy?

20 A. Simon Bernstein.

21 Q. No, no. I'm sorry.

22 After Simon's death, who's the -- who  
23 was the person who made the first communication  
24 to the insurance company with regard to

1 obtaining payment of the proceeds?

2 A. I don't know.

3 Q. Do you recall being part of any

4 conversations or becoming aware of any

5 conversations that took place prior to that

6 approach being made?

7 MR. SIMON: Objection, facts not in --

8 THE WITNESS: I don't know if it was prior to

9 or subsequent to the first approach.

10 BY MR. STAMOS:

11 Q. And when was the first approach -- I'm

12 sorry. Mr. Bernstein died in September of 2012?

13 A. Simon Bernstein?

14 Q. Yes.

15 A. September of 2012.

16 Q. And when was the first approach made to

17 the insurance company?

18 A. I don't know.

19 Q. When was the first conversation you had

20 with anyone after Simon Bernstein's death about

21 making an approach to the insurance company?

22 A. I believe in the winter of '12-'13.

23 December, January, right in there.

24 Q. And why then, not more proximate to the

1 time of his death?

2 A. That's the first conversation I had. I  
3 don't know. That's why I said it's very  
4 possible that a prior approach had been made.

5 Q. And with whom did you have the first  
6 conversation about it?

7 A. I don't know who. It was all on the  
8 phone, but Robert Spallina for sure was on the  
9 phone. Ted Bernstein. I believe Lisa  
10 Friedstein.

11 Q. Okay.

12 A. Jill Iantoni. Eliot might have been on  
13 the phone. I don't know.

14 Q. Okay. And who said what to whom in  
15 that conversation?

16 A. Does anybody have a copy of the  
17 insurance policy.

18 Q. All right. And --

19 A. And does anybody have a copy of the  
20 life insurance trust.

21 Q. And who initiated that call?

22 A. I don't know.

23 Q. Do you know, when the first submission  
24 was made to the insurance company, do you know



1 who made it as trustee? Who was identified as  
2 the trustee of the trust of that communication?

3 A. I don't know if anyone was identified  
4 as trustee on the first submission.

5 Q. Have you ever seen the first submission  
6 of the document?

7 A. I don't know if it was the first  
8 submission. I don't know what -- I -- I can't  
9 tell what would be the first submission.

10 Q. Right, right. Have you seen a document  
11 that -- that you believe to have been the first  
12 submission?

13 A. I would have no belief of whether it  
14 was the first or second or third submission.

15 Q. Have you seen any documents that you  
16 understand to have been a submission?

17 A. Yes.

18 Q. And who was identified -- did you see  
19 one or more than one?

20 A. I've seen more than one.

21 Q. And in those, who was identified as  
22 trustee?

23 A. In one, I don't know that anyone was  
24 identified as trustee, and in the other one, I

1 believe Robert Spallina identified himself as  
2 trustee.

3 Q. Okay. And was he the trustee?

4 A. No.

5 Q. Then why did he identify himself as  
6 trustee?

7 MR. SIMON: Objection, speculation.

8 THE WITNESS: Ask Robert Spallina.

9 BY MR. STAMOS:

10 Q. Were you surprised to see him  
11 identified as trustee when you -- when you read  
12 it?

13 A. Yes.

14 Q. And did you discuss that with anyone?  
15 Did you discuss the fact that he was identified  
16 as the trustee when you knew that, to your  
17 knowledge, he would not have been the trustee?

18 A. I discussed it before filing this  
19 litigation, yes.

20 Q. With whom?

21 A. Adam Simon.

22 Q. Okay. And what did you --

23 A. Ted Bernstein.

24 Q. And what did you say to Adam and what

1 did he say to you?

2 MR. SIMON: Objection, attorney-client.

3 BY MR. STAMOS:

4 Q. You're not a party to this litigation,

5 are you?

6 A. No.

7 MR. SIMON: Yes, he is.

8 THE WITNESS: It's true. I am. Eliot sued

9 me.

10 BY MR. STAMOS:

11 Q. Well, at the time that the suit was

12 filed -- prior to the time the suit was filed,

13 you were not to be a party, correct? How could

14 you be a party? You never understood yourself

15 to be a beneficiary of either the trust or

16 the -- or the policy, correct?

17 A. That's correct.

18 Q. So when the suit was brought in order

19 to obtain proceeds of the policy and presumably

20 proceeds of the trust, you couldn't have been

21 suing on your own behalf, right?

22 A. I was not.

23 Q. So he wasn't representing you?

24 A. No.

1 Q. So what did he say to you and what did  
2 you say to him?

3 A. I said that Spallina is not the  
4 trustee. Ted is.

5 Q. Okay.

6 A. I saw the trust. I know Ted's the  
7 trustee because that was one of the things that  
8 needed to be changed in the draft, and I wasn't  
9 positive that that was changed.

10 Q. Okay. Now, tell me this: You -- what  
11 are the terms of the trust that you saw with  
12 your own eyes?

13 A. I'd have to see a draft of the trust to  
14 give you all the terms.

15 Q. All right. Did you ever have a  
16 conversation with Mr. Spallina in which he -- in  
17 which you asked him or he explained why it was  
18 he identified himself as the trustee?

19 A. I may have. I don't recall.

20 Q. What did you say to him and what did he  
21 say to you?

22 A. I just have a general remembrance of a  
23 discussion about us filing the litigation.

24 Q. And what's your general remembrance of

1 how he explained that he identified himself as  
2 the trustee?

3 A. I'm not sure that that specifically was  
4 talked about.

5 MR. STAMOS: All right. I think that's all I  
6 have. Anybody else have anything?

7 MR. SIMON: I do.

8 MR. STAMOS: Guys on the phone?

9 MS. FOGLIETTA: Not me.

10 MR. STAMOS: Okay. Eliot? Eliot, are you  
11 there?

12 MR. SIMON: I take that as a no.

13 MR. BERSTEIN: I said I'm okay.

14 MR. STAMOS: Okay. I'm sorry. We didn't  
15 hear you. Thank you. All right.

16 MR. SIMON: I do have questions.

17 MR. STAMOS: Yeah, of course.

18 MR. SIMON: I have some questions.

19 Just for the record, this is Adam Simon  
20 questioning David Simon.

21 EXAMINATION

22 BY MR. SIMON:

23 Q. David, during the entire deposition,  
24 you have not been presented with any marked

1 exhibits by Mr. Stamos; is that correct?

2 A. Yes.

3 Q. You've been asked to testify solely by

4 recollection; is that true?

5 A. Yes.

6 Q. Okay. I just would like to show you

7 some documents that may be relevant to some of

8 your testimony.

9 MR. SIMON: Can we mark this as David Simon

10 Deposition Exhibit No. 1.

11 (Whereupon, D. Simon Deposition

12 Exhibit No. 1 was marked for

13 identification.)

14 BY MR. STAMOS:

15 Q. David, I am showing you what's been

16 marked as David Simon Deposition Exhibit No. 1

17 that's got a Bates stamp BT 000031, and at the

18 top of the page, it says S.B. Lexington, Inc.,

19 Employer.

20 Have you ever seen that document

21 before?

22 A. Yes, I have.

23 Q. And can you describe what that document

24 is?

1 A. Under the VEBA, the individual insured  
2 or member fills out a beneficiary designation  
3 form. This is Si Bernstein's membership -- Si  
4 Bernstein as member, filling out his beneficiary  
5 designation.

6 Q. And at the top of the page, can you  
7 read that, the very heading?

8 A. S.B. Lexington, Inc., Employer/Employee  
9 Death Benefit Plan and Trust, Plan and Trust  
10 Beneficiary Designation, Simon L. Bernstein.

11 Q. And then can you read -- actually, can  
12 you read the entire form into the record?

13 A. Sure.

14 I hereby designate in accordance with  
15 the terms of said plan and trust as it may be  
16 amended that the name of the beneficiary should  
17 be Simon Bernstein irrevocable insurance trust  
18 and is signed then by Simon Bernstein as the  
19 person to receive at my death the death benefit  
20 stipulated in the S.B. Lexington, Inc. employee  
21 death benefit and trust in the adoption form  
22 adopted by my employer.

23 It is then signed again by Simon and  
24 dated.

1 Q. What is the date?

2 A. 8/26/95.

3 Q. And do you recognize those signatures?

4 A. I do.

5 Q. And what are -- whose signatures are  
6 those?

7 A. Simon Bernstein.

8 Q. Okay. I have no further questions on  
9 that.

10 I'd like to show you --

11 MR. STAMOS: Can you mark this as David Simon  
12 Deposition Exhibit No. 2.

13 (Whereupon, D. Simon Deposition  
14 Exhibit No. 2 was marked for  
15 identification.)

16 BY MR. SIMON:

17 Q. David, I'm showing you what's been  
18 marked David Simon Deposition Exhibit No. 2.  
19 It's got a Bates stamp of BT 000104. It's  
20 entitled SS-4, Application for Employer  
21 Identification Number.

22 Have you ever seen that form before?

23 A. Yes, I have.

24 Q. And can you describe what that is?



1 A. This is an application for a tax ID  
2 number on behalf of the irrevocable insurance  
3 trust, and I filled it out.

4 Q. And can you tell me what appears on  
5 Line 1 under Name of Applicant?

6 A. Simon Bernstein Irrevocable Insurance  
7 Trust.

8 Q. And on Line No. 3 as trustee or  
9 executor?

10 A. Shirley Bernstein.

11 Q. And in the upper-right corner, can you  
12 identify what number that is?

13 A. The tax ID number given to the  
14 insurance trust.

15 Q. And that -- can you read that number  
16 into the record?

17 A. 65-6178916, signed by Shirley Bernstein  
18 as trustee, June 21, 1995.

19 Q. And do you recognize that signature?

20 A. I do.

21 Q. And whose signature is that?

22 A. Shirley Bernstein.

23 MR. SIMON: Can we mark this as David Simon

24 Exhibit 3.

1 (Whereupon, D. Simon Deposition  
2 Exhibit No. 3 was marked for  
3 identification.)

4 BY MR. SIMON:

5 Q. David, I'm showing you what's been  
6 marked as David Simon Deposition Exhibit No. 3.  
7 It's Bates stamped BT 000002 through BT 000012,  
8 and I'm going to ask you if you recognize this  
9 exhibit?

10 A. I do.

11 Q. And can you tell me -- can you describe  
12 what's contained on the page stamped BT 000002?

13 A. It is a screenshot of a page from our  
14 database.

15 Q. And can you tell us what it says at the  
16 top of the page of that screenshot?

17 A. It is Si Trust and the properties of Si  
18 Trust, and then it says when it was modified,  
19 which was the day it was put in, June 21, 1995,  
20 and the date that we accessed it, September 30,  
21 2013, and then it has a created date, which was  
22 when we modified our database to the new  
23 database, which is September 3, 2004, so it was  
24 reentered.

1 Q. Can you describe that further about the  
2 new database?

3 A. We switched over and had to enter  
4 into -- some old records into a new database.

5 Q. And do you recall how this document was  
6 found?

7 A. Myself or Cheryl conducted a search and  
8 found this print of the screen and then the  
9 attached draft of the irrevocable trust  
10 agreement.

11 Q. And can you describe what the remainder  
12 of the exhibit is?

13 A. It's a draft of the irrevocable life  
14 insurance trust that I gave to Si.

15 Q. And this was in June of 1995?

16 A. Yes.

17 Q. Showing you --

18 MR. SIMON: Can you mark this as Exhibit 4,  
19 please.

20 (Whereupon, D. Simon Deposition  
21 Exhibit No. 4 was marked for  
22 identification.)

23 BY MR. SIMON:

24 Q. Showing you what has been marked as

1 David Simon Deposition Exhibit No. 4. It's  
2 Bates stamped BT 000013 through 000021.

3 Have you ever seen that document  
4 before?

5 A. Yes, I have, and it has my writing on  
6 it.

7 Q. So you see some handwriting in the  
8 blanks on the first page?

9 A. I do.

10 Q. And what does that say?

11 A. The handwriting says Si, then Shirley,  
12 then Si.

13 Q. And it's got Shirley -- Shirley's name  
14 and then the words -- what words follow  
15 Shirley's name?

16 A. As trustee. This is an earlier draft  
17 of the same document.

18 Q. Okay. Now, I'd like to direct your  
19 attention to Article 7 of Exhibit 4, and can you  
20 read that Article 7 into the record?

21 A. Upon my death, the trustee shall divide  
22 the property of this trust into as many separate  
23 trusts as there are children of mine who survive  
24 me and children of mine who predecease me

1 leaving descendants who survive me. These  
2 trusts shall be designated respectively by the  
3 name of my children. Each trust shall be  
4 administered and distributed in the following  
5 manner.

6 And there's an A, B, and C.

7 Q. And then Article 8, let's look at the  
8 last paragraph. Right before Article 9, can you  
9 read that sentence?

10 A. As of the date of this agreement, I  
11 currently have blank children living; namely,  
12 colon.

13 Q. And now I'd like you to look back at  
14 Exhibit No. 3 and read to me Article 7.

15 A. Upon my death, the trustee shall divide  
16 the property of the trust into as many separate  
17 trusts as there are children of mine that  
18 survive me and children of mine who predecease  
19 me, living descendants who survive me. These  
20 trusts shall be designated respectively by the  
21 names of my children. Each trust shall be  
22 administered and distributed in the following  
23 manner.

24 And there's an A, B, and C.

1 Q. And directing you to the end of  
2 Article 8 of that draft, which is, again,  
3 Exhibit 3, can you read the last same sentence?

4 A. Sure.

5 As of the date of this agreement, I  
6 currently have five children living; namely, Ted  
7 S. Bernstein, Pamela B. Simon, Jill Bernstein,  
8 Lisa Bernstein Friedstein, and Eliot Bernstein.

9 MR. SIMON: I have nothing further.

10 MR. STAMOS: Couple follow-ups.

11 FURTHER EXAMINATION

12 BY MR. STAMOS:

13 Q. When you look at Exhibit No. 4,  
14 where -- where was this document located?

15 A. My file.

16 Q. And when you say your files, what does  
17 that mean? I mean, did you have a file that --

18 A. File, yes, my --

19 Q. Was it lying on a -- laying on a desk?

20 A. Oh, no. In storage --

21 Q. I mean, how was it maintained? I mean,  
22 how did you -- how did you locate it?

23 A. Went to storage, got the manila folder  
24 out that said File on it, opened the file.

1 Q. And what did that file -- what did that  
2 file -- how was that file designated?

3 A. I -- I don't know off the top of my  
4 head. I'd have to check.

5 Q. How did you -- were there other  
6 materials in it aside from this document, this  
7 blank?

8 A. No.

9 Q. So I take it the document that we have  
10 marked as Exhibit No. 3 was not in that file,  
11 because this -- this, you had to go in the  
12 computer to find, correct?

13 A. Correct.

14 Q. And so how did -- where did this --  
15 when you look at Exhibit No. 4, where did this  
16 originally come from? Was this originally --  
17 was this at some point in your word processor  
18 and you -- with these lines in it that were to  
19 be filled out?

20 A. Yes.

21 Q. Did you locate that? This, meaning  
22 Exhibit 4, right, just so we know what we're  
23 talking about.

24 A. Did I locate that on the word

1 processor?

2 Q. Yeah, no, I wasn't clear.

3 Looking at Exhibit No. 4, I take it

4 this is at -- this was at one point on your word

5 processor and it was printed out and then filled

6 out and then --

7 A. Not -- not the exhibit, no. It has my

8 handwriting on it, so what I think I did is, is

9 I wrote this in and gave it to my assistant who

10 then made the modifications which you see is

11 Exhibit 3.

12 Q. But my question to you is: Before you

13 wrote in, this was obviously printed out from a

14 printer, correct?

15 A. Correct.

16 Q. This must have been on your word

17 processor to be printed out on a printer,

18 correct? Exhibit 4.

19 A. I believe so.

20 Q. Did you find Exhibit 4 in your -- in

21 your computer?

22 A. Changed to look like Exhibit 3, yes.

23 Q. And then I take it -- hang on for a

24 second.



1           Were any subsequent drafts made on your  
2 computer after -- after Exhibit No. 3?

3           A. No.

4           Q. Did you give a copy of Exhibit No. 3 to  
5 Simon Bernstein?

6           A. Yes.

7           Q. And what did he do with it?

8           A. I don't know for sure because I wasn't  
9 there, but I believe he went to Hopkins & Sutter  
10 to have it changed one last time and executed.

11          Q. And did you share your draft with  
12 Hopkins & Sutter? What's in your computer, was  
13 it ever transmitted to Hopkins & Sutter so they  
14 could mark it up?

15          A. It originated at Hopkins & Sutter  
16 because it was Hopkins & Sutter that did my  
17 irrevocable life insurance trust.

18          Q. No, no, I know that, but -- but you  
19 created the document called Si Trust that you've  
20 talked about, Exhibit No. 3, correct?

21          A. Actually, it was created at -- most of  
22 it by Hopkins & Sutter when they did the work  
23 for me.

24          Q. Okay.

1 A. I modified what you're seeing.

2 Q. I understand that. So you modified a  
3 document that had been your document from  
4 Hopkins & Sutter, right? That's what you're  
5 telling us?

6 A. Yes.

7 Q. And then -- and you made modifications,  
8 including you being identified as the trustee,  
9 correct?

10 A. Yes.

11 Q. On No. 3, Exhibit No. 3?

12 A. Yes.

13 Q. And you gave that to Simon Bernstein,  
14 correct?

15 A. Yes.

16 Q. Okay. What I'm asking is: Did you  
17 also transmit to Hopkins & Sutter electronically  
18 what we have before us as Exhibit No. 3 so that  
19 they could make modifications to it pursuant to  
20 what Mr. Bernstein wanted?

21 A. I personally did not.

22 Q. Did somebody else do that?

23 A. It's very possible.

24 Q. And who would have done that?

1 A. My assistant.

2 Q. Who?

3 A. Debbie.

4 Q. Is she still with you?

5 A. She's not.

6 Q. Is she still available?

7 A. Don't know.

8 Q. Would she have done that without your

9 instruction?

10 A. She would -- if Si would have told her,

11 she would have, yes.

12 Q. Do you think that happened?

13 A. I don't know.

14 Q. When Mr. Bernstein -- did you -- did

15 you keep a copy of what you gave Mr. Bernstein

16 to take to Hopkins & Sutter?

17 A. No, I did not.

18 Q. Why not?

19 A. No reason.

20 Q. Why'd you keep a draft?

21 A. I didn't realize I did, but obviously

22 at the time, Debbie must have filed it.

23 Q. When he returned to you after his

24 meetings at Hopkins & Sutter, did you keep a

1 copy of that document?

2 A. The executed trust?

3 Q. Yeah.

4 A. I believe we did have it for a period

5 of time till we moved offices.

6 Q. Okay. And I take it you would have

7 stored it in the same file as the draft, right?

8 You wouldn't put it in another place --

9 A. I didn't store it.

10 Q. Who --

11 A. Mr. Bernstein would have stored it,

12 Simon Bernstein.

13 Q. He did? Did you see him put it in the

14 file?

15 A. Did I see him? No. I don't watch --

16 Q. Did you ever see it again after that

17 day?

18 A. We do a thing called the document

19 review board, so depending on the exact date

20 that it was funded, I'd have to go back. I

21 probably would have seen it at that point, too,

22 so on every time there's an A.L.P.S. funding,

23 there's a series of documents.

24 Q. Every time there's a what funding?

1 A. A.L.P.S.

2 Q. Yeah?

3 A. Arbitrage Life Payment System.

4 So at the time of the funding of the  
5 policy, there would have been a document review  
6 board, and that would have been reviewed again  
7 at that time.

8 Q. Why do you care who the beneficiary is?

9 A. He was also the owner.

10 Q. What does that matter at that the  
11 point?

12 A. Because in the Arbitrage Life Payment  
13 System, there's reps and warranties made by the  
14 owner that are essential to the payment plan.

15 Q. Is it your testimony that you saw  
16 the -- the trust at a later date in your office?

17 A. I would have to see what date it was  
18 funded, but I would say yes, I saw it on the  
19 date that it was funded also.

20 Q. Do you remember doing that? Do you  
21 remember seeing it?

22 A. I remember seeing it when he came back.  
23 I do not have an independent recollection of  
24 that, but it was our habit and custom to do that

1 on each and every trust and each and every  
2 owner.

3 Q. Okay. And that's something that would  
4 have been maintained by your company because you  
5 were participating in this A.L.P.S. program,  
6 correct?

7 I'm probably not talking about it  
8 properly, but -- but the exercise you said you  
9 went through --

10 A. Yes.

11 Q. -- was something that -- this review  
12 you would have done would have been done as the  
13 company. The company would have been required  
14 to do that as part of this A.L.P.S. payment?

15 A. S.T.P. would have done it. It's not  
16 required to, but it's one of the ways that --

17 Q. All right. And it would have been in  
18 your records, the document would have been in  
19 your records to facilitate your doing that,  
20 correct?

21 A. No.

22 Q. Whose records would it have been in?

23 A. Simon Bernstein's.

24 Q. And all the -- do you have other people

1 who have purchased insurance pursuant to the  
2 A.L.P.S. program?

3 A. Yes.

4 Q. Do you do the same review for all of  
5 them?

6 A. Yes.

7 Q. Do you have them bring their records in  
8 to look at or do you look at the records you  
9 maintain for them?

10 A. No, I would look at the records. And  
11 if it wasn't other than Simon Bernstein or  
12 myself or the employees are there, then we  
13 probably would have kept a copy of that  
14 individual's trust, but maybe not the whole  
15 trust. Usually what happens is we get a trust  
16 certification from the attorney, so there's a  
17 front two pages, and then a back signature page.  
18 That's the standard practice for us.

19 Q. I see. I see.

20 And your testimony is that at some  
21 point, he just took that with him and it was no  
22 longer available to you?

23 A. 1996 or when we moved offices, he took  
24 all of his furniture, books, records.

1 Q. And when did -- when did -- at some  
2 point, did he -- did it cease being funded  
3 through the A.L.P.S. program?

4 A. The Lincoln Benefit policy?

5 Q. No. The -- the --

6 A. Capitol Bankers policy was never funded  
7 through the A.L.P.S. program.

8 Q. Did the Lincoln benefits policy have  
9 the '95 trust you've talked about as the  
10 beneficiary?

11 A. And owner.

12 Q. Well, you said that earlier.

13 MR. STAMOS: Okay. That's all I got.

14 Thanks.

15 Reserve?

16 MR. SIMON: Yes.

17 (Whereupon, the deposition  
18 concluded at 4:25 p.m.)

19

20

21

22

23

24



1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION

4 SIMON BERNSTEIN )  
IRREVOCABLE INSURANCE )  
5 TRUST DTD 6/21/95, by )  
Ted S. Bernstein, its )  
6 Trustee, Ted S. )  
Bernstein, an )  
7 individual, Pamela B. )  
Simon, an individual, )  
8 Jill Iantoni, an )  
individual, and Lisa S. )  
9 Friedstein, an )  
individual, )

10 Plaintiff, )  
vs. ) No. 13 CV 3643

11 )  
12 HERITAGE UNION LIFE )  
INSURANCE COMPANY, )  
13 Defendant. )

14 This is to certify that I have read the  
15 transcript of my deposition taken in the  
16 above-entitled cause by Vicki L. D'Antonio,  
17 Certified Shorthand Reporter, on January 5, 2015,  
18 and that the foregoing transcript accurately  
states the questions asked and the answers given

19 \_\_\_\_\_  
20 DAVID SIMON

21 SUBSCRIBED AND SWORN TO  
22 before me this \_\_\_\_\_ day  
23 of \_\_\_\_\_, 2015.

24 \_\_\_\_\_  
Notary Public

1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF C O O K )

4

5 I, VICKI L. D'ANTONIO, a Notary Public

6 within and for the County of Cook and State of

7 Illinois, do hereby certify that heretofore,

8 to-wit, on the 5th day of January, 2015,

9 personally appeared before me, DAVID SIMON, a

10 witness in a certain cause now pending and

11 undetermined in the United States District

12 Court, Northern District of Illinois, Eastern

13 Division, wherein SIMON BERNSTEIN IRREVOCABLE

14 INSURANCE TRUST DTD 6/21/95 is the Plaintiff and

15 HERITAGE UNION LIFE INSURANCE COMPANY

16 is the Defendant.

17 I further certify that the said DAVID

18 SIMON was by me first duly sworn to testify the

19 truth, the whole truth, and nothing but the

20 truth in the cause aforesaid; that the testimony

21 then given by said witness was reported

22 stenographically by me in the presence of said

23 witness and afterwards reduced to typewriting by

24 Computer-Aided Transcription, and the foregoing

1 is a true and correct transcript of the  
2 testimony so given by said witness as aforesaid.

3 I further certify that the signature to  
4 the foregoing deposition was reserved by counsel  
5 for the respective parties.

6 I further certify that the taking of this  
7 deposition was pursuant to notice and that there  
8 were present at the deposition the attorneys  
9 hereinbefore mentioned.

10 I further certify that I am not counsel  
11 for nor in any way related to the parties to  
12 this suit, nor am I in any way interested in the  
13 outcome thereof.

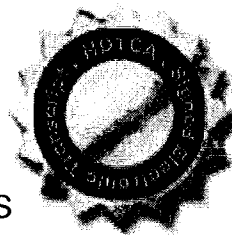
14 IN TESTIMONY WHEREOF: I have hereunto  
15 set my hand and affixed my notarial seal this  
16 9th day of January, 2015.

17

18

19

\_\_\_\_\_  
*Richard S. D'Antonio*



20 NOTARY PUBLIC, COOK COUNTY, ILLINOIS  
21 CSR LIC. NO. 84-004344

22

23

24

1           McCorkle Litigation Services, Inc.  
2           200 N. LaSalle Street, Suite 2900  
3           Chicago, Illinois 60601-1014

4           January 9, 2015

5           The Simon Law Firm  
6           Mr. Adam M. Simon  
7           203 East Wacker Drive, Suite 2725  
8           Chicago, Illinois 60601

9           IN RE: Bernstein v. Heritage  
10          COURT NUMBER: 13 CV 3643  
11          DATE TAKEN: January 5, 2015  
12          DEPONENT: Mr. David Simon

13          Dear Mr. Simon:

14          Enclosed is the deposition transcript for the  
15          aforementioned deponent in the above-entitled  
16          cause. Also enclosed are additional signature  
17          pages, if applicable, and errata sheets.

18          Per your agreement to secure signature, please  
19          submit the transcript to the deponent for review  
20          and signature. All changes or corrections must  
21          be made on the errata sheets, not on the transcript  
22          itself. All errata sheets should be signed and  
23          all signature pages need to be signed and notarized.  
24          After the deponent has completed the above,  
            please return all signature pages and errata  
            sheets to me at the above address, and I will  
            handle distribution to the respective parties.

            If you have any questions, please call me at the  
            phone number below.

            Sincerely,

            Margaret Setina      Court Reporter Present:  
            Signature Department Vicki L. D'Antonio  
            cc: Mr. James Stamos

<p><b>A</b></p> <p><b>A.L.P.S</b> 100:22 101:1 102:5 102:14 103:2 104:3,7</p> <p><b>ability</b> 41:12</p> <p><b>above-entitled</b> 105:15 108:11</p> <p><b>Absolutely</b> 32:9</p> <p><b>accept</b> 23:8</p> <p><b>accessed</b> 90:20</p> <p><b>accurately</b> 105:16</p> <p><b>achieve</b> 52:12</p> <p><b>acrimony</b> 54:10,19</p> <p><b>act</b> 32:23</p> <p><b>acting</b> 31:20,22 33:17 35:2</p> <p><b>actual</b> 14:24</p> <p><b>Adam</b> 2:9 3:15 21:11 46:4 47:20 82:21,24 85:19 108:5</p> <p><b>added</b> 30:9</p> <p><b>adding</b> 29:10</p> <p><b>additional</b> 29:3 40:24 108:12</p> <p><b>address</b> 108:18</p> <p><b>addressed</b> 75:3,4,6</p> <p><b>administered</b> 5:22 93:4,22</p> <p><b>adopted</b> 87:22</p> <p><b>adoption</b> 87:21</p> <p><b>advised</b> 60:4</p> <p><b>affairs</b> 70:22</p> <p><b>affidavit</b> 69:14,22,23 70:1</p> <p><b>affixed</b> 107:15</p> <p><b>aforementioned</b> 108:11</p> <p><b>aforsaid</b> 106:20 107:2</p> <p><b>agency</b> 12:13</p> <p><b>agree</b> 24:21 35:16 52:6 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## **Exhibit 36**

**Heritage Union Life Insurance Company**

PO Box 1147, Jacksonville, IL 62651-1147

Phone 800-825-0003 Fax 803-333-7842

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April 23, 2010

SIMON BERNSTEIN  
7020 LIONS HEAD  
BOCA RATON, FL 33496

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09085605

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.

Sincerely,

Client Services

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

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

v. )

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

HERITAGE UNION LIFE INSURANCE )  
COMPANY )  
 )  
Counter-Plaintiff )

v. )

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95 )  
 )  
Counter-Defendant )

and, )

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## **II. FACTUAL BACKGROUND**

### **A. THE PARTIES**

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

### **B. THE POLICY**

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

### **C. THE INSURED**

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

### **D. THE INSURER**

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

### **E. THE POLICY PROCEEDS (THE “STAKE”)**

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

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

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

#### **F. THE POLICY PROVISIONS ON BENEFICIARIES**

The Policy provisions which set forth both the definitions of a beneficiary under the Policy, and the requirements for naming or changing a beneficiary of the Policy are the controlling factors in making the determination as to whom is the beneficiary of the Policy Proceeds. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 415, 318 N.E.2d 52, 57 (1<sup>st</sup> Dist., 1974) *citing* 2 Appelman, Insurance Law and Practice §921 (1966). In this instance, the Policy defines “Beneficiary” as follows:

A Beneficiary is any person *named on our* [the Insurer’s] *records* to receive proceeds of this policy after the insured dies. There may be different classes of Beneficiaries, such as primary and contingent. These classes set the order of payment. There may be more than one beneficiary in a class. Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order:  
(emphasis added)

- a. Primary Beneficiaries.
- b. Contingent Beneficiaries, if any, provided no primary Beneficiary is living at the death of the Insured.
- c. The Owner or the Owner’s executor or administrator, provided no Primary or Contingent Beneficiary is living at the death of the Insured.

Any Beneficiary may be named an Irrevocable Beneficiary. An irrevocable beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in part 2. (**SoF, ¶26; Ex. 5 at bates no. JCK00101**)

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**III. VENUE AND JURISDICTION**

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

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

IV. ARGUMENT

A. STANDARDS

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

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

## B. GOVERNING LAW

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

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

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

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

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

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

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

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

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

The *McDairmid* court continued:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Such additional evidence includes the following:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **V. CONCLUSION**

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

Dated: March 27, 2015

Respectfully Submitted,

/s Adam M. Simon

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Phone: 312-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
Attorney for Movants  
Simon Bernstein Irrevocable Insurance Trust;  
Ted Bernstein as Trustee, and individually,  
Pamela B. Simon, Jill Iantoni, Lisa Friedstein

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
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 )

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

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

**AMENDED MOTION FOR  
SUMMARY JUDGMENT AS TO  
COUNTS I AND II OF MOVANTS'  
CLAIMS TO THE POLICY PROCEEDS**



Third-Party Defendants. )

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

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

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 56(a) and Local Rule 56.1, move the Court for summary judgment as to Counts I and II of their Claims to the Policy Proceeds, and in support thereof states as follows:

1. The undisputed facts and evidence supporting this motion are set forth more fully in the accompanying Plaintiff's Statement of Material Undisputed Facts Pursuant to Local Rule 56.1(a); the Appendix of Exhibits; and the Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment.

2. This action was originally filed by the Simon Bernstein Irrevocable Insurance Trust dated 6/21/95 against Heritage Union Life Insurance Company (the "Insurer") in the Circuit Court of Cook County. The Action related to Plaintiff's claim to certain death benefit proceeds ("Policy Proceeds") payable under a life insurance policy (the "Policy") insuring the life of Simon Bernstein who passed away in September of 2012.

3. The Insurer removed this Action from Cook County to the Northern District, and filed an Interpleader Action.

4. The Insurer did not dispute its liability under the Policy. Instead, the Insurer sought to interplead conflicting claimants to the Policy Proceeds, and deposit the Policy Proceeds with the Registry of the Court. The Insurer accomplished this and after depositing the Policy Proceeds, the Insurer was dismissed from the litigation.

5. The remaining parties have had access to the Policy records and all documents produced in this litigation, and have had ample time to conduct discovery. The fact discovery deadline set by Judge St. Eve passed on January 9, 2015. **[Dkt. #123]**

6. The matter is now ripe for the court to determine which claimant is the beneficiary of the Policy Proceeds.

7. In its memorandum and submissions, Plaintiff has established a rock solid foundation of undisputed evidence in support of its motion. Plaintiff's memorandum of law explains each element of that foundation building to the inescapable conclusion that Simon Bernstein formed the Bernstein Trust and intended for it to be the beneficiary of the Policy Proceeds.

8. Finally, Plaintiffs will show that Ted Bernstein was to be the successor trustee of the Bernstein Trust and/or should be so appointed, and that the five children of Simon Bernstein were the designated beneficiaries of the Bernstein Trust.

9. In addition, once this court grants Movants' motion for summary judgment, Movant will be prepared to promptly move for summary judgment as Eliot's Claims which go beyond the scope of this litigation and do not relate directly to the Policy Proceeds. Movants request that the court grant Movants and the remaining Third-Party Defendants sixty days to file a dispositive motion as to all of the remaining Eliot Claims after the Court grants Movants' current motion for summary judgment.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for summary judgment as to counts I and II of their first amended complaint in its entirety, and enter an Order finding and/or declaring as follows:

- a) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;
- b) Following the death of Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;

- c) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee;
- d) The beneficiary of the Policy Proceeds is the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;
- e) The beneficiaries of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 are the five adult children—Ted Bernstein, Pamela B. Simon, Eliot I. Bernstein, Jill Iantoni and Lisa Friedstein—to share equally;
- f) That upon entry of the Order counsel, Adam M. Simon, shall be authorized to present the judgment to the Registry of the Court and have the Registry distribute the Policy Proceeds in a check payable as follows:  
  
“The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”;
- g) Adam M. Simon shall deposit the Policy Proceeds in The Simon Law Firm Client Trust Account and then disburse the Policy Proceeds as follows:
  - i) First to the payment of attorney Adam M. Simon's fees and costs;
  - ii) Second, \$5,000.00 shall be retained in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance of the \$5,000.00 after payment of such expenses shall be distributed to the five adult children in equal shares;
  - iii) The balance to be split equally among the five adult children of Simon Bernstein;
  - iv) Each Beneficiary that receives a share of the Policy Proceeds shall execute and deliver to the Adam M. Simon a signed receipt for such payment; and
  - v) Following the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

- h) Movants and Third-Party Defendants are granted leave to file a dispositive motion as to Eliot's Claims within sixty days;
- i) Movants are entitled to such further relief as this court may deem just and proper.

Dated: March 27, 2015

Respectfully Submitted,

/s/ Adam M. Simon

Adam M. Simon (#6205304)

303 E. Wacker Drive, Suite 2725

Chicago, IL 60601

Phone: 312-819-0730

Fax: 312-819-0773

E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)

Attorney for Movants

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

**CERTIFICATE OF SERVICE**

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

ELIOT IVAN BERNSTEIN  
2753 NW 34 St.  
Boca Raton, FL 33434  
*Appearing Pro Se*  
(By U.S. Mail)

James J. Stamos  
Kevin Horan  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
*Attorney for Intervenor,  
Estate of Simon Bernstein*

on this 27th day of March, 2015.

/s/ Adam Simon  
Adam Simon, Esq.  
#6205304  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
(312) 819-0730  
Attorney for Plaintiffs-Movants

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

Third-Party Defendants. )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

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

**INTERVENOR’S MOTION  
TO STAY DISCOVERY**

**Filer:**

Brian O’Connell, as Personal  
Representative of the Estate of  
Simon L. Bernstein, Intervenor.

v. )  
 )  
 )  
 TED BERNSTEIN, individually and )  
 as alleged Trustee of the Simon Bernstein )  
 Irrevocable Insurance Trust Dtd, 6/21/95 )  
 )  
 Cross-Defendant )  
 and, )  
 )  
 PAMELA B. SIMON, DAVID B.SIMON, )  
 both Professionally and Personally )  
 ADAM SIMON, both Professionally and )  
 Personally, THE SIMON LAW FIRM, )  
 TESCHER & SPALLINA, P.A., )  
 DONALD TESCHER, both Professionally )  
 and Personally, ROBERT SPALLINA, )  
 both Professionally and Personally, )  
 LISA FRIEDSTEIN, JILL IANTONI )  
 S.B. LEXINGTON, INC. EMPLOYEE )  
 DEATH BENEFIT TRUST, S.T.P. )  
 ENTERPRISES, INC. S.B. LEXINGTON, )  
 INC., NATIONAL SERVICE )  
 ASSOCIATION (OF FLORIDA), )  
 NATIONAL SERVICE ASSOCIATION )  
 (OF ILLINOIS) AND JOHN AND JANE )  
 DOES )  
 )  
Third-Party Defendants. )  
 )  
 BRIAN M. O'CONNELL, as Personal )  
 Representative of the Estate of )  
 Simon L. Bernstein, )  
 )  
 )  
Intervenor. )

**INTERVENOR'S MOTION TO STAY DISCOVERY**

NOW COMES Intervenor, Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein ("Intervenor"), and moves this Court to stay discovery in this case for sixty (60) days. In support of his motion, Intervenor states as follows:



1. Intervenor has been directed by the Palm Beach County Probate Court to pursue the instant action on behalf of the Estate of Simon Bernstein. (A copy of the Order is attached hereto as Exhibit A).<sup>1</sup>

2. If Intervenor is successful, the \$1.7 million currently interpleaded will be paid to the Estate. If Intervenor is not successful, the money will not be paid to the Estate, the beneficiaries of which are principally the grandchildren of the deceased.

3. The parties initiated discovery while the matter was pending before Judge St. Eve. They exchanged and reviewed thousands of documents and took the deposition of David Simon. In the interim, however, there has been a great deal of activity in the probate matter before the Palm Beach County Probate Court which bears directly upon the activity here. As a consequence of this activity, described more fully below, a great deal of effort and expense might be avoided if discovery in this case were to be stayed for 60 days to allow the issues before the Probate Court to be resolved.

4. Currently pending before the Palm Beach County Probate Court are a number of issues, one of which is finalization of a proposed settlement between the Estate and William Stansbury, an Estate claimant. At present, it is unclear what effect the proposed settlement may have on the future of the instant litigation, or Plaintiffs' and the Estate's role in the instant litigation, should it continue (the resolution of Mr. Stansbury's claim may, in fact, obviate the need for further litigation). It has yet to be determined when the settlement of Mr. Stansbury's claim will be finalized.

5. Another issue before the Palm Beach Probate Court is a dispute concerning Ted Bernstein's role as purported trustee of a subsequent trust formed by Simon Bernstein. Ted

---

<sup>1</sup> Intervenor Brian M. O'Connell, Personal Representative of the Estate of Simon Bernstein, assumed the duties of Administrator Ad Litem Benjamin P. Brown on July 24, 2014; Intervenor's uncontested motion to substitute in the instant action was granted on November 3, 2014 (Dkt. No. 126).

Bernstein, one of the Plaintiffs in the instant action, may be conflicted insofar as he is advancing a position in the Florida litigation (as purported trustee of his late father's trust) which is directly opposed to his position in this litigation.

6. Undersigned counsel takes no position with regard to the merits of the disputes currently being litigated in Florida. However, the issue of Ted Bernstein's potentially conflicted role in the Florida litigation should be resolved before dispositive motion practice and/or further discovery commences in the instant action, if only to avoid depleting Estate assets.

7. Plaintiffs have brought a Motion for Summary Judgment (Dkt. No. 153) which, on its face, raises issues of fact which demonstrate the need for further discovery in this case. Intervenor, on behalf of the Estate, is prepared to respond to Plaintiffs' motion. However, as outlined above, an extension of 60 days (until the underlying issues before the Probate Court in Florida are resolved) will likely serve to avoid expense and effort for all parties.

8. Intervenor has informed this Court that additional discovery is necessary in this case, including likely five (5) additional depositions (*See* Dkt. No. 141). In the interest of preserving Estate assets, Intervenor requests that discovery in this action be stayed for an additional sixty days pending resolution of the issues outlined above.

9. This motion is not brought with the intention to delay the proceedings but only as a matter of preserving resources pending the anticipated resolution of matters before the Florida Probate Court and to ensure discovery is completed in an efficient manner.

10. No party will be prejudiced by the granting of this Motion.

WHEREFORE, Intervenor prays that the Court stay discovery in this matter for an additional sixty (60) days.

Dated: April 3, 2015

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, Personal Representative 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 April 3, 2015, 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.

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

Eliot Ivan Bernstein, *Pro Se*

          /s/          Kevin P. Horan          

Kevin P. Horan



FROM: Peter M. Feaman P.A. 7346664 TO: 2741418 05/23/2014 10:43:47 #17897 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.

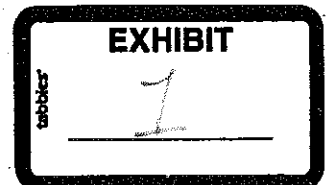
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

**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.




Case 1:13-cv-03643 Document 154 Filed 04/03/15 Page 8 of 8 PageID 2211

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 Ross, Esq., PAGE, MRACHUK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [alan.ross@pm-law.com](mailto:alan.ross@pm-law.com) and [mehandler@pm-law.com](mailto:mehandler@pm-law.com)
  - John Pankowski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [john@pankowskilawfirm.com](mailto:john@pankowskilawfirm.com)
  - Peter M. Feinman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com)
  - Elliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [ev@elliottbernst.com](mailto:ev@elliottbernst.com)
  - William H. Glasko, Esq., Gordon 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 F. Brown, Esq., Mutwiczky & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bfb@mutwiczky.com](mailto:bfb@mutwiczky.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., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )

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

**Motion for Extension of Time to File  
Reply to Summary Judgement**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

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. )

BRIAN M. O'CONNELL, as Personal )

Representative of the Estate of )

Simon L. Bernstein, )

Intervenor. )



**Motion for Extension of Time to File Reply to Summary Judgement**

1. That Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant requests additional time to file a reply to the Motion for Summary Judgement filed by Plaintiff.
2. That Eliot is currently scheduled for a series of hearings in the 4 legal cases involving the Estates and Trusts of his deceased parents to remove Ted Bernstein as the alleged Trustee and 1 case involving his three children’s trusts with several hearings as well. These hearings are taking place through April and into May and Eliot requests at least until May 15, 2012 to file a reply.
3. The Summary Judgement is 800 pages and Eliot is Pro Se so this is an extensive undertaking to complete within the 20 days required.

Wherefore, Eliot requests this Court grant an extension of time after considering the circumstances.

Respectfully submitted,

DATED: Saturday, April 4, 2015

/s/ **Eliot Ivan Bernstein**  
Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
Telephone (561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
[www.iviewit.tv](http://www.iviewit.tv)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Saturday, April 4, 2015, 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, )

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 )

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

**Filers:  
Simon Bernstein Irrevocable  
Insurance Trust Dated 6/21/95,  
Ted Bernstein, as Trustee and  
Individually,  
Pamela B. Simon, Jill Iantoni, Lisa  
Friedstein, David Simon, Adam Simon,  
The Simon Law Firm, and STP  
Enterprises, Inc. (“Plaintiffs” or  
“Movants”)**

**RESPONSE IN OPPOSITION TO  
INTERVENOR’S MOTION TO STAY  
DISCOVERY**

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

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

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

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and states as their response in opposition to Intervenor's motion to stay discovery as follows:

### **INTRODUCTION**

Intervenor's motion to stay discovery should be denied. In filing the motion, Intervenor once again attempts to delay proceedings solely to save itself from the time and expense required to litigate a case in which it voluntarily inserted itself. The motion to stay discovery is devoid of any of the procedural history necessary for the court to make an informed decision. Further, the motion is deficient on its face because it fails to allege that it was brought in good faith or because of excusable neglect. And, the content of the motion—or lack thereof -- indicates it was not.

The sum total of Intervenor's efforts in this case consists of taking one deposition and filing multiple motions for extensions of time. After intervening, Intervenor provided no documentation in response to Rule 26 disclosure requirements because it admittedly has no affirmative evidence that it is the beneficiary of the Policy Proceeds at issue.

On the other hand, Plaintiffs' counsel delivered a compact disc to Intervenor's counsel in August of 2014 containing all of the documents exchanged up to that date by all parties. Intervenor's assertion that it does not intend to delay the proceedings is completely contradicted by the docket in this case which shows that stalling has been the extent of Intervenor's efforts to date.

## PROCEDURAL HISTORY

Two years ago, Plaintiffs originally brought an action against Heritage Union Life Insurance Company seeking payment of proceeds from a life insurance policy issued on the life of Simon Bernstein, as Insured. Simon Bernstein passed away in September of 2012. Heritage Union removed the action to the Northern District, and filed an interpleader action serving potential competing claimants to the Policy Proceeds. Heritage Union did not serve the Estate of Simon Bernstein as a potential claimant or name the Estate in the interpleader litigation.

In 2013, William Stansbury, a potential creditor of the Estate of Simon Bernstein sought to intervene in the instant litigation, and Plaintiffs opposed that motion to intervene. On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”

Five to six months later, Stansbury took a second bite at the apple by filing a petition in the Probate Court in Florida to have an administrator ad litem appointed on behalf of the Estate of Simon Bernstein to intervene in the instant litigation. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem and specifically ordered that the legal fees and costs be borne not by the Estate but by William Stansbury. (*See* Probate Court Order attached as Ex. 1 to Intervenor’s Motion to Stay). Subsequently, Kevin O’Connell was appointed and substituted in Benjamin Brown’s stead as administrator ad litem.

Before the Estate filed its motion to intervene, Judge St. Eve had set a fact discovery deadline of June 13, 2014 [**Dkt. #96**]. After Judge St. Eve granted Intervenor's motion to intervene, she extended the fact discovery deadline until January 9, 2015 and set a deadline for filing dispositive motions on March 6, 2015. [**Dkt. #123**].

On March 2, 2015, Intervenor filed a motion to extend time for filing of dispositive motions, and the court granted the extension setting a dispositive motion deadline for April 3, 2015. On the date of the deadline for filing dispositive motions, and after Plaintiffs filed and served their motion for summary judgment on all parties, Intervenor filed this motion for a stay of discovery.

### **ARGUMENT**

As a matter of procedure, Intervenor's motion must be denied because it seeks a stay of discovery three months after fact discovery closed by prior order of the Court. On the date of the deadline for filing dispositive motions, and after Plaintiffs filed and served their motion for summary judgment on all parties, Intervenor filed the instant motion for a stay of discovery.

Intervenor overlooks the fact that discovery closed months ago, and that its request for a stay is untimely. The Order transferring this cause from Judge St. Eve to this court specifically ordered that all discovery deadlines remain intact unless otherwise ordered by the court. [**Dkt. #133**]. Since the date the case was transferred to Judge Blakey, no order has been entered extending fact discovery, and so the January 9, 2015 deadline remained intact. Clearly, Intervenor's request for a stay of discovery months after the discovery deadline passed is untimely.

Under Fed.R.Civ.P. (6)(b)(2), the court's discretion to grant a tardy motion for an extension of discovery is limited to situations where a party shows that "excusable neglect" justified its failure to comply with the district court's discovery deadline.

Intervenor fails to acknowledge the existence of the expired discovery deadline at all. In the absence of excusable neglect, the court has no discretion to grant Intervenor's motion to stay discovery since the discovery deadline passed months before the motion to stay was filed.

Had Intervenor's motion been timely, District courts usually have extremely broad discretion to control discovery. (cites omitted). In accordance with the Federal Rules "for good cause," the court may limit the scope of discovery or control its sequence to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *New England Carpenters Health and Welfare Fund v. Abbott Laboratories*, No. 12 C 1662, 2013 WL 690613 (N.D.Ill., 2013) citing Fed.R.Civ.P. 26(c)(1); *Crawford-El*, 523 S. at 598, *Tamburo v. Dworkin*, No. 04 C 3317, 2010 WL 4867346 at \*1 (N.D.Ill. Nov. 17, 2010).

But, ".....a stay of discovery is generally appropriate only when a party raises a potentially threshold issue such as a challenge to a plaintiff's standing....although Rule 26 gives the Court "authority to stay discovery, this authority must be exercised so as to 'secure the just, speedy and inexpensive determination of every action.'" "Where the Court finds that a stay of discovery is unlikely to significantly expedite the litigation, and may actually, slow it down, it will decline to interfere." *New England Carpenters Health and Welfare Fund, supra* citing *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79-80, 108 S.Ct. 2268, 101 L.Ed.2d 69 (1988).

But, Intervenor makes no argument that a stay of discovery will expedite the litigation, because it won't. The only thing a stay of discovery would achieve is to bring this litigation to a screeching halt for no reason. And, the only interest that would be served by a stay would be Intervenor's self-interest in saving the cost and expense associated with litigating a case it voluntarily sought to join.



Also, Intervenor's motion to stay discovery lacks any factual basis for the relief it seeks. Right from the get-go the motion contains patently false statements of fact including the very reason for its intervention. Intervenor was not directed by the Florida Probate Court *sua sponte* to pursue its claims on behalf of the Estate in this litigation. The sole instigating factor for Intervenor's appearance here are the efforts of William Stansbury, a potential creditor of the Estate. In fact, Intervenor's own motion admits as much because Intervenor asserts that "the resolution of Mr. Stansbury's claim may, in fact, obviate the need for further litigation." (*See* Intervenor's Motion to Stay Discovery at ¶4 and Ex. 1).

Intervenor asserts that Plaintiff's motion for summary judgment raises issues of fact that "require additional discovery". But, Intervenor fails to set forth any description of what issues of fact require further discovery, or why discovery was not completed in compliance with the court deadlines.

And, for the sake of argument, assuming that Intervenor's version is true, and that the Estate intervened only upon the Probate Court's explicit order and direction to assert the Estate's rights in this litigation; then Intervenor's failure to diligently prosecute this litigation is simply a violation of the Probate Court's Order. Intervenor's prolonged inaction has not served to assert the rights of the Estate, it only serves to prejudice the rights of the true beneficiary to the Policy Proceeds.

This litigation is over the Policy Proceeds and is separate and apart from the probate litigation in Florida. The Policy Proceeds vested in the beneficiary at the instant of the insured's death. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 318 N.E.2d 52 (1<sup>st</sup> Dist., 1974).

Plaintiffs' motion for summary judgment raises no new evidence, and relies on evidence that has been in the hands of Intervenor for many months as the clock ticked on discovery. For whatever reason, Intervenor made the strategic decision to take a single deposition during the five months it was granted for discovery after it intervened.

Intervenor has not alleged that there are any outstanding discovery requests or subpoenas for deposition that Intervenor issued within the time for discovery. In short, there is no showing of diligence, good faith or excusable neglect by Intervenor. This matter is ripe for determination as to whom is entitled to the Policy Proceeds and a ruling on Plaintiffs' motion for summary judgment will achieve just that.

Intervenor provides no just reason for any further delay in this litigation, and delay for no reason is by definition prejudicial to the true beneficiaries of the Policy Proceeds.

### CONCLUSION

For all of the foregoing reasons, Intervenor's motion for a stay of discovery should be denied.

Dated: April 6, 2015

Respectfully Submitted,

/s/ Adam M. Simon

Adam M. Simon (#6205304)

303 E. Wacker Drive, Suite 2725

Chicago, IL 60601

Phone: 312-819-0730

Fax: 312-819-0773

E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)

Attorney for Plaintiffs

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

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

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

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

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, )  
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. )  
\_\_\_\_\_ )

**NOTICE OF FILING**

To: SEE CERTIFICATE OF SERVICE ATTACHED

PLEASE TAKE NOTICE that the following document, a copy of which is attached, was electronically filed with the Clerk of the Court on the date indicated in the time stamp above:

- Plaintiffs' Response in Opposition to Intervenor's Motion to Stay Discovery

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the documents set forth below to be filed and served via ECF with the Clerk of the Court, and via U.S. mail, proper postage prepaid (if indicated) to the following on April 6, 2015:

ELIOT IVAN BERNSTEIN  
2753 NW 34 St.  
Boca Raton, FL 33434  
*Appearing Pro Se*  
(By U.S. Mail)

James J. Stamos  
Kevin Horan  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
*Attorney for Intervenor,  
Estate of Simon Bernstein*

Dated: April 6, 2015

/s/ Adam M. Simon  
Adam Simon, Esq.  
#6205304  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Attorney for Plaintiffs  
(312) 819-0730

**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 John Robert  
Blakey

Eliot Bernstein

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, April 6, 2015:

MINUTE entry before the Honorable John Robert Blakey: Intervenor's motion to stay discovery [154] is denied, as discovery closed on 1/9/15 (see [123], [133]). Motion by Third-Party Defendant/Counter-claimant Eliot Bernstein for an extension of time to file a response to Plaintiffs' motion for summary judgment [155] is granted. Third-Party Defendant/Counter-claimant Eliot Bernstein shall file his response on or before 5/15/15. Plaintiffs shall file their reply on or before 5/27/15. The notice of motion date set for 4/9/15 is stricken, the parties need not appear. The case is already set for a status hearing on 4/13/15 at 9:45 a.m. in Courtroom 1725, and that date stands. Mailed notice(gel, )

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

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

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

Third-Party Defendants. )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

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

**UNOPPOSED MOTION TO ENTER  
AGREED BRIEFING SCHEDULE**

**Filer:**

Brian O’Connell, as Personal  
Representative of the Estate of  
Simon L. Bernstein, Intervenor.

v. )  
 )  
 TED BERNSTEIN, individually and )  
 as alleged Trustee of the Simon Bernstein )  
 Irrevocable Insurance Trust Dtd, 6/21/95 )  
 )  
 Cross-Defendant )  
 and, )  
 )  
 PAMELA B. SIMON, DAVID B.SIMON, )  
 both Professionally and Personally )  
 ADAM SIMON, both Professionally and )  
 Personally, THE SIMON LAW FIRM, )  
 TESCHER & SPALLINA, P.A., )  
 DONALD TESCHER, both Professionally )  
 and Personally, ROBERT SPALLINA, )  
 both Professionally and Personally, )  
 LISA FRIEDSTEIN, JILL IANTONI )  
 S.B. LEXINGTON, INC. EMPLOYEE )  
 DEATH BENEFIT TRUST, S.T.P. )  
 ENTERPRISES, INC. S.B. LEXINGTON, )  
 INC., NATIONAL SERVICE )  
 ASSOCIATION (OF FLORIDA), )  
 NATIONAL SERVICE ASSOCIATION )  
 (OF ILLINOIS) AND JOHN AND JANE )  
 DOES )  
 )  
Third-Party Defendants. )  
 )  
 BRIAN M. O’CONNELL, as Personal )  
 Representative of the Estate of )  
 Simon L. Bernstein, )  
 )  
 )  
Intervenor. )

**INTERVENOR’S UNOPPOSED MOTION TO ENTER BRIEFING SCHEDULE**

NOW COMES Intervenor, Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (“Intervenor”), and moves this Court to enter a briefing schedule with respect to Plaintiffs’ Motion for Summary Judgment. In support of his motion, Intervenor states as follows:



1. Before the Court is Plaintiffs' Motion for Summary Judgment (Dkt. No. 148)<sup>1</sup>.
2. This Court previously entered a briefing schedule granting Third-Party Defendant/Counter-claimant Eliot Bernstein an extension of time to file a response thereto on April 6, 2015 (Dkt. No. 158).
3. Counsel for Plaintiffs and Intervenor have conferred and have agreed to apply the same briefing schedule to Intervenor's response to Plaintiffs' Motion for Summary Judgment.
4. Counsel for Intervenor has submitted a proposed agreed order, via electronic mail in accordance with the Court's standing orders.
5. No party will be prejudiced by the granting of this Motion.

WHEREFORE, Intervenor prays that the Court enter a briefing schedule on Plaintiffs' Motion for Summary Judgment which reflects the following:

- a. Intervenor shall file any response to Plaintiffs' Motion for Summary Judgment on or before May 15, 2015;
- b. Plaintiffs shall file their reply, if any, on or before May 27, 2015.

Dated: April 7, 2015

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, Personal Representative 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

---

<sup>1</sup> Plaintiffs filed their Amended Motion for Summary Judgment (Dkt. No. 153) on March 27, 2015.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 7, 2015, 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.

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

Eliot Ivan Bernstein, *Pro Se*

/s/ Kevin P. Horan  
Kevin P. Horan

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

Third-Party Defendants. )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

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

**PROPOSED AGREED ORDER  
ENTERING BRIEFING SCHEDULE**

**Filer:**

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

v. )  
 )  
 )  
 TED BERNSTEIN, individually and )  
 as alleged Trustee of the Simon Bernstein )  
 Irrevocable Insurance Trust Dtd, 6/21/95 )  
 )  
 Cross-Defendant )  
 and, )  
 )  
 PAMELA B. SIMON, DAVID B.SIMON, )  
 both Professionally and Personally )  
 ADAM SIMON, both Professionally and )  
 Personally, THE SIMON LAW FIRM, )  
 TESCHER & SPALLINA, P.A., )  
 DONALD TESCHER, both Professionally )  
 and Personally, ROBERT SPALLINA, )  
 both Professionally and Personally, )  
 LISA FRIEDSTEIN, JILL IANTONI )  
 S.B. LEXINGTON, INC. EMPLOYEE )  
 DEATH BENEFIT TRUST, S.T.P. )  
 ENTERPRISES, INC. S.B. LEXINGTON, )  
 INC., NATIONAL SERVICE )  
 ASSOCIATION (OF FLORIDA), )  
 NATIONAL SERVICE ASSOCIATION )  
 (OF ILLINOIS) AND JOHN AND JANE )  
 DOES )  
 )  
Third-Party Defendants. )  
 )  
 BRIAN M. O'CONNELL, as Personal )  
 Representative of the Estate of )  
 Simon L. Bernstein, )  
 )  
 )  
Intervenor. )

**[PROPOSED] AGREED ORDER ENTERING BRIEFING SCHEDULE**

Before the Court is Plaintiffs' Motion for Summary Judgment (Dkt. No. 148)<sup>1</sup>. This Court previously entered a briefing schedule granting Third-Party Defendant/Counter-claimant Eliot Bernstein an extension of time to file a response thereto on April 6, 2015 (Dkt. No. 158).

<sup>1</sup> Plaintiffs filed their Amended Motion for Summary Judgment (Dkt. No. 153) on March 27, 2015.

Counsel for Plaintiffs and Intervenor have conferred and have agreed to apply the same briefing schedule to Intervenor's response to Plaintiffs' Motion for Summary Judgment.

With respect to the current briefing schedule, the Court orders as follows:

- Intervenor shall file any response to Plaintiffs' Motion for Summary Judgment on or before May 15, 2015;
- Plaintiffs shall file their reply, if any, on or before May 27, 2015.

SO ORDERED.

Dated: April \_\_\_\_, 2015

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Hon. John Robert Blakey  
United States District 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 John  
Robert Blakey

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, April 7, 2015:

MINUTE entry before the Honorable John Robert Blakey: Intervenor's unopposed motion to set a briefing schedule [159] is granted. Intervenor shall file any response to Plaintiffs' motion for summary judgment on or before 5/15/15. Plaintiffs shall file their reply, if any, on or before 5/27/15. The notice of motion date set for 4/13/15 is stricken with regard to the intervenor's motion [160]. However, this matter is already set for a status hearing on 4/13/15 at 9:45 a.m. in Courtroom 1725 [see 143]. That date stands and the parties shall appear in court at that time. Mailed notice(gel, )

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

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

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

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable John  
Robert Blakey

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, April 13, 2015:

MINUTE entry before the Honorable John Robert Blakey: Status and motion hearing held on 4/13/2015. Oral motion to reopen discovery to permit the depositions of Ted Bernstein and Don Sanders is granted. The depositions shall be completed on or before 4/27/2015. Status hearing set for 5/6/2015 at 9:45 AM in Courtroom 1725. Mailed notice(gel, )

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

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

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

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

**Motion for Extension of Time to File  
Reply to Summary Judgement**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



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. )

BRIAN M. O'CONNELL, as Personal )

Representative of the Estate of )

Simon L. Bernstein, )

Intervenor. )

Motion for Additional Extension of Time to Respond to Summary Judgement

1. That Eliot has recently been inundated with a barrage of hearings and necessary responses due in the Florida Probate and Trust matters before Judge Martin Colin in the Palm Beach Probate Court.
2. That Judge Martin Colin's office on his own initiative demanded a change in a 2.5 hour continuation of an accounting hearing from May 19, 2015 to April 20, 2015 (Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children) and there were no if and or buts allowed to challenge the hearing date change ordered by the Judge. The accounting proceeding was inundated with new evidence filed during the extension period that must be reviewed if possible before the Monday hearings. The details to that are as follows:

From: Candice Bernstein [mailto:tourcandy@gmail.com]  
Sent: Wednesday, April 15, 2015 7:52 PM  
To: 'Eliot Ivan Bernstein'  
Subject: Judge Colin's asst call to reschedule hearing on May 19 to April 20

Honey,

Sherrie the Judicial Assistant for Judge Martin Colin called several times today. She left a message on our voice mail and also spoke with Josh who took a message that the judge has rescheduled a hearing scheduled for May 19 to April 20 and to call her. When I called her back she informed me the judge notified her to call all the parties and re-schedule the hearing set for May 19 at 1:30 to April 20 at 1:30. I informed her we have several impending other court obligations including the urgent time frame regarding the Illinois litigation including two depositions that need to be completed by April 27 and an answer to an 800 page summary judgement. I also informed her of the fact that Oppenheimer recently did a document dump of hundreds of additional documents necessary to review before the accounting hearing. I was under the impression the hearing set for May 19 would give us the right amount of time to review and prepare given the new information we have received. I informed her to move the hearing up a whole month ahead of the scheduled date was impossible. Sherrie said under no circumstance could she relay any message to the judge regarding our concerns and stated the hearing was mandatory and will go on whether

we can attend or not. I also informed her of the timeline we are currently under preparing for the two and half hour hearing already scheduled for April 23 in actions to remove Ted as Trustee. Again she stated there was nothing to do other than bring it up with the judge on Monday at the hearing. In addition the only date to bring our concerns to the judge's attention is at a UMC hearing and the only day prior to Monday's hearing is tomorrow and we would have to coordinate a last minute agreed hearing with Oppenheimer and get them to agree to attend the hearing to see if we can coordinate a better date. Given the call with Sherrie was at 3:30pm and our prior commitment at 4:30 there was no way enough time to coordinate and schedule a hearing for tomorrow at 8:45am UMC hearing with the other parties. I asked her if the judge gave a reason for this change she said no just that he told her to reschedule this hearing immediately and that it was mandatory. Also we will have to cancel our commitment on Monday, April 20 at 4:30pm for Danny.

Please advise, xocandy

3. That Judge Martin Colin finally decided on two Motions to Dismiss a Motion to Remove Ted Bernstein as Trustee on April 15, 2015 that I received today, April 17, 2015 (Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB) and I only have 15 days from date of the Order to figure out what it means and file a response as a Pro Se litigant. **SEE EXHIBIT 1** - ORDERS
4. There is a two part several hour hearing for April 23, 2015 (Case # 502014CP003698XXXXSB – Shirley Trust Construction ) to remove Ted as Trustee in my mother's Trust that I have had to prepare for at this same time and recently filed Motion for Contempt that has been filed against me that have I have to respond to as well on this date in this case.
5. Now additional hearings have to be scheduled prior to a supposed closing on a primary residence home sale and this is still unscheduled so I am unsure what will transpire and how much of my time will be necessary to allot to this most serious matter (Case # 502011CP000653XXXXSB – Shirley Bernstein Estate). **SEE EXHIBIT 2** – URL Motion re

Home Sale @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150415%20Final%20Signed%20Printed%20Motion%20to%20Stop%20Sale%20Of%207020%20Lions%20Head%20Lane%20ECF%20FILED%20COPY.pdf>

6. I have two objections to accountings and inventories that were recently submitted to the Court in the Shirley Estate Inventory and Simon Bernstein Trust Accounting and these have to be responded to timely as well during this next month.
7. That it appears that of the 5 probate cases and 1 federal case I am in presently in they all have motions and petitions and hearings that are in need of response and very serious to preserve my family's rights due in these next few days and have dates that cannot be missed, which have been suddenly thrust upon me and in unison. Therefore, do to these reasons I need more time to properly prepare and file pleadings to preserve my rights. I am not a law firm.
8. You will note that this case has been delayed by the alleged Trustee of the Trust that does not exist legally acting as Plaintiff in this matter who has been trying to find an executed Trust document that gives them legal standing to even file suit and after all this time still has not been produced to this Court, this accounts for months of delays.
9. You will note that this case is a Breach of Contract lawsuit regarding the breach of an insurance policy contract that still has not been produced to this Court and was additional cause for months of delay and still today no contract exists that was breached and no executed trust has been produced giving Plaintiff legal standing to file and this is what has caused delay upon delay in this case.
10. That due to these urgent and unchangeable deadlines now imposed by the Courts during this short time, in which I anticipated mainly getting the response to the Summary Judgement

done, I am asking for another three to four weeks extension to file a reply to the Summary Judgement.

Wherefore Eliot respectfully request this Court enter and order granting three to four more weeks extension to prepare a response to the Motion for Summary Judgement.

Respectfully submitted,

DATED: Friday, April 17, 2015

*/s/ Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
Telephone (561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
[www.iviewit.tv](http://www.iviewit.tv)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Friday, April 17, 2015, 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.

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, )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

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

**Motion for Extension of Time to File**  
**Reply to Summary Judgement**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



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. )

BRIAN M. O'CONNELL, as Personal )

Representative of the Estate of )

Simon L. Bernstein, )

Intervenor. )

**AMENDED MOTION FOR ADDITIONAL EXTENSION OF TIME TO RESPOND TO  
SUMMARY JUDGEMENT, EXHIBIT 1 ATTACHED**

1. That Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant requests additional time to file a reply to the Motion for Summary Judgement filed by Plaintiff.
2. That Eliot forgot to attach Exhibit 1 and hereby amends the prior Motion for Additional Time filed April 17, 2015 to include this Exhibit.
3. That Eliot has recently been inundated with a barrage of hearings and necessary responses due in the Florida Probate and Trust matters before Judge Martin Colin in the Palm Beach Probate Court.
4. That Judge Martin Colin’s office on his own initiative demanded a change in a 2.5 hour continuation of an accounting hearing from May 19, 2015 to April 20, 2015 (Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children) and there were no if and or buts allowed to challenge the hearing date change ordered by the Judge. The accounting proceeding was inundated with new evidence filed during the extension period that must be reviewed if possible before the Monday hearings. The details to that are as follows:

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Subject: Judge Colin's asst call to reschedule hearing on May 19 to April 20

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the fact that Oppenheimer recently did a document dump of hundreds of additional documents necessary to review before the accounting hearing. I was under the impression the hearing set for May 19 would give us the right amount of time to review and prepare given the new information we have received. I informed her to move the hearing up a whole month ahead of the scheduled date was impossible. Sherrie said under no circumstance could she relay any message to the judge regarding our concerns and stated the hearing was mandatory and will go on whether we can attend or not. I also informed her of the timeline we are currently under preparing for the two and half hour hearing already scheduled for April 23 in actions to remove Ted as Trustee. Again she stated there was nothing to do other than bring it up with the judge on Monday at the hearing. In addition the only date to bring our concerns to the judge's attention is at a UMC hearing and the only day prior to Monday's hearing is tomorrow and we would have to coordinate a last minute agreed hearing with Oppenheimer and get them to agree to attend the hearing to see if we can coordinate a better date. Given the call with Sherrie was at 3:30pm and our prior commitment at 4:30 there was no way enough time to coordinate and schedule a hearing for tomorrow at 8:45am UMC hearing with the other parties. I asked her if the judge gave a reason for this change she said no just that he told her to reschedule this hearing immediately and that it was mandatory. Also we will have to cancel our commitment on Monday, April 20 at 4:30pm for Danny.

Please advise, xocandy

5. That Judge Martin Colin finally decided on two Motions to Dismiss a Motion to Remove Ted Bernstein as Trustee on April 15, 2015 that I received today, April 17, 2015 (Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB) and I only have 15 days from date of the Order to figure out what it means and file a response as a Pro Se litigant. **SEE EXHIBIT 1** - ORDERS
6. There is a two part several hour hearing for April 23, 2015 (Case # 502014CP003698XXXXSB – Shirley Trust Construction ) to remove Ted as Trustee in my mother's Trust that I have had to prepare for at this same time and recently filed Motion for Contempt that has been filed against me that have I have to respond to as well on this date in this case.

7. Now additional hearings have to be scheduled prior to a supposed closing on a primary residence home sale and this is still unscheduled so I am unsure what will transpire and how much of my time will be necessary to allot to this most serious matter (Case # 502011CP000653XXXXSB – Shirley Bernstein Estate). SEE EXHIBIT 2 – URL Motion re Home Sale @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150415%20Final%20Signed%20Printed%20Motion%20to%20Stop%20Sale%20Of%207020%20Lions%20Head%20Lane%20ECF%20FILED%20COPY.pdf>
8. I have two objections to accountings and inventories that were recently submitted to the Court in the Shirley Estate Inventory and Simon Bernstein Trust Accounting and these have to be responded to timely as well during this next month.
9. That it appears that of the 5 probate cases and 1 federal case I am in presently in they all have motions and petitions and hearings that are in need of response and very serious to preserve my family's rights due in these next few days and have dates that cannot be missed, which have been suddenly thrust upon me and in unison. Therefore, do to these reasons I need more time to properly prepare and file pleadings to preserve my rights. I am not a law firm.
10. You will note that this case has been delayed by the alleged Trustee of the Trust that does not exist legally acting as Plaintiff in this matter who has been trying to find an executed Trust document that gives them legal standing to even file suit and after all this time still has not been produced to this Court, this accounts for months of delays.
11. You will note that this case is a Breach of Contract lawsuit regarding the breach of an insurance policy contract that still has not been produced to this Court and was additional cause for months of delay and still today no contract exists that was breached and no

executed trust has been produced giving Plaintiff legal standing to file and this is what has caused delay upon delay in this case.

12. That due to these urgent and unchangeable deadlines now imposed by the Courts during this short time, in which I anticipated mainly getting the response to the Summary Judgement done, I am asking for another three to four weeks extension to file a reply to the Summary Judgement.

Wherefore Eliot respectfully request this Court enter and order granting three to four more weeks extension to prepare a response to the Motion for Summary Judgement.

Respectfully submitted,

DATED: Saturday, April 18, 2015

/s/ **Eliot Ivan Bernstein**

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
Telephone (561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
[www.iviewit.tv](http://www.iviewit.tv)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Friday, April 18, 2015, 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.

EXHIBIT 1

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

ELIOT BERNSTEIN, individually;  
ELIOT BERNSTEIN as a beneficiary of the  
2008 SIMON L. BERNSTEIN TRUST  
AGREEMENT, as amended and restated in the  
SIMON L. BERNSTEIN AMENDED AND  
RESTATED TRUST AGREEMENT dated  
July 25, 2012 and as Legal Guardian of  
JOSHUA BERNSTEIN, JACOB BERNSTEIN,  
and DANIEL BERNSTEIN,

FILE NO.: 502014CA014637XXXXMB

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;  
THEODORE STUART BERNSTEIN, as Successor  
Trustee of the 2008 SIMON L. BERNSTEIN  
TRUST AGREEMENT, as amended and restated in the  
SIMON L. BERNSTEIN AMENDED AND RESTATED  
TRUST AGREEMENT dated July 25, 2012;  
ALEXANDRA BERNSTEIN;  
ERIC BERNSTEIN;  
MICHAEL BERNSTEIN;  
MOLLY SIMON;  
JULIA IANTONI;  
MAX FRIEDSTEIN;  
CARLY FRIEDSTEIN;  
JOHN AND JANE DOE 1-5000,

Defendants.

---

**ORDER ON MOTION TO DISMISS COMPLAINT TO REMOVE  
THEODORE BERNSTEIN AS SUCCESSOR TRUSTEE, AND  
TO STRIKE ALLEGATIONS CONTAINED IN COMPLAINT**

THIS MATTER came before the Court on the Motion to Dismiss Complaint to Remove  
Theodore Bernstein as Successor Trustee, and to Strike Allegations Contained in Complaint filed



Bernstein v. Bernstein, et al.

File No.: 502014CA014637XXXXMB

Order on Motion to Dismiss Complaint to Remove

Theodore Bernstein as Successor Trustee, and

to Strike Allegations Contained in Complaint

Page 2

by Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that the aforementioned Defendants' Motion to Dismiss Complaint to Remove Theodore Bernstein as Successor Trustee, and to Strike Allegations

Contained in Complaint is GRANTED AS TO PARAGRAPH 1 OF MOTION TO DISMISS

- DENIED AS TO PARAGRAPHS 2+3 OF MOTION TO DISMISS

INASMUCH AS THE REMEDY FOR RELIEF SHALL APPLY TO ALL COURTS AND THE JURISDICTIONAL REQUISITES APPLY TO ALL COURTS, AS WELL.

- GRANTED AS TO PARAGRAPH 4 OF MOTION TO DISMISS

- DENIED AS TO PARAGRAPHS 5, 6, 7 + 8 OF MOTION TO DISMISS

- GRANTED AS TO PARAGRAPH 9 OF MOTION TO STRIKE

- DENIED AS TO PARAGRAPH 10 OF MOTION TO STRIKE.

- GRANTED AS TO PARAGRAPHS 11 + 12 OF MOTION TO STRIKE.

AS A RESULT, PLAINTIFF SHALL 15 DAYS FROM DATE OF THIS ORDER TO REPLEAD, TAKING THIS ORDER INTO CONSIDERATION

DONE AND ORDERED at Delray Beach, Palm Beach County, Florida, this 15

day of April, 2015.

The Honorable Martin H. Colin  
Circuit Court Judge

- Copies to:
- JOHN P. MORRISSEY, Esquire, 330 Clematis Street, Suite 213, West Palm Beach, Florida 33401  
(John@jmorrisseylaw.com)
  - ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
(arose@pm-law.com)
  - ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33436  
(iviewit@iviewit.tv)
  - BRIAN M. O'CONNELL, Esquire, 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, Florida 33401  
(boconnell@ciklinlubitz.com)

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

ELIOT BERNSTEIN, individually;  
ELIOT BERNSTEIN as a beneficiary of the  
2008 SIMON L. BERNSTEIN TRUST  
AGREEMENT, as amended and restated in the  
SIMON L. BERNSTEIN AMENDED AND  
RESTATED TRUST AGREEMENT dated  
July 25, 2012 and as Legal Guardian of  
JOSHUA BERNSTEIN, JACOB BERNSTEIN,  
and DANIEL BERNSTEIN,

Case No.: 502015CP001162XXXXSBIY

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;  
THEODORE STUART BERNSTEIN, as Successor  
Trustee of the 2008 SIMON L. BERNSTEIN  
TRUST AGREEMENT, as amended and restated in the  
SIMON L. BERNSTEIN AMENDED AND RESTATED  
TRUST AGREEMENT dated July 25, 2012;  
ALEXANDRA BERNSTEIN;  
ERIC BERNSTEIN;  
MICHAEL BERNSTEIN;  
MOLLY SIMON;  
JULIA IANTONI;  
MAX FRIEDSTEIN;  
CARLY FRIEDSTEIN;  
JOHN AND JANE DOE 1-5000,

Defendants.

---

**ORDER ON TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S  
COMPLAINT TO REMOVE TED S. BERNSTEIN AS  
SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST**

THIS CAUSE came before the Court for hearing on April 2, 2015, Trustee's *Motion to Dismiss Eliot Bernstein's Complaint to Remove Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust* ("the Motion"). The Court, having reviewed the Motion

Order on Trustee's Motion to Dismiss Eliot Bernstein's Complaint to Remove Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust  
Case No. 502015CP001162XXXXSBIY

and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

- The Motion is DENIED AS TO PARAGRAPHS 1-5 OF MOTION TO DISMISS GRANTED AS TO PARAGRAPHS 6 & 7 OF MOTION TO DISMISS GRANTED AS TO PARAGRAPHS 8 & 9 & 10 OF MOTION TO STRIKE DENIED AS TO PARAGRAPH 10 OF MOTION TO STRIKE

PLAINTIFF SHALL HAVE 15 DAYS FROM DATE OF THIS ORDER TO REPLEAD, TAKING INTO CONSIDERATION THIS ORDER

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 11 day of

APRIL 2015.

  
Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

Order on Trustee's Motion to Dismiss Eliot Bernstein's Complaint to  
Remove Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein  
Amended and Restated Trust  
Case No. 502015CP001162XXXXSBIY

**SERVICE LIST**

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

**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 John  
Robert Blakey

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, April 20, 2015:

MINUTE entry before the Honorable John Robert Blakey: Third-party defendant Eliot Bernstein's motion for additional extension of time [163] and amended motion for additional extension of time [165] are granted. Third-party defendant's response to plaintiffs' summary judgment motion is now due 6/5/15, and plaintiffs' reply is now due 6/26/15. The Court is unlikely to grant additional extensions on this briefing schedule. The 4/21/15 Notice of Motion date is stricken; the parties need not appear. Mailed notice(gel, )

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

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

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
)  
Plaintiff, )  
)  
v. )  
)  
HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
)  
Defendant, )  
)  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )  
)  
Counter-Plaintiff )  
)  
v. )  
)  
SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95 )  
)  
Counter-Defendant )  
)  
and, )  
)  
FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN, )  
)  
Third-Party Defendants. )  
)  
ELIOT IVAN BERNSTEIN, )  
)  
Cross-Plaintiff )

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

**EMERGENCY MOTION TO ENTER  
AGREED BRIEFING SCHEDULE AND  
FOR EXTENSION OF TIME TO  
DEPOSE WITNESSES**

**Filer:**

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

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, )  
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 and Personally, ROBERT SPALLINA, )  
 both Professionally and Personally, )  
 LISA FRIEDSTEIN, JILL IANTONI )  
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 NATIONAL SERVICE ASSOCIATION )  
 (OF ILLINOIS) AND JOHN AND JANE )  
 DOES )  
 )  
Third-Party Defendants. )  
 )  
 BRIAN M. O’CONNELL, as Personal )  
 Representative of the Estate of )  
 Simon L. Bernstein, )  
 )  
 )  
Intervenor. )

**INTERVENOR’S EMERGENCY MOTION TO ENTER BRIEFING SCHEDULE AND FOR EXTENSION OF TIME TO DEPOSE WITNESSES**

NOW COMES Intervenor, Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (“Intervenor”), and moves this Court to enter an agreed briefing schedule with respect to Plaintiffs’ Motion for Summary Judgment and to extend the deadline to depose witnesses. In support of his motion, Intervenor states as follows:

1. Currently pending before the Court is Plaintiffs' Motion for Summary Judgment (Dkt. No. 148)<sup>1</sup>.

2. On April 13, 2015, this Court granted Intervenor's oral motion to reopen discovery to permit the depositions of Ted Bernstein and Don Sanders and set a deadline for of April 27, 2015 for completion of the depositions (Dkt. No. 162).

3. On April 20, 2015, the Court granted Third-Party Defendant/Counter-claimant Eliot Bernstein's Motion for an extension of time to file his Response to Plaintiffs' Motion for Summary Judgment (Dkt. No. 166). The briefing schedule entered by the Court granted Eliot Bernstein an additional three weeks to file his Response (on or before June 5, 2015) and three additional weeks for Plaintiffs to file any Reply thereto (on or before June 21, 2015).

4. Pursuant to Local Rule 37.2, Counsel for Intervenor and Plaintiffs conferred via telephone and electronic mail on April 17, April 20, and April 21, 2015 (*See* Group Exhibit 1, attached hereto).

5. Counsel for Intervenor requested that the same briefing schedule for Eliot Bernstein's Response be applied to Intervenor's Response to the pending Motion for Summary Judgment and for a commensurate extension of time in which to complete depositions (an additional three weeks).

6. Counsel for Intervenor is currently engaged in trial in the Circuit Court of Cook County, Illinois, and expects the trial to continue for at least one more week. Counsel for Intervenor informed Plaintiffs' counsel of this trial conflict and attempted to schedule Ted Bernstein's deposition for April 24, 2015, in the event the case settled (*See* Group Exhibit 1).

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<sup>1</sup> Plaintiffs filed their Amended Motion for Summary Judgment (Dkt. No. 153) on March 27, 2015.



7. Plaintiffs' counsel has agreed to an extension of the briefing schedule (an additional three weeks) but has not agreed to a commensurate extension of time in which to complete depositions.

8. This motion is not brought with the intention to delay the proceedings. Counsel for Intervenor has not requested an extension of time beyond the deadline currently set for Third-Party Defendant/Counter-claimant Eliot Bernstein's Response to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Response thereto.

9. Intervenor brings this motion on an emergent basis because this Court's Motion Schedule will not allow for a timely hearing on the matters asserted herein, causing serious harm to Intervenor.

10. Counsel for Intervenor has submitted a proposed order via electronic mail in accordance with this Court's standing orders.

11. No party will be prejudiced by the granting of this Motion.

WHEREFORE, Intervenor prays that the Court enter an Order which reflects the following:

- a. Intervenor shall file his response to Plaintiffs' Motion for Summary Judgment on or before June 5, 2015;
- b. Plaintiffs shall file their reply, if any, on or before June 26, 2015;
- c. Depositions authorized by the Court's April 13, 2015 Order shall be completed on or before May 18, 2015.

Dated: April 21, 2015

Respectfully submitted,

/s/ *Kevin P. Horan*

One of the attorneys for Intervenor, Brian M. O'Connell, Personal Representative 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 April 21, 2015, 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.

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

Eliot Ivan Bernstein, *Pro Se*

/s/ **Kevin P. Horan**  
Kevin P. Horan

**Kevin Horan**

---

**From:** adam simon [asimon21@att.net]  
**Sent:** Friday, April 17, 2015 5:32 PM  
**To:** Kevin Horan  
**Subject:** Re: Deposition of Ted Bernstein

I have sent word to Ted to keep the dates open.

Sent from my iPhone

On Apr 17, 2015, at 5:03 PM, Kevin Horan <[KHoran@stamostrucco.com](mailto:KHoran@stamostrucco.com)> wrote:

Adam:

I called earlier this afternoon regarding scheduling but missed you. Please keep open April 23 and 24 for Ted Bernstein's deposition (the 24<sup>th</sup> looking like the most likely day to take Mr. Bernstein's deposition in person). As I mentioned in my voicemail, we anticipate getting out of the case which is set for trial next week and Jim is optimistic that we will know by Tuesday at the absolute latest. I will be in touch with you as soon as I get confirmation. In the meantime, if you have any questions or wish to discuss anything further, please give me a call.

Thanks,

Kevin

**Kevin P. Horan**  
Stamos & Trucco LLP  
One East Wacker Drive  
Third Floor  
Chicago, IL 60601  
[\(312\) 630-1208](tel:(312)630-1208) Direct  
[\(312\) 630-7979](tel:(312)630-7979) Main  
[\(312\) 630-1183](tel:(312)630-1183) Fax  
[www.stamostrucco.com](http://www.stamostrucco.com)

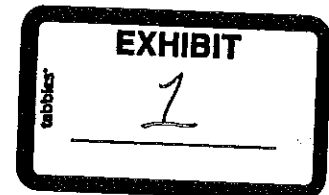
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**From:** [asimon21@att.net](mailto:asimon21@att.net) [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 13, 2015 4:55 PM  
**To:** James J. Stamos; Kevin Horan  
**Subject:** Deposition of Ted Bernstein

Jim and Kevin:



Please be advised that Ted Bernstein would be amenable to an evening deposition by video conference, provided it starts at 5 p.m. (eastern time) and is limited by agreement to two hours.

If the deposition will be held by video conference, I may or may not travel to Florida for the deposition.

The following dates work for Ted and me:

April 15, 16  
April 22, 23 or 24

Please get back to me as soon as possible so I can make final arrangements with my client for this deposition.

Thanks.

Adam Simon  
cell: 312-320-4491

Sent from Windows Mail

**Kevin Horan**

---

**From:** adam simon [asimon21@att.net]  
**Sent:** Tuesday, April 21, 2015 5:33 PM  
**To:** Kevin Horan  
**Subject:** Re: Ted deposition

Kevin: plaintiffs position remains unchanged. I promptly provided dates both last week and this week. Yet again the Estate chose not to take the dep.

It obviously goes without saying that Jim Stamos is not the only lawyer in your firm. Don't see how you couch this as an emergency but that's your call not mine.

Thanks.

Sent from my iPhone

> On Apr 21, 2015, at 5:21 PM, Kevin Horan <KHoran@stamostrucco.com> wrote:

>

> Dear Adam:

>

> Following up on the voicemail message I left you earlier today, I will be filing our Emergency Motion for extension of time in which to complete Ted Bernstein's deposition this evening. As you previously agreed to my request to apply Eliot's briefing schedule to our Response (granting an additional three weeks to respond), I asked that you also agree to a commensurate extension of time to complete the depositions. As you know, our office is currently engaged in a trial in Cook County which is anticipated to last into next week. I had hoped that your agreement to my request would obviate the need to bring an emergency motion; I will notice it for hearing Thursday morning before Judge Blakey.

>

> I will file the motion later this evening. Should you wish to discuss further, please feel free to contact me.

>

> Best wishes,

>

> Kevin

>

> Kevin P. Horan

> Stamos & Trucco LLP

> One East Wacker Drive

> Third Floor

> Chicago, IL 60601

> (312) 630-1208 Direct

> (312) 630-7979 Main

> (312) 630-1183 Fax

> www.stamostrucco.com

>

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>

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>

> -----Original Message-----

> From: adam simon [mailto:asimon21@att.net]

> Sent: Tuesday, April 21, 2015 12:54 PM  
> To: Kevin Horan  
> Cc: James J. Stamos  
> Subject: Ted deposition  
>  
> Kevin: please proceed according to the conversation we had yesterday. Plaintiffs will agree to the same briefing schedule as Eliot for summary judgment but object to any further extensions for discovery or depositions.  
>  
> Thanks.  
>  
> Adam Simon  
>  
> Sent from my iPhone  
>

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

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

**Filers:  
Simon Bernstein Irrevocable  
Insurance Trust Dated 6/21/95,  
Ted Bernstein, as Trustee and  
Individually,  
Pamela B. Simon, Jill Iantoni, Lisa  
Friedstein, David Simon, Adam Simon,  
The Simon Law Firm, and STP  
Enterprises, Inc. (“Plaintiffs” or  
“Movants”)**

**RESPONSE IN OPPOSITION TO  
INTERVENOR’S EMERGENCY  
MOTION FOR ADDITIONAL TIME  
TO TAKE DEPOSITION**



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

Third-Party Defendants. )

---

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

Third-Party Defendants. )

---

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and states as their response in opposition to Intervenor's emergency motion for additional time to take the deposition of Ted Bernstein as follows:

### **INTRODUCTION**

Intervenor's latest motion for yet more time to take the deposition of Ted Bernstein should be denied. In filing the motion, Intervenor once again attempts to delay proceedings solely to save itself from the time, expense and inconvenience required to litigate a case in which it voluntarily inserted itself. Once again, Intervenor's motion is devoid of any of the procedural history necessary for the court to make an informed decision.

The sum total of Intervenor's efforts in this case consists of taking one deposition and filing multiple motions for extensions of time. After intervening, Intervenor provided no documentation in response to Rule 26 disclosure requirements because it admittedly has no affirmative evidence that it is the beneficiary of the Policy Proceeds at issue.

On the other hand, Plaintiffs' counsel delivered a compact disc to Intervenor's counsel in August of 2014 containing all of the documents exchanged up to that date by all parties. Intervenor's repeated assertion that it does not intend to delay the proceedings is completely contradicted by the docket in this case which shows that stalling has been the extent of Intervenor's efforts to date.

## ARGUMENT

Two years ago, Plaintiffs originally brought an action against Heritage Union Life Insurance Company seeking payment of proceeds from a life insurance policy issued on the life of Simon Bernstein, as Insured. Simon Bernstein passed away in September of 2012. Heritage Union removed the action to the Northern District, and filed an interpleader action serving potential competing claimants to the Policy Proceeds. Heritage Union did not serve the Estate of Simon Bernstein as a potential claimant or name the Estate in the interpleader litigation.

In 2013, William Stansbury, a potential creditor of the Estate of Simon Bernstein sought to intervene in the instant litigation, and Plaintiffs opposed that motion to intervene. On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”

Five to six months later, Stansbury took a second bite at the apple by filing a petition in the Probate Court in Florida to have an administrator ad litem appointed on behalf of the Estate of Simon Bernstein to intervene in the instant litigation. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem and specifically ordered that the legal fees and costs be borne not by the Estate but by William Stansbury. (*See Dkt. #154, Probate Court Order attached as Ex. 1 to Intervenor’s Motion to Stay*). .

Before the Estate intervened, Judge St. Eve had set a fact discovery deadline of June 13, 2014 [**Dkt. #96**]. After Judge St. Eve granted Intervenor’s motion to intervene, she extended the fact discovery deadline until January 9, 2015 and set a deadline for filing dispositive motions on March 6, 2015. [**Dkt. #123**].

In December of 2014 and again in early 2015, Plaintiffs were asked by Intervenor to provide dates for Ted Bernstein's deposition. Plaintiffs provided Intervenor with dates for Ted's deposition in December of 2014, prior to the New Year Holiday Season, and again in January of 2015, shortly after the New Year.

Intervenor chose not to notice up or take Ted's deposition on either occasion despite an impending discovery deadline. The fact discovery deadline set by Judge St. Eve passed on January 9, 2015. In March of 2015, Intervenor filed an untimely motion to stay discovery, and this court denied it because the fact discovery deadline had passed. (**Dkt. #158**).

The parties appeared for an initial status date before Judge Blakey on April 13, 2015. At the status, the court set a briefing schedule for Plaintiff's motion for summary judgment. (**Dkt. #162**).

At the status date of April 13th, the Court also granted Intervenor's and Eliot Bernstein's oral motion for more time to take depositions over Plaintiffs objection and despite having denied Intervenor's prior motion to stay discovery. Since that date, neither Eliot nor Intervenor have sent notices or subpoenas for the depositions they requested.

Since the status date of April 13th, Eliot Bernstein filed a request for additional time for briefing of the summary judgment motion. The court promptly granted Eliot's motion but admonished the parties that no further extensions would likely be granted. (**Dkt. #166**). Now Intervenor requests a matching briefing schedule to Eliot's, and Plaintiffs will consent provided - - IF AND ONLY IF -- it does not result in any further delay or extension of time for the deposition of Ted Bernstein.

The very next day following the April 13<sup>th</sup> status, Plaintiff's counsel sent Intervenor's counsel an email with multiple dates during both the week of April 13<sup>th</sup> and the week of April 20<sup>th</sup>

upon which Ted Bernstein would be available to appear for his deposition. Intervenor sent no notice of deposition for Ted's deposition during the dates provided for the week of April 13<sup>th</sup>.

Intervenor's counsel also suggested that the deposition be taken during evening hours to facilitate travel and trial schedules. Ted Bernstein accommodated by providing dates during both day or evening hours in which a deposition could be taken in compliance with the court's order.

On April 17, 2015, Intervenor's counsel asked Plaintiff's counsel to confirm that Ted Bernstein would remain available on the dates provided during the week of April 20<sup>th</sup>, and Plaintiff's confirmed that Ted kept those dates open for his deposition.

On April 20 and April 21, the Estate sent no notice of deposition, and instead asked for Plaintiff's consent to yet another extension of time for the deposition of Ted Bernstein. Plaintiff's counsel has provided dates for Ted Bernstein's deposition to Intervenor on at least three occasions, all of which complied with the court's discovery schedule then in effect. On all three occasions, Intervenor failed to notice or take the deposition.

On this third and most recent occasion, instead of assigning one of the two other qualified attorneys at the firm of Stamos and Trucco that are listed on the docket of this case as counsel for Intervenor to take the deposition of Ted Bernstein in order to comply with the extended schedule generously granted by the Court, Intervenor cites a trial it knew was coming as an excuse for delay yet again.

If the court grants additional time as requested it is inevitable that either the Estate or Eliot Bernstein, or more likely both, will again ask the court for extensions because of a need for more time with the Ted Bernstein deposition transcript.

Plaintiffs' implore the Court to put an immediate end to Eliot's and Intervenor's blatant tag-team delay tactics. Both Eliot's and Intervenor's multiple motions for extensions have already prejudiced Plaintiffs by causing delay and needless added expense in pleading these motions.

It is also critical to note that the situation Intervenor finds itself in was self-inflicted as a result of Intervenor's prior neglect. If Intervenor had put forth the time, effort and expense to litigate this case in the first instance, Intervenor would not be in the position of having to file this so-called "emergency motion".

Intervenor's continued requests to have his court facilitate its own time-frame, expense account, and attorney availability totally disregards and prejudices the rights of the true beneficiaries of the Policy whom have been waiting over two years to obtain what is rightfully theirs. This is all the more true, in this instance, where (i) Intervenor voluntarily interjected itself in this litigation and (ii) Intervenor, by its own admission, does not possess an affirmative claim to the Policy Proceeds.

### **CONCLUSION**

For all of the foregoing reasons, Intervenor's motion for additional time to take the deposition of Ted Bernstein should be denied.

Dated: April 22, 2015

Respectfully Submitted,

/s/ Adam M. Simon

Adam M. Simon (#6205304)

303 E. Wacker Drive, Suite 2725

Chicago, IL 60601

Phone: 312-819-0730

Fax: 312-819-0773

E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)

Attorney for Plaintiffs

**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 John Robert  
Blakey

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, April 23, 2015:

MINUTE entry before the Honorable John Robert Blakey: Motion hearing held on 4/23/2015. ProSe third party defendant, Eliot Bernstein failed to appear by telephone. Eliot Bernstein is ordered to appear by telephone or in person at the next court date. If Eliot Bernstein fails to appear at the next Court date he is warned that his case can be dismissed for want of prosecution. Plaintiff intervenor's motion to set a briefing schedule and extend time to complete deposition [167] is granted. Plaintiff's motion for summary judgment is briefed as follows: Defendant's response is due on or before 6/5/2015; reply, if any, is due on or before 6/26/2015. Deposition of Ted Bernstein shall be taken on or before 5/7/2015. No further extension will be granted. Status hearing previously set for 5/6/2015 is stricken and reset for 5/12/2015 at 9:45 AM in Courtroom 1725. 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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