

APPEAL,ROWLAND,TERMED

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

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

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

Cause: 28:1441 Petition for Removal

Date Filed	#	Page	Docket Text
05/04/2015	<u>173</u>	7	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiff Eliot BernsteinOmnibus Multiple Reliefs (Bernstein, Eliot) (Entered: 05/04/2015)
05/04/2015	<u>175</u>	111	MINUTE entry before the Honorable John Robert Blakey:Third Party Defendant Eliot Bernstein's emergency omnibus motion <u>173</u> is taken under advisement. If Third Party Defendant Bernstein feels that he is in immediate life threatening danger he is advised to contact 911 emergency officials as needed. (rbf, ) (Entered: 05/04/2015)
05/05/2015	<u>176</u>	112	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan BernsteinFederal Protection (Bernstein, Eliot) (Entered: 05/05/2015)
05/06/2015	<u>178</u>	123	MINUTE entry before the Honorable John Robert Blakey: Pursuant to LR 7.1, Third Party Defendant Eliot Bernstein's omnibus motion <u>173</u> is hereby stricken. Third Party Defendant Bernstein may re-file his motion so long as it is in compliance with LR 7.1 and does not exceed 15 pages double spaced. The Court encourages Third Party Defendant Bernstein to confine his motion to matters over which this Court has jurisdiction including time limits for discovery and summary judgment briefing. Because the omnibus motion <u>173</u> has been stricken, Third Party Defendant Bernstein's May 5, 2015 motion <u>176</u> is denied as moot. The local rules are available at <a href="http://www.ilnd.uscourts.gov/">http://www.ilnd.uscourts.gov/</a> . Mailed notice (gel, ) (Entered: 05/06/2015)
05/12/2015	<u>179</u>	124	MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 5/12/2015 and continued to 7/20/2015 at 9:45 AM in Courtroom 1725. Schedule for Plaintiff's motion for summary judgment to stand: Defendant's response is due on or before 6/5/2015; reply, if any, is due on or before 6/26/2015. Mailed notice (gel, ) (Entered: 05/12/2015)
05/14/2015	<u>180</u>	125	

			Scheduling & Discovery Letter by Eliot Ivan Bernstein, Eliot Bernstein (Bernstein, Eliot) (Entered: 05/14/2015)
05/18/2015	<u>181</u>	176	MOTION by ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein, Third Party Defendant Eliot Bernstein for disbursement of funds <i>Interim Distribution of Interpled Funds</i> (Bernstein, Eliot) (Entered: 05/18/2015)
05/20/2015	<u>183</u>	240	MOTION by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Trust, N.A. to strike MOTION by ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein, Third Party Defendant Eliot Bernstein for disbursement of funds <i>Interim Distribution of Interpled Funds</i> <u>181</u> or <i>For Briefing Schedule</i> (Simon, Adam) (Entered: 05/20/2015)
05/22/2015	<u>185</u>	245	MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's motion for interim disbursement of interpled funds <u>181</u> is denied. Bernstein's representations to the contrary notwithstanding, at this time the Court is unable to say that anyone has a clear right to the proceeds deposited by Heritage Union Life Insurance Company, let alone what each interested party's share should be. In his answer <u>35</u> , Bernstein concedes that he does not know who the beneficiaries are under the Trust. And although Bernstein and his siblings may claim to be entitled to the funds, the Intervenor has claimed an interest in the funds as well. Bernstein has not cited, and the Court is not aware of, any authority that would allow it to award damages before resolving the merits of the parties' dispute. Plaintiffs' motion to strike <u>183</u> is denied as moot. The 5/28/15 Notice of Motion dates are stricken; the parties need not appear. Mailed notice (gel, ) (Entered: 05/22/2015)
06/03/2015	<u>186</u>	246	RESPONSE by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein in Opposition to 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>as to Count I of Claims to Policy Proceeds</i> <u>148</u> , 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> <u>153</u> (Bernstein, Eliot) Docket Text Modified by Clerk's Office on 6/4/2015 (ph, ). Modified on 6/5/2015 (ph, ). (Entered: 06/03/2015)
06/05/2015	<u>188</u>	319	MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's motion in opposition to summary judgment <u>186</u> is stricken for failing to comply with Local Rules 7.1 and 56.1(b). Mailed notice (gel, ) (Entered: 06/05/2015)
06/05/2015	<u>189</u>	320	RESPONSE by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein to motion for summary judgment, <u>148</u> (Bernstein, Eliot) (Entered: 06/05/2015)
06/05/2015	<u>190</u>	393	MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's response to motion for summary judgment <u>189</u> is stricken for failing to comply with Local Rules 7.1 and 56.1(b). Mailed notice (gel, ) (Entered: 06/05/2015)

06/05/2015	<u>191</u>	394	RESPONSE by Brian M. O'Connellin Opposition to 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 153</i> (Stamos, James) (Entered: 06/05/2015)
06/05/2015	<u>193</u>	425	RESPONSE by Brian M. O'Connellin Opposition to 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 153 Corrected Response in Opposition</i> (Horan, Kevin) (Entered: 06/05/2015)
06/08/2015	<u>194</u>	440	RESPONSE by Eliot Ivan Bernsteinin Opposition to 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>as to Count I of Claims to Policy Proceeds 148</i> , 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 153</i> (Attachments: # <u>1</u> Supplement Response to Statement of Fact, # <u>2</u> Supplement Memorandum of Law)(Bernstein, Eliot) (Entered: 06/08/2015)
06/08/2015	<u>195</u>	518	RESPONSE by Eliot Ivan Bernstein, Eliot Bernsteinin Opposition to 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>as to Count I of Claims to Policy Proceeds 148</i> , 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 153</i> (Attachments: # <u>1</u> Supplement Amended Response to Statement of Facts, # <u>2</u> Supplement Amended Memorandum of Law)(Bernstein, Eliot) (Entered: 06/08/2015)
06/12/2015	<u>196</u>	596	Supplemental Exhibit 3rd Party Opposition Response to Motion for Summary Judgement by Eliot Ivan Bernstein, Eliot Bernstein <i>Pro Se</i> (Bernstein, Eliot) (Entered: 06/12/2015)
06/25/2015	<u>197</u>	767	MOTION by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for leave to file excess pages <i>Reply Brief for Summary Judgment</i> (Simon, Adam) (Entered: 06/25/2015)
06/25/2015	<u>199</u>	770	MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion for leave to file a reply brief in excess of fifteen pages <u>197</u> is granted. Plaintiffs may file a consolidated reply brief of up to twenty pages. The 6/30/15 Notice of Motion date is stricken; the parties need not appear. Mailed notice (gel, ) (Entered: 06/25/2015)
06/26/2015	<u>200</u>	771	REPLY by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 to other <u>196</u> , response in opposition to motion, <u>193</u> , response in opposition to motion,, <u>195 to Estate and Eliot's Responses</u> (Attachments: # <u>1</u> Notice of Filing Notice of Filing/Cert of Serv)(Simon, Adam) (Entered: 06/26/2015)

06/26/2015	<u>201</u>	793	REPLY by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 to <i>Estate Stmt of Add'l Facts</i> (Attachments: # <u>1</u> Exhibit Ex 37)(Simon, Adam) (Entered: 06/26/2015)
06/26/2015	<u>202</u>	810	REPLY by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 <i>Reply to Eliot's Stmt of Add'l Facts</i> (Simon, Adam) (Entered: 06/26/2015)
07/10/2015	<u>204</u>	836	MINUTE entry before the Honorable John Robert Blakey: Intervenor Brian O'Connell's motion for leave to file a sur-reply <u>203</u> is granted. O'Connell is directed to file the sur-reply as a separate docket entry. The 7/20/15 Notice of Motion date is stricken; the parties need not appear. Additionally, the 7/20/15 status hearing is stricken and reset to 10/1/15 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel, ) (Entered: 07/10/2015)
07/13/2015	<u>205</u>	837	SUR-REPLY by Intervenor Plaintiff Brian M. O'Connell (Stamos, James) (Entered: 07/13/2015)
07/17/2015	<u>206</u>	842	MOTION by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for leave to file <i>Sur Sur Reply</i> (Attachments: # <u>1</u> Exhibit Ex A)(Simon, Adam) (Entered: 07/17/2015)
07/17/2015	<u>208</u>	855	MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion to file a sur-reply <u>206</u> is granted. Plaintiffs are directed to file the sur-reply as a separate docket entry. No further briefing will be permitted on plaintiffs' motion for summary judgment. The 8/4/15 Notice of Motion date is stricken; the parties need not appear. Mailed notice (gel, ) (Entered: 07/17/2015)
07/20/2015	<u>209</u>	856	SUR-REPLY by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 to sur-reply <u>205</u> to <i>Intervenor's Sur Reply</i> (Attachments: # <u>1</u> Certificate of Service)(Simon, Adam) (Entered: 07/20/2015)
08/10/2015	<u>210</u>	865	APPLICATION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for leave to proceed in forma pauperis and <i>Financial Affidavit</i> (Bernstein, Eliot) (Entered: 08/10/2015)
08/17/2015	<u>211</u>	869	MINUTE entry before the Honorable John Robert Blakey: Eliot Ivan Bernstein's application to proceed in forma pauperis <u>210</u> is denied. First, the filing fee was paid in full years ago in this case, and no fees are required of Mr. Bernstein. Additionally, the parties have briefed summary judgment and nothing further is required of Mr. Bernstein at this time; To the extent future filings should become necessary, Mr. Bernstein has proven himself more than capable of filing pleadings. Mailed notice (gel, ) (Entered: 08/17/2015)
09/24/2015	<u>212</u>	870	MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the 10/1/15 status hearing is stricken and reset to 12/15/15 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel, ) (Entered: 09/24/2015)
12/08/2015	<u>213</u>	871	MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the 12/15/15 status hearing is stricken and reset to 3/15/16 at 9:45 a.m.

			in Courtroom 1725. Mailed notice (gel, ) (Entered: 12/08/2015)
02/24/2016	<u>214</u>	872	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for preliminary injunction (Bernstein, Eliot) (Entered: 02/24/2016)
02/24/2016	<u>215</u>	1004	MEMORANDUM OF LAW FOR MOTION FOR INJUNCTION (Bernstein, Eliot) (Entered: 02/24/2016)
02/24/2016	<u>217</u>	1021	MOTION by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 to strike MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for preliminary injunction <u>214</u> (Attachments: # <u>1</u> Certificate of Service CERT. OF SERVICE AND NOTICE OF FILING)(Simon, Adam) (Entered: 02/24/2016)
02/25/2016	<u>218</u>	1032	MINUTE entry before the Honorable John Robert Blakey: Emergency motion hearing held on 2/25/2016. Oral request for additional filings is denied. Third Party Defendant's motion for preliminary injunction <u>214</u> is denied as stated in open Court. Plaintiff's motion to strike <u>217</u> is denied. Status hearing date of 3/15/2016 at 9:45 a.m. in Courtroom 1725, to stand. Mailed notice (gel, ) (Entered: 02/25/2016)
03/15/2016	<u>219</u>	1033	MINUTE entry before the Honorable John Robert Blakey: Enter Order. Plaintiffs' motions for summary judgment, <u>148</u> , <u>153</u> , are denied as explained in the accompanying Order. This matter remains set for a status hearing on 3/15/16 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel, ) (Entered: 03/15/2016)
03/15/2016	<u>220</u>	1034	MEMORANDUM Opinion and Order Signed by the Honorable John Robert Blakey on 3/15/2016. Mailed notice(gel, ) (Entered: 03/15/2016)
03/15/2016	<u>221</u>	1040	STATUS Report by Eliot Ivan Bernstein, Eliot Bernstein (Bernstein, Eliot) (Entered: 03/15/2016)
03/15/2016	<u>222</u>	1049	MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 3/15/2016 and continued to 4/14/2016 at 10:00 a.m. in Courtroom 1725. Parties wishing to appear by telephone should contact the Courtroom Deputy at 312-818-6699, by 4/13/2016, to arrange for a telephonic appearance. Mailed notice (gel, ) (Entered: 03/15/2016)
03/16/2016	<u>223</u>	1050	MINUTE entry before the Honorable John Robert Blakey: The Court is in receipt of Third Party Plaintiff Eliot Bernstein's "status report." <u>221</u> . In the future, Third Party Plaintiff Bernstein is directed to submit his requests to the Court in the form of a motion, and not as a letter or status report. Any future submissions by Third Party Plaintiff Bernstein that do not comply with this directive, this District's Local Rules, and the Federal Rules of Civil Procedure will be summarily stricken. To the extent the "status report" can be seen as a motion, the Court rules as follows: (1) Third Party Plaintiff Bernstein's request for leave to amend his counter-complaint/cross complaint is denied because Bernstein has not indicated how he would like to amend his pleadings, and his motion for leave to amend has been brought so late in the proceedings that it would constitute undue delay and would unfairly prejudice the other parties in

			<p>this matter, see Stanard v. Nygren, 658 F.3d 792, 797 (7th Cir. 2011); and (2) Third Party Plaintiff Bernstein's request for additional discovery is denied, as fact discovery closed on 1/9/15 and Bernstein has provided no justification for allowing the late discovery sought here. As to Third Party Plaintiff Bernstein's request for clarification regarding LR 7.1., the request is denied. See Commonwealth Plaza Condo. Ass'n v. City of Chicago, 693 F.3d 743, 747 (7th Cir. 2012) (Court "may not issue advisory opinions"). Mailed notice (gel, ) (Entered: 03/16/2016)</p>
04/02/2016	<u>224</u>	1052	<p>MOTION by Attorney Adam M. Simon to withdraw as attorney for Lisa Sue Friedstein, Lisa Sue Friedstein. New address information: Jill Iantoni, 2101 Magnolia Lane, Highland Park, IL 60035 (Attachments: # <u>1</u> Exhibit Ex 1– Party Contact Info)(Simon, Adam) (Entered: 04/02/2016)</p>
04/14/2016	<u>226</u>	1060	<p>MINUTE entry before the Honorable John Robert Blakey: Motion and status hearing held on 4/14/2016. Motion to withdraw appearance on behalf of Lisa Sue Friedstein and Jill Iantoni <u>224</u> is granted. Pro se appearance form given to Lisa Sue Friedstein and Jill Iantoni in open court. Pro Se Plaintiffs may want to review the Court's standing order for pro se litigants, which is available on the Court's webpage at <a href="http://www.ilnd.uscourts.gov">www.ilnd.uscourts.gov</a>. Plaintiff may also wish to contact the District Court Pro Se Assistance Program, the Hibbler Help Desk, which may be reached at the Clerk's Office Intake desk, Dirksen Federal Building, 219 S. Dearborn, 20th floor, or by calling (312) 435–5691. Any motion for leave to file an amended complaint shall be filed on or before 4/29/2016. Any motions for summary judgment shall be filed on or before 5/25/2016. Status hearing set for 5/26/2016 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel, ) (Entered: 04/14/2016)</p>
04/17/2016	<u>228</u>	1061	<p>MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein for leave to file excess pages (Bernstein, Eliot) (Entered: 04/17/2016)</p>

**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**

**Urgent Emergency Omnibus Motion**

**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. )



**URGENT EMERGENCY OMNIBUS MOTION FOR:**

**FEDERAL PROTECTION FROM LIFE-THREATENING DANGER TO ELIOT AND HIS FAMILY VIA NEW THREATS OF PHYSICAL DANGER ACTING AS WHISTLEBLOWER, CONTINUATION OF RICO ACTIVITIES AFTER PRIOR FAMILY MINIVAN CAR BOMBING, PRIOR THREATS, SCHEME TO DENY PROPER MONETIZATION OF INVENTIONS, DENIAL OF DUE PROCESS AND PROCEDURE THAT IS OBSTRUCTING JUSTICE;**

**DESIGNATION OF STATUS AS WHISTLEBLOWER AND AFFORD ALL STATE AND FEDERAL WHISTLEBLOWER PROTECTIONS AND PROVIDE FEDERAL WITNESS PROTECTION;**

**STAY OF ALL PROCEEDINGS IN THE FLORIDA PROBATE COURT AND TRANSFER OF ALL FLORIDA PROBATE MATTERS TO THIS COURT;**

**APPOINTMENT OF PROTECTED COUNSEL;**

**PROVIDE IMMEDIATE EMERGENCY DISTRIBUTIONS OF AT MINIMUM \$200,000.00 FOR ELIOT AND HIS MINOR CHILDREN;**

**FREEZING AND TRANSFER OF ALL PROBATE ASSETS TO THIS COURT;**

**RE-OPENING OF RICO MATTER DUE TO NEW PREDICATE ACTS;**

**APPOINTMENT OF FEDERAL PROSECUTOR, MONITOR AND INVESTIGATOR TO INVESTIGATE FRAUD ON AND IN THE FLORIDA PROBATE COURT;**

**EXTENSION OF TIME FOR ALL COURT MATTERS INCLUDING EXTENDED TIME TO TAKE DEPOSITION OF DONALD SANDERS OR PROVIDE INTERROGATORIES;**

**DECLARATORY JUDGEMENT; AND**

**SEEK LEAVE TO AMEND COUNTER COMPLAINT.**

That Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se, files this Urgent Emergency Omnibus Motion and states under information and belief as follows:

**FEDERAL PROTECTION FROM LIFE-THREATENING DANGER TO ELIOT AND HIS FAMILY VIA NEW THREATS OF PHYSICAL DANGER ACTING AS WHISTLEBLOWER, CONTINUATION OF RICO ACTIVITIES AFTER PRIOR FAMILY MINIVAN CAR BOMBING, PRIOR THREATS, SCHEME TO DENY PROPER MONETIZATION OF INVENTIONS, DENIAL OF DUE PROCESS AND PROCEDURE THAT IS OBSTRUCTING JUSTICE.**

1. That Eliot has previously filed a RICO and ANTITRUST lawsuit before Honorable Judge Shira A. Scheindlin, 07cv11196 Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al. and these matters and the criminal elements both proven and alleged herein appear to be continuations of those crimes by similar and related parties mostly reprobate attorneys at law. That Eliot filed an Amended Complaint<sup>1</sup> in that case and this Court can review those records from that case for more information regarding how the Iviewit matters tie in to many significant events in US History, including the Bush v Gore election fraud and Supreme Court nomination in a 5-4 vote for President, the collapse of Enron and more.
2. That Scheindlin in her err filed dismissal of the RICO<sup>2</sup> writes an excellent synopsis of the case as defined at the time.
3. Eliot has recently come under new and continued life threatening danger and severe duress and seeks this Court's urgent protection from his Whistleblowing efforts on attorneys at law

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<sup>1</sup> Iviewit / Eliot Bernstein Amended Complaint

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf>

<sup>2</sup> March 08, 2008 Shira Scheindlin Dismissal of Iviewit RICO complaint

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080808%20Scheindlin%20Dismissal%20of%20Complaint%20no%20comments.pdf>

March 08, 2008 Shira Scheindlin Dismissal of Related Cases to Christine C. Anderson, Esq.

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080808%20Scheindlin%20Dismissal%20of%20related%20complaints.pdf>

acting outside the color of law in Florida, in a variety of titles, as judges, prosecutors, private attorneys, state bar disciplinary agent and more. This danger is evidenced by all the following ongoing issues in the life of Eliot and his family.

4. Massive recent further fraud and other crimes against Eliot and his family, primarily committed by attorneys at law, with court escalation of retaliation and denial of due process and procedure against Eliot that obstructs justice, intentionally and with scienter, to interfere with expectancies/inheritance for Eliot and his minor children and this retaliation due to his exposing and having reported to prosecutors and criminal authorities attorneys at law involved directly in crimes committed in, on and by the Florida Probate court and its Florida Bar members. Eliot and his family are subjected to domestic terrorism under 18 U.S.C. § 2331 and crimes against Humanity.
5. It appears there is a domestic terrorist organization operating with the legal system, where a mob styled infiltration has occurred at the highest level in the legal system, using the courts as their business addresses to facilitate their crimes and operate a human trafficking scheme through guardianships that rob the victims of their legal rights and theft and money laundering through the probate courts to steal families properties upon the death of their loved ones. The courts abuse of process creates a mob styled racketeering enterprise committed under a tainted color of law in the State of Florida that is given cover by the Florida Bar, which protects its reprobate members who are part of the scheme and artifice to defraud citizens.
6. A victim is targeted in the Probate/Guardianship court, their assets then stolen after they are dead in probate or while still living through guardianships of unlawful chicanery designed to

bleed their victims assets as they are slowly put to their death by illegal court “edicts”, stripped of legal right through illegal legal custody gained and then defenseless stripped of their assets and isolated from their family members who get in the way.

7. The officers of the Florida Probate court in Eliot’s parents probate and trusts matters were caught and have admitted to their law firm committing felony criminal acts, including but not limited to, proven Post Mortem Fraudulent Alteration and Notarization of Court documents and Dispositive documents posited with the court as a Fraud on the Court, Post Mortem Admitted Forgeries of documents for decedents Simon and Shirley and other living parties including Eliot, numerous past and ongoing Frauds on the court and multiple Frauds committed against Beneficiaries of the estates and trusts. Further they are undergoing investigations for other crimes not yet proven but formally alleged, including but not limited to, Insurance Fraud, Fraud on a Creditor, Fraud on a Federal Court (this Court), Mail and Wire Fraud, Theft of Estate and Trust Assets, Conversion, Extortion, alleged Murder of Simon Bernstein by Plaintiff Theodore Bernstein and more.
8. Eliot’s exposure of and objections to the court corruption and his filings with criminal authorities for acts committed by these attorneys at law, operating as officers and fiduciaries of the probate courts of Judge Martin Colin, Esq. (“Colin”) and Judge David E. French, Esq. (“French”)<sup>3</sup>, has been covered up and further aided and abetted by the judges of the Florida

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- i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- ii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- iii. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- iv. Case # 502014CP003698XXXXSB – Shirley Trust Construction
- v. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE #502014CA014637XXXXMB

Omnibus Motion...  
Monday, May 4, 2015

Probate court, which are facilitating these highly sophisticated illegal legal crimes under the guise of probate proceedings and providing cover for the reprobate attorneys who were caught.

9. These harms are caused by the very courts that should be upholding Eliot's rights and protecting him, especially after he cleaned house for the judges by exposing the bad faith acts of Florida attorneys at law practicing before their courts, the officers appointed by the courts, who were found acting in concert to Fraud the court and commit a variety of crimes against the Beneficiaries, these crimes primarily targeting Eliot.
10. Why Eliot? Eliot was joined together in 2008 with American Hero Whistleblower, New York Supreme Court Appellate Division Departmental Disciplinary Committee attorney at law, Christine C. Anderson, Esq., by Federal Judge Shira A. Scheindlin who legally related Eliot's RICO case involving a massive corruption inside government and almost all attributable to those with legal degrees, to Anderson's riveting Whistleblower lawsuit that exposed a criminal cartel operating at the highest levels of the country's legal system and protected by the self-regulating failed attorney at law disciplinary departments they controlled.
11. That Scheindlin related several other Whistleblower citizens fighting the corruption in the courts for many years together with Anderson and so began a lengthy and ongoing effort to expose the corruption that plagues our nation by a small group of very dedicated citizens who fearlessly took on the corruption machine inside the courts, at great personal and familial costs.

12. That after finding out how the innards of this corruption scheme worked whereby criminals disguised as attorneys at law are violating law with impunity, it was apparent that they have seized the keys to the kingdom at the highest outposts of law and turned a country built on law into lawlessness society.
13. This has created an unprecedented situation in our country, a coup d'état of the legal system and everything it controls and now requiring unprecedented actions by both citizens and a brave few lawyers and judges who are willing to stand up in their roles as honorable and duty bound to justice attorneys at law and bust up this racket that threatens our nation by turning in those reprobate members who are acting outside the color of law, despite the consequences against them by those in control of their profession at this time, unafraid of the retaliation they most certainly will face.
14. Eliot has recently met even more brave Whistleblower attorneys at law, upholding their oaths to report the misconduct of their brethren, although these are false brethren, as they are really criminals using law to commit crime and cover them up, using the courts as retaliatory weapons against the victims and the retaliation of these lawyers who have done nothing wrong but fulfill their duty to report other members misconduct is swift and vicious.
15. Joining Anderson's heroic whistleblowing are now Barbara Stone, Esq., Candice Schwager, Esq., Joanne Denison, Esq., Kenneth Ditkowski, Esq., Kevin R. Hall, Esq. and Dean Loren, Esq. and other attorney Whistleblowers who are all exposing the illegally formed bar associations and the crimes in the court they have witnessed firsthand. Now they are in danger of losing their livelihoods and being viciously retaliated against for their exposure of the bad actors by what at first glance appears lawyers, judges, prosecutors and the bar

associations and with deeper inspection one finds they are lawbreakers misusing law to target their victims.

16. There is also another citizen, William Windsor, who has been jailed for his efforts to expose the public office corruption in the nation by assembling video of nationwide victims and again Mr. Windsor's only crime is that of exposing the underbelly of the legal system through the eyes of victims. <http://www.lawlessamerica.com/index.php>

17. The reprobate attorneys are acting to commit crimes in various combinations of racketeering type fraudulent illegal legal schemes that utilize the courts as host to the crimes and using their legal degrees to commit these crimes and then having other criminals disguised as lawyers planted in the regulatory agencies to cover them up for them, with virtually no fear of retribution, as the cover up is at the highest levels of the failed self-policing attorney at law failed Disciplinary Departments, State Bars, Judicial Conduct Commissions and criminal prosecutorial agencies.
18. The self-policing bar associations and the judicial qualifications commissions instead of protecting the Whistleblowers exposing their reprobate members and investigating the complaints filed by the Whistleblowers and citizen victims reporting the misconduct of judges to them are instead retaliated against.
19. Retaliation against the Whistleblower members of the Florida Bar who are reporting against other members of the bar committing the crimes include extortionary threats of disbarment used in efforts to force these brave and heroic whistleblowers from pursuing their acts to expose the bad actors or else.

20. Further the state bar associations and judicial conduct commissions are denying due process and procedure of the attorney at law Whistleblowers by disbaring them and preventing and dismantling their efforts to protect their clients, themselves, their families and the public at large from the dangers of the reprobate attorneys at law, judges and prosecutors they are exposing who have corrupted and polluted the legal system, casting a grave appearance of impropriety over the whole system of jurisprudence and leaving no one capable of putting it down.
21. The danger to Eliot directly is further evidenced by Eliot and his wife Candice's receipt of a phone call at 4am. on April 11, 2015 by his children's counsel, Candice Schwager, Esq. of Texas, informing him that their lives were in imminent danger for their whistleblowing efforts against judicial and attorney at law corruption and to instantly seek federal and state protections. This phone call and the following actions with state and federal authorities already involved in Eliot's life is documented below by attorney at law Barbara Stone, Esq. who also received a similar call from Candice Schwager, Esq.:

**From:** Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv> ]  
**Sent:** Monday, April 13, 2015 7:07 AM  
**To:** Michael Horowitz [Inspector General @ US DOJ OIG] ~ Partner @ Cadwalader, Wickersham & Taft LLP ([michael.horowitz@cwtt.com](mailto:michael.horowitz@cwtt.com) ); 'The Honorable Glenn Alan Fine, Inspector General ~ Department of Justice'  
**Cc:** 'Barbara Stone ([bstone575@gmail.com](mailto:bstone575@gmail.com) )'; 'JoAnne M. Denison Esq. @ Denison & Associates, PC ([jdenison@surf.free.com](mailto:jdenison@surf.free.com) )'; Candice Schwager @ Schwager Law Firm ([candiceschwager@icloud.com](mailto:candiceschwager@icloud.com) ); 'Andrew Dietz @ Rock-It Cargo USA, Inc. ([andyd@rockitcargo.com](mailto:andyd@rockitcargo.com) )'; 'CANDICE BERNSTEIN ([tourcandy@gmail.com](mailto:tourcandy@gmail.com) )'; 'Caroline Prochotska Rogers Esq. ([caroline@cprogers.com](mailto:caroline@cprogers.com) )'; 'Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) )'; 'Marc R. Garber Esq. ([marcgarber@gmail.com](mailto:marcgarber@gmail.com) )'; 'Marc R. Garber Esq. @ Flaster Greenberg P.C. ([marc.garber@flastergreenberg.com](mailto:marc.garber@flastergreenberg.com) )'; 'Michele M. Mulrooney ~ Partner @ Venable LLP ([mmulrooney@Venable.com](mailto:mmulrooney@Venable.com) )'  
**Subject:** Eliot Bernstein. FW: We have been warned by counsel that we are in danger and need of Federal protection



Dear Inspector General Horowitz, please add this email to my ongoing case file with DOJ OIG. As this involves further potential dangers to my family, where it has been alleged my father was murdered and a Coroner's report reveals several elevated heavy metals, I take this warning very seriously, especially where I have uncovered and proven fraud and forgeries of deceased parties to gain Dominion and Control of my deceased father's estate, the crimes committed by Attorneys at Law. I have been trying to contact the FBI for several months to report several very serious crimes that require federal investigations and have supposedly contacted the FBI who refused to give me names of the people that were supposed to be doing the intake and have not heard back from them at all. I have tried to contact your offices and similarly I was unable to confirm anyone's name that I was speaking to and if in fact you had gotten my messages. Please feel free to contact me at my numbers below. Eliot

Eliot I. Bernstein  
Inventor

**From:** Eliot Bernstein [<mailto:iviewit5@gmail.com>]  
**Sent:** Monday, April 13, 2015 6:57 AM  
**To:** 'Detective Andrew Panzer @ Palm Beach County Sheriff ([PanzerA@pbso.org](mailto:PanzerA@pbso.org))'  
**Subject:** Eliot Bernstein. FW: We have been warned by counsel that we are in danger and need of Federal protection

Dear Detective Panzer, please add this to the ongoing investigation of my family estate and trust matters. Barbara Stone is a Florida Attorney who is exposing Judicial Corruption. I got a call at 4am from attorney Candice Schwager who informed me and Candice my wife that our lives and those of our children were in imminent danger for our Whistleblowing efforts. This warning came from a licensed attorney. Paul Wright is at the FBI according to Barbara. I was told to contact state and federal authorities for protection. Eliot

**From:** barbara stone [<mailto:bstone575@gmail.com>]  
**Sent:** Sunday, April 12, 2015 7:36 PM  
**To:** Paul Wright  
**Cc:** Eliot Bernstein; Candice Schwager, Esq.; JoAnne M Denison, Esq.  
**Subject:** We have been warned by counsel that we are in danger and need of Federal protection

My attorney, Candice Schwager who is also the attorney for Eliot Bernstein contacted both of us on or about 4:00 am EST on Saturday and advised us to contact Federal authorities for protection.

She warned me and Eliot Bernstein that we and our families are in danger and in need of immediate Federal protection due to our efforts to expose judicial corruption.

Ms Schwager is a licensed attorney in the state of Texas and can be reached at 832.315.8489

I can be reached at 305 494 2463 and Mr. Bernstein can be reached at 561 245.8588.

Barbara Stone  
on behalf of myself and my mother and on behalf of Eliot Bernstein and his family.

22. That this wakeup call warning of imminent danger and to get the children protected by a licensed Attorney at Law has left Eliot and his wife Candice panicked and frantic for the last two plus weeks trying to get help and keep an eye on the children at the same time and left them hardly able to keep up with the sudden increased legal hearings and pleadings dumped on them as the pressure is mounting on the bad actors from the criminal acts being uncovered in the courts.
23. These sharp practices of heaping hearing after hearing on Eliot seems calculated to heighten the pressure on them intentionally in the six legal cases involving the Estates and Trusts of Eliot's deceased parents, Simon and Shirley as pressure mounts and their crimes are further uncovered and reported on.
24. Many of the legal actions require strict deadlines, there are a mass of scheduled hearings, hearings of Eliot's changed overnight and moved up a month by Judge Colin on his own initiative with demands that Eliot be present at that time or else lose his rights regarding complicated accounting proceedings, where thousands of pages of documents were dumped on him without giving him the opportunity to review them before the hearing and all this coming as Eliot and others are finding out about a plethora of crimes committed by the attorneys at law, fiduciaries and other parties involved in the Estates and Trust cases of Simon and Shirley Bernstein.
25. That the court will again take note that it was alleged by Ted Bernstein and Pamela Simon on the day Simon died that he was murdered, TED and PAM are his estranged son and daughter

who were cut out of the Estates and Trusts with their lineal descendants and if the murder allegation is true Eliot could be next.

26. That the Court will take note that a bomb was placed in Eliot's car (see Graphic images of car bombing @ [www.iviewit.tv](http://www.iviewit.tv)) that blew up three cars next to it as well and where every day of Eliot and Candice's life that all of these matters are not investigated and handled properly with fair and impartial due process given them, they are in danger every time they start their vehicle to take the children to school in the morning.
27. This car bombing alleged to have taken place over Eliot's claims that reprobate attorneys at law stole his and others Intellectual Properties worth an estimated billions to trillions (currently over 90% of internet traffic uses the technologies as they are backbone imaging and video technologies), and the attorneys at law were using the Court system and other Government agencies, including the US Patent Office, to enable the highly sophisticated legal crimes deployed by major law firms to steal the technologies.
28. When caught in the act it is alleged that these lawyers infiltrated some of the highest outposts of law in efforts to cover up the crimes by interfering with Eliot's due process rights and by obstructing Justice inside government agencies and when caught at the cover up then tried to murder him and have since been pursuing a pattern and practice of crimes to hurt and damage Eliot and his family.
29. The death of Simon Bernstein if he was murdered may also have been due to his ownership interests in the Intellectual Properties, his potential settlement interests in Eliot's RICO and his intimate knowledge of how the royalties were being converted illegally by the law firms that stole the technologies (primarily Proskauer Rose LLP) through the Madoff and Sir Allen

Stanford Ponzi Schemes (aka criminal attorney at law and law firm money laundering schemes for monies stolen from clients.)

30. As the court will note in the Probate and Trust cases involving Eliot's three minor children and Oppenheimer, there are accounts at the heart of that matter that came from Stanford Bank and Stanford Trust that then transferred with the agents from Stanford to Oppenheimer Trust and the accounts and agents transferred to JP Morgan, where it is alleged that millions of dollars of Simon's monies in the estates and trusts disappeared weeks before his untimely and strange death.
31. Eliot has had repeated death threats over a thirteen year period reported to state and federal authorities for his Whistleblowing efforts against the highest ranking members of three state bar associations, judges, prosecutors, attorneys at law and high ranking government officials throughout the nation who were involved in the thefts of the Intellectual Properties.

*Wherefore, Eliot requests that there be an order of federal protection from life threatening danger to Eliot and his family.*

**DESIGNATION OF STATUS AS WHISTLEBLOWER AND AFFORD ALL STATE AND FEDERAL WHISTLEBLOWER PROTECTIONS AND PROVIDE FEDERAL WITNESS PROTECTION**

32. That while Eliot is not an attorney at law, nor a member of any bar association, his efforts to expose the corruption of the members of three state bar associations have led to Orders ( see URL @

<http://iviewit.tv/CompanyDocs/2004%2006%2017%20Cahill%20Motion%20to%20move%20complaints%20krane%20rubenstein.pdf> )

from the New York Appellate Division of the Supreme Court, First Judicial Departmental Disciplinary Committee for investigation of three of its members, including former deceased President of the New York State Bar at the time, Steven C. Krane, Esq. of Proskauer Rose (who died suddenly after the investigations were ordered), Kenneth Rubenstein, Esq. of Proskauer Rose and sole patent evaluator for MPEGLA, LLC (who Eliot claims is the largest infringer of his Intellectual Properties) and Thomas Cahill, Esq., the former Chief Counsel for the First Judicial Departmental Disciplinary Committee (who Whistleblower Anderson sued and immediately after losing her trial against him Judge Scheindlin came into the Court after the jury had left and entered into the record that she had just learned that Cahill and others had perjured their testimony in the trial and thus poisoned the jury decision and where Cahill resigned early amidst the Anderson case and the legally related Iviewit RICO). The Iviewit RICO<sup>4</sup> is legally related to Anderson and other actions that allege widespread attorney at law corruption in various divisions of the courts, prosecutors' offices and more.

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<sup>4</sup> Anderson and Related Cases @ New York Second Circuit

1. File USCA Case Number 10-5303 = Iviewit Appeal Docket No. Case 08-4873-cv United States Court of Appeals for the Second Circuit Docket - Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al. - TRILLION DOLLAR LAWSUIT
2. Capogrosso v New York State Commission on Judicial Conduct, et al.
3. Esposito v The State of New York, et al.
4. McKeown v The State of New York, et al.

Anderson Related Cases @ US District Court - Southern District NY

5. 07cv09599 Anderson v The State of New York, et al. - WHISTLEBLOWER LAWSUIT which other cases have been marked legally "related" to by Fed. Judge Shira A. Scheindlin, including Eliot RICO
6. 07cv11196 Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al.
7. 07cv11612 Esposito v The State of New York, et al.,
8. 08cv00526 Capogrosso v New York State Commission on Judicial Conduct, et al.,
9. 08cv02391 McKeown v The State of New York, et al.,
10. 08cv02852 Galison v The State of New York, et al.,
11. 08cv03305 Carvel v The State of New York, et al., and,
12. 08cv4053 Gizella Weisshaus v The State of New York, et al.
13. 08cv4438 Suzanne McCormick v The State of New York, et al.
14. 08 cv 6368 John L. Petrec-Tolino v. The State of New York
15. 06cv05169 McNamara v The State of New York, et al

Omnibus Motion...  
Monday, May 4, 2015

That the fraud on the Court in the Anderson case and related cases should lead, when the time is ripe, for a rehearing for Anderson and the related cases once the court corruption is cleaned up and it was truly extensive and widespread as Anderson's testimony revealed.

33. The New York Appellate Division of the Supreme Court, First Judicial Departmental Disciplinary Committee was Ordered to be investigated by the New York Appellate Division of the Supreme Court, Second Judicial Departmental Disciplinary Committee. The reason those ordered investigations were never completed was because new allegations of conflict were levied against the New York Appellate Division of the Supreme Court, Second Judicial Departmental Disciplinary Committee.
34. Eliot therefore should be considered a Whistleblower as he is instrumental in bringing about law enforcement to investigate the corruption in the legal system and because his RICO case in New York is legally related to New York Appellate Division of the Supreme Court, First Judicial Departmental Disciplinary Committee Attorney at Law Christine C. Anderson, Esq. whistleblowing lawsuit against State Actors and Disciplinary Departments. So too, the retaliation against Eliot involved in denying due process to Eliot's RICO and his bar and disciplinary complaints is substantially the same as the retaliation suffered by attorney at law members of the state bar for their Whistleblower efforts.
35. Due to Eliot's efforts as a Whistleblower he has come under repeated life threatening retaliations by attorneys at law over the last decade who desire to cover up their crimes through continued misuse of the courts and justice system to deny him due process, deprive him of inheritance and to intentionally obstruct his efforts to get fair and impartial treatment under law and essentially obstructing any/every effort Eliot makes to seek relief, state or

federally to protect his rights and protect his family, all in efforts to try and silence Eliot and his family.

36. That immediately after the recent warnings by Candice Schwager, Esq.<sup>5</sup> that Eliot and his family and Attorney Barbara Stone, Esq. were in imminent danger of their lives, exhibited already herein, the bar associations in the respective states recommended disbarment of two of the attorneys involved with Eliot and helping him, Joanne Denison, Esq. (IL)<sup>6</sup> and Barbara Stone, Esq. (FL)<sup>7</sup> in what appears retaliation by the bar associations against them for blowing the whistle on massive corruption schemes being operated under the color of law by certain judges and attorneys in their states who they blew the whistle on.
37. These Whistleblowing attorneys are duty bound to report the misconduct of other members of their profession by their respective state bar Rules of Professional Conduct in the first place. By following The Rules of Professional Conduct that they take oath under G-d to uphold, they are compelled to report any misconduct of other attorneys and judges they are aware of.
38. The good actors are then rewarded with retaliation by the very institution charged with investigating the corruption of the reprobate attorneys at law and judges they are exposing and their law licenses are dangled as leverage to silence them and thus their livelihoods that

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<sup>5</sup> <http://atty4kids.org/>

<sup>6</sup> <http://marygsykes.com/tag/joanne-denison>

<sup>7</sup> Florida Bar Attorney Affidavit – Judge and Lawyer Threatening Counsel for 87 Year Old Woman  
<http://www.iviewit.tv/Exhibit%20-%20Barbara%20Stone%20Attorney%20Affidavit.pdf>  
and  
<http://www.iviewit.tv/BarbaraStoneCriminal%20ComplaintMarch2%202015.pdf>  
and  
<http://www.iviewit.tv/Barbara%20Stone%20Florida%20Bar%20Whistleblower.pdf>

are held captive by the Bar Associations who can disbar them are used as threats, which is like being blacklisted from the profession, a typical mob styled racketeering extortion scheme reminiscent of mob controlled Unions and their extortion of their members.

39. Like the retaliation from Whistleblowing on the corrupt courts by honest attorneys at law doing what they are duty bound to do, Eliot is also subject to continuous retaliation by these reprobate attorneys at law because he is pursuing the law firms and thousands of corporations worldwide that are using Eliot's technologies through illegal patent pooling schemes the lawyers are using to benefit themselves not Eliot from the stolen technologies of Eliot's and who have illegally blocked Eliot from market through anticompetitive monopolistic patent pooling schemes and disabling his legal rights to pursue to such illegal combinations like those conducted by MPEGLA, LLC., which is controlled by Eliot's former Intellectual Property Counsel, Proskauer Rose LLP and which licenses thousands of corporations.
40. Many of these companies such as YouTube and Facebook are wholly dependent on Eliot's SUSPENDED Intellectual Properties and these companies are directly tied to the alleged perpetrators of the Intellectual Property crimes in many instances directly to Proskauer Rose, a large law firm that Eliot is pursuing as the initial conspirator in the thefts and where these corporations also have incentive to see Eliot and his family and other shareholders and patent interest holders dead (including his father) versus successful in Court where they could lose everything if Eliot succeeds and he will in time, when the due process blocks are busted up.
41. That Eliot has alleged that further retaliation comes from the recent Estate and Probate crimes being committed against his family, which once again are crimes again done primarily by attorneys at law and judges acting in conspiracy against Eliot's rights and designed to



deny him his inheritances and where the crimes now include the alleged murder of Simon (alleged by Ted the day his father died.)

42. That Eliot alleges that the theft of the insurance policy that is the subject of the lawsuit before this Court is yet further retaliation to deny him expectancies, where Eliot was initially NOT told of this lawsuit and was not made party to the original complaint and is yet another effort to steal the estate property and deny him inheritances through fraud committed again by attorneys at law, Donald R. Tescher, Esq. and his junior partner Robert L. Spallina, Esq., in concert with Ted, designed to steal millions of dollars of monies for Eliot's family.
43. This insurance policy theft scheme is to further disable any chance of Eliot getting monies, which could be used to get counsel to defend his family's inheritance (he has not received a dollar from the Estates and Trusts in over two years due to frauds committed that have delayed their expectancies) and where the inheritance could also be used to pursue his and others Intellectual Property rights and his RICO, feed his children and more.
44. Eliot and his family were wholly dependent on their inheritances for income as Simon had set up elaborate estate plans for Eliot's family to continue to receive monthly income that Simon and Shirley Bernstein had set up and begun many years before their deaths to protect Eliot and his family due to the dangerous situation their lives became entangled in and their inability to seek employment with the onslaught against them.
45. The danger prevented Eliot from gaining employment, as not many employers want to hire people who have bombs put in their cars and are in the middle of complex RICO litigation and these funds Simon and Shirley set up paid for all basic living and household expenses for the home that Eliot's children own, private school tuitions for the children and all of their

other expenses and needs, including but not limited to Health Insurance, Food, Clothing, Entertainment, etc.

46. That Simon had set up continuation of these payments to occur long into the future upon his death through his Estate plans and took many precautions to make sure Eliot and his family would have no problems once he died with income to survive many years and through all the children's college educations. That the hijacking and theft of these funds via the crimes in the probate court are fully intended to cause grave harm and damage to Eliot to keep him from pursuing his whistleblowing efforts.
47. That Eliot must now protect his family without help from authorities who have been virtually silent for years on ongoing investigations and silent since being noticed regarding the recent threat of imminent danger to his family made by a licensed attorney at law, Schwager, and where Eliot alleges this delay may also be intentional and created by lawyers who are in prosecutorial roles and controlled by the law firms that are against Eliot, in direct efforts to deny Eliot and his family state and federal protections.
48. However, it appears that wherever attorneys at law in whatever role they play (private attorneys, prosecutors, judges, etc.) become involved in Eliot's life there is no relief and in fact further retaliations and denials of due process and procedure to Obstruct any chance at Justice. Hence, there should be an Injunctive Relief that: 1) the Bar Associations or any of the judges against whom the whistle is being blown on cannot take any action against Eliot or his family for publishing the truth and 2) the courts must refrain from restricting our pleadings and motions to protect the innocent.

*Wherefore, Eliot request that Eliot be designated with the status of a Whistleblower and afford all the state and federal Whistleblower protections and provide federal witness protection.*

**STAY OF ALL PROCEEDINGS IN THE FLORIDA PROBATE COURT AND  
TRANSFER OF ALL FLORIDA PROBATE MATTERS TO THIS COURT**

49. The denial of due process, equal protection and obstruction of justice and retaliatory acts proliferate because the Florida Bar protects the corruption and criminal actions of its members instead of holding them accountable and issuing strong sanctions as it appears the enterprise has infiltrated any agency that can investigate them and their self-policing Bar Association.
50. The Bar Association's reprobate attorneys at law in charge of disciplinary sanctions against members appears steeped in corruption and is used to retaliate against honest members doing the right thing by reporting the corruption they witness that they are duty bound under Oath of G-d to report and instead promote the bad actor members reported who are acting outside the color of law for personal gain and who aid and abet the racketeering enterprise.
51. Victims who are turned to the Florida Bar for relief when they report civil, ethical and criminal misconduct of attorneys at law and judges are subjected to the same retaliatory acts by the Florida Bar as their member whistleblowers and in giving their complaint information to the Florida Bar they have basically turned their evidence over to those they are complaining against as the Florida Bar then gives that information to the accused parties and again this deprives rights to victims ingrained in traditional investigations.

52. The Florida Bar then typically issues letters to victims of how they reviewed the matters and found no cause to investigate further and that you owe your attorney fees or words to that effect. In Eliot's case, the goodbye good luck letters were found to be written by or aided by Proskauer Rose attorneys who were violating Florida Bar rules by interfering in the complaints filed against their firm, which is what led to the investigations in New York and that led Eliot to the Florida Supreme Court and then the US Supreme Court, where it appears the attorney protections go all the way up the chain, as neither would review the bar associations misconduct and thus no remedy avails victims.
53. There is a conflict of interest inherent in the Florida Bar's self-disciplinary regulatory body policy for how can a state organization regulate itself and its members and skirt traditional discipline from criminal investigation, as the bar association disciplinary agencies cannot investigate or regulate the criminal misconduct of its members and only investigate their ethical misconduct and sanction or disbar them.
54. The self-policing policy of the Florida Bar does not work – Florida Bar members cannot unbiasedly investigate the actions of other Florida Bar members and victims complaining about their members or be counted on to report them to criminal authorities when necessary, as a protection of brethren members is inherent.
55. Therefore, a loophole in justice is created whereby lawyers committing crimes may evade criminal prosecution if the state bar fails to contact criminal authorities to investigate claims made by victims that involve criminal elements and this covers up the felony misconduct instead. When citizens have complaints, criminal or civil, against judges, prosecutors and

private attorneys at law they are directed by law enforcement to contact the Florida Bar or the Judicial Qualification Committee to report the criminal or civil misconduct of bar members.

56. These bar association and judicial commissions have regulatory bodies (which have no criminal jurisdiction or powers to prosecute or investigate criminal acts), which are then supposed to review the victims complaints and report any criminal misconduct they find to the proper criminal authorities for investigation.
57. If they find criminal misconduct and fail to report the felonies alleged the loophole to evade justice is fulfilled, as no criminal investigations are instituted because they have been blocked. Every once in a while an attorney may be disbarred or a judge suspended when they are involved in criminal misconduct but no criminal prosecution of them is made and the victim is left helpless with no due process for the crimes against them.
58. If the victims turn back to criminal authorities after the regulatory agencies determine no cause to investigate the complaint, law enforcement then states that the agencies did not find wrong doing and that they do not want to review the matter as it will be taken to a prosecutor member of the Florida Bar in the end who will review and work with the State Bar and thus the effort will be futile.
59. That Eliot states that victims should never seek State Bar sanctions or disbarment of the attorneys who have committed crimes against them and only work with criminal authorities who are often not associated with the Florida Bar, as there is nothing sexier in a prison environment than a lawyer with a license who everyone wants as a cellie at night to do his pleadings and so disbarment for criminal acts of lawyers is not good, as if a lawyer is guilty of a criminal act against a client, it would serve well the victim to know that the lawyer is not

only criminally charged, prosecuted and sentenced but that he is then being worked to death while serving his sentence in the pen by everyone who needs a lawyer in jail.

60. This “Get Out of Jail Free” card that lawyers and judges have written themselves by creating the state bar associations and disciplinary departments to have regulatory power over their members in ethical and criminal complaints filed by citizens and whistleblowers and move the matters to their organization for improper adjudication is unconstitutional.
61. This perversion of the system allows bar members who commit felony acts to be first reviewed by the bar association and determinations made that can evade criminal authorities, such as intentionally failing to report the criminal acts of their members in victim complaints (Misprision of a Felony or Aiding and Abetting) to criminal authorities and this directly impacts the victims’ rights to fair and impartial due process of parties that committed criminal acts against them.
62. The complaints get moved from criminal authorities to the very organization where the complained members are beholden to for their livelihoods and who may be part of the organized criminal element within the bar association and regulatory body and this is like going to the Gestapo and complaining camp guards are beating you and anticipating justice will be served and the guards will now treat you with respect.
63. ANY OTHER AMERICAN without legal title who has to face criminal authorities for crimes alleged against them by a victim have no place or organization they are members of that they can go to and try and wiggle out of criminal misconduct by the organization they belong to failing to pursue criminal misconduct against them by failing to report the crimes

and instead charge them with a slap on the wrist with useless disciplinary sanction, suspension from profession such as disbarment and evade criminal prosecution.

64. The state bars are NOT a law enforcement agency. This ability to evade criminal authorities and punishments creates unequal protections in the application of law and places certain parties above the law and getting preferential treatment, while denying their victims fair and impartial due process.
65. Florida Bar members should be conflicted out from investigating any another attorney who is a member of the Florida Bar, which is a patent denial of due process through conflict that obstructs justice and creates an overwhelming Appearance of Impropriety to the general public that lawyers and judges are untouchable or immune to the criminal misconduct they do and the reason lawyers and judges have the lowest approval rating of any professional organization in America next to Congress (again made up primarily by attorneys at law.)
66. The self-policing aspect of the Florida Bar becomes even more inherently biased, conflicted and unjust when the complaint is made by another Florida Bar member against another Florida Bar member that is connected and the investigator is yet another connected Florida Bar regulatory member. In this instance, the lawyer complaining can be threatened with disbarment the ole Hollywood mob line modified to, “you’ll never practice or rule in this state again,” forcing them to give up their complaint or go against the organization that holds their livelihood and be destroyed.
67. The same inherent conflict of interest that exists with the Florida Bar also exists with the Judicial Qualifications Commission. Florida Bar members again regulate Judges, who are other Florida Bar members when a Florida Bar member whistleblower or a victim of judicial

injustice files a complaint against a Florida State Judge with the Judicial Qualifications Commission.

68. For these reasons Florida Bar members and the Florida Bar are inherently conflicted from handling any aspect of Eliot's Whistleblower matters or other civil actions due to these conflicts from Eliot's pursuit of the organization that conflict him with every member, whether they are directly involved or not, as Eliot cannot know which members are involved in the conspiracy against him due to the secretive nature of a conspiracies members who conceal their criminal intent or know who the good lawyers trying to help him who are then being threatened to drop his matters or else.
69. Due to the inherent conflict in the Florida Bar self-policing its members, it has manifested into an criminal protection agency composed of reprobate attorneys who threaten and extort members and victims who play by the rules seeking justice and protection and where it is in no way a consumer protection agency in the way it operates.
70. That due to Eliot's exposing reprobate members of the Florida Bar, he is also perusing attorneys at law and judges in three states and their bar associations (PA, NY & VA) and Eliot's complaints allege collusion by a host of judges and he is now being legally abused by misuse of the Florida Probate courts and aided and abetted by the courts acting as accomplice and facilitator to ongoing crimes against him in Florida and this Court.
71. All of these new crimes taking place in this Court and the Florida Probate court are again done by reprobate attorneys at law and all intended to deprive Eliot of his properties by legal schemes and disabling his rights, including his right to counsel (as everyone of over 100



lawyers contacted to help him have declined, most expressing fear of retribution by their bar associations or stating it was too complicated to sue attorneys.)

72. After the Candice Schwager, Esq. warning call, no attorneys after learning of that even want to talk about representation, as if telling them about the car bombing up front does not scare them away. After the call, Schwagger had to decline further representation to Eliot's minor children as she too is fearful of retribution and now suffering from the legal process abuse directed at her for efforts to expose the corruption and truly help and provide justice to victims.
73. Eliot, his wife Candice and their minor children are all afraid for their lives and in need of immediate protections. All court proceedings in all Florida court cases should be immediately stayed by this Court while they are transferred to this Court to prevent further mis-adjudication, Fraud on the court, Fraud in the court and Fraud by the court and to prevent further criminal activities from occurring against Eliot.
74. Eliot also seeks this Court to federally intervene in all prosecutorial and criminal investigations due to the influence on these agencies by members of the Florida Bar and Florida Supreme Court who Eliot is suing and pursuing in criminal and civil complaints filed with state and federal agencies and to ensure and provide conflict free investigations and prosecutions.
75. Eliot is pursuing all of the following parties that are members of the Florida Bar, Florida Supreme Court and other reprobate bar members acting in private practices (and this is only a partial list in Florida and Eliot has three other similar states he sued with a similar cast of

criminals in each<sup>8</sup>) for their involvement in the prior crimes alleged involving the Intellectual Properties theft, including but not limited to the following Defendants sued in the RICO filed. These bar members were public officials involved at the time of filing the RICO in the cover up and subsequent crimes:

**STATE OF FLORIDA,**

**OFFICE OF THE STATE COURTS  
ADMINISTRATOR, FLORIDA,**

**HON. JORGE LABARGA in his official and individual capacities,  
[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election he aided in the failure to recount when he was a civil circuit judge and for effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess]**

**THE FLORIDA BAR,**

**JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,**

**KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,**

**LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,**

**ERIC TURNER, ESQ. in his official and individual capacities,**

**KENNETH MARVIN, ESQ. in his official and individual capacities,**

**JOY A. BARTMON, ESQ. in her official and individual capacities,**

**JERALD BEER, ESQ. in his official and individual capacities,**

**BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,**

**JAMES J. WHEELER, ESQ. in his professional and individual capacities,**

**FLORIDA SUPREME COURT,**

**Hon. Charles T. Wells, in his official and individual capacities,**

**Hon. Harry Lee Anstead, in his official and individual capacities,**

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<sup>8</sup> Full List of Iviewit RICO Defendants @  
<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

**Hon. R. Fred Lewis, in his official and individual capacities,  
Hon. Peggy A. Quince, in his official and individual capacities,  
Hon. Kenneth B. Bell, in his official and individual capacities,  
THOMAS HALL, ESQ. in his official and individual capacities,  
DEBORAH YARBOROUGH in her official and individual capacities,**

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION – FLORIDA,**

**CITY OF BOCA RATON, FLA.,  
DETECTIVE ROBERT FLECHAUS in his official and individual capacities,  
CHIEF ANDREW SCOTT in his official and individual capacities,**

**CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities,**

**MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,**

**ALBERT T. GORTZ, ESQ. in his professional and individual capacities.**

76. Eliot once again in the Probate matters has caught lawyers and judges in Florida involved in crimes against him and his family in efforts to shut him down financially by stealing his inheritance and stop Eliot from inheriting several million dollars that could be used in part to further his pursuit of he, his father's and his shareholders' interests in the Intellectual Property but instead their crimes were discovered and the backlash has elevated as Eliot has pressed for criminal prosecutions.
77. Eliot discovered the sneaky and diabolical crimes committed by these "trusted" estate planning lawyers of his parents, TESCHER and SPALLINA, who through fraud and deceit

seized Dominion and Control of the Estates and Trusts of Eliot's parents by inserting themselves into the dispositive documents as Co-Personal Representatives and Co-Trustees (later removed after admitting to fraudulently altering dispositive documents Post Mortem.)

78. TESCHER and SPALLINA then used two of five estranged children who had been cut out of the Estates and Trusts with their lineal descendants, by Simon and Shirley, who were tipped off that they were disinherited by TESCHER and SPALLINA while Simon was alive without his consent and who then became enraged and tried to force Simon to make changes to his Estate and Trust plans immediately prior to his death and this feud these attorneys intentionally created left Simon a sitting duck and opened a portal once he was dead to use these estranged children to aid them in stealing the inheritances being left to Eliot and try and remove from the estates and trusts the interests in the Intellectual Properties that are worth billions of dollars.
79. Despite the mounds of evidence against the attorneys and others the Florida courts and prosecutors presented by Eliot, authorities seem to be deaf and blind to the multitude of crimes reported and docketed with them involving the Estate and Trust crimes, including the alleged Murder of Simon and have tried to wiggle out of prosecuting the attorneys and attempt to shift the investigation to the Florida Bar, which has no legal authority to investigate these FELONY CRIMINAL ACTS as they are not ethical violations (which really should be crimes too.)
80. For example, the murder investigation ordered by TED through his lawyers done by Palm Beach County Sheriff investigators the day Simon died at his home is docketed with the Palm Beach Sheriff as a hospital maintenance record check, as indicated in the Sheriff Report

exhibited herein and was closed without even contacting Simon's girlfriend at the time, Maritza Puccio, who TED and PAM and others claimed had poisoned him.

81. Despite an autopsy ordered by TED through his lawyers for alleged poisoning on the day Simon died, suspiciously no heavy metal screening was done until Eliot over a year later demanded it be done by the Coroner who failed to screen for poisons initially, despite the claim Simon had been poisoned. Shockingly over a year later this heavy metal poison report came back with three elevated heavy metals and arsenic three times the reportable level and where Eliot does not believe in coincidence.
82. Despite ample evidence of the crimes submitted to authorities of the Fraud on the Court, Theft of Assets, Forgeries, Frauds and more the cases linger with criminal authorities allowing the criminals to continue to commit more and more criminal acts and prepare cover ups with more fraudulent documents and all with no fear of retribution. This failure to properly and timely investigate has aided and abetted in the cover up for the criminals.
83. That despite Judge Colin knowing of very serious felony acts that occurred in his court, by the attorneys at law and fiduciaries appointed by him, he has failed to uphold his duty to inform criminal authorities of the crimes, to take necessary steps to insure protection of the beneficiaries and assets in his custody, further aiding and abetting the criminals by failing to report and committing Misprision of a Felony or two or three and more.
84. In removing judges or judges removing on their own motions, courts have repeatedly held that positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194 (1988) (what matters is not the reality of bias or prejudice but its appearance); *United States*

*v. Balistreri*, 779 F.2d 1191 (7th Cir. 1985) (Section 455(a) “is directed against the appearance of partiality, whether or not the judge is actually biased.”)

85. “Section 455(a) of the Judicial Code, 28 U.S.C. §455(a), is not intended to protect litigants from actual bias in their judge but rather to promote public confidence in the impartiality of the judicial that Court also stated that Section 455(a) “requires a judge to recuse himself in any proceeding in which her impartiality might reasonably be questioned.” *Taylor v. O’Grady*, 888 F.2d 1189 (7th Cir. 1989). In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the Court stated that “It is important that the litigant not only actually receive justice, but that he believes that he has received justice.”
86. The Supreme Court has ruled and has reaffirmed the principle that “justice must satisfy the appearance of justice”, *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). A judge receiving a bribe from an interested party over which he is presiding, does not give the appearance of justice.
87. “Recusal under Section 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances.” *Taylor v. O’Grady*, 888 F.2d 1189 (7th Cir. 1989).
88. Further, the judge has a legal duty to disqualify himself even if there is no motion asking for his disqualification. The Seventh Circuit Court of Appeals further stated that “We think that this language [455(a)] imposes a duty on the judge to act sua sponte, even if no motion or affidavit is filed.” *Balistreri*, at 1202.
89. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given

another example of his “appearance of partiality” which, possibly, further disqualifies the judge. Should another judge not accept the disqualification of the judge, then the second judge has evidenced an “appearance of partiality” and has possibly disqualified himself/herself. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

90. For the foregoing reasons, again this case cannot be heard by any member of the Florida bar Probate Court without the appearance of impropriety.

***Wherefore, Eliot requests to stay of all proceedings in the Florida Probate Court and transfer of all Florida Probate Matters to this Court.***

**FLORIDA PROBATE COURT DENIALS OF DUE PROCESS THAT OBSTRUCT  
JUSTICE AND HARM AND CAUSE GRAVE DAMAGE TO ELIOT AND HIS FAMILY**

***FRAUD ON THE COURT, FRAUD IN THE COURT, FRAUD BY THE COURT***

91. That following are some of the reasons that the Florida Probate matters must be moved to insure fair and impartial due process and procedure to a non-Florida court for adjudication.
92. That Eliot has not received fair and impartial due process in the Florida Probate courts due to his past pursuit of members of this same court and many parties relating to his Intellectual Property thefts who are again involved in these new probate crimes and for his current

relentless pursuit of the criminal acts that have occurred in the court of Judge Martin Colin and Judge David French by officers and fiduciaries under their tutelage, who they appointed.

93. Eliot and his family have instead been subjected to a series of further injustices in the courts that appear designed to withhold his inheritances entirely from him through calculated abuse of process delays, while the assets are stolen, hidden and depleted through a stream of lawyers and fiduciaries who have committed crimes and billed the Estates and Trusts for their crimes and their cover up of them, all aided and abetted by the court's blind eyes.
94. First, Judge Colin and French should have upon learning of Fraud In and Upon their courts committed by reprobate attorneys at law acting as officers of their courts and fiduciaries, immediately disqualified themselves from the proceedings and allowed new non conflicted judges to adjudicate and investigate the matters, the court the crime scene.
95. Judge French and Judge Colin's failure to disqualify themselves immediately after learning of the crimes committed in their court and the fact that they will now be material and fact witnesses in these matters and the possibility that they could be discovered as part of the crimes was absolute cause to turn these matters over to non-conflicted justices but instead they held on and this began a series of Frauds on the court and FRAUD BY THE COURT with every decision or ruling they made forward while in conflict and directly involved in the matters with serious interests, as they could be implicated if a proper investigation by a non-conflicted judge were instituted.
96. Eliot asks this Court how a judge can investigate the crimes committed in his court by his court appointed lawyers and fiduciaries fair and impartially when the appearance of impropriety is overwhelming that he may cover up, as the judges may either be directly



involved in the crimes that took place in and upon their court or they may have incentive to cover them up so as not to have such heinous crimes exposed publically and taint their reputations and all of these reasons impart an appearance of impropriety. However, their actions to deny due process and derail investigation of their brethren who committed crimes speaks for itself in showing that they do have more invested in these matters than initially meets the eye.

97. The cases in French's court and Colin's court were then improperly merged into Judge Colin's court without separate hearings before each judge to determine if the cases of Simon and Shirley could be transferred and merged, as required by Statute.
98. Instead, Judge Colin had a hearing and determined it was OK to transfer them to him and Judge French's hearing was set on a day the court was closed (the day before Christmas) where only Candice and Eliot appeared to the empty and locked courthouse for the hearing that was alleged scheduled by French.
99. Then at the rescheduled hearing before Judge French, Judge Colin appeared in his stead and stated that he could hear Judge French's matters, as it was common, despite Eliot's protest that it was not proper according to statute and that both judges had to hear the transfer request independently and adjudicate it separately. Judge Colin therefore singlehandedly transferred the case to himself and Judge French never held a hearing regarding the Simon Estate case being transferred from his court to Colin's.
100. Judge Colin then chose instead of disqualifying himself from the matters for the obvious conflicts, to continue handling the proceedings without securing any of the evidence at the

crime scene (his and judge French's courts) or securing evidence from the criminals (the court appointed attorneys at law and fiduciaries.)

101. The crime scene being in part Judge French and his own court should have been secured and instead of acting to protect the beneficiaries (including minor children) under his custody and care by calling in authorities to investigate and dust for prints, etc., Colin did nothing, failing to secure the courts files and records himself or interview his staff regarding the fraudulent documents entered into the court record and further Colin failed to seize all records of those involved in the frauds and forgeries and more, the officers of the court he appointed.
102. Most importantly it was discovered that Colin's chambers had told a Palm Beach County Sheriff investigator, Detective Ryan Miller, that his court would handle the criminal aspects of the complaints Eliot filed with the Sheriff and for them to put Eliot's criminal investigations on hold. This led Eliot to have to go to internal affairs and the Chief to get the cases out of the holding pattern and investigated and prosecuted again.
103. Judge Colin then failed to secure all the records from the lawyers and fiduciaries involved in the crimes and secure and protect the assets for the beneficiaries (including at the time 6 minor children) and instead allowed the reprobate attorneys at law to continue filing pleading after pleading for months, even after Judge Colin stated in the initial hearing evidenced below that he enough evidence at that time to read Miranda Warnings twice for different crimes discovered to the fiduciaries, Spallina and Ted and their counsel<sup>9</sup>.

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

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<sup>9</sup> Sept 13, 2013 Hearing Transcript @ <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf> (fully incorporated by reference herein)

18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein

20 there is no technically any PR because we had  
21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from

24 Mr. Bernstein's 57-page filing, which falls  
25 lawfully short of any emergency, was a petition  
00024

1 to reopen the estate, so technically nobody has  
2 letters right now.

3 Simon Bernstein, your Honor, who died a  
4 year ago today as you heard, survived his wife,  
5 Shirley Bernstein, who died December 10, 2010.  
6 Simon Bernstein was the PR of his wife's  
7 estate.

8 As a result of his passing, and in attempt  
9 to reopen the estate we're looking to have the  
10 estate reopened. So nobody has letters right  
11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's  
13 estate it was closed January of this year,  
14 there was an order of discharge, I see that.  
15 Is that true?

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

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

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the  
20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I  
23 want to be discharged, my wife's estate is  
24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it  
00025

1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that  
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

Page 14

In Re\_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

Omnibus Motion...  
Monday, May 4, 2015

11 MR. ELIOT BERNSTEIN: Oh.  
12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?  
15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.  
18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.  
21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.  
25 THE COURT: No, it's waivers of  
00026  
1 accountings.  
2 MR. MANCERI: Right, by the beneficiaries.  
3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.  
6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?  
8 THE COURT: November 21st.  
9 MR. SPALLINA: Yeah, it was after his date  
10 of death.  
11 THE COURT: Well, how could that happen  
12 legally? How could Simon --  
13 MR. MANCERI: Who signed that?  
14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?  
16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They  
00027

Page 15

In Re\_ The Estate of Shirley Bernstein.txt  
1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,

Omnibus Motion...

Monday, May 4, 2015

4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

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

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

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

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

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon  
00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

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

9 MR. MANCERI: Okay.

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

12 MR. SPALLINA: I'm sorry?

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

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of  
Page 16

In Re\_ The Estate of Shirley Bernstein.txt  
22 the estate.

104. That in that hearing on September 13, 2013 Judge Colin discovered that not only had documents been fraudulently notarized and forged and then posited with his court but also that an elaborate plan to close the Estate of Simon's deceased wife Shirley took place that used Simon for four months after he was dead as the Personal Representative/Executor to close her estate and where the fraudulent and forged documents were posited by TESCHER and SPALLINA's law firm Tescher & Spallina, PA and then disseminated further through mail and wire to beneficiaries and others.
105. This macabre scene of a dead person being used to close another dead person's estate as part of a financial necrophilia crime is alleged to have been done to attempt to then switch Shirley's beneficiaries of an irrevocable trust to include TED and his sister PAM's families into Trusts they had been disinherited from but they needed Simon to be alive when Shirley's Estate was closed (where Simon died with it unclosed) to then say he made the changes to her Trust after closing her estate by using an alleged Power of Appointment from an alleged Simon Trust he was to have amended and signed allegedly approximately 48 days prior to his death. The alleged Amended Trust is already deemed to have not been properly notarized by the Florida Governor Rick Scott's Notary Public division and appears to have been fraudulently constructed from the original trust.
106. Judge Colin however having the information that crimes were committed allowed the fiduciaries and their counsel to continue in the proceedings providing them cover for another year instead of reporting them instantly to the proper criminal and ethical authorities as he is duty bound to do under law and judicial canons, instead leaving Eliot to do all the reporting to criminal authorities (which Colin was blocking and telling authorities he would handle)

and forcing Eliot to file pleadings to remove TED and his counsel as a Pro Se litigant that he has consistently evaded and made scheduling hearings impossible each time taking now over a year.

107. This shifting of the burden to Eliot by Colin to report to the authorities, despite the fact that Colin and French's court were the scene of the crimes, their court appointed Officers and court appointed Fiduciaries were the criminals and it was their duty to take corrective actions, of which the first step for both judges would have been to disqualify themselves from the proceedings due to their involvement (whether they were involved in the crimes or not) as proscribed in their Judicial Cannons, Attorney Conduct Codes and Law that require such immediate disqualification in such scenarios to avoid the inevitable Appearance of Impropriety created by their remaining involved.
108. Once Judge Colin decided to continue handling the cases in conflict, instead of freezing the assets, securing the documents as evidence of he and Judge French's courts involvement, securing the documents as evidence of all the Fiduciaries and Counsel involved in the frauds and staying the proceedings while he called in investigators, Judge Colin continued to proceed in hearings as if nothing happened and never read Miranda's or called in someone who could.
109. Judge Colin continues to use dispositive documents prepared illegally by those that have now admitted to fraudulently altering dispositive documents POST MORTEM, TESCHER and SPALLINA and despite that these documents were challenged by Eliot in his initial pleading to the court as further evidence of fraud and now dispositive documents have been proven in several instances to be executed improperly by the Governor Rick Scott's Notary division.

110. Further dispositive documents have been admitted to being fraudulently altered Post Mortem by the attorney at law that drafted them to make changes illegally to alter beneficiaries and it is alleged further to alter the fiduciaries to gain Dominion and Control of the Estates and Trusts and rob the Estates and Trusts.
111. No validity hearings were called for by Judge Colin, no request to have all documents and court records be forensically analyzed by the proper authorities was ordered and these failures can only be viewed as intentional and with scienter, casting again an overwhelming appearance of impropriety on Colin's court and expanded the possibility that these judges are directly involved in the crimes.
112. Judge Colin has since that time, despite learning of more and more crimes committed by the Officers of his Court has done nothing to either report or regulate the Officers of his Court and Fiduciaries appointed by him involved and done NOTHING to protect the beneficiaries, including minor children and has repeatedly allowed these attorneys at law involved with the criminal acts and frauds and tied to the main perpetrators, TESCHER and SPALLINA, to continue to act as Officers of his Court and Fiduciaries and to continue to legally abuse Eliot.
113. Judge Colin has further allowed both TESCHER and SPALLINA to continue to operate as attorneys at law and take new clients before that court, as it is alleged that he has close personal relationships with TESCHER and this leaves the public open to these reprobate attorneys at law without knowing of the crimes they committed in judge French and Colin's court.
114. Judge Colin has forced Eliot to file repeated filings to remove the Fiduciaries instead of removing them on his own initiative due to obvious violations of law and ethics he witnessed



first hand in the September 13, 2013 hearing and each time Eliot gets to a hearing to remove them, Judge Colin derails the hearings for some technical pleading reason and months go by before new hearings are scheduled and new technicalities are used in Eliot's Pro Se pleadings to further stymie and delay the removal.

115. We are now in the second year of this cat and mouse nonsense that allows more and more crimes to be committed against the beneficiaries, creditors and interested parties by fiduciaries and counsel in the matters who replaced TESCHER and SPALLINA and who are directly tied and related and benefitted from the crimes proven against TESCHER and SPALLINA and their law firm, primarily TED and his minion of attorneys.
116. That it was TED's close personal friends, business associates and his counsel, TESCHER and SPALLINA, who committed the initial crimes that benefitted TED and his family through the frauds to change fiduciaries and beneficiaries to benefit TED and despite warning TED and his counsel that he had enough evidence to read them their Miranda rights at the first hearing, Colin then unbelievably made TED the Personal Representative of the Estate of Shirley when he reopened it due to the frauds committed and then allowed TESCHER and SPALLINA to transfer trusteeship to TED in Simon's Trusts when they resigned!!!
117. Judge Colin has further looked the other way on assets that were sold by TED and disbursements made by TED (despite language in the Trusts that considers TED dead for all purposes of dispositions of the trust) to improper parties, including to TED's children and has done nothing to recover the assets until the true and proper beneficiaries can be determined. This despite Colin having Sheriff reports that state that TED was advised by counsel that he could not make dispositions to his children.

118. Judge Colin has further not secured counsel for minor beneficiaries in need of counsel, while allowing TED to waste estate assets on counsel in droves that have billed the Estates and Trusts for committing their crimes and for time they were investigated by authorities.
119. That Eliot on 4/23/2015 at 9:45am was not present in this Federal Court before Your Honor for the Emergency Motion to Extend Time for Ted Bernstein's Deposition due to the fact that he did not get Notice sent to him of the hearing until 7:45pm on 4/21/2015 and did not review the Notice until 4/23/2015 due to his preparation with his wife for two straight days with virtually no sleep for the following hearings on 4/23/2015 at 10am -12pm in Judge Colin's court (some of the Motions for hearing were filed only days before);
- a. MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS
  - b. MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY
  - c. SUPPLEMENT TO MOTION TO APPROVE SALE OF TRUST PROPERTY RE: CLOSING AND TITLE ISSUES FOR SHIRLEY'S HOMESTEAD
  - d. TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION TO REMOVE TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, MOTION TO STRIKE AND MOTION TO STAY PROCEEDINGS
120. That one of the Sanctions sought in the Contempt Hearing against Eliot in the pleading filed by Attorney Alan Rose, Esq. who was retained by TED and worked intimately with the law firm Tescher & Spallina, Esq. immediately after Simon died when TESCHER and SPALLINA were acting as the Co-Trustees and Co-Personal Representatives of Simon's Estate and Trusts and additionally acting as Counsel for TED as alleged fiduciary in Shirley's Estate and Trusts, prior to their resignation that came after admitting fraudulently altering a Shirley Trust document and more, stated,

“ordering Eliot immediately to remove all posting on the Ted Bernstein report and <http://tedbernsteinreport.blogspot.com> relating to the sale of House, **using the coercive powers of this Court including incarceration if needed** to compel compliance.<sup>10</sup>”

121. This pleading by Rose in effect asks the Probate court to Extort and Coerce the author of blogs relating to the Corruption in the cases before Colin and French, Crystal Cox, by using Eliot as leverage to stop her by incarcerating him, in typical mob fashion extortion to remove her blogs. Cox only attempting to expose the corruption of the Florida Probate court and officers and fiduciaries of that court.
122. For another example of these sudden and unexpected needs for Emergency hearings, there is the recent attempt to sell a major asset of Shirley’s Trust, the primary residence of Simon with no notice to Beneficiaries or the Probate court. That it was discovered on March 21, 2015 that a large asset of the decedent Simon, a home valued at \$3.4 Million Dollars two weeks before Simon Bernstein’s death on Sept. 13, 2012 was secretly being sold by Ted Bernstein for \$1.1 Million Dollars in five days. Eliot found out from a Zillow Alert<sup>11</sup> that property was under contract for sale, not from the Fiduciary TED or his counsel ROSE.
123. The sale was not disclosed to beneficiaries and a sale contract was already entered into weeks earlier and this while Judge Martin Colin who ordered that all pleadings be approved by him

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<sup>10</sup> April 02, 2015 Motion to Hold Eliot in Contempt  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150402%20Motion%20to%20Hold%20Eliot%20in%20Contempt%20Shirley%20re%20Home%20Sale.pdf>

<sup>11</sup> Zillow Listing of 7020 Lions Head Lane, Boca Raton, FL  
[http://www.zillow.com/homedetails/7020-Lions-Head-Ln-Boca-Raton-FL-33496/46627713\\_zpid/](http://www.zillow.com/homedetails/7020-Lions-Head-Ln-Boca-Raton-FL-33496/46627713_zpid/)

first had been given a Lis Penden Eliot wanted to file on the property in October 2014 and took it under consideration then and had not yet permitted the filing of the Lis Penden by Eliot. Was Colin holding the Lis Penden's to allow TED and ROSE to try and sell the house, where it is much easier to convert cash to improper properties to move to offshore accounts, than trying to run off with a house on your back.

124. A motion to stop the sale was filed by Eliot, the Lis Penden languishing with and obstructed from filing by Judge Colin since October 2014 was then filed instantly by Eliot despite the court's failure to approve it and court hearings were scheduled on an urgent basis by TED and ROSE once they and the realtor were noticed the Lis Penden had been filed.
125. ROSE then using a continued pattern and practice of Sharp Practices again filed a second motion for contempt against Eliot that Colin had the audacity to entertain instead of sanctioning ROSE for the attempted behind the court and beneficiary back fraudulent sale of the property with a pending Lis Penden that was not disclosed to the alleged buyer.
126. These crisis matters took precedence over the many other legal matters that were ongoing simultaneously, like this Court's hearing that Eliot missed and had virtually no notice of it being scheduled and as Eliot stated to this Court already he and his wife are not a law firm and do not have any counsel helping them so these sudden emergency court calamities took precedence, as well as protecting their family's from the imminent danger counsel warned them of.
127. The sale of the home was stopped by Colin who had no choice as he learned that beneficiaries were not notified of any sale prior and lucky for everyone, as the title company

now wants additional information regarding the estate documents before consenting to the transaction.

128. The title companies refusal to clear title has now held the sale up, imagine if the sale had proceeded and then the title issues were raised, the costs of litigation to beneficiaries that would have followed would be enormous and efforts to claw back the properties would have damaged everyone involved.
129. That in a subsequent hearing on April 23, 2015 in a Petition filed by Eliot to remove TED as alleged Trustee of Shirley Bernstein's Trust, TED filed four add on motions to be heard regarding the home in Eliot's hearing time without proper notice and agreement by Eliot, including a contempt motion that Judge Colin entertained that day for ½ of the two hours allotted to Eliot for his matters.
130. Unconscionably, Judge Colin held a contempt hearing against Eliot who discovered and proved Frauds on his Court by TED's former counsel and now has alleged fraud and conflict charges against TED's new counsel ROSE, who is a Counter Defendant in two counter complaints filed in the matters by Eliot and where ROSE was retained by and worked closely with TESCHER and SPALLINA immediately after Simon died and who should have been removed from the proceedings once the Fraud was discovered and once he was sued as Counter Defendant for very serious alleged Felony acts.
131. Judge Colin further allowed the motion for contempt against Eliot filed by the fiduciary TED and his counsel, ROSE, filed in retaliation for Eliot's exposure of the fraudulent attempted sale and efforts to stop the improper fire sale straw man scheme of the home and divert and

to diffuse the criminal issues alleged against them and instead attempted to slander and legally abuse Eliot instead and with a little help from the judge it worked.

132. Judge Colin has a Pattern and Practice of aiding and abetting this type of vexatious filing and allowing vexatious hearings against Eliot (including many to try and put guardians on Eliot and his children or find him in contempt for nonsense) by parties directly related to those that committed the Fraud on his Court and Fraud on Beneficiaries, who he allows to continue to operate with impunity and with court cover.
133. Instead of denying the contempt motion and other such harassing motions sua sponte and sanctioning the filing parties for their frivolous, vexatious and staged litigations designed to defame and slander Eliot on the record and shift the focus from their crimes, he acts as if this normal and part of the process. Often, he is found in these hearings chastising Eliot rudely and has called him fat, when Eliot simply stated his children were starving from the loss of inheritances and delays caused by his court officers and the court and this comment made in front of Candice's friend who has been supporting Eliot's family with food and necessities during this crises and other parties including the creditor and his counsel. Colin is further found screaming at Eliot and threatening Eliot with contempt or guardianship making sure it is entered into the record at key spots where Eliot is conducting his defenses and he wants to stop him as it involves allegations of Fraud on the Court, etc.
134. Colin's allowing this harassment of Eliot has poisoned the record of many of the hearings over the last two years, with judge Colin chastising and threatening Eliot on the record with contempt threats or guardianship threats for things like Eliot coughing (rather choking at the circus going on his court), hand gestures and more and yet he fails to do a thing to those who

committed and continue to commit crimes in his court and on his court and allows them to operate strategies of force and aggression against Eliot as will be defined further herein.

135. That Judge Colin has refused to disqualify himself despite the fact that the crimes occurred in his Courtroom and other serious matters. See, Colin Disqualification Motion Declined as Legally Insufficient<sup>12</sup>.
136. That despite solid cause for Judge Colin's disqualification ON HIS OWN MOTION as he is duty bound to do under his oath under G-d as a judge and further required to do under the judicial canons, including the fact that he is irrefutably a material and fact witness to the crimes that occurred in and upon his court by officers and fiduciaries he appointed and that his court is the scene of the crime, Colin still refuses to let go of the cases, voluntarily disqualify as required and turn the matters over to criminal authorities for investigation of his court and himself and turn the civil matters over to a non-conflicted judge to adjudicate.
137. Instead Colin waits for Pro Se Eliot to file a "legally sufficient" pleading to disqualify him and continues to make adjudication despite his obvious conflicts of interest, adverse interests to Eliot who is exposing the crimes and criminals in his court and the overwhelming appearance of impropriety created by his involvement in the case other than as a witness or defendant if he is found to acted outside the color of law.

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<sup>12</sup> Disqualification Motions and Orders Regarding Colin

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140101%20Final%20Motion%20to%20Disqualify%20Colin%20and%20more%20131279ns.pdf>

and

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140108%20ORDER%20DENYING%20MOTION%20TO%20DISQUALIFY%20JUDGE%20MARTIN%20COLIN%20SIGNED%20BY%20MARTIN%20COLIN.pdf>

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and

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140616%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20PROPOSED%20AND%20EXISTING%20ORDERS%20and%20DISQUALIFY%20OF%20HON%20JUDGE%20MARTIN%20COLIN.pdf>

138. Where Judge Colin should have held contempt hearings for TED and ROSE's attempt to dispose of a home with a pending Lis Penden before the court that they were aware Colin had been sitting on for months and they failed to seek the court or beneficiaries approval of the sale or give notice of the sale at all to any party while having this knowledge of the Lis Penden.
139. Were it was admitted in sworn oath testimony at the hearing<sup>13</sup> that they (TED, ROSE and John Poletto the Realtor) did not disclose the Lis Penden pending with Colin or disclose the ongoing litigations involving the home with the buyer that they all knew of, Poletto even stating that he would not notify potential buyers of the litigations he was aware of, as it could get in the way of the sale. Poletto had been sent information regarding the litigations in 2014, as illustrated below,

**From:** Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]  
**Sent:** Thursday, July 31, 2014 6:30 AM  
**To:** John Poletto @ Nestler Poletto Sotheby's International Realty (john@npsir.com); Mark Nestler @ Nestler Poletto Sotheby's International Realty (Mark@npsir.com)  
**Cc:** Caroline Prochotska Rogers Esq. (caroline@cprogers.com); Michele M. Mulrooney ~ Partner @ Venable LLP (mmulrooney@Venable.com); Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq. @ Flaster Greenberg P.C. (marcgarber@verizon.net); Marc R. Garber Esq. (marcgarber@gmail.com); Marc R. Garber Esq. @ Flaster Greenberg P.C. (marc.garber@flastergreenberg.com); "tourcandy@gmail.com" (tourcandy@gmail.com); 'Eliot Bernstein (iviewit@iviewit.tv)'  
**Subject:** RE SIMON & SHIRLEY BERNSTEIN SERVICE OF COURT DOCUMENT - CASE NUMBER 502014CP002815XXXXSB - Eliot and Candice Bernstein v. Oppenheimer & Co., Inc. et al.

John and Mark ~ there are already two probate cases in ongoing litigation with Motions pending and both estates remain open, my mother's was reopened due to fraud and more. Attached herein is a copy of my counter complaint filed in a related case. Again, I urge you not to sell or partake in the sale of any further properties of my family's that are involved in the Estates or Trusts of my parents without first disclosing these critical litigious issues. Already, as I mentioned, I will be suing those people who were involved in the firesale of my mother's condo

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<sup>13</sup> Hearing Transcript @ URL  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150326HearingTranscriptHomeSale.pdf>



and seeking to recover the property, commissions and damages. I hope all is well and if I can be of assistance feel free to call me. Eliot

140. That Colin then issued an Order<sup>14</sup> prohibiting Eliot from notifying the buyer of the potential litigations that could later cause them litigation expenses and loss of the home in an Order that seems to defy Florida Real Estate disclosure laws, especially where he became aware that the realtor, TED and ROSE did not disclose as they should have. Yet, another protection act by Colin for the guilty and his Order threatens Eliot with contempt and more if he in any way, directly or indirectly notified buyers.
141. Further, inside the home at time were the Personal Properties of Simon and Shirley Bernstein which were under the custody of the new Executor of the Estate of Simon, Brian O'Connell, Esq. and the Personal Property items were ordered to be re-inventoried by the Court because TED had sold a condominium in Shirley's Trust, again without notice to beneficiaries and the court and it was discovered by Eliot and others that the contents that were inside and part of Simon's Personal Properties, were missing.
142. Then TED and his Counsel, ROSE and John Pankauski, Esq. stated TED moved the contents worth allegedly millions, in art, furniture and more and they were now stored at the Primary residence of the decedent and where TED had no authority to move the properties as they were not in his custody.
143. That almost a year earlier the court upon finding the items were moved had ordered the new Curator, Benjamin Brown, Esq. to re-inventory the items to make sure nothing was missing

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<sup>14</sup> Order regarding Sale of Saint Andrews home  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150331OrderRegardingSaleOfSaintAndrewsHome.pdf>

and this had not yet been completed at the time they contracted to sell the house with properties left in it as part of the sale, as TED and ALAN evaded repeated requests to have the re-inventorying done despite the Order to inspect and re-inventory.

144. That upon being informed by Eliot (NOT TED OR ROSE) of the contracted sale of the home with Personal Property he was now in custody of, the Executor of the Estate O'Connell filed for an immediate Order to Inspect and Take Possession of the Personal Properties prior to the sale, since he was not noticed of the sale of the home and the Personal Property was being either sold or moved behind his back before he would have had time to re-inventory.
145. The Order to Take Possession was granted for immediate inspection on March 26, 2015 (the original Order was granted in June 2014) and the inspection was done the following week and where Ted and his counsel had claimed the items from the Condo, a 4,000 sq ft ocean front property, were stored in the Primary Residence garages in so many boxes that it would take many people to unpack and re-inventory, so as to force the Executor O'Connell to file for an amended order to seek more money than the court originally allotted in the 6/14 Order to deal with the manpower necessary to do the job.
146. Yet, on the day of the inspection and re-inventory on March 27, 2015 when the garages were opened, three of them were empty and one had 4 or 5 little boxes<sup>15</sup> about knee high and a table with salt shakers and napkin holders on it and it was obvious that all the items of the condo, which had previously been inventoried<sup>16</sup> were missing. The previous inventory is

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<sup>15</sup> Picture of Garages at Saint Andrews home on day of re-inventorying.  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/GaragePics.pdf>

<sup>16</sup> Prior inventory of Shirley Condo (challenged as missing items originally upon inventory) all items missing at re-inventory representing Grand Theft and more.

also being challenged for further evidence of fraud and theft. All of these items were therefore stolen.

147. It is believed that TED stole them, then sold the items of the Condo that were not in his custody and no accounting for the items stolen has ever been done and it is alleged that the sale of the home was also going to try and further confound beneficiaries efforts to enforce the court ordered inspection and provide another layer of crime to cover up the theft and thwart efforts to find out what happened to the now confirmed stolen items.
148. That TED and his Counsel ROSE committed yet another FRAUD ON THE COURT and FRAUD ON THE BENEFICIARIES by telling them that the items were safely stored in the Saint Andrews home and having the court and everyone involved, including the Creditor and his counsel, all waste time and money to re-inventory what they knew all along was not there. Again, Colin asleep at the wheel it appears as he ignored evidence of this crime.
149. The Court can see from the Palm Beach Sheriff Reports exhibited herein (Police Investigations and Coroner Reports See URL @ [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) ) that a complaint for the stolen Personal Properties was filed CASE NO. 13159967 on 12/23/13 and is still languishing and pending and it is believed that TED and his counsel who are the alleged primary suspects in the thefts were trying to further evade and cover up the crimes of the thefts with the sale of the home. Again, the Sheriff appears asleep too and it is alleged that this too is stymied by the Judge Colin's message for the Sheriff not to investigate Eliot's complaints and that he would handle them instead.

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130124%20Appraisal%20Home%20Furnishings%20no%20Jewelry.pdf> pages 26-32

150. The Court should note that all this is happening with the secretive undisclosed sale of the house and subsequent motions and hearings in the same week that Eliot's family is warned that their lives are imminent danger and to seek federal and state protection and where the stress alone from that has left Eliot's wife scared to death for her minor children and Eliot trying to seek protection and no one noticed of the dangers calling him back.
151. These extreme situations are making responding to this Court and the pleadings timely with NO COUNSEL virtually impossible and that is only one case that hearings were held in involving the Probate cases since the warning that Eliot's family's lives were in danger and there have been several other hearings in the other Probate cases as reported to this Court in the last motion for extension of time filed a few weeks ago.
152. That it was then learned 4/25/2015 that Eliot's children home is about to be foreclosed on by an alleged Mortgage holder on the home Eliot's children paid for, which is owned inside 3 trusts for the children that are the subject of the Oppenheimer lawsuit cited herein at footnote 3.
153. The children's home is wrapped inside the trust within an entity owned by Eliot's children, Bernstein Family Realty, LLC, and all of these complex estate plans were designed by Simon and Shirley to protect the property from seizure of those trying to murder and financially destroy Eliot and his family after the car bombing.
154. The home is being alleged to be foreclosed by a one Walter Sahn and where Eliot believes that Sahn has been enraged by the acts of TED and his counsel ROSE with scienter to force him to foreclose and where recently TED and ROSE tried to acquire the mortgage from

Sahm and arranged such transaction to take over the alleged home loan Sahm claims to have and to further use it to extort Eliot with a foreclosure themselves.

155. TED and ROSE could then not consummate the deal with Sahm that they promised, after Oppenheimer as Trustee of the children's trust and Manager of Bernstein Family Realty, LLC failed to pay interest or principal on the mortgage to Sahm and even maintain homeowners insurance (which the home still does not have for over a year) as the parties involved found they could not legally effectuate such transaction that TED and ROSE tried to arranged with Sahm, leaving Sahm further harmed and further enraged. Colin had ordered that Sahm get paid by the Simon Estate/Trust but when the new PR needed to get funds allocated from the trust he could not ask ROSE and TED as he already made claims to the court that TED was not a legally valid trustee and so this would have exposed O'Connell to liabilities.
156. All these acts involving the home by the fiduciaries at Oppenheimer (including former Stanford Ponzi members) in combination with TED, SPALLINA, TESCHER and ROSE, were designed to enrage Sahm to file foreclosure in frustration against Eliot's children home, which he did not want to do since he knew the intent of Simon his friend and business partner to protect Eliot and his family<sup>17</sup>.
157. Sahm called Eliot last week very apologetic regarding the Mortgage and claimed he was left with no other choice than to foreclose after all the failed promises of TED, ROSE and Oppenheimer to pay off his loan or even maintain interest and insurance on the property (all

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<sup>17</sup> Sahm Letters @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/EXHIBIT%206%20-%2020130927%20Walter%20Sahm%20Letter%20and%20Note%20information.pdf>

alleged to have been calculated to harm Eliot in Eliot's Counter Complaint filed in the Oppenheimer v Minor Children of Bernstein lawsuit before Colin<sup>18</sup>, which Sahn stated left him saddened as this was directly against the wishes of Simon who told Sahn the Estate would pay off the loan at his death and satisfy the debt, leaving the home free and clear for the children.

158. There is another bogus mortgage Simon had taken on the home to himself to add another layer of protection from Eliot's enemies, which would be unenforceable at his death for a number of reasons and the home that Eliot's children paid for would be theirs free and clear after Sahn was paid off by his estate.
159. That TED, SPALLINA, TESCHER and ROSE are claiming the sham Mortgage from Simon to himself is now suddenly enforceable and that the Estate of Simon should own an interest in Eliot's children's home, again another attempt to harass Eliot and threaten foreclosure and where despite TESCHER and SPALLINA's creating the alleged Mortgage to Simon failed to put the sham loan on the initial inventory of Simon and only later, when the Sheriff came knocking, did they amend the Inventory to add the Mortgage and then use it to try and extort Eliot to cease his pursuit of them or else<sup>19</sup>.
160. That Sahn has retained foreclosure counsel and paid a retainer as of 4/22/15 in order to file and this is yet another emergency that puts Eliot and his family in danger for their lives, on

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<sup>18</sup> Eliot Counter Complaint Oppenheimer Case @ URL  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140730%20FINAL%20SIGNED%20PRINTED%20Answer%20and%20Counter%20Oppenheimer.pdf> (pages 24-109)

<sup>19</sup> Eliot Letter regarding Extortion and More  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131229%20Response%20to%20Ted%20Bernstein%20and%20Donald%20Tesch%20Letter%20re%20Emergency%20Interim%20Distributions.pdf>

the street if successful and stands as another attempt to wreak havoc on them through further legal process abuse and fraud that was calculated by the fiduciaries in the Estate and Trust cases. This pending foreclosure action making it even harder to respond to many critical court deadlines in order to now deal with this imminent threat to his family's home.

161. Where the only thing Eliot has done in those cases that may incite those involved to try repeatedly in retaliation to have Eliot held in Contempt and/or appoint a Guardian is to have exposed and caught red handed the Officers and Fiduciaries appointed by Judge Martin Colin and David French's court in Fraud on the court, Fraud in the court and now Fraud by the court
162. This Court should note the Consumer Comment #2<sup>20</sup> at the footnote below for excerpts from a threatening Email TED sent to Eliot allegedly intending it to be sent to his counsel whereby he states he wants to use a strategy of "forcefulness and aggression" against Eliot with his lawyers and those lawyers like John Pankauski, Esq. who do not want to participate in such lawless acts TED states he wants to get rid of.
163. The reason Eliot cannot exhibit the email to this Court is because then in an unprecedented ruling Judge Colin ordered that Eliot cannot transmit the email sent to him by TED as it is now declared Inadvertently Disclosed Attorney Client Privileged Matter, despite the fact that it was never sent to an attorney by a client, it was sent directly to Eliot by TED and neither are attorneys. Further, the law clearly is not intended to make privileged information

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<sup>20</sup> <http://www.ripoffreport.com/r/Alan-Rose-of-Mrachek-Fitzgerald-Rose/West-Palm-Beach-Florida-33401/Alan-Rose-of-Mrachek-Fitzgerald-amp-Rose-Alan-B-Rose-Suppress-Free-Speech-Cover-Up-1149197>

regarding Trustee and Attorney at Law Misconduct as the email exposes TED planning with his counsel how to harass and intimidate Eliot, his three minor children and anyone helping Eliot, through legal process abuse, misuse of Trust funds and more. And Colin buried it and has threatened contempt and jail if Eliot transmits it even to a federal judge or criminal authorities.

164. TED even claiming he wanted to go after Eliot's minor children and his nephews school records to attempt to find dirt on them (of which there is nothing there but what angels they are) and even claims he wants ROSE to fire Attorney at Law John Pankauski, Esq. (who immediately thereafter resigned as Ted's counsel) for not wanting to go after Eliot with "force" and "aggressive" intent and because he felt TED was misusing trust funds to defend himself.
165. Judge Colin then moved to have this email marked as Attorney Client Privileged Information Inadvertently Disclosed despite the fact that neither Eliot nor Ted is an attorney and thus the privilege could never be established in the first place. The letter was sent by Ted to only Eliot and no counsel was part of the email. The problem for Colin who marked the letter privileged in attempts to cover up the Attorney ROSE and Fiduciary TED's misconduct evidenced in the letter was that prior to even knowing of a claim of privilege by Alan Rose, Esq., Eliot had sent the email to Crystal Cox and many others (including all the parties TED threatened in the letter to go after with legal process abuse) and Cox had already posted the



extortionary letter across many sites on the world wide web before any privilege was learned of and refused subsequent requests and demands by ROSE to remove the posts<sup>21</sup>.

166. From TED's own words in a hearing under sworn oath regarding the letter,

4 TED BERNSTEIN,  
5 a witness herein being of lawful age, and being first  
6 duly sworn in the above cause, testified under oath  
7 as follows:  
8 DIRECT EXAMINATION  
9 BY MR. ELIOT BERNSTEIN  
10 Q Ted, did you send me, Eliot, a letter on May  
11 23 -- or on May 22, 2014?  
12 A I believe I did.  
13 Q Can you describe what the e-mail you sent  
14 was --  
15 MR. ROSE: Objection, best evidence.  
16 BY MR. ELIOT BERNSTEIN  
17 Q -- about?  
18 THE COURT: Yeah, best evidence is the  
19 e-mail. You can ask him questions about it, but  
20 you are asking him to describe it.  
21 MR. ELIOT BERNSTEIN: Okay.  
22 BY MR. ELIOT BERNSTEIN  
23 Q Did you use the words force and aggression  
24 to -- to invoke a strategy of force and aggression  
25 against Eliot Bernstein?  
00093  
1 A I don't know. Can I see the e-mail, please?  
2 THE COURT: That's fair.  
3 MR. ELIOT BERNSTEIN: Sure.  
4 THE COURT: He's showing him a document.  
5 MR. ROSE: I was just cautioning him not to  
6 publish the --  
7 THE COURT: It's still ID only. Go ahead.  
8 So you've shown him, Eliot, the document. What's  
9 your question?  
10 BY MR. ELIOT BERNSTEIN  
11 Q Did you say you were -- that you suggested  
12 using force and aggression with Eliot?

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<sup>21</sup> May 23, 2014 Cox Email to Rose to "Cordially Go Fuck Himself" regarding taking the privileged letter off the web.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140523%20Cox%20to%20Rose%20Cordially%20Go%20Fuck%20Yourself.pdf>

13 MR. ROSE: Object to the form.  
14 THE COURT: Overruled.  
15 THE WITNESS: No.  
16 BY MR. ELIOT BERNSTEIN  
17 Q Can you read that section into --  
18 MR. ROSE: Objection to him reading it.  
19 THE COURT: Well --  
20 MR. ROSE: He can read it to himself.  
21 THE COURT: Yeah, you can read it to yourself  
22 and then ask a question. But you also need to  
23 tell me what part you're reading.  
24 MR. ELIOT BERNSTEIN: Him being aggressive  
25 and forceful.  
00094  
1 THE COURT: Where -- what paragraph should I  
2 read?  
3 MR. ELIOT BERNSTEIN: Like the fifth line --  
4 the first one, two, three, four --  
5 THE COURT: Okay. Let me read it.  
6 MR. ELIOT BERNSTEIN: -- sixth line where it  
7 starts --  
8 THE COURT: Give me a chance. Ted and I will  
9 read at the same time.  
10 Okay. I read it. Go ahead.  
11 THE WITNESS: I've read it too.  
12 BY MR. ELIOT BERNSTEIN  
13 Q Does that refresh your memory? Did you use --  
14 if you used the words --  
15 A My answer is still no.  
16 Q -- to be forceful and aggressive with Eliot?  
17 A You asked if I used the words force and  
18 aggression.  
19 Q Okay. I'll ask it again. Did you use the  
20 words being aggressive and forceful?  
21 A **Yes, I did. [EMPHASIS ADDED]**<sup>22</sup>

167. That it appears outside the Judicial Cannons and casts a grand Appearance of Impropriety for a judge to hear matters and adjudicate matters where crimes were committed in his Court,

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<sup>22</sup> July 11, 2014 Hearing Transcript

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140711%20TRANSCRIPT%20-%20HEARING%20-%202014-11-14%20-%20FULL%20HEARING.pdf>

including FRAUD ON THE COURT, committed by Officers of his Court and Judge David E. French's Court. Whereby they are now material and fact witnesses and possibly involved and how can they investigate their own courts and their Officers, Employees and appointed fiduciaries, instead of giving the matters over to non-conflicted parties who are not centrally involved and who could conduct a fair and impartial review of the criminals and crimes? Judge Colin and French may desire to aid and abet the cover up of the crimes that would embarrass their Court and perhaps lead to revealing involvement in the actual crimes the Appearance of Impropriety apparent.

168. Where Eliot sued the 15th Judicial Circuit, Florida Bar and thousands of Florida Bar member attorneys in the alleged criminal law firms sued in his RICO<sup>23</sup> and also Supreme Court Chief Judge Jorge Labarga, Esq., personally and professionally, for their direct involvement in the theft of his patents and where Judge Colin has claimed in a Florida Bar Resume that Chief Justice Labarga is his mentor, yet another cause for his disqualification.
169. That Eliot is seeking this Court to review and intervene and take over these unprecedented corrupted Florida Probate cases that directly relate to the matters in this lawsuit and move them to a federal jurisdiction outside the state of Florida (this Court) and outside the reach of Florida Bar members (Eliot is not claiming they are all involved in the conspiracy but due to the nature of conspiracies, it is impossible to know who is good and bad) and preferably move the matters all to This Court under Your Honor's tutelage.
170. That it should be noted that secreted from Eliot attempts to settle this case have been made that involve somehow moving this case from this Court to Judge Colin's court to evade the

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<sup>23</sup>VIEWIT EXTENDED LIST OF RICO DEFENDANTS  
<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

Federal Court proceedings and Eliot states it should be the other way around, where this Court seizes those cases for their obvious violations of law, including but not limited to, Fraud on the court, Fraud in the court and Fraud by the court.

171. Eliot and Candice are in continued fear to go to the Florida Court as it appears they are continuously trying to entrap them in either Contempt or seek Guardian for them and their children (where factually they all need PRISON GUARDS on them) and where Eliot's CONSTITUTIONAL RIGHTS to due process and procedure have been stripped through Sharp Practice after Sharp Practice, conflict after conflict, fraud after fraud, by the attorneys and judges involved thus far.
172. These acts against Eliot caused by criminal and civil misconduct by the Attorneys at Law have already delayed inheritances for over two years, starving out his children, forcing them out of school, having their electricity turned on and off and other home services by fiduciaries in charge of the bills they cannot access account information on.
173. This insurance policy theft attempted by Fraud on this Court in this lawsuit have caused massive damages financially to Eliot's family as well and this Court should be compelled knowing of the intentional delays caused by fraud and more in Eliot and children's inheritances to allocate funds interpleaded from the court registry to Eliot and his family until this matter before the court is fully resolved. This should be done without Eliot signing any release that would give implied consent to anything involved in the lawsuit, including any admission that the funds interpled equal the true death benefit of the policy since at this time no legally executed insurance policy with a stated death claim on it has been produced in this lawsuit.

174. That Eliot has submitted to this Court recently a letter from a Florida attorney who represents a creditor in the Probate cases, Peter Feaman, Esq., describing misconduct by Attorney Alan B. Rose, Esq. and his client TED, directly relating to their misconduct in this case before Your Honor and where such misconduct further directly damages Eliot and his children.
175. That Eliot has submitted a filing to Judge Colin by Attorney at Law Brian O'Connell, Esq. who is the new Executor of the Estate of Simon after Ted's Counsel Tescher and Spallina resigned after admitting to Fraudulently Altering a Trust document and disseminating it via Mail and Wire to another attorney at law representing Eliot's children, Christine C. Yates, Esq. of Tripp Scott law firm.
176. That once the fraudulent and forged documents were discovered by Yates to be valid she resigned as Counsel and stated that Eliot would have to bring these lawyers who committed fraud on her and the beneficiaries to the authorities and courts on his own, Pro Se, as it was too complicated for her and of course the impact and retaliation that could come in her trying to report misconduct on Florida Bar members.
177. Eliot understood that Yates attempting to report these crimes against other attorneys at law could put her and her license to practice at risk and perhaps her life for trying to help Eliot and his family, as she was already aware and scared of the car bombing that occurred and so Eliot went about proving the fraud and more to the Court on his own, PRO SE.
178. Eliot was successful at proving the crimes, reopening Shirley's Estate, having the Governor Rick Scott's Notary Division prove improper notarizations leading to arrest, forcing ongoing investigations that revealed admission of fraud by SPALLINA and TESCHER which forced the resignation and removal of TESCHER and SPALLINA as Co-Trustees and Co- Personal

Representatives in the Estate and Trusts of Simon and as counsel to TED as alleged Personal Representative of the Estate of Shirley and Trustee of Shirley's trust.

179. That it should raise the Court's brow that TED and his Counsel, TESCHER and SPALLINA, after calling the Palm Beach County Sheriff on the day Simon died on 9/12/12 and reporting an alleged murder of Simon then contacted the Palm Beach Coroner to conduct an autopsy for murder via poisoning, while they were simultaneously filing a fraudulent Beneficiary claim form with Heritage Union Life on behalf of a Trust, which both TED and his Counsel claim never to have seen or possessed that was DENIED.
180. The claim was DENIED due to the failure to prove a beneficial interest as SPALLINA claimed he could not produce the Trust he stated was beneficiary and that he was acting as Trustee for when filing the fraudulent claim.
181. SPALLINA claimed to be Trustee of a legally nonexistent Trust and failed to mention to the carrier Heritage that he and his client TED had alleged that Simon was murdered to the Sheriff and Coroner, which would also materially affect the payment of the claim.
182. SPALLINA and TED both failed to notice the carrier, the Sheriff and Coroner of a holographic Will<sup>24</sup> that TED was in possession minutes after Simon died as it was hand delivered to him by a one Rachel Walker, Simon's assistant, with stacks of other dispositive documents that TED sent Rachel to the home from the hospital to pick up and bring to the hospital as Simon lay dying in the hospital, which she returned with minutes after Simon passed.

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<sup>24</sup> Simon Holographic Will signed only hours before he may have been murdered.  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2012%20Simon%20Holographic%20Will%20Martiza%20Life%20Insurance.pdf>

183. Yet, despite what could have provided a motive for authorities to investigate Simon's girlfriend who TED and PAMELA were claiming may have poisoned Simon, TED and TESCHER and SPALLINA failed to turn it over to this Court, the Insurance Carrier, the Sheriff the next day at the Murder Investigation conducted and did not disclose it to parties until TESCHER and SPALLINA were forced by court Order to turn over their records to the Curator upon their removal over a year later.
184. SPALLINA further impersonated the Trustee of this nonexistent Trust claiming to be the contingent beneficiary the legally nonexistent trust that TED now claims to be Trustee for<sup>25</sup>.
185. SPALLINA also at the time impersonated himself as the Trustee of the LaSalle National Trust, NA to the insurance carrier<sup>26</sup>, which he is not Trustee for but the carrier's production documents submitted to this Court revealed that the Primary Beneficiary of the LOST Policy they cannot find is LaSalle National Trust NA.
186. This fraudulent claim form and fraudulent representation by SPALLINA represents alleged multitudes of fraud and criminal misconduct in the claim filed and DENIED by the carrier and where the denial led to this fraudulent Breach of Contract lawsuit being filed before Your Honor filed by TED who magically becomes the TRUSTEE of the legally nonexistent trust and replaces SPALLINA as Trustee.

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<sup>25</sup> SPALLINA DENIED DEATH BENEFIT CLAIM FORM  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

<sup>26</sup> SPALLINA ACTING AS TRUSTEE OF LASALLE NATIONAL TRUST NA THE PRIMARY BENEFICIARY OF THE POLICY  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

187. When the fraudulent claim was DENIED, TED then alleged he was the Trustee of the legally nonexistent Trust that SPALLINA claimed to the carrier he was Trustee for and filed this frivolous and illegal lawsuit with this Court as Plaintiff/Trustee claiming a Breach of Contract for the carriers failure to pay a fraudulent claim submitted where no beneficial interest by the Claimant could be proved, this all in attempts to further abscond with the policy proceeds through this Fraud on a Federal Court and Fraud on the Policy's true and proper beneficiaries.
188. TED as alleged Trustee seemed to ignore that SPALLINA had acted as TRUSTEE of the lost Trust that he claims to be Trustee for as a prudent fiduciary would and instead failed to report this to this Court or criminal authorities and continued the Fraud in and on this Court.
189. TED also failed to notice this Court that he had alleged Simon was murdered, which would affect the payment of the benefits to parties possibly and failed to notify Eliot or other beneficiaries of the Estates and Trusts of this Breach of Contract legal action despite the carrier requesting that to get the claim paid they would need a court order and a list of ALL possible beneficiaries<sup>27</sup>, including but not limited to, Eliot, Maritza and the Estate and Trust beneficiaries.
190. Eliot only found out about this lawsuit when he was sued in this action by Heritage/Jackson National (as he was intentionally and scienter left off the backdoor deal,) which made him cognizant of the lawsuit and the efforts being made to try and pay the policy proceeds to improper parties, the lawsuit claimed four of five children of Simon only as Plaintiffs and not

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<sup>27</sup> Heritage Letter to Spallina regarding Death Benefit Claim  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130308HeritageLetterToSpallina.pdf>



all interested parties who may have an interest in the Policy including, Maritza and the estate and beneficiaries of the estate.

191. Eliot has had to fight TED and PAM to get their children represented by the Estate in this matter and it took nearly two years to achieve this and get them protected in this matter, with Colin and the Probate court looking the other way until again Eliot forced the issue upon them with the Creditor of the Estate who volunteered to pay from his own pocket the costs of having the estate beneficiaries represented in this action.
192. Colin has made the Creditor of the Estate, William Stansbury, pay for the costs of the Illinois Insurance Litigation to protect the Estate beneficiaries (go figure) and despite counsel for this Court's matter offering a contingency fee instead, Colin still has not released Stansbury from paying the tab and has stated the contingency is a bad idea, again, go figure.
193. Colin prohibited the Creditor Stansbury from arguing to remove Ted as a Fiduciary claiming he did not have standing to remove Ted despite claims against the Estates and Trusts that give him a future possible beneficial interest.
194. Eliot and his family are being criminally denied their inheritance by the probate court judge. Eliot and his family's survival is threatened as they are being deliberately denied any funds for their basic living needs including food, insurance, homeowners insurance, medical attention, school tuitions and supplies and other services. They are facing foreclosure of their family residence, are on food stamps and all the while the assets are being deliberately withheld by Judge Colin who has ignored repeated frantic pleadings by Eliot for adequate funds to provide for his family's living expenses while the crimes of his court are resolved.

195. Judge Colin while having custody of the property of Eliot's family, including his minor children whom he has obligations to protect, especially where the crimes delaying inheritance were caused by Fiduciaries and Officers of his Court, which is depriving Eliot's children of their educations, home not being protected with insurance, children gravely suffering economic and emotional hardships and these heartless acts by Judge Colin to leave them penniless while others make off with assets illegally raise grave red flags of judicial impropriety and worse.
196. Judge Colin allows Trusts for minors to be operated by a Trustee, Oppenheimer, without ANY SIGNATURE PAGES<sup>28</sup> and improperly executed and asks Eliot in hearing what statute prohibits a bank trust company from operating Trusts without signature pages or opening an account (in a different name than on the trust) and using such funds without a signed Trust instrument. When Eliot responded to Colin stating fraud as the statute, Colin states it is not enough and overruled an accounting objection to the Trust accounting claiming Oppenheimer operated without legal documents, and accessed an account with a different name than that on the trust that has no signature pages.
197. Again this raises red flags as to Colin's competency and his acts to try and further cover up for the officers and fiduciaries he appointed, Oppenheimer, who once again are caught in what appears an alleged massive fraud and again Colin fails to notify the authorities of the possible criminal acts this bank fraud depicts and yet entertains guardianship hearings filed by Steven A. Lessne, Esq., ("LESSNE") the attorney for Oppenheimer, who is a counter

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<sup>28</sup> OPPENHEIMER TRUST THEY POSITED WITH COURT AS DOCUMENT THEY ARE OPERATING ON FOR DANIEL BERNSTEIN MISSING SIGNATURE PAGES!  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Exhibit%20C%20Oppenheimer%20Criminal%20Complaint%20PBSO%20-%20Trust%20Daniel.pdf>

defendant in Eliot's counter complaint against Oppenheimer which has been stayed by Colin and yet LESSNE continues to represent other parties despite his conflict.

198. That it should be noted by the Court that LESSNE began his representation of Oppenheimer at the law firm GrayRobinson, P.A. and then after Eliot counter sued LESSNE and Gray Robinson, LESSNE then transferred with the Oppenheimer case, to ROSE's former law firm Gunster, Yoakley & Stewart, P.A. ("GUNSTER")
199. That GUNSTER is the former law firm of Christopher Wheeler, Esq., the central defendant in Eliot's RICO claims of theft of the Intellectual Properties, who was formerly with Proskauer Rose until resigning and going to work at GEO Corporation, the private prison company that incarcerates people for profit as their stock value is dependent on the number of prisoners incarcerated.
200. Again Colin protects the officer of his Court LESSNE that he appointed and shields him from criminal investigation of him and his client while allowing hearings of contempt and guardianship issues filed by LESSNE as retaliation to proceed forward.
201. Judge Colin allegedly transferred Trusteeship of the three minor children's trusts in 2010 and without reviewing the 3 trusts which are not attached to the Petition filed<sup>29</sup>, which have no signatures pages for Daniel, which have conflicting trustees and a Successor named Larry Bishens, Esq. and are improperly executed, which he would have seen these glaring problems had he reviewed the Trusts prior to allegedly transferring Trusteeship to Oppenheimer based on what appear more fraudulent and forged documents.

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<sup>29</sup> Alleged Fraudulent and Forged Petition to Change Trustee of Children Trusts  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20100619AllegedForgedEliotCandicePetitiontoAppointSuccessorTrusteeJoshuaJacobandDaniel.pdf>

202. The Court should note again that Kratish and Greenwald both deny being trustees of the initial trust and Kratish has claimed she replaced Stanford as Trustee and then transferred trusteeship to Oppenheimer but this does not jive with the petition that puts her as the initial Trustee.
203. The documents used in the transfer are alleged to be signed in part by Eliot and Candice Bernstein who have reported them to authorities and the courts as further fraudulent documents with forged signatures on them and yet, Colin seeing all the problems with the Trusts ignores these facts and instead is attempting to terminate the trusts and remove the protected properties out of the protection designed for the corpus to be safe from poachers and exposing the three minor children to risk of loss of trust assets, including foreclosure of the home.
204. That Colin is refusing to allow Candice Bernstein to become the successor trustee of the trusts and made insulting remarks as to her being qualified to be trustee, again abusing his power and making insult that prejudices on of the parties and attempts to deny the natural guardian of the children to act as trustee of the Trusts in efforts to keep the corpus in the Trusts until all the fraudulent acts alleged can be ferreted out.
205. That a new Trustee for the children's Trusts cannot be obtained because Oppenheimer prior to resigning bled the monies dry and failed to get reimbursed by the Estate where SPALLINA and TESCHER had told Oppenheimer that monies used from the children's trusts would be replenished by the Estate when it received liquid funds.
206. That at the time Oppenheimer requested the monies back, SPALLINA and TESCHER who directed Oppenheimer with no authority to misuse the funds, refused to replenish them and

instead of going after TESCHER and SPALLINA they abdicated their fiduciary duties by resigning without notifying authorities of the crime that was committed in misusing the funds directed by SPALLINA and TESCHER.

207. Further, Oppenheimer hired Tescher & Spallina, PA with the children's Trust funds, after they became aware that Eliot was having criminal authorities pursue them and that their law firm was under criminal investigation.
208. That the Court will note on the Oppenheimer Trust that on page on Traci Kratish, Esq. ( a woman attorney at law and accountant ) is described as a "he" as the initial Trustee of the Trust and that on page 4 of the Trust, an attorney at law, Steven Greenwald, Esq. is said to be the initial Trustee and despite in hearing seeing this contradiction, Judge Colin acted as if asleep and allowed the proceeding to continue as if this too was a normal part of Trusts to have switching Trustees.
209. Eliot has spoken to both Kratish and Greenwald and both deny being a part of the initial trust or initial trustees and Eliot has reported this to the Sheriff investigating these matters now, Detective Andrew Panzer of the Palm Beach Sheriff Department, who has languished on this information for several months without interviewing the two conflicting alleged Trustees.
210. Kratish claimed to Eliot, Candice Bernstein and William Stansbury the Creditor in a meeting that she was not an employee at the time of the alleged signing of the Trusts for Simon Bernstein and states that only AFTER Stanford Trust was seized by the Feds in 2009 or thereabouts was she made Successor Trustee and for only a few days before she transferred Trusteeship to Oppenheimer. Kratish's statements wholly contradict the story being told by

Oppenheimer's attorney, LESSNE to the court and the story laid out in the Petition to transfer trusteeship that Colin signed.

211. In fact, LESSNE has submitted further fraudulent documents with a different story to the court recently based on a falsified and forged document Candice and Eliot are alleged to have signed but they have reported to authorities that these too are fraudulent documents.
212. Colin learned that a court Order to pay Eliot children's school by the alleged Trustee Ted of Simon's Trust failed to make the payment and Eliot's children were pulled from their school on the 2nd day of classes and for over a month were not in a new school, which had started a month earlier than their other school and all kids suffered a massive trauma from this, as they had been attending the school for many years and this sudden change caused grades to go the lowest levels, depression to set in and has truly been a nightmare.
213. Upon learning that his court Ordered was violated and the children were thrown out of school, he stated in court that this made him very unhappy and he would deal with it later and later has never come. This again while the children are under his tutelage and the monies for their school held hostage in his court due to the Fraud on the Court, Fraud in the Court and Fraud by the Court.
214. Colin has capped the fees of the Curator Brown and the Successor Personal Representative O'Connell so as to limit their ability to investigate the prior frauds and forensically inspect documents and do a forensic accounting but has not limited the fees for the other Fiduciaries and where Ted has hired up to 8 law firms to defend himself from the actions against him at premium rates and has even allowed payments to Tescher and Spallina for their work in committing fraud on the beneficiaries and fraud on the court and even to go to the Sheriff to

confess that their law firm committed fraud, yet Colin does nothing to limit this waste, fraud and abuse by fiduciaries.

215. Colin while seeing that Eliot is forced to represent his minor children Pro Se has done nothing to allow or compel the fiduciaries to get them counsel to protect them properly despite the fact that they need counsel due to Fraud on his court, Fraud in his court and Fraud by his court all caused by Attorney at Law Officers of his court and fiduciaries appointed by his court. Again, Ted has had a multitude of lawyers billing up the Estates and Trusts with no accounting for their fees and the beneficiaries are denied any access to funds despite the dispositive documents providing for such.
216. Despite repeated calls for Colin's voluntary disqualification<sup>30</sup> on his own motion and Eliot attempting to file disqualification motions Pro Se, which Colin states are legally insufficient, Colin refuses to disqualify despite the statute stating that even if the motion is insufficient nothing precludes the judge from voluntary disqualification on the grounds stated in the insufficient motion, which are beyond cause for voluntary disqualification, yet Colin ignores his duties, the Judicial Canons he violates and continues with the Fraud by the court on the Beneficiaries, Creditors and Interested Parties.

***Wherefore, Eliot prays for this Court to insure forward fair and impartial Due Process and Procedure and preserve Eliot's Constitutional rights by moving these matters to a non-conflicted venue and jurisdiction and any other remedy this Court finds just and equitable.***

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<sup>30</sup> Motion to Disqualify Colin @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140101%20Final%20PRINTED%20SIGNED%20Motion%20to%20Disqualify%20Colin%20and%20more%20131279ns.pdf>  
and Order Denying Motion to Disqualify @  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140108%20ORDER%20DENYING%20MOTION%20TO%20DISQUALIFY%20JUDGE%20MARTIN%20COLIN%20SIGNED%20BY%20MARTIN%20COLIN.pdf>

**APPOINTMENT OF PROTECTED COUNSEL AND REMOVAL OF TAINTED  
COUNSEL**

217. Eliot is requesting this Court set up protected Pro Bono counsel for Eliot that is protected by this Court to aid Eliot free of worries of threats or extortion by any members of any bar association that can provide counsel to one being denied counsel with intent and scienter to disable his due process rights and further abuse him through legal process abuse.
218. Federal Court adjudication and counsel for Eliot and his children that are not Florida Bar members and cannot be influenced or contacted by any member of the Florida while handling these matters and any contact with Florida Bar members ordered to be reported to the Court by such protected counsel.
219. An affidavit<sup>31</sup> of a threat by a Judge in the Barbara Stone, Esq. Whistleblower Counter Complaint against her counsel shows how judges being investigated and reported on for criminal misconduct by a bar member, can threaten and extort counsel to not represent litigants to usurp their due process rights. This is a very scary letter that defines what Eliot has alleged is going on to preclude Florida Bar members from handing him or his three minor children cases to deny them rights to fair and impartial counsel.
220. That the Court should remove all remnants of Florida Bar members influence on these matters in any capacities they currently have be it as lawyers or fiduciaries in Eliot's cases and force all parties to seek counsel that cannot be influenced by Florida Bar member lawyers.

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<sup>31</sup> Affidavit Regarding Threat by Florida Judge Michael Genden  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/1Rochlin%20Affidavit.pdf>



221. That in the Barbara Stone, Esq., whistleblowing case there has been a recent revelation that Florida Judge Michael Genden and another member of the Florida Bar, Roy Lusting, Esq., have acted in an extortionary manner to threaten an attorney at law representing Stone's mother, an elderly abused and vulnerable adult in a Gestapo guardianship, by threatening her if she continued to represent Barbara or her mother Helen with disbarment and complaints against her.
222. That despite this affidavit that was provided by another attorney at law, Debra P. Rochlin, Esquire, another honest attorney in a sea of scum, following her ethical duty to report the misconduct of reprobate judge Michael Genden and reprobate attorney at law, Roy Lustig, alleging some very serious criminal misconduct by them, including threats, harassment, extortion, obstruction of Stone's constitutional rights to counsel for her and her mother and ex parte conspiratorial acts to deprive counsel, judge Genden is still gunning for Stone despite his obvious and mandated disqualification on the fact that this affidavit by Rochlin is beyond cause for immediate disqualification until he can be investigated for the criminal charges filed by Stone against he and Lustig on May 1, 2015 in Miami Dade county.
223. Genden upon receipt of this letter knows that he will now be a material and fact witness in the civil proceeding and most likely criminal proceedings into the allegations and yet he is still going to try to rule forward despite his self-mandating disqualification which should be made on his own motion and initiative, the minute he became aware of the affidavit and the allegations against him last week.
224. In fact, Genden appears to have had Lustig prepare a Motion to Strike the Disqualification filed by Stone, attempting to claim Stone violated the court illegal Order stating Stone could

not file any pleadings, including more disqualifications against Genden without a Florida Bar member filing them. Yet, the disqualification is no longer the responsibility of Stone once Genden knew of the affidavit and was served a copy he had an obligation to do it on his own and yet he rules on, apparently delusional that he is above the law and does not have to follow the rules of disqualification imposed upon him.

225. That this sharp practice move by Genden to have Lustig remove the disqualification without his having to hear it is revealing and comes on the heels of a the most honorable and sympathetic Broward County Florida Judge, Sandra Perlman, who on April 2014, in a hearing<sup>32</sup> with Stone and Lustig, after hearing the barrage of allegations against Stone by Lustig including all the arrests he had made on her with Judge Genden, looked past that and stated she had sympathy for Stone and that she should amend her complaint to include a Whistleblower count.
226. Genden already has Stone on a tracking collar as if she is a criminal or to further track his victim through violations of her privacy and more and gain advantage over her further.
227. That on May 3, 2015 at 11:30am Genden has demanded Stone to come his chambers for two orders to show cause and face contempt proceeding whereby he is threatening jail if she violated a court order that she could not file pleadings without a licensed member of the Florida Bar filing them for her and a second show cause for allegedly violating his orders to remove ALL contact between Stone and her mother and the facilities she is being tortured in.

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<sup>32</sup> Stone Hearing Transcript  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150421JudgePerlmanTranscript.pdf>

228. That Lustig then filed a disqualification motion against Judge Perlman for her showing sympathy to Stone and advising her to file a Whistleblower count by amending her complaint and Perlman disqualified and judge with a drunk driving conviction took over.
229. Genden's actions reminiscent of the two lines at Auschwitz that separated mother and child forever with a steel toed boot Gestapo agent acting above law and violating the law of G-d. Stone's mother is reported in grave condition and being deprived of loved ones and her home and more, imprisoned in Genden's abusive guardianship and now Genden is trying to remove all rights of a daughter to protect her.
230. Where Stone has filed a disqualification pleading in potential violation of the Order but where Stone could not find counsel to file for her, despite her being an attorney at law and once she received affiants affidavit she became aware of why she was having problems retaining counsel and then keeping counsel once they were retained after they appeared before Genden.
231. Once in receipt of the Affiant's affidavit of the threats by Genden to force counsel off her and her mother cases or else, Stone was caught in a catch 22 of either file the disqualification as mandated by Florida Bar rules that require her to report misconduct such as claimed in the Affiants Affidavit, acting Pro Se, since her lawyer quit and where it was learned she quit based on the new information of criminal misconduct and threats by Genden.
232. Again, Genden should be forced to disqualify from the matters until the affiants allegations are resolved on his own initiative once he was served the affidavit last week.
233. Stone is left either surrendering her rights PRO SE and without counsel to break what appears an illegal Order constructed intentionally to deny her due process and procedure if

she cannot get counsel to file, which failure is now alleged to be caused by Genden's usurping her right to file Pro Se knowing he would preclude her from gaining counsel, while secretly threatening and extorting Florida Bar members that were willing to represent the Stone's.

234. That in the Florida Probate court it was recently discovered by Eliot that honorable attorney at law, Peter Feaman, Esq. had reported attorney at law and fiduciary misconduct to the new Personal Representative/Executor of the Estate of Simon, Brian O'Connell, Esq. alleging improper representations and conflicts of interest with intent in the case before this Court, as illustrated in the email below.

Subject: FW: Bernstein Estate  
Subject: Bernstein Estate  
Date: Tue, 16 Dec 2014 15:57:54 □0500  
From: pfeaman@feamanlaw.com  
To: boconnell@ciklinlubitz.com  
CC: [jroyer@feamanlaw.com](mailto:jroyer@feamanlaw.com)

Brian,

When you and I spoke last week you indicated that you were in favor of the settlement that Mr. Stansbury had signed and sent to you for signature.

You indicated that you had to work out funding with the trust.

Meanwhile, the Life insurance litigation in Chicago is moving forward.

Our attorneys are taking a deposition in Chicago the week after New Years of "Scooter" Bernstein, I think.

They also want to depose Ted Bernstein and Robert Spallina in early January as well.

I offered my office as a locale for those depositions.

Deposing Ted Bernstein in the Chicago action poses some serious conflict of interest issues for Ted Bernstein and ethical issues for Mr. Rose as the Florida attorney for Mr. Ted Bernstein.

He is being deposed as a party Plaintiff in the Chicago action, the purpose of which is to direct \$1.7 million in life insurance to the 5 adult children of Simon Bernstein away from the Bernstein estate.

Yet Mr. Rose represents Ted Bernstein as Successor Trustee to the Simon Bernstein Trust, the beneficiaries of which are the GRANDCHILDREN OF Simon Bernstein, and the Trust is the beneficiary of the Simon Estate which is directly opposed to the position of Ted Bernstein as Plaintiff in the Chicago Life Insurance litigation.

Just as Ted Bernstein cannot wear both hats, it seems that Alan Rose cannot represent a client so conflicted.

Further, it would seem to me that the estate (you as Personal Representative) has an absolute duty to demand Ted's resignation as Successor Trustee, as his continued role as such imperils the interests of the grandchildren, to whom you owe a fiduciary duty as the Personal Representative.

The bottom line is that the more this drags on, the worse it is going to get for all concerned.

At some point, respectfully, I think you are going to have to take the bull by the horns and 1.) demand that Ted Bernstein resign as Successor Trustee and 2.) Take an active role in directing the attorneys in Chicago to push the case in order to bring it to a successful resolution on behalf of the estate, either by settlement or trial. This means taking over the responsibility for the litigation from Mr. Stansbury in light of the favorable position that the Estate is now in as a result of Mr. Stansbury 's efforts.

I welcome your thoughts on this.

Peter M. Feaman  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard  
Suite 9  
Boynton Beach, FL 33436  
Telephone: 561 □ 734 □ 5552  
Facsimile: 561 □ 734 □ 5554  
[www.feamanlaw.com](http://www.feamanlaw.com)

235. That TED is conflicted in this Breach of Contract lawsuit before this Court as the Trustee of the legally nonexistent Trust that he claims he is a one fifth beneficiary of said nonexistent trust and this conflicts with his role as ALLEGED Trustee of the Simon Trust where if the benefits are paid to the Estate and pass through to the Trust, TED will have a zero percent interest.

236. TED and his counsel have already acted in Conflict by interceding in the matters to block the Estate Beneficiaries (which are either ten grandchildren or Eliot and two of his five siblings, Jill Iantoni and Lisa Friedstein) from joining the case by filing opposition motions to them

Omnibus Motion...  
Monday, May 4, 2015

being added to the case as Plaintiffs using his role as Trustee of the Simon Trust with an obligation to those beneficiaries to protect their interests, instead choosing to protect the interest where he will possibly get monies directly in his pocket.

237. That further the Personal Representative of the Estate Brian O’Connell, Esq. has notified the Probate court both in pleading and in a hearing before the court that Ted Bernstein is not a legally valid Successor Trustee to the Simon Trust as the very language of the Trust precludes a related party from being Successor Trustee and furthermore Ted Bernstein is named as predeceased for all purposes of the trust. In his first and only affirmative defense in an answer to a complaint regarding Ted’s standing as a Trustee of the Simon Trust he states,

**“AFFIRMATIVE DEFENSE**

1. First Affirmative Defense - Lack of Standing - Ted Bernstein lacks the requisite standing as he is not validly serving as Trustee of the Simon Trust, is not a beneficiary of the Simon Trust, and is not representing any minor child that is a beneficiary of the Simon Trust.”

238. After learning of the statements regarding Ted’s lack of qualification as a fiduciary from both Feaman and O’Connell two attorneys at law reporting the misconduct of another attorney at law and a fiduciary to the tribunal as they are duty bound to report, Colin again acted if nothing were wrong. The statements of these two attorneys at law fell on the deaf ears of Colin and after learning at the hearing that the language of the Trust precluded TED from being fiduciary as he is a related party to Simon and where related parties are expressly prohibited from being a successor trustee, Judge Colin stated on the record that he had not

yet “peeked” at the Trust language that is the dispositive operative document in the case for two years.

239. Yet, instead of “peeking” at the dispositive document there and then to see if the two attorneys before him were telling the truth about ROSE and TED’s misconduct, Judge Colin continued to look the other way and further empowered TED by keeping him as a Fiduciary and not removing him on his own motion and amazingly instead burdened Pro Se Eliot with the responsibility to file a perfect pleading to achieve TED’s removal, which has now taken over a year to try and get heard, as each pleading has been defeated on technicalities, while TED and ROSE continue to runs rampant with Estate and Trust assets without proper accountings or information regarding assets provided to beneficiaries at all.
240. That while Judge Colin has been aware that statutorily required accountings have not been performed or executed as proscribed by Statute by any of the fiduciaries (less Brian O’Connell, Esq. and Benjamin Brown, Esq.) he has allowed TED to continue the Pattern and Practice of his former counsel TESCHER and SPALLINA and fail to provide accountings according to statute leaving the beneficiaries in the dark as to the value of their inheritances.
241. That despite knowing that TED is alleged acting as an illegal imposter Trustee who gained Trusteeship through a transfer made allegedly by TESCHER and SPALLINA on their way out the door for fraud, without beneficiaries or the court’s approval of such illegal transfer, Colin continues to allow TED to act and retain lawyers who are burning through assets of the Estates and Trusts with fraudulent intent, while precluding and failing to appoint Eliot and his children counsel to protect themselves from the fraud committed in his court, on his court

and now by his court by officers and fiduciaries he appointed, thereby depriving Eliot and his minor children counsel.

242. That repeated requests to all the fiduciaries and counsel to provide Eliot and his children counsel as allowed for under the terms of the challenged Wills and Trusts of Simon and Shirley, these requests have been ignored.

*Wherefore, Eliot seeks appointment of Protected Pro Bono Counsel by this Court to insure his and his minor children's due process rights being denied and obstructed in the Florida Probate court.*

**PROVIDE IMMEDIATE EMERGENCY DISTRIBUTIONS OF AT MINIMUM**

**\$200,000.00 FOR ELIOT AND HIS MINOR CHILDREN**

243. Due to inheritances that have been intentionally stymied and delayed through abuse of process and fraud, Eliot seeks immediate relief from this court from the either the monies held in this Court's registry for the insurance proceeds that Eliot or his children are certain beneficiaries no matter the outcome.
244. That Eliot for many years prior to his father and mother's deaths was receiving \$10,000.00 a month tax free through the children's trust via Bernstein Family Realty, LLC and another \$5,000.00 to \$10,000.00 a month for other needs that arose and this was set up to continue long after their deaths. The monies were stopped after Oppenheimer misused school trust funds to pay these amounts directed with scienter to use them up by SPALLINA and leave them nothing at the end of that money, so they have been without this income for over year now and so the \$200,000.00 would cover the losses thus far and allow them to pay the bills and get insurance on the home and put the kids back in private school and more.



245. These monies are requested for emergency needs for the children who have already gravely harmed from the Estates and Trusts when the assets are transferred to this Court, if this Court does not use some of the monies in the Court registry interpled in this case to help Eliot's family.
246. Eliot requests that any monies paid by either this Court or from the Probate court come with no implied consent or waiver of rights to pursue legal actions for the frauds committed.

*Wherefore, Eliot seeks for an order to provide immediate emergency distribution of at minimum 2000,000.00 for Eliot and his minor children.*

**FREEZING AND TRANSFER OF ALL PROBATE ASSETS TO THIS COURT**

247. This Court should seize all court records of the Florida Probate court, all cases that any of the fraudsters have worked on for any client, all court records in Eliot's cases, all assets and records from all parties relating to Simon and Shirley Bernstein, all tax and other records for Simon and Shirley Bernstein, as there is evidence of fraudulent tax documents and more.
248. That this Court upon freezing and transferring the remaining assets and records should simultaneously order all parties, court, lawyers, fiduciaries, judges, beneficiaries and others to provide full and formal accountings of any and all assets they are aware of that may have been improperly transferred to improper parties, stolen off with or otherwise removed from the Estates and Trusts of Simon and Shirley.
249. That TED recently produced an Inventory for the Estate of Shirley that claimed that Shirley's Personal Property equaled \$0.00 at the time of her death, despite having become aware of millions of dollars of Inventory that was not on the Inventory Simon was alleged to have done, making it appear that Shirley died as a welfare recipient.

250. That virtually all of the accountings and documents tendered appear fraudulent at this time and according to Ben Brown, Esq. the recently deceased Curator (age 49) no original documents were produced by TESCHER and SPALLINA when they were court ordered to turn them over to Brown except for one document, the alleged Promissory Note to Simon's Mortgage that was not recorded and suddenly appears as the only signed document in the possession of TESCHER and SPALLINA.
251. That nothing tendered to the Probate court by any party involved in the original frauds and fraud on the court can be relied upon, including the court records and yet Judge Colin continues to allow these documents to be used to make rulings on and to allow further fraud and conversion of assets to occur without sounding the alarm and calling in investigators to investigate the Attorneys at Law acting as Officers of his court and the Fiduciaries appointed by him and have the documents inspected first before proceeding forward.
252. The information provided herein leaves the Appearance of Impropriety to any sane person that Judge Colin and Judge French's handling of their own court investigations of the crimes committed in their courts done under their noses, by those under their tutelage, are craftily designed staged litigations to subterfuge and derail due process, while further enabling crimes against Eliot, his lovely wife Candice and their three minor children and the creditor William Stansbury and at the same time cover it all up through further abuse of process, all outside the color of law.
253. Florida Statutes-Title XLVI Crimes Section 843.0855- Criminal actions under color of law or through use of simulated legal process states as follows:

“(2) A person who deliberately impersonates or falsely acts as a public officer or employee in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It is the intent of the Legislature that this section applies if a person acts as an officer or employee purporting to supersede or override any legislation or statute of this state, or to supersede or override any action of any court of this state.

(3) A person who simulates legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who falsely under color of law attempts in any way to influence, intimidate, harass, retaliate against, or hinder a public officer or employee involving the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.”

As per Florida Statutes-Title XLVI Crimes Section 843.0855, the Plaintiffs in this matter and those parties defined herein in the Probate cases are liable for crimes committed under color of law.

*Wherefore, Eliot seeks for an order to freeze and transfer all Probate and Trust Assets of Simon and Shirley Bernstein to this Court. Further seeks for an order of punishment against Third Party Defendants as per Florida Statutes-Title XLVI Crimes Section 843.0855.*

**NEW RICO AND RE-OPENING OF PRIOR RICO DUE TO NEW PREDICATE ACTS**

Omnibus Motion...  
Monday, May 4, 2015

254. That Eliot's Federal RICO against three state bar associations, judges, law firms and thousands of Attorneys, is soon to be requested reopened by Eliot to Federal Judge Shira Scheindlin regarding the new predicate crimes committed again by reprobate attorneys at law, Robert Spallina, Esq., Donald Tescher, Esq. and others (other include Defendants in the RICO, ie Gerald R. Lewin, CPA, Proskauer Rose and Greenberg Traurig) who are now involved in the Florida Probate Cases for his mother and father. These new predicate RICO criminal acts now include but are not limited to, the alleged by Theodore Bernstein, Rachel Walker and Pamela Simon, Murder of Simon Bernstein (Heavy Metal Test completed almost a year later reveal three elevated poisons, with Arsenic three times reportable levels), Forgery, Fraud on the Court, Fraud on Beneficiaries (primarily Eliot), Fraudulent Notarizations (Arrest of Notary and Legal Assistant for Tescher and Spallina, Kimberly Moran), Fraudulent Alteration Post Mortem of Trust Documents (admitted to by Robert Spallina to Palm Beach County Sheriff Investigators in the exhibited Sheriff's Reports herein), Extortion of Eliot by intentional interference by attorneys and judges of his and his children's expectancy/inheritance and more.
255. A judge is an officer of the court, as well as are all attorneys and fiduciaries appointed by the court. A state judge is a state judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must meet the same requirements. A judge is not the court. *People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

256. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."
257. "Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894),

affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

258. As reiterated in *Baker v. Myers Tractor Services, Inc.*, 765 So. 2d 149, (Fla. 1st DCA 2000): When the central issues of a case are based in fraud, the courts cannot move forward as a matter of law. The fraud issue must first be cleared up. Judge Colin, TED and ROSE are directly connected to fraud in this case and must be removed from this proceeding instantly and sanctioned and reported to the proper authorities. See *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998).
259. As set forth in *Rosenthal v. Rodriguez*, 750 So. 2d 703, 704 (Fla. 3d DCA 2000): Courts throughout this state have repeatedly held "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve their ends." *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999) (quoting *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998)); see also *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); *O'Vahey v. Miller*, 644 So. 2d 550, 551 (Fla. 3d DCA 1994); *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).
260. That the legally related case to Eliot's RICO CASE #07-cv-11196-SAS is Case #07cv09599-SAS Anderson v The State of New York, et al., which was filed by an inside Whistleblower at the New York Supreme Court Disciplinary Department who at trial exposed one of the

largest Attorney Corruption Schemes in the history of our great Nation and one that threatens the very fabric of the US legal system and those employed by it. Not only were the highest ranking members of Supreme Court of New York Members alleged involved but Prosecutors, Judges, US Attorneys, DA's, ADA's, "Favored Law Firms and Lawyers" and others were alleged participants in a criminal good ol' boy network of corruption and cover up all done by criminals cloaked as Attorneys at Law and those in charge of regulating such attorneys. The crimes against their victims beyond belief. See below information regarding the Anderson and related cases.

FORMAL COMPLAINT FILED AGAINST NYS EMPLOYEES FOR ILLEGAL WIRETAPPING...THE WIDESPREAD ILLEGAL WIRETAPPING INCLUDED TARGETED NEW YORK STATE JUDGES AND ATTORNEYS.....

<http://ethicsgate.blogspot.com/2013/04/formal-complaint-filed-against-nys.html>

SELECT QUOTES FROM THAT NEWS STORY

April 3, 2013

Robert Moossy, Jr., Section Chief  
Criminal Section, Civil Rights Division  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

RE: FORMAL COMPLAINT AGAINST NEW YORK STATE EMPLOYEES  
INVOLVING CONSTITUTIONAL VIOLATIONS, INCLUDING  
WIDESPREAD ILLEGAL WIRETAPPING

Dear Mr. Moossy,

At some point in time shortly after 9/11, and by methods not addressed here, these individuals improperly utilized access to, and devices of, the lawful operations of the Joint Terrorism Task Force (the JTTF). These individuals completely violated the provisions of FISA, ECPA and the Patriot Act for their own personal and

Omnibus Motion...  
Monday, May 4, 2015

political agendas. Specifically, these NY state employees essentially commenced black bag operations, including illegal wiretapping, against whomever they chose- and without legitimate or lawful purpose.

This complaint concerns the illegal use and abuse of such lawful operations for personal and political gain, and all such activity while acting under the color of law. This un-checked access to highly-skilled operatives found undeserving protection for some connected wrong-doers, and the complete destruction of others- on a whim, including the pre-prosecution priming of falsehoods (set-ups). The aftermath of such abuse for such an extended period of time is staggering.

It is believed that most of the 1.5 million-plus items in evidence now under seal in Federal District Court for the Eastern District of New York, case #09cr405 (EDNY) supports the fact, over a ten-year-plus period of time, of the illegal wiretapping of New York State judges, attorneys, and related targets, as directed by state employees.

One sworn affidavit, by an attorney, confirms the various illegal activity of Manhattan's attorney ethics committee, the Departmental Disciplinary Committee (the DDC), which includes allowing cover law firm operations to engage in the practice of law without a law license. Specifically, evidence (attorney affidavits, etc.) supports the claim that Naomi Goldstein, and other DDC employees supervised the protection of the unlicensed practice of law. The evidence also shows that Ms. Goldstein knowingly permitted the unlicensed practice of law, over a five-year-plus period of time, for the purpose of gaining access to, and information from, hundreds of litigants.

Evidence also supports the widespread illegal use of black bag operations by the NYS employees for a wide-range of objectives: to target or protect a certain judge or attorney, to set-up anyone who had been deemed to be a target, or to simply achieve a certain goal. The illegal activity is believed to not only have involved attorneys and judges throughout all of the New York State, including all 4 court-designated ethics departments, but also in matters beyond the borders of New York.

The set-up of numerous individuals for an alleged plot to bomb a Riverdale, NY Synagogue. These individuals are currently incarcerated. The trial judge, U.S. District Court Judge Colleen McMahon, who publicly expressed concerns over the case, saying, I have never heard anything like the facts of this case. I don't think any other judge has ever heard anything like the facts of this case. (2nd Circuit 11cr2763).

Omnibus Motion...  
Monday, May 4, 2015



The concerted effort to fix numerous cases where confirmed associates of organized crime had made physical threats upon litigants and/or witnesses, and/or had financial interests in the outcome of certain court cases.

The judicial and attorney protection/operations, to gain control, of the \$250 million-plus Thomas Carvel estate matters, and the pre-prosecution priming of the \$150 million-plus Brooke Astor estate.

The wire-tapping and ISP capture, etc., of DDC attorney, Christine C. Anderson, who had filed a lawsuit after being assaulted by a supervisor, Sherry Cohen, and after complaining that certain evidence in ethics case files had been improperly destroyed. (See SDNY case #07cv9599 - Hon. Shira A. Scheindlin, U.S.D.J.)

The eToys litigation and bankruptcy, and associates of Marc Dreir, involving over \$500 million and the protection by the DDC of certain attorneys, one who was found to have lied to a federal judge over 15 times.

The set-up and chilling of effective legal counsel of a disabled woman by a powerful CEO and his law firms, resulting in her having no contact with her children for over 6 years.

The wrongful detention for 4 years, prompted by influential NY law firms, of an early whistleblower of the massive Wall Street financial irregularities involving Bear Sterns and where protected attorney-client conversations were recorded and distributed.

The blocking of attorney accountability in the \$1.25 billion Swiss Bank Holocaust Survivor settlement where one involved NY admitted attorney was ultimately disbarred- in New Jersey. Only then, and after 10 years, did the DDC follow with disbarment. Gizella Weisshaus v. Fagan.

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NY SUPREME COURT BOSSES ILLEGALLY WIRETAPPING JUDGES  
CHAMBERS & HOMES. CHRISTINE ANDERSON WHISTLEBLOWER  
ILLEGALLY TARGETED FOR 24/7/365 SURVEILLANCE IN RELATED  
CASE TO IVIEWIT ELIOT BERNSTEIN RICO...

FOR IMMEDIATE RELEASE

(Free-Press-Release.com) May 14, 2013 -- According to news reports, yes, the heads of the NY Supreme Court Ethics Department have been accused of derailing Justice by targeting victims and misusing Government Resources

Omnibus Motion...  
Monday, May 4, 2015

against private citizens with no other motive than Obstruction of Justice in court and regulatory actions against them or their cronies.

World Renowned Inventor Eliot Bernstein files NEW RICO RELATED CRIMINAL ALLEGATIONS against Law Firms Proskauer Rose, Foley & Lardner, Greenberg Traurig and more. Allegations that Bernstein was a target of these criminals cloaked as ATTORNEY AT LAW ETHICS BOSSES at the NY Supreme Court were presented to Federal Judge Shira A. Scheindlin. That evidence was presented that Bernstein's father may have been a target and murdered for his efforts to notify the authorities and more!!!

READ ALL ABOUT IT @

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

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**Friday, August 24, 2007**

**Justice Department Widens "Patentgate" Probe Buried by Ethics Chief Thomas J. Cahill...*CLICK HERE FOR FULL STORY***

In a letter dated July 16, 2007, the U.S. Department of Justice, Office of Professional Responsibility, announced from its Washington, D.C. headquarters that it was expanding its investigation into a bizarrely stalled FBI investigation that involves an almost surreal story of the theft of nearly 30 U.S. Patents, and other intellectual property, worth billions of dollars. The probe reaches some of New York's most prominent politicians and judges, and has already proven to be a stunning embarrassment to the State's ethics watchdog committees. *(To the right, see the July 16, 2007 letter "D.O.J. Widens Patentgate Probe")...*

<http://exposecorruptcourts.blogspot.com/2007/08/justice-dept-widens-patentgate-probe.html>

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PREVIOUS PRESS RELEASES RELATING TO JUDGES ILLEGALLY WIRETAPPED

That on Tuesday, February 19, 2013, ECC released the story,

Omnibus Motion...  
Monday, May 4, 2015

ETHICSGATE UPDATE FAXED TO EVERY U.S. SENATOR THE  
ULTIMATE VIOLATION OF TRUST IS THE CORRUPTION OF ETHICS  
OVERSIGHT EXCLUSIVE UPDATE:

<http://exposecorruptcourts.blogspot.com/2013/02/ethicsgate-update-faxed-to-every-us.html>

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IVIEWIT LETTER TO US DOJ OFFICE OF INSPECTOR GENERAL  
MICHAEL E. HOROWITZ

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130520%20FINAL%20Michael%20Horowitz%20Inspector%20General%20Department%20of%20Justice%20SIGNED%20PRIN TED%20EMAIL.pdf>

*Wherefore, Eliot seeks to file new RICO Counter Complaint due to new predicate acts that qualify RICO to be filed in these matters and reopen of prior RICO case of Eliot filed with the most Honorable Judge Shira A. Scheindlin.*

**APPOINTMENT OF FEDERAL PROSECUTOR, MONITOR AND INVESTIGATOR TO  
INVESTIGATE FRAUD ON AND IN THE FLORIDA PROBATE COURT**

261. There are the criminal predicate acts committed by those involved in the Estate and Trust Frauds described herein and those that are also involved in the prior RICO regarding the stolen Intellectual Properties who again are violating RICO that Eliot is seeking this Court to allow his Counter Complaint with a new RICO charge and request to join the Attorney General in the action to prosecute the criminal elements of:

- a. Racketeering
- b. Conspiracy
- c. Extortion

- d. Fraud In, On and By the courts
- e. Alleged Murder
- f. Insurance and Bank Fraud
- g. Stanford Bank related crimes and more.

262. All the parties defined herein who are alleged to have violated laws acted in concert to retaliate against Eliot for exposing the corruption racket.

263. As a result of the violations of RICO by these parties they should be ordered to compensate Eliot for the value of the wrongfully obtained benefits and ordered to disgorge all profits derived by them. They should be ordered to pay treble damages and costs and attorney's fees. There should also be an order of injunction to prevent and restrain the alleged perpetrators from committing further RICO and other violations of law against Eliot and his family.

*Wherefore Eliot seeks appointment of a Federal prosecutor, Monitor and investigator to investigate, Fraud on this COURT, Fraud on the Probate court in FL, Fraud in the Probate court in Florida, Fraud by the Florida Probate court and Fraud in the Florida prosecutorial agencies defined herein.*

**EXTENSION OF TIME FOR ALL MATTERS WITH DEADLINES IN THIS COURT  
INCLUDING EXTENDED TIME TO TAKE DEPOSITION OF DONALD SANDERS OR  
PROVIDE INTERROGATORIES INSTEAD**

264. That Eliot is currently scheduled for a series of hearings in the five Probate cases involving the Estates and Trusts of his deceased parents, including two more hearings to attempt to remove Ted Bernstein as the alleged Trustee of the Simon and Shirley Trusts and also the lawsuit involving his three children's trusts with critical hearings scheduled as well. These hearings are taking place through May and into June and Eliot requests at least until July 15,

Omnibus Motion...  
Monday, May 4, 2015

2012 to file a reply to the Summary Judgement, which he has not started to even look at due to the flood of events described herein.

265. The Summary Judgement is 800 pages and Eliot is Pro Se so this is an extensive undertaking to complete within the 20 days required and these other hearings are all occurring in the time deadlines are set and this severely limits Eliot's due process rights, as he is Pro Se and all of these involve complex legal issues that would take a full time law firm to accomplish in months, not days, thereby putting the risk of error or missed court appearances or filings (like the hearing last week missed by Eliot before this Court, the first hearing Eliot has missed in any of these cases) and this loss of rights is a very real danger.
266. That Eliot believes these sudden flood of hearings heaped upon him are all further a Pattern and Practice of Sharp Practices and Harassment committed by the members of the Florida Bar involved in the Florida Probate case and certain parties to this Lawsuit, including the attorneys at law for Plaintiffs and the judges in the Florida Probate case.

***Wherefore, Eliot seeks extension of time for all matters with deadlines in this court including extended time to take deposition of Donald Sanders or provide interrogatories instead.***

#### **DECLARATORY JUDGEMENT**

267. That Eliot seeks this Court's declaration on all of the following issues;
- a. Eliot as a private citizen in the state of Florida has blown the whistle as a private citizen on State of Florida judicial corruption he has become aware of, whereby he has sued State of Florida Supreme Court members, The State of Florida, the chief

judge Jorge Labarga of the Florida Supreme Court and other justices of that court, the Florida Bar and certain of its officers and certain members. That for Eliot's efforts he has been retaliated against by Florida Bar members who operate as judges, prosecutors and private attorneys at law working in concert to wholly disable his due process rights in relation to the ongoing litigations in the Probate court of Florida already described herein and his pursuit of his Intellectual Property rights and obstructing his rights to justice in the courts of Florida. That this Court is asked what remedy Eliot has in a situation where a state's entire legal framework is in conflict that party and no state relief is thus available.

- b. That similarly in criminal complaints Eliot filed with law enforcement that must be prosecuted by other Florida Bar members, Eliot has found further evidence of fraud and illegal interference by Florida Bar members, as in the case of Judge Colin contacting Sheriff investigators to cease criminal investigations) and whereby again his rights to due process and procedure have been obstructed with scienter and place he and his family in imminent danger without any state protection.
- c. That while Eliot is unclear which members of the Florida Bar are members who are working for the corrupt members he has sued or who can be influenced or threatened by such other members it is without question that all Florida Bar members can be

- considered conflicted with Eliot due to his pursuit of civil remedies against the Florida Bar Association, which they are all due paying members of and thus all members must be conflicted out of handling any matters involving Eliot whether they are involved or not. Eliot seeks a statement from the Court that ALL Florida Bar members are conflicted with Eliot and cannot represent, adjudicate or prosecute any matters involving Eliot.
- d. That Eliot has described in his whistleblowing that the Florida Bar is operating as a part of RICO styled criminal organization that threatens and intimidates members whose livelihood they control through their bar licenses and thus can be easily influenced to not represent certain parties they blacklist who are attempting to expose their corruption through judicial process. Eliot seeks this Court to declare what relief Eliot has when the Bar Association and its members are used to deny counsel through threats and intimidation or the court allows conflicted counsel and judges to proceed against Eliot despite their conflicts and involvement in fraud and disable his rights to due process and procedure.
- e. Eliot has asked that counsel be supplied by the Court and protected from any contact by any member of the Florida Bar or any attorney at law in any state that makes threats or intimidation or innuendo to such protected counsel who the Court should

mandate all such efforts to communicate or influence said protected counsel be reported to this Court for immediate investigation and sanctioning. Eliot asks this Court if it fails to grant protected counsel, what relief Eliot can seek as there appears nowhere to turn, if the federal government will not force the Florida courts to follow law.

- f. How does a victim obtain Relief from a Mafia- type enterprise that operates in the courts under color of law abuse but that is engaged in crimes and where no relief can be sought because members of the Florida Bar are the ones who relief must be sought from?
- g. How can Eliot and his family get protected counsel in a jurisdiction and venue that is composed only of members of the Florida Bar that can be threatened and intimidated and where they are adverse to Eliot and in conflict with their roles as members of the organization he is pursuing?

*Wherefore, Eliot requests that there be a Declaratory judgment on the aforesaid issues.*

**SEEK LEAVE TO AMEND COUNTER COMPLAINT**

- 268. Eliot seeks leave to amend his Counter Complaint and as the pleading is rather complex seeks at least one month in which to complete the amend.
- 269. Eliot has helped design another whistleblower lawsuit for another inside Whistleblower like Anderson in New but in Florida, which his Counter Complaint will partially mirror the Counter Complaint filed last week by Barbara Stone, Esq. and these claims are very similar to those of Eliot's with different personal circumstances but the same RICO and



Whistleblowing claims relating to the mob of criminals acting outside color of law with legal degree and title, and very high title, who are running a racket inside the state bar agencies, courts, prosecutors offices, congresspeople from both parties and more. See Stone Counter Complaint<sup>33</sup>.

270. That Eliot apologies for any pleading errors or confusion in the layout of this motion but due to the circumstances defined herein and rush to get this in and seek protection it is what it is and Eliot also apologizes for not attending the last hearing and emphasizes that he in no way wanted to miss a hearing or lose any rights from not attending. This motion in fact began as a simple response to the Court's last Minute Entry regarding Eliot's missing Your Honor's court.

*Wherefore, Eliot seeks leave to amend counter complaint. That all URL'S linked herein are hereby incorporated by reference herein in entirety and Eliot requests that this Court print these and add them to the filing in order to prevent undue tampering after the fact with the linked documents.*

WHEREFORE, Eliot seeks this Court enter an Order Granting the Following Relief:

1. FEDERAL PROTECTION FROM LIFE-THREATENING DANGER TO ELIOT AND HIS FAMILY,
2. Grant Eliot DESIGNATION OF STATUS AS WHISTLEBLOWER AND AFFORD ALL STATE AND FEDERAL WHISTLEBLOWER PROTECTIONS. PROVIDE FEDERAL WITNESS PROTECTION,

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<sup>33</sup> Barbara Stone Whistleblower RICO Federal Counter Complaint  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/BarbaraStoneAttorneyWhistleblowerRICOAgainstTheFloridaBarEtAl.pdf>

3. STAY ALL PROCEEDINGS IN THE FLORIDA PROBATE COURT AND TRANSFER ALL FLORIDA PROBATE MATTERS TO THIS COURT,
4. APPOINT PROTECTED COUNSEL,
5. PROVIDE IMMEDIATE EMERGENCY DISTRIBUTIONS OF AT MINIMUM \$200,000.00 FOR ELIOT AND HIS MINOR CHILDREN;
6. FREEZE AND TRANSFER ALL PROBATE AND TRUST ASSETS OF SIMON AND SHIRLEY BERNSTEIN TO THIS COURT,
7. Eliot seeks for an order of punishment against Plaintiffs and those involved in the Florida Probate criminal misconduct as per Florida Statutes-Title XLVI Crimes Section 843.0855,
8. ALLOW FILING OF NEW RICO COUNTER COMPLAINT DUE TO NEW PREDICATE ACTS THAT QUALIFY and RE-OPEN PRIOR RICO CASE;
9. APPOINT A FEDERAL PROSECUTOR, MONITOR AND INVESTIGATOR TO INVESTIGATE FRAUD ON, IN AND BY THE FLORIDA PROBATE COURT,
10. As a result of the violations of RICO, parties found to have violated RICO should be ordered to compensate Eliot for the value of the wrongfully obtained benefits and ordered to disgorge all profits derived by them. Plaintiffs and others who acted in concert with them in this lawsuit should be ordered to pay treble damages and costs and attorney's fees. There should also be an order of injunction to prevent and restrain Plaintiffs and others connected to them from committing further such RICO violations,
11. EXTENSION OF TIME FOR ALL COURT MATTERS FOR TWO MONTHS,

12. EXTEND ORDER FOR MORE TIME TO TAKE DEPOSITION OF DONALD SANDERS AND/OR PROVIDE INTERROGATORIES INSTEAD,
13. DECLARATORY JUDGEMENT,
14. SEEK LEAVE TO AMEND COUNTER COMPLAINT,
15. Award Pro Se attorney fees and costs,
16. Disgorgement of all attorneys and fiduciaries who were involved in frauds defined herein and
17. Any other relief Eliot has failed to ask for that this Court deems just and equitable.

Respectfully submitted,

DATED: Monday, May 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)

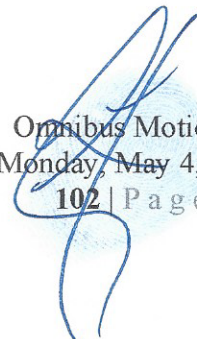
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Monday, May 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.

  
/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
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Omnibus Motion...  
Monday, May 4, 2015  
102 | Page

12. EXTEND ORDER FOR MORE TIME TO TAKE DEPOSITION OF DONALD SANDERS AND/OR PROVIDE INTERROGATORIES INSTEAD,
13. DECLARATORY JUDGEMENT,
14. SEEK LEAVE TO AMEND COUNTER COMPLAINT,
15. Award Pro Se attorney fees and costs,
16. Disgorgement of all attorneys and fiduciaries who were involved in frauds defined herein and
17. Any other relief Eliot has failed to ask for that this Court deems just and equitable.

Respectfully submitted,

DATED: Monday, May 4, 2015

/s/ *Eliot Ivan Bernstein*  
Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
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/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

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

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable John  
Robert Blakey

Eliot Bernstein

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, May 4, 2015:

MINUTE entry before the Honorable John Robert Blakey:Third Party Defendant Eliot Bernstein's emergency omnibus motion [173] is taken under advisement. If Third Party Defendant Bernstein feels that he is in immediate life threatening danger he is advised to contact 911 emergency officials as needed.(rbf, )

**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, )

Third-Party Defendants. /

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, )

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

**MOTION REGARDING INCIDENT  
INVOLVING COURT ORDER DATED  
MAY 5, 2015 ADVISING ELIOT TO  
CONTACT 911 and MORE**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

MOTION RE INCIDENT

Monday, May 5, 2015

1 | Page



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 )

Third-Party Defendants. /

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 RE INCIDENT  
Monday, May 5, 2015  
2 | Page

**MOTION REGARDING INCIDENT INVOLVING COURT ORDER DATED MAY 5, 2015 ADVISING ELIOT TO CONTACT 911 AND MORE**

That Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se, files this “MOTION REGARDING INCIDENT INVOLVING COURT ORDER DATED MAY 5, 2015, ADVISING ELIOT TO CONTACT 911 and MORE” and states under information and belief as follows:

1. Eliot filed an Omnibus Motion with this Court electronically at approximately 8:46 am on Monday, May 04, 2015 detailing new danger to his family communicated by a licensed attorney from Texas, Candice Schwager, Esq. (“Schwager”) was representing Eliot’s family and three minor children.
2. Schwager stated that the danger was the result of Eliot’s Whistleblowing efforts regarding the Florida courts his family’s probate matters are before and more and that his life and his family’s lives were in imminent danger.
3. The phone call was made approximately 4am on April 11, 2015 and Schwager stated that Eliot should seek federal and state protection for his entire family immediately.
4. Eliot notified the OIG Inspector General Michael Horowitz and Palm Beach County Sheriff Investigator Andrew Panzer of the call as evidenced in the Omnibus Motion filed.
5. Your Honor entered an Order later that same day on May 4, 2015 that stated the Omnibus Motion was being reviewed and further advised Eliot to contact 911 if he felt his life was in danger.
6. On May 5, 2015 at approximately 12pm because your Order referred Eliot to contact the 911 authorities and because Eliot does not know the source or method or means of the danger that he is in ( example, could be another car bomb? See prior filings relating to RICO and the predicate acts alleged in that prior lawsuit and graphic images of the car bombing at

[www.iviewit.tv](http://www.iviewit.tv) ) Eliot contacted 9/11 to report these matters to proper authorities and consistent with this Court's Order and to seek protection or determine what the next step should be.

7. Eliot indicated to 911 dispatch that he did not believe he needed the authorities to come to his home at that time and that as far as he knew it was not like someone was at the door and thus it did not appear to be clear and present dangers that were necessitating emergency response but that at the same time, Eliot also stated he did not know if he or his wife or children could possibly be in grave danger, as Eliot's father was alleged to have been murdered via poisoning and the Court should note that it was Eliot brother Plaintiff Ted Bernstein and his sister Pamela Simon who stated on the day of Eliot's father's death that he had been murdered.
8. Ted ordered a Sheriff investigation and Coroners report on that day alleging Simon's girlfriend had murdered him and incidence reports were taken at Simon's home and those were presented in the Omnibus Motion for the Court to review.
9. Thus, when speaking with 911 dispatch Eliot asked to be transferred to an officer to speak with him by phone and to determine if Eliot needed to come down to the station to provide more information or a sworn statement regarding the threat and what kind of state protections could be afforded. Eliot also wanted to make an official record with them of the incident that prompted these matters and give notice that he may need protection.
10. Officer Bart Galletta called Eliot back and left a message. Eliot called him back with Patrick Hanley & Kevin R. Hall on the line and dispatch said he would call me right back.

11. Suddenly there was pounding on Eliot's front door and when he opened it it was Officers James Giumenta and Bart Galleta who claimed they were responding to Eliot's 911 call, incident #2015-6354 and 1500078412.
12. That along with them was a Senior Child Protective Investigator with the Florida Department of Children and Families named Leigh Bourgoine LF 10044, CASE #2015121408 who Eliot thought was responding to see if the kids were in danger from the retaliations described in the Omnibus Motion and how to protect them.
13. Eliot asked why the officers came to his home as he had arranged to talk with them on the phone expressing that there was no need for a visit. They stated they needed to talk with me regarding a Child Protective complaint that was filed yesterday, May 04, 2015 and that is why they came. The complaint was filed on or about 2pm EST, by an anonymous caller, stating the children were in danger and this due to their parents who were abusive and more.
14. That the Court's Order advising Eliot to contact 911 regarding the danger Eliot's family is in was filed by Your Honor at 2:35 PM CDT.
15. There were all kinds of allegations made by this anonymous caller to DCF and this Court can contact DCF to get that report as they would not release a copy of the report to me. Keep in mind that since some of the clear history of my prior RICO shows involvement by government actors in the state of Florida, reporting this danger initially by phone seemed to be the most prudent course of action at that time.
16. The authorities at Eliot's front door stated that they had gone to his minor children's schools and interviewed one of the children without notifying Eliot or my wife and with no consent from them. They came to the home to interview the other two, one was still at school and the other was home with a lacrosse injury from practice yesterday.

17. Eliot did not grant further consent to talk to his children without counsel present or a parent present in the future, due to the nature of the information contained in my Omnibus Motion filed on May 04, 2015 regarding our whistleblowing efforts against Florida Bar members, the Boca Raton PD department and more and to prevent any chance of retaliation.
18. Also, Eliot notes that he has received information that even the Child Protective Hotline system which “sounds good” on paper and has good stated goals has itself been the subject of widespread abuse in the legal system from retaliatory and false reports being filed against people and used as a weapon. This abuse has resulted in actual danger and harm to some of the very children it was designed to protect and has had resulting emotional and related harm to parents along the way.
19. That the timing of the anonymous tip comes after this Court was made aware of serious felony acts made in the court of Martin Colin and David French of West Palm Beach, FL. Crimes committed by attorneys at law in Eliot’s parents estate and trust cases and the cases involve fraud, forgeries of dispositive documents in the court (including Post Mortem for fraudulent alteration of documents in both of parents cases), fraudulent notarizations, fraud on the beneficiaries, fraud in and on the court and more. This is further described in the Omnibus Motion.
20. That the allegations are baseless and false but nonetheless the DCF has to perform their duty once they are made aware of any claims to protect children, despite if they are baseless or not and this Eliot and his wife appreciate and respect and so both cooperated fully with the officers and the DCF.
21. The officers took the Order from this Court to understand the nature of the call and why it was made and then stated that Eliot should not call 911 despite what the Court Order stated

and Eliot stated again that he explained up front that it was not something we needed emergency response to and was a matter that could have been explained by coming to the station.

22. That Eliot fears that this falsified DCF report is further retaliation by those seeking to cause harm to Eliot's family because of the crimes being exposed against them as defined in the Omnibus Motion filed and in my prior pleadings in this Court. Crimes that involve very serious allegations of fraud and more and where several people may go to prison as they are prosecuted by criminal authorities.
23. Eliot and Candice believe their family is being further targeted and increased pressure being put on them the more corruption that is exposed and this retaliation may be for notifying this Court of the problems in Florida courts in the Omnibus Motion and to try and make Eliot appear crazy to this Court or cast the appearance that Eliot and Candice are bad people and parents who are making crazy claims to the Police.
24. The Court will find upon reviewing the claims stated to be in the report that they are false to anyone who knows what is going on with these matters.
25. The more pressure that is building on the parties alleged involved in the crimes the crazier the retaliation appears to be against Eliot and these appear attempts to slander and defame and even frame Eliot and his wife in some sort of retaliation scheme.
26. That the patently false and absurd claims made were that Eliot and Candice were bad parents, that they were substance abusers, that they were not feeding or tending to their children, the children were in danger, Eliot was delusional and thought people were poisoning people and he was telling the children that their grandfather was poisoned and again all of this does not

fit the reality of the situation. Eliot's children may be in danger but it is certainly not by Eliot or his wife.

27. Obviously, when evidence such as pictures of the car bombing, names of Sheriff Investigators involved in investigating several criminal complaints relating to crimes alleged and some already proven, none of the claims made by the nameless caller appeared true. Further, when the authorities saw the children, saw us and saw our home they also did not find what was described by the caller.
28. My wife and children are further traumatized by these recent events and false allegations against us and fear greater retaliations.
29. That with the allegations made by Ted Bernstein and Pam Simon that their father was murdered by poison and with a recent heavy metal poison test coming back with high poison levels above reportable levels, including but not limited to, Arsenic and Cadmium, it is apparent that something bad may have happened in Simon's sudden and unexpected death and this adds another level of concern as stated in Eliot's Omnibus Motion.
30. That there is recent evidence that thefts of personal properties have taken place and further fraud on courts, fraud on beneficiaries and more crimes are taking place currently and as pressure mounts on the parties alleged to have committed the crimes, the retaliation appears heightened.
31. Eliot's wife is in fear and wants to leave state now with the kids and yet we do not have the resources at this time and the kids are in school but as stated in the Omnibus Motion we are in need of federal protection at this time as we fear that the state of Florida people we are accusing are highly positioned in several government agencies.

32. We have estate and trusts hearings tomorrow with Judge Colin and since reporting the misconduct of Judge Colin and David French to this Court we fear that even further retaliations may occur in the courts against our family and their continued efforts to try and gain guardianship and have contempt hearings to further harm us and our children, as described more fully in Omnibus Motion.
33. When the officers were made aware of these facts that the claims made by the caller were not true and did not fit with the fact pattern of what was going and the evidence we showed them, they stated they were done with the 911 incident report and that the DCF investigation needed to be further handled and they needed to see one more of my children and needed to talk to the supervisor regarding what to do in this complex situation.
34. On or about 5pm Leigh Bourgoine from DCF returned to Eliot's home and wanted to see Eliot's oldest son to confirm he was OK. When she arrived Eliot let her into the home to view the home and the living conditions that she requested to do earlier, she stated it was a beautiful home and the environment seemed great, even checking to see if there was food in the refrigerator as she was told the kids were being starved. She interviewed Eliot's son and then left stating she would come back Tuesday to interview Eliot's youngest son and then prepare her report.
35. The whole DCF incident made seems like a smear campaign was instituted by those accused in the Omnibus Motion.
36. That this Court should be aware that Eliot is afraid that Judge Colin may have received news about the Omnibus Motion and may act retaliatory at tomorrow's hearing.



37. That the Court should note that the officers upon leaving the residence returned Your Honor's Order to me that they had taken initially for their report and stated they no longer wanted it.

**WHEREFORE**, Eliot seeks this Court enter an Order Granting the Following Relief:

1. The relief requested in Eliot's Omnibus Motion to protect Eliot, his wife Candice and children from continued and ongoing retaliation from State of Florida Court officers, State of Florida Enforcement officials and others described in the Omnibus Motion filed on May 04, 2015 and currently under advisement with this Court.

Respectfully submitted,

DATED: Tuesday, May 5, 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)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Tuesday, May 5, 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

  
MOTION RE INCIDENT

Monday, May 5, 2015

10 | Page

generated by CM/ECF or in some other authorized manner.



/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
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MOTION RE INCIDENT

Monday, May 5, 2015

11 Page

**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 Wednesday, May 6, 2015:

MINUTE entry before the Honorable John Robert Blakey: Pursuant to LR 7.1, Third Party Defendant Eliot Bernstein's omnibus motion [173] is hereby stricken. Third Party Defendant Bernstein may re-file his motion so long as it is in compliance with LR 7.1 and does not exceed 15 pages double spaced. The Court encourages Third Party Defendant Bernstein to confine his motion to matters over which this Court has jurisdiction including time limits for discovery and summary judgment briefing. Because the omnibus motion [173] has been stricken, Third Party Defendant Bernstein's May 5, 2015 motion [176] is denied as moot. The local rules are available at <http://www.ilnd.uscourts.gov/>. Mailed notice(gel, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If 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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, May 12, 2015:

MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 5/12/2015 and continued to 7/20/2015 at 9:45 AM in Courtroom 1725. Schedule for Plaintiff's motion for summary judgment to stand: Defendant's response is due on or before 6/5/2015; reply, if any, is due on or before 6/26/2015. 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).



*"Surf with Vision"*

**Eliot I. Bernstein**  
**Founder & Inventor**  
**Direct Dial: (561) 245-8588 (o)**  
**(561) 886-7628 (c)**

Thursday, May 14, 2015

The Honorable John Robert Blakey  
United States District Court for the Northern District of Illinois Eastern Division  
Everett McKinley Dirksen  
United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604  
Courtroom 1725 | Chambers 1046  
Telephone Number: (312) 435-6058  
Fax Number: (312) 554-8195

**RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY**

Dear Honorable Judge John Robert Blakey,

I write to acknowledge and express my understanding of my obligations to conform my filings to the formatting rules of the Court and matters within the Court's jurisdiction. I also write in regards to Scheduling issues after our status call this week with your Court indicating Discovery to be closed upon the taking of the Deposition of my brother, Plaintiff, Ted Bernstein.

I will respectfully be seeking leave by way of formal motion to open the Discovery not only for further examination of Ted Bernstein but also to Notice for

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Deposition Judge Martin Colin of the Palm Beach Probate Court who I have just petitioned for Mandatory Disqualification on numerous grounds under the Florida Rules and Code including but not limited to being a necessary fact witness and material witness to actions of fraud upon his Court involving licensed attorneys Tescher and Spallina who have also been part of the litigation before this Court.

I have attached the Disqualification motion herein with respect to Florida Judge Colin for good faith reference and seek leave to move by way of formal motion within this Court's formatting rules to demonstrate the intertwined nature of the actions in this Court with the fraud and actions in Judge Colin's Court.

Please note that the car-bombing of my family mini-van in Boynton Beach, Florida was a very real thing and not a day goes by when I don't wonder what will happen any time my wife, children or I get in to a car. Full pictorial evidence and reports by involved authorities thus far can be found at [www.iviewit.tv](http://www.iviewit.tv) .

This car-bombing was also reported as part of a Petition I filed with the White House to President Obama, the White House Counsel's Office, the US Attorney General, FBI, SEC and other related federal and state agencies and I have attached a link to this Petition which provides a good overview of the "elephant in the room" being the nature of my Technology which is used on the Hubble Space Telescope, for a mass of US Defense applications, across the globe for digital imaging across the internet and more and also outlines how I was directed by Harry I. Moatz of the Office of Enrollment and

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RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Discipline of the USPTO to file a Petition claiming fraud upon the United States as well as myself and shareholders involving the Technology, which led to suspensions of the Intellectual Properties. The Technology was validated, used, tested and approved by leading engineers and computer experts on property owned by Lockheed Martin in Orlando, Florida at Real3d, Inc. which was at that time a consortium owned by the Intel Corporation, Lockheed Martin and Silicon Graphics and the technologies were valued in the hundreds of billions of dollars over the life of the IP claimed as the "holy grail" of the internet by these leading engineers. See,

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20l.pdf> .

Also please note that not only is the car-bombing a very real event that occurred in my life during this ongoing Technology fraud and theft, but as noted in the White House Petition and elsewhere even a Federal Agent such as FBI Special Agent Luchessi of the Palm Beach Office of the FBI has "gone missing" according to West Palm Beach Florida FBI Office (leading to my being directed to former Inspector General Glenn Fine of the Department of Justice for resolution, which still has not occurred) while investigating the Iviewit matters leaving myself in a position of not being able to trust even federal officers and agents and thus I typically err on the side of documenting all

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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important information in all known places and federal state and international offices. Now as you may be aware from my prior filings, there are new frauds and criminal acts by same, similar, and/or related actors with reports that my father may have been murdered.

Since the time of the February 2009 White House Petition filing when I was personally on the phone line confirming the fax number and receipt for the White House and White House Counsel's office, not a single US Secret Service Officer, Capitol Police, US Marshall or other federal agent has shown up to say I filed a frivolous and harassing Petition to the President or to challenge the veracity of my statements in the Petition. Again, I respectfully remind the Court that I was directed by a Federal official, Harry I. Moatz, Director of the Office of Enrollment and Discipline, to file a petition for suspension claiming Fraud Upon the United States by Patent Bar Attorneys and others

Judge St. Eve had already granted me Leave to Amend my Complaint and the motion to take Florida Judge Colin's Deposition in this Court will demonstrate the relevance to these proceedings and action by the intertwined orchestration of fraud cover up by Judge Colin in his Court also involving Ted Bernstein who is a party in this action and attorney Spallina and others common in both cases also exposing the depth and breadth of the powerful financial interests at play. See the 2009 SEC Petition for general background,

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**Iviewit Holdings, Inc./Iviewit Technologies, Inc.**  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245-8588 (c) / (561) 886.7628 (c) / (561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) - [www.iviewit.tv](http://www.iviewit.tv)



Hon. John Robert Blakey

Page 5 of 6

US District Court for the Northern District of Illinois Eastern Division

Thursday, May 14, 2015

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

Respectfully Yours,

Eliot I. Bernstein  
Founder & Inventor

- Iviewit Holdings, Inc. – DL
- Iviewit Holdings, Inc. – DL
- Iviewit Holdings, Inc. – FL
- Iviewit Technologies, Inc. – DL
- Uview.com, Inc. – DL
- Iviewit.com, Inc. – FL
- Iviewit.com, Inc. – DL
- I.C., Inc. – FL
- Iviewit.com LLC – DL
- Iviewit LLC – DL
- Iviewit Corporation – FL
- Iviewit, Inc. – FL
- Iviewit, Inc. – DL
- Iviewit Corporation

cc/ec:

Enclosure(s)/Attachment(s)/URL's

**All Uniform Resource Locators ( URL's ) and the contents of those URL's are incorporated in entirety by reference herein and therefore must be included in your hard copy file WITH ALL EXHIBITS, as part of this correspondence and as further evidentiary material to be Investigated. Due**

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**Iviewit Holdings, Inc./Iviewit Technologies, Inc.**  
 2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
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RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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to allegations alleged by New York State Supreme Court Whistleblower Christine C. Anderson and similar claims in the Iviewit RICO & ANTITRUST Lawsuit regarding Document Destruction and Tampering with Official Complaints and Records, PRINT all referenced URL's and their corresponding exhibits and attach them to your hard copy file, as this is now necessary to ensure fair and impartial review.

In order to confirm that **NO DOCUMENT DESTRUCTION OR ALTERCATIONS** have occurred, once complete forward a copy of this correspondence with all exhibits and materials included to, Eliot I. Bernstein at the address listed herein. This will insure that all parties are reviewing the same documentation and no additional illegal activity is taking place. If you, for any reason, are incapable of providing this confirmation copy, please put your reasons for failure to comply in writing and send that to Eliot I. Bernstein at the address listed herein. Note, that this is a request only for a copy of this Correspondence and the referenced materials and NOT a request for any Case Investigation information, which may be protected by law.

cmb/eib

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE #  
502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN**

COMES NOW Eliot Bernstein (“Petitioner”) and files under information and belief this Verified  
Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, pursuant to Fla R.  
Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit  
judges in all matters in all divisions of court.**

1. Judge Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.

Motion for Disqualification Judge Colin

1 Page

Thursday, May 14, 2015

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Colin provided by rules, statute and by the Code of Judicial Conduct.

a. Judge Colin has violated the following Judicial Canons, including but not limited to,

- i. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary
- ii. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities
- iii. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

**B. Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

**D. Disciplinary Responsibilities.**

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

**E. Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

**F. Remittal of Disqualification.**

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

- b. Judge Colin has violated Statutes related to, including but not limited to,
- i. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and more.
  - ii. Fraud in the Court
  - iii. Fraud by the Court
  - iv. Obstruction of Justice through Denial of Due Process

Motion for Disqualification Judge Colin

31 Page  
Thursday, May 14, 2015

v. Aiding and Abetting and more.

c. Judge Colin has violated Probate Statutes and Rules

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

3. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the movant**  
**relies as the grounds for disqualification.**

4. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or by a**  
**separate affidavit.**

5. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to disqualify**  
**filed under this rule in the case and the dates of the orders granting**  
**those motions.**

6. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that the**  
**motion and the client's statements are made in good faith. In addition**  
**to filing with the clerk, the movant shall immediately serve a copy of**  
**the motion on the subject judge as set forth in Florida Rule of Florida**  
**Rule of Civil Procedure 1.080.**

7. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Colin under Rule 1.080.

Motion for Disqualification Judge Colin

4 Page  
Thursday, May 14, 2015

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

8. That Petitioner asserts that he will not and has not received a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d), and shall be mandatory disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

9. Judge Colin had reasons to voluntarily disqualify himself from these proceedings prior to and regardless of this Motion to Disqualify him by Petitioner and has failed to do so prompting Pro Se Petitioner to file this disqualification on multiple grounds.

10. Judge Colin's Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk's Office of a Memorandum<sup>1</sup> allegedly made by

<sup>1</sup> November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

Motion for Disqualification Judge Colin

5 | Page  
Thursday, May 14, 2015

Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.

11. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court's own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that "Receipts for assets from all of the specific beneficiaries were not notarized." It is important to note that Attorney Spallina is fully aware at this time that his client Simon Bernstein the Personal Representative has passed away on September 13, 2012 and yet he continues to file with the Court documents on his deceased clients behalf to close the Estate months after his passing and presumably without notifying the Court.
12. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin's Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley's deceased at the time husband, Simon Bernstein<sup>2</sup>, and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin's Court had already received for filing:
  - a. A Petition for Discharge (Full Waiver)<sup>3</sup> (also needing notarization but not notarized) to close Shirley's Estate allegedly dated April 9th, 2012 and allegedly signed by Simon

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<sup>2</sup> Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

<sup>3</sup> Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL



Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed and Docketed with the Court until Oct. 24, 2012 with Judge Colin's Court and time-stamped by the Clerk's Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley's Estate a month *after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin's Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;*

- b. A Tax Statement<sup>4</sup> allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin's Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin's Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and
- c. A Probate Checklist<sup>5</sup> dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

<sup>4</sup> Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

<sup>5</sup> Probate Checklist

Motion for Disqualification Judge Colin

7 | Page  
Thursday, May 14, 2015

Representative/Executor of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin's Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz dated Nov. 5, 2012.

13. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.
14. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin's Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley's Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court's own Docket.
15. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Florida Rules and Statutes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge's impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

Motion for Disqualification Judge Colin

8 | Page  
Thursday, May 14, 2015

16. Now, back to the Ex Parte nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin's Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.
17. A careful review of the Nov. 5, 2012 Ex Parte Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk's for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.
18. Judge Colin's impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an Ex Parte Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.
19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand

Motion for Disqualification Judge Colin

Page  
Thursday, May 14, 2015

in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who "received" the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

Motion for Disqualification Judge Colin

10 | Page

Thursday, May 14, 2015

20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.
21. Judge Colin should have disqualified then and must be disqualified now.
22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013<sup>6</sup> Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.
23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim

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<sup>6</sup> Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

Motion for Disqualification Judge Colin

11 / Page

Thursday, May 14, 2015

that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently ( and competently ) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"<sup>7</sup> this Court and Attorney Spallina are both put on Notice by Petitioner's motion of :

- a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);

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<sup>7</sup> May 06, 2013 Petition @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

Motion for Disqualification Judge Colin

Page  
Thursday, May 14, 2015

- b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section “X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE” and “XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE”)
- c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley’s Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section “VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE”);
- d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner’s Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder<sup>8</sup> (Pages 85-86 Section “XVII. ALLEGED MURDER OF SIMON BERNSTEIN”);

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<sup>8</sup>Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

Motion for Disqualification Judge Colin

13 |

Thursday, May 14, 2015

- e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");
- f. That the Court and Spallina are notified of the "Elephant in the Room" relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see [www.iviewit.tv](http://www.iviewit.tv) for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.");
- g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");
- h. That other assets were remaining that should have been been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over \$3 million.

A handwritten signature in blue ink is written over a blue circular stamp. The signature appears to be 'C. Spallina'. The stamp is partially obscured by the signature.



25. Simply reviewing the September 13, 2013 Hearing Transcript<sup>9</sup> of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

- a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
- b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
- c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
- d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
- e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;

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<sup>9</sup> September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

Motion for Disqualification Judge Colin

15 / Page

Thursday, May 14, 2015



- f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
- g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
- h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;
- i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing<sup>10</sup>;
- j. knows of the "elephant in the room"<sup>11</sup> being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and
- k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his

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<sup>10</sup> May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

<sup>11</sup> May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

Court lawn<sup>12</sup>, instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such a way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.
27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposor of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.
28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as

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<sup>12</sup> September 13, 2013 Hearing Page 11

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENT S.pdf>

Motion for Disqualification Judge Colin

17 Page

Thursday, May 14, 2015

requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over \$3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.
30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be

Motion for Disqualification Judge Colin

18 | Page

Thursday, May 14, 2015

squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.
32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013<sup>13</sup> when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a \$25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for

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<sup>13</sup> October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

Motion for Disqualification Judge Colin

19

Thursday, May 14, 2015

Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

Motion for Disqualification Judge Colin

26 Page

Thursday, May 14, 2015

35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.
36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate

crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.
38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over \$1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for

Motion for Disqualification Judge Colin

22 |

Thursday, May 14, 2015



itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt<sup>14</sup>.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.
40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.
41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.
42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

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<sup>14</sup> Brand Pratt Letter and Conflict of Interest Disclosure Form

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

Motion for Disqualification Judge Colin

23 Page

Thursday, May 14, 2015

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged “buyer” occurred during the Hearing on the sale of the St. Andrew’s Home and knows Florida law requires no undue influence or pressure must be exerted on buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.
44. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.
45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/tp/pdf/FLrpg.pdf>.
46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a

hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at \$1,100,000.00 as the property was listed for \$3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.
48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.
49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." *Flagship Bank of Orlando v. Bryan*, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. *BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.* 482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.
50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then

Motion for Disqualification Judge Colin

25 | Page

Thursday, May 14, 2015

refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, <http://mrachek-law.com/ourteam/alan-b-rose/>.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.
52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal  
14 because, frankly, we were concerned it would be  
15 public and that would defeat their chance of  
16 selling it.  
17 THE COURT: I'm not -- look, nothing is easy  
18 here. It's not going to get easier until we can  
19 get hearings where I can start to knock off some  
20 of the issues, which is what I have been saying  
21 now like a broken record.  
22 At some point, either Eliot is going to be  
23 sustained on his positions or he's going to be  
24 overruled, but one way or the other, we can put  
25 some of this stuff to rest. The problem is we're  
I doing all of this business with some of the metes [matters?]

2 of the case still up in the air where I haven't  
3 been able to adjudicate; the claims that Ted  
4 should be removed; the claims that there's  
5 wrongdoing beyond Spallina and Tescher, the trust  
6 is not valid. I mean, give me a chance to rule on  
7 that, because once I rule on that, then the matter  
8 is over with on those and you'll know one way or  
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust<sup>15</sup> by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct<sup>16</sup>, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a

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<sup>15</sup> O'Connell Affirmative Defense, Ted is not a valid Trustee

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

<sup>16</sup> Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

Motion for Disqualification Judge Colin

27 Page  
Thursday, May 14, 2015

Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings<sup>17</sup>, has ignored all of these facts and held hearing, after hearing, after hearing and has:

- a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
- b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
- c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
- d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
- e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,
- f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity.
- g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,

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<sup>17</sup> Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

Motion for Disqualification Judge Colin

28 Page

Thursday, May 14, 2015

- h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
- k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
- l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

Motion for Disqualification Judge Colin

29 | Page

Thursday, May 14, 2015

m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,

n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Canons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court.

Motion for Disqualification Judge Colin

30 Page

Thursday, May 14, 2015



It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.
59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.
60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.
61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case. Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's cases. When Petitioner cited the rule calling for separate hearings by each

Motion for Disqualification Judge Colin

31 | Page

Thursday, May 14, 2015

Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.
63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.
64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.
65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15<sup>th</sup> Judicial, The Florida Bar and many Judges of the Supreme Court of

Florida and Petitioner fears this also creates prejudice and bias against Petitioner with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,  
OFFICE OF THE STATE COURTS  
ADMINISTRATOR, FLORIDA,

HON. JORGE LABARGA in his official and individual capacities,  
[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]

**THE FLORIDA BAR**

JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,  
KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,  
LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,  
ERIC TURNER, ESQ. in his official and individual capacities,  
KENNETH MARVIN, ESQ. in his official and individual capacities,  
JOY A. BARTMON, ESQ. in her official and individual capacities,  
JERALD BEER, ESQ. in his official and individual capacities,  
BROAD & CASSEL, and, all of its Partuers, Associates and Of Counsel, in their professional and individual capacities.  
JAMES J. WHEELER, ESQ. in his professional and individual capacities,

**FLORIDA SUPREME COURT,**

Hon. Charles T. Wells, in his official and individual capacities,  
Hon. Harry Lee Anstead, in his official and individual capacities,  
Hon. R. Fred Lewis, in his official and individual capacities,  
Hon. Peggy A. Quince, in his official and individual capacities,  
Hon. Kenneth B. Bell, in his official and individual capacities,  
THOMAS HALL, ESQ. in his official and individual capacities,  
DEBORAH YARBOROUGH in her official and individual capacities,

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION - FLORIDA,

CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,  
CHIEF ANDREW SCOTT in his official and individual capacities,

CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

Motion for Disqualification Judge Colin

33 | Page

Thursday, May 14, 2015

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]<sup>18</sup>

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor<sup>19</sup>, Chief Judge Jorge Labarga, who is a central figure in Petitioner's ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.

68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.

69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida<sup>20</sup>. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free

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<sup>18</sup> Full List of Iviewit RICO Defendants @

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

<sup>19</sup> Colin statement regarding Labarga as his mentor

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

<sup>20</sup> Omnibus Motion Federal Court

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

Motion for Disqualification Judge Colin

34 | Page  
Thursday, May 14, 2015

of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.
71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.
72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.
73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

**Rule 2.330 (d) Grounds.**

**(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that**

Motion for Disqualification Judge Colin

35 | Page

Thursday, May 14, 2015

**said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.**

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.
75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.
76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and**

Motion for Disqualification Judge Colin

36 Page

Thursday, May 14, 2015

**promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

77. This Motion is being made within 10 days from Petitioner's receipt of a "FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY" signed May 06, 2015. Where this Order, as with all Orders issued after Judge Colin's Mandatory Disqualification was failed, is an illegally obtained Order and therefore legally void, other grounds for this Order mandating disqualification have also been described herein.
78. This Motion for Disqualification is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

79. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law and whereby whether legally sufficient or not 2.330 allows Colin to disqualify on his own.

Motion for Disqualification Judge Colin

37 Page

Thursday, May 14, 2015

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

80. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

81. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court<sup>21</sup>. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:

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<sup>21</sup> May 14, 2015 Letter to Judge Blakey

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

38 Page  
Thursday, May 14, 2015



- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD  
Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

82. Petitioner states that Judge Colin should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

83. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive Probate rulings thus far that have interfered intentionally with their and Petitioner's expectancies that this Disqualification be made instantly as it is legally sufficient and MANDATED. Delays could cause further harm of Petitioner's minor children and Petitioner which would result in

Motion for Disqualification Judge Colin

39

Thursday, May 14, 2015

additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.

84. That PRIOR to any other actions by Judge Colin, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits; etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

85. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law.

Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts

Motion for Disqualification Judge Colin

40 | Page

Thursday, May 14, 2015

alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 14<sup>th</sup> day of May, 2015

Respectfully Submitted,

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)

**CERTIFICATE OF SERVICE**

Pctitioner docs hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 14th day of May, 2015.

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)

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification. California DL #C6956008

NOTARY PUBLIC

Print name of Notary:

Sarah Barnett



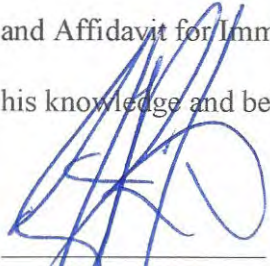
My commission expires:

07/05/2016

Motion for Disqualification Judge Colin

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief



Eliot Ivan Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

May 14<sup>th</sup>, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification California DL #C6A56008

Notary Public Sarah Barnett  
Print name: Sarah Barnett

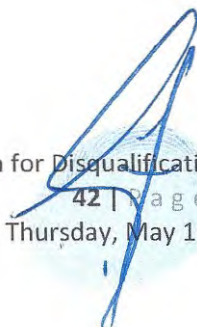
Stamp

My commission expires: 07/05/2016



Motion for Disqualification Judge Colin

42 | Page  
Thursday, May 14, 2015



**EXHIBIT 1 - URL EXHIBITS FULLY INCORPORATED BY REFERENCE HEREIN IN THE  
MOTION**

**1. November 05, 2012 Memorandum**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

**2. Simon Bernstein un-notarized Waiver @ URL**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

**3. Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

**4. Affidavit of No Florida Estate Tax Due @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

**5. Probate Checklist**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

**6. Order of Discharge**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

**7. May 06, 2013 Petition @ URL**

Motion for Disqualification Judge Colin

43 | Page

Thursday, May 14, 2015

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

**8. Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

**9. September 13, 2013 Hearing Judge Colin**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

**10. May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"**

**11. May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82**

**12. September 13, 2013 Hearing Page 11**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>

**13. October 28, 2013 Evidentiary Hearing**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

**14. Brand Pratt Letter and Conflict of Interest Disclosure Form**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

**15. O'Connell Affirmative Defense, Ted is not a valid Trustee**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

Motion for Disqualification Judge Colin

44 | Page

Thursday, May 14, 2015

**16. Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

**17. Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

**18. Full List of Iviewit RICO Defendants @**

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

**19. Colin statement regarding Labarga as his mentor**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

**20. Omnibus Motion Federal Court**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

**21. May 14, 2015 Letter to Judge Blakey**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

45 Page

Thursday, May 14, 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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

**Motion for Interim Distributions...**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

Motion for Interim Distributions of Interpled Funds

Monday, May 18, 2015

1 | Page



Third-Party Defendants. / )  
 )  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
 )  
Intervenor. )

**MOTION FOR INTERIM DISTRIBUTIONS OF INTERPLED FUNDS**

Now Comes Movant, Eliot I. Bernstein ("Eliot"), Third-party Defendant, Cross-Plaintiff, individually and on behalf of his minor children Joshua, Jacob and Danny Bernstein, pursuant to the Federal Rules of Civil Procedure 67, 28 USC 2041 and 2042, Local Rule 5.3 and – or Federal Rule of Civil Procedure 64 and upon the broad equitable powers of this Court, who now moves this Court for an Order granting the withdrawal of monies deposited into this Court and payment of said monies to Eliot I. Bernstein and/or on behalf of said minor children forthwith during the pendency of this litigation in the amount of \$200,000.00 ( two-hundred thousand and 00 cents ) and another \$50,000.00 (fifty thousand and 00 cents) for legal counsel and for such other and further relief as may be just and proper.

1. Upon information and belief derived from the litigation papers of this action and upon the proceedings heretofore had herein, this Court has had deposited into the Court approximately \$1.7 Million dollars as insurance proceeds deposited by inter-pleader by Jackson National Life Insurance Company.
2. Plaintiff Ted Bernstein and related parties have moved for Summary Judgement and asserted various claims and arguments as to how said funds should be distributed amongst beneficiaries in this and asserted other arguments and pleadings regarding the source and

nature of said funds and various Trusts involving our deceased Father Simon Bernstein who survived our deceased mother Shirley Bernstein.

3. One of the dividing and central issues in this litigation is whether such funds should be distributed by the Plaintiffs' theories under unknown and undetermined Trusts or instead by the Estate of Simon Bernstein through the Florida probate courts, where the Wills and Trusts are also disputed and beneficiaries and trustees remains unknown.
4. Under another theory the Primary Beneficiary LaSalle National Trust, NA or its successor would receive the funds and pay them out according to the terms of the trust they are trustees of and again Eliot and his children are alleged to be beneficiaries under any such trust.
5. Under one assertion, the Plaintiff's position, Eliot would take 1/5 of the funds as 1 of 5 surviving children in addition to Ted Bernstein, Lisa Bernstein-Friedstein, Pam Bernstein-Simon and Jill Bernstein-Iantoni.
6. Under another assertion, the Estate assertion, it would just be Eliot as 1 of 3 Beneficiaries with Jill Bernstein-Iantoni and Lisa Bernstein-Iantoni and where Ted Bernstein and Pam Bernstein-Simon are not entitled to any of the funds as they were disinherited and considered predeceased in both the Estates and Trusts of Simon and Shirley Bernstein.
7. Yet under the theory that the funds go to the surviving grandchildren, where Eliot's three minor children are 3 of the 10 surviving grandchildren.
8. Under a final theory, a trust created in the year 2000 by Proskauer Rose, LLP submitted to this Court by the Estate and Eliot, which directly names the insurance policy that is the subject of this lawsuit as part of the trust would have the benefits paid to 4 of 5 of the children, with Pam Bernstein-Simon disinherited.

9. Thus, regardless of the theory and claim asserted by Plaintiffs, the Estate or Eliot, either Eliot or his minor children are Beneficiaries entitled to distribution of the funds.
10. According to the current amount deposited into the Court estimated at \$1.7 million approximately,
  - a. if the Plaintiffs prevail Eliot receives = \$340,000.00
  - b. if the Estate prevails the monies would be distributed
    - i. if Eliot, Jill and Lisa beneficiaries = \$566,666
    - ii. If ten grandchildren beneficiaries, Eliot has 3 of 10 = \$510,000.00
    - iii. If LaSalle is the primary beneficiary Eliot is assumed to receive at least the amounts above and perhaps more if the trust LaSalle is Trustee over has other assets within it.
    - iv. If the 2000 Proskauer Irrevocable Insurance Trust is determined to be the beneficiary then Eliot would receive an amount = \$425,000.00
11. Thus, again regardless of what theory of distribution is used, an award of \$200,000.00 at this time leaves adequate security with the Court and it is prayed for an immediate interim award and distribution under the direction of this Court.
12. The District Courts have broad equitable powers to make such interim awards and fashion relief and similar interim awards are made in arbitration cases and case where Receivers have been appointed.
13. According to Wikipedia, "The term **interim order** refers to an order issued by a court during the pendency of the litigation. It is generally issued by the Court to ensure Status quo. The rationale for such orders to be issued by the Courts is best explained by the Latin legal maxim "*Actus curiae neminem gravabit*" which, translated to (English,) stands for "*an act of*

*the court shall prejudice no one*". Therefore, to ensure that none of the interests of the parties to the litigation are harmed, the court may issue an interim order.

14. Interim orders issued by the court may be of various kinds. The nature of the order essentially depends on the direction issued by the Court." See, [http://en.wikipedia.org/wiki/Interim\\_order](http://en.wikipedia.org/wiki/Interim_order)
15. Federal Rule 64 has a catchall provision at the end that says "other corresponding or equivalent remedies" as part of the types of provisional remedies allowed which already included attachment. See, [www.law.cornell.edu/rules/frcp/rule\\_64](http://www.law.cornell.edu/rules/frcp/rule_64).
16. In this case, Eliot, his wife Candice and their minor children have faced serious and substantial delays in receiving their inheritances and trust and insurance benefits caused by a pattern and practice of Fraudulent Activities, including but not limited to,
- a. Fraudulent Dispositive Documents Posited with Court by Fiduciaries and Counsel with multiple layers of conflicts of interest;
  - b. Forged Dispositive Documents Posited with Court by Fiduciaries and Counsel again with multiple layers of conflict of interest; Fraud on Court, Fraud in Court and Fraud by Court in resolving initial Frauds and intentionally using court to further delay inheritances through further fraud as seen in the Florida Probate Courts where nearly 2.5 years has gone by and the Probate Court has yet to hold a hearing on the authenticity and construction of any of the Trust and Will documents despite knowing of the fraudulent activity in and upon the probate court;
  - c. and where the attorneys Spallina and Tescher also acting in this action had withheld production of any single document of the Trust or Estate for nearly 2 years after Shirley Bernstein's death while simultaneously having forged and crafted fraudulent

documents and tendered them to the Florida probate court and to beneficiaries as part of a fraud of a larger fraud to seize Dominion and Control of the Estates and Trusts, while making improper distributions and transfers of assets, properties and more. There are ongoing investigations into stolen assets, including but not limited to, Jewelry, Furniture, Art, Trusts, IRA's, Insurance, Investment Accounts and other Personal Properties;

17. That Eliot and his children have received ZERO distributions due to these frauds for now over two and one half years.
18. Eliot and his minor children are dependent on the inheritances set aside for them by both Simon and Shirley Bernstein due to involvement in a RICO regarding stolen intellectual properties that led to a bomb in the car of Eliot's family and other problems caused by Eliot's whistleblowing involving court officials and others. These events have made it impossible for Eliot and Candice to gain proper employment (as not many people want to hire persons who have bombs put in their car and are involved in RICO actions against major US Government officials), but moreover Eliot's parents understood this and Simon and Shirley by agreements set up several trusts for Eliot and his children and formed a LLC company owned by Eliot's children to take care of all needs of Eliot and his children while they were living, for many years prior to their deaths, with an agreement signed for 10k per month tax free income flowing into the trusts and company for household and all living expenses, and school payments were covered separately for the children, the agreed funds and school payments were to continue after their deaths through their inheritances for many years into the future.

19. In fact, Simon and Shirley had hired an Employee, Rachel Walker to primarily deal with taking care of all the needs of Eliot and his family due to the serious circumstances Eliot faces in his involvement with his RICO and criminal complaints filed and ongoing into the thefts of he and his father's Intellectual Properties that have been estimated by leading engineers to be worth billions upon billions and more.
20. Instead, through further fraud by Plaintiff Ted, his former Counsel and other related parties including but not limited to Oppenheimer Trust Company of New Jersey, bills of Simon were shifted to Eliot's children's trusts for college and these trusts were bled dry with promise from the former removed fiduciaries to return those monies to the trust but who after knowing they were under investigation refused to then return the funds to further harm and extort Eliot.
21. The prior fiduciaries and Ted's counsel, Tescher and Spallina now have admitted to fraudulently altering documents to Palm Beach County Sheriff investigators and whose law firm was found to have posited with the probate court fraudulently notarized and forged documents (leading to arrest of their Legal Secretary and Notary Public) and who closed the Estate of Shirley (now reopened due to the frauds) with a deceased Personal Representative/Executor as part of a scheme to alter beneficiaries for their client and business associate Ted and seize Dominion and Control of the Estates and Trusts of Simon and Shirley.
22. These crimes are alleged to have been in order to commit a variety of alleged other crimes to steal and hide estate assets and which are currently under ongoing investigations. Once their crimes were discovered the monies promised to be returned by the former fiduciaries of the

Estate of Simon to the children's trusts were never returned and no distributions were made to Eliot and his children, again causing catastrophic harms to Eliot and his children.

23. The Disposition of assets to Eliot and his children has never happened as the fiduciaries in efforts to shut Eliot down prior to his being able to expose their crimes have gone to further criminal acts to block his inheritances and were finally forced to be removed after being caught and admitting to very serious felony crimes and now remain under investigation.
24. Now it has also further been discovered that there are alleged missing other **trusts** for the children and Eliot at JP Morgan, missing assets from the Estates and Trusts of both Simon and Shirley, no accountings were filed timely in any of the estates and trusts per Florida probate rules and statutes, that there are Illegal trustees and Executors who have acted and are acting illegally on fraudulent dispositive documents who have seized Dominion and Control of the all the assets and properties and where all of this is being allowed by Judge Martin Colin in the Florida probate court who continues to allow the fraud to continue.
25. Judge Colin has failed to take any judicial actions to correct the fraud on his court and in fact continues to move forward illegally allowing dispositions with beneficiaries still unknown due to the frauds, trust validity hearings still unheard, trust construction hearings still not heard and multiple hearings to remove Ted as a fraudulent trustee precluded from being Trustee by the very terms of the trusts that he claims to operate under prohibiting him from being a fiduciary being unresolved and where Judge Colin has been repeatedly requested to disqualify himself (see attached Exhibit 1) as a material and fact witness to the events of his court and due to his possible participation in the original and subsequent crimes that transpired in his court.

26. Judge Colin's refusal to disqualify appears to be an attempt to cover up the crimes that are taking place in his court and to protect his court appointed officers and fiduciaries who have committed these unbelievable crimes and enable further crimes to be committed against Eliot and his family for their efforts at exposing and prosecuting the appointments he made of fiduciaries and attorneys at law in these matters.
27. Eliot's minor children have been thrown out of school on the second school day of school this year and forced into a new school over a month after it had begun, the homeowners insurance has lapsed, the mortgage to one Walter Sahn was not paid, utilities were intentionally and with scienter turned off by those controlling payments for the school and utilities as Trustees of the Trusts (Oppenheimer Trust Company of New Jersey) and Managers of the company Bernstein Family Realty LLC (Oppenheimer Trust Company of New Jersey) owned by Eliot's children's Trusts.
28. The minor children were thrown out of school even after a court ordered payment to cover the past due amounts and full school year when the Plaintiff, Theodore Stuart Bernstein, failed to comply with the Order.
29. The Court should note that the Oppenheimer trust funds were originally held in accounts by the Stanford Trust Company, which was operated by the infamous second largest Ponzi con, Sir Allen Stanford and where then transferred with the agents who solicited the accounts at Stanford to Oppenheimer when they transferred jobs after the government seized Stanford's holdings.
30. The oldest son of Eliot's cannot now go to college as past due amounts to his prior school due which were also court ordered to be paid were not and therefore there are no transcripts

Motion for Interim Distributions of Interpled Funds  
Moncay, May 18, 2015



- to apply with and no monies in the school trust funds set aside for his college, as the monies misused were never replenished.
31. Eliot asserts and believes the insurance proceeds interpled to this Court may be higher than what was paid due to possible riders and options in the policy (where the policy remains missing and not produced to this Court by an party in their production), possible insurance riders on Shirley and other assets that may be in the trust that LaSalle National Trust, NA maintains.
32. Eliot asserts and believes the VEBA trust that LaSalle National Trust, NA is Trustee for may have had other assets in it that were to be paid on death or that Simon Bernstein Trust, NA, which the insurance carrier claims is the true contingent beneficiary, which may have other assets being hidden within that trust too. No contact appears to have been made by the insurance carrier or other parties to get all records and information from LaSalle National Trust, NA the primary beneficiary according to insurance company parole evidence submitted in their production.
33. While LaSalle may be the rightful beneficiary in this action, even if so, any such funds would ultimately be distributed and designated for either Eliot and his minor children as beneficiaries making this award of interim payment distribution proper now, as Eliot and his children appear to be beneficiaries under all beneficiary scenarios.
34. Granting of such interim award is proper as not only is ultimate judgment as beneficiaries certain it also goes to begin to level the playing field to challenge the wrongful conduct at play, no of which Eliot and his children were a part of other than as victim. Clearly it was the intent of both Simon and Shirley Bernstein to protect while living and after their deaths Eliot and his family who are under very unique circumstances to say the least, as all Estate and

Trust plans include Eliot and his family and special provisions were made just for them above and beyond any other beneficiaries.

35. The Court could also consider an additional \$50,000.00 separately to be paid out for an attorney's fund should proper non-conflicted counsel be available.
36. It is asserted requested and stipulated that any such interim payment is made with no admission or waiver that said amount of total insurance paid to the court is proper and with no release of liabilities against the Plaintiffs and parties cross-complained herein.

Wherefore, it is respectfully prayed for an immediate Order granting immediate payment of \$200,000.00 to Eliot and his family and \$50,000.00 for legal counsel out of funds deposited into the Court upon these terms and upon such other terms as in this Court's guidance deems just and proper.

Respectfully submitted,

DATED: Monday, May 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  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Monday, May 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

Motion for Interim Distributions of Interpled Funds  
Monday, May 18, 2015

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.

  
/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St  
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Motion for Interim Distributions of Interpled Funds

Monday, May 18, 2015

12 Page

EXHIBIT 1 – PETITION TO DISQUALIFY JUDGE MARTIN COLIN

Motion for Interim Distributions of Interpled Funds  
Monday, May 18, 2015

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN**

COMES NOW Eliot Bernstein (“Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

- 1. Judge Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.

Motion for Disqualification Judge Colin

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Colin provided by rules, statute and by the Code of Judicial Conduct.

a. Judge Colin has violated the following Judicial Canons, including but not limited to,

- i. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary
- ii. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities
- iii. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

**B. Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

**D. Disciplinary Responsibilities.**

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

**E. Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

**F. Remittal of Disqualification.**

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

- b. Judge Colin has violated Statutes related to, including but not limited to,
- i. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and more.
  - ii. Fraud in the Court
  - iii. Fraud by the Court
  - iv. Obstruction of Justice through Denial of Due Process

Motion for Disqualification Judge Colin

31 Page  
Thursday, May 14, 2015

v. Aiding and Abetting and more.

c. Judge Colin has violated Probate Statutes and Rules

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

3. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the movant**  
**relies as the grounds for disqualification.**

4. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or by a**  
**separate affidavit.**

5. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to disqualify**  
**filed under this rule in the case and the dates of the orders granting**  
**those motions.**

6. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that the**  
**motion and the client's statements are made in good faith. In addition**  
**to filing with the clerk, the movant shall immediately serve a copy of**  
**the motion on the subject judge as set forth in Florida Rule of Florida**  
**Rule of Civil Procedure 1.080.**

7. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Colin under Rule 1.080.

Motion for Disqualification Judge Colin

4 Page  
Thursday, May 14, 2015



**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

8. That Petitioner asserts that he will not and has not received a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d), and shall be mandatory disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

9. Judge Colin had reasons to voluntarily disqualify himself from these proceedings prior to and regardless of this Motion to Disqualify him by Petitioner and has failed to do so prompting Pro Se Petitioner to file this disqualification on multiple grounds.

10. Judge Colin's Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk's Office of a Memorandum<sup>1</sup> allegedly made by

<sup>1</sup> November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

Motion for Disqualification Judge Colin

5 | Page  
Thursday, May 14, 2015

Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.

11. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court's own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that "Receipts for assets from all of the specific beneficiaries were not notarized." It is important to note that Attorney Spallina is fully aware at this time that his client Simon Bernstein the Personal Representative has passed away on September 13, 2012 and yet he continues to file with the Court documents on his deceased clients behalf to close the Estate months after his passing and presumably without notifying the Court.
12. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin's Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley's deceased at the time husband, Simon Bernstein<sup>2</sup>, and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin's Court had already received for filing:
  - a. A Petition for Discharge (Full Waiver)<sup>3</sup> (also needing notarization but not notarized) to close Shirley's Estate allegedly dated April 9th, 2012 and allegedly signed by Simon

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<sup>2</sup> Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

<sup>3</sup> Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

Motion for Disqualification Judge Colin

6 | Page

Thursday, May 14, 2015



Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed and Docketed with the Court until Oct. 24, 2012 with Judge Colin's Court and time-stamped by the Clerk's Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley's Estate a month *after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin's Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;*

- b. A Tax Statement<sup>4</sup> allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin's Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin's Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and
- c. A Probate Checklist<sup>5</sup> dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%2012%20COMMENTS.pdf>

<sup>4</sup> Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

<sup>5</sup> Probate Checklist

Motion for Disqualification Judge Colin

7 | Page

Thursday, May 14, 2015

Representative/Executor of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin's Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz dated Nov. 5, 2012.

13. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.
14. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin's Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley's Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court's own Docket.
15. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Florida Rules and Statutes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge's impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

Motion for Disqualification Judge Colin

8 | Page  
Thursday, May 14, 2015

16. Now, back to the Ex Parte nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin's Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.
17. A careful review of the Nov. 5, 2012 Ex Parte Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk's for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.
18. Judge Colin's impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an Ex Parte Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.
19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand

Motion for Disqualification Judge Colin

Page  
Thursday, May 14, 2015

in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who "received" the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

Motion for Disqualification Judge Colin

10 | Page

Thursday, May 14, 2015

20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.
21. Judge Colin should have disqualified then and must be disqualified now.
22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013<sup>6</sup> Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.
23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim

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<sup>6</sup> Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

Motion for Disqualification Judge Colin

11 / Page

Thursday, May 14, 2015

that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently ( and competently ) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"<sup>7</sup> this Court and Attorney Spallina are both put on Notice by Petitioner's motion of :

- a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);

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<sup>7</sup> May 06, 2013 Petition @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

Motion for Disqualification Judge Colin

Page  
Thursday, May 14, 2015



- b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section “X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE” and “XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE”)
- c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley’s Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section “VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE”);
- d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner’s Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder<sup>8</sup> (Pages 85-86 Section “XVII. ALLEGED MURDER OF SIMON BERNSTEIN”);

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<sup>8</sup>Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

Motion for Disqualification Judge Colin

13 |

Thursday, May 14, 2015

- e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");
- f. That the Court and Spallina are notified of the "Elephant in the Room" relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see [www.iviewit.tv](http://www.iviewit.tv) for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.");
- g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");
- h. That other assets were remaining that should have been been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over \$3 million.

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25. Simply reviewing the September 13, 2013 Hearing Transcript<sup>9</sup> of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

- a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
- b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
- c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
- d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
- e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;

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<sup>9</sup> September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

Motion for Disqualification Judge Colin

15 / Page

Thursday, May 14, 2015

- f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
- g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
- h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;
- i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing<sup>10</sup>;
- j. knows of the "elephant in the room"<sup>11</sup> being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and
- k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his

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<sup>10</sup> May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

<sup>11</sup> May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

Court lawn<sup>12</sup>, instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such a way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.
27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposor of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.
28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as

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<sup>12</sup> September 13, 2013 Hearing Page 11

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENT S.pdf>

Motion for Disqualification Judge Colin

17 Page

Thursday, May 14, 2015

requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over \$3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.
30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be

Motion for Disqualification Judge Colin

18 | Page

Thursday, May 14, 2015

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squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.
32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013<sup>13</sup> when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a \$25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for

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<sup>13</sup> October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

Motion for Disqualification Judge Colin

19

Thursday, May 14, 2015

Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

Motion for Disqualification Judge Colin

20 Page

Thursday, May 14, 2015



35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.
36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate

crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.
38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over \$1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for

Motion for Disqualification Judge Colin

22 |

Thursday, May 14, 2015

itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt<sup>14</sup>.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.
40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.
41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.
42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

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<sup>14</sup> Brand Pratt Letter and Conflict of Interest Disclosure Form

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

Motion for Disqualification Judge Colin

23 Page

Thursday, May 14, 2015

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged “buyer” occurred during the Hearing on the sale of the St. Andrew’s Home and knows Florida law requires no undue influence or pressure must be exerted on buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.
44. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.
45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/rp/pdf/FLrpg.pdf>.
46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a

hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at \$1,100,000.00 as the property was listed for \$3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.
48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.
49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." *Flagship Bank of Orlando v. Bryan*, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. *BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.* 482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.
50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then

Motion for Disqualification Judge Colin

25 | Page

Thursday, May 14, 2015

refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, <http://mrachek-law.com/ourteam/alan-b-rose/>.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.
52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal  
14 because, frankly, we were concerned it would be  
15 public and that would defeat their chance of  
16 selling it.  
17 THE COURT: I'm not -- look, nothing is easy  
18 here. It's not going to get easier until we can  
19 get hearings where I can start to knock off some  
20 of the issues, which is what I have been saying  
21 now like a broken record.  
22 At some point, either Eliot is going to be  
23 sustained on his positions or he's going to be  
24 overruled, but one way or the other, we can put  
25 some of this stuff to rest. The problem is we're  
I doing all of this business with some of the metes [matters?]

2 of the case still up in the air where I haven't  
3 been able to adjudicate; the claims that Ted  
4 should be removed; the claims that there's  
5 wrongdoing beyond Spallina and Tescher, the trust  
6 is not valid. I mean, give me a chance to rule on  
7 that, because once I rule on that, then the matter  
8 is over with on those and you'll know one way or  
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust<sup>15</sup> by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct<sup>16</sup>, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a

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<sup>15</sup> O'Connell Affirmative Defense, Ted is not a valid Trustee

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

<sup>16</sup> Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

Motion for Disqualification Judge Colin

27 Page  
Thursday, May 14, 2015

Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings<sup>17</sup>, has ignored all of these facts and held hearing, after hearing, after hearing and has:

- a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
- b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
- c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
- d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
- e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,
- f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,
- g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,

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<sup>17</sup> Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustec%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

Motion for Disqualification Judge Colin

28 Page

Thursday, May 14, 2015



- h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
- k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
- l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

Motion for Disqualification Judge Colin

29 | Page

Thursday, May 14, 2015

- m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,
- n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Cannons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court.

It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.
59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.
60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.
61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case. Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's cases. When Petitioner cited the rule calling for separate hearings by each

Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.
63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.
64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.
65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15<sup>th</sup> Judicial, The Florida Bar and many Judges of the Supreme Court of

Florida and Petitioner fears this also creates prejudice and bias against Petitioner with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,  
OFFICE OF THE STATE COURTS  
ADMINISTRATOR, FLORIDA,

HON. JORGE LABARGA in his official and individual capacities,  
[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]

**THE FLORIDA BAR,**

JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,  
KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,  
LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,  
ERIC TURNER, ESQ. in his official and individual capacities,  
KENNETH MARVIN, ESQ. in his official and individual capacities,  
JOY A. BARTMON, ESQ. in her official and individual capacities,  
JERALD BEER, ESQ. in his official and individual capacities,  
BROAD & CASSEL, and, all of its Partuers, Associates and Of Counsel, in their professional and individual capacities,  
JAMES J. WHEELER, ESQ. in his professional and individual capacities,

**FLORIDA SUPREME COURT,**

Hon. Charles T. Wells, in his official and individual capacities,  
Hon. Harry Lee Anstead, in his official and individual capacities,  
Hon. R. Fred Lewis, in his official and individual capacities,  
Hon. Peggy A. Quince, in his official and individual capacities,  
Hon. Kenneth B. Bell, in his official and individual capacities,  
THOMAS HALL, ESQ. in his official and individual capacities,  
DEBORAH YARBOROUGH in her official and individual capacities,

**DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION - FLORIDA,**

CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,  
CHIEF ANDREW SCOTT in his official and individual capacities,

CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

Motion for Disqualification Judge Colin

33 | Page

Thursday, May 14, 2015

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]<sup>18</sup>

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor<sup>19</sup>, Chief Judge Jorge Labarga, who is a central figure in Petitioner's ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.
68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.
69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida<sup>20</sup>. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free

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<sup>18</sup> Full List of Iviewit RICO Defendants @

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

<sup>19</sup> Colin statement regarding Labarga as his mentor

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

<sup>20</sup> Omnibus Motion Federal Court

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

Motion for Disqualification Judge Colin

34 | Page  
Thursday, May 14, 2015

of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.
71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.
72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.
73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

**Rule 2.330 (d) Grounds.**

**(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that**

Motion for Disqualification Judge Colin

35 | Page

Thursday, May 14, 2015

**said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.**

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.
75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.
76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and**

Motion for Disqualification Judge Colin

36 Page

Thursday, May 14, 2015



**promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

77. This Motion is being made within 10 days from Petitioner's receipt of a "FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY" signed May 06, 2015. Where this Order, as with all Orders issued after Judge Colin's Mandatory Disqualification was failed, is an illegally obtained Order and therefore legally void, other grounds for this Order mandating disqualification have also been described herein.
78. This Motion for Disqualification is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

79. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law and whereby whether legally sufficient or not 2.330 allows Colin to disqualify on his own.

Motion for Disqualification Judge Colin

37 Page

Thursday, May 14, 2015

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

80. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

81. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court<sup>21</sup>. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:

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<sup>21</sup> May 14, 2015 Letter to Judge Blakey

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

38 Page  
Thursday, May 14, 2015

- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD  
Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

82. Petitioner states that Judge Colin should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

83. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive Probate rulings thus far that have interfered intentionally with their and Petitioner's expectancies that this Disqualification be made instantly as it is legally sufficient and MANDATED. Delays could cause further harm of Petitioner's minor children and Petitioner which would result in

Motion for Disqualification Judge Colin

39

Thursday, May 14, 2015

additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.

84. That PRIOR to any other actions by Judge Colin, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits; etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

85. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law.

Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts

Motion for Disqualification Judge Colin

40 | Page

Thursday, May 14, 2015

alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 14<sup>th</sup> day of May, 2015

Respectfully Submitted,

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)

**CERTIFICATE OF SERVICE**

Petitioner docs hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 14th day of May, 2015.

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)

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification. California DL #C6956008

NOTARY PUBLIC

Print name of Notary:

Sarah Barnett



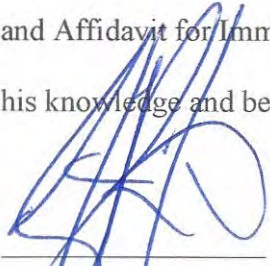
My commission expires:

07/05/2016

Motion for Disqualification Judge Colin

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief



Eliot Ivan Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

May 14<sup>th</sup>, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification California DL #C6A56008

Notary Public Sarah Barnett  
Print name: Sarah Barnett

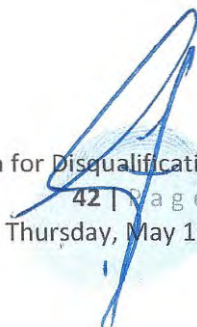
Stamp

My commission expires: 07/05/2016



Motion for Disqualification Judge Colin

42 | Page  
Thursday, May 14, 2015



**EXHIBIT 1 - URL EXHIBITS FULLY INCORPORATED BY REFERENCE HEREIN IN THE  
MOTION**

**1. November 05, 2012 Memorandum**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

**2. Simon Bernstein un-notarized Waiver @ URL**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

**3. Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

**4. Affidavit of No Florida Estate Tax Due @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

**5. Probate Checklist**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

**6. Order of Discharge**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

**7. May 06, 2013 Petition @ URL**

Motion for Disqualification Judge Colin

43 | Page

Thursday, May 14, 2015

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

**8. Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

**9. September 13, 2013 Hearing Judge Colin**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

**10. May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"**

**11. May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82**

**12. September 13, 2013 Hearing Page 11**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>

**13. October 28, 2013 Evidentiary Hearing**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

**14. Brand Pratt Letter and Conflict of Interest Disclosure Form**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

**15. O'Connell Affirmative Defense, Ted is not a valid Trustee**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

Motion for Disqualification Judge Colin

44 | Page

Thursday, May 14, 2015



**16. Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

**17. Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

**18. Full List of Iviewit RICO Defendants @**

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

**19. Colin statement regarding Labarga as his mentor**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

**20. Omnibus Motion Federal Court**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

**21. May 14, 2015 Letter to Judge Blakey**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

45 Page

Thursday, May 14, 2015



*"Surf with Vision"*

**Eliot I. Bernstein**  
**Founder & Inventor**  
**Direct Dial: (561) 245-8588 (o)**  
**(561) 886-7628 (c)**

Thursday, May 14, 2015

The Honorable John Robert Blakey  
United States District Court for the Northern District of Illinois Eastern Division  
Everett McKinley Dirksen  
United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604  
Courtroom 1725 | Chambers 1046  
Telephone Number: (312) 435-6058  
Fax Number: (312) 554-8195

**RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY**

Dear Honorable Judge John Robert Blakey,

I write to acknowledge and express my understanding of my obligations to conform my filings to the formatting rules of the Court and matters within the Court's jurisdiction. I also write in regards to Scheduling issues after our status call this week with your Court indicating Discovery to be closed upon the taking of the Deposition of my brother, Plaintiff, Ted Bernstein.

I will respectfully be seeking leave by way of formal motion to open the Discovery not only for further examination of Ted Bernstein but also to Notice for

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Deposition Judge Martin Colin of the Palm Beach Probate Court who I have just petitioned for Mandatory Disqualification on numerous grounds under the Florida Rules and Code including but not limited to being a necessary fact witness and material witness to actions of fraud upon his Court involving licensed attorneys Tescher and Spallina who have also been part of the litigation before this Court.

I have attached the Disqualification motion herein with respect to Florida Judge Colin for good faith reference and seek leave to move by way of formal motion within this Court's formatting rules to demonstrate the intertwined nature of the actions in this Court with the fraud and actions in Judge Colin's Court.

Please note that the car-bombing of my family mini-van in Boynton Beach, Florida was a very real thing and not a day goes by when I don't wonder what will happen any time my wife, children or I get in to a car. Full pictorial evidence and reports by involved authorities thus far can be found at [www.iviewit.tv](http://www.iviewit.tv) .

This car-bombing was also reported as part of a Petition I filed with the White House to President Obama, the White House Counsel's Office, the US Attorney General, FBI, SEC and other related federal and state agencies and I have attached a link to this Petition which provides a good overview of the "elephant in the room" being the nature of my Technology which is used on the Hubble Space Telescope, for a mass of US Defense applications, across the globe for digital imaging across the internet and more and also outlines how I was directed by Harry I. Moatz of the Office of Enrollment and

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RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Discipline of the USPTO to file a Petition claiming fraud upon the United States as well as myself and shareholders involving the Technology, which led to suspensions of the Intellectual Properties. The Technology was validated, used, tested and approved by leading engineers and computer experts on property owned by Lockheed Martin in Orlando, Florida at Real3d, Inc. which was at that time a consortium owned by the Intel Corporation, Lockheed Martin and Silicon Graphics and the technologies were valued in the hundreds of billions of dollars over the life of the IP claimed as the "holy grail" of the internet by these leading engineers. See,

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20l.pdf> .

Also please note that not only is the car-bombing a very real event that occurred in my life during this ongoing Technology fraud and theft, but as noted in the White House Petition and elsewhere even a Federal Agent such as FBI Special Agent Luchessi of the Palm Beach Office of the FBI has "gone missing" according to West Palm Beach Florida FBI Office (leading to my being directed to former Inspector General Glenn Fine of the Department of Justice for resolution, which still has not occurred) while investigating the Iviewit matters leaving myself in a position of not being able to trust even federal officers and agents and thus I typically err on the side of documenting all

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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important information in all known places and federal state and international offices. Now as you may be aware from my prior filings, there are new frauds and criminal acts by same, similar, and/or related actors with reports that my father may have been murdered.

Since the time of the February 2009 White House Petition filing when I was personally on the phone line confirming the fax number and receipt for the White House and White House Counsel's office, not a single US Secret Service Officer, Capitol Police, US Marshall or other federal agent has shown up to say I filed a frivolous and harassing Petition to the President or to challenge the veracity of my statements in the Petition. Again, I respectfully remind the Court that I was directed by a Federal official, Harry I. Moatz, Director of the Office of Enrollment and Discipline, to file a petition for suspension claiming Fraud Upon the United States by Patent Bar Attorneys and others

Judge St. Eve had already granted me Leave to Amend my Complaint and the motion to take Florida Judge Colin's Deposition in this Court will demonstrate the relevance to these proceedings and action by the intertwined orchestration of fraud cover up by Judge Colin in his Court also involving Ted Bernstein who is a party in this action and attorney Spallina and others common in both cases also exposing the depth and breadth of the powerful financial interests at play. See the 2009 SEC Petition for general background,

Hon. John Robert Blakey

Page 5 of 6

US District Court for the Northern District of Illinois Eastern Division

Thursday, May 14, 2015

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

Respectfully Yours,

Eliot I. Bernstein  
Founder & Inventor

- Iviewit Holdings, Inc. – DL
- Iviewit Holdings, Inc. – DL
- Iviewit Holdings, Inc. – FL
- Iviewit Technologies, Inc. – DL
- Uview.com, Inc. – DL
- Iviewit.com, Inc. – FL
- Iviewit.com, Inc. – DL
- I.C., Inc. – FL
- Iviewit.com LLC – DL
- Iviewit LLC – DL
- Iviewit Corporation – FL
- Iviewit, Inc. – FL
- Iviewit, Inc. – DL
- Iviewit Corporation

cc/ec:

Enclosure(s)/Attachment(s)/URL's

**All Uniform Resource Locators ( URL's ) and the contents of those URL's are incorporated in entirety by reference herein and therefore must be included in your hard copy file WITH ALL EXHIBITS, as part of this correspondence and as further evidentiary material to be Investigated. Due**

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Iviewit Holdings, Inc./Iviewit Technologies, Inc.  
 2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
 (561) 245.8588 (o) / (561) 886.7628 (c) / (561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) - [www.iviewit.tv](http://www.iviewit.tv)

Hon. John Robert Blakey

Page 6 of 6

US District Court for the Northern District of Illinois Eastern Division

Thursday, May 14, 2015

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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to allegations alleged by New York State Supreme Court Whistleblower Christine C. Anderson and similar claims in the Iviewit RICO & ANTITRUST Lawsuit regarding Document Destruction and Tampering with Official Complaints and Records, PRINT all referenced URL's and their corresponding exhibits and attach them to your hard copy file, as this is now necessary to ensure fair and impartial review.

In order to confirm that **NO DOCUMENT DESTRUCTION OR ALTERCATIONS** have occurred, once complete forward a copy of this correspondence with all exhibits and materials included to, Eliot I. Bernstein at the address listed herein. This will insure that all parties are reviewing the same documentation and no additional illegal activity is taking place. If you, for any reason, are incapable of providing this confirmation copy, please put your reasons for failure to comply in writing and send that to Eliot I. Bernstein at the address listed herein. Note, that this is a request only for a copy of this Correspondence and the referenced materials and NOT a request for any Case Investigation information, which may be protected by law.

cmb/eib

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**Iviewit Holdings, Inc./Iviewit Technologies, Inc.**  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245.8588 (o) / (561) 886.7628 (c) / (561) 245-8644 (f)  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

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 )

**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”)**

**MOTION TO STRIKE  
ELIOT BERNSTEIN’S MOTION FOR  
INTERIM DISTRIBUTION;  
OR FOR A BRIEFING  
SCHEDULE  
AND TO REQUIRE  
ELIOT BERNSTEIN’S  
IN PERSON APPEARANCE  
AT ANY HEARING ON THE MOTION**



Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

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

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and moves this court to strike Eliot Bernstein's Motion for an Interim Distribution; or alternatively to set a Briefing Schedule and Require the Personal Appearance of Eliot Bernstein for any hearings on the motion, and in support thereof Plaintiffs state as follows:

**MOTION TO STRIKE**

Eliot Bernstein has recently filed a series of motions -- the first two motions for federal protection and other relief -- both of which were stricken or denied as moot by the court. The third motion is Eliot's request for the Court to make an interim distribution to Eliot and/or his Children. It is critical to note that Eliot has filed over 150 pages worth of motions over the last 14 days all while he has a response due to a pending motion for summary judgment. Obviously, time is no issue for Eliot.

The first reason the court should strike the motion is Eliot provides absolutely no legitimate legal authority or statute that would permit the court to make an interim distribution for interpleader funds in this instance.

More importantly, the court should strike Eliot's motion since it runs afoul of his own counterclaims and third party claims that remain pending in this action. Given that the current state of Eliot's answer, counterclaim and other pleadings filed thus far in this action would effectively negate any potential claim on the Policy, Eliot cannot now claim in his motion for an interim distribution to be entitled to anything. Again, Plaintiff will further explain Eliot's conundrum in its brief in opposition to Eliot's most recent motion if it is not stricken first.

It is also very important for the court to be made aware, that in the Florida Probate Action it is a matter of public record that Eliot has up to this point steadfastly refused any court approved interim distributions because Eliot maintains that he cannot accept funds that he believes are somehow tainted. The availability of those funds, totaling at least \$240,000.00 to be held in trusts for Eliot's three children and his refusal to facilitate acceptance of those amounts are reason enough for his motion to be stricken when here Eliot contests anyone's right to receive the Policy Proceeds.

In addition, Eliot Bernstein has applied to the personal representative of the Estate of Shirley Bernstein for a loan that awaits approval from the Probate Court. This is another avenue for Eliot or his children to potentially receive funds that are not currently in dispute.

Due to the nature of this motion and the extraordinary relief requested, Plaintiffs also respectfully request that the court require Eliot's personal appearance in court for any oral argument or hearing on this motion. Plaintiffs strongly believe that any hearing on such motion must be in person so the court can properly evaluate (i) the credibility and competency of the witness making the allegations in the motion; (ii) whether the court has the power, authority and jurisdiction to grant the relief sought by Eliot; and (iii) whether Eliot's position and argument in the litigation is consistent with the relief he requests in the motion for interim distribution.

Alternatively, if the court refuses to strike the motion, and a briefing schedule is to be set, Plaintiffs request that they be granted until June 17, 2015 to respond to the instant motion. If Eliot maintains many of the positions he has taken thus far in the litigation in his response to the motion for summary judgment due on June 5th, than his own summary judgment response will effectively bar his request for an interim distribution rendering the motion moot.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order as follows:

- a. Striking Eliot Bernstein's Motion for Interim distribution for the reasons set forth herein; or
- b. Granting Plaintiff until June 17, 2015 to file its response in opposition;
- c. Setting a hearing date thereafter if needed;
- d. Requiring Eliot Bernstein to personally appear in court for any hearings on this motion; and
- e. Granting any further relief this court deems just and proper. .

Dated: May 20, 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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, May 22, 2015:

MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's motion for interim disbursement of interpled funds [181] is denied. Bernstein's representations to the contrary notwithstanding, at this time the Court is unable to say that anyone has a clear right to the proceeds deposited by Heritage Union Life Insurance Company, let alone what each interested party's share should be. In his answer [35], Bernstein concedes that he does not know who the beneficiaries are under the Trust. And although Bernstein and his siblings may claim to be entitled to the funds, the Intervenor has claimed an interest in the funds as well. Bernstein has not cited, and the Court is not aware of, any authority that would allow it to award damages before resolving the merits of the parties' dispute. Plaintiffs' motion to strike [183] is denied as moot. The 5/28/15 Notice of Motion dates are 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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

Case No. 13 cv 3643

Honorable John Robert Blakey

Magistrate Mary M. Rowland

**MOTION IN OPPOSITION TO**  
**SUMMARY JUDGEMENT**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



Third-Party Defendants\_ )  
)  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
)  
Intervenor. )  
/

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**MOTION IN OPPOSITION TO SUMMARY JUDGEMENT**

COMES NOW Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se and files this “Motion in Opposition to Summary Judgement” and states under information and belief as follows:

Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff’s improper at this time. In some instances, it is asserted that Plaintiffs’ statement of facts are fraudulent and Plaintiffs have withheld material facts and information from this Court and thus, Plaintiffs should be subject to Federal Rule 11 or appropriate sanctions. Summary Judgement to Plaintiffs must be denied at this stage of litigation and further Discovery proceedings scheduled together with a hearing on sanctions and such other and further relief as to this Court may be just and proper.

**DISPUTED FACTS**

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged “Policy” at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent,

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the "Policy" are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic "Specimen Policy" not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the "Policy" are in genuine dispute. .
3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon Bernstein ("Simon") including but not limited to further document and record production from Heritage Union Life Insurance Company ("HERITAGE"), Jackson National Life Insurance Company ("JACKSON"), LaSalle National Trust, NA ("LASALLE") in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein ("TED"), EBTs of Pamela Beth Simon ("PAM"), David Simon ("D. SIMON"), Robert L. Spallina, Esq. ("SPALLINA"), Donald R. Tescher, Esq. ("TESCHER") and Don Sanders ("SANDERS") at minimum.
4. It is noted for this Court that Judge Martin Colin ("COLIN") of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015



Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.
6. The Disqualification motion<sup>1</sup> in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.
7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

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<sup>1</sup> COLIN Disqualification Motion

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

8. The fact is there is no executed "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.
9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.
10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs' Summary Judgment itself at this time. See Plaintiffs' Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs' own document submissions.
11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs' own document submissions have not been brought in as a party in these proceedings by Plaintiffs

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.
13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital<sup>2</sup> and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.
14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte "recuses" after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact

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<sup>2</sup> Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

witnesses to the frauds committed by TESCHER and SPALLINA'S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order<sup>3</sup>.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim<sup>4</sup> in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust.
16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit ("Action") filed for breach of contract and the Action is based on the carrier denial<sup>5</sup> of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.
17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA

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<sup>3</sup> COLIN Recusal Order

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>4</sup> Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

<sup>5</sup> Reassure America Life Insurance Company Decline Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.
19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.
20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for LASALLE when filing his death benefit claim<sup>6</sup>, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.
21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent

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<sup>6</sup> HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP<sup>7</sup> that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.
23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust<sup>8</sup> and sanctions or a sanctions hearing should be granted and further Discovery allowed.
24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the

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<sup>7</sup> 2000 Simon Bernstein Life Insurance Trust - Proskauer

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

<sup>8</sup> TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“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. [emphasis added]** as Successor Trustee...”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.
27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>9</sup> from six cases after

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<sup>9</sup> Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as "Legally Insufficient"

his denial of Eliot's Petition for Disqualification<sup>10</sup> as "Legally Insufficient" on May 18, 2015<sup>11</sup>, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases<sup>12</sup> of the Bernstein family.
29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>10</sup> Petition for Disqualification of Judge Martin Colin

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

<sup>11</sup> Judge Colin Denial of Disqualification

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

<sup>12</sup>

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
3. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502014CP003698XXXXSB – Shirley Trust Construction
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB
6. Case # TBD – Creditor Claim – Eliot v. Estate of Simon

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015



from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.
31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

other data related to this case. These items have been inappropriately covered by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.
33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.
34. The matters need to be investigated by the carrier as a possible murder of Simon<sup>13</sup> which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.
35. There are Petitions that were unheard by COLIN'S court at the time of his recent refusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover

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<sup>13</sup> Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446>, which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.
37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,
- a. Records from insurers and reinsurers,
  - b. Records from the Primary Beneficiary LaSalle National Trust, NA,
  - c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,
  - d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.

38. There is need for further affidavits, declaration and further discovery, especially after TED'S deposition, which opens new discovery, including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract<sup>14</sup>.

**LINE BY LINE OBJECTIONS TO:**  
**"AMENDED MOTION FOR SUMMARY JUDGEMENT AS TO COUNT 1 MOVANTS**  
**CLAIMS TO POLICY PROCEEDS"**

39. Eliot will now present a line by line objection to each statement in Plaintiffs Summary Judgement and supporting documents with each numbered statement of Plaintiffs addressed with an answer below it.

"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:"

**ANSWER**

40. There is a primary beneficiary LASALLE and it appears that no one has contacted the Primary Beneficiary or its Successors and this Summary Judgement is instead attempting to have this Court pay a Contingent Beneficiary instead of the Primary. When there is the existence of a Primary Beneficiary the contingent beneficiary cannot be paid benefits.

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<sup>14</sup> TED Deposition Pages 116-118

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

41. No executed copy of a "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" the alleged by Plaintiff Contingent Beneficiary has been produced to this Court to establish this legally nonexistent trust and give it legal standing as a Plaintiff or a Contingent Beneficiary. Again, the insurance company records state the Contingent Beneficiary is the Simon Bernstein Trust, NA on the day Simon died not the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95.
42. As no executed copy of the 95 Legally Nonexistent Unexecuted Trust has been presented by Plaintiffs and produced to this Court, the legal standing of TED as a legally valid trustee of such nonexistent trust is therefore disputed and Plaintiff's have failed to bring forward competent proof to demonstrate the absence of material issues of fact on this matter and therefore Summary Judgment must be denied. Thus, it is disputed whether this Trust even exists and without competent proof and-or further discovery, the Trust and alleged Trustee must be presumed to not exist or at minimum certainly not proven sufficient for Summary Judgment at this stage of litigation.
43. There is also an executed 2000 insurance trust done by Proskauer Rose that would supersedes any 95 Legally Nonexistent Unexecuted Trust already exhibited herein which the Plaintiffs and attorney SPALLINA coordinated and colluded to secret.
44. There is also a missing Simon Bernstein Trust, NA that the carrier production records show was the Contingent Beneficiary at Simon's death that would supersede any 95 Legally Nonexistent Unexecuted Trust.
45. It is noted that Adam Simon is brother to David Simon who is married to Pam Bernstein-Simon. Without this lawsuit scheme, if the money passes to the estate instead of the 95 Legally Nonexistent Unexecuted Trust, then Pam Bernstein Simon and Ted Bernstein would

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

16

receive NO benefits. Their children may receive benefits depending on the outcome of estate beneficiary disputes ongoing in Florida. Adam Simon represents TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust and the alleged beneficiaries of the trust and the Plaintiffs of this lawsuit, which may present conflicts of interest.

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.

**ANSWER**

46. Virtually all the “undisputed facts” presented by Plaintiffs are disputed by Eliot.

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.”

**ANSWER**

47. As affirmatively stated above, there is no “Policy” that has been produced by any Plaintiff or any party to this action and thus this fact that there is a life insurance “Policy” at this time in this Action is disputed.

48. As there is no legally binding insurance contract proven or provided or produced, and there is no “Policy” proven, provided or produced, as such there can be no “Policy Proceeds.” determined to award Plaintiffs Summary Judgment at this time. Further Discovery proceedings should be ordered.

49. This lawsuit is a Breach of Contract lawsuit spawned from a denied insurance claim that arose after attorney SPALLINA first began illegally attempting to act as the Trustee of

LASALLE by correspondences already exhibited herein, which was done within weeks after Simon Bernstein passed away and thus this is not a dispute between various claimants as Plaintiffs suggest to this Court.

50. There is no copy or record of the 95 Legally Nonexistent Unexecuted Trust produced in these matters and thus Plaintiff's standing is disputed. If there is no trust there is no Trustee and therefore TED'S legal standing is disputed. Further, Plaintiffs individually, TED, Pamela Simon, Jill Iantoni and Lisa Friedstein, likewise have legal standing issues in dispute, as if the trust does not exist then they have no rights thereunder and whereby they have no claims to this Court or the carrier that they are beneficiaries of the missing policy deserving standing in any individual capacity. Thus, their lawsuit should be dismissed or at least reviewed and-or investigated as a fraud upon this Court and their attorneys at law involved should all be reported to the proper authorities and sanctioned for intentional misconduct and acting with scienter in tortious interference with an expectancy.
51. While corresponding with HERITAGE as the Trustee of LASALLE the Primary Beneficiary, SPALLINA then filed a death benefit claim on behalf of the alleged Contingent Beneficiary, the 95 Legally Nonexistent Trust, not on behalf of the primary beneficiary LASALLE (for unknown reasons) and that claim was DENIED because SPALLINA could not provide ANY document to HERITAGE to evidence a legally binding trust instrument to pay and this is the reason for the Breach of Contract lawsuit being filed.
52. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of LASALLE or provides any authority to act as same and thus within six weeks of the death of Simon Bernstein, attorney SPALLINA on behalf of his

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

legal client TED was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in correspondences with the carrier, SPALLINA was attempting to convert the monies to his law firm's trust account<sup>15</sup>.

53. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of a 95 Legally Nonexistent Unexecuted Trust or provides any authority to act as same and thus on November 01, 2012 within 6 weeks after the death of Simon Bernstein, attorney SPALLINA was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in the exhibited claim form attempting to convert the monies to his law firm's trust account.
54. The claim form submitted by SPALLINA on November 01, 2012 makes no mention of the fact that at that time there were ongoing investigation by the Palm Beach County Sheriff and an autopsy being performed to determine if Simon had been murdered.
55. The initial breach of contract action was not even filed in Cook County Illinois until after the Law Office of SPALLINA and TESCHER had already filed fraudulent documents in the Palm Beach County Circuit Court of COLIN on or about Oct. 24, 2012, including but not limited to, a false Petition of Discharge (full Waiver)<sup>16</sup> of Simon Bernstein dated April 9,

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<sup>15</sup> SPALLINA Letter to HERITAGE to pay death benefit to Tescher & Spallina PA law firm trust account. Page 11, Bullet Number 5.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

<sup>16</sup> April 09, 2012 Petition for Discharge (full Waiver)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>



2012, which sought to use a document allegedly executed by Simon Bernstein and witnessed by SPALLINA five months earlier, submitted POST MORTEM for Simon who was now deceased, enabling a deceased Simon to act as Personal Representative while dead to close the Estate of his wife Shirley Bernstein. In addition to the fraudulent submission of the document, the document contained numerous false and fraudulent recitals of acts allegedly signed to by Simon Bernstein, which clearly had not occurred by the date of the alleged signing on April 9, 2012, for instance Simon claims to have all beneficiaries Waivers and the waivers were not sent to beneficiaries until May of 2012 and certain beneficiaries did not submit them until after Simon died.

56. While the precise circumstances of COLIN'S knowledge and possible involvement in the fraud are not presently fully known, after certain frauds had been exposed even COLIN stated on the record in a hearing on September 13, 2013<sup>17</sup> that he had enough evidence at that time to read TED, TESCHER, SPALLINA and their counsel their Miranda Rights.
57. That the law firm of Tescher & Spallina, PA also submitted to the Court forged and fraudulent Waivers for six parties, including POST MORTEM forgery and fraudulent notarizations of Simon's, also used to close the Estate of Simon's deceased wife Shirley using Simon while dead to act as the Personal Representative as part of an elaborate fraud on the court of COLIN, the beneficiaries, the creditors and others.
58. Upon learning of the six fraudulent waivers, including POST MORTEM forgery and fraudulent notarization for Simon, COLIN again stated he had enough evidence at that

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<sup>17</sup> September 13, 2013 Hearing - Colin discovers Fraud Upon the Court - Pages 14-18

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

moment to read them all their Miranda Rights (See exhibited September 13, 2013 Hearing Pages 14-18).

59. The Court should note that COLIN however failed to take any corrective or administrative actions against those involved and in fact proceeded as if a crime had not taken place and allowed TESCHER, SPALLINA and TED to continue to be fiduciaries and counsel in the proceedings and forced Eliot and others to spend years attempting to remove them through pleading after pleading evaded by COLIN who should have removed them with himself once he discovered the Fraud in and on his court committed by his appointed Fiduciaries, Counsel and involving him and his employees directly.
60. COLIN further failed to inform this Court of the crimes related parties to this Action were involved in in his court and instead began a two year denial of due process and procedure and retaliation against Eliot who was exposing the crimes of his court, while he was mandated under Judicial Canons to disqualify on his own initiative due to his direct involvement as a material and fact witness to the criminal acts that took place in and on his court that were committed by his appointed Officers and Fiduciaries, attorneys at law, TESCHER, SPALLINA and TED and other retained counsel, MANCERI and PANKAUSKI.
61. COLIN also acted outside the color of law as he could not investigate his own court, himself, his court appointed fiduciaries and officers without exuding the Appearance of Impropriety and Judicial Canons require mandatory disqualification in such situations, yet he hung on as long as he could despite numerous attempts to remove him and force disqualification on his own initiative.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

62. That the law firm of Tescher & Spallina, PA also used Simon Bernstein POST MORTEM to close the Estate of Shirley in January 2013 where Simon who died on September 13, 2012 and was dead for four months closed the Estate of Shirley. At no time prior to Simon closing Shirley's estate while dead did TESCHER and SPALLINA who were acting as his counsel while he was dead notify the Florida probate court that Simon had passed away. At least there is no proof or record in the probate court that shows COLIN was so notified by Tescher & Spallina.
63. That when Simon died no Successor Personal Representative for Shirley's Estate was legally chosen and instead TESCHER, SPALLINA and TED used Simon to close Shirley's Estate as they needed for Simon to appear alive at the time of the closing of Shirley's Estate in order to attempt to then have Simon (while appearing alive) fraudulently change Shirley's Irrevocable Trust Beneficiaries that were set in stone two years earlier upon her death on December 08, 2010.
64. A fair review of the evidence thus far shows this complex scheme was created and designed in order for TESCHER, SPALLINA, TED et al. to seize Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then begin to steal assets of the estates and trusts, including through this secreted insurance scheme, while they breached fiduciary duties and law and denied beneficiaries access to information and accounting for any of the assets, all in violation of a mass of Probate Rules and Statutes and felony criminal laws and resulting in a mass of civil torts against beneficiaries and creditors and all allowed to continue through the closed eyes of COLIN.
65. That upon the resignations of TESCHER and SPALLINA after it was admitted and proven that their law firm committed fraud and forgery on the court, COLIN allowed them as their

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

last act to transfer Trusteeship in the Florida Simon Trust despite having acted as TED'S counsel to commit the frauds that directly benefited TED, in order to continue the cover up of the crimes committed in his court.

66. Simultaneous and in connection with the frauds in the Florida probate courts of COLIN and FRENCH were the illegal attempts by TESCHER, SPALLINA, TED and PAMELA SIMON to get the HERITAGE insurance proceeds initially converted illegally outside of the true and proper beneficiaries of the Estate and Trusts by SPALLINA impersonating himself as Trustee of the institutional trust company LASALLE, the alleged Primary Beneficiary of the missing insurance policy at the center of this Action.
67. Attorney SPALLINA then filed a death benefit claim with HERITAGE with SPALLINA now allegedly acting and signing the claim as the Trustee of the 95 Legally Nonexistent Unexecuted Trust (the Contingent Beneficiary alleged by Plaintiff of the missing insurance policy) which no Plaintiff or party working in concert with the Plaintiffs or any party who responded in this complaint have yet been able to provide to this Court or any court and certainly which has never been produced by Plaintiffs to myself, Eliot Bernstein.
68. Numerous ancillary crimes were committed once Dominion and Control were seized are under ongoing investigations, including this insurance fraud scheme, with the primary suspects alleged to be the fiduciaries and counsel in the matters, including but not limited to, TED, ROSE, TESCHER, SPALLINA, PAMELA SIMON, MANCERI, SWERGOLD and now to be added COLIN and FRENCH.
69. The fraudulent death benefit claim was filed by attorneys at law, SPALLINA and TESCHER, acting as counsel to TED and in simultaneously in conflict acting as counsel to

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

the Estate of Simon where there are different beneficiaries in this lawsuit and the Simon Estate and Florida Trust.

70. TESCHER and SPALLINA were acting at the same time in many other conflicting capacities to fraudulently maintain complete control of the Estates and Trusts, including but not limited to;

- a. Alleged “Trustee” of the 95 Legally Nonexistent Unexecuted Trust when filing the death benefit claim,
- b. Counsel to TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust, prior to their falling out after the claim was denied and Adam Simon then replacing TESCHER and SPALLINA upon filing of this lawsuit, which according to Jackson National’s initial Answer<sup>18</sup> TED was advised by SPALLINA as his Counsel that he had no legal standing to file this lawsuit, “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)...” Where TED further filed the lawsuit while not possessing a copy, executed or not executed or even a draft copy, of the alleged 95 Legally Nonexistent Unexecuted Trust and only upon repeated demand by this Court then over a year later produced alleged drafts that have no legal authority as they are wholly unexecuted,
- c. Alleged “Trustee” of LaSalle National Trust, NA,

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<sup>18</sup> Jackson National Answer and Counter Complaint (Page 8)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130626%20Jackson%20Answer%20to%20Complaint%20and%20Counterclaim%20and%20Third%20Party%20for%20Interpleader.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

- d. Co-Personal Representatives of the Simon Bernstein Estate,
  - e. Co-Trustees of the Simon Bernstein Trust,
  - f. Counsel to themselves as Co-Personal Representatives and Co-Trustees for Simon's Estate and a Florida Simon Trust,
  - g. Counsel to TED as alleged Successor Trustee of the Shirley Bernstein Trust, and,
  - h. Counsel to TED as Successor Personal Representative to the Shirley Bernstein Estate.
71. Where TESCHER and SPALLINA then resigned<sup>19</sup> from the fiducial capacities listed above amidst the admission in an ongoing investigation with Palm Beach County Sheriff Investigators<sup>20</sup> that they fraudulently altered and disseminated a Shirley Trust document and potentially many others under investigation at this time.
72. There is no legally binding insurance contract that has been produced by any Plaintiff or any party to this action and thus this fact alleged by Plaintiffs that there is a life insurance policy is again disputed.
73. As there is no legally binding insurance contract, there is no "Policy" and as such there can be no "Policy Proceeds" and therefore the existence of "Policy Proceeds" is also disputed.

3. "The Insurer removed this Action from Cook County to the Northern District, and filed an Interpleader Action."

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<sup>19</sup> TESCHER and SPALLINA Resignation Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2014014%20Tesch%20Spallina%20Manceri%20Resignation%20Letters%20and%20Withdrawal%20as%20Counsel%20and%20Executors.pdf>

<sup>20</sup> Sheriff Reports (Page 6 of 51)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

**ANSWER**

74. The insurer not only removed the case to this Court but also added Eliot as third party defendant, as the lawsuit had been secreted from him despite claims from Plaintiffs that he is entitled to benefits.

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."

**ANSWER**

75. The fact that the insurance carrier failed to produce a bona fide insurance policy is a liability to the carrier that should have caused them to remain in this lawsuit and the Court erred in allowing them to be dismissed prematurely and they should be re-entered in the lawsuit by this Court enjoining them until such time that a bona fide policy is produced to this Court and an explanation and analysis of the law regarding LOST or MISSING insurance policies and liabilities resulting from such loss of contract is litigated before this Court.

76. There were no conflicting "claimants" to the proceeds as suggested as Eliot never filed a claim on his or anyone else's behalf and the insurer misled the Court that there was a dispute when interpleading their funds and did not correctly notify the Court that a fraudulent death benefit claim had been made by SPALLINA that was denied and abdicated their responsibilities through this misrepresentation.

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]"

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

77. The discovery needs to be expanded due to new evidence in the Estate and Trust cases of Simon and Shirley Bernstein that may have significant impact on this lawsuit.
78. That discovery needs to be expanded due to new information gained from the Deposition of Ted Bernstein.
79. That discovery needs to be expanded to contact the Primary Beneficiary before any payment can be made to any alleged contingent beneficiary.
80. Eliot has been denied access to estate and trust documents of Simon and Shirley in violation of Probate Rules and Statutes as part of an effort to conceal the fraudulent activities of TESCHER, SPALLINA, TED and others that has been exposed and in certain instances prosecuted already in the estates and trusts of Simon and Shirley Bernstein and which crimes are under a series of ongoing state and federal investigations.
81. This lawsuit has been stymied and delayed for over a year while Plaintiffs attempted to find an executed trust document to give them standing and still they have failed to produce such document. Additionally, it took over a year and half for Eliot to get Judge COLIN to allow counsel to represent the Estate's potential interest, which was blocked by the fiduciaries and their counsel acting in conflicts of interest to deny such intervenor. Finally, documents have been secreted from this Court, the beneficiaries and others for over two and half years making discovery almost impossible. The need for further discovery is essential to determining the facts in this matter and until TED'S qualifications as a legitimate Trustee are heard and it determined if he is now qualified, discovery is blocked due to TED'S alleged fiduciary roles and his failure to investigate or provide information regarding the fraudulent activities of his former counsel and others on his behalf.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015



6. "The matter is now ripe for the court to determine which claimant is the beneficiary of the Policy Proceeds."

**ANSWER**

82. There are no "Policy Proceeds" as there is no "Policy" and thus the court cannot make an informed decision at this time without further discovery and litigation of the matters of who the beneficiary of anything is due to the numerous frauds committed and ongoing.

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."

**ANSWER**

83. The evidence submitted by Plaintiffs is disputed and does not support Plaintiffs motion and in fact their own evidence and that of third party defendant Eliot's herein contradicts their conclusion that Simon Bernstein intended the Contingent Beneficiary to be the 95 Legally Nonexistent Unexecuted Trust.

84. In fact, the 95 Legally Nonexistent Unexecuted Trust is only an alleged Contingent Beneficiary and thus should not be paid as Plaintiffs admit that LASALLE is the Primary Beneficiary and no one has proven that it is not a viable beneficiary that should be paid before any Contingent Beneficiary would be considered.

85. There is NO legally existent "Policy" and thus there are no "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.

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

86. There is no legally executed 95 Legally Nonexistent Unexecuted Trust and therefore the legality of TED being the trustee at all is questioned. No valid evidence exists to show TED as a Successor Trustee.
87. TED is being petitioned to be removed in the Florida probate court as Successor Personal Representative of Shirley's Estate, alleged Successor Trustee of Simon's Trust and Successor Trustee of Shirley's Trust, as he is not now qualified to be Trustee for a multitude of reasons, including but not limited to,
- a. breaches of fiduciary duties,
  - b. conflicts of interest,
  - c. adverse interests,
  - d. alleged violations of state and federal laws under ongoing investigations,
  - e. the fact that the language in the Florida Simon Trust he alleges to be trustee of, precludes him from such fiduciary roles as the Successor Trustee cannot be related to the issuer (his father Simon) and TED is considered PREDECEASED for all purposes of the Florida Simon Trust,
  - f. the fact that it was TED'S former attorneys at law TESCHER and SPALLINA and their law firm members, who were acting as TED's counsel while simultaneously acting as fiduciaries in Simon's Estates and Trusts, committed a series of crimes to benefit their client and business associate TED by altering illegally dispositive documents, forging documents for six parties (including POST MORTEM forgery), fraudulently notarized dispositive documents (including POST MORTEM fraudulent notarizations) and committing fraud upon the court in the Florida Probate and Trust cases directly related to these matters and more, and,

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

g. even if TED were the Successor Trustee of the 95 Legally Nonexistent Unexecuted Trust, TED's failure to take any action regarding SPALLINA'S fraudulent insurance claim that was filed with SPALLINA executing the claim as the alleged Trustee of 95 Legally Nonexistent Unexecuted Trust that led the carrier to DENY the claim and led to this instant Action where TED magically appears as Trustee/Plaintiff. This dereliction and breach of fiduciary duty would be cause for TED to be removed, as TED'S knowing failure<sup>21</sup> to take action against his attorneys, friends and business associates, TESCHER and SPALLINA, who aided and abetted the insurance fraud scheme indicates TED'S protecting them versus the beneficiaries of the 95 Legally Nonexistent Unexecuted Trust.

88. TED is also conflicted acting as the alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust and at the same time acting as the ALLEGED Successor of the Simon Bernstein Trust in Florida, where TED would receive 1/5<sup>th</sup> of the missing policy proceeds in the event this bogus illegal lawsuit action is successful and would receive 0% if the proceeds are paid to the Estate and/or Trusts of Simon in Florida.
89. TED has already acted with his counsel in this lawsuit to block the estate/trust beneficiaries in Florida from being represented in this matter and acted in his own self-dealing best interests at the expense of the estate/trust beneficiaries, which is cause for his instant

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<sup>21</sup> TED Deposition Statement Regarding SPALLINA acting as Trustee (Pages 35-37)  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

removal in these matters as alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust<sup>22</sup>.

90. O'CONNELL, the newly appointed Successor Personal Representative/Executor of the Simon Estate has filed an affirmative defense<sup>23</sup> that claims that TED is acting as an illegal alleged Successor Trustee of the Simon Bernstein Trust in Florida, based on the fact that the language in the alleged Simon Trust precludes the Successor Trustee from being a related party to the issuer and thus TED as Simon's son is not a valid Trustee and also TED is considered predeceased for all purposes of the trust.
91. TED has admitted in his deposition that despite having alleged his father may have been murdered and contacting and opening a Sheriff investigation and Coroner Autopsy that TED did not feel there was any need to notify this Court or the insurance carrier that his father may have been murdered while simultaneously with his attorneys at law TESCHER and SPALLINA filed claims for the death benefits from the carrier and then filed this instant Action attempting to further abscond with insurance proceeds.

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

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<sup>22</sup> Attorney at Law Peter Feaman Letter to O'CONNELL regarding alleged misconduct of TED and ROSE in the Illinois Insurance Litigation.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O%27Connell.pdf>

<sup>23</sup> O'CONNELL Affirmative Defense that TED is not a legally valid Trustee.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

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.

**ANSWER**

92. As there is no basis for Summary Judgement to be granted at this stage of litigation with voluminous genuine issues of material fact presented and multiple areas of further Discovery warranted, any statement by Plaintiffs of what they may do in the future regarding my claims is premature and irrelevant at this time.

“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;”

**ANSWER**

92. Since there is no legally existent “Policy” produced in these matters the Owner and Beneficiary of the “Policy” are still disputed and further discovery is needed to contact all parties, insurers and reinsurers to determine where the legal policy contract is and determine if it is missing who is liable and for what damages

93. This statement itself by Plaintiffs is fraudulent and false before this Court since Plaintiffs' know of the existence of the Primary Beneficiary LASALLE and have done nothing to bring LASALLE into their lawsuit other than attorney SPALLINA fraudulently acting as Trustee of LASALLE and Plaintiffs should be subject to Rule 11 sanctions in the bringing of this motion for Summary Judgement. .

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

94. The primary beneficiary LASALLE and/or its successor has not been contacted by the life insurance carriers or the Plaintiffs and thus again further discovery is needed as to what happened to LASALLE and what the terms of the VEBA trust they acted as Successor Trustee for that was beneficiary of the policy and what happened upon the alleged dissolution. Movant David Simon's affidavit claims that he dissolved the VEBA trust but he was not the Trustee of LASALLE who would have had legal obligations to dissolve the VEBA and distribute any assets held by it to the plan participants according to the VEBA trust instrument, which again has not been produced to this Court by Plaintiffs who maintained the trust document at their offices.
95. The Contingent Beneficiary according to the insurance parole evidence is not the 95 Legally Nonexistent Unexecuted Trust but instead the Simon Bernstein Trust, NA and this contradiction remains disputed. The only evidence produced by Plaintiffs contrary to the records is an affidavit produced by a Jackson National Insurance Company executive stating that the name of the Contingent Beneficiary was a mistake but where the insurance company produced NO legally existent policy to prove such claim showing the policy beneficiary and where SANDERS statements are made in conflict as the carrier has an interest in having this case resolved without a policy as if it is determined that they have lost the policy the liabilities from potential beneficiaries could be enormous.
96. There is a 2000 Irrevocable Trust that exists that is executed done by Proskauer Rose, LLP that has the missing policy identified as the beneficiary of the policy and this would supersede any 95 Legally Nonexistent Unexecuted Trust and shows that Simon's intent had changed as to the beneficiaries since the 95 Legally Nonexistent Unexecuted Trust is claimed to have existed.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

97. That SPALLINA, TESCHER, TED, PAM and DAVID SIMON are acting fraudulently before this Court by their intentional secreting of this 2000 Trust document (until turned over when TESCHER and SPALLINA resigned and were court Ordered to turn over their records) with the intent to defeat the wishes and intent of Simon Bernstein, best illustrated at TED'S recent deposition<sup>24</sup> where it is shown that the 2000 Trust was intentionally secreted from the carrier by SPALLINA, TESCHER, TED and PAM as it did not suit their ends to produce the document as it cut certain parties out any benefits.
98. This concealment of pertinent evidence constitutes a fraud on the court and the beneficiaries and other interested parties who have been damaged by this intentional and with scienter obstruction and this deserves both sanctions and reporting of the intentional fraud on the court and others to the proper authorities by the long and strong arm of the law exercised through this Court.
- 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;

**ANSWER**

99. The "drafts" of the alleged 95 Legally Nonexistent Unexecuted Trust prove that there is no legally executed trust that allows Plaintiff to have standing in these matters and have no legal basis to attempt to act as a contingent beneficiary.
100. The "drafts" while alleged to have been done by Hopkins and Sutter law firm before they were acquired by Foley & Lardner, LLP are suspiciously missing any law firm markings to

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<sup>24</sup> TED'S Deposition - Exhibits 1, 2 and 23 (Simon Bernstein 2000 Insurance Trust dated August 15, 2000) and Testimony Pages 37-53. 82-87

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

identify their work and one of the drafts was supposedly created on the date the trust was signed and has missing information and blank spots, no law firm markings or letters accompanying the alleged draft and appear to have come off David Simon, an interested party in this litigation computer.

101. Simon Bernstein's intent on the day he died cannot be known but prior to his death his intent is clear from the evidence in his estate plans which was to have TED and PAMELA SIMON excluded from any inheritances and Simon had considered them predeceased with his wife Shirley from all trusts while living in 2008.

c. Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee;

102. Each of the "Consenting Children" have conflicted interests with their own children in these matters as if this Action is successful each child will receive 1/5<sup>th</sup> of the missing policy benefits and if unsuccessful in this Action all of them will receive nothing from the missing policy. If the estate is successful in this Action and the beneficiaries are determined to be Simon's grandchildren again the children will get nothing. The beneficiaries of the Estate and Trusts of Simon Bernstein are all in question in the probate court due to the frauds committed by TED'S former counsel and former fiduciaries of the Estate and Trusts of Simon Bernstein, TESCHER and SPALLINA. Finally, the grandchildren may not be beneficiaries in Simon's Estate either as the dispositive documents have been challenged and have already been found by Governor Rick Scott's Notary Public Division to have been improperly notarized and they are alleged fraudulent and under ongoing investigations.

103. TED would again not be a qualified trustee as he is conflicted and adverse to beneficiaries of the Estate due to his direct interest in the outcome of this Action.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015



- d. The beneficiary of the Policy Proceeds is the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;

**ANSWER**

104. The beneficiary remains disputed and unknown at this time, even according to the Court's recent Order denying Eliot's claim for emergency interim distribution until resolution of the beneficiaries is determined.

105. There are no "Policy Proceeds" as there has not been produced a legally binding policy at this time.

106. There is no 95 Legally Nonexistent Unexecuted Trust that has standing as a Plaintiff or as an alleged beneficiary.

- 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;

**ANSWER**

107. There is no legally valid 95 Legally Nonexistent Unexecuted Trust and thus the alleged beneficiaries are not legally valid.

- 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";

**ANSWER**

108. That if the Court were to rule in favor of the 95 Legally Nonexistent Unexecuted Trust than Eliot would request that due to the disputes with the other beneficiaries and their attempts to deprive Eliot through fraud of his inheritance in multiple schemes currently under

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

investigation and some proven already, Eliot would request any share be paid directly to him.

109. There are no "Policy Proceeds" as no legally binding policy has been produced to this Court by any party.

- 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."

**ANSWER**

110. N/A

- h. Movants and Third-Party Defendants are granted leave to file a dispositive motion as to Eliot's Claims within sixty days;

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

111. N/A

- i. Movants are entitled to such further relief as this court may deem just and proper.

**ANSWER**

112. N/A

**LINE BY LINE OBJECTIONS TO:**  
**20150327 MOTION FOR SUMMARY JUDGEMENT MOVANT STATEMENT OF**  
**FACTS**

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).

**ANSWER**

113. There is no executed legally valid 95 Legally Nonexistent Unexecuted Trust that can act as Plaintiff in this matter and as an alleged Contingent Beneficiary. The insurance carrier HERITAGE already declined to pay the proceeds to the legally nonexistent 95 Legally Nonexistent Unexecuted Trust for failure to produce an executed copy of the said trust.

114. Counsel, A. Simon cannot represent a legally non-existent trust.

115. TED cannot act as alleged “Trustee” of a legally non-existent trust.

2. Bank of America, N.A. (“Bank of America”), was named a party to Heritage’s counterclaim for Interpleader. Bank of

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

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)

**ANSWER**

116. N/A

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)

**ANSWER**

117. N/A

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)

**ANSWER**

118. This failure to answer is cause for further discovery.

119. I, Eliot Bernstein, should be granted Court Ordered Discovery as I cannot gain discovery to United Bank of Illinois since I am not an Executor/Personal Representative or Trustee.

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).

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

**ANSWER**

120. The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally nonexistent "Policy" that is the subject contract of this Breach of Contract Lawsuit filed by the Plaintiff and where Sanders testimony could be construed as efforts to cover up for said liabilities resulting from losing an insurance policy, an unheard of event in insurance that would expose the carrier Jackson National Life to a variety of liabilities to beneficiaries and others.
121. There is evidence in production that shows that Simon Bernstein requested and was given the exact name of the beneficiaries, which were the Primary as LASALLE and the Contingent as Simon Bernstein Trust, NA in 2010 and Simon did not respond to the names as incorrect and the insurance carrier referred to no truncation or abbreviation of the Contingent Beneficiaries name in their letter.
122. SANDER'S statement that the name "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" was truncated by a computer system due to length or entered in error by an employee and thus was transformed into "Simon Bernstein Trust, N.A." does not fit any known computer system software that truncates data strings by eliminating the end of strings after the maximum character recognition is exceeded. Where the name of the beneficiary is not subject to interpretation by employees as the beneficiaries name must be exact and the beneficiary forms must be attached to the executed policy contract, which at this time no legally valid insurance contract has been produced to confirm SANDER'S claims and thus needs further discovery and litigation.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

123. That there are frauds that have already been proven in the Estate and Trusts of Simon and Shirley Bernstein and there are missing trusts and other documents in the Estates and Trusts of Simon and Shirley Bernstein and Ted Bernstein according to his deposition testimony does not know what he did with a mass of dispositive documents brought to him minutes after his father died and these documents may have additional information that is intentionally being secreted from beneficiaries, the insurance carrier and this Court for Plaintiffs to attempt to steal off with the insurance proceeds deposited with the Court.

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)

**ANSWER**

124. TED is not a valid "Trustee" of the 95 Legally Nonexistent Unexecuted Trust as there is no legally executed and binding trust document produced.

125. No retainer of A. Simon's services has been produced to beneficiaries. Since there is no 95 Legally Nonexistent Unexecuted Trust produced, the acts of the alleged Trustee and his counsel are legally invalid and where neither the alleged Trustee or his alleged Counsel are acting within the law.

126. TED retained SPALLINA as his counsel to file the fraudulent claim to the insurance carrier, whereby SPALLINA claimed to be the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust and the claim was DECLINED by the carrier leading to this Breach of Contract lawsuit and then TED retained A. Simon as his counsel and with no notice to the alleged

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

beneficiaries became suddenly the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

127. That TED was advised by his own counsel SPALLINA that he had no standing to file this lawsuit. TED then retained his sister Pam’s husband’s brother, Adam Simon, to represent him as the new Trustee. Where Adam Simon is partner with his brother David Simon in a law firm that primarily worked for Simon Bernstein in his offices since each graduated college and where David Simon and his firm stand to benefit directly from this action not only from legal fees but D. Simon will get with his wife Pamela 1/5<sup>th</sup> of the proceeds if this lawsuit is successful for Plaintiffs.

128. Similar to TED, is his sister Pamela Bernstein-Simon, who both were considered predeceased in the Estates and Trusts of Simon and Shirley Bernstein and if the monies are paid to the Estate or other vehicles and not the 95 Legally Nonexistent Unexecuted Trust, both stand to get nothing for them or their families. Their children may be beneficiaries but that is still to be determined via ongoing probate and trust actions due to the FRAUD that has occurred by TED and his counsel TESCHER and SPALLINA and others.

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)

**ANSWER**

129. The fact that Plaintiffs claim that JP Morgan Chase Bank is an “alleged” successor calls for further discovery in these matters.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

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)

**ANSWER**

130. N/A

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)

**ANSWER**

131. N/A

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.)"

**ANSWER**

132. N/A

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.)

**ANSWER**

133. From the Idaho Department of Insurance @

<http://www.doi.idaho.gov/insurance/Succession.aspx?AID=1315>



The Certificate of Authority #1315 belongs to an active company with former names.

Start	End	Former Names
12/29/1980	12/12/2000	CAPITOL BANKERS LIFE INSURANCE COMPANY
12/12/2000	8/29/2008	ANNUITY & LIFE REASSURANCE AMERICA, INC.
8/29/2008		HERITAGE UNION LIFE INSURANCE COMPANY (1315)

134. That information from Annuity & Life Reassurance America has not been obtained in this lawsuit and they may have retained copies of the missing insurance policy and thus need for further discovery. Eliot cannot obtain this information as he is not an Executor/Personal Representative of the Estate and Trusts of Simon.

135. JACKSON is believed to have then acquired HERITAGE and entered this case on behalf of HERITAGE and then suddenly disappeared after depositing funds in the court registry.

136. HERITAGE when interpleading the funds to this Court misled this Court to believe that there was a valid binding life insurance policy with "Policy Proceeds" equal to the amount interpled, when factually they failed to produce such policy showing that this in fact was the correct amount stated in the legally binding contract that remains missing.

137. There can be no "Policy Proceeds" without a legally binding policy produced and this is misleading.

138. There are conflicting evidences of the amount of insurance of the missing policy<sup>25</sup>.

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<sup>25</sup> HERITAGE application to increase Death Benefit from 2 to 3 Million.

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)

**ANSWER**

139. N/A

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)

**ANSWER**

140. N/A

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)

**ANSWER**

141. That Adam Simon representing the Trustee and the beneficiaries appears conflicted.

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

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

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)

**ANSWER**

142. N/A

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)

**ANSWER**

143. N/A

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)

**ANSWER**

144. N/A

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.

**ANSWER**

145. N/A

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)

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

146. N/A

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)

**ANSWER**

147. N/A

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)

**ANSWER**

148. The Primary Beneficiary LASALLE was the trustee and administrator for the VEBA plan that the missing policy is a part of according to the records produced and thus LASALLE or its Successors must be contacted by the carrier as they remain the Primary Beneficiary.

149. What happened on dissolution of the VEBA to the assets of the VEBA, including any insurance benefits and policies, where the insured's chosen beneficiaries of the policies issued for the VEBA were defined through the VEBA plan not by the missing policy's named beneficiaries, which was LASALLE and Simon Bernstein Trust, NA. The VEBA plan trust must be produced to know the plan beneficiaries and what happens to the VEBA trust assets upon dissolution and this needs further discovery or litigation to determine.

22. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

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)

**ANSWER**

150. N/A

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)

**ANSWER**

151. N/A

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)

**ANSWER**

152. It appears that this corporation was dissolved by TED immediately after his father died and no records of this entity have been turned over to beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein in Florida and thus further discovery needs to take place or further litigation to determine what assets were in this entity.

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"

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

or the "Estate". (Dkt. #126; Ex. 30, Aff. of Ted Bernstein ¶¶43-  
¶44)

**ANSWER**

153. That Adam Simon represented Ted Bernstein as an alleged trustee of the 95 Legally Nonexistent Unexecuted Trust and filed opposition pleadings to block the entry of the Estate of Simon from intervening in this lawsuit. This was done in conflict and with improper representation as TED was simultaneously acting as Trustee for a Simon Bernstein Trust in Florida that would also possibly receive the proceeds and where Ted alleges to be a beneficiary of the 95 Legally Nonexistent Unexecuted Trust who stands to gain 20% of any proceeds paid and where TED and/or his children may get nothing if the proceeds are paid to the Estate and Trust beneficiaries in Florida, once those beneficiaries are determined. In no event will TED receive benefits if not paid through the 95 Legally Nonexistent Unexecuted Trust scheme in this Action.

154. That this conflict of TED'S that led him to file opposition papers to the Estate being joined in these matters has caused delays in the Estate being represented in these matters, compounding the delays in inheritances caused by TED'S prior counsel and the prior fiduciaries of the Estate of Simon, Co-Executors/Personal Representatives and Co-Trustees, TESCHER and SPALLINA, who intentionally blocked the Estate and Trust of Simon from entering this case (working against the interest of the Estate and Trust beneficiaries), as they were working as TED's counsel to convert the proceeds through the 95 Legally Nonexistent Unexecuted Trust scheme whereby TESCHER and SPALLINA filed the fraudulent insurance claim that led to this Breach of Contract Lawsuit in efforts to defeat their clients they represented in the Estate of Simon to benefit TED instead. Where the claim asserted by the Plaintiff is that the insurance company breached the missing insurance contract terms

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

by failing to pay the fraudulent death benefit claim submitted by TESCHER and SPALLINA and where SPALLINA represented that he was the trustee of the 95 Legally Nonexistent Unexecuted Trust that TED now claims to be the alleged Trustee of in this lawsuit.

155. That due to these intentional delays and interferences with expectancies both Eliot and the Estate have been denied proper time to fully complete discovery and thus discovery must be extended, especially where it was intentionally interfered with to attempt to close this Action before allowing known possible beneficiaries to participate. At this time, none of the grandchildren, including minor children are represented in this case by counsel, except Eliot's children who are represented Pro Se by Eliot.

I. 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.)

**ANSWER**

156. A specimen policy was provided, which is not a legally valid executed and legally binding copy of the actual insurance policy that is subject of this lawsuit. A specimen policy is an insurance carrier policy submitted to each state the policy is being applied for in as a sample of what a policy will look like for a consumer.

157. There is no policy presently produced or proven by Plaintiffs so no "Policy Proceeds" can be determined from a specimen and the attempt to define the specimen as the actual

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

“Policy” on Simon is misleading to the Court and requires further discovery as to where the actual policy is.

158. That the affidavit of SANDER’S states that the specimen policy amount of insurance is not the correct amount and would not be the amount stated in the missing life insurance contract and this is cause for further discovery and litigation into what exactly the missing policy death benefit amount is.

159. That the Specimen policy also contains no beneficiaries of the missing policy as the beneficiaries are not defined thereunder.

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)

**ANSWER**

160. The application is not complete as submitted in production as parts appear missing, a verified copy would need to be obtained showing the entire document and cause for further discovery.

161. Don Sanders affidavit is in question due to conflicts and adversity.

162. There is alleged evidence that shortly before his death Simon’s policy lapsed and was reinstated, a new application was taken and appears missing from the records which may also contain new application information pertinent to this lawsuit and the reinstatement should have caused a new or reinstated policy to be produced as indicated in letters to Simon by HERITAGE and this lack of a reinstated policy is highly suspect that this information is missing from the carriers production.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015



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)

**ANSWER**

163. This application is not known to be the actual application of the policy as no policy is produced at this time proving what application is attached to the policy, especially after alleged re-issue and where insurance contracts, policies, have attached to them the policy applications as part of the legally required contractual documents attached to the issued policy. Therefore, this evidence is questionable and needs further discovery to determine if in fact this application was the defining application of the original issued policy. The final application is required to be attached to the policy.

164. (ii) The records and policies for the VEBA plan participants are sent to Simon's companies and office location at that time, as the policies were sold by Simon and the VEBA was administered with many other VEBA policies he sold through the trust company he established (Simon was the founder of death benefit VEBA programs and the leading broker nationwide in such sales.)

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

165. (iii) Simon Bernstein was an executive and leading insurance salesman nationwide who brokerage sold billions of dollars of life insurance premium.
166. (iv) N/A
167. (v) N/A
168. (vi) N/A
169. (vii) This would indicate that the missing policy should be with the original owner or its successors and would require additional discovery to determine where it is, although it is the ultimate responsibility of the insurance carrier to maintain a copy of the actual policy and policy records according to law and underwriting and administrative procedures, as well as would be required by any reinsurers that risk was ceded to.

II. THE S.B. LEXINGTON EMPLOYEE DEATH  
BENEFIT TRUST THE “ V E B A ”)

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)

ANSWER

170. That the VEBA information is critical to the payment of any proceeds of any policy once one is found, as LASALLE being the Trustee for the primary beneficiary of the VEBA plan would then have specific duties to pay beneficiaries determined in the VEBA plan by the employees to their named **plan** beneficiaries.

171. That if LASALLE dissolved the VEBA the benefits would be allocated according to law and the terms of the VEBA trust and again why further discovery is necessary to determine the role of the Primary Beneficiary and its obligations under the VEBA plan upon dissolution.

172. That the VEBA information and copies of the trust should be maintained as well by Pam and David Simon who ultimately controlled the administration of the many VEBA plans sold by Simon Bernstein and thus should have been produced in these matters but have not been.

173. It is alleged that the VEBA plan or its Successor plan may have had over \$50,000,000.00 of assets in it as late as 2009<sup>26</sup>.

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)

**ANSWER**

174. This statement contradicts Plaintiffs' own claims that a contingent beneficiary (with a different name than the insurance company's own records which claim the contingent to be Simon Bernstein Trust, NA) should be paid while the primary beneficiary LaSalle National

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<sup>26</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A showing 50 Million + of assets in 2009

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/SBLexingtonDeathBenefitPlanUnitedBankOfIllinois.pdf>

Trust, NA is according to the carrier of the nonexistent policy the Primary Beneficiary and where Equifax was told the VEBA would be responsible for paying the insurance benefits.

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)

**ANSWER**

175. N/A

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)

**ANSWER**

176. That while this may have been the initial VEBA plan beneficiary designated by Simon there is evidence, including a 2000 Insurance Trust and the subsequent Simon Bernstein Trust NA that would suggest that Simon had changed the beneficiary of the VEBA plan and this would need discovery from LASALLE through its successor, Chicago Title to determine who the VEBA plan beneficiary now is.

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

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday June 3, 2015

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)

**ANSWER**

177. According to the Insurance records the Primary beneficiary was LASALLE and the contingent beneficiary was not the “Bernstein Trust” aka 95 Legally Nonexistent Unexecuted Trust as alleged by Plaintiffs but in fact the Simon Bernstein Trust, NA.

178. Again with a legally existent Primary Beneficiary the Contingent Beneficiary does not even become a viable recipient of the death benefit, which could make Summary Judgement more fraud if the Contingent is paid while the parties all knew of an existing Primary Beneficiary.

179. At death the VEBA was the Primary Beneficiary according to this account.

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)

**ANSWER**

180. SANDER’S affidavit has claimed to be steeped in conflict as his employer JACKSON has a vested interest in the outcome of the litigation, especially if they have lost the insurance contract and are exposed to liabilities resulting from such loss.

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)

**ANSWER**

181. N/A

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

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)

**ANSWER**

182. The dissolution papers are missing to confirm the veracity of Pam's affidavit which violates the Il Dead Man's Act as it relates to the "shareholders" of which Simon was one.

183. While it is claimed that the owner was changed from LASALLE it is not claimed that the Primary Beneficiary was changed from LASALLE and again this would make LASALLE the beneficiary of the proceeds of the missing/lost/suppressed contract.

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)

**ANSWER**

184. Note that no efforts were made to contact LaSalle National Trust NA or its Successor by HERITAGE or any party to this lawsuit and thus further discovery and litigation of these matters is still necessary and the insurance company must be rejoined as an indispensable party and this Court demand they answer why they have failed to contact the Primary Beneficiary.

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))

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

185. The only party with claims to the benefits of the missing policy would according to insurance company records would be the primary beneficiary LaSalle National Trust, NA.

186. That documents are missing in the Estate and Trusts of Simon Bernstein and thus it is highly probable that like the 2000 Insurance Trust that was secreted from this Court the alleged Contingent Beneficiary by HERITAGE, the Simon Bernstein Trust NA is also being suppressed and secreted by Plaintiffs in their efforts to fraudulently convert the monies.

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.

**ANSWER**

187. LASALLE or its successors would appear to be the only financial institutions with claims to the litigation proceeds and the carrier nor any parties in this litigation have notified LASALLE or its successors they are the Primary Beneficiary of an alleged insurance policy death benefit.

**III. 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)

**ANSWER**

188. Even if this were the case, this 95 Legally Nonexistent Unexecuted Trust would be only a Contingent Beneficiary and there is still a Primary Beneficiary and then there is the 2000 Proskauer Trust that supersedes the 95 Legally Nonexistent Unexecuted Trust and then there is a Simon Bernstein Trust, NA that supersedes the 95 Legally Nonexistent Unexecuted Trust as Contingent Beneficiary as of the year 2010 and confirmed by Simon Bernstein as such.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

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)

**ANSWER**

189. That this new information leads one to need discovery to get all the tax records regarding the VEBA trust and tax records for the missing 95 Legally Nonexistent Unexecuted Trust and tax records for all of the other trusts involved.

190. It should be noted that the Curator of the Estate of Simon who replaced TESCHER and SPALLINA, attorney at law Benjamin Brown, Esq. ("Brown") had requested from the IRS over a year ago tax returns for Simon and Shirley individually and for entities they owned and only days after he stated he thought he had received them, he unexpectedly died at age 49 from a heart attack. Upon receiving records from Brown, O'CONNELL the Personal Representative that replaced Brown stated the long anticipated tax returns were not with the records Brown turned over. Several months ago O'CONNELL stated his firm had ordered new "certified" copies of the tax returns and they would be produced shortly but as of this date they have not been produced to any parties. This is further reason that discovery should be continued as the tax returns will provide valuable information that may influence the outcome of this litigation.

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 Bemstein Trust appear on this document. (Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)

**ANSWER**

191. This may be true at that time in 1995 but again this would only show that the VEBA controls whom the beneficiary would be and with LASALLE still the Primary Beneficiary this indicates that even if the VEBA had been dissolved as alleged, the VEBA trust provided that LASALLE or its Successor would pay the former VEBA plan participants benefits after dissolution of the VEBA.

192. That again even if proved that the 95 Legally Nonexistent Unexecuted Trust existed and were valid it would still be only a Contingent Beneficiary. Again, there are competing claims that the Contingent Beneficiary was changed by Simon to the Simon Bernstein Trust NA.

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)

**ANSWER**

193. Here the Plaintiffs are claiming the benefits are paid to the VEBA Trust through LASALLE as the Primary Beneficiary to then be paid by LASALLE to the VEBA and the administrator would then pay the VEBA plan participant's beneficiary election, which they claim is the missing 95 Legally Nonexistent Unexecuted Trust. In this scenario, the 95 Legally Nonexistent Trust would not be listed as the Contingent Beneficiary on the insurance

contract, as apparently, according to the records produced it has never been named as the Contingent Beneficiary on the missing contract.

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).

**ANSWER**

194. Simon's intent changed over time and at the time of his death he had removed Ted and Pam from receiving any benefits of the Estate planning Trusts of Simon and they were considered predeceased.

195. Simon Bernstein's intent as of 2000 was more defined in the 2000 Proskauer Insurance Trust that at that time would have been the beneficiary and the 95 Legally Nonexistent Unexecuted Trust would have replaced it.

196. Simon Bernstein's intent as of 2010 was more defined when he confirmed with HERITAGE that the Contingent Beneficiary was the Simon Bernstein Trust NA.

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."

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

197. This evidence contradicts Plaintiffs claims that the missing policy Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust.

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)

**ANSWER**

198. SANDERS statement is made on hearsay evidence as he does not claim to be the party responsible for the error in entering the full formal name of the beneficiary. SANDERS also states that it is common practice for the insurance carrier to rename a beneficiary to an entirely different name and retain no formal evidence of the actual name of the contingent beneficiary.

199. That SANDERS statements are based on the records he reviewed but it is OBVIOUS that the records reviewed are missing key pertinent records, including but not limited to, THE ACTUAL POLICY, copies of the trusts and more and so his statements are based on an incomplete set of records.

200. Simon Bernstein allegedly requested confirmation of the beneficiaries and the letter was sent indicating the Contingent Beneficiary as the Simon Bernstein Trust, NA, which to Eliot's knowledge, no one has conducted investigation to see if this trust exists and there are ongoing investigations into missing and suppressed and fraudulent and altered estate documents ongoing that may materially affect the outcome of this case and make Summary Judgement Premature when records are released that are being withheld or suppressed.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

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)

**ANSWER**

201. Exhibit 14 indicates that a NEW POLICY COPY was issued by the carrier and sent to Simon's home address. This would indicate that insurer would have had a recent COPY of the missing policy available at that time but did not retain a copy with their letter sent to Simon or produce the letter with the copy sent at that time.

202. The reinstated policy may differ than any other earlier policy in key areas such as face amount, beneficiaries, health ratings, etc., which could materially affect the outcome of this lawsuit.

203. If the Primary Beneficiary did not change at this time then LASALLE is the receiver of any monies resulting from this lawsuit or the policy if it is found at some point through further discovery.

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)

**ANSWER**

204. That a death benefit claim and this instant legal Action were both filed with NO DRAFT COPY in the possession of the alleged trustees of the 95 Legally Nonexistent Unexecuted

Trust for over a year until they magically appeared when the Court was demanding that an executed copy be found to give Plaintiffs standing.

205. That these unexecuted drafts are not legally binding in any way and thus do not give standing in this lawsuit and do not qualify to be paid beneficiaries, as indicated when the insurance carrier DECLINED the death benefit request filed by SPALLINA who could not produce an executed trust as required by the carrier.

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)

**ANSWER**

206. N/A

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)

**ANSWER**

207. N/A

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)

**ANSWER**

208. Illinois Dead Man rule disqualifies this affidavit statements relating to conversations or events involving Simon.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

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)

**ANSWER**

209. The draft has no law firm markings and is wholly unexecuted and is disputed as to its legal validity in toto and nothing within the document can therefore be relied upon.

210. Why would David Simon handwrite in names to show Simon where names go in the trust?

What significance does this have?

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)

**ANSWER**

211. The terms of this draft are not binding if they are in fact a draft of the 95 Legally Nonexistent Unexecuted Trust that to date does not exist in the Court record.

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)

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

212. This document is an alleged draft on the date of the trust and yet no law firm has markings upon the document. There are other problems with the datafile that put it in dispute as a valid document.

213. The File Created date is September 03, 2004.

214. The file Modified date is June 21, 1995? How was it modified in 1995 when it was created in 2004?

215. Accessed "Today, September 30, 2013."

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)

**ANSWER**

216. N/A

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)

**ANSWER**

217. Ted Bernstein has a stepson making it 11 grandchildren if included.

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)

**ANSWER**

218. The fact is disputed in their own statement above as to who the trustee of this alleged draft of the 95 Legally Nonexistent Unexecuted Trust was going to be, which makes this a disputed fact.

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)

**ANSWER**

219. The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER**

220. The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Weclnesday, June 3, 2015



221. The “executed Bernstein Trust Agreement” does not exist and thus it is unknown what it would say if it existed.

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”

**ANSWER**

222. a) N/A

223. b) N/A

224. c) There is no “Bernstein Trust” that exists and thus again TED has no standing to act as a Trustee. Adam Simon should be sanctioned for attempting to claim that TED is a legally valid Trustee of a trust that does not exist and filing this lawsuit as Fraud on this Court. Adam Simon and the Plaintiffs should be reported for this Fraud on this Court to the proper authorities by this Court.

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)

**ANSWER**

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

225. That the Lincoln Benefit Life Insurance Company policy should also have a copy any 95 Legally Nonexistent Unexecuted Trust and the Lincoln Benefit policy and this is hearsay evidence from interested parties to the litigation.

226. The Lincoln Benefit Life contract or any evidence suggesting the veracity of the claims made has not been produced by Plaintiffs.

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)

**ANSWER**

227. No proof that a lapse occurred is presented.

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)

**ANSWER**

228. This Lincoln Policy also is controlled by the 2000 Proskauer Rose Irrevocable Trust and supersedes any alleged 95 Legally Nonexistent Unexecuted Trust interest.

IV. ELIOT'S CLAIMS

65. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation the ("Eliot's Claims"). (Ex. 26)

**ANSWER**

229. That until Eliot's counterclaims, third party claims and cross claims are heard Summary Judgement is premature.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

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)

**ANSWER**

230. N/A

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)

**ANSWER**

231. Eliot never submitted a claim form to the carrier claiming he or his children were named beneficiaries.

V. 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)

**ANSWER**

232. Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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.

**ANSWER**

233. Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER**

234. Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER**

235. The 2012 Will of Simon Bernstein has been challenged on its validity and there are pending motions and petitions filed regarding the validity and the construction that remain unheard.

236. The Florida Governor Rick Scott's Notary Public Division has determined that the Will is improperly notarized by TED's assistant, Lindsay Baxley. The document is under ongoing investigation and challenged on validity and construction in the probate case.

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

**ANSWER**

237. N/A

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.)

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

**ANSWER**

238. N/A

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.)

**ANSWER**

239. Eliot's counter/cross/third party claims present evidence that confutes and puts into dispute the Plaintiffs arguments herein and thus make Summary Judgement premature and litigation necessary.

VI. 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)

**ANSWER**

240. The reason the carrier declined the SPALLINA filed death benefit claim was because an executed copy of the alleged 95 Legally Existent Trust was not produced and thus is the same reason this Court should not pay the claim to the alleged 95 Legally Nonexistent Unexecuted Trust.

WHEREFORE, Eliot I. Bernstein, Pro Se Third party defendant, respectfully prays for an Order denying Plaintiffs' Summary Judgement motion in it's entirety, dismissing the Plaintiffs' claims if appropriate, Ordering further Discovery as requested, ordering sanctions or a hearing on sanctions against Plaintiffs if appropriate, and for such other and further relief as this Court deems just and proper.

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: June 03, 2015

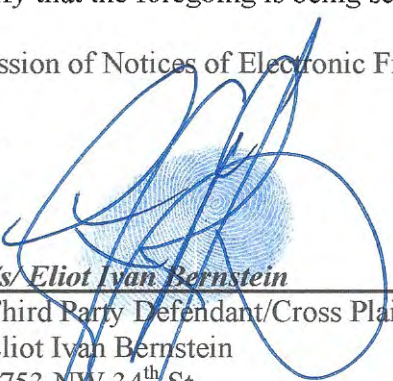
**Note: All URL'S contained herein are hereby incorporated by reference in entirety herein.**



/s/ Eliot Ivan Bernstein  
Third Party Defendant/Cross Plaintiff PRO SE  
Eliot Ivan Bernstein  
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Telephone (561) 245-8588  
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[www.iviewit.tv](http://www.iviewit.tv)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 03, 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.



/s/ Eliot Ivan Bernstein  
Third Party Defendant/Cross Plaintiff PRO SE  
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MOTION IN OPPOSITION TO SUMMARY JUDGEMENT  
Wednesday, June 3, 2015

**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 Friday, June 5, 2015:

MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's motion in opposition to summary judgment [186] is stricken for failing to comply with Local Rules 7.1 and 56.1(b). 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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

**RESPONSE TO SUMMARY  
JUDGEMENT**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



Third-Party Defendants\_ )  
 )  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
 )  
Intervenor. )  
/

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### **RESPONSE TO SUMMARY JUDGEMENT**

COMES NOW Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se and files this “Response to Summary Judgement” and states under information and belief as follows:

Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff’s improper at this time. In some instances, it is asserted that Plaintiffs’ statement of facts are fraudulent and Plaintiffs have withheld material facts and information from this Court and thus, Plaintiffs should be subject to Federal Rule 11 or appropriate sanctions. Summary Judgement to Plaintiffs must be denied at this stage of litigation and further Discovery proceedings scheduled together with a hearing on sanctions and such other and further relief as to this Court may be just and proper.

### **DISPUTED FACTS**

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged “Policy” at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent,

and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the “Policy” are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic “Specimen Policy” not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the “Policy” are in genuine dispute. .
3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon Bernstein (“Simon”) including but not limited to further document and record production from Heritage Union Life Insurance Company (“HERITAGE”), Jackson National Life Insurance Company (“JACKSON”), LaSalle National Trust, NA (“LASALLE”) in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein (“TED”), EBTs of Pamela Beth Simon (“PAM”), David Simon (“D. SIMON”), Robert L. Spallina, Esq. (“SPALLINA”), Donald R. Tescher, Esq. (“TESCHER”) and Don Sanders (“SANDERS”) at minimum.
4. It is noted for this Court that Judge Martin Colin (“COLIN”) of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the

Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.
6. The Disqualification motion<sup>1</sup> in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.
7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

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<sup>1</sup> COLIN Disqualification Motion

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

8. The fact is there is no executed “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.
9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.
10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs’ Summary Judgment itself at this time. See Plaintiffs’ Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs’ own document submissions.
11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs’ own document submissions have not been brought in as a party in these proceedings by Plaintiffs

nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.
13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital<sup>2</sup> and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.
14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte "recuses" after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact

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<sup>2</sup> Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

witnesses to the frauds committed by TESCHER and SPALLINA'S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order<sup>3</sup>.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim<sup>4</sup> in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust.
16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit ("Action") filed for breach of contract and the Action is based on the carrier denial<sup>5</sup> of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.
17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA

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<sup>3</sup> COLIN Recusal Order

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>4</sup> Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

<sup>5</sup> Reassure America Life Insurance Company Decline Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

- as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.
18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.
19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.
20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for LASALLE when filing his death benefit claim<sup>6</sup>, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.
21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent

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<sup>6</sup> HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP<sup>7</sup> that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.
23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust<sup>8</sup> and sanctions or a sanctions hearing should be granted and further Discovery allowed.
24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the

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<sup>7</sup> 2000 Simon Bernstein Life Insurance Trust - Proskauer

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

<sup>8</sup> TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>



Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“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. [emphasis added]** as Successor Trustee...,”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.
27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>9</sup> from six cases after

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<sup>9</sup> Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as “Legally Insufficient

his denial of Eliot's Petition for Disqualification<sup>10</sup> as "Legally Insufficient" on May 18, 2015<sup>11</sup>, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases<sup>12</sup> of the Bernstein family.
29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>10</sup> Petition for Disqualification of Judge Martin Colin

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

<sup>11</sup> Judge Colin Denial of Disqualification

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

<sup>12</sup>

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
3. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502014CP003698XXXXSB – Shirley Trust Construction
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB
6. Case # TBD – Creditor Claim – Eliot v. Estate of Simon

from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.
31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and

other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.
33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.
34. The matters need to be investigated by the carrier as a possible murder of Simon<sup>13</sup> which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.
35. There are Petitions that were unheard by COLIN'S court at the time of his recent recusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover

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<sup>13</sup> Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446>, which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.
37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,
- a. Records from insurers and reinsurers,
  - b. Records from the Primary Beneficiary LaSalle National Trust, NA,
  - c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,
  - d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,

- e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.
38. There is need for further affidavits, declaration and further discovery, especially after TED'S deposition, which opens new discovery, including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract<sup>14</sup>.

**LINE BY LINE OBJECTIONS TO:**  
**“AMENDED MOTION FOR SUMMARY JUDGEMENT AS TO COUNT 1 MOVANTS**  
**CLAIMS TO POLICY PROCEEDS”**

39. Eliot will now present a line by line objection to each statement in Plaintiffs Summary Judgement and supporting documents with each numbered statement of Plaintiffs addressed with an answer below it.

“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:”

**ANSWER**

40. There is a primary beneficiary LASALLE and it appears that no one has contacted the Primary Beneficiary or its Successors and this Summary Judgement is instead attempting to have this Court pay a Contingent Beneficiary instead of the Primary. When there is the existence of a Primary Beneficiary the contingent beneficiary cannot be paid benefits.

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<sup>14</sup> TED Deposition Pages 116-118

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

41. No executed copy of a “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” the alleged by Plaintiff Contingent Beneficiary has been produced to this Court to establish this legally nonexistent trust and give it legal standing as a Plaintiff or a Contingent Beneficiary. Again, the insurance company records state the Contingent Beneficiary is the Simon Bernstein Trust, NA on the day Simon died not the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95.
42. As no executed copy of the 95 Legally Nonexistent Unexecuted Trust has been presented by Plaintiffs and produced to this Court, the legal standing of TED as a legally valid trustee of such nonexistent trust is therefore disputed and Plaintiff’s have failed to bring forward competent proof to demonstrate the absence of material issues of fact on this matter and therefore Summary Judgment must be denied. Thus, it is disputed whether this Trust even exists and without competent proof and-or further discovery, the Trust and alleged Trustee must be presumed to not exist or at minimum certainly not proven sufficient for Summary Judgment at this stage of litigation.
43. There is also an executed 2000 insurance trust done by Proskauer Rose that would supersedes any 95 Legally Nonexistent Unexecuted Trust already exhibited herein which the Plaintiffs and attorney SPALLINA coordinated and colluded to secret.
44. There is also a missing Simon Bernstein Trust, NA that the carrier production records show was the Contingent Beneficiary at Simon’s death that would supersede any 95 Legally Nonexistent Unexecuted Trust.
45. It is noted that Adam Simon is brother to David Simon who is married to Pam Bernstein-Simon. Without this lawsuit scheme, if the money passes to the estate instead of the 95 Legally Nonexistent Unexecuted Trust, then Pam Bernstein Simon and Ted Bernstein would

receive NO benefits. Their children may receive benefits depending on the outcome of estate beneficiary disputes ongoing in Florida. Adam Simon represents TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust and the alleged beneficiaries of the trust and the Plaintiffs of this lawsuit, which may present conflicts of interest.

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.

**ANSWER**

46. Virtually all the “undisputed facts” presented by Plaintiffs are disputed by Eliot.

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.”

**ANSWER**

47. As affirmatively stated above, there is no “Policy” that has been produced by any Plaintiff or any party to this action and thus this fact that there is a life insurance “Policy” at this time in this Action is disputed.

48. As there is no legally binding insurance contract proven or provided or produced, and there is no “Policy” proven, provided or produced, as such there can be no “Policy Proceeds.” determined to award Plaintiffs Summary Judgment at this time. Further Discovery proceedings should be ordered.

49. This lawsuit is a Breach of Contract lawsuit spawned from a denied insurance claim that arose after attorney SPALLINA first began illegally attempting to act as the Trustee of



LASALLE by correspondences already exhibited herein, which was done within weeks after Simon Bernstein passed away and thus this is not a dispute between various claimants as Plaintiffs suggest to this Court.

50. There is no copy or record of the 95 Legally Nonexistent Unexecuted Trust produced in these matters and thus Plaintiff's standing is disputed. If there is no trust there is no Trustee and therefore TED'S legal standing is disputed. Further, Plaintiffs individually, TED, Pamela Simon, Jill Iantoni and Lisa Friedstein, likewise have legal standing issues in dispute, as if the trust does not exist then they have no rights thereunder and whereby they have no claims to this Court or the carrier that they are beneficiaries of the missing policy deserving standing in any individual capacity. Thus, their lawsuit should be dismissed or at least reviewed and-or investigated as a fraud upon this Court and their attorneys at law involved should all be reported to the proper authorities and sanctioned for intentional misconduct and acting with scienter in tortious interference with an expectancy.
51. While corresponding with HERITAGE as the Trustee of LASALLE the Primary Beneficiary, SPALLINA then filed a death benefit claim on behalf of the alleged Contingent Beneficiary, the 95 Legally Nonexistent Trust, not on behalf of the primary beneficiary LASALLE (for unknown reasons) and that claim was DENIED because SPALLINA could not provide ANY document to HERITAGE to evidence a legally binding trust instrument to pay and this is the reason for the Breach of Contract lawsuit being filed.
52. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of LASALLE or provides any authority to act as same and thus within six weeks of the death of Simon Bernstein, attorney SPALLINA on behalf of his

legal client TED was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in correspondences with the carrier, SPALLINA was attempting to convert the monies to his law firm's trust account<sup>15</sup>.

53. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of a 95 Legally Nonexistent Unexecuted Trust or provides any authority to act as same and thus on November 01, 2012 within 6 weeks after the death of Simon Bernstein, attorney SPALLINA was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in the exhibited claim form attempting to convert the monies to his law firm's trust account.
54. The claim form submitted by SPALLINA on November 01, 2012 makes no mention of the fact that at that time there were ongoing investigation by the Palm Beach County Sheriff and an autopsy being performed to determine if Simon had been murdered.
55. The initial breach of contract action was not even filed in Cook County Illinois until after the Law Office of SPALLINA and TESCHER had already filed fraudulent documents in the Palm Beach County Circuit Court of COLIN on or about Oct. 24, 2012, including but not limited to, a false Petition of Discharge (full Waiver)<sup>16</sup> of Simon Bernstein dated April 9,

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<sup>15</sup> SPALLINA Letter to HERITAGE to pay death benefit to Tescher & Spallina PA law firm trust account. Page 11, Bullet Number 5.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

<sup>16</sup> April 09, 2012 Petition for Discharge (full Waiver)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

2012, which sought to use a document allegedly executed by Simon Bernstein and witnessed by SPALLINA five months earlier, submitted POST MORTEM for Simon who was now deceased, enabling a deceased Simon to act as Personal Representative while dead to close the Estate of his wife Shirley Bernstein. In addition to the fraudulent submission of the document, the document contained numerous false and fraudulent recitals of acts allegedly signed to by Simon Bernstein, which clearly had not occurred by the date of the alleged signing on April 9, 2012, for instance Simon claims to have all beneficiaries Waivers and the waivers were not sent to beneficiaries until May of 2012 and certain beneficiaries did not submit them until after Simon died.

56. While the precise circumstances of COLIN'S knowledge and possible involvement in the fraud are not presently fully known, after certain frauds had been exposed even COLIN stated on the record in a hearing on September 13, 2013<sup>17</sup> that he had enough evidence at that time to read TED, TESCHER, SPALLINA and their counsel their Miranda Rights.
57. That the law firm of Tescher & Spallina, PA also submitted to the Court forged and fraudulent Waivers for six parties, including POST MORTEM forgery and fraudulent notarizations of Simon's, also used to close the Estate of Simon's deceased wife Shirley using Simon while dead to act as the Personal Representative as part of an elaborate fraud on the court of COLIN, the beneficiaries, the creditors and others.
58. Upon learning of the six fraudulent waivers, including POST MORTEM forgery and fraudulent notarization for Simon, COLIN again stated he had enough evidence at that

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<sup>17</sup> September 13, 2013 Hearing - Colin discovers Fraud Upon the Court - Pages 14-18

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

moment to read them all their Miranda Rights (See exhibited September 13, 2013 Hearing Pages 14-18).

59. The Court should note that COLIN however failed to take any corrective or administrative actions against those involved and in fact proceeded as if a crime had not taken place and allowed TESCHER, SPALLINA and TED to continue to be fiduciaries and counsel in the proceedings and forced Eliot and others to spend years attempting to remove them through pleading after pleading evaded by COLIN who should have removed them with himself once he discovered the Fraud in and on his court committed by his appointed Fiduciaries, Counsel and involving him and his employees directly.
60. COLIN further failed to inform this Court of the crimes related parties to this Action were involved in in his court and instead began a two year denial of due process and procedure and retaliation against Eliot who was exposing the crimes of his court, while he was mandated under Judicial Canons to disqualify on his own initiative due to his direct involvement as a material and fact witness to the criminal acts that took place in and on his court that were committed by his appointed Officers and Fiduciaries, attorneys at law, TESCHER, SPALLINA and TED and other retained counsel, MANCERI and PANKAUSKI.
61. COLIN also acted outside the color of law as he could not investigate his own court, himself, his court appointed fiduciaries and officers without exuding the Appearance of Impropriety and Judicial Canons require mandatory disqualification in such situations, yet he hung on as long as he could despite numerous attempts to remove him and force disqualification on his own initiative.

62. That the law firm of Tescher & Spallina, PA also used Simon Bernstein POST MORTEM to close the Estate of Shirley in January 2013 where Simon who died on September 13, 2012 and was dead for four months closed the Estate of Shirley. At no time prior to Simon closing Shirley's estate while dead did TESCHER and SPALLINA who were acting as his counsel while he was dead notify the Florida probate court that Simon had passed away. At least there is no proof or record in the probate court that shows COLIN was so notified by Tescher & Spallina.
63. That when Simon died no Successor Personal Representative for Shirley's Estate was legally chosen and instead TESCHER, SPALLINA and TED used Simon to close Shirley's Estate as they needed for Simon to appear alive at the time of the closing of Shirley's Estate in order to attempt to then have Simon (while appearing alive) fraudulently change Shirley's Irrevocable Trust Beneficiaries that were set in stone two years earlier upon her death on December 08, 2010.
64. A fair review of the evidence thus far shows this complex scheme was created and designed in order for TESCHER, SPALLINA, TED et al. to seize Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then begin to steal assets of the estates and trusts, including through this secreted insurance scheme, while they breached fiduciary duties and law and denied beneficiaries access to information and accounting for any of the assets, all in violation of a mass of Probate Rules and Statutes and felony criminal laws and resulting in a mass of civil torts against beneficiaries and creditors and all allowed to continue through the closed eyes of COLIN.
65. That upon the resignations of TESCHER and SPALLINA after it was admitted and proven that their law firm committed fraud and forgery on the court, COLIN allowed them as their

last act to transfer Trusteeship in the Florida Simon Trust despite having acted as TED'S counsel to commit the frauds that directly benefited TED, in order to continue the cover up of the crimes committed in his court.

66. Simultaneous and in connection with the frauds in the Florida probate courts of COLIN and FRENCH were the illegal attempts by TESCHER, SPALLINA, TED and PAMELA SIMON to get the HERITAGE insurance proceeds initially converted illegally outside of the true and proper beneficiaries of the Estate and Trusts by SPALLINA impersonating himself as Trustee of the institutional trust company LASALLE, the alleged Primary Beneficiary of the missing insurance policy at the center of this Action.
67. Attorney SPALLINA then filed a death benefit claim with HERITAGE with SPALLINA now allegedly acting and signing the claim as the Trustee of the 95 Legally Nonexistent Unexecuted Trust (the Contingent Beneficiary alleged by Plaintiff of the missing insurance policy) which no Plaintiff or party working in concert with the Plaintiffs or any party who responded in this complaint have yet been able to provide to this Court or any court and certainly which has never been produced by Plaintiffs to myself, Eliot Bernstein.
68. Numerous ancillary crimes were committed once Dominion and Control were seized are under ongoing investigations, including this insurance fraud scheme, with the primary suspects alleged to be the fiduciaries and counsel in the matters, including but not limited to, TED, ROSE, TESCHER, SPALLINA, PAMELA SIMON, MANCERI, SWERGOLD and now to be added COLIN and FRENCH.
69. The fraudulent death benefit claim was filed by attorneys at law, SPALLINA and TESCHER, acting as counsel to TED and in simultaneously in conflict acting as counsel to

the Estate of Simon where there are different beneficiaries in this lawsuit and the Simon Estate and Florida Trust.

70. TESCHER and SPALLINA were acting at the same time in many other conflicting capacities to fraudulently maintain complete control of the Estates and Trusts, including but not limited to;

- a. Alleged “Trustee” of the 95 Legally Nonexistent Unexecuted Trust when filing the death benefit claim,
- b. Counsel to TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust, prior to their falling out after the claim was denied and Adam Simon then replacing TESCHER and SPALLINA upon filing of this lawsuit, which according to Jackson National’s initial Answer<sup>18</sup> TED was advised by SPALLINA as his Counsel that he had no legal standing to file this lawsuit, “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)...” Where TED further filed the lawsuit while not possessing a copy, executed or not executed or even a draft copy, of the alleged 95 Legally Nonexistent Unexecuted Trust and only upon repeated demand by this Court then over a year later produced alleged drafts that have no legal authority as they are wholly unexecuted,
- c. Alleged “Trustee” of LaSalle National Trust, NA,

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<sup>18</sup> Jackson National Answer and Counter Complaint (Page 8)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130626%20Jackson%20Answer%20to%20Complaint%20and%20Counterclaim%20and%20Third%20Party%20for%20Interpleader.pdf>

- d. Co-Personal Representatives of the Simon Bernstein Estate,
  - e. Co-Trustees of the Simon Bernstein Trust,
  - f. Counsel to themselves as Co-Personal Representatives and Co-Trustees for Simon's Estate and a Florida Simon Trust,
  - g. Counsel to TED as alleged Successor Trustee of the Shirley Bernstein Trust, and,
  - h. Counsel to TED as Successor Personal Representative to the Shirley Bernstein Estate.
71. Where TESCHER and SPALLINA then resigned<sup>19</sup> from the fiducial capacities listed above amidst the admission in an ongoing investigation with Palm Beach County Sheriff Investigators<sup>20</sup> that they fraudulently altered and disseminated a Shirley Trust document and potentially many others under investigation at this time.
72. There is no legally binding insurance contract that has been produced by any Plaintiff or any party to this action and thus this fact alleged by Plaintiffs that there is a life insurance policy is again disputed.
73. As there is no legally binding insurance contract, there is no "Policy" and as such there can be no "Policy Proceeds" and therefore the existence of "Policy Proceeds" is also disputed.

3. "The Insurer removed this Action from Cook County to the Northern District, and filed an Interpleader Action."

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<sup>19</sup> TESCHER and SPALLINA Resignation Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2014014%20Teschler%20Spallina%20Manceri%20Resignation%20Letters%20and%20Withdrawal%20as%20Counsel%20and%20Executors.pdf>

<sup>20</sup> Sheriff Reports (Page 6 of 51)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>



**ANSWER**

74. The insurer not only removed the case to this Court but also added Eliot as third party defendant, as the lawsuit had been secreted from him despite claims from Plaintiffs that he is entitled to benefits.

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.”

**ANSWER**

75. The fact that the insurance carrier failed to produce a bona fide insurance policy is a liability to the carrier that should have caused them to remain in this lawsuit and the Court erred in allowing them to be dismissed prematurely and they should be re-entered in the lawsuit by this Court enjoining them until such time that a bona fide policy is produced to this Court and an explanation and analysis of the law regarding LOST or MISSING insurance policies and liabilities resulting from such loss of contract is litigated before this Court.

76. There were no conflicting “claimants” to the proceeds as suggested as Eliot never filed a claim on his or anyone else’s behalf and the insurer misled the Court that there was a dispute when interpleading their funds and did not correctly notify the Court that a fraudulent death benefit claim had been made by SPALLINA that was denied and abdicated their responsibilities through this misrepresentation.

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]”

**ANSWER**

77. The discovery needs to be expanded due to new evidence in the Estate and Trust cases of Simon and Shirley Bernstein that may have significant impact on this lawsuit.
78. That discovery needs to be expanded due to new information gained from the Deposition of Ted Bernstein.
79. That discovery needs to be expanded to contact the Primary Beneficiary before any payment can be made to any alleged contingent beneficiary.
80. Eliot has been denied access to estate and trust documents of Simon and Shirley in violation of Probate Rules and Statutes as part of an effort to conceal the fraudulent activities of TESCHER, SPALLINA, TED and others that has been exposed and in certain instances prosecuted already in the estates and trusts of Simon and Shirley Bernstein and which crimes are under a series of ongoing state and federal investigations.
81. This lawsuit has been stymied and delayed for over a year while Plaintiffs attempted to find an executed trust document to give them standing and still they have failed to produce such document. Additionally, it took over a year and half for Eliot to get Judge COLIN to allow counsel to represent the Estate's potential interest, which was blocked by the fiduciaries and their counsel acting in conflicts of interest to deny such intervenor. Finally, documents have been secreted from this Court, the beneficiaries and others for over two and half years making discovery almost impossible. The need for further discovery is essential to determining the facts in this matter and until TED'S qualifications as a legitimate Trustee are heard and it determined if he is now qualified, discovery is blocked due to TED'S alleged fiduciary roles and his failure to investigate or provide information regarding the fraudulent activities of his former counsel and others on his behalf.

6. "The matter is now ripe for the court to determine which claimant is the beneficiary of the Policy Proceeds."

**ANSWER**

82. There are no "Policy Proceeds" as there is no "Policy" and thus the court cannot make an informed decision at this time without further discovery and litigation of the matters of who the beneficiary of anything is due to the numerous frauds committed and ongoing.

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."

**ANSWER**

83. The evidence submitted by Plaintiffs is disputed and does not support Plaintiffs motion and in fact their own evidence and that of third party defendant Eliot's herein contradicts their conclusion that Simon Bernstein intended the Contingent Beneficiary to be the 95 Legally Nonexistent Unexecuted Trust.

84. In fact, the 95 Legally Nonexistent Unexecuted Trust is only an alleged Contingent Beneficiary and thus should not be paid as Plaintiffs admit that LASALLE is the Primary Beneficiary and no one has proven that it is not a viable beneficiary that should be paid before any Contingent Beneficiary would be considered.

85. There is NO legally existent "Policy" and thus there are no "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.

**ANSWER**

86. There is no legally executed 95 Legally Nonexistent Unexecuted Trust and therefore the legality of TED being the trustee at all is questioned. No valid evidence exists to show TED as a Successor Trustee.
87. TED is being petitioned to be removed in the Florida probate court as Successor Personal Representative of Shirley's Estate, alleged Successor Trustee of Simon's Trust and Successor Trustee of Shirley's Trust, as he is not now qualified to be Trustee for a multitude of reasons, including but not limited to,
- a. breaches of fiduciary duties,
  - b. conflicts of interest,
  - c. adverse interests,
  - d. alleged violations of state and federal laws under ongoing investigations,
  - e. the fact that the language in the Florida Simon Trust he alleges to be trustee of, precludes him from such fiduciary roles as the Successor Trustee cannot be related to the issuer (his father Simon) and TED is considered PREDECEASED for all purposes of the Florida Simon Trust,
  - f. the fact that it was TED'S former attorneys at law TESCHER and SPALLINA and their law firm members, who were acting as TED's counsel while simultaneously acting as fiduciaries in Simon's Estates and Trusts, committed a series of crimes to benefit their client and business associate TED by altering illegally dispositive documents, forging documents for six parties (including POST MORTEM forgery), fraudulently notarized dispositive documents (including POST MORTEM fraudulent notarizations) and committing fraud upon the court in the Florida Probate and Trust cases directly related to these matters and more, and,

g. even if TED were the Successor Trustee of the 95 Legally Nonexistent Unexecuted Trust, TED's failure to take any action regarding SPALLINA'S fraudulent insurance claim that was filed with SPALLINA executing the claim as the alleged Trustee of 95 Legally Nonexistent Unexecuted Trust that led the carrier to DENY the claim and led to this instant Action where TED magically appears as Trustee/Plaintiff. This dereliction and breach of fiduciary duty would be cause for TED to be removed, as TED'S knowing failure<sup>21</sup> to take action against his attorneys, friends and business associates, TESCHER and SPALLINA, who aided and abetted the insurance fraud scheme indicates TED'S protecting them versus the beneficiaries of the 95 Legally Nonexistent Unexecuted Trust.

88. TED is also conflicted acting as the alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust and at the same time acting as the ALLEGED Successor of the Simon Bernstein Trust in Florida, where TED would receive 1/5<sup>th</sup> of the missing policy proceeds in the event this bogus illegal lawsuit action is successful and would receive 0% if the proceeds are paid to the Estate and/or Trusts of Simon in Florida.
89. TED has already acted with his counsel in this lawsuit to block the estate/trust beneficiaries in Florida from being represented in this matter and acted in his own self-dealing best interests at the expense of the estate/trust beneficiaries, which is cause for his instant

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<sup>21</sup> TED Deposition Statement Regarding SPALLINA acting as Trustee (Pages 35-37)  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

removal in these matters as alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust<sup>22</sup>.

90. O'CONNELL, the newly appointed Successor Personal Representative/Executor of the Simon Estate has filed an affirmative defense<sup>23</sup> that claims that TED is acting as an illegal alleged Successor Trustee of the Simon Bernstein Trust in Florida, based on the fact that the language in the alleged Simon Trust precludes the Successor Trustee from being a related party to the issuer and thus TED as Simon's son is not a valid Trustee and also TED is considered predeceased for all purposes of the trust.
91. TED has admitted in his deposition that despite having alleged his father may have been murdered and contacting and opening a Sheriff investigation and Coroner Autopsy that TED did not feel there was any need to notify this Court or the insurance carrier that his father may have been murdered while simultaneously with his attorneys at law TESCHER and SPALLINA filed claims for the death benefits from the carrier and then filed this instant Action attempting to further abscond with insurance proceeds.

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

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<sup>22</sup> Attorney at Law Peter Feaman Letter to O'CONNELL regarding alleged misconduct of TED and ROSE in the Illinois Insurance Litigation.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O%27Connell.pdf>

<sup>23</sup> O'CONNELL Affirmative Defense that TED is not a legally valid Trustee.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%200Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf>

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.

**ANSWER**

92. As there is no basis for Summary Judgement to be granted at this stage of litigation with voluminous genuine issues of material fact presented and multiple areas of further Discovery warranted, any statement by Plaintiffs of what they may do in the future regarding my claims is premature and irrelevant at this time.

“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;”

**ANSWER**

92. Since there is no legally existent “Policy” produced in these matters the Owner and Beneficiary of the “Policy” are still disputed and further discovery is needed to contact all parties, insurers and reinsurers to determine where the legal policy contract is and determine if it is missing who is liable and for what damages

93. This statement itself by Plaintiffs is fraudulent and false before this Court since Plaintiffs' know of the existence of the Primary Beneficiary LASALLE and have done nothing to bring LASALLE into their lawsuit other than attorney SPALLINA fraudulently acting as Trustee of LASALLE and Plaintiffs should be subject to Rule 11 sanctions in the bringing of this motion for Summary Judgement. .

94. The primary beneficiary LASALLE and/or its successor has not been contacted by the life insurance carriers or the Plaintiffs and thus again further discovery is needed as to what happened to LASALLE and what the terms of the VEBA trust they acted as Successor Trustee for that was beneficiary of the policy and what happened upon the alleged dissolution. Movant David Simon's affidavit claims that he dissolved the VEBA trust but he was not the Trustee of LASALLE who would have had legal obligations to dissolve the VEBA and distribute any assets held by it to the plan participants according to the VEBA trust instrument, which again has not been produced to this Court by Plaintiffs who maintained the trust document at their offices.
95. The Contingent Beneficiary according to the insurance parole evidence is not the 95 Legally Nonexistent Unexecuted Trust but instead the Simon Bernstein Trust, NA and this contradiction remains disputed. The only evidence produced by Plaintiffs contrary to the records is an affidavit produced by a Jackson National Insurance Company executive stating that the name of the Contingent Beneficiary was a mistake but where the insurance company produced NO legally existent policy to prove such claim showing the policy beneficiary and where SANDERS statements are made in conflict as the carrier has an interest in having this case resolved without a policy as if it is determined that they have lost the policy the liabilities from potential beneficiaries could be enormous.
96. There is a 2000 Irrevocable Trust that exists that is executed done by Proskauer Rose, LLP that has the missing policy identified as the beneficiary of the policy and this would supersede any 95 Legally Nonexistent Unexecuted Trust and shows that Simon's intent had changed as to the beneficiaries since the 95 Legally Nonexistent Unexecuted Trust is claimed to have existed.



97. That SPALLINA, TESCHER, TED, PAM and DAVID SIMON are acting fraudulently before this Court by their intentional secreting of this 2000 Trust document (until turned over when TESCHER and SPALLINA resigned and were court Ordered to turn over their records) with the intent to defeat the wishes and intent of Simon Bernstein, best illustrated at TED'S recent deposition<sup>24</sup> where it is shown that the 2000 Trust was intentionally secreted from the carrier by SPALLINA, TESCHER, TED and PAM as it did not suit their ends to produce the document as it cut certain parties out any benefits.
98. This concealment of pertinent evidence constitutes a fraud on the court and the beneficiaries and other interested parties who have been damaged by this intentional and with scienter obstruction and this deserves both sanctions and reporting of the intentional fraud on the court and others to the proper authorities by the long and strong arm of the law exercised through this Court.
- 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;

**ANSWER**

99. The "drafts" of the alleged 95 Legally Nonexistent Unexecuted Trust prove that there is no legally executed trust that allows Plaintiff to have standing in these matters and have no legal basis to attempt to act as a contingent beneficiary.
100. The "drafts" while alleged to have been done by Hopkins and Sutter law firm before they were acquired by Foley & Lardner, LLP are suspiciously missing any law firm markings to

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<sup>24</sup> TED'S Deposition - Exhibits 1, 2 and 23 (Simon Bernstein 2000 Insurance Trust dated August 15, 2000) and Testimony Pages 37-53. 82-87  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

identify their work and one of the drafts was supposedly created on the date the trust was signed and has missing information and blank spots, no law firm markings or letters accompanying the alleged draft and appear to have come off David Simon, an interested party in this litigation computer.

101. Simon Bernstein's intent on the day he died cannot be known but prior to his death his intent is clear from the evidence in his estate plans which was to have TED and PAMELA SIMON excluded from any inheritances and Simon had considered them predeceased with his wife Shirley from all trusts while living in 2008.

c. Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee;

102. Each of the "Consenting Children" have conflicted interests with their own children in these matters as if this Action is successful each child will receive 1/5<sup>th</sup> of the missing policy benefits and if unsuccessful in this Action all of them will receive nothing from the missing policy. If the estate is successful in this Action and the beneficiaries are determined to be Simon's grandchildren again the children will get nothing. The beneficiaries of the Estate and Trusts of Simon Bernstein are all in question in the probate court due to the frauds committed by TED'S former counsel and former fiduciaries of the Estate and Trusts of Simon Bernstein, TESCHER and SPALLINA. Finally, the grandchildren may not be beneficiaries in Simon's Estate either as the dispositive documents have been challenged and have already been found by Governor Rick Scott's Notary Public Division to have been improperly notarized and they are alleged fraudulent and under ongoing investigations.

103. TED would again not be a qualified trustee as he is conflicted and adverse to beneficiaries of the Estate due to his direct interest in the outcome of this Action.

- d. The beneficiary of the Policy Proceeds is the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;

**ANSWER**

104. The beneficiary remains disputed and unknown at this time, even according to the Court's recent Order denying Eliot's claim for emergency interim distribution until resolution of the beneficiaries is determined.

105. There are no "Policy Proceeds" as there has not been produced a legally binding policy at this time.

106. There is no 95 Legally Nonexistent Unexecuted Trust that has standing as a Plaintiff or as an alleged beneficiary.

- 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;

**ANSWER**

107. There is no legally valid 95 Legally Nonexistent Unexecuted Trust and thus the alleged beneficiaries are not legally valid.

- 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";

**ANSWER**

108. That if the Court were to rule in favor of the 95 Legally Nonexistent Unexecuted Trust than Eliot would request that due to the disputes with the other beneficiaries and their attempts to deprive Eliot through fraud of his inheritance in multiple schemes currently under

investigation and some proven already, Eliot would request any share be paid directly to him.

109. There are no "Policy Proceeds" as no legally binding policy has been produced to this Court by any party.

- 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."

**ANSWER**

110. N/A

- h. Movants and Third-Party Defendants are granted leave to file a dispositive motion as to Eliot's Claims within sixty days;

**ANSWER**

111. N/A

- i. Movants are entitled to such further relief as this court may deem just and proper.

**ANSWER**

112. N/A

**LINE BY LINE OBJECTIONS TO:**  
**20150327 MOTION FOR SUMMARY JUDGEMENT MOVANT STATEMENT OF**  
**FACTS**

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).

**ANSWER**

113. There is no executed legally valid 95 Legally Nonexistent Unexecuted Trust that can act as

Plaintiff in this matter and as an alleged Contingent Beneficiary. The insurance carrier

HERITAGE already declined to pay the proceeds to the legally nonexistent 95 Legally

Nonexistent Unexecuted Trust for failure to produce an executed copy of the said trust.

114. Counsel, A. Simon cannot represent a legally non-existent trust.

115. TED cannot act as alleged “Trustee” of a legally non-existent trust.

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)

**ANSWER**

116. N/A

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)

**ANSWER**

117. N/A

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)

**ANSWER**

118. This failure to answer is cause for further discovery.

119. I, Eliot Bernstein, should be granted Court Ordered Discovery as I cannot gain discovery to United Bank of Illinois since I am not an Executor/Personal Representative or Trustee.

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).

**ANSWER**

120. The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally nonexistent “Policy” that is the subject contract of this Breach of Contract Lawsuit filed by the Plaintiff and where Sanders testimony could be construed as efforts to cover up for said liabilities resulting from losing an insurance policy, an unheard of event in insurance that would expose the carrier Jackson National Life to a variety of liabilities to beneficiaries and others.
121. There is evidence in production that shows that Simon Bernstein requested and was given the exact name of the beneficiaries, which were the Primary as LASALLE and the Contingent as Simon Bernstein Trust, NA in 2010 and Simon did not respond to the names as incorrect and the insurance carrier referred to no truncation or abbreviation of the Contingent Beneficiaries name in their letter.
122. SANDER’S statement that the name “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” was truncated by a computer system due to length or entered in error by an employee and thus was transformed into “Simon Bernstein Trust, N.A.” does not fit any known computer system software that truncates data strings by eliminating the end of strings after the maximum character recognition is exceeded. Where the name of the beneficiary is not subject to interpretation by employees as the beneficiaries name must be exact and the beneficiary forms must be attached to the executed policy contract, which at this time no legally valid insurance contract has been produced to confirm SANDER’S claims and thus needs further discovery and litigation.

123. That there are frauds that have already been proven in the Estate and Trusts of Simon and Shirley Bernstein and there are missing trusts and other documents in the Estates and Trusts of Simon and Shirley Bernstein and Ted Bernstein according to his deposition testimony does not know what he did with a mass of dispositive documents brought to him minutes after his father died and these documents may have additional information that is intentionally being secreted from beneficiaries, the insurance carrier and this Court for Plaintiffs to attempt to steal off with the insurance proceeds deposited with the Court.

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)

**ANSWER**

124. TED is not a valid "Trustee" of the 95 Legally Nonexistent Unexecuted Trust as there is no legally executed and binding trust document produced.

125. No retainer of A. Simon's services has been produced to beneficiaries. Since there is no 95 Legally Nonexistent Unexecuted Trust produced, the acts of the alleged Trustee and his counsel are legally invalid and where neither the alleged Trustee or his alleged Counsel are acting within the law.

126. TED retained SPALLINA as his counsel to file the fraudulent claim to the insurance carrier, whereby SPALLINA claimed to be the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust and the claim was DECLINED by the carrier leading to this Breach of Contract lawsuit and then TED retained A. Simon as his counsel and with no notice to the alleged



beneficiaries became suddenly the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

127. That TED was advised by his own counsel SPALLINA that he had no standing to file this lawsuit. TED then retained his sister Pam’s husband’s brother, Adam Simon, to represent him as the new Trustee. Where Adam Simon is partner with his brother David Simon in a law firm that primarily worked for Simon Bernstein in his offices since each graduated college and where David Simon and his firm stand to benefit directly from this action not only from legal fees but D. Simon will get with his wife Pamela 1/5<sup>th</sup> of the proceeds if this lawsuit is successful for Plaintiffs.

128. Similar to TED, is his sister Pamela Bernstein-Simon, who both were considered predeceased in the Estates and Trusts of Simon and Shirley Bernstein and if the monies are paid to the Estate or other vehicles and not the 95 Legally Nonexistent Unexecuted Trust, both stand to get nothing for them or their families. Their children may be beneficiaries but that is still to be determined via ongoing probate and trust actions due to the FRAUD that has occurred by TED and his counsel TESCHER and SPALLINA and others.

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)

## **ANSWER**

129. The fact that Plaintiffs claim that JP Morgan Chase Bank is an “alleged” successor calls for further discovery in these matters.

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)

**ANSWER**

130. N/A

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)

**ANSWER**

131. N/A

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.)”

**ANSWER**

132. N/A

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.)

**ANSWER**

133. From the Idaho Department of Insurance @

<http://www.doi.idaho.gov/insurance/Succession.aspx?AID=1315>

The Certificate of Authority #1315 belongs to an active company with former names.

Start	End	Former Names
12/29/1980	12/12/2000	CAPITOL BANKERS LIFE INSURANCE COMPANY
12/12/2000	8/29/2008	ANNUITY & LIFE REASSURANCE AMERICA, INC.
8/29/2008		HERITAGE UNION LIFE INSURANCE COMPANY (1315)

134. That information from Annuity & Life Reassurance America has not been obtained in this lawsuit and they may have retained copies of the missing insurance policy and thus need for further discovery. Eliot cannot obtain this information as he is not an Executor/Personal Representative of the Estate and Trusts of Simon.

135. JACKSON is believed to have then acquired HERITAGE and entered this case on behalf of HERITAGE and then suddenly disappeared after depositing funds in the court registry.

136. HERITAGE when interpleading the funds to this Court misled this Court to believe that there was a valid binding life insurance policy with "Policy Proceeds" equal to the amount interpled, when factually they failed to produce such policy showing that this in fact was the correct amount stated in the legally binding contract that remains missing.

137. There can be no "Policy Proceeds" without a legally binding policy produced and this is misleading.

138. There are conflicting evidences of the amount of insurance of the missing policy<sup>25</sup>.

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<sup>25</sup> HERITAGE application to increase Death Benefit from 2 to 3 Million.

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)

**ANSWER**

139. N/A

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)

**ANSWER**

140. N/A

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)

**ANSWER**

141. That Adam Simon representing the Trustee and the beneficiaries appears conflicted.

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

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

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)

**ANSWER**

142. N/A

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)

**ANSWER**

143. N/A

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)

**ANSWER**

144. N/A

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.

**ANSWER**

145. N/A

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)

**ANSWER**

146. N/A

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)

**ANSWER**

147. N/A

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)

**ANSWER**

148. The Primary Beneficiary LASALLE was the trustee and administrator for the VEBA plan that the missing policy is a part of according to the records produced and thus LASALLE or its Successors must be contacted by the carrier as they remain the Primary Beneficiary.

149. What happened on dissolution of the VEBA to the assets of the VEBA, including any insurance benefits and policies, where the insured’s chosen beneficiaries of the policies issued for the VEBA were defined through the VEBA plan not by the missing policy’s named beneficiaries, which was LASALLE and Simon Bernstein Trust, NA. The VEBA plan trust must be produced to know the plan beneficiaries and what happens to the VEBA trust assets upon dissolution and this needs further discovery or litigation to determine.

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)

**ANSWER**

150. N/A

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)

**ANSWER**

151. N/A

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)

**ANSWER**

152. It appears that this corporation was dissolved by TED immediately after his father died and no records of this entity have been turned over to beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein in Florida and thus further discovery needs to take place or further litigation to determine what assets were in this entity.

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)

**ANSWER**

153. That Adam Simon represented Ted Bernstein as an alleged trustee of the 95 Legally Nonexistent Unexecuted Trust and filed opposition pleadings to block the entry of the Estate of Simon from intervening in this lawsuit. This was done in conflict and with improper representation as TED was simultaneously acting as Trustee for a Simon Bernstein Trust in Florida that would also possibly receive the proceeds and where Ted alleges to be a beneficiary of the 95 Legally Nonexistent Unexecuted Trust who stands to gain 20% of any proceeds paid and where TED and/or his children may get nothing if the proceeds are paid to the Estate and Trust beneficiaries in Florida, once those beneficiaries are determined. In no event will TED receive benefits if not paid through the 95 Legally Nonexistent Unexecuted Trust scheme in this Action.

154. That this conflict of TED’S that led him to file opposition papers to the Estate being joined in these matters has caused delays in the Estate being represented in these matters, compounding the delays in inheritances caused by TED’S prior counsel and the prior fiduciaries of the Estate of Simon, Co-Executors/Personal Representatives and Co-Trustees, TESCHER and SPALLINA, who intentionally blocked the Estate and Trust of Simon from entering this case (working against the interest of the Estate and Trust beneficiaries), as they were working as TED’s counsel to convert the proceeds through the 95 Legally Nonexistent Unexecuted Trust scheme whereby TESCHER and SPALLINA filed the fraudulent insurance claim that led to this Breach of Contract Lawsuit in efforts to defeat their clients they represented in the Estate of Simon to benefit TED instead. Where the claim asserted by the Plaintiff is that the insurance company breached the missing insurance contract terms



by failing to pay the fraudulent death benefit claim submitted by TESCHER and SPALLINA and where SPALLINA represented that he was the trustee of the 95 Legally Nonexistent Unexecuted Trust that TED now claims to be the alleged Trustee of in this lawsuit.

155. That due to these intentional delays and interferences with expectancies both Eliot and the Estate have been denied proper time to fully complete discovery and thus discovery must be extended, especially where it was intentionally interfered with to attempt to close this Action before allowing known possible beneficiaries to participate. At this time, none of the grandchildren, including minor children are represented in this case by counsel, except Eliot's children who are represented Pro Se by Eliot.

#### I. 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.)

#### ANSWER

156. A specimen policy was provided, which is not a legally valid executed and legally binding copy of the actual insurance policy that is subject of this lawsuit. A specimen policy is an insurance carrier policy submitted to each state the policy is being applied for in as a sample of what a policy will look like for a consumer.

157. There is no policy presently produced or proven by Plaintiffs so no "Policy Proceeds" can be determined from a specimen and the attempt to define the specimen as the actual

“Policy” on Simon is misleading to the Court and requires further discovery as to where the actual policy is.

158. That the affidavit of SANDER’S states that the specimen policy amount of insurance is not the correct amount and would not be the amount stated in the missing life insurance contract and this is cause for further discovery and litigation into what exactly the missing policy death benefit amount is.

159. That the Specimen policy also contains no beneficiaries of the missing policy as the beneficiaries are not defined thereunder.

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)

#### **ANSWER**

160. The application is not complete as submitted in production as parts appear missing, a verified copy would need to be obtained showing the entire document and cause for further discovery.

161. Don Sanders affidavit is in question due to conflicts and adversity.

162. There is alleged evidence that shortly before his death Simon’s policy lapsed and was reinstated, a new application was taken and appears missing from the records which may also contain new application information pertinent to this lawsuit and the reinstatement should have caused a new or reinstated policy to be produced as indicated in letters to Simon by HERITAGE and this lack of a reinstated policy is highly suspect that this information is missing from the carriers production.

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)

**ANSWER**

163. This application is not known to be the actual application of the policy as no policy is produced at this time proving what application is attached to the policy, especially after alleged re-issue and where insurance contracts, policies, have attached to them the policy applications as part of the legally required contractual documents attached to the issued policy. Therefore, this evidence is questionable and needs further discovery to determine if in fact this application was the defining application of the original issued policy. The final application is required to be attached to the policy.

164.(ii) The records and policies for the VEBA plan participants are sent to Simon’s companies and office location at that time, as the policies were sold by Simon and the VEBA was administered with many other VEBA policies he sold through the trust company he established (Simon was the founder of death benefit VEBA programs and the leading broker nationwide in such sales.)

165. (iii) Simon Bernstein was an executive and leading insurance salesman nationwide who brokerage sold billions of dollars of life insurance premium.
166. (iv) N/A
167. (v) N/A
168. (vi) N/A
169. (vii) This would indicate that the missing policy should be with the original owner or its successors and would require additional discovery to determine where it is, although it is the ultimate responsibility of the insurance carrier to maintain a copy of the actual policy and policy records according to law and underwriting and administrative procedures, as well as would be required by any reinsurers that risk was ceded to.

## II. THE S.B. LEXINGTON EMPLOYEE DEATH BENEFIT TRUST THE “ V E B A ”)

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)

### ANSWER

170. That the VEBA information is critical to the payment of any proceeds of any policy once one is found, as LASALLE being the Trustee for the primary beneficiary of the VEBA plan would then have specific duties to pay beneficiaries determined in the VEBA plan by the employees to their named **plan** beneficiaries.

171. That if LASALLE dissolved the VEBA the benefits would be allocated according to law and the terms of the VEBA trust and again why further discovery is necessary to determine the role of the Primary Beneficiary and its obligations under the VEBA plan upon dissolution.

172. That the VEBA information and copies of the trust should be maintained as well by Pam and David Simon who ultimately controlled the administration of the many VEBA plans sold by Simon Bernstein and thus should have been produced in these matters but have not been.

173. It is alleged that the VEBA plan or its Successor plan may have had over \$50,000,000.00 of assets in it as late as 2009<sup>26</sup>.

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)

### **ANSWER**

174. This statement contradicts Plaintiffs' own claims that a contingent beneficiary (with a different name than the insurance company's own records which claim the contingent to be Simon Bernstein Trust, NA) should be paid while the primary beneficiary LaSalle National

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<sup>26</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A showing 50 Million + of assets in 2009

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/SBLexingtonDeathBenefitPlanUnitedBankOfIllinois.pdf>

Trust, NA is according to the carrier of the nonexistent policy the Primary Beneficiary and where Equifax was told the VEBA would be responsible for paying the insurance benefits.

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)

**ANSWER**

175. N/A

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)

**ANSWER**

176. That while this may have been the initial VEBA plan beneficiary designated by Simon there is evidence, including a 2000 Insurance Trust and the subsequent Simon Bernstein Trust NA that would suggest that Simon had changed the beneficiary of the VEBA plan and this would need discovery from LASALLE through its successor, Chicago Title to determine who the VEBA plan beneficiary now is.

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)

**ANSWER**

177. According to the Insurance records the Primary beneficiary was LASALLE and the contingent beneficiary was not the “Bernstein Trust” aka 95 Legally Nonexistent Unexecuted Trust as alleged by Plaintiffs but in fact the Simon Bernstein Trust, NA.

178. Again with a legally existent Primary Beneficiary the Contingent Beneficiary does not even become a viable recipient of the death benefit, which could make Summary Judgement more fraud if the Contingent is paid while the parties all knew of an existing Primary Beneficiary.

179. At death the VEBA was the Primary Beneficiary according to this account.

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)

**ANSWER**

180. SANDER’S affidavit has claimed to be steeped in conflict as his employer JACKSON has a vested interest in the outcome of the litigation, especially if they have lost the insurance contract and are exposed to liabilities resulting from such loss.

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)

**ANSWER**

181. N/A

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)

**ANSWER**

182. The dissolution papers are missing to confirm the veracity of Pam's affidavit which violates the Il Dead Man's Act as it relates to the "shareholders" of which Simon was one.

183. While it is claimed that the owner was changed from LASALLE it is not claimed that the Primary Beneficiary was changed from LASALLE and again this would make LASALLE the beneficiary of the proceeds of the missing/lost/suppressed contract.

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)

**ANSWER**

184. Note that no efforts were made to contact LaSalle National Trust NA or its Successor by HERITAGE or any party to this lawsuit and thus further discovery and litigation of these matters is still necessary and the insurance company must be rejoined as an indispensable party and this Court demand they answer why they have failed to contact the Primary Beneficiary.

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))

**ANSWER**



185. The only party with claims to the benefits of the missing policy would according to insurance company records would be the primary beneficiary LaSalle National Trust, NA.

186. That documents are missing in the Estate and Trusts of Simon Bernstein and thus it is highly probable that like the 2000 Insurance Trust that was secreted from this Court the alleged Contingent Beneficiary by HERITAGE, the Simon Bernstein Trust NA is also being suppressed and secreted by Plaintiffs in their efforts to fraudulently convert the monies.

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.

**ANSWER**

187. LASALLE or its successors would appear to be the only financial institutions with claims to the litigation proceeds and the carrier nor any parties in this litigation have notified LASALLE or its successors they are the Primary Beneficiary of an alleged insurance policy death benefit.

III. 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)

**ANSWER**

188. Even if this were the case, this 95 Legally Nonexistent Unexecuted Trust would be only a Contingent Beneficiary and there is still a Primary Beneficiary and then there is the 2000 Proskauer Trust that supersedes the 95 Legally Nonexistent Unexecuted Trust and then there is a Simon Bernstein Trust, NA that supersedes the 95 Legally Nonexistent Unexecuted Trust as Contingent Beneficiary as of the year 2010 and confirmed by Simon Bernstein as such.

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)

**ANSWER**

189. That this new information leads one to need discovery to get all the tax records regarding the VEBA trust and tax records for the missing 95 Legally Nonexistent Unexecuted Trust and tax records for all of the other trusts involved.

190. It should be noted that the Curator of the Estate of Simon who replaced TESCHER and SPALLINA, attorney at law Benjamin Brown, Esq. ("Brown") had requested from the IRS over a year ago tax returns for Simon and Shirley individually and for entities they owned and only days after he stated he thought he had received them, he unexpectedly died at age 49 from a heart attack. Upon receiving records from Brown, O'CONNELL the Personal Representative that replaced Brown stated the long anticipated tax returns were not with the records Brown turned over. Several months ago O'CONNELL stated his firm had ordered new "certified" copies of the tax returns and they would be produced shortly but as of this date they have not been produced to any parties. This is further reason that discovery should be continued as the tax returns will provide valuable information that may influence the outcome of this litigation.

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)

**ANSWER**

191. This may be true at that time in 1995 but again this would only show that the VEBA controls whom the beneficiary would be and with LASALLE still the Primary Beneficiary this indicates that even if the VEBA had been dissolved as alleged, the VEBA trust provided that LASALLE or its Successor would pay the former VEBA plan participants benefits after dissolution of the VEBA.

192. That again even if proved that the 95 Legally Nonexistent Unexecuted Trust existed and were valid it would still be only a Contingent Beneficiary. Again, there are competing claims that the Contingent Beneficiary was changed by Simon to the Simon Bernstein Trust NA.

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)

**ANSWER**

193. Here the Plaintiffs are claiming the benefits are paid to the VEBA Trust through LASALLE as the Primary Beneficiary to then be paid by LASALLE to the VEBA and the administrator would then pay the VEBA plan participant's beneficiary election, which they claim is the missing 95 Legally Nonexistent Unexecuted Trust. In this scenario, the 95 Legally Nonexistent Trust would not be listed as the Contingent Beneficiary on the insurance

contract, as apparently, according to the records produced it has never been named as the Contingent Beneficiary on the missing contract.

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).

**ANSWER**

194. Simon's intent changed over time and at the time of his death he had removed Ted and Pam from receiving any benefits of the Estate planning Trusts of Simon and they were considered predeceased.

195. Simon Bernstein's intent as of 2000 was more defined in the 2000 Proskauer Insurance Trust that at that time would have been the beneficiary and the 95 Legally Nonexistent Unexecuted Trust would have replaced it.

196. Simon Bernstein's intent as of 2010 was more defined when he confirmed with HERITAGE that the Contingent Beneficiary was the Simon Bernstein Trust NA.

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."

**ANSWER**

197. This evidence contradicts Plaintiffs claims that the missing policy Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust.

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)

**ANSWER**

198. SANDERS statement is made on hearsay evidence as he does not claim to be the party responsible for the error in entering the full formal name of the beneficiary. SANDERS also states that it is common practice for the insurance carrier to rename a beneficiary to an entirely different name and retain no formal evidence of the actual name of the contingent beneficiary.

199. That SANDERS statements are based on the records he reviewed but it is OBVIOUS that the records reviewed are missing key pertinent records, including but not limited to, THE ACTUAL POLICY, copies of the trusts and more and so his statements are based on an incomplete set of records.

200. Simon Bernstein allegedly requested confirmation of the beneficiaries and the letter was sent indicating the Contingent Beneficiary as the Simon Bernstein Trust, NA, which to Eliot’s knowledge, no one has conducted investigation to see if this trust exists and there are ongoing investigations into missing and suppressed and fraudulent and altered estate documents ongoing that may materially affect the outcome of this case and make Summary Judgement Premature when records are released that are being withheld or suppressed.

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)

**ANSWER**

201. Exhibit 14 indicates that a NEW POLICY COPY was issued by the carrier and sent to Simon's home address. This would indicate that insurer would have had a recent COPY of the missing policy available at that time but did not retain a copy with their letter sent to Simon or produce the letter with the copy sent at that time.

202. The reinstated policy may differ than any other earlier policy in key areas such as face amount, beneficiaries, health ratings, etc., which could materially affect the outcome of this lawsuit.

203. If the Primary Beneficiary did not change at this time then LASALLE is the receiver of any monies resulting from this lawsuit or the policy if it is found at some point through further discovery.

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)

**ANSWER**

204. That a death benefit claim and this instant legal Action were both filed with NO DRAFT COPY in the possession of the alleged trustees of the 95 Legally Nonexistent Unexecuted

Trust for over a year until they magically appeared when the Court was demanding that an executed copy be found to give Plaintiffs standing.

205. That these unexecuted drafts are not legally binding in any way and thus do not give standing in this lawsuit and do not qualify to be paid beneficiaries, as indicated when the insurance carrier DECLINED the death benefit request filed by SPALLINA who could not produce an executed trust as required by the carrier.

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)

**ANSWER**

206. N/A

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)

**ANSWER**

207. N/A

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)

**ANSWER**

208. Illinois Dead Man rule disqualifies this affidavit statements relating to conversations or events involving Simon.

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)

**ANSWER**

209. The draft has no law firm markings and is wholly unexecuted and is disputed as to its legal validity in toto and nothing within the document can therefore be relied upon.

210. Why would David Simon handwrite in names to show Simon where names go in the trust?

What significance does this have?

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)

**ANSWER**

211. The terms of this draft are not binding if they are in fact a draft of the 95 Legally

Nonexistent Unexecuted Trust that to date does not exist in the Court record.

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)

**ANSWER**



212. This document is an alleged draft on the date of the trust and yet no law firm has markings upon the document. There are other problems with the datafile that put it in dispute as a valid document.

213. The File Created date is September 03, 2004.

214. The file Modified date is June 21, 1995? How was it modified in 1995 when it was created in 2004?

215. Accessed "Today, September 30, 2013."

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)

**ANSWER**

216. N/A

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)

**ANSWER**

217. Ted Bernstein has a stepson making it 11 grandchildren if included.

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)

**ANSWER**

218. The fact is disputed in their own statement above as to who the trustee of this alleged draft of the 95 Legally Nonexistent Unexecuted Trust was going to be, which makes this a disputed fact.

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)

**ANSWER**

219. The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER**

220. The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER**

221. The “executed Bernstein Trust Agreement” does not exist and thus it is unknown what it would say if it existed.

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”

**ANSWER**

222. a) N/A

223. b) N/A

224. c) There is no “Bernstein Trust” that exists and thus again TED has no standing to act as a Trustee. Adam Simon should be sanctioned for attempting to claim that TED is a legally valid Trustee of a trust that does not exist and filing this lawsuit as Fraud on this Court.

Adam Simon and the Plaintiffs should be reported for this Fraud on this Court to the proper authorities by this Court.

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)

**ANSWER**

225. That the Lincoln Benefit Life Insurance Company policy should also have a copy any 95 Legally Nonexistent Unexecuted Trust and the Lincoln Benefit policy and this is hearsay evidence from interested parties to the litigation.

226. The Lincoln Benefit Life contract or any evidence suggesting the veracity of the claims made has not been produced by Plaintiffs.

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)

**ANSWER**

227. No proof that a lapse occurred is presented.

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)

**ANSWER**

228. This Lincoln Policy also is controlled by the 2000 Proskauer Rose Irrevocable Trust and supersedes any alleged 95 Legally Nonexistent Unexecuted Trust interest.

IV. ELIOT'S CLAIMS

65. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation the ("Eliot's Claims"). (Ex. 26)

**ANSWER**

229. That until Eliot's counterclaims, third party claims and cross claims are heard Summary Judgement is premature.

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)

**ANSWER**

230. N/A

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)

**ANSWER**

231. Eliot never submitted a claim form to the carrier claiming he or his children were named beneficiaries.

V. 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)

**ANSWER**

232. Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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.

**ANSWER**

233. Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER**

234. Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER**

235. The 2012 Will of Simon Bernstein has been challenged on its validity and there are pending motions and petitions filed regarding the validity and the construction that remain unheard.

236. The Florida Governor Rick Scott's Notary Public Division has determined that the Will is improperly notarized by TED's assistant, Lindsay Baxley. The document is under ongoing investigation and challenged on validity and construction in the probate case.

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

**ANSWER**

237. N/A

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.)

**ANSWER**

238. N/A

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.)

**ANSWER**

239. Eliot's counter/cross/third party claims present evidence that confutes and puts into dispute the Plaintiffs arguments herein and thus make Summary Judgement premature and litigation necessary.

VI. 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)

**ANSWER**

240. The reason the carrier declined the SPALLINA filed death benefit claim was because an executed copy of the alleged 95 Legally Existent Trust was not produced and thus is the same reason this Court should not pay the claim to the alleged 95 Legally Nonexistent Unexecuted Trust.

WHEREFORE, Eliot I. Bernstein, Pro Se Third party defendant, respectfully prays for an Order denying Plaintiffs' Summary Judgement motion in it's entirety, dismissing the Plaintiffs' claims if appropriate, Ordering further Discovery as requested, ordering sanctions or a hearing on sanctions against Plaintiffs if appropriate, and for such other and further relief as this Court deems just and proper.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: June 05, 2015

**Note: All URL'S contained herein are hereby incorporated by reference in entirety herein.**

/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)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 05, 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.

/s/ *Eliot Ivan Bernstein*

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RESPONSE TO SUMMARY JUDGEMENT

Friday, June 5, 2015



**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 Friday, June 5, 2015:

MINUTE entry before the Honorable John Robert Blakey: Eliot Bernstein's response to motion for summary judgment [189] is stricken for failing to comply with Local Rules 7.1 and 56.1(b). 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

**INTERVENOR'S RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

**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 LOCAL RULE 56.1(b)(3) RESPONSE TO PLAINTIFFS'  
 STATEMENT OF UNDISPUTED MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C)  
 STATEMENT OF ADDITIONAL FACTS REQUIRING THE DENIAL OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Intervenor, Brian M. O'Connell, Personal Representative of the Estate of  
 Simon L. Bernstein ("Intervenor"), by his attorneys, James J. Stamos and Kevin P. Horan of

Stamos & Trucco, LLP, and for his Response to Plaintiffs' Statement of Undisputed Material Facts and Statement of Additional Facts pursuant to Local Rule 56.1(b)(3), states as follows:

**THE PARTIES**

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**)

**ANSWER:** The first sentence of Paragraph 1 is disputed in that Plaintiffs have failed to present any admissible evidence to demonstrate as a matter of law that the "Bernstein Trust" was executed and bore the terms they allege. Plaintiffs rely entirely on ¶ 21 of the Affidavit of Ted Bernstein to support the assertions in paragraph 1 that the Trust exists. Under Rule 56(c)(1)(b), Ted Bernstein's Affidavit cannot serve to demonstrate the absence of a disputed issue of material fact with respect to the existence of the Trust because Ted Bernstein has never seen an executed copy of the document. (*See* May 6, 2015 Deposition of Ted Bernstein, attached hereto as Intervenor's Exhibit A, p. 24:6-12) Ted Bernstein has no personal knowledge with regard to the creation of the Trust, its execution or its terms, as he testified at his deposition. (*See* Intervenor's Exhibit A, pp. 10:25 – 11:2; 12:19 – 13:6) He knows of the facts regarding the Trust only by having been told by David Simon. (*Id.* pp. 17:5 – 18:20; 27:23 – 28:4; 30:4-7)

In addition, the existence of the Trust is disputed by multiple items of evidence as more fully described in Intervenor's Response to Plaintiffs' SOF, ¶ 40.

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**)

**ANSWER:** Undisputed.

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)**

**ANSWER:** Undisputed.

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)**

**ANSWER:** Undisputed.

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)**

**ANSWER:** Disputed pursuant to Rule 56(c)(1)(b) in that the Affidavit of Don Sanders (Ex. 29) at paragraphs 69 and 78 does not demonstrate that a “misnomer” occurred. It does not address that topic.

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)**

**ANSWER:** Intervenor disputes the first sentence of paragraph 6 under Rule 56(c)(1)(b) in that the sole basis cited for the assertion that Ted Bernstein is “Trustee” of the “Bernstein Trust” is paragraph 25 of Ted Bernstein’s Affidavit. However, paragraph 25 states no factual basis for that assertion. It simply declares that he acted as Trustee when he initiated this action. At his deposition, Ted Bernstein confirmed that the only basis he had for believing himself to be the Trustee was that David Simon told him that he was to be the Trustee and that his name appears at page BT000020 of Plaintiffs’ Exhibit 16. (See Intervenor’s Exhibit A, pp. 12:19 – 13:6) That

document, however, is unsigned and the initial trustee was indicated to be “Shirley, David, [illegible]?” with the successor trustee indicated as “Pam, Ted.” Moreover at page BT000010 of Plaintiffs’ Exhibit 15, which is represented to be the more formalized version of Exhibit 16, the successor trustee to Shirley is specifically stated to be David Simon, not Ted Bernstein. At the very least, the document itself demonstrates a question of fact as to whether Ted was to be the successor trustee to Shirley. (*See* Plaintiffs’ Exhibits 15 and 16)

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**)

**ANSWER:** Undisputed.

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**)

**ANSWER:** Undisputed.

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**)

**ANSWER:** Undisputed.

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.**)

**ANSWER:** Undisputed.

11. Heritage is the successor Insurer to Capitol Banker [*sic*] 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.)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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);

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

ANSWER: Undisputed.

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.

ANSWER: Undisputed.

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)

ANSWER: Undisputed.

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)

ANSWER: Undisputed.

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)

ANSWER: Undisputed.

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)

ANSWER: Undisputed.



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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed, except that Brian M. O'Connell substituted his appearance as Personal Representative of the Estate of Simon Bernstein as of November 3, 2014, not as Curator and Administrator *ad Litem*. (See Dkt. No. 126)

## 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.)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

ANSWER: Undisputed.

### 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)

ANSWER: Disputed under Rule 56(c)(1)(b) in that the Affidavit paragraphs cited do not establish the facts asserted in paragraph 29.

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)

ANSWER: Undisputed.

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)

ANSWER: Undisputed.

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)

**ANSWER:** Undisputed but Pam Simon asserts no basis to conclude that she has personal knowledge of the matters contained in paragraph 32.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Disputed. The face of the documents in Plaintiffs’ Exhibit 8 does not indicate that Capitol Bankers Life sent correspondence on November 27, 1995 (*See* Plaintiffs’ Exhibit 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)

**ANSWER:** Disputed under Rule 56(c)(1)(b) in that the Affidavit paragraphs cited do not address the matters asserted in paragraph 35.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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))

**ANSWER:** Undisputed.

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.

**ANSWER:** Undisputed.

#### **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)

**ANSWER:** Disputed under Rule 56(c)(1)(a) and 56(c)(1)(b) as follows:

a. Plaintiffs cite only Paragraph 30 of Plaintiffs' Exhibit 32 (the Affidavit of David Simon) in support of this paragraph but that paragraph makes no reference whatsoever to the creation or formation of the Simon Bernstein Trust nor to the appointment of his wife, Shirley as Trustee. That paragraph addresses only the creation of an IRS SS-4 form, Plaintiffs' Exhibit 19.

b. The evidence Plaintiffs present for the assertion that Simon Bernstein executed a Trust with the terms reflected in Plaintiffs' Exhibits 15 and 16 is the Affidavit of David Simon at Paragraphs 23 through 27. (See Plaintiffs' Exhibit 32) However, these paragraphs are based entirely upon Mr. Simon's description of conversations he had with Simon Bernstein and things he observed Mr. Bernstein doing with respect to the creation of the alleged Trust. In Paragraph 23 he avers that he and his wife had used Hopkins & Sutter to create trusts for themselves. In

Paragraph 24 he then describes how Simon Bernstein came to him and said essentially that he wanted to do the same thing. Paragraph 25 describes David Simon creating a sample insurance trust for Simon Bernstein and reviewing it with him. It further describes conversations he had in which they agreed he would use Hopkins & Sutter to finalize and execute the insurance trust and where they discussed the purpose of the insurance trust, who would be a trustee and Mr. Simon's suggestion to Mr. Bernstein that Ted Bernstein act as the "next trustee." Paragraph 26 describes Simon Bernstein taking a copy of the draft trust and going to Hopkins & Sutter to execute it.<sup>1</sup> (See Plaintiffs' Exhibit 32 ¶¶ 23-27).

In Paragraph 27, David Simon then avers that he met again with Simon Bernstein and reviewed the executed Bernstein Trust Agreement and that he assisted him with preparing certain other forms. The testimony contained in these paragraphs is all the evidence Plaintiffs have to rely upon for the notion that Mr. Bernstein executed a trust document. All of this testimony is offered by an interested party which is barred by the Illinois Dead Man's Act, 735 ILCS 5/8-201 *et seq.*, because it relates conversations and events that took place solely in the presence of the Decedent.

c. Even if David Simon's testimony were admissible, his testimony could only be accepted if deemed credible by the trier of fact. Multiple facts exist that controvert his testimony and/or undermine the credibility of David Simon in this regard:

1. David Simon never witnessed Simon Bernstein draft or execute the purported Trust document as described in ¶ 30 of Plaintiffs' Exhibit 32 (See Plaintiffs' Exhibit 35, pp. 36:12 – 39:8; 39:17 – 40:16; 41:14 – 43:9). According to David Simon's

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<sup>1</sup> It is undisputed that Hopkins & Sutter has no record of the 1995 Trust (See Plaintiffs' Exhibit 35, pp. 44:12 – 45:15; 46:15 – 47:21) and there has been no evidence explaining why it was that he needed to go to Hopkins & Sutter to "execute the document" when David Simon appears to be saying that he prepared the document.

testimony, Simon Bernstein left the Simon Law Firm with an unsigned draft of a document and returned with a signed document, which was not copied, scanned or otherwise saved in the files of the Simon Law Firm or Hopkins & Sutter. (*See* Plaintiffs' Exhibit 35, pp. 44:3 - 45:13);

2. David Simon states in his Affidavit (and in his deposition) that he recalls the exchanges with Simon Bernstein, including the assertion at Paragraph 25 of his Affidavit that he created the sample insurance trust (presumably Exhibit 15 which was retrieved from the computer hard drive). However, throughout the period of time from Simon's death in September of 2012 until the purported discovery of Plaintiffs' Exhibits 15 and 16 one year later, not a single email exchanged among the Plaintiffs, when they were discussing their attempts to locate the trust document, reflects anything about David's recollection of having created it on his computer. (*See* Intervenor's Exhibit A, the Deposition of Ted Bernstein, at Exs. 1-5, 8-11, 14);

3. The emails among Simon Bernstein's children for the most part included Robert Spallina, Simon Bernstein's attorney, through whom they were attempting to obtain the proceeds of the insurance policy from Heritage. Again, none of those emails refers to David's recollection of having created the Trust on his word processor and providing it to Simon. There is also no evidence in that year-long string of emails that David thought to check his word processor for drafts of the document. (*See* Intervenor's Exhibit A, the Deposition of Ted Bernstein, at Exs. 1-5; 8-11; 14-18);

4. Mr. Spallina apparently engaged in discussions with Heritage for the company to interplead the funds into the Court in Florida. (*See* Intervenor's Exhibit A, the Deposition of Ted Bernstein, at Exs. 1, 2, 4) However, at that point David Simon and

his brother, Adam Simon, the attorney currently representing Plaintiffs in this case, filed a lawsuit in Circuit Court of Cook County seeking to obtain the funds from Heritage. (*See* Intervenor's Exhibit A at Ex. 16) This resulted in a breach with Mr. Spallina, including a very angry exchange of emails and ultimate withdrawal of Mr. Spallina's lawfirm. (*See* Intervenor's Exhibit A at Exs. 16-17);

5. Simon Bernstein died on September 2012. His children, and David Simon, conducted a series of conversations, and exchanges of emails, in which they discussed strategies for obtaining the payout from the Heritage policy notwithstanding the inability to locate the 1995 Trust. (*See* Intervenor's Exhibit A, pp. 51:22-52:2; 53:22 – 54:11 and Exs. 2-4, 7, 11) This included considering the possibility of employing a different trust, called the "2000 Trust" which choice was rejected because it did not include Pam Simon as a beneficiary. (*See* Intervenor's Exhibit A, pp. 48:21 – 49:16; 52:15 – 53:6 and Exs. 1-2);

6. Notwithstanding the fact that David Simon now testifies to recalling the creation of the Trust in the office he shared with Simon Bernstein, the "discovery" he describes at paragraphs 28 and 29 of his Affidavit (Plaintiffs' Exhibit 32) occurred in September 2013, one year after Simon died. (*See* Plaintiffs' Exhibit 15; Plaintiffs' Exhibit 32 at ¶ 28-29);

7. Despite David Simon's averment that he recalls having created the Trust on his computer and having sent Mr. Bernstein off to the law firm of Hopkins and Sutter, the Complaint filed by Adam Simon on behalf of David Simon's wife and her other siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73 at ¶ 1);

8. Thereafter, despite there having allegedly been an “exhaustive search” prior to December of 2012 (*See* Intervenor’s Exhibit A, p. 55:1-11 and Dep. Ex. 3), David Simon for the first time purports to have located Plaintiffs’ Exhibits 15 and 16 on the computer and in the records at his law office on September 13, 2013, one year after Simon’s death, which he had previously shared with Simon Bernstein. (*See* Plaintiffs Exhibit 32 at ¶ 19);

9. Notwithstanding David’s testimony in his Affidavit at paragraphs 23 through 27 regarding his knowledge of the creation of the Trust, at no point over the course of that year did David ever report such knowledge to his wife or her siblings or to their attorney. (*See* Intervenor’s Exhibit A, p. 81:13-21);

10. Ted Bernstein testified that, despite David’s current assertions as described above, the recollections referenced in paragraphs 25-27 of his Affidavit were never related to the other family members during the interim between Simon’s death and the “discovery” of the documents. (*Id.*)

11. David Simon’s recollections of his conversations with Simon are inconsistent with Plaintiffs’ Exhibits 15 and 16 because, despite the parties’ current assertion that Ted Bernstein was to be the successor trustee to Shirley Bernstein under the 1995 Trust, Plaintiffs’ Exhibit 15, the most complete purported version of that Trust, indicates that David Simon was to be the Successor Trustee. (*See* Plaintiffs’ Exhibit 15, p. BT000010). No testimony or evidence is offered to explain how that can be consistent with David’s current assertion as to whom the successor trustee was to be.

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)

**ANSWER:** Intervenor disputes that Simon Bernstein formed the purported Simon Bernstein Irrevocable Insurance Trust on the bases described in its response to SOF ¶40, above. Intervenor disputes that Plaintiffs' Exhibit 32 complies with Fed. R. Civ. P. 56(c)(2), 56(c)(4), or 56(e) so as to be admissible for the purposes of Plaintiffs' Motion for Summary Judgment.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** This paragraph asserts a legal conclusion as to the intent of Simon Bernstein. Intervenor disputes that conclusion and the credibility and personal knowledge of the Affiants as well as their testimonial competence under the DMA.

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).

**ANSWER:** This paragraph asserts a legal conclusion as to the intent of Simon Bernstein. Intervenor disputes the credibility and personal knowledge of the Affiants, as well as their testimonial competence under the DMA. Further, no original or executed copy of the Policy has

been produced. (*See* Plaintiffs' Exhibit 29, Aff. of Don Sanders at ¶ 35) Moreover, Plaintiffs' diagram (Plaintiffs' Exhibit 17), is irrelevant, should be barred pursuant to 735 ILCS 5/8-201 *et seq.* and Fed. R. Civ. P. 56 as it is an inadmissible hearsay document created by an interested person purporting to show the intent of the Decedent.

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."

**ANSWER:** Undisputed.

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**)

**ANSWER:** Disputed in that the cited testimony of Don Sanders in his opinion, not an averment of fact based upon his personal knowledge.

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**)

**ANSWER:** Undisputed.

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**)

**ANSWER:** The first sentence is undisputed. The second sentence is disputed on the same basis as asserted in Intervenor's Response to SOF ¶40. Moreover, Plaintiffs' status as interested

parties renders them incompetent to testify on the matters stated in their Affidavits pursuant to the Illinois Dead Man's Act.

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)

ANSWER: Undisputed.

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)

ANSWER: Disputed to the extent that Plaintiffs' Exhibit 32 ¶23 lists 1994, not 1995 as the year of creation of the insurance trusts with which Hopkins & Sutter purportedly assisted David and Pamela Simon and that the citation to Plaintiffs' Exhibit 35 does not support any fact asserted in paragraph 50.

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)

ANSWER: Disputed. David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 24 of his Affidavit pursuant to the Illinois Dead Man's Act. (See Plaintiffs' Exhibit 35, pp. 58:9 – 59:4) The assertion contained in ¶ 24 of David Simon's Affidavit cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2).

52. One unexecuted draft of what would become The Simon Bernstein Irrevocable Trust dated 6/21/95 include [*sic*] 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)

**ANSWER:** Disputed. David Simon's status as an interested party renders him incompetent to testify to the matters stated in ¶ 28 of his Affidavit and at pages 40:17-41:1 of his deposition pursuant to the Illinois Dead Man's Act. (*See* Plaintiffs' Exhibit 35) The assertion contained in ¶ 28 of David Simon's Affidavit, together with his deposition testimony, cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2). Plaintiffs' Exhibit 16 is a hearsay document which cannot be presented in a form that would be admissible in evidence as required by Fed. R. Civ. P. 56(c)(2). This paragraph is further disputed by the evidence cited in Intervenor's response to SOF ¶ 40.

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**)

**ANSWER:** Disputed. Plaintiffs' Exhibit 16 is a hearsay document which cannot be presented in a form that would be admissible in evidence as required by Fed. R. Civ. P. 56(c)(2). Moreover, David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 28 of his Affidavit pursuant to the Illinois Dead Man's Act and as required by Rule 56(c)(4). This paragraph is further disputed by the evidence cited in response to SOF ¶ 40.

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**)

**ANSWER:** Intervenor disputes the first sentence of paragraph 54 under Rule 56(c)(1)(b) for the reason stated in its Response to SOF ¶ 40, referenced above with respect to the "discovery" of the document on the Simon Law Firm computer. In addition, the "metadata" is hearsay. Intervenor further disputes the credibility of David Simon regarding the cited testimony. Intervenor does not dispute the second sentence of paragraph 54.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Intervenor disputes paragraph 57 pursuant to Rule 56(c)(1)(a) and (b). Plaintiffs' Exhibit 16 is a hearsay document which cannot be presented in a form that would be admissible in evidence as required by Fed. R. Civ. P. 56(c)(2). David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 25 of his Affidavit pursuant to the Illinois Dead Man's Act. The assertion contained in ¶ 25 of David Simon's Affidavit, together with his deposition testimony, cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2).

In addition, Plaintiffs' Exhibit 16, referenced as the basis for the assertions of paragraph 57, is ambiguous regarding the identity of the trustee. At page BT 000013 of Plaintiffs' Exhibit 16, the name "Shirley" is handwritten as the Trustee but at page BT 000020, in the section which deals with the naming of successor trustees, the first blank line, which is intended to identify the original trustee, does not state "Shirley" but rather states "Shirley, David, [illegible]?". Moreover, in the second blank line where the successor trustee is to be named, the words "Pam, Ted" appear. This language is inconsistent with the Affidavit of David Simon, Plaintiffs' Exhibit 29 at ¶ 25, where he stated that Shirley was to be the trustee and that either he, Ted or Pam were

to be successor trustees. Notwithstanding the assertion in this Court that Ted Bernstein is the Successor Trustee, and Ted's testimony that his father told him he was to be the Trustee (*See* Intervenor's Exhibit A, pp. 23:2 – 25:3), Plaintiffs' Exhibit 15, at page BT 000010 purports to identify David Simon as the Successor Trustee in Article 11.

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**)

**ANSWER:** Disputed. Paragraph 25 of David Simon's Affidavit does not support the averments in SOF ¶ 58. Moreover, David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 25 of his Affidavit pursuant to the Illinois Dead Man's Act. The assertion contained in ¶ 25 of David Simon's Affidavit cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2). Intervenor also disputes SOF ¶58 based upon the evidence presented in its Response to SOF ¶ 40 and SOF ¶ 57. Intervenor further disputes David Simon's credibility regarding the testimony in ¶ 25 of his Affidavit.

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**)

**ANSWER:** Intervenor disputes the averments of SOF ¶ 59 in that Intervenor disputes the credibility of David Simon with regard to cited testimony. Moreover, David Simon's testimony regarding his viewing the executed Trust in the presence of Simon Bernstein, in the midst of a conversation with Simon Bernstein, is barred by the Illinois Dead Man's Act. His description in

his deposition of having seen an executed trust in which Ted Bernstein was identified as a successor trustee is inconsistent with the terms of Exhibit 15, which designates David Simon as the successor trustee. This implies that whatever might have been contained in a purported executed trust had at least one change in it which his own testimony establishes. His testimony fails to establish what other changes would or would not have been made.

In addition, despite the fact that changes were made in the text of the trust according to David Simon's testimony, his investigation with the firm of Hopkins & Sutter, where the execution purportedly occurred, demonstrated that they had no evidence of a trust. (*See* Plaintiffs' Exhibit 35, pp44:17 – 45:13; 46:15 – 47:11) Moreover, while David Simon testifies at p. 43 of his deposition that he had Simon Bernstein execute several forms for submission to Lincoln Benefit, including the trust, he further testifies at p. 43 of his deposition that when he contacted Lincoln Benefit, they had no copy of the trust even though he believed that they would have. (*Id.* at pp. 43:10 – 44:2)

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).

**ANSWER:** Intervenor disputes the existence of an executed trust and the averments of SOF ¶ 57 for the reasons set forth in its Response to SOF ¶ 40, above.

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;

**ANSWER:** Undisputed that four of the five adult children have executed affidavits indicating their respective stipulations, but disputed as to the foundation and admissibility of their assertions contained therein.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

#### **V. ELIOT'S CLAIMS**

65. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation the ("Eliot's Claims"). (Ex. 26)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.



## 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)

**ANSWER:** Undisputed, except that Intervenor's Complaint is attached as Exhibit 27 to Plaintiffs' Statement of Facts.

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.

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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)

**ANSWER:** Undisputed.

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

**ANSWER:** Undisputed.

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.)

**ANSWER:** Undisputed.

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.)

ANSWER: Undisputed.

#### 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)

ANSWER: Undisputed.

#### LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS

1. Plaintiffs' and Intervenor's interests in the outcome of this action are diametrically opposed: the Policy proceeds will either be payable to the Plaintiffs or to the Estate, the beneficiaries of which are Simon Bernstein's grandchildren (Plaintiffs' children). (See Deposition of Ted Bernstein, attached hereto as Intervenor's Exhibit A, pp. 92:23 – 93:25)

#### Interested Parties

2. David and Pamela Simon are interested parties to this litigation. If Plaintiffs are successful, Pamela Simon will receive over \$300,000, representing 20 percent of the Policy proceeds. (See Deposition of David Simon, attached hereto as Intervenor's Exhibit B, pp. 58:9 – 59:4) David is Pamela's husband. (*Id.* at p. 7:9-10)

3. Ted Bernstein is an interested party to this litigation. If Plaintiffs prevail, he will receive over \$300,000, representing 20 percent of the Policy proceeds. (See Intervenor's Exhibit A, pp. 9:18 – 10:4; 118:17 – 118:14)

4. The remaining Plaintiffs (Jill Iantoni and Lisa Friedstein) are interested parties to this litigation. If Plaintiffs prevail, they will each receive over \$300,000, representing 20 percent of the Policy proceeds. (See Intervenor's Exhibit A, pp. 118:16 – 119:14; Plaintiffs' Exhibits 15 and 16)

**Lack of Personal Knowledge**

5. Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. (*See* Intervenor's Exhibit A, p. 24:6-12) Ted Bernstein testified that he was informed by his father that he would be a trustee of the 1995 Trust in 1995 but did not recall his status as trustee until he was informed by David Simon after Simon Bernstein's death. (*See* Intervenor's Exhibit A, pp. 24:13 – 25:3)

**The Purported 1995 Trust**

6. Plaintiffs have produced no executed original or executed copy of a written trust agreement reflecting the terms of the purported 1995 Trust. (*See* Dkt. No. 144 at ¶9; Intervenor's Exhibit A, p. 13:13-15; Plaintiffs' Exhibit 29 at ¶ 35, ¶ 37) No original or executed copy of the Policy has been produced by Plaintiffs to date. (*See* Plaintiffs' Exhibit 29 at ¶ 35)

7. While Ted asserts in his Affidavit that he was the Trustee of the Trust as of October 19, 2012, Robert Spallina, Simon Bernstein's lawyer, made an application for the Policy proceeds on behalf of Plaintiffs, purportedly as trustee of the 1995 Trust. (*See* Intervenor's Exhibit A, pp. 35:12 – 36:3 and Dep. Ex. 1) On October 19, 2012, Ted Bernstein sent an email to Robert Spallina suggesting that he had a "solution to the life insurance policy which provides the desired result" and that a conversation take place between he, Spallina, Pamela Simon and David Simon prior to any further overtures to the insurance company. (*See* Intervenor's Exhibit A, pp. 35:12 – 37:3; Dep. Ex. 1).

8. On November 19, 2012, after Robert Spallina unsuccessfully attempted to claim the Policy proceeds without providing any documentation, David Simon suggested attempting to secure the Policy proceeds on behalf of the Plaintiffs by submitting a waiver and settlement agreement. (*See* Intervenor's Exhibit A, pp. 51:22 – 52:2; 53:22 – 54:4; Dep. Ex.2)

9. At least one “exhaustive search” for the 1995 Trust document had been conducted between September 13, 2012 and December 6, 2012, but it was not found. (*See* Intervenor’s Exhibit A, p. 55:1-11).

10. According to David Simon, the first attempt to locate the 1995 Trust took place in the winter of 2012-2013 (*See* Dep. of David Simon, p. 59:13-22). Foley & Lardner, the successor firm to Hopkins & Sutter, was contacted to see if they retained a copy of the 1995 Trust; but David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (*See* Intervenor’s Exhibit B, pp. 44:12 – 45:15; 46:22 – 47:15)

11. On February, 8, 2013, Pamela Simon informed Ted Bernstein that she could not find a copy of the insurance Policy or the 1995 Trust. (*See* Intervenor’s Exhibit A, pp. 60:25 – 61:10; Dep. Ex. 10)

12. As of February 14, 2013, the Plaintiffs planned to pursue the Policy proceeds via a Release and Settlement Agreement and have the proceeds paid to Robert Spallina. (*See* Intervenor’s Exhibit A, pp. 62:16-63:3; Dep. Ex.2)

13. Mr. Spallina apparently engaged in discussions with Heritage making a plan for the company to interplead the funds into court in Florida. (*See* Intervenor’s Exhibit A, Dep. Exs. 1, 2, 4, 7, 11) However, at that point David Simon and his brother, Adam Simon, the attorney currently representing Plaintiffs in this case, abruptly filed a lawsuit in Circuit Court of Cook County on April 15, 2014 seeking to obtain the funds from Heritage. (*See* Intervenor’s Exhibit A, Dep. Ex. 16) This act resulted in a breach with Mr. Spallina, including a very angry exchange of emails. (*See* Intervenor’s Exhibit A, Dep. Exs. 16, 17)

14. Despite David Simon's averment that he recalls having created the trust on his computer and having seen it after execution, the Complaint filed by Adam Simon on behalf of David Simon's wife and her siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73 at ¶ 1) It was only after this event that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16.

15. As of August 30, 2013, the 1995 Trust (in any form) had not been located. (*See* Intervenor's Exhibit A, pp. 76:11 – 77:3)

16. David Simon claims to have located an unexecuted copy of the purported 1995 Trust on the computer system of the Simon Law Firm on September 13, 2013. (*See* Plaintiffs' Exhibit 15; Plaintiffs' Exhibit 32 at ¶¶ 28-29)

17. David Simon claims to have located an unexecuted copy of the purported 1995 Trust containing the handwriting of David Simon, in the stored files of the Simon Law Firm on or around September 13, 2013. (*See* Intervenor's Exhibit B, pp. 94:13 – 96:22)

18. According to David Simon, the persons who searched the offices of the Simon Law Firm to see whether a copy of the 1995 Trust could be found were David Simon (husband of Plaintiff Pamela Simon), Adam Simon (brother of David Simon), and Cheryl Sychowski (employee of STP Enterprises and The Simon Law Firm). (*See* Intervenor's Exhibit B, p. 47:17-21).

#### **Subsequently Executed Estate Documents**

19. Simon Bernstein executed a Will and Irrevocable Insurance Trust on August 15, 2000 (the "2000 Trust"). The Policy at issue in this litigation was listed as an asset of the 2000 Trust. That Trust document made no reference to a 1995 even though by definition it would have superseded it. (*See* Intervenor's Exhibit A at Dep. Ex. 23)

20. Pursuant to the terms of the 2000 Trust, Pamela Simon and her lineal descendants are considered “predeceased” and no inheritance was allocated for them “not out of lack of love or affection but because they have been adequately provided for.” (*See* Intervenor’s Exhibit A at Dep. Ex. 23, p. 19)

21. Simon Bernstein executed a Will and Trust Agreement on May 20, 2008 (the “2008 Trust”). Pursuant to the terms of the 2008 Trust, Pamela Simon and her lineal descendants, in addition to Ted Bernstein and his lineal descendants are considered “predeceased.” and no inheritance shall pass to them pursuant to the terms of the 2008 Trust (*See* Intervenor’s Exhibit A at Dep. Ex. 25, p. 7, ¶E. 1.; Dep. of David Simon, p. 55:2-17)

22. In May 2012, Plaintiff Pamela Simon wrote to her father, expressing her distress over his decision to disinherit her and her children, along with Plaintiff Ted Bernstein and his children. (*See* Intervenor’s Exhibit A at Dep. Ex. 25) Plaintiff Pamela Simon was passionate that Simon Bernstein’s estate plan did not, at that time, include several of his children, including Pamela Simon and Ted Bernstein. (*See* Intervenor’s Exhibit A, p. 91:13-25)

23. Simon Bernstein participated in a telephone conference with Plaintiffs and their spouses a few months prior to his death (Summer 2012) (*See* Intervenor’s Exhibit B, p. 53:1-19; Intervenor’s Exhibit A, p. 90:11-14) During this telephone conference, Simon Bernstein instructed that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children in an effort to quell some then-existing family acrimony. (*See* Intervenor’s Exhibit B, pp. 53:12 – 55:8; Intervenor’s Exhibit A, pp. 89:21 – 90:2; 90:15-18)

24. Simon Bernstein executed an Amended at Restated Trust Agreement on July 25, 2012 (the “2012 Trust”). This document amends and restates the May 20, 2008 Trust Agreement

in its entirety. (*See* Intervenor's Exhibit A at Dep. Ex. 24, p. 1) Pursuant to the terms of the 2012 Trust, Plaintiffs are deemed to have predeceased Simon Bernstein (*Id.* at p. 6) and all assets are directed to be passed in equal shares among Simon Bernstein's grandchildren. (*Id.* at p. 2, p. 16; Intervenor's Exhibit A, p. 89:2-15; pp. 118:17 – 119:14)

25. On September 7, 2012, six days prior to his death, Simon Bernstein executed a holographic will directing a \$100,000 bequest to Maritza Puccio from his current insurance policy and indicating that he would change the beneficiary on said policy to reflect his wishes. (*See* Intervenor's Exhibit C). Simon Bernstein directed that the bequest to Ms. Puccio should proceed in the event of his death, without interruption "from family or probate." (*Id.*) This document was not witnessed or notarized.

26. Simon Bernstein executed no other Wills or Trust Agreements which were witnessed and/or notarized between July 25, 2012 and September 13, 2012 (the date of his death).

Respectfully submitted,

By: /s/ James J. Stamos  
Attorney for Intervenor, Brian M. O'Connell

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Kevin P. Horan  
STAMOS & TRUCCO LLP  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2015, this Response to Plaintiffs' Rule 56.1 Statement of Undisputed Material Facts and Statement of Additional Facts pursuant to Rule 56.1(b)(3)(C) was filed electronically using the CM/ECF system and notice will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ James J. Stamos  
James J. Stamos



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

RESPONSE IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

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 RESPONSE IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW COMES Intervenor, Brian M. O'Connell, Personal Representative of the Estate of  
Simon L. Bernstein ("Intervenor"), and for his Response in Opposition to Plaintiffs' Motion for  
Summary Judgment, states as follows:

## INTRODUCTION

Plaintiffs have moved for summary judgment only on Counts I and II of their three count complaint. Count I is moot because the defendant against whom that Count is brought has been dismissed. Plaintiffs have not moved for summary judgment on Count III which seeks the declaration of the resulting trust as alternative relief to that is sought in Count II. As a consequence, only Count II is effectively before the court. The only issues raised by Plaintiffs' Motion as to Count II are whether they have demonstrated as a matter of law, notwithstanding their inability to locate an executed trust document, that Simon Bernstein executed a written trust and that, as a matter of law, the terms of that trust are as depicted on the unsigned drafts they have presented as Plaintiffs' Exhibits 15 and 16. Plaintiffs' Motion fails to do either of those things for the following reasons:

1. The burden of proof applicable to Count II is an enhanced "clear and convincing" standard which Plaintiffs do not even acknowledge, no less demonstrate they have satisfied *as a matter of law*.
2. The essential material facts upon which their Motion relies to establish that Simon Bernstein executed a trust document are offered through the testimony of David Simon and Ted Bernstein who are "interested parties" as that term is used under the Illinois Dead Man's Act. Their testimony is therefore inadmissible in these proceedings.
3. Even if the testimony of David Simon and Ted Bernstein were admissible on the issue of the execution of the trust, the circumstantial and direct evidence presented herein controverts their testimony as to both the creation and terms of the trust.

As a consequence, Plaintiffs' Motion for Summary Judgment must be denied.

## LEGAL STANDARD FOR SUMMARY JUDGMENT

A court deciding a motion for summary judgment must view all evidence in the light most favorable to the party opposing the motion for summary judgment." *Santiago v. Lane*, 894 F.2d 218, 221 (7th Cir. 1990). A genuine dispute as to any material fact exists if "the evidence is

such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party has the initial burden of establishing that there is no genuine dispute as to a material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The non-movant “need only come forward with appropriate evidence demonstrating that there is a pending dispute of material fact.” *Waldridge v. American Hoechst Corp.*, 24 F.3d 918, 921 (7th Cir. 1994). Under these standards, Plaintiffs have failed to demonstrate the absence of a disputed issue of material fact and their Motion must be denied.

### ARGUMENT

#### **I. Count I is Moot Because Heritage has been Dismissed.**

Plaintiffs seek summary judgment on Counts I and II of their Amended Complaint. (Dkt. No. 73) However, Count I is a breach of contract claim against Heritage Union Life Insurance Company that interpleaded the proceeds of an insurance policy and was dismissed from the case. (Dkt. No. 101) Plaintiffs provide no authority for the proposition that they may obtain a judgment against a party who is no longer a defendant. Summary judgment must be denied on Count I, which is moot.

Plaintiffs have not moved for summary judgment on Count III of the Amended Complaint, which seeks the declaration of a resulting trust as alternative relief to that sought in Count II. Therefore, the only substantive issue raised by Plaintiffs’ Motion is whether they have shown under Count II that as a matter of law, Simon Bernstein executed a written trust and that its terms were those reflected in Plaintiffs’ Exhibits 15 and 16. They have failed to do that.

#### **II. The Burden of Proof Applicable to Plaintiffs’ Claim is an enhanced “Clear and Convincing” Standard.**

Count II seeks a declaration that Simon Bernstein executed a written trust with terms reflected in the unsigned documents attached as Exhibits 15 and 16 to their Motion. Plaintiffs

seek to prove the execution of the trust document principally by the testimony of David Simon and Ted Bernstein. To prevail on their claim through this parol evidence, “the oral evidence must, to establish the execution of a lost instrument, be clear and strong, satisfactory and convincing.” *Stowell v. Satorius*, 413 Ill. 482 (1952). Following *Stowell*, in *Jones v. Royal Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4<sup>th</sup> Dist. 1976), the plaintiff sought to prove the existence of a trust agreement and, failing that, sought to prove the existence of a resulting trust. The court there described the applicable burden of proof as follows:

The proof necessary to establish the existence of a trust by parol evidence has been phrased in various ways: The proof must be ‘clear and convincing’ (*Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593); ‘unequivocal and unmistakable’ (*Reynolds v. First National Bank*, 279 Ill. App. 581); even so strong, unequivocal and unmistakable as to lead to but one conclusion. (*Maley v. Burns*, 6 Ill. 2d 11, 126 N.E.2d 695). A similar high degree of proof is necessary to establish the terms of the trust, such as the identity of the beneficiaries, and the nature and extent of their interests. *Maley v. Burns*.

39 Ill. App. 3d at 492. Here, Plaintiffs have failed even to acknowledge the applicability of this burden, and have made no effort to establish that the evidence they present satisfies this burden *as a matter of law*. This is particularly significant here because, as shown below and in Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts, the evidence upon which Plaintiffs rely in support of their Motion is based entirely on the credibility of two interested witnesses, Ted Bernstein and David Simon, and credibility determinations are the sole province of the trier of fact. *Reeves v. Sanderson Plumbing Products*, 530 U.S. 133 (2000) (“the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence), *Lyle v. Household Mfg., Inc.*, 494 U.S. 545, 554–555, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The importance of this Rule

would appear even more acute where the burden of proof is as stringent as that applicable to proof of a trust where the trust document is lost.

As shown below, the circumstantial and direct evidence creates a question of fact as to material issues, particularly regarding Simon Bernstein's purported execution of a trust. It demonstrates that the credibility of these key witnesses must be weighed by the trier of fact having the opportunity to view their manner of testifying and considering their bias, interest, etc. Plaintiffs have not provided a basis to declare these factual issues resolved as a matter of law by the "clear and convincing" standard.

### **III. The Evidence Plaintiffs Present Does Not Demonstrate the Absence of a Disputed Issue of Material Fact**

#### **A. David Simon and Ted Bernstein are "interested parties" under the Illinois Dead Man's Act.**

Plaintiffs' Motion must be denied because it relies upon the deposition and affidavit testimony of David Simon and Ted Bernstein for the key facts underlying the Motion. But their testimony may not be considered because it is inadmissible under the Illinois Dead Man's Act ("DMA"). The relevant portion of the DMA states as follows:

In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability...

735 ILCS 5/8-201. None of the enumerated exceptions to the application of the DMA apply here. The DMA is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent. *Gunn v Sobucki*, 216 Ill. 2d 602, 837 N.E. 2d 865 (2005) (upheld DMA); *Brown, Udell and Pomerantz, Ltd. v Ryan*, 369

Ill. App. 3d 821, 861 N.E. 2d 258 (1st D 2006). The rationale for the rule is that because a decedent's lips are sealed by death, a survivor's lips will be silenced by law. *See* 98 C.J.S. Witnesses § 209. The DMA applies to summary judgment proceedings and in federal diversity cases where state law supplies the rule of decision. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006); *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7<sup>th</sup> Cir. 1989). The parties agree that Illinois law supplies the rules of decision here. (Dkt. No. 151, p. 9) The DMA will prohibit the testimony of an adverse or directly interested party from testifying on his or her own behalf.

In determining whether a party is "adverse," Illinois courts look to the actual interests of the party, not to his or her formal designation. *Ball v. Kotter* 2012 WL 987223 at \*7. "A non-party witness's testimony may also be barred under the DMA if that person is deemed 'directly interested in the action.' To disqualify a witness as 'directly interested in the action,' the witness's 'interest in the judgment must be such that a pecuniary gain or loss will come to the witness directly as the immediate result of the judgment.'" *Id.* at \*8, citing *Michalski v. Chicago Title & Trust Co.*, 50 Ill.App.3d 335 (3d Dist. 1977). The testimony of an interested party's spouse is also barred pursuant to the Dead Man's Act. *In re Estate of Babcock*, 105 Ill. 2d 267, 271, 473 N.E. 2d 1316 (Ill. 1985).

David Simon and Ted Bernstein are "interested parties" under the DMA. It is undisputed that if summary judgment is entered in favor of the Plaintiffs, each of them will receive 20% of the interpleaded funds. (*See* Intervenor's SOF, ¶¶ 1-4) Each plaintiff is therefore, by definition, an interested party under the Dead Man's Act. In addition, Plaintiffs' most critical witness is David Simon, who is not a Plaintiff, but is the spouse of Pam Simon who is a Plaintiff. Because

his wife will receive over \$300,000 if Plaintiffs prevail, he also is an interested party under the DMA. (*Babcock, supra*; Intervenor's SOF, ¶ 3)

**B. The Dead Man's Act Bars the essential testimony underlying Plaintiffs' Motion for Summary Judgment.**

The testimony of every Plaintiff, and of David Simon, regarding what Simon Bernstein said or did in their presence is barred by the DMA. Paragraphs 23 through 27 of the Affidavit of David Simon (Plaintiffs' Exhibit 32) set forth the facts upon which the Plaintiffs rely in asserting that Plaintiffs' Exhibits 15 and 16 represent facsimiles of a written trust executed by Simon Bernstein. Without this testimony, Plaintiffs have no basis to claim that Exhibits 15 and 16 represent the terms of the trust that Mr. Bernstein purportedly executed and they have no evidence upon which a trier of fact could find that Mr. Bernstein executed anything, no less a document with terms identical to those in Exhibits 15 and 16. However, these paragraphs are based entirely upon Mr. Simon's description of conversations he had with Simon Bernstein and things that occurred in Mr. Bernstein's presence with respect to the creation of the trusts. All of this testimony is therefore barred by the DMA.<sup>1</sup>

In Paragraph 23 of Plaintiffs' Exhibit 32, Mr. Simon avers that he and his wife had used Hopkins & Sutter to create trusts for themselves. In Paragraph 24, he describes how Simon Bernstein told him essentially that he wanted to do the same thing David and his wife had done. Paragraph 25 describes David Simon creating a sample insurance trust for Simon Bernstein and reviewing it with him. It further describes conversations in which they agreed Simon Bernstein would use Hopkins & Sutter to finalize and execute the insurance trust, where they discussed the purpose of the insurance trust, who would be a trustee, and Mr. Simon's suggestion to Mr. Bernstein that Ted Bernstein act as the "next trustee." Paragraph 26 describes Simon Bernstein

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<sup>1</sup> Ted Bernstein's testimony that his father told him he was to be the trustee of a trust (*See* Intervenor's Exhibit A, pp) is also barred by the DMA.



taking a copy of the draft trust and going to Hopkins & Sutter to execute it.<sup>2</sup> David Simon never witnessed Simon Bernstein modify or execute the purported Trust document. (See Intervenor's Exhibit B, pp. 36:12 – 39:8; 39:17 – 40:16; 41:14 – 43:9). According to David Simon's testimony, Simon Bernstein left the Simon Law Firm with an unsigned draft of a document and returned with a signed document, which was not copied, scanned or otherwise saved in the files of the Simon Law Firm or Hopkins & Sutter. (See Intervenor's Exhibit B, pp. 44:3 - 45:13). In Paragraph 27, David Simon then avers that he met again with Simon Bernstein and reviewed the executed Bernstein Trust Agreement and that he assisted him with preparing certain other forms.

All of this testimony, including his allegedly viewing the executed Trust, occurred in the presence of Simon Bernstein, in the midst of conversations with Simon Bernstein, and is therefore barred by the Illinois Dead Man's Act. The testimony contained in these paragraphs is all the evidence Plaintiffs have to rely upon for the notion that Mr. Bernstein executed a trust document and that its terms are those contained in Plaintiffs' Exhibits 15 and 16. Because this testimony is inadmissible under the DMA, Plaintiffs' Motion as to Count II must be denied.

**C. Even if Admissible, David Simon's Testimony is Heavily Controverted**

*i. The results and timing of the two document searches raise doubt.*

Even if David Simon's testimony were admissible, it could only be accepted if deemed credible by the trier of fact. Multiple facts controvert his testimony and/or undermine his credibility. For example, in his Affidavit, Mr. Simon states in paragraph 28 that he conducted a search of his office and records in Chicago and located a hard copy draft of the Simon Bernstein

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<sup>2</sup> Foley & Lardner, the successor firm to Hopkins & Sutter, was contacted to see if the firm retained a copy of the 1995 Trust; but David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (See Intervenor's Exhibit B, pp. 44:12 – 45:15; 46:22 – 47:15). There has been no evidence cited to explain why he needed to go to Hopkins & Sutter to "execute the document" when David Simon appears to be saying that he prepared the document.

Trust. (*See* Plaintiffs' Exhibit 32 at ¶ 28; Ex. 16) In paragraph 29, he states that, with the help of his brother Adam, he located a copy of the Trust (Plaintiffs' Exhibit 15) that had been prepared on his word processor. (*Id.* at ¶ 29) Those two exhibits are presented to this Court as facsimiles of the Trust that they claim Simon Bernstein actually executed. However, the circumstances and timing of the discovery of these documents would allow a trier of fact to doubt their authenticity. That is because Mr. Simon's Affidavit omits the fact that the search he performed which resulted in the discovery of the documents occurred one year after Simon Bernstein died. (*See* Plaintiffs' Exhibit 15; Plaintiffs' Exhibit 32 at ¶¶ 28-29) Almost a year earlier, the family had conducted what was described as a "exhaustive search" for the Trust, and none was found. (*See* Intervenor's Exhibit A, p. 55:1-11 and Dep. Ex. 3)

Between the two searches, the Bernstein siblings and their attorney, Robert Spallina, exchanged many emails addressing how best to extract the insurance proceeds from Heritage. (*See* Intervenor's Exhibit A, Dep. Exs. 1-5; 8-18) Many of those emails refer to the inability to locate the trust document. (*See* Intervenor's Exhibit A, Dep. Exs. 4, 7-11) David Simon was a participant in those email exchanges and yet in none of them did he relate a recollection of what a jury might consider to be critical events described in Paragraphs 23 through 27 of his Affidavit. None of those emails apparently rang a bell with him that he might want to check his word processor and his files to see whether Plaintiffs' Exhibits 15 and 16 still existed. That occurred only after the Simon Law Firm was retained as counsel and he and his brother undertook their second search in September, 2013.

*ii. The 2000 Trust claims the proceeds of the Heritage Policy.*

In addition, as the siblings addressed the lack of an executed document in their email exchanges, they considered several options for attempting to obtain the money from the

insurance company. One of the options was to employ a trust that Simon Bernstein admittedly executed which is called the “2000 Trust.” (See Intervenor’s Exhibit A, p. 37:4-18; pp. 48:21 – 49:19; Dep. Ex. 1) But that option was rejected because the 2000 Trust did not include Pam Simon as a beneficiary. (*Id.*) The existence of the 2000 Trust is critical, however, because it identifies the proceeds of the insurance policy at issue here as an asset of that Trust (See Intervenor’s Exhibit A, Dep. Ex. 23 at Schedule A) while it does not refer to the existence of an alleged 1995 trust, which it would have superseded. (After all, the same proceeds cannot pass to two different trusts). A trier of fact might conclude that Simon Bernstein executed the 2000 Trust, omitting any reference to a 1995 trust, because the 1995 trust was never actually executed. Maybe he planned to do it and never did. There is no other clear explanation for it. In any event, Plaintiffs’ Motion papers do not resolve the question as a matter of law by the “clear and convincing” standard.<sup>3</sup>

*iii. The original complaint in this case omits reference to a written trust.*

The pleadings in the original complaint here are also inconsistent with David’s current recollection. Mr. Spallina apparently engaged in discussions with Heritage to plan for the company to interplead the funds into court in Florida. (See Intervenor’s Exhibit A, Dep. Ex. 16) However, at that point David Simon and his brother Adam Simon, the attorney currently representing Plaintiffs in this case, abruptly filed a lawsuit in Circuit Court of Cook County on April 15, 2014 seeking to obtain the funds from Heritage. (*Id.*; Dkt. No. 1) This act resulted in a breach with Mr. Spallina, including a very angry exchange of emails and Spallina’s ultimate withdrawal as counsel (See Intervenor’s Exhibit A, Dep. Exs. 16 and 17). The complaint filed by

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<sup>3</sup> It is also notable that no subsequent estate planning document executed by Simon Bernstein revokes, or even refers to the existence of, a purported 1995 Trust. (See 2000 Trust, Intervenor’s Exhibit A at Dep. Ex. 23; 2008 Trust, Intervenor’s Exhibit A at Dep. Ex.25; 2012 Trust, Intervenor’s Exhibit A at Dep. Ex. 24).

the Simon Law Firm undermines Plaintiffs' position here because, despite David Simon's averment that he recalls having created the trust on his computer and having seen it after execution, the Complaint filed by Adam Simon on behalf of David Simon's wife and her siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 1) It was only later, in September 2013, that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16.

*iv. The events surrounding the purported execution of the trust raise doubt.*

David Simon avers in his Affidavit that Simon Bernstein took his draft trust document to the firm of Hopkins & Sutter where the execution purportedly occurred. (*See* Plaintiffs' Exhibit 32 at ¶¶ 23-27) He also testified that the identity of the successor trustee had been changed on the final document (*See* Intervenor's Exhibit B, pp. 40:2 - 43:4) The clear implication would have to be that word processing revisions occurred at Hopkins & Sutter as part of the trust being executed. However, David Simon also testified that Foley & Lardner, the successor firm to Hopkins & Sutter, was contacted to see if the firm retained a copy of the 1995 Trust. They had none. David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (*See* Intervenor's Exhibit B, pp. 44:12 - 45:15; 46:22 - 47:15). Perhaps more importantly, he testified that after Simon Bernstein returned from Hopkins & Sutter, he assisted him in preparing documents to be submitted to Lincoln Benefit to give effect to the Trust and that he would have expected Lincoln Benefit to retain copies of the documents. (*See* Intervenor's Exhibit B, pp. 43:10 - 44:2). However, while he again cannot recall who called or to whom they spoke at Lincoln Benefit, that entity retained no copies relevant to the Trust. (*Id.*) This testimony would also allow the jury to question the execution of the trust and the terms it contained.

*iv. The terms of Plaintiffs' Exhibits 15 and 16 are inconsistent.*

Another issue raising doubt about David Simon's testimony is that Plaintiffs have presented two different versions of the same document which are not fully consistent with each other and not consistent with the Affidavit of David Simon. Plaintiffs' Exhibit 15 seems to be a later version of Plaintiffs' Exhibit 16, the implication being that Plaintiffs' Exhibit 16 was a draft of Plaintiffs' Exhibit 15. Article 11 in both documents addresses the appointment of a successor trustee. David Simon avers at paragraph 25 of his Affidavit that he suggested to Simon Bernstein that Ted be appointed the successor trustee. But the handwriting at BT 000020 (Plaintiffs' Exhibit 16) lists Pam before Ted as a potential successor trustee. More importantly, on Plaintiffs' Exhibit 15 at BT 000010, the typed version of Article 11 indicates David Simon as the successor trustee. Notwithstanding that, the parties have agreed among themselves that the intention all along was for Ted to be the successor trustee. But, when the purported trust first made a claim to the insurance company, they represented that attorney Spallina was the trustee of the Trust. (See Intervenor's Exhibit B, pp. 59:13 – 60:3; 81:15 – 82:13) Nothing about the text of either Exhibit, nor any of the other evidence concludes the issue as a matter of law, by the "clear and convincing" standard, that Simon Bernstein executed a trust with the terms contained in those exhibits.

**D. A Triable Issue of Fact Remains**

At summary judgment, "if fair-minded persons could draw more than one conclusion or inference from the facts, including one unfavorable to the moving party, a triable issue exists and the motion for summary judgment should be denied. It is only when undisputed facts are susceptible of but a single inference that the issue becomes one of law." *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983). The evidence Plaintiffs have presented and

the evidence included in this Response and in Intervenor's Statement of Facts would allow a jury to conclude that it is at least equally likely that Simon Bernstein never executed the 1995 Trust as that he did; it is at least equally likely that the terms of any trust he might have executed are different than the terms contained in Plaintiffs' Exhibits 15 and 16. And in any event, Plaintiffs have not even tried, no less succeeded in demonstrating by the "clear and convincing" standard, that as a matter of law Simon Bernstein executed a trust and that its terms are as found in those Exhibits. The essential testimony underlying their claim is barred by the Dead Man's Act, and even if it were not barred, it is clearly controverted. Summary judgment must be denied.

WHEREFORE, based upon the foregoing, Intervenor prays that Plaintiffs' Motion for Summary Judgment be denied.

Respectfully submitted,

By: /s/ James J. Stamos  
Attorney for Intervenor, Brian M. O'Connell

James J. Stamos  
Kevin P. Horan  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2015, this Response to Plaintiffs' Rule 56.1 Statement of Undisputed Material Facts and Statement of Additional Facts pursuant to Rule 56.1(b)(3)(C) was filed electronically using the CM/ECF system and notice will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ James J. Stamos  
James J. Stamos

**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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

**RESPONSE TO SUMMARY**  
**JUDGEMENT**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



Third-Party Defendants\_ )  
 )  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
 )  
Intervenor. )  
\_\_\_\_\_ /

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN'S RESPONSE TO PLAINTIFFS  
AMENDED MOTION FOR SUMMARY JUDGEMENT AS TO COUNT 1 & II;  
PLAINTIFFS CLAIM TO POLICY PROCEEDS**

COMES NOW Eliot Ivan Bernstein ("Eliot"), a Third Party Defendant, Pro Se and files this "Response to Summary Judgement" and states under information and belief as follows:

1. Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff's improper at this time.

2. There is a primary beneficiary, LaSalle National Trust, NA ("LASALLE") and it appears that no one has contacted them or its Successors and this Summary Judgement is instead attempting to have this Court pay an ALLEGED Contingent Beneficiary instead of the Primary Beneficiary. When there is the existence of a Primary Beneficiary the contingent beneficiary cannot be paid benefits.

3. No executed copy of a "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" ("Legally Nonexistent Unexecuted Trust") the trust alleged by Plaintiff to be the Contingent Beneficiary has been produced to this Court to establish legal standing as a Plaintiff or a Contingent Beneficiary.

4. As no executed copy of the 95 Legally Nonexistent Unexecuted Trust has been presented by Plaintiffs and produced to this Court, the legal standing of TED as a legally valid trustee of

such nonexistent trust is therefore disputed and Plaintiffs have failed to bring forward competent proof to demonstrate the absence of material issues of fact on this matter and therefore Summary Judgment must be denied. Thus, it is disputed whether this Trust even exists and without competent proof and-or further discovery, the Trust and alleged Trustee must be presumed to not exist or at minimum certainly not proven sufficient for Summary Judgment at this stage of litigation.

5. There is also an executed 2000 insurance trust done by Proskauer Rose that would supersede any 95 Legally Nonexistent Unexecuted Trust (FOOTNOTE 9 – Response to Plaintiffs Motion for Summary Judgment Statement of Facts), which the Plaintiffs and attorney SPALLINA coordinated and colluded to secret.

6. That SPALLINA, TESCHER, TED, PAM and DAVID SIMON are acting fraudulently before this Court by their intentional secreting of this 2000 Trust document (secreted from Eliot until turned over when TESCHER and SPALLINA resigned and were court Ordered to turn over their records) with the intent to defeat the wishes and intent of Simon Bernstein, best illustrated at TED'S recent deposition (EXHIBIT 10 – Pages 37-53) where it is shown that the 2000 Trust was intentionally secreted from the carrier and this Court by SPALLINA, TESCHER, TED and PAM as it did not suit their ends to produce the document as it cut certain parties out any benefits.

7. This concealment of pertinent evidence constitutes a fraud on the court and the beneficiaries and other interested parties who have been damaged by this intentional and with scienter obstruction and this deserves both sanctions and reporting of the intentional fraud on the court and others to the proper authorities by the long and strong arm of the law exercised through this Court.

8. There is also a missing Simon Bernstein Trust, NA that the carrier production records show was the Contingent Beneficiary at Simon's death that would supersede any 95 Legally Nonexistent Unexecuted Trust.

9. It is noted that Adam Simon is brother to David Simon who is married to Pam Bernstein-Simon. Without this lawsuit scheme, if the money passes to the estate instead of the 95 Legally Nonexistent Unexecuted Trust, then Pam Bernstein Simon and Ted Bernstein would receive NO benefits. Their children may receive benefits depending on the outcome of estate beneficiary disputes ongoing in Florida. Adam Simon represents TED as "Trustee" of the 95 Legally Nonexistent Unexecuted Trust and if there is no legal trust with standing, then there is no Trustee with standing and there ultimately is no counsel that has standing.

10. Virtually all the "undisputed facts" presented by Plaintiffs are disputed by Eliot in his counter complaint/cross claim, hereby included by reference herein.

11. There is no insurance contract "Policy", which is admitted by Plaintiffs and through the Affidavit submitted by Don Sanders of Jackson Nation (See Plaintiffs Summary Judgement EXHIBIT 29) that has been produced by any Plaintiff or any party to this action and thus Plaintiffs asserted fact that there is a life insurance "Policy" and reliance upon it or its terms at this time is all disputed as there is no legally binding insurance contract produced at this time.

12. As there is no legally binding insurance contract proven or provided or produced, as such there can be no "Policy Proceeds." determined to award Plaintiffs Summary Judgment at this time.

13. This lawsuit is a Breach of Contract lawsuit spawned from a denied insurance claim filed with HERITAGE that arose after Plaintiff TED'S attorney SPALLINA within weeks of Simon's death began illegally attempting to impersonate himself as the Trustee of LASALLE by

correspondences (FOOTNOTE 6 – Response to Plaintiffs Summary Judgement Statement of Facts), which was done within weeks after Simon Bernstein passed away. Thus, this lawsuit is not a dispute between various claimants as Plaintiffs suggest to this Court as there are not competing claimants.

14. There is no copy or record of the 95 Legally Nonexistent Unexecuted Trust produced in these matters and thus Plaintiff's standing is disputed, if there is no trust there is no Trustee and therefore TED'S legal standing is disputed.

15. Further, Plaintiffs individually, TED, Pamela Simon, Jill Iantoni and Lisa Friedstein, likewise have legal standing issues in dispute, as if the trust does not exist then they have no rights thereunder as alleged beneficiaries and whereby they have asserted no claims to this Court or the carrier that they are beneficiaries of the missing policy deserving standing in any individual capacity. Thus, their lawsuit should be dismissed or at least reviewed and-or investigated as a fraud upon this Court and their attorneys at law involved should all be reported to the proper authorities and sanctioned for intentional misconduct and acting with scienter in tortious interference with an expectancy.

16. While corresponding with HERITAGE, SPALLINA acted as the Trustee of LASALLE, the Primary Beneficiary, and filed a death benefit claim on behalf of the alleged Contingent Beneficiary, the 95 Legally Nonexistent Trust with HERITAGE, not on behalf of the primary beneficiary LASALLE (for unknown reasons) and that claim was subsequently DENIED because SPALLINA could not provide ANY document to HERITAGE to evidence a legally binding trust instrument to pay and this is the reason for the Breach of Contract lawsuit being filed NOT a claimant dispute.

17. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of LASALLE or provides any authority to act as same and thus within six weeks of the death of Simon Bernstein, attorney SPALLINA on behalf of his legal client TED was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in correspondences with the carrier, SPALLINA was attempting to convert the monies to his law firm's trust account with no legal authority (EXHIBIT 1).

18. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of a 95 Legally Nonexistent Unexecuted Trust or provides any authority to act as same and thus on November 01, 2012 within 6 weeks after the death of Simon Bernstein, attorney SPALLINA was already acting fraudulently in attempts to secret control over assets and property in this case (see FOOTNOTES 6, 7 & 8 – Response to Plaintiffs Summary Judgement Statement of Facts), attempting to convert the monies to his law firm's trust account.

19. The claim form submitted by SPALLINA on November 01, 2012 makes no mention of the fact that at that time there were ongoing investigation by the Palm Beach County Sheriff and an autopsy being performed to determine if Simon Bernstein had been murdered ordered by TED.

20. The initial breach of contract action was not even filed in Cook County Illinois until after the Law Office of SPALLINA and TESCHER had already filed fraudulent documents in the Palm Beach County Circuit Court of COLIN on or about Oct. 24, 2012, including but not limited to, a false Petition of Discharge (full Waiver) (EXHIBIT 2) of Simon Bernstein dated April 9, 2012, which sought to use a document allegedly executed by Simon Bernstein and

witnessed by SPALLINA five months earlier, submitted POST MORTEM for Simon who was now deceased, enabling a deceased Simon to act as Personal Representative while dead to close the Estate of his wife Shirley Bernstein. In addition to the fraudulent submission of the document, the document contained numerous false and fraudulent recitals of acts allegedly signed to by Simon Bernstein, which clearly had not occurred by the date of the alleged signing on April 9, 2012, for instance Simon claims to have all beneficiaries Waivers and the waivers were not sent to beneficiaries until May of 2012 and certain beneficiaries did not submit them until after Simon died on September 13, 2012.

21. While the precise circumstances of COLIN'S knowledge and possible involvement in the fraud are not presently fully known, after certain frauds had been exposed, including COLIN learning at the hearing that a dead Simon had been illegally used to close the Estate of wife Shirley months after his death, COLIN stated on the record in a hearing on September 13, 2013 (EXHIBIT 3) that he had enough evidence at that time to read TED, TESCHER, SPALLINA and their counsel their Miranda Rights.

22. That the law firm of Tescher & Spallina, PA also submitted to the Court forged and fraudulent Waivers for six parties, including POST MORTEM forgery and fraudulent notarizations of Simon's, also used to close the Estate of Simon's deceased wife Shirley using Simon while dead to act as the Personal Representative as part of an elaborate fraud on the court of COLIN, the beneficiaries, the creditors and others. Upon learning of the six fraudulent waivers, including POST MORTEM forgery and fraudulent notarization for Simon that were proven fraudulently notarized and admitted to being forged by a member of the Tescher & Spallina PA law firm, Kimberly Moran who was then arrested and convicted, COLIN again stated he had enough evidence at that moment to read them all their Miranda Rights (See

EXHIBIT 3 September 13, 2013 Hearing Pages 14-18). The Court should note that COLIN however failed to take any corrective or administrative actions against those involved and in fact proceeded as if a crime had not taken place and allowed TESCHER, SPALLINA and TED to continue to be fiduciaries and counsel in the proceedings and forced Eliot and others to spend years attempting to remove them through pleading after pleading evaded by COLIN who should have removed them and instantly disqualified himself once he discovered the Fraud in and on his court committed by his appointed Fiduciaries, Counsel and involving him and his employees directly.

23. COLIN further failed to inform this Court of the crimes related parties to this Action were involved in in his court and instead began a two year denial of due process and procedure and retaliation against Eliot who was exposing the crimes of his court, while he was mandated under Judicial Canons to disqualify on his own initiative due to his direct involvement as a material and fact witness to the criminal acts that took place in and on his court that were committed by his appointed Officers and Fiduciaries, attorneys at law, TESCHER, SPALLINA and TED and other retained counsel, MANCERI and PANKAUSKI.

24. COLIN also acted outside the color of law as he could not investigate his own court, himself, his court appointed fiduciaries and officers without exuding the Appearance of Impropriety and Judicial Canons require mandatory disqualification in such situations, yet he hung on as long as he could despite numerous attempts to remove him and force disqualification on his own initiative and instead choose a day after denying Eliot's Petition for Disqualification to instead Recuse himself Sua Sponte on May 19, 2015 from six cases relating to the Bernstein family.

25. That the law firm of Tescher & Spallina, PA used Simon Bernstein POST MORTEM to close the Estate of Shirley in January 2013 where Simon who died on September 13, 2012 and was dead for four months closed the Estate of Shirley. At no time prior to Simon closing Shirley's estate while dead did TESCHER and SPALLINA who were acting as his counsel while he was dead notify the Florida probate court that Simon had passed away. At least there is no proof or record in the probate court that shows COLIN was so notified by Tescher & Spallina.

26. That when Simon died no Successor Personal Representative for Shirley's Estate was legally chosen and instead TESCHER, SPALLINA and TED used Simon to close Shirley's Estate as they needed for Simon to appear alive at the time of the closing of Shirley's Estate in order to attempt to then have Simon (while appearing alive) fraudulently change Shirley's Irrevocable Trust Beneficiaries that were set in stone two years earlier upon her death on December 08, 2010.

27. A fair review of the evidence thus far shows this complex scheme was created and designed in order for TESCHER, SPALLINA, TED et al. to seize Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then begin to steal assets of the estates and trusts, including through this secreted insurance scheme before this Court, while they breached fiduciary duties and law and denied beneficiaries access to information and accounting for any of the assets, all in violation of a mass of Probate Rules and Statutes and felony criminal laws and resulting in a mass of civil torts against beneficiaries and creditors and all allowed to continue through the closed eyes of COLIN.

28. That upon the resignations of TESCHER and SPALLINA after it was admitted and proven that their law firm committed fraud and forgery on the court and there were admissions to the Palm Beach Sheriff of intentionally and with scienter alteration of Shirley's Trust Document,



COLIN allowed them as their last act to transfer Trusteeship in the Florida Simon Trust to TED, despite COLIN knowing they acted as TED'S counsel to commit the frauds that directly benefited TED. COLIN'S acts can only be seen as an effort to continue the cover up of the crimes committed in his court by allowing TED to continue to breach fiduciary duties and deny documents, records and accountings from beneficiaries.

29. Continuing a Pattern and Practice of Fraud, simultaneous and in connection with the frauds in the Florida probate courts of COLIN and FRENCH were the illegal attempts by TESCHER, SPALLINA, TED and PAMELA SIMON to get the HERITAGE insurance proceeds initially converted illegally outside of the true and proper beneficiaries of the Estate and Trusts or LASALLE, with SPALLINA even fraudulently impersonating himself as Trustee of the institutional trust company LASALLE, the alleged Primary Beneficiary of the missing insurance policy at the center of this Action.

30. Attorney SPALLINA and his client TED continuing an alleged Pattern and Practice of Fraud then filed a death benefit claim with HERITAGE with SPALLINA who signed the death claim form as the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust (the Contingent Beneficiary alleged by Plaintiff of the missing insurance policy) which no Plaintiff or party working in concert with the Plaintiffs or any party who responded in this complaint have yet been able to provide to this Court or any court.

31. Numerous ancillary crimes were committed once Dominion and Control of the Estates and Trusts were seized and these crimes are under ongoing criminal investigations, including this insurance fraud scheme, with the primary suspects alleged to be the fiduciaries and counsel in the matters, including but not limited to, TED, ROSE, TESCHER, SPALLINA, PAMELA SIMON, MANCERI, SWERGOLD and now to be added COLIN and FRENCH.

32. TESCHER and SPALLINA were acting at the same time in many other conflicting capacities to fraudulently maintain complete control of the Estates and Trusts, including but not limited to: Alleged “Trustee” of the 95 Legally Nonexistent Unexecuted Trust when filing the death benefit claim; Counsel to TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust, (prior to their falling out after the claim was denied and Adam Simon then replacing TESCHER and SPALLINA upon filing of this lawsuit, which according to Jackson National’s initial Answer (EXHIBIT 4) TED was advised by SPALLINA as his Counsel that he had no legal standing to file this lawsuit, “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...”); Alleged “Trustee” of LaSalle National Trust, NA; Co-Personal Representatives of the Simon Bernstein Estate; Co-Trustees of the Simon Bernstein Trust; Counsel to themselves as Co-Personal Representatives and Co-Trustees for Simon’s Estate and a Florida Simon Trust; Counsel to TED as alleged Successor Trustee of the Shirley Bernstein Trust; and, Counsel to TED as Successor Personal Representative to the Shirley Bernstein Estate.

33. Where TESCHER and SPALLINA then resigned (EXHIBIT 5) from the fiducial capacities listed above amidst admission in an ongoing investigation with Palm Beach County Sheriff Investigators (EXHIBIT 6) that they fraudulently altered and disseminated a Shirley Trust document and other documents and where many other dispositive documents and other records are under ongoing investigation at this time, including Wills and Trusts of both Simon and Shirley.

34. The insurer removed this lawsuit from the Illinois Circuit Court where it was originally filed to this Court and added Eliot as third party defendant, as the lawsuit had been secreted from Eliot despite claims from Plaintiffs that he is entitled to benefits.

35. The fact that the insurance carrier HERITAGE/JACKSON failed to produce a bona fide insurance policy is a liability to the carrier that should have caused them to remain in this lawsuit and the Court erred in allowing them to be dismissed prematurely. HERITAGE/JACKSON should be re-entered in the lawsuit by this Court enjoining them until such time that a bona fide policy is produced to this Court and they provide analysis of the law regarding LOST or MISSING insurance policies and the liabilities resulting from such loss of contract and demand they contact the Primary Beneficiary LASALLE and notify them of the claim.

36. There were no conflicting “claimants” to the proceeds as suggested by Plaintiffs as Eliot never filed a claim on his or anyone else’s behalf with the insurer HERITAGE and the insurer misled the Court that there was a claimant dispute over policy proceeds when interpleading their funds and did not correctly notify the Court that a fraudulent death benefit claim had been made by SPALLINA that was denied. When HERITAGE could not produce a policy with contracted values to be paid to the Court they paid instead an amount they claim represents the nonexistent policy amount but cannot prove this amount to be the policy amount due. Plaintiffs similarly have tried to restyle their pleadings to claim that there was a claimant dispute but have filed a Breach of Contract Lawsuit for the failure of the carrier to pay the Spallina fraudulent death benefit claim made.

37. That discovery needs to be expanded for the insurance carrier to contact the Primary Beneficiary LASALLE before any payment can be made to any alleged contingent beneficiary or to the Estate or any party.

38. Additionally, it took over a year and half for Eliot to get Judge COLIN to allow counsel to represent the Estate's potential interest in this lawsuit, which was blocked by the fiduciaries and their counsel, TED, SPALLINA, TESCHER et al. acting in conflicts of interest and through fraud to deny such Intervenor intervening in these matters.

39. Finally, documents have been secreted from this Court, the beneficiaries and others, for over two and half years making discovery almost impossible. The need for further discovery is essential in this lawsuit and the Florida estate and trust cases to determine the facts in this matter.

40. TED'S legal standing and qualifications as a legitimate Trustee are challenged in the Florida estate and trusts cases and until they heard and it determined if he is now qualified and has standing, discovery is being blocked due to TED'S alleged fiduciary roles and his continued breaches for failure to investigate the crimes committed by his former counsel or provide information to beneficiaries to investigate.

41. The evidence submitted by Plaintiffs is disputed and does not support Plaintiffs own motion that Simon Bernstein intended the Contingent Beneficiary to be the 95 Legally Nonexistent Unexecuted Trust. In fact, the 95 Legally Nonexistent Unexecuted Trust is only an alleged Contingent Beneficiary and thus should not be paid as Plaintiffs admit that LASALLE is the Primary Beneficiary and no one has proven that it is not a viable beneficiary that should be paid before any Contingent Beneficiary would be considered.

42. TED is being petitioned to be removed in the Florida probate court as Successor Personal Representative of Shirley's Estate, alleged Successor Trustee of Simon's Trust and Successor Trustee of Shirley's Trust, as he is not now qualified to be Trustee for a multitude of reasons, including but not limited to: breaches of fiduciary duties; conflicts of interest; adverse interests; alleged violations of state and federal laws under ongoing investigations; the fact that

the language in the Florida Simon Trust TED alleges to be trustee of, precludes him from such fiduciary role, as the Successor Trustee cannot be related to the issuer (his father Simon) and TED is considered PREDECEASED for all purposes of the Florida Simon Trust; the fact that it was TED'S former attorneys at law TESCHER and SPALLINA and their law firm members, who were acting as TED's counsel committed a series of crimes to benefit their client and business associate TED. Even if TED were the Successor Trustee of the 95 Legally Nonexistent Unexecuted Trust, TED's failure to take any action regarding SPALLINA'S fraudulent insurance claim would be cause for TED to be removed see (EXHIBIT 7).

43. TED has already acted with his counsel in this lawsuit to block the estate/trust beneficiaries in Florida from being represented in this matter and acted in his own self-dealing best interests at the expense of the estate/trust beneficiaries, which is cause for his instant removal in these matters as alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust (EXHIBIT 8).

44. O'CONNELL, the newly appointed Successor Personal Representative/Executor of the Simon Estate and Intervenor in this lawsuit has filed an affirmative defense (EXHIBIT 9) that claims that TED is acting as an illegal and not valid alleged Successor Trustee of the Simon Bernstein Trust in Florida, based on the fact that the language in the alleged Simon Trust precludes the Successor Trustee from being a related party to the issuer and thus TED as Simon's son is not a valid Trustee and also TED is considered predeceased for all purposes of the trust.

45. TED has admitted in his deposition that despite having alleged his father may have been murdered and contacting and opening a Sheriff investigation and Coroner Autopsy that TED did not feel there was any need to notify this Court or the insurance carrier that his father

may have been murdered, which could materially affect the payout of any proceeds. (See Intervenor Response to Summary Judgement EXHIBIT A – TED Deposition Pages 127-134.)

46. The primary beneficiary LASALLE and/or its successor has not been contacted by the life insurance carriers or the Plaintiffs and thus again further discovery is needed as to what happened to LASALLE and what the terms of the VEBA trust they acted as Successor Trustee for that was beneficiary of the policy and what happened upon the alleged dissolution. Movant David Simon's affidavit claims that he dissolved a VEBA trust but he was not the Trustee of LASALLE who would have had legal obligations to dissolve the VEBA and distribute any assets held by it to the plan participants according to the VEBA trust instrument, which again has not been produced to this Court by Plaintiffs who maintained the trust document at their offices.

47. The Contingent Beneficiary according to the insurance parole evidence is not the 95 Legally Nonexistent Unexecuted Trust but instead the Simon Bernstein Trust, NA and this contradiction remains disputed. The only evidence produced by Plaintiffs contrary to the records of the carrier stating the Simon Bernstein Trust NA is an affidavit produced by a Jackson National Insurance Company executive stating that the name of the Contingent Beneficiary was a mistake but where the insurance company produced NO legally existent policy to prove such claim showing the policy beneficiary and where SANDERS statements are made in conflict as the carrier has an interest in having this case resolved quietly as it has LOST an insurance policy on the life of an insured and the liabilities from potential beneficiaries could be enormous.

48. The "drafts" of the alleged 95 Legally Nonexistent Unexecuted Trust prove that there is no legally executed trust that allows Plaintiff to have standing in these matters and have no legal basis to attempt to act as a contingent beneficiary. The "drafts" while alleged to have been done

by Hopkins and Sutter law firm before they were acquired by Foley & Lardner, LLP are suspiciously missing any law firm markings to identify their work.

49. Each of the “Consenting Children” have conflicted interests with their own children in these matters as if this Action is successful each child will receive 1/5th of the missing policy benefits and if unsuccessful in this Action all of them will receive nothing from the missing policy. If the estate is successful in this Action and the beneficiaries are determined to be Simon’s grandchildren again the children will get nothing. The beneficiaries of the Estate and Trusts of Simon Bernstein are all in question in the probate court due to the frauds committed by TED’S former counsel and former fiduciaries of the Estate and Trusts of Simon Bernstein, TESCHER and SPALLINA. Finally, the grandchildren may not be beneficiaries in Simon’s Estate either as the dispositive documents have been challenged and have already been found by Governor Rick Scott’s Notary Public Division to have been improperly notarized and they are alleged fraudulent and under ongoing investigations and validity hearings were petitioned for but remain unheard by COLIN after two years making it impossible to move forward without the questions of validity and construction heard.

50. That it is alleged that Simon signed Dispositive Documents a 2012 Will and Amended and Restated Trust but those documents have also been legally challenged and remain in dispute and under investigation.

51. Further, it is unknown who the beneficiaries LASALLE, the primary beneficiary, is mandated to pay under the trust they operate under. The beneficiary remains disputed and unknown at this time, even according to the Court’s recent Order denying Eliot’s claim for emergency interim distribution until resolution of the beneficiaries is determined.

WHEREFORE, Eliot I. Bernstein, Pro Se Third party defendant, respectfully prays for an Order denying Plaintiffs' Summary Judgement motion in its entirety to Count I & II, dismissing the Plaintiffs' claims if appropriate, Ordering further Discovery as requested, ordering sanctions or a hearing on sanctions against Plaintiffs if appropriate, and for such other and further relief as this Court deems just and proper.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

**Note: All URL'S contained herein are hereby incorporated by reference in entirety herein.**

DATED: June 05, 2015

/s/ Eliot Ivan Bernstein  
Third Party Defendant/Cross Plaintiff PRO SE  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 05, 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.

/s/ Eliot Ivan Bernstein  
Third Party Defendant/Cross Plaintiff PRO SE  
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**EXHIBITS**

1. SPALLINA LETTER TO HERITAGE TO PAY DEATH BENEFIT TO TESCHER & SPALLINA PA LAW FIRM TRUST ACCOUNT. PAGE 11, BULLET NUMBER 5.

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>**

2. APRIL 09, 2012 PETITION FOR DISCHARGE (FULL WAIVER)

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>**

3. SEPTEMBER 13, 2013 HEARING - COLIN DISCOVERS FRAUD UPON THE COURT - PAGES 14-18

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Teschher%20Ted%20Manceri.pdf>**

4. JACKSON NATIONAL ANSWER AND COUNTER COMPLAINT (PAGE 8)

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130626%20Jackson%20Answer%20to%20Complaint%20and%20Counterclaim%20and%20Third%20Party%20for%20Interpleader.pdf>**

5. TESCHER AND SPALLINA RESIGNATION LETTER

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2014014%20Teschher%20Spallina%20Manceri%20Resignation%20Letters%20and%20Withdrawal%20as%20Counsel%20and%20Executors.pdf>**

6. SHERIFF REPORTS (PAGE 6 OF 51)

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>**

7. TED DEPOSITION STATEMENT REGARDING SPALLINA ACTING AS TRUSTEE (PAGES 35-37)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

8. ATTORNEY AT LAW PETER FEAMAN LETTER TO O'CONNELL REGARDING ALLEGED MISCONDUCT OF TED AND ROSE IN THE ILLINOIS INSURANCE LITIGATION.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O%27Connell.pdf>

9. O'CONNELL AFFIRMATIVE DEFENSE THAT TED IS NOT A LEGALLY VALID TRUSTEE.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf>

10. TED'S DEPOSITION - EXHIBITS 1, 2 AND 23 (SIMON BERNSTEIN 2000 INSURANCE TRUST DATED AUGUST 15, 2000) AND TESTIMONY PAGES 37-53. 82-87

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

**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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

**RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

Third-Party Defendants\_ )  
BRIAN M. O’CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
Intervenor. )  
\_\_\_\_\_ /

**LOCAL RULE 56.1(b)(3) RESPONSE TO PLAINTIFFS' STATEMENT OF Undisputed MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS REQUIRING THE DENIAL OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COMES NOW Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se and files this “Response to Summary Judgement” and states under information and belief as follows:

**THE PARTIES**

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).

**ANSWER** There is no executed legally valid 95 Legally Nonexistent Unexecuted Trust that can act as Plaintiff in this matter and as an alleged Contingent Beneficiary. The insurance carrier HERITAGE already declined to pay the proceeds to the legally nonexistent 95 Legally Nonexistent Unexecuted Trust for failure to produce an executed copy of the said trust. Counsel, A. Simon cannot represent a legally non-existent trust. TED cannot act as alleged “Trustee” of a legally non-existent trust.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** This failure to answer is cause for further discovery. I, Eliot Bernstein, should be granted Court Ordered Discovery as I cannot gain discovery to United Bank of Illinois since I am not an Executor/Personal Representative or Trustee.

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).

**ANSWER** The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally nonexistent “Policy” that is the subject contract of this Breach of Contract Lawsuit filed by the Plaintiff and where Sanders testimony could be construed as efforts to cover up for said liabilities resulting from losing an insurance policy, an unheard of event in insurance that would expose the carrier Jackson National Life to a variety of liabilities to beneficiaries and others.

There is evidence in production that shows that Simon Bernstein requested and was given the exact name of the beneficiaries, which were the Primary as LASALLE and the Contingent as Simon Bernstein Trust, NA in 2010 and Simon did not respond to the names as incorrect and the

insurance carrier referred to no truncation or abbreviation of the Contingent Beneficiaries name in their letter. SANDER'S statement that the name "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" was truncated by a computer system due to length or entered in error by an employee and thus was transformed into "Simon Bernstein Trust, N.A." does not fit any known computer system software that truncates data strings by eliminating the end of strings after the maximum character recognition is exceeded. Where the name of the beneficiary is not subject to interpretation by employees as the beneficiaries name must be exact and the beneficiary forms must be attached to the executed policy contract, which at this time no legally valid insurance contract has been produced to confirm SANDER'S claims and thus needs further discovery and litigation.

That there are frauds that have already been proven in the Estate and Trusts of Simon and Shirley Bernstein and there are missing trusts and other documents in the Estates and Trusts of Simon and Shirley Bernstein and Ted Bernstein according to his deposition testimony does not know what he did with a mass of dispositive documents brought to him minutes after his father died and these documents may have additional information that is intentionally being secreted from beneficiaries, the insurance carrier and this Court for Plaintiffs to attempt to steal off with the insurance proceeds deposited with the Court.

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)

**ANSWER** TED is not a valid "Trustee" of the 95 Legally Nonexistent Unexecuted Trust as there is no legally executed and binding trust document produced. No retainer of A. Simon's services has been produced to beneficiaries. Since there is no 95 Legally Nonexistent

Unexecuted Trust produced, the acts of the alleged Trustee and his counsel are legally invalid and where neither the alleged Trustee or his alleged Counsel are acting within the law.

TED retained SPALLINA as his counsel to file the fraudulent claim to the insurance carrier, whereby SPALLINA claimed to be the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust and the claim was DECLINED by the carrier leading to this Breach of Contract lawsuit and then TED retained A. Simon as his counsel and with no notice to the alleged beneficiaries became suddenly the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

That TED was advised by his own counsel SPALLINA that he had no standing to file this lawsuit. TED then retained his sister Pam’s husband’s brother, Adam Simon, to represent him as the new Trustee. Where Adam Simon is partner with his brother David Simon in a law firm that primarily worked for Simon Bernstein in his offices since each graduated college and where David Simon and his firm stand to benefit directly from this action not only from legal fees but D. Simon will get with his wife Pamela 1/5<sup>th</sup> of the proceeds if this lawsuit is successful for Plaintiffs. Similar to TED, is his sister Pamela Bernstein-Simon, who both were considered predeceased in the Estates and Trusts of Simon and Shirley Bernstein and if the monies are paid to the Estate or other vehicles and not the 95 Legally Nonexistent Unexecuted Trust, both stand to get nothing for them or their families. Their children may be beneficiaries but that is still to be determined via ongoing probate and trust actions due to the FRAUD that has occurred by TED and his counsel TESCHER and SPALLINA and others.

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)

**ANSWER** The fact that Plaintiffs claim that JP Morgan Chase Bank is an “alleged” successor calls for further discovery in these matters.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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.)”

**ANSWER** Undisputed

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.)

**ANSWER** From the Idaho Department of Insurance @

<http://www.doi.idaho.gov/insurance/Succession.aspx?AID=1315>

The Certificate of Authority #1315 belongs to an active company with former names.

Start	End	Former Names
12/29/1980	12/12/2000	CAPITOL BANKERS LIFE INSURANCE COMPANY
12/12/2000	8/29/2008	ANNUITY & LIFE REASSURANCE AMERICA, INC.
8/29/2008		HERITAGE UNION LIFE INSURANCE COMPANY (1315)

That information from Annuity & Life Reassurance America has not been obtained in this lawsuit and they may have retained copies of the missing insurance policy and thus need for



further discovery. Eliot cannot obtain this information as he is not an Executor/Personal Representative of the Estate and Trusts of Simon. JACKSON is believed to have then acquired HERITAGE and entered this case on behalf of HERITAGE and then suddenly disappeared after depositing funds in the court registry. HERITAGE when interpleading the funds to this Court misled this Court to believe that there was a valid binding life insurance policy with “Policy Proceeds” equal to the amount interpled, when factually they failed to produce such policy showing that this in fact was the correct amount stated in the legally binding contract that remains missing. There can be no “Policy Proceeds” without a legally binding policy produced and this is misleading. There are conflicting evidences of the amount of insurance of the missing policy<sup>1</sup>.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

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<sup>1</sup> HERITAGE application to increase Death Benefit from 2 to 3 Million.  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

**ANSWER** That Adam Simon representing the Trustee and the beneficiaries appears conflicted.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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.

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** The Primary Beneficiary LASALLE was the trustee and administrator for the VEBA plan that the missing policy is a part of according to the records produced and thus LASALLE or its Successors must be contacted by the carrier as they remain the Primary Beneficiary.

What happened on dissolution of the VEBA to the assets of the VEBA, including any insurance benefits and policies, where the insured’s chosen beneficiaries of the policies issued for the VEBA were defined through the VEBA plan not by the missing policy’s named beneficiaries, which was LASALLE and Simon Bernstein Trust, NA. The VEBA plan trust must be produced to know the plan beneficiaries and what happens to the VEBA trust assets upon dissolution and this needs further discovery or litigation to determine.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** It appears that this corporation was dissolved by TED immediately after his father died and no records of this entity have been turned over to beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein in Florida and thus further discovery needs to take place or further litigation to determine what assets were in this entity.

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)

**ANSWER** That Adam Simon represented Ted Bernstein as an alleged trustee of the 95 Legally Nonexistent Unexecuted Trust and filed opposition pleadings to block the entry of the Estate of Simon from intervening in this lawsuit. This was done in conflict and with improper representation as TED was simultaneously acting as Trustee for a Simon Bernstein Trust in Florida that would also possibly receive the proceeds and where Ted alleges to be a beneficiary of the 95 Legally Nonexistent Unexecuted Trust who stands to gain 20% of any proceeds paid and where TED and/or his children may get nothing if the proceeds are paid to the Estate and Trust beneficiaries in Florida, once those beneficiaries are determined. In no event will TED receive benefits if not paid through the 95 Legally Nonexistent Unexecuted Trust scheme in this Action.

That this conflict of TED'S that led him to file opposition papers to the Estate being joined in these matters has caused delays in the Estate being represented in these matters, compounding the delays in inheritances caused by TED'S prior counsel and the prior fiduciaries of the Estate of Simon, Co-Executors/Personal Representatives and Co-Trustees, TESCHER and SPALLINA, who intentionally blocked the Estate and Trust of Simon from entering this case

(working against the interest of the Estate and Trust beneficiaries), as they were working as TED's counsel to convert the proceeds through the 95 Legally Nonexistent Unexecuted Trust scheme whereby TESCHER and SPALLINA filed the fraudulent insurance claim that led to this Breach of Contract Lawsuit in efforts to defeat their clients they represented in the Estate of Simon to benefit TED instead. Where the claim asserted by the Plaintiff is that the insurance company breached the missing insurance contract terms by failing to pay the fraudulent death benefit claim submitted by TESCHER and SPALLINA and where SPALLINA represented that he was the trustee of the 95 Legally Nonexistent Unexecuted Trust that TED now claims to be the alleged Trustee of in this lawsuit.

That due to these intentional delays and interferences with expectancies both Eliot and the Estate have been denied proper time to fully complete discovery and thus discovery must be extended, especially where it was intentionally interfered with to attempt to close this Action before allowing known possible beneficiaries to participate. At this time, none of the grandchildren, including minor children are represented in this case by counsel, except Eliot's children who are represented Pro Se by Eliot.

## **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.)

**ANSWER** A specimen policy was provided, which is not a legally valid executed and legally binding copy of the actual insurance policy that is subject of this lawsuit. A specimen policy is an insurance carrier policy submitted to each state the policy is being applied for in as a sample of what a policy will look like for a consumer.

There is no policy presently produced or proven by Plaintiffs so no "Policy Proceeds" can be determined from a specimen and the attempt to define the specimen as the actual "Policy" on Simon is misleading to the Court and requires further discovery as to where the actual policy is.

That the affidavit of SANDER'S states that the specimen policy amount of insurance is not the correct amount and would not be the amount stated in the missing life insurance contract and this is cause for further discovery and litigation into what exactly the missing policy death benefit amount is.

That the Specimen policy also contains no beneficiaries of the missing policy as the beneficiaries are not defined thereunder.

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)

**ANSWER** The application is not complete as submitted in production as parts appear missing, a verified copy would need to be obtained showing the entire document and cause for further discovery. Don Sanders affidavit is in question due to conflicts and adversity.

There is alleged evidence that shortly before his death Simon's policy lapsed and was reinstated, a new application was taken and appears missing from the records which may also contain new application information pertinent to this lawsuit and the reinstatement should have caused a new or reinstated policy to be produced as indicated in letters to Simon by HERITAGE and this lack of a reinstated policy is highly suspect that this information is missing from the carriers production.

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)

**ANSWER** This application is not known to be the actual application of the policy as no policy is produced at this time proving what application is attached to the policy, especially after alleged re-issue and where insurance contracts, policies, have attached to them the policy applications as part of the legally required contractual documents attached to the issued policy. Therefore, this evidence is questionable and needs further discovery to determine if in fact this application was the defining application of the original issued policy. The final application is required to be attached to the policy. (ii) The records and policies for the VEBA plan participants are sent to Simon's companies and office location at that time, as the policies were sold by Simon and the VEBA was administered with many other VEBA policies he sold through the trust company he established (Simon was the founder of death benefit VEBA programs and the leading broker nationwide in such sales.) (iii) Simon Bernstein was an executive and leading insurance salesman nationwide who brokerage sold billions of dollars of life insurance premium. (iv) Undisputed (v) Undisputed (vi) Undisputed (vii) This would indicate that the missing policy should be with the original owner or its successors and would require additional discovery to determine where it is, although it is the ultimate responsibility of the insurance carrier to maintain a copy of the actual policy and policy records according to law and underwriting and administrative procedures, as well as would be required by any reinsurers that risk was ceded to.

**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)

**ANSWER** That the VEBA information is critical to the payment of any proceeds of any policy once one is found, as LASALLE being the Trustee for the primary beneficiary of the VEBA plan would then have specific duties to pay beneficiaries determined in the VEBA plan by the employees to their named plan beneficiaries.

That if LASALLE dissolved the VEBA the benefits would be allocated according to law and the terms of the VEBA trust and again why further discovery is necessary to determine the role of the Primary Beneficiary and its obligations under the VEBA plan upon dissolution.

That the VEBA information and copies of the trust should be maintained as well by Pam and David Simon who ultimately controlled the administration of the many VEBA plans sold by Simon Bernstein and thus should have been produced in these matters but have not been.

It is alleged that the VEBA plan or its Successor plan may have had over \$50,000,000.00 of assets in it as late as 20092.

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)

**ANSWER** This statement contradicts Plaintiffs' own claims that a contingent beneficiary (with a different name than the insurance company's own records which claim the contingent to be Simon Bernstein Trust, NA) should be paid while the primary beneficiary LaSalle National

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<sup>2</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A showing 50 Million + of assets in 2009  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/SBLexingtonDeathBenefitPlanUnitedBankOfIllinois.pdf>



Trust, NA is according to the carrier of the nonexistent policy the Primary Beneficiary and where Equifax was told the VEBA would be responsible for paying the insurance benefits.

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)

**ANSWER** Undisputed

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)

**ANSWER** That while this may have been the initial VEBA plan beneficiary designated by Simon there is evidence, including a 2000 Insurance Trust and the subsequent Simon Bernstein Trust NA that would suggest that Simon had changed the beneficiary of the VEBA plan and this would need discovery from LASALLE through its successor, Chicago Title to determine who the VEBA plan beneficiary now is.

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)

**ANSWER** According to the Insurance records the Primary beneficiary was LASALLE and the contingent beneficiary was not the “Bernstein Trust” aka 95 Legally Nonexistent Unexecuted Trust as alleged by Plaintiffs but in fact the Simon Bernstein Trust, NA.

Again with a legally existent Primary Beneficiary the Contingent Beneficiary does not even become a viable recipient of the death benefit, which could make Summary Judgement more fraud if the Contingent is paid while the parties all knew of an existing Primary Beneficiary. At death the VEBA was the Primary Beneficiary according to this account.

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)

**ANSWER** SANDER’S affidavit has claimed to be steeped in conflict as his employer JACKSON has a vested interest in the outcome of the litigation, especially if they have lost the insurance contract and are exposed to liabilities resulting from such loss.

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)

**ANSWER** Undisputed

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)

**ANSWER** The dissolution papers are missing to confirm the veracity of Pam’s affidavit which violates the Il Dead Man’s Act as it relates to the “shareholders” of which Simon was one.

While it is claimed that the owner was changed from LASALLE it is not claimed that the Primary Beneficiary was changed from LASALLE and again this would make LASALLE the beneficiary of the proceeds of the missing/lost/suppressed contract.

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)

**ANSWER** Note that no efforts were made to contact LaSalle National Trust NA or its Successor by HERITAGE or any party to this lawsuit and thus further discovery and litigation of these matters is still necessary and the insurance company must be rejoined as an indispensable party and this Court demand they answer why they have failed to contact the Primary Beneficiary.

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))

**ANSWER** The only party with claims to the benefits of the missing policy would according to insurance company records would be the primary beneficiary LaSalle National Trust, NA.

That documents are missing in the Estate and Trusts of Simon Bernstein and thus it is highly probable that like the 2000 Insurance Trust that was secreted from this Court the alleged Contingent Beneficiary by HERITAGE, the Simon Bernstein Trust NA is also being suppressed and secreted by Plaintiffs in their efforts to fraudulently convert the monies.

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.

**ANSWER** LASALLE or its successors would appear to be the only financial institutions with claims to the litigation proceeds and the carrier nor any parties in this litigation have notified LASALLE or its successors they are the Primary Beneficiary of an alleged insurance policy death benefit.

#### **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)

**ANSWER** Even if this were the case, this 95 Legally Nonexistent Unexecuted Trust would be only a Contingent Beneficiary and there is still a Primary Beneficiary and then there is the

2000 Proskauer Trust that supersedes the 95 Legally Nonexistent Unexecuted Trust and then there is a Simon Bernstein Trust, NA that supersedes the 95 Legally Nonexistent Unexecuted Trust as Contingent Beneficiary as of the year 2010 and confirmed by Simon Bernstein as such.

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)

**ANSWER** That this new information leads one to need discovery to get all the tax records regarding the VEBA trust and tax records for the missing 95 Legally Nonexistent Unexecuted Trust and tax records for all of the other trusts involved.

It should be noted that the Curator of the Estate of Simon who replaced TESCHER and SPALLINA, attorney at law Benjamin Brown, Esq. ("Brown") had requested from the IRS over a year ago tax returns for Simon and Shirley individually and for entities they owned and only days after he stated he thought he had received them, he unexpectedly died at age 49 from a heart attack. Upon receiving records from Brown, O'CONNELL the Personal Representative that replaced Brown stated the long anticipated tax returns were not with the records Brown turned over. Several months ago O'CONNELL stated his firm had ordered new "certified" copies of the tax returns and they would be produced shortly but as of this date they have not been produced to any parties. This is further reason that discovery should be continued as the tax returns will provide valuable information that may influence the outcome of this litigation.

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)

**ANSWER** This may be true at that time in 1995 but again this would only show that the VEBA controls whom the beneficiary would be and with LASALLE still the Primary Beneficiary this indicates that even if the VEBA had been dissolved as alleged, the VEBA trust provided that LASALLE or its Successor would pay the former VEBA plan participants benefits after dissolution of the VEBA.

That again even if proved that the 95 Legally Nonexistent Unexecuted Trust existed and were valid it would still be only a Contingent Beneficiary. Again, there are competing claims that the Contingent Beneficiary was changed by Simon to the Simon Bernstein Trust NA.

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)

**ANSWER** Here the Plaintiffs are claiming the benefits are paid to the VEBA Trust through LASALLE as the Primary Beneficiary to then be paid by LASALLE to the VEBA and the administrator would then pay the VEBA plan participant's beneficiary election, which they claim is the missing 95 Legally Nonexistent Unexecuted Trust. In this scenario, the 95 Legally Nonexistent Trust would not be listed as the Contingent Beneficiary on the insurance contract, as apparently, according to the records produced it has never been named as the Contingent Beneficiary on the missing contract.

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).

**ANSWER** Simon's intent changed over time and at the time of his death he had removed Ted and Pam from receiving any benefits of the Estate planning Trusts of Simon and they were considered predeceased.

Simon Bernstein's intent as of 2000 was more defined in the 2000 Proskauer Insurance Trust that at that time would have been the beneficiary and the 95 Legally Nonexistent Unexecuted Trust would have replaced it.

Simon Bernstein's intent as of 2010 was more defined when he confirmed with HERITAGE that the Contingent Beneficiary was the Simon Bernstein Trust NA.

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."

**ANSWER** This evidence contradicts Plaintiffs claims that the missing policy Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust.

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)

**ANSWER** SANDERS statement is made on hearsay evidence as he does not claim to be the party responsible for the error in entering the full formal name of the beneficiary. SANDERS also states that it is common practice for the insurance carrier to rename a beneficiary to an entirely different name and retain no formal evidence of the actual name of the contingent beneficiary.

That SANDERS statements are based on the records he reviewed but it is OBVIOUS that the records reviewed are missing key pertinent records, including but not limited to, THE

ACTUAL POLICY, copies of the trusts and more and so his statements are based on an incomplete set of records.

Simon Bernstein allegedly requested confirmation of the beneficiaries and the letter was sent indicating the Contingent Beneficiary as the Simon Bernstein Trust, NA, which to Eliot's knowledge, no one has conducted investigation to see if this trust exists and there are ongoing investigations into missing and suppressed and fraudulent and altered estate documents ongoing that may materially affect the outcome of this case and make Summary Judgement Premature when records are released that are being withheld or suppressed.

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)

**ANSWER** Movants Exhibit 14 indicates that a NEW POLICY COPY was issued by the carrier and sent to Simon's home address. This would indicate that insurer would have had a recent COPY of the missing policy available at that time but did not retain a copy with their letter sent to Simon or produce the letter with the copy sent at that time.

The reinstated policy may differ than any other earlier policy in key areas such as face amount, beneficiaries, health ratings, etc., which could materially affect the outcome of this lawsuit.

If the Primary Beneficiary did not change at this time then LASALLE is the receiver of any monies resulting from this lawsuit or the policy if it is found at some point through further discovery.

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)

**ANSWER** That a death benefit claim and this instant legal Action were both filed with NO DRAFT COPY in the possession of the alleged trustees of the 95 Legally Nonexistent Unexecuted Trust for over a year until they magically appeared when the Court was demanding that an executed copy be found to give Plaintiffs standing.

That these unexecuted drafts are not legally binding in any way and thus do not give standing in this lawsuit and do not qualify to be paid beneficiaries, as indicated when the insurance carrier DECLINED the death benefit request filed by SPALLINA who could not produce an executed trust as required by the carrier.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** Illinois Dead Man rule disqualifies this affidavit statements relating to conversations or events involving Simon.

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)

**ANSWER** The draft has no law firm markings and is wholly unexecuted and is disputed as to its legal validity in toto and nothing within the document can therefore be relied upon.



Why would David Simon handwrite in names to show Simon where names go in the trust?

What significance does this have?

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)

**ANSWER** The terms of this draft are not binding if they are in fact a draft of the 95 Legally Nonexistent Unexecuted Trust that to date does not exist in the Court record.

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)

**ANSWER** This document is an alleged draft on the date of the trust and yet no law firm has markings upon the document. There are other problems with the datafile that put it in dispute as a valid document. The File Created date is September 03, 2004. The file Modified date is June 21, 1995? How was it modified in 1995 when it was created in 2004? Accessed “Today, September 30, 2013.”

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)

**ANSWER** Undisputed

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)

**ANSWER** Ted Bernstein has a stepson making it 11 grandchildren if included.

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)

**ANSWER** The fact is disputed in their own statement above as to who the trustee of this alleged draft of the 95 Legally Nonexistent Unexecuted Trust was going to be, which makes this a disputed fact.

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)

**ANSWER** The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER** The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER** The "executed Bernstein Trust Agreement" does not exist and thus it is unknown what it would say if it existed.

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

That Simon Bernstein formed the Bernstein Trust on June 21, 1995;

a. That the five surviving children of Simon Bernstein were named as beneficiaries;

- b. 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”

**ANSWER** a) Undisputed b) Undisputed c) There is no “Bernstein Trust” that exists and thus again TED has no standing to act as a Trustee. Adam Simon should be sanctioned for attempting to claim that TED is a legally valid Trustee of a trust that does not exist and filing this lawsuit as Fraud on this Court. Adam Simon and the Plaintiffs should be reported for this Fraud on this Court to the proper authorities by this Court.

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)

**ANSWER** That the Lincoln Benefit Life Insurance Company policy should also have a copy any 95 Legally Nonexistent Unexecuted Trust and the Lincoln Benefit policy and this is hearsay evidence from interested parties to the litigation.

The Lincoln Benefit Life contract or any evidence suggesting the veracity of the claims made has not been produced by Plaintiffs.

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)

**ANSWER** No proof that a lapse occurred is presented.

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)

**ANSWER** This Lincoln Policy also is controlled by the 2000 Proskauer Rose Irrevocable Trust and supersedes any alleged 95 Legally Nonexistent Unexecuted Trust interest.

### **ELIOT' S CLAIMS**

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

**ANSWER** That until Eliot’s counterclaims, third party claims and cross claims are heard Summary Judgement is premature.

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)

**ANSWER** Undisputed

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)

**ANSWER** Eliot never submitted a claim form to the carrier claiming he or his children were named beneficiaries.

### **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)

**ANSWER** Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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.

**ANSWER** Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER** Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER** The 2012 Will of Simon Bernstein has been challenged on its validity and there are pending motions and petitions filed regarding the validity and the construction that remain unheard.

The Florida Governor Rick Scott's Notary Public Division has determined that the Will is improperly notarized by TED's assistant, Lindsay Baxley. The document is under ongoing investigation and challenged on validity and construction in the probate case.

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

**ANSWER** Undisputed

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.)

**ANSWER** Undisputed

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.)

**ANSWER** Eliot's counter/cross/third party claims present evidence that confutes and puts into dispute the Plaintiffs arguments herein and thus make Summary Judgement premature and litigation necessary.

## **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)

**ANSWER** The reason the carrier declined the SPALLINA filed death benefit claim was because an executed copy of the alleged 95 Legally Existent Trust was not produced and thus is the same reason this Court should not pay the claim to the alleged 95 Legally Nonexistent Unexecuted Trust.

### **LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS**

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged "Policy" at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent, and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the "Policy" are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic "Specimen Policy" not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the "Policy" are in genuine dispute. .

3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon

Bernstein (“Simon”) including but not limited to further document and record production from Heritage Union Life Insurance Company (“HERITAGE”), Jackson National Life Insurance Company (“JACKSON”), LaSalle National Trust, NA (“LASALLE”) in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein (“TED”), EBTs of Pamela Beth Simon (“PAM”), David Simon (“D. SIMON”), Robert L. Spallina, Esq. (“SPALLINA”), Donald R. Tescher, Esq. (“TESCHER”) and Don Sanders (“SANDERS”) at minimum.

4. It is noted for this Court that Judge Martin Colin (“COLIN”) of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.

6. The Disqualification motion<sup>3</sup> in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.

7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

8. The fact is there is no executed “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.

9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.

10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs

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<sup>3</sup> COLIN Disqualification Motion  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>



own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs' Summary Judgment itself at this time. See Plaintiffs' Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs' own document submissions.

11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs' own document submissions have not been brought in as a party in these proceedings by Plaintiffs nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.

13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital<sup>4</sup> and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting

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<sup>4</sup> Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.

14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte “recuses” after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact witnesses to the frauds committed by TESCHER and SPALLINA’S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order<sup>5</sup>.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim<sup>6</sup> in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit (“Action”) filed for breach of contract and the Action is based

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<sup>5</sup> COLIN Recusal Order

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>6</sup> Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

on the carrier denial<sup>7</sup> of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.

17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.

19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.

20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for

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<sup>7</sup> Reassure America Life Insurance Company Decline Letter  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

LASALLE when filing his death benefit claim<sup>8</sup>, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.

21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP<sup>9</sup> that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.

23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by

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<sup>8</sup> HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

<sup>9</sup> 2000 Simon Bernstein Life Insurance Trust – Proskauer <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust<sup>10</sup> and sanctions or a sanctions hearing should be granted and further Discovery allowed.

24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“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.** [emphasis added] as Successor Trustee....”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

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<sup>10</sup> TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposit%20ion.pdf>

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.

27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>11</sup> from six cases after his denial of Eliot's Petition for Disqualification<sup>12</sup> as "Legally Insufficient" on May 18, 2015<sup>13</sup>, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases<sup>14</sup> of the Bernstein family.

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<sup>11</sup> Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as "Legally Insufficient  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>12</sup> Petition for Disqualification of Judge Martin Colin  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

<sup>13</sup> Judge Colin Denial of Disqualification  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

<sup>14</sup> Case # 502012CP004391XXXXSB – Simon Bernstein Estate, Case # 502011CP000653XXXXSB – Shirley Bernstein Estate, Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children, Case # 502014CP003698XXXXSB – Shirley Trust Construction, Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB, Case # TBD – Creditor Claim – Eliot v. Estate of Simon

29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.

31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal

Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.

33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.

34. The matters need to be investigated by the carrier as a possible murder of Simon<sup>15</sup> which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.

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<sup>15</sup> Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>



35. There are Petitions that were unheard by COLIN'S court at the time of his recent recusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446> , which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.

37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,

- a. Records from insurers and reinsurers,
- b. Records from the Primary Beneficiary LaSalle National Trust, NA,
- c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,

- d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,
- e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.

38. There is need for further affidavits, declaration and further discovery after TED'S deposition that opens new discovery including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract<sup>16</sup>.

DATED: **Saturday, June 6, 2015**

Respectfully submitted by,

/s/ *Eliot Ivan Bernstein*

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **Saturday, June 6, 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.

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<sup>16</sup> TED Deposition Pages 116-118

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

*/s/ Eliot Ivan Bernstein*

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

SIMON BERNSTEIN IRREVOCABLE )  
 INSURANCE TRUST DTD 6/21/95, )  
 )  
                     Plaintiff, )  
 )  
 v. )  
 )  
 HERITAGE UNION LIFE INSURANCE )  
 COMPANY, )  
 )  
                     Defendant, )  
 )  
 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, et al. )  
 )  
                     Third-Party Defendants, )  
 )  
 and )  
 )  
 ELIOT IVAN BERNSTEIN, )  
 )  
                     Cross-Plaintiff )  
 )  
 v. )  
 )  
 TED BERNSTEIN, individually et al. )  
 )  
                     Third-Party Defendants )  
 )  
 BRIAN M. O’CONNELL, as Personal )  
 Representative of the Estate of )  
 Simon L. Bernstein, )  
 )  
                     Intervenor. )  
 )

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

**THIRD-PARTY DEFENDANT ELIOT I.  
 BERNSTEIN’S MEMORANDUM OF LAW IN  
 OPPOSITION TO PLAINTIFFS’ MOTION FOR  
 SUMMARY JUDGEMENT**

**Filers:**  
 Eliot Ivan Bernstein, Third-Party Defendant  
 and Counter-Plaintiff.

**TABLE OF CONTENTS**

Table of Authorities ..... 2  
Preliminary Statement .....3  
Procedural History .....7  
Argument.....8

**POINT 1:** BECAUSE MULTIPLE GENUINE ISSUES OF MATERIAL FACT EXIST, PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN AND PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT MUST BE DENIED.

- A. PLAINTIFFS HAVE FAILED TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF.
  
- B. SIGNIFICANT PROBATIVE EVIDENCE HAS BEEN ADDUCED FROM WHICH A JURY COULD REASONABLY FIND FOR THE NON-MOVING PARTY, ELIOT I. BERNSTEIN, AGAINST THE PLAINTIFFS THEREBY DENYING SUMMARY JUDGMENT AT THIS STAGE OF LITIGATION.
  
- C. ILLINOIS DEAD-MAN STATUTE PREVENTS THE MAJORITY OF PROOF OFFERED BY PLAINTIFFS WHICH EVEN IF TRUE HAS NOT BEEN DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE

**TABLE OF AUTHORITIES**

- 1. 735 ILCS 5/8-201
- 2. FRCP 56
- 3. *Anderson*, 477 U.S. at 249
- 4. *Lindsey vs. Sears Roebuck and Company* , 16 F.3d 616, 618 (5<sup>th</sup> Cir. 1994).
- 5. *Little v . Liquid AirCorp.*, 37 F.3d 1069, 1975 (5th Cir. 1994) (en banc)
- 6. *Eastman Kodak v. Image Technical Servs., Inc*, 504 U.S. 45 1, 45 658 (1992);
- 7. *Jones v. Royal Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4<sup>1</sup>Dist. 1976),
- 8. *Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593);
- 9. *Reynolds v. First National Bank*, 279 Ill. App. 581)
- 10. *(lyfaley v. Burns*, 6 Ill. 2d 11, 126N.E.2d 695
- 11. *Lytle v. Household lllfg., Inc.*, 494 U.S. 545, 554-555, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990).

12. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).
13. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006);
14. *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7th Cir. 1989).
15. *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983).

### **PRELIMINARY STATEMENT**

For the reasons herein and because of the genuine multiple issues of material fact and need for further discovery raised by Plaintiffs' own filings, the responses herein on Summary Judgment, the counterclaims made herein and all of the documentary evidence and exhibits to date, Plaintiffs' Amended Motion for Summary Judgment must be denied at this stage of litigation. Presented before this Court is an Amended Motion for Summary Judgment brought by Plaintiffs Ted Bernstein, Pamela Bernstein-Simon, Jill Bernstein-Iantoni, and Lisa Bernstein-Friedstein who added themselves as Plaintiffs after the action was first filed alleged on behalf of the 1995 Simon Bernstein Trust. This action was commenced on April 05, 2013 in the Illinois Circuit court several months after the passing of Simon Bernstein on September 13, 2012. At the time of Simon Bernstein's passing in September of 2012, the Estate of his wife, Shirley Bernstein who predeceased Simon Bernstein was still open and pending before Judge Martin Colin in the Florida Probate Court of Palm Beach County. Ted Bernstein, Pam Bernstein Simon, Jill Bernstein-Iantoni and Lisa Bernstein-Friedstein are natural children of Shirley and Simon Bernstein along with Third-party Defendant Eliot I. Bernstein, herein.

At the time of Simon Bernstein's passing, Ted Bernstein made comments at the Hospital where he passed suspecting the possible murder of Simon Bernstein. Ted Bernstein took action with the Coroner's Office and was seeking an autopsy of Simon Bernstein on or about the time of his passing and ultimately obtained the involvement of Palm Beach County Sheriff authorities

regarding the circumstances of Simon Bernstein's death, which resulted in police authorities arriving at the home of Simon Bernstein in the early morning of his passing. See Third-party Defendant Eliot I. Bernstein Answer and Cross Claim Par 18 (i)(a) citing and linking to Eliot Bernstein Emergency Motion to Judge Colin on May 2013 Florida Probate Court, Section III- Post Mortem Autopsy Demand and Sheriff Department Investigation of Allegations of Murder. The alleged policy at issue before this Court which has never been produced or presented and thus not proven involves the deceased Simon Bernstein.

Yet, in the short weeks after his passing and with unsettled questions as to the actual cause of death of Simon Bernstein existing, documentary evidence obtained months later shows that attorney Robert Spallina was seeking payment of a claimed policy's proceeds from Heritage Union Life while acting and being addressed by Heritage as the Trustee of the La Salle National Trust, N.A., which is shown by documentary evidence obtained months later to be the alleged Primary Beneficiary of an alleged policy involving Simon Bernstein at the time of his death, this fact has not been challenged by any party.

Somehow, Heritage apparently never confirms that attorney Spallina has or had any authority to act as Trustee of the La Salle National Trust, N.A., and no document or record has ever been brought forward in this action or elsewhere to show attorney Spallina was ever a Trustee of the La Salle National Trust, N.A. Mysteriously, on or about October 04 2012 again with open questions about the actual cause of death of Simon Bernstein outstanding, attorney Spallina then diverts to attempt to claim proceeds from Heritage now acting as the Trustee of the 1995 Simon Bernstein Trust, which also has never been produced or presented in writing in this action by submitting a claim for death benefits. On or about Oct. 19, 2012, documentary evidence of email communications between attorney Spallina, Ted and Pam Bernstein showing

the parties acting in concert to find a “solution” to missing trusts and policies. Days later on or about Oct. 24, 2012, attorney Tescher and Spallina’s offices begin filing documents in the Florida Probate Court of Judge Colin later determined to be fraudulent on many grounds including the fact that the attorneys were attempting to use an alleged sworn statement of now deceased Simon Bernstein allegedly sworn to months before his death to now close the Estate case of Shirley Bernstein acting as the Personal Representative while deceased. (See Response to Statement of Facts, See Footnote 3, Disqualification Motion.)

While the fraud is permitted to continue in the Florida Probate Court of Martin Colin who has also never held a hearing to determine a valid Trustee in those cases, attorneys Tescher & Spallina continued to communicate with the Plaintiffs on ways to obtain the proceeds from the alleged policy again while open questions and investigations remain as to the exact cause of death of Simon Bernstein all the while attorneys Spallina and the Plaintiffs never communicate to Heritage or any carrier that Simon Bernstein may have passed because of possible murder. These parties acting in concert specifically communicate on keeping a 2000 Trust of Simon Bernstein done by the law firm Proskauer Rose out of the insurance actions and this lawsuit as this Trust allegedly determines Pam Bernstein to be “predeceased” under the Trust and thus not able to claim proceeds, which is also the result of what would happen if the alleged policy proceeds were to flow into the Estate of Simon Bernstein due to a Will-Trust by Simon Bernstein that says that both Ted Bernstein and Pam Bernstein Simon are predeceased and will not gain benefits directly under the Estate-Trust.

From the time of Simon Bernstein’s passing and continuing for many months later attorneys Spallina and Tescher and Ted Bernstein and others are all withholding documents and records and property from Third-party Defendant Eliot I. Bernstein herein while also holding up



inheritances to Eliot Bernstein and his family and children. When the action is first filed in the Illinois courts by Ted Bernstein on behalf of the 1995 Simon Bernstein Trust that attorney Spallina attempted to act as Trustee of while making the death benefit claim to Heritage weeks before (that was then subsequently Denied by the carrier) attorney Spallina claims Ted Bernstein has no authority to file a breach of contract lawsuit against Heritage and heated exchanges take place by email between attorney Spallina, Plaintiffs and their attorneys the Simon Law Firm. Heritage-Jackson itself files an Answer in this Action which itself raises genuine material issues of fact preventing summary judgment as to what the actual policy is, where the policy is, what the policy says, what the terms and conditions of the policy are, what the death benefit actually is, what riders were attached, who the beneficiaries are and whether Ted Bernstein is a proper Trustee, if the trust exists and who is the Trustee of any such Trust that claims to be the beneficiary.

Meanwhile in this action, neither Heritage nor Plaintiffs seek to contact the party their own documents and filings show as the Primary Beneficiary being La Salle National Trust, N.A., which itself is a basis to deny summary judgment to Plaintiffs. Ultimately in this action neither Ted Bernstein nor any Plaintiff is able to find or produce any actual policy nor any actual Trust document and thus are relying solely upon parol evidence and statements barred by the Illinois Dead Man Statute. Yet, even such evidence even if admissible still lacks any clear and convincing evidence as to the actual policy, actual policy terms, conditions, riders, history nor any Trust and terms thereunder under which Plaintiffs can claim proceeds. On or about a year after the action is filed one David Simon, husband to Plaintiff Pam Bernstein Simon who is also brother to Adam Simon and partner in the The Simon Law Firm, the attorneys filing the complaints and documents in this action, magically has a revelation that he can prove an alleged

Trust allegedly by Data files on his computer that make no sense and do not match the dates alleged and all of which beg the question a reasonable juror could ask which is why he forgot he could prove the Trust for that entire year and why he and his brother never alleged those facts in any of the original and amended complaints in any event.

Thus, for all the genuine issues of material fact raised by Plaintiffs' own filings, raised by the Answer of Heritage-Jackson, raised by Third-party Defendant and Counterclaimant Eliot I. Bernstein's Answer and Counterclaim, raised by Third-Party Defendant and Counterclaimant Eliot Bernstein's Response and Opposition herein and for the specific areas of Discovery not produced and the absence of necessary and material parties such as La Salle National Trust NA or its successors, Plaintiffs' Amended Motion for Summary Judgement must be denied in its entirety at this stage of litigation.

## **PROCEDURAL HISTORY**

The present motion before the Court is an Amended Motion for summary judgment by Plaintiffs as to Counts I and II of the Amended Complaint. This comes after the claims by Plaintiffs were originally brought in the State Court in Cook County, Illinois and the action was then removed to this federal district court where it was previously heard before Hon. District Judge Amy St. Eves. This motion by Plaintiffs is now before this Court at a time when related actions in the Florida Probate Court are in limbo after Eliot I. Bernstein, Third-party Defendant and Counterclaimant herein, filed a detailed, specified motion for mandatory Disqualification of Florida Probate Judge Martin Colin as a necessary material and fact witness after multiple fraudulent filings in the Florida Courts by the offices of attorneys Tescher & Spallina emerged in the Florida Courts. Attorneys Tescher and Spallina, by clear documentary evidence, were clearly working and communicating with the Plaintiffs during the relevant times of this federal action.

Florida Probate Court Judge Martin Colin Denied the motion for mandatory disqualification as being “legally insufficient” and then, within 24 hours, issued a Sua Sponte Recusal Orders from all six Florida cases but then acted upon those Florida cases with other Florida Judges ultimately resulting in the Florida cases being transferred to one Hon. Judge Coates who was a Partner at the Boca Raton office of the Proskauer Rose law firm that was directly involved with one of the Trusts implicated in this Illinois federal action. Now, even Judge Coates has recused himself from the Florida proceedings leaving the present Florida state matters in limbo. Further, this motion for Summary Judgment by Plaintiffs comes as there are continued and open investigations into the fraudulent document filings in Florida, the fraudulent insurance claim filed by Spallina, stolen estate and trust Properties, illegal Real Estate Sales and continue while Third-party Defendant and Counterclaimant Eliot I. Bernstein has sought leave to file a motion in this action to continue depositions of Ted Bernstein amongst others including Florida Judge Martin Colin, a motion which has yet to be filed. Because of the multiple genuine issues of material fact that exist and the need for further discovery, Plaintiffs’ Amended Motion for Summary Judgement must be denied at this time.

**ARGUMENT: POINT 1 - BECAUSE MULTIPLE GENUINE ISSUES OF MATERIAL FACT EXIST, PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN AND PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT MUST BE DENIED.**

Plaintiffs seek summary judgment on Counts I and II of their Amended Complaint. (Dkt. No. 73) However, Count I is a breach of contract claim against Heritage Union Life Insurance Company that interpleaded the proceeds of an insurance policy and was dismissed from the case. (Dkt. No. 101) Plaintiffs provide no authority for the proposition that they may obtain a judgment against a party who is no longer a defendant. Summary judgment must be denied on Count I, which is moot. Heritage’s (and-or successor Jackson) absence from this action at this

stage of litigation is improper and the Answer filed by Jackson itself raises genuine issues of material facts as to Count II. Ironically, Plaintiffs' have not moved for summary judgment on Count III of the Amended Complaint and thus, this Memorandum does not address this claim at this stage of litigation.

**A. PLAINTIFFS HAVE FAILED TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF**

When seeking summary judgment, the movant bears the initial responsibility of demonstrating the absence of an issue of material fact with respect to those issues on which the movant bears the burden of proof at trial. *Lindsey vs. Sears Roebuck and Company*, 16 F.3d 616, 618 (5<sup>th</sup> Cir. 1994). If the movant fails to meet its initial burden, the motion must be denied, regardless of the non-movant's response. *Little v. Liquid AirCorp.*, 37 F.3d 1069, 1975 (5<sup>th</sup> Cir. 1994) (*en banc*). With respect to the Plaintiffs' current Amended Motion for Summary Judgment presently before the Court, it is absolutely clear that multiple issues of genuine fact exist preventing summary judgment at this stage of the litigation and that a reasonable juror could come to multiple conclusions against the moving party and thus, Plaintiffs' motion must be denied.

In determining whether a genuine issue exists for trial, the Court must view the evidence introduced and all factual inferences from the evidence in the light most favorable to the nonmovant. *Eastman Kodak v. Image Technical Servs., Inc.*, 504 U.S. 451, 456 (1992); *Gremillion v Gulf Coast Catering Co.*, 904 F.2d 2902, 92 (5<sup>th</sup> Cir. 1990); see also *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5<sup>th</sup> Cir. 1993). The action before the Court involves Plaintiffs' claims to proceeds allegedly under an Illinois insurance policy and thus, the Illinois state law of insurance contracts is at issue. In construing an insurance policy, the court must

ascertain the intent of the parties to the contract. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108, 607 N.E.2d 1204, 1212 (1992).

In *Royal Jones v Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4<sup>1</sup>Dist. 1976), the plaintiff sought to prove the existence of a trust agreement and, failing that, sought to prove the existence of a resulting trust. The court there described the applicable burden of proof as follows:

The proof necessary to establish the existence of a trust by parol evidence has been phrased in various ways: The proof must be 'clear and convincing' (*Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593); 'unequivocal and unmistakable' (*Reynolds v. First National Bank*, 279 Ill. App. 581); even so strong, unequivocal and unmistakable as to lead to but one conclusion. (*Ivafaley v. Burns*, 6 Ill. 2d 11, 126 N.E.2d 695). A similar high degree of proof is necessary to establish the terms of the trust, such as the identity of the beneficiaries, and the nature and extent of their interests. *Ivafaley v. Burns*.

In the present action, there is no contract which has been produced, there is no policy which has been produced, and the Plaintiffs' own pleadings, documentary evidence and statements and exhibits before this Court show that one major necessary party, La Salle National Trust, N.A., has never even been contacted by Plaintiffs at least according to the submissions before this Court and clearly have not been brought in to this action as a party. Thus, one of the major necessary parties in this action, La Salle National Trust NA, who by the way is deemed a Primary Beneficiary according to Plaintiffs' own documents and Heritage/Jackson and has never been heard before this Court and this alone should defeat Plaintiffs' present motion for summary judgment.

Another necessary party, Heritage and or Jackson as successor, by their own Answer and Counterclaim before this Court, has alleged Ted Bernstein is not a proper Trustee and raises material questions of fact itself as to the actual policy, policy terms, and also admitting that no actual policy has been produced. Yet, this necessary party has presently been dismissed from this action and Third-party Defendant and Counterclaimant Eliot Bernstein asserts Heritage-Jackson

should be brought back into this action by this Court and thus Summary Judgment to the Plaintiffs is inappropriate at this stage of litigation and must be denied.

Duties of an insured are controlled by the terms and conditions of its insurance contract. *American Country Insurance Co. v. Bruhn*, 289 Ill. App. 3d 241, 247, (1997). In construing an insurance policy, the primary function of the court is to ascertain and enforce the intentions of the parties as expressed in the agreement. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108 (2001). Yet, as stated, the actual terms and conditions of the contract and policy are unknown as it has never been properly produced and thus summary judgment to Plaintiffs at this stage is impossible and must be denied. Even by attempting to prove a claim to proceeds by parol evidence, Plaintiffs wholly fail to meet their burden of demonstrating the absence of genuine material issues of fact by clear and convincing evidence and summary judgment must be denied.

According to his Deposition, Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. (See Response Exhibit 10, p. 24:6-12) Ted Bernstein testified that he was informed by his father that he would be a trustee of the 1995 Trust in 1995 but did not recall his status as trustee until he was informed by David Simon after Simon Bernstein's death. (See Response Exhibit 10, pp. 24:13 -25:3) While Ted asserts in his Affidavit that he was the Trustee of the Trust as of October 19, 2012, Robert Spallina, Simon Bernstein's lawyer but also a party shown to be working in common with Ted Bernstein at certain stages and even represented Ted Bernstein, made an application for the Policy proceeds on behalf of Plaintiffs, purportedly as trustee of the 1995 Trust after communications from Heritage to Spallina as the Trustee of the La Salle Trust with no authority shown by Spallina to act or be such Trustee and with La Salle never being contacted or brought in as a party. (See Response

Exhibit 10, pp. 35:12 - 36:3 and Dep. Exhibit 1) On October 19, 2012, Ted Bernstein sent an email to Robert Spallina suggesting that he had a "solution to the life insurance policy which provides the desired result" and that a conversation take place between he, Spallina, Pamela Simon and David Simon prior to any further overtures to the insurance company. (See Response Exhibit 10, pp. 35:12 - 37:3; Dep. Ex. 1).

According to Paragraphs 17-21 of the Jackson Counterclaim and Third Party Complaint submitted with its Answer herein, with Jackson as the alleged successor in interest to Heritage as follows:

“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.”

None of the filings by Plaintiffs satisfactorily answer these questions such that there is an absence of genuine issues of material fact by clear and convincing evidence entitling Plaintiffs to summary judgement. Likewise, the Trust and Trust documents have not been produced and are not proven by any standard of evidence and certainly not by a clear and convincing standard of evidence and therefore the very authority for Plaintiffs to claim rights to the proceeds of any insurance contract has not been proven and material issues of fact exist preventing summary judgment to Plaintiffs at this time.

**B. SIGNIFICANT PROBATIVE EVIDENCE HAS BEEN ADDUCED FROM WHICH A JURY COULD REASONABLY FIND FOR THE NON-MOVING PARTY, ELIOT I. BERNSTEIN, AGAINST THE PLAINTIFFS THEREBY DENYING SUMMARY JUDGMENT AT THIS STAGE OF LITIGATION.**

Plaintiffs’ assertions before this Court is that the VEBA dissolved in 1998 and LaSalle was no longer the owner of the policy but however records exist with Heritage (Movant Exhibit 36) showing as recent as 2010 with La Salle National Trust, N.A., still as the Primary Beneficiary. Yet, Plaintiffs have never contacted La Salle since the time of passing of Simon Bernstein or at least never brought any proof forward showing La Salle as Primary Beneficiary has ever been contacted and La Salle was not made a party to this action. Meanwhile, there is proof in the Record that attorney Spallina was being contacted by Heritage as the Trustee of La Salle National Trust, N.A. (See correspondence by Heritage to Spallina, Response Exhibit 1, P.7) in the weeks after the passing of Simon Bernstein who passed under such suspicious circumstances that Plaintiff Ted Bernstein was seeking an autopsy through the Coroner, an independent autopsy and involved the local Sheriff authorities regarding the possible murder of Simon Bernstein while never advising or informing any Insurance Company or this Court of these facts.



Nowhere in the Record is there any proof brought forward to show attorney Spallina as a valid Trustee of La Salle and nowhere in the Record is there any explanation about how or why this occurred. There is proof in the Record, however, showing attorney Spallina communicating with Ted Bernstein in Oct. 2012 to find a “solution” to some of the alleged missing policy and trust problems days before filings made in Probate Court of Judge Martin Colin in Florida on Oct. 24, 2012 ( See Response Exhibit 2). These filings are later determined to involve fraudulent notaries performed by a Paralegal/Notary Public employed by attorneys Spallina and his partner Donald R. Tescher, Esq. at Spallina & Tescher PA named Kimberly Moran who was arrested and convicted. Attorney Spallina later admitted to Palm Beach County authorities of being involved in fraud-forgery of at least one Trust document involving Shirley Bernstein’s Irrevocable Trust to fraudulently include Ted Bernstein’s family back into the trust and a subsequent motion for mandatory disqualification of Florida Probate Judge Martin Colin recently filed and already exhibited herein showed Judge Colin as a necessary material witness to other specified fraud document filings by attorney Spallina ( and maybe Tescher ) around that time. This mandatory disqualification motion of Florida Judge Colin ultimately results in a sua sponte recent Recusal from all cases by Judge Colin within 24 hours of denying the disqualification motion as legally insufficient.

Further, there is other proof in the Record that attorney Spallina and the Plaintiffs secreted and withheld from this Court evidence of a 2000 Trust by Proskauer Rose that also cut Ted Bernstein and Pam Bernstein Simon out of a claim to proceeds. Later on, a “different story” emerges about the policies and Trusts, where David Simon jumps in to the game a year after the original complaint was filed and then according to David Simon, the first attempt to locate the 1995 Trust took place in the winter of 2012-2013 (See Dep. of David Simon, p. 59:13-22). Foley

& Lardner, the successor law firm to Hopkins & Sutter, was contacted to see if they retained a copy of the 1995 Trust; but David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (See Movant Exhibit 35, pp. 44: 12 -45:15; 46:22 -47:15)

Despite David Simon's late in the game “magical revelation and recollection” that he recalls having created the trust on his computer and having seen it after execution which is magically recalled over a year after the original complaint was filed by Plaintiffs, the Complaint filed by Adam Simon who is the brother to David Simon filed on behalf of David Simon's wife and her siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73) It was only after this event that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16. Yet, despite these late in the game magical revelations and recollections, still no original documents are produced, nothing but Sample policies produced, no documents prepared by law firms produced nor properly signed or executed while at the same time Plaintiffs are failing to inform the insurance carriers of the possible murder of Simon Bernstein, failing to contact La Salle or bring in La Salle National Trust, N.A., the Plaintiffs were attempting to secret and hide documents from this Court and other parties like the 2000 Proskauer Trust that cut out Ted Bernstein and Pam Simon, and massive fraud is unfolding in the Florida Probate Court where Judge Martin Colin who has allowed the fraud to continue for 2.5 years without conducting a hearing into who is the proper Trustee, if the Trusts and Wills of Simon are valid and now suddenly “Recused” from all cases within 24 hours of Third-party Defendant Eliot Bernstein filing a detailed, specified motion for mandatory disqualification claiming COLIN as a material witness and possible participant to the

fraud on the Court who acted outside his jurisdiction by failing to disqualify when he knew of his standing as witness as required by Judicial Canons and law for over two years.

A reasonable juror under these facts and records could fairly arrive at multiple conclusions including but not limited to the Plaintiffs are hiding evidence from this Court, the Plaintiffs may be involved in fraud by these filings, La Salle National Trust, N.A. who hasn't been contacted despite attorney Spallina acting as Trustee with no authority as the Primary Beneficiary, and further that the Plaintiffs have failed to meet their burden of proof.

"If fair-minded persons could draw more than one conclusion or inference from the facts, including one unfavorable to the moving party, a triable issue exists and the motion for summary judgment should be denied. It is only when undisputed facts are susceptible of but a single inference that the issue becomes one of law." *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983). Significant probative evidence must be adduced from which a jury could reasonably find for the non-movant. *Anderson*, 477 U.S. at 249.

Third-party Defendant Eliot Bernstein has adduced significant probative evidence from which a jury could reasonably find in his favor and all such conclusions mandate that summary judgement is denied at this time.

**C. ILLINOIS DEAD-MAN STATUTE PREVENTS THE MAJORITY OF PROOF OFFERED BY PLAINTIFFS WHICH EVEN IF TRUE HAS NOT BEEN DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE**

The relevant portion of the DMA states as follows:

In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability..

The DMA is an evidentiary rule banning testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent. *Gunn v Sobucki*, 216 Ill. 2d 602, 837 N.E. 2d 865 (2005) (upheld DMA); *Brown, Udell and Pomerantz, Ltd. v Ryan*, 369. The DMA applies to summary judgment proceedings and in federal diversity

cases where state law supplies the rule of decision. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006); *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7th Cir. 1989).

While Plaintiffs have wholly failed to satisfy their burden of proof by clear and convincing evidence, any of the proof in the form of affidavits and deposition testimony by Ted Bernstein and David Simon that comes close to answering some of the multiple genuine issues of material fact would be barred by the Dead Man statute. For these additional reasons Summary Judgment must be denied.

### **CONCLUSION**

**WHEREFORE**, for all of the foregoing reasons, Plaintiffs' motion for Summary Judgment must be denied at this stage of litigation and further Discovery ordered and leave granted to add parties such as La Salle National Trust, N.A., bring Jackson-Heritage back into the case and for such other and further relief as may be just and proper.

DATED: June 05, 2015

/s/ Eliot Ivan Bernstein  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 05, 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.

*/s/ Eliot Ivan Bernstein*

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

**AMENDED RESPONSE TO SUMMARY**  
**JUDGEMENT**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

Third-Party Defendants\_ )  
 )  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
 )  
Intervenor. )  
\_\_\_\_\_ /

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN'S RESPONSE TO PLAINTIFFS  
AMENDED MOTION FOR SUMMARY JUDGEMENT AS TO COUNT 1 & II;  
PLAINTIFFS CLAIM TO POLICY PROCEEDS**

COMES NOW Eliot Ivan Bernstein ("Eliot"), a Third Party Defendant, Pro Se and files this "Response to Summary Judgement" and states under information and belief as follows:

1. Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff's improper at this time.

2. There is a primary beneficiary, LaSalle National Trust, NA ("LASALLE") and it appears that no one has contacted them or its Successors and this Summary Judgement is instead attempting to have this Court pay an ALLEGED Contingent Beneficiary instead of the Primary Beneficiary. When there is the existence of a Primary Beneficiary the contingent beneficiary cannot be paid benefits.

3. No executed copy of a "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" ("Legally Nonexistent Unexecuted Trust") the trust alleged by Plaintiff to be the Contingent Beneficiary has been produced to this Court to establish legal standing as a Plaintiff or a Contingent Beneficiary.

4. As no executed copy of the 95 Legally Nonexistent Unexecuted Trust has been presented by Plaintiffs and produced to this Court, the legal standing of TED as a legally valid trustee of

such nonexistent trust is therefore disputed and Plaintiffs have failed to bring forward competent proof to demonstrate the absence of material issues of fact on this matter and therefore Summary Judgment must be denied. Thus, it is disputed whether this Trust even exists and without competent proof and-or further discovery, the Trust and alleged Trustee must be presumed to not exist or at minimum certainly not proven sufficient for Summary Judgment at this stage of litigation.

5. There is also an executed 2000 insurance trust done by Proskauer Rose that would supersede any 95 Legally Nonexistent Unexecuted Trust (FOOTNOTE 9 – Response to Plaintiffs Motion for Summary Judgment Statement of Facts), which the Plaintiffs and attorney SPALLINA coordinated and colluded to secret.

6. That SPALLINA, TESCHER, TED, PAM and DAVID SIMON are acting fraudulently before this Court by their intentional secreting of this 2000 Trust document (secreted from Eliot until turned over when TESCHER and SPALLINA resigned and were court Ordered to turn over their records) with the intent to defeat the wishes and intent of Simon Bernstein, best illustrated at TED'S recent deposition (EXHIBIT 10 – Pages 37-53) where it is shown that the 2000 Trust was intentionally secreted from the carrier and this Court by SPALLINA, TESCHER, TED and PAM as it did not suit their ends to produce the document as it cut certain parties out any benefits.

7. This concealment of pertinent evidence constitutes a fraud on the court and the beneficiaries and other interested parties who have been damaged by this intentional and with scienter obstruction and this deserves both sanctions and reporting of the intentional fraud on the court and others to the proper authorities by the long and strong arm of the law exercised through this Court.



8. There is also a missing Simon Bernstein Trust, NA that the carrier production records show was the Contingent Beneficiary at Simon's death that would supersede any 95 Legally Nonexistent Unexecuted Trust.

9. It is noted that Adam Simon is brother to David Simon who is married to Pam Bernstein-Simon. Without this lawsuit scheme, if the money passes to the estate instead of the 95 Legally Nonexistent Unexecuted Trust, then Pam Bernstein Simon and Ted Bernstein would receive NO benefits. Their children may receive benefits depending on the outcome of estate beneficiary disputes ongoing in Florida. Adam Simon represents TED as "Trustee" of the 95 Legally Nonexistent Unexecuted Trust and if there is no legal trust with standing, then there is no Trustee with standing and there ultimately is no counsel that has standing.

10. Virtually all the "undisputed facts" presented by Plaintiffs are disputed by Eliot in his counter complaint/cross claim, hereby included by reference herein.

11. There is no insurance contract "Policy", which is admitted by Plaintiffs and through the Affidavit submitted by Don Sanders of Jackson Nation (See Plaintiffs Summary Judgement EXHIBIT 29) that has been produced by any Plaintiff or any party to this action and thus Plaintiffs asserted fact that there is a life insurance "Policy" and reliance upon it or its terms at this time is all disputed as there is no legally binding insurance contract produced at this time.

12. As there is no legally binding insurance contract proven or provided or produced, as such there can be no "Policy Proceeds." determined to award Plaintiffs Summary Judgment at this time.

13. This lawsuit is a Breach of Contract lawsuit spawned from a denied insurance claim filed with HERITAGE that arose after Plaintiff TED'S attorney SPALLINA within weeks of Simon's death began illegally attempting to impersonate himself as the Trustee of LASALLE by

correspondences (FOOTNOTE 6 – Response to Plaintiffs Summary Judgement Statement of Facts), which was done within weeks after Simon Bernstein passed away. Thus, this lawsuit is not a dispute between various claimants as Plaintiffs suggest to this Court as there are not competing claimants.

14. There is no copy or record of the 95 Legally Nonexistent Unexecuted Trust produced in these matters and thus Plaintiff's standing is disputed, if there is no trust there is no Trustee and therefore TED'S legal standing is disputed.

15. Further, Plaintiffs individually, TED, Pamela Simon, Jill Iantoni and Lisa Friedstein, likewise have legal standing issues in dispute, as if the trust does not exist then they have no rights thereunder as alleged beneficiaries and whereby they have asserted no claims to this Court or the carrier that they are beneficiaries of the missing policy deserving standing in any individual capacity. Thus, their lawsuit should be dismissed or at least reviewed and-or investigated as a fraud upon this Court and their attorneys at law involved should all be reported to the proper authorities and sanctioned for intentional misconduct and acting with scienter in tortious interference with an expectancy.

16. While corresponding with HERITAGE, SPALLINA acted as the Trustee of LASALLE, the Primary Beneficiary, and filed a death benefit claim on behalf of the alleged Contingent Beneficiary, the 95 Legally Nonexistent Trust with HERITAGE, not on behalf of the primary beneficiary LASALLE (for unknown reasons) and that claim was subsequently DENIED because SPALLINA could not provide ANY document to HERITAGE to evidence a legally binding trust instrument to pay and this is the reason for the Breach of Contract lawsuit being filed NOT a claimant dispute.

17. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of LASALLE or provides any authority to act as same and thus within six weeks of the death of Simon Bernstein, attorney SPALLINA on behalf of his legal client TED was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in correspondences with the carrier, SPALLINA was attempting to convert the monies to his law firm's trust account with no legal authority (EXHIBIT 1).

18. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of a 95 Legally Nonexistent Unexecuted Trust or provides any authority to act as same and thus on November 01, 2012 within 6 weeks after the death of Simon Bernstein, attorney SPALLINA was already acting fraudulently in attempts to secret control over assets and property in this case (see FOOTNOTES 6, 7 & 8 – Response to Plaintiffs Summary Judgement Statement of Facts), attempting to convert the monies to his law firm's trust account.

19. The claim form submitted by SPALLINA on November 01, 2012 makes no mention of the fact that at that time there were ongoing investigation by the Palm Beach County Sheriff and an autopsy being performed to determine if Simon Bernstein had been murdered ordered by TED.

20. The initial breach of contract action was not even filed in Cook County Illinois until after the Law Office of SPALLINA and TESCHER had already filed fraudulent documents in the Palm Beach County Circuit Court of COLIN on or about Oct. 24, 2012, including but not limited to, a false Petition of Discharge (full Waiver) (EXHIBIT 2) of Simon Bernstein dated April 9, 2012, which sought to use a document allegedly executed by Simon Bernstein and

witnessed by SPALLINA five months earlier, submitted POST MORTEM for Simon who was now deceased, enabling a deceased Simon to act as Personal Representative while dead to close the Estate of his wife Shirley Bernstein. In addition to the fraudulent submission of the document, the document contained numerous false and fraudulent recitals of acts allegedly signed to by Simon Bernstein, which clearly had not occurred by the date of the alleged signing on April 9, 2012, for instance Simon claims to have all beneficiaries Waivers and the waivers were not sent to beneficiaries until May of 2012 and certain beneficiaries did not submit them until after Simon died on September 13, 2012.

21. While the precise circumstances of COLIN'S knowledge and possible involvement in the fraud are not presently fully known, after certain frauds had been exposed, including COLIN learning at the hearing that a dead Simon had been illegally used to close the Estate of wife Shirley months after his death, COLIN stated on the record in a hearing on September 13, 2013 (EXHIBIT 3) that he had enough evidence at that time to read TED, TESCHER, SPALLINA and their counsel their Miranda Rights.

22. That the law firm of Tescher & Spallina, PA also submitted to the Court forged and fraudulent Waivers for six parties, including POST MORTEM forgery and fraudulent notarizations of Simon's, also used to close the Estate of Simon's deceased wife Shirley using Simon while dead to act as the Personal Representative as part of an elaborate fraud on the court of COLIN, the beneficiaries, the creditors and others. Upon learning of the six fraudulent waivers, including POST MORTEM forgery and fraudulent notarization for Simon that were proven fraudulently notarized and admitted to being forged by a member of the Tescher & Spallina PA law firm, Kimberly Moran who was then arrested and convicted, COLIN again stated he had enough evidence at that moment to read them all their Miranda Rights (See

EXHIBIT 3 September 13, 2013 Hearing Pages 14-18). The Court should note that COLIN however failed to take any corrective or administrative actions against those involved and in fact proceeded as if a crime had not taken place and allowed TESCHER, SPALLINA and TED to continue to be fiduciaries and counsel in the proceedings and forced Eliot and others to spend years attempting to remove them through pleading after pleading evaded by COLIN who should have removed them and instantly disqualified himself once he discovered the Fraud in and on his court committed by his appointed Fiduciaries, Counsel and involving him and his employees directly.

23. COLIN further failed to inform this Court of the crimes related parties to this Action were involved in in his court and instead began a two year denial of due process and procedure and retaliation against Eliot who was exposing the crimes of his court, while he was mandated under Judicial Canons to disqualify on his own initiative due to his direct involvement as a material and fact witness to the criminal acts that took place in and on his court that were committed by his appointed Officers and Fiduciaries, attorneys at law, TESCHER, SPALLINA and TED and other retained counsel, MANCERI and PANKAUSKI.

24. COLIN also acted outside the color of law as he could not investigate his own court, himself, his court appointed fiduciaries and officers without exuding the Appearance of Impropriety and Judicial Canons require mandatory disqualification in such situations, yet he hung on as long as he could despite numerous attempts to remove him and force disqualification on his own initiative and instead choose a day after denying Eliot's Petition for Disqualification to instead Recuse himself Sua Sponte on May 19, 2015 from six cases relating to the Bernstein family.

25. That the law firm of Tescher & Spallina, PA used Simon Bernstein POST MORTEM to close the Estate of Shirley in January 2013 where Simon who died on September 13, 2012 and was dead for four months closed the Estate of Shirley. At no time prior to Simon closing Shirley's estate while dead did TESCHER and SPALLINA who were acting as his counsel while he was dead notify the Florida probate court that Simon had passed away. At least there is no proof or record in the probate court that shows COLIN was so notified by Tescher & Spallina.

26. That when Simon died no Successor Personal Representative for Shirley's Estate was legally chosen and instead TESCHER, SPALLINA and TED used Simon to close Shirley's Estate as they needed for Simon to appear alive at the time of the closing of Shirley's Estate in order to attempt to then have Simon (while appearing alive) fraudulently change Shirley's Irrevocable Trust Beneficiaries that were set in stone two years earlier upon her death on December 08, 2010.

27. A fair review of the evidence thus far shows this complex scheme was created and designed in order for TESCHER, SPALLINA, TED et al. to seize Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then begin to steal assets of the estates and trusts, including through this secreted insurance scheme before this Court, while they breached fiduciary duties and law and denied beneficiaries access to information and accounting for any of the assets, all in violation of a mass of Probate Rules and Statutes and felony criminal laws and resulting in a mass of civil torts against beneficiaries and creditors and all allowed to continue through the closed eyes of COLIN.

28. That upon the resignations of TESCHER and SPALLINA after it was admitted and proven that their law firm committed fraud and forgery on the court and there were admissions to the Palm Beach Sheriff of intentionally and with scienter alteration of Shirley's Trust Document,

COLIN allowed them as their last act to transfer Trusteeship in the Florida Simon Trust to TED, despite COLIN knowing they acted as TED'S counsel to commit the frauds that directly benefited TED. COLIN'S acts can only be seen as an effort to continue the cover up of the crimes committed in his court by allowing TED to continue to breach fiduciary duties and deny documents, records and accountings from beneficiaries.

29. Continuing a Pattern and Practice of Fraud, simultaneous and in connection with the frauds in the Florida probate courts of COLIN and FRENCH were the illegal attempts by TESCHER, SPALLINA, TED and PAMELA SIMON to get the HERITAGE insurance proceeds initially converted illegally outside of the true and proper beneficiaries of the Estate and Trusts or LASALLE, with SPALLINA even fraudulently impersonating himself as Trustee of the institutional trust company LASALLE, the alleged Primary Beneficiary of the missing insurance policy at the center of this Action.

30. Attorney SPALLINA and his client TED continuing an alleged Pattern and Practice of Fraud then filed a death benefit claim with HERITAGE with SPALLINA who signed the death claim form as the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust (the Contingent Beneficiary alleged by Plaintiff of the missing insurance policy) which no Plaintiff or party working in concert with the Plaintiffs or any party who responded in this complaint have yet been able to provide to this Court or any court.

31. Numerous ancillary crimes were committed once Dominion and Control of the Estates and Trusts were seized and these crimes are under ongoing criminal investigations, including this insurance fraud scheme, with the primary suspects alleged to be the fiduciaries and counsel in the matters, including but not limited to, TED, ROSE, TESCHER, SPALLINA, PAMELA SIMON, MANCERI, SWERGOLD and now to be added COLIN and FRENCH.

32. TESCHER and SPALLINA were acting at the same time in many other conflicting capacities to fraudulently maintain complete control of the Estates and Trusts, including but not limited to: Alleged “Trustee” of the 95 Legally Nonexistent Unexecuted Trust when filing the death benefit claim; Counsel to TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust, (prior to their falling out after the claim was denied and Adam Simon then replacing TESCHER and SPALLINA upon filing of this lawsuit, which according to Jackson National’s initial Answer (EXHIBIT 4) TED was advised by SPALLINA as his Counsel that he had no legal standing to file this lawsuit, “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...”); Alleged “Trustee” of LaSalle National Trust, NA; Co-Personal Representatives of the Simon Bernstein Estate; Co-Trustees of the Simon Bernstein Trust; Counsel to themselves as Co-Personal Representatives and Co-Trustees for Simon’s Estate and a Florida Simon Trust; Counsel to TED as alleged Successor Trustee of the Shirley Bernstein Trust; and, Counsel to TED as Successor Personal Representative to the Shirley Bernstein Estate.

33. Where TESCHER and SPALLINA then resigned (EXHIBIT 5) from the fiducial capacities listed above amidst admission in an ongoing investigation with Palm Beach County Sheriff Investigators (EXHIBIT 6) that they fraudulently altered and disseminated a Shirley Trust document and other documents and where many other dispositive documents and other records are under ongoing investigation at this time, including Wills and Trusts of both Simon and Shirley.



34. The insurer removed this lawsuit from the Illinois Circuit Court where it was originally filed to this Court and added Eliot as third party defendant, as the lawsuit had been secreted from Eliot despite claims from Plaintiffs that he is entitled to benefits.

35. The fact that the insurance carrier HERITAGE/JACKSON failed to produce a bona fide insurance policy is a liability to the carrier that should have caused them to remain in this lawsuit and the Court erred in allowing them to be dismissed prematurely. HERITAGE/JACKSON should be re-entered in the lawsuit by this Court enjoining them until such time that a bona fide policy is produced to this Court and they provide analysis of the law regarding LOST or MISSING insurance policies and the liabilities resulting from such loss of contract and demand they contact the Primary Beneficiary LASALLE and notify them of the claim.

36. There were no conflicting “claimants” to the proceeds as suggested by Plaintiffs as Eliot never filed a claim on his or anyone else’s behalf with the insurer HERITAGE and the insurer misled the Court that there was a claimant dispute over policy proceeds when interpleading their funds and did not correctly notify the Court that a fraudulent death benefit claim had been made by SPALLINA that was denied. When HERITAGE could not produce a policy with contracted values to be paid to the Court they paid instead an amount they claim represents the nonexistent policy amount but cannot prove this amount to be the policy amount due. Plaintiffs similarly have tried to restyle their pleadings to claim that there was a claimant dispute but have filed a Breach of Contract Lawsuit for the failure of the carrier to pay the Spallina fraudulent death benefit claim made.

37. That discovery needs to be expanded for the insurance carrier to contact the Primary Beneficiary LASALLE before any payment can be made to any alleged contingent beneficiary or to the Estate or any party.

38. Additionally, it took over a year and half for Eliot to get Judge COLIN to allow counsel to represent the Estate's potential interest in this lawsuit, which was blocked by the fiduciaries and their counsel, TED, SPALLINA, TESCHER et al. acting in conflicts of interest and through fraud to deny such Intervenor intervening in these matters.

39. Finally, documents have been secreted from this Court, the beneficiaries and others, for over two and half years making discovery almost impossible. The need for further discovery is essential in this lawsuit and the Florida estate and trust cases to determine the facts in this matter.

40. TED'S legal standing and qualifications as a legitimate Trustee are challenged in the Florida estate and trusts cases and until they heard and it determined if he is now qualified and has standing, discovery is being blocked due to TED'S alleged fiduciary roles and his continued breaches for failure to investigate the crimes committed by his former counsel or provide information to beneficiaries to investigate.

41. The evidence submitted by Plaintiffs is disputed and does not support Plaintiffs own motion that Simon Bernstein intended the Contingent Beneficiary to be the 95 Legally Nonexistent Unexecuted Trust. In fact, the 95 Legally Nonexistent Unexecuted Trust is only an alleged Contingent Beneficiary and thus should not be paid as Plaintiffs admit that LASALLE is the Primary Beneficiary and no one has proven that it is not a viable beneficiary that should be paid before any Contingent Beneficiary would be considered.

42. TED is being petitioned to be removed in the Florida probate court as Successor Personal Representative of Shirley's Estate, alleged Successor Trustee of Simon's Trust and Successor Trustee of Shirley's Trust, as he is not now qualified to be Trustee for a multitude of reasons, including but not limited to: breaches of fiduciary duties; conflicts of interest; adverse interests; alleged violations of state and federal laws under ongoing investigations; the fact that

the language in the Florida Simon Trust TED alleges to be trustee of, precludes him from such fiduciary role, as the Successor Trustee cannot be related to the issuer (his father Simon) and TED is considered PREDECEASED for all purposes of the Florida Simon Trust; the fact that it was TED'S former attorneys at law TESCHER and SPALLINA and their law firm members, who were acting as TED's counsel committed a series of crimes to benefit their client and business associate TED. Even if TED were the Successor Trustee of the 95 Legally Nonexistent Unexecuted Trust, TED's failure to take any action regarding SPALLINA'S fraudulent insurance claim would be cause for TED to be removed see (EXHIBIT 7).

43. TED has already acted with his counsel in this lawsuit to block the estate/trust beneficiaries in Florida from being represented in this matter and acted in his own self-dealing best interests at the expense of the estate/trust beneficiaries, which is cause for his instant removal in these matters as alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust (EXHIBIT 8).

44. O'CONNELL, the newly appointed Successor Personal Representative/Executor of the Simon Estate and Intervenor in this lawsuit has filed an affirmative defense (EXHIBIT 9) that claims that TED is acting as an illegal and not valid alleged Successor Trustee of the Simon Bernstein Trust in Florida, based on the fact that the language in the alleged Simon Trust precludes the Successor Trustee from being a related party to the issuer and thus TED as Simon's son is not a valid Trustee and also TED is considered predeceased for all purposes of the trust.

45. TED has admitted in his deposition that despite having alleged his father may have been murdered and contacting and opening a Sheriff investigation and Coroner Autopsy that TED did not feel there was any need to notify this Court or the insurance carrier that his father

may have been murdered, which could materially affect the payout of any proceeds. (See Intervenor Response to Summary Judgement EXHIBIT A – TED Deposition Pages 127-134.)

46. The primary beneficiary LASALLE and/or its successor has not been contacted by the life insurance carriers or the Plaintiffs and thus again further discovery is needed as to what happened to LASALLE and what the terms of the VEBA trust they acted as Successor Trustee for that was beneficiary of the policy and what happened upon the alleged dissolution. Movant David Simon's affidavit claims that he dissolved a VEBA trust but he was not the Trustee of LASALLE who would have had legal obligations to dissolve the VEBA and distribute any assets held by it to the plan participants according to the VEBA trust instrument, which again has not been produced to this Court by Plaintiffs who maintained the trust document at their offices.

47. The Contingent Beneficiary according to the insurance parole evidence is not the 95 Legally Nonexistent Unexecuted Trust but instead the Simon Bernstein Trust, NA and this contradiction remains disputed. The only evidence produced by Plaintiffs contrary to the records of the carrier stating the Simon Bernstein Trust NA is an affidavit produced by a Jackson National Insurance Company executive stating that the name of the Contingent Beneficiary was a mistake but where the insurance company produced NO legally existent policy to prove such claim showing the policy beneficiary and where SANDERS statements are made in conflict as the carrier has an interest in having this case resolved quietly as it has LOST an insurance policy on the life of an insured and the liabilities from potential beneficiaries could be enormous.

48. The "drafts" of the alleged 95 Legally Nonexistent Unexecuted Trust prove that there is no legally executed trust that allows Plaintiff to have standing in these matters and have no legal basis to attempt to act as a contingent beneficiary. The "drafts" while alleged to have been done

by Hopkins and Sutter law firm before they were acquired by Foley & Lardner, LLP are suspiciously missing any law firm markings to identify their work.

49. Each of the “Consenting Children” have conflicted interests with their own children in these matters as if this Action is successful each child will receive 1/5th of the missing policy benefits and if unsuccessful in this Action all of them will receive nothing from the missing policy. If the estate is successful in this Action and the beneficiaries are determined to be Simon’s grandchildren again the children will get nothing. The beneficiaries of the Estate and Trusts of Simon Bernstein are all in question in the probate court due to the frauds committed by TED’S former counsel and former fiduciaries of the Estate and Trusts of Simon Bernstein, TESCHER and SPALLINA. Finally, the grandchildren may not be beneficiaries in Simon’s Estate either as the dispositive documents have been challenged and have already been found by Governor Rick Scott’s Notary Public Division to have been improperly notarized and they are alleged fraudulent and under ongoing investigations and validity hearings were petitioned for but remain unheard by COLIN after two years making it impossible to move forward without the questions of validity and construction heard.

50. That it is alleged that Simon signed Dispositive Documents a 2012 Will and Amended and Restated Trust but those documents have also been legally challenged and remain in dispute and under investigation.

51. Further, it is unknown who the beneficiaries LASALLE, the primary beneficiary, is mandated to pay under the trust they operate under. The beneficiary remains disputed and unknown at this time, even according to the Court’s recent Order denying Eliot’s claim for emergency interim distribution until resolution of the beneficiaries is determined.

WHEREFORE, Eliot I. Bernstein, Pro Se Third party defendant, respectfully prays for an Order denying Plaintiffs' Summary Judgement motion in its entirety to Count I & II, dismissing the Plaintiffs' claims if appropriate, Ordering further Discovery as requested, ordering sanctions or a hearing on sanctions against Plaintiffs if appropriate, and for such other and further relief as this Court deems just and proper.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

**Note: All URL'S contained herein are hereby incorporated by reference in entirety herein.**

DATED: June 08, 2015

/s/ *Eliot Ivan Bernstein*  
Third Party Defendant/Cross Plaintiff PRO SE  
Eliot Ivan Bernstein  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 08, 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.

/s/ *Eliot Ivan Bernstein*  
Third Party Defendant/Cross Plaintiff PRO SE  
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**EXHIBITS**

1. SPALLINA LETTER TO HERITAGE TO PAY DEATH BENEFIT TO TESCHER & SPALLINA PA LAW FIRM TRUST ACCOUNT. PAGE 11, BULLET NUMBER 5.

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>**

2. APRIL 09, 2012 PETITION FOR DISCHARGE (FULL WAIVER)

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>**

3. SEPTEMBER 13, 2013 HEARING - COLIN DISCOVERS FRAUD UPON THE COURT - PAGES 14-18

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Teschher%20Ted%20Manceri.pdf>**

4. JACKSON NATIONAL ANSWER AND COUNTER COMPLAINT (PAGE 8)

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130626%20Jackson%20Answer%20to%20Complaint%20and%20Counterclaim%20and%20Third%20Party%20for%20Interpleader.pdf>**

5. TESCHER AND SPALLINA RESIGNATION LETTER

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2014014%20Teschher%20Spallina%20Manceri%20Resignation%20Letters%20and%20Withdrawal%20as%20Counsel%20and%20Executors.pdf>**

6. SHERIFF REPORTS (PAGE 6 OF 51)

**<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>**

7. TED DEPOSITION STATEMENT REGARDING SPALLINA ACTING AS TRUSTEE (PAGES 35-37)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

8. ATTORNEY AT LAW PETER FEAMAN LETTER TO O'CONNELL REGARDING ALLEGED MISCONDUCT OF TED AND ROSE IN THE ILLINOIS INSURANCE LITIGATION.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O%27Connell.pdf>

9. O'CONNELL AFFIRMATIVE DEFENSE THAT TED IS NOT A LEGALLY VALID TRUSTEE.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf>

10. TED'S DEPOSITION - EXHIBITS 1, 2 AND 23 (SIMON BERNSTEIN 2000 INSURANCE TRUST DATED AUGUST 15, 2000) AND TESTIMONY PAGES 37-53. 82-87

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>



**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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

**RESPONSE TO  
PLAINTIFFS' STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

)

Third-Party Defendants\_ )

)

BRIAN M. O’CONNELL, as Personal )

Representative of the Estate of )

Simon L. Bernstein, )

)

Intervenor. )

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**LOCAL RULE 56.1(b)(3) RESPONSE TO PLAINTIFFS' STATEMENT OF Undisputed MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS REQUIRING THE DENIAL OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

COMES NOW Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se and files this “Response to Summary Judgement” and states under information and belief as follows:

**THE PARTIES**

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).

**ANSWER** There is no executed legally valid 95 Legally Nonexistent Unexecuted Trust that can act as Plaintiff in this matter and as an alleged Contingent Beneficiary. The insurance carrier HERITAGE already declined to pay the proceeds to the legally nonexistent 95 Legally Nonexistent Unexecuted Trust for failure to produce an executed copy of the said trust. Counsel, A. Simon cannot represent a legally non-existent trust. TED cannot act as alleged “Trustee” of a legally non-existent trust.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** This failure to answer is cause for further discovery. I, Eliot Bernstein, should be granted Court Ordered Discovery as I cannot gain discovery to United Bank of Illinois since I am not an Executor/Personal Representative or Trustee.

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).

**ANSWER** The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally nonexistent “Policy” that is the subject contract of this Breach of Contract Lawsuit filed by the Plaintiff and where Sanders testimony could be construed as efforts to cover up for said liabilities resulting from losing an insurance policy, an unheard of event in insurance that would expose the carrier Jackson National Life to a variety of liabilities to beneficiaries and others.

There is evidence in production that shows that Simon Bernstein requested and was given the exact name of the beneficiaries, which were the Primary as LASALLE and the Contingent as Simon Bernstein Trust, NA in 2010 and Simon did not respond to the names as incorrect and the

insurance carrier referred to no truncation or abbreviation of the Contingent Beneficiaries name in their letter. SANDER'S statement that the name "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" was truncated by a computer system due to length or entered in error by an employee and thus was transformed into "Simon Bernstein Trust, N.A." does not fit any known computer system software that truncates data strings by eliminating the end of strings after the maximum character recognition is exceeded. Where the name of the beneficiary is not subject to interpretation by employees as the beneficiaries name must be exact and the beneficiary forms must be attached to the executed policy contract, which at this time no legally valid insurance contract has been produced to confirm SANDER'S claims and thus needs further discovery and litigation.

That there are frauds that have already been proven in the Estate and Trusts of Simon and Shirley Bernstein and there are missing trusts and other documents in the Estates and Trusts of Simon and Shirley Bernstein and Ted Bernstein according to his deposition testimony does not know what he did with a mass of dispositive documents brought to him minutes after his father died and these documents may have additional information that is intentionally being secreted from beneficiaries, the insurance carrier and this Court for Plaintiffs to attempt to steal off with the insurance proceeds deposited with the Court.

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)

**ANSWER** TED is not a valid "Trustee" of the 95 Legally Nonexistent Unexecuted Trust as there is no legally executed and binding trust document produced. No retainer of A. Simon's services has been produced to beneficiaries. Since there is no 95 Legally Nonexistent

Unexecuted Trust produced, the acts of the alleged Trustee and his counsel are legally invalid and where neither the alleged Trustee or his alleged Counsel are acting within the law.

TED retained SPALLINA as his counsel to file the fraudulent claim to the insurance carrier, whereby SPALLINA claimed to be the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust and the claim was DECLINED by the carrier leading to this Breach of Contract lawsuit and then TED retained A. Simon as his counsel and with no notice to the alleged beneficiaries became suddenly the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

That TED was advised by his own counsel SPALLINA that he had no standing to file this lawsuit. TED then retained his sister Pam’s husband’s brother, Adam Simon, to represent him as the new Trustee. Where Adam Simon is partner with his brother David Simon in a law firm that primarily worked for Simon Bernstein in his offices since each graduated college and where David Simon and his firm stand to benefit directly from this action not only from legal fees but D. Simon will get with his wife Pamela 1/5<sup>th</sup> of the proceeds if this lawsuit is successful for Plaintiffs. Similar to TED, is his sister Pamela Bernstein-Simon, who both were considered predeceased in the Estates and Trusts of Simon and Shirley Bernstein and if the monies are paid to the Estate or other vehicles and not the 95 Legally Nonexistent Unexecuted Trust, both stand to get nothing for them or their families. Their children may be beneficiaries but that is still to be determined via ongoing probate and trust actions due to the FRAUD that has occurred by TED and his counsel TESCHER and SPALLINA and others.

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)

**ANSWER** The fact that Plaintiffs claim that JP Morgan Chase Bank is an “alleged” successor calls for further discovery in these matters.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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.)”

**ANSWER** Undisputed

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.)

**ANSWER** From the Idaho Department of Insurance @

<http://www.doi.idaho.gov/insurance/Succession.aspx?AID=1315>

The Certificate of Authority #1315 belongs to an active company with former names.

Start	End	Former Names
12/29/1980	12/12/2000	CAPITOL BANKERS LIFE INSURANCE COMPANY
12/12/2000	8/29/2008	ANNUITY & LIFE REASSURANCE AMERICA, INC.
8/29/2008		HERITAGE UNION LIFE INSURANCE COMPANY (1315)

That information from Annuity & Life Reassurance America has not been obtained in this lawsuit and they may have retained copies of the missing insurance policy and thus need for

further discovery. Eliot cannot obtain this information as he is not an Executor/Personal Representative of the Estate and Trusts of Simon. JACKSON is believed to have then acquired HERITAGE and entered this case on behalf of HERITAGE and then suddenly disappeared after depositing funds in the court registry. HERITAGE when interpleading the funds to this Court misled this Court to believe that there was a valid binding life insurance policy with “Policy Proceeds” equal to the amount interpled, when factually they failed to produce such policy showing that this in fact was the correct amount stated in the legally binding contract that remains missing. There can be no “Policy Proceeds” without a legally binding policy produced and this is misleading. There are conflicting evidences of the amount of insurance of the missing policy<sup>1</sup>.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

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<sup>1</sup> HERITAGE application to increase Death Benefit from 2 to 3 Million.  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

**ANSWER** That Adam Simon representing the Trustee and the beneficiaries appears conflicted.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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.

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed



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)

**ANSWER** The Primary Beneficiary LASALLE was the trustee and administrator for the VEBA plan that the missing policy is a part of according to the records produced and thus LASALLE or its Successors must be contacted by the carrier as they remain the Primary Beneficiary.

What happened on dissolution of the VEBA to the assets of the VEBA, including any insurance benefits and policies, where the insured’s chosen beneficiaries of the policies issued for the VEBA were defined through the VEBA plan not by the missing policy’s named beneficiaries, which was LASALLE and Simon Bernstein Trust, NA. The VEBA plan trust must be produced to know the plan beneficiaries and what happens to the VEBA trust assets upon dissolution and this needs further discovery or litigation to determine.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** It appears that this corporation was dissolved by TED immediately after his father died and no records of this entity have been turned over to beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein in Florida and thus further discovery needs to take place or further litigation to determine what assets were in this entity.

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)

**ANSWER** That Adam Simon represented Ted Bernstein as an alleged trustee of the 95 Legally Nonexistent Unexecuted Trust and filed opposition pleadings to block the entry of the Estate of Simon from intervening in this lawsuit. This was done in conflict and with improper representation as TED was simultaneously acting as Trustee for a Simon Bernstein Trust in Florida that would also possibly receive the proceeds and where Ted alleges to be a beneficiary of the 95 Legally Nonexistent Unexecuted Trust who stands to gain 20% of any proceeds paid and where TED and/or his children may get nothing if the proceeds are paid to the Estate and Trust beneficiaries in Florida, once those beneficiaries are determined. In no event will TED receive benefits if not paid through the 95 Legally Nonexistent Unexecuted Trust scheme in this Action.

That this conflict of TED'S that led him to file opposition papers to the Estate being joined in these matters has caused delays in the Estate being represented in these matters, compounding the delays in inheritances caused by TED'S prior counsel and the prior fiduciaries of the Estate of Simon, Co-Executors/Personal Representatives and Co-Trustees, TESCHER and SPALLINA, who intentionally blocked the Estate and Trust of Simon from entering this case

(working against the interest of the Estate and Trust beneficiaries), as they were working as TED's counsel to convert the proceeds through the 95 Legally Nonexistent Unexecuted Trust scheme whereby TESCHER and SPALLINA filed the fraudulent insurance claim that led to this Breach of Contract Lawsuit in efforts to defeat their clients they represented in the Estate of Simon to benefit TED instead. Where the claim asserted by the Plaintiff is that the insurance company breached the missing insurance contract terms by failing to pay the fraudulent death benefit claim submitted by TESCHER and SPALLINA and where SPALLINA represented that he was the trustee of the 95 Legally Nonexistent Unexecuted Trust that TED now claims to be the alleged Trustee of in this lawsuit.

That due to these intentional delays and interferences with expectancies both Eliot and the Estate have been denied proper time to fully complete discovery and thus discovery must be extended, especially where it was intentionally interfered with to attempt to close this Action before allowing known possible beneficiaries to participate. At this time, none of the grandchildren, including minor children are represented in this case by counsel, except Eliot's children who are represented Pro Se by Eliot.

## **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.)

**ANSWER** A specimen policy was provided, which is not a legally valid executed and legally binding copy of the actual insurance policy that is subject of this lawsuit. A specimen policy is an insurance carrier policy submitted to each state the policy is being applied for in as a sample of what a policy will look like for a consumer.

There is no policy presently produced or proven by Plaintiffs so no "Policy Proceeds" can be determined from a specimen and the attempt to define the specimen as the actual "Policy" on Simon is misleading to the Court and requires further discovery as to where the actual policy is.

That the affidavit of SANDER'S states that the specimen policy amount of insurance is not the correct amount and would not be the amount stated in the missing life insurance contract and this is cause for further discovery and litigation into what exactly the missing policy death benefit amount is.

That the Specimen policy also contains no beneficiaries of the missing policy as the beneficiaries are not defined thereunder.

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)

**ANSWER** The application is not complete as submitted in production as parts appear missing, a verified copy would need to be obtained showing the entire document and cause for further discovery. Don Sanders affidavit is in question due to conflicts and adversity.

There is alleged evidence that shortly before his death Simon's policy lapsed and was reinstated, a new application was taken and appears missing from the records which may also contain new application information pertinent to this lawsuit and the reinstatement should have caused a new or reinstated policy to be produced as indicated in letters to Simon by HERITAGE and this lack of a reinstated policy is highly suspect that this information is missing from the carriers production.

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)

**ANSWER** This application is not known to be the actual application of the policy as no policy is produced at this time proving what application is attached to the policy, especially after alleged re-issue and where insurance contracts, policies, have attached to them the policy applications as part of the legally required contractual documents attached to the issued policy. Therefore, this evidence is questionable and needs further discovery to determine if in fact this application was the defining application of the original issued policy. The final application is required to be attached to the policy. (ii) The records and policies for the VEBA plan participants are sent to Simon's companies and office location at that time, as the policies were sold by Simon and the VEBA was administered with many other VEBA policies he sold through the trust company he established (Simon was the founder of death benefit VEBA programs and the leading broker nationwide in such sales.) (iii) Simon Bernstein was an executive and leading insurance salesman nationwide who brokerage sold billions of dollars of life insurance premium. (iv) Undisputed (v) Undisputed (vi) Undisputed (vii) This would indicate that the missing policy should be with the original owner or its successors and would require additional discovery to determine where it is, although it is the ultimate responsibility of the insurance carrier to maintain a copy of the actual policy and policy records according to law and underwriting and administrative procedures, as well as would be required by any reinsurers that risk was ceded to.

**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)

**ANSWER** That the VEBA information is critical to the payment of any proceeds of any policy once one is found, as LASALLE being the Trustee for the primary beneficiary of the VEBA plan would then have specific duties to pay beneficiaries determined in the VEBA plan by the employees to their named plan beneficiaries.

That if LASALLE dissolved the VEBA the benefits would be allocated according to law and the terms of the VEBA trust and again why further discovery is necessary to determine the role of the Primary Beneficiary and its obligations under the VEBA plan upon dissolution.

That the VEBA information and copies of the trust should be maintained as well by Pam and David Simon who ultimately controlled the administration of the many VEBA plans sold by Simon Bernstein and thus should have been produced in these matters but have not been.

It is alleged that the VEBA plan or its Successor plan may have had over \$50,000,000.00 of assets in it as late as 20092.

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)

**ANSWER** This statement contradicts Plaintiffs' own claims that a contingent beneficiary (with a different name than the insurance company's own records which claim the contingent to be Simon Bernstein Trust, NA) should be paid while the primary beneficiary LaSalle National

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<sup>2</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A showing 50 Million + of assets in 2009  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/SBLexingtonDeathBenefitPlanUnitedBankOfIllinois.pdf>

Trust, NA is according to the carrier of the nonexistent policy the Primary Beneficiary and where Equifax was told the VEBA would be responsible for paying the insurance benefits.

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)

**ANSWER** Undisputed

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)

**ANSWER** That while this may have been the initial VEBA plan beneficiary designated by Simon there is evidence, including a 2000 Insurance Trust and the subsequent Simon Bernstein Trust NA that would suggest that Simon had changed the beneficiary of the VEBA plan and this would need discovery from LASALLE through its successor, Chicago Title to determine who the VEBA plan beneficiary now is.

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)

**ANSWER** According to the Insurance records the Primary beneficiary was LASALLE and the contingent beneficiary was not the “Bernstein Trust” aka 95 Legally Nonexistent Unexecuted Trust as alleged by Plaintiffs but in fact the Simon Bernstein Trust, NA.

Again with a legally existent Primary Beneficiary the Contingent Beneficiary does not even become a viable recipient of the death benefit, which could make Summary Judgement more fraud if the Contingent is paid while the parties all knew of an existing Primary Beneficiary. At death the VEBA was the Primary Beneficiary according to this account.

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)

**ANSWER** SANDER’S affidavit has claimed to be steeped in conflict as his employer JACKSON has a vested interest in the outcome of the litigation, especially if they have lost the insurance contract and are exposed to liabilities resulting from such loss.

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)

**ANSWER** Undisputed

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)

**ANSWER** The dissolution papers are missing to confirm the veracity of Pam’s affidavit which violates the Il Dead Man’s Act as it relates to the “shareholders” of which Simon was one.

While it is claimed that the owner was changed from LASALLE it is not claimed that the Primary Beneficiary was changed from LASALLE and again this would make LASALLE the beneficiary of the proceeds of the missing/lost/suppressed contract.

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)



**ANSWER** Note that no efforts were made to contact LaSalle National Trust NA or its Successor by HERITAGE or any party to this lawsuit and thus further discovery and litigation of these matters is still necessary and the insurance company must be rejoined as an indispensable party and this Court demand they answer why they have failed to contact the Primary Beneficiary.

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))

**ANSWER** The only party with claims to the benefits of the missing policy would according to insurance company records would be the primary beneficiary LaSalle National Trust, NA.

That documents are missing in the Estate and Trusts of Simon Bernstein and thus it is highly probable that like the 2000 Insurance Trust that was secreted from this Court the alleged Contingent Beneficiary by HERITAGE, the Simon Bernstein Trust NA is also being suppressed and secreted by Plaintiffs in their efforts to fraudulently convert the monies.

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.

**ANSWER** LASALLE or its successors would appear to be the only financial institutions with claims to the litigation proceeds and the carrier nor any parties in this litigation have notified LASALLE or its successors they are the Primary Beneficiary of an alleged insurance policy death benefit.

#### **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)

**ANSWER** Even if this were the case, this 95 Legally Nonexistent Unexecuted Trust would be only a Contingent Beneficiary and there is still a Primary Beneficiary and then there is the

2000 Proskauer Trust that supersedes the 95 Legally Nonexistent Unexecuted Trust and then there is a Simon Bernstein Trust, NA that supersedes the 95 Legally Nonexistent Unexecuted Trust as Contingent Beneficiary as of the year 2010 and confirmed by Simon Bernstein as such.

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)

**ANSWER** That this new information leads one to need discovery to get all the tax records regarding the VEBA trust and tax records for the missing 95 Legally Nonexistent Unexecuted Trust and tax records for all of the other trusts involved.

It should be noted that the Curator of the Estate of Simon who replaced TESCHER and SPALLINA, attorney at law Benjamin Brown, Esq. ("Brown") had requested from the IRS over a year ago tax returns for Simon and Shirley individually and for entities they owned and only days after he stated he thought he had received them, he unexpectedly died at age 49 from a heart attack. Upon receiving records from Brown, O'CONNELL the Personal Representative that replaced Brown stated the long anticipated tax returns were not with the records Brown turned over. Several months ago O'CONNELL stated his firm had ordered new "certified" copies of the tax returns and they would be produced shortly but as of this date they have not been produced to any parties. This is further reason that discovery should be continued as the tax returns will provide valuable information that may influence the outcome of this litigation.

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)

**ANSWER** This may be true at that time in 1995 but again this would only show that the VEBA controls whom the beneficiary would be and with LASALLE still the Primary Beneficiary this indicates that even if the VEBA had been dissolved as alleged, the VEBA trust provided that LASALLE or its Successor would pay the former VEBA plan participants benefits after dissolution of the VEBA.

That again even if proved that the 95 Legally Nonexistent Unexecuted Trust existed and were valid it would still be only a Contingent Beneficiary. Again, there are competing claims that the Contingent Beneficiary was changed by Simon to the Simon Bernstein Trust NA.

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)

**ANSWER** Here the Plaintiffs are claiming the benefits are paid to the VEBA Trust through LASALLE as the Primary Beneficiary to then be paid by LASALLE to the VEBA and the administrator would then pay the VEBA plan participant's beneficiary election, which they claim is the missing 95 Legally Nonexistent Unexecuted Trust. In this scenario, the 95 Legally Nonexistent Trust would not be listed as the Contingent Beneficiary on the insurance contract, as apparently, according to the records produced it has never been named as the Contingent Beneficiary on the missing contract.

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).

**ANSWER** Simon's intent changed over time and at the time of his death he had removed Ted and Pam from receiving any benefits of the Estate planning Trusts of Simon and they were considered predeceased.

Simon Bernstein's intent as of 2000 was more defined in the 2000 Proskauer Insurance Trust that at that time would have been the beneficiary and the 95 Legally Nonexistent Unexecuted Trust would have replaced it.

Simon Bernstein's intent as of 2010 was more defined when he confirmed with HERITAGE that the Contingent Beneficiary was the Simon Bernstein Trust NA.

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."

**ANSWER** This evidence contradicts Plaintiffs claims that the missing policy Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust.

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)

**ANSWER** SANDERS statement is made on hearsay evidence as he does not claim to be the party responsible for the error in entering the full formal name of the beneficiary. SANDERS also states that it is common practice for the insurance carrier to rename a beneficiary to an entirely different name and retain no formal evidence of the actual name of the contingent beneficiary.

That SANDERS statements are based on the records he reviewed but it is OBVIOUS that the records reviewed are missing key pertinent records, including but not limited to, THE

ACTUAL POLICY, copies of the trusts and more and so his statements are based on an incomplete set of records.

Simon Bernstein allegedly requested confirmation of the beneficiaries and the letter was sent indicating the Contingent Beneficiary as the Simon Bernstein Trust, NA, which to Eliot's knowledge, no one has conducted investigation to see if this trust exists and there are ongoing investigations into missing and suppressed and fraudulent and altered estate documents ongoing that may materially affect the outcome of this case and make Summary Judgement Premature when records are released that are being withheld or suppressed.

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)

**ANSWER** Movants Exhibit 14 indicates that a NEW POLICY COPY was issued by the carrier and sent to Simon's home address. This would indicate that insurer would have had a recent COPY of the missing policy available at that time but did not retain a copy with their letter sent to Simon or produce the letter with the copy sent at that time.

The reinstated policy may differ than any other earlier policy in key areas such as face amount, beneficiaries, health ratings, etc., which could materially affect the outcome of this lawsuit.

If the Primary Beneficiary did not change at this time then LASALLE is the receiver of any monies resulting from this lawsuit or the policy if it is found at some point through further discovery.

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)

**ANSWER** That a death benefit claim and this instant legal Action were both filed with NO DRAFT COPY in the possession of the alleged trustees of the 95 Legally Nonexistent Unexecuted Trust for over a year until they magically appeared when the Court was demanding that an executed copy be found to give Plaintiffs standing.

That these unexecuted drafts are not legally binding in any way and thus do not give standing in this lawsuit and do not qualify to be paid beneficiaries, as indicated when the insurance carrier DECLINED the death benefit request filed by SPALLINA who could not produce an executed trust as required by the carrier.

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)

**ANSWER** Undisputed

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)

**ANSWER** Undisputed

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)

**ANSWER** Illinois Dead Man rule disqualifies this affidavit statements relating to conversations or events involving Simon.

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)

**ANSWER** The draft has no law firm markings and is wholly unexecuted and is disputed as to its legal validity in toto and nothing within the document can therefore be relied upon.

Why would David Simon handwrite in names to show Simon where names go in the trust?

What significance does this have?

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)

**ANSWER** The terms of this draft are not binding if they are in fact a draft of the 95 Legally Nonexistent Unexecuted Trust that to date does not exist in the Court record.

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)

**ANSWER** This document is an alleged draft on the date of the trust and yet no law firm has markings upon the document. There are other problems with the datafile that put it in dispute as a valid document. The File Created date is September 03, 2004. The file Modified date is June 21, 1995? How was it modified in 1995 when it was created in 2004? Accessed “Today, September 30, 2013.”

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)

**ANSWER** Undisputed

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)

**ANSWER** Ted Bernstein has a stepson making it 11 grandchildren if included.

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)

**ANSWER** The fact is disputed in their own statement above as to who the trustee of this alleged draft of the 95 Legally Nonexistent Unexecuted Trust was going to be, which makes this a disputed fact.

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)

**ANSWER** The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER** The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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)

**ANSWER** The "executed Bernstein Trust Agreement" does not exist and thus it is unknown what it would say if it existed.

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

That Simon Bernstein formed the Bernstein Trust on June 21, 1995;

a. That the five surviving children of Simon Bernstein were named as beneficiaries;



- b. 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”

**ANSWER** a) Undisputed b) Undisputed c) There is no “Bernstein Trust” that exists and thus again TED has no standing to act as a Trustee. Adam Simon should be sanctioned for attempting to claim that TED is a legally valid Trustee of a trust that does not exist and filing this lawsuit as Fraud on this Court. Adam Simon and the Plaintiffs should be reported for this Fraud on this Court to the proper authorities by this Court.

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)

**ANSWER** That the Lincoln Benefit Life Insurance Company policy should also have a copy any 95 Legally Nonexistent Unexecuted Trust and the Lincoln Benefit policy and this is hearsay evidence from interested parties to the litigation.

The Lincoln Benefit Life contract or any evidence suggesting the veracity of the claims made has not been produced by Plaintiffs.

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)

**ANSWER** No proof that a lapse occurred is presented.

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)

**ANSWER** This Lincoln Policy also is controlled by the 2000 Proskauer Rose Irrevocable Trust and supersedes any alleged 95 Legally Nonexistent Unexecuted Trust interest.

### **ELIOT' S CLAIMS**

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

**ANSWER** That until Eliot’s counterclaims, third party claims and cross claims are heard Summary Judgement is premature.

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)

**ANSWER** Undisputed

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)

**ANSWER** Eliot never submitted a claim form to the carrier claiming he or his children were named beneficiaries.

### **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)

**ANSWER** Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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.

**ANSWER** Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER** Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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)

**ANSWER** The 2012 Will of Simon Bernstein has been challenged on its validity and there are pending motions and petitions filed regarding the validity and the construction that remain unheard.

The Florida Governor Rick Scott's Notary Public Division has determined that the Will is improperly notarized by TED's assistant, Lindsay Baxley. The document is under ongoing investigation and challenged on validity and construction in the probate case.

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

**ANSWER** Undisputed

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.)

**ANSWER** Undisputed

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.)

**ANSWER** Eliot's counter/cross/third party claims present evidence that confutes and puts into dispute the Plaintiffs arguments herein and thus make Summary Judgement premature and litigation necessary.

## **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)

**ANSWER** The reason the carrier declined the SPALLINA filed death benefit claim was because an executed copy of the alleged 95 Legally Existent Trust was not produced and thus is the same reason this Court should not pay the claim to the alleged 95 Legally Nonexistent Unexecuted Trust.

### **LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS**

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged "Policy" at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent, and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the "Policy" are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic "Specimen Policy" not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the "Policy" are in genuine dispute. .

3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon

Bernstein (“Simon”) including but not limited to further document and record production from Heritage Union Life Insurance Company (“HERITAGE”), Jackson National Life Insurance Company (“JACKSON”), LaSalle National Trust, NA (“LASALLE”) in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein (“TED”), EBTs of Pamela Beth Simon (“PAM”), David Simon (“D. SIMON”), Robert L. Spallina, Esq. (“SPALLINA”), Donald R. Tescher, Esq. (“TESCHER”) and Don Sanders (“SANDERS”) at minimum.

4. It is noted for this Court that Judge Martin Colin (“COLIN”) of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.

6. The Disqualification motion<sup>3</sup> in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.

7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

8. The fact is there is no executed “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.

9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.

10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs

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<sup>3</sup> COLIN Disqualification Motion  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs' Summary Judgment itself at this time. See Plaintiffs' Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs' own document submissions.

11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs' own document submissions have not been brought in as a party in these proceedings by Plaintiffs nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.

13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital<sup>4</sup> and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting

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<sup>4</sup> Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.

14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte “recuses” after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact witnesses to the frauds committed by TESCHER and SPALLINA’S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order<sup>5</sup>.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim<sup>6</sup> in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit (“Action”) filed for breach of contract and the Action is based

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<sup>5</sup> COLIN Recusal Order  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>6</sup> Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>



on the carrier denial<sup>7</sup> of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.

17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.

19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.

20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for

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<sup>7</sup> Reassure America Life Insurance Company Decline Letter  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

LASALLE when filing his death benefit claim<sup>8</sup>, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.

21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP<sup>9</sup> that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.

23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by

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<sup>8</sup> HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

<sup>9</sup> 2000 Simon Bernstein Life Insurance Trust – Proskauer <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust<sup>10</sup> and sanctions or a sanctions hearing should be granted and further Discovery allowed.

24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“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.** [emphasis added] as Successor Trustee...”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

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<sup>10</sup> TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposit%20ion.pdf>

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.

27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>11</sup> from six cases after his denial of Eliot's Petition for Disqualification<sup>12</sup> as "Legally Insufficient" on May 18, 2015<sup>13</sup>, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases<sup>14</sup> of the Bernstein family.

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<sup>11</sup> Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as "Legally Insufficient  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>12</sup> Petition for Disqualification of Judge Martin Colin  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

<sup>13</sup> Judge Colin Denial of Disqualification  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

<sup>14</sup> Case # 502012CP004391XXXXSB – Simon Bernstein Estate, Case # 502011CP000653XXXXSB – Shirley Bernstein Estate, Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children, Case # 502014CP003698XXXXSB – Shirley Trust Construction, Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB, Case # TBD – Creditor Claim – Eliot v. Estate of Simon

29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.

31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal

Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.

33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.

34. The matters need to be investigated by the carrier as a possible murder of Simon<sup>15</sup> which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.

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<sup>15</sup> Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

35. There are Petitions that were unheard by COLIN'S court at the time of his recent recusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446> , which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.

37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,

- a. Records from insurers and reinsurers,
- b. Records from the Primary Beneficiary LaSalle National Trust, NA,
- c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,

- d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,
- e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.

38. There is need for further affidavits, declaration and further discovery after TED'S deposition that opens new discovery including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract<sup>16</sup>.

DATED: June 08, 2015

Respectfully submitted by,

/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 08, 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.

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<sup>16</sup> TED Deposition Pages 116-118

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>



*/s/ Eliot Ivan Bernstein*

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
 )  
Defendant, )  
 )  
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, et al. )  
 )  
Third-Party Defendants, )  
 )  
and )  
 )  
ELIOT IVAN BERNSTEIN, )  
 )  
Cross-Plaintiff )  
 )  
v. )  
 )  
TED BERNSTEIN, individually et al. )  
 )  
Third-Party Defendants )  
 )  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
 )  
Intervenor. )  
 )  
\_\_\_\_\_ /

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

**THIRD-PARTY DEFENDANT ELIOT I.  
BERNSTEIN'S MEMORANDUM OF LAW IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGEMENT**

**Filers:**  
  
Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.

**TABLE OF CONTENTS**

Table of Authorities ..... 2  
Preliminary Statement .....3  
Procedural History .....7  
Argument.....8

**POINT 1:** BECAUSE MULTIPLE GENUINE ISSUES OF MATERIAL FACT EXIST, PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN AND PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT MUST BE DENIED.

- A. PLAINTIFFS HAVE FAILED TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF.
  
- B. SIGNIFICANT PROBATIVE EVIDENCE HAS BEEN ADDUCED FROM WHICH A JURY COULD REASONABLY FIND FOR THE NON-MOVING PARTY, ELIOT I. BERNSTEIN, AGAINST THE PLAINTIFFS THEREBY DENYING SUMMARY JUDGMENT AT THIS STAGE OF LITIGATION.
  
- C. ILLINOIS DEAD-MAN STATUTE PREVENTS THE MAJORITY OF PROOF OFFERED BY PLAINTIFFS WHICH EVEN IF TRUE HAS NOT BEEN DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE

**TABLE OF AUTHORITIES**

- 1. 735 ILCS 5/8-201
- 2. FRCP 56
- 3. *Anderson*, 477 U.S. at 249
- 4. *Lindsey vs. Sears Roebuck and Company* , 16 F.3d 616, 618 (5<sup>th</sup> Cir. 1994).
- 5. *Little v . Liquid AirCorp.*, 37 F.3d 1069, 1975 (5th Cir. 1994) (en banc)
- 6. *Eastman Kodak v. Image Technical Servs., Inc*, 504 U.S. 45 1, 45 658 (1992);
- 7. *Jones v. Royal Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4<sup>1</sup>Dist. 1976),
- 8. *Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593);
- 9. *Reynolds v. First National Bank*, 279 Ill. App. 581)
- 10. *(lyfaley v. Burns*, 6 Ill. 2d 11, 126N.E.2d 695
- 11. *Lytle v. Household lllfg., Inc.*, 494 U.S. 545, 554-555, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990).

12. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).
13. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006);
14. *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7th Cir. 1989).
15. *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983).

### **PRELIMINARY STATEMENT**

For the reasons herein and because of the genuine multiple issues of material fact and need for further discovery raised by Plaintiffs' own filings, the responses herein on Summary Judgment, the counterclaims made herein and all of the documentary evidence and exhibits to date, Plaintiffs' Amended Motion for Summary Judgment must be denied at this stage of litigation. Presented before this Court is an Amended Motion for Summary Judgment brought by Plaintiffs Ted Bernstein, Pamela Bernstein-Simon, Jill Bernstein-Iantoni, and Lisa Bernstein-Friedstein who added themselves as Plaintiffs after the action was first filed alleged on behalf of the 1995 Simon Bernstein Trust. This action was commenced on April 05, 2013 in the Illinois Circuit court several months after the passing of Simon Bernstein on September 13, 2012. At the time of Simon Bernstein's passing in September of 2012, the Estate of his wife, Shirley Bernstein who predeceased Simon Bernstein was still open and pending before Judge Martin Colin in the Florida Probate Court of Palm Beach County. Ted Bernstein, Pam Bernstein Simon, Jill Bernstein-Iantoni and Lisa Bernstein-Friedstein are natural children of Shirley and Simon Bernstein along with Third-party Defendant Eliot I. Bernstein, herein.

At the time of Simon Bernstein's passing, Ted Bernstein made comments at the Hospital where he passed suspecting the possible murder of Simon Bernstein. Ted Bernstein took action with the Coroner's Office and was seeking an autopsy of Simon Bernstein on or about the time of his passing and ultimately obtained the involvement of Palm Beach County Sheriff authorities

regarding the circumstances of Simon Bernstein's death, which resulted in police authorities arriving at the home of Simon Bernstein in the early morning of his passing. See Third-party Defendant Eliot I. Bernstein Answer and Cross Claim Par 18 (i)(a) citing and linking to Eliot Bernstein Emergency Motion to Judge Colin on May 2013 Florida Probate Court, Section III- Post Mortem Autopsy Demand and Sheriff Department Investigation of Allegations of Murder. The alleged policy at issue before this Court which has never been produced or presented and thus not proven involves the deceased Simon Bernstein.

Yet, in the short weeks after his passing and with unsettled questions as to the actual cause of death of Simon Bernstein existing, documentary evidence obtained months later shows that attorney Robert Spallina was seeking payment of a claimed policy's proceeds from Heritage Union Life while acting and being addressed by Heritage as the Trustee of the La Salle National Trust, N.A., which is shown by documentary evidence obtained months later to be the alleged Primary Beneficiary of an alleged policy involving Simon Bernstein at the time of his death, this fact has not been challenged by any party.

Somehow, Heritage apparently never confirms that attorney Spallina has or had any authority to act as Trustee of the La Salle National Trust, N.A., and no document or record has ever been brought forward in this action or elsewhere to show attorney Spallina was ever a Trustee of the La Salle National Trust, N.A. Mysteriously, on or about October 04 2012 again with open questions about the actual cause of death of Simon Bernstein outstanding, attorney Spallina then diverts to attempt to claim proceeds from Heritage now acting as the Trustee of the 1995 Simon Bernstein Trust, which also has never been produced or presented in writing in this action by submitting a claim for death benefits. On or about Oct. 19, 2012, documentary evidence of email communications between attorney Spallina, Ted and Pam Bernstein showing

the parties acting in concert to find a “solution” to missing trusts and policies. Days later on or about Oct. 24, 2012, attorney Tescher and Spallina’s offices begin filing documents in the Florida Probate Court of Judge Colin later determined to be fraudulent on many grounds including the fact that the attorneys were attempting to use an alleged sworn statement of now deceased Simon Bernstein allegedly sworn to months before his death to now close the Estate case of Shirley Bernstein acting as the Personal Representative while deceased. (See Response to Statement of Facts, See Footnote 3, Disqualification Motion.)

While the fraud is permitted to continue in the Florida Probate Court of Martin Colin who has also never held a hearing to determine a valid Trustee in those cases, attorneys Tescher & Spallina continued to communicate with the Plaintiffs on ways to obtain the proceeds from the alleged policy again while open questions and investigations remain as to the exact cause of death of Simon Bernstein all the while attorneys Spallina and the Plaintiffs never communicate to Heritage or any carrier that Simon Bernstein may have passed because of possible murder. These parties acting in concert specifically communicate on keeping a 2000 Trust of Simon Bernstein done by the law firm Proskauer Rose out of the insurance actions and this lawsuit as this Trust allegedly determines Pam Bernstein to be “predeceased” under the Trust and thus not able to claim proceeds, which is also the result of what would happen if the alleged policy proceeds were to flow into the Estate of Simon Bernstein due to a Will-Trust by Simon Bernstein that says that both Ted Bernstein and Pam Bernstein Simon are predeceased and will not gain benefits directly under the Estate-Trust.

From the time of Simon Bernstein’s passing and continuing for many months later attorneys Spallina and Tescher and Ted Bernstein and others are all withholding documents and records and property from Third-party Defendant Eliot I. Bernstein herein while also holding up

inheritances to Eliot Bernstein and his family and children. When the action is first filed in the Illinois courts by Ted Bernstein on behalf of the 1995 Simon Bernstein Trust that attorney Spallina attempted to act as Trustee of while making the death benefit claim to Heritage weeks before (that was then subsequently Denied by the carrier) attorney Spallina claims Ted Bernstein has no authority to file a breach of contract lawsuit against Heritage and heated exchanges take place by email between attorney Spallina, Plaintiffs and their attorneys the Simon Law Firm. Heritage-Jackson itself files an Answer in this Action which itself raises genuine material issues of fact preventing summary judgment as to what the actual policy is, where the policy is, what the policy says, what the terms and conditions of the policy are, what the death benefit actually is, what riders were attached, who the beneficiaries are and whether Ted Bernstein is a proper Trustee, if the trust exists and who is the Trustee of any such Trust that claims to be the beneficiary.

Meanwhile in this action, neither Heritage nor Plaintiffs seek to contact the party their own documents and filings show as the Primary Beneficiary being La Salle National Trust, N.A., which itself is a basis to deny summary judgment to Plaintiffs. Ultimately in this action neither Ted Bernstein nor any Plaintiff is able to find or produce any actual policy nor any actual Trust document and thus are relying solely upon parol evidence and statements barred by the Illinois Dead Man Statute. Yet, even such evidence even if admissible still lacks any clear and convincing evidence as to the actual policy, actual policy terms, conditions, riders, history nor any Trust and terms thereunder under which Plaintiffs can claim proceeds. On or about a year after the action is filed one David Simon, husband to Plaintiff Pam Bernstein Simon who is also brother to Adam Simon and partner in the The Simon Law Firm, the attorneys filing the complaints and documents in this action, magically has a revelation that he can prove an alleged

Trust allegedly by Data files on his computer that make no sense and do not match the dates alleged and all of which beg the question a reasonable juror could ask which is why he forgot he could prove the Trust for that entire year and why he and his brother never alleged those facts in any of the original and amended complaints in any event.

Thus, for all the genuine issues of material fact raised by Plaintiffs' own filings, raised by the Answer of Heritage-Jackson, raised by Third-party Defendant and Counterclaimant Eliot I. Bernstein's Answer and Counterclaim, raised by Third-Party Defendant and Counterclaimant Eliot Bernstein's Response and Opposition herein and for the specific areas of Discovery not produced and the absence of necessary and material parties such as La Salle National Trust NA or its successors, Plaintiffs' Amended Motion for Summary Judgement must be denied in its entirety at this stage of litigation.

## **PROCEDURAL HISTORY**

The present motion before the Court is an Amended Motion for summary judgment by Plaintiffs as to Counts I and II of the Amended Complaint. This comes after the claims by Plaintiffs were originally brought in the State Court in Cook County, Illinois and the action was then removed to this federal district court where it was previously heard before Hon. District Judge Amy St. Eves. This motion by Plaintiffs is now before this Court at a time when related actions in the Florida Probate Court are in limbo after Eliot I. Bernstein, Third-party Defendant and Counterclaimant herein, filed a detailed, specified motion for mandatory Disqualification of Florida Probate Judge Martin Colin as a necessary material and fact witness after multiple fraudulent filings in the Florida Courts by the offices of attorneys Tescher & Spallina emerged in the Florida Courts. Attorneys Tescher and Spallina, by clear documentary evidence, were clearly working and communicating with the Plaintiffs during the relevant times of this federal action.



Florida Probate Court Judge Martin Colin Denied the motion for mandatory disqualification as being “legally insufficient” and then, within 24 hours, issued a Sua Sponte Recusal Orders from all six Florida cases but then acted upon those Florida cases with other Florida Judges ultimately resulting in the Florida cases being transferred to one Hon. Judge Coates who was a Partner at the Boca Raton office of the Proskauer Rose law firm that was directly involved with one of the Trusts implicated in this Illinois federal action. Now, even Judge Coates has recused himself from the Florida proceedings leaving the present Florida state matters in limbo. Further, this motion for Summary Judgment by Plaintiffs comes as there are continued and open investigations into the fraudulent document filings in Florida, the fraudulent insurance claim filed by Spallina, stolen estate and trust Properties, illegal Real Estate Sales and continue while Third-party Defendant and Counterclaimant Eliot I. Bernstein has sought leave to file a motion in this action to continue depositions of Ted Bernstein amongst others including Florida Judge Martin Colin, a motion which has yet to be filed. Because of the multiple genuine issues of material fact that exist and the need for further discovery, Plaintiffs’ Amended Motion for Summary Judgement must be denied at this time.

**ARGUMENT: POINT 1 - BECAUSE MULTIPLE GENUINE ISSUES OF MATERIAL FACT EXIST, PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN AND PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT MUST BE DENIED.**

Plaintiffs seek summary judgment on Counts I and II of their Amended Complaint. (Dkt. No. 73) However, Count I is a breach of contract claim against Heritage Union Life Insurance Company that interpleaded the proceeds of an insurance policy and was dismissed from the case. (Dkt. No. 101) Plaintiffs provide no authority for the proposition that they may obtain a judgment against a party who is no longer a defendant. Summary judgment must be denied on Count I, which is moot. Heritage’s (and-or successor Jackson) absence from this action at this

stage of litigation is improper and the Answer filed by Jackson itself raises genuine issues of material facts as to Count II. Ironically, Plaintiffs' have not moved for summary judgment on Count III of the Amended Complaint and thus, this Memorandum does not address this claim at this stage of litigation.

**A. PLAINTIFFS HAVE FAILED TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF**

When seeking summary judgment, the movant bears the initial responsibility of demonstrating the absence of an issue of material fact with respect to those issues on which the movant bears the burden of proof at trial. *Lindsey vs. Sears Roebuck and Company*, 16 F.3d 616, 618 (5<sup>th</sup> Cir. 1994). If the movant fails to meet its initial burden, the motion must be denied, regardless of the non-movant's response. *Little v. Liquid AirCorp.*, 37 F.3d 1069, 1975 (5<sup>th</sup> Cir. 1994) (*en banc*). With respect to the Plaintiffs' current Amended Motion for Summary Judgment presently before the Court, it is absolutely clear that multiple issues of genuine fact exist preventing summary judgment at this stage of the litigation and that a reasonable juror could come to multiple conclusions against the moving party and thus, Plaintiffs' motion must be denied.

In determining whether a genuine issue exists for trial, the Court must view the evidence introduced and all factual inferences from the evidence in the light most favorable to the nonmovant. *Eastman Kodak v. Image Technical Servs., Inc.*, 504 U.S. 451, 456 (1992); *Gremillion v Gulf Coast Catering Co.*, 904 F.2d 2902, 92 (5<sup>th</sup> Cir. 1990); see also *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5<sup>th</sup> Cir. 1993). The action before the Court involves Plaintiffs' claims to proceeds allegedly under an Illinois insurance policy and thus, the Illinois state law of insurance contracts is at issue. In construing an insurance policy, the court must

ascertain the intent of the parties to the contract. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108, 607 N.E.2d 1204, 1212 (1992).

In *Royal Jones v Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4<sup>1</sup>Dist. 1976), the plaintiff sought to prove the existence of a trust agreement and, failing that, sought to prove the existence of a resulting trust. The court there described the applicable burden of proof as follows:

The proof necessary to establish the existence of a trust by parol evidence has been phrased in various ways: The proof must be 'clear and convincing' (*Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593); 'unequivocal and unmistakable' (*Reynolds v. First National Bank*, 279 Ill. App. 581); even so strong, unequivocal and unmistakable as to lead to but one conclusion. (*Ivafaley v. Burns*, 6 Ill. 2d 11, 126 N.E.2d 695). A similar high degree of proof is necessary to establish the terms of the trust, such as the identity of the beneficiaries, and the nature and extent of their interests. *Ivafaley v. Burns*.

In the present action, there is no contract which has been produced, there is no policy which has been produced, and the Plaintiffs' own pleadings, documentary evidence and statements and exhibits before this Court show that one major necessary party, La Salle National Trust, N.A., has never even been contacted by Plaintiffs at least according to the submissions before this Court and clearly have not been brought in to this action as a party. Thus, one of the major necessary parties in this action, La Salle National Trust NA, who by the way is deemed a Primary Beneficiary according to Plaintiffs' own documents and Heritage/Jackson and has never been heard before this Court and this alone should defeat Plaintiffs' present motion for summary judgment.

Another necessary party, Heritage and or Jackson as successor, by their own Answer and Counterclaim before this Court, has alleged Ted Bernstein is not a proper Trustee and raises material questions of fact itself as to the actual policy, policy terms, and also admitting that no actual policy has been produced. Yet, this necessary party has presently been dismissed from this action and Third-party Defendant and Counterclaimant Eliot Bernstein asserts Heritage-Jackson

should be brought back into this action by this Court and thus Summary Judgment to the Plaintiffs is inappropriate at this stage of litigation and must be denied.

Duties of an insured are controlled by the terms and conditions of its insurance contract. *American Country Insurance Co. v. Bruhn*, 289 Ill. App. 3d 241, 247, (1997). In construing an insurance policy, the primary function of the court is to ascertain and enforce the intentions of the parties as expressed in the agreement. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108 (2001). Yet, as stated, the actual terms and conditions of the contract and policy are unknown as it has never been properly produced and thus summary judgment to Plaintiffs at this stage is impossible and must be denied. Even by attempting to prove a claim to proceeds by parol evidence, Plaintiffs wholly fail to meet their burden of demonstrating the absence of genuine material issues of fact by clear and convincing evidence and summary judgment must be denied.

According to his Deposition, Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. (See Response Exhibit 10, p. 24:6-12) Ted Bernstein testified that he was informed by his father that he would be a trustee of the 1995 Trust in 1995 but did not recall his status as trustee until he was informed by David Simon after Simon Bernstein's death. (See Response Exhibit 10, pp. 24:13 -25:3) While Ted asserts in his Affidavit that he was the Trustee of the Trust as of October 19, 2012, Robert Spallina, Simon Bernstein's lawyer but also a party shown to be working in common with Ted Bernstein at certain stages and even represented Ted Bernstein, made an application for the Policy proceeds on behalf of Plaintiffs, purportedly as trustee of the 1995 Trust after communications from Heritage to Spallina as the Trustee of the La Salle Trust with no authority shown by Spallina to act or be such Trustee and with La Salle never being contacted or brought in as a party. (See Response

Exhibit 10, pp. 35:12 - 36:3 and Dep. Exhibit 1) On October 19, 2012, Ted Bernstein sent an email to Robert Spallina suggesting that he had a "solution to the life insurance policy which provides the desired result" and that a conversation take place between he, Spallina, Pamela Simon and David Simon prior to any further overtures to the insurance company. (See Response Exhibit 10, pp. 35:12 - 37:3; Dep. Ex. 1).

According to Paragraphs 17-21 of the Jackson Counterclaim and Third Party Complaint submitted with its Answer herein, with Jackson as the alleged successor in interest to Heritage as follows:

“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.”

None of the filings by Plaintiffs satisfactorily answer these questions such that there is an absence of genuine issues of material fact by clear and convincing evidence entitling Plaintiffs to summary judgement. Likewise, the Trust and Trust documents have not been produced and are not proven by any standard of evidence and certainly not by a clear and convincing standard of evidence and therefore the very authority for Plaintiffs to claim rights to the proceeds of any insurance contract has not been proven and material issues of fact exist preventing summary judgment to Plaintiffs at this time.

**B. SIGNIFICANT PROBATIVE EVIDENCE HAS BEEN ADDUCED FROM WHICH A JURY COULD REASONABLY FIND FOR THE NON-MOVING PARTY, ELIOT I. BERNSTEIN, AGAINST THE PLAINTIFFS THEREBY DENYING SUMMARY JUDGMENT AT THIS STAGE OF LITIGATION.**

Plaintiffs’ assertions before this Court is that the VEBA dissolved in 1998 and LaSalle was no longer the owner of the policy but however records exist with Heritage (Movant Exhibit 36) showing as recent as 2010 with La Salle National Trust, N.A., still as the Primary Beneficiary. Yet, Plaintiffs have never contacted La Salle since the time of passing of Simon Bernstein or at least never brought any proof forward showing La Salle as Primary Beneficiary has ever been contacted and La Salle was not made a party to this action. Meanwhile, there is proof in the Record that attorney Spallina was being contacted by Heritage as the Trustee of La Salle National Trust, N.A. (See correspondence by Heritage to Spallina, Response Exhibit 1, P.7) in the weeks after the passing of Simon Bernstein who passed under such suspicious circumstances that Plaintiff Ted Bernstein was seeking an autopsy through the Coroner, an independent autopsy and involved the local Sheriff authorities regarding the possible murder of Simon Bernstein while never advising or informing any Insurance Company or this Court of these facts.

Nowhere in the Record is there any proof brought forward to show attorney Spallina as a valid Trustee of La Salle and nowhere in the Record is there any explanation about how or why this occurred. There is proof in the Record, however, showing attorney Spallina communicating with Ted Bernstein in Oct. 2012 to find a “solution” to some of the alleged missing policy and trust problems days before filings made in Probate Court of Judge Martin Colin in Florida on Oct. 24, 2012 ( See Response Exhibit 2). These filings are later determined to involve fraudulent notaries performed by a Paralegal/Notary Public employed by attorneys Spallina and his partner Donald R. Tescher, Esq. at Spallina & Tescher PA named Kimberly Moran who was arrested and convicted. Attorney Spallina later admitted to Palm Beach County authorities of being involved in fraud-forgery of at least one Trust document involving Shirley Bernstein’s Irrevocable Trust to fraudulently include Ted Bernstein’s family back into the trust and a subsequent motion for mandatory disqualification of Florida Probate Judge Martin Colin recently filed and already exhibited herein showed Judge Colin as a necessary material witness to other specified fraud document filings by attorney Spallina ( and maybe Tescher ) around that time. This mandatory disqualification motion of Florida Judge Colin ultimately results in a sua sponte recent Recusal from all cases by Judge Colin within 24 hours of denying the disqualification motion as legally insufficient.

Further, there is other proof in the Record that attorney Spallina and the Plaintiffs secreted and withheld from this Court evidence of a 2000 Trust by Proskauer Rose that also cut Ted Bernstein and Pam Bernstein Simon out of a claim to proceeds. Later on, a “different story” emerges about the policies and Trusts, where David Simon jumps in to the game a year after the original complaint was filed and then according to David Simon, the first attempt to locate the 1995 Trust took place in the winter of 2012-2013 (See Dep. of David Simon, p. 59:13-22). Foley

& Lardner, the successor law firm to Hopkins & Sutter, was contacted to see if they retained a copy of the 1995 Trust; but David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (See Movant Exhibit 35, pp. 44: 12 -45:15; 46:22 -47:15)

Despite David Simon's late in the game “magical revelation and recollection” that he recalls having created the trust on his computer and having seen it after execution which is magically recalled over a year after the original complaint was filed by Plaintiffs, the Complaint filed by Adam Simon who is the brother to David Simon filed on behalf of David Simon's wife and her siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73) It was only after this event that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16. Yet, despite these late in the game magical revelations and recollections, still no original documents are produced, nothing but Sample policies produced, no documents prepared by law firms produced nor properly signed or executed while at the same time Plaintiffs are failing to inform the insurance carriers of the possible murder of Simon Bernstein, failing to contact La Salle or bring in La Salle National Trust, N.A., the Plaintiffs were attempting to secret and hide documents from this Court and other parties like the 2000 Proskauer Trust that cut out Ted Bernstein and Pam Simon, and massive fraud is unfolding in the Florida Probate Court where Judge Martin Colin who has allowed the fraud to continue for 2.5 years without conducting a hearing into who is the proper Trustee, if the Trusts and Wills of Simon are valid and now suddenly “Recused” from all cases within 24 hours of Third-party Defendant Eliot Bernstein filing a detailed, specified motion for mandatory disqualification claiming COLIN as a material witness and possible participant to the



fraud on the Court who acted outside his jurisdiction by failing to disqualify when he knew of his standing as witness as required by Judicial Canons and law for over two years.

A reasonable juror under these facts and records could fairly arrive at multiple conclusions including but not limited to the Plaintiffs are hiding evidence from this Court, the Plaintiffs may be involved in fraud by these filings, La Salle National Trust, N.A. who hasn't been contacted despite attorney Spallina acting as Trustee with no authority as the Primary Beneficiary, and further that the Plaintiffs have failed to meet their burden of proof.

"If fair-minded persons could draw more than one conclusion or inference from the facts, including one unfavorable to the moving party, a triable issue exists and the motion for summary judgment should be denied. It is only when undisputed facts are susceptible of but a single inference that the issue becomes one of law." *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983). Significant probative evidence must be adduced from which a jury could reasonably find for the non-movant. *Anderson*, 477 U.S. at 249.

Third-party Defendant Eliot Bernstein has adduced significant probative evidence from which a jury could reasonably find in his favor and all such conclusions mandate that summary judgement is denied at this time.

**C. ILLINOIS DEAD-MAN STATUTE PREVENTS THE MAJORITY OF PROOF OFFERED BY PLAINTIFFS WHICH EVEN IF TRUE HAS NOT BEEN DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE**

The relevant portion of the DMA states as follows:

In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability..

The DMA is an evidentiary rule banning testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent. *Gunn v Sobucki*, 216 Ill. 2d 602, 837 N.E. 2d 865 (2005) (upheld DMA); *Brown, Udell and Pomerantz, Ltd. v Ryan*, 369. The DMA applies to summary judgment proceedings and in federal diversity

cases where state law supplies the rule of decision. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006); *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7th Cir. 1989).

While Plaintiffs have wholly failed to satisfy their burden of proof by clear and convincing evidence, any of the proof in the form of affidavits and deposition testimony by Ted Bernstein and David Simon that comes close to answering some of the multiple genuine issues of material fact would be barred by the Dead Man statute. For these additional reasons Summary Judgment must be denied.

### **CONCLUSION**

**WHEREFORE**, for all of the foregoing reasons, Plaintiffs' motion for Summary Judgment must be denied at this stage of litigation and further Discovery ordered and leave granted to add parties such as La Salle National Trust, N.A., bring Jackson-Heritage back into the case and for such other and further relief as may be just and proper.

DATED: June 08, 2015

/s/ *Eliot Ivan Bernstein*  
Third Party Defendant/Cross Plaintiff PRO SE  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 08, 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.

*/s/ Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

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**IN THE SUPREME COURT OF FLORIDA**

**CAUSE NO. \_\_\_\_\_**

**UNDERLYING CASES NUMBERS**

- 1. CASE: 502015CP002717XXXXNB - SIMON BERNSTEIN ESTATE - JUDGE COATES  
CASE: 502012CP004391XXXXSB – SIMON BERNSTEIN ESTATE - JUDGE COLIN  
CASE: 2012CP004391 IX – SIMON BERNSTEIN ESTATE - JUDGE DAVID FRENCH**
- 2. CASE: 502011CP000653XXXXSB – SHIRLEY BERNSTEIN ESTATE - JUDGE COLIN**
- 3. CASE: 502014CP002815XXXXSB – OPPENHEIMER V. BERNSTEIN MINOR CHILDREN - JUDGE COLIN**
- 4. CASE: 502014CP003698XXXXSB – SHIRLEY TRUST CONSTRUCTION - JUDGE COLIN**
- 5. CASE: 502015CP001162XXXXSB – ELIOT BERNSTEIN V. TRUSTEE SIMON TRUST CASE - JUDGE COLIN**
- 6. CASE: 502014CA014637XXXXMB - JUDGE KEYSER  
\*ALL SIX CASES WERE TRANSFERRED TO JUDGE COATES WHO RECUSED SUA SPONTE AT THE FIRST HEARING**

**OTHER RELATED CASE**

- 7. CASE: 13-CV-03643 - FEDERAL LAWSUIT IN THE US DISTRICT COURT OF EASTERN ILLINOIS, BEFORE THE HON. JUDGE JOHN ROBERT BLAKEY, PREVIOUSLY BEFORE JUDGE AMY ST. EVE.**

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**IN THE ESTATES AND TRUSTS OF SIMON LEON BERNSTEIN,  
SHIRLEY BERNSTEIN AND PETITIONER'S MINOR CHILDREN  
TRUSTS**

**ELIOT IVAN BERNSTEIN,  
PETITIONER**

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**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF  
MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY  
RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR  
PRESERVATION OF ALL EVIDENCE**

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**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF  
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RESTRAIN SALE, TRANSFER, DISPOSITION OF ANY ASSET AND FOR  
PRESERVATION OF ALL EVIDENCE**

Now comes ELIOT IVAN BERNSTEIN (“PETITIONER”) who respectfully petitions and pleads and shows this court as follows:

1. This is a Petition for All Writs and is a Writ of Mandamus, Writ of Prohibition and a Temporary Restraining Order-Stay prohibiting any transfer, sale or disposition of any assets herein under the Estates and Trusts of Simon and Shirley Bernstein and Trusts of PETITIONER’S minor children and further requiring the parties to preserve any and all evidence, documents, records, notes, statements, properties and materials relating to these Estate and Trust matters in all cases stated in the caption.
2. It is respectfully submitted that Hon. Judge Martin Colin (“COLIN”) has failed to perform mandatory duties under Florida law by failing to mandatorily Disqualify himself under the Judicial Canons by instead issuing a “Recusal” Order sua sponte within 24 hours of Denying the Disqualification motion “as legally insufficient” and then after “Recusal” acted outside of his jurisdiction to poison and prejudice these cases by communicating with other Judges to transfer the cases while acting as a “material witness” to fraud upon and in his own court. In so doing Judge Martin Colin has acted in excess of his jurisdiction and outside the law and must be prohibited by the writ herein. Because the Orders of Judge Colin

who should have mandatorily Disqualified are a nullity and void and must be officially voided, there are no valid and proper Orders under which the parties are acting and thus the parties herein and each case listed in the caption shall be temporarily restrained from any further transfers, sale, disposition or compromise of any asset herein pending proper determinations of authority to act, proper determinations of who is and should be Trustee, the Personal Representative and what Dispositive documents prevail and other substantive orders in the case.

### I. BASIS FOR INVOKING JURISDICTION

3. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.
4. Florida Rule of Appellate Procedure Provides:

**Original Jurisdiction.** The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

5. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See *McFadden vs. Fourth Dist. Court of Appeal*, 682 So.2d 1068 (Fla. 1996).
6. Florida Rule of Appellate procedure 9.100(h) provides:

**Order to Show Cause.** If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

7. Petitioner filed a “VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN” (EXHIBIT A) and seeks Mandamus to compel Hon. Judge Martin Colin to strike his Order Denying the Petition (EXHIBIT B) for mandatory Disqualification as “legally insufficient,” further strike his Order (EXHIBIT C) for Sua Sponte Recusal ordered the day after denying the Petition for Disqualification and enter an Order of Disqualification as required by law. Petitioners also seek Prohibition which is also appropriate to prevent Judge Colin from further acting in excess of lawful authority and outside his jurisdiction as Judge Colin acted unlawfully in denying the Motion for Mandatory Disqualification as “legally insufficient” and by his own Sua Sponte Recusal Order issued within 24 hours thereafter showed he had continued to act outside the law and further tainting and poisoning the case by communicating with two



other local Judges which ultimately lead the action which is immersed in fraudulent filings, fraudulent documents and fraud on the court to somehow be Transferred to one Hon. Judge Coates who himself was a Partner working at Proskauer Rose whose conduct and actions are clearly implicated in the case and in fact Judge Coates worked in the office of Proskauer Rose right across the hall from Petitioner here in Boca Raton, Florida during key times at issue in the underlying actions.

**II. IMMINENT AND IMMEDIATE PENDING ACTIONS MAKING PROHIBITION, STAY AND TEMPORARY RESTRAINING ORDER APPROPRIATE**

8. Prohibition and further Stay and Temporary Restraining Order is further appropriate since the unlawful acts of Judge Colin in denying Disqualification and instead issuing “Recusal” could have the effect of leading the parties herein to further act in fraud such as an immediately imminent illegal Sale of the deceased Simon Bernstein home in Boca Raton, Florida pursuant to an illegal Order of Sale by Judge Colin which should have been vacated as a nullity upon his mandatory disqualification, yet despite being a legal nullity and there being no lawful authority to act, the parties acting in fraud could infer this Sale still proper to move forward and thus must be Stayed and temporarily restrained pending further hearings and determinations. Of fundamental relevance herein and as set out in the mandatory Disqualification motion of Judge Colin, actions were

permitted to continue in fraud in his courts for nearly 2.5 years yet Judge Colin had never held a hearing to determine a proper Trustee of the Trusts, meaning of the Trusts, and likewise never held a hearing to determine the validity of any Will or Trust nor the Personal Representative of either estate and instead Judge Colin's Court simply permitted parties intertwined in the Fraud such as Ted Bernstein to continue to act illegally selling off property, stealing personal property and making other dispositions and now the illegal sale of the deceased Simon Bernstein home by Ted Bernstein is imminently scheduled for sale by tomorrow, June 10, 2015.

### III. STATEMENT OF FACTS

9. Petitioner herein, Eliot I. Bernstein, filed a detailed and specified Motion for mandatory Disqualification of Judge Colin on or about May 14, 2015. The motion satisfied all requirements under the law and rules pertaining to mandatory Disqualification under the Canons of Judicial Conduct and was proper in all respects. The motion, which is annexed hereto, set out mandatory Disqualification under several provisions (Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7, 3(B)5, 3E(1), 3(E)1a, 3(E)1b and 3(E)1b(iv) ) pertaining to (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer; (b) or personal

knowledge of disputed evidentiary facts concerning the proceeding; (c) is to the judge's knowledge likely to be a material witness in the proceeding.

10. While Petitioner set out a proper legally sufficient motion to mandate Disqualification under all three grounds, most troubling and critical for purposes of the Writ of Prohibition as it relates to Judge Colin's conduct acting in excess and outside jurisdiction is the continuing to act and interfere in proper adjudication of the cases with other judges while being a material witness to the ongoing and continuing frauds in his courts and on his court. See, COLIN Sua Sponte Recusal issued within 24 hours of illegal denial of mandatory disqualification motion.
11. It is noted that at the time this mandatory disqualification motion had been filed, Judge Colin had already permitted the cases to continue for nearly 2.5 years without ever holding a hearing to determine who the proper Trustees were, who proper Personal Representatives of the Estate were and are, what the construction and meaning of the Trusts and Estates should be all the while permitting parties such as Ted Bernstein and attorneys Tescher and Spallina who are involved in the direct frauds upon his court to nonetheless continue acting permitting properties to be illegally sold, substantial monies and assets transferred and disposed of while denying Petitioner and Petitioner's minor children rights of inheritancy causing substantial financial and related harm.

12. Such Disqualification motion was filed against the further backdrop of a case wherein the Trustee being illegally allowed to act, Ted Bernstein, had such concerns and suspicions that deceased Simon Bernstein (his father) may have been murdered that he sought action by the Coroner, action to get an independent autopsy and a complaint to the Palm Beach County Sheriff's all within a short amount of hours after Simon Bernstein passed.
13. The Motion for Mandatory Disqualification was filed nearly two years after Petitioner had first filed an Emergency Motion in both the Estate cases of Shirley and Simon Bernstein showing direct fraud on the Court by the filings of Attorneys Donald R. Tescher, Esq. and Robert L. Spallina, Esq. and by the time the May 2015 Disqualification was filed a paralegal Notary Public Kimberly Moran who was employed by Tescher and Spallina had already been under investigation and later charged and convicted in Notary Fraud. Attorney Spallina later admitted to the Palm Beach Sheriff of fraudulent actions by himself personally in conspiracy with his partner Tescher involving one of the Trusts ( 2008 Shirley Bernstein Trust ), yet Judge Colin, despite stating on the Record at the first hearing on September 13, 2013 that Miranda warnings were appropriate for Ted Bernstein and his attorneys Tescher and Spallina and others, continued to allow the parties to move forward in fraud and held no hearings to correct the

frauds and took no actions to refer the attorneys Spallina and Tescher to proper authorities.

14. While Judge Colin's full involvement in the frauds is presently unknown, it is clear that he was made directly aware of the frauds by Petitioner's Emergency motion filing in May, 2013, if not directly aware or involved earlier.

#### IV. MANDAMUS

15. A Writ OF Mandamus is appropriate and required to direct JUDGE COLIN to vacate his prior illegal ORDERS, specifically the Sua Sponte Order of Recusal and Order Denying the motion for Disqualification as "legally insufficient" and to further enter an Order of Disqualification and Vacating all other Orders in the case. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. See *Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. *Austin*, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. *Superior Garlic Int'l, Inc. v. E&A Produce Corp.*, 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).

16. “Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” *Poole v. City of Port Orange*, 33 So. 3d 739, 741 (Fla. 5th DCA 2010) (citing *Puckett v. Gentry*, 577 So. 2d 965, 967 (Fla. 5th DCA 1991)). “A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Austin v. Crosby*, 866 So. 2d 742, 744 (Fla. 5th DCA 2004).”
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18. Petitioner’s motion for Disqualification clearly shows it was properly filed according to law and was facially valid and sufficient and thus Petitioner has established a clear legal right to Disqualification by Judge Colin and mandamus is thus appropriate to enforce this right. The only question before this Court is whether Petitioner met this burden in the filing of the original Disqualification and this Petition and such original Disqualification motion (EXHIBIT A) clearly

shows the burden was met by Petitioner thus making mandamus appropriate at this time.

### **DISQUALIFICATION MOTION SHOWS JUDGE COLIN AS MATERIAL FACT WITNESS**

19. The Disqualification motion clearly demonstrated Colin as a material fact witness in relation to the fraud by Attorneys Spallina and Tescher specifically in relation to an Oct. 24, 2012 filing wherein Attorney Spallina files multiple documents allegedly signed by then Deceased Simon Bernstein nearly 6 months before, thus using a Deceased person to attempt to close the Estate of Shirley Bernstein. The Disqualification motion further shows Judge Colin and his Court Officer having Ex Parte contact with Attorney Spallina two weeks later on Nov. 5, 2012 but not even this Ex Parte communication is docketed until the next day, Nov. 6, 2012.
20. An excerpt of the Disqualification motion shows as follows:

19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who "received" the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?

- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

**DISQUALIFICATION MOTION SHOWS LACK OF IMPARTIALITY, BIAS PREJUDICE AND REASONABLE FEAR OF NOT GETTING FAIR TRIAL**

21. The motion for mandatory disqualification further shows as follows:

20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.

21. Judge Colin should have disqualified then and must be disqualified now.

22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent



illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013<sup>1</sup> Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.

23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently ( and competently ) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"<sup>2</sup> this Court

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<sup>1</sup> Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

<sup>2</sup> May 06, 2013 Petition @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

and Attorney Spallina are both put on Notice by Petitioner's motion of :

- a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);
- b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section "X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE" and "XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE")
- c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley's Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section "VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE");
- d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner's Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder<sup>3</sup> (Pages 85-

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<sup>3</sup>Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report) <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and

86 Section “XVII. ALLEGED MURDER OF SIMON BERNSTEIN”);

- e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley’s condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein’s right to act and dispose of assets (Pages 51-57 “XIV. VANISHING ESTATE ITEMS AND ASSETS”);
- f. That the Court and Spallina are notified of the “Elephant in the Room” relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner’s Minivan (see [www.iviewit.tv](http://www.iviewit.tv) for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section “XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.”
- g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections “VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON” and “VII. INSURANCE PROCEED DISTRIBUTION SCHEME”);
- h. That other assets were remaining that should have been been frozen such as the St. Andrew’s home recently listed by Petitioner’s father weeks before his passing for over \$3 million.

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half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

25. Simply reviewing the September 13, 2013 Hearing Transcript<sup>4</sup> of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

- a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
- b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
- c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
- d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
- e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;
- f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
- g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
- h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;

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<sup>4</sup> September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

- i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing<sup>5</sup>;
- j. knows of the "elephant in the room"<sup>6</sup> being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and
- k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his Court lawn<sup>7</sup>, instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceeding and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such a way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.

27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by

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<sup>5</sup> May 06, 2013 Petition – Already Exhibited Herein - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

<sup>6</sup> May 06, 2013 Petition – Already Exhibited Herein - Section XV "The Elephant in the Room" Pages 57-82

<sup>7</sup> September 13, 2013 Hearing Page 11

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>

corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposor of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.

28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over \$3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.

30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings

before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.

32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013 when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a \$25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager

implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted



Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.

36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.

38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the

fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over \$1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.

40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.

41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.

42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged "buyer" occurred during the Hearing on the sale of the St. Andrew's Home and knows Florida

law requires no undue influence or pressure must be exerted or buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.

44. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.

45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/rp/pdf/FLrpg.pdf>.

46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at \$1,100,000.00 as the property was listed for \$3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order

nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.

48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.

49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." *Flagship Bank of Orlando v. Bryan*, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. *BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.* 482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.

50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, <http://mrachek-law.com/ourteam/alan-b-rose/>.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.

52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond

Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal  
14 because, frankly, we were concerned it would be  
15 public and that would defeat their chance of  
16 selling it.  
17 THE COURT: I'm not -- look, nothing is easy  
18 here. It's not going to get easier until we can  
19 get hearings where I can start to knock off some  
20 of the issues, which is what I have been saying  
21 now like a broken record.  
22 At some point, either Eliot is going to be  
23 sustained on his positions or he's going to be  
24 overruled, but one way or the other, we can put  
25 some of this stuff to rest. The problem is we're  
1 doing all of this business with some of the metes [matters?]  
2 of the case still up in the air where I haven't  
3 been able to adjudicate; the claims that Ted  
4 should be removed; the claims that there's  
5 wrongdoing beyond Spallina and Tescher, the trust  
6 is not valid. I mean, give me a chance to rule on  
7 that, because once I rule on that, then the matter  
8 is over with on those and you'll know one way or  
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was

suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings, has ignored all of these facts and held hearing, after hearing, after hearing and has:

- a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
- b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
- c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
- d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
- e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,

- f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,
- g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,
- h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
- k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
- l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin

only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

- m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,
- n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Cannons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.



57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court. It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.

59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.

60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.

61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case, Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's

cases. When Petitioner cited the rule calling for separate hearings by each Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.

63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.

64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.

65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15th Judicial, The Florida Bar and many Judges of the Supreme Court of Florida and Petitioner fears this also creates prejudice and bias against Petitioner

with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,  
OFFICE OF THE STATE COURTS  
ADMINISTRATOR, FLORIDA,  
HON. JORGE LABARGA in his official and individual capacities,

[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]

THE FLORIDA BAR,

JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,

KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,

LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,

ERIC TURNER, ESQ. in his official and individual capacities,

KENNETH MARVIN, ESQ. in his official and individual capacities,

JOY A. BARTMON, ESQ. in her official and individual capacities,

JERALD BEER, ESQ. in his official and individual capacities,

BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,

JAMES J. WHEELER, ESQ. in his professional and individual capacities,

**FLORIDA SUPREME COURT,**

Hon. Charles T. Wells, in his official and individual capacities,

Hon. Harry Lee Anstead, in his official and individual capacities,

Hon. R. Fred Lewis, in his official and individual capacities,

Hon. Peggy A. Quince, in his official and individual capacities,

Hon. Kenneth B. Bell, in his official and individual capacities,

THOMAS HALL, ESQ. in his official and individual capacities,

DEBORAH YARBOROUGH in her official and individual capacities,

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION – FLORIDA,  
CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,

CHIEF ANDREW SCOTT in his official and individual capacities,

CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities, [now involved in the Estate and Trust matters]

MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor, Chief Judge Jorge Labarga, who is a central figure in Petitioners ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.

  
PETITION FOR ALL WRITS...  
33

68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.

69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.

71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.

72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.

73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

**Rule 2.330 (d) Grounds.**

**(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.**

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.

75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.

76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.” See, Motion to Disqualify.

22. PETITIONER’S MOTION TO DISQUALIFY filed on May 14, 2015 was “legally sufficient” because:

- a. COLIN had a mandatory duty to disqualify independent of whether PETITIONER’S MOTION TO DISQUALIFY was “legally sufficient” (an undefined legal term) under the due process clause of the United States Constitution due to the crimes committed in and upon his Court by his Court Appointed Officers and Fiduciaries, his direct involvement in the Fraud on his Court, the Conflicts created by his handling matters he is a material and fact witness in and therefore he was mandated to Disqualify from the matters on his own initiative;
- b. PETITIONER had listed COLIN in a Counter Complaint (EXHIBIT 1) filed in these matters as a Material and Fact Witness whom may become a defendant in any amended complaint filed. Whereby COLIN again instead of disqualifying then “stayed” the Counter Complaint that named him and Judge French as witnesses, further derailing PETITIONER’S right to fair and impartial due process and further causing COLIN to be conflicted with

PETITIONER. Yet, COLIN continued to act and adjudicate in violation of Judicial Canons and Law;

- c. PETITIONER has filed criminal complaints against the Fiduciaries, the Attorneys at Law and others involved in the criminal matters and where COLIN then attempted to influence law enforcement to cease investigating PETITIONER'S filed criminal complaints with the Palm Beach County Sheriff Office, stating he would handle the criminal investigations into the matters in his court and this led to investigators attempting to shut down the criminal investigations PETITIONER instigated, this too is cause for disqualification;
- d. Upon learning of this attempt to shut down the criminal investigations by the Palm Beach County Sheriff investigators, PETITIONER notified law enforcement that COLIN had no jurisdiction to interfere and could in fact become a suspect in the investigations into the Fraud on his court and thus his actions constituted intentional Obstruction of Justice;
- e. PETITIONER was then forced to start an Internal Affairs complaint against the Sheriff officers involved and elevate the matters to the Captain of the Sheriff department to get the complaints re-opened, which then led to attorney at law, Co-Personal Representative and Co-Trustee of Simon Bernstein's Estate and Trusts SPALLINA being questioned and admitting to



fraudulently altering a Shirley Bernstein Trust document on behalf of his client Theodore Stuart Bernstein (“TED”) who TESCHER and SPALLINA represented as alleged Trustee of Shirley’s Trust, yet no arrest of SPALLINA or his partner TESCHER who SPALLINA stated conspired with him to commit the fraud has yet been made and possibly due to interference by COLIN; and

- f. TESCHER and SPALLINA acted as fiduciaries to the Estate and Trusts of Simon and simultaneously as TED’S counsel in Shirley’s Estate and Trusts, acted against the interests of the beneficiaries of Shirley’s Trust (of which her son TED is excluded) to benefit their client TED and themselves by trying to insert TED into her Trust fraudulently and COLIN did not sanction them and report these matters to the proper authorities as required by Judicial Canons and Law thereby further cause for COLIN’S disqualification.

23. However, COLIN after learning of the frauds committed in his Court instead of taking actions to protect the beneficiaries, creditors and interested parties has instead created an Attorney at Law and Fiduciary protection system for those involved in the criminal misconduct in and on his court by:

- a. failing to report the misconduct of the attorneys at law and fiduciaries to the proper authorities;
- b. interfering in ongoing investigations of the suspect parties;

- c. allowing the Attorneys at Law who committed felony criminal acts in and upon his court to withdraw from the matters after admitting criminal acts instead of removing them as demanded by PETITIONER who filed motions to remove them and where removal would have had a more severe impact on those involved and given greater protection to the beneficiaries;
- d. staying Counter Complaints that named COLIN and Judge David E. French (“FRENCH”) as material and fact witnesses;
- e. forcing PETITIONER to file new complaints but ordering (EXHIBIT 2) that Attorneys at Law involved in the criminal acts or any Attorney at Law could not be sued by PETITIONER, despite their being fiduciaries and thereby preventing PETITIONER from including Attorneys at Law in a court ordered complaint (the Simon Trust case);
- f. staying the Counter Complaint other than demanding to have PETITIONER remove COLIN and FRENCH from the complaint as possible defendants in any amended complaint;
- g. repeatedly delaying and stymying actions to remove TED and others involved from the cases, instead of removing all elements of those involved in the initial Fraud on the court immediately on his own motion, even after in an initial hearing on September 13, 2013 stating twice (for two separate crimes discovered by COLIN) that he had enough evidence at that time to

read TED, TESCHER, SPALLINA and attorney at law Mark Manceri, Esq. (“MANCERI”) their Miranda Rights, yet he then failed to ever take any action to have them prosecuted for the crimes he affirmed had taken place on his court (EXHIBIT 10) for two years;

- h. suggesting to PETITIONER to file a new Simon Trust lawsuit to remove the legally impermissible fiduciary Ted Bernstein as Trustee and Ordering that Eliot could not sue attorneys at law in the complaint, despite the fact that the two prior Co-Trustees were attorneys at law who resigned amidst the fraud and corruption they were directly involved in and admitted to and whom as a last act before resigning transferred trusteeship to their legal client TED who they committed the crimes to benefit in addition to themselves and COLIN allowed this;
- i. knowing that TED upon allegedly accepting successorship has done nothing to pursue the wrongdoings of his former counsel, the former Personal Representatives, Trustees and Counsel, TESCHER and SPALLINA or to correct the frauds on the court on behalf of the beneficiaries, as TED was involved in the crimes as well and COLIN was aware of these failures and violations of Statutes and did nothing to protect the beneficiaries, creditors and interested parties;

- j. knowing TED was disinherited by both Simon and Shirley Bernstein in their estate plans and considered predeceased for all purposes of the trusts and has fraudulently seized his fiduciary roles and Obstructed beneficiaries from documents and accountings to protect TED, his counsel TESCHER, SPALLINA, COLIN and others from prosecution for the crimes committed and being committed and where COLIN aided and abetted this fraud by allowing TED to remain a fiduciary;
- k. allowing a fraudulent transfer of trusteeship to TED was OBSCENE, as well as illegal, as TED could not be a Successor Trustee for the Simon Bernstein Trust (EXHIBIT 3) as the very language of the Trust states the Successor cannot be related to the issuer and that TED, the son of the issuer Simon, is additionally considered PREDECEASED for ALL PURPOSES OF THE TRUST! The 2012 Simon Trust has been challenged as fraudulent and is under ongoing investigation and yet, COLIN continued to use these documents without affirming validity or construction first despite evidence of Fraud with the documents;
- l. continuing to have hearings using Dispositive documents that are challenged for validity and construction for over two years and being investigated as fraudulent and which remain under ongoing investigations;

- m. failing to seize records and preserve and protect assets once COLIN became aware of the frauds committed by the court appointed Officers and Fiduciaries of his court;
- n. making privileged an email (EXHIBIT 4) sent only to PETITIONER from TED that described the use of FORCE and AGGRESSION (EXHIBIT 5) against PETITIONER by the fiduciary TED and his lawyers Alan B. Rose, Esq. ("ROSE") and John J. Pankauski, Esq. ("PANKAUSKI") (the letter also details misuse of trust funds and attacks on minor children beneficiaries and friends of Simon's) and again in efforts to cover up the corruption occurring in his court, COLIN ruled (EXHIBIT 6) the email from TED to PETITIONER (two non attorneys) was inadvertent disclosure of privileged material;

The Court should note that PETITIONER has had a bomb in his car and has reported that his brother TED was the last person in possession of the vehicle and that TED has acquired friends that PETITIONER is pursuing for his stolen Intellectual Properties, including direct defendants in PETITIONER'S RICO and ANTITRUST suit filed, Proskauer Rose, Gerald R. Lewin, former executives from the Madoff and Sir Allen Stanford Ponzi schemes and others who are directly involved in the Estate and Trust matters before the court for direct involvement in the estate and trust matters and yet COLIN ignored

these facts in his ruling to make privileged the email and instead guesstimated about TED'S intent and meaning to the his use of the words about using "force and aggression" against PETITIONER without even asking him under oath what he meant.

The Court should note that COLIN was aware that PETITIONER had stated to the court that SIMON may have been talking with investigators regarding the Sir Allen Stanford Ponzi, which PETITIONER has joined the Texas Federal Lawsuit and Receiver action alleging that Stanford was a money laundering scheme for PROSKAUER for royalties converted illegally from PETITIONER'S stolen Intellectual Properties;

The Court should note COLIN was aware that PETITIONER'S stolen Intellectual Properties involved allegations that the 15th Judicial Circuit Judge of the case that was sued by PETITIONER for his acts outside the color of law in the case is Chief Judge of this Court, Jorge Labarga, who COLIN cites as his mentor and this too was cause for the cases to be moved for the Appearance of Impropriety, especially where PETITIONER continues to pursue his invention royalties and intellectual properties against these very same officials;

The Court should note that COLIN was aware that TED contacted on the morning his father died the Palm Beach County Sheriff who came to Simon's

home and opened an investigation (EXHIBIT 7) at TED'S bequest and TED also contacted the Palm Beach Coroner (EXHIBIT 8) to report that his father may have been murdered on that day, and yet, under deposition (EXHIBIT 9) TED could not recall having done those things on that day and so denied doing them; and

- o. attempting to steer the cases after his Sua Sponte recusal by poisoning the next jurisdiction and venue and setting up the transfer of the cases to a court he influenced the move to post recusal and where it just so happens lands in the lap of Judge Howard K. Coates, Jr. a former Proskauer partner during the years Proskauer represented PETITIONERS intellectual properties and who worked across the hall from PETITIONER during the years Proskauer represented PETITIONER'S Intellectual Properties.

24. Due to the frauds on, in and by the Court that began the instant COLIN failed to Disqualify himself on his own initiative, all orders issued by COLIN must be voided and vacated, Village of Willowbrook, 37 Ill. App. 3D 393 (1962).
25. Due to COLIN'S steering the case post recusal the cases should all be stayed while PETITIONER seeks a new jurisdiction and venue, conflict free to ensure due process and procedure.
26. Judge Coates who the cases were steered to by COLIN recused himself Sua Sponte at the first hearing, after having had access to the court records of COLIN

and this may have been the intent of COLIN in steering the case to Coates, knowing he would then have to recuse after having access to the files. PETITIONER fears that the whole steering of the case was designed to achieve this end and benefit PROSKAUER, a Counter Defendant in PETITIONER'S Counter Complaint in the Trust cases and that the transfer from Judge Coates to the next judge is also part of this scheme to further deny due process and procedure to PETITIONER.

27. A MOTION TO DISQUALIFY (EXHIBIT A) was Denied (EXHIBIT B) by Judge Martin Colin ("COLIN") as "Legally Insufficient" in violation of Florida Rule of Judicial Administration 2.330, Florida Statute 38, and Florida Code of Judicial Conduct, Canon 3(B)7, 3(B)5, 3E(1), 3(E)1a, 3(E)1b and 3(E)1b(iv), all of which require that a judge disqualify himself on his own initiative and where once the Petitioner has established a reasonable fear that he will not obtain a fair hearing by a Petition for Disqualification the Judge must Disqualify as well.
28. Thus, since the motion for Disqualification showed a clear right for Petitioner to obtain Disqualification, Mandamus is now appropriate.

## V. PROHIBITION

29. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st



D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

30. That the day after denying PETITIONER'S Petition to Disqualify as "Legally Insufficient" that would have voided his orders due to the fact that they were issued as part of a Fraud on the Court, COLIN suddenly decided to Sua Sponte Recuse (EXHIBIT C) himself instead from the six cases involving the Estates and Trusts of Simon and Shirley Bernstein and in so doing again denied PETITIONER due process and procedure. Then to further compound the problems COLIN influenced the transfer of the cases post recusal and thus tainted the next court from the start.
31. COLIN began abusing his discretion in failing to disqualify himself on or before an initial hearing in the matters on September 13, 2013 (EXHIBIT 10) in legal actions involving Shirley Bernstein's ("Shirley") Estate and Trusts and Simon Bernstein's ("Simon") Estate and Trusts, when it was discovered by COLIN that there was Fraud upon his court committed by Fiduciaries and Counsel he appointed in the matters and these frauds materially affected PETITIONER'S rights to a fair and impartial hearing adjudicated by COLIN as he was now a material and fact witness to certain of the fraudulent events. This abuse of process denied PETITIONER due process and procedure, obstructed justice and interfered with expectancies and property rights from that point forward.

32. COLIN was mandatorily required at the time of discovering the frauds on his court, when he found he would be a material and fact witness to certain of the events and possible suspect to voluntarily and on his own motion disqualify himself, as the crimes were committed in his court and directly conflicted him with the matters, especially since the crimes were committed by his court appointed officers, fiduciaries and staff. COLIN had direct involvement in the matters that would have to be questioned as well.
33. Once the Fraud in and on his court was discovered, it became impossible for COLIN to continue to handle the matters due to the overwhelming appearance of impropriety created by COLIN handling the investigations involving his court, the Officers of his court he appointed, his staff and himself, without PETITIONER fearing that his direct involvement in the matters biased his decisions and under Judicial Canons Colin was obligated to Disqualify.
34. PETITIONER filed Petitions for Disqualifications (EXHIBITS – 11, 12 & 13) and Motions for Disqualification on COLIN'S own initiative but COLIN refused to disqualify despite his duty under Judicial Canons and Law to mandatorily disqualify himself when he became a material and fact witness in the case, when it became necessary to investigate his court, himself and his court appointed Officers and Fiduciaries as the crimes had taken place in and on his court by his court appointed Officers and Fiduciaries. Also the fact that COLIN may be a

potential suspect in the crimes conflicted him and forced disqualification. Yet, COLIN continued to proceed and rule in the matters as if Above the Law and Judicial Canons and thus every act forward by COLIN was without legal Jurisdiction.

35. PETITIONER'S APPLICATION FOR WRIT OF PROHIBITION and WRIT OF MANDAMUS should be granted because:

- a. All acts of COLIN after his mandatory disqualification was required defied law and denied due process and caused PETITIONER to fear continued prejudice and the inability to obtain a fair trial for himself and his three minor children going forward;
- b. COLIN recused himself improperly from the proceedings after two and a half years, only one day after denying a disqualification petition filed by PETITIONER. This sharp practice of recusing himself versus ruling in favor of PETITIONER'S disqualification petition not only appears an attempt to leave his legally void orders issued without jurisdiction standing but to then prejudice PETITIONER further with having a hand in the new court he had the cases assigned to;
- c. The only way these improper judicial acts of COLIN can now be removed from prejudicing the cases further is if this Court rules that COLIN'S Sua Sponte Recusal (coming the day after he denied PETITIONER'S Petition for

Disqualification) is voided and he is mandated to instead Disqualify himself and ALL acts and orders of COLIN be voided and stricken from the record as fraud on the court mandates in this situation and that this court then preclude COLIN from making any post disqualification actions that influence the transfer of the cases as he has done already;

- d. COLIN is a material and fact witness and thus has an interest in the cases involving PETITIONER'S family that is adverse and prejudicial to PETITIONER and his family who have exposed the court of COLIN and the Fraud on his court, Fraud in his court, Fraud by his court and other crimes both proven and alleged, several being investigated at this time both state and federally. Almost all of the crimes committed were committed by Officers of the court and court appointed Fiduciaries, who were misusing the court as the vehicle to commit the crimes and under COLIN the perpetrators were shielded and protected by COLIN from prosecution;
- e. The proven crimes that occurred in the court, include but are not limited to:
  - i. Forgeries of dispositive documents; Fraudulent Notarizations of dispositive documents; Fraudulent closing of a deceased's estate using a deceased Personal Representative to close the estate as part of a larger fraud to seize Dominion and Control of the Estates and Trusts of both

Simon and Shirley Bernstein by the court appointed fiduciaries and attorneys at law;

ii. Fraudulent Alteration of Dispositive documents admitted to by Attorney at Law Robert Spallina, Esq. to Palm Beach County Sheriff Investigators, which were altered by SPALLINA and his partner Donald R. Tescher, Esq. (“TESCHER”) on behalf of their client Theodore Stuart Bernstein (“TED”); and

iii. Fraud on the court, Fraud in the court and Fraud by the court committed by TESCHER, SPALLINA, TED and others;

f. Where there continue to be ongoing, state and federal, civil and criminal investigations and proceedings into multiple fraudulent acts that are in combination to the frauds that took place using the court of COLIN to achieve; and,

g. COLIN cannot investigate himself, his court appointed Officers, Fiduciaries and his court staff regarding the Fraud on the court, Fraud in the court and Fraud by the court, without the overwhelming appearance of impropriety that he steered the cases improperly to avoid investigation and prosecution, covering up the crimes to avoid bad press, covering up the crimes to allow continued crimes against PETITIONER and his family and shift the focus away from his direct involvement in the matters. Once knowledgeable about

these conflicts of interest and adverse interests created by the criminal activity that took place in his court COLIN was mandated by Judicial Canons and law to disqualify from the matters on his own initiative but again did not.

36. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).
37. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).
38. The next Jurisdiction and Venue have already been poisoned by the egregiousness of COLIN'S post recusal misconduct.

**VI. ALL PRIOR ORDERS OF JUDGE COLIN SHOULD BE VACATED AS VOID AND A LEGAL NULLITY**

39. "Procedural due process promotes fairness in government decisions by requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty or property." *John Corp. v. City of Houston*,

214 F.3d 573, 577 (5th Cir. 2000) (internal citations and quotations omitted).

“Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, serves to prevent governmental power from being used for purposes of oppression.” Id. In order to establish either a substantive or procedural due process violation, a plaintiff must first establish the denial of a constitutionally protected property interest. See Bryan v. City of Madison, 213 F.3d 267, 276 (5th Cir. 2000).

40. COLIN’S actions spanning the last two and half years, may be directly tied to PETITIONER’S pursuing legal remedies against members of this Court, including Chief Judge Jorge Labarga, other Justices of this Court, the FLORIDA BAR and its officers and several large South Florida Law Firms, regarding stolen intellectual properties, alleged to have been stolen from PETITIONER and his father by their Intellectual Property Lawyers, primarily at the law firm Proskauer Rose LLP and Foley & Lardner, in conjunction with various state actors installed to block due process and procedure and obstruct justice. PETITIONER filed a RICO and ANTITRUST Lawsuit (EXHIBIT 14) and an Amended Complaint (EXHIBIT 15) before the Honorable Judge Shira A. Scheindlin and will be petitioning to reopen that RICO based on the new RICO predicate acts committed in COLIN and FRENCH’S courts (Fraud on the Court, Alleged Murder by TED Bernstein, Extortion, Intentional Interference with an Expectancy, Conspiracy and

more), crimes committed again primarily by ATTORNEYS AT LAW and COURT OFFICERS many related to the prior RICO.

41. WRIT OF MANDAMUS is required to direct JUDGE COLIN to vacate his prior illegal ORDERS. The writ of mandamus is appropriately used to require a government actor to perform a nondiscretionary duty or obligation that he or she has a clear legal duty to perform. *See Austin v. Crosby*, 866 So. 2d 742, 743 (Fla. 5th D.C.A. 2004) (holding that mandamus may only be granted if there is a clear legal obligation to perform a duty in a prescribed manner). It applies to enforce a right already established. *Austin*, 866 So. 2d at 744. The writ of mandamus will issue to require a trial court to comply with the mandate of an appellate court. *Superior Garlic Int'l, Inc. v. E&A Produce Corp.*, 29 Fla. L. Weekly D2341 (Fla. 3d D.C.A. Oct. 20, 2004).
42. PETITIONER and his minor children are in imminent continued and ongoing danger of irreparable injury due to COLIN'S use of illegal ORDERS to exact revenge from the bench for over two years acting improperly "under Color of State Law" via a series of illegal ORDERS that have destroyed PETITIONER'S rights to his property and endangered his family, in retaliation for PETITIONER filing civil and criminal complaints against those involved in the crimes that took place in COLIN'S court. These retaliatory actions have caused serious financial



harms on certain of the beneficiaries of the estate including three minor children and as COLIN acted outside of the Color of Law, NO IMMUNITY HAS HE.

43. Denial of PETITIONER'S plea will place the ELIOT BERNSTEIN FAMILY in further substantial risk of danger for their reporting criminal activity in the court of COLIN and FRENCH. Recently PETITIONER has received a warning from his attorney at law, Candice Schwager, Esq. that he and his family were in grave danger due to their whistleblowing efforts.(EXHIBIT 16)
44. PETITIONER met the burden of demonstrating that a reasonable person would fear bias and the inability to decide matters in this case with impartiality and that COLIN should have disqualified based on PETITIONER'S Petition for Disqualification.

**VII. LACK OF JURISDICTION – FRAUD ON THE COURT, FRAUD IN THE COURT AND FRAUD BY THE COURT**

45. COLIN did not have jurisdiction to proceed with hearings and proceedings after knowing he would be a material and fact witness to the proceedings at no later than the first hearing on September 13, 2013 exactly one year after Simon died when he discovered he would be a witness and more and that his court was a crime scene involving his court appointed Officers and Fiduciaries, which required mandatory disqualification.
46. Upon discovering the criminal felony acts committed in and upon his court COLIN needed to hand off the matters instantly and disqualify himself on his

own initiative according to Judicial Canons and Law and have a new judge adjudicate the matters forward and have conducted an independent investigation of the crimes in COLIN'S court, investigate and question COLIN and his court appointed Officers and Fiduciaries involved directly in the crimes, yet disregarding his judicial duties COLIN instead proceeded to act outside of the Color of Law from that point forward and continued to adjudicate without legal Jurisdiction and without immunity.

47. COLIN held hearing after hearing using Dispositive Documents that he knew were challenged, fraudulent in some instances, confirmed improperly notarized and forged in certain instances by Governor Rick Scott's Notary Public Division, under ongoing criminal investigations and yet issued void order after order while suppressing any investigations of the criminal misconduct and attempting to sweep it under the rug to protect himself and his court appointed Officers and Fiduciaries involved. COLIN was even reported partying with several of TED'S counsel involved in the crimes, several who have since resigned in these matters, at a Florida Bar party the night before a hearing with PETITIONER.
48. The Supreme Court **must intervene** immediately to protect PETITIONER, his wife and minor children from further acts of aggression of COLIN et al., who have been exacting revenge from the bench and through abuse of process in conspire with Officers and Fiduciaries of the court, all actions disguised "under

color of State law” to continue to harm PETITIONER and deprive due process and procedure to deny PETITIONER property rights and more.

49. That even in his final act of “recusal” instead of mandatory “disqualification” COLIN acted **after his recusal** to further influence and poison the next court and further controlled the process again void of legal Jurisdiction. COLIN pre and post Recusal steered the case to a county where a former PROSKAUER partner was sitting as a judge and where the case was transferred to such judge, where PROSKAUER is a counter defendant in Petitioners stayed Counter Complaints and thus COLIN transferred highly confidential case and court records to a conflicted party.
50. PROSKAUER is also at the center of Petitioner’s claims in the RICO and ANTITRUST and other state and federal actions filed in relation to Intellectual Property thefts and whereby PETITIONER’S car was already bombed, which remains under ongoing state and federal investigations to the best of PETITIONER’S knowledge (See Graphic Images of the Car Bombing, which blew up three cars next to it @ [www.iviewit.tv](http://www.iviewit.tv) ).
51. PROSKAUER is also directly involved in the Estates and Trusts of Simon and Shirley in direct relation to estate planning work done in 1999-2001 to protect the Intellectual Properties which Proskauer was also representing, which have been

valued in the billions to trillions of dollars and work they did is now directly involved in the Estate and Trust cases before COATES' court.

52. That COLIN influencing the matters after recusal appears further obstruction and may have given Proskauer inside information and records with intent and scienter in further efforts to derail PETITIONER'S rights.

The Court further stated:

In Metropolitan Dade County v. Martinsen, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." Hanono v. Murphy, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing Carter v. Carter, 88 So. 2d 153, 157 (Fla. 1956).

53. This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.

### VIII. VIOLATION OF DUE PROCESS

54. COLIN has intentionally sought to deprive PETITIONER and his three minor children of privileges, properties and immunities guaranteed citizens of the United States by the Constitution in violation of 18 U.S.C. 241 ("conspiracy against rights"), 242 ("deprivation of rights under color of State law), and 42 U.S.C. 1983 (civil deprivation of rights under color of State law) –constituting official oppression.

55. COLIN intentionally and with scienter and in conspire with others deprived PETITIONER and his three minor children of First, Fifth, Sixth, Seventh, and Fourteenth Amendment rights to freedom of speech, freedom of association, due process, equal protection of the law, and the right to effective assistance of counsel.

56. 18 U.S.C. 242 provides as follows:

Whoever, under color of any law, ordinance, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of rights, privileges, or immunities secured or protected by the Constitution of the laws of the United States, or to different punishments, pains or penalties...than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year; or both... and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap...shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death. [Note 18 U.S.C. 241 contains similar language but applies to two or more people conspiring to deprive a citizen of rights and privileges under the Constitution.]

57. COLIN violated PETITIONER and his three minor children's due process rights in his fervor to retaliate and cover up for crimes exposed, committed and run through the misuse of his court as a vehicle to commit said crimes and other ancillary crimes, all the while covering up for the crimes of his court appointed officers and fiduciaries in efforts to exculpate the criminals from prosecution by aiding and abetting the felonious acts through a complex legal process abuse scheme that not only covered up but in fact continued to commit new crimes

against PETITIONER and his minor children through the legal process abuse scheme and artifice to defraud.

58. COLIN violated the OPEN COURTS provision of the U.S. and Florida Constitution, due process and equal protection clause via the following scheme:
- (a) Issuance of illegal void ORDERS issued outside the color of law, allowing Officers and Fiduciaries to continue in proceedings after learning of their involvement in Felony Misconduct and after stating he had enough evidence of their fraud and fraud on the court to read them all their Miranda Warnings twice at the very first hearing where he learned of obscene frauds on the court, including crimes committed POST MORTEM of decedents SIMON and SHIRLEY to directly contradict and defeat their last wishes, (EXHIBIT 10) and then failing to do ANYTHING required of him by Law and Judicial Canons over the next two and one half years about any of the felony crimes.

**IX. COLIN ORDERS WITHOUT LEGAL JURISDICTION UNDER THE COLOR OF LAW AFTER MANDATORY DISQUALIFICATION DUE TO FRAUD ON THE COURT AND HIS STANDING AS A MATERIAL AND FACT WITNESS AND MORE ARE VOID**

59. All of COLIN'S Orders from the moment he knew he was mandated under Judicial Canons and law to disqualify himself and then does not are all obtained outside the color of law and continue a Fraud on the court, Fraud in the court and Fraud by the court.

60. COLIN was aware that Motions and Petitions are unheard involving Trust Validity, Trust Construction and Removal of the PR for serious breaches and allegations of felony misconduct and yet without hearing these issues first he moves forward using the documents to make orders, have hearings with the disputed and alleged fraudulent documents, sell assets, etc. From a March 26, 2015 hearing<sup>8</sup> COLIN states in response to a home sale question by ROSE,

Page 53

17 THE COURT: I'm not -- look, nothing is easy  
18 here. It's not going to get easier until we can  
19 get hearings where I can start to knock off some  
20 of the issues, which is what I have been saying  
21 now like a broken record.  
22 At some point, either Eliot is going to be  
23 sustained on his positions or he's going to be  
24 overruled, but one way or the other, we can put  
25 some of this stuff to rest. The problem is we're

Page 54

1 doing all of this business with some of the metes  
[matters]  
2 of the case still up in the air where I haven't  
3 been able to adjudicate; the claims that Ted  
4 should be removed; the claims that there's  
5 wrongdoing beyond Spallina and Tescher, the trust  
6 is not valid. I mean, give me a chance to rule on  
7 that, because once I rule on that, then the matter  
8 is over with on those and you'll know one way or  
9 the other what to do.

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<sup>8</sup> March 26, 2015 Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150326%20HEARING%20TRANSCRIPT%20HOME%20SALE.pdf>

10 Do you understand what I'm saying? I think  
11 we have hearing time coming up. Let's use that,  
12 you know, prioritize hearings on this case. So as  
13 soon as we can, I'll give it to you.  
14 MR. ROSE: I appreciate that.

61. COLIN is the next hearing only days later then ruled to sell the house without having any of the hearings he stated he needed to have first before moving forward (after two years of moving forward without them), including validity hearings, removal of PR hearings and further fraud hearings and this typifies COLIN'S continued acts outside the color of law in furtherance of fraudulent activities.
62. COLIN denied the initial Emergency Motion<sup>9</sup> PETITIONER filed, denying it as an Emergency when there was evidence in the filing submitted that Fraud Upon the Court had occurred by Officers and Fiduciaries of his court, documents were submitted fraudulently to court and there were allegations that Simon Bernstein had been murdered made by his son TED making it a valid Emergency and this denial as an Emergency delayed hearing the matters for four more months while PRO SE PETITIONER refiled and rescheduled.
63. COLIN in a hearing on September 13, 2013 then ordered that Shirley Bernstein's Estate be reopened due to the fraud he discovered took place in the hearing but

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<sup>9</sup> EMERGENCY PETITION

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20LGW.pdf>



then failed to have the fraud investigated and after threatening to read TESCHER, SPALLINA, TED and MANCERI their Miranda's upon discovering and affirming two separate and distinct frauds upon his court they were all involved in, leaves those involved in the frauds as fiduciaries and moves forward as if nothing took place stating he will get to it and after almost two years has failed to do so.

64. COLIN then, after threatening to read TED and his counsel their Miranda's and learning of the frauds he was involved in, COLIN appoints TED as PR to Shirley's Estate when he reopens the Estate due to the fraud. COLIN then states that TED is named in the Shirley Will as a Successor Trustee and this despite having weeks earlier stated he was going to read TED and his attorneys at law, TESCHER, SPALLINA and MANCERI their Miranda Rights upon learning of multiple frauds on the court they committed, including fraudulent Dispositive documents and using a deceased Personal Representative to close the Estate of Shirley.

65. COLIN further allowed TESCHER, SPALLINA and MANCERI to continue to act as the attorneys in the case despite having learned they were involved in felony misconduct.

66. COLIN allowed TESCHER and SPALLINA to continue for months until they were forced to resign after admission of fraud to PBSO investigators and instead

of removing them COLIN allows them to withdraw and without ordering investigations or reporting their misconduct as required by Judicial Canons and Law.

67. COLIN rules on trusts and wills and uses language from trusts and wills despite knowing they have been challenged and found improperly notarized by Governor Rick Scott's Notary Public division for over two years.
68. COLIN evades hearings to remove TED as a fiduciary and continues to allow TED and his minion of attorneys to file pleading despite evidence showing COLIN TED is not legally a valid trustee. That many of the pleading filed were retaliatory at PETITIONER attempting to have him held in contempt or have guardians placed over him and his children, in efforts to intimidate PETITIONER to give up his pursuit of the criminal matters.
69. COLIN denies Disqualification motions filed by PETITIONER as "legally insufficient" and evades motions filed by PETITIONER to have COLIN disqualify himself on his own initiative as provided for by statute.
70. COLIN orders that an IRA account for Simon and Shirley Bernstein can be modified to change investments despite PETITIONER'S protest that the account has been reported to authorities as having been illegally accessed and COLIN assures PETITIONER that no change of the account will occur but then allows a complete change of the account to occur, erasing the old account. The problem is

that COLIN was aware that the beneficiary of the IRA is missing and documents regarding the account were also missing at the time and the change appears to be an attempt to cover up the problems.

71. COLIN ruled that a trust without signature pages is a legally valid trust unless Pro Se PETITIONER could cite law stating it was not valid without signature pages.
72. COLIN allegedly orders a transfer of trusteeship from Stanford Trust Company (the infamous Ponzi schemer Sir Robert Allen Stanford company) to Oppenheimer in 2010 but orders the transfer without having the trusts to review and determine if the transfer is legal under the terms of the trust. The trusts when discovered are all full of errors, are unexecuted in part, have missing signature pages and have conflicting trustees and would have precluded such transfer by COLIN.
73. COLIN holds accounting hearings for the minor children's trusts in the Oppenheimer case and precludes Eliot from making a record and when Eliot (who is approved as indigent) asks the court to get a reporter and COLIN states the court is broke and cannot afford any luxuries. Eliot asks to create a taped record and is refused.
74. COLIN Orders a letter between TED and PETITIONER, two non-attorneys to be privileged when no attorney was sent the letter. The letter also exposes fiduciary

misconduct alleged by TED'S counsel and misuse of Trust funds and contains threats to use "force and aggression" on PETITIONER.

75. COLIN Orders Simon's house be sold after stating at hearing he cannot order the sale until trust construction hearings, hearings to remove Ted and trust validity hearings are heard first. Then in next hearing he sells the house without doing any of the other things he stated must be done first at the prior hearing.
76. COLIN Orders against PETITIONER'S motions to remove conflicted counsel repeatedly, allowing counsel involved in the frauds to continue protected.
77. COLIN Orders cases of he and FRENCH be consolidated but violates statutes requiring each judge to hold a separate hearing to merge the cases and Colin hears FRENCH'S motion for him and violates the statute in so doing.
78. COLIN Orders school for three minor children to be paid, when it was not paid and PETITIONER filed an EMERGENCY HEARING regarding when he finds out order was violated and children thrown out of school states he will deal with it and never does.
79. COLIN orders that Eliot cannot contact buyer of Simon home to inform the buyer of a Lis Penden pending that COLIN has held and precluded PETITIONER from filing for several months and orders PETITIONER to not contact the buyer to inform them of ongoing litigation or face severe court ordered sanctions, where PETITIONERS head would spin if he did or words to that effect.

80. COLIN stated in the home sale order that he conducted hearings and the transaction was arm's length but never had any statements or testimony from the buyer or even allows PETITIONER to know who the secret buyer is and precludes the buyer from knowledge of litigation by Order.

## X. LEGAL AUTHORITIES

### MANDATORY DISQUALIFICATION

81. COLIN had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his Sua Sponte Recusal on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.

82. That Petitioner, being Pro Se, also motioned COLIN several times to disqualify on his own initiative as required under statutes and Judicial Canons and COLIN failed to rule on the motion and disqualify himself.

83. The Florida Code of Judicial Conduct Canon 3 provides states:

A Judge SHALL disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning the party or a party's lawyers.

84. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that

"Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

85. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);
86. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then

the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

87. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

“A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently” Section E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding.”

88. The issues before this Court are the failure of COLIN to mandatorily Disqualify and the “**legal sufficiency**” of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

...a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. **It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.**’

*State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially.** *State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983)

(emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

89. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. *Holland v. State*, 503 So. 2d 1354 (Fla. 1987); *Easter v. Endell*, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." *Carey v. Phipus*, 435 U.S. 247, 262 (1978). Principles of due process demand that this case be heard by another judge selected without COLIN'S prejudice and for COLIN to disqualify himself and remove his Orders issued outside his jurisdiction and outside the color of law:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Phipus*, 435 U.S. 247, 259-262, 266-267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of



an erroneous or distorted conception of the facts or the law. *See Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

90. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN’S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable, establishes a prima facie case of appearance of impropriety:

It is the established law of this State that every litigant...is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516, 194 So. 613 (1939); *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Mickle v. Rowe*, 100 Fla. 1382, 131 So. 3331 (1930).

\* \*

The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge

under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. *Dickenson v. Parks*, 104 Fla. 577, 140 So. 459 (1932); *State ex rel. Aguiar v. Chappell*, 344 So.2d 925 (Fla. 3d DCA 1977).

91. The United States Supreme Court has stated:

...the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or **an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.**' *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,' but due process of law requires no less. *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). *Taylor v. Hayes*, 418 U.S. 488, 501 (1974) (**emphasis added**).

92. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. *See In re Murchison*, 349 U.S. 133 (1955). "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge." *State ex rel. Mickle v. Rowe*, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

93. The issues before this Court are the dismissal of the Recusal order of Colin in favor of a mandated mandatory disqualification of COLIN and voiding of his prior orders and the question of "legal sufficiency" of the motion filed by

PETITIONER; there is no deference owed to the lower court. *Smith v. Santa Rosa Island Authority*, 729 So. 2d 944, 946 (Fla. 1st DCA 1998). The test for determining the legal sufficiency of a motion for disqualification is an objective one which asks whether the facts alleged in the motion would place a reasonably prudent person in fear of not receiving a fair and impartial hearing. See *Livingston v. State*, at 1087. The fact that the crimes were committed in COLIN'S court by Officers and Fiduciaries under COLIN'S tutelage requires mandatory disqualification on COLIN'S own initiative and casts "a shadow...upon judicial neutrality so that disqualification [of the circuit] is required." *Chastine v. Broome*, at 295.

94. In *Partin v Solange et al*, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed his prejudgment of the matter and in another hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did COLIN engage in this similar egregious conduct towards PETITIONER from the start but his disqualification is also mandated because of his direct involvement and handling of the fraudulently notarized and forged documents posited in his court and other direct involvement in the matters that eroded PETITIONER'S rights to fair and

impartial due process under law by retaliating for two years against PETITIONER instead.

95. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *Peters v. Kiff*, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a *pro se* party are violations of Equal Protection and due process of law. *Pro se* parties are a distinct minority class in judicial proceedings. COLIN should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court, reported the misconduct, removed all parties involved in the fraud instead of allowing them to continue to participate for months and even to this day, disqualified himself and instead COLIN took opposite actions to harm PETITIONER and his minor children and delay their inheritances by continuing the Fraud on the court, Fraud in the court and Fraud by the court, to intentionally

cause catastrophic financial ruin upon PETITIONER and his minor children by continuing to hold fraudulent proceedings and illegally issue orders.

96. None of the orders issued by a judge who has been disqualified or should have been disqualified by law are valid. They are void as a matter of law, and are of no legal force or effect. The orders issued by COLIN are null and void and of no force and effect as they are procured by fraud, without jurisdiction, the result of unlawful rulings, are unconstitutional and violate due process causing criminal Obstruction of Justice.

**ALL ORDERS OF JUDGE COLIN ARE A NULLITY AND ARE VOID**

97. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US

274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

98. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

### **FRAUD UPON THE COURT VOIDS ORDERS**

An order is void if it was procured by fraud upon the court," In re Village of Willowbrook, 37 Ill. App. 3D 393(1962)

A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did not have jurisdiction over subject matter or the parties, *Rook v. Rook*, 353 S.E. 2d 756 (Va. 1987).

A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any

time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999)

"Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

"Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of Illinois v. Fred E. Sterling*, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935).

Under Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect."

As reiterated in *Baker v. Myers Tractor Services, Inc.*, 765 So. 2d 149, (Fla. 1st DCA 2000): When the central issues of a case are based in fraud, the courts cannot move forward as a matter of law.

The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.

As set forth in *Rosenthal v. Rodriguez*, 750 So. 2d 703, 704 (Fla. 3d DCA 2000): Courts throughout this state have repeatedly held "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding

should not be permitted to continue to employ the very institution it has subverted to achieve their ends.” Metropolitan Dade County v. Martinsen, 736 So. 2d 794, 795 (Fla. 3d DCA 1999) (quoting Hanono v. Murphy, 723 So. 2d 892, 895 (Fla. 3d DCA 1998)); see also Cox v. Burke, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); O’Vahey v. Miller, 644 So. 2d 550, 551 (Fla. 3d DCA 1994); Kornblum v. Schneider, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).

### **VOID ORDERS IN VIOLATION OF DUE PROCESS**

“Due Process is a requirement of the U.S. Constitution. Violation of the United States Constitution by a judge deprives that person from acting as a judge under the law. He/she is acting as a private person, and not in the capacity of being a judge,”: Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872) “any judge who acts without jurisdiction is engaged in an act of treason,” U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821). “Engaging in an act of treason against the United States Constitution by any citizen of the United States is an act of war against the United States,” Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

The United States Supreme Court, in Twining v. New Jersey, 211 U.S. 78, 29 S.Ct. 14, 24, (1908), stated that “Due Process requires that the court which assumes to determine the rights of parties shall have jurisdiction.”; citing Old Wayne Mut. Life Assoc. V. McDonough, 204 U. S. 8, 27 S. Ct. 236 (1907); Scott v McNeal, 154 U.S. 34, 14, S. Ct. 1108 (1894); Pennoyer v. Neff, 95 U.S. 714, 733 (1877).

“Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process,” U.S.C.A. Const. Amend. 5-Triad Energy Corp. v. McNell, 110 F.R.D. 382 (S.D.N.Y. 1986).

Judgment is a void judgment if the court that rendered the judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules of Civil Procedure, Rule 60(B) (4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 – Klug v. U.S., 620 F. Supp. 892 (D.S.C. 1985).

“A judgment is void if it violated due process,” Johnson v. Zerbst, 304 U.S. 458 S Ct.1019; Pure Oil Co. v. City of Northlake, 10 Ill. 2D 241, 245, 140 N.E. 2D 289 (1956) Hallberg v. Goldblatt Bros., 363 Ill. 25 (1936)



## **VOID ORDERS IN VIOLATION OF RIGHT TO BE HEARD**

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. *Renaud v. Abbott*, 116 US 277, 29 L Ed 629, 6 S Ct 1194. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. *Earle v McVeigh*, 91 US 503, 23 L Ed 398.

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. *Sabariego v Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461, and is not entitled to respect in any other tribunal.

"A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L.Ed. 861: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists."

## **VOID ORDERS WITHOUT JURISDICTION OR EXCEED JURISDICTION**

"If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120-c.)

"When judges act when they do not have jurisdiction to act, or they enforce a void order (an order issued by a judge without jurisdiction), they become trespassers of the law, and are engaged in treason," The Court in *Yates v. Village of Hoffman Estates, Illinois*, 209 F.Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse."

void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void. *Potenz Corp. v. Petrozzini*, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the orders are void ab initio and not voidable because they are already void.

The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101, S. Ct. 471, 66 L.Ed. 2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

Title 5, US Code Sec. 556(d), Sec. 557, Sec.706: Courts lose jurisdiction if they do not follow Due Process.

An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608; Pennoyer v. Neff (1877) 95 US 714, 24 L ed 565; Thompson v. Whitman (1873) 18 Wall 457, 21 L ed 897; Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; McDonald v. Mabee (1917) 243 US 90, 37 Sct 343, 61 L ed 608.

"If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 Freeman on Judgments, 120-c.) "A void judgment is no judgment at all and is without legal effect." (Jordon v. Gilligan, 500 F.2d 701, 710 (6th Cir. 1974)) "a court must vacate any judgment entered in excess of its jurisdiction." (Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645 (1st Cir. 1972).).

A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include Kalb v. Feuerstein (1940) 308 US 433, 60 S Ct 343, 84 L ed 370. Federal judges issued orders permanently barring Stich from filing any papers in federal courts. After Judges Robert Jones and Edward Jellen corruptly seized and started to liquidate Stich's assets, Judge Jones issued an unconstitutional order barring Stich from filing any objection to the seizure and liquidation.

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally, People v. Wade, 506 N.W.2d 954 (Ill. 1987).

Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in manner inconsistent with due process of law Eckel v. MacNeal, 628 N.E.2d 741 (Ill. App.Dist. 1993).

Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process, U.S.C.A. Const. Amend. 5-Triad Energy Corp. v. McNell, 110 F.R.D. 382 (S.D.N.Y. 1986).

Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved; such judgment may be attacked at any time, either directly or collaterally People v. Sales, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990).

Subject matter jurisdictional failings:

Fraud committed in the procurement of jurisdiction, Fredman Brothers Furniture v. Dept. of Revenue, 109 Ill.2d 202, 486 N.E.2d 893 (1985).

Fraud upon the court, In re Village of Willowbrook, 37 Ill. App.3d 393 (1962)

A judge does not follow statutory procedure, Armstrong v. Obucino, 300 Ill. 140, 143 (1921).

Unlawful activity of a judge, Code of Judicial Conduct.

If the court exceeded its statutory authority, Rosenstiel v. Rosenstiel, 278 F.Supp. 794 (S.D.N.Y. 1967).

Any acts in violation of 11 U.S.C. §362(a), In re Garcia, 109 B.R. 335 (N.D. Illinois, 1989).

Where no justiciable issue is presented to the court through proper pleadings, Ligon v. Williams, 264 Ill. App.3d 701, 637 N.E.2d 633 (1st Dist. 1994).

Where a complaint states no cognizable cause of action against that party, Charles v. Gore, 248 Ill.App.3d 441, 618 N.E.2d 554 (1st Dist. 1993).

When the judge is involved in a scheme of bribery (the Alemann cases, Bracey v. Warden, U.S. Supreme Court No. 96-6133; June 9, 1997)

### **VOID IN VIOLATION OF THE CONSTITUTION**

A Judge has no lawful authority to issue any order which violates the Supreme Law of the Land.

The First Amendment to the U.S. Constitution states that all entities have the mandatory right of an adequate, complete, effective, fair, full meaningful and timely access to the court.

The First and the Fourteenth Amendment to the U.S. Constitution guarantees the right of association.

The Fifth and Fourteenth Amendment guarantees Due Process and Equal Protection to all. "No state shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." United States Constitutional Amendment XIV and adopted by State of Indiana Constitution.

"Choices about marriage, family life, and upbringing of children are among associational rights ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against State's unwarranted usurpation, disregard, or disrespect. U.S.C.A. Constitutional Amendment 14.

"Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law." -- Owen v. Independence, 100 S.C.T. 1398, 445 US 622; Scheuer v. Rhodes, 416 U.S. 232.

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. Earle v. McVeigh, 91 US 503, 23 L Ed 398. See also Restatements, Judgments ' 4(b). Prather v Loyd, 86 Idaho 45, 382 P2d 910. The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. Hanson v Denckla, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.

### **VOID ORDERS CAN BE ATTACKED AT ANY TIME**

An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himely (1808) 4 Cranch 241, 2 L ed 608; Pennoyer v. Neff (1877) 95 US 714, 24 L ed 565; Thompson v. Whitman (1873) 18 Wall 457, 21 L Ed 897; Windsor v. McVeigh (1876) 93 US 274, 23 L ed 914; McDonald v. Mabee (1917) 243 US 90, 37 Sct 343, 61 L ed 608. U.S. v. Holtzman, 762 F.2d 720 (9th Cir. 1985) ("Portion of judgment directing defendant not to import

vehicles without first obtaining approval ... was not appropriately limited in duration and, thus, district court abused its discretion by not vacating it as being prospectively inequitable." Id at 722.)

**VOID JUDGMENTS DO NOT HAVE TO BE DECLARED VOID BY A JUDGE**

A void order is an order issued without jurisdiction by a judge and is void ab initio and does not have to be declared void by a judge to be void. Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the attempted procurement of jurisdiction, is sufficient for an order to be void. *Potenz Corp. v. Petrozzini*, 170 Ill. App. 3d 617, 525 N.E. 2d 173, 175 (1988). In instances herein, the law has stated that the orders are void ab initio and not voidable because they are already void.

A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in *People v. Miller*. A party may have a court vacate a void order, but the void order is still void ab initio, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

This principle of law was stated by the U.S. Supreme Court as "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS IS EVEN PRIOR TO REVERSAL ." [Emphasis added]. *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See also *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v. Berry*, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); *Rose v. Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

Pursuant to the *Valley* court decision, a void order does not have to be reversed by any court to be a void order. Courts have also held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never

becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, "Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. ...[Would be an] unlawful action by the appellate court itself." *Freytag v. Commissioner*, 501 U.S. 868 (1991); *Miller*, supra. Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio.

A void order has no legal force or effect. As one court stated, a void order is equivalent to a blank piece of paper.

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments " 44, 45.

### **VOID JUDGMENTS ARE A NULLITY**

"A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

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Marine Ins. Co., 254 U.S. 348, 41 S. Ct. 116 (1920) as well as other state courts, e.g. by the Illinois Supreme Court in *People v. Miller*. A party may have a court vacate a void order, but the void order is still void ab initio, whether vacated or not; a piece of paper does not determine whether an order is void, it just memorializes it, makes it legally binding and voids out all previous orders returning the case to the date prior to action leading to void ab initio.

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Pursuant to the Vallely court decision, a void order does not have to be reversed by any court to be a void order. Courts have also held that, since a void order is not a final order, but is in effect no order at all, it cannot even be appealed. Courts have held that a void decision is not in essence a decision at all, and never becomes final. Consistent with this holding, in 1991, the U.S. Supreme Court stated that, “Since such jurisdictional defect deprives not only the initial court but also the appellate court of its power over the case or controversy, to permit the appellate court to ignore it. ...[Would be an] unlawful action by the appellate court itself.” *Freytag v. Commissioner*, 501 U.S. 868 (1991); *Miller*, supra. Following the same principle, it would be an unlawful action for a court to rely on an order issued by a judge who did not have subject-matter jurisdiction and therefore the order he issued was Void ab initio.

A void judgment is one which, from its inception, was a complete nullity and without legal effect. See *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972)

A void judgment is one which from the beginning was complete nullity and without any legal effect. See *Hobbs v. U.S. Office of Personnel Management*, 485 F.Supp. 456 (M.D. Fla. 1980).

Void judgment is one that, from its inception, is complete nullity and without legal effect. *Holstein v. City of Chicago*, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill. 1992).

A void judgment is one which, from its inception, was a complete nullity and without legal effect, *Rubin v. Johns*, 109 F.R.D. 174 (D. Virgin Islands 1985).

A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree. *Loyd v. Director, Dept. of Public Safety*, 480 So.2d 577 (Ala.Civ.App. 1985). A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, *City of Los Angeles v. Morgan*, 234 P.2d 319 (Cal.App. 2 Dist. 1951).

Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, *Ward. v. Terriere*, 386 P.2d 352 (Colo. 1963). A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted, *Davidson Chevrolet, Inc. v. City and County of Denver*, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958).

Void judgment is one which, from its inception is complete nullity and without legal effect In re Marriage of Parks, 630 N.E.2d 509 (Ill.App. 5 Dist. 1994).

Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity. *People v. Rolland*, 581 N.E.2d 907 (Ill.App. 4 Dist. 1991).

**XI. PETITION TO STAY CASES AND TEMPORARILY RESTRAIN ANY SALE, TRANSFER, DISPOSITION OF ANY ASSET OR PROPERTY AND PRESERVATION OF EVIDENCE**

99. Petitioners must establish the following four elements:



(1) a substantial likelihood that the plaintiffs will prevail on the merits; (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiffs outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir.1994).

100. The mandamus petition herein and filed motion for mandatory Disqualification clearly shows said motion was legally sufficient and Judge Colin should have mandatorily disqualified. Thus Petitioners have a substantial likelihood to prevail on this application. In addition to an illegal sale of real property being the home of deceased Simon Bernstein imminently scheduled for sale by tomorrow, June 10, 2015, Petitioners have shown loss of property, loss of records, loss of documents and evidence, loss of trusts and inheritances and other issues of irreparable harm. Granting a temporary stay and injunction against further threatened injury to Petitioners outweighs and harm to Respondent –defendants. Granting a temporary stay is in the public interest until a neutral court can sort out the frauds and conflicts and proper parties and proper trustees and proper trusts and instruments.

101. PETITIONER has suffered at the hands of the Florida court system for thirteen years and has been denied INTELLECTUAL PROPERTIES and due process to seek redress as the alleged criminals are almost all attorneys at law in their various capacities as private lawyers, judges, prosecutors and politicians.

102. PETITIONER has suffered at the hands of the Florida court system for almost three years since the passing of PETITIONER'S father and has been denied PROPERTIES rightfully his through inheritance and again the criminals are almost all attorneys at law and many are connected to the prior INTELLECTUAL PROPERTIES thefts.
103. PETITIONER again cannot get redress or due process in the Florida court system and seeks to have the cases moved from the Florida court system as due to his pursuit of Supreme Court Justices, the Florida Bar and many Florida Lawyers and Law Firms and therefore PETITIONER fears he cannot get a fair and impartial hearing and adequate remedy of law by any party that is a member of the Florida Bar.
104. PETITIONER has battled two years to remove JUDGE COLIN for a situation of Fraud on the Court that was irrefutable and cause for disqualification on several grounds but who refused to follow Judicial Canons and Law and thus has caused severe harms to PETITIONER and his three minor children as the record reflects.
105. Even when "recusing" JUDGE COLIN influenced inappropriately the case knowingly to a former PROSKAUER partner and where PETITIONER was again harmed as the new judges COATES then had access to all the courts records to gain further advantage over PETITIONER. That COLIN and COATES knew of

the conflict of interest and that PROSKAUER was a Counter Defendant in the certain of PETITIONER'S Counter Complaints and a party to the matters.

106. That COATES had reviewed the case file and stated on the record that he was NOT CONFLICTED with PETITIONER and the matters until PETITIONER reminded JUDGE COATES that despite his desire to stay on the case that he had JUDICIAL CANONS that could make his retaining the case violate them, whereby JUDGE COATES after several attempts to claim NO CONFLICT suddenly SUA SPONTE recused himself.

107. That due to this nefarious setup of PETITIONER'S cases to further stymie and delay and interfere with PETITIONER'S due process and procedure rights PETITIONER fears that no matter how or who the cases are transferred to in Florida that PETITIONER cannot receive due process.

## **XII. CONCLUSION AND PRAYER**

**WHEREFORE,** PETITIONER seeks a WRIT OF PROHIBITION to prohibit COLIN from:

- a. Acting in excess of his lawful jurisdiction;
- b. Attempting to enforce the May 20<sup>th</sup> 2015 SUA SPONTE RECUSAL or ANY OTHER ORDER;
- c. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;

d. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and well being are in danger if this WRIT is denied for lack of a legal remedy.

**WHEREFORE,** PETITIONER seeks a WRIT OF MANDAMUS, compelling the COLIN to:

- a. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;
- b. set aside the May 20<sup>th</sup> 2015 Order to Recuse as void ab initio immediately and instead disqualify himself and make NO FURTHER ACTION;
- c. set aside the ALL ORDERS as void ab initio immediately;
- d. set aside all other Orders in his Court as *void ab initio* immediately as they are the product of fraud on, in and by the court; and,
- e. immediately disqualify himself from this case and take no further action.

**WHEREFORE,** PETITIONER seeks a 30 day STAY ORDER for all cases in order to move the cases to a prescreened conflict free venue, either state or federal.

- a. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been converted through the fraudulent orders immediately be returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,
- b. Reverse COLIN'S acts to interfere with the next venue in these matters by having the case assigned to a proper jurisdiction and venue without COLIN'S steering the case to a court and judge that he influenced the outcome in choosing.

And for such other and further relief as to this Court may seem just and proper.

DATED: Wednesday, June 10, 2015

Respectfully submitted,

  
/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

Pro Se

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished  
by e-filing and email on this Wednesday, June 10, 2015.

Respectfully submitted,



/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

Pro Se

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the font standards, i.e. Times New Roman 14 point font as set forth in Florida Rule of Appellate Procedure 9.210.

DATED: Wednesday, June 10, 2015

Respectfully submitted,

  
/s/ Eliot Ivan Bernstein

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**EXHIBITS****URL' S ARE FULLY INCORPORATED HEREIN BY REFERENCE.**

<b>Exhibits</b>	<b>Document - URL</b>
A	See Attachment – Disqualification Petition
B	See attachment – Order Denying Disqualification Petition
C	See attachment – Order Sua Sponte Recusal
1	September 02, 2014 Counter Complaint  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf</a>
2	October 06, 2014 Colin Order Prohibiting Attorney/Fiduciaries from being sued  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141006%20Order%20on%20Ted%20Bernstein%20Removal%20as%20Trustee%20and%20Attorney%20Protection%20Order.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141006%20Order%20on%20Ted%20Bernstein%20Removal%20as%20Trustee%20and%20Attorney%20Protection%20Order.pdf</a>
3	July 25, 2012 ALLEGED Simon Bernstein Trust (See Pages 5,6 and 16, 17)  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf</a>
4	Crystal Cox Blog  <a href="http://tedbernsteinreport.blogspot.com/2014/07/alan-rose-john-pankauski-and-ted.html">http://tedbernsteinreport.blogspot.com/2014/07/alan-rose-john-pankauski-and-ted.html</a>
5	TED Testimony Admitting Force and Aggression to be used against PETITIONER with his counsel.  <a href="http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140711%20Hearing%20TED%20ADMITS%20FORCE%20AND%20AGGRESSION%20AGAINST%20ELIOT.pdf">http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140711%20Hearing%20TED%20ADMITS%20FORCE%20AND%20AGGRESSION%20AGAINST%20ELIOT.pdf</a>
6	July 18, 2014 COLIN Privilege Order



	<a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140718%20Order%20Regarding%20Privilege.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140718%20Order%20Regarding%20Privilege.pdf</a>
7	Palm Beach County Sheriff Report (Pages 25-28)  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf</a>
8	Palm Beach County Coroner Report (Pages 31-51)  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf</a>
9	May 06, 2015 TED Deposition (Pages 115-134)  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf</a>
10	September 13, 2013 Emergency Hearing  <a href="http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spalina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf">http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spalina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf</a>
11	May 14 2015 Motion for Disqualification  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf</a>
12	June 16, 2104 Petition to Remove Judge Colin  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140616%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20PROPOSED%20AND%20EXISTING%20ORDERS%20and%20DISQUALIFY%20OF%20HON%20JUDGE%20MARTIN%20COLIN.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140616%20FINAL%20SIGNED%20PRINTED%20OBJECTION%20TO%20PROPOSED%20AND%20EXISTING%20ORDERS%20and%20DISQUALIFY%20OF%20HON%20JUDGE%20MARTIN%20COLIN.pdf</a>
13	January 01, 2014 Motion to Disqualify Colin  <a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140101%20">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140101%20</a>

	<u>20Final%20PRINTED%20SIGNED%20Motion%20to%20Disqualify%20Colin%20and%20more%20131279ns.pdf</u>
14	Iviewit RICO and Antitrust  <u><a href="http://www.iviewit.tv/20071215usdcsnycomplaint.pdf">http://www.iviewit.tv/20071215usdcsnycomplaint.pdf</a></u>
15	Iviewit RICO and Antitrust Amended Complaint  <u><a href="http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf">http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20AND%20RICO%20SIGNED%20COPY%20MED.pdf</a></u>
16	Candice Schwager, Esq. Warning - PETITIONER correspondences with Sheriff Andrew Panzer & DOJ OIG Michael Horowitz  <u><a href="http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150411CandiceSchwagerEsqWarningDOJOIGHorowitzAndSherifPanzerLetters.pdf">http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150411CandiceSchwagerEsqWarningDOJOIGHorowitzAndSherifPanzerLetters.pdf</a></u>

# EXHIBIT A

PETITION FOR ALL WRITS...

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN**

COMES NOW Eliot Bernstein (“Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

1. Judge Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.

Motion for Disqualification Judge Colin

1 Page

Thursday, May 14, 2015

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Colin provided by rules, statute and by the Code of Judicial Conduct.

a. Judge Colin has violated the following Judicial Canons, including but not limited to,

- i. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary
- ii. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities
- iii. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

**B. Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

**D. Disciplinary Responsibilities.**

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

**E. Disqualification.**



Motion for Disqualification Judge Colin

2 | Page

Thursday, May 14, 2015

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

**F. Remittal of Disqualification.**

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

- b. Judge Colin has violated Statutes related to, including but not limited to,
  - i. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and more.
  - ii. Fraud in the Court
  - iii. Fraud by the Court
  - iv. Obstruction of Justice through Denial of Due Process

Motion for Disqualification Judge Colin

31 Page  
Thursday, May 14, 2015

v. Aiding and Abetting and more.

c. Judge Colin has violated Probate Statutes and Rules

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

3. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the movant**  
**relies as the grounds for disqualification.**

4. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or by a**  
**separate affidavit.**

5. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to disqualify**  
**filed under this rule in the case and the dates of the orders granting**  
**those motions.**

6. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that the**  
**motion and the client's statements are made in good faith. In addition**  
**to filing with the clerk, the movant shall immediately serve a copy of**  
**the motion on the subject judge as set forth in Florida Rule of Florida**  
**Rule of Civil Procedure 1.080.**

7. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Colin under Rule 1.080.

Motion for Disqualification Judge Colin

4 page

Thursday, May 14, 2015

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

8. That Petitioner asserts that he will not and has not received a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d), and shall be mandatory disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

9. Judge Colin had reasons to voluntarily disqualify himself from these proceedings prior to and regardless of this Motion to Disqualify him by Petitioner and has failed to do so prompting Pro Se Petitioner to file this disqualification on multiple grounds.

10. Judge Colin's Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk's Office of a Memorandum<sup>1</sup> allegedly made by

<sup>1</sup> November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

Motion for Disqualification Judge Colin

5 | Page  
Thursday, May 14, 2015



Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.

11. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court's own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that "Receipts for assets from all of the specific beneficiaries were not notarized." It is important to note that Attorney Spallina is fully aware at this time that his client Simon Bernstein the Personal Representative has passed away on September 13, 2012 and yet he continues to file with the Court documents on his deceased clients behalf to close the Estate months after his passing and presumably without notifying the Court.
12. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin's Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley's deceased at the time husband, Simon Bernstein<sup>2</sup>, and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin's Court had already received for filing:
  - a. A Petition for Discharge (Full Waiver)<sup>3</sup> (also needing notarization but not notarized) to close Shirley's Estate allegedly dated April 9th, 2012 and allegedly signed by Simon

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<sup>2</sup> Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

<sup>3</sup> Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed and Docketed with the Court until Oct. 24, 2012 with Judge Colin's Court and time-stamped by the Clerk's Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley's Estate a month *after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin's Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;*

- b. A Tax Statement<sup>4</sup> allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin's Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin's Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and
- c. A Probate Checklist<sup>5</sup> dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%2012%20COMMENTS.pdf>

<sup>4</sup> Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

<sup>5</sup> Probate Checklist

Motion for Disqualification Judge Colin

7 | Page

Thursday, May 14, 2015

Representative/Executor of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin's Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz dated Nov. 5, 2012.

13. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.
14. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin's Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley's Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court's own Docket.
15. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Florida Rules and Statutes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge's impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

Motion for Disqualification Judge Colin

8 | Page  
Thursday, May 14, 2015

16. Now, back to the Ex Parte nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin's Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.
17. A careful review of the Nov. 5, 2012 Ex Parte Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk's for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.
18. Judge Colin's impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an Ex Parte Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.
19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand

Motion for Disqualification Judge Colin

Page  
Thursday, May 14, 2015

in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who "received" the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

Motion for Disqualification Judge Colin

10 | Page

Thursday, May 14, 2015

20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.
21. Judge Colin should have disqualified then and must be disqualified now.
22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013<sup>6</sup> Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.
23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim

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<sup>6</sup> Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

Motion for Disqualification Judge Colin

11 / Page

Thursday, May 14, 2015

that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently ( and competently ) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"<sup>7</sup> this Court and Attorney Spallina are both put on Notice by Petitioner's motion of :

- a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);

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<sup>7</sup> May 06, 2013 Petition @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

Motion for Disqualification Judge Colin

Page  
Thursday, May 14, 2015

- b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section “X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE” and “XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE”)
- c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley’s Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section “VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE”);
- d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner’s Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder<sup>8</sup> (Pages 85-86 Section “XVII. ALLEGED MURDER OF SIMON BERNSTEIN”);

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<sup>8</sup>Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

Motion for Disqualification Judge Colin

13 |

Thursday, May 14, 2015



- e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");
- f. That the Court and Spallina are notified of the "Elephant in the Room" relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see [www.iviewit.tv](http://www.iviewit.tv) for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.");
- g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");
- h. That other assets were remaining that should have been been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over \$3 million.

Motion for Disqualification Judge Colin

14 | Page

Thursday, May 14, 2015



25. Simply reviewing the September 13, 2013 Hearing Transcript<sup>9</sup> of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

- a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
- b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
- c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
- d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
- e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;

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<sup>9</sup> September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

Motion for Disqualification Judge Colin

15 / Page

Thursday, May 14, 2015

- f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
- g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
- h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;
- i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing<sup>10</sup>;
- j. knows of the "elephant in the room"<sup>11</sup> being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and
- k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his

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<sup>10</sup> May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

<sup>11</sup> May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

Motion for Disqualification Judge Colin

16 | Page  
Thursday, May 14, 2015

Court lawn<sup>12</sup>, instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such a way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.
27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposor of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.
28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as

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<sup>12</sup> September 13, 2013 Hearing Page 11

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENT%20S.pdf>

Motion for Disqualification Judge Colin

17 Page

Thursday, May 14, 2015

requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over \$3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.
30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be

Motion for Disqualification Judge Colin

18 | Page

Thursday, May 14, 2015

squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.
32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013<sup>13</sup> when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a \$25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for

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<sup>13</sup> October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

Motion for Disqualification Judge Colin

19

Thursday, May 14, 2015

Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.
34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

Motion for Disqualification Judge Colin

20 Page  
Thursday, May 14, 2015

35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.
36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate



crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.
38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over \$1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for

Motion for Disqualification Judge Colin

22 |

Thursday, May 14, 2015

itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt<sup>14</sup>.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.
40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.
41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.
42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

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<sup>14</sup> Brand Pratt Letter and Conflict of Interest Disclosure Form

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

Motion for Disqualification Judge Colin

23 Page

Thursday, May 14, 2015

43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged “buyer” occurred during the Hearing on the sale of the St. Andrew’s Home and knows Florida law requires no undue influence or pressure must be exerted or buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.
44. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.
45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/tp/pdf/FLrpg.pdf>.
46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a

hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at \$1,100,000.00 as the property was listed for \$3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.
48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.
49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." *Flagship Bank of Orlando v. Bryan*, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. *BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.* 482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.
50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then

Motion for Disqualification Judge Colin

25

Thursday, May 14, 2015

refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, <http://mrachek-law.com/ourteam/alan-b-rose/>.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.
52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal  
14 because, frankly, we were concerned it would be  
15 public and that would defeat their chance of  
16 selling it.  
17 THE COURT: I'm not -- look, nothing is easy  
18 here. It's not going to get easier until we can  
19 get hearings where I can start to knock off some  
20 of the issues, which is what I have been saying  
21 now like a broken record.  
22 At some point, either Eliot is going to be  
23 sustained on his positions or he's going to be  
24 overruled, but one way or the other, we can put  
25 some of this stuff to rest. The problem is we're  
I doing all of this business with some of the metes [matters?]

2 of the case still up in the air where I haven't  
3 been able to adjudicate; the claims that Ted  
4 should be removed; the claims that there's  
5 wrongdoing beyond Spallina and Tescher, the trust  
6 is not valid. I mean, give me a chance to rule on  
7 that, because once I rule on that, then the matter  
8 is over with on those and you'll know one way or  
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust<sup>15</sup> by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct<sup>16</sup>, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a

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<sup>15</sup> O'Connell Affirmative Defense, Ted is not a valid Trustee

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

<sup>16</sup> Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

Motion for Disqualification Judge Colin

27 Page  
Thursday, May 14, 2015

Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings<sup>17</sup>, has ignored all of these facts and held hearing, after hearing, after hearing and has:

- a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
- b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
- c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
- d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
- e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,
- f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,
- g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,

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<sup>17</sup> Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustec%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

Motion for Disqualification Judge Colin

28 Page

Thursday, May 14, 2015

- h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
- k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultancously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
- l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervenc in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whcreas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin only allowing the Estate to intervenc after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

Motion for Disqualification Judge Colin

29 | Page

Thursday, May 14, 2015



m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,

n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Canons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court.

Motion for Disqualification Judge Colin

30 Page

Thursday, May 14, 2015

It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.
59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.
60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.
61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case. Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's cases. When Petitioner cited the rule calling for separate hearings by each

Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.
63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.
64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.
65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15<sup>th</sup> Judicial, The Florida Bar and many Judges of the Supreme Court of

Florida and Petitioner fears this also creates prejudice and bias against Petitioner with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,  
OFFICE OF THE STATE COURTS  
ADMINISTRATOR, FLORIDA,

HON. JORGE LABARGA in his official and individual capacities,  
[his lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]

**THE FLORIDA BAR.**

JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,  
KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,  
LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,  
ERIC TURNER, ESQ. in his official and individual capacities,  
KENNETH MARVIN, ESQ. in his official and individual capacities,  
JOY A. BARTMON, ESQ. in her official and individual capacities,  
JERALD BEER, ESQ. in his official and individual capacities,  
BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities.  
JAMES J. WHEELER, ESQ. in his professional and individual capacities,

**FLORIDA SUPREME COURT,**

Hon. Charles T. Wells, in his official and individual capacities,  
Hon. Harry Lee Anstead, in his official and individual capacities,  
Hon. R. Fred Lewis, in his official and individual capacities,  
Hon. Peggy A. Quince, in his official and individual capacities,  
Hon. Kenneth B. Bell, in his official and individual capacities,  
THOMAS HALL, ESQ. in his official and individual capacities,  
DEBORAH YARBOROUGH in her official and individual capacities.

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION – FLORIDA,

CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,  
CHIEF ANDREW SCOTT in his official and individual capacities,

CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]

MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

Motion for Disqualification Judge Colin

33 | Page

Thursday, May 14, 2015

ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]<sup>18</sup>

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor<sup>19</sup>, Chief Judge Jorge Labarga, who is a central figure in Petitioner's ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.
68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.
69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida<sup>20</sup>. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free

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<sup>18</sup> Full List of Iviewit RICO Defendants @

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

<sup>19</sup> Colin statement regarding Labarga as his mentor

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

<sup>20</sup> Omnibus Motion Federal Court

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

Motion for Disqualification Judge Colin

34 | Page  
Thursday, May 14, 2015

of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.
71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, **while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.**
72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.
73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

**Rule 2.330 (d) Grounds.**

**(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that**

Motion for Disqualification Judge Colin

35 | Page

Thursday, May 14, 2015

**said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.**

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.
75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.
76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and**

Motion for Disqualification Judge Colin

36 Page  
Thursday, May 14, 2015

**promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

77. This Motion is being made within 10 days from Petitioner's receipt of a "FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY" signed May 06, 2015. Where this Order, as with all Orders issued after Judge Colin's Mandatory Disqualification was failed, is an illegally obtained Order and therefore legally void, other grounds for this Order mandating disqualification have also been described herein.

78. This Motion for Disqualification is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

79. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law and whereby whether legally sufficient or not 2.330 allows Colin to disqualify on his own.

Motion for Disqualification Judge Colin

37 Page

Thursday, May 14, 2015



**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

80. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

81. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court<sup>21</sup>. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:

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<sup>21</sup> May 14, 2015 Letter to Judge Blakey

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

38 Page

Thursday, May 14, 2015

- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD  
Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

82. Petitioner states that Judge Colin should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

83. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive Probate rulings thus far that have interfered intentionally with their and Petitioner's expectancies that this Disqualification be made instantly as it is legally sufficient and MANDATED. Delays could cause further harm of Petitioner's minor children and Petitioner which would result in

Motion for Disqualification Judge Colin

39

Thursday, May 14, 2015

additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.

84. That PRIOR to any other actions by Judge Colin, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits; etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

85. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law.

Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts

Motion for Disqualification Judge Colin

40 | Page  
Thursday, May 14, 2015

alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 14<sup>th</sup> day of May, 2015

Respectfully Submitted,

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)

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 14th day of May, 2015.

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)

STATE OF FLORIDA

COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification. California DL #C6956008

NOTARY PUBLIC

*Sarah Barnett*

Print name of Notary:

Sarah Barnett



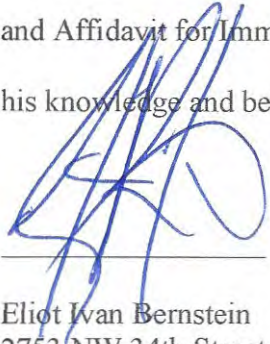
My commission expires:

07/05/2016

Motion for Disqualification Judge Colin

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief



Eliot Ivan Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

May 14<sup>th</sup>, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification California DL #C6A56008

Notary Public Sarah Barnett  
Print name: Sarah Barnett

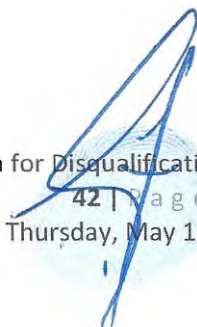
Stamp

My commission expires: 07/05/2016



Motion for Disqualification Judge Colin

42 | Page  
Thursday, May 14, 2015



**EXHIBIT 1 - URL EXHIBITS FULLY INCORPORATED BY REFERENCE HEREIN IN THE  
MOTION**

**1. November 05, 2012 Memorandum**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

**2. Simon Bernstein un-notarized Waiver @ URL**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

**3. Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

**4. Affidavit of No Florida Estate Tax Due @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

**5. Probate Checklist**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

**6. Order of Discharge**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

**7. May 06, 2013 Petition @ URL**

Motion for Disqualification Judge Colin

43 | Page

Thursday, May 14, 2015

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

**8. Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a 113 year old male.

**9. September 13, 2013 Hearing Judge Colin**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

**10. May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"**

**11. May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82**

**12. September 13, 2013 Hearing Page 11**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>

**13. October 28, 2013 Evidentiary Hearing**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

**14. Braud Pratt Letter and Conflict of Interest Disclosure Form**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

**15. O'Connell Affirmative Defense, Ted is not a valid Trustee**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

Motion for Disqualification Judge Colin

44 | Page

Thursday, May 14, 2015

**16. Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

**17. Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

**18. Full List of Iviewit RICO Defendants @**

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

**19. Colin statement regarding Labarga as his mentor**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

**20. Omnibus Motion Federal Court**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

**21. May 14, 2015 Letter to Judge Blakey**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

45 Page

Thursday, May 14, 2015





*"Surf with Vision"*

Eliot I. Bernstein  
Founder & Inventor  
Direct Dial: (561) 245-8588 (o)  
(561) 886-7628 (c)

Thursday, May 14, 2015

The Honorable John Robert Blakey  
United States District Court for the Northern District of Illinois Eastern Division  
Everett McKinley Dirksen  
United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604  
Courtroom 1725 | Chambers 1046  
Telephone Number: (312) 435-6058  
Fax Number: (312) 554-8195

**RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY**

Dear Honorable Judge John Robert Blakey,

I write to acknowledge and express my understanding of my obligations to conform my filings to the formatting rules of the Court and matters within the Court's jurisdiction. I also write in regards to Scheduling issues after our status call this week with your Court indicating Discovery to be closed upon the taking of the Deposition of my brother, Plaintiff, Ted Bernstein.

I will respectfully be seeking leave by way of formal motion to open the Discovery not only for further examination of Ted Bernstein but also to Notice for

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Deposition Judge Martin Colin of the Palm Beach Probate Court who I have just petitioned for Mandatory Disqualification on numerous grounds under the Florida Rules and Code including but not limited to being a necessary fact witness and material witness to actions of fraud upon his Court involving licensed attorneys Tescher and Spallina who have also been part of the litigation before this Court.

I have attached the Disqualification motion herein with respect to Florida Judge Colin for good faith reference and seek leave to move by way of formal motion within this Court's formatting rules to demonstrate the intertwined nature of the actions in this Court with the fraud and actions in Judge Colin's Court.

Please note that the car-bombing of my family mini-van in Boynton Beach, Florida was a very real thing and not a day goes by when I don't wonder what will happen any time my wife, children or I get in to a car. Full pictorial evidence and reports by involved authorities thus far can be found at [www.iviewit.tv](http://www.iviewit.tv) .

This car-bombing was also reported as part of a Petition I filed with the White House to President Obama, the White House Counsel's Office, the US Attorney General, FBI, SEC and other related federal and state agencies and I have attached a link to this Petition which provides a good overview of the "elephant in the room" being the nature of my Technology which is used on the Hubble Space Telescope, for a mass of US Defense applications, across the globe for digital imaging across the internet and more and also outlines how I was directed by Harry I. Moatz of the Office of Enrollment and

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RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Discipline of the USPTO to file a Petition claiming fraud upon the United States as well as myself and shareholders involving the Technology, which led to suspensions of the Intellectual Properties. The Technology was validated, used, tested and approved by leading engineers and computer experts on property owned by Lockheed Martin in Orlando, Florida at Real3d, Inc. which was at that time a consortium owned by the Intel Corporation, Lockheed Martin and Silicon Graphics and the technologies were valued in the hundreds of billions of dollars over the life of the IP claimed as the "holy grail" of the internet by these leading engineers. See,

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20l.pdf> .

Also please note that not only is the car-bombing a very real event that occurred in my life during this ongoing Technology fraud and theft, but as noted in the White House Petition and elsewhere even a Federal Agent such as FBI Special Agent Luchessi of the Palm Beach Office of the FBI has "gone missing" according to West Palm Beach Florida FBI Office (leading to my being directed to former Inspector General Glenn Fine of the Department of Justice for resolution, which still has not occurred) while investigating the Iviewit matters leaving myself in a position of not being able to trust even federal officers and agents and thus I typically err on the side of documenting all

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RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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important information in all known places and federal state and international offices. Now as you may be aware from my prior filings, there are new frauds and criminal acts by same, similar, and/or related actors with reports that my father may have been murdered.

Since the time of the February 2009 White House Petition filing when I was personally on the phone line confirming the fax number and receipt for the White House and White House Counsel's office, not a single US Secret Service Officer, Capitol Police, US Marshall or other federal agent has shown up to say I filed a frivolous and harassing Petition to the President or to challenge the veracity of my statements in the Petition. Again, I respectfully remind the Court that I was directed by a Federal official, Harry I. Moatz, Director of the Office of Enrollment and Discipline, to file a petition for suspension claiming Fraud Upon the United States by Patent Bar Attorneys and others

Judge St. Eve had already granted me Leave to Amend my Complaint and the motion to take Florida Judge Colin's Deposition in this Court will demonstrate the relevance to these proceedings and action by the intertwined orchestration of fraud cover up by Judge Colin in his Court also involving Ted Bernstein who is a party in this action and attorney Spallina and others common in both cases also exposing the depth and breadth of the powerful financial interests at play. See the 2009 SEC Petition for general background,

Hon. John Robert Blakey

Page 5 of 6

US District Court for the Northern District of Illinois Eastern Division

Thursday, May 14, 2015

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

Respectfully Yours,

Eliot I. Bernstein  
Founder & Inventor

- Iviewit Holdings, Inc. – DL
- Iviewit Holdings, Inc. – DL
- Iviewit Holdings, Inc. – FL
- Iviewit Technologies, Inc. – DL
- Uview.com, Inc. – DL
- Iviewit.com, Inc. – FL
- Iviewit.com, Inc. – DL
- I.C., Inc. – FL
- Iviewit.com LLC – DL
- Iviewit LLC – DL
- Iviewit Corporation – FL
- Iviewit, Inc. – FL
- Iviewit, Inc. – DL
- Iviewit Corporation

cc/ec:

Enclosure(s)/Attachment(s)/URL's

**All Uniform Resource Locators ( URL's ) and the contents of those URL's are incorporated in entirety by reference herein and therefore must be included in your hard copy file WITH ALL EXHIBITS, as part of this correspondence and as further evidentiary material to be Investigated. Due**

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Iviewit Holdings, Inc./Iviewit Technologies, Inc.  
 2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
 (561) 245.8588 (o) / (561) 886.7628 (c) / (561) 245-8644 (f)  
[i.viewit@iviewit.tv](mailto:i.viewit@iviewit.tv) - [www.iviewit.tv](http://www.iviewit.tv)

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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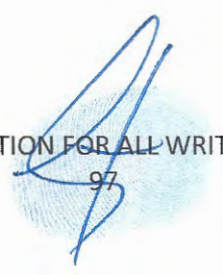
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to allegations alleged by New York State Supreme Court Whistleblower Christine C. Anderson and similar claims in the Iviewit RICO & ANTITRUST Lawsuit regarding Document Destruction and Tampering with Official Complaints and Records, PRINT all referenced URL's and their corresponding exhibits and attach them to your hard copy file, as this is now necessary to ensure fair and impartial review.

In order to confirm that NO DOCUMENT DESTRUCTION OR ALTERCATIONS have occurred, once complete forward a copy of this correspondence with all exhibits and materials included to, Eliot I. Bernstein at the address listed herein. This will insure that all parties are reviewing the same documentation and no additional illegal activity is taking place. If you, for any reason, are incapable of providing this confirmation copy, please put your reasons for failure to comply in writing and send that to Eliot I. Bernstein at the address listed herein. Note, that this is a request only for a copy of this Correspondence and the referenced materials and NOT a request for any Case Investigation information, which may be protected by law.

cmb/eib

# EXHIBIT B



PETITION FOR ALL WRITS...

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
PROBATE /GUARDIANSHIP DIVISION "TY"**

**CASE NO. 502014CP003698XXXXSB**

**TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN  
TRUST AGREEMENT DATED  
MAY 20, 2008, AS AMENDED,**  
Plaintiff,

v.

**ALEXANDER BERNSTEIN; ET AL.,**  
Defendants.

**ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND  
AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN  
COLIN**

**THIS CAUSE** came before the Court on Eliot Bernstein's Verified Sworn Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin. It is hereby,

**ORDERED AND ADJUDGED** that the Eliot Bernstein Verified Sworn Emergency Petition and Affidavit for Immediate Disqualification is **Denied** as legally insufficient.

**DONE AND ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida this 18<sup>th</sup> day of May, 2015.

\_\_\_\_\_  
MARTIN H. COLIN  
Circuit Court Judge

**SIGNED & DATED  
MAY 18 2015  
JUDGE MARTIN H. COLIN**



Copies furnished:

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, Fl. 33401

Alan Rose, Esquire  
505 South Flagler Drive, Suite 600  
West Palm Beach, Fl. 33401

Pamela Beth Simon  
303 East Wacker Drive, Suite 2725  
Chicago, IL 60601

Brian M. O'Connell, Esquire  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

# EXHIBIT C

PETITION FOR ALL WRITS...  
98



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

CASE NO: **502011CP000653XXXXSB**  
PROBATE DIVISION: IY


**IN RE: SHIRLEY BERNSTEIN  
ESTATE**

\_\_\_\_\_ /

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

Alan Rose, Esquire  
505 South Flagler Drive, Suite 600  
West Palm Beach, Fl. 33401

Pamela Beth Simon  
950 North Michigan Avenue, #2603  
Chicago, IL 60611

Max Friedstein and Carley  
Friedstein, Minors  
c/o Jeffrey and Lisa Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035

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

CASE NO: **502015CP001162XXXXSB**  
PROBATE DIVISION: IY

**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 DANEIL BERNSTEIN,**  
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 OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a

South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.



---

**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, Fl. 33401

Alan Rose, Esquire  
505 South Flagler Drive, Suite 600  
West Palm Beach, Fl. 33401

Brian M. O'Connell, Esquire  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

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

CASE NO: **502014CP002815XXXXSB**  
PROBATE DIVISION: IY

**OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,**  
Petitioner,

vs.


**ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,**  
Respondents.

\_\_\_\_\_ /

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:

Eliot and Candice Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

Steven A. Lessne, Esquire  
777 South Flagler Drive, Suite 500 East  
West Palm Beach, Fl. 33401

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

CASE NO: **502012CP004391XXXXSB**  
PROBATE DIVISION: IY

**THE ESTATE OF  
SIMON L. BERNSTEIN,**  
Deceased.

---

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

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**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, Fl. 33401

Alan Rose, Esquire  
505 South Flagler Drive, Suite 600  
West Palm Beach, Fl. 33401

Pamela Beth Simon  
950 North Michigan Avenue, #2603  
Chicago, IL 60611



Brian M. O'Connell, Esquire  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

Lisa Friedstein and Carley  
Friedstein, Minors  
c/o Jeffrey and Lisa Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035

Joshua, Jacob and Daniel  
Bernstein, Minors  
c/o Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

Irwin J. Block, Esquire  
700 S. Federal Highway, Suite 200  
Boca Raton, Fl. 33432

Gary Shendell, Esquire  
2700 N. Military Trail, Suite 150  
Boca Raton, Fl. 33431

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

CASE NO: **502012CP004391XXXXSB**  
PROBATE DIVISION: IY

**THE ESTATE OF  
SIMON L. BERNSTEIN,**  
Deceased.

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**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

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**MARTIN H. COLIN**  
Circuit Judge

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2700 N. Military Trail, Suite 150  
Boca Raton, Fl. 33431

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

CASE NO: **502014CP003698XXXXSB**  
PROBATE DIVISION: IY

**TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN  
TRUST AGREEMENT DATED  
MAY 20, 2008, AS AMENDED,**  
Plaintiff,

v.

**ALEXANDER BERNSTEIN; ET AL.,**  
Defendants.

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, Fl. 33401

Alan Rose, Esquire  
505 South Flagler Drive, Suite 600  
West Palm Beach, Fl. 33401

Pamela Beth Simon  
303 East Wacker Drive, Suite 2725  
Chicago, IL 60601

Brian M. O'Connell, Esquire  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

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

CASE NO: **502011CP000653XXXXSB**  
PROBATE DIVISION: IY


**IN RE: SHIRLEY BERNSTEIN  
ESTATE**

\_\_\_\_\_ /

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

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505 South Flagler Drive, Suite 600  
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2142 Churchill Lane  
Highland Park, IL 60035

Irwin J. Block, Esquire  
700 S. Federal Highway, Suite 200  
Boca Raton, Fl. 33432

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL. 60035

Peter Feaman, Esquire  
3615 Boynton Beach Blvd.  
Boynton Beach, Fl. 33436

John J. Pankauski, Esquire  
120 South Olive Avenue, 7<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

Mark R. Manceri, Esquire  
2929 East Commercial Blvd., Suite 702  
Fort Lauderdale, Fl. 33308

Robert Spallina, Esquire  
Boca Village Corporate Center I  
4855 Technology Way, Suite 720  
Boca Raton, Fl. 33431

Donald Tescher, Esquire  
Boca Village Corporate Center I  
4855 Technology Way, Suite 720  
Boca Raton, Fl. 33431

Julia Iantoni, a Minor  
c/o Guy and Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035

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

PROBATE DIVISION  
CASE NUMBER: **502012CP004391XXXXNB**  
DIVISION: IJ

IN RE: ESTATE OF

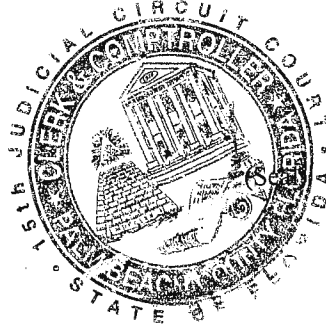
**SIMON L BERNSTEIN**, Deceased

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated **05/19/15**, the above styled case is reassigned to Division **IJ**, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY: Miley Bock  
Deputy Clerk

2015 MAY 19 PM 4:27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

cc:  
cc: ALL PARTIES



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

PROBATE DIVISION <sup>2011</sup>  
CASE NUMBER: ~~502012~~ CP000653XXXXNB  
DIVISION: IJ

IN RE: ESTATE OF

**SHIRLEY BERNSTEIN**, Deceased

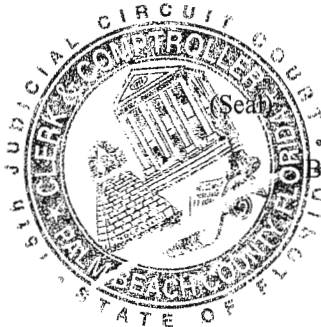
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Sharon R. Bock  
Clerk & Comptroller



BY:

*Sharon R. Bock*  
Deputy Clerk

2015 MAY 19 PM 4:27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH FILED

cc:  
CC: ALL PARTIES

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

PROBATE DIVISION  
CASE NUMBER: **502014CP003698XXXXNB**  
DIVISION: IJ

IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

**DTD MAY 20, 2008, AS AMENDED**

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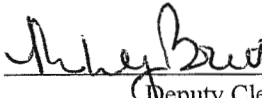
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WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY:   
Deputy Clerk

2015 MAY 19 PM 4:27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY  
SOUTH CITY BRANCH-FILED

cc:  
CC: ALL PARTIES

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

PROBATE DIVISION  
CASE NUMBER: **502015CP001162XXXXNB**  
DIVISION: IJ

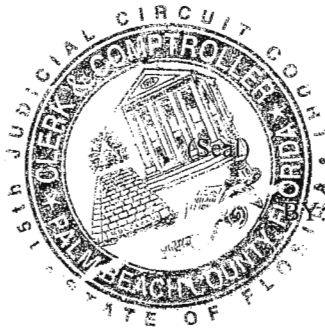
IN RE: THE 2008 SIMON L. BERNSTEIN TRUST AGREEMENT

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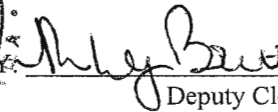
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WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock  
Clerk & Comptroller

  
Deputy Clerk

2015 MAY 19 PM 4:26  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

cc:  
CC: ALL PARTIES

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

PROBATE DIVISION  
CASE NUMBER: 502014CP003698XXXXNB  
DIVISION: IJ

IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

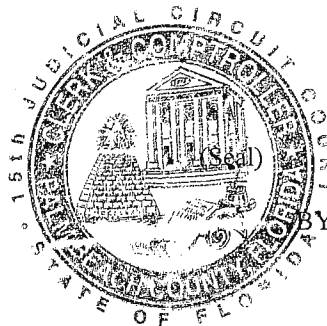
**DTD MAY 20, 2008, AS AMENDED**

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***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated *05/19/15*, the above styled case is reassigned to Division *IJ*, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY: Sharon R. Bock  
Deputy Clerk

2015 MAY 19 PM 4:27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

cc:  
CC: ALL PARTIES

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

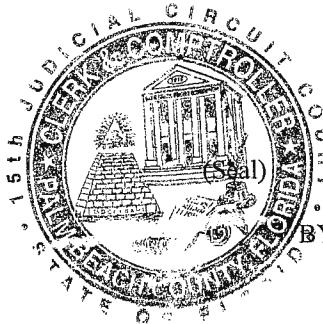
PROBATE DIVISION  
CASE NUMBER: **502014CP002815XXXXNB**  
DIVISION: IJ

IN RE: SIMON BERNSTEIN IRREVOCABLE TRUSTS CREATED FOR  
THE BENEFIT OF JOSHUA, JAKE & DANIEL BERNSTEIN

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated *05/19/15*, the above styled case is reassigned to Division *IJ*, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY: *Sharon Bock*  
Deputy Clerk

2015 MAY 19 PM 4: 27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

cc:  
CC: ALL PARTIES

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

PROBATE DIVISION  
CASE NUMBER: 502012CP004391XXXXNB  
DIVISION: IJ

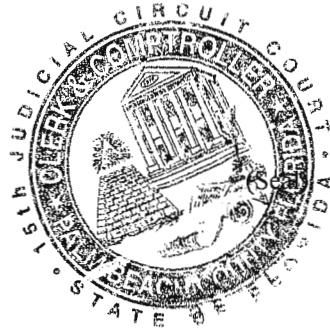
IN RE: ESTATE OF  
**SIMON L BERNSTEIN**, Deceased

---

***CLERK'S NOTICE OF REASSIGNMENT***

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Sharon R. Bock  
Clerk & Comptroller

BY: *Mahey Bock*  
Deputy Clerk

2015 MAY 19 PM 4:27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH FILED

cc:  
CC: ALL PARTIES

**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”).**

**MOTION FOR LEAVE TO  
FILE A REPLY BRIEF IN EXCESS OF  
FIFTEEN PAGES**

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 7.1, respectfully move this honorable court for an order granting leave to file a reply memorandum of law in further support of their motion for summary judgment in excess of the fifteen page limit, and in support thereof states as follows:

1. Movants are prepared to file their replies to the Estate and Eliot's responses to movants' motion for summary judgment. Movants' reply is due on June 26, 2015.
2. The Estate's response brief is approximately thirteen pages, and Eliot's response brief is fifteen pages, for a combined total of twenty-eight pages of opposition pleadings.
3. In lieu of filing two fifteen page reply briefs, Movants seek leave of the court to file a single, consolidated reply brief in excess of fifteen pages that shall not exceed twenty pages.

WHEREFORE, Plaintiffs pray for an Order granting them leave to file a reply memorandum of law in further support of their motion for summary judgment that exceeds the fifteen page limit.

Dated: June 25, 2015

Respectfully submitted,

/s/ Adam Simon

Adam Simon, Esq.

#6205304

303 East Wacker Drive,

Suite 2725

Chicago, Illinois 60601

(312) 819-0730

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, June 25, 2015:

MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion for leave to file a reply brief in excess of fifteen pages [197] is granted. Plaintiffs may file a consolidated reply brief of up to twenty pages. The 6/30/15 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 )

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**

**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 REPLY TO THE ESTATE OF  
SIMON BERNSTEIN’S AND ELIOT  
BERNSTEIN’S RESPONSES  
TO 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. )  
 \_\_\_\_\_ )

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 further support of their motion for summary judgment and in reply to the responses of the Estate of Simon Bernstein and Eliot Bernstein.

## **INTRODUCTION**<sup>1</sup>

In respondents' combined efforts to knock down a few trees, they have missed the forest completely. In fact, Eliot denies and disclaims any claim to the forest, both on behalf of himself and his children. Eliot then takes a giant leap further by denying the forest's very existence.

More importantly, both the Estate and Eliot failed to plant any tree of their own. And all of this is because respondents seem to have forgotten or misapprehended the fact that this is now an interpleader action based on the Interpleader Complaint filed by the Insurer and the conflicting pleadings of the potential claimants.

Respondents' collective failure to assert competing claims to the Policy Proceeds is the dispositive issue (the forest) in this litigation. By failing to assert and establish viable claims of their own that could prevail at trial, both respondents fail to raise a dispute as to the primary issue which is who is the beneficiary of the Policy Proceeds. Movants' motion for summary judgment, on the other hand, sets forth two legal theories (Counts I and II) both leading to the same conclusion, and that is the Bernstein Trust is the beneficiary of the Policy Proceeds.

### **SUMMARY JUDGMENT UNOPPOSED AS TO COUNT I**

Respondents argue that movants can no longer proceed on Count I because it's moot since the Insurer was dismissed as a party from the litigation after depositing the Policy Proceeds with the Registry of the Court. But, Respondents chose to ignore the fact that Count I of

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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.

movant's first amended complaint states one of its claims to the Policy Proceeds on behalf of an express common law trust – the Bernstein Trust – and thus is certainly not moot. (**Exh. 25, Movants' First Amended Complaint, Count I**).

Neither respondent cites any legal authority that requires a party to re-plead its claim to the stake simply because the interpleading party deposited the stake -- the Policy Proceeds -- with the court and was eventually dismissed from the litigation. Nor, did the court order the conflicting claimants to re-plead when it granted the Insurer's motion to dismiss itself from the litigation. (**Dkt. #101**). And again, the relief requested in Count I specifically targets the Policy Proceeds placed on deposit with the Registry of the Court. (**Exh. 25, Movants' First Amended Complaint, Count I**).

An interpleader involves two stages. In the first, the court determines if the prerequisites of an interpleader action have been met, and if so, a court may discharge the stakeholder. *Aaron v. Merrill Lynch Pierce Fenner & Smith*, 502 F.Supp.2d 804, 808 (2007). In the case at bar, on February 18, 2014, the court entered an order discharging the Insurer, and did not order the conflicting claimants to the Policy Proceeds whom had been named parties to the case to re-plead their claims to the stake (the Policy Proceeds). (**Dkt. #101**).

Also, the Insurer originally brought its Interpleader Complaint as a counterclaim to Movants' initial breach of contract action. In its Interpleader Complaint the Insurer alleged that the Bernstein Trust had filed a breach of contract action seeking the Policy Proceeds, and that it was the named contingent beneficiary of the Policy Proceeds. (**Exh. 28, Insurer's Interpleader Complaint, ¶3 and ¶9**). This shows that the Insurer clearly understood that Movant's Count I

represented a claim to the Policy Proceeds and treated it as such when filing its Interpleader Complaint.

Now that the stake (the Policy Proceeds) has been deposited, in this second stage of the litigation, the court determines which claim to the Policy Proceeds prevails. *Id.* Count I sets forth all the facts and elements required under the pleading requirements of the FRCP to state one of its claims to the Policy Proceeds. Since both respondents argued that Count I was moot, they willingly ignored it. Thus, movants' uncontroverted Count I provides a first basis for the court to grant the relief requested by way of summary judgment. But in light of the shortcomings of respondents' opposition briefs, movants will provide the court with several additional compelling reasons for granting its motion for summary judgment.

#### ARGUMENT

#### NO COMPETING CLAIMS; NO STANDING; NO TRIABLE ISSUE OF FACT

In its motion pleadings, movants demonstrated that the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 is the beneficiary of the Policy Proceeds at issue in this case. This essential fact is dispositive of the central issue in this case – who is the beneficiary of the Policy Proceeds. Both Respondents fail to dispel or disprove the underlying facts that were used by Ted Bernstein to submit and explain Exh. 17, which is a demonstrative exhibit containing a diagram illustrating that no matter if the Primary Beneficiary or Contingent Beneficiary are determined to have the prevailing claim, the ultimate outcome is the same, and the Bernstein Trust will end up with the Policy Proceeds. (**Movants' SoF, ¶44**). In fact, the Estate makes a significant admission supporting movants' explanation when the Estate did not dispute that “on August 26, 1995, Simon L. Bernstein, as Member of the VEBA, named the

Bernstein Trust as the “persons to receive my death benefits...”. (**Estate’s response to movants SoF, #32**). Here, the Estate is admitting that Simon Bernstein designated the Bernstein Trust as the ultimate beneficiary of the Policy Proceeds in the event the Primary Beneficiary survived the insured. As, movants explanation of **Exh. 17** demonstrated, the Primary Beneficiary – the VEBA -- did not survive the insured and thus the Policy Proceeds must pass to the Bernstein Trust as contingent beneficiary of the Policy.

The Estate also concedes that the Bernstein Trust was designated the owner of the Lincoln Benefit Life Policy, and does not dispute the written evidence submitted to Lincoln Benefit to designate the Bernstein trust as owner of the Lincoln policy. (**Estate’s Response to SoF, ¶64**). The Estate’s admission that the Bernstein Trust was named the owner and beneficiary of the Lincoln Policy, and separate named beneficiary of the VEBA is at minimum a tacit admission of the very existence of the Bernstein Trust. Similarly, the fact that the Bernstein Trust was named the owner and beneficiary of the Lincoln Policy according to the Lincoln Policy records submitted by movants’ is undisputed evidence in and of itself of the existence of the Bernstein Trust for the Lincoln Policy was at one time a part of the corpus of the Trust before the Lincoln Policy lapsed.

The documents and Policy records movants submitted as proof of the identity of the named beneficiaries of the VEBA, and the Capital Bankers Policy and the owner and beneficiary of the Lincoln Policy serve as undisputed, clear and convincing proof of the formation and existence of the Bernstein Trust itself. Respondents also fail to refute the written and signed evidence and case law Movants relied upon which establish that Movants’ evidence satisfies the statute of frauds for written proof of the existence and formation of a trust. Such evidence includes the SS-4 form containing the signature of the trustee, the name of the trust, and its tax



i.d. Movants also submitted beneficiary and owner designations for the VEBA, this Policy and the Lincoln Policy collectively containing the Settlor's signature, the Trustee's signature, the tax i.d. and name of the trust. **(Movants' SoF, ¶32, ¶ 44, ¶59-¶64).**

Further, the Estate's assertion that David Simon only saw the executed trust in the presence of Simon Bernstein is just plain wrong and is a blatant mischaracterization of his testimony. At his deposition, David Simon testified that he saw the executed Bernstein Trust Agreement on the date Simon Bernstein executed it after he returned from the law offices of Hopkins & Sutter. **(Exh. 32, Dep. D. Simon, p. 44:5-8).** David Simon further testified that he reviewed or according to his customary business practice would have reviewed the executed Bernstein Trust Agreement during a document review meeting for an A.L.P.S. funding of the Lincoln Policy. **(Exh. 32, Dep. of David Simon, p. 100:15-102:2).** David Simon also testified that he saw the executed Bernstein Trust Agreement just before he assisted Simon and Shirley Bernstein with completing the SS-4 form to obtain a tax i.d. number for the Bernstein Trust. **(Movants SoF, ¶59).** The SS-4 form itself evidences formation and existence of the trust, and the fact that the tax i.d. number that appears on the SS-4 form is used by the Bernstein Trust in association with both the Capitol Bankers Policy and the Lincoln Policy is extremely strong corroborative evidence of the formation and existence of the Bernstein Trust.

More glaringly, Eliot affirmatively denies and disclaims any interest in the "non-existent Policy" and "non-existent Policy Proceeds". Eliot's response to movants' statement of facts includes several admissions which nullify his standing to participate in this interpleader action as a potential claimant at all. For example, Eliot states as follows:

"The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally

nonexistent “Policy” that this the subject of this Breach of Contract Lawsuit....” (**Eliot Resp. Statement of Facts, p.3**).

“There can be no “Policy Proceeds” without a legally binding policy produced...” (**Eliot Resp. Statement of Facts, p.4**)

“There is no policy presently produced or even proven by Plaintiffs so no “Policy Proceeds” can be determined from a specimen....” (**Eliot Resp. Statement of Facts, p.12**).

“Eliot never submitted a claim to the carrier claiming he or his children were named beneficiaries.” (**Eliot Resp. Statement of Facts, p.12**).

Eliot’s final strategy is to attempt to manufacture a dispute between the primary beneficiary and the contingent beneficiary where none exists, and Eliot certainly has no standing to raise one. And, both respondents’ oppositions rest largely on their own self-serving misstatements of law requiring a written and signed, formal trust agreement. Respondents’ proclamations are totally devoid of any citations to authority for the proposition that a trust can only exist if a formal, executed, written trust document is produced.

#### **DEAD MAN’S ACT – EXCEPTION TRIGGERED – DOOR OPEN**

Both Respondents attempt to exclude certain testimony of Ted Bernstein and David Simon regarding conversations they had with decedent, Simon Bernstein. But, the only party permitted to invoke the Illinois Dead Mans’ Act is a “representative”. *Balma v. Henry*, 404 Ill.App. 3d 233 (2<sup>nd</sup> Dist. 2010), *Moran v. Erickson*, 297 Ill.App. 342 (1<sup>st</sup> Dist. 1998). Thus, all of Eliot’s invocations of the DMA must be disregarded by the court.

Turning to the Estate’s invocation of the DMA, the Estate apparently failed to adequately consider and address certain statutory exceptions to the DMA. And the Estate *triggered a big one* in its own statements of additional facts.

In its memorandum of law, the Estate seeks to bar “the testimony of every Plaintiff (including Ted Bernstein) and of David Simon; regarding what Simon Bernstein said or did in

their presence.” (**Estate brief, p.8**). The Estate invoked the DMA stating that as interested parties all testimony of Ted Bernstein and David Simon relating to conversations they had with decedent, Simon Bernstein, should be excluded. (**Estate opp. brief, p.8**).

But in its own statement of additional facts, the Estate “opens the door” to the very type of testimony it seeks to exclude -- and opens it wide -- by making the following allegations of additional facts:

5. Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. Ted Bernstein testified that he was *informed by his father* that he would be a trustee of the 1995 Trust in 1995 but did not recall his status as trustee until he was informed by David Simon after Simon Bernstein’s death. (*cite to Ted Bernstein testimony omitted*) (emphasis added).

23. Simon Bernstein participated in a telephone conference with Plaintiffs and their spouses a few months prior to his death (Summer 2012). *During this telephone conference, Simon Bernstein instructed* that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children in an effort to quell some then-existing family acrimony. (*cite to David Simon and Ted Bernstein’s testimony omitted*) (emphasis added) (**Estate Statement of Additional Facts, ¶23**).

First, its simply odd that such allegations of facts are included by the Estate in its own opposition papers since Simon Bernstein’s declarations that the “policy proceeds were to pass to his five children” and that his son, Ted “would be a trustee of the 1995 Trust in 1995” both jibe so nicely with Movants’ claim that (i) the Bernstein Trust is the beneficiary of the Policy Proceeds, (ii) that the five children are the beneficiaries of the Bernstein Trust; and (iii) Ted Bernstein is the successor trustee.

But, back to the point. By alleging these additional facts, the Estate offers up the exact type of testimony it otherwise seeks to exclude under the DMA. The DMA provides in pertinent part as follows:

735 ILC § 8-201. Dead-Man's Act. In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no

adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, except in the following instances:

(a) If any person testifies on behalf of the representative to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, any adverse party or interested person, if otherwise competent, may testify concerning the same conversation or event.

By offering testimony of conversations between the decedent on one hand, and David Simon, Ted Bernstein and the remaining Plaintiffs on the other, the Estate has certainly opened the door to testimony regarding all conversations described in the Estate's own allegations of additional facts. But also, where courts determine that in the face of the "door opening" testimony further exclusions of evidence under the DMA would provide a misleading picture of events, courts have not hesitated to open the door wide in order to let the truth in.

In other words, the Estate's offer of the same testimony they seek to exclude when offered by movant triggers the exception to the DMA for all testimony between these witnesses and the decedent for the rest of these proceedings including trial, if any. *Zorn v. Zorn*, 126 Ill.App.3d 258 (4<sup>th</sup> Dist., 1984). In *Zorn*, the court was confronted with a case where the party who had invoked the DMA, was simultaneously trying to offer the same type of testimony they were seeking to exclude.

The court in *Zorn* reasoned as follows:

"Although it was decided under a prior statute, the case of *Perkins v. Brown* (1948), 400 Ill. 490, 81 N.E.2d 207, bears many striking similarities to the case at bar. There the defendant wished to explain his testimony as an adverse witness by testifying to conversations which he had had with the decedent in the months prior to her death. The Illinois Supreme Court held:

"The justice of this rule is too apparent to require discussion. It would be palpably unjust if a litigant were permitted to call an adverse party and examine him as to one fact or phase of a transaction in his favor and then invoke the bar of the statute when the party examined sought to testify further with regard to the same transaction for the purpose of

explaining his former testimony or correcting an erroneous impression left thereby. (cite omitted). Giving the litigant the right to call the adverse party and examine him as if under cross-examination, in no way abrogates the rule that where a party calls a witness and examines him as to a particular part of a transaction, the other party may call out the whole of the transaction bearing upon or tending to explain or qualify the particular part to which the examination of the other party was directed. Appellants having called Brown to testify and elicited from him the statement that he had received a deed for the property from the deceased and that he did not pay her for it or buy it from her, it was entirely proper to permit him to explain the entire transaction with the deceased, including the conversations had by her with him concerning the conveyance of the property, as such conversations were a part of the transaction inquired about by appellants.” *Zorn v. Zorn*, 126 Ill.App.3d 258 (4<sup>th</sup> Dist., 1984) citing *Perkins v. Brown*, 400 Ill. 490, 497, 81 N.E.2d 207, 211 (1948).

Here, just as in *Perkins* and *Zorn*, it would be “palpably unjust” to allow the Estate to pick and choose testimony and evidence in this fashion. The door has been opened, and according to the DMA and related case law, it remains open for the remainder of the proceedings. In short, the court should disregard both respondents invocations of the DMA entirely.

#### **STANDARD FOR SURVIVING SUMMARY JUDGMENT**

Both respondents set forth the same standard they each must satisfy to survive a motion for summary judgment:

At summary judgment, “if fair-minded persons could draw more than one conclusion or inference from the facts, including one unfavorable to the moving party, a triable issue exists and the motion for summary judgment should be denied. *It is only when undisputed facts are susceptible to a single inference that the issue becomes one of law.*” (emphasis added) (**Estate opp. Brief, p.13; Eliot opp. Brief, p.16**)

In only trying to chop down a few trees -- attacking oral testimony made in front of the decedent -- the Estate forgot to lay claim to the forest -- the Policy Proceeds. The Estate has attached no documentation that the Estate was ever named the beneficiary of the Policy

Proceeds. Nor did the Estate rebut the affidavit of Insurer's 30(b)(6) representative Don Sanders whom confirmed the Estate was never named a beneficiary of the Policy Proceeds. **(Movants' SoF, ¶70)**

Similarly, Eliot failed to submit any evidence or testimony which supports a claim to the Policy Proceeds either on his own behalf or that of his children. This makes perfect sense since Eliot denies the very existence of the Policy and Policy Proceeds. In addition, Eliot also failed to rebut the Affidavit of Don Sanders and the Policy records that indicate that neither Eliot, nor any of his children, were ever individually named as beneficiaries of the Policy Proceeds. **(Movants' SoF, ¶67).**

Conversely, movants established that the Bernstein Trust was the beneficiary of the Policy Proceeds. What is truly dispositive here is that (i) the Estate failed to explain how any disputed fact raises an inference that the Policy Proceeds could be awarded to the Estate; and (ii) Eliot failed to explain how any disputed fact raises an inference that the Policy Proceeds could be awarded to Eliot. Eliot does not claim that either Eliot or his children are the beneficiaries of the Policy Proceeds. Similarly, the Estate never asserts that it was named a beneficiary of the Policy Proceeds.

The Estate tries – but fails – to rebut the trust's existence. Tellingly, while relying on certain portions of Simon Bernstein's last will regarding his bequests, the Estate fails to address the language highlighted by movants and contained in Simon Bernstein's own last Will which reaffirmed his beneficiary designation of insurance contracts. **(Movants' SoF, ¶71).**

But, respondents' collective failure to take that next essential step of drawing an inference from disputed facts that creates a triable issue is the fatal blow to their opposition. Because the Estate and Eliot each failed to show how any set of facts could lead to the conclusion that they could be determined to be the prevailing claimant and awarded the Policy Proceeds, both respondents failed to survive summary judgment according to the standards set forth in their own opposition papers.

Since they lacked viable claims of their own, both Eliot and the Estate sought simply to poke a few holes in Movants' case which is insufficient to prevail in an Interpleader Action. 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). Neither rebutted this proposition of law contained in the movants' memorandum of law regarding interpleader procedure. In doing so, both respondents failed to lay claim to the stake, confining their responses to trying to point out weakness of movants' claims or asserting claims of others -- chopping trees but ignoring the forest. And in the same vein, since respondents provided no evidence that they are even potential claimants to the Policy Proceeds, neither respondent possess the standing to make any of the evidentiary objections they make in their responses or oppose movants' claims at all.

The only other strategy both respondents utilized was to try to assert the claims of others (LaSalle and the 2000 Trust) which as movant pointed out is also improper and should be disregarded in an Interpleader Action. Neither Respondent has alleged any standing or representative capacity to represent the 2000 Trust or LaSalle. Simply put, a claimant may only assert his own injury or claim and cannot rest his claim to relief on the legal rights or interests of

third parties. *Hodack v. City of St. Peters*, 535 F.3d 899 (8<sup>th</sup> Cir. 2008) citing *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); *see also Deutsche Bank Nat. Trust Co. v. Gilbert*, 2012 IL App (2d) 120164 (2<sup>nd</sup> Dist., 2012).

Also, the notion that either the Insurer or movants' failed to notify or serve the 2000 Trust, or that the 2000 Trust has a claim at all is nonsensical. The Insurer looked at its Policy records and did not determine that the 2000 Trust was a potential claimant. Neither respondent has submitted any Policy record submitted to the insurer by a Policy owner naming the 2000 Trust an owner or beneficiary of the Policy.

The Insurer was represented by competent counsel. Presumably, the Insurer together with its counsel determined which persons and entities they felt represented potential claimants to the Policy Proceeds before deciding which parties to serve with their Interpleader Action. The Insurer never heard from a representative of the 2000 Trust asserting a claim. The Insurer evidently found no need to name or serve the 2000 Trust. And, nothing and no one prevented either respondent from notifying the 2000 Trust or serving it with this litigation. Also, it is safe to assume that the trustee of a trust that purportedly has a pecuniary interest in an insurance policy with a death benefit exceeding \$1,000,000.00 would be duty bound to periodically monitor whether the insured was alive or dead, and if dead, make a death claim on the Policy. The 2000 Trust never did.

Though lacking any standing to do so, Eliot raises an issue regarding LaSalle as primary beneficiary. Eliot fails to dispute all the evidence movants submitted proving that LaSalle was acting as a trustee for the VEBA that had long since been dissolved. **(Movants' SoF, ¶29-39).**



The Estate, on the other hand, admitted that LaSalle was acting as a trustee for the VEBA that had long since been dissolved. **(Estate’s response to movants SoF, #33 and #36)**. Also, the fact is that the Insurer did serve their Interpleader Complaint upon Bank of America, N.A. as the successor to LaSalle as alleged in their Interpleader Complaint. Subsequently, Bank of America, N.A. was dismissed from the litigation. **(Movants’ SoF ¶22 and Insurer’s Interpleader Action, Exh. 28, ¶8)**.

Even if the Insurer failed to serve a claimant whom has not appeared in this litigation – it did not – that still does not impede the court’s ability to render summary judgment in this action. If another claimant were to appear later to file an independent and viable claim against the Insurer, it is the Insurer who may face liability that exceeds the amount of the stake despite all of its efforts to the contrary. This risk of excess liability of the Insurer is not a risk that falls on any other party to this action, and thus provides no reason to delay judgment with regard to this litigation. Given the time that has lapsed since the death of the insured, and the extent to which the Insurer went to examine its records and serve all potential conflicting claimants, the Insurer’s risk, if any, is miniscule. And, in any case, as a matter of law and procedure an interpleader action cannot guaranty to limit the stakeholder’s liability to that of the stake. *William Penn Life Ins. Co. of New York v. Viscuso*, 569 F.Supp.2d 355 (S.D. NY, 2008); *Lee v. West Coast Life Ins. Co.*, 688 F.3d 1004 (9<sup>th</sup> Cir., 2012).

**UNDISPUTED BENEFICIARIES OF THE BERNSTEIN TRUST**

With regard to the identity of the beneficiaries of the Bernstein Trust, Respondents fail to raise a disputed issue of fact. Here again, Respondents failed to refute the consistent evidence provided in **Exh. 15** and **Exh. 16** that both identify Simon Bernstein’s children as beneficiaries

of the Bernstein Trust. Respondent's failed to make any counterargument as to the identities of the beneficiaries, and also failed to address or distinguish the case law cited by Movants' in their motion that obligates the court to look at the totality of the circumstances and apply common sense in making the determination of the intended beneficiaries.

The Estate failed to dispute the arguments made by Movants with regard to the surrounding factors and considerations that the court should consider with regard to the timing of the formation of the trust and its purposes. All of the parole evidence regarding the Bernstein Trust and the five children as its beneficiaries is also admissible and unrefuted since the DMA does not apply to exclude it.

#### **SUCCESSOR TRUSTEE**

The issue of the identity of the Successor Trustee of the trust is really a non-issue and yet the Estate devotes a significant portion of its response to it. With regard to the issue of the identity of the successor trustee, respondents ignore both written evidence provided in **Exh. 16**, and the fact that Movant's have petitioned the court for a declaration or appointment of Ted Bernstein as successor trustee based on the written consent of 4/5ths of the beneficiaries of the Bernstein Trust. Also, since the DMA does not apply, all of David Simon's, Ted Bernstein's and all the other Plaintiffs' testimony regarding the existence of the trust, the identity of the trustee and successor trustee, and the beneficiaries of the trust is admissible and unrefuted. Finally, the Estate's own statement of additional fact #5 provides evidence and cites testimony that Ted was informed by his father that he was one of the trustees.

### CONCLUSION

To wrap up let's briefly revisit how we got here and how this case should be resolved. The reason we are here in the first place is that movants filed a breach of contract action (and related claims) against the Insurer in the Circuit Court of Cook County, Illinois. In response, the Insurer removed to the Northern District and filed an Interpleader Complaint citing, *inter alia*, conflicting claims it received from Eliot Bernstein and the Bernstein Trust. Eliot's response expressly disclaimed any interest in the Policy proceeds on behalf of Eliot or his children. In fact, Eliot's response denied the very existence of the Policy and the Policy Proceeds. So, neither Eliot nor his children, by Eliot's own adamant admissions, possess a claim to the Policy Proceeds. As a result, Eliot and his children have no standing as potential claimants to the stake in this Interpleader Action.

Respondents provided no facts, testimony, or documents that establish a claim on behalf of the Estate, Eliot or Eliot's children. On the other hand, movants' have provided, clear, convincing, and undisputed evidence of their claim that the Bernstein Trust is the Beneficiary of the Policy Proceeds. Not only is this claim undisputed by respondents, it is corroborated by the Insurer's Policy records and the Affidavit of its Rule 30(b)(6) witness, Donald Sanders, VP of Operation.

All of the documents, and unrefuted testimony that establish the identity of the Bernstein Trust as Beneficiary, are also sufficient to satisfy both the statute of frauds, and/or a "clear and convincing" standard to prove up the existence and terms of the Bernstein Trust. The material terms of the trust, the identity of its beneficiaries are also undisputed. No other claimant has

asserted that they are beneficiaries of the Bernstein Trust other than movants on behalf of all five children of Simon Bernstein -- including Eliot. The Estate's own statement of additional facts #23 is completely consistent with this result.

Movants' written and parole evidence also establishes the identity of the successor trustee, Ted Bernstein. But in addition, movants' have set forth statutory authority for the court to declare and appoint Ted Bernstein as successor trustee by virtue of the consent of 4/5ths of the beneficiaries of the Bernstein Trust.

Ultimately, the court must first consider that movants have set forth detailed and documented claims to the Policy Proceeds explaining to the Court (i) how the beneficiary is to be determined according to the Policy -- from the beneficiary designations contained in the Policy records; (ii) who was the sole surviving beneficiary under the Policy -- the Bernstein Trust; (iii) who are the beneficiaries of the Bernstein Trust -- Simon Bernstein's five children, including Eliot; and (iv) who should be declared or appointed to be the successor trustee -- Ted Bernstein.

Next, the court should consider respondents' opposition papers, and ask itself:

Has the Estate drawn an inference that explains how the Estate could be awarded the Policy Proceeds at trial? Has Eliot drawn an inference that explains how Eliot, or his children, could be awarded the Policy Proceeds at trial? And, the answer to both questions is an emphatic "NO". So the only thing left for the court to do is enter the order requested by movants' in their motion for summary judgment.

Dated: June 26, 2015

Respectfully Submitted,

/s Adam M. Simon

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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 )  
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 documents, copies of which are attached, was electronically filed with the Clerk of the Court on the date indicated in the time stamp above:

- Movants' Memorandum of Law in further support of its motion for summary judgment and in reply to the Estate's and Eliot's responses
- Movants' Reply to the Estate's Statement of Additional Facts (and Exhibit thereto)
- Movants' Motion to Strike; Objections and Reply to Eliot's Statement of Additional Facts

**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 June 26, 2015:

ELIOT IVAN BERNSTEIN  
2753 NW 34 St.  
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*Appearing Pro Se*  
(By U.S. Mail)

James J. Stamos  
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Chicago, IL 60601  
*Attorney for Intervenor,  
Estate of Simon Bernstein*

Dated: June 26, 2015

/s/ Adam M. Simon  
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**IN THE UNITED STATES DISTRICT COURT  
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SIMON BERNSTEIN IRREVOCABLE )  
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Counter-Plaintiff )

SIMON BERNSTEIN IRREVOCABLE )  
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FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
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Trust, N.A., SIMON BERNSTEIN TRUST, )  
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**Case No. 13 cv 3643  
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**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’ REPLY TO THE  
ESTATE OF SIMON BERNSTEIN’S  
STATEMENT OF ADDITIONAL  
FACTS**

\_\_\_\_\_ )  
 )  
 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 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 reply to the Estate’s Statement of Additional Facts.

**MOVANTS' REPLY TO ESTATE'S STATEMENT OF ADDITIONAL FACTS**

1. Plaintiffs' and Intervenor's interests in the outcome of this action are diametrically opposed: the Policy proceeds will either be payable to the Plaintiffs or to the Estate, the beneficiaries of which are Simon Bernstein's grandchildren (Plaintiffs' children). (*See* Deposition of Ted Bernstein, attached hereto as Intervenor's Exhibit A, pp. 92:23 – 93:25).

Answer: Disputed. Ted Bernstein, who is a non-lawyer's understanding of where Policy Proceeds would go is not controlling. Also, this statement of additional fact does not contain all of Ted Bernstein's testimony on the issue, which included his acknowledgment that in the event the court did not rule that the Bernstein Trust was the beneficiary of the Policy Proceeds, that "there's infinite possibilities of where it could go." (*See* Deposition of Ted Bernstein, attached hereto as Exh. 37, pp, 120:7-121:4).

2. David and Pamela Simon are interested parties to this litigation. If Plaintiffs are successful, Pamela Simon will receive over \$300,000, representing 20 percent of the Policy proceeds. (*See* Deposition of David Simon, attached hereto as Intervenor's Exhibit B, pp. 58:9 – 59:4) David is Pamela's husband. (*Id.* at p. 7:9-10)

Answer: Object insofar as the characterization that they are "interested parties" calls for a legal conclusion. Undisputed that if Plaintiffs are successful Pamela Simon will receive 20 percent of the Policy Proceeds and David Simon is Pamela's husband.

3. Ted Bernstein is an interested party to this litigation. If Plaintiffs prevail, he will receive over \$300,000, representing 20 percent of the Policy proceeds. (*See* Intervenor's Exhibit A, pp. 9:18 – 10:4; 118:17 – 118:14)

Answer: Object insofar as the characterization that Ted is an “interested party” calls for a legal conclusion. Undisputed that if Movants’ prevail Ted will receive a 20 percent share of the Policy Proceeds.

4. The remaining Plaintiffs (Jill lantoni and Lisa Friedstein) are interested parties to this litigation. If Plaintiffs prevail, they will each receive over \$300,000, representing 20 percent of the Policy proceeds. (*See* Intervenor's Exhibit A, pp. 118:16 – 119:14; Plaintiffs' Exhibits 15 and 16).

Answer: Object insofar as the characterization that Jill and Lisa are “interested parties” calls for a legal conclusion. Undisputed that if Plaintiffs prevail Jill and Lisa will each receive a 20 percent share of the Policy Proceeds.

5. Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. (*See* Intervenor's Exhibit A, p. 24:6-12) Ted Bernstein testified that he was informed by his father that he would be a trustee of the 1995 Trust in 1995 but did not recall his status as trustee until he was informed by David Simon after Simon Bernstein's death. (*See* Intervenor's Exhibit A, pp. 24:13 — 25:3).

Answer: Undisputed with one clarification. Ted testified about the conversation described by the Estate between Ted and his father, Simon Bernstein. Except, Ted testified he was told by his father he was a “successor trustee”.

6. Plaintiffs have produced no executed original or executed copy of a written trust agreement reflecting the terms of the purported 1995 Trust. (See Dkt. No. 144 at ¶9; Intervenor's Exhibit A, p. 13:13-15; Plaintiffs' Exhibit 29 at ¶ 35, 37) No original or executed copy of the Policy has been produced by Plaintiffs to date. (See Plaintiffs' Exhibit 29 at 35).

Answer: Undisputed with regard to the executed written formal trust agreement. Objection as to relevance with regard to the Policy as the Insurer has not disputed either the Policy or its liability for the Policy Proceeds. Further, the Insurer has produced a specimen policy, as well as copies of the specification and schedule pages unique to the Policy.

7. While Ted asserts in his Affidavit that he was the Trustee of the Trust as of October 19, 2012, Robert Spallina, Simon Bernstein's lawyer, made an application for the Policy proceeds on behalf of Plaintiffs, purportedly as trustee of the 1995 Trust. (See Intervenor's Exhibit A, pp. 35:12 — 36:3 and Dep. Ex. 1) On October 19, 2012, Ted Bernstein sent an email to Robert Spallina suggesting that he had a "solution to the life insurance policy which provides the desired result" and that a conversation take place between he, Spallina, Pamela Simon and David Simon prior to any further overtures to the insurance company. (See Intervenor's Exhibit A, pp. 35:12 — 37:3; Dep. Ex. 1).

Answer: Object as to relevance as the Insurer never paid any claim that Spallina submitted and instead filed an Interpleader Action. Otherwise undisputed.

8. On November 19, 2012, after Robert Spallina unsuccessfully attempted to claim the Policy proceeds without providing any documentation, David Simon suggested attempting to secure the Policy proceeds on behalf of the Plaintiffs by submitting a waiver and settlement agreement. (*See* Intervenor's Exhibit A, pp. 51:22 — 52:2; 53:22 — 54:4; Dep. Ex.2)

Answer: Object as to relevance as the Insurer never paid any claim proposed or submitted and instead filed an Interpleader Action. Otherwise undisputed.

9. At least one "exhaustive search" for the 1995 Trust document had been conducted between September 13, 2012 and December 6, 2012, but it was not found. (*See* Intervenor's Exhibit A, p. 55:1-11).

Answer: Undisputed.

10. According to David Simon, the first attempt to locate the 1995 Trust took place in the winter of 2012-2013 (*See* Dep. of David Simon, p. 59:13-22). Foley & Lardner, the successor firm to Hopkins & Sutter, was contacted to see if they retained a copy of the 1995 Trust; but David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (*See* Intervenor's Exhibit B, pp. 44:12 — 45:15; 46:22 — 47:15)

Answer: Undisputed regarding the first attempts to locate the 1995 Trust. Disputed with regard to David's testimony as to who contacted Foley and Lardner as David Simon testified it "might have been Pam, might have been me, might have been Adam" and further when David Simon was asked who contacted Foley and Lardner he also responded "I'm not sure. I'd have to look." (Movants' Statement of Undisputed Facts, **Exh. 35**, David Simon

Dep., p. 45:12-13.)

11. On February, 8, 2013, Pamela Simon informed Ted Bernstein that she could not find a copy of the insurance Policy or the 1995 Trust. (*See* Intervenor's Exhibit A, pp. 60:25 — 61:10; Dep. Ex. 10)

Answer: Undisputed.

12. As of February 14, 2013, the Plaintiffs planned to pursue the Policy proceeds via a Release and Settlement Agreement and have the proceeds paid to Robert Spallina. (*See* Intervenor's Exhibit A, pp. 62:16-63:3; Dep. Ex.2)

Answer: Disputed. The Estate has misstated the testimony and evidence it cited. The testimony and evidence does not indicate that the settlement will result in a payment to Robert Spallina. Instead, it states that the proceeds would be deposited into the Tescher and Spallina firm trust account.

13. Mr. Spallina apparently engaged in discussions with Heritage making a plan for the company to interplead the funds into court in Florida. (*See* Intervenor's Exhibit A, Dep. Exs. 1, 2, 4, 7, 11) However, at that point David Simon and his brother, Adam Simon, the attorney currently representing Plaintiffs in this case, abruptly filed a lawsuit in Circuit Court of Cook County on April 15, 2014 seeking to obtain the funds from Heritage. (*See* Intervenor's Exhibit A, Dep. Ex. 16) This act resulted in a breach with Mr. Spallina, including a very angry exchange of emails (*See* Intervenor's Exhibit A, Dep. Exs. 16, 17).

Answer: Objection relevance. Without waiving said objection, dispute. Adam Simon, as attorney, filed the lawsuit in Illinois on behalf of Ted Bernstein, as Trustee for the Bernstein Trust. Undisputed that Adam Simon sent a, terse, email attempting to end communications with Mr. Spallina.

14. Despite David Simon's averment that he recalls having created the trust on his computer and having seen it after execution, the Complaint filed by Adam Simon on behalf of David Simon's wife and her siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73 at ¶ It was only after this event that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16.

Answer: Object relevance. Without waiving the objection, Movants' do not dispute that the words "executed" or "written" do not appear in their complaint to describe the Bernstein Trust.

15. As of August 30, 2013, the 1995 Trust (in any form) had not been located. (See intervenor's Exhibit A, pp. 76:11 — 77:3).

Answer: Disputed. Misstates the testimony cited, as Ted Bernstein merely testified that as of August 30, 2013, he was unaware that drafts of the Bernstein Trust had been located.



16. David Simon claims to have located an unexecuted copy of the purported 1995 Trust on the computer system of the Simon Law Firm on September 13, 2013. (*See* Plaintiffs' Exhibit 15; Plaintiffs' Exhibit 32 at ¶¶28-29)

Answer: Undisputed.

17. David Simon claims to have located an unexecuted copy of the purported 1995 Trust containing the handwriting of David Simon, in the stored files of the Simon Law Firm on or around September 13, 2013. (*See* Intervenor's Exhibit B, pp. 94:13 — 96:22)

Answer: Undisputed.

18. According to David Simon, the persons who searched the offices of the Simon Law Firm to see whether a copy of the 1995 Trust could be found were David Simon (husband of Plaintiff Pamela Simon), Adam Simon (brother of David Simon), and Cheryl Sychowski (employee of STP Enterprises and The Simon Law Firm). (*See* Intervenor's Exhibit B, p. 47:17--21).

Answer: Undisputed.

19. Simon Bernstein executed a Will and Irrevocable Insurance Trust on August 15, 2000 (the "2000 Trust"). The Policy at issue in this litigation was listed as an asset of the 2000 Trust. That Trust document made no reference to a 1995 [Trust] even though by definition it would have superseded it. (*See* Intervenor's Exhibit A at Dep. Ex. 23).

Answer: Object insofar as the Estate lacks standing to make any claims on behalf of the 2000 Trust. Object to the legal conclusion that “by definition it would have superseded” the 1995 Trust although it did not mention it. Without waiving said objections, dispute insofar as Dep. Ex. 23 does not indicate it is a “Will and Trust”. Undisputed insofar as Dep. Ex. 23 does indicate that it is a “Simon Bernstein 2000 Insurance Trust”. Dispute that the Policy at issue ever became an asset of the 2000 Trust as no one has produced any evidence that the 2000 Trust was ever named an owner or beneficiary of the Policy on the Policy records of the Insurer.

20. Pursuant to the terms of the 2000 Trust, Pamela Simon and her lineal descendants are considered "predeceased" and no inheritance was allocated for them "not out of lack of love or affection but because they have been adequately provided for." (See Intervenor's Exhibit A at Dep. Ex. 23, p. 19).

Answer: Objection, relevance as the 2000 Trust was never named a beneficiary of the Policy Proceeds and the Estate has no standing to raise any claim on its behalf. Disputed insofar as the 2000 Trust does not contain a general statement that “no inheritance” was allocated for Pamela Simon and her lineal descendants. The 2000 Trust merely says that “The Settlor has not made any provisions herein (in the 2000 Trust) for Pamela Beth Simon or her lineal descendants”.

21. Simon Bernstein executed a Will and Trust Agreement on May 20, 2008 (the "2008 Trust"). Pursuant to the terms of the 2008 Trust, Pamela Simon and her lineal descendants, in addition to Ted Bernstein and his lineal descendants are considered "predeceased" and no inheritance shall pass to them pursuant to the terms of the 2008 Trust (See Intervenor's Exhibit A at Dep. Ex. 25, p. 7 E1.; Dep. of David Simon, p. 55:2-17).

Answer: Objection, relevance. The Estate has no alleged no standing on behalf of the 2008 Trust, nor has the Estate submitted any evidence that the 2008 Trust was ever named a beneficiary of the Policy. Without waiving the objections, dispute and deny that Dep. Ex. 25 is entitled a "Will and Trust Agreement", and disputes and denies that Dep. Ex. 25, includes the word "predeceased" or refers to Ted Bernstein or Pamela Simon by name anywhere in the document.

22. In May 2012, Plaintiff Pamela Simon wrote to her father, expressing her distress over his decision to disinherit her and her children, along with Plaintiff Ted Bernstein and his children. (See Intervenor's Exhibit A at Dep. Ex. 25). Plaintiff Pamela Simon was passionate that Simon Bernstein's estate plan did not, at that time, include several of his children, including Pamela Simon and Ted Bernstein. (See Intervenor's Exhibit A, p. 91:13-25).

Answer: Dispute that the communication referred to is attached as Dep. Ex. 25 to Intervenor's Exhibit A. Undisputed that Pamela Simon was concerned about the fact that Simon Bernstein had "cut" Pam, Ted and their families "out of his will".

23. Simon Bernstein participated in a telephone conference with Plaintiffs and their spouses a few months prior to his death (Summer 2012) (*See* Intervenor's Exhibit B, p. 53:1-19; Intervenor's Exhibit A, p. 90:11-14) During this telephone conference, Simon Bernstein instructed that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children in an effort to quell some then-existing family acrimony. (*See* Intervenor's Exhibit B, pp. 53:12 — 55:8; Intervenor's Exhibit A, pp. 89:21 — 90:2; 90:15-18).

Answer: Undisputed.

24. Simon Bernstein executed an Amended at Restated Trust Agreement on July 25, 2012 (the "2012 Trust"). This document amends and restates the May 20, 2008 Trust Agreement in its entirety. (*See* Intervenor's Exhibit A at Dep. Ex. 24, p. 1) Pursuant to the terms of the 2012 Trust, Plaintiffs are deemed to have predeceased Simon Bernstein (*Id.* at p. 6) and all assets are directed to be passed in equal shares among Simon Bernstein's grandchildren. (*Id.* at p. 2, p. 16; Intervenor's Exhibit A, p. 89:2-15; pp. 118:17 -- 119:14)

Answer: Objection, relevance. There is no evidence that the 2012 Trust was ever named a beneficiary of the Policy on the Policy records of the Insurer. Without waiving the objection, undisputed that the assets of the 2012 Trust, if any, are to be passed in equal shares among Simon Bernstein's grandchildren.

25. On September 7, 2012, six days prior to his death, Simon Bernstein executed a holographic will directing a \$100,000 bequest to Maritza Puccio from his current insurance policy and indicating that he would change the beneficiary on said policy to reflect his wishes. (*See* Intervenor's Exhibit C). Simon Bernstein directed that the bequest to Ms. Puccio should proceed in the event of his death, without interruption "from family or probate." (Id.) This document was not witnessed or notarized.

Answer: Objection, relevance. Objection to the legal conclusion that the document is a holographic will. The Estate has failed to allege any standing on behalf Maritza Puccio. Maritza Puccio was not named or served and is not a party to the Insurer's Interpleader Action, nor has she ever sought to intervene. There has been no evidence produced indicating that Maritza Puccio was ever named a beneficiary of the Policy Proceeds on the Policy records of the Insurer. Dispute that Exh. C is executed or signed by Simon Bernstein. Dispute that the gift or bequest contemplated was effectuated as it was expressly conditional. Any gift contemplated in the document is expressly subject to the condition stating "should either party fail to live up to these conditions all claims are void".

26. Simon Bernstein executed no other Wills or Trust Agreements which were witnessed and/or notarized between July 25, 2012 and September 13, 2012 (the date of his death).

Answer: Object, as there is no citation to an affidavit or other testimony indicating the source of this allegation of fact. Without waving said objection, Movants are unaware of the existence of any Will or Trust Agreement executed by Simon Bernstein between the dates of July 25, 2012 and September 13, 2012.

Dated: June 26, 2015

Respectfully Submitted,

/s/ Adam M. Simon

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Simon Bernstein Irrevocable Insurance Trust;  
Ted Bernstein as Trustee, and individually,  
Pamela B. Simon, Jill Iantoni, Lisa Friedstein

**EXHIBIT 37**

1 MR. ELIOT BERNSTEIN: Okay. I have one last  
2 question.

3 MR. STAMOS: Let me ask -- let me follow that  
4 up.

5 REDIRECT EXAMINATION

6 BY MR. STAMOS:

7 Q where do you understand to be the third  
8 possibility as the destination for the proceeds of the  
9 policy?

10 A So there's, you know, all kinds of  
11 possibilities of where insurance proceeds can go when  
12 they're up for grabs like that and --

13 MR. SIMON: And I'm going to object, because  
14 this is all legal conclusion for the judge to  
15 decide.

16 MR. STAMOS: I'm just following up your  
17 question. You asked him was there a third  
18 possibility; he said yes. I'm just trying to find  
19 out what third possibility he understands that  
20 there is.

21 MR. SIMON: I said third possibility that the  
22 judge would determine. That was my question.

23 MR. STAMOS: Yeah. Well, Adam, I'm just  
24 asking what he understands. If he has no  
25 understanding, he can tell me that and we can go





home.

A I understand that there's infinite possibilities of where it could go in the event that a judge makes a ruling on where they go.

MR. ELIOT BERNSTEIN: Okay. I have one last question.

RE CROSS EXAMINATION

BY MR. ELIOT BERNSTEIN:

Q Ted, what's the primary beneficiary on the policy that you possess?

A The primary beneficiary, if I recall, was a -- was a -- I think it was a voluntary employee benefit plan.

Q would that happen to be LaSalle National Trust?

A Oh, boy, I -- I don't know.

Q You don't know who the primary beneficiary on the policy that you're the trustee for is?

MR. SIMON: Objection; asked and answered, argumentative.

We're done. Let's go.

Q One more question.

MR. SIMON: No. We're done.

Q Who's the contingent beneficiary named on it? Are you aware your father -- of his heavy



**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 )

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 )

**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’ REPLY TO THE  
ELIOT BERNSTEIN’S  
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 (OF ILLINOIS) AND JOHN AND JANE )  
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 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 reply to the Eliot’s Statement of Additional Facts.

**GENERAL OBJECTIONS AND MOTION TO STRIKE  
ELIOT'S RESPONSE TO STATEMENT OF FACTS  
AND ELIOT'S STATEMENT OF ADDITIONAL FACTS**

Eliot's response to movant's statement of facts fails to comport to the FRCP and the Local Rules, in that many of the responses are non-responsive to the facts alleged by movant and raise issues well outside the scope of this litigation and the jurisdiction of this court.

Eliot misuses his own statements of additional fact in the same manner by bringing up irrelevant matters outside the scope of this litigation and jurisdiction of this court. Eliot also uses most of his responsive "statement of additional facts" as extra pages of argument which belong in a memorandum of law. Most of the "additional facts" alleged are not facts at all but unsupported conjecture, opinion and legal argument, absent any citation to legal authority, declaration, affidavit or document submission.

To provide three examples, Eliot's Responsive Statement of Additional Facts includes the following:

" 8. The fact is there is no executed "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed."

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application by Spallina.

"36. The Affidavits submitted in the Summary Judgment by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act (cite omitted) which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by

someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent” and thus making most of the statements moot.

Because Eliot’s statement of additional facts run so far afield of the FRCP and Local Rules, and have no citations to a factual record or evidence, it is virtually impossible for Movants to determine what if any additional facts are buried in there that require a reply.

Suffice to say Eliot continues to disregard the Federal Rules of Civil Procedure, and the Local Rules despite having received Movants’ Notice to Pro Se Party Regarding Summary Judgment, and having been admonished by the court on several recent occasions when the court struck Eliot’s two prior attempts at filing his response to this motion, his Omnibus Motion for Urgent Emergency Federal Protection.

Eliot’s response contains footnote’s to apparent web addresses that he refers to in his Response, but none of that material is properly before the court as it was not filed in accordance with the Local Rules. Eliot burdens both movants and the court by asking them to search to his footnoted internet links in order to find his citations. For all the foregoing reasons, Movants request that the Court strike and disregard Eliot’s response to movants’ statement of facts, Eliot’s statement of additional facts, and Eliot’s citations to his internet record in their entirety.

### **RESPONSE**

In the alternative movants’ respond to Eliot’s “statement of additional facts” as follows:

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged “Policy” at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent, and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and

fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

Answer: Disputed. Neither the Insurer nor any other party but Eliot have disputed either the existence of the Policy or the liability of the insurer for the Policy Proceeds. No objections were raised when the court permitted the Insurer to deposit the Policy Proceeds, or when the Insurer was subsequently dismissed from the litigation.

2. All references by Plaintiffs to the “Policy” are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic “Specimen Policy” not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the “Policy” are in genuine dispute.

Answer: Disputed. Neither the Insurer nor any other party but Eliot have disputed either the existence of the Policy or the liability of the insurer for the Policy Proceeds. No objections were raised when the court permitted the Insurer to deposit the Policy Proceeds, or when the Insurer was subsequently dismissed from the litigation. The Specimen Policy and Policy records were reviewed and explained by the Insurer’s VP of Operations, Don Sanders in his Affidavit.

3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased

Simon Bernstein (“Simon”) including but not limited to further document and record production from Heritage Union Life Insurance Company (“HERITAGE”), Jackson National Life Insurance Company (“JACKSON”), LaSalle National Trust, NA (“LASALLE”) in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein (“TED”), EBTs of Pamela Beth Simon (“PAM”), David Simon (“D. SIMON”), Robert L. Spallina, Esq. (“SPALLINA”), Donald R. Tescher, Esq. (“TESCHER”) and Don Sanders (“SANDERS”) at minimum.

Answer: Move to strike as this statement #3 is entirely argument and not a statement of fact. No evidence is submitted by Eliot. Discovery was closed in open court and without objection.

4. It is noted for this Court that Judge Martin Colin (“COLIN”) of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

Answer: Move to strike. None of Statement #4 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, it is not a statement of fact. . Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot’s

third party claims when the court granted their motion to dismiss.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.

Answer: Move to strike. None of Statement #5 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, there is no statement of fact requiring a response.

6. The Disqualification motion in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.

Answer: Move to strike. None of Statement #6 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is



evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, there is no statement of fact requiring a response.

7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

Answer: Move to strike, as statement #7 contains no statement of additional fact, but just argument regarding the state of Movants evidence. None of Statement #7 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, there is no statement of fact requiring a response.

8. The fact is there is no executed “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ” document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.

Answer: Move to strike, and statement #8 contains no statement of additional fact, but just argument regarding the state of Movants evidence.

8. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.

Answer: Move to strike, and statement #9 contains no statement of additional fact, but just argument regarding the state of movants evidence.

9. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this

stage of litigation and is a basis to deny Plaintiffs' Summary Judgment itself at this time. See Plaintiffs' Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs' own document submissions.

Answer: Move to strike, as statement #10 contains no statement of additional fact, but just argument regarding the state of movants evidence.

11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs' own document submissions have not been brought in as a party in these proceedings by Plaintiffs nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

Answer: Objection and Move to strike, as statement #11 contains no statement of additional fact, but just argument regarding the state of movants evidence. Without waving said objections, the Insurer did in fact serve Bank of America, NA as successor to LaSalle. Bank of America never asserted a claim and was dismissed from the litigation. Nothing prevented Eliot from notifying and serving LaSalle with this action.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal

standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.

Answer: Objection and move to strike, as statement #12 contains no statement of additional fact, but just argument regarding the state of Movants evidence.

13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital<sup>4</sup> and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.

Answer: Objection relevance and Disputed. Eliot has provided no evidence that any such investigations into the cause of death of Simon Bernstein conducted by the medical examiner or local law enforcement resulted in any charges being brought or any determination that a homicide occurred. On Simon Bernstein's death certificate, after autopsy, the "probable manner of death" is listed as "natural"; the causes of death are (i) "myocardial infarct" and (ii) "severe arteriosclerosis". (Simon Bernstein Death Certificate, **Exh. 12** to Movants SoF). The Insurer never disputed its liability for the Policy Proceeds based on the cause of death of the insured.

14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte “recuses ” after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact witnesses to the frauds committed by TESCHER and SPALLINA’S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Orders.

Answer: Move to strike. None of Statement #14 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot’s third party claims when the court granted their motion to dismiss.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim<sup>6</sup> in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

Answer: Objection relevance and move to strike. Disputed. The Insurer never made a distribution based on any claim to the Policy Proceeds but instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot’s third

party claims when the court granted their motion to dismiss.

16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit (“Action”) filed for breach of contract and the Action is based on the carrier denial<sup>7</sup> of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.

Answer: Disputed. The Insurer’s Interpleader Complaint speaks for itself as to the reasons the Insurer determined there was a possibility of duplicate liability.

17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA as a Trustee and thus it appears from Plaintiff’s own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

Answer: Objection relevance and disputed. **Exh. 15** and **Exh. 16** which are two drafts of the Bernstein Trust Agreement are date stamped BT000002-BT000021, and were among the first documents produced to all parties pursuant Rule 26. No claim was paid by the Insurer, instead the Insurer filed an Interpleader Complaint.

17. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.

Answer: Objection and move to strike, as statement #18 contains no statement of additional fact, but just argument regarding an alleged conflict that is unsupported with any citations to a factual record.

18. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self-dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.

Answer: Objection and move to strike, as statement #19 contains no statement of additional fact, but just argument regarding an alleged conflict that is unsupported with any citations to a factual record.

19. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for LASALLE when filing his death benefit claim<sup>8</sup>, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.

Answer: Objection relevance and move to strike. Disputed. The Insurer never made a distribution based on any claim to the Policy Proceeds but instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

Answer: Objection relevance and move to strike. Statement #21 is almost entirely argument has no citations to evidence or a record. Without waiving said objections, disputed. The Insurer never made a distribution based on any claim to the Policy



Proceeds but instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP<sup>9</sup> that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.

Answer: Objection relevance and move to strike. Statement #22 is almost entirely argument has no citations to evidence or a record. Without waiving said objections, disputed. Eliot has no standing to act on behalf of the 2000 Trust. No party has produced or submitted any evidence that the 2000 Trust was named a beneficiary on the Policy records.

23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust and sanctions or a sanctions hearing should be granted and further Discovery allowed.

Answer: Objection relevance and move to strike. Statement #23 is entirely argument has no citations to evidence or a record. Without waiving said objections, disputed. The Insurer never made a distribution based on any claim to the Policy Proceeds but

instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

Answer: Objection relevance and move to strike. Statement #24 is entirely argument has no citations to evidence or a record. Without waiving said objection, Movants established that Simon Bernstein Trust, N.A. was in fact a misnomer or abbreviation on the records of the insurer and that the true beneficiary contained on the beneficiary designation form received by the Insurer identified the beneficiary as the Bernstein Trust.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“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.**

**[emphasis added]** as Successor Trustee....”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

Answer: Objection relevance and move to strike. Statement #25 is almost entirely argument. Undisputed that the statement from Don Sander cited above is contained in his Affidavit.

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.

Answer: Objection relevance and move to strike. Statement #26 is entirely argument and not a statement of additional fact.

27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>11</sup> from six cases after his denial of Eliot’s Petition for Disqualification<sup>12</sup> as “Legally Insufficient” on May

18, 2015 , which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

Answer: Objection and move to strike. None of Statement #27 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

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28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases 14 of the Bernstein family.

Answer: Objection relevance and move to strike. None of Statement #28 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

Answer: Objection relevance and move to strike. None of Statement #29 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss. None of the other persons have appeared in this litigation or have anything to do with it, and Eliot has provided no evidence to the contrary.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his “custody,” where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Simon Bernstein’s business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.

Answer: Objection relevance and move to strike. None of Statement #30 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Alan Rose has never appeared as an attorney or party to this Illinois litigation.

31. Further, upon an Order issued by COLIN for inventorying of Simon’s Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal Representative, Brian O’Connell, Esq. (“O’Connell”). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon’s Personal Properties.

Answer: Objection, relevance. None of Statement #30 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Alan Rose has never appeared as an attorney or party in this Illinois litigation.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.

Answer: Objection relevance and move to strike. None of Statement #32 pertains in any manner to this litigation but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Statement #32 is also incomprehensible.

33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.

Answer: Objection and move to strike. Statement #33 is entirely argument and not a statement of additional fact. Disputed. The Insurer did serve Bank of America as successor to LaSalle National Trust, N.A.

34. The matters need to be investigated by the carrier as a possible murder of Simon which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.

Answer: Objection relevance and Disputed. Eliot has provided no evidence that any such investigations into the cause of death of Simon Bernstein conducted by the medical examiner or local law enforcement resulted in any charges being brought or determination that a homicide occurred. On Simon Bernstein's death certificate, after autopsy, the "probable manner of death" is listed as "natural"; the causes of death are (i) "myocardial infarct" and (ii) "severe arteriosclerosis". (Simon Bernstein Death Certificate, **Exh. 12** to Movants SoF). The Insurer has never disputed its liability for the Policy Proceeds based on the cause of death of the insured.

35. There are Petitions that were unheard by COLIN'S court at the time of his recent recusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in



the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

Answer: Objection relevance and move to strike. None of Statement #35 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. The Insurer has not disputed the insurance policy or its liability thereunder.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446>, which according to the hornbook definition, “the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent” and thus making most of the statements moot.

Answer: Objection and move to strike. Statement #36 is entirely argument and not a statement of additional fact. Eliot has no standing to raise the DMA as he is not a representative of the estate. (*See* Movant’s Reply Brief).

37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,

- a. Records from insurers and reinsurers,
- b. Records from the Primary Beneficiary LaSalle National Trust, NA,
- c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy;
- d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,
- e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.

Answer: Move to strike as this statement #37 is entirely argument and not a statement of fact. No evidence is submitted by Eliot. This argument would be more appropriate in a discovery related motion, and in any case, Eliot has failed to make any effort to conduct prior to discovery cut off. Further, Discovery was closed in open court and without objection.

38. There is need for further affidavits, declaration and further discovery after TED'S deposition that opens new discovery including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract.

Answer: Move to strike as this statement #38 is entirely argument and not a statement of fact. No evidence is submitted by Eliot. This argument would be more appropriate in a discovery related motion, and in any case, has failed to make any effort to conduct discovery prior to discovery cut off. Further, Discovery was closed in open court and without objection.

Dated: June 26, 2015

Respectfully Submitted,

/s/ Adam M. Simon

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Attorney for Movants  
Simon Bernstein Irrevocable Insurance Trust;  
Ted Bernstein as Trustee, and individually,  
Pamela B. Simon, Jill Iantoni, Lisa Friedstein

**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 Friday, July 10, 2015:

MINUTE entry before the Honorable John Robert Blakey: Intervenor Brian O'Connell's motion for leave to file a sur-reply [203] is granted. O'Connell is directed to file the sur-reply as a separate docket entry. The 7/20/15 Notice of Motion date is stricken; the parties need not appear. Additionally, the 7/20/15 status hearing is stricken and reset to 10/1/15 at 9:45 a.m. 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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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 SUR-REPLY IN  
OPPOSITION TO PLAINTIFFS’  
SUMMARY JUDGMENT MOTION**

**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 SUR-REPLY IN OPPOSITION  
 TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

NOW COMES Intervenor, Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (“Intervenor”), by his attorneys James J. Stamos and Kevin P. Horan of Stamos & Trucco LLP, and for its Sur-Reply in Opposition to Plaintiffs’ Motion for Summary Judgment, states as follows:

**A. Intervenor Did Not Concede Count I of Plaintiffs' Complaint**

Plaintiffs in their Reply newly cite *Aaron v. Merrill Lynch Pierce Fenner & Smith*, 502 F. Supp. 2d 804, 808 (N.D. Ind. 2007) to support their argument that Intervenor “willingly ignored” Count I and that summary judgment is therefore unopposed on that count. In fact, *Aaron* does not address the issue raised here, *i.e.*, Plaintiffs seeking summary judgment against a dismissed party. In *Aaron*, the stakeholder (Merrill Lynch) had deposited the contested funds with the court but remained a party to the case at the summary judgment phase. The parties filed cross-motions for summary judgment, necessitating a judicial determination of the merits of each party’s respective claims to the contested funds. That case has no application when the stakeholder has been dismissed and there is no cross-motion for summary judgment.

The only determination to be made on Plaintiffs’ Motion for Summary Judgment is whether they have met their burden of showing the existence and terms of the purported Trust, as a matter of law, by clear and convincing evidence. Plaintiffs have failed to meet this burden and have failed even to acknowledge the application of the clear and convincing standard.

**B. *Aaron* Does Not Impose a Burden on Intervenor**

Plaintiffs also cite *Aaron* for the proposition that Intervenor has a burden to meet in its Response. As noted above, unlike *Aaron*, Intervenor did not file a cross-motion for summary judgment. Intervenor therefore bears no burden to demonstrate a superior claim to the Policy proceeds. In fact, the Estate is the default beneficiary of the Policy proceeds under both Florida and Illinois law. *New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962); *Harris v. Byard*, 501 So. 2d 730 (Fla. Dist. Ct. App. 1987). The Estate does not need to demonstrate a superior claim in order to defeat Plaintiffs’ Motion, or even to win the case. Under these cases, the Estate wins if Plaintiffs cannot prove their claim.

**C. Dead Man's Act**

Plaintiffs argue that Intervenor triggered an exception to the Illinois Dead Man's Act, 735 ILCS 5/8-201 *et seq.* (the "Act"), and has "opened the door" by offering testimony of interested witnesses that will be barred by the Act. No door was opened. The evidence cited was initially cited *by Plaintiffs* in support of their Motion. *See* Plaintiffs' Motion for Summary Judgment Exhibit 30 at ¶ 88 and Exhibit 35 at p. 52, ln. 23 – p. 55, ln. 22. Intervenor referred to that testimony again only to demonstrate that credibility questions would have to be resolved regarding those statements if they were ever heard by the jury. Intervenor would obviously never seek to offer that evidence at trial.

And, even if Intervenor had "opened the door" to otherwise-barred testimony, Plaintiffs still must be denied summary judgment. In his Response, Intervenor cited to Plaintiffs' evidence to highlight clear questions of fact which can only be resolved by a determination of the credibility of Plaintiffs' witnesses who all have an interest in the outcome of the case. Credibility determinations are the sole province of the trier of fact. Plaintiffs have not addressed how this Court can decide this Motion as a matter of law in their favor without making critical credibility determinations. It cannot and summary judgment must therefore be denied.

Respectfully submitted,

/s/ James J. Stamos

Attorney for Intervenor, Brian M. O'Connell

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Facsimile: (312) 630-1183



**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2015, this Intervenor's Sur-Reply in Opposition to Plaintiffs' Summary Judgment Motion pursuant to Rule 56.1(b)(3)(C) was filed electronically using the CM/ECF system and notice will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ James J. Stamos  
James J. Stamos

**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 )

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**

**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”)**

**PLAINTIFFS-MOVANT’S MOTION  
 FOR LEAVE TO FILE ITS SUR SUR  
 REPLY TO THE ESTATE’S SUR  
 REPLY TO PLAINTIFFS’  
 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. )  
 \_\_\_\_\_ )

NOW COMES PLAINTIFFS, by and through their undersigned counsel and move this Honorable Court, for an Order granting Plaintiffs leave to file the attached Sur Sur Reply to Intervenor's Sur Reply, and in support thereof states as follows:

**Introduction**

1. Intervenor's (the "Estate") motion for leave to file a sur reply, and their sur reply itself was based on multiple misrepresentations of the record which must be corrected and clarified in order for the court to render a just decision on Plaintiffs' motion for summary judgment.
2. By the end of June, 2015, Plaintiffs filed their consolidated reply to the Estate's and Eliot's responses, and Plaintiffs motion for summary judgment appeared fully briefed.
3. Obviously concerned with the state of the record at the end of briefing, the Estate then filed a motion for leave to file a sur reply. The motion was quickly granted by the court, and on July 8, 2015, the Estate filed its sur reply.
4. Plaintiffs have filed this motion and are requesting leave to file the attached proposed Sur Sur Reply not because the substance of the Reply causes Plaintiffs concern, but because the Estate has attempted to muddy the waters through misstatements of the record which are addressed, clarified and corrected in Plaintiffs' proposed Sur Sur Reply.

WHEREFORE, Plaintiffs respectfully request, that this Honorable Court (i) grant Plaintiffs' leave to file the attached Sur Sur Reply, instanter, and (ii) terminate briefing on Plaintiffs' motion for summary judgment and take it under advisement.

Dated: July 17, 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

**EXHIBIT A**

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

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 )  
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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

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”)

SUR SUR REPLY TO INTERVENOR’S  
SUR REPLY TO PLAINTIFFS’  
MOTION FOR SUMMARY  
JUDGMENT

ELIOT IVAN BERNSTEIN, )  
)  
Cross-Plaintiff )  
)  
v. )  
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TED BERNSTEIN, individually and )  
as alleged Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd, 6/21/95 )  
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Cross-Defendant )  
and, )  
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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-MOVANTS, by and through their undersigned counsel, and respectfully submit this Sur Sur Reply to Intervenor's Sur Reply, in further support of Plaintiffs' motion for summary judgment.

1. To begin, let's examine Intervenor's (the "Estate") assertion that for the first time *in their reply brief*, Plaintiffs argue that the Estate bears a burden of proof of its own claims in responding to the Motion. This assertion is patently false, and so easily controverted it's a wonder that the Estate made it at all. This assertion is false because under the "Standards" section of Plaintiffs' *initial* memorandum of law in support of their motion for summary judgments Plaintiffs state as follows:

"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)." (see Dkt. #151, Plaintiffs' Memorandum of Law in support of their motion for summary judgment at p.8.)

2. As shown above, Plaintiff did argue that Respondents had the burden to establish their own claims and not just negate or attack Plaintiff's claims. The Estate had every opportunity to respond by asserting and explaining its own claim in its responsive pleadings, but decided instead to argue mootness, and the Dead Mans' Act. The Estate's arguments are limited to attacking Plaintiff's claims while failing to establish any basis for the Estate's claims to the Policy Proceeds. What the Estate continues to ignore or fails to apprehend is that this is an *Interpleader Action*.

3. To try to correct this uncorrectable deficiency, the Estate trumped up the notion that they were never on notice that they had to put forth a claim. But, as shown above, Respondents were made aware of that obligation by Plaintiffs' in their *initial* brief.
4. The Estate's argument in its Sur Reply regarding the Dead Mans' Act also plays fast and loose with the record. The Estate does not deny that it invoked the Dead Mans' Act and did so in an attempt to exclude all conversations between interested parties, including David Simon and Ted Bernstein on the one hand, and decedent on the other.
5. The Estate also cannot and does not deny that it then when on to introduce this exact same type of testimony, but in its sur reply the Estate represents to the court that it only mentioned the testimony it sought to exclude in order to discredit or impeach it. If that were true, all the Estate need do is cite to Plaintiffs' statement of facts to try to discredit or dispute testimony offered by Plaintiff. But, that is not what transpired here.
6. Instead, the Estate, *in its own statement of additional facts*, made allegations of *additional facts* and in support of those allegations the Estate cites to testimony relating to conversations between the interested parties and decedent. The Estate's not very subtle attempt to use its sur reply to try to re-shut the door it so clearly had opened in its response brief fails because the exact type of testimony it seeks to exclude is included in their own statement of additional facts. (*See* Dkt. 191, Intervenor's Local Rule 56.1(b)(3)(C) Statement of Additional Facts, at ¶5 and ¶23).

7. Local Rule 56.1 states in pertinent part as follows:

If additional material facts are submitted by the opposing party pursuant to section (b), the moving party may submit a concise reply in the form prescribed in that section for a response. All material facts set forth in the statement filed pursuant to section (b)(3)(C) will be deemed admitted unless controverted by the statement of the moving party.

8. In response to the Estate's allegations of additional fact regarding Ted Bernstein's conversation with Simon Bernstein where Ted was told he was named a trustee of the Bernstein Trust, Plaintiffs' response was as follows:

"Answer: Undisputed with one clarification. Ted testified about the conversation described by the Estate between Ted and his father, Simon Bernstein. Except, Ted testified he was told by his father he was a 'successor trustee'". (See Dkt. 201, Movants' Reply to the Estate's Statement of Additional Facts at ¶5.)

9. In response to the Estate's allegation of additional facts regarding the content of a telephone conversation decedent participated in a few months before his death with Plaintiffs, and David Simon, the Estate answered: "Undisputed." (See Dkt. 201, Movants' Reply to the Estate's Statement of Additional Facts at ¶23.)

10. Since the Estate made these allegations of additional fact, and Plaintiffs answered “undisputed”, pursuant to Local Rule 56 these facts are deemed admitted and are part of the record for summary judgment.
11. The Estate’s explanation that it submitted these undisputed facts solely for the purposes of discrediting them is not only incredulous, it is inapposite with Local Rule 56 pursuant to which the Estate promulgated their statements of additional fact. Something is amiss when the Estate says out of one side of its mouth that these allegations in our statement of additional facts are undisputed, yet out of the other side the Estate claims it really sought only to discredit these same “undisputed” facts.
12. The Estate’s plea to the court to re-shut the door because the Estate would never have introduced such evidence at trial is rebutted by the Estate’s own memorandum of law in response to Plaintiffs’ motion for summary judgment where the Estate *itself* argued as follows:
- “The DMA applies to summary judgment proceedings and in federal cases where state law supplies the rule of decision. (cites omitted). The parties agree that Illinois supplies the rules of decision here. (cite omitted). The DMA will prohibit the testimony of an adverse or indirectly interested party from testifying on his or her own behalf. (*See* Dkt. 193, Intervenor’s Memorandum of Law in Response to Plaintiffs’ motion for summary judgment, p. 7).
13. What’s transpired here is that in its response the Estate invoked the DMA and argued its applicability on summary judgment – that is until Plaintiffs pointed out that the Estate had opened the door pursuant to an exception under the DMA.

Then, in their Sur Reply, the Estate argues that the door should be re-shut or was never opened because the Estate would never have offered such testimony at trial.

14. The Estate wants it both ways. Apply the DMA to exclude Plaintiffs' assertion of such testimony on summary judgment, but ignore the DMA until trial when the Estate offers the exact same type of testimony on summary judgment. This is a perfect illustration of the reason for the "door" in the first place, and that is to prevent one party from opening it in support of their own case, then sealing it shut to frustrate the opposition.
  
15. The Estate opened the door, and it remains open for the remainder of the proceedings.
  
16. Despite the Estate's unsuccessful attempt to muddy the waters, what remains dispositive here, is that the Estate has not and cannot present the court with a set of facts and then explain under applicable law – how it is that the Estate should be named the beneficiary of the Policy Proceeds.
  
17. Absent that set of facts, the Estate's only arrow in its quiver was used to try to shoot down Plaintiffs' claim to the Policy Proceeds. And as Plaintiffs have demonstrated, that arrow is insufficient as a matter of law to strike down its target -- and in any case -- it flew by harmlessly, missing its target by a wide margin.

For all of the foregoing reasons, Plaintiffs respectfully request that the Court (i) terminate briefing on Plaintiffs' motion for summary judgment, and then (ii) grant Plaintiffs' motion for summary judgment in its entirety.

Dated: July 16, 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

**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 Friday, July 17, 2015:

MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion to file a sur-reply [206] is granted. Plaintiffs are directed to file the sur-reply as a separate docket entry. No further briefing will be permitted on plaintiffs' motion for summary judgment. The 8/4/15 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  
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SIMON BERNSTEIN IRREVOCABLE )  
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Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
 COMPANY, )

Defendant, )

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Counter-Plaintiff )

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**Case No. 13 cv 3643  
 Honorable John Robert Blakey**

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**SUR SUR REPLY TO INTERVENOR’S  
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 MOTION FOR SUMMARY  
 JUDGMENT**



ELIOT IVAN BERNSTEIN, )  
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For all of the foregoing reasons, Plaintiffs respectfully request that the Court (i) terminate briefing on Plaintiffs' motion for summary judgment, and then (ii) grant Plaintiffs' motion for summary judgment in its entirety.

Dated: July 20, 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

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused copies of the attached Plaintiffs' Sur Sur Reply 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 20th day of July, 2015.

/s/ Adam Simon  
Adam Simon, Esq.  
#6205304  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
(312) 819-0730  
Attorney for Plaintiffs-Movants



03/12/14

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

IN FORMA PAUPERIS APPLICATION  
AND  
FINANCIAL AFFIDAVIT

Eliot Ivan Bernstein  
Plaintiff

v.

HERITAGE UNION LIFE INSURANCE ) COMPANY et al.  
Defendant(s)

Case Number: 13 cv 3643

Judge: Hon. John Robert Blakey

**Instructions:** Please answer every question. Do not leave any blanks. If the answer is "none" or "not applicable (N/A)," write that response. Wherever a box is included, place a ✓ in whichever box applies. If you need more space to answer a question or to explain your answer, attach an additional page that refers to each such question by number and provide the additional information. Please print or type your answers.

**Application:** I, Eliot Ivan Bernstein, declare that I am the  plaintiff  petitioner  movant  (other 3rd Party Defendant) in the above-entitled case. This affidavit constitutes my application  to proceed without full prepayment of fees, or  in support of my motion for appointment of counsel, or  both. I declare that I am unable to pay the costs of these proceedings, and I believe that I am entitled to the relief sought in the complaint/petition/motion/appeal. In support of my application, I answer the following questions under penalty of perjury.

1. Are you currently incarcerated?  Yes  No  
(If "No," go to Question 2)

I.D. #: N/A Name of prison or jail: N/A  
Do you receive any payment from the institution?  Yes  No  
Monthly amount: \_\_\_\_\_

2. Are you currently employed?  Yes  No

a. If the answer is "yes," state your:  
Monthly salary or wages: N/A  
Name and address of employer: N/A

b. If the answer is "no," state your:  
Beginning and ending dates of last employment: 1998-2001  
Last monthly salary or wages: \$200,000  
Name and address of last employer: Iviewit Holdings  
2255 Glades Road - One Boca Place, Boca Raton, FL 33431-7382

3. Are you married?  Yes  No  
 If the answer is "yes," is your spouse currently employed?  Yes  No  
 Spouse's *monthly* salary or wages: 1,000.00  
 Name and address of spouse's employer: Upwork - Online Work
- 
4. In addition to your income stated above in response to Question 2 (which you should not repeat here), *have you or anyone else living at the same residence* received more than \$200 in the past twelve months from any of the following sources? Mark a ✓ next to "Yes" or "No" in each of the categories a. through g, check all boxes that apply in each category, and fill in the twelve-month total in each category.
- a.  Salary or  wages  Yes  No  
 Total received in the last 12 months: N/A  
 Received by: N/A
- b.  Business,  profession or  other self-employment  Yes  No  
 Total received in the last 12 months: N/A  
 Received by: N/A
- c.  Rental income,  interest or  dividends  Yes  No  
 Total received in the last 12 months: N/A  
 Received by: N/A
- d.  Pensions,  social security,  annuities,  life insurance,  disability,  workers' compensation,  alimony or maintenance or  child support  Yes  No  
 Total received in the last 12 months: N/A  
 Received by: N/A
- e.  Gifts or  inheritances  Yes  No  
 Total received in the last 12 months: 10,000.00  
 Received by: Friends Family
- f.  Unemployment,  welfare or  any other public assistance  Yes  No  
 Total received in the last 12 months: Health Ins - Food Stamps  
 Received by: State of Florida / Gov Health Care
- g.  Any other sources (describe source: N/A)  Yes  No  
 Total received in the last 12 months: N/A  
 Received by: N/A
5. Do you or anyone else living at the same residence have more than \$200 in cash or checking or savings accounts?  Yes  No  
 Total amount: N/A  
 In whose name held: N/A Relationship to you: N/A

6. Do you or anyone else living at the same residence own any stocks, bonds, securities or other financial instruments?  Yes  No

Property: Unknown Current value: Unknown  
In whose name held: Unknown Part of Litigation Relationship to you: N/A

7. Do you or anyone else living at the same residence own any real estate (with or without a mortgage)? Real estate includes, among other things, a house, apartment, condominium, cooperative, two-flat, etc.  Yes  No

Type of property and address: 2753 NW 34th St, Boca Raton, FL 33434  
Current value: \$400,000 Equity: 0 (Equity is the difference between what the property is worth and the amount you owe on it.)  
In whose name held: Bernstein Family Realty LLC/ Joshua, Jacob and Daniel Bernstein Relationship to you: Children  
Amount of monthly mortgage or loan payments: 0  
Name of person making payments: N/A

8. Do you or anyone else living at the same residence own any automobiles with a current market value of more than \$1000?  Yes  No

Year, make and model: Volvo 2008 SUV & KIA Soul  
Current value: 15,000 Equity: 15,000 (Equity is the difference between what the automobile is worth and the amount you owe on it.)  
Amount of monthly loan payments: 0  
In whose name held: Candice Bernstein Relationship to you: Spouse  
Name of person making payments: N/A

9. Do you or anyone else living at the same residence own any boats, trailers, mobile homes or other items of personal property with a current market value of more than \$1000?  Yes  No

Property: N/A  
Current value: N/A Equity: N/A (Equity is the difference between what the property is worth and the amount you owe on it.)  
Amount of monthly loan payments: N/A  
In whose name held: N/A Relationship to you: N/A  
Name of person making payments: N/A

10. List the persons who live with you who are dependent on you for support. State your relationship to each person and state whether you are entirely responsible for the person's support or the specific monthly amount you contribute to his or her support. If none, check here:  None.

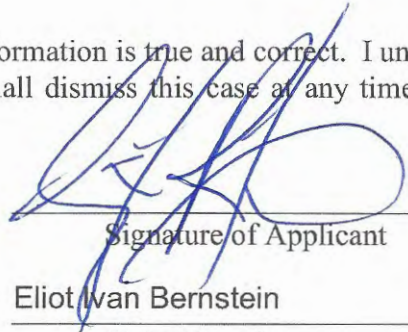
Joshua Bernstein, Jacob Bernstein & Daniel Bernstein - Entirely

11. List the persons who do not live with you who are dependent on you for support. State your relationship to each person and state how much you contribute monthly to his or her support. If none, check here:  None.

\_\_\_\_\_

I declare under penalty of perjury that the above information is true and correct. I understand that 28 U.S.C. § 1915(e)(2)(A) states that the court shall dismiss this case at any time if the court determines that my allegation of poverty is untrue.

Date: August 10, 2015

  
\_\_\_\_\_  
Signature of Applicant  
Eliot Ivan Bernstein  
\_\_\_\_\_  
(Print Name)

**NOTICE TO PRISONERS:** In addition to the Certificate below, a prisoner must also attach a print-out from the institution(s) where he or she has been in custody during the last six months showing all receipts, expenditures and balances in the prisoner's prison or jail trust fund accounts during that period. Because the law requires information as to such accounts covering a full six months before you have filed your lawsuit, you must attach a sheet covering transactions in your own account – prepared by each institution where you have been in custody during that six-month period. As already stated, you must also have the Certificate below completed by an authorized officer at each institution.

**CERTIFICATE**  
**(Incarcerated applicants only)**  
**(To be completed by the institution of incarceration)**

I certify that the applicant named herein, N/A, I.D.# N/A, has the sum of \$ N/A on account to his/her credit at (name of institution) N/A. I further certify that the applicant has the following securities to his/her credit: N/A. I further certify that during the past six months the applicant's average monthly deposit was \$ N/A. (Add all deposits from all sources and then divide by number of months).

N/A  
\_\_\_\_\_  
Date

N/A  
\_\_\_\_\_  
Signature of Authorized Officer  
N/A  
\_\_\_\_\_  
(Print Name)

**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, August 17, 2015:

MINUTE entry before the Honorable John Robert Blakey: Eliot Ivan Bernstein's application to proceed in forma pauperis [210] is denied. First, the filing fee was paid in full years ago in this case, and no fees are required of Mr. Bernstein. Additionally, the parties have briefed summary judgment and nothing further is required of Mr. Bernstein at this time; To the extent future filings should become necessary, Mr. Bernstein has proven himself more than capable of filing pleadings. 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.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, September 24, 2015:

MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the 10/1/15 status hearing is stricken and reset to 12/15/15 at 9:45 a.m. 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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**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 Tuesday, December 8, 2015:

MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the 12/15/15 status hearing is stricken and reset to 3/15/16 at 9:45 a.m. 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, Eliot I. Bernstein, )  
Individually, and on behalf of the Minor )  
Children JEZB, JNAB, and DEAOB, )  
ET AL. )**

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

**PETITION-MOTION FOR  
INJUNCTION:  
Under the All Writs Act ( AWA ),  
Anti-Injunction Act ( AIA ) and Other  
relief**

**Third-Party Plaintiffs / Counter-  
Plaintiffs-Petitioners Eliot I. Bernstein,  
Individually and On behalf of Minor  
Children**

**Filers:  
Eliot Ivan Bernstein, Third-Party  
Defendant and Counter-Plaintiff.**

Comes now Eliot Ivan Bernstein, being duly sworn, declares and says under oath and penalties of perjury as follows, on information and belief:



## INTRODUCTION

1. I am over the age of 18 years and reside at 2753 NW 34th St, Boca Raton, Florida 33434, and am acting pro se herein.
2. I make this Affidavit-Petition in good faith in support of an Emergency Motion for Injunctive Relief against all parties this District Court presently has jurisdiction over and for at least temporarily restraining the Florida Probate Court of Judge John Phillips by an appropriately tailored Order under the Anti-Injunction Act and All Writs Act under 28 USC Sec. 2283 and 28 USC Sec. 1651(a) respectively until such time as this Court holds a Hearing and or Conference where Orderly Production of Discovery, Preservation of evidence, documents, records is obtained and where other issues such as the conflicts of interest and potential misconduct by the parties before this Court can be determined, determination of “side agreements” impacting the integrity of this Court’s litigation such as discussed in Winkler v Eli Lilly can be heard, and such other matters as to this Court seems just and proper.
3. As this Court will see, with the newly discovered fraudulent company Lions Head Land Trust, Inc., with at least Ted Bernstein and his counsel Alan Rose who appeared for Ted Bernstein at a Deposition held for this Court just being discovered last week Feb. 18, 2016 as another vehicle of fraud to hide and secret away the transfer of assets valued in the millions is present, along with a series of orchestrated proceedings in the parallel litigation in the State Court including but not limited to attorneys Alan Rose and Steven Lessne submitting motions at a 5 Minute UMC motion calendar for attorneys fees in the hundreds of thousands *without submitting any Billing statements to support*, and being a flurry of motions to “wrap up” the Probate cases despite literally millions of dollars in assets never being accounted for there is a very real and imminent danger that the critical evidence, documents, records and Discovery necessary in aid

of this Court's own jurisdiction and integrity of this Court's own proceedings will be permanently lost thus requiring this Court to now act with an appropriately tailored injunctive Order herein against parties already under this Court's jurisdiction.

4. I am specifically seeking to enjoin the parties under this Court's jurisdiction, Ted Bernstein, Brian O'Connell and the Estate of Simon Bernstein, Alan Rose as Ted Bernstein's attorney who represented him at a federal court Deposition herein and remains his Palm Beach attorney, Pamela Simon, David Simon, Adam Simon, Jill Iantoni, Lisa Friedstein and Florida State Probate Judge John Phillips of the North Branch of Palm Beach County temporarily pending further Order of this Court and at least until proper evidence, documents and Discovery are both preserved and produced, until this Court sorts out conflicts of interest as set out herein and exercises its inherent powers to probe "side deals" compromising the integrity of this Court's Jurisdiction and that such injunction should specifically include but not be limited to enjoining proceedings before Judge Phillips in Palm Beach County this Thursday, Feb. 25, 2016 at 3:15 PM Est and as this Court further deems proper.
5. I further assert in good faith that this Court should find sufficient cause for such extra-ordinary exercise of the injunctive powers at least by the time it reaches that part of this complaint that describes the new fraudulent company Ted Bernstein and Alan Rose are involved in secreting and hiding from the public record secreting multi-million dollar asset listed at \$3.4 million allegedly sold for \$1.1 Million by recent deed transfer to a false company titled Lions Head Land Trust, Inc, although there are further sections which describe with specificity and by "piece-meal" discovery the Millions in assets presently unaccounted for by these parties herein further justifying injunctive relief to schedule Orderly and proper discovery proceedings.

6. Just one “piece-meal” disclosed item of documentary evidence shown later herein documents approximately \$2.8 Million in just one of Simon Bernstein’s accounts at the time of his passing which *to this day has never been accounted for* which also does not include millions from other accounts and the millions of worth of Shirley Bernstein where *in 5 years there has never been an accounting* yet the core parties who brought this original action to your Court try to portray my parents as virtual paupers where all their records and financials and critical documents are “lost” which is a fraud itself.
7. As shown throughout this complaint, the Discovery Abuses in the parallel State proceedings which justify exercise of this Court’s injunctive powers at this time are such that there has never been any coherent, complete disclosure of “Original” Trusts, Wills and related instruments nor any coherent presentation of the Estates and how these were managed despite sophisticated lawyers working in these cases Billing hundreds of thousands of dollars a clip.
8. I submit that the *naked human eye* upon reviewing the piece-meal production of “copies” and magically timed surfacing of alleged “duplicate Originals” of the operative Trusts and other instruments herein can detect multiple signatures that appear “too identical”, “too evenly placed” on the page and multiple “identical” “Initials” such as “SB” that appear to be too perfectly aligned such that preservation of Original documents and all evidence becomes even more important in a case where proven, admitted to, documented fraud and forgery of important instruments in the Florida Court has already been established yet instead of the Court notifying any investigative authorities I am retaliated against for seeking truth and integrity in these proceedings.
9. Because the amount and level of fraud is so pervasive and complex that is alleged to take place in and upon the Florida Court by Court Officers, Fiduciaries and Counsel and can not be stated

in a few sentences and takes painstaking time to address, the remaining sections provide of this case while also supporting the motion for use of the Injunctive powers of this court also further provides background facts to the depth of the assets at stake, the depth of the fraud and claims and part of the basis upon which I will respectfully seek further Leave of this Court to amend my counter-cross complaints filed herein September 22, 2013 and further leave to Add parties but due to the continuing nearly daily distractions by the sharp, abuse of process practices in the Probate Court my proposed Amendments to my Cross-counterclaims are presently only in draft form and I respectfully seek leave of this Court to file and submit a proposed Amended Counter-cross complaint which not only seeks to add claims such as claims under 42 USC Sec. 1983 but also parties as well.

10. I ask this Court to note, however, that even in the process of submitting this Motion-Petition-Complaint herein, I have experienced significant “downtime” at my website where the host Service provider that always responded timely in the past now does not respond sometimes for days and where the basic internet services into my home have been “down” at critical times where deadlines are in play and thus even this submission has been significantly delayed.
11. I further point out that Ted Bernstein who is the one that suggested at the hospital that our father Simon Bernstein may have been poisoned and murdered also said he would be handling things with the authorities and had friend attorneys to do so and was on calls with a lawyer both from Greenberg Traurig and Robert Spallina and where Ted’s “storyline” of how and why he is “in charge” as “Trustee” has changed from day one while the delay denial of operative documents began day one in a case where my father’s body goes “missing” for a week allegedly out for autopsy at one location and where Simon Bernstein’s home computer containing years of valuable business records alone is found “wiped clean” on the night of his passing and where

the Coroner's Report comes back on a 113 yr old male while certainly Simon Bernstein was not that age at the time of passing. See, Email of Ted's Calls Sept 14, 2012<sup>1</sup>.

12. As referenced later in this complaint herein, Greenberg Traurig has been publicly identified as being in the middle of major lawsuits for involvement in the multi-Billion Stanford Ponzi scheme where Stanford monies and accounts exceeding a Million dollars for my parents is just one of many items Unaccounted for where Discovery abuse has further occurred.
13. I have attempted to organize this complex set of facts in the most logical and orderly manner under these emergency circumstances where my family grows in increasing imminent danger as described herein.
14. I have read the Local Rules and believe I have complied in good faith and provided advance Notice of this Emergency Application to the involved parties Electronically by Email on Friday, Feb. 19, 2016 as follows:

Service Case #13-cv-03643 - Notice per Local Rule of Application on Emergency Motion / Injunction US District Court Hon. John Robert Blakey  
CONFIDENTIAL:

Parties, Attorneys and To Whom It May Concern:

I am writing to give you all as current parties and / or attorneys and representatives for current parties in the Illinois federal court litigation and other parties to be added to the federal court litigation as much advance reasonable notice as possible that I intend to contact Judge Blakey's Courtroom Deputy, Gloria Lewis, at (312) 818-6699, to make a request to set a hearing on an emergency motion which will seek Injunctive relief against all parties currently under jurisdiction of the District Court of Illinois with a further request to enjoin at least temporarily all proceedings in the Court of Probate Judge John Phillips and also add other parties to the action and other relief.

I will be requesting that this application be heard no later than this Tuesday, Feb. 23, 2016 Motion Calendar in Judge Blakey's Court and since my actual filings may not be electronically uploaded until later today and over the weekend that such request be deemed an Emergency and thus appropriate to hear as soon as practical.

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<sup>1</sup>September 14, 2012 Emails Ted Tescher Spallina and Greenberg Traurig's Jon Swergold  
[www.iviewit.tv/20120914SpallinaTescherTedGreenbergTraurigSwergoldDayAfterSimonDies.pdf](http://www.iviewit.tv/20120914SpallinaTescherTedGreenbergTraurigSwergoldDayAfterSimonDies.pdf)

Please advise of your availability to hear this motion for this coming Tuesday, Feb. 23, 2016.

Eliot I. Bernstein  
Inventor  
Iviewit Holdings, Inc. – DL  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245.8588 (o)  
(561) 886.7628 (c)  
(561) 245-8644 (f)  
iviewit@iviewit.tv  
<http://www.iviewit.tv>

15. I assert in good faith that hearing this Motion on an Emergency basis is proper due to a series of extortive, abusive, orchestrated actions of continued abuse of process in the Florida Probate Courts and by the Florida Probate Courts in conspiracy and or acting in concert with fiduciaries, counsel and others that are interfering and threaten to further interfere with this Court's jurisdiction and the ability to orderly decide the claims before it as there is a real and serious imminent threat and danger that critical evidence, documents, records, Discovery and real and personal properties will be permanently lost imminently preventing this Court from properly adjudicating claims before it while these parties are simultaneously hiding millions of dollars of assets as shown later herein wholly Unaccounted for and retaliating against and threatening myself with the Baker Act, Jail, Contempt and now a Guardianship on my children simply for seeking my inheritance, seeking the truth, reporting crimes as discovered against the fiduciaries and counsel primarily and now the Florida Courts are in high gear retaliating against the exercise of my First Amendment rights to suppress my whistleblowing that has uncovered and proven massive frauds against me committed on and by the Florida courts and its officers, fiduciaries and others.

16. I respectfully remind this Court and Your Honor that it is my original fingerprint on the February 2009 Petition to the White House, White House Counsel's Office<sup>2</sup>. USAG, FBI and a other investigative agencies and further that I have been interviewed with federal agents including but not limited to now "missing" FBI Agent Stephen Luchessi originally out of West Palm Beach FBI in Florida who went missing with the Iviewit case files causing my case to be elevated to the former Inspector General of the Department of Justice Glenn A. Fine who assigned a Miami field agent to my case, Harry I, Moatz the former Director of the Office of Enrollment of the US Patent Office who had me file charges of Fraud on the US Patent Office committed by my IP counsel that were members of the Federal Patent Bar that have led to a multi year suspension of my Intellectual Properties while investigations continue) and other federal agents like Ron Gardella out of the US Attorney's Office in the SDNY ( now retired, I believe ), others in the SDNY US Attorney's offices and other investigative bodies as well.
17. The purpose for reminding Your Honor of these matters is to demonstrate that I have never been charged by any of these federal authorities for making a false frivolous statement or received adverse treatment yet in the Palm Beach County Probate proceedings I am being vilified and retaliated against just for pursuing my rights and those of my children of our inheritance herein and Technology rights while certain parties under this Court's jurisdiction have attempted to have CPS take my children on a false report that came back unfounded which was initiated on the same day I notified this Court last May 2015 of threats against my life and this Court referred me to 9/11 services, attempted through threat to Baker Act me for reporting/discussing fraud and crime to a "Mediator" out of Judge Phillips Court, and now are seeking to jail me and impose Guardianship against me this Thursday for topics like the Car bombing of my Mini-Van

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<sup>2</sup> February 13, 2009 Letter to Honorable President Barack Obama  
<http://www.scribd.com/doc/255176532/February-13-2009-Iviewit-Letter-to-Barrack-Obama-to-Join-US-Attorney-Eric-Holder-in-Iviewit-Federal-RICO-Shira-Scheindlin#scribd>

in 2005 which was reported to the FBI and other authorities and other matters that have been reported to federal authorities thus retaliating against me being a Whistleblower of the Fraud on the Court and Fraud by the Court and its officers et al. and exercising First Amendment rights.

18. There have also been threats to take the home that my parents provided for my wife and children under a specific agreement to relocate to Boca Raton, Fl from California to be close to my parents and thus it is not unreasonable to suggest if I am falsey Baker acted or jailed the likely next moves are to take the home while I am cast away leaving my wife and children alone while I somehow have lost my “standing” at a 5 Minute UMC hearing in the State Court where no Construction Hearing has ever occurred on any of the operative documents and has elevated to even being blocked from filing responses to the motions in the Florida Probate Court, meanwhile literally years of no Accountings and Abusive discovery and “lost” items from sophisticated parties continues.

**Emergency: Imminent Permanent Loss of Critical Evidence. Documents, Discovery  
Necessary in Aid of this Court’s Jurisdiction:  
Status in the District Court, New and Recent Discovery of Undisclosed Conflicts of  
Interest, Feb. 18, 2016 Discovery of Fraudulent “Shell” Company to Hide Assets-Owner  
etc.**

19. While the parties are awaiting determination from this Court on the Summary Judgement motions filed by Plaintiffs, at least 2 scheduled Court Conferences with this Court have been re-scheduled, yet still remaining before this Court even aside from the Summary Judgment motions are Petitioner Eliot Bernstein’s Answer and Counterclaims filed September 22, 2013 asserting causes of action in Fraud, Fraud upon the Beneficiaries and Court, Abuse of Legal Process, Civil Conspiracy and Breach of Fiduciary Duties amongst others.
20. On Jan. 13, 2014 in Docket Entry 71, prior Judge St. Eve issued a Minute Entry Order which provided in part as follows, “Discovery is hereby stayed until the proper Trustee is determined” thus acknowledging that determination of a “proper Trustee” is an issue in the case, which



remains disputed. The Trustee/Trust/Beneficiaries/Policy issues remains undetermined presently and this Court's jurisdiction is imminently threatened by the permanent loss of evidence, documents and discovery by the parties orchestrating proceedings in Florida where this evidence and the parties in possession of such evidence should be enjoined herein.

21. This Court itself, Hon. John G. Blakey, presiding, issued a Minute Entry Order on May 22, 2015 under Docket Entry 185 that further provided in part as follows, "Bernstein's representations to the contrary notwithstanding, at this time the Court is unable to say that anyone has a clear right to the proceeds deposited by Heritage Union Life Insurance Company, let alone what each interested party's share should be."
22. The same core parties and nucleus of operative facts are present in this US District Court litigation as the Probate matters in Florida and I further seek leave to file for Declaratory relief herein on the Trusts and Operating companies which are non-probate, and suggest judicial economy in this complex case with parties from multiple jurisdictions will ultimately be served by this Court taking jurisdiction over the Construction and validity of all the Trusts herein which are non-probate anyway and for Construction and Validity of the operative Wills as will be shown if I am granted leave to Amend my cross-counter complaint.
23. As will be shown, just on Discovery abuses alone where Discovery and the Denial of Discovery has been used as a "weapon" by the Plaintiffs and other parties in the related proceedings in the State Probate Court of Florida, there is a real and imminent danger that the Integrity of this Court's judgment and path to judgment will be fundamentally impaired by the permanent loss of evidence and discovery materials justifying the exercise of the extra-ordinary relief under the All Writs Act and Anti-Injunction Act.

24. This evidence and documents and Discovery which “should answer” the outstanding questions before this Court of where the Original Trusts are, where the Original Policies are, where the Original records and where business records are that go along with Simon Bernstein’s life who made millions per year in the Insurance industry for decades and all items are directly relevant to the Life Insurance claim and my counter-crossclaims.
25. Instead, in the Florida Probate Court Simon Bernstein is falsely being portrayed as nearly a “pauper” with virtually no assets left and “Missing” and “losing” all ( or substantially all ) Business documents and dispositive documents meticulously kept for Decades, at least according to Plaintiffs and the counsels working with Plaintiffs.
26. Yet proper Discovery and Depositions would and should prove the contrary which is why this Court must act to preserve this evidence in the hands of multiple parties and some unknown parties where Discovery is necessary to specify the appropriate party and entity.
27. Further, that sufficient evidence will be shown to justify this Court exercising its inherent powers to make inquiry of the parties and respective counsels about “side agreements” and other “agreements” outside the record of any proceedings impairing the integrity of proceedings in this Court similar to the inquiry discussed in Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1202 (7th Cir. 1996).
28. This Court should be well aware of the “missing” and “lost” Trusts and Policies and business records which surround the original claim filed in this Court by the core party Plaintiffs and attorneys acting on their behalf which itself cut out Eliot Bernstein and his children as named, necessary parties tortiously attempting to deprive and deny rights of inheritance and expectancy to Eliot Bernstein and his children without their knowledge, which will be established as a pattern and practice that started the minute Simon Bernstein passed.

29. The need for proper Discovery and production and depositions should be plain and obvious to further aid this Court in it's own exercise of jurisdiction rendering a properly tailored Injunction under the All Writs Act and Anti-Injunction Act proper at this time.

**Florida Probate Proceedings Scheduled for Thursday, Feb. 25, 2016, Judge Phillips at 3:15 PM EST on Guardianship, Gag Orders, Jail-Contempt against Eliot etc Should be Temporarily Enjoined under All Writs Act, Anti-Injunction Act**

30. While I respectfully assert to this Court that ultimately the entirety and or virtual entirety of proceedings in the Florida Probate Courts are part of an orchestrated series of abusive and Constitutionally defective set of actions including continuing and ongoing Discovery abuse, this immediate appearance before Judge John L. Phillips in the North Branch of Palm Beach County should now be at least temporarily enjoined for all the reasons set forth herein until further Order of this Court.
31. As will be shown herein, the entirety of these parallel proceedings in the Florida State Probate Court has been ripe with Discovery Abuse each step of the way, where documents, discovery and evidence are either completely denied and ignored, substantially delayed for years, fraudulently altered and forged and entered into the record and turned over in a "piece-meal" orchestrated fashion thwarting and frustrating any fair justice where, like in this District Court with the same core parties where "magical" draft trust documents appear at critical times yet No Originals turned over for inspection or comparison and no law firms can be identified to have produced them.
32. It is further noted that the original Curator attorney Ben Brown of the Simon Bernstein Estate never received Original productions from resigning attorneys Tescher & Spallina except for documents on Eliot Bernstein's home and Ben Brown specifically complained about the piece-

meal fashion records were turned over such as records from JP Morgan etc. and unsigned tax returns. See, Ben Brown emails on Production and missing TPP.<sup>3</sup>

33. Tescher & Spallina did turn over 7,000+ ( seven-thousand ) plus pages Bate Stamped copies of alleged documents but these were copies on a Zip drive turned over to the Curator at least according to Spallina after Judge Colin orchestrated for them to have at least 10 months to create / fabricate/ forge, redact records and evidence after my original May 6, 2013 Emergency Motion<sup>4</sup> to seize all Records was filed after a series of fraudulent documents were discovered in the Estate of my mother Shirley Bernstein. The Emergency Motion of May 2013 was incorporated by reference in my September 2013 Answer and Cross-Counter claims in this District Court where I specifically pleaded for Discovery<sup>5</sup>.
34. Many of these documents were “fluff” pages where the actual Account Statements were missing, not in sequential order etc and where several instances of irregularities in the Bates Stamps numbers themselves exist.
35. Further, that Ben Brown had claimed to have obtained IRS Certified Returns he ordered months earlier for Simon Bernstein as Curator in 2014 and then suddenly died at a young age of 50 after resigning as Curator and to this day, successor PR Brian O’Connell’s office has Never obtained or Disclosed such IRS records from Ben Brown or independently obtained these from the IRS despite claiming they had ordered them months ago upon his getting his Letters as these records are critical as shown herein, just another example of Discovery Abuse throughout this case justifying use of the All Writs Act, Anti-Injunction Act at this time.

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<sup>3</sup>Ben Brown Emails Re TPP, JP Morgan and Production  
[www.iviewit.tv/BenBrownEmailsForFedInjunctionBlakey.pdf](http://www.iviewit.tv/BenBrownEmailsForFedInjunctionBlakey.pdf)

<sup>4</sup>May 06, 2013 Emergency Petition  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20LOW.pdf>

<sup>5</sup>September 22, 2013  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130922%20Eliot%20Answer%20and%20Cross%20Claim%20Northern%20District%20Illinois%20Simon%20v%20Heritage%20Jackson%20Insurance.pdf>

36. Such records are critical for a variety of reasons and it is asserted such Discovery will help show the manipulation and frauds upon even this District Court by the core parties herein under this Court's jurisdiction.

**New Conflicts of Interest emerge showing prior Judge Colin with substantial business interests with La Salle Bank-Trust who should be added to the District Court action and further Undisclosed Conflicts with PR Brian O'Connell for the Simon Bernstein Estate who is already under this Court's Jurisdiction**

37. New evidence has only recently been discovered in these last weeks January-February 2016 as a result of investigations by the Palm Beach Post and Investigative Reporter John Pacenti<sup>6</sup> into conflicts of interest and improper seizing of persons and property under Guardianship / Probate programs run by Palm Beach Judges Martin Colin and David French<sup>7</sup> in other cases also involving Brian O'Connell and a former attorney for Ted named John Pankauski alleging a host of criminal and civil misconduct, which have revealed Judicial Financial Disclosures of Judge Martin Colin demonstrating a long term financial business relationship during all relevant years herein and involving several hundred thousand dollars of Loans with LaSalle Bank / LaSalle Trust which were never Disclosed in the underlying Probate cases related herein.

38. La Salle Bank -Trust and-or whoever is the proper "successor" is directly implicated in the actions presently before this federal Court where I have raised in Summary Judgement that La Salle should be added as a party and Discovery is needed with respect to the original Life Insurance policy on the breach of contract action as La Salle is named as the Primary

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<sup>6</sup> January 14, 2016 "Judge's finances show history of unpaid debt, IRS liens, foreclosures" By John Pacenti - Palm Beach Post Staff Writer  
<http://www.mypalmbeachpost.com/news/news/judges-finances-show-history-of-unpaid-debt-irs-li/np4rH/>

<sup>7</sup> Guardianship Series - Guardianship a Broken Trust <http://www.mypalmbeachpost.com/guardianships-colin-savitt/>  
and Guardianship Probate Series Palm Beach Post Compiled PDF  
<http://www.iviewit.tv/Pacenti%20Articles%20Compiled%20as%20of%20Feb%2002%202016L.pdf> (Large and Sun Sentinel re Colin and wife Savitt  
<http://www.sun-sentinel.com/opinion/editorials/fl-editorial-guardianship-law-20160129-story.html#ifrndnlocgoogle>

Beneficiary of the alleged “lost” Life Insurance Policy owned by deceased Simon Bernstein brought to this Court by the same operative parties who have conveniently left LaSalle out of these federal proceedings in the same manner I and my minor children were left out as necessary parties in the action before this federal court. See, Summary Judgement Eliot Bernstein<sup>8</sup>.

39. I note that the carrier Jackson in this Court suggested that Bank of America was the proper “successor” in interest in this case and information shows Bank of America is the entity that acquired LaSalle Bank where Judge Colin is shown by his own Financial Disclosures to have hundreds of thousands in Loans with La Salle at least for years 2008 to the end of 2014 thus during all relevant times herein.
40. In the recent weeks leading up to the present, a series of Investigative Journal articles have been published by the Palm Beach Post showing a widespread abuse in the Palm Beach Court system specifically involving Judge Martin Colin where allegations of Double-billing by “inside” law firms, the “taking” of Guardian’s Assets “prior to Court approval”, and Undisclosed conflicts of interest are alleged.
41. The allegations by the Palm Beach Post are remarkably similar to claims I have made for years while orchestrated Discovery abuses have occurred from the first days after my father Simon Bernstein’s passing.

“The savings of incapacitated seniors flow into the household of Palm Beach County Circuit Judge Martin Colin. This occurs courtesy of Colin’s wife — Elizabeth “Betsy” Savitt. She serves as a professional guardian, appointed by judges to make decisions for adults who no longer can take care of themselves. . . . . Savitt has **taken money** from the elderly people whose lives she controls without first getting a judge’s approval as well as **double-billed** their accounts, a Palm Beach Post investigation has uncovered in court records.

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<sup>8</sup>20150608 Amended Redo Summary Judgement  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150608%20FINAL%20AMENDED%20REDO%20Response%20to%20Summary%20Judgement%20ECF%20STAMPED%20COPY.pdf>

Families of some of the seniors say the judge's wife and her attorneys drum up **unnecessary litigation** that runs up fees, benefiting herself, the judge and her lawyers. Savitt doesn't appear before her husband, but Judge Colin does oversee other guardianship cases where he is responsible for safeguarding the finances and well-being of these "wards" of the court. Colin's colleague, Circuit Judge **David French** who lunches with him regularly, has overseen almost two-thirds of Savitt's cases. Some lawyers who have opposed Savitt in Judge French's courtroom say he didn't disclose that Savitt is the wife of a fellow judge or his social connections to the couple. . . . . The lawyers Savitt has hired to represent her also practiced before her husband in other cases, where he had the power to approve their fees. A former Florida Supreme Court chief justice and a law professor say this constitutes, at minimum, an appearance of impropriety and should be investigated.

"This conflict puts the whole courthouse under a cloud because it raises so many questions and there are no answers forthcoming. And that is why we have a judicial canon on the appearance of impropriety, so there are no questions like this," Nova Southeastern law Professor Robert Jarvis said." See,

"His wife's job as a professional guardian leaves Judge Colin compromised, handcuffing him from fully doing his job, The Post found. He's recused himself from 115 cases that involve his wife's lawyers in the last six months of 2015 after The Post started asking questions in its investigation.

"When you have a judge suddenly recuse himself of so many cases, it certainly sends up a red flag," Jarvis said. "How did a judge allow himself to be put in such a position? I have never heard of a judge doing such a thing."

"Savitt often hires attorneys Hazeltine, **Ellen Morris** and **John Pankauski** prolific practitioners in elder law. They or members of their firms practiced in front of Colin before he began recusing himself from their cases last year. From 2009 to 2014, Colin's recusals totaled 30. Since the beginning of July, he's taken himself off 133 cases — 115 involving his wife's lawyers.

**Hazeltine, Morris** and Pankauski **or their firms** — as well as the guardians they represent — have had fees in non-Savitt cases repeatedly approved by Judge Colin, The Post found."

"Judge Colin and his wife have socialized with one of the judges she appears in front of regularly, The Post has learned.

Colin and Circuit Judge David French eat lunch together nearly every day. Colin and French co-hosted a **trivia night**<sup>9</sup> in May for the South Palm Beach Bar Association. The event was co-sponsored by Pankauski's firm. French did not return repeated attempts for comment.<sup>10</sup>

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<sup>9</sup> Trivia Night Invatation <https://www.documentcloud.org/documents/2623271-trivia-night.html> and <http://www.bellersmith.com/blog/4th-annual-trivia-night>

<sup>10</sup> February 02, 2016 Palm Beach Post Series "Guardianship a Broken Trust" by Reporter John Pacenti <http://www.mypalmbeachpost.com/guardianships-martin-colin/>

<http://www.mypalmbeachpost.com/guardianships-martin-colin>

42. In this case, BOTH Judges Colin and French were involved in the underlying Estates with Judge Colin “assigned” to the Shirley Bernstein case and Judge French originally “assigned” to the Estate of Simon Bernstein case and where later the French case was improperly assigned to Colin by Colin with no necessary hearing to transfer had by French, as it was scheduled on the day before Christmas when the court was closed, leaving Eliot and Candice at an empty court building and then when rescheduled Colin appeared in French’s stead and ruled for French to transfer the case to himself.
43. In another blatant conflict, I consulted extensively with attorney Pankauski also mentioned in the Post articles as involved in cases with Judge Colin’s wife Savitt and her attorney Hazeltine regarding the estate and trust cases and was in the process of trying to raise a Retainer when Pankauski turned around and showed up at a Hearing with Ted Bernstein and continued to represent Ted Bernstein in front of Judge Colin for several months. Judge Colin had denied a motion to Disqualify attorney Pankauski written by attorney Peter Feaman, Pankauski being prominently mentioned above in the Palm Beach articles<sup>11</sup>.
44. Even more important is that when I first filed my original May 6, 2015 “Emergency Motion” after first learning of the extensive Fraudulent documents being used in the Shirley Bernstein Estate case involving attorneys Tescher & Spallina and their paralegal Kimberly Moran, Judge Colin who was only “assigned” to Shirley Bernstein’s case simultaneously came in and Denied the Motion as an Emergency in *both* the Shirley Bernstein case and then “stepped over” to

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<sup>11</sup> June 23, 2014 Motion Remove Pankauski

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140623%20FINAL%20SINGED%20PRINTED%20MOTION%20to%20Remove%20Rose%20Theodore%20and%20Pankauski%20Low.pdf>

and

June 30, 2014 Motion to Remove Pankauski

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140630%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20REMOVE%20JOHN%20PANKAUSKI%20ESQ.pdf>



Judge French's case for Simon Bernstein and issued the Order denying this Motion<sup>12</sup> as an Emergency in the Simon Bernstein case.

45. Despite filing this Emergency Motion in May of 2013 in the State Probate Court in Florida to in part seize and obtain the DISCOVERY and DOCUMENTS in the case to be secured for forensic review, over 3.5 years later the Documents and Records and evidence have not been fully produced or seized or disclosed and to this day there are named Trusts in existing Trusts that I have never seen before and Trusts for my children created on the day my father died that I am being sued as Trustee of in the Shirley Trust case under which I have never seen nor have they ever been produced.
46. This Emergency Motion of May 2013 was incorporated by reference into my Answer and Counterclaims<sup>13</sup> filed with this US District Court in September of 2013 and the evidence and documents therein are necessary in aid of this Court's jurisdiction and my counter-cross claims expressly plead for Discovery in this Court which is in jeopardy of being permanently lost from the actions of the State actors and courts.
47. This relationship between Judge Colin and French and Judge Colin "stepping over" into Judge French's case to Deny my Emergency is directly relevant to proceedings herein as it relates to when Judge Colin had "knowledge" that Simon Bernstein was Deceased which relates to the Fraud exposed in his court committed by Tescher & Spallina and their legal assistant and notary public Kimberly Moran with Ted Bernstein involved with Tescher & Spallina at all times relevant therein and Spallina and Tescher acting as his counsel in his alleged roles as fiduciary

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<sup>12</sup>May 08, 2013 Order Denying Emergency in Simon Estate signed by wrong Judge Colin instead of French and Order Denying Emergency in Shirley Estate  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130508%20Order%20Denying%20Petition%20and%20Amended%20Order%20Denying%20Petit.pdf>

<sup>13</sup>September 21, 2013 Answer and Cross Claim Illinois Federal Court Judge Amy St, Eve  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130921%20FINAL%20Eliot%20Answer%20Jackson%20Nat%20Simon%20Estate%20Heritage%20Spallina188287%20HIGH.pdf>

in Shirley's estate and trust and also being big clients of each other, where Ted brought Spallina and Tescher to Simon Bernstein in order to secure life insurance clients in return from Tescher and Spallina.

**Undisclosed Conflicts of PR Brian O'Connell, Joielle Foglietta involved in cases with Judge Colin's wife Elizabeth Savitt and Savitt's attorney Hazeltine at same time O'Connell is Recommended as Successor PR by Creditor Attorney Peter Feaman**

48. Recent records obtained as a result of the Palm Beach Post Investigation show that attorneys Brian O'Connell and Joielle Foglietta where Brian O'Connell became appointed in the Simon Bernstein Estate as the new PR upon recommendation of Creditor William Stansbury's attorney Peter Feaman on or around June of 2014 now show that Brian O'Connell and Joielle Foglietta were involved in that same time frame with at least one case involving Judge Martin Colin's wife Elizabeth Savitt and her attorney Hazeltine in the Probate Case of Albert Vasallo<sup>14</sup>, CASE NO.:502014MH001432XXXXSB .
49. Said conflicts of interest were never Disclosed by Judge Martin Colin, Brian O'Connell, Joielle Foglietta nor Creditor attorney Peter Feaman, Esq., IF Mr. Feaman knew of this which is presently unknown.
50. As this District Court is or should be aware, attorney Brian O'Connell is under this Court's jurisdiction having been granted Intervenor status in the Illinois Life Insurance Litigation on behalf of the Estate of Simon Bernstein.
51. Yet instead of taking diligent action to secure and obtain Original records, documents, evidence and Discovery by Brian O'Connell which was Ordered by Judge Colin Feb. 18, 2014, and despite the issues in the Illinois litigation involving the "Missing" Trusts, "Missing" Insurance policies, and "Missing" business records that would or should show or lead to the truth of

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<sup>14</sup> Palm Beach Post Articles and Court Filings Posted re Vassallo case.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Vassallo%20Case%20Palm%20Beach%20Post%20O'Connell%20Savitt%20Pankauski.pdf>

matters, the O'Connell office has sat silent obtaining virtually no Discovery and records while acting as PR, denying Eliot production requests and opposing motions for discovery and all the while stating he has been working on a voluminous production request to send from the day he was commissioned and which remains incomplete as of this day and never sent out to the parties.

52. O'Connell also failed to do a court ordered inventorying of Simon's office possessions at his office location and it was later learned that Ted had been evicted and was found loading trucks in the night by the landlord and nothing remains at that site and the items of Personal Property are now missing with Alan Rose turning over to O'Connell two boxes of plaques of Simon's claiming that was all there was after 3 years that no one had ever inventoried his businesses, his computer files, records and personal properties for multiple companies. I am aware of several items of personal property that are missing and were not inventoried that were in Simon's office, including but not limited to, gifts from me and William Stansbury to Simon.
53. Meanwhile, as shown in the Summary Judgment process before this Court, LaSalle Bank where it is now newly Discovered that Judge Colin has hundreds of thousands of dollars in business-mortgage loans, was allegedly never contacted in the Life Insurance process despite being named as Primary Beneficiary all the while Judge Martin Colin "controlled" actions in the Probate Court somehow forcing Creditor William Stansbury to pay for the costs of Illinois litigation on behalf of the Estate, which could or should be a Conflict situation from the start, while simultaneously playing some "sham" of a game that Stansbury otherwise has no "Standing" to be in the Florida Probate cases and file petitions to remove Ted as an unqualified not validly serving trustee based on alleged criminal misconduct, major breaches of fiduciary duties and more.

54. A flurry of motions were filed in the State Court to discontinue William Stansbury's obligation to pay for the Estate's federal Illinois counsel and enter into a new "top-loaded" retainer by the Estate for the federal Illinois litigation right around the times this Court's was about to hold a Scheduled conference reflective of some form of undisclosed "agreement" between the O'Connell firm, Peter Feaman, the Illinois counsel and likely Alan Rose-Ted Bernstein (again wholly excluding Eliot on any proposed settlements or other agreements) while the same attorneys were orchestrating other State Court proceedings so that a "Validity" Trial would proceed with no licensed attorney to challenge Alan Rose and Ted Bernstein despite the fact that Peter Feaman had written to O'Connell in Aug. 2014<sup>15</sup> advising him of his "absolute duty" to move the court to Remove Ted Bernstein as trustee for waste of assets, unaccounted for assets and other. See Feaman and O'Connell Motions on Payment of Illinois Litigation.
55. Yet, attorney Feaman never took any follow-up with O'Connell to this date some 19 Months later and O'Connell failed to participate in an orchestrated "one-day" "Validity" trial on Simon's Estate documents leaving the Estate without representation and failing to prosecute the already filed Answer to the Trust Construction/Validity Complaint stating Ted Bernstein. was not a validly serving Trustee under the Simon Trust, as stated,

**"AFFIRMATIVE DEFENSE"**

1. First Affirmative Defense- Lack of Standing- Ted Bernstein lacks the requisite standing as he is not validly serving as Trustee of the Simon Trust, is not a beneficiary of the Simon Trust, and is not representing any minor child that is a beneficiary of the Simon Trust.<sup>16</sup>

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<sup>15</sup> August 29, 2014, Feaman Letter to O'Connell Regarding Ted  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

<sup>16</sup> February 17, 2015 O'Connell Answer Affirmative Defense Ted is not a validly serving Trustee  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

56. Ted was allegedly appointed Successor Trustee by Spallina and Tescher after they resigned after admitting fraudulently altering a Shirley Trust that benefited Ted directly and while acting as Ted's counsel and where the Shirley Trust Successor provision Tescher and Spallina drafted states that the Successor can not be related to the issuer Simon and where further the Trust states that TED IS PREDECEASED FOR ALL PURPOSES OF DISPOSITION OF THE TRUST.
57. These facts alone fundamentally compromise and call into question the actions of the parties and attorneys before this US District Court justifying use of the All Writs Act and Anti-Injunction Act injunctive powers and the Inherent Powers doctrine to at minimum Enjoin the parties and Florida case until Orderly proceedings and Conference and Inquiry made be made by this District Court.

**Discovery Abuse - Tescher & Spallina Records never properly turned over in excess of 2 years with no action taken by O'Connell, Foglietta**

58. Despite Judge Colin having actual knowledge of Fraud upon his Court involving Spallina and Tescher in the Shirley Bernstein case and having to have Actual knowledge that Simon Bernstein was Deceased at least as of May 2013 when Judge Colin "steps into" Judge French's shoes to Deny my Emergency Motion in the Simon Bernstein case where Judge French was the assigned Judge, Judge Colin **fails to Order for several months any Inquiry** of the Attorneys and parties before his Court and denies further motions by Eliot Bernstein until finally it becomes known that Tescher & Spallina paralegal and employee Kimberly Moran is under investigation and has made admissions about the forgery and fraud<sup>17</sup> and finally Orders a hearing for Sept. 13, 2013.

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<sup>17</sup>September 04, 2013 Motion to Freeze et al.

59. Yet the bulk of the Hearing is a sham where Judge Colin “dances” around the issue of when it becomes known that Simon Bernstein had been Deceased at the time the fraudulent filings were made, dances around who filed what and why and proceeds to let Robert Spallina off the hook from answering virtually any direct questions of his involvement in the fraud of using Deceased Simon Bernstein to act in the present to Close the Estate of Shirley Bernstein while simultaneously permitting Ted Bernstein to appear as a “Trustee” for Shirley Bernstein on this date.
60. Yet Judge Colin had to have knowledge that Ted Bernstein knew of the Fraud or learned of the fraud since Ted Bernstein had not signed ANY Waiver prior to the April 9, 2012 date when Robert Spallina fraudulently creates a Petition for Discharge allegedly signed by Simon Bernstein on that date which could not have been possible or true since the Petition references Waivers being obtained as Signed Waivers that clearly that had not yet been signed (one not until after Simon passed) and Ted also knew that he had never notarized the Waiver that Kimberly Moran had fraudulently notarized and forged in his name and yet Judge Colin took no action to even inquire of Ted Bernstein and permits him to continue to act as “Trustee” and even after stating he had enough evidence of fraud to read Ted and his counsel Tescher and Spallina their Miranda Warnings at the first hearing, and then promotes Ted after to Personal Representative in the Shirley Estate which was reopened by Colin due to the fraud committed by Ted’s counsel and which fraud benefited Ted and his family directly. Ted had been acting without Letters from the Court as PR at the time his mother’s estate was closed by his deceased father illegally and acting without letters from September 12, 2012 until October 2013 when Letters of Administration were issued and when he found out what his attorneys did in forging

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130904%20FINAL%20SIGNED%20PRINT%20FILED%20Motion%20to%20Freeze%20Estates%20of%20Shirley%20Due%20to%20Admitted%20Notary%20Fraud.pdf>

and fraudulently notarizing documents and submitting them to the Court as part of a Fraud on the Court, Ted took no actions to report the matters or seize all pertinent and relevant documents for analysis and to this day claims never to have the original trusts and wills he operates under and that he did nothing to validate the authenticity of them. See Dec. 15, 2015 Transcript<sup>18</sup>.

61. Ted is close personal friends and business associates with Tescher and Spallina who brought his counsel Tescher and Spallina into the Bernstein family in order to get insurance business clients from them.
62. Yet all of this *begs the question and should have forced Judge Colin to question* that IF Ted Bernstein was in Fact the Trustee and PR of Shirley's Estate after Simon Bernstein passed shown by some proper Original operative document, then Why wasn't Ted Bernstein acting after Simon passed with the Tescher Spallina firm to "close" the Estate or take whatever action was necessary instead of fraudulently using Deceased Simon Bernstein on documents to do so?
63. It is noted for this US District Court that on or about Nov. 5, 2012, the same day an Ex Parte communication from Judge Colin is memorialized to attorney Robert Spallina's office regarding filings in the Shirley Bernstein Estate, my attorney Christine Yates was attempting to get Documents from Robert Spallina's Office relating to the Trusts, Wills, standard documents that Beneficiaries are entitled to<sup>19</sup> yet Christine Yates is told by Spallina's Office that there was no Bernstein case or client?

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<sup>18</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

<sup>19</sup> November 06, 2012 Christine Yates Letter Stating Spallina claimed he did not know Bernstein despite several months of meetings with Bernstein family.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20121106%20Yates%20letter%20re%20Spallina%20claiming%20he%20does%20not%20know%20Bernstein.pdf>

64. It is noted for this US District Court that this is an ongoing pattern and practice to deny me Eliot Bernstein and my children Counsel of our choice as each time I have had an attorney such as Yates there is Discovery Abuse in getting documents to review and handle the case with Yates being so bullied by the Spallina office that she later resigned or where such as Pankauski I end up consulting with an attorney that ends up working for and with Ted Bernstein or as with Branden Pratt who attends an evidentiary hearing regarding the fraudulent documents of Moran and states he and others do not want to put Moran on the stand despite her being present as they did not want to throw her under the bus, the exact opposite strategy Pratt had recommended immediately prior to and in preparation for the hearing.
65. A similar event happened with Steven Lessne himself who is now pursuing a Guardianship against me with Alan Rose before Judge Phillips on February 25, 2016 at 3:15pm where Lessne obtained confidential valuable information from myself when we first spoke without fully disclosing who he was really working for and in fact concealing and lying about his representation of my family and ended up being counsel to Janet Craig, Manager of BFR for Oppenheimer and Trustee for the children's trusts, all of these attorneys whom should be added to the District Court case on an amended complaint for good and just cause.
66. That part of the improper basis for Guardianship itself is the fact that I have refused for myself and children to take funds which are Part of a Fraud such as funds from the sale of the Shirley Condo when Ted Bernstein had not been approved as any Trustee at the time of sale and not only had Original documents never been turned over but no proper Validity hearing had ever occurred and still has never occurred and thus imposed reasonable conditions on any funds that I would accept that neither I nor my children would be immersed in nor further fraud nor would we be liable as a result for accepting such funds. Yet for this type of action the parties are now



trying to take further control and block me off from Any ability to file and get Discovery by seeking a Guardianship and denying me standing and attempting to now claim I am not a beneficiary with no hearings to determine such and where I am clearly a beneficiary in the Shirley IRREVOCABLE Trust.

67. This Ex Parte Communication of Nov. 5, 2012 was somehow not Docketed with Judge Colin's Court until Nov. 6, 2012 as prominently noted in my May 2015 Motion for Mandatory Disqualification of Judge Colin<sup>20</sup> and voiding of his Orders in part due to Fraud On and Fraud By his court, which was denied as legally insufficient by Colin but then leading to the sua sponte "Recusal" within 24 hours that further entails Judge Colin "steering" the Transfer and Re-Assignment of the case to the North Branch of Palm Beach County after his recusal.
68. As shown in the mandatory Disqualification Motion against Judge Colin, Colin had proceeded for 2 years since my original May 2013 Emergency Motion, never holding Validity hearings, never requiring Accountings which to this day have never occurred in the Shirley Bernstein case and are incomplete missing years of accounting in Simon, never addressing Ted Bernstein's involvement and knowledge in the Tescher Spallina frauds while meanwhile using what now appears as the Standard Modus Operandi by attempting to "Force" me to take Distributions from the improper Sale of Shirley's Condo sold by Ted Bernstein even before the Sept. 2013 hearing, thus the standard M.O. of "taking" and "disposing" of the assets first, then trying to retroactively "approve" by Court order. This occurred even where what is claimed as the Shirley Bernstein Trust specifically states that Ted is considered PREDECEASED FOR ALL PURPOSES OF DISPOSITIONS of the trust.

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<sup>20</sup> May 14, 2015 Mandatory Disqualification Motion Judge Martin Colin  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20ECF%20STAMPED%20COPY.pdf>

69. I thereafter filed a Petition for All Writs in the nature of Prohibition and Mandamus<sup>21</sup> about these actions of Judge Colin in improperly “steering” the case as a Material Fact Witness and Potential Counter Defendant which ultimately lead to the case going to one Judge Coates who not only happened to be a former Proskauer Rose partner but later file review shows that as a Proskauer Partner Coates himself had “Billed<sup>22</sup>” as part of the original Iviewit - Proskauer “Billing case before Judge Labarga” whereby Coates billed to Eliot’s companies for time relating to SEC work after learning the Iviewit technologies had been deemed the “Holy Grail” and “Priceless” worth billions upon billions of dollars, claimed by by leading engineers at a company, Real 3D, Inc. (Intel, Lockheed and Silicon Graphics owned) that Proskauer introduced Iviewit to for a technology review.
70. Before this, however, several more months passed by after Colin held the sham Sept. 2013 hearings knowing of serious fraud in his court where six counts of forgery occur where Tescher & Spallina are allowed by Colin to remain in Custody and Control of all of the Documents, Originals, Evidence of Simon and Shirley Bernstein after Spallina claimed in the September 13, 2013 hearing that he knew of no other frauds in the estates and trusts than the forgeries and fraudulent notarizations that Moran did.

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<sup>21</sup> ORIGINAL ALL WRITS

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

REDO OF ALL WRITS

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

<sup>22</sup> Judge Coates Billing Iviewit as Proskauer Rose Partner for Securities Work and Estate Planning of Stock

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Coates%20Billing%20Iviewit%20Holdings%20as%20Proskauer%20Partner%20on%20Iviewit%20Clean.pdf>

and

Proskauer notes referring to Coates involvement with Iviewit

[www.iviewit.tv/ProskauerCoatesTriggs.pdf](http://www.iviewit.tv/ProskauerCoatesTriggs.pdf)

71. Yet Spallina concealed from the Hearing Record on Sept. 13, 2013 other frauds he had done and that were later admitted to by Spallina to the Palm Beach Sheriff's<sup>23</sup> where he admits having fraudulently altered Shirley's Trust to benefit Ted's family and for months moved the court and retaliated against Eliot in pleading after pleading and finally under PBSO investigation admitted his felony alteration and creation of a Fraudulent Shirley Trust.
72. Despite having admitted to fraudulently altering a Trust document and being directly involved with fraudulent documents filed in the Estate of Shirley Bernstein before Judge Colin through his law firm, ultimately in January of 2014 Judge Colin simply lets Tescher & Spallina "resign" after they admitted to the Bernstein family that they had fraudulently altered the Shirley Trust document and mailed it to Eliot's minor children's counsel<sup>24</sup> (making fraudulent changes to include Ted's children as beneficiaries despite Ted and his lineal descendants being considered Predeceased for all purposes of the Shirley Trust) .
73. On February 18, 2014 Judge Colin issues an Order for Tescher & Spallina as follows: "**By March 4, 2014 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.**"

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<sup>23</sup> PBSO Sheriff Report Page 1-8

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

<sup>24</sup> Attorney Christine Yates, Esq. of Tripp Scott had to be hired by Eliot to get Estate and Trust Documents from Tescher and Spallina due to their refusal to give such documents to Beneficiaries or Interested Parties from day one and when they were finally forced months later by Yates to turn over records they sent documents that have been proven and admitted to be forged and fraudulently notarized by their offices and some of those submitted to the Florida probate court as part of an elaborate fraud on the court to seize Dominion and Control of the Estates and Trusts of Simon and Shirley, fraudulently alter documents and begin to loot the estates of millions upon millions of dollars, in complex legal frauds and all the while refusing documents, losing documents, stealing documents from the estate, no transparency and no accountings. .

**regardless of whether such property has been previously distributed, transferred, abandoned, or otherwise disposed of.**” ( emphasis added ) See, Feb. 18, 2014 Order of Judge Colin<sup>25</sup>.

74. It is clear from the Vasallo records herein<sup>26</sup> that Brian O’Connell was already working closely with Judge Colin’s wife Elizabeth Savitt and attorney Hazeltine by the time Brian O’Connell was appointed successor PR by Judge Colin over Simon Bernstein’s Estate in July of 2014 or at least on or about the same time.

**O’Connell, Foglietta Disqualified as Material Fact Witnesses intertwined with Alan Rose and Steven Lessne, also Disqualified as Material Fact Witnesses; Intertwined with Spallina, Colin fraud and the Stanford Ponzi fraud; Orchestration to avoid Discovery and Original Documents before Judge Phillips**

75. It is clear that compliance with the Feb. 2014 Order against Tescher & Spallina was never determined by the time O’Connell was appointed as PR and to this very day there still has been no Compliance hearing on this Discovery tantamount to continuing Discovery Abuse and Discovery as a Weapon justifying exercise of powers under the All Writs Act and Anti-Injunction Act.

76. I have made and filed multiple requests for Discovery<sup>27</sup> and production throughout the Florida State Court litigation which has been denied to such an extent as to be Abuse of Discovery.

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<sup>25</sup>February 18, 2014 Order Judge Colin Tescher and Spallina to turn over ALL records.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>26</sup> Palm Beach Post Articles and Court Filings Posted re Vassallo case.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Vassallo%20Case%20Palm%20Beach%20Post%20O'Connell%20Savitt%20Pankauski.pdf>

<sup>27</sup>November 01, 2013 Production Request

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131101%20ELIOT%20BERNSTEIN%20FIRST%20REQUEST%20FOR%20PRODUCTION%20OF%20DOCUMENTS%20AND%20THINGS%20PROPOSED%20ON%20THEODORE%20S%20%20BERNSTEIN.pdf>

and

November 01, 2013 Interrogatories Request

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131101%20ELIOT%20BERNSTEIN%20FIRST%20SET%20OF%20INTERROGATORIES%20PROPOSED%20ON%20THEODORE%20BERNSTEIN.pdf>

and

May 12, 2014 Production Request Benjamin Brown Curator

While the proceedings before this US District Court were in essentially a hold pattern with the submissions of the Summary Judgement motions and while my Petition for All Writs at the Florida Supreme Court was pending regarding Judge Colin as a Necessary and Material Fact witness which further sought a Stay by the Florida Supreme Court and preservation of evidence, documents and discovery, after Judge Coates who worked at Proskauer and had billed Iviewit on SEC matters Recused from the Florida case after the improper Transfer from Colin whereby he gained confidential court records while initially denying he had conflicts or knew of Eliot or Iviewit, the case was then assigned to the current Probate Judge John Phillips.

77. The Petition for All Writs<sup>28</sup> at the Florida Supreme Court further brought up for review the very process by which Judge Colin “poisoned” the transfer and steered the case to the North Branch

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<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140512%20ELIOT%20BERNSTEIN'S%20FFIST%20REQUEST%20FOR%20PRODUCTION%20OF%20DOCUMENTS%20BENJAMIN%20BROWN.pdf>

and  
January 20, 2015 Motion for Production from Brian O'Connell

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150120%20FINAL%20SIGNED%20PRINTED%20Request%20for%20Production%20Brian%20O'Connell%20ECF%20COPY.pdf>

and

February 27, 2015 Motion in Opposition to Production

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150227%20Motion%20in%20Opposition%20to%20PR%20Motion%20to%20Strike%20Production%20ECF%20Copy.pdf>

and

November 09, 2012 Christine Yates, Esq. request to Spallina and Tescher for Production

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120909%20Letter%20Yates%20to%20Spallina%20re%20Information%20Request.pdf>

and

December 21, 2012 Christine Yates, Esq. to Spallina

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20121221%20Yates%20Letter%20to%20Spallina%20re%20Simon%20Shirley%20Estate%20info.pdf>

and

June 13, 2013 Letter Marc Garber, Esq. to Christine Yates re Spallina and Tescher

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130613%20Marc%20Garber%20Letter%20re%20Christine%20Yates%20termination%20Spallina%20etc.pdf>

<sup>28</sup> June 10, 2015 All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

and

July 01, 2015 Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%2>

in his Sua Sponte Recusal<sup>29</sup> just one day after denying a Mandatory Disqualification based in part on Fraud on the Court and Fraud by the Court.

78. Joielle Foglietta of the O'Connell firm then filed for a Status Conference<sup>30</sup> which was held on July 15, 2015 during which time I raised the pending Writ with Judge Phillips who indicated twice on the record I would "be heard" on this at the next appearance.
79. While I had written to Joielle Foglietta by email to ascertain the proposed Schedule of proceedings, none was forthcoming however the O'Connell and Joielle Foglietta team filed for a Case Management Conference in the SIMON Bernstein Case which was scheduled and held Sept. 15, 2015.
80. After close of business hours on the Eve of the Conference, attorney Alan Rose on behalf of Ted Bernstein submitted a filing seeking to co-opt the Conference and impose a Guardianship on me before Judge Phillips at that time without disclosing that hearings had already been held and even Judge Colin had denied this repeated demand for guardians, contempt hearings, requests for gag orders and arrest of Eliot.
81. As shown by the Transcript of Conference of Sept. 15, 2015 and my subsequent Motions for Mandatory Disqualification of Judge Phillips, Phillips fundamentally denied me a Due Process Opportunity to be heard on this day despite saying my Writ application would be addressed cutting me off at each attempt to be heard yet allowing Alan Rose to begin moving Judge Phillips to schedule a Trial in the Shirley Bernstein case which was NOT Noticed for the Conference that day and ultimately Judge Phillips Ordered a Pre-determined, prejudged "One-

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[OWrits%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf](#)

<sup>29</sup>May 19, 2015 Colin Sua Sponte Recusal and Steering of the Cases

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

<sup>30</sup>August 03, 2015 Case Management Conference Notice of Hearing in SIMON ESTATE ONLY

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%202015%202015%200930am%20Case%20Management.pdf>

day” Validity Trial for Dec. 15, 2015 in a case not even Noticed for Conference that day. See Sept. 15, 2015 Transcript<sup>31</sup>.

82. Licensed attorneys O’Connell acting as PR for Simon’s estate, Foglietta and Creditor attorney Peter Feaman sat by idly watching as this occurred without raising any questions on Discovery, production or standard pre-trial issues as the record reflects they barely said a word at a hearing both have vested interest in.
83. It should be noted that this occurred after Judge Phillips “pre-judged” any matters relating to Judge Colin expressing his “love” for Judge Colin on the Record and his friendships with all the attorneys and stating I was the only one he knew nothing of in an angry tone and indicating he would not find Colin had done anything wrong without even having the Due process Opportunity to make or state a case while falsely representing he had no powers to do so when Florida law allows for prior Orders to be vacated. See, Transcript of Case Management Conference Sept. 15, 2015<sup>32</sup>.
84. Florida Rules of Civil Procedure provide in part:

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference. At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice, may convene, a case management conference. The matter to be considered shall be specified in the order or notice setting the conference. At such a conference the court may: (1) schedule or reschedule the service of motions, pleadings, and other papers; (2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information; (6) consider the need for advance rulings from

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<sup>31</sup> September 15, 2015 Judge Phillips Status Conference Transcript  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>32</sup> September 15, 2015 Judge Phillips Status Conference Transcript  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

the court on the admissibility of documents and electronically stored information; (7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources; (8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (9) schedule or hear motions in limine; (10) pursue the possibilities of settlement; March 16, 2015 Florida Rules of Civil Procedure 36 (11) require filing of preliminary stipulations if issues can be narrowed; (12) consider referring issues to a magistrate for findings of fact; and (13) schedule other conferences or determine other matters that may aid in the disposition of the action.

85. Yet, despite knowing that this Rule provides, “**The matter to be considered shall be specified in the order or notice setting the conference**”, licensed attorneys O’Connell, Foglietta and Feaman took no action during or after to correct the pre-judged “one day” Validity Trial scheduled in the wrong case, Shirley Bernstein, which was Not noticed for Conference on this date.
86. Such attorneys further took No Action to raise DISCOVERY COMPLIANCE prior to to the Trial despite the outstanding Order of Judge Colin of Feb. 2014 nor was I allowed a Due Process opportunity to raise Discovery issues, the need for Experts due to the fraud already determined in dispositive documents nor the need for a longer trial period based upon multiple Witnesses needed nor the need for Pre-Trial Depositions and the record will reflect that as I tried to make claims I was rudely shut down repeatedly by rude and angry Judge Phillips.
87. To backtrack slightly which shows the continuing pattern of Discovery Abuse in the State Court, by the time of the Sept. 13, 2013 Hearing<sup>33</sup> after the fraud and forgeries in Judge Colin’s Court were Discovered, over 3 Years Ago now Judge Colin had been notified on the Record during that Sept. 2013 hearing that as of a Year After my father Simon Bernstein passed away I

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<sup>33</sup> September 13, 2013 (one year to the date of Simon’s passing Colin Hearing  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>



still had NO proper Documents on the Trusts and Wills including the Oppenheimer Trusts yet attorney Steven Lessne is now seeking a Guardianship against me before Phillips even though Lessne represents Oppenheimer who is a "Resigned" Trustee with no standing. I notified Judge Colin on the Record as follows from the September 13, 2013 hearing footnoted herein:

Page 06

12 THE COURT: Okay. So the bills that they

13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,

17 electricity, water, food, clothing, everything,

18 100 percent.

19 THE COURT: When did the emergency take

20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.

22 They told me if I didn't sign releases that

23 Robert wanted me to sign and turn the money

24 over to my brother, the remaining corpus of the

25 trust, that they were going to shut the funds

Page 7

1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100 percent

4 sure, because then I asked them for their

5 operating documents that Mr. Spallina had sent

6 them, and once again we've got unnotarized

7 documents □ □

8 THE COURT: We'll talk about the notary

9 thing in a second.

10 **MR. ELIOT BERNSTEIN: Okay. Then we have**

11 **new improperly notarized documents authorizing**

12 **the trust to operate, and they sent me**

13 **incomplete documents which are unsigned on**

14 **every page of the trust agreement, so they're**

15 **telling me and I've asked them three times if**

16 **they have signed copies and three times they've**

17 **sent me unsigned copies.**

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

19 MR. ELIOT BERNSTEIN: All of them.

88. Previously in this Hearing Judge Colin is further shown how Spallina was Not Notifying certain banks such as Legacy that Simon Bernstein had passed away and is “moving” funds around from different accounts as follows;

Page 05

13 THE COURT: Okay. So tell me how that □□  
14 what evidence is there that this is an  
15 emergency along those lines?

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

1 THE COURT: Who is they?

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

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

2 know, what he's operating out of, but  
3 Oppenheimer then started to pay the things □□  
4 first they said, wait a minute, these are  
5 school trust funds □□ well, they actually said  
6 that after they started paying, and they were a  
Page 06  
7 little hesitant that these funds were being  
8 used for personal living expenses of everybody,  
9 which the other Legacy account had been paying  
10 for through an agreement between and my  
11 parents. And then what happened was  
12 Mr. Spallina directed them to continue, stating  
13 he would replenish and replace the funds if he  
14 didn't get these other trusts he was in the  
15 process of creating for my children in place  
16 and use that money he would replenish and  
17 replace it.  
18 So the other week or two weeks or a few  
19 week ago Janet Craig said that funds are  
20 running low and she contacted Mr. Spallina who  
21 told her that he's not putting any money into  
22 those trusts and that there's nothing there for  
23 me, and that basically when that money runs out  
24 the kids' insurance, school, their home  
25 electricity and everything else I would  
1 consider an emergency for three minor children  
2 will be cut off, and that was not □□

**STEVEN LESSNE DISQUALIFIED AS MATERIAL FACT WITNESS**

89. Thus it is clear that the Oppenheimer Trusts are just another set of Trusts and Documents and evidence where Discovery Abuse has occurred and huge delays in getting Any proper Operative documents has occurred which continues to this day, yet Lessne is moving for Guardianship against me before Phillips for a second time after law of the case was established in virtually an identical filing whereby Guardianship was denied and it was determined that after Lessne finished an accounting, if the Successor Trustee wanted to bring such charges they could but that he had no standing.

90. Mr. Lessne becomes a Material Fact Witness in the Chain of Custody of documents and Originals involving various Trusts and what the Trusts should say or provide where he claims as an Attorney in a sworn Filing before Judge Colin filed June 20, 2014 as follows:

“Oppenheimer's Appointment, Service and Resignation As Trustee  
5. Gerald R. Lewin was the initial trustee of the Trusts. 6. On September 5, 2007, Mr. Lewin resigned as trustee and appointed Stanford Trust Company as his successor pursuant to Section 5 .3 of the Trusts. “  
Lessne filing June 20, 2014<sup>34</sup>.

91. This sworn Statement, however, is contradicted by Multiple other documents and filings herein, however, demonstrating exactly why Injunctive relief for preservation and Orderly Production of Discovery is Necessary for this US District Court in furtherance of its jurisdiction.

92. In what was Allegedly Filed in the Palm Beach County Courthouse by Robert Spallina claimed to be filed on July 7, 2010 is an alleged Petition to Appoint Successor Trustee dated June 18, 2010<sup>35</sup> which claims one TRACI KRATISH *and not Gerry Lewin as Lessne claims* was the TRUSTEE of the Children’s Trusts who allegedly Resigned Sept. 12, 2007 whereupon it claims the STANFORD TRUST took over and then purports to be a Petition of me and my wife Candice authorizing OPPENHEIMER to take over as Trustee from Stanford yet this document appears to have Robert Spallina’s signature on it yet where my wife and Candice Bernstein have Reported this Document as Fraud and a Forgery to the Court and Palm Beach County Sheriff’s as not only had we never signed this document but had never even met Robert Spallina as of 2010 and this was Reported to Judge Colin during the June 2014 hearings with Oppenheimer

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<sup>34</sup>June 20, 2014 Oppenheimer Complaint

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140620%20Oppenheimer%20v.%20Eliot%20Candice%20Joshua%20Jacob%20and%20Daniel%20Case%20No%20502104cp00281xxxxsb%20Summons%20and%20Complaint%20Eliot%20Service%20Low.pdf>

<sup>35</sup>June 19, 2010 Petition

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20100619AllegedForgedEliotCandicePetitiontoAppointSuccessorTrusteeJoshuaJacobandDaniel.pdf>

and Lessne, yet fell on deaf ears. See, Petition under Spallina's Signature in 2010 alleged as Fraud to Palm Beach Sheriff and Court by Eliot and Candice Bernstein.

93. Thus Lessne is a material fact witness as to who the Real Trustee is and what the operative documents actually say.
94. Further, there is a significant issue as to whether Trusts were Transferred from Oppenheimer to JP Morgan where Lessne, Oppenheimer and Janet Craig of Oppenheimer all should be witnesses thus making the Discovery Abuse as a Weapon even more harmful since there is never any clear, orderly picture of what is taking place when and by who.

#### **ALAN ROSE AS MATERIAL FACT WITNESS**

95. To further complicate the frauds in what should make Alan Rose a Material Fact Witness, in May of 2015 Alan Rose magically comes out with an alleged ORIGINAL of the Trusts which he allegedly "Finds" left at the 7020 Lions Head Lane Boca Raton, Fl St. Andrew's Home of Simon Bernstein after his passing yet by this point in time the ENTIRETY of the St. Andrews's Home had already been Seized and Inventoried by Brian O'Connell and Joielle Foglietta's Offices as of March 2015, several months before and before that by Benjamin Brown the Curator.
96. Alan Rose somehow amazingly tries to claim after allegedly finding and removing from the Estate without authorization from O'Connell who has custody over them, 3 "Originals" of my Children's Trusts that somehow these were Unimportant and Discounted and "Overlooked" by the O'Connell Foglietta team who are fully aware of the problems with the trusts in the Oppenheimer case and who Already had allegedly Fully Inventoried and seized Custody of all these items at the St. Andrews Home in March 2015 two months before in a case where

substantial Document fraud had already been demonstrated and Discovery abuses going on continually, Emailing on May, 20, 2015<sup>36</sup> as follows:

**From:** Alan Rose [mailto:ARose@mrachek-law.com]  
**Sent:** Wednesday, May 20, 2015 2:14 PM  
**To:** Lessne, Steven; Eliot Ivan Bernstein; Eliot Ivan Bernstein  
**Cc:** Ted Bernstein; O'Connell, Brian M.; Foglietta, Joy A  
**Subject:** Original signed "Oppenheimer" Trusts

Mr. Lessne and Mr. Eliot Bernstein:

I am writing to advise that we located some files in drawers in Simon's private office in his home at Lions Head, as we were trying to assess the complexity of things that must happen between now and the closing of Lions Head. My primary reason was to visually inspect the three chandeliers that have been the subject of PR emails in the past few days.

In any event, and although these files likely were examined and discounted as unimportant by the PRs after Simon's death and likely meant nothing if and when they were catalogued or viewed during the O'Connell as PR re-appraisal/re-inspection, I noticed a folder marked as the Jake Bernstein Trust. Looking more closely, there were three green folders labeled with Eliot's children's names and inside are what appear to be the original signed Irrevocable Trust Agreements for the Trusts which Oppenheimer formerly served. ***These may be relevant or important to the ongoing Oppenheimer case, so I bring them to your attention.*** There also are what appears to some tax returns and Stanford Account Statements. Simply because I have attended some of the Oppenheimer hearings, I understand that Eliot claims at least one of the Trusts does not exist. As an officer of the court, and because these may be relevant, I have taken temporary custody of the documents. I will hold them pending joint instructions or a court order, but would prefer to deliver them to Steve Lessne as Oppenheimer's counsel. These have no economic value and have no bearing on the estate, so I doubt Brian O'Connell would want them, but I did not want to see them lost or discarded in the impending move. To facilitate your review, I have scanned the first and last page of each trust, and scanned the first page of the ancillary documents, and attach that in .pdf format.

I am sure that people have looked through these files before, and there did not appear to be anything else of significance. (I did notice a few folders with other grandchildren's names, not Eliot's kids, but left those papers in place because I understand that everyone except Eliot has fully cooperated with Oppenheimer in resolving these matters.)

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<sup>36</sup>May 20, 2015 Alan Rose, Esq. Letter re Finding New Documents and removing them illegally from Simon's Estate and whereby the records were in the custody of Brian O'Connell at that time and Rose took them from the Estate without authorization.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150520%20Alan%20Rose%20Letter%20to%20Eliot%20et%20al%20Regarding%20Oppenheimer%20Trust%20documents%20and%20Tax%20Records%20found.pdf>

I also have had occasion to re-look through a small box of trust documents which I have been holding, which came from Simon's former work office. Inside file folders in a desk drawer, Simon retained duplicate originals of the trust agreements relevant to my cases. When I was looking to reexamine these documents – duplicate originals of the 2008 Trusts and the 2012 Trust (the true originals remain with Tescher & Spallina who drafted them) – I noticed a copy of the three separate irrevocable trust documents. Again, these would not have caught my eye originally because I would have never guessed that Eliot would claim the trusts were not valid. I only recently had occasion to notice these in looking for the duplicate trust originals for Simon and Shirley. The three Irrevocable Trusts appear to be signed and witnessed on page 17, but the individual pages are not initialed. Again, these were only copies, but now having looked at the originals included in the attached scan, I note (although not a handwriting expert) that the attached copies appear to be absolutely identical to the originals just found in Simon's personal office.

These copies include IRS forms under which Traci Kratish PA, as Trustee appears to have applied for and obtained a Taxpayer ID number for each trust, and obviously she provided these to Simon. Each of the Trust documents is signed by Simon Bernstein, as Settlor, and by Traci Kratish PA as the initial Trustee, and the signatures are witnessed by two people. Simon's is witnessed by Jocelyn Johnson and someone else. I am advised that Jocelyn was an employee of Simon's, as presumably was the second witness and also the initial Trustee, Traci Kratish, who was in house counsel for the companies Simon owned part of.

Although this was long before any involvement on my part, Traci Kratish appears to have been the initial trustee (there is a typo elsewhere naming Steven Greenwald). I do not know Steven Greenwald, but I have confirmed that that these trusts were not created by Tescher & Spallina. If they had been, I'm sure they would have retained the original and given Simon duplicate originals as they did for all of the trust documents for the 2008 and 2012 Trusts they prepared. I do not know if Greenwald prepared these and made a typo leaving his name on a later section, or if Kratish prepared these from a boilerplate Greenwald form and made the typo. Either way, and it does not matter to me, the fact that this was a simple and ordinary typo should be obvious to all.

Eventually, Traci Kratish left the employ as the in-house counsel for the companies. Sometime before or at the time of her leaving, she resigned and appointed someone else, and eventually these trusts accounts along with similar trusts for Simon's other seven grandchildren and much of Simon's personal wealth, were moved to Stanford. After Stanford's collapse amid word that it was a Ponzi scheme -- Simon lost upwards of \$2 million of his own funds in the Ponzi scheme -- Simon directed the transfer of the his and these trust accounts to Oppenheimer. Simon selected Oppenheimer; paid Tescher's firm to do the necessary documents to appoint Oppenheimer as successor trustee; took the documents from Tescher and had them signed by all children, including Eliot and Candice; and returned the documents to Tescher for filing. I presume that Simon paid all of these legal fees, because that is the right thing to do from an estate planning strategy and as a favor to his grandkids. I now have seen copies of the filed Petitions, and again without being a handwriting expert, it certainly looks like Eliot's and Candice's

signature on them, regardless of whether they had ever met Tescher or Spallina before their parents' deaths.

Eliot and Candice reaped the benefits of Oppenheimer's services, and in any event there is no reason to believe that Candice and Eliot did not sign these Petitions for the benefit of their children. If Eliot now suggests that his and his wife's signatures do not appear on the June 2010 Petitions appointing Oppenheimer 2010 allegation, which is highly doubtful just looking at the three sets of signatures, that would mean Eliot is accusing Simon of being a forger. Eliot already is supportive of Bill Stansbury, who accuses Simon of committing a fraud on Stansbury. I would be shocked by any accusation that Simon did not obtain from Eliot and Candice their genuine signatures on the June 2010 Petitions, and particularly shocked that Eliot, who received so much of his father's (and mother's) largesse during their lifetimes, would now malign Simon's name in such a manner.

Anyway, I'm not sure if either of you needs these any longer, but if you do, here they are.

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97. Thus, Brian O'Connell, Joielle Foglietta, Alan Rose and Steven Lessne are all Material Fact Witnesses on this Chain of Custody alone which all is critical evidence for this Court as it relates to the production of Valid and Original Trusts and documents at issue and my Cross-Counterclaims and thus Injunctive relief should now issue.



98. Lessne, nor Rose (a Counter Defendant in the Stayed Counter Complaint in the Oppenheimer case), has yet to turn these alleged new documents into the Court and where since the lawsuit was based on other documents filed this would seem to materially affect the whole case.
99. It should be noted that in the days and weeks leading up to this “magical” Discovery by Alan Rose that the O’Connell and Foglietta team had issued substantial billings for communications with Alan Rose<sup>37</sup> even though O’Connell had filed an Answer claiming Alan Rose’s client Ted Bernstein was Invalid as a Trustee although the Petition had not been heard.
100. Alan Rose and Brian O’Connell are again tied up as material fact witnesses just a few weeks later when Judge Coates briefly came into the case wherein Alan Rose now “magically” has “Originals” of the Shirley Trust and related documents that he allegedly scanned onto a CD and while his Letter indicates he was “Transferring” this CD to me in person at Court he actually used Brian O’Connell to “pass me” the CD.
101. Rose claims these are “Originals” or “Duplicate Originals” scanned onto the CD but provides No Chain of Custody of how, when, where or why these come into his possession making him a Material Fact Witness on the Chain of Custody of documents. See, Alan Rose Letter of June 4, 2015<sup>38</sup>. As noted, here is where “Originals” appear to be signed in Different Color Ink from the “Original” Originals and where the *naked human eye* can detect too many identical signatures identically or virtually identically placed in the some place on the documents and too many initials placed in the same place.

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<sup>37</sup>Ciklin/O’Connell Billing Statements

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151210%20MASTER%20O'Connell%20Ciklin%20Fees%20Billing.pdf>

and

Rose and O’Connell billing excerpts from Ciklin bills

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151210%20Rose%20O'Connell%20Legal%20Fees%20Bills%20Excerpts%20In%20Chronological%20Order.pdf>

<sup>38</sup> June 04, 2015 Rose Letter Regarding CD of Newly Discovered Estate and Trust documents

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150604%20Rose%20Letter%20with%20CD%20of%20Simon%20Shirley%20Oppenheimer%20Trust%20Will%20Documents.pdf>

102. Yet, on or about August 11, 2015, I physically appeared and went to the O'Connell law office per arrangements with Joielle Foglietta and was directed to some Staff member I will call "Jane Doe" for now, although other records may disclose her name, whereupon I was supposed to be able to finally "view" and "inspect" all of Simon's Business Records, Documents, etc that the O'Connell firm had obtained and am shocked to be placed into a Conference Room with 4 Banker Boxes that were half-full for my father who had been a successful Insurance business person for Decades with multiple bank accounts, corporations, trust companies and tons of other personal records. One of the boxes had allegedly been dropped off by Alan Rose and only had a few miscellaneous "wall hangings" from his Business Office and the other 3 boxes are allegedly what the O'Connell firm had taken out of the St. Andrew's home.
103. Yet these were partially filled boxes and the Jane Doe staff member indicated she had retrieved "everything", "everything" from the St. Andrew's home on or around June 4, 2015 which contradicts what Joielle Foglietta had claimed in March 2015 about taking custody of the Business documents and files and further contradicts what Alan Rose "finds" in May of 2014, thus rendering all of these individuals Material Fact Witnesses on Chain of Custody and possession. Miraculously these documents appear days before Sheriff deputies are contacting Kratish regarding the prior documents and allegations of fraud in the prior documents.
104. This item further ties up Judge Colin, the Palm Beach County Sheriff's Office, Gerry LEWIN, SPALLINA and TESCHER as more intertwined in the fraud.
105. Both Judge Colin and the PBSO are aware that Eliot and his wife Candice have claimed they never signed a Petition that SPALLINA "Witnessed" in 2010 relating to the Trust which

SPALLINA apparently deposited with Colin's court in June of 2010<sup>39</sup> and that Colin is alleged to have signed.

106. The Document provided by ROSE as an "original" however, purports to be a Trust signed Sept. 7, 2006 and allegedly witnessed by one Traci Kratish.
107. However, in her statement to the PBSO<sup>40</sup>, Traci Kratish, a lawyer and accountant, says she did not begin work with Eliot's father until Sept. 10, 2006 and was not brought in Pre-Stanford Trust and has no independent recollection of signing this Trust which is further ripe with errors such as referring to Traci Kratish as a "he" instead of "she", having a different trustee Steven Greenwald identified later in the document as the "Trustee," no reference to the law firm who allegedly prepared the Trusts, missing initials on the pages and other obvious errors.
108. Still further, LEWIN prepares and has Tax documents ( copies, not Originals ) saying the Trust was created on Sept. 1, 2006, not Sept. 7th and further that Stanford was the Trustee from the beginning and not Traci Kratish as alleged by SPALLINA in the June 2010 Petition claiming the Trusts went from Kratish to Stanford and then Oppenheimer with this Petition allegedly signed by Eliot and his wife which they have denied signing or seeing prior to it being produced in the matters to the the PBSO and COLIN and reported as fraud<sup>41</sup>.
109. Despite the PBSO and PANZER knowing all the fraud admitted to date and SPALLINA who was not forthcoming in his first interview, PBSO illegally steers this part of the fraud and criminal investigation away from following up with Spallina and the involved parties and

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<sup>39</sup> July 08, 2010 Alleged Forged Petition for Children's Trusts Oppenheimer @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/Exhibit%20E%2020100619%20Alleged%20Eliot%20Candice%20Petition%20to%20Appoint%20Successor%20Trustee%20Joshua%20Jacob%20and%20Daniel.pdf>

<sup>40</sup> May 21, 2015 Traci Kratish PBSO Interview statements @ [www.iviewit.tv/Simon and Shirley Estate/Kratish Statements to PBSO.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Kratish%20Statements%20to%20PBSO.pdf)

<sup>41</sup> May 20, 2015 Alan Rose Email Claiming to have found New Trust Documents @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150520%20Alan%20Rose%20Letter%20to%20Eliot%20et%20al%20Regarding%20Oppenheimer%20Trust%20documents%20and%20Tax%20Records%20found.pdf>

attempted to close the case in a rush with admitted felony crimes of Spallina not being prosecuted and thus committing misprision of felony and aiding and abetting the fraud by failure to report the admitted crime to prosecutors and which is currently under a second Internal Affairs review, the first review after Judge Colin interfered with the criminal investigations and had them close the case of Fraud on the Court stating he would handle those and forcing Eliot to IA to have the cases reopened due to the improper interference, which led to subsequent interviews where Spallina confessed to Felony misconduct..

110. By TESCHER SPALLINA Bates<sup>42</sup> No. TS000815 Spallina falsely writes to Christopher Prindle of Wachovia/Stanford/Oppenheimer/JP Morgan on July 1, 2010 who is intimately involved in the Financial Accounts of Simon Bernstein claiming he has: “**certified Final Orders on Petitions to Appoint Successor Trustee** designating Oppenheimer Trust Company as Successor Trustee of the following trusts: 1. Daniel Bernstein Irrevocable Trust dated September 7, 2006 2. Carly Esther Friedstein Irrevocable Trust dated September 7, 2006 3. Jake Bernstein Irrevocable Trust dated September 7, 2006 4. Max Friedstein Irrevocable Trust dated September 7, 2006 5. Julie Iantoni Irrevocable Trust dated September 7, 2006 6. Joshua Z. Bernstein Irrevocable Trust dated September 7, 2006 “ all as of July 1, 2010.

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<sup>42</sup> Tescher & Spallina Bates Numbered Court Ordered Production

It should be noted that while the documents are bates stamped they were never tendered by Spallina and Tescher to the court and no document originals were tendered to successors despite court order to turn over “ALL” records, whereby all copies of alleged documents in the Tescher and Spallina production are therefore alleged fraudulent and part of an ongoing fraud to cover up and maintain the prior frauds they have been caught in and further continue the frauds.

\*\*\*FOR ALL FURTHER REFERENCES HEREIN OF SPALLINA and TESCHER Bates Stamped Documents please refer to the following link which contains the entire file of Bates stamped documents Total Pages 7,202 with gaps in the bates numbering and search for the Bates numbers listed in this filing.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20PRODUCTION%20OF%20DOCUMENTS%20SIMON%20ESTATE%20BY%20COURT%20ORDER%20TO%20BEN%20BROWN%20CURATOR%20DELIVERED%20BY%20TESCHER%20AND%20SPALLINA.pdf> (File is large and takes time to download)

111. Yet on the same date of July 1, 2010, by TS000831 SPALLINA writes to Margaret Brown at Baker Botts saying:

From: Robert Spallina [mailto:rspallina@tescherspallina.com]

Sent: Thursday, July 01, 2010 9:14 AM

To: Brown, Margaret

Subject: Bernstein

Dear Margaret - we finally received the last of the signed petitions for the minor grandchildren and will be walking through the petitions next week to get the orders designating Oppenheimer as successor Trustee to Stanford. Attached are copies of the signed petitions we are filing for your records.

112. The close relationship with SPALLINA and COLIN is shown by the casual manner SPALLINA is simply going to “walk through” over at the Court to get the Orders he has told key Financial person Christopher Prindle he already has in Certified form as of the same date.

113. The alleged Orders do appear to be “Certified” and signed by COLIN but not until July 8, 2010, a week after he tells Prindle these are done by the Court already which SPALLINA writes to Margaret Brown again about on July 8, 2010, see TESCHER SPALLINA PRODUCTION Bates No.TS000829.

114. This pattern and practice of false information even shown by the TESCHER SPALLINA production is further reason to Enjoin and Restrain the parties and the evidence in further aid of this Court’s jurisdiction.

115. Moreover, because there are NO Accountings from TESCHER SPALLINA in the year and half plus of their involvement as fiduciaries (NO accountings in Shirley for FIVE years and INCOMPLETE ACCOUNTING FOR SIMON ONLY RECENTLY TURNED OVER after almost three years after Simon’s Passing) where millions were likely moved between accounts or converted without any accounting, Records and accounts of Christopher Prindle, Stanford, JP Morgan and Oppenheimer should further be enjoined when the Court has proper jurisdiction over these parties.

116. Note that the Curator Ben Brown of the Estate of Simon Bernstein purported to have obtained actual signed Tax returns from the IRS herein for Simon's Estate and quietly died at a young age shortly thereafter upon information and belief before turning them over and according to O'Connell he never received them and immediately ordered new ones immediately after gaining Letters of Administration but still has not received them to the best of my belief and certainly has not turned them over to me as promised.
117. Yet, current PR of the Simon Bernstein Estate Brian O'Connell and Joielle Foglietta of the Ciklin Lubitz Martens & O'Connell law firm have Never obtained or provided any Signed Tax Documents or actual originals in the 18 months in the case yet repeatedly bills the Estate for calls with Alan Rose, including many redacted Billing entries<sup>43</sup> and<sup>44</sup>.
118. The 2007-2008 LIC Tax statements where Simon Bernstein was 45 % owner shows 2 consecutive years of revenue exceeding \$30 Million per year and where Renewals on insurance should still be coming in but where TED, ROSE and the PRs claim estates and trusts virtually empty while denying discovery and production<sup>45</sup>, with Simon taking several million dollars in income in just these years prior to his death.
119. Yet, the O'Connell and Foglietta team claim the Estate is out of money and even proceeded to demand a payment of \$750 approximately from myself to obtain copies of the bare records in 3 partially filled boxes the PRs have obtained to date that they stated copies would be ready for me to pick up when I went to their offices and were not, then later when I was forced to

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<sup>43</sup> Alan B. Rose and Brian O'Connell Billing Excerpts from Ciklin Lubitz Martens & O'Connell Bills @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151210%20Rose%20O'Connell%20Legal%20Fees%20Bills%20Excerpts%20In%20Chronological%20Order.pdf>

<sup>44</sup> O'CONNELL and Ciklin Lubitz Martens & O'Connell Billing Statements @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151210%20MASTER%20O'Connell%20Ciklin%20Fees%20Billing.pdf>

<sup>45</sup> 2007-2008 Unsigned Tax Returns LIC prepared by Gerald Lewin CPA <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/tax%20returns%202007%202008%20LIC.pdf>

repeatedly ask for them to be sent they changed their tune demanding payment for the meager records they had obtained and further *have repeatedly denied access to even visually Inspect the alleged Storage unit where all the TPP allegedly is.*

120. As will be shown later herein, Millions remain Unaccounted for in the cases further justifying an Injunction at this time.

**“Orchestration” of the “One-day” “Validity” Trial by the Fiduciaries, Lawyers and Judge**

**Phillips**

121. Despite this tortured background, the licensed attorneys O’Connell, Foglietta, Rose and Feaman allow matters to proceed along course to a “one-day” Validity Trial with Judge Phillips held Dec. 15, 2015.

122. In the weeks before this, Creditor attorney Peter Feaman expressly stated in a phone call with myself, William Stansbury and others that there was a deliberate “conspiracy” against me by the parties with money and connections or words to that effect.

123. Attorney Peter Feaman also acknowledged that Florida Courts do have traditional Pre-Trial and Trial procedures, none of which were followed.

124. No pre-trial Discovery compliance was ever determined, no Pre-trial Depositions were determined, and I was provided no Due Process opportunity to speak about the Necessary Witnesses that should be at Trial which would make the Trial go beyond one day and the importance of having the hearings to remove Ted first to determine if he would even be able to conduct validity hearings, especially where there was document fraud with the documents being validated committed by his attorneys representing him as fiduciary and where the fraud directly benefited Ted’s family, slight conflicts that should have forced Ted from holding the hearings. Ted also being considered Predeceased for ALL PURPOSES OF DISPOSITION OF THE

SHIRLEY TRUST certainly could not hold a validity hearing as it regards disposition of the trust. Yet, Phillips refused both Feaman and my request to have that hearing first.

125. Creditor Attorney Peter Feaman had previously in August of 2014 written a specific letter to Brian O'Connell indicating he had an "absolute duty" to take up the baton to remove Ted Bernstein noting the waste of assets, lack of accountings, conflicts of interest and other items, although attorney Feaman would take no action to prevent or participate in the "Validity Trial" despite the fact that the only 2 Witnesses that were called, Robert Spallina and Ted Bernstein (both involved in the Fraudulent Documents submitted to the court and others) were Both parties that Creditor William Stansbury had sued although that case was before a separate Judge.

126. Despite the Fraud shown with Colin who should be a Material fact witness and should have disqualified once he knew there was Fraud Upon His Court and he was involved in the matters, Feaman took no action to assert and re-argue if necessary Stansbury's "standing" which had been denied in the case by Colin although Stansbury was "in the case" for purposes of Paying for the Illinois litigation before Your Honor which all appears to be part of "orchestration" where Stansbury and Feaman are "in" on some issues but not in on others.

127. Feaman had "confirmed" that O'Connell as the PR was going to Participate at the one day Validity Trial as O'Connell had filed an Answer to remove Ted Bernstein at Trial as an Invalid Trustee yet "at the last minute" it was announced O'Connell and Ted Bernstein's attorney Alan Rose had some form of "consultation" deal where it was decided O'Connell would not participate in the Validity Trial despite the fact that his Office had been Billing the Estate for nearly 2 years based upon Ted as Trustee including many billings with Alan Rose on behalf of



Ted Bernstein all of which is compromised if a proper Trial showed the documents to be invalid and/or Ted Bernstein should be removed.

128. When Feaman brought O'Connell into the cases after being denied standing to remove Ted, Feaman had Eliot withdraw a hearing to remove Ted that day telling him that he spoke to O'Connell and O'Connell would file the motion Feaman filed that was denied for standing and that I would have a much better chance of success with O'Connell filing. To this date, despite being given Feaman's filing to put his name on and repeatedly stating he would file it, O'Connell has failed to file despite knowing Ted is "not a validly serving Trustee" or in other words that Ted and Alan are committing a Fraud knowing Ted cannot be Trustee but pulling yet another Fraud on the Court and Fraud on the Beneficiaries and Creditor.

129. Thus, the Estate of Simon Bernstein was Unrepresented and did not participate in the Phillips "Validity" Trial of the Simon documents and where the Governor Rick Scott's office already found defects in the notarizations of Simon's Estate and Trust documents that O'Connell was made aware of prior and where if they were not validated as Rose wanted them, O'Connell could have been knocked out and Stansbury could have become the Successor as was the case only a few weeks before Simon died when allegedly new improperly notarized documents are said to have been signed.

130. Alan Rose was motioned by my counsel Candice Schwager of Texas who was seeking to come into Florida pro hac vice<sup>46</sup> for a 30 day Continuance<sup>47</sup> and to get the Documents necessary to be able to represent my children properly and determine if any conflicts existed that prevented her

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<sup>46</sup>December 12, 2015 Candice Schwager Pro Hac Vice Letter to Court and Alan Rose, Esq.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

<sup>47</sup>20151215 Motion for Stay  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

from representing both myself and my children but both Rose and Judge Phillips denied the continuance and denied her access to documents<sup>48</sup> leaving my children unrepresented at the Validity “trial” as well.

131. The notice and motion further indicated Alan Rose should be Disqualified as a Material fact witness for the reasons set out above.

132. Thus the Trial was orchestrated so no Attorneys were present to Cross-examine the only 2 Witnesses produced by Ted Bernstein and Alan Rose being Robert Spallina and Ted Bernstein himself.

133. It is noted that there were no Pre-Trial Depositions allowed of Robert Spallina or Ted Bernstein and thus acting Pro Se I did all I could do at the Trial which still revealed remarkable information and confessions of new crimes, including federal mail fraud by Spallina, who also violated his SEC consent order by misrepresenting his SEC consent deal and further misrepresented his standing with the Florida Bar as the record reflects. Spallina also admitted to using a deceased Simon acting as PR to close Shirley’s Estate and depositing further fraudulent documents with the court, while admitting he had not to that date told anyone about these crimes, while Phillips ignored all these admissions and since has done nothing to notify proper authorities of these new and damning admissions of crimes and violations of SEC consent orders, despite repeated requests by myself for him to do so.

134. It is further noted that no Inspection or Comparison of the “duplicate” and other alleged “originals” was allowed pre-trial or during trial as these Documents and evidence simply were

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<sup>48</sup>January 06, 2016 Alan Rose, Esq. Letter to Attorney for Minor Children and Eliot denying access to file or even to speak despite her being retained counsel in need of documents to evaluate cases. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Rose%20Denying%20to%20talk%20or%20give%20information%20to%20Attorney%20Schwager.pdf>

not produced or made available at the hearing for inspection and have never been forensically examined.

135. It is respectfully asserted to this Court that not only would proper production and Discovery be reflective of actual value and worth of assets at stake, but further relevant to Undue influence and pressures that were on Simon Bernstein at all relevant times herein. The potential for undue influence should have been clear just by the April 9, 2012 fraudulent Petition for Discharge allegedly signed by Simon on this date and Witnessed by Spallina since if this is Simon's signature he absolutely knew the Waivers referenced in the Petition had not even been received by some of the parties by this date much less Signed and returned and signing such a document falsely would have been totally out of character and practice for the decades he had been in business. This Court should now issue an Injunction.

**No Concern for Original Documents, Rose, Spallina, Ted Bernstein or Judge Phillips**

136. I believe the following passage from the Validity "Trial" makes clear that an Injunction should issue since no one seems to know where the Originals are, and the many Duplicate originals and Ted Bernstein claims to have only seen "copies" of the Trusts although it is noted for this US District Court there are other Trusts that are referenced in the produced Trusts where copies have been provided that not only were the other referenced Trusts never "Served" with Process for the Validity hearing but these referenced Trusts have never been produced to this day such as:

Page 137 of linked PDF document @  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

Transcript Page 121  
Spallina Witness - Eliot Cross Examining

4. . . . Q. . Okay. . In the chain of custody of these  
5. . documents, you stated that there were three copies made?

6 . . . A. . Yes.  
7 . . . Q. . Do you have those three original trust copies  
8 . here?  
9 . . . A. . I do not.  
10 . . . . MR. BERNSTEIN: . Does anybody?  
11 . . . . THE COURT: . Do you have any other questions of  
12 . . . the witness?  
13 . . . . MR. BERNSTEIN: . Yeah. . I wanted to ask him  
14 . . . some questions on the original documents.  
15 . . . . THE COURT: . Okay. . Keep going.  
16 . BY MR. BERNSTEIN:  
17 . . . Q. . Okay. . So the original documents aren't in the  
18 . court?  
19 . . . A. . I don't have them.  
20 . . . Q. . Your firm is not in possession of any of the  
21 . original documents?  
22 . . . A. . I'm not sure. . I'm not at the firm anymore.  
23 . . . Q. . When you left the firm, were there documents  
24 . still at the firm?  
25 . . . A. . Yes, there were.

Page 122

-1- Q. . Were you ordered by the court to turn those  
2 . documents over to the curator, Benjamin Brown?  
3 . . . A. . I don't recall.  
4 . . . . MR. ROSE: . Objection. . Can he clarify the  
5 . . . question, which documents? . Because I believe the  
6 . . . curator was for the estate, and the original will  
7 . . . was already in file, and the curator would have no  
8 . . . interest in the trust --  
9 . . . . THE COURT: . Which documents? . When you say  
10 . . . "those documents," which ones are you referring to?  
11 . . . . MR. BERNSTEIN: . Any of the trusts and estate  
12 . . . documents.  
13 . . . . THE COURT: . Okay. . That's been clarified.  
14 . . . . You can answer, if you can.  
15 . . . . THE WITNESS: . I believe that he was given -- I  
16 . . . believe all the documents were copied by  
17 . . . Mr. Pollock's office, and that he was given some  
18 . . . type of zip drive with everything. . I'm not sure,  
19 . . . though. . I couldn't --  
20 . BY MR. BERNSTEIN:  
21 . . . Q. . Did the zip drive contain the original  
22 . documents?  
23 . . . A. . Did not. . I believe the original documents  
24 . came back to our office. . Having said that, we would  
25 . only have -- when we made and had the client execute

Page 123

1 three documents, two originals of those documents would  
2 remain with the client, and then we would keep one  
3 original in our file, except -- including, most of the  
4 time, the original will, which we put in our safe  
5 deposit box. So we would have one original of every  
6 document that they had executed, including the original  
7 will, and they would keep two originals of everything,  
8 except for the will, which we would give them conformed  
9 copies of, because there was only one original will.  
10 Q. Okay. I asked a specific question. Did your  
11 firm, after the court order of Martin Colin, retain  
12 documents, original documents?  
13 MR. ROSE: Objection. Sorry. I should have  
14 let him finish.  
15 MR. BERNSTEIN: -- original documents?  
16 THE WITNESS: I believe --  
17 MR. ROSE: Relevance and misstates the --  
18 there's no such order.  
19 THE COURT: Well, the question is, Did your  
20 firm retain the original documents?  
21 Is that the question?  
22 MR. BERNSTEIN: Yes, sir.  
23 THE COURT: Overruled.  
24 Answer, please.  
25 THE WITNESS: I believe we had original

Page 124

1 documents.  
2 BY MR. BERNSTEIN:  
3 Q. After the date you were court ordered to  
4 produce them to the curator?  
5 MR. ROSE: Object -- that's the part I object  
6 to.  
7 THE COURT: Sustained.  
8 MR. BERNSTEIN: Okay.  
9 BY MR. BERNSTEIN:  
10 Q. To your knowledge -- so, to your knowledge,  
11 the documents can't all be here since they may be at  
12 your firm today?  
13 A. I don't practice at the firm anymore, so I'm  
14 not sure where the documents are.  
15 Q. Okay. And you said you made copies of all the  
16 documents that you turned over to the curator? Did you  
17 turn over any original documents as ordered by the  
18 court?  
19 MR. ROSE: Objection. Same objection.  
20 There's no court order requiring an original

21. . . . document be turned over.  
22. . . . .THE COURT: What order are you referring to?  
23. . . . .MR. BERNSTEIN: Judge Colin ordered when they  
24. . . . resigned due to the fraudulent alteration of the  
25. . . . documents that they turn over –

Page 125

1. . . . .THE COURT: I just said, what order are you  
2. . . . referring to?  
3. . . . .MR. BERNSTEIN: It's an order Judge Colin  
4. . . . ordered.  
5. . . . .THE COURT: All right. Well, produce that  
6. . . . order so I can see it, because Judge Colton's [sic]  
7. . . . been retired for six or seven years.  
8. . . . .MR. BERNSTEIN: Okay. I don't have it with  
9. . . . me, but...  
10. . . . .THE COURT: Well, Judge Colton's a retired  
11. . . . judge. He may have served in some other capacity,  
12. . . . but he doesn't enter orders, unless he's sitting as  
13. . . . a replacement judge. And that's why I'll need to  
14. . . . see the order you're talking about, so I'll know if  
15. . . . he's doing that. Okay. Thanks. Next question.  
16. BY MR. BERNSTEIN:  
17. . . . Q. Okay. Has anyone, to the best of your  
18. knowledge, seen the originals while you were in custody  
19. of them?  
20. . . . A. Yes.  
21. . . . Q. Okay. Who?  
22. . . . A. I believe Ken Pollock's firm was -- Ken  
23. Pollock's firm was the firm that took the documents for  
24. purposes of copying them.  
25. . . . Q. Did anybody ask you, refer copies to inspect

Page 126

1. the documents?  
2. . . . A. Other than Ken Pollock's office, I don't  
3. recall.  
4. . . . Q. Did I ask you?  
5. . . . A. Perhaps you did.

Page 170

14. . . . Q. But it does say on the document that the  
15. original will's in your safe, correct?  
16. . . . A. For your mother's document, it showed that.  
17. . . . Q. Oh, for my father's -- where are the originals  
18. of my father's?  
19. . . . A. Your father's original will was deposited in  
20. the court. As was your mother's.

21. . . . Q. . How many copies of it were there that were  
22. . original?  
23. . . . A. . Only one original. . I think Mr. Rose had  
24. . stated on the record that he requested a copy from the  
25. . clerk of the court of your father's original will, to

Page 171

1. . make a copy of it.  
2. . . . Q. . Certified?  
3. . . . A. . I'm not sure if he said it was certified or  
4. . not.

TED BERNSTEIN WITNESS - ELIOT BERNSTEIN CROSS EXAM

Page 209

23. . . . . MR. BERNSTEIN: . Yeah.  
24. . BY MR. BERNSTEIN:  
25. . . . Q. . Have you seen the original will and trust of

Page 210

1. . your mother's?  
2. . . . A. . Can you define original for me?  
3. . . . Q. . The original.  
4. . . . A. . The one that's filed in the court?  
5. . . . Q. . Original will or the trust.  
6. . . . A. . I've seen copies of the trusts.  
7. . . . Q. . Have you done anything to have any of the  
8. . documents authenticated since learning that your  
9. . attorneys had committed fraud in altering dispositive  
10. . documents that you were in custody of?  
11. . . . . MR. ROSE: . Objection. . Relevance.  
12. . . . . THE COURT: . Overruled.  
13. . . . . THE WITNESS: . I have not.  
14. . BY MR. BERNSTEIN:  
15. . . . Q. . So you as the trustee have taken no steps to  
16. . validate these documents; is that correct?  
17. . . . A. . Correct.  
18. . . . Q. . Why is that?  
19. . . . A. . I'm not an expert on the validity of  
20. . documents.  
21. . . . Q. . Did you contract a forensic analyst?  
22. . . . A. . I'm retained by counsel, and I've got counsel  
23. . retained for all of this. . So I'm not an expert on the  
24. . validity of the documents.  
25. . . . Q. . You're the fiduciary. . You're the trustee.

Page 211

·1· You're the guy in charge. You're the guy who hires your  
·2· counsel. You tell them what to do.  
·3· . . . . So you found out that your former attorneys  
·4· committed fraud. And my question is simple. Did you do  
·5· anything, Ted Bernstein, to validate these documents,  
·6· the originals?  
·7· . . . . THE COURT: That's already been answered in  
·8· . . . the negative. I wrote it down. Let's keep going.  
·9· . . . . MR. BERNSTEIN: Okay.  
10· BY MR. BERNSTEIN:  
11· . . . Q. As you sit here today, if the documents in  
12· your mother's -- in the estates aren't validated and  
13· certain documents are thrown out if the judge rules them  
14· not valid, will you or your family gain or lose any  
15· benefit in any scenario?  
16· . . . A. Can you repeat that for me, please? I'm not  
17· sure I'm understanding.  
18· . . . Q. If the judge invalidates some of the documents  
19· here today, will you personally lose money, interest in  
20· the estates and trusts as the trustee, your family, you?  
21· . . . A. I will not.  
22· . . . Q. Your family?  
23· . . . A. My -- my children will.  
24· . . . Q. So that's your family?  
25· . . . A. Yes.

Page 212

·1· . . . Q. Okay. So do you find that as a fiduciary to  
·2· be a conflict?  
·3· . . . . MR. ROSE: Objection.  
·4· . . . . THE WITNESS: No.  
·5· . . . . MR. ROSE: I think it calls for a legal  
·6· . . . conclusion.  
·7· . . . . THE COURT: Sustained.

Page 215

21· . . . Q. Did you ever have access to the original will  
22· of your father or mother that were in the Tescher &  
23· Spallina vaults?  
24· . . . A. I have no access, no.  
25· . . . Q. Did you ever have access to the original

Page 216

·1· copies of the trusts that Mr. Spallina testified were  
·2· sitting in their firm's file cabinets or vaults?  
·3· . . . A. I did not.  
·4· . . . Q. Now, did you find in your father's possessions  
·5· the duplicate originals of the trusts of him and your



- 6· ·mother that we've talked about?
- 7· ··· A· ·I did.
- 8· ··· Q· ·And do you have any reason to believe that
- 9· ·they aren't valid, genuine and signed by your father on
- 10· ·the day that he -- your father and your mother on the
- 11· ·days that it says they signed them?
- 12· ··· A· ·None whatsoever.

**Predetermined Trial, Missing Witnesses, Missing Originals and Discovery:**

137. Trial Transcript makes it crystal clear the Result of the “Trial” was predetermined by Phillips as alleged in post-trial motions<sup>49</sup> and motions for Disqualification<sup>50</sup>.
138. Missing Witnesses include Traci Kratish who gives contradictory statements to the Palm Beach Sheriff’s from the alleged Oppenheimer Trusts produced by Alan Rose and Steven Lessne and further contradicting filed documents by Robert Spallina in 2010 which are claimed as frauds, see above. Kratish is allegedly also a Witness to certain operative Trusts/Wills/Instruments so an adverse inference against the core parties and in favor of this Petition should be drawn by the failure to produce Traci Kratish at the alleged Validity trial.
139. Phillips made it clear, however, that he was not going to go beyond his “one day” trial thus fully prejudging the case and denies me from calling Alan Rose as a witness with 11 minutes remaining despite his direct involvement in the break of the chain of custody of dispositive documents and more and where Rose is also a served Counter Defendant in the Counter Complaint<sup>51</sup> stayed by Colin in the Shirley Trust case and where Colin is also listed as a Material and Fact Witness and Potential Counter Defendant in the Party Heading in the case.

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<sup>49</sup> December 31, 2015 Motion for New Trial Stay Injunction  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151231%20FINAL%20ESIGNED%20MOTION%20FOR%20NEW%20TRIAL%20STAY%20INJUNCTION%20PHILLIPS%20ECF%20STAMPED%20COPY.pdf>

<sup>50</sup> December 28, 2015 2nd Petition for Disqualification of Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

<sup>51</sup> September 02, 2014 Stayed Counter Complaint

140. Other missing witnesses include: Kimberly Moran (arrested for 6 Fraudulent Notarizations and Admitted to 6 Forgeries of Estate documents), Lindsay Baxley aka Lindsay Giles, Diana Banks and others, who were all parties to various of the Estate and Trust documents.
141. According to Peter Feaman and William Stansbury, Donald Tescher was “seen” at the Courthouse on Trial day but never called as a Witness.
142. Spallina admits under oath at the hearing to having worked with Alan Rose in preparation for the trial.

·3· ·BY MR. BERNSTEIN:  
·4· · . . . Q· ·Okay· ·How many times have you spoken with  
·5· ·Alan Rose in the last three months?  
·6· · . . . A· ·Twice.  
·7· · . . . Q· ·Did you prepare for this hearing in any way  
·8· ·with Alan Rose?  
·9· · . . . A· ·I did.  
10· · . . . Q· ·Okay· ·Was that the two times you spoke to  
11· ·him?  
12· · . . . A· ·Yes.  
13· · . . . Q· ·Do you see any other of the parties that would  
14· ·be necessary to validate these trust documents in the  
15· ·court today?  
16· · . . . ·MR. ROSE:· ·Objection· ·Cumulative.  
17· · . . . ·THE COURT:· ·Sustained.

December 15, 2015 Hearing Transcript Page 149<sup>52</sup>

, See Post-Trial Motions and Disqualifications of Judge Phillips; see pending 4th DCA Writ of Prohibition appealing Original Phillips Denial of Disqualification<sup>53</sup>;

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<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

<sup>52</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

<sup>53</sup>

**Tescher-Spallina Prosecuted by the SEC, yet Phillips, Rose, O'Connell, Foglietta, Ted**

**Bernstein have left critical Originals, documents and evidence in their possession, thus this**

**Court must now act:**

143. Other new evidence and facts have emerged during the relevant time this federal action has been waiting to come back on the calendar where the Estate Planning attorneys for my now deceased parents Simon and Shirley Bernstein, being attorneys Tescher & Spallina of Boca Raton, have been charged by the SEC with violations of federal Insider Trading and breaches of fiduciary duties to other clients and now entered into formal Consent Orders with the SEC<sup>54</sup>, and yet the involved judicial actors of the Florida Probate Courts, attorney Alan Rose, Ted Bernstein, and the PR attorneys Brian O'Connell and Joielle Foglietta for the Simon Bernstein Estate have permitted years of "ORIGINAL" documents and business records relevant to this action to remain in the possession of Tescher and Spallina despite their being Court Ordered approximately 2 years ago to turn over "ALL"<sup>55</sup> records upon their removal after admitting to fraudulently creating a Shirley Trust, thus creating an imminent danger that further vital Original documents and evidence relevant to this federal action will also go "permanently lost" or be destroyed further justifying the need for an immediate injunction herein.

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<sup>54</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

AND

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

AND

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Teschher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

<sup>55</sup> February 18, 2014 Order Demanding ALL TESCHER and SPALLINA records be turned over to the Replacement Curator Benjamin Brown

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

144. As this Court may recall from the Summary Judgment filings herein, attorney Robert Spallina sought to have the proceeds of the alleged “lost” Life Insurance Policy paid to his office by signing a Death Benefit Claim as the Trustee of a Trust also “lost” and which he claims in testimony and other parole evidence obtained that he had nothing to with the trust or insurance policy, including stating this in his recent testimony at the Validity hearing and further he was being addressed in communications over several months by Heritage Union Life Insurance as “Trustee” of the “La Salle Trust” and yet the parties kept LaSalle out of this federal case where Financial Disclosures of Florida Probate Judge Martin Colin now publicly available due to the Palm Beach Post Investigative series show Judge Colin has had an ongoing financial business relationship with La Salle for all relevant years and yet never Disclosed this on the record despite knowing and having actual knowledge that La Salle was a Defendant in a counter-complaint<sup>56</sup> filed by myself in his Court as of July, 2014 in relation to an Oppenheimer Trust instigated lawsuit against Eliot’s children that Colin immediately stayed<sup>57</sup> despite knowing of the conflict this represented as a potential Counter Defendant and as a Material and Fact Witness to certain fraud in and on and by his court.

145. This Court must now act and use its Injunctive powers over the parties currently within its jurisdiction to restrain. obtain, produce and preserve the critical evidence, documents and records and Discovery necessary from all parties including the probate court files in aid of it’s own jurisdiction.

**Ted Bernstein and Alan Rose involved with New Fraud Company to hide Ownership of Assets at 7020 Lions Head Lane, Boca Raton, FL ; Further Need for Injunctive Relief**

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<sup>56</sup> July 30, 2014 Answer and Counter Complaint Oppenheimer lawsuit v Eliot Minor Children  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140730%20FINAL%20SIGNED%20PRINTED%20Answer%20and%20Counter%20Oppenheimer.pdf>

<sup>57</sup> August 06, 2014 Oppenheimer Counter Complaint  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140806%20REFILED%2020140730%20PRINTED%20SIGNED%20ECF%20STAMPED%20Counter%20Complaint%20Oppenheimer%20Lawsuit-2.pdf>

146. On Feb. 18, 2016 I had a personal conversation with one Leilani Ochoada of Orlando, Florida after discovering information at the Florida Secretary of State website [www.sunbiz.org](http://www.sunbiz.org) regarding a false company set up as 7020 Lions Head Land Trust, Inc., shown on a Deed purportedly signed and transferred by Ted Bernstein of the property at 7020 Lions Head Lane, Boca Raton which was my parent's St. Andrews home. See, Deed signed by Ted Bernstein and Alan Rose<sup>58</sup>.
147. The sunbiz.org website showed this 7020 Lions Head Land Trust, Inc. company had a False and Inactive ( Dissolved ) company listed as it's Registered Agent which according to Melanie Sellers at the Florida Division of Corporations should not have made it through the Secretary of State's Office to be filed as the Registered Agent must be a valid and active company. See Document Number P15000049545 filed 6/4/15 which is the reference number on the Lions Head Land Trust Inc. filing. See Document Number P15000049545<sup>59</sup>
148. The Registered Agent is listed as ISL, Inc. with an address at 1540 GLENWAY DRIVE TALLAHASSEE, FL 32301 which is also the address listed as the Principal Place of Business for Lions Head Land Trust, Inc.
149. According to [www.sunbiz.org](http://www.sunbiz.org) the ISL, Inc. company listed as Registered Agent by Lions Head Land Trust Inc. has been INACTIVE and Dissolved since 1997 according to Secretary of State Document Number P96000079975 and this has been confirmed by staff at the Division of

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<sup>58</sup> DEED

[www.iviewit.tv/DEEDLIONSHEADLANDTRUSTINC7020LIONSHEADLANEBOCARATONFLSALE.pdf](http://www.iviewit.tv/DEEDLIONSHEADLANDTRUSTINC7020LIONSHEADLANEBOCARATONFLSALE.pdf)

<sup>59</sup> [www.iviewit.tv/DocumentP15000049545Articles.pdf](http://www.iviewit.tv/DocumentP15000049545Articles.pdf) - Articles of Incorporation

[www.iviewit.tv/DocumentP15000049545DetailsCorp.pdf](http://www.iviewit.tv/DocumentP15000049545DetailsCorp.pdf) - Detail of Corp

Corporations who were initiating inquiry and investigation. See, Document Number P96000079975<sup>60</sup>

150. Upon information and belief, the actual licensed business at 1540 GLENWAY DRIVE TALLAHASSEE, FL 32301 is Incorporating Services, LTD and the person at phone number (850) 656-7956 says there is no ISL, Inc. at that address and no company like Lions Head Land Trust, Inc. has principal offices at the 1540 GLENWAY DRIVE TALLAHASSEE, FL 32301 address.
151. Upon speaking to Leilani Ochoada who is listed as the “Incorporator” of Lions Head Land Trust, Inc., using an Address on the Articles of Incorporation as 7020 Lions Head Lane Boca Raton, Fl 33496 Leilani says she will come forward with an Affidavit for federal and state court and Investigators as follows upon information and belief: 1) She has no knowledge of Lions Head Land Trust, Inc. at all ; 2) She never authorized anyone to use her name as an Incorporator; 3) Until Feb. 18th 2016 had no knowledge any entity was incorporated by filings at the Fla Secretary of State under her name and had no involvement with any land transaction involving 7020 Lions Head Lane, Boca Raton, F; 4) She initially believed it was some form of identity theft when she got the call and looked into it further; 5) She never lived at any Boca Raton, Fl address in general and never at 7020 Lions Head Land Trust Inc. and is from Orlando, Fl; 6) She found out an attorney that had an Office building where her company rented space in Orlando used her name as this Incorporator without permission and never knew about any land deal with Mitch Huhem/ Laurence Pino or anything related to this property with Laurence Pino being the attorney who apparently did this expressly stating he was trying to hide Mitch Huhem from the public record as part of this transaction; 7) She knew absolutely nothing about the Articles of Incorporation and the addresses and companies named there using her name; 8)

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<sup>60</sup> [www.iviewit.tv/DocumentP96000079975.pdf](http://www.iviewit.tv/DocumentP96000079975.pdf) - Details of Corp

Attorney Laurence Pino never had Leilani's permission to incorporate any entity using her name as an Incorporator either by signed document or Electronically ; 9) Pino has not been able to produce any written document that she allegedly signed with his office; 10) Pino's Exec Assistant Cathy can not find Any document signed by Leilani after reviewing the files supporting Leilani's version of the events that she had no knowledge and no involvement.

152. Thus, Ted Bernstein and Attorney Alan Rose knew and had to know by the most basic due diligence reviewing the company's data of Lion Head Land Trust, Inc. as the alleged "buyer" in this Real Estate transaction which was never approved or authorized by myself that the Company was False and Fraudulent as Ted Bernstein and Alan Rose knew and had to know Leilani Ochoada had never met them before and surely did not have an address at 7020 Lions Head Lane, Boca Raton Fl 33467 and thus Ted and Alan are again in the middle of fraud this time in a direct manner to SECRET away and HIDE ASSETS and this Court must now use its Injunctive powers herein.

153. This US District Court clearly has jurisdiction over Ted Bernstein and Alan Rose has "appeared" in the federal case as Attorney for Ted Bernstein at a Deposition and thus this Court should also have proper power under the All Writs Act and Anti Injunction Act to reach Alan Rose as well until such time he is formally served with a Summons and Amended Complaint where he is among several parties I am seeking to add to this action herein and should now be enjoined until further Order of this Court from all actions on behalf of Ted Bernstein and related to the matters herein.

**Sharp, Fraudulent practices and Abuse of Process, sham hearings, Alan Rose, Steven Lessnee, Judge Phillips wherein this Court should at least Temporarily Enjoin proceedings before Judge Phillips specifically including a Thursday, Feb. 25, 2016 proceeding this week at 3:15 PM EST until further Order of this Court:**

In addition to the grounds set forth above where Alan Rose and Steven Lessne both should be Disqualified from representation as Material fact witnesses in the Stanford-Oppenheimer-JP Morgan Trust documents involving Gerald Lewin, Traci Kratish and others, both attorneys have engaged in Sharp and abusive practices by:

1. filing motions with minimal Notice during times I have Noticed as Unavailable for medical reasons;
2. seeking to hear at 5 Minute UMC Motion dates complex matters knowingly requiring Hearings;
3. seeking to have Ordered at such Motion dates hundreds of thousands of dollars in attorneys fees without providing ANY Billing statements;
4. Falsely presenting to the Florida Courts knowing misrepresentations of claimed Injunctions against me by SDNY Judge Shira Scheindlin and directly misrepresenting the truth and actual language;
5. pursuing Guardianship as a retaliatory tool against seeking truth and disclosure and justice.

This Court should now Enjoin and Restrain Alan Rose who is under this Court's jurisdiction as having appeared in a federal court deposition for Ted Bernstein who is under the Court's jurisdiction, or at least enjoining Ted Bernstein and the Probate Court of Judge Phillips at least temporarily.

**"Side-Deals" and "Agreements" Thwarting and Impairing this Court's Jurisdiction**

It is expressly known that "some form" of side deal - agreement is in place where somehow Creditor William Stansbury has some "settlement" with Ted Bernstein yet the terms are completely unknown and should be fully disclosed and while William Stansbury has been very helpful to myself and my family in many ways the actions of his attorney Peter Feaman in not pursuing avenues of relief combined with the orchestrated actions of O'Connell and Rose demand this Court exercise it's injunctive and inherent powers to determine how such off record agreements are manipulating the integrity of both federal and state proceedings and the court should further act upon and resolve the conflicts of interests of the attorneys and for those not under the Court's jurisdiction I pray for leave to Amend to add parties and claims herein.

**Piece-Meal Documentary Proof of "Missing Millions" and "Missing Files-Records"**

154. While it is presently unknown to Eliot when COLIN first gained knowledge of the sizable holdings of Simon and Shirley Bernstein or when COLIN first had involvement in Bernstein family matters inside or outside the Courthouse, Court records and documentary evidence show COLIN becoming involved in both the Estate cases of Shirley and Simon Bernstein in at least



2010 for Shirley Bernstein and 2012 for Simon Bernstein when he took over his Estate case from FRENCH.

155. From the minimal records and Discovery obtained by Eliot via Court Ordered Production of Tescher & Spallina, PA upon their removal, Simon Bernstein had assets and holdings of over \$13 Million plus in Investments Accounts, Private Banking Accounts, checking accounts, retirement accounts etc since 2008 when Tescher & Spallina, PA, TESCHER and SPALLINA were doing Estate Family Planning for Simon and Shirley Bernstein plus over \$5 Million in real estate based upon Listings of the properties weeks prior to Simon's passing.

156. That the Tescher & Spallina PA, production documents which are Not Originals are not transferred to the replacement Curator, Benjamin Brown, Esq. until on or about June 02, 2014, nearly a year after Eliot first reported to the COLIN court that Fraud Upon the Court had taken place and approximately nine months since the September 13, 2013 hearing before COLIN where he had admissions from the lawyers and fiduciaries that Fraudulent Documents had been submitted to the Court by Tescher & Spallina PA.

157. The failure of COLIN to seize the records of all parties involved that committed Fraud Upon his court allowed the parties involved to begin to prepare further alleged fraudulent documents to attempt to cover up for the crimes exposed in Eliot's May 2013 pleading, subsequent pleadings and criminal complaints they were then being investigated in.

158. TESCHER and SPALLINA's production lacks all of the following;

- a. Historical and present Bank and other Financial Institutions statements for the multitude of Simon's Personal and Financial Accounts,
- b. Post Mortem Personal and Corporate Mail,
- c. Mail from time periods prior to Simon's passing,

- d. Historical and current Business Records of Simon's,
- e. Historical and current Insurance records i.e. Homeowners, Jewelry, Auto, Business, etc.,
- f. Historical and current Corporate Records for any of the many companies Simon owned,
- g. Historical Signed Tax Returns, personal and corporate, for any years,
- h. Computer Data and Drives both personal and corporate, and,
- i. Tescher and Spallina despite Court Order to turn over records to Curator retained Original Dispositive Documents and all original documents, as what was tendered to the Curator had only one original alleged Promissory Note for Eliot's children's home that was never filed with the courts.

159. What was left upon inspection by Eliot at O'Connell's office of Simon's personal and corporate records was 3 bankers boxes of files each only partially filled, for a man who ran multiple businesses, had multiple financial institution accounts and more. On information and belief, despite O'Connell having a court order to inspect Simon's offices with Eliot present, they failed to ever inventory Simon's office prior to TED's eviction and despite Eliot being allowed to be present at any inventory of the office, Eliot was never contacted to appear.

160. That O'Connell was supposed to have inventories all of Simon's home business records done by a professional appraiser and turn that appraisal over to Eliot and while the appraiser did come to Simon's house to reinventory as court ordered, he failed to provide an inventory of the records.

161. After O'Connell inventorying, Rose enters home for lighting issue and alleges to have discovered and then removed documents and trust documents included from the home, despite that he had no legal authority to remove any properties of the Estate of Simon.

162. Where the Tescher & Spallina, PA production documents referenced herein are alleged to be part of an attempt to cover up crimes and are virtually all alleged to be fraudulent and not at all

representative of the law firm files of Simon Bernstein or the files that became part of Simon and Shirley's Estates. There was only 1 original document sent, not even the original dispositive documents were tendered to the Successor, no historical banking, tax or other business records and there was virtually no mail from the time of Simon's death included in the production.

163. From Tescher & Spallina, PA Production, Bates Doc. No. TS001503-TS001506, by Letter dated June 25, 2013 from Grant Thornton, under Primary Express Account 309513, Payee Bernstein Family Investments LLP, regarding a claim against Stanford Bank International Limited ( "the Company"), **a Claim was allowed for \$1,062,734.50 in the Antiguan Estate. The Letter references that there may be "more letters of notification in order to incorporate all CDs." Where the CD's my father held on information and belief were only a small fraction, one to two percent of his holdings.**
164. However, by Tescher & Spallina, PA Bates Doc. No. TS003734 the STANFORD Simon & Shirley Bernstein Valuations as of 5/28/2008 reflect a Net Worth for that Statement at \$6, 928,933.52 ( Million ) with \$839,362.12 in Cash Available.
165. From Tescher & Spallina, PA Production, Bates Doc. No. TS004808 by Statement dated Aug. 31, 2012 (two weeks before Simon's death) in the Wilmington Trust Investment Details for 088949-000 Simon L. Bernstein Irrev TR the Grand Total \$2,829,961.66, thus this nearly \$3 Million remains wholly Unaccounted for and according to William Stansbury this value may be doubled to Over \$6 Million when Shirley Bernstein's 49% of this account is factored in, which also remains Unaccounted for.

166. From Tescher & Spallina, PA Production already exhibited herein TED allegedly settled Simon's \$2,000,000.00 of CD's with Stanford with Grant Thornton for \$1,062,734.50. There is no complete accounting.
167. From Tescher & Spallina, PA Bates Doc. No. TS005459 Simon Bernstein BankOne checking activity Acct MI/FL/Ga Checking XXXX7231 \$67,402.08 was the available Balance in that account as of 10/15/12 just after Simon Bernstein's passing with \$109,456.67 available as of Sept. 7, 2012 just a short time before his passing for that account.
168. By **Tescher & Spallina, PA Bates Doc. No. TS005478 JP Morgan Bernstein Family Investment LLP Acct. W32635000 showed \$1,872,810.91 for a 49.5% interest in the total Market Value with Accruals with \$807,289.79 Cash included for Statement covering 8/1/12-8/31/12 just weeks before Simon Bernstein's passing.**
169. By Tescher & Spallina, PA Bates Doc. No. TS004765 JP Morgan Simon Bernstein Account No. 000000849197231 showing Total Payments & Transfers of \$97,793.74 for the period 8/10/12 to 9/12/12 up to Simon's passing.
170. By Tescher & Spallina, PA Bates Doc. No. TS004820 JP Morgan Simon Bernstein Trust Robert M. Spallina Donald L. Tescher Trustees Primary Account 000000478018083 Dec. 20, 2013 Balance \$150,177.17 with an "Internal Transfer" of \$100,000.00 on Dec. 20, 2015. It is unknown what this "Internal Transfer" was for that occurred over a year after Simon's passing.
171. By email dated Feb. 8, 2013 Victoria Roraff, Registered Client Service Associate of OPPENHEIMER of the Boca Raton, Florida office writing to SPALLINA she admits she does not have a File on all of the STANFORD Accounts but provides how some of the accounts

change account numbers transferring from STANFORD to OPPENHEIMER

**From:** Roraff, Victoria [Victoria.Roraff@opco.com]  
**Sent:** Friday, February 08, 2013 10:27 AM  
**To:** Robert Spallina  
**Subject:** RE: Stanford Statement Request

I don't have a file on all of them – but here's what I'm able to provide:

NM2012273 – Bernstein Holdings LLC – became G51-1403458  
NM2012109 – Bernstein Family Investments LLLP – became G51-1403425  
NM2010376 -  
NJF011401 – Bernstein Family Investments LLLP – became G51-1403433  
NJF011443 -  
NJF011674 – Bernstein Family Investments LLLP – became G51-1403441  
NJF010213 –

Thank you,

*Vickie Roraff*  
Registered Client Service Associate

Oppenheimer & Co. Inc.  
Boca Village Corporate Center  
4855 Technology Way  
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Boca Raton, FL 33431

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Toll Free - 888-999-3660

172. Thus with at least \$13 million plus in known cash and accounts and over \$6 million in real estate ( the St. Andrews home and Beachfront Condominium ), approximately \$800,000.00 plus in Jewelry, a Bentley that values at several hundred thousand, a Porsche that values at over one-hundred thousand, a million dollar settlement with STANFORD payout and the Life Insurance of \$1.7 million in the original underlying case herein, there was over \$20 million in known assets held by Simon Bernstein shortly prior to and after his passing, yet Third-Party Defendants, Estate attorney O'CONNELL and TED and ROSE falsely and fraudulently claim now Simon Bernstein's Estate and Trusts are virtually gone, depleted as if it vanished into thin

air without any distribution at all to Eliot and his family who are beneficiaries under any beneficiary scenario asserted by any party and they have provided No accountings that show the total holdings from the date of the decedents' deaths to date, in violation of Probate Rules and Regulations and fail to show where the vanished holdings have gone in 2.5 years justifying a preliminary injunction at this time.

173. These numbers from the minimal bare discovery obtained to date do not include and are without any accounting for the value of Simon's holdings in the Intellectual Properties of "Iviewit" which propels the Estate and Trust to one of the largest in the country when royalties are finally monetized.

174. The value of the VEBA which is already part of this federal litigation involving the Illinois life insurance is but one of many unknown assets in this case and it is unknown what happened to the VEBA assets once the VEBA was unwound as alleged by Counter-Defendants and Third-Party Defendants.

175. Certain documentary evidence shows the VEBA may have been worth \$50 Million or more with Simon and Shirley as primary plan participants, yet this asset and these funds have also allegedly disappeared and vanished according to Counter-Defendants and Third-Party Defendants PAMELA, TED, D. SIMON, A. SIMON and other defendants and again with no accountings and no records provided to beneficiaries or this Court.<sup>61</sup> Where the VEBA Trust Trustee LASALLE is according to all parties the named PRIMARY BENEFICIARY of the missing insurance policy underlying this action.

<b>S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A</b>	
Employer Identification Number (EIN)	363479122

<sup>61</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A Information  
<http://www.nonprofitfacts.com/IL/S-B-Lexington-Inc-Death-Benefit-Plan-United-Bank-Of-Illinois-N-A.html>

Name of Organization	S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A
Address	120 W State St, Rockford, IL 61101-1125
Subsection	Voluntary Employees' Beneficiary Association (Non-Govt. Emps.)
Foundation	All organizations except 501(c)(3)
Organization	Corporation
Exempt Organization Status	Unconditional Exemption
Tax Period	2009
Assets	<b>\$50,000,000 to greater</b>
Income	<b>\$10,000,000 to \$49,999,999</b>
Filing Requirement	990 - Required to file Form 990-N - Income less than \$25,000 per year
Asset Amount	\$0
Amount of Income	\$0
Form 990 Revenue Amount	\$0

176. On or about September 2012, Eliot discovered that his father Simon Bernstein's home office computers had been virtually wiped clean of data, dispositive documents removed from the home by a one Rachel Walker minutes after Simon died causing reasonable and great suspicion when considering the sudden and alleged suspicious manner of passing, the allegations of Simon's being poisoned made by his brother TED and others and the millions of dollars in holdings Simon Bernstein had after decades of being in business thus beginning a continuing and ongoing pattern of missing documents, missing information, missing trusts, missing IRA beneficiaries, missing insurance policies and missing evidence which now must be halted and enjoined.

177. Thus, the destruction and loss of vital business records and account records began by the time of Simon's passing in 2012 if not earlier.

178. On or about Nov. 1, 2013 and Dec. 10, 2013 Eliot pro se filed a motion to Produce against TED as the Personal Representative in the Estate of Shirley Bernstein yet no such production has been forthcoming by TED to date.

179. That Eliot also filed an extensive production request of O'Connell the Personal Representative of the Estate of Simon now and O'Connell challenged the routine request and the court has not yet made determination, thereby further denying Eliot necessary documentation of the Estate of Simon and making it impossible to have Validity or Construction hearings without either obtaining the records or having a statement as to where they are.

180. The Court should note that despite having a court order from COLIN to inventory Simon's home and office business records and produce the inventory to beneficiaries and interested parties, despite reassurances from O'Connell that the documents and records would be inventoried, no such inventory was produced. It was later learned that O'CONNELL nor his office inventoried Simon's business address for records as court ordered and by the time this was learned it was also learned that TED had been evicted from the office and removed all the records from that address before the court ordered inventorying could be done.

181. The Court should note that COLIN ordered a re-inventorying of assets as it was learned that Personal Property from the Shirley Condo sale was missing and where TED claimed it was moved to the garages of his father's primary home and months later when the re-inventorying was done it was found that all these items were missing and the garages were empty. Despite learning of this O'CONNELL has taken no action to report the missing Personal Property that is in his custody to the proper authorities and further took possession of remaining items and moved them to an undisclosed location.

182. TESCHER and SPALLINA's production lacks all of the following;

- a. Historical and present Bank and other Financial Institutions statements for the multitude of Simon's Personal and Financial Accounts,
- b. Post Mortem Personal and Corporate Mail,



- c. Mail from time periods prior to Simon's passing,
- d. Historical and current Business Records of Simon's,
- e. Historical and current Insurance records i.e. Homeowners, Jewelry, Auto, Business, etc.,
- f. Historical and current Corporate Records for any of the many companies Simon owned,
- g. Historical Signed Tax Returns, personal and corporate, for any years,
- h. Computer Data and Drives both personal and corporate, and,
- i. Tescher and Spallina despite Court Order to turn over records to Curator retained Original Dispositive Documents and all original documents, as what was tendered to the Curator had only one original alleged Promissory Note for Eliot's children's home that was never filed with the courts.

183. What was left upon inspection by Eliot at O'Connell's office of Simon's personal and corporate records was 3 bankers boxes of files each only partially filled, for a man who ran multiple businesses, had multiple financial institution accounts and more. On information and belief, despite O'Connell having a court order to inspect Simon's offices with Eliot present, they failed to ever inventory Simon's office prior to TED's eviction.

184. That O'Connell was supposed to have inventories all of Simon's home business records done by a professional appraiser and turn that appraisal over to Eliot and while the appraiser did come to Simon's house to reinventory as court ordered, he failed to provide an inventory of the records and he failed to inventory all of the Personal Property as required, stating they were out of time.

185. After O'Connell inventorying, Rose enters the home for alleged lighting issues and alleges to have discovered and then removed illegally documents and trust documents included from the

home which were under the custody of O'Connell, despite that he had no legal authority to remove any properties of the Estate of Simon.

186. Where the Tescher & Spallina, PA production documents referenced herein are alleged to be part of an attempt to cover up crimes and are virtually all alleged to be fraudulent and not at all representative of the law firm files of Simon Bernstein or the files that became part of Simon and Shirley's Estates. There was only 1 original document sent, not even the original dispositive documents were tendered to the Successor, no historical banking, tax or other business records and there was no mail from the time of Simon's death included in the production.

187. That Simon had almost a fifty year career in the insurance industry and had multiple active companies, including having had multiple trust companies for various of his products he invented and Simon was a meticulous record keeper and had massive office space housing records prior to his death. Simon had computer records dating back 20 years and all these records and data now appear missing.

188. Mail from the day he died and prior to his death appears missing, including bank statements, insurance records for home, life and property insurances, insurance commission checks, insurance policy records, credit card statements and virtually all of his mail is unaccounted for. Years of personal finance records of his many Private Banking Accounts and Statements all missing from his records for accounts held at Oppenheimer, Stanford, JP Morgan, Sabadell Bank, Legacy Bank, Wilmington Trust, Wells Fargo, etc. Tax Returns missing. Trust Documents Missing. Insurance Policies Missing for both he and Shirley. IRA account histories missing. Pension account information missing. According to O'Connell Simon and Shirley's business and personal finance records were in less than three banker boxes. No hard drives

have been recovered and data from them produced. All records of his 17 year involvement with the Iviewit Technology Companies, including his stock in the companies and copies of Intellectual Property Filings and more, which I had seen at his office only a few months prior to his death are all missing, including thousands of emails regarding the companies and other pertinent information that Simon was safekeeping after it was seized from the companies on or about 2000-2001. Overall the contents of Simon's home and office records should have amounted to over 100 banker boxes filled and gigabytes of data.

**Ted Bernstein, Greenberg Traurig, Stanford Trust, Robert Spallina, Proskauer Rose**

189. TED is the oldest son of Simon and Shirley Bernstein, now deceased.
190. Simon Bernstein passed away in Sept. of 2012, having predeceased his wife Shirley Bernstein who passed away in Dec. 2010.
191. Ted was the last person in possession of my Mini-van before it was turned over to the body company where it was burglarized with wires taken out and a PD report generated and then taken to another company where it was Car-bombed.
192. While Ted Bernstein had been asked to come forward to the FBI about the circumstances of the Car-bombing he has never done so to my knowledge.
193. TED was living in the home of Simon Bernstein pulling his life together prior to the Car-bombing of Eliot's family vehicle in 2005.
194. TED soon thereafter was commingling with PROSKAUER, LEWIN and Greenberg Traurig and suddenly gets a Multi-million dollar home on the intra-coastal waters.<sup>62</sup> TED has other insurance business relationships with Tescher & Spallina, PA, TESCHER and SPALLINA right

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<sup>62</sup> Zillow Listing TED Home @ [http://www.zillow.com/homes/880-Berkeley-St-Boca-Raton-FL-33487\\_rb/?fromHomePage=true&shouldFireSellPageImplicitClaimGA=false](http://www.zillow.com/homes/880-Berkeley-St-Boca-Raton-FL-33487_rb/?fromHomePage=true&shouldFireSellPageImplicitClaimGA=false)

from the outset of their involvement in Simon and Shirley's Estate Planning and TED brings them to his father claiming they will be a rich source of referrals for him.

195. Greenberg Traurig ("GT") who was involved with the Iviewit IP and Iviewit Bar Complaints and Federal RICO and ANTITRUST lawsuit of Eliot, also represented TED personally in the lawsuit that also involves the Estates and Trusts of Simon and Shirley with Stansbury - GT main defendant with PROSKAUER in the STANFORD litigation.

196. TESCHER under deposition can not remember why he gets checks of \$55k twice from one of TED companies.<sup>63</sup>

197. STANFORD is one fund that Simon Bernstein invested substantial monies in and eventually STANFORD broke open as a major Ponzi scheme on or about Feb. 2009 and is claimed as a \$7 Billion plus ponzi scheme, See, SEC public Announcement Feb. 17, 2009:

**“ SEC Charges R. Allen Stanford, Stanford International Bank for Multi-Billion Dollar Investment Scheme FOR IMMEDIATE RELEASE 2009-26: Washington, D.C., Feb. 17, 2009 —** The Securities and Exchange Commission today charged Robert Allen Stanford and three of his companies for orchestrating a fraudulent, multi-billion dollar investment scheme centering on an \$8 billion CD program.<sup>64,</sup>”

198. According to the SEC public statement,

“Rose Romero, Regional Director of the SEC's Fort Worth Regional Office, added, "We are alleging a fraud of shocking magnitude that has spread its tentacles throughout the world.”

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<sup>63</sup> July 09, 2014 Tescher Deposition by Florida counsel Peter Feaman on behalf of William Stansbury  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140709%20Tescher%20Deposition%20and%20Exhibits.pdf>

<sup>64</sup> February 07, 2009 SEC PRESS REPORT ALLEN STANFORD PONZI  
<https://www.sec.gov/news/press/2009/2009-26.htm>

199. According to public articles, PROSKAUER and GREENBERG TRAURIG are centrally involved in the Stanford Ponzi and are being sued for the entire scheme<sup>65</sup>.
200. Upon information and belief, William Stansbury has not able to get info on the Retirement Plans from TED even as a Co-Trustee and Stansbury's lawyer Peter Feaman has no response from ROSE .
201. According to Stansbury, approximately \$6500 or so per each minor child that should have been paid out and not gone through Estate.
202. Further, upon information and belief, TED is under Dept of Labor Investigation and has been non responsive to beneficiaries and again with no accountings the numbers seem strikingly low.

**Simon Bernstein's "Missing Iviewit Shares, Proskauer Iviewit Files and Iviewit", "Missing Estate Planning" from Proskauer Rose and Foley Lardner**

203. Eliot is the natural son of Simon and Shirley Bernstein, who both resided in Boca Raton, Florida within Palm Beach county at relevant times herein.
204. Shortly after the birth of their first son in California, Joshua, Eliot and Candice Bernstein were about to move into a new home with their child.
205. That Simon and Shirley however had taken ill at the time and traveling to California was burdensome at the time and Eliot and Candice proposed moving to Florida and Candice would move from her hometown of Newport Beach/Corona Del Mar where her and her family lived and where she had met and married Eliot. Candice willing to give up everything to be with Eliot's parents and have her baby with them and so they moved.

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<sup>65</sup> July 27, 2015 Proskauer Rose, Greenberg Traurig and Chadbourne sued in STANFORD PONZI Judge refuses to dismiss  
<http://www.americanlawyer.com/id=1202732467400/Judge-Declines-to-Dismiss-Claims-Against-Proskauer-and-Chadbourne?slreturn=20151101125935>

206. Simon and Shirley were elated to have their son, his wife and grandson close to them and they gave Eliot and Candice a \$100,000.00 wedding gift as a deposit at a Condominium on Mizner Boulevard in Boca Raton and where decorating it prior to Eliot and Candice's arrival.
207. Where the owner of the building, a one James Cohen was a client of Simon's and so it was a spectacular deal on a brand new trio of buildings in the heart of Boca, which property had fantastic growth in a short time.
208. Life was great in Boca working with Simon for the first time in his life in the same city, every week like clockwork Eliot, Candice and the children had brunch on Sunday, dinner at least once a week with them and then golf or a movie. A second son was born, JNAB.
209. At all relevant times herein, since on or about 1998, Eliot is the actual and true Owner and Inventor of Intellectual Properties ( hereinafter referred to as "IP" ) and the technologies hereinafter referred to as the "Iviewit" technologies were technologies heralded by leading experts as the "Holy Grail" of the Internet, being backbone technologies used around the globe for digital imaging, having major and significant "government" uses such as used on the Hubble Space telescope, for a mass of defense applications such as, Space and Flight Simulators, Drones, Medical Imaging applications and much much more.
210. Once the technologies were discovered Simon and Eliot formed companies and secured Intellectual Properties through LEWIN and PROSKAUER, raised seed capital from H. Wayne Huizenga, Crossbow Ventures and many other seed investors, had a Private Placement with Wachovia and already had Goldman Sachs referring clients and getting the companies ready for an IPO that some claimed would make the companies larger than Microsoft, as the IP would become the backbone technologies to virtually all digital imaging and video content creation and distribution software and hardware and more.

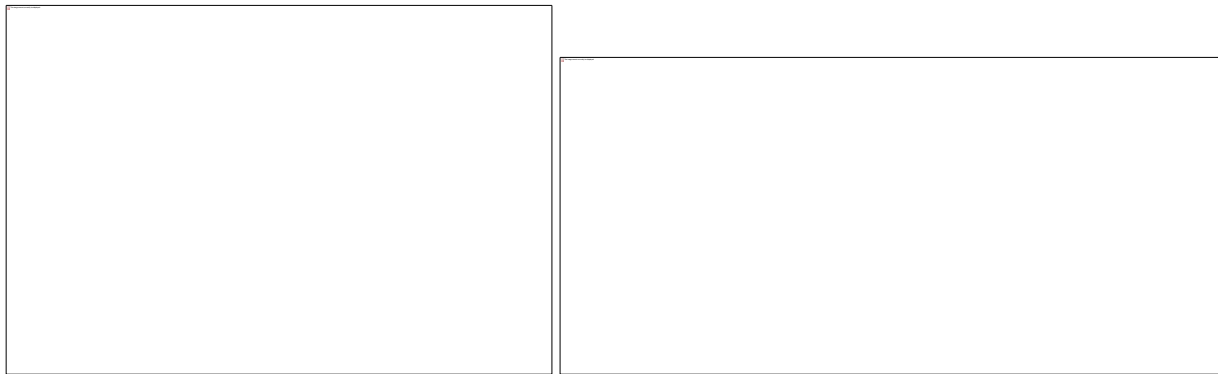
211. The “Iviewit” technologies were tested used and validated by leading engineers and companies including but not limited to Gerald Stanley of Real3d Inc., engineers at Lockheed Martin, the Intel Corporation, Silicon Graphics, Inc., AOLTW ( America Online-Time Warner), Sony and Warner Bros., with the IP having been valued in the Billions to Trillions of dollars over the life of the IP.
212. Hundreds of signed Non-Disclosure Agreements, Licensing and Strategic Alliance Agreements were obtained on behalf of the technologies involving Fortune 500 companies, financial institutions and others such as Lockheed Martin, the Intel Corporation Inc., Goldman Sachs, Wachovia, JPM, Chase, IBM, AT&T, Warner Bros, Sony, Inc., Dell Inc, and many others, all currently and since that time using Inventor Bernstein’s Scaling Technologies IP without paying royalties to the true and proper inventors and violating their contracts.
213. The Internet would not have rich video or imaging and cable television would have 75% less channel bandwidth available without these technologies.
214. Simon L. Bernstein was a lifelong successful Life Insurance salesman growing many businesses and gaining substantial wealth during his lifetime, earning millions in income yearly such that he was a “Private Banking” client of leading US and International Banks, and he and his wife had a fully paid multi-million dollar home in Boca Raton, Fl, at the leading country golf club Saint Andrews and a fully paid multi-million dollar beachfront Condominium on Ocean Blvd. in Boca Raton, Fl. with their own private floor and elevator.
215. On or about 1997, Simon L. Bernstein an original seed capital investor in Counter Plaintiff’s novel technologies and IP, which later became known as the “Iviewit” technologies and Simon Bernstein became a 30 percent shareholder of company stock issued for operational and holding companies for the Intellectual Properties and 30 percent owner of the Intellectual Properties and

he also became the Chairman of the Board, all companies originally formed by PROSKAUER and accountant LEWIN.

216. PROSKAUER and LEWIN were both not only intimately involved in the “Iviewit” Company operations and were stockholders on gifts Eliot gave Proskauer and Lewin’s family, but further provided Estate and Family Planning advice to Simon who had now become a 30% shareholder in the Iviewit IP and Iviewit companies.

217. PROSKAUER prepared Wills, Trusts and other Estate Planning instruments for Simon and Shirley Bernstein while PROSKAUER was simultaneously acting as Counsel, including Intellectual Property Counsel for the Iviewit companies.

218. With the “Iviewit” Technologies having been valued by leading Experts in the billions of dollars by Proskauer referred technology companies, since on or about 2001 to the present, Eliot and his wife Candice and their minor children have experienced an ongoing pattern and practice of extortionate actions, threats, death threats so real as to include but not be limited to the car-bombing of the family mini-van in Boynton Beach, Florida on or about March 14, 2005.







219. This pattern of ongoing wrongful acts includes but is not limited to orchestrated actions to deny Eliot, Simon, the Iviewit shareholders and patent IP interest holders any monetization of the IP, deny Eliot from gaining any significant funds to pursue his IP interests, deny Eliot any now with the passing of his parents who were protecting Eliot and his family throughout this ordeal of his Inheritancy a substantial part of which was expressly designed with Simon Bernstein based upon the involvements with the Iviewit IP, and further cause massive financial harms, deny due process and procedure by subterfuging the courts with complex legal crimes, through conflict of interest after conflict by those in charge of the courts and deny and deprive Eliot and even his minor children from counsel.

220. This pattern of actions further includes but is not limited to fraudulent filings in various courts constituting not only Fraud upon the courts (including as alleged in this US District Court) but Fraud By the FL courts and where the legal machinery of the FL courts themselves have become part of the wrongful acts and criminal mechanism to deny fundamental rights and monies to Eliot and his immediate family and the Iviewit shareholders and IP interest holders.

221. Still further, the pattern and history of frauds includes but is not limited to documentary frauds, forged and fraudulent documents to the US Patent Office that have led to the suspension of the IP for several years by the Commissioner of Patents, forged/fraudulent documents to probate

courts and fraudulent documents sent to private institutional banking and trust companies, fraudulent creation of similarly named companies and similarly named IP in efforts to move the IP into other people's names, one patent attorney, Raymond Joao, who misrepresented himself with his partner Kenneth Rubenstein as being partners of PROSKAUER when actually at that time they were with Meltzer, Lippe, Goldstein, Wolf & Schlissel, P.C. and where Joao put 90+ patents in his own name<sup>66</sup> and when this was discovered he left his law firm and went to work for New York Senator Dean Skelos' law firm Ruskin, Moscou, Evans & Faltischek and where Skelos and his son are currently on trial in NY with charges of corruption by US Attorney Preet Bharara), all combined to further the fraud and maintain control of the IP for the perpetrators.

222. Joao further worked after Iviewit with the now infamous Ponzi schemer Marc Stuart Dreier, sentenced to 20 years by the Department of Justice at the law firm Dreier & Barritz LLP.

223. The Perpetrators of the frauds alleged herein are primarily composed of criminals with law degrees acting in concert and Misusing the law while acting as Private and Public Attorneys at Law in their various capacities.

224. That the reason Eliot's complaints are full of Attorneys at Law and Judges is that the crimes alleged in both the Probate Court and those regarding the IP crimes are both sophisticated legal crimes that require a legal degree and bar association license to commit and involve misusing the Courts and Government Agencies to implement the crimes, Then to protect the alleged criminals from prosecution the victims are then further victimized through denial of due process and where legal process appears controlled by the criminals and infiltrate at will through conflicts and more, and finally claiming that because of their legal positions they are "immune" from their criminal and civil acts because they are acting as Attorneys at Law or Judges. Where

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<sup>66</sup> April 22, 2002 Article Iviewit Patent Attorney Raymond Joao, Esq. has 90+ patents in his name <http://www.iviewit.tv/Joao%20Article%2090%20patents%20clean.pdf>

in fact it should be the opposite to protect the public and where those who violate their ethics should be charged with treble damages instead.

225. Since on or about 1999 Eliot has consistently and diligently reported criminal actions relating to the crimes committed against the Iviewit shareholders, investors, patent interest owners, himself and his family relating to their IP rights, crimes committed primarily by lawyers, to a host of federal, state and local authorities as well as international bodies.<sup>67</sup>

226. This reporting and petitioning government entities of ongoing criminal actions and thefts of the IP includes a Feb. 2009 Petition to the Office of President Barack Obama, the White House Counsel's Office, US Attorney General's Office, White Collar crime units of the FBI as well as several petitions to the SEC in 2009<sup>68</sup>.

227. One could say that greed was the motivating factor behind these IP crimes, "holy grail" and "priceless" evaluations from leading engineers worldwide, until one discovers that Christopher Wheeler (Proskauer), Brian G. Utley (IBM) and William Dick (Foley & Lardner and former IBM far eastern IP counsel) had secreted the fact that prior to joining the Iviewit companies they had worked together for a Florida philanthropist Monte Friedkin who had fired them all for attempting to steal intellectual properties from his company Diamond Turf Equipment Co, which he had to shutter and take a multimillion dollar loss after learning of their attempt to steal his IP. On the biography of Utley that Wheeler sold to the Iviewit board it stated that the company had went on to be a leader in Turf Equipment due to Utley's innovations instead. With this truth it became clear that a pattern and practice of IP theft was in play, nothing to do

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<sup>67</sup> Investigation Master Chart @

<http://iviewit.tv/CompanyDocs/INVESTIGATIONS%20MASTER.htm>

<sup>68</sup> February 13, 2009 Letter to Hon. President Barack Hussein Obama re Iviewit @

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20L.pdf>

with Iviewit or greed, a well greased group of players who were perfecting their crimes, in fact, the alleged Iviewit thefts mirror the Diamond Turf attempt with Wheeler, Utley and Dick all involved in similar acts.

228. The veracity and truthfulness of Counter-Plaintiff's statements and reporting of these crimes and thefts has never been challenged by any Federal authority including but not limited to the US Secret Service, the Capitol Police, the US Marshall's Service, the FBI, the SEC, at least one Federal Judge and other related federal offices.
229. In 1999 it was learned that IP counsel, Joao from PROSKAUER and Meltzer Lippe Goldstein & Schlissel, tampered with Iviewit IP applications and was also putting Iviewit IP into his own name, while retained as counsel for the companies.
230. On or about 2000-2001 it was learned that the IP was fraudulently altered and that false inventors were inserted into various IP's, that there were similarly named yet different IP applications filed some entirely missing the invention process being patented and that the companies formed were duplicated as part of an elaborate shell game to move the IP out of the Iviewit shareholders ownership and into others hands.
231. As IP applications were seized from Brian Utley, who was acting as President / COO to Iviewit at the time, on referral from his friend Christopher Clarke Wheeler, Esq. at PROSKAUER and William Dick, Esq. his business associate and patent counsel for IBM who was new IP counsel hired by Iviewit to replace Joao who was caught putting IP in his name. Dick worked at FOLEY as of counsel.
232. It was then learned that the IP was in the wrong names, the assignees/owners were all wrong according to Harry I. Moatz, the Director of Enrollment and Discipline at the US Patent Office, which led to Moatz directing Eliot to file with the Commissioner of Patents allegations that

FRAUD UPON THE US PATENT OFFICE had occurred and seeking suspension of the IP while Moatz and an FBI Agent from West Palm Beach, FL were investigating the matters. Suspensions were granted.

233. Warner Bros. finds different IP then Utley showed them and stated that their patent expert, Wayne Smith, Esq. had gone to the US Patent Office and what was on file did not capture the invention, nor is what Utley showed them when presenting them a Wachovia Private Placement and seeking investment funds.

234. Shortly after Eliot and his friend, co-inventor and investor and executive at the Iviewit companies, James Armstrong, seized the IP applications and information from Utley and Eliot went back to California where he was opening a new HQ office in the Warner Bros. Advanced Tech Building in Glendale and taking over their video operations. Eliot began preparing and filing federal and state complaints. Utley then came unannounced to California and levied death threats to Eliot claiming that he and his friends Wheeler of PROSKAUER, Dick of FOLEY et al. were very powerful and their law firms were too and that if Eliot disclosed the findings to the board or others he would have to watch his back and the backs of his wife and kids back in Boca. Eliot contacted the Rancho Palos Verdes Police and Long Beach, CA FBI office and reported the incident.

235. After a board meeting with certain board members including Simon, LEWIN, Donald Kane of Goldman Sachs, H. Hickman Powell of Crossbow Ventures/Alpine regarding the threats by Utley it was determined that Eliot should stay in LA and his wife and kids would leave Florida overnight until things could be sorted out in FL with Utley, PROSKAUER, FOLEY, Wheeler, Dick et al. and deal with the threats on Eliot's family lives that were made by Utley and reported to the proper authorities.

236. The result the Board members determined was to close the Boca Raton, Fl office and fire all the bad players involved, move Eliot's family overnight to California, in what was just being learned to be an attempt to steal the IP by Iviewit's attorneys at law hired to protect the IP.
237. Upon information and belief, LABARGA, is presently the Chief Judge of the Florida State Supreme Court.
238. On or about 2002-2003, LABARGA was a District Judge in Palm Beach County assigned to a "billing" lawsuit (undisclosed to the Iviewit shareholders, board members, executives and potential investors) brought by PROSKAUER after the PROSKAUER firm had done work for Eliot, Simon and the "Iviewit" companies and PROSKAUER gaining Confidential information about the "Iviewit" technologies and confidential information about their own clients and companies. This lawsuit was also not known to Wachovia who was doing a PPM at the time.
239. Upon information and belief, the source being actual and true Court pleadings filed with LABARGA by a Florida licensed and practicing attorney named Steven Selz, Esq. on or about 2003 factual pleadings were made in a Counter-Complaint filed by said attorney Selz against the PROSKAUER and FOLEY before LABARGA in the "billing" case seeking damages against PROSKAUER and claiming the value of the "Iviewit" technologies as \$10 Billion or greater as of that time in 2003 based upon review and statements of one Gerald Stanley, Engineer at Real 3d Inc.<sup>69</sup> and others.
240. These leading Engineers deemed the Iviewit Technologies and IP as "priceless".
241. Florida Licensed attorney Steven Selz pled in said Counter-Complaint against PROSKAUER in LABARGA's court as follows:

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<sup>69</sup> January 28, 2003 Steven Selz, Esq. Counter Complaint in Labarga Court - See Par. 29  
<http://www.iviewit.tv/CompanyDocs/2003%2001%2028%20Counter%20Complaint%20Filed.pdf>

“As a direct and proximate result of the actions of the Counter Defendant, Counter Plaintiffs have been damaged in a sum estimated to be greater than \$10,000,000,000.00, based on projections by Gerald Stanley, CEO of Real 3-D (a consortium of Lockheed, Silicone Graphics and Intel) as to the value of the technologies and their applications to current and future uses together with the loss of funding from Crossbow Ventures as a result of such conduct.” See Par. 29, Jan. 28, 2003

<http://www.iviewit.tv/CompanyDocs/2003%2001%2028%20Counter%20Complaint%20Filed.pdf>

242. According to wikipedia,

“**Real3D, Inc.** was a maker of **arcade graphics boards**, a spin-off from **Lockheed Martin**. . . . The majority of Real3D was formed by research and engineering divisions originally part of **GE Aerospace**. Their experience traces its way back to the **Project Apollo** Visual Docking Simulator, the first full-color 3D computer generated image system.<sup>[1]</sup>,<sup>70</sup>

243. Prior to the PROSKAUER “Billing” lawsuit before LABARGA, back in June 30, 1999, Gerald W. Stanley as Chairman, President and CEO of Real 3d, Inc., wrote to Simon Bernstein as CEO of Iviewit, Inc., opining favorably on the Iviewit technologies, yet documents start emerging by PROSKAUER partners and Brian Utley where the “Iviewit” company name is changed as licensing and partnership deals are being signed and finalized and where Timothy P. Donnelly, Director of Engineering of Real 3d Inc, even writes to PROSKAUER partner Chris Wheeler about providing Eliot an “original signature” on the agreement with Real3d.<sup>71</sup>

244. Just prior to this in on or about April 26, 1999 PROSKAUER Partner Christopher Wheeler wrote to counsel Richard Rosman, Esq. at Lewinter & Rosman law firm who was acting on behalf of Hassan Miah who was brought in by Sky Dylan Dayton, the CEO of Earthlink to evaluate the technologies as he was the leading expert in the field of digital video and imaging at the time who founded the Creative Artist Agency ( CAA ) / Intel Media lab, the first major

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<sup>70</sup> Wikipedia Real 3D, Inc. <https://en.wikipedia.org/wiki/Real3D>

<sup>71</sup> June 30, 1999 Real 3D Letter @

[http://www.iviewit.tv/CompanyDocs/Real%203D%20Opinion%20and%20Licensing%20Info.p  
df](http://www.iviewit.tv/CompanyDocs/Real%203D%20Opinion%20and%20Licensing%20Info.pdf)

collaboration between Hollywood and Silicon Valley in the early days of the Internet whereby PROSKAUER Partner Wheeler not only indicates PROSKAUER is coordinating the corporate and intellectual property matters for Iviewit but also describes the Iviewit process as “novel” and “far superior to anything presently available with what they are familiar”<sup>72</sup>. Proskauer would later try and claim they did no IP work despite their IP partners billing for services rendered and more.

245. Hassan Miah was also CEO of Xing Technology Corporation and from and between 2002-2006 was managing Director of Media and Entertainment for the Intel Corporation.<sup>73</sup>

246. Hassan Miah was one of the first Experts to declare the Iviewit technologies as “The Holy Grail of the Internet.”

247. On or about May 30, 1999, expert Hassan Miah was emailing Eliot saying the Iviewit project “is very exciting to me,” providing his home phone number to Eliot, being impressed with Ken Rubenstein of PROSKAUER (who was the sole patent evaluator for the MPEGLA LLC company and MPEG patent pooling scheme now controlled by PROSKAUER through Rubenstein) and indicating Hassan’s own company Xing was a licensee under the MPEG patent pool at the time<sup>74</sup>.

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<sup>72</sup>April 22, 1999 Wheeler Letter to Richard Rosman, Esq. re Hassan Miah, <http://www.iviewit.tv/CompanyDocs/1999%2004%2026%20Wheeler%20Letter%20to%20Rosman%20re%20Rubenstein%20opinion.pdf>

<sup>73</sup> Hassan Miah LinkedIn <https://www.linkedin.com/in/hassanmiah>

<sup>74</sup> June 01, 1999 Hassan Miah Letter Forwarded to Iviewit Patent Counsel Kenneth Rubenstein of Proskauer Rose <http://www.iviewit.tv/CompanyDocs/1999%2006%2001%20HASSAN%20LETTER%20FORWARDED%20TO%20RUBENSTEIN.pdf>



248. The Intel Corporation acquired Real 3d Inc. (Lockheed, SGI & Intel interests), in 1999 which was under NDA, licensing and other agreements with the Iviewit companies regarding the Iviewit technologies.<sup>75</sup>

249. As referenced in the March 25, 2009 SEC complaint regarding Intel<sup>76</sup> and a massive accounting fraud which has now been specifically reported to the Philadelphia Office of the SEC that recently prosecuted SPALLINA and TESCHER in a separate case from this action but where SPALLINA and TESCHER are immersed in fraud and mis-accountings in this action:

“Not only did Intel later acquire in whole the R3D company which was intimately involved in the early phases of this matter and under signed agreements with my company, but specific members of Intel/ R3D staff were present during key meetings in the early phases and otherwise involved in these matters including but not limited to, Lawrence Palley (Director of Business Development @ Intel), Gerald W. Stanley (Chairman of the Board, President & Chief Executive Officer @ R3D a consortium of Intel, Lockheed and SGI), David Bolton (Corporate Counsel @ R3D & Lockheed Martin), Steven A. Behrens (Vice President and Chief Financial Officer @ R3D), Rosalie Bibona (Program Manager @ R3D), Timothy P. Connolly (Director, Engineering @ R3D), Richard Gentner (Director of Scalable Graphics Systems @ R3D), Connie Martin (Director, Software Development @ R3D), Diane H. Sabol (Director and Corporate Controller Finance & Administration @ R3D), Rob Kyanko (Intel), Michael Silver (@ ?), Ryan Huisman (@ R3D), Matt Johannsen (@ R3D), Hassan Miah (@ Intel), Dennis Goo (Manager, Digital Home Content for the Americas @ Intel), Rajeev Kapur (Chief of Staff, Enterprise Product Group @ Intel) and Kostas Katsohirakis (Business Development Manager @ Intel).

250. On or about June 1, 1999, Donald G. Kane (Managing Director) who worked at Goldman Sachs with LISA’s husband, Jeffrey Friedstein and his father Sheldon Friedstein (Managing Director

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<sup>75</sup> Wikipedia Real 3D, Inc.

<https://en.wikipedia.org/wiki/Real3D>

<sup>76</sup> March 25, 2009 Iviewit Intel SEC Complaint @

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

at Goldman Sachs), was emailing to Eliot about setting up a Royalty Agreement for Eliot and his family giving a “***priority return ahead of other shareholders.***”<sup>77</sup> ( emphasis added ).

251. By the summer of 2000, Christopher Clarke Wheeler, Esq. a Partner at PROSKAUER, authors a Marketing letter showing the broad value of the Iviewit technologies and the ability to profit from same as 2.5% Shareholders together with a Representative Client List of Proskauer that can benefit from the Iviewit technologies including but not limited to AT&T, ABC, Inc., NBC, CBS, the NBA, NHL, Citibank, Columbia Pictures, Inc., Bear Stearns, HBO, Time Warner, The Chase Manhattan Bank, JPM, MGM, Oppenheimer and many others.

252. PROSKAUER Partner Wheeler goes on to say as follows in his letter:

Dear Colleagues,

As a firm, we are in a unique position to impact the effectiveness of the Internet and to profit from the same. The firm of iviewit.com, Inc. is one of my clients and Proskauer, Rose, LLP. is a 2.5% shareholder. I have worked closely with iviewit, for the past 18 months, establishing and fine-tuning their corporate structure. My objective with this letter is to introduce you to this forward-thinking company and to ask for your support and assistance. The Internet is quickly evolving from a text-based medium that users have been forced to read, into a multimedia platform that users can begin to experience. The importance that this evolution has to e-commerce has been likened to the impact felt by television when it was embraced as a marketing and communications tool. iviewit’s intellectual property positions them as a leader in the streaming video, streaming audio and virtual imaging online markets. Their technologies have broad ranging applications for many different industries including: entertainment, auctions, education, healthcare and retail. Because of the extensive applicability of iviewit’s products, the vast majority of Proskauer’s client relationships represent potential clients for iviewit. Please join me as I endeavor to introduce my clients to iviewit and, in the process, help those clients to gain a competitive advantage through the utilization of iviewit’s technologies. Please contact me with any opportunities that you identify and I will arrange an introduction to a member of iviewit’s management team. I have enclosed a descriptive flyer from iviewit and a multimedia CD-ROM that will serve as an introduction to iviewit. Additional information can be found at their website,

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<sup>77</sup> June 01, 1999 Hassan Miah Letter Forwarded to Iviewit Patent Counsel Kenneth Rubenstein of Proskauer Rose  
<http://www.iviewit.tv/CompanyDocs/1999%2006%2001%20HASSAN%20LETTER%20FORWARDED%20TO%20RUBENSTEIN.pdf>

www.iviewit.com. Thank you for your time and attention. I look forward to working together to help this valued client and to further enhance the value of our equity position in iviewit.

Sincerely,  
Christopher C. Wheeler<sup>78</sup>

253. According to this PROSKAUER Partner Chris Wheeler letter of 2000, PROSKAUER was already representing OPPENHEIMER and JPM as of 2000 while representing Eliot, Simon Bernstein and the Iviewit companies with OPPENHEIMER and JPM being NDA signers and then later being just two of the places where Simon and Shirley Bernstein's wealth was placed.

254. Upon information and belief, history shows that attempted murder such as the car bombing of Eliot's family minivan in Boynton Beach, Florida and possible murder such as the possible murder of his father Simon Bernstein, as alleged by Theodore Bernstein on the day of Simon's death, have been carried out for far less than a 30% Interest in the IP and Technologies valued at least at \$10 Billion or more by leading experts back in 2003.

255. As indicated, Eliot's father, Simon Bernstein was a 30% shareholder in the Iviewit Intellectual Properties and companies formed, with PROSKAUER centrally involved in the drafting and planning of said companies, drafting and filing of intellectual properties, distributing stock to various shareholders and drafting and executing dispositive estate and trust documents regarding Simon and Shirley Bernstein's Estate planning.

256. Estate planning with PROSKAUER was done by both Simon and Eliot in direct preparation of an Initial Public Offering to be done by Goldman Sachs through an advisor to the company and shareholder, Donald Kane who was a Managing Director at Goldman Sachs & Co. The IPO was to follow a Wachovia Private Placement and the estate and trust work done by

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<sup>78</sup> July 22, 2000 - Christopher Wheeler Letter to All Proskauer Partners Re Iviewit Techs @ <http://www.iviewit.tv/CompanyDocs/Armstrong%20Wheeler%20Client%20letter%20with%20highlights.pdf>

PROSKAUER was to transfer interests in the Iviewit companies prior to their growth in Eliot and Simon's estates, to their children's estates to avoid having to transfer them later and suffer the estate taxes on the growth of the stock.

257. These estate plans were executed and then later revoked by both Simon and Eliot, once it was alleged that PROSKAUER was involved in frauds against the companies and shareholders and PROSKAUER was TERMINATED as counsel.

258. Yet, somehow, just like this original Insurance litigation in Illinois where litigation is filed by Trustees that change overnight from SPALLINA to TED and the Trust remains to this day missing with NO executed copies put forth and drafts found months after the lawsuit was instigated that appear without any identification of who the draftee is and have no legal force and even the Insurance contracts and policies underlying the claims in this Breach of Contract lawsuit are missing (not even the insurers have put forth a bona fide copy) and critical business documents are missing that any Insurer and Estate planner would have to legally maintain and likewise records from PROSKAUER, FOLEY and other involved Estate planners involving Simon and Shirley Bernstein are allegedly all "missing" as well and where finally evidence of Fraud has been now proven and further alleged regarding the dispositive documents and other crimes have been reported ranging from Extortion to TED's claim on the day his father died that he was poisoned.

259. Back in 2003, LABARGA, however, never afforded Eliot and the Iviewit companies the due process opportunity to be heard on their Counter-Complaint, and instead denied the Counter-Complaint altogether. In a bizarre twist at a scheduled Trial Eliot and counsel showed up to an empty courtroom of Labarga and at the trial rescheduling Labarga dismissed two law firms representing the Iviewit companies simultaneously on Petitions for Withdrawal whereby both

law firms, Steven Selz PA and Schiffrin and Barroway both claimed the other would be representing the Iviewit companies at trial and then both walked out, one after the other and left the Iviewit companies without counsel. Approximately 45 days later Labarga ruled a default for the company's failure to retain replacement counsel.

260. Yet upon information and belief, LABARGA also never sanctioned nor reported attorney Selz for misconduct or frivolity in making this factual allegation regarding the value of the Iviewit technologies.

261. One of the wrongful “tactics” employed by various Counter-Defendants and Third-Party Defendants in the recent years against Eliot in and out of the Courtroom has been to question his sanity and ability care for his own children by attacking his claims regarding the car bombing of his family minivan and claims about the value of Iviewit IP, yet even Florida Licensed attorney Steven Selz who was representing Plaintiff at the time before LABARGA in 2003 himself filed a factual pleading stating,

“That PROSKAUER billed IVIEWIT for legal services related to corporate, patent, trademark and other work in a sum of approximately \$800,000.00” and further “ That based on the over-billing by PROSKAUER, IVIEWIT paid a sum in of approximately \$500,000.00 plus together with a 2.5% interest in IVIEWIT, which sums and interest in IVIEWIT was received and accepted by PROSKAUER.”

262. See, Paragraphs 24 and 27 of 2003 filed and proposed Counter-Complaint filed by attorney Selz in the LABARGA/PROSKAUER billing lawsuit, again this Counter-Complaint never being heard by LABARGA.<sup>79</sup>

263. Then immediately following Selz, LABARGA then heard a Withdrawal as Counsel motion filed by Schiffrin & Barroway that claimed that another law firm, Selz would be representing the Iviewit companies and LABARGA approved this withdrawal knowing he had moments

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<sup>79</sup> January 28, 2003 Steven Selz, Esq. Counter Complaint Labarga Case @ <http://www.iviewit.tv/Counter%20Complaint%20in%20Order.pdf>

earlier let Selz out as counsel and then calling Eliot to the stand to advise him that the Iviewit companies no longer had counsel and Eliot, a non party to the action would have to obtain new counsel in a short period of time or else default, thus denying counsel to Eliot and the proper Iviewit interests under fraudulent circumstances by the machinery of the Courts as continues to today.

264. Eliot was unable to reach either Selz or Schiffrin & Barroway to obtain court files and records during the period he had to obtain new counsel and finally after showing up to Selz's offices unannounced was able to recover some of the files and where Eliot attempted to get more time from LABARGA who refused.

265. When Eliot could not get counsel in time, LABARGA ruled against the Iviewit companies and issued a default.

266. Later it would be learned that many of the companies sued by Proskauer in their billing lawsuit, who did not have retainers with the Iviewit companies, where duplicated companies involved in an attempt to move IP out of the companies and inventors hands and into the hands of improper fraudulent inventors.

267. Thus, while various Counter-Defendants and Third-Party Defendants may simply wrongfully claim "Iviewit" was a failed dot.com, it only raises substantial questions as to why PROSKAUER would "Bill" close to \$1 million, take a 2.5 percent interest in royalties and stock in the Iviewit companies, file numerous Intellectual Properties (Patents, Trademarks, Copyrights and Tradeseecrets, worldwide), recruit their clients to sign agreements with Iviewit, issue Stock to Shareholders of numerous companies and do exhaustive Estate planning for Simon, Shirley and Eliot Bernstein including protecting Simon's 30% interest and Eliot's 70% interest in the IP at that time.

268. As part of the same practice and pattern which continues in the Estate proceedings of Shirley and Simon Bernstein and the Insurance litigation in this Illinois federal district court, PROSKAUER schemed in 2001 to tortiously interfere with business relationships and financial relationships that would benefit Eliot and advance the technologies by interfering with a financing deal going on with Warner Bros. / AOL at the time which would have brought \$10-\$20 Million in capital to the Iviewit companies which had already began a licensing and operational agreement with them.

269. Florida licensed attorney Selz filed a specific counter-complaint against PROSKAUER in the "billing lawsuit" being heard by LABARGA who denied hearing the Countercomplaint which alleged as follows:

**"COUNT IV- TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS BUSINESS RELATIONSHIP**

This is an action for tortious interference with an advantageous business relationship within the jurisdiction of this Court.

Counter Plaintiff re-alleges and hereby incorporates that allegations of Paragraphs I through 30 as if fully set forth herein.

Counter Plaintiff was engaged in negotiations of technology agreements with both Warner Bros. and AOLTime-Warner as to the possible use of the Technologies of the Counter Plaintiffs and investment in Counter Plaintiffs as a strategic partner.

That despite the prior representations of RUBENSTEIN, at a meeting held on or about November 1, 2000, by and between UTLEY, RUBENSTEIN and representatives of Warner Bros. as to the Technology of IVIEWIT and the efficacy, novelty and unique methodology of the Technology, RUBENSTEIN refused to subsequently make the same statements to representatives of AOL and Warner Bros., taking the position that since Warner Bros./AOL is "now a big client of Proskauer, I can't comment on the technologies of Iviewit." or words to that effect in response to inquiry from Warner Brother/AOL's counsel as to the status and condition of the pending patents on the intellectual property.

That RUBENSTEIN, having served as an advisor to the Board of Directors for IVIEWIT, was aware of the fact that at the time of the making of the statements set forth in Paragraph 50, above, IVIEWIT was in the midst of negotiations with

AOL/Warner Bros. as to the possible funding of the operations of IVIEWIT in and sum of between \$10,000,000.00 and \$20,000,000.00.

Further, RUBENSTEIN as a partner of PROSKAUER, and despite his clear prior actions in representing the interests of IVIEWIT, refused to answer questions as to the enforcement of the Technology of IVIEWIT, with the intent and knowledge that such refusal would lead to the cessation of the business relationship by and between IVIEWIT and Warner Bros./AOL and other clients familiar with the Warner Bros./AOL technology group then in negotiations with IVIEWIT, including, but not limited to Sony Corporation, Paramount, MGM and Fox.

That the actions of RUBENSTEIN were and constituted an intentional and unjustified interference with the relationship by and between IVIEWIT and Warner Bros./AOL designed to harm such relationship and further motivated by the attempts to "cover-up" the conflict of interest in PROSKAUER's representation of both IVIEWIT and Warner Bros./AOL.

That indeed, as a direct and proximate result of the conduct of RUBENSTEIN, Warner Bros./AOL ceased business relations with IVIEWIT to the damage and detriment of Counter Plaintiffs.<sup>80</sup>

270. Yet somehow PROSKAUER and FOLEY being powerful international law firms have virtually no records of the Estate Planning work done or IP work done for Simon Bernstein nor did TESCHER and SPALLINA allegedly obtain this prior work from PROSKAUER or FOLEY or Attorney at Law Steven Greenwald, Esq. of Florida before embarking on similar Estate Planning work for Simon and Shirley Bernstein. Especially where Simon believed the IP to the largest assets of his estate requiring special Estate planning from the outset for the IP.

271. Yet, TESCHER and SPALLINA had a public relationship with PROSKAUER in the Boca Raton, Florida community being hosted at Bar events and similar events.<sup>81</sup> TESCHER and SPALLINA directly know and are close friends with PROSKAUER Partner GORTZ of the

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<sup>80</sup> January 28, 2003 Steven Selz, Esq. Counter Complaint Labarga Case @ <http://www.iviewit.tv/Counter%20Complaint%20in%20Order.pdf>

<sup>81</sup> March 27, 2012 Jewish Federation Mitzvah Society - Proskauer, Tescher & Spallina @ [http://jewishboca.org/departments/foundation/pac/caring\\_estate\\_planning\\_professionals\\_to\\_honor\\_donald\\_r\\_tescher\\_esq\\_at\\_mitzvah\\_society\\_reception\\_on\\_march\\_27/](http://jewishboca.org/departments/foundation/pac/caring_estate_planning_professionals_to_honor_donald_r_tescher_esq_at_mitzvah_society_reception_on_march_27/)



PROSKAUER Boca Raton Office in Florida who was the first lawyer that accountant Third Party Defendant LEWIN introduced Simon and Eliot too to seek IP protection.

272. GORTZ of PROSKAUER was directly involved in the Iviewit matters and Bernstein Estate matters dating back to 1998, and in fact he was the first person that LEWIN took the technologies to for IP protection for the benefit of Eliot and Simon Bernstein.

273. In the original underlying Illinois life insurance litigation herein, SPALLINA was in communication with GORTZ of PROSKAUER. See email dated February 18, 2013 from SPALLINA to Eliot's children's counsel Christine Yates from SPALLINA TESCHER PRODUCTION Bates No. TS004461-TS004463.

274. This pattern of established law firms involved in the technologies failing basic record keeping for client files like PROSKAUER and FOLEY allegedly not having important Estate and related records like the missing Trusts and Insurance policies in the underlying original action is further support for a preliminary injunction at this time.

275. Eliot, members of the board, investors, prospective investors and management of Iviewit first learned of this "billing" lawsuit by PROSKAUER in Palm Beach County while in the middle of Financing negotiations for the Iviewit companies with Warner Bros. ( AOL-Time Warner) for approximately a \$10 to \$20 Million Capital infusion for the Iviewit companies while other financing activities were underway with a Private Placement Memorandum through Wachovia bank.

276. Eliot had already opened a new Iviewit HQ inside the Warner Advanced Technology building on Brand in Glendale, Ca. and had taken over encoding of all Internet content creation of their digital video library and had revenue and royalty contracts signed.

277. Eliot also learned at the same time that an “Involuntary Bankruptcy” had been filed in Florida against companies similarly named to “Iviewit” companies being filed by Brian G. Utley, Real3D, Inc./Intel/RYSO, Michael Reale and Raymond Hersh the CFO<sup>82</sup>.
278. Eliot also learned on or about the same time from a Arthur Andersen audit conducted on behalf of Crossbow Ventures, the largest investor at that time in the IP, that two similarly named companies, Iviewit Holdings existed with only one set of books available.
279. Raymond Hersh claimed that LEWIN’s daughter, Erika Lewin, the in-house accountant at Iviewit was accused of misleading the Andersen auditors in her representation of the corporate structures put together by LEWIN and PROSKAUER. Andersen was suddenly removed from the audit and replaced by Ernst & Young on a referral from LEWIN to complete the audit for Crossbow.
280. ELIOT also learned on or about the same time that the Iviewit companies President and Chief Operating Officer, a one Brian G. Utley, had in his possession a second set of almost identical Intellectual Property applications and one set had different inventors, including Utley as sole inventor on critical imaging IP such as “Zoom and Pan on a Digital Camera” which was invented by Eliot and others almost a year before even hiring Utley, where Utley lists himself as the sole (soulless) inventor.
281. Eliot also learned on or about the same time more information that Joao who represented himself as a Proskauer Partner when in fact he was not, had put over 90 patents in his name, many with of the Iviewit IP technologies at the heart of them and taken from business plans and other IP related materials JOAO accessed as IP Counsel. Later it would be learned that Joao left PROSKAUER/MELTZER LIPPE GOLDSTEIN & SCHLISSEL to work for Ruskin,

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<sup>82</sup> Iviewit Involuntary Bankruptcy Files @ <http://iviewit.tv/CompanyDocs/Utley%20Reale%20Hersh%20RYSO%20Bankruptcy%20nonsense.pdf>

Moscou, Evans & Faltischek where Dean Skelos the New York Senator currently in ongoing corruption proceedings and convicted on all counts against him, putting up a defense of business as usual, which failed to vindicate him.

282. That it is also learned that Joao later goes to the law firm of Dreier & Barritz LLP, where the now infamous attorney Marc Drier was sentenced in a “Ponzi” scheme thereafter.

283. Eliot also learned on or about the same time that the Intellectual Properties represented by Utlely to potential investors, investors and the financial institutions funding the Iviewit companies and those raising funds were not the ones that actually were filed with the US Patent Office.

284. This exposure of the Intellectual Property crimes that were committed to the authorities and others began a terroristic mob style pattern and practice of orchestrated schemes to harm and potentially murder Eliot and his family by primarily lawyers, to deny him monetization of his inventions, deny him access to capital and even basic access to counsel to pursue his rights and claims and a full blunt force denial of due process in the courts and state and federal agencies through a series of conflicts of interests with the attorneys at law infiltrating and interfering improperly in virtually all of Eliot’s legal actions, as they do name very large law firms, legislators, judges and prosecutors as the perpetrators of the IP thefts as filed in his RICO and ANTITRUST lawsuit.

285. This same pattern and practice continues to this day in both Florida Trust and Estate cases and this Illinois insurance litigation which should be viewed by this Court as nothing but a furtherance of a scheme to secret away monies and assets and deny any basic funds or monies to Plaintiff and his family literally to the point of basic survival as Plaintiff has been; a) forced on govt. Food Stamps to feed his 3 minor children who were supposed to be protected and provided for in Simon and Shirley’s Estate planning WITHOUT INTERRUPTION; b) had

home Security systems cut off; c) electric shut off and repeatedly threatened with shut off; d) homeowners insurance lapsed; e) health insurance lapsed, and other acts to deprive Counter Plaintiff of income and more.

286. That after the death of his father Simon Eliot and his family's worlds were literally blown apart financially, when the funds that were supposed to flow to Eliot and his family to protect them were intentionally and with scienter cut off, their kids were ripped from private school on the second day of classes and where the tuitions were funded by Simon and Shirley while living and despite a COLIN court order to pay the tuitions to keep them in school, TED and his counsel ROSE failed to comply and COLIN upon learning of this catastrophe did nothing despite claiming he was very upset and would deal with it shortly.

287. That due to TED'S allegation that his father was murdered via poisoning Eliot and his family live in fear that this may be true, especially after an autopsy done a year or more after Simon's death revealed elevated (beyond reportable levels in some instances) heavy metal toxins, including Arsenic and Cadmium.

288. Simon and Shirley Bernstein in fact while living set up for Eliot through special planning efforts exclusively for Eliot and his family's protection, vehicles designed and funded while living that provided income and security, including a paid for home and expenses for the home and family paid monthly all this careful planning for Eliot and his family resulting from the very real efforts to harm Eliot and his family, especially after viewing the car bombing and learning of death threats against their son and his family.

289. That the probate crimes not only shut down all Eliot's family income streams but further TED, TESCHER and SPALLINA then shut down a company that Simon had invested in, Telenet

Systems, LLC, that provided income to both Eliot and his lovely wife Candice at the time of Simon's death.

290. Without any income from the point of Simon's death to now, as income for the family at Simon's death was to be continued through the Estates and Trusts and other vehicles set up for Eliot and his family such as his Telenet interest and where the crimes were directly intended to leave Eliot and his family instead homeless and denied of their inheritancy with scienter and further bury the Iviewit stock and IP held by Simon and defeat the careful estate plans SPALLINA and TESCHER and others were contracted to protect.
291. That it is alleged that the probate crimes were orchestrated in advance of Simon's death when Simon refused to make changes to the plans of he and Shirley and never did so while living and so fraudulent documents were submitted to Courts and others to make it appear that Simon had changed he and his wife's estate plans and allow TESCHER, SPALLINA and TED to seize Dominion and Control of the Estates and Trusts through FRAUD and begin looting of the assets with impunity with the cover and aid of the state court actors, all acting outside the color of law.
292. That Shirley's Trust was changed admittedly by SPALLINA Post Mortem and it is alleged this fraud was in order to execute a scheme to not only change beneficiaries illegally but more importantly to take fiduciary and legal control of the Estates and Trusts to enable them to steal off with the assets and convert funds to improper parties, all the while failing to provide legally required accountings and document transparency to beneficiaries and again through these crimes leave Eliot and his family with virtually nothing since the time of Simon's death.
293. As this Court is or should be aware, Eliot and his minor children were not even named as Necessary parties to this original Illinois insurance litigation even though all original parties

knew and should have known Eliot and his children were beneficiaries with interests in the case including Attorneys at Law and Fiduciaries TESCHER, SPALLINA and TED e.

**SPALLINA ADMITS NEW STATE AND FEDERAL CRIMES AT A “VALIDITY HEARING” BEFORE JUDGE PHILLIPS INCLUDING NEW ADMISSIONS OF FRAUD ON THE COURT AND MORE AND VIOLATES A CONSENT ORDER HE IS UNDER WITH THE SEC**

294. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER.

295. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,

“2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”

296. Yet, in a December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-22<sup>83</sup>;

14 · · · · · THE COURT:· You can answer the question, which  
15 · · · · · is, did you plead to a felony?  
16 · · · · · MR. BERNSTEIN:· Sorry, sir.  
17 · · · · · THE WITNESS:· I have not.  
18 · · · · · THE COURT:· Okay.· Next question.  
19 · BY MR. BERNSTEIN:  
20 · · · · Q.· Have you pled guilty to a misdemeanor?  
21 · · · · A.· I have not.  
22 · · · · Q.· Were you involved in a insider trading case?  
23 · · · · · MR. ROSE:· Objection.· Relevance.

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<sup>83</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

24 · · · · · THE COURT: Sustained. Next question.

297. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523. that the allegations in the complaint are true...”

298. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail,

Page 95 Lines 14-25 and Page 96 Line 1-19,

14 · · · Q · Mr. Spallina, have you been in discussion with  
15 · the Palm Beach County Sheriff's Office regarding the  
16 · Bernstein matters?

17 · · · · · MR. ROSE: Objection. Relevance.

18 · · · · · THE COURT: Overruled.

19 · · · · · You can answer that.

20 · · · · · THE WITNESS: Yes, I have.

21 · BY MR. BERNSTEIN:

22 · · · Q · And did you state to them that you  
23 · fraudulently altered a Shirley trust document and then  
24 · sent it through the mail to Christine Yates?

25 · · · A · Yes, I did.

·1 · · · Q · Have you been charged with that by the Palm  
·2 · Beach County Sheriff yet?

·3· . . . A. · No, I have not.  
·4· . . . Q. · Okay. · How many times were you interviewed by  
·5· · the Palm Beach County Sheriff?  
·6· . . . . MR. ROSE: · Objection. · Relevance.  
·7· . . . . THE COURT: · Sustained.  
8· · BY MR. BERNSTEIN:  
·9· . . . Q. · Did you mail a fraudulently signed document to  
10· · Christine Yates, the attorney for Eliot Bernstein's  
11· · minor children?  
12· . . . . MR. ROSE: · Objection. · Relevance.  
13· . . . . THE COURT: · Overruled.  
14· . . . . THE WITNESS: · Yes.  
15· · BY MR. BERNSTEIN:  
16· . . . Q. · And when did you acknowledge that to the  
17· · courts or anybody else? · When's the first time you came  
18· · about and acknowledged that you had committed a fraud?  
19· . . . A. · I don't know that I did do that.

299. Further, SPALLINA perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commit further FRAUD ON THE COURT and then slips up and admits that they sent the fraudulent documents back to the court when he states;

10· · BY MR. BERNSTEIN:  
11· . . . Q. · And what was she convicted for?  
12· . . . A. · She had notarized the waiver releases of  
13· · accounting that you and your siblings had previously  
14· · provided, and we filed those with the court.  
15· . . . Q. · We filed those with the court.  
16· . . . . Your law firm submitted fraudulent documents  
17· · to the court?  
18· . . . A. · No. · We filed -- we filed your original  
19· · documents with the court that were not notarized, and  
20· · the court had sent them back.  
21· . . . Q. · And then what happened?  
22· . . . A. · And then Kimberly forged the signatures and  
23· · notarized those signatures and sent them back.

300. That not only does SPALLINA admit to Felony criminal that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties



(including for a deceased Simon and one for Eliot) and fraudulent notarizations of such documents. Spallina states in the hearing Pages 102-103,

102

20 · · · · · MR. BERNSTEIN: Sure.  
21 · BY MR. BERNSTEIN:  
22 · · · · Q · You've testified here about Kimberly Moran.  
23 · · · · · Can you describe your relationship with her?  
24 · · · · A · She's been our long-time assistant in the  
25 · office.

103

·1 · · · · Q · Was she convicted of felony fraudulent  
·2 · notarization in the Estate of Shirley Bernstein?  
·3 · · · · · MR. ROSE: Objection. Relevance.  
·4 · · · · · THE COURT: Overruled.  
·5 · · · · · You're asking if she was convicted of a felony  
·6 · · · with respect to the Estate of Shirley Bernstein?  
·7 · · · · · You can answer the question.  
·8 · · · · · MR. BERNSTEIN: Correct.  
·9 · · · · · THE WITNESS: I believe she was.

301. SPALLINA then claims that it is standard practice for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements. Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death while acting as Personal Representative as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17 · · · · Q · Okay. Are you aware of an April 9th full  
18 · waiver that was allegedly signed by Simon and you?  
19 · · · · A · Yeah. That was the waiver that he had signed.  
20 · And then in the May meeting, we discussed the five of  
21 · you, all the children, getting back the waivers of the  
22 · accountings.  
23 · · · · Q · Okay. And in that April 9th full waiver you  
24 · used to close my mother's estate, does Simon state that  
25 · he has all the waivers from all of the parties?  
·1 · · · · A · He does. We sent out -- he signed that, and

·2· ·we sent out the waivers to all of you.  
·3· · . . . Q. ·Okay. · So on April 9th of 2012, Simon signed,  
·4· ·with your presence, because your signature's on the  
·5· ·document, a document stating he had all the waivers in  
·6· ·his possession from all of his children.  
·7· · . . . ·Had you sent the waivers out yet as of  
·8· ·April 9th?

...

20· ·BY MR. BERNSTEIN:

21· · . . . Q. ·April 9th, 2012, you have a signed full waiver  
22· ·of Simon's that says that he is in possession of all of  
23· ·the signed waivers of all of the parties?  
24· · . . . A. ·Standard operating procedure, to have him  
25· ·sign, and then to send out the documents to the kids.

...

·1· · . . . Q. ·Was Simon in possession -- because it's a  
·2· ·sworn statement of Simon saying, I have possession of  
·3· ·these waivers of my children on today, April 9th,  
·4· ·correct, the day you two signed that?

·5· · . . . ·Okay. · So if you hadn't sent out the waivers  
·6· ·yet to the --

·7· · . . . A. ·I'm not certain when the waivers were sent  
·8· ·out.

·9· · . . . Q. ·Were they sent out after the --

10· · . . . A. ·I did not send them out.

11· · . . . Q. ·Okay. · More importantly, when did you receive  
12· ·those? · Was it before April 9th or on April 9th?

13· · . . . A. ·We didn't receive the first one until May.

14· ·And it was your waiver that we received.

15· · . . . Q. ·So how did you allow Simon, as his attorney,  
16· ·to sign a sworn statement saying he had possession of  
17· ·all of the waivers in April if you didn't get mine 'til  
18· ·May?

19· · . . . ·MR. ROSE:· Objection. · I think it's relevance  
20· ·and cumulative. · He's already answered.

21· · . . . ·THE COURT:· What's the relevance?

22· · . . . ·MR. BERNSTEIN:· Oh, this is very relevant.

23· · . . . ·THE COURT:· What is the relevance on the issue  
24· ·that I have to rule on today?

25· · . . . ·MR. BERNSTEIN:· On the validity? · Well, it's  
1· · . . . relevant. · If any of these documents are relevant,  
·2· · . . . this is important if it's a fraud.

·3· · . . . ·THE COURT:· I'll sustain the objection.

·4· · . . . ·MR. BERNSTEIN:· Okay. · Can I -- okay.

·5· ·BY MR. BERNSTEIN:

·6· · . . . Q. ·When did you get -- did you get back prior to

·7· ·Simon's death all the waivers from all the children?  
·8· ··· A· ·No, we did not.  
·9· ··· Q· ·So in Simon's April 9th document where he  
10· says, he, Simon, on April 9th has all the waivers from  
11· his children while he's alive, and you didn't even get  
12· one 'til after he passed from one of his children, how  
13· could that be a true statement?  
14· ··· ·MR. ROSE:· Objection.· Relevance.· Cumulative.  
15· ··· ·THE COURT:· Sustained.

302. SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as “ineligible<sup>84</sup>” to practice law in the state of Florida, when he states in the December 15, 2015 hearing,

Page 91

7· ·BY MR. BERNSTEIN:  
·8· ··· Q· ·Mr. Spallina, you were called today to provide  
·9· some expert testimony, correct, on the --  
10· ··· A· ·No, I was not.  
11· ··· Q· ·Oh, okay.· You're just going based on your  
12· doing the work as Simon Bernstein's attorney and Shirley  
13· Bernstein's attorney?  
14· ··· A· ·Yes.  
15· ··· Q· ·Okay.· Are you still an attorney today?  
16· ··· A· ·I am not practicing.  
17· ··· Q· ·Can you give us the circumstances regarding  
18· that?  
19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:  
20· ··· Q· ·Did you -- are you a member of the Florida  
21· Bar?  
22· ··· A· ·Yes, I am.  
23· ··· Q· ·Currently?  
24· ··· A· ·Yes, I am.  
25· ··· Q· ·Okay.· You said before you surrendered your  
·1· license.  
·2· ··· A· ·I said I withdrew from my firm.· It wasn't

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<sup>84</sup> Florida Bar Robert Spallina Ineligible to Practice Law  
[https://www.floridabar.org/wps/portal/flbar/home/attyssearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptHRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZggSEHEE7girnXJMMNktoDIOr2qgtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2ll7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?flag=Y&mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attyssearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptHRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZggSEHEE7girnXJMMNktoDIOr2qgtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2ll7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?flag=Y&mid=497381)

·3· that I was not practicing.

303. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22· BY MR. BERNSTEIN:

23· · · · Q· Did the fraudulently altered document change

24· the beneficiaries that were listed in Shirley's trust?

25· · · · A· They did not.

304. Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), **and their respective lineal descendants** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, 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.”<sup>85</sup>

305. Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read 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 PAMELA B. SIMON ("PAM"), shall be deemed to have predeceased the survivor of my spouse and me, 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 PAM

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<sup>85</sup> Shirley Trust Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

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.<sup>86</sup>"

306. Clearly the fraudulent amendment attempts to remove from the predeceased language TED and PAMELA's lineal descendants from being excluded by removing them from the original trust language through a fraudulent amendment as being considered predeceased and thus change the beneficiaries of the Shirley Trust and this perjury changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which was already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding hearings.

307. That in relation to this very case before the Federal Court in SPALLINA's testimony under oath at the Validity Hearing SPALLINA states,

Pages 154-55

20 · BY MR. BERNSTEIN:

21 · . . . Q. · You referenced an insurance policy earlier,  
22 · life insurance policy, that you said you never saw; is  
23 · that correct?

24 · . . . A. · Yes.

25 · . . . Q. · And was that part of the estate plans?

1 · . . . A. · We never did any planning with that. · That was  
· 2 · an insurance policy that your father had taken out  
· 3 · 30 years before. · He had created a trust in 1995 for  
· 4 · that. · That was not a part of any of the planning that  
· 5 · we did for him.

· 6 · . . . Q. · Did you file a death benefit claim on behalf  
· 7 · of that policy?

· 8 · . . . MR. ROSE: · Objection. · Relevancy.

· 9 · . . . THE COURT: · Sustained.

308. This statement of SPALLINA's that he had nothing to do with the "planning with that" makes his actions in the insurance matters before this Court questionable, as if he had nothing to do

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<sup>86</sup> Spallina Fraudulent Shirley Trust Page 30

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

with the planning of the policy and the lost and missing trust involved in this action alleged to be the beneficiary, how in the world did Spallina file an insurance death benefit claim<sup>87</sup> for the policy benefits acting and signing as the claimant on the policy, in the fiduciary capacity of “Trustee” of the 1995 Missing, Lost or Suppressed Trust and acting as the Policy Beneficiary, which appears now to be part of the alleged Insurance Fraud, Mail and Wire Fraud alleged in Petitioner’s pleadings that is now further supported by his perjurious statement in the Florida court denying any involvement.

309. The Court should note that while SPALLINA was filing a death benefit claim as Trustee for the lost and missing trust he claims to have had no involvement with, while he was simultaneously claiming to Eliot that a Florida Probate Court order<sup>88</sup> would be necessary to determine who the trustee, beneficiaries, etc. of a lost and missing trust would be<sup>89</sup>, he was secretly and in conspiracy with others filing claims for the Policy and when that failed filing this Lawsuit, without notifying Eliot or the Creditor or the Probate Court of this action and failing to including Eliot as part of the legal action, all as part of a complex insurance fraud against Eliot and Beneficiaries of the Estate and the Creditor of the Estate, STANSBURY, and attempting to have the insurance money deposited to his law firm’s trust account acting as the Beneficiary of the Policy he claims to have nothing to do with, acting as Trustee of the lost trust he claims to have

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<sup>87</sup> Spallina Fraudulent Insurance Claim Form He Signs as Beneficiary of the Policy as Trust of a Trust and Policy he has claimed he had nothing to do with, which is DECLINED by Heritage - See Page 05 <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>, Spallina also represents in the correspondences to the carrier that he is Trustee of LaSalle National Trust, NA, which he is not but that is because LaSalle is the Primary Beneficiary.

<sup>88</sup> January 22, 2013 SPALLINA Letter Re Insurance <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130122%20Ted%20Letter%20and%20Spallina%20Letter%20re%20Insurance.pdf>

<sup>89</sup> TESCHER & SPALLINA Prepared Settlement Regarding Insurance Policy <http://iviewit.tv/Simon%20and%20Shirley%20Estate/EXHIBIT%205%20-%2020130205%20Eliot%20Letter%20to%20Spallina%20et%20al%20Regarding%20Analysis%20of%20SAMR.pdf>

never seen and impersonating himself as the Primary Beneficiary of the Policy, as Trustee of the LaSalle National Trust NA, of which he is none of.

310. That the fraudulent claim filed by SPALLINA is what led to this Federal Lawsuit being filed as a breach of contract lawsuit for HERITAGE failing to pay the claim to SPALLINA until he could prove the trust and that he was Trustee, of the trust he claims in court under sworn testimony to have had NOTHING to do with.

311. That the Court must question where Judge PHILLIPS was during the hearing where confessions to new crimes of Fraud on the Court, Mail Fraud, Fraud on the Beneficiaries (and Eliot's minor children's counsel, Christine Yates of Tripp Scott law firm) and more are being admitted to on the record by an Officer of the Court SPALLINA, a former Co-Trustee and Co-Personal Representative along with his partner in the crime and the ringleader another former Co-Trustee and Co-Personal Representative, TESCHER who also is under an SEC Consent Order for Insider Trading and one look at the transcript will find Judge PHILLIPS "doodling" (Page 138 Line 1) during the hearing and more interested in threatening Candice Bernstein with contempt of court repeatedly, even removing her from the defense table and sending her to the audience section and yet failing to force SPALLINA to show cause regarding the crimes he committed and admitted to the court, in fact sustaining Eliot from probing these serious felony admissions including Fraud on the Court and Beneficiaries in the validity matters SPALLINA was testifying about and where SPALLINA's felonies were far more serious in nature than Candice's alleged contempt for asking ROSE in the hearing to turn an exhibit for all to see and handing Eliot a document (Page 24 Lines 12-23 and Page 127 Lines 3-7).

312. Further, the Court must question and call to account for what Judge PHILLIPS did after learning of these crimes of the star witness of the "validity" hearing, some admitted by

SPALLINA to have not been investigated or reported by him at the time and thus ripe for prosecution and now having pleadings which show the perjured statements in violation of his SEC Consent Order, did he take control to find out how and who the fraudulent documents were posited in the Court as part of newly admitted FRAUDS ON THE COURT and has Judge PHILLIPS contacted the SEC to report the violation of SPALLINA's consent order or did he contact and report the crimes of Fraud on the Court to the IG of the Court or the Chief Judge or did he contact the Federal Bureau of Investigations regarding the admitted mail fraud or did he have his bailiff, a member of the Palm Beach County Sheriff deputies arrest SPALLINA on the spot?

313. Judge PHILLIPS appears to have done nothing but take SPALLINA's sole testimony to the validity of the documents (some which SPALLINA admitted in the hearing he and others had fraudulently created) and in a bizarre ruling that defies logic and appears outside the color of law, then ruled that the documents were valid with no other parties present to confirm the perjurious Felon's testimony whose Hands are Unclean, credibility shattered and one certainly must ask why the Trustee TED did not call ANY of the other witnesses or multiple notaries and instead choose SPALLINA his business associate and TED's counsel as ALLEGED PR and Trustee who admitted to PBSO that he committed fraud that altered documents to benefit TED's family, which had been wholly considered PREDECEASED prior to the fraud in Shirley Trust. TED filed for the validity hearing after his counsel committed fraud to benefit him and his only witness is his counsel that has committed fraud and TED in his own words stated under sworn oath at the Validity hearing,

Page 206-210

25 · · · Q · Okay · Ted, you were made aware of Robert  
1 · Spallina's fraudulent alteration of a trust document of



·2· ·your mother's when?

·3· ··· A· ·I believe that was in the early 2013 or '14.

·4· ··· Q· ·Okay. ·And when you found out, you were the  
·5· ·fiduciary of Shirley's trust, allegedly?

·6· ··· A· ·I'm not sure I understand the question.

·7· ··· Q· ·When you found out that there was a fraudulent  
·8· ·altercation [sic] of a trust document, were you the  
·9· ·fiduciary in charge of Shirley's trust?

10· ··· A· ·I was trustee, yes. ·I am trustee, yes.

11· ··· Q· ·And your attorneys, Tescher and Spallina, and  
12· ·their law firm are the one who committed that fraud,  
13· ·correct, who altered that document?

14· ··· A· ·That's what's been admitted to by them,  
15· ·correct.

16· ··· Q· ·Okay. ·So you became aware that your counsel  
17· ·that you retained as trustee had committed a fraud,  
18· ·correct?

19· ··· A· ·Correct.

20· ··· Q· ·What did you do immediately after that?

21· ··· A· ·The same day that I found out, I contacted  
22· ·counsel. ·I met with counsel on that very day. ·I met  
23· ·with counsel the next day. ·I met with counsel the day  
24· ·after that.

25· ··· Q· ·Which counsel?

·1· ··· A· ·Alan Rose.

...

P 209-210

24· ·BY MR. BERNSTEIN:

25· ··· Q· ·Have you seen the original will and trust of  
·1· ·your mother's?

·2· ··· A· ·Can you define original for me?

·3· ··· Q· ·The original.

·4· ··· A· ·The one that's filed in the court?

·5· ··· Q· ·Original will or the trust.

·6· ··· A· ·I've seen copies of the trusts.

·7· ··· Q· ·Have you done anything to have any of the  
·8· ·documents authenticated since learning that your  
·9· ·attorneys had committed fraud in altering dispositive  
10· ·documents that you were in custody of?

11· ····· MR. ROSE:· Objection.· Relevance.

12· ····· THE COURT:· Overruled.

13· ····· THE WITNESS:· I have not.

14· ·BY MR. BERNSTEIN:

15· ··· Q· ·So you as the trustee have taken no steps to  
16· ·validate these documents; is that correct?

17· ··· A· ·Correct.

314. TED further shows he is an incompetent Trustee at his validity hearing where he admits having not seen the original documents, not bringing any of them to the hearing to prove them valid and that he did “NOTHING” to validate them and did not even have them forensically analyzed or request the originals back from his former disgraced counsel after their admission of fraudulent created trusts and forged documents posited into the court record in his mother’s estate and elsewhere and the admitted fraudulent use of his deceased father by his former counsel to commit fraud upon the court, fraud upon the beneficiaries and close his deceased mother’s estate (despite a COURT ORDER for TESCHER and SPALLINA to turn over “ALL” RECORDS) .

315. The formal Complaint filed by the SEC contains breaches of fiduciary duties by SPALLINA and TESCHER that are almost identical to the claims Eliot has made in the Florida Probate Courts of Palm Beach County since at least on or about May of 2013<sup>90</sup> and<sup>91</sup> and<sup>92</sup> and<sup>93</sup> .

316. Multiple requests for Discovery from TED in the Florida Probate Courts have been made including by short term counsel Brendan Pratt, Esq.<sup>94</sup> but no voluntary compliance by TED has occurred and no voluntary Discovery by TED produced.

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<sup>90</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, “SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant”

<http://www.sec.gov/news/pressrelease/2015-213.html>

<sup>91</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

<sup>92</sup> October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Teschher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

<sup>93</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>94</sup> November 01, 2013 Production Request Ted Bernstein

**NY Moreland Commission and Other Related Info**

317. Eliot had made inquiry to the Moreland Commission to testify and had submitted information regarding Public Office Corruption in both the State of New York and State of Florida, including information regarding Public Office Complaints against members of the Florida Supreme Court, including former 15<sup>th</sup> Judicial Judge Jorge Labarga who was the main complained of party in Eliot's Court Corruption complaints and Bar Complaints in Florida and who is now Chief Justice of the Florida Supreme Court and Florida Bar Members (including members of Brian O'Connell's firm Ciklin a one Jerald Beer, Esq.
318. The Honorable Preet Bharara who has now taken down several of the most prominent Lawmakers from both parties in a New York Corruption Probe unparalleled and gaining worldwide recognition and applause, has recently revealed that he has seized the Moreland Commission inquiries for further investigation and where it is presumed that Eliot's inquiry has also been acquired by US Attorney's.

U.S. Attorneys » Southern District of New York » News » Press Releases  
Department of Justice  
U.S. Attorney's Office  
Southern District of New York  
FOR IMMEDIATE RELEASE  
Monday, January 11, 2016  
Statement Of U.S. Attorney Preet Bharara Relating To Moreland Commission Investigation

“After a thorough investigation of interference with the operation of the Moreland Commission and its premature closing, this Office has concluded that, absent any additional proof that may develop, there is insufficient evidence to prove a federal crime. We continue to have active investigations related to substantive inquiries that were being conducted by the Moreland Commission at the time of its closure.”

16-009  
USAO - New York, Southern

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<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131101%20ELIOT%20BERNSTEINS%20FIRST%20REQUEST%20FOR%20PRODUCTION%20OF%20DOCUMENTS%20AND%20THINGS%20PROPOSED%20ON%20TED%20S%20%20BERNSTEIN.pdf>

Updated January 11, 2016

<http://www.justice.gov/usao-sdny/pr/statement-us-attorney-preet-bharara-relating-moreland-commission-investigation>

319. That the knowledge that Bharara has taken over the Moreland inquiries to the US Attorney's Office may provide an answer as to why the Florida Courts are denying due process to Eliot and participating in a massive court controlled conspiracy against his rights, involving many of the same parties as were in his prior complaints now presumed to be before the US Attorney. This may also explain the need to cover up the current Fraud on the Court, Fraud by the Court and Fraud on Eliot and his family at all costs at this time and explain the retaliation and abuse of process against Eliot's family.

320. Due to the Palm Beach Posts Guardianship series exposing widespread Guardianship abuses Eliot and Candice fear that judge Phillips may abuse the Guardianship process to gain control over Eliot's children and where there is already volumes of online complaints<sup>95</sup> against Judge Phillips this becomes even more frightening.

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<sup>95</sup> "Florida Judge is Taking Children from Good Mothers and Placing Them with Abusers"

Daily Kos Sunday Jul 20, 2014 · 9:10 AM EDT

<http://www.dailykos.com/story/2014/7/20/1315240/-Florida-Judge-is-Taking-Children-from-Good-Mothers-and-Placing-Them-with-Abusers>

and

Families Against Court Travesties, Inc. - John L. Phillips' Cases

C.C.S.'s Story - <https://factscourtwatch.com/c-c-s/>

B.D.'s Story - <https://factscourtwatch.com/b-d/>

E.C.'s Story - <https://factscourtwatch.com/e-c/>

J.J.'s Story - <https://factscourtwatch.com/j-j/>

M.J.'s Story - <https://factscourtwatch.com/m-j/>

M.M.'s Story - <https://factscourtwatch.com/m-j/>

T.R.'s Story - <https://factscourtwatch.com/t-r/>

<https://factscourtwatch.com/john-l-phillips-cases/>

and

John. L Phillips Racist and Biased Judge John L. Phillips Palm Beach Gardens Florida

<http://www.ripoffreport.com/r/John-L-Phillips/Palm-Beach-Gardens-Florida/John-L-Phillips-Racist-and-Biased-Judge-John-L-Phillips-Palm-Beach-Gardens-Florida-1177334>

and

Judge John Phillips rules Elderly People Incapacitated Violating the Elderly Rights of Due Process

<http://ireport.cnn.com/docs/DOC-163498>

and

Judge John L. Phillips from Palm Beach Garden is a lose cannon a Prejudicial biased Judge that is hurting our families.

321. That Eliot has been a thorn in the side of these lawyers and judges for many years and with their knowledge that if Eliot succeeds at some point in breaking through the corruption to have a fair and impartial hearing and honest investigations that they may lose everything and many of them may end up in prison on very serious counts including alleged attempted murder and murder according to Ted and others of Simon and thus all of these crimes in the Florida Probate matters may be carefully planned attacks on Eliot and his family to suppress and destroy all records and evidence of Eliot and Simon's relating to Iviewit before investigators can prosecute them.

322. Eliot has reason to fear that there is no due process in Florida and in fact the opposite, a massive Obstruction by attorneys and judges and other State Agencies<sup>96</sup> Eliot has complained of working hand in hand, allowing years of records to disappear from Simon, allowing forged and fraudulently notarized documents to be submitted to the courts to further the scheme and nothing done when they are caught by the self regulating legal system that has failed, Judge Colin directly interfering with state criminal investigations to shutter them from investigating the Fraud on the Court and Fraud by the Court Officers and Judges alleged and proven in some instances already.

323. Therefore this Court and the US Attorneys with Eliot's Moreland Complaint may not only lose value production documents necessary to prove the truth of this lawsuit but if the Florida Probate Court continues to remove Eliot's rights as a beneficiary, standing and pleadings, this Court may lose Eliot as material and fact witness and all Eliot's records as they try and

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<http://www.avvo.com/legal-answers/judge-john-l--phillips-from-palm-beach-garden-is-a-1626549.html>  
and

Judge John Phillips of West Palm Florida Probate courts does nothing to end the wall of corruption in the Florida Probate Courts. Ted Bernstein Life Insurance Concepts, Judge Martin Colin, Donald Tescher Florida Attorney; Florida Probate Courts.

<http://tedbernsteinreport.blogspot.com/2016/02/judge-john-phillips-of-west-palm.html>

<sup>96</sup>Iviewit Investigation Master List

[www.iviewit.tv/CompanyDocs/INVESTIGATIONS%20MASTER.htm](http://www.iviewit.tv/CompanyDocs/INVESTIGATIONS%20MASTER.htm)

repeatedly charge Eliot with contempt and more in efforts to have him imprisoned and his children placed in unnecessary and illegal guardianships obtained through fraud on the court and fraud by the court as is the case in tomorrows hearing before Judge Phillips and while jailed may move to evict his family from their home and destroy all records in his possession.

324. Finally, due to the heavy metal poison results of his father and the attempted car bombing of his family, Eliot fears that with the US Attorney now involved they may rush to finally perfect their attempt and murder Eliot and his family. The Court's injunctive power could be no greater to protect its authority and protect the main witness to the facts in this Court's case and where Eliot is a Whistleblower on the Court Corruption he is in need of Federal protection of his life and properties, all important to this Court's determination of the matters before it and all being intentionally interfered with by the Florida Court State Actors who have no immunity for such egregious and criminal misconduct in efforts to thwart Eliot's due process rights and interfere with this Court's matter as well.

325. Eliot apologizes to the Court for any filing errors in advance but this is an emergency situation where my life and the life of my wife and children and all of our properties appear in imminent danger and this Court must act instantly to preserve the powers of this Court despite any technical drafting errors by a Pro Se party.

326. There are so many due process violations and obstructions occurring rapidly that it would take a several hundred page pleading to attempt to deal with all of this ongoing criminal misconduct and civil torts.

327. In seeking leave to amend the counter complaint I will try and put the remainder of items in a proper pleading within two weeks so the Court can further assess the merits of the case.

**Parties and Claims to be Added on Leave to Amend for Declaratory Judgment, 42 USC Sec. 1983 and other Fiduciary, tortious interference, negligence and State Claims - See Exhibit A**

I respectfully seek Leave to file an Amended Complaint / Counter-Cross Complaint however properly labeled adding parties and claims as set forth above.

**WHEREFORE**, Eliot I. Bernstein, Pro Se Third Party Defendant/Cross Plaintiff respectfully prays for an Order:

1. Immediate Injunctive Relief under the All Writs Act, Anti-Injunction Act and FRCP against Ted Bernstein and counsel and representatives acting on his behalf specifically including but not limited to attorney Alan M. Rose, against the Estate of Simon Bernstein acting by and through local Illinois counsel and by Florida PRs Brian O'Connell and Joy Foglietta, against Pamela Simon, David Simon, Adam Simon, Jill Bernstein-Iantoni, Lisa Friedstein, and against proceedings in the Florida Probate Courts of Palm Beach County and other parties deemed proper by this Court, temporarily enjoining said parties from further proceedings in the Florida Probate Courts herein until further order of this Court, from disposing, selling, transferring, encumbering or in any way disposing of any assets, properties as specified herein, and further preserving any and all evidence, documents, files, notes, bills, statements, mail, emails, and other evidence herein;
2. Specifically Enjoining at least Temporarily Florida Probate Court Judge Phillips on Thursday, Feb. 25, 2016 at 3:15 PM EST until further Order of this

Court;

3. Permitting the Amendment of the original counter-complaint filed herein to add claims under 42 USC Sec. 1983 and other pendant state law claims including but not limited to tortious interference with rights of expectancy and inheritance;
4. Granting appropriate leave to further Amend said complaint to add specified known parties and have said parties served by the US Marshal service or agency determined by this Court;
5. Granting leave to Amend to include a Declaratory Judgment on specified counts pertaining to Trusts, Wills, Instruments, and the Validity and Construction thereof;
6. Waiving any requirement for Bonding by Eliot I. Bernstein under extraordinary circumstances and imposing the requirement of bonding against specified wrongdoers herein if necessary.
7. Such other and further relief as to this Court may seem just and proper.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: Wednesday, February 24, 2016

**Note: All URL EXHIBITS contained herein are hereby incorporated by reference in entirety herein. The Court should consider printing these URL exhibits as recent hacking of Eliot's website and mail have caused his site to repeatedly be shut down at critical times making drafting and filing of complaints even more difficult. To ensure the court that these links do not disappear copying them down and printing them is requested.**

/s/ Eliot Ivan Bernstein



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 Wednesday, **February 24, 2016** 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.

*/s/ Eliot Ivan Bernstein*

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)

**SERVICE LIST**

James J. Stamos and Kevin Horan STAMOS & TRUCCO LLP One East Wacker Drive, Third Floor Chicago, IL 60601 Attorney for Intervenor, Estate of Simon Bernstein	Adam Simon, Esq. #6205304 303 East Wacker Drive, Suite 2725 Chicago, Illinois 60601 Attorney for Plaintiffs (312) 819-0730	Ted Bernstein, 880 Berkeley Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com
Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD , ROSE, KONOPKA, THOMAS & WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 arose@pm-law.com and arose@mrachek-law.com	Pamela Simon President STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com	Estate of Simon Bernstein Personal Representative Brian M. O'Connell, Partner and Joielle Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N Flagler Drive 20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com

Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	David B. Simon, Esq. #6205304 303 East Wacker Drive, Suite 2725 Chicago, Illinois 60601 Attorney for Plaintiffs (312) 819-0730

**EXHIBIT A - LIST OF COUNTER COMPLAINT DEFENDANTS TO BE INCLUDED  
IN THE AMENDED COMPLAINT**

**EXHIBIT A**  
**COUNTER COMPLAINT DEFENDANTS / PARTIES**

**COUNTER-DEFENDANTS/THIRD PARTY DEFENDANTS FOR AMENDED COMPLAINT AND PARTY DESIGNATIONS**

1. Hon. Jorge Labarga, Chief Justice of the Florida Supreme Court, professionally;
2. Hon. Jorge Labarga, Chief Justice of the Florida Supreme Court, personally;
3. Judge Martin Colin, professionally;
4. Judge Martin Colin, personally;
5. Judge David French, professionally;
6. Judge David French, personally;
7. Judge Howard Coates, professionally;
8. Judge Howard Coates, personally;
9. Judge John Phillips, professionally;
10. Judge John Phillips, personally;
11. The State of Florida;
12. The Florida Supreme Court;
13. The 4th District Court of Appeals;
14. Palm Beach County Probate and Circuit Courts;
15. The County of Palm Beach;
16. The Palm Beach County Sheriff;
17. Detective Ryan Miller;
18. Detective David Groover;
19. Detective Andrew Panzer;
20. Captain Carol Gregg;
21. Theodore Bernstein, personally;
22. Theodore Bernstein, as alleged Trustee of the Shirley Trust;
23. Theodore Bernstein as Personal Representative of the Shirley Estate;
24. Theodore Bernstein as alleged Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95;
25. Theodore Bernstein, acting in any fiduciary capacity, corporate and company capacity and trustee capacity relevant herein;
26. Pamela Beth Simon, personally;
27. Pamela Beth Simon, acting in any fiduciary capacity, corporate and company capacity and trustee capacity relevant herein;
28. Lisa Sue Friedstein, personally;
29. Lisa Sue Friedstein, as Natural Guardian of minor CF;
30. Jill Marla Iantoni, personally;
31. Jill Marla Iantoni, as Natural Guardian of minor JI;
32. David B. Simon, Esq., professionally;
33. David B. Simon, Esq., personally;
34. Adam Simon, Esq., professionally;
35. Adam Simon, Esq., personally;

36. The Simon Law Firm and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
37. Robert L. Spallina, Esq., personally;
38. Robert L. Spallina, Esq., professionally;
39. Robert L. Spallina, Esq., former alleged Co-Trustee of the Simon Bernstein Trust;
40. Robert L. Spallina, Esq., former alleged Co-Personal Representative of the Simon Bernstein Estate;
41. Donald R. Tescher, Esq. personally;
42. Donald R. Tescher, Esq. professionally;
43. Donald R. Tescher, Esq. former alleged Co-Trustee of the Simon Bernstein Trust;
44. Donald R. Tescher, Esq. former alleged Co-Personal Representative of the Simon Bernstein Estate;
45. Gutter Chaves Josepher Rubin Forman Fleisher Miller PA F.K.A. Tescher Gutter Chaves Josepher Rubin Ruffin & Forman PA and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
46. Tescher & Spallina, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
47. T&S Registered Agents, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
48. Kimberly Francis Moran, personally;
49. Kimberly Francis Moran, professionally;
50. Lindsay Baxley aka Lindsay Giles, personally;
51. Lindsay Baxley aka Lindsay Giles, professionally;
52. Alan B. Rose, Esq. – personally;
53. Alan B. Rose, Esq. – professionally;
54. Page, Mrachek, Fitzgerald & Rose, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
55. Ciklin Lubitz Martens & O'Connell and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
56. Brian O'Connell, Esq., personally;
57. Brian O'Connell, Esq., professionally;
58. Brian O'Connell, Esq., fiduciary;
59. Joielle "Joy" A. Foglietta, Esq., personally;
60. Joielle "Joy" A. Foglietta Esq., professionally;
61. Joielle "Joy" A. Foglietta Esq., fiduciary;

62. Albert Gortz, Esq., personally;
63. Albert Gortz, Esq., professionally;
64. Proskauer Rose, LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
65. Hopkins & Sutter and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
66. Foley & Lardner LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
67. Greenberg Traurig, LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
68. Jon Swergold, Esq., personally;
69. Jon Swergold, Esq., professionally;
70. Gerald R. Lewin, CPA, personally;
71. Gerald R. Lewin, CPA, professionally;
72. CBIZ, Inc. (NYSE: CBZ) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
73. John Morrissey, Esq., personally;
74. John Morrissey, Esq., professionally;
75. John P. Morrissey, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
76. Mark R. Manceri, Esq., personally;
77. Mark R. Manceri, Esq., professionally;
78. Mark R. Manceri, Esq., P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
79. Pankauski Law Firm PLLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
80. John J. Pankauski, Esq., personally;
81. John J. Pankauski, Esq., professionally;
82. Steven A. Lessne, Esq., personally;
83. Steven A. Lessne, Esq., professionally;
84. GrayRobinson, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
85. GUNSTER and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;

86. Brandan J. Pratt, Esq., personally;
87. Brandan J. Pratt, Esq., professionally;
88. Huth & Pratt and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
89. Stanford Financial Group and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers, Receivers and Fiduciaries;
90. Oppenheimer & Co. Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
91. Oppenheimer Trust Company of Delaware and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
92. Janet Craig, personally;
93. Janet Craig, professionally;
94. Janet Craig, fiduciary;
95. Huntington Worth, personally;
96. Huntington Worth, professionally;
97. Huntington Worth, fiduciary;
98. William McCabe, Esq., personally;
99. William McCabe, Esq., professionally;
100. Legacy Bank of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
101. JP Morgan Chase & Co. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
102. LaSalle National Trust, NA and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
103. Chicago Title Land Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
104. Heritage Union Life and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;

105. Jackson National Life and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
106. Reassure America Life Insurance Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
107. WiltonRe and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
108. First Arlington National Bank as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
109. United Bank of Illinois and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
110. Bank of America, Alleged successor in interest to LaSalle National Trust, N.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
111. Wilmington Trust Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
112. Regency Title dba US Title of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
113. Old Republic National Title Insurance Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
114. Nestler Poletto Sotheby's International Realty and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
115. Bernstein Family Realty, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
116. Bernstein Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
117. Bernstein Family Investments, LLLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns,



- Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
118. S.T.P. Enterprises, Inc., and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
  119. S.B. Lexington, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  120. National Service Association, Inc. (of Illinois) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  121. Life Insurance Concepts, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  122. LIC Holdings, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  123. LIC Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  124. Arbitrage International Management LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  125. Arbitrage International Marketing, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  126. Arbitrage International Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  127. National Services Pension Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  128. Arbitrage International Marketing Inc. 401 (k) Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  129. Simon L. Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;

130. Simon L. Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
131. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
132. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2012) and its current and former trustees, fiduciaries and counsel;
133. Simon L. Bernstein Amended and Restated Trust Agreement (2012) and its current and former trustees, fiduciaries and counsel;
134. Wilmington Trust 088949-000 Simon L. Bernstein Irrevocable Trust and its current and former trustees, fiduciaries and counsel;
135. Estate and Will of Shirley Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
136. Shirley Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
137. Shirley Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
138. Simon Bernstein Irrevocable Insurance Trust dated 6/21/1995 (currently missing and legally nonexistent) and its current and former trustees, fiduciaries and counsel;
139. Shirley Bernstein Marital Trust and Family Trust created under the Shirley Bernstein Trust (2008) and its current and former trustees, fiduciaries and counsel;
140. S.B. Lexington, Inc. 501(C)(9) VEBA TRUST and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
141. Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
142. Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
143. Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
144. Eliot Bernstein Family Trust dated May 20, 2008 and its current and former trustees, fiduciaries and counsel;
145. Daniel Bernstein Irrevocable Trust dated September 7, 2006 and its current and former trustees, fiduciaries and counsel;
146. Jake Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
147. Joshua Z. Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
148. Traci Kratish, Fiduciary;
149. Christopher Prindle, personally;
150. Christopher Prindle, professionally;
151. Peter Montalbano, personally;
152. Peter Montalbano, professionally;
153. Steven Greenwald, personally;
154. Steven Greenwald, professionally;
155. Louis B. Fournet; professionally;

- 156. Louis B. Fournier, personally;
- 157. Alexandra Bernstein;
- 158. Michael Bernstein;
- 159. Eric Bernstein;
- 160. Molly Simon;
- 161. Max Friedstein;
- 162. John and Jane Doe State Defendants,

**EXHIBIT A - LIST OF POTENTIAL DEFENDANTS TO BE ADDED TO COUNTER COMPLAINT BASED ON NEED TO OBTAIN DISCOVERY AND POTENTIAL COMPANY - VEHICLE TO HIDE-MOVE ASSETS ETC**

- 163. John Hancock
- 164. Delray Medical Center;
- 165. Ronald V. Alvarez, Esquire, is a mediator;
- 166. CFC of Delaware, LLC.
- 167. Life Insurance Connection, Inc.
- 168. TSB Holdings, LLC
- 169. TSB Investments LLLP
- 170. Life Insurance Concepts, LLC
- 171. Life Insurance Innovations, Inc.
- 172. National Service Association, Inc. (of Florida)
- 173. Total Brokerage Solutions LLC
- 174. Cambridge Financing Company
- 175. National Service Association, Inc.
- 176. National Service Corp (FLORIDA)
- 177. Simon L. Bernstein Irrevocable Trust U/A 9/7/06
- 178. Shirley Bernstein Irrevocable Trust U/A 9/7/06
- 179. Simon Bernstein 2000 Insurance Trust (dated august 15, 2000)
- 180. Shirley Bernstein 2000 Insurance Trust (dated august 15, 2000)
- 181. 2000 Last Will and Testament of Simon L. Bernstein
- 182. 2000 Last Will and Testament of Shirley Bernstein
- 183. Jill Iantoni Family Trust dated May 20, 2008
- 184. Lisa Friedstein Family Trust dated May 20, 2008
- 185. Daniel Bernstein Irrevocable Trust 07-JUL-10 049738
- 186. Jake Bernstein Irrevocable Trust 07-JUL-10 0497381
- 187. Joshua Z Bernstein Irrevocable Trust 07-JUL-10 0497381
- 188. Simon Bernstein Irrevocable Trust dated 6/21/95
- 189. Simon Bernstein Trust, NA
- 190. S.B. Lexington, Inc. Employee Death Benefit Trust
- 191. Simon Bernstein Trust Agreement dated May 13, 2008
- 192. Saint Andrews School Boca Raton

**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, Eliot I. Bernstein, )  
 Individually, and on behalf of the Minor )  
 Children JEZB, JNAB, and DEAOB, )  
 ET AL. )**

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

**MEMORANDUM OF LAW:  
 Third-Party Plaintiffs / Counter-  
 Plaintiffs-Petitioners Eliot I. Bernstein,  
 Individually and On behalf of Minor  
 Children Motion for Injunctive relief  
 under the All Writs Act, Anti-Injunction  
 Act and alternatively a Temporary  
 Restraining Order-Stay-Preliminary  
 Injunction and Other relief**

**Filers:  
 Eliot Ivan Bernstein, Third-Party  
 Defendant and Counter-Plaintiff.**

**TABLE OF CONTENTS**

Table of Authorities . . . . .

Preliminary Statement . . . . .

Argument:

- I. This Court has power under the All Writs Act and Anti-Injunction Acts to issue proper Injunctive Relief against the parties and at least temporarily Enjoin the Florida Probate Court of John Phillips**

**II. The Supreme Court in *Marshall v Marshall* makes it clear this federal district court has jurisdiction to hear Eliot Bernstein's Declaratory and Amended claims and grant Leave to file such Amended claims.**

**TABLE OF AUTHORITIES**

1. FRCP 4, 65
2. 42 USC Sec. 1983 et seq.
3. 28 U.S.C. § 2283
4. 28 U.S.C. § 1651(a)
5. 28 U.S.C. § 1331
6. 28 U.S.C. § 1367(a)
7. 28 U.S.C. §§ 1332
8. 28 USC Sec. 2201 and 2202.
9. US Constitution, 5th and 14th Amendments
10. Michigan Tech Fund v. Century Nat'l Bank, 680 F.2d 736 (11th Cir. 1982)
11. Winkler v. Eli Lilly & Co., 101 F.3d 1196, 1202 (7th Cir. 1996)
12. Chambers v. Nasco, Inc., 501 U.S. 32, 43-44 (1991)
13. Dennis v. Sparks 449 U.S. 24 (1980)
14. Atlantic Coastline R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295(1970).
15. MARKHAM v. ALLEN 326 U.S., at 494, 66 S. Ct. 193,
16. United States v. New York Telephone, 434 U.S. 159, 173 (1977).
17. Gravel v. United States, 408 U. S. 606,
18. Power 914 F2d 1459 (11th Cir 1990),
19. Hulsey v. Ownes 63 F3d 354 (5th Cir 1995)
20. In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)."
21. Puckett v. Cox 456 F2d 233 (1972 Sixth Circuit USCA
22. Conley v. Gibson, 355 U.S. 41 at 48 (1957)
23. Mullane v Central Hanover Trust Co. ( 339 U.S. 306 )
24. Marshall v. Marshall, 126 S. Ct. 1735, 1748 (2006)
25. Pulliam v. Allen, 466 U.S. 522 (1984)
26. Cohens v. Virginia 19 U.S. 264 (1821)

**PRELIMINARY STATEMENT**

Eliot I. Bernstein brings this Petition, application and motion under the All Writs Act and Anti-Injunction Act necessary in aid of its own jurisdiction and further under the Inherent Powers doctrine and to enjoin parties over which this U.S. District Court already has jurisdiction from

taking further action in the Florida Probate State Courts to further thwart and interfere with this Court's own path to judgment and to restrain and preserve evidence, documentation and discovery to achieve that judgment and further relief as appropriate. As shown herein and in the attached petition-affidavit, a series of orchestrated actions by the parties in the Florida Courts including but not limited to newly discovered fraudulent Florida companies to hide assets and value has created an imminent danger and emergency endangering this Court's jurisdiction by having the Florida Probate cases "wrapped up" improperly cutting off all of Eliot's rights to Discovery in the Florida Courts and standing and forever losing the necessary evidence, documents and Discovery which this District Court needs to properly adjudicate the claims presently before it including both the Life Insurance claim and Eliot's counter/crossclaims and thus this Court must now act to enjoin these parties and preserve evidence, records, documents and Discovery.

Further, previously undisclosed conflicts of interest involving LaSalle Bank and the original Florida Probate Judge Martin Colin and attorney Brian O'Connell, a party permitted to Intervene in this District Court as the Personal Representative of the Simon Bernstein Estate, have recently come to light showing previously undisclosed conflicts of interest of Brian O'Connell simultaneously being involved in cases involving Judge Colin's wife Elizabeth Savitt acting as a Private "Guardian" where massive conflicts in the Palm Beach County Court system are being exposed almost daily by a series of Investigative Reports by the Palm Beach Post to such an extent that several "former" Justices of the Florida Supreme Court have called for action in Palm Beach County<sup>1</sup>.

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<sup>1</sup> Guardianship Series - Guardianship a Broken Trust by Reporter John Pacenti  
<http://www.mypalmbeachpost.com/guardianships-colin-savitt/>  
and  
Guardianship Probate Series Palm Beach Post Compiled PDF

Eliot Bernstein specifically seeks to enjoin at least temporarily a scheduled “Guardianship” and “Contempt proceedings” before Probate Judge John Phillips in the North Branch of Palm Beach County on this Thursday, Feb. 25, 2016 at 3:15pm brought by attorneys who should now become Defendants in this action and be conflicted out of representation in the Florida State Courts.

This action has been pending in the US District Court for several years and your Honor has now been on the case in excess of a year expending substantial judicial resources on Court conferences and extensive Summary Judgment proceedings on Plaintiffs’ motion for summary judgment.

While the parties are awaiting determination from this Court on the Summary Judgment motions, at least 2 scheduled Court Conferences with this Court have been re-scheduled, still remaining before this Court are Petitioner Eliot Bernstein’s Answer and Counterclaims filed September 22, 2013 asserting causes of action in Fraud, fraud upon the beneficiaries and Court, abuse of legal process, civil conspiracy and breach of fiduciary duties amongst others.

On Jan. 13, 2014 in Docket Entry 71, prior Judge St. Eve issued a Minute Entry Order which provided in part as follows, “Discovery is hereby stayed until the proper Trustee is determined” , thus acknowledging that determination of a “proper Trustee” is an issue in the case, which remains disputed. The Trustee/Trust/Beneficiaries/Policy issues remains undetermined presently and the Court’s jurisdiction is imminently threatened by the permanent loss of evidence, documents and discovery by the parties orchestrating proceedings in Florida where this evidence and the parties in possession of such evidence should be enjoined herein.

This Court itself, Hon. John G. Blakey, presiding, issued a Minute Entry Order on May 22, 2015 under Docket Entry 185 that further provided in part as follows, “Bernstein's representations to

the contrary notwithstanding, at this time the Court is unable to say that anyone has a clear right to the proceeds deposited by Heritage Union Life Insurance Company, let alone what each interested party's share should be.“

As will be shown, just on Discovery abuses alone by the Plaintiffs and other parties in the related proceedings in the State Probate Court of Florida, there is a real and imminent danger that the Integrity of this Court’s judgment and path to judgment will be fundamentally impaired by the permanent loss of evidence and discovery materials justifying the exercise of the extra-ordinary relief under the All Writs Act and Anti-Injunction Act. This evidence and documents and Discovery which “should answer” the outstanding questions before this Court of where the Original Trusts are, where the Original Policies are, where the Original records and where business records are that go along with Simon Bernstein’s life who made millions per year in the Insurance industry for decades and are relevant to the Life Insurance claim and counter-crossclaims. Instead, Simon Bernstein is falsely being portrayed as nearly a “pauper” with no assets left and “Missing” and “losing” all Business documents and dispositive documents meticulously kept for Decades, at least according to Plaintiffs and the counsels working with Plaintiffs. Yet proper Discovery and Depositions would and should prove the contrary which is why this Court must act to preserve this evidence in the hands of multiple parties and some unknown .

Further, that sufficient evidence will be shown to justify this Court exercising its inherent powers to make inquiry of the parties and respective counsels about “side agreements” and other “agreements” outside the record of any proceedings impairing the integrity of proceedings in this Court similar to the inquiry discussed in *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996).



Further, that this Court should permit Amendment of Eliot Bernstein's counter-complaint to seek Declaratory judgment in this Court on issues involving the related Trusts and the validity of certain Wills and instruments and other Amendment of claims and adding of parties for tortious interference of rights and claims under 42 USC Sec. 1983 and that it is in the interest of judicial economy since the parties to be added are from diverse and different states that this Court resolve these proposed Amended Counterclaims to provide an orderly and final path to judgment.

### **FACTUAL BACKGROUND**

A short period of time after Ted Bernstein's father Simon Bernstein passed away in the hospital on Sept. 12, 2012, one of Ted Bernstein's business partners named Robert Spallina of Boca Raton, Fl began fraudulently attempting to obtain Life Insurance proceeds from one of Simon Bernstein's Life Insurance policies. Robert Spallina along with his partner, Donald Tescher, another business partner of Ted Bernstein, had previously become the Estate Planners and attorneys for Simon and Shirley Bernstein prior to their passing. Ted Bernstein had claimed his father Simon had possibly been "murdered" and "poisoned" at the Hospital on the night of his passing and Eliot Bernstein, one of Simon's other adult children, had been prevented and delayed by Hospital staff from getting in to see Simon Bernstein because of a claim that he may have been poisoned and "Security" was involved. Ted Bernstein got the Palm Beach County Sheriff's office involved in this alleged "murder" and sought a Coroner's investigation. Somehow the body of Simon Bernstein went "missing" for nearly a week and traditional Jewish religious observances after passing were delayed. An elevated "heavy metals" report came back on Simon Bernstein although the Report claimed to be of a male that was 113 years old, not Simon Bernstein's age. Robert Spallina failed to Notify the Insurance Carrier where he was seeking recovery on Simon Bernstein's Life Insurance about the possible claims of murder. During the same timeframe, Ted Bernstein and the Tescher & Spallina law office began denying Eliot

Bernstein access to basic documents regarding several Trusts, Wills and other items where he and/or his children were Beneficiaries. As shown in the attached Petition-affidavit, At Simon Bernstein's home in Boca Raton, Fl, Eliot Bernstein discovered on the night of his father's passing that Simon's entire hard drive of his home office computer had been "wiped clean" of years of valuable files and information as Simon Bernstein had been a successful business person for 50 years bringing in millions of dollars of income each year. Candice Bernstein also observed one Rachel Walker taking "important" documents out of the Simon Bernstein home minutes after his passing and Eliot Bernstein witnessed her deliver them to Ted Bernstein at the hospital. Simon and Shirley Bernstein had five children, Ted Bernstein, Pamela Bernstein Simon, Lisa Bernstein Friedstein, Jill Bernstein Iantoni, and Eliot Bernstein. Shirley Bernstein had predeceased Simon in Dec. 2010. During their marriage and lifetime, Simon and Shirley Bernstein had 2 main properties in the Boca Raton, Fl area, one at St. Andrews listed at \$3.4 million and a beachfront Condo listed at \$2.2 million (both listed at these prices by Simon weeks prior to his death), Shirley had a fully paid for Bentley worth several hundred thousand dollars, a wedding ring valued at \$250,000.00 and other Insured Jewelry exceeding \$600,000.00 in value prior to her passing and her inventory never sent to the beneficiaries was found to claim her worth at twenty five thousand dollars. Simon and Shirley Bernstein enjoyed trips with their grandchildren flying on Private jets and much travel and vacation during their lifetimes having lead successful lives and being successful in business, Simon was a leader in the life insurance sales business and his products sold in the billions of dollars of premium. Ted, Pam, Lisa, Jill, David Simon, Esq., Adam Simon, Esq. and attorneys working with them including Tescher and Spallina filed the original District Court action on an alleged "breach of contract" against the Carrier for the Carrier rejecting to pay an alleged fraudulent claim filed by Spallina as the

“Trustee” of the lost trust he claims to have never seen or possessed and the trustee to this day is still unknown according to this court’s order) but have never produced the Life Insurance Policy at issue or Trust agreement that may govern the proceeds claiming the Trust and Policy are “lost” although this is the Policy for Simon Bernstein who had made millions in the insurance industry for decades and owned and operated multiple insurance business and trust companies and was a meticulous record keeper. The same parties have also been taking action in the Florida Probate Courts relating to other parts of the Estates and Trusts while Eliot Bernstein has exposed a series of fraudulent actions on the Court in Florida, where dispositive documents have been found fraudulently notarized and admittedly forged and more. While this federal Court in Illinois has had Summary Judgement motions filed by Plaintiffs’ pending, the same parties have orchestrated proceedings in the Florida Probate Court to further deny Eliot Bernstein previously state Court Ordered Discovery from nearly 2 years ago and further orchestrated proceedings in Florida so no Attorney would be available to cross-examine Robert Spallina and Ted Bernstein as the only 2 witnesses at a contrived “one-day” Validity hearing that was missing necessary witnesses, discovery, experts and forensic evaluation in a case where sophisticated and organized document fraud has already been exposed.

In addition to US Constitutional due process violations in the scheduling of this rushed to Judgment “one-day” “Validity” hearing involving certain Wills, Trusts and Instruments, the entirety of this “validity” Hearing was a sham and fraud itself as it was held without the Court of new judge John Phillips, the alleged Trustee Ted Bernstein or his attorney Alan Rose, attorneys Brian O’Connell and Joy Foglietta as PRs for the Simon Bernstein Estate, or even Interested party Creditor William Stansbury’s attorney Peter Feaman ever ensuring that a January 2014

Order by Judge Colin to Tescher & Spallina to turn over All Original Records and Documents **had ever been complied with prior to the hearing.** See Order of Feb. 18, 2014 in Petition.

Still further, both former PR Robert Spallina and current alleged Trustee Ted Bernstein both admitted during the Hearing about not knowing where the Original documents are and Ted Bernstein only having reviewed “copies” of the Trusts and admitting he did nothing to validate the documents despite his counsel having committed fraud on various documents and thus the whereabouts of the Original records which had been Ordered to be Disclosed over 2 years ago are presently unknown thus creating an Imminent risk and danger of forever impairing this Court’s path to judgement and integrity of the proceedings.

The parties further orchestrated proceedings to remove Eliot Bernstein’s “standing” in the Trust and Estate cases although no “Construction” hearing was ever held, have further threatened to Baker Act Eliot Bernstein at a “Mediation Conference” simply for reporting crime and seeking truth, and are presently threatening incarceration and imposing an illegal Guardianship on Eliot Bernstein and his minor children at a proceeding scheduled for this Thursday, Feb. 25, 2016 solely because he has sought the Truth and Discovery and disclosure in these related actions and blew the whistle on a series of criminal frauds on the court and by the court which should be viewed as First Amendment Constitutional violations and retaliation and enjoined at this time. Further, new fraudulent companies discovered just last week are directly involved with a transfer of a substantial asset of the Estate of Simon Bernstein where assets and value are being hidden. See, Petition-Affidavit.

These orchestrated actions in the Florida Probate Courts which have violated not only procedural and substantive Florida law but also Constitutional due process are imminently jeopardizing the integrity of the federal District Court action by forever losing the evidence, documents, records

that would prove the truth of the various Trusts, policies and items in issue before the Court where the parties will simply say the Estates are closed up and the assets all gone despite no Accounting thus no need for Discovery in Florida. This has all occurred in Florida despite years with No accountings (five years in the Shirley Trust, five years in the Shirley Estate, missing years in the Simon Trust and missing years in the Simon Estate) by the fiduciaries where millions of dollars will be shown to this Court that have apparently “vanished” in the Florida Courts and are unaccounted for while the proceedings are further orchestrated involving a “creditor” of the Estate who is also at interest in the federal litigation in Illinois. Despite proven fraud on the court and beneficiaries the court has done nothing to seize the documents and freeze assets held by those involved in the frauds further compounding the problems versus any effort to rectify and cease the fraudulent activities are the courts are alleged to be aiding and abetting the racket.

### **ARGUMENT I.**

#### **This Court has power under the All Writs Act and Anti-Injunction Acts to issue proper Injunctive Relief against the parties and at least temporarily Enjoin the Florida Probate Court of John Phillips**

The 7th Circuit Court of Appeals has stated in Winkler v Eli Lilly,  
“The express language of the Anti-Injunction Act, however, excepts from its interdict injunctions "necessary in aid of [a federal court's] jurisdiction." 28 U.S.C. § 2283. This exception, the Supreme Court teaches, means that an injunction may be issued where "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." Atlantic Coastline R.R. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295(1970). The exception thus parallels the federal courts' power under the All Writs Act "to issue such

commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." *United States v. New York Telephone*, 434 U.S. 159, 173

We agree that the "necessary in aid of jurisdiction" exception should be construed "to empower the federal court to enjoin a concurrent state proceeding that might render the exercise of the federal court's jurisdiction nugatory." Martin H. Redish, *The Anti-Injunction Statute Reconsidered*, 44 U. Chi. L. Rev. 717, 754 (1977).

Further, the *Winkler v Eli Lilly* court went on to note,

"In the case at bar, the district court quite reasonably believed that the plaintiffs were resorting to the state courts for the specific purpose of evading its ruling denying discovery of the Fentress agreement. The principles of federalism and comity which the Anti-Injunction Act is meant to protect include a strong and long-established policy against forum-shopping. See *Kapco Mfg. Co., Inc. v. C O Enterprises, Inc.*, 886 F.2d 1485, 1492 (7th Cir. 1989); *Freeman v. Kohn Vick Machine Works, Inc.*, 673 F.2d 196, 198 n. 2 (7th Cir. 1982).

An important aspect of that control is to prevent predatory discovery, especially of sensitive documents, ensuring that litigants use discovery properly as an evidence-gathering tool, and not as a weapon. *Id.* at 1161-62.

Where a litigant's success in a parallel state court action would make a nullity of the district court's ruling, and render ineffective its efforts effectively to manage the complex litigation at hand, injunctive relief is proper.

The All Writs Act, the Supreme Court teaches, permits a federal court to support its jurisdiction, by "issu[ing] such commands . . . as may be necessary or appropriate to effectuate and prevent

the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." United States v. New York Telephone, 434 U.S. at 173 \*12031203 (emphasis added). Litigants who engage in forum-shopping, or otherwise take advantage of our dual court system for the specific purpose of evading the authority of a federal court, have the potential "to seriously impair the federal court's flexibility and authority to decide that case." Atlantic Coastline R.R., 398 U.S. at 295. “, See Winkler v Eli Lilly,

**Forum Shopping:**

The manner in which this original District Court action was filed by the parties shows the “forum shopping” engaged in by the parties and this is set out in the Summary Judgment opposition briefing as well. This Court is reminded that despite being one of 5 surviving children of Simon Bernstein, neither I nor my children were named parties in the original Illinois litigation showing these parties to be shopping for a forum to pull off a quick fraudulent payment of the Life Insurance proceeds this Court becoming the host of this insurance crime and tortiously interfere and deprive Eliot’s rights of expectancy and inheritance.

**Predatory Discovery - Abusive Discovery**

In the Florida Courts, the parties have orchestrated and steered proceedings so that proper outstanding Discovery was never complied with and other Discovery and Depositions obtained. This includes an Order of Judge Martin Colin of Feb. 18, 2014 to Tescher & Spallina to turn over by March 4, 2014 all records and property of the Estate to the new fiduciary as they resigned after admitting fraudulently creating a Shirley Trust document, mail fraud and more. This has never been complied with and there has been no Compliance hearing in the State Court on the important topic of Discovery, especially where the court is aware that multiple fraudulent documents were submitted to the court by the Fiduciaries (Ted, Tescher and Spallina) and

Counsel and other fraud on the court that involved using a deceased Personal Representative (Simon) to close the Estate of Shirley, months after he was deceased.

This Court need only look at the Testimony of Robert Spallina and Ted Bernstein at a contrived “one-day” Validity hearing to determine that the “fiduciaries” and former fiduciaries have no concern over having or providing or determining Original documents, complete documents and neither does the Florida Probate Court disregarding that in the hearing Spallina being the only witness attesting to the documents admits that he fraudulently created a Shirley Trust and distributed via mail to Eliot’s minor children’s counsel and then testifies to the validity of some other copy of the alleged trust. Spallina also under an SEC consent order with his partner Tescher for insider trading. See Dec. 15th Hearing Testimony Exhibit in Petition-Affidavit.

This Court should now issue an appropriate injunction under the All Writs Act and Anti-Injunction act against the parties it has jurisdiction over, including the Florida Courts, to preserve all such evidence, documents, records of any kind whatsoever and enjoin such parties at least temporarily in the Florida Probate Court of Judge Phillips at least until Discovery compliance is completed and this Court conducts proper inquiry and conference herein.

**Alan Rose, Steven Lessne, Brian O’Connell and Joielle Foglietta should be Disqualified as Material Fact Witnesses and Enjoined from acting at least temporarily in the Florida Probate Courts.**

As shown in the attached Petition-affidavit, attorneys Alan Rose acting for Ted Bernstein, Brian O’Connell and Joy Foglietta as PRs of the Estate of Simon Bernstein already in this case, and Steven Lessne as attorney for Oppenheimer who should be added to this case as Defendants are all material fact witnesses at minimum to the Chain of Custody of specified “Original” Trusts and should be disqualified from representation and enjoined from proceeding in the Florida



Probate Courts on Guardianship, Contempt, Gag Orders, Property Transfers/Conversions and all similar relief.

Under the inherent powers doctrine, courts have the historic authority to grant such equitable relief as is necessary to protect the integrity of their judgments and the proceedings before them. This includes the power to set aside fraudulently begotten judgments, as well as the power to conduct independent investigations in order to determine whether the court has been the victim of fraud or deceit. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-44 (1991), cited in the 7th Circuit *Winkler v Eli Lilly* case. As further supported in the Petition-Affidavit, this Court should further exercise these powers to make inquiries from the parties and counsel of "side agreements" and fraud steering the litigation in the State courts in such a manner as to impair the integrity of the federal court proceedings.

**Argument II:**

**The Supreme Court in *Marshall v Marshall* makes it clear this federal district court has jurisdiction to hear Eliot Bernstein's Declaratory and Amended claims.**

"It is true that a federal court has no jurisdiction to probate a will or administer an estate . . . . But it has been established by a long series of decisions of this Court that federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." 326 U.S., at 494, 66 S. Ct. 193, 90 L. Ed. 165 (quoting *Waterman*, 215 U.S., at 43, 30 S. Ct. 10, 54 L. Ed. 80). See, *Marshall v Marshall*, 126 S. Ct. 1735, 1748 (2006)

A widely recognized tort that has been allowed to be heard in federal district courts's is ("One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that [s]he would otherwise have received is subject to liability to the other for loss of the inheritance or gift."). See, *Marshall v Marshall*.

In *Michigan Tech Fund v. Century Nat'l Bank*, 680 F.2d 736 (11th Cir. 1982), the court permitted the district court to entertain an action *against* the decedent's estate that sought a declaration that the decedent's will conveyed certain of the decedent's assets to the plaintiffs.

\*673673 The fact that resolution of the claims against the estate required the federal district court to interpret the will was insufficient to divest the court of diversity jurisdiction over the claim. *Id.* at 740. The court also allowed the plaintiffs to assert a claim against the estate for breach of a promise to make a will. *Id.* The *Michigan Tech* court allowed the defendants to maintain these claims against the estate in spite of the pending probate proceedings. *Id.* at 738.

Thus, it is clear this Court properly has jurisdiction to hear the claims that Eliot Bernstein seeks leave to file in a proposed Amended Counter-Complaint and orderly resolution of the current claims before this Court and judicial economy dictates that this Court should enjoin further proceedings in the Florida Courts until further Order of this Court.

**WHEREFORE**, it is respectfully prayed for an Order granting Injunctive relief as requested, preserving evidence and Discovery, addressing conflicts of interest and disqualifications and be granted leave according to an appropriate schedule to Amend the Counter-cross claims adding claims and parties and such other and further relief as may be just and proper.

Respectfully submitted,

DATED: February 24, 2016

/s/ **Eliot Ivan Bernstein**  
Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 24, 2016, 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.

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

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 )

**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”)**

**MOTION TO STRIKE  
ELIOT BERNSTEIN’S  
PETITON- EMERGENCY  
MOTION FOR INJUNCTIVE RELIEF  
UNDER THE ALL WRITS ACT,  
ANTI -INJUNCTION ACT, FRCP 65,  
AND OTHER RELIEF**

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

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

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

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and move this court to strike Eliot Bernstein's Emergency Motion for Injunctive Relief under the All Writs Act, Anti-Injunction Act and alternatively for a Temporary Restraining Order-Stay-Preliminary Injunction and Other relief, and in support of their Motion to Strike state as follows:

### **INTRODUCTION**

Eliot Bernstein has yet again filed a motion without providing any jurisdictional basis for this court to grant the relief requested. Eliot's motion is woefully insufficient as a matter of law. Eliot's motion also violates and attempts to circumvent this court's prior order and the page limitations in LR 7.1 because his Emergency pleadings consist of a 14 page brief in support of a 132 page motion. For these and other reasons, Plaintiff, in addition to certain other relief, moves this court to (i) strike Eliot's Emergency Motion and related pleadings, and (ii) require that Eliot seek leave of court prior to filing any further motions, or pleadings in the Northern District.

### **MOTION TO STRIKE AND FOR OTHER RELIEF**

Eliot's Emergency Motion violates this court's prior order entered on May 6, 2015. The May 6, Order struck Eliot's omnibus motion [Dkt. 173], which like Eliot's current Emergency Motion sought this court's intervention in the probate actions pending in the Florida Probate Court. In its May 6 Order, this court struck Eliot's omnibus motion pursuant to LR 7.1 for exceeding the page limitations for a brief filed in the Northern District. In addition, the court ordered Eliot to restrict future motions to matters for which this court has jurisdiction over such

as deadlines in the instant litigation, etc. Plaintiffs ask this court to take judicial notice of its May 6 Order. [Dkt. 178].

Eliot has violated both aspects of the court's May 6 Order first by filing a 132 page so-called Emergency Motion in addition to a 14 page brief and second by seeking relief well outside the jurisdiction of this court. Because, Eliot has shown a willful disregard for this court's prior orders, Plaintiff asks that this court require Eliot to seek leave of this court prior to filing any further pleadings, petitions, complaints, motions or briefs in the Northern District of Illinois.

What Eliot stubbornly refuses to apprehend is that the instant litigation involves one and only one *non-probate* asset, the proceeds paid from a life insurance policy currently on deposit with the Registry of the Court for the Northern District of Illinois. Discovery in this matter was closed on January 9, 2016 [Dkts. #123 and #133]. Plaintiff's motion for summary judgment is fully briefed and awaits the court's ruling. (*see* [Dkt. #211]).

Thus, all of Eliot's new pleas for discovery in the instant litigation come far too late, especially in light of the fact that Eliot conducted virtually no discovery in this case during the time allotted to him. Eliot's pleas for additional discovery in the Florida Probate matters need be made in the Florida Probate court.

Eliot's Emergency motion makes no secret that it has virtually nothing to do with the insurance proceeds at issue in the Northern District, but everything to do with the Probate matters in Florida plus virtually every other piece of litigation Eliot has ever filed. As Eliot points out he has "lost standing in Florida" after a hearing in the Florida Probate Court. (Eliot's emergency motion at p.8, ¶18.)



Now, the Palm Beach County court is entertaining a motion to appoint a guardian *ad litem* for Eliot's children in the Florida Probate actions. (see Eliot's emergency motion at p.6, ¶15). In yet another telegraphed and desperate attempt at an end around of the Florida Probate Court, Eliot asks this U.S. District Court sitting in Chicago, Illinois to (i) sack a Judge sitting in his Florida state courtroom, and (ii) call a time-out in the probate actions pending before in the Florida state court.

Eliot has a multitude of insurmountable problems in addition to his violation of the local rules and this court's May 6 Order. First, this court lacks subject-matter jurisdiction over the Florida Probate actions, and this court ruled as much over 8 months ago. [May 6 Order, Dkt. #178].

Second, Eliot's motion is insufficient as a matter of law. Nowhere in his motion does Eliot allege that he has any likelihood of success on the merits in the matters he seeks to enjoin. Instead, Eliot in his own motion admits that he has already lost standing in the Florida Probate matters. Since Eliot has already lost standing that is the status quo as of the date of the filing of Eliot's motion for injunctive relief. The undisputed fact that as of the date of the filing of his Emergency Motion, Eliot lacked standing in the Florida probate matters makes his chances of success in Florida not just unlikely, but virtually nil.

Further, Eliot's own memorandum of law includes the following recitation of case law that completely undermines any argument in favor of this court's jurisdiction:

"It is true that a federal court has no jurisdiction to probate a will or administer an estate...But it has been established by a long series of decisions of this Court that the federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate to 'establish' their claims so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court". (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.14 of 17])

This portion of the *Marshall* decision starts with the premise that a federal court has no jurisdiction to probate a will. (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.14 of 17]). The *Marshall* court then distinguishes certain claims made by creditors or legatees against an estate (as opposed to the probate of that estate, itself) in holding that a Federal court may have jurisdiction over such claims. But, this brings us back to the same problem Eliot either misapprehends or refuses to accept, which is that the instant litigation is not a probate of Simon Bernstein's estate, nor is it a claim against the estate by creditors or legatees. Instead, it is an interpleader action involving one *non-probate asset*, the life insurance policy proceeds on deposit in the Northern District.

Perhaps most importantly, Eliot's citation to the *Marshall* decision includes the prohibition "so long as the federal court does not interfere" (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.14 of 17]). So the *Marshall* decision, upon which Eliot's motion relies, contains both the proclamation that the federal court does not have jurisdiction over the probate of an estate, but also, in those matters where a federal court exercises its jurisdiction to hear a creditor or legatee claim against an estate or an estate asset, it also contains the proscription that the federal court shall not interfere or exercise general jurisdiction over the actual probate of the estate.

Yet, Eliot's Emergency motion asks this court to not only interfere with the probate of the estate by "temporarily restraining" the probate proceedings in Florida, but also to take general control of the matters in the Florida Probate Court by issuing orders relating to preserving evidence and discovery, addressing conflicts, etc." (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.13 of 17])

## CONCLUSION

This court already ruled that it has no jurisdiction over the matters described in Eliot's latest iteration now styled as Eliot Bernstein's Emergency Motion for Injunctive Relief, but previously filed as part of Eliot's omnibus motion. For this and all the other reasons stated herein, Plaintiffs ask this court to strike Eliot's motion in its entirety. Further, considering there is a summary judgment motion that is fully briefed and pending in this matter, Plaintiffs move this court to require Eliot to seek leave of this court prior to filing any further pleadings or motions in the Northern District.

In the event the court should determine that it must entertain Eliot's Emergency motion, Plaintiffs ask that it be set for a date certain in the future since there is also no showing of an emergency, and provide Plaintiffs with 21 days to file their memorandum of law in opposition. Also, Eliot's Emergency Motion, by its own admission seeks "extraordinary injunctive relief" so Plaintiffs further request that Eliot's phone appearance privileges for any hearings, or evidentiary hearings on the motion be revoked, and instead require his personal appearance in court.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order as follows:

- a. striking Eliot Bernstein's Emergency Motion, and all related pleadings, for the reasons set forth herein; and
- b. requiring Eliot Bernstein to seek leave of this court before filing any future motions or pleadings of any kind in the Northern District of Illinois; or
- c. requiring Eliot Bernstein to personally appear in court for any hearings, and evidentiary hearings on this motion;

- d. requiring Eliot Bernstein to seek leave of this court before filing any future motions or pleadings of any kind in the Northern District of Illinois;
- e. granting Plaintiff until March 17, 2016 to file its memorandum of law in opposition;
- f. setting a hearing and/or evidentiary hearing dates thereafter, if needed; and
- g. granting such further relief as this court deems just and proper.

Dated: February 24, 2016

Respectfully Submitted,

/s/ Adam M. Simon

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601

Phone: 312-819-0730

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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 documents, copies of which are attached, was electronically filed with the Clerk of the Court on the date indicated in the time stamp above:

- Plaintiffs motion to strike Eliot Bernstein’s Emergency Motion for Injunctive Relief under the All Writs Act, Anti-Injunction Act, FRCP 65, and other relief.

**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, via U.S. mail, proper postage prepaid, and email if indicated) to the following on February 24, 2016:

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: February 24, 2016

/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.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, February 25, 2016:

MINUTE entry before the Honorable John Robert Blakey: Emergency motion hearing held on 2/25/2016. Oral request for additional filings is denied. Third Party Defendant's motion for preliminary injunction [214] is denied as stated in open Court. Plaintiff's motion to strike [217] is denied. Status hearing date of 3/15/2016 at 9:45 a.m. in Courtroom 1725, to stand. Mailed notice(gel, )

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

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

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable John  
Robert Blakey

Eliot Bernstein

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, March 15, 2016:

MINUTE entry before the Honorable John Robert Blakey: Enter Order. Plaintiffs' motions for summary judgment, [148], [153], are denied as explained in the accompanying Order. This matter remains set for a status hearing on 3/15/16 at 9:45 a.m. 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).

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

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

Plaintiffs,

v.

Heritage Union Life Insurance Co.,

Defendant.

Case No. 13 C 3643

Judge John Robert Blakey

**ORDER**

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

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

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

**Legal Standard**

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

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

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

### **Count I**

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

### **Count II**

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

IT IS SO ORDERED

Dated: March 15, 2016

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

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, Eliot I. Bernstein, )  
Individually, and on behalf of the Minor )  
Children JEZB, JNAB, and DEAOB, )  
ET AL. )

Defendant and Counter-Plaintiff. )  
\_\_\_\_\_ /)

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

STATUS HEARING MEMORANDUM

Filers:  
Eliot Ivan Bernstein, Third-Party

**STATUS HEARING MEMORANDUM MARCH 15, 2016**

Honorable Judge John Robert Blakey, US District Court Northern District of Illinois:

The following is provided as a Status Memorandum tendered by Eliot I. Bernstein for a Status Hearing / Conference to be held on March 15, 2016 submitted under Local Rule 16.2 and Federal Rule 16 in furtherance of:

- 1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and
- (5) facilitating settlement.

And other topics under this Rule.



### **Clarification of Local Rules and LR 7.1**

To ensure compliance with this Court's Orders and Rules, I am seeking to clarify Local Rule 7.1 which has been raised by the Plaintiffs on multiple occasions.

I understand that LR 7.1 **does have** a Page Limit for Memorandums of Law ( Briefs ) for a motion but I do not see any Rule that specifies a Page Limit for the submission of Complaints and/or Amended Complaints and for example I believe the Government Receiver in one of the Stanford actions filed a Complaint over 100 pages long and while I am not suggesting the Amended Complaint I seek leave to file may be that long, it is possible it could be due to the complexity and sophistication of frauds relating to the original action removed to the District Court herein.

Any clarification from the Court on this Page Limit requirement for Amended Complaints is requested if possible.

As a separate housekeeping matter of correction I note that my recent complaint for Injunctive relief which this Court denied as an Emergency motion was sought under the All Writs Act and Anti-Injunction Act with different standards than a preliminary injunction and just respectfully ask this Court to take notice and I understand the Court denied such motion and continued this Status hearing in the normal course of case management.

I respectfully refer the Court back to prior pleadings and even the recent Petition for Injunction to show that Simon Bernstein was a successful business person sometimes bringing in \$38 Million or more in Revenue and was involved in Insurance and Planning his entire life where "missing millions" are at play and where Multiple Trusts, Business entities and "Originals" of Simon and Shirley Bernstein have never been brought before this Court although it is reasonably believed such "Originals" and proper Discovery would show the proper Policies herein and Trusts.

I also respectfully refer this Court back to some key items from the Jackson production up to Summary Judgment proceedings by Plaintiffs:

JCK000539 ( Jackson Bates No. ) purports to show Shirley Bernstein as Owner and Simon Bernstein as Insured on Policy No. 1009208 changing Face Value of Policy from \$2 to \$3 Million with Capitol Bankers Life Greenville, SC in document dated July 20 1995

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

JCK001262 shows Oct. 9, 2012 Heritage Union Life doc addressing Robert Spallina as Trustee of La Salle National Trust N. A., LASALLE NATIONAL TRUST N .A TRUSTEE C/OROBERT SPALLINA, ATTORNEY AT LAW 4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431 Insured Name: SIMON BERNSTEIN Policy Number: I 009208 Correspondence Number: 097 65315

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

**New Facts and Recent “gruesome” Death of Mitch Huhem referenced at Paragraphs 146-153 of Petition for Injunction under All Writs Act-Anti Injunction Act:**

It was anticipated that I, Eliot I. Bernstein, would have a proposed Amended Counter-complaint by the time of this Status Hearing on March 15, 2016, however, real life Dangers of ultimate serious nature have emerged since the time I was last before this Court on Thursday, Feb. 25, 2016 along with Adam Simon as Attorney for Ted Bernstein, Lisa Friedstein, Jill Iantoni and Pam Simon and Attorney Stamos for the Estate of Simon Bernstein and PR Brian O’Connell.

However, I believe it is appropriate to Notify this Court based upon information discovered after Feb. 25, 2016 that on or around the precise time that myself and Ted Bernstein’s Attorney and the Estate and Brian O’Connell’s attorney were on the Hearing Conference Call with your Honor on this date, that on or around the same time actual blood relative Family members of Mitch Huhem were en route to the St. Andrews home of Simon Bernstein at 7020 Lions Head Lane Boca Raton, Fl to View and Inspect the Scene where their family Member Mitch Huhem’s Body was allegedly Discovered dead in what was allegedly described as such a gruesome death of gunshot wounds to the head that the Palm Beach Sheriff’s Office ( PBSO ) did not let Mitch Huhem’s wife Debra Huhem even see the body which was allegedly found in the St. Andrew’s home garage by the PBSO.

The sources of this information are actual blood relatives of Mitch Huhem who wish to remain confidential currently in these proceedings out of fear of harm but upon information and belief have spoken to authorities.

As this Court can note, Mitch Huhem was referenced in my Petition for Injunction in Paragraphs 146-153 starting with a conversation I had with one Leilani Ochoada on Feb. 18th, 2016 who knew that I was bringing the information she provided into **this Federal Court** and other Federal and state authorities as of that date where Ms. Ochoada had provided information showing Orlando attorney Laurence Pino, alleged “friend” of Mitch Huhem, had been involved in falsely filing Articles of Incorporation for a Lion’s Head Land Trust Inc. falsely using Leilani Ochoada’s name allegedly to hide from the public the name of Mitch Huhem who was allegedly taking the property in a Sale by Ted Bernstein and his attorney Alan Rose.

The information by the family further provides that Debra Huhem, wife of Mitch Huhem, waited some approximately 16-24 Hours until Wednesday, February 24, 2016 on the same day I, Eliot I. Bernstein, actually filed Electronically the referenced Petition naming Mitch Huhem and Laurence Pino, before Debra Huhem Called ANY blood relative of Mitch Huhem to report the Death and then upon doing so invited one of the family members to the Intra-Coastal Home of Ted and Debbie Bernstein, **both who were involved in the underlying transaction about to be exposed in this Federal court the next day.** It is further understood that No PBSO members had contacted ANY of the blood relatives of Mitch Huhem by this point and the wife

Debra Huhem was using Mitch's cell-phone in the days after which may have Evidence of his interactions with Ted Bernstein and others for the alleged "business meeting" that didn't occur where Mitch Huhem ends up dead instead.

On the Wednesday, Feb. 24, 2016, the day I filed Electronically in this Court on the Petition for Injunction, the family member allegedly found out from Debra Huhem that her blood relative Mitch Huhem was allegedly found the day before by the PBSO with such gruesome gunshot wounds to the head the Wife did not see the body while TED BERNSTEIN was claiming on Wed, Feb. 24, 2016 at his IntraCoastal home that he was "excited" to see Mitch Huhem on the morning he allegedly went "missing" as Ted and Mitch were allegedly starting "a new business together" but then Mitch allegedly didn't show up.

Yet, Ted Bernstein's attorney certainly did not Notify this Court on Feb. 25, 2016 that a Dead body had been found at one of the very places I was seeking to Enjoin the Loss of Evidence and Order the preservation of evidence and assets, **nor in the Florida Probate Court proceeding later the same day with Judge Phillips** where neither Attorney Alan Rose nor his Client Ted Bernstein had informed Judge Phillips about a Dead body at the St. Andrew's Home that I had just sought to enjoin and prevent the Loss of evidence and Order the preservation of evidence and assets.

Upon information and belief from the confidential family members of Mitch Huhem, allegedly the PBSO had not spoken to Ted Bernstein about Mitch Huhem's Death as of over 15 days later March, 10, 2016 where Mitch was allegedly "meeting" with Ted Bernstein on the day of this event.

Likewise, the PBSO had allegedly not interviewed Laurence Pino, the Orlando attorney friend of Mitch Huhem allegedly involved in the false set up of Lion's Head Land Trust according to Leilani Ochoada as of the time Debra Huhem brought a Petition to State Court Judge David French being represented by Laurence Pino in a Petition to take control of the Body for Cremation where the Mitch Huhem blood relative family had evidence that Mitch Huhem had purchased a Burial Plot in Utah, thus presently letting Debra Huhem destroy all evidence while the Case is allegedly "Open" with the PBSO. Judge David French is the Florida Probate Judge who was **actually Assigned to the Simon Bernstein Estate case at the time of May 2013 when Eliot I. Bernstein first filed his Emergency Motion to Freeze Assets and the Cases based upon Discovering Fraud in the Court Of Judge Martin Colin involving Ted Bernstein's other business partner attorneys Tescher and Spallina where both Robert Spallina and their paralegal Kimberly Moran have already admitted to frauds in the case.**

Yet, as previously shown to this Court, Judge Colin "stepped over" into the Simon Bernstein Estate case of Judge David French, Denied my May 2013 Emergency Petition in both Shirley and Simon's case, took over Simon's case where I had just exposed fraud in Judge Colin's court, allowed Tescher and Spallina to remain in the case and **with all Original files** until Feb. 2014, some 8 months later and that alleged "Trustee" Ted Bernstein even upon learning of the fraud by my May 2013 Petition and the ultimate Admissions by Spallina and Tescher has still

never taken any action to validate or question Tescher and Spallina and to the contrary, have continued to “work with” at least Robert Spallina as a “friendly” Witness in Florida proceedings where SEC Consent Orders are violated by the Testimony and no party to my knowledge but myself has reported this to authorities. Further, where it was shown in the recent Petition for Injunction by the Palm Beach Post Investigation that Judges Colin and French are socially very close.

From the same confidential Huhem family sources it has been Discovered that at least one Simon Bernstein Medical record was found with Mitch Huhem’s possessions in the upstairs of the St. Andrew’s home and reports of Boxes upon Boxes at the home are present as well, yet the sources indicate Debra Huhem has been left to “clean up and clear out” all the evidence at the Scene of the Death and in general where Pictorial evidence at the Blood scene by the family could lead a lay person to question the “official” story thus far which has been suggested to be a “suicide” with No Suicide note allegedly found and with the PBSO not even interviewing Ted Bernstein who was supposed to be meeting with Mitch Huhem on the morning of Tuesday, Feb. 23, 2016 for a “business meeting” when it is known Leilani Ochoada was in contact with Laurence Pino and Leilani Ochoada knew these matters were going to federal authorities and into federal court.

**Conclusion: The Potential of Lost Evidence, Records is Real**

**Neither Attorneys Stamos for O’Connell and the Estate of Simon Bernstein, Brian O’Connell and Joy Foglietta, Alan Rose for Ted Bernstein, Adam Simon for Ted Bernstein, Peter Feaman for Claimant William Stansbury or any of the sophisticated attorney actors have sought Production of All Originals from Tescher & Spallina nor have sought Compliance with Judge Colin’s Order of Production from Feb. 2014**

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

Having been involved with matters reasonably questioning my family's own safety and my safety with the events of Mitch Huhem emerging and taking action with the FBI and other authorities to report events herein, I am seeking further Leave of this Court to Amend my counter-complaint/cross-complaint to Add causes of action where this Court has jurisdiction, add parties as appropriate complying with this Court's Rules, Orders and the Federal Rules.

For Case Management purposes, I assert to the Court that Depositions on Chain of Custody of Documents and Evidence are a Priority matter and should include but not be limited to:

1. **Robert Spallina**, who has admitted mail fraud, fraudulently attempted to collect the Insurance benefits herein as Trustee of La Salle, under an SEC Consent Order which he is alleged to have Mis-represented in the Florida Court of John Phillips, is under Open Case status with the FBI by recent conversation of myself to the FBI, and who was involved with Ted Bernstein and the underlying action from the outset;
2. **Ted Bernstein**, who admits to have never seen the "Original Trusts" involved, has an "evolving" changing "storyline" with Robert Spallina and others about how he became Trustee anywhere, admits he took no action to Validate any Trust or instrument herein, and for other fraud;
3. **Alan Rose**, having recently admitted "there are no trusts" that he has sued me upon, being a material fact witness for the Chain of Custody of certain "originals" and "duplicate originals" herein;
4. **Brian O'Connell, Joy Foglietta**, for why Originals and Production was never sought pursuant to Judge Colin's Feb. 2014 Order and for being in the Chain of Custody of All Business Records of Simon Bernstein as set out previously herein and to be amended

including Original Tax documents of Simon Bernstein which the PRs have failed and neglected to obtain for over 20 months.

5. **Donald Tescher** - for specifics of Originals and Document production and Wealth Planning with Simon and Shirley Bernstein and related topics an an.
6. **Benjamin, Brwon, Esq. (DECEASED) - Matwiczuk & Brown, LLP**, who stated that his law firm received only 1 original piece of paper in over 7k pages of production delivered to him by Tescher and Spallina upon their resignations, despite a Court Order to turn over ALL records, which without originals the copies cannot be validated in any way, especially where there are multiple fraudulent documents already proven and new admissions of Spallina in a Dec 15, 2015 hearing that other documents were fraudulently tendered to the Probate Court by Simon Bernstein at a time after he was deceased.

And such other and further Discovery as may be just and proper and amended as facts and justice allows.

**Leave and Retaliation:**

As indicated I seek Leave of this Court to submit a proper proposed Amended Complaint - Counter-complaint/cross-complaint and for Discovery and note that further retaliation has been sought against myself in the Florida Courts by way of improper Guardianship in a case where I was sued on a Trust that Alan Rose now admits does not exist, where proper parties were never Joined or Served in the Florida actions, and where while the Plaintiffs may claim that somehow I am collaterally estopped by these Florida actions, I will be able to show this Court where such determinations are not only defective and not from full and fair proceedings but are part of an orchestrated sequence of events where fraud has never been removed from the proceedings where Judge Phillips is attempting to remove evidence by Striking 3 years worth of my filings demonstrating fraud in the proceedings.

Respectfully submitted,

DATED: Tuesday, March 15, 2016

*/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 Tuesday, March 15, 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.

*/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)

**SERVICE LIST**

James J. Stamos and Kevin Horan STAMOS & TRUCCO LLP One East Wacker Drive, Third Floor Chicago, IL 60601 Attorney for Intervenor, Estate of Simon Bernstein	Adam Simon, Esq. #6205304 303 East Wacker Drive, Suite 2725 Chicago, Illinois 60601 Attorney for Plaintiffs (312) 819-0730	Ted Bernstein, 880 Berkeley Boca Raton, FL 33487 <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a>
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Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com	Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	David B. 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.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, March 15, 2016:

MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 3/15/2016 and continued to 4/14/2016 at 10:00 a.m. in Courtroom 1725. Parties wishing to appear by telephone should contact the Courtroom Deputy at 312-818-6699, by 4/13/2016, to arrange for a telephonic appearance. Mailed notice(gel, )

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

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

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable John  
Robert Blakey

Eliot Bernstein

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, March 16, 2016:

MINUTE entry before the Honorable John Robert Blakey: The Court is in receipt of Third Party Plaintiff Eliot Bernstein's "status report." [221]. In the future, Third Party Plaintiff Bernstein is directed to submit his requests to the Court in the form of a motion, and not as a letter or status report. Any future submissions by Third Party Plaintiff Bernstein that do not comply with this directive, this District's Local Rules, and the Federal Rules of Civil Procedure will be summarily stricken. To the extent the "status report" can be seen as a motion, the Court rules as follows: (1) Third Party Plaintiff Bernstein's request for leave to amend his counter-complaint/cross complaint is denied because Bernstein has not indicated how he would like to amend his pleadings, and his motion for leave to amend has been brought so late in the proceedings that it would constitute undue delay and would unfairly prejudice the other parties in this matter, see *Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir. 2011); and (2) Third Party Plaintiff Bernstein's request for additional discovery is denied, as fact discovery closed on 1/9/15 and Bernstein has provided no justification for allowing the late discovery sought here. As to Third Party Plaintiff Bernstein's request for clarification regarding LR 7.1., the request is denied. See *Commonwealth Plaza Condo. Ass'n v. City of Chicago*, 693 F.3d 743, 747 (7th Cir. 2012) (Court "may not issue advisory opinions"). Mailed notice(gel, )

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

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**IN THE 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: Adam M. Simon, as counsel  
for Jill Iantoni and Lisa Friedstein**

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

**MOTION TO WITHDRAW AS COUNSEL  
FOR  
JILL IANTONI AND LISA FRIEDSTEIN ONLY**

Pursuant to LR83.17, and in compliance with Illinois Rules of Professional Conduct R. 1.16, Adam M. Simon (“Movant”) hereby notifies the parties and the Court of his intent to withdraw as counsel for Plaintiffs/Counter-defendants, Jill Iantoni and Lisa Friedstein, only. Adam M. Simon shall remain as counsel for all other Plaintiffs and all other parties where he is listed on the docket as counsel of record.

1. Movant has represented Jill Iantoni, and Lisa Friedstein as Co-plaintiffs since this action was filed in 2013.
2. Plaintiffs’ motion for summary judgment was recently denied by the court’s order entered on March 15, 2016.
3. Currently, there are no other pending motions on the docket.
4. There are also no pre-trial deadlines looming in the near future.
5. Movant has received written instructions via email from both Lisa Friedstein and Jill Iantoni terminating Movant’s representation as their attorney and instructing Movant to file this motion to withdraw.
6. Pursuant to the local rules and rules of professional conduct, Movant informed both Jill Iantoni and Lisa Friedstein of the following:
  - a) The status of the case as summarized above;
  - b) The notice of hearing pertaining to this motion;
  - c) The next status court date which is set on April 14, 2016;

- d) that court information and contact information for the clerk of the court and Judge Blakey's chambers may be found on the website for the Northern District of Illinois;
- e) that court information regarding a Pro Se party's access to the court's Electronic Case Filing System and other information for Pro Se litigants can be found on the website for the Northern District of Illinois;
- f) that the court would likely require them to file pro se appearances on their own behalf or retain separate counsel to file substitute attorney appearances on their behalf;
- g) that if they failed to file any such required pro se or attorney appearance they may be dismissed as plaintiffs from the case and/or defaulted as counter-defendants;
- h) that their termination of my representation on their behalf individually would not result in any change to the allegations in Plaintiffs' complaint, including those allegations that the beneficiaries of the Bernstein Trust are all five children of Simon Bernstein, which include Lisa Friedstein and Jill Iantoni; and
- i) Movant further notified Jill Iantoni and Lisa Friedstein, that after Movant's withdrawal as their attorney, Movant shall remain as counsel for the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Ted Bernstein and Pam Simon, and the other parties counsel currently represents.

7. Movant verily believes he has informed Jill Iantoni and Lisa Friedstein of the material information required to protect their own interests in the instant litigation following Movant's withdrawal.
8. Movant has filed this motion pursuant to the express instructions of Jill Iantoni and Lisa Friedstein terminating Movant's representation of their interests.
9. Pursuant to LR83.17, and the Illinois Rules of Professional Conduct Rule 1.16, Movant seeks leave of the Court to withdraw as counsel for Jill Iantoni and Lisa Friedstein.

WHEREFORE, Movant respectfully requests that this Court grant him leave to withdraw as counsel for Jill Iantoni and Lisa Friedstein, and enter an Order stating that Movant has so withdrawn.

Dated: April 2, 2016

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

Simon L. Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95; Ted Bernstein as Trustee, and  
individually, and Pamela B. Simon, individually



**EXHIBIT 1**

06/12/15

**United States District Court  
Northern District of Illinois**

**Notification of Party Contact Information**

**Directions:** This form must be attached to a motion to withdraw from a case when no other attorney of record has been noted on the docket. A completed form must be electronically filed as an attachment to the motion to withdraw. The address and telephone number of your client must be completed on this form to enable the Court to contact your client in the future if the motion to withdraw is granted.

**Case Number:** 13 cv 3643

**Case Title:** Simon Bernstein Irrv. Ins. Trust Dtd 6/21/95 v. Heritage Insurance, et.al.

**Judge:** John Robert Blakey

**Name of Attorney submitting the motion to withdraw:**

Adam M. Simon

**Name of Client:**

Jill Iantoni

**Mailing address of Client:** 2101 Magnolia Lane

**City:** Highland Park

**State:** IL

**Zip:** 60035

**Telephone Number:** 847-831-4915

**I attest that the above information is true and correct to the best of my knowledge.**

**Signed:**  \_\_\_\_\_, Adam M. Simon

**Date:** 4-2-2016

06/12/15

**United States District Court  
Northern District of Illinois**

**Notification of Party Contact Information**

**Directions:** This form must be attached to a motion to withdraw from a case when no other attorney of record has been noted on the docket. A completed form must be electronically filed as an attachment to the motion to withdraw. The address and telephone number of your client must be completed on this form to enable the Court to contact your client in the future if the motion to withdraw is granted.

**Case Number:** 13 cv 3643

**Case Title:** Simon Bernstein Irrv. Ins. Trust Dtd 6/21/95 v. Heritage Insurance, et.al.

**Judge:** John Robert Blakey

**Name of Attorney submitting the motion to withdraw:**

Adam M. Simon

**Name of Client:**

Lisa Friedstein

**Mailing address of Client:** 2142 Churchill Lane

**City:** Highland Park

**State:** IL

**Zip:** 60035

**Telephone Number:** 847-831-1360

**I attest that the above information is true and correct to the best of my knowledge.**

**Signed:**  \_\_\_\_\_, Adam M. Simon

**Date:**

4-2-2016

**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 Thursday, April 14, 2016:

MINUTE entry before the Honorable John Robert Blakey: Motion and status hearing held on 4/14/2016. Motion to withdraw appearance on behalf of Lisa Sue Friedstein and Jill Iantoni [224] is granted. Pro se appearance form given to Lisa Sue Friedstein and Jill Iantoni in open court. Pro Se Plaintiffs may want to review the Court's standing order for pro se litigants, which is available on the Court's webpage at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov). Plaintiff may also wish to contact the District Court Pro Se Assistance Program, the Hibbler Help Desk, which may be reached at the Clerk's Office Intake desk, Dirksen Federal Building, 219 S. Dearborn, 20th floor, or by calling (312) 435-5691. Any motion for leave to file an amended complaint shall be filed on or before 4/29/2016. Any motions for summary judgment shall be filed on or before 5/25/2016. Status hearing set for 5/26/2016 at 9:45 a.m. 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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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

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

Plaintiffs,

v.

Heritage Union Life  
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643

Judge John Robert Blakey

Filers:

Eliot Ivan Bernstein, Pro Se

---

**MOTION FOR LEAVE TO FILE A BRIEF (MEMORANDUM OF LAW) IN EXCESS  
OF FIFTEEN PAGES**

Plaintiffs, pursuant to Local Rule 7.1, respectfully move this Honorable court for an Order granting permission file a Brief ( Memorandum of Law ) which may exceed the fifteen page limit to support a Motion for Leave to Amend-Supplement the Third Party Complaint / Cross-Claim / Counterclaim to be filed by April 29, 2016 pursuant to this Court's recent Minute-Entry Text Order of April 14, 2016.

In support thereof, Eliot I. Bernstein states as follows:

1. Third Party Defendant Eliot I. Bernstein who was brought into this action by Jackson National is preparing to file a motion for leave to Amend - Supplement the Third Party Complaint / Cross-Claim / Counterclaim herein and file said motion by this Court's deadline of April 29, 2016.

2. As the Court has seen from the recent Summary Judgment filings and submissions and the parties that have been in the case and removed from the case and the complex and factually detailed nature of the fraud and claims background as recently outlined and plead in a motion for an injunction under the All Writs Act and Anti-Injunction Act, it is reasonably possible that the Brief and Memorandum in Support in draft stage may exceed the 15 page limit by 5 pages or so and if said Brief does exceed the 15 page limit, it is respectfully asserted that such extra pages are warranted.
3. I believe that I have dealt with the issues presented by this case and or attempted to deal with the issues in an efficient and succinct manner under the circumstances and am diligently attempting to do so in the Brief in support,

WHEREFORE, Third Party Defendant Eliot I. Bernstein prays for an Order granting leave to file a Brief ( Memorandum of Law ) in support of a motion for Leave to Amend - Supplement the Third Party Complaint / Cross-Claims / Counterclaims herein that exceeds the fifteen page limit.

Respectfully submitted,

DATED: April 17, 2016

*/s/ Eliot Ivan Bernstein*

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Eliot Ivan Bernstein  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 17, 2016 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.

*/s/ Eliot Ivan Bernstein*

\_\_\_\_\_  
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