

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
08/27/2016	<u>259</u>	5	MEMORANDUM by Eliot Ivan Bernstein, Eliot Bernstein in Opposition to motion for summary judgment <u>245</u> (Attachments: # <u>1</u> Exhibit 20150506 Ted Bernstein Deposition with Exhibits, # <u>2</u> Exhibit 20160826 Feaman Letter to Judge Phillips re Simon Estate and Motion for Retention of Counsel and to Appoint Ted Adminsitrator Ad Litem, # <u>3</u> Exhibit 20160826 FINAL ESIGNED ILLINOIS DECLARATION OF ELIOT BERNSTEIN OPPOSITION TO SUMMARY JBY INTERVENOR)(Bernstein, Eliot) (Entered: 08/27/2016)
08/27/2016	<u>260</u>	396	RESPONSE by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein in Opposition to MOTION by Third Party Defendants David B Simon, Ted Bernstein, S.T.P. Enterprises, Inc., Adam M Simon, The Simon Law Firm, Ted Bernstein, Pamela Beth Simon, Cross Defendant Ted Bernstein for summary judgment <i>as to Eliot Bernstein's Claims</i> <u>239</u> (Bernstein, Eliot) (Entered: 08/27/2016)
09/15/2016	<u>262</u>	419	MOTION by Intervenor Plaintiff Brian M. O'Connell for extension of time to file response/reply <i>in further support of Motion for Summary Judgment</i> (Stamos, James) (Entered: 09/15/2016)
09/19/2016	<u>264</u>	424	MINUTE entry before the Honorable John Robert Blakey: Intervenor's motion for extension of time to file reply <u>262</u> is granted. Intervenor's reply brief is now due 10/27/16. The 9/22/16 Notice of Motion date is stricken, and the parties need not appear. Additionally, the status hearing previously set for 10/27/16 is stricken and reset to 12/6/16 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel,) (Entered: 09/19/2016)
10/06/2016	<u>265</u>	425	REPLY by Ted Bernstein, Ted Bernstein, Ted Bernstein(individually and as alleged Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95), S.T.P. Enterprises, Inc., Adam M Simon, David B Simon, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, The Simon Law Firm to response in opposition to motion, <u>260</u> (Attachments: # <u>1</u> Certificate of Service Notice of Filing/Cert of Serv)(Simon, Adam) (Entered: 10/06/2016)

			10/06/2016)
10/27/2016	<u>266</u>	436	REPLY by Intervenor Plaintiff Brian M. O'Connell (Stamos, James) (Entered: 10/27/2016)
10/27/2016	<u>267</u>	446	REPLY by Intervenor Plaintiff Brian M. O'Connell <i>to Plaintiff's Response to Intervenor's Motion for Summary Judgment</i> (Stamos, James) (Entered: 10/27/2016)
10/27/2016	<u>268</u>	462	REPLY by Intervenor Plaintiff Brian M. O'Connell <i>to Eliot Bernstein's Response to Intervenor's Motion for Summary Judgment</i> (Stamos, James) (Entered: 10/27/2016)
12/02/2016	<u>269</u>	471	MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the status hearing previously set for 12/6/2016 is reset for 12/9/2016 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel,) (Entered: 12/02/2016)
12/06/2016	<u>270</u>	472	MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the status hearing previously set for 12/9/2016 is reset for 1/25/2017 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel,) (Entered: 12/06/2016)
01/25/2017	<u>272</u>	481	MINUTE entry before the Honorable John Robert Blakey: Enter Memorandum Opinion and Order. For the reasons stated in the accompanying Memorandum Opinion and Order, Plaintiffs' Motion for Summary Judgment <u>239</u> is granted and Intervenor's Motion for Summary Judgment <u>245</u> is denied. The status hearing previously set for 2/21/2017 at 9:45 AM in Courtroom 1725 to stand, at which time the parties shall be prepared to set a trial date. Mailed notice (gel,) (Entered: 01/30/2017)
01/30/2017	<u>271</u>	473	Simon Bernstein Irrv. Trust Dtd 6/21/95 v. Heritage Union Ins. et al, No. 13 cv 3463 – Clarification of Last Conference Call of Jan. 25, 2017 and pending Motions STATEMENT by Eliot Ivan Bernstein, Eliot Bernstein (Bernstein, Eliot) (Linked document has the incorrect case number (bg)) (Entered: 01/30/2017)
01/30/2017	<u>273</u>	482	MEMORANDUM Opinion and Order Signed by the Honorable John Robert Blakey on 1/30/2017. Mailed notice(gel,) (Entered: 01/30/2017)
02/21/2017	<u>274</u>	503	MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 2/21/2017. Additional case management dates set as follows: the parties shall file their proposed final pretrial order and motions in limine on or before 7/3/2017; responses to motions in limine are due 7/10/2017; final pretrial conference set for 7/24/2017 at 1:30 p.m. in Courtroom 1725; bench trial set for 8/7/2017 at 10:00 a.m. in Courtroom 1725. The parties should review and strictly comply with the Court's standing orders, including the order on proposed pretrial procedures (including motions in limine) which is available on the Courts homepage at www.ilnd.uscourts.gov . Additionally, the case is set for a settlement conference on 7/14/2017 at 11:00 a.m. in Courtroom 1725. The parties are directed to exchange position letters as follows: Plaintiff shall provide Defendant with a demand letter by 7/3/2017, and Defendants shall provide a response by 7/10/2017. By 5:00 p.m. on 7/11/2017, Plaintiff shall submit copies of all letters exchanged by the parties to: Proposed_Order_Blakey@ilnd.uscourts.gov . Copies of the settlement conference letters shall not be filed with the Clerk's Office. The Parties shall come to the settlement conference on 7/14/2017 with an accounting of costs

			properly taxable under 28 U.S.C. §1920, both incurred in the litigation to date and an estimate of taxable costs that would be incurred should the matter proceed to trial. Parties with full and complete settlement authority must attend the conference personally. The term full and complete settlement authority includes the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of Plaintiff or any level as low as the offer provided by Defendant. Parties attending the conference should be sure to review and consider the settlement letters exchanged between the parties in advance of the conference. The Court generally will follow a mediation format; that is, each side will have an opportunity to make a presentation, followed by joint discussion with the Court and private meetings by the Court with each side individually. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. All statements made during the settlement conference will remain confidential and will not be admissible at trial. Mailed notice (gel,) (Entered: 02/21/2017)
05/31/2017	<u>281</u>	505	NOTICE by Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 <i>Matrix Mediation-Notice of Mediation</i> (Attachments: # <u>1</u> Notice of Filing Notice of Filing/Cert of Serv)(Simon, Adam) (Entered: 05/31/2017)
06/23/2017	<u>283</u>	508	AFFIDAVIT Accompanying motion for permission to appeal in forma pauperis by Plaintiff. (gcy,) (Entered: 06/23/2017)
06/26/2017	<u>284</u>	514	MINUTE entry before the Honorable John Robert Blakey: Eliot Ivan Bernstein has filed a Notice of Appeal, seeking review of this Court's summary judgment decision. He seeks leave to appeal in forma pauperis. Federal Rule of Appellate Procedure 24(a)(1) requires a party seeking leave to proceed on appeal in forma pauperis to attach an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal. Eliot's affidavit satisfies subparts (A) and (B): his financial affidavit includes a statement claiming an entitlement to redress and also indicates that he is unemployed and earns no income, that his wife earns less than \$1,600 per month, and that their combined monthly expenses total almost \$3,000. Eliot's affidavit does not, however, set forth the issues he plans to present on appeal, as required by Rule 24(a)(1)(C). In fact, he left that section of the form blank. Accordingly, his motion for leave to appeal in forma pauperis <u>283</u> is denied. Mailed notice (gel,) (Entered: 06/26/2017)
06/26/2017	<u>285</u>	515	FINANCIAL Affidavit (Bernstein, Eliot) (Entered: 06/26/2017)
07/05/2017	<u>287</u>	620	MINUTE entry before the Honorable John Robert Blakey: Oral motion to extend deadline for submitting the pretrial order is granted. Pretrial order shall be submitted on or before 7/7/2017. Mailed notice (gel,) (Entered: 07/05/2017)
07/10/2017	<u>288</u>	621	MINUTE entry before the Honorable John Robert Blakey: The 7/7/17 final pretrial order due date and the 7/14/17 settlement conference date are stricken. This case is set for a status hearing on 7/13/17 at 9:45 a.m. in Courtroom 1725. Parties wishing to appear by phone should contact the Courtroom Deputy, Gloria Lewis, at (312) 818-6699 by noon on 7/12/17. Mailed notice (gel,) (Entered: 07/10/2017)
07/13/2017	<u>290</u>	622	

			MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 7/13/2017 and continued to 8/29/2017 at 9:45 a.m. in Courtroom 1725. All other deadlines and hearings are stricken. Status will be stricken if parties file dismissal documents prior to the next hearing. Mailed notice (gel,) (Entered: 07/13/2017)
08/29/2017	<u>294</u>	623	MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 8/29/2017 and continued to 12/6/2017 at 9:45 a.m. in Courtroom 1203. Mailed notice (gel,) (Entered: 08/30/2017)
11/07/2017	<u>296</u>	624	First MOTION for Interpleader Disbursement (28 U.S.C. Section 1335) <i>and entry of Final Judgment</i> (Attachments: # <u>1</u> Exhibit Exh 1–Probate Order, # <u>2</u> Certificate of Service Notice of Mot./Cert Serv)(Simon, Adam) (Entered: 11/07/2017)

**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

**MEMORANDUM OF LAW IN OPPOSITION TO INTERVENOR'S MOTION FOR
SUMMARY JUDGMENT**

Third-party Defendant, Eliot I. Bernstein, pro se, for his Memorandum of Law in Opposition to the Intervenor's Motion for Summary Judgment, pursuant to Local Rule 56.1(b)(2), states as follows:

INTRODUCTION

Intervenor Brian O'Connell, on behalf of the Estate of Simon Bernstein, has moved for Summary Judgment on the complaint for Declaratory relief and under Count II of the Plaintiff's Amended Complaint for entitlement of the proceeds deposited with this Court allegedly under a Life Insurance Contract as the "default beneficiary" by operation of law claiming the Plaintiffs are not capable of meeting their burden of proving the existence of a 1995 Trust by clear and convincing evidence. Intervenor's motion of May 21, 2016 comes shortly after this Court issued its Decision and Order of March 15, 2016 denying Summary Judgment to Plaintiffs.

This Court concluded in its March 15, 2016 Order as follows:

"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.” See, ECF No. 220, MEMORANDUM Opinion and Order Signed by the Honorable John Robert Blakey on 3/15/2016.

Despite this Court just recently finding that there are Triable issues of fact, the Intervenor’s Motion for Summary Judgment does nothing to remove those Triable issues of fact and appears as nothing more than re-arguing to this Court that the Plaintiffs can not make out their case and thus the funds must go to the Estate by default. The Intervenor has brought nothing more to the Court in the way of evidence or affidavit despite the fact that this Court found in its Decision and Order that Plaintiffs had provided some evidence to support their position, stating in reference to the evidence and positions advanced by the Plaintiffs, “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.”. The Intervenor has failed to come forward with proof and evidence to remove the triable issues found and the absence of material facts in dispute and must be denied.

Simply stated, the Intervenor’s Motion does nothing to resolve the Triable issues of fact already determined by this Court in its March 15, 2016 Opinion and Order and therefore the Intervenor’s have not met their burden of proof to be awarded Summary Judgment in favor of the Estate. Even beyond the “triable” issues that this Court has already determined presently exist which prevents Summary Judgment, there are multiple outstanding issues of material fact as raised in my original opposition to Plaintiff’s Summary Judgment which prevent an award in favor of the Estate at this time, most notably the existence of the Primary Beneficiary which was LaSalle National Trust, NA (“LaSalle”) and the failure of the parties to properly determine from a proper successor to La Salle their interest as primary beneficiary. In fact, Plaintiffs claim Bank of America (BOA) to be successor , while Third Party Plaintiff Eliot states that it is Chicago Title

as BOA only acquired the banking division of LaSalle and not the trust company. Either way, no party has obtained any production from any of those parties (of if so, such has not been brought forth to the Court or other parties) and BOA was let out of this action without making any pleading whatsoever despite Plaintiffs claim they are the successor to the Primary Beneficiary LaSalle. Non-movant Third-party Defendant previously moved during the opposition to Plaintiff's summary judgment that these parties should be brought back into the case and Discovery re-opened. Either way, there is presently material issues of fact as to the Primary Beneficiary's claim to the proceeds sufficient to defeat the Intervenor's motion at this time. Still further, under the present state of facts and circumstances the most likely finding of a reasonable jury at this stage is reasonably in my favor as the non-moving party such that collusion and conspiracy exist specifically designed to suppress and deny from this Court and the true beneficiaries the proper, actual policy, the proper actual Trust and the proper, actual terms of both. A reasonable jury could certainly find that the Estate, by and through its trial counsel in Illinois and the office of Brian O'Connell as alleged Personal Representative of the Estate of Simon Bernstein has specifically determined and colluded not to seek the very documents and proof which would show the actual policy and likely actual Trust.

All of these matters already exist on the face of the records before this Court and the Court could deny the Intervenor's motion without my opposition. Nonetheless, my Affidavit-Declaration and opposition herein further creates the existence of triable issues of fact that prevents Summary Judgement in favor of the Estate at this time.

ARGUMENT

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.). 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). Thus, it is the Intervenor's burden to show no genuine dispute as to any material fact and that the Intervenor is entitled to Judgment as a matter of law.

The Intervenor's motion does nothing to dispel the triable issues of fact this Court already found when issuing its March 15, 2015 Order denying Summary Judgment to the Plaintiffs. Because the Intervenor has failed to meet this burden, Summary Judgment must be denied.

There is clearly proof that some policy existed as over \$1.5 million has been deposited into this Court's registry by an insurance carrier. The terms of the policy, the value of the policy, the conditions of the policy, however, are all in dispute. As shown by my Affidavit-Declaration, having been in business working with Simon Bernstein on Life Insurance and knowing his work in Life Insurance for over 30 years and knowing his expertise in asset protection, the only likely reasonable conclusion a Jury could arrive at is that there is in fact an actual Policy that is being suppressed and denied (or hidden or destroyed), and likely that there is an actual Trust that is the beneficiary, also which is being suppressed and denied (or hidden or destroyed).

According to TS TS003942 from an alleged Heritage letter of Feb. 3, 2012 in the months prior to my father's passing, La Salle National Trust, N.A., was the Primary beneficiary, see TS 003942¹. There has been insufficient determination by any alleged successor to La Salle National Trust, N.A., of what the Primary Beneficiary's interest in the insurance proceeds are. As moved in the opposition to Plaintiffs' original motion for Summary Judgment, these parties should be properly brought back into the case and Discovery opened to determine the actual policy, discover the actual policy and determine the proper policy amount and beneficiaries. I have asserted and do

¹ February 03, 2012 Heritage Union Life Confirmation of the Primary and Contingent Beneficiaries <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120203%20Heritage%20Union%20Life%20Statement%20Regarding%20Current%20Primary%20and%20Contingent%20Beneficiaries.pdf>

assert a claim as beneficiary to any such policy both for myself and on behalf of my minor children.

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). As shown herein, a reasonable jury could return a verdict for myself as the non-moving party and thus summary judgment is not appropriate.

Under the present facts and circumstances of this case, a reasonable jury could return a verdict in my favor. A reasonable jury could also issue a “no cause” finding that neither side sufficiently proved it’s case. Both such grounds are sufficient to deny summary judgment to the Intervenor at this stage of litigation.

As shown by my Answer and Counterclaims herein, together with my original opposition to the Plaintiffs’ motion for Summary Judgment, and the Petition under the All Writs Act filed with this Court in February of 2016, all of which is incorporated by reference herein in opposition to the Intervenor’s motion, together with my Affidavit-Declaration herein, a reasonable Jury could conclude that the Estate, acting through Illinois trial counsel Stamos and PR Brian O’Connell has colluded with Ted Bernstein and others to suppress and deny from this Court the actual policy (Policies), the actual and true Trusts and who the proper beneficiaries are.

A careful review of the Deposition of Ted Bernstein shows:

1. Only a cursory examination by Intervenor Counsel Stamos on any “exhaustive search” performed by Ted Bernstein; no determination of what Ted Bernstein did find; no

questions about whether he was looking in file cabinets, if so where, on computers, if so which ones and where, in desk drawers, if so when and where, nothing.

2. Ted Bernstein admits to having seen the policy and even having documents but yet not only does Ted Bernstein not produce these to the Court or myself and parties, Intervenor Counsel Stamos has continuously failed to move for Ted Bernstein to produce such items to the Court;
3. Meanwhile, as shown by the Petition for All Writs of Feb. 2016, PR Brian O'Connell never moved to obtain all the records of Simon's Estate from Ted Bernstein's counsels Tescher and Spallina despite a Court Order of Florida Judge Colin in Feb. 2014 and PR O'Connell for the Estate still has failed to obtain such compliance and obtain such records to this day.

As seen in Ted Bernstein's Deposition,

Page 18 Line 25

25 · · · · Q · Now, you describe there that you participated

Page 19 Lines 1-16

1 · in and conducted diligent searches of your father's
2 · home, office and condominium, and some further activity
3 · following that. Can you tell me when those searches
4 · took place relative to his death?
5 · · · · A · No, I can't.
6 · · · · Q · Can you give me a time range? If you think
7 · about the date of his death being in September, did you
8 · do that search October, November, December?
9 · · · · A · I really -- I don't know the dates.
10 · · · · Q · Who else searched, or who searched with you,
11 · if that's different?
12 · · · · A · I don't believe that anybody else searched
13 · with me.
14 · · · · Q · Did anyone search separately for documents?
15 · · · · · MR. SIMON: Object --
16 · · · · A · No.

Page 32 Ted's Depo - Lines 3-18

3 · · · · Q · Look at page 59 -- I'm sorry, paragraph 59 on
4 · Page 9, please, and in that first sentence, it says,
5 · "During the application process, the insurer conducted a
6 · routine underwriting investigation of Simon Bernstein
7 · prior to approving his policy." How do you know that?
8 · · · · A · From conversations with counsel, and also
9 · there were a lot of documents that the insurance company
10 · sent over to me at the time that this policy was going
11 · through the reinstatement process. So these are all
12 · pretty common things for -- for me to see in -- in an
13 · insurance company's document like that.
14 · · · · · I'm -- I'm -- I think it would be also in
15 · something about an application process that may have
16 · been through the discovery of the documents that the
17 · insurance company provided in that reinstatement
18 · process.

Page 116 Ted Bernstein Deposition Lines 18-22

18 · · · · A · I believe I have a copy of what the insurance
19 · company sent during this time of reinstatement. I
20 · believe I have a copy of the insurance policy. Whether
21 · executed, I -- I don't know what they deem executed.
22 · · · · Q · You have a copy of the insurance policy, okay.
23 · Have you given that in your production?
24 · · · · · MR. SIMON: Objection; misstated his answer.
25 · · · · Q · I asked you did you put it in production. You

Page 117 Lines 1-25

1 · haven't answered.
2 · · · · · MR. SIMON: He said he saw it in production.
3 · · · · He said what was produced.
4 · · · · Q · No. I asked you, did you put your copy of the
5 · policy in production. You were supposed to --
6 · · · · · MR. SIMON: No, you didn't.
7 · · · · Q · -- put all your documents.
8 · · · · · MR. SIMON: That's not what you said. That's
9 · · · · not what he said. He said he found the documents
10 · · · · through production.
11 · · · · Q · Did you put the policy in with your production
12 · documents?
13 · · · · A · I'm not sure.

14 · · · · Q · You were asked by the court to produce
15 · documents. Did you produce all your documents?
16 · · · · A · I don't know if I was asked by a court to
17 · produce documents, but...
18 · · · · Q · Okay. We had to do a Rule 26 document
19 · request. You're the plaintiff. You produced documents.
20 · · · · · MR. SIMON: I'm going to object to this line
21 · · · · of questioning. He has answered about the policy.
22 · · · · He believes he had a copy. He's not sure if --
23 · · · · Q · You believe you had a copy --
24 · · · · · (Cross-talking. Interruption by the
25 · reporter.)

Page 118 Lines 1-4

1 · · · · Q · Did you put the copy of the policy you claim
·2 · to have with your production to the court when you
·3 · produced?
·4 · · · · A · I'm not sure.

See attached Exhibit 1 - May 06, 2015 Deposition of Ted Bernstein

The Court is directed to the exchange with Adam Simon who interrupts the testimony of Ted Bernstein to “change” the responses. This occurred on other occasions during the Deposition of Ted Bernstein. As also shown by the Deposition, the questioning was abruptly cut off at the end and the need for further Deposition and Discovery against Ted Bernstein and Plaintiffs and other parties is clear.

Yet, not only has Trial Counsel Stamos continually failed to take action to force production by Ted Bernstein in this Illinois case, PR O’Connell in the Florida Probate case has likewise deliberately disregarded seeking Discovery and proper Deposition of Ted Bernstein in those cases.

As this Court noted in its Order denying Summary Judgement to Plaintiffs, “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."

Further, this Court noted, "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."

Still further, " 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."

As shown in Tescher and Spallina production documents, according to TS TS005879, on Aug. 23, 2012 shortly before his passing Tescher and Spallina Billed Simon Bernstein for Estate Planning and Insurance work as follows:

“FOR LEGAL SERVICES RENDERED through July 31, 2012 in connection with estate planning, including meeting with client to finalize planning items; telephone calls and email **correspondence with Diana regarding existing insurance matters** and status of GC Trust transfers from Oppenheimer to JP Morgan; finalize EP documents and meet with client to execute same.” See, TS005879². Yet not only has Illinois Trial Counsel Stamos not pursued these matters further for the Estate, but PR O’Connell has likewise not pursued any such actions in the Florida Probate courts to clarify these matters.

Thus, clear actions by multiple parties to manipulate what documents were presented to this Court is shown while clear actions needing further Discovery such as who was allegedly contacted at Hopkins-Sutter etc, exist, and yet neither Trial Counsel Stamos nor PR O’Connell has pursued actions to determine the truth in any of these matters and thus material issues of fact remain preventing summary judgment.

As shown in the All Writs Petition, this is a pattern amongst these alleged “fiduciaries” and attorneys as PR O’Connell’s Office and Ted’s counsel Alan Rose are intertwined in other items of Tangible personal property missing, unaccounted for, and items from 7020 Lions Head Lane showing up “magically” even after O’Connell’s office had allegedly already removed such items. See Motion for All Writs Injunction ECF Docket #214 Paragraphs 75-103 and the Petition in it’s entirety.

Direct collusion between PR Brian O’Connell and Ted Bernstein is shown not only in PR O’Connell’s abandoning of the Estate in a “validity” hearing and failure of O’Connell and Trial Counsel Stamos to pursue proper Discovery and sanctions against Ted Bernstein in this Illinois

² August 23, 2012 Tescher and Spallina Bill for Insurance Services
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120823%20Tescher%20Spallina%20Bill%20for%20Insurance.pdf>

case, but is directly shown in a recent motion filed by Ted Bernstein in the Florida Probate Court where Brian O'Connell as PR is allowing Ted Bernstein and his attorney Alan Rose to come in and "Represent" the Estate ad litem in an action against William Stansbury who is the party who has actually been paying the fees of Trial Counsel Stamos for this action in Illinois. The conflicts and collusion are clearly set out in counsel Peter Feaman's opposition to the motion. See Exhibit 2 - August 26, 2016 Filing of Attorney at Law Peter Feaman, Esq.

This Court is respectfully reminded of the "side deals" and requests to use "inherent powers" as Petitioned in the All Writs application at least for purposes of consideration on this opposition to Summary Judgment. See, ECF #214 All Writs.

Moreover, the Affidavit-Declaration attached herein as Exhibit 3 - Eliot Ivan Bernstein Affidavit dated August 26, 2016 which reflects testimony I would provide at Trial demonstrating meticulous record keeping by Simon Bernstein for decades, describing distinct sources of record keeping, his expertise in asset protection and his 50 years in Life Insurance all leads to the reasonable conclusion a jury could reach which is that a Policy exists, a Trust likely exists, but collusion and conspiracy to suppress and deny the actual documents has occurred by the Estate and Ted Bernstein parties which creates sufficient issues of material fact in addition to the issues raised herein to deny Summary Judgment to the Intervenor at this time.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, the Intervenor's motion for Summary Judgment must be denied at this stage of litigation and further Discovery ordered including Ordering Production by Ted Bernstein of all documents he allegedly provided to Tescher and Spallina including copies of the Policies and Ordering parties such as LaSalle National Trust,

N.A. or its successor, Jackson-Heritage and necessary parties back into the case and for such other and further relief as may be just and proper.

DATED: August 26, 2016

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross
Plaintiff PRO SE

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www.iviewit.tv

CERTIFICATE OF SERVICE

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/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross
Plaintiff PRO SE

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 SIMON BERNSTEIN IRREVOCABLE
5 INSURANCE TRUST DTD 6/21/95,

6 Plaintiff,

v.

Case No. 13 cv 3643

7 HERITAGE UNION LIFE INSURANCE
8 COMPANY,

9 Defendant,

10 HERITAGE UNION LIFE INSURANCE
11 COMPANY,

12 Counter-Plaintiff

13 v.

14 SIMON BERNSTEIN IRREVOCABLE
15 INSURANCE TRUST DTD 6/21/95

16 Counter-Defendant

17 and,

18 FIRST ARLINGTON NATIONAL BANK
19 as Trustee of S. B. Lexington, Inc.
20 Employee Death Benefit Trust,
21 UNITED BANK OF ILLINOIS, BANK OF
22 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

23 Third-Party Defendants.
24 _____/



1 ELI OT I VAN BERNSTEI N,

2 Cross-Pl ai nt i ff

3 v.

4 TED BERNSTEI N, i ndi vi du al l y and as
5 al l ege d Tru st ee of the Si mon Bern stei n
Irrevo cabl e Insuranc e Tru st Dtd
6/21/95,

6 Cross-Def endant

7 and,

8 PAMELA B. SI MON, DAVID B. SI MON, both
9 Profession al l y and Person al l y, ADAM
10 SI MON, both Profession al l y and Person al l y,
11 THE SI MON LA W FI RM, TESCHER & SPALLI NA,
12 P. A. , DONALD TESCHER, both Profession al l y
and Person al l y, ROBERT SPALLI NA, both
13 Profession al l y and Person al l y, LI SA
14 FRI EDSTEI N, JI LL I ANTONI , S. B. LEXI NGTON,
15 I NC. EMPLOYEE DEATH BENEFIT TRU ST, S. T. P.
16 ENTERPRI SES, I NC. , S. B. LEXI NGTON, I NC,
17 NATI ONAL SERVI CE ASSOCI ATI ON (OF FLORI DA),
18 NATI ONAL SERVI CE ASSOCI ATI ON (OF I LLI NOI S),
19 AND JOHN AND JANE DOES

20 Thi rd- Party Def endants.

21 _____/
22
23 DEPOSI TI ON OF
24 TED BERNSTEI N

25 Taken on behal f of the Estate of Si mon Bern stei n

DATE TAKEN: May 6, 2015
TIME: 5: 06 p. m. - 8: 15 p. m.
PLACE: 2385 N. W. Executi ve Center Drive
Boca Raton, Florida

Stenographi call y Reported by:

Li sa Gropper, R. P. R. , F. P. R.



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18 ALSO PRESENT: William Stansbury
19 Candice Bernstein (as noted)

20 - - -



I N D E X

1				
2	Wit n e s s	D i r e c t	C r o s s	R e d i r e c t R e c r o s s
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1 THE COURT REPORTER: Do you swear or affirm
2 that the testimony you're about to give will be the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MR. STAMOS:

7 Q State your name for the record, please.

8 A Ted Bernstein.

9 Q Where do you reside, Mr. Bernstein?

10 A 880 Berkeley Street, Boca Raton, Florida.

11 Q Where are you employed?

12 A In Boca Raton, Florida.

13 Q What's the entity that employs you?

14 A Life Insurance Concepts.

15 Q How long have you been in that business?

16 A Approximately 15, 16, 17 years.

17 Q Were you engaged in the insurance business
18 before working with Life Concepts?

19 A I was in the insurance business before.

20 Q With who?

21 A Primarily for myself.

22 Q Were you employed by yourself or were you an
23 employee of some other person or entity?

24 A I was employed by companies that I set up.

25 Q Can you just tell me generally -- I don't need



1 a lot of detail, but what was the nature of it? Was it
2 mostly life insurance?

3 A Yes, it was.

4 Q Do you hold a license of any kind in Florida?

5 A I do.

6 Q What kind of license do you hold?

7 A A life insurance license: Life, accident and
8 health insurance.

9 Q Do you hold a license in any other state?

10 A I believe I do.

11 Q What other state or states?

12 A I can't remember off the top of my head.

13 Q What are the candidates for states in which
14 you might hold a license?

15 MR. SIMON: Objection; speculation.

16 You can answer.

17 A I can't -- I really can't remember. There's a
18 lot of states, and at different times we will do
19 business in those states and get a nonresident license.
20 I really can't remember.

21 Q Let me ask you this: Did you ever have a
22 resident license in any other state?

23 A I did.

24 Q What state is that?

25 A Illinois.



1 Q Is that license still active?

2 A My resident license is not.

3 Q Okay. Has any license, resident or otherwise,
4 in any state ever been disciplined or restricted in any
5 way?

6 A I don't recall. I don't think so.

7 Q Can you tell me what status you now have with
8 respect to the Estate of Simon Bernstein.

9 MR. SIMON: Objection; vague.

10 Q Do you understand my question?

11 A I don't understand the word "status".

12 Q Well, do you have any official role in any
13 official capacity with regard to the estate itself or
14 any entities or structures that relate to the estate?

15 MR. SIMON: Objection; vague.

16 A I believe I do; as trustee.

17 Q Of what are you trustee?

18 A Simon Bernstein Trust.

19 Q What is the year of that trust?

20 A I don't recall.

21 Q You are also a plaintiff in the case that's
22 pending in Chicago; is that correct?

23 A Yes.

24 Q So have you perceived any divergence of
25 interest or any conflict of interest in having a role



1 with respect to the trust and the estate while
2 simultaneously being a plaintiff in the case in Chicago?

3 A I do not.

4 Q As the trustee of the trust, the Simon
5 Bernstein Trust, will the proceeds of the estate, once
6 they are disbursed, be disbursed to that trust of which
7 you are a trustee?

8 MR. SIMON: Objection; speculation.

9 Q To your knowledge, is that your understanding
10 of the mechanics of it?

11 A I do believe that that's correct.

12 Q And you agree that, if you are successful as a
13 plaintiff in the Chicago case, the amount of assets
14 available in the estate to be disbursed to the trust of
15 which are you a trustee will be reduced, correct?

16 A Could you -- could you ask me that in a
17 different way?

18 Q Yes. If you are successful as a plaintiff in
19 the Chicago case and the proceeds of the insurance
20 policy regarding which we are all litigating is
21 disbursed to the plaintiffs in the Chicago case, those
22 funds will not be disbursed to the estate. You
23 understand that?

24 A I do.

25 Q And, therefore, the estate will have less



1 funds to disburse to the trust of which you are a
2 trustee. Do you understand mechanically that's what
3 would happen in that circumstance?

4 A I -- I do.

5 Q So you don't perceive a conflict in those
6 roles?

7 A I do not.

8 Q Okay. Now, the date of your father's death
9 was September 13, 2012, correct?

10 A Yes.

11 Q Prior to the time that your father died, were
12 you aware of the existence of any trust with regard to
13 any life insurance policy?

14 MR. SIMON: Objection; vague.

15 A Can you define "existence"?

16 Q Well, when did you first learn that -- well,
17 strike that.

18 In the lawsuit in Chicago, you're aware that
19 the plaintiffs are promoting the notion that there is a
20 1995 insurance trust which should receive the funds of
21 the insurance proceeds, correct?

22 A Correct.

23 Q When did you first become aware of the
24 existence of the trust that is being promoted as the
25 beneficiary in the Chicago case?



1 A I'm not sure that I can recall when I first
2 remembered when there was a trust.

3 Q Did you learn of it before or after your
4 father passed away?

5 A Before.

6 MR. STAMOS: I just want to get oriented
7 mechanically here. What we did was we have a bunch
8 of exhibits that we sent down, and the court
9 reporter was kind enough to break them into
10 exhibits so that we could use them with some ease.
11 I think there should be more than one set there I'm
12 hoping. And so we'll address those in a moment.
13 Among them would be the affidavit that was
14 submitted in support of the Motion for Summary
15 Judgment. I'm wondering if the court reporter
16 could give that to the witness now, and it is
17 Exhibit 19.

18 (Exhibit 19 was marked for identification.)

19 Q (By Mr. Stamos) Now, first of all,
20 Mr. Bernstein, can you tell me, who drafted this
21 affidavit?

22 A Can you explain -- help me with the term
23 "draft"?

24 Q Who wrote it? Who created it? I'm not sure
25 how to put it otherwise, but let's start with that.



1 A Counsel and -- and me, I guess.

2 Q Mr. Simon --

3 A Correct.

4 Q -- and you?

5 A Correct.

6 Q What did you understand the purpose of the
7 affidavit to be?

8 A To create a record of what my understanding
9 was of the questions being addressed here.

10 Q Now, if I could ask you, please, to look at --
11 I think it's the -- I don't know what page it is, but
12 it's -- I guess at the top it's Page 6 of 20, if you
13 look up there, and paragraph 25. Do you see that?

14 A I do.

15 Q Now, that paragraph says that, "I, Ted
16 Bernstein, as trustee of the Bernstein Trust, retained
17 plaintiff's counsel and initiated the filing of this
18 action."

19 Now, the first question I have for you is
20 what's the basis for your assertion that you are the
21 trustee of the Bernstein Trust?

22 A What is the basis of my understanding?

23 Q Yeah.

24 A I guess a couple of different things would be
25 the basis of my understanding.



1 Q What are they?

2 A David Simon told me I was the successor
3 trustee.

4 Q Okay.

5 A I've seen documents that would lead me to
6 believe that I was a successor trustee in some of the
7 notes that were in the documents that I've seen.

8 Q What documents are those?

9 A Trust documents.

10 Q Which trust documents are you referring to?

11 A I'm referring to the trust document that owned
12 this trust. I mean owned this policy.

13 Q So do we share the understanding that no one
14 has located an executed copy of the 1995 trust?

15 A We do.

16 Q I have Exhibits 21 and 22. I would ask the
17 court reporter to give those to you.

18 (Exhibits 21 and 22 were marked for
19 identification.)

20 Q Looking at number 21, I understand this to
21 have been a draft of -- represented to be a draft of a
22 trust that was found on a computer in the Simon law
23 office. Have you seen this document before and is my
24 understanding correct as far as you know?

25 A 21?



1 Q Yeah.

2 (Pause.)

3 Q Does my question make sense or should I
4 restate it? It was kind of convoluted.

5 A Sure, please.

6 Q So looking at number 21, what do you
7 understand that to be?

8 A An unexecuted copy of the irrevocable trust
9 agreement.

10 Q I'll tell you what. When we're talking about
11 the '95 trust, how about if we both call it the '95
12 trust? That way we won't confuse ourselves. Because I
13 think I started by not doing that, and I don't want us
14 confused. Okay?

15 A The '95 trust, certainly.

16 Q Have you seen this before?

17 A Yes, I have.

18 Q Is this one of the documents you're referring
19 to as being one of the bases for your belief that you
20 are the trustee of the '95 trust?

21 A I believe so.

22 Q When I look at Page 10, BT10, paragraph A
23 refers to the appointment of a successor trustee and it
24 refers to David Simon, and I'm wondering what about this
25 document implies to you that you would be the successor



1 trustee.

2 A Well, there's a couple of versions of this
3 document if my recollection is correct, and -- or maybe
4 not this document, but maybe forms of this document, and
5 in another one of the forms of this document I have seen
6 in this, what I believe would be the same or similar
7 section, some handwritten notes that listed me as a
8 successor trustee.

9 Q So, at least for our purposes, what I've shown
10 you as number 21 does not refer to you, correct?

11 A That's correct.

12 Q All right. We'll get back to 21.

13 Looking at 22 now, if you go to Page 20, I
14 understand, and tell me if you share this understanding,
15 that number 22 was a hard copy draft represented to be a
16 draft of the '95 trust that was found in a file
17 someplace in the Simon law office. Do you share that
18 understanding?

19 A I'm -- I'm not sure. Could you repeat that
20 for me, please?

21 Q Well, have you seen this before?

22 A I have.

23 Q What do you understand it to be?

24 A A version, another version of the -- of the
25 trust document, of the '95 trust.



1 Q It is also unexecuted, correct?

2 A Yes, it is.

3 Q When you look at Page BT20, do you see that?

4 A I do.

5 Q When you look at paragraph A under article 11,
6 is that the handwriting you're talking about having
7 seen?

8 A Yes, it is.

9 Q It says, "If for any reason --," it looks like
10 it says, "Shirley dead," et cetera, question mark,
11 right?

12 A Yes.

13 Q Then it says, "Does not continue to act as
14 trustee," and then it looks like it says, "Pam, Ted,"
15 right?

16 A Yes.

17 Q Whose handwriting is that, do you know?

18 A I believe it to be David's.

19 Q Did David ever have a conversation with you
20 about either of these documents, 21 or 22?

21 A No.

22 Q Other than those two documents that I've just
23 shown you, Exhibits 21 and 22, are you aware of any
24 other documents that exist that constitute drafts of the
25 1995 trust?



1 A No.

2 Q So, as far as you know, these are the only
3 drafts that are in our communal possession, correct?

4 A I believe so.

5 Q Earlier, in beginning to answer one of my
6 questions, you said that David Simon was a source of
7 your knowledge that you were the trustee. Did you ever
8 have a conversation with David in that regard, or
9 conversations?

10 A About him telling me that I was the successor
11 trustee?

12 Q Yes.

13 A Yes.

14 Q When was the first time you and he talked
15 about that?

16 A It was sometime after Simon's death. I would
17 say after Simon's death.

18 Q Do you have a sense for how long after Simon's
19 death?

20 A No, I really don't.

21 Q Who was present for that conversation?

22 A Other than he and me, I don't know if anybody
23 was.

24 Q What did you say to him? What did he say to
25 you in that conversation?



1 A I don't have any idea.

2 Q Well, did you talk about the '95 trust?

3 A Yes.

4 Q What did you say to him and what did he say to
5 you?

6 A I can't recall the specifics, but it was about
7 the fact that there was a trust that was unable to be
8 located and who the -- the trustees were, who the
9 successor trustees were.

10 I can't be more specific with you than --
11 than -- than that. I just don't recall, you know, the
12 specifics of the conversation at that point in time.

13 Q All right. At the point in time that you had
14 that conversation, did David have in his possession
15 either Exhibit Number 21 or Number 22, or had you seen
16 either of them by then?

17 A I don't believe so.

18 Q Is it fair to say that you didn't see 21 and
19 22 until sometime after your father died?

20 A That's correct.

21 Q Now, if you would go to -- looking back at
22 your exhibit now, which is number 19, if you would look
23 at paragraph 47. Do you see that?

24 A Yes.

25 Q Now, you describe there that you participated



1 in and conducted diligent searches of your father's
2 home, office and condominium, and some further activity
3 following that. Can you tell me when those searches
4 took place relative to his death?

5 A No, I can't.

6 Q Can you give me a time range? If you think
7 about the date of his death being in September, did you
8 do that search October, November, December?

9 A I really -- I don't know the dates.

10 Q Who else searched, or who searched with you,
11 if that's different?

12 A I don't believe that anybody else searched
13 with me.

14 Q Did anyone search separately for documents?

15 MR. SIMON: Object --

16 A No.

17 Q In paragraph 48 of Exhibit 19, it says, "I am
18 aware that the documents produced by Plaintiffs in this
19 matter also contain documents located by David Simon and
20 Pamela Simon in their offices in Chicago." Do you see
21 that there?

22 A I do.

23 Q When do you understand they performed a search
24 of their offices in Chicago for documents relative to
25 the dispute we're in now?



1 MR. SIMON: Objection; speculation.

2 A I have no idea.

3 Q Well, you said that you're aware. How were
4 you made aware of that fact?

5 A By learning of it probably from conversations.

6 Q Conversations with whom?

7 A With David Simon, I would imagine.

8 Q But you don't know the source -- you can't
9 tell me specifically the source of that information,
10 correct?

11 A Well, you're asking for dates or source?

12 Q Well, source is where I'm going now.

13 A Source, I think it was with -- with David
14 Simon.

15 Q What documents do you understand were located
16 and produced that were found in their offices?

17 MR. SIMON: Objection; speculation.

18 Q Well, now, let's make sure we're clear. I'm
19 never asking you to speculate -- there might be times
20 that I do ask you to speculate. Sometimes that's a
21 useful question to ask. So when Mr. Simon says,
22 "Objection; speculation," I'm asking you to tell me what
23 you know or you don't know or what you think. So I just
24 want you to be aware that I'm not asking you to take
25 wild guesses about things.



1 A Okay.

2 Q All right?

3 A Could you ask me that last question again,
4 please.

5 Q Now I forget my question.

6 MR. SIMON: Can you read the question?

7 MR. STAMOS: Why don't you read that question
8 back.

9 (Candice Bernstein enters the room.)

10 (Read back by the reporter.)

11 MR. SIMON: Same objection.

12 Let's just take a one-minute break.

13 (Recess taken.)

14 MR. STAMOS: Was there a question pending?

15 (Read back by the reporter.)

16 THE WITNESS: And -- other than these
17 documents, I would imagine, that you're asking me
18 about?

19 Q (By Mr. Stamos) Other than 21 and 22 you mean?

20 A Yes.

21 Q Yes.

22 A Other than 21 and 22. I believe there was a
23 document that was something to do with a filing to the
24 IRS concerning the trust. There might have been a -- a
25 W-9 or something. And I think that might be the extent



1 of it.

2 Q All right. So let's then go to number 88,
3 paragraph 88. That's page 13 of 20.

4 A 88?

5 Q Yes.

6 A Okay. It's on my Page 12, but okay.

7 Q Oh. If you look at the top, does the top say,
8 "13 of 20"?

9 A 13 of 20 on the top, it does.

10 Q Yeah, I'm sorry. I think actually we had
11 those numbered and sent to you, but the copy I had it
12 made from was never numbered. So we'll refer to it as
13 Page 12.

14 A Okay.

15 Q All right. So 88, it says here, "In 1995, I
16 was sharing office space with Simon Bernstein in
17 Chicago, as was your sister Pam and David."

18 Now, first of all, during what years did you
19 share office space with your father in Chicago?

20 A About these times, I'm going to say shared
21 office space in 1980 through 1995-ish.

22 Q In 1995, did you leave for Florida?

23 A Yes. I began --

24 Q Okay.

25 A Yes, I began going to Florida in 1995 back and



1 forth.

2 Q It says, "In the summer of 1995, Simon
3 Bernstein discussed with me that he was forming a life
4 insurance trust with a policy and that I would be named
5 one of the trustees for the life insurance trust."

6 Now, who was present for that conversation?

7 A Of course Simon Bernstein, my father, would
8 have been present, but other than that I can't remember.

9 Q After you and he talked about that in 1995,
10 what was the next time you had any information or
11 knowledge regarding the existence, creation, changes to,
12 et cetera, regarding a trust in 1995, dated 1995?

13 A I believe that would have been maybe a year, a
14 year and a half prior to my father's death when there
15 was a -- this -- the policy that was in this trust
16 lapsed and there was a reinstatement matter, and about
17 that time it would have -- it would have come up again.

18 Q When you say, "It would have come up again,"
19 did you have a conversation with anyone at that time
20 about the 1995 trust? In other words --

21 A No.

22 Q -- at the time that you were addressing the
23 reinstatement of the policy the year or two before he
24 died, did you have any conversation with him, not about
25 the reinstatement of the policy, but about the 1995



1 trust?

2 A No.

3 Q So any other time prior to his death that you
4 had conversations with anyone about the 1995 trust?

5 A No.

6 Q Now, it says here that he told you you were
7 going to be one of the trustees. I take it you never
8 saw an executed trust with you -- period, correct?

9 A Correct.

10 Q So, therefore, you never saw an executed trust
11 with your name on it as trustee, correct?

12 A Not -- not that I recall.

13 Q Well, when you had the conversation with David
14 Simon that you described earlier in which you learned
15 that you were the replacement -- the successor trustee,
16 did you remember this conversation with your father, or
17 was that a different topic because in '95 he said you
18 would be the trustee, not a successor trustee?

19 MR. SIMON: Objection; vague.

20 A So the conversation with David Simon would
21 have made perfect sense -- based on '88, would have made
22 perfect sense when he told me that I was, you know,
23 successor trustee.

24 Q Right. I mean, I know it would have made
25 perfect sense. What I'm asking you is: Did you hearken



1 back and say, "Oh, yeah, dad told me that," or something
2 like that?

3 A Oh. I don't recall. I can't remember.

4 Q Then if you would go, please, to paragraph 97,
5 it says, "Following the death of my father, my sister
6 Pamela and brother-in-law David conducted searches of
7 their office files and records and that's where they
8 located the unexecuted drafts." I take that to be 21
9 and 22, correct?

10 A Yes.

11 Q Now, referring to the metadata that is in the
12 last sentence of that paragraph, if you would please
13 look at Exhibit 21, let me tell you what I understand
14 the facts to be, and tell me if you share the
15 understanding. I always get a little confused about
16 metadata, but where it indicates, "Wednesday June 21,
17 1995," then says, "Modified," David's told us that's
18 actually the date the document was created. Does that
19 sound like your understanding?

20 MR. SIMON: Objection; speculation. This is
21 not his database. He knows nothing about it.

22 MR. STAMOS: Adam, if you've got an objection
23 as to form, you may do that, but I don't expect you
24 to give answers about what he knows or he doesn't
25 know, because the affidavit says it includes a



1 printout of metadata from the computer file for
2 this draft indicating it was last modified on
3 June 21st. So he's got some knowledge; otherwise,
4 he wouldn't have signed the affidavit. So please
5 don't tell him what he knows and doesn't know.

6 So I'm going to ask my question again.

7 Q (By Mr. Stamos) When you look at the metadata,
8 do you understand -- this is my understanding. Do you
9 understand that, where it says, "Modified Wednesday
10 June 21, 1995" -- David Simon has told us that's the day
11 that the document was created. Is that your
12 understanding of it?

13 MR. SIMON: Objection; speculation.

14 A I just want to make sure that -- could you
15 help me out and -- where do you want me to look at on
16 this document in reference to what you're asking me?

17 Q On the page you're looking at, is there --
18 Can you see this (indicating)?

19 Is there a little square box --

20 A Yes, there is.

21 Q -- rectangular box? Okay.

22 So you see those words there about -- on the
23 second half of it, so to speak, "Created, modified,
24 accessed"?

25 A Yes, I do now, yeah. Yes.



1 Q What I understand David has testified to, and
2 I believe it's on Page 90 of his deposition, is that
3 where it says, "Modified," that was the day it was put
4 in the computer; where it says, "September 3rd," that
5 was the day it was re-entered into a new database,
6 September 3, 2004; and where it says, "September 30,
7 2013 accessed," that's the day it was taken off of the
8 computer and ultimately printed so that we could see it.
9 Do you share that understanding?

10 MR. SIMON: Objection; speculation.

11 A I don't. I don't have any idea what this --
12 all this means.

13 Q Do you know what date it was that this
14 document, 21, was taken off of the computer?

15 A I don't.

16 Q Where paragraph 98 says, "The second draft of
17 the Bernstein trust was located as a hard copy inside a
18 file folder within the stored files of David Simon," do
19 you know when that was found?

20 A Back to this document (indicating)?

21 Q Back to Exhibit Number 22, yes.

22 A Okay. Could you ask me that again, please?

23 Q Yeah. If you look at -- do you know when
24 Exhibit Number 22 was found?

25 A I don't.



1 Q How did you learn it was found?

2 A I learned of it from conversations with David.
3 I learned of it reading these things. I -- that's, I
4 guess, the two ways I would have learned about it.

5 Q We're going to go through some emails in a
6 moment, but I imagine that the discovery of those two
7 drafts was considered to be an important step in this
8 case for you, correct?

9 MR. SIMON: Objection; speculation.

10 Q Was it important or not?

11 A I don't know.

12 Q Did you think it was a positive development
13 from the point of view of the lawsuit, you as a
14 plaintiff in the Chicago lawsuit, that these documents
15 were found?

16 MR. SIMON: Objection; relevance.

17 A I thought it was a positive development as a
18 layperson.

19 Q How did you come to possess them so that you
20 could look at them? Were they emailed to you from
21 Chicago?

22 A I don't recall.

23 Q Do you recall seeing them before today,
24 obviously?

25 A Yes.



1 Q Do you recall seeing him before the lawsuit
2 was filed in Chicago?

3 A I don't recall.

4 Q Now, a couple of more things about your
5 affidavit.

6 Some of these things that are in here -- I'd
7 like you, if you would, to look at paragraph 21, would
8 you, of Exhibit Number 19. Do you see paragraph 21?

9 A I do.

10 Q Now, the first sentence where it says, "The
11 Simon Bernstein Irrevocable Insurance Trust dated
12 6/21/95 is an irrevocable life insurance trust formed in
13 Illinois as further described below," does that assume
14 that the trust -- your statement that it is a trust, is
15 that based upon your understanding that it was executed?

16 A If I'm understanding your question correctly,
17 yes.

18 Q What's the basis for your understanding that
19 it was executed?

20 A That -- number one, that David told me that it
21 was; number two, that there were filings that had tax ID
22 number. I believe I -- there was a form that may have
23 been filled out for the insurance company that named the
24 beneficiary -- I mean -- yeah, that named the life
25 insurance trust as the beneficiary, and maybe there was



1 an Equifax reporting where I think Simon said --
2 mentioned that the contingent beneficiary of the life
3 insurance policy was an irrevocable trust, just --

4 Q But in terms of your father having signed the
5 document, the knowledge of that is based on what David
6 Simon told you, correct?

7 A Yes.

8 Q Look if you will, at paragraph 40, which is on
9 page -- I'm guessing 7 at the bottom.

10 A 40?

11 Q Yes, paragraph 40, the last line of that.
12 Do you see that?

13 A I do.

14 Q It says, "The vivo was dissolved in 1998 upon
15 dissolution of S. B. Lexington, Inc." How do you know
16 that?

17 A I know that from -- from David.

18 Q Where it says, paragraph 41, "Robert Spallina,
19 Esquire was named a third-party defendant to Eliot's
20 claims," how do you know that?

21 A I'm not sure how I know it. I just -- I'm not
22 exactly sure that I even understand that question.

23 Q You don't understand the question or the
24 assertion in 41?

25 A Your question of how I know something.



1 Q Well, how did you become aware? How did you
2 become aware of the statement of the fact asserted in
3 paragraph 41, that Robert Spallina, Esquire was named a
4 third-party defendant to Eliot's claims? How do you
5 know that to be true?

6 A Probably from seeing documents where he was a
7 named defendant.

8 Q Would that also be true with regard to the
9 succeeding paragraphs, 42, 43, 44?

10 A Okay. So I've read those subsequent
11 paragraphs. What is the question about them?

12 Q How do you know the facts asserted in those
13 paragraphs?

14 A Well, they're all different paragraphs about
15 different things, so some --

16 Q Well, we'll go through them one by one.
17 That's fine.

18 A Okay.

19 Q How do you know that National Services
20 Association was named as a third-party defendant to
21 Eliot's claim?

22 A From seeing documents or from -- and/or from
23 having conversations with David and counsel.

24 Q How about Benjamin Brown filed a motion to
25 intervene? How did you know that?



1 A From conversations with -- with counsel or
2 seeing documents.

3 Q Look at page 59 -- I'm sorry, paragraph 59 on
4 Page 9, please, and in that first sentence, it says,
5 "During the application process, the insurer conducted a
6 routine underwriting investigation of Simon Bernstein
7 prior to approving his policy." How do you know that?

8 A From conversations with counsel, and also
9 there were a lot of documents that the insurance company
10 sent over to me at the time that this policy was going
11 through the reinstatement process. So these are all
12 pretty common things for -- for me to see in -- in an
13 insurance company's document like that.

14 I'm -- I'm -- I think it would be also in
15 something about an application process that may have
16 been through the discovery of the documents that the
17 insurance company provided in that reinstatement
18 process.

19 Q Look at paragraph 70, please. It's on Page
20 10.

21 A Okay.

22 Q It says, "On or about June 5, 1992, a letter
23 was submitted on behalf of the policyholder informing
24 the insurer that LaSalle National Trust was being
25 appointed as successor trustee." Did you become aware



1 of that by reviewing documents in this case?

2 A Yes, I believe so.

3 Q Likewise, the June 17, 1992, acknowledgment by
4 the insurer is also something you learned long after
5 1992, correct?

6 A Yes.

7 Q That's all I want to talk to you about your
8 affidavit for now. I want to walk through the emails
9 with you, if we can. I think they've been numbered.
10 I'd like to begin with Exhibit Number 1.

11 (Exhibit 1 was marked for identification.)

12 Q Do you have that in front of you? I believe
13 it's marked Exhibit Number 1 with Bates numbers TS4965
14 to 4966. Do you see that?

15 A Yes, I do.

16 Q Now, this is dated -- it's a string that
17 begins, it looks like, on October 15th and ends on
18 October 19th, if I'm looking at that correctly. So we
19 have to read the second page first. Okay?

20 A Yes.

21 Q Now, as best I'm able to tell, this is the
22 earliest email that I have on the subject matter of
23 obtaining the life insurance proceeds that we're
24 addressing here. Do you know when the process began, if
25 this was the beginning of the process or was there



1 effort and discussion about that prior to October 15,
2 2012?

3 A I do not know.

4 Q What's the first conversation you recall with
5 anyone after your father's passing about the insurance
6 policy and the trust and so forth?

7 A My recollection would be with Robert Spallina
8 and/or Don Tescher.

9 Q If we're looking here at Exhibit Number 1,
10 Page 2 of that exhibit, on the 15th it looks like Pam
11 wrote, "Hi all. Do you have time for a status," to
12 which Spallina writes, "There are no updates at this
13 time." Does that imply to you that there must have been
14 communications before October 15th about the insurance
15 policy?

16 MR. SIMON: Objection; speculation.

17 A No, it doesn't.

18 Q It doesn't?

19 A No.

20 Q So, when he says there are no updates, would
21 that not imply to you that he knew there was something
22 to be updated and, therefore, would have been familiar
23 with the topic?

24 A I -- I'm not sure. There were a lot of things
25 going on about a lot of topics. So the question "Do you



1 have time for status -- "

2 Q Okay.

3 A -- I -- I can't be sure what led up to the --
4 to that question being asked without any more guiding
5 information in that sentence.

6 Q Did you have an understanding that
7 Mr. Spallina submitted a claim to the insurance company
8 representing himself to be the trustee of the '95 trust?

9 A Can you ask me that again? There was wind or
10 something.

11 Q I'm sorry. That's actually a train.

12 Do you understand that Mr. Spallina made
13 application to the insurance company for the proceeds of
14 the insurance stating that he was the trustee of the
15 trust?

16 A I do understand that, yes.

17 Q When is the first time you became aware that
18 Mr. Spallina was going to make an application
19 identifying himself as the trustee?

20 A I'm -- I will say after Simon's death
21 obviously, but other than that, I don't -- I can't tell
22 you what the time period was.

23 Q Did you ever have a -- were you aware he was
24 going to do that before he did it?

25 A I was not.



1 Q You were only aware of that after he was --
2 after he did it?

3 A After he did it.

4 Q How did you become aware of that?

5 A Through conversations with Robert Spallina.

6 Q Look, if you will, at the top of -- I'm sorry,
7 look at the middle, from Robert Spallina, October 19th,
8 to Pam Simon, copied to you. Do you see that?

9 A We're on Page 1 now?

10 Q Yes, we are.

11 A Page 1, and you want me to pick up where?

12 Q Where it says, right in the middle, "Pam, my
13 office is processing."

14 A Yeah.

15 Q Do you see that?

16 A Yes, I do.

17 Q And you were copied on this, correct?

18 A I was.

19 Q It says, "My office is processing --" this is
20 from Spallina. "My office is processing the claim as
21 your father was the owner of the policy and the proceeds
22 will likely be paid to the estate in the absence of
23 finding the trust."

24 Is it fair to say -- did you understand at
25 that point it was understood that the trust could not be



1 located, the '95 trust?

2 MR. SIMON: Objection; speculation, form.

3 A Yes.

4 Q Then he says, "As I mentioned previously,
5 there was a discussion with the carrier about possibly
6 using the 2000 trust (the one you are carved out of but
7 would be split five ways according to Ted), but I am not
8 sure that we will achieve that result." Do you see
9 that?

10 A I do.

11 Q What was the first conversation you had with
12 Mr. Spallina about the possibility of submitting the
13 claim to the insurance company using the 2000 trust?

14 A Around the same time that these discussions
15 were going on.

16 Q When did you become aware that the 2000 trust
17 existed?

18 A Around this same time period.

19 Q When you first had that conversation with
20 Mr. Spallina, what did you say to him and what did he
21 say to you about using the 2000 trust to submit a claim
22 to the insurance company?

23 MR. SIMON: Objection; privilege.

24 Don't answer.

25 MR. STAMOS: Privilege? Privilege of who for



1 whom?

2 MR. SIMON: Attorney-client. He was his
3 attorney. Spallina was his attorney. You're
4 asking about a conversation between him and his
5 attorney.

6 Q Well, he was your attorney personally or as
7 trustee or what?

8 A He was my attorney as trustee.

9 Q Trustee of what?

10 A Shirley Bernstein Trust.

11 Q Did the Shirley Bernstein Trust have an
12 interest in the insurance policy that we're litigating
13 about?

14 A It did not.

15 Q So what did the conversation you had with him
16 about the 2000 trust have to do with your role as
17 trustee of Shirley's trust?

18 MR. SIMON: Same objection; privilege.

19 Don't answer.

20 MR. STAMOS: Well, I'm not asking for a
21 conversation. I'm trying to establish -- I think
22 that you're obligated to establish the basis of a
23 privilege objection, and I'm entitled to test the
24 existence of the privilege.

25 You've declared that Mr. Spallina was his



1 lawyer. He's now told me Mr. Spallina was his
2 lawyer as trustee of Shirley's trust, and he's now
3 established with me that Shirley's trust had no
4 interest in the subject matter of the insurance
5 policy, while we know that Mr. Bernstein has a
6 personal interest in the result of the insurance
7 policy. So I don't see how Mr. Spallina was his
8 lawyer with regard to this topic.

9 Do you have a basis for asserting that?

10 MR. SIMON: He consulted with him as an
11 attorney on this matter. That's my basis.

12 Q (By Mr. Stamos) Is that true, Mr. Bernstein.

13 THE WITNESS: Answer?

14 MR. SIMON: (Nonverbal response.)

15 A Is it true that I consulted with him about
16 this matter?

17 Q That you consulted with him about this matter
18 in a capacity other than as the trustee of Shirley's
19 trust.

20 And I don't mean to be disrespectful by saying
21 "Shirley's trust". I'm just shortening --

22 A Sure.

23 Q Is "sure" the answer to my question or
24 response to my comment there?

25 A Oh.



1 Q I'm sorry, I'm confused.

2 MR. ROSE: Do you want to confer about the
3 privilege issue if you're confused?

4 MR. STAMOS: I do. I do.

5 Would you please recite the question again to
6 the witness leaving out my comment about Shirley.

7 MR. SIMON: We're going to take a minute and
8 confer on a privilege issue.

9 MR. STAMOS: That's a good idea.

10 (Recess taken.)

11 MR. STAMOS: All right. So can we read the
12 last question back to the witness without my
13 editorial comment at the end.

14 (Read back by the reporter.)

15 Q (By Mr. Stamos) Can you answer that, please.

16 THE WITNESS: Could you read it back to me
17 again, please.

18 Q Actually, you know what, let me stop there.
19 Let me ask a couple of more questions and I'll get back
20 to that.

21 Would you agree with me that Exhibit Number 1
22 reflects an email by Mr. Spallina to yourself and to Pam
23 with regard to the subject matter of the potential use
24 of the 2000 trust?

25 A Yes.



1 Q And, likewise, the email from yourself at the
2 top to Mr. Spallina and to Pam is talking generally here
3 about making the application to the insurance company,
4 correct?

5 A Correct.

6 Q So you made Pam privy to your conversations
7 and your communications with Mr. Spallina with regard to
8 this topic, correct?

9 A Well, I don't know if I made her privy, but
10 this was a chain of people in -- in this email going,
11 you know, between two and three people.

12 Q Right. But you were the only one who was the
13 trustee of Shirley's trust, correct?

14 A Yes.

15 MR. STAMOS: All right. Well, let me just add
16 that, not only do I still not understand what the
17 basis for a privilege would be, but if there was a
18 privilege, it was waived by including Pam in these
19 communications. So do I need to establish that any
20 more, Adam, or can I ask more questions?

21 MR. SIMON: If depends what the question is.
22 If it's about these emails, that's fine. If it's
23 about conversations between Robert and him
24 personally, it's not fine. It's privileged.

25 MR. STAMOS: All right.



1 Q (By Mr. Stamos) Were there any other
2 conversations in which you and Pam and he participated
3 with regard to the subject matter of the 2000 trust?

4 A No, not that I recall.

5 Q What was the notion behind the potential for
6 using the 2000 trust?

7 MR. SIMON: Objection; speculation.

8 A I don't know.

9 Q When Mr. Spallina made the application to the
10 company identifying himself as the trustee of the '95
11 trust, was he acting as your lawyer at that time?

12 MR. SIMON: Objection; form. I think you said
13 made an application to an insurance company?

14 Q I thought we established earlier that you were
15 aware that Mr. Spallina had applied to the insurance
16 company for distribution of the proceeds to the '95
17 trust and had done that representing himself to be the
18 trustee of the '95 trust. Did I hear that correctly?

19 A Yes.

20 Q Okay. When he did that, was he your lawyer
21 then?

22 A Yes.

23 Q So are you telling us that he submitted that
24 as your lawyer without your knowledge?

25 A I'm telling you that, if that's what he did as



1 my -- if that's what he did, he was doing it as my
2 attorney.

3 Q But you're telling me that he did it without
4 your knowledge?

5 A I'm telling you that, if he did it, he did it
6 as my attorney. Whether he did it with my knowledge or
7 not, that's something I think I've said I -- I don't
8 remember.

9 Q When you say he did it as your attorney, are
10 you saying he did it as your attorney in your capacity
11 as the trustee of Shirley's trust?

12 A All my --

13 MR. SIMON: Objection; speculation.

14 MR. STAMOS: Well, I mean, I'm not sure what's
15 speculative about that.

16 Q Can you answer that question?

17 MR. SIMON: Yeah, I can answer what's
18 speculative about it. He --

19 MR. STAMOS: No, no, no. I haven't asked you
20 any questions. I'm asking the witness. I'm not
21 asking you to explain to the witness now how to
22 calculate this as being speculative. I'm asking
23 the question.

24 I'm going to ask the court reporter to read
25 that question back.



1 (Read back by the reporter.)

2 A I'm saying that my conversations with Robert
3 Spallina, I viewed him as my counsel. In any
4 conversations I had with Robert Spallina, I expected
5 that the attorney-client privilege was there.

6 Q But what I'm trying to get at is, do you have
7 an understanding as to in what -- because you have --
8 you wear many hats apparently. Are you saying he was
9 your attorney in every hat you wore?

10 MR. SIMON: Object to form.

11 Q Do you understand my question?

12 A I believe I do.

13 Q Okay. Are you telling us that he was your
14 attorney in each of the capacities you have that relate
15 to the subject matter of this lawsuit?

16 A In these -- in these matters --

17 Q For your father's --

18 A Yes.

19 Q So that would include he was your attorney as
20 the trustee of Shirley's trust; he was your attorney as
21 the successor trustee of the '95 trust; and he was your
22 personal attorney?

23 A As everything that relates to these matters,
24 yes, I -- I viewed Robert as my attorney.

25 Q Did he ever disclose to you potential issues



1 of conflict that arose by virtue of the divergent roles
2 you have as I've just described, and perhaps there are
3 other roles?

4 MR. SIMON: Objection; privilege.

5 MR. STAMOS: Privilege for which attorney --

6 MR. SIMON: If that's not privileged, nothing
7 is.

8 MR. STAMOS: Well, we're going to have to
9 litigate about this, so I'm trying to figure out --

10 MR. SIMON: That's fine.

11 MR. STAMOS: -- a privilege in which
12 attorney-client relationship? The attorney-client
13 relationship of him to --

14 MR. SIMON: You just asked -- Jim, let me
15 answer your question. You just asked about a
16 conflict in many different capacities, correct?

17 MR. STAMOS: Yes.

18 MR. SIMON: So any of those capacities or all
19 of them, it's privileged, and that's --

20 MR. STAMOS: I understand conceptually. What
21 I'm asking you is, in which capacity are you saying
22 there was a conversation that resulted in a
23 privileged conversation?

24 MR. SIMON: In the capacity that he was the
25 client and Robert was the attorney, and we won't be



1 talking about conversations between them that are
2 privileged.

3 Q (By Mr. Stamos) Are you going to follow your
4 lawyer's instruction not to answer any questions about
5 conversations you had with Robert Spallina?

6 A I am.

7 Q Will that extend to conversations that are
8 memorialized in the emails that we're going to be
9 reviewing here?

10 MR. SIMON: I will --

11 Is that for me or him?

12 MR. STAMOS: Well, that's for him, but I guess
13 I'm curious --

14 (Cross-talking. Interruption by the
15 reporter.)

16 MR. SIMON: We won't assert privilege where
17 there's a third party on the email or it's been
18 disclosed because we didn't assert the privilege.

19 MR. STAMOS: Okay. I just want to state that
20 my position, so to give you an opportunity to
21 modify yours, is that, by virtue of our having been
22 produced these emails, and we're going to go
23 through more, which themselves give us partial
24 information about conversations that took place and
25 communications that took place about the topics



1 we're addressing, such as the potential use of the
2 2000 trust, that the privilege was waived, that you
3 can't -- that's number one.

4 And, number 2, that these documents reflect
5 that the communications on these topics were not
6 conducted solely between Mr. Spallina, as
7 Mr. Bernstein's lawyer, and Mr. Bernstein, but were
8 conducted among Mr. Spallina and Mr. Bernstein and
9 others who did not have his capacities regarding
10 these matters and was waived in that way as well.

11 So that's my position, and I ask you to
12 reconsider yours. Otherwise, we'll have to have
13 the judge address it.

14 MR. SIMON: We'll likely have to have the
15 judge address it, but we'll consider it at a break.

16 MR. STAMOS: Okay.

17 Q (By Mr. Stamos) Did you personally make a
18 judgment or reach a conclusion as to whether the 2000
19 trust should be used as a beneficiary in making a
20 submission to the insurance company for proceeds of the
21 insurance policy?

22 A I did not.

23 Q Did you ever have a conversation with anyone
24 other than Mr. Spallina about the potential for using
25 the 2000 trust in making an application to the insurance



1 company?

2 A Possibly -- possibly Donald Tescher.

3 Q Did you ever have a conversation with your
4 sister who would not have received proceeds of the
5 policy if, in fact, the 2000 trust were employed?

6 A Not that I recall, no.

7 Q So this entire process was conducted, and at
8 no point did you discuss with your sister the fact that
9 if the 2000 trust were employed, in fact, she would be
10 cut out of the proceeds of the insurance policy?

11 MR. SIMON: Objection; asked and answered.

12 You can answer.

13 Q Is that correct? That's your testimony?

14 A That's correct.

15 Q Did you have a conversation with anyone else
16 other than maybe Spallina and maybe Tescher?

17 A About the 2000 trust document; is that the
18 question?

19 Q Yes.

20 A No, I don't believe so.

21 Q Where Mr. Spallina writes to Pam here in the
22 middle of Exhibit Number 1, Page 1, "As I mentioned
23 previously, there was a discussion with the carrier
24 about possibly using the 2000 trust, the one you are
25 carved out of but would be split five ways according to



1 Ted, but I'm not sure that we will achieve that result."

2 Are you familiar with what he's talking about there?

3 A Yes.

4 Q What's he talking about there?

5 A It looks like he's talking about the fact that
6 the 2000 document didn't include Pam, and he was
7 probably -- he -- it looks like he may have been
8 referencing, according to him, according to me, the --
9 the -- there would be a split five ways.

10 Q What was the basis for your belief that there
11 would be a split five ways?

12 A There were conversations going on at that
13 point in time about how to -- what to do with, you know,
14 this insurance policy, and splitting it five ways was
15 what -- my understanding was how the -- what the
16 proceeds of the policy -- of the trust were going to be.

17 Q The 2000 trust?

18 A No, not the -- I knew nothing about a 2000
19 trust.

20 Q Do you recall receiving this email where --
21 the last item in the string is from you, where
22 Mr. Spallina says, "As I mentioned previously, there was
23 a discussion with the carrier about possibly using the
24 2000 trust, the one you are carved out of but would be
25 split five ways according to Ted," doesn't that imply



1 that you were involved in a conversation about the 2000
2 trust?

3 A I didn't have conversations with the carrier.
4 Spallina had conversations with the carrier. I did not.

5 Q No, no. Doesn't this imply that you had a
6 conversation with Mr. Spallina in which he says, "But it
7 would be split five ways according to Ted"? I mean, how
8 would he know what Ted thought unless Ted told him, and
9 you're Ted?

10 A I -- I -- I can't help you there. I don't
11 know what Spallina was thinking.

12 Q In any event, so we've established that this
13 is a string of emails that you and Ted and Pam shared,
14 correct? You and Spallina and Pam shared, correct?

15 A Yes.

16 Q And you would have seen them at or about the
17 time they're dated, correct?

18 A Yes.

19 Q Let me then go to Exhibit Number 2, which is
20 TS4489 through 92.

21 (Exhibit 2 was marked for identification.)

22 Q Again, we have to go back to front, and this
23 is a string of emails -- am I correct, this is a string
24 of emails in which you participated, the last one being
25 from you to Mr. Spallina, Pam Simon, David Simon and --



1 I guess Pam Simon twice, right?

2 A Yes.

3 Q Okay. Going back to front, the first message
4 appears to be from Pam to Spallina and to you saying,
5 "Hi, Robert. Any word on the proceeds," asking whether
6 he needed help, correct?

7 A Yes.

8 Q Then the next item of the string is from
9 Spallina to Pam saying, "Heritage responded back that
10 they need a copy of the trust instrument. We do not
11 have a copy, and the only executed trust document that
12 we have in which the policy is listed as an asset is the
13 2000 trust prepared by Al Gortz." Do you see that?

14 A I do see that.

15 Q This is dated, it looks like, November 19,
16 2012. It is your email back. "Highly unlikely they
17 will use another trust. What is the SOP when a doc
18 can't be found?" That's from you, right?

19 A Yes, it is.

20 Q And it's dated November 19, 2012, right?

21 A Yes.

22 Q Am I correct, as I'm reading this, at least by
23 November 19, 2012, no one has located Exhibits 21 and 22
24 that we talked about earlier, the unsigned drafts of the
25 trust, correct?



1 MR. SIMON: Objection; speculation.

2 A You are right, correct.

3 Q When you then go to the next page, 4490, it
4 says, from Pam to you, copied to Spallina, "Please send
5 the executed trust document before you respond to
6 Heritage." Do you remember what Pam -- what trust
7 document she was talking about?

8 A I do not.

9 Q Is it fair to say the only executed document
10 you had that would be relevant at that point would have
11 been the 2000 trust document, correct?

12 MR. SIMON: Objection; speculation.

13 Q As far as you knew.

14 A Can you ask me that question again, please?

15 Q Yeah. Actually, it might help if I go above
16 that. When you look at Spallina's note to you then, a
17 little bit below the halfway point of page 4409, it
18 says, from Spallina, "We are not responding to them with
19 the document from 2000. We discussed that and you are
20 carved out under that document. We need to find the
21 1995 trust ASAP."

22 Do you understand that was him responding to
23 Pam where she said, "Please send the executed trust
24 document before you respond to Heritage"?

25 A I -- I do.



1 Q He must have been talking about the 2000
2 trust, and he's telling her we're not going to use that
3 trust because you're cut out, right?

4 A I can't say for sure, you know, why he's
5 saying that, but that's, you know, what -- what it looks
6 like from this document.

7 Q When you received this and saw it, is that
8 what you assumed, that he's telling her we're not going
9 to use the 2000 trust because you're cut out of it?

10 MR. SIMON: Objection; speculation.

11 MR. STAMOS: No. I'm not asking him to
12 speculate.

13 Q I'm asking your perception when you read this.

14 MR. SIMON: No. You asked him what he
15 assumed, is what you asked.

16 MR. STAMOS: Well, I'm not asking him to
17 speculate about what he assumed. I'm asking him to
18 tell me what he assumed, if he can remember.

19 A I can't remember, but according to this,
20 that's what it looks like Spallina is saying.

21 Q Okay. That's fine.

22 Then there's another letter -- there's another
23 note November 19th, the same date, from David Simon,
24 "May be able to achieve Sy's intended result through
25 waiver and settlement agreement." That was the attempt



1 that was made to get all five children to sign off, and
2 then you wouldn't need to worry about what the trust
3 said or didn't say, correct?

4 A I believe so, yes.

5 Q Okay, excellent. If you then look at Exhibit
6 Number 3, it looks to me -- if you just take a quick
7 look at this, it looks to me that this is an email from
8 Pam, and you are among those copied --

9 A I don't have it.

10 Q We don't have 3 yet.

11 MR. STAMOS: Oh, I'm sorry. I'm sorry. Could
12 the court reporter please give it to him.

13 (Exhibit 3 was marked for identification.)

14 Q I just have a simple question for you.
15 Looking at this, am I correct that this is a letter --
16 an email that Pam sent and that you were copied on which
17 attempted to circulate a settlement agreement among you
18 to try to get the proceeds without the need for
19 litigation or worrying about the trusts?

20 A That is what it looks like to me, yes.

21 Q And you recall that effort was made, correct?

22 A Yes.

23 Q And it was not successful because Eliot would
24 not agree, correct?

25 A I believe that's the reason why, yes.



1 Q If you could then --

2 I'm sorry, continue to look at that exhibit,
3 at 4519. It said there was -- at the bottom, that's
4 your email, correct, that says, "There was an exhaustive
5 search for the original trust document from 1995 which
6 is the beneficiary of the policy owned by dad. Since
7 we've have not been able to locate it," and then some
8 further text. Is it fair to say that as of December 6,
9 2012, the drafts of the trust, Numbers 21 and 22, had
10 still not been located?

11 A That is correct.

12 Q Thank you.

13 All right. If you could then look at Exhibit
14 4.

15 (Exhibit 4 was marked for identification.)

16 Q Now, reading bottom to top here, which I think
17 we need to do, on Page 69, this is from you -- I'm
18 sorry, this is from Spallina to you, correct?

19 A No.

20 On 67 or -- a different page?

21 Q I'm sorry.

22 Oh, you got 67. Okay, yeah, I'm sorry. I
23 have two sets of them.

24 When you're looking at Page 67, that's
25 Mr. Spallina writing to you, correct?



1 A Well, I'm copied.

2 Q You are one of those to whom this was
3 addressed, correct?

4 A Yes.

5 Q In it, Mr. Spallina was talking about options
6 and trying to deal -- dealing with the situation where
7 the agreement could not be achieved, right?

8 A Yes.

9 Q Among the things he said was, and this is in
10 the fourth line from the bottom, "As none of us can be
11 sure exactly what the 1995 trust said (although an
12 educated guess would point to the children in light of
13 the document prepared by Al Gortz in 2000), it is
14 important that we discuss further prior to spending more
15 money to pursue this option." As of that day, and this
16 was dated January 22, 2013, none of you could know for
17 sure what it said, correct?

18 A That's correct.

19 Q Am I correct, as of this date, Exhibits 21 and
20 22 had not been located, correct?

21 MR. SIMON: Objection; speculation, asked and
22 answered.

23 A That's correct.

24 MR. STAMOS: No, it hasn't been asked.

25 Q I'm sorry, what was the answer?



1 A Correct.

2 Q Thank you.

3 MR. STAMOS: Do you want to take a break now,
4 Adam?

5 MR. SIMON: Please.

6 MR. STAMOS: Okay.

7 (Recess taken.)

8 MR. STAMOS: So now we're on Exhibit 5.

9 (Exhibit 5 was marked for identification.)

10 Q (By Mr. Stamos) Now, I'm looking at Exhibit
11 Number 5. Do you have page 65? Is that the page number
12 at the bottom?

13 A Yes.

14 Q Looking at the message from Spallina, the
15 second one here - it looks like the top is from Lisa to
16 Spallina and Jill - where Spallina said, "I need to see
17 Pam's life insurance trust to answer the question," do
18 you know what question he was talking about?

19 MR. SIMON: Objection; speculation.

20 A I don't.

21 Q All right. Then I'm going to skip Number 6.

22 I'm just trying to cut this down so we can
23 move along. I'm saving time by wasting a little bit of
24 time.

25 I'm not going to talk to you about 7.



1 If you would then look at Exhibit Number 8,
2 please.

3 (Exhibit 8 was marked for identification.)

4 Q This is from Mr. Spallina to Eliot and
5 yourself and -- to Pam, carbon copied to Eliot and
6 yourself, Lisa, Jill and Christine, right?

7 A Correct.

8 Q See at the top there?

9 A Yes, you are correct.

10 Q Thank you. And I want to direct you to the
11 fourth paragraph up, the one that begins, "Let's stop
12 making." Do you see that?

13 A I do.

14 Q The second sentence says, "Pam saw him execute
15 the trust with the same attorney that prepared her own
16 trust, a copy of which I have and will offer up to fill
17 in the boilerplate provisions." Do you see that?

18 A Yes.

19 Q When you received this, did you understand
20 that to mean that Mr. Spallina understood that your
21 father's '95 trust was basically a mirror image of Pam's
22 and, therefore, he would use Pam's in order to fill in
23 the blanks with regard to boilerplate language?

24 MR. SIMON: Objection; speculation, form.

25 Q I'm asking if that's your understanding.



1 MR. SIMON: You said did he understand that he
2 understood. It's like two understandings removed.

3 MR. STAMOS: If that's what I did, let me fix
4 it.

5 Q When Mr. Spallina wrote that and you received
6 this and read it, was it your understanding that
7 Mr. Spallina had the understanding that the 1995 trust
8 was basically a copy, so to speak, of Pam's trust and,
9 therefore, he could use Pam's trust to fill in the
10 missing boilerplate language that might be necessary to
11 be filled in?

12 MR. SIMON: Same objections.

13 A You're using words like "mirror image" and
14 I -- I don't believe that he was looking at Pam's
15 document, according to this email, as a -- as a tool and
16 a mirror image. I think he was using Pam's document
17 maybe as -- more as a guide, because I think they were
18 prepared around the same time by the same firm. So --
19 but I can't honestly speculate what was in Spallina's
20 mind at the time he wrote this.

21 Q Have you ever seen Pam's trust?

22 A I have not.

23 Q Then let's go to -- looking now at Exhibit
24 Number 9.

25 (Exhibit 9 was marked for identification.)



1 Q We have number 9 in front of you. Page 51 and
2 52, do you see that?

3 A I do.

4 Q This looks to be, going back on Page 52, an
5 email that you drafted giving your analysis of the
6 Heritage payout situation, and looking at that document,
7 about seven lines down, as of that point the trust could
8 not be located still, correct?

9 A Correct.

10 Q I take it at that time Exhibits 21 and 22 were
11 still not located, because if they were, you would have
12 talked about them, correct?

13 MR. SIMON: Objection; speculation.

14 A Correct.

15 Q Then on Page 51, that's your email to your
16 siblings and Mr. Spallina in which -- in further
17 analysis -- this is actually to Eliot - I see - with
18 copies to your siblings responding to a prior email he
19 had written about what he thought the situation was,
20 correct?

21 A Yes, sir.

22 MR. STAMOS: Now, if we could go, please, to
23 Exhibit 10.

24 (Exhibit 10 was marked for identification.)

25 Q If you're looking at the bottom of Page 47,



1 this is part of a string that ends with Eliot writing on
2 February 9th to yourself and to Pam, copies to many
3 other people. Do you see that?

4 A Yes, I do.

5 Q Then when you look at the bottom, the first
6 email on that page where Pam says, on February 8, 2013,
7 "Yeah, bad news. We don't have copies of the policy.
8 Dad probably took it when he emptied his office.
9 Probably the trust, too." Do you see that?

10 A Yes, I do.

11 Q Do you have any understanding as to how it
12 came to be that a copy of the draft trust was located at
13 a later date even though a search had already been done
14 trying to find the trust document itself?

15 MR. SIMON: Objection; speculation.

16 A None.

17 Q When the trust documents -- strike that.

18 When the draft trust documents, Exhibits 21
19 and 22, were located, do you recall having any
20 conversation with anybody, Mr. Simon, your sister,
21 anything to the effect of, "How come you didn't find
22 these the first time you looked," or anything like that?

23 A No, nothing like that with me, no.

24 Q Did it strike you? Did you wonder? Whether
25 you had a conversation or not, did you wonder how it was



1 that they didn't find them the first time?

2 A No.

3 Q It didn't strike you as odd?

4 MR. SIMON: Objection; asked and answered.

5 A No, it didn't. Having searched for things
6 before in my life, you search once, you search again,
7 sometimes you come across things, especially old. No,
8 it didn't strike me as odd.

9 Q If you could look at Exhibit Number 11,
10 please.

11 (Exhibit 11 was marked for identification.)

12 Q This is another string here. Beginning at the
13 bottom, this is your brother Eliot telling you that he's
14 seeking independent counsel, correct, on February 13,
15 2013?

16 A Yes.

17 Q Then the next email up, on February 14th, is
18 you to Robert Spallina saying, "Please move forward as
19 we discussed in the last group phone call in which we
20 decided to have Heritage pay your trust account or a
21 trust that you would act as trustee. Heritage has
22 stated that they will pay based on a court order showing
23 that there's consensus among the 1995 trust
24 beneficiaries. Let's get this done."

25 My question about that is, as of that point,



1 was it your understanding that Eliot would agree to have
2 such a court order entered?

3 A I don't know.

4 Q This communication with Mr. Spallina includes
5 copies to all of your siblings as well as to Christine
6 Yates, who was Eliot's attorney, correct?

7 A I -- I believe so.

8 Q Is it your position that this was
9 attorney-client communication, as well, between you and
10 Mr. Spallina?

11 MR. SIMON: We didn't assert a privilege, if
12 that's what you're asking. I didn't object.

13 MR. STAMOS: Well, our position, for the
14 record, is that you may not selectively employ the
15 privilege.

16 Q So my question is, was this an attorney-client
17 communication, as far as you were concerned?

18 A In every communication I had with Robert
19 Spallina, I would expect that that privilege was there.

20 MR. ROSE: This is Alan Rose, just for the
21 record, since I'm Mr. Bernstein's personal counsel.
22 He's not asserting the privilege as to
23 communications of this nature as responded in your
24 email. He's asserting privilege to private
25 communications he had one-on-one with Robert



1 Spallina, who he considered to be his counsel.

2 That's the position for the record and that's why
3 the privilege is being asserted.

4 Continue.

5 MR. STAMOS: No, I understand that. It's just
6 that our position is that, if one has an
7 attorney-client relationship, in particular with
8 regard to discussions concerning a particular
9 topic, the privilege is waived when you do not
10 maintain the privilege with respect to certain
11 communications and you do with others, and that's
12 our position. So --

13 MR. ROSE: Okay. But for the record, since
14 you're going to argue this in Illinois potentially,
15 in every piece of litigation, certain things that
16 you communicate with your lawyer eventually find
17 their way into pleadings or communication with the
18 other side. That does not mean that private
19 communication you have one-on-one with your lawyer
20 about various things when you're seeking legal
21 advice on a confidential basis are not privileged.
22 That's the sole basis upon which the privilege is
23 being asserted and it's going to continue to be
24 asserted.

25 MR. STAMOS: Can we proceed?



1 MR. ROSE: Absolutely. Thanks.

2 MR. STAMOS: Got it.

3 Q (By Mr. Stamos) In any event, looking at
4 Exhibit 11, this was a -- whatever it says, this was an
5 email series of -- exchange between yourself and Eliot
6 and all the addressees, correct?

7 A It appears to be, yes.

8 Q Have you ever investigated to advise yourself
9 as to what took place within the insurance company, that
10 is to say the insurance company records, as to your
11 father's interactions or lack of interactions with them
12 about beneficiary changes or ownership changes?

13 A I -- I have not; did not do that.

14 Q I take it you, therefore, have no knowledge
15 about that, no personal knowledge about that?

16 A Can you tell me what "that" is again.

17 Q About beneficiary changes that your father
18 either did send or did not send to the insurance
19 company.

20 A Again, I'm going to go back to that time of
21 reinstatement where it was my understanding that the
22 beneficiary of this insurance policy was the trust,
23 so -- I think you stated something that wasn't entirely
24 accurate about that I didn't have any knowledge.

25 Q Okay. So your knowledge of it would have been



1 with regard -- I think we talked about that earlier.
2 You told us what your role was in that -- what you knew
3 about the reinstatement provision a couple of years
4 before he died, correct?

5 A Yes, that's right.

6 Q All right. We don't need to go over that
7 again. That, I understand.

8 Let's look, if we can, at Exhibit Number 14.
9 (Exhibit 14 was marked for identification.)

10 Q Looking at that document, it looks like a
11 string that ends with an email from Mr. Spallina to Pam
12 and copied to yourself and David, correct?

13 A Yes, that is correct.

14 Q Now that email -- the initial email in that
15 string is one from David Simon -- I'm guessing to
16 Mr. Spallina, although it's not clear, where it says,
17 "Last of the docs we could dig up." Do you see that?

18 A I do.

19 Q My assumption, although it's not clear from
20 the email, is that there was -- oh, yeah, I'm sorry. At
21 the bottom you can see there's a PDF attachment, a
22 Document 9 PDF. Do you see that on Page 6579?

23 A Yes.

24 Q Do you know what document he's referring to in
25 that email?



1 A I don't.

2 Q If you would look at Exhibit Number 15,
3 please.

4 (Exhibit 15 was marked for identification.)

5 Q This document, 6508 through 6512, is a string
6 of emails that ends with one from you to Robert Spallina
7 copied to several people, correct?

8 A It appears that way so far, yes.

9 Q Take your time. Is that what that is?

10 A Yes.

11 Q The last email in that string is one that you
12 sent, correct?

13 A Yes.

14 Q When you say, "I think one of my --" This is
15 to Robert: "Pam, Scooter, Jill, Lisa and I will be
16 discussing several related issues over the weekend," and
17 this is Saturday, March 16, 2013. "I think one of my
18 previous emails asked you to hold off doing anything
19 concerning the life insurance policy after a specific
20 date. Please continue to work with the insurance
21 company on our behalf."

22 What were you talking about there?

23 A I cannot remember.

24 Q If you would please look at 6510. It's the
25 third page of that exhibit.



1 A Okay.

2 Q Do you see the reference to March 15, 2013
3 there from Spallina?

4 A I see March 15, 2013.

5 Q Right. 7:07 a.m., in the middle of that page?

6 A Yes, I do.

7 Q And Mr. Spallina wrote in this email string
8 that ends with your last email, "There is a break in
9 title and beneficiary designation prior to getting where
10 the confirmation letters state where we are today, Sy as
11 owner and the trust as beneficiary." Do you know what
12 they're talking about?

13 A I believe that I do.

14 Q What did you understand Mr. Spallina was
15 conveying by that message?

16 A That there was a previous owner or an initial
17 owner of this policy and that I think he was learning
18 about the -- the chain of -- of ownership of the policy
19 from the very beginning and its iterations over time
20 when -- after speaking with the insurance company.

21 Q Did you understand this to be that
22 Mr. Spallina was told by the insurance company that
23 there was a break in title and beneficiary designation?

24 A Well, I -- I'm -- only because I'm reading
25 what he said. I don't know what he assumed that meant,



1 but I'm assuming from what I'm reading that he is saying
2 that there was some break there.

3 Q And this was in response to your email from --
4 it looks like --

5 Well, it looks like the times are a little bit
6 odd there. I'm not sure why that is.

7 A Right.

8 Q I wonder if one is eastern time and one is
9 central time?

10 A Between me and Robert?

11 Q Yeah. Could that have been possible?

12 A Anything's possible, but unlikely, I think.

13 Q Well, in any event, when you received that,
14 did you understand what he was talking about?

15 A At the time, I probably did not.

16 Q Now, looking at Exhibit 16, please.

17 (Exhibit 16 was marked for identification.)

18 Q Do you know who Mr. Welling is, before I ask
19 you any questions about the document?

20 A I believe that he was someone connected to the
21 insurance company.

22 Q I'd like you, if you will, to take a moment
23 and read Exhibit Number 12 -- I'm sorry, Exhibit
24 Number 16, back to front, and then I want to ask you
25 some questions about it. It's not all that long.



1 A So you'd like me to read all the pages in the
2 email?

3 Q Yeah.

4 A Okay.

5 Q Just take a moment to read it. The messages
6 are actually pretty brief.

7 MR. ROSE: While he's looking at that, I'd
8 just state for the record that TS5253, at the
9 bottom, clearly supports the assertion of the
10 privilege.

11 MR. STAMOS: In as much as it includes Scott
12 Welling on it, I'd have a hard time understanding
13 how that supports the existence of a privilege,
14 but --

15 MR. ROSE: Okay.

16 Q (By Mr. Stamos) Have you had a chance to read
17 that yet, Mr. Bernstein?

18 A Yes. I'm -- yes, I have.

19 Q I bet you recall this email string, correct?

20 A Yes.

21 Q It ends with a message from Mr. Spallina to
22 you which would have included all the rest of it,
23 correct?

24 A Yes.

25 Q What's this about? What's the genesis of this



1 dispute that results in Mr. Spallina saying, "Ted, I'm
2 done with this matter"? What did you understand was
3 going to happen?

4 A The change in who was going to be handling the
5 life insurance policy at -- at around this time.

6 Q It was changed from whom to whom?

7 A From the Tescher & Spallina firm to Adam
8 Simon.

9 Q Were there any discussions with the insurance
10 company about that prior to the lawsuit being filed in
11 Chi cago?

12 MR. SIMON: Objection; speculation.

13 A I've -- I simply don't know.

14 Q You don't?

15 A I do not.

16 Q Now, when you then look at --

17 I'm sorry, we'll go to the next exhibit, which
18 is -- it looks like Exhibit 17.

19 (Exhibit 17 was marked for identification.)

20 Q Now, looking at Exhibit Number 17, where
21 Mr. Tescher writes, "I feel that we have serious
22 conflicts in continuing to represent you as trustee to
23 the life insurance trust and need to withdraw from
24 further representation," do you see that?

25 A I do.



1 Q Now, first, this document is an email string
2 that ends with Mr. Tescher sending an email to
3 Mr. Welling, Mr. Spallina and also to yourself, as well
4 as the Simons, correct?

5 A Yes.

6 Q You recall receiving this, do you?

7 A Now that I see it, I recall.

8 Q Now, where Mr. Tescher says that, "There's a
9 serious conflict continuing to represent you as trustee
10 of the life insurance trust," is he referring to the
11 1995 trust?

12 MR. SIMON: Objection; speculation.

13 A I believe that that's what he's referring to
14 here.

15 Q I take it that he withdraw from representing
16 you in that capacity as of this email?

17 A I -- I believe that to be the case.

18 Q Did they continue to represent you in any
19 other capacity after that date?

20 A Yes.

21 Q In what capacities did they continue to
22 represent you?

23 A As the -- counsel for the Shirley Bernstein
24 Trust.

25 Q Do they continue to be your attorney in that



1 capacity?

2 A Currently?

3 Q Yes.

4 A They are not.

5 Q When did they cease being your attorney in
6 that capacity?

7 A Early 2014 is my recollection.

8 Q What led to that?

9 A What led to that was --

10 MR. ROSE: Well, let me -- to the extent he's
11 discussing communications he had with his former
12 counsel, they would be privileged, and I would
13 instruct him not to answer based upon any
14 communications with his counsel.

15 MR. STAMOS: Okay.

16 Q I don't agree with that, but I assume you're
17 going to follow your attorney's instruction not to
18 answer that?

19 A Yes.

20 Q All right. We don't need to say anymore, but
21 we'll certify that.

22 Leaving aside conversations then with
23 Mr. Spallina or Mr. Tescher, what led to their ceasing
24 to be your attorneys?

25 A My recollection is that they withdrew.



1 Q Okay.

2 A Again, we're going back quite a while, but I
3 believe what led to them not being my attorneys is that
4 they withdrew.

5 MR. ROSE: And just for the record, there are
6 aspects of that that are not privileged, but you
7 asked him about his -- I just advised him not to
8 disclose his private, confidential communication
9 with them while they were still his lawyers. That
10 does not foreclose your questioning.

11 MR. STAMOS: No, what I asked him was what
12 other circumstances led to that other than --
13 without reference to such conversations, and he
14 said they withdrew.

15 Q Do you know why they withdrew?

16 A I -- I do know why they withdrew. There were
17 some questions within their firm about documents and
18 irregular -- irregularity around documents, and they
19 withdrew because I felt it was best for them to
20 withdraw.

21 Q What documents were there -- with regard to
22 what documents were there irregularities, as far as you
23 knew?

24 A There was an amendment to a trust document.

25 Q Which trust?



1 A Shirley Bernstein Trust.

2 Q And finally Exhibit Number 18.

3 (Exhibit 18 was marked for identification.)

4 Q Are you ready?

5 A Yes.

6 Q Let me just back up a second. The document
7 that you were talking about that there was a problem
8 with was a document which it appeared that the Tescher &
9 Spallina firm had participated in backdating a signature
10 by your father, correct? Is that your understanding of
11 it?

12 A Something along those lines. I'm not quite
13 sure that it's backdating or creation of a document.
14 I'm not sure that backdating would be the right way to
15 describe that.

16 Q It included a notarization that was not
17 authentic, correct?

18 A There were -- there were two issues that arose
19 out of that law firm that were highly irregular as far
20 as I'm concerned.

21 Q What were those?

22 A One was a -- was the signing of a notarized
23 document by a notary that was not proper, and the second
24 was the creation or fabrication of a document by
25 Mr. Spallina that -- that related to Shirley's trust



1 document. It was, I believe, in the amended trust
2 document, but I'm going now by complete recollection
3 of --

4 Q Do you recall what the purpose of that
5 document was, the second document you're talking about?

6 A The purpose was to make changes to the
7 original trust document.

8 Q Any particular change that you can recall?

9 A No, not -- not, you know, sitting here without
10 the document, no.

11 Q The last document that I've shown you, this
12 Exhibit Number 18, this is Mr. Tescher -- it looks like
13 he's writing to you and your siblings in particular
14 about billing, correct?

15 A Yes.

16 Q This is August 30, 2013, correct?

17 A Yes, it is.

18 Q As of this date, he's still referring to the
19 fact that your father's - looking at the second full
20 paragraph from the bottom - that your father's affairs
21 were not left in the best order and so forth, and also
22 some concern that Eliot's activity might be costing the
23 estate money, correct?

24 A That's what he says here, yes.

25 Q As of this time that this was written, you



1 still were not aware of the existence of Exhibits 21 and
2 22, the draft unsigned '95 trust, correct?

3 A I'm not sure.

4 Q Here's what I want to ask you: You're aware
5 that the 2000 trust is an insurance trust, correct?
6 It's for the purpose of receiving insurance proceeds,
7 correct?

8 MR. SIMON: Objection. Are you going to show
9 him the document?

10 MR. STAMOS: Yeah, I can. I was going to work
11 from memory, but we can.

12 That's Exhibit Number 23.

13 (Exhibit 23 was marked for identification.)

14 Q So, first, let me ask you this: I imagine
15 that your business, over the years that you've been
16 involved in selling life insurance, you've dealt with
17 many customers or clients who have had insurance trusts,
18 correct?

19 A That is correct.

20 Q This is not the first time you've ever looked
21 at an insurance trust, the one you've just looked at,
22 correct?

23 A Also correct, yeah.

24 Q In your experience, the lawyers who draft
25 trusts, for example this one, very often do what was



1 done here, which is they provide a first page indicating
2 who prepared it with the law firm's name on it, right?

3 MR. SIMON: Objection; speculation.

4 Q Is that your experience to see that?

5 A Yes.

6 Q If you look at Exhibit Number 24 and 25 --

7 Let's start with Number 24.

8 (Exhibits 24 and 25 were marked for
9 identification.)

10 Q Looking at 24, that's the trust dated July 25,
11 2012, correct?

12 A Yes, it is.

13 Q And number 25 is a trust dated May 20, 2008,
14 correct?

15 A Yes.

16 Q And those are both prepared by the Tescher &
17 Spallina firm, right?

18 A Yes.

19 Q The three trusts that we have, at least that
20 we know are executed, each one of them identifies the
21 law firms who prepared them, correct?

22 A Yes.

23 Q In your experience as a life insurance
24 professional, I'm sure you've had occasion over time to
25 be the first one advised that one of the insureds has



1 died and then you participated in helping to make a
2 claim, correct?

3 A Yes.

4 Q In doing that, I'm sure you've interacted with
5 attorneys, including those who have drafted trusts as
6 part of that process, right?

7 A Yes.

8 Q Is it your experience, what I believe to be
9 universal among estates and trusts lawyers, that they
10 maintain trusts that they have drafted or estate plans
11 they have created because they're aware that down the
12 line when someone dies, number one, they might need to
13 find those documents, and number 2, the lawyers hope to
14 get the business as part of the estate? Is that true in
15 your experience?

16 MR. SIMON: Objection; speculation, form.

17 MR. STAMOS: I'm asking for his experience.

18 MR. SIMON: He's not an attorney.

19 A That, I don't know. I mean, what their intent
20 is for drafting the documents and -- I can't say in
21 general terms --

22 Q Okay. But in your experience, have you ever
23 gone to a firm that drafted a trust and they didn't have
24 a copy of it?

25 A I don't know.



1 Q Here, do you know if efforts were made to
2 contact the attorneys who are purported to have drafted
3 the 1995 trust to see if they had a copy of it?

4 A I believe that efforts were made to do that,
5 yes.

6 Q Did you learn what the results of that
7 investigation were?

8 A My recollection was the firm was absorbed by
9 another firm, or maybe there were two, you know,
10 iterations of this, but the firm is no longer in
11 existence and that they didn't keep the records or they
12 may have sent out something about records.

13 I'm just going by memory, so I can't be -- you
14 know, give you anything more than that.

15 Q Do you remember who told you that?

16 A I do believe that was Robert Spallina. I
17 think he was making those inquiries to the other firm.

18 It may have been David in Chicago.

19 Q Now, David has testified that -- I'm speaking
20 roughly, but I believe accurately in describing his
21 testimony, which is that he -- that when Simon created
22 the '95 trust, that David assisted him in preparing it
23 on the computer actually and Simon then took that
24 version and took it over to Hopkins & Sutter, the law
25 firm that they say prepared it, and that was the basis



1 for the trust ultimately that Simon executed. Does that
2 sound familiar to you?

3 A It doesn't. It does not sound familiar that
4 Scooter was -- that David was creating a document on
5 a -- on a -- on a computer.

6 Q We now know that David testifies that there
7 was a document on the computer, correct, because that's
8 what Exhibit Number 21 is, right?

9 A Okay.

10 Q Okay? I mean, do you agree with me, that's
11 what we understand that to be?

12 A I do.

13 Q So the question I have for you is, did you
14 ever have a conversation with David in which he said --
15 when these communications were taking place with
16 Mr. Spallina about how do we approach, we can't find the
17 '95 trust and so forth, did David ever say anything to
18 you like, "You know, I put it on my computer to begin
19 with. Maybe I should check there"? Do you ever
20 remember any such conversation?

21 A I do not.

22 Q When you look at Exhibit Number 23, if you
23 would look at that, please, the first page indicates
24 that the 2000 trust is to receive the proceeds --
25 looking at the very first paragraph, the first sentence



1 actually, was to receive the proceeds of some insurance
2 policies listed on Exhibit A, correct?

3 A Okay. I'm with you now. You want me looking
4 at 23?

5 Q Yup. And look at the first page of it, which
6 is 3893, the first text page.

7 A Okay. I'm with you.

8 Q This trust provides that the insurance
9 policies set forth in Schedule A, the proceeds of those
10 policies are going to be paid to the trust, right?

11 MR. SIMON: Objection; the document speaks for
12 itself.

13 MR. STAMOS: I'm asking if that's his
14 understanding of it.

15 MR. SIMON: Same objection.

16 A I mean, the document says what it says.
17 Right?

18 Q It says that it transfers to the trustees of
19 this 2008 trust the life insurance policies set forth in
20 Schedule A, right?

21 MR. ROSE: Wait. Which one are you looking
22 at?

23 MR. SIMON: Objection as to form of question.
24 That's not what it says.

25 MR. ROSE: Which document are you looking at?



1 Don't tell me the number.

2 MR. STAMOS: I'm looking --

3 MR. ROSE: What does it say on the front?

4 MR. STAMOS: Let's start again.

5 MR. ELI OT BERNSTEIN: Proskauer Rose trust.

6 MR. STAMOS: I'm looking at Exhibit 23. The
7 very first page indicates it was prepared by the
8 Proskauer firm. Do we all have that document in
9 front of us?

10 MR. SIMON: Yes.

11 THE WITNESS: Yes.

12 Q (By Mr. Stamos) All right. If you flip that
13 first page and go to TS3893, paragraph number 1, do we
14 agree that it says, "As and for a gift, the settlor
15 hereby assigns and transfers to the trustees and their
16 successors (together "the trustees"), the life insurance
17 policies set forth in Schedule A."

18 MR. SIMON: Continue.

19 Q Do you see that?

20 MR. SIMON: Continue.

21 Q Well, it says other things as well, but -- you
22 can read as much as you -- read as much of it as you
23 want and then tell me whether you've read it.

24 MR. SIMON: Into the record. Read the whole
25 thing into the record.



1 Q Okay? You see that, correct?

2 A I see it.

3 Q All right. And then Schedule A includes in it
4 the life insurance policy with regard to which we are
5 currently litigating, right?

6 MR. SIMON: I'm going to object as to form,
7 because again you've misstated what paragraph 1
8 said.

9 A Yeah. I'm going to read it. "The life
10 insurance policies set forth in Schedule A annexed
11 hereto, and the settlor agrees to execute all such
12 assignments and changes of beneficiary and to do such
13 other acts and things as may be necessary in order to
14 make the trustees irrevocable absolute assignees of said
15 life insurance policies. The trustee shall hold said
16 policies together with any other property which may be
17 received by them in trust upon the terms and conditions
18 set forth herein. This trust shall be known as the
19 Simon Bernstein 2000 Insurance Trust."

20 And I don't believe this policy ever
21 received -- this trust ever received the policy, but
22 okay.

23 Q I just want to establish first what it says,
24 see if we could agree what it says. I agree that's what
25 it -- you accurately read it. I agree with you.



1 A Okay.

2 Q Listed on Schedule A then, as being subject to
3 the words that you just read, is included the insurance
4 policy that we're litigating about, correct?

5 A Let me go to sub 2A.

6 Q Okay.

7 THE WITNESS: Do you have Schedule A?

8 MR. SIMON: It's the last page, I think.

9 Q It's the last page of that exhibit.

10 A Got it.

11 Q All right?

12 A I missed it at the top.

13 Q That's okay. And that includes the life
14 insurance policy that we are litigating about in this
15 case, correct?

16 A That is correct.

17 Q Do you agree with me that this trust document
18 does not reference the existence of a prior trust that
19 had any interest in that insurance policy or any prior
20 trust at all, right?

21 MR. SIMON: I'm going to have to ask him to
22 read the entire document.

23 THE WITNESS: Yeah, I can't answer --

24 MR. SIMON: Go ahead.

25 A I can't answer that question without reading



1 the whole document.

2 MR. SIMON: Go ahead.

3 Q Well, it speaks for itself.

4 Let me ask you this: Are you aware of whether
5 it does without reading it? Are you aware of whether it
6 references any 1995 trust or any other trust?

7 MR. SIMON: Objection; speculation. Not
8 allowing him to read it.

9 MR. STAMOS: No, no. I'm just asking if he's
10 aware of it without reading it. It says what it
11 says. His reading is not going to change what it
12 says. I'm asking his state of mind.

13 Q Are you aware of whether or not that document
14 references the 1995 trust without having read it?

15 MR. SIMON: Objection; relevance.
16 Go ahead.

17 Q Do you know?

18 A I'm not -- I'm not aware.

19 Q Do you think that if this document did
20 reference the 1995 trust, that Mr. Spallina would have
21 commented on that?

22 MR. SIMON: Objection; speculation.

23 Q Would you have expected him to tell you that
24 it did?

25 A Can you ask me that question again?



1 Q Yeah. If this document said, for example,
2 "I'm replacing the '95 trust with this 2000 trust,"
3 would you have expected that Mr. Spallina would have
4 given you advice with regard to that fact, if it were a
5 fact?

6 MR. ROSE: I'm going to object, instruct him
7 not to answer based on communications he had with
8 Mr. Spallina, but you can ask the question with
9 regard to information that Spallina disseminated to
10 third parties or --

11 Q Well, other than conversations that just
12 involved you and Mr. Spallina, but not excluding
13 communications that involved your siblings, like so many
14 of these emails did, would you have expected in such
15 communications when you and he were talking about
16 whether we're going to use the 2000 trust and so forth,
17 if the 2000 trust had referenced the existence of a
18 prior trust, do you not think he would have brought that
19 to your attention so that you could decide what impact
20 that had on your view that the '95 trust still applied?

21 MR. SIMON: Objection; form.

22 A Honestly, I'm not sure. I can't, you know,
23 tell you or speculate as to what Spallina -- what the
24 expectations were of what was in this document.

25 Honestly, I -- I can't.



1 MR. STAMOS: If you can give me just one
2 second, I want to confer with Mr. Horan for a
3 second.

4 (Recess taken.)

5 Q (By Mr. Stamos) If you would look at Exhibit
6 24, please.

7 A Okay.

8 Q Is it your understanding that this document,
9 the Simon L. Bernstein Trust -- I'm sorry, let me start
10 again.

11 This document is dated July 25, 2012, correct?

12 A Yes. It's hard to read, but yes.

13 Q You understand this document treats all of
14 Simon's children as predeceasing for the purpose of its
15 distribution, correct?

16 A I have not read this document, but -- so I
17 can't -- you know, I can't tell you that I agree with
18 you.

19 Q Are you aware, being one of those children, as
20 to whether you are a beneficiary or are entitled to any
21 distribution from the 2012 trust?

22 MR. SIMON: Objection; the document speaks for
23 itself.

24 A Do you want me to read the whole document? If
25 that's what it says, then that's what it says. If not,



1 then --

2 Q No, I don't -- that's not what I'm asking you.
3 There's a reasonable amount of money involved here, and
4 what I'm asking you is, as one of Simon's children, are
5 you aware, personally aware -- not did you read this
6 just now and what is it saying, but are you aware of
7 whether you are a beneficiary of a trust that he left
8 when he died?

9 A I am -- I am aware of the trust when he died
10 and I'm aware that I'm not a beneficiary.

11 Q Okay. That's what 2012 talks about, correct?

12 A Correct.

13 Q Not only are you not a beneficiary, none of
14 your siblings are beneficiaries, correct?

15 A You are correct.

16 Q Was there a dispute in the family when you all
17 learned that your father was going to, in effect,
18 disinherit his singling? I'm sorry, the siblings?

19 MR. ROSE: What time was that? Did you --

20 MR. STAMOS: Let me start again.

21 Q Prior to his death, you became aware that it
22 was his plan that he was not going to leave money to his
23 children, correct?

24 A I did -- I'm aware of that.

25 Q And that lead to some discord in the family,



1 correct?

2 A It did.

3 Q Was there a call in which he participated, as
4 did the siblings, in which you attempted to get him to
5 change his mind or explain why his plan was not
6 appropriate?

7 A No.

8 Q There was no such call?

9 A There was no such call based on what you just
10 said that call was about.

11 Q Was there a call prior to his death that
12 involved inheritance, that involved the siblings and
13 your father?

14 A Yes.

15 Q Who said what to whom in that conference?

16 A Robert Spallina explained that my father was
17 going to leave the -- his assets to ten grandchildren
18 equally.

19 Q When -- I ask you to -- if you could pick up
20 Exhibit Number 26, please.

21 (Exhibit 26 was marked for identification.)

22 Q Exhibit Number 26 was one of the documents
23 produced by the Tescher & Spallina firm. Have you seen
24 it before?

25 A Yes.



1 Q The third page is a transcription so that we
2 could read what it actually said. Do you see that?

3 A Do I see what the third page is?

4 Q Yeah.

5 A Yes, I do.

6 Q What was the genesis of the facts surrounding
7 Pam writing this note?

8 MR. SIMON: Objection; speculation.

9 Q I'm asking what you know, not what you're
10 speculating about.

11 A Can you ask me the -- what -- the question
12 again, or what you're specifically asking me?

13 Q What do you understand to have been the
14 circumstances of the facts that led to Pam writing this
15 note to your father? Why did she write it, as far as
16 you know?

17 MR. SIMON: Objection.

18 A As far as I know, she read it -- she wrote it
19 because she was -- she was passionate about the fact
20 that the document -- that the estate plan did not
21 include some of Sy's beneficiaries.

22 Q Meaning several of the siblings, right?

23 A Some of his children. Some of my siblings.

24 Q Did it exclude you as well?

25 A It did.



1 Q Did you encourage her to write that, or did
2 you know she was going to write that note when she wrote
3 it?

4 A I did not.

5 Q Did you take any view on the subject matter?

6 MR. SIMON: Objection.

7 Q The subject of the disinheritance.

8 MR. SIMON: Objection; relevance.

9 Q You may answer.

10 A Did I take any view to who?

11 Q Did you have a view internally as to the
12 appropriateness of your father's plan to disinherit some
13 of his children?

14 A Appropriateness, no. I encouraged --

15 Q You didn't have any --

16 A -- my father --

17 Q Oh, go ahead, I'm sorry.

18 A I encouraged my father to go speak with his
19 counsel about the fact that he received this and what he
20 should contemplate doing in receipt of it and how he was
21 feeling about it, and I encouraged him to talk to
22 counsel about it.

23 Q Ultimately, he left the estate plan in place
24 so that upon his death none of his estate passed to the
25 siblings, correct?



1 MR. ROSE: Object to the form.

2 Oh, that's your objection.

3 A He left the -- he left it in place.

4 Q Meaning that each of you and your siblings was
5 deemed to have been predeceased for the purpose of his
6 estate planning?

7 MR. SIMON: Objection; form.

8 Q Is that your understanding? If it's not, tell
9 me. I mean, I don't -- I'm not going to --

10 MR. SIMON: Well, the first time you said
11 "estate" and the second time you said "estate
12 planning", which is much more general.

13 MR. STAMOS: I didn't mean a distinction.

14 Q I just want to establish, upon his death, no
15 money as a consequence of his death passed or will have
16 passed to you and your siblings if the '95 trust is
17 never enforced and receives money through the insurance
18 policy, right?

19 A Correct.

20 Q But the money will otherwise pass to all of
21 your children, correct?

22 A To all of his grandchildren.

23 Q All of Simon's grandchildren, including your
24 children as well, correct?

25 A Correct.



1 MR. STAMOS: Give me just one second.

2 THE WITNESS: Sure.

3 Q This is my final question, or just about:
4 When you learned that Mr. Spallina had filed a claim
5 identifying himself as trustee of the '95 trust, did you
6 ever report to anyone in the insurance company or any
7 authority that he, in fact, was never the trustee of the
8 '95 trust?

9 A I did not.

10 Q Did you ever instruct him to take steps to
11 correct any misimpression he might have caused others to
12 form as a result of him having made that claim?

13 A I'm not sure he caused misimpressions in
14 anybody, so I don't know, and I didn't have any
15 conversations with insurance companies.

16 MR. STAMOS: All right. That's all I have.
17 Thank you.

18 THE WITNESS: You're welcome.

19 MR. ELIOT BERNSTEIN: Okay. I have a few
20 questions.

21 CROSS-EXAMINATION

22 BY MR. ELIOT BERNSTEIN:

23 Q Ted, are you aware of a holographic will
24 leaving some of the insurance proceeds to Maritza
25 Puccio?



1 A I don't know what a holographic will is.

2 Q It's a document that was written to leave
3 Maritza a portion of the death benefit that Rachel
4 Walker --

5 Did she give you documents at the hospital the
6 night he died?

7 MR. SIMON: Objection; form. What's the
8 question? Did she give you documents?

9 Q Did Rachel -- do you know Rachel Walker?

10 A I do.

11 Q On the night your father died, did she bring
12 documents to you at the hospital?

13 A I believe she did.

14 Q Was one of those documents a document with a
15 check and a letter regarding Maritza Puccio?

16 A No.

17 Q What documents did she bring you?

18 A My recollection is she brought me something --
19 things pertaining to living wills. I'm not using
20 correct legal terms I'm sure, but DNRs and things like
21 that.

22 Q On the day your dad died, did you contact the
23 sheriff?

24 A No.

25 Q On the day after he died, did you contact the



1 sheriff?

2 A I don't recall.

3 Q Did you file a sheriff's report at all after
4 your father died?

5 A I don't recall.

6 Q Did you make any claims that Maritza Puccio,
7 his girlfriend, might have poisoned him?

8 A No.

9 Q You gave no statement to the sheriff?

10 MR. SIMON: Objection; asked and answered.

11 Don't answer.

12 Q Did you file a coroner's -- did you order a
13 coroner inquiry on the day your father died?

14 A I did not.

15 Q At any time?

16 A I did not.

17 Q Do you know anybody who did?

18 A I believe the Palm Beach County did.

19 Q Palm Beach County who?

20 A The County.

21 Q The County ordered a coroner's --

22 MR. SIMON: Asked and answered.

23 Q -- investigation?

24 MR. SIMON: Asked and answered.

25 Q Okay. Why did they order it?



1 MR. SIMON: Objection; speculation.

2 Q Have you seen the report?

3 A I believe so.

4 Q On the day after your -- on the morning after
5 your father died -- or actually that morning, did you go
6 to your father's house?

7 A What date are you asking me about?

8 Q September 13th.

9 A You know, it's a blurry time. I -- shortly
10 after dad died, I -- I went to his house.

11 Q Were there sheriffs there?

12 A I believe some -- somebody from a law
13 enforcement agency showed up one of those days shortly
14 after dad died.

15 Q Did you speak with those sheriffs?

16 A I did.

17 Q What did you talk to them about?

18 A Not a lot of recollection, but they were
19 asking me questions about things.

20 Q Like?

21 A Medication, what -- what amounts of
22 medication, if I knew what kind of medication he took or
23 was taking or things like that.

24 Q Why were they there?

25 MR. SIMON: Objection; speculation.



1 Q Well, you met with the sheriff. Didn't you
2 wonder why he was at your father's house on the day he
3 died and you were giving statements to him?

4 MR. SIMON: Same objection.

5 A You -- did you ask me why were they there?

6 Q Yeah.

7 A I don't know. I can't remember why they were
8 there.

9 Q And you had no involvement in the call. Did
10 your attorney have any involvement in the call to the
11 sheriff that you're aware of?

12 A I don't -- I can't -- I don't think so. I
13 don't think so.

14 Q So you, to the best of your recollection, you
15 don't know who called the sheriff or contacted them?

16 MR. SIMON: Objection; form.

17 Q Are you aware the night your father died that
18 a call had been made to the hospital claiming that he
19 had been poisoned?

20 A I'm not -- I'm not aware of a call that was
21 made where -- where it was claimed that he was poisoned.

22 Q You weren't aware of that?

23 A (Nonverbal response.)

24 Q Okay.

25 MR. ROSE: Can you hear this okay in Chicago?



1 I can't tell if you're acting like you're not able
2 to hear.

3 MR. STAMOS: No, we can hear. We got it.

4 MR. ROSE: Okay.

5 MR. STAMOS: Thank you.

6 MR. ROSE: You're welcome. I just saw your
7 face, so...

8 MR. STAMOS: Thanks.

9 Q (By Mr. Eliot Bernstein) So you became aware
10 at some point that there was a coroner's inquiry and you
11 were aware that there was claims about his medication,
12 correct?

13 MR. SIMON: Objection; form.

14 Q That if he had been --

15 MR. ELIOT BERNSTEIN: Oh, okay. I'll skip
16 that for a second.

17 Q If this 1995 trust is lost and is not valid by
18 the court, you get no benefits whatsoever, correct?

19 MR. SIMON: Objection; speculation, and calls
20 for a legal conclusion.

21 Q Can you look at the trust document, either one
22 of those trust documents that were exhibited, and tell
23 me who the law firm is on that trust document.

24 A Tescher & Spallina's law firm?

25 Q No, the two 1995 trusts that you're claiming



1 you're the trustee of. Who's the law firm that prepared
2 that document?

3 MR. STAMOS: Those are Exhibit 21 and 22.

4 THE WITNESS: Oh, thank you, Jim.

5 21 and 22? Of course I kept everything in
6 order except 21 and 22.

7 Do you have it? He's looking for the law
8 firm's name? Is this 21 and 22?

9 MR. SIMON: Yeah, these are 21 and 22. You
10 can just look at it.

11 A Are you asking me for the law firm on 21 and
12 22?

13 Q Yes.

14 A I don't see a law firm.

15 Q You don't see a law firm on the trust
16 document?

17 A I don't.

18 Q Anywhere on the document, does it say who
19 prepared it?

20 MR. SIMON: Objection; asked and answered.

21 MR. ELIOT BERNSTEIN: Well, I'm asking him
22 is -- anywhere on the document, is there a
23 reference to a law firm.

24 MR. SIMON: Asked and answered.

25 A Not -- not that I see.



1 Q Are you aware of any claim that your father
2 had been poisoned by anybody? Have you ever heard that
3 claim in the course of these proceedings?

4 A I -- I have heard things about dad being
5 poisoned.

6 Q Did you report those things to the insurance
7 company?

8 MR. SIMON: Objection; relevance.

9 MR. ELIOT BERNSTEIN: Well, there's a death
10 benefit claim, and I think it would be pretty
11 relevant, if somebody was murdered, who the
12 beneficiaries would be and how it would be paid and
13 if the insurance company should seek an
14 investigation.

15 MR. SIMON: You can ask the question.

16 MR. ELIOT BERNSTEIN: So --

17 Q Go right ahead.

18 A Can you ask me the question again?

19 Q Did you report to the insurance company that
20 you had information that your father might have been
21 poisoned?

22 A I did not.

23 Q Did you report it to the federal court that
24 your father might have been poisoned?

25 A I have -- I have not.



1 Q When you filed the lawsuit, did you notify
2 anybody that your father might have been poisoned?

3 A Which lawsuit?

4 Q The 1995 trust.

5 A I did not.

6 Q When you became trustee -- Robert Spallina
7 filed that original claim. When you became trustee, who
8 did you notify? Did you send out anything to the
9 beneficiaries?

10 A When I became the trustee of --

11 Q The successor trustee of this lost trust that
12 doesn't exist legally.

13 A Did I send anything to anybody?

14 Q Yeah.

15 MR. SIMON: Objection as to form.

16 Q Did you contact the beneficiaries by sending
17 them proper notice that you were trustee?

18 MR. SIMON: Objection as to form.

19 A I think all the beneficiaries were in
20 discussions, but I didn't.

21 Q Are you familiar with the laws regarding
22 successor trustees?

23 MR. SIMON: Objection; vague, asking for legal
24 conclusions.

25 MR. ELIOT BERNSTEIN: Okay.



1 Q Is Adam Simon related to you?

2 MR. SIMON: It's an easy question. No.

3 A I don't think so, no.

4 Q Is he related to your sister's husband?

5 A He is.

6 Q He is. And does your sister stand to lose all
7 of her benefit if this trust can't be proven and the
8 money gets paid to the estate?

9 MR. SIMON: Objection; speculation, calls for
10 a legal conclusion.

11 A No -- no idea.

12 Q So you know that if the trust doesn't succeed
13 and the money's paid to the estate, you, because you're
14 considered predeceased, don't get benefit, but you're
15 not sure about your sister who's also considered
16 predeceased?

17 MR. SIMON: Objection as to form; makes a
18 legal conclusion that's not necessarily correct.

19 I wouldn't even answer that one.

20 Continue.

21 MR. ELIOT BERNSTEIN: Okay. So we'll certify
22 that to take up with the judge.

23 MR. SIMON: Please.

24 MR. ELIOT BERNSTEIN: Okay.

25 Q Do you think that notifying an insurance



1 company of a potential claim that the insured was
2 murdered is appropriate in your experience as an
3 insurance agent?

4 MR. SIMON: Objection; speculation, form.
5 You can try to answer.

6 A I think you're asking me, if I knew that
7 somebody was murdered -- would I notify an insurance
8 company if I knew that somebody was murdered.

9 Q If you thought somebody was murdered.

10 A Would I notify an insurance company if I had
11 reason to be involved in that situation, I think what
12 you're asking me is, if I had that knowledge, I would
13 notify an insurance company.

14 Q When you filed this lawsuit, you filed a
15 breach of contract lawsuit, correct?

16 A I'm not sure.

17 Q Well, you're the plaintiff. You filed the
18 lawsuit --

19 MR. SIMON: Show him the Complaint. That's
20 what it's for.

21 Q So you're not sure --

22 MR. SIMON: Show him the Complaint, Mr.
23 Bernstein.

24 MR. ELIOT BERNSTEIN: That's a good enough
25 answer.



1 Q What type of lawsuit did you file with the
2 federal court?

3 MR. SIMON: Objection. Show him the
4 Complaint, please.

5 Q I'm just asking based on your knowledge.

6 A And I'm -- and I'm not a lawyer, and I don't
7 have the document, and the type of lawsuit that was
8 filed, without looking at something, I can't tell you.

9 Q So you're the trustee of this trust and you
10 filed as a plaintiff a lawsuit and you don't know what
11 kind of lawsuit?

12 MR. SIMON: Objection; speculation,
13 argumentative. We've asked you several times to
14 give him the Complaint which would give you the
15 answer you're looking for, Mr. Bernstein, so please
16 continue.

17 MR. ELIOT BERNSTEIN: I'm just asking for his
18 knowledge.

19 MR. SIMON: I'm just asking you to continue.
20 We'll just stop. We can just stop.

21 MR. ELIOT BERNSTEIN: I'm just asking for his
22 knowledge.

23 MR. SIMON: Then go ahead.

24 Q So, based on your knowledge, you are claiming
25 that you have no idea how you filed this lawsuit?



1 MR. SIMON: Objection. That's not what
2 he's -- you're testifying for him. Ask him a
3 question.

4 Q Did you deliver the documents that you got
5 from Rachel Walker at the hospital to any party?

6 A Other than the hospital?

7 Q Yeah.

8 A Deliver them? I don't recall, Eliot.

9 Q Where are those documents?

10 A I don't recall that either.

11 Q Well, Rachel Walker, you sent her to get
12 documents from the home of Simon after he died, correct?

13 A I believe I did.

14 Q And they were estate documents, correct?

15 A I think I understand what you're asking me,
16 and, yes, they were -- they were documents that were
17 part of his estate planning.

18 Q And I'm asking you if you know where they are.

19 A I think I answered. I don't recall right now
20 where they are.

21 Q Were you in custody of Simon's personal
22 property and possessions after he died?

23 MR. SIMON: Objection; relevance.

24 A Was I in custody? Can you clarify "custody"
25 for me?



1 Q Well, were you in charge of Simon's personal
2 property to remove documents off the estate when he
3 died?

4 MR. SIMON: Objection; relevance.

5 A I don't understand the question.

6 Q Well, we have missing documents, Ted --

7 A Yes.

8 Q -- as you're aware, estate documents, trusts.
9 Rachel came with --

10 How many documents did she give you that
11 night?

12 MR. SIMON: Objection; form. That's not
13 even --

14 Q Approximately how many documents did she bring
15 to you that were estate planning documents?

16 A A couple.

17 Q And then you have no idea where you have those
18 documents?

19 A No. At this time, I don't.

20 Q In those documents, you weren't aware of any
21 documents that were supposed to be tendered back to the
22 estate?

23 MR. SIMON: Objection.

24 Q You removed property from the estate or had
25 someone remove it on your behalf. Did you have it



1 returned to the estate?

2 MR. SIMON: Objection; form. Didn't let him
3 answer. Compound questions.

4 Q Were you requested by any parties to turn
5 those documents over to them?

6 A I don't believe so.

7 MR. ELIOT BERNSTEIN: I'd like to submit this
8 as an exhibit. Can we get a copy of that real
9 quick.

10 (Recess taken.)

11 (Exhibit A was marked for identification.)

12 MR. STAMOS: Can you describe that for us? We
13 don't have a copy.

14 Q (By Mr. Eliot Bernstein) Ted, could you
15 describe that document.

16 MR. ROSE: (Indicating.)

17 MR. STAMOS: Is that the police report
18 document?

19 MR. ELIOT BERNSTEIN: Yes.

20 MR. STAMOS: Yeah, we have that. I think we
21 have that.

22 MR. ROSE: I'm just trying to be helpful.

23 MR. STAMOS: Thank you.

24 Is that topped by the February 11, 2014 fax
25 number -- fax legend?



1 MR. ROSE: This one says January 31, '13.

2 MR. STAMOS: Oh.

3 MR. ROSE: The report entry though is --
4 starts with the words "On 9/13/12 at 12:11 hours."

5 MR. STAMOS: Oh, okay. We don't have that
6 one. All right.

7 THE WITNESS: Okay.

8 Q (By Mr. Eliot Bernstein) You were talking to
9 the sheriff's department on this day, correct?

10 A Yes, I was.

11 Q And that's the day your father died, right?

12 A Yes.

13 Q Did you advise the sheriff's department that
14 your father might have been overdosed or the likes by
15 his girlfriend?

16 A No.

17 Q No?

18 A No.

19 Q Okay. Were you advised by anybody that your
20 father could have been overdosed?

21 A Yes.

22 Q That's good. So now you're remembering that
23 you did talk to the sheriff's department that day?

24 MR. SIMON: Objection; move to strike,
25 argumentative.



1 Q Did you voice concerns to Delray Hospital that
2 your father might have been overdosed or taken too much
3 medication?

4 MR. SIMON: Objection; asked and answered.

5 Q Okay. Can you read in the 11th line.

6 A What is the first word?

7 Q It will be at the end of that sentence. "He,"
8 being you, Ted, "said," can you read that?

9 A "He said he voiced his concerns to the doctors
10 at Delray Community Hospital but they advised there did
11 not appear to be any suspicious circumstances
12 surrounding Simon's death and they would not be
13 conducting an autopsy."

14 Q Can you keep reading the next sentence,
15 please.

16 A "Ted contacted both a private company and the
17 Palm Beach County Medical Examiner's Office regarding
18 having an autopsy conducted."

19 Q Would you like to change your prior statement?

20 MR. SIMON: Objection; argumentative, form.

21 Q Does that say you contacted the private
22 autopsy firm?

23 MR. SIMON: Objection.

24 A It says, "Regarding."

25 MR. SIMON: Document says what it says.



1 Q Did you contact a private company regarding
2 doing an autopsy?

3 A I believe that I did.

4 Q Oh, now you did, okay.

5 MR. SIMON: Objection; move to strike,
6 argumentative.

7 Q Did you contact the Palm Beach County Medical
8 Examiner's Office about having an autopsy?

9 A I can't recall.

10 Q Well, read the next line. Did you tell a
11 sheriff's deputy that?

12 A Which line are you asking me to read?

13 Q The one that is -- I think it's like 14. Hold
14 on.

15 MR. SIMON: Eliot, I'm going to give you two
16 more questions, and then we're going to do my
17 questions, and then I'm going to stop.

18 MR. ELIOT BERNSTEIN: I've got a few more
19 questions.

20 MR. SIMON: You've got two.

21 MR. ELIOT BERNSTEIN: And these are very
22 serious questions, so please. This could have --
23 you know, potential murder of my father. I know
24 you're concerned because my father spoonfed you his
25 whole life.



1 MR. SIMON: Nobody from the insurance
2 department --

3 Q Ted, on Line 15 --

4 MR. SIMON: We're done now.

5 Q -- Ted contacted -- it starts with "Ted
6 contacted." Could you read that into the record,
7 please.

8 MR. SIMON: You can read that.

9 Q Three lines up from the bottom of the first
10 paragraph.

11 A "Ted contacted both the private company and
12 the Palm Beach County Medical Examiner's Office
13 regarding having an autopsy conducted. Both advised he
14 should contact the Palm Beach County Sheriff's Office."

15 Q Did you contact the Palm Beach County
16 Sheriff's Office?

17 A I don't remember.

18 MR. SIMON: We're done.

19 Q You don't recall that you're --

20 MR. ELIOT BERNSTEIN: I'm not done. I have
21 questions.

22 MR. SIMON: You're done. We agreed to five to
23 eight. I'm going to ask him two questions and then
24 we're out of here.

25 MR. ELIOT BERNSTEIN: Then you're out of time.



1 MR. SIMON: Come on.

2 Okay.

3 MR. ELIOT BERNSTEIN: Yeah.

4 (Mr. Simon and Mr. Ted Bernstein exit the
5 room.)

6 MR. ROSE: We're temporarily off the record.

7 (Recess taken.)

8 MR. SIMON: This is Adam Simon. I just have
9 two or three questions.

10 MR. ELIOT BERNSTEIN: Well -- so you're
11 interrupting my line of questioning? I was
12 questioning. So we should take this up with the
13 judge to give me more time?

14 MR. SIMON: Please do.

15 MR. ELIOT BERNSTEIN: Okay, we will.

16 MR. SIMON: Please do. Please. Please do.

17 Yeah, the judge has been so --

18 (Cross-talking. Interruption by the
19 reporter.)

20 MR. ELIOT BERNSTEIN: Your father would be
21 ashamed.

22 MR. SIMON: All right. You guys ready?

23 MR. STAMOS: We're ready.

24 CROSS- EXAMI NATI ON

25 BY MR. SIMON:



1 Q Ted, we talked about the 2000 insurance trust,
2 correct?

3 A Yes.

4 Q Have you seen any documents produced by anyone
5 that assigned the ownership of the Capital Bankers
6 policy to the 2000 trust?

7 A No, I haven't. It's my understanding that
8 that -- that trust never received any assets, didn't
9 receive the insurance policy, was never named as a
10 beneficiary.

11 Q Never named as a beneficiary or an owner,
12 correct?

13 A Or an owner.

14 Q Around the time of the reinstatement of the
15 policy that you discussed, did you have any
16 conversations with your father regarding the beneficiary
17 of the policy and the purpose of the policy?

18 A I did.

19 Q And can you describe that conversation.

20 A So we were having conversations at that time
21 about a buy/sell agreement, you know, buying each other
22 out of the business as he was winding things down in his
23 career, and I wanted a life insurance policy because we
24 were partners in that business and I, you know, was
25 hoping that we would get a life insurance policy, but he



1 made it, you know, emphatically clear, and I knew it
2 from the reinstatement process, and I also just knew it
3 from his medical history, that there was really little
4 chance or no chance of getting another life insurance
5 policy on his life. So I thought it might be easy to
6 use existing life insurance and just change the
7 beneficiary portion of the policy to take care of the
8 needs that we would have needed in the buy/sell
9 agreement discussions, but he was unwilling to do that.
10 I guess he was unwilling to do that because he felt it
11 was part of his overall plan to have those life
12 insurance policies, you know, do other things to be left
13 obviously for his children through the trust.

14 MR. SIMON: I have nothing further.

15 MR. ELIOT BERNSTEIN: I'd like to ask you a
16 question on that.

17 RE-CROSS EXAMINATION

18 BY MR. ELIOT BERNSTEIN:

19 Q You mentioned the policy. You're the trustee
20 of this lost trust. Do you have possession of the
21 policy?

22 A I think I have a copy of the policy.

23 Q A fully executed life insurance policy?

24 MR. SIMON: Objection; relevance.

25 Q Have you produced that policy to the court?



1 MR. SIMON: Objection; relevance. The
2 policy's been paid out by the carrier.

3 Q The policy, do you have a copy of the actual
4 policy from the carrier?

5 A A copy of the policy? I think so.

6 Q Fully executed?

7 MR. SIMON: Objection.

8 A I don't know what that means.

9 Q A policy that has all the pages to it that's a
10 complete policy, that's got the beneficiaries, the death
11 benefits, all that listed out. A copy of the policy.

12 MR. SIMON: Objection; form --

13 Q Do you have possession of that?

14 MR. SIMON: Objection; form. Objection;
15 foundation.

16 Q Do you have the policy?

17 MR. SIMON: Objection, relevance.

18 A I believe I have a copy of what the insurance
19 company sent during this time of reinstatement. I
20 believe I have a copy of the insurance policy. Whether
21 executed, I -- I don't know what they deem executed.

22 Q You have a copy of the insurance policy, okay.
23 Have you given that in your production?

24 MR. SIMON: Objection; misstated his answer.

25 Q I asked you did you put it in production. You



1 haven' t answered.

2 MR. SIMON: He said he saw it in production.

3 He said what was produced.

4 Q No. I asked you, did you put your copy of the
5 policy in production. You were supposed to --

6 MR. SIMON: No, you didn' t.

7 Q -- put all your documents.

8 MR. SIMON: That' s not what you said. That' s
9 not what he said. He said he found the documents
10 through production.

11 Q Did you put the policy in with your production
12 documents?

13 A I' m not sure.

14 Q You were asked by the court to produce
15 documents. Did you produce all your documents?

16 A I don' t know if I was asked by a court to
17 produce documents, but...

18 Q Okay. We had to do a Rule 26 document
19 request. You' re the plaintiff. You produced documents.

20 MR. SIMON: I' m going to object to this line
21 of questioning. He has answered about the policy.
22 He believes he had a copy. He' s not sure if --

23 Q You believe you had a copy --

24 (Cross- talki ng. Interruption by the
25 reporter.)



1 Q Did you put the copy of the policy you claim
2 to have with your production to the court when you
3 produced?

4 A I'm not sure.

5 MR. SIMON: Jim, we're ten minutes over the
6 agreed time. Do you have anything further?

7 MR. STAMOS: I just have one additional
8 question, if you don't mind.

9 REDIRECT EXAMINATION

10 BY MR. STAMOS:

11 Q You described this conversation you had with
12 your father a moment ago about the trust, how it related
13 to the buy/sell and so forth. Do you recall that
14 question and answer you just gave?

15 A Yes, I do.

16 Q And apropos of that conversation and any
17 other -- apropos of that conversation, you understand
18 that if the court recognizes the '95 trust as being the
19 appropriate beneficiary for the policy, that you will
20 receive 20 percent of the proceeds, and that if the
21 court doesn't recognize the '98 [sic] trust as the
22 beneficiary of the insurance policy in question, you
23 will receive none of the proceeds of that policy,
24 correct?

25 MR. SIMON: Objection; it's a legal conclusion



1 which is probably inaccurate.

2 Q I'm asking your understanding.

3 MR. SIMON: Relevance. His understanding is
4 not going to determine that.

5 A It's my understanding that if the trust is
6 determined not to be the beneficiary of the insurance
7 policy, that I will not receive whatever it was I was
8 supposed to receive. That's my -- what I understand.
9 Anything else, I don't -- I don't know.

10 Q Just one last -- but the corollary of that is
11 your notion that if the court does recognize the trust
12 as being the beneficiary, you'll receive something;
13 you're just not sure what it is?

14 A That's correct.

15 MR. STAMOS: Okay. Thanks. That's all I
16 have.

17 MR. SIMON: I just have one more.

18 RE-CROSS EXAMINATION

19 BY MR. SIMON:

20 Q Do you understand that there is a third
21 possibility, that even if the trust is not acknowledged,
22 it may not go to the estate? It could possibly be
23 decided to go somewhere else by the judge? Do you
24 understand that?

25 A I do understand that.



1 MR. ELI OT BERNSTEI N: Okay. I have one last
2 questi on.

3 MR. STAMOS: Let me ask -- let me follow that
4 up.

5 REDI RECT EXAMI NATI ON

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 deci de.

16 MR. STAMOS: I'm just following up your
17 questi on. 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 questi on.

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



1 home.

2 A I understand that there's infinite
3 possibilities of where it could go in the event that a
4 judge makes a ruling on where they go.

5 MR. ELI OT BERNSTEIN: Okay. I have one last
6 question.

7 RE CROSS EXAMI NATI ON

8 BY MR. ELI OT BERNSTEIN:

9 Q Ted, what's the primary beneficiary on the
10 policy that you possess?

11 A The primary beneficiary, if I recall, was a --
12 was a -- I think it was a voluntary employee benefit
13 plan.

14 Q Would that happen to be LaSalle National
15 Trust?

16 A Oh, boy, I -- I don't know.

17 Q You don't know who the primary beneficiary on
18 the policy that you're the trustee for is?

19 MR. SIMON: Objection; asked and answered,
20 argumentative.

21 We're done. Let's go.

22 Q One more question.

23 MR. SIMON: No. We're done.

24 Q Who's the contingent beneficiary named on it?
25 Are you aware your father -- of his heavy



1 metal poison test, Ted? Ted?

2 MR. ROSE: I think Adam's terminated the
3 deposition, so --

4 MR. SIMON: Yeah. We're way past --

5 MR. ROSE: You have no further questions in
6 Chicago, right?

7 MR. SIMON: Way past.

8 MR. STAMOS: No, we're all set.

9 MR. ROSE: Have a good night, guys.

10 (Mr. Simon and Mr. Ted Bernstein exit the
11 room.)

12 (Deposition concluded at 8:15 p.m.)

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ERRATA- SIGNATURE PAGE
SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE UNION
LIFE INSURANCE
Case No. 13 CV 3643
DEPOSITION TAKEN May 6, 2015

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Under penalties of perjury, I declare that I have read the foregoing transcript and that the facts stated in it are true.

_____ Date _____ TED BERNSTEIN



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CERTIFICATE OF OATH

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

I, Lisa Gropper, Registered Professional Reporter,
Florida Professional Reporter, Notary Public, State of
Florida, certify that TED BERNSTEIN personally appeared
before me on the 6th day of May, 2015 and was duly
sworn.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day of
May, 2015.

LISA GROPPER, RPR, FPR
Notary Public, State of Florida
My Commission No. : EE136111
My Commission Expires: 11/18/2015



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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

I, LISA GROPPER, Registered Professional Reporter,
Florida Professional Reporter, do hereby certify that I
was authorized to and did stenographically report the
deposition of TED BERNSTEIN; that a review of the
transcript was requested; and that the foregoing
transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative,
employee, or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
counsel connected with the action, nor am I financially
interested in the action.

Dated this 19th day of May, 2015.

Lisa Gropper, R. P. R. , F. P. R.



1 McCorkle Litigation Services, Inc.
2 200 N. LaSalle Street - Suite 2900
3 Chicago, Illinois 60601
4 (312) 263-0052

5
6 May 19, 2015

7 The Simon Law Firm
8 303 East Wacker Drive
9 Suite 2725
10 Chicago, Illinois 60601
11 ATTN: Adam M. Simon, Esq.

12 RE: SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE
13 UNION LIFE INSURANCE

14 Dear Mr. Simon,

15 Enclosed please find the deposition transcript of
16 TED BERNSTEIN in the above-captioned case taken on
17 May 6, 2015.

18 Please have Mr. Bernstein read your transcript copy
19 and sign the attached errata sheet. Make a copy of the
20 errata sheet to attach to your copy of the transcript,
21 and then please forward the original errata sheet back
22 to our office.

23 Please make arrangements to have this accomplished
24 as soon as possible. The failure to read and sign the
25 deposition could be constituted as a waiver if not
accomplished within a reasonable period of time.

Your attention to this matter is appreciated.

Sincerely,

Li sa Gropper, RPR, FPR



<p>Exhibits</p> <p>T. Bernstein Exhibit 1 33:10,11,13 34:9 40:21 48:22</p> <p>T. Bernstein Exhibit 10 60:23,24</p> <p>T. Bernstein Exhibit 11 62:9,11 65:4</p> <p>T. Bernstein Exhibit 14 66:8,9</p> <p>T. Bernstein Exhibit 15 67:2,4</p> <p>T. Bernstein Exhibit 16 69:16,17,23,24</p> <p>T. Bernstein Exhibit 17 71:18,19,20</p> <p>T. Bernstein Exhibit 18 75:2,3 76:12</p> <p>T. Bernstein Exhibit 19 11:17,18 19:17 29:8</p> <p>T. Bernstein Exhibit 2 50:19,21</p> <p>T. Bernstein Exhibit 21 18:15 25:13 81:8 100:3</p> <p>T. Bernstein Exhibit 22 27:21,24</p> <p>T. Bernstein Exhibit 23 77:12,13 81:22 83:6</p> <p>T. Bernstein Exhibit 24 78:6 88:5,6</p> <p>T. Bernstein Exhibit 25</p> <p>T. Bernstein Exhibit 26 90:20,21,22</p> <p>T. Bernstein Exhibit 3 54:5,6,13</p> <p>T. Bernstein Exhibit 4 55:13,14,15</p>	<p>T. Bernstein Exhibit 5 57:8,9,10,11</p> <p>T. Bernstein Exhibit 8 58:1,3</p> <p>T. Bernstein Exhibit 9 59:23,24,25</p> <p>T. 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Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Friday, October 19, 2012 12:32 PM
To: Robert Spallina; Pam Simon
Subject: RE: Update

Robert,

We believe we have a solution to the life insurance policy which provides the desired result. We would like to discuss this with you at your earliest convenience. Until we have this conversation, please do not process anything further with the insurance company as we would like to avoid any unnecessary confusion for them. Pam, her husband Scooter, and I would like to have this initial conversation with you.

Let me know what is good for you and I can coordinate with Pam and Scooter.

Take care...

-----Original Message-----

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Friday, October 19, 2012 7:19 AM
To: Pam Simon
Cc: Ted Bernstein
Subject: Re: Update

Pam - My office is processing the claim as your father was the owner of the policy and the proceeds will likely be paid to the estate in the absence of finding the trust. As I mentioned previously there was a discussion with the carrier about possibly using the 2000 trust (the one you are carved out of but would be split 5 ways according to Ted) but I'm not sure that we will achieve that result. 11:00 on Tuesday your time is my lunch hour. I am out of the office all day and will reach out to you on Monday as my calendar is fairly packed next week and a status call will have to be later in the day sometime next week. Have a nice weekend.

Sent from my iPhone

On Oct 19, 2012, at 6:32 AM, "Pam Simon" <pambsimon@me.com> wrote:

> Hi Robert - I have the ss4 on the 1995 irrevocable trust so we should be able to take care of getting the payment. If you already have the death claim package from the carrier can you overnight it to me and we will take care of the payout? If you don't have the package, can you send me an original death certificate and I will request it from the carrier?

> Also, we would like to do a family status call Tuesday at 11 am
> chicago time. Pls let us know if that works for you? Have a nice
> weekend - Pam Simon

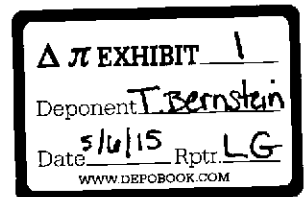
>
> Thanks
> Pam
>

> On Oct 15, 2012, at 10:12 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

>
>> Call me now
>>

>> -----Original Message-----

>> From: Pam Simon [mailto:pambsimon@me.com]



>> Sent: Monday, October 15, 2012 11:11 AM
>> To: Robert Spallina
>> Subject: Re: Call 10/ 16/12 Tuesday 3:30 pm Chicago time
>>
>> I have some on the trust - should only be a few minutes
>>
>> On Oct 15, 2012, at 8:36 AM, Robert Spallina
>> <rspallina@tescherspallina.com> wrote:
>>
>>> There are no updates at this time
>>>
>>> Sent from my iPhone
>>>
>>> On Oct 15, 2012, at 8:40 AM, "Pam Simon" <pambsimon@me.com> wrote:
>>>
>>>> Hi all - do you have time for status?

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Wednesday, December 05, 2012 6:01 PM
To: Robert Spallina; Pam Simon
Cc: Simon David Scooter; Simon Pam
Subject: RE: Proceeds

OK Robert, we understand and I will distribute the document to each of my siblings this evening if I can get to it, otherwise tomorrow morning for sure.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Wednesday, December 05, 2012 10:24 AM
To: Pam Simon
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: RE: Proceeds

Eliot is represented and I can send nothing to him directly. If you all want to send it to him then by all means do so. Keep in mind that he is likely to send it to his attorney anyway. I will leave it to your discretion.

From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Wednesday, December 05, 2012 9:58 AM
To: Robert Spallina
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: Re: Proceeds

Hi Robert Did you send to Eliot yet - prob a good start.

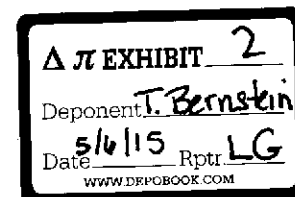
On Dec 3, 2012, at 1:35 PM, Robert Spallina <rspallina@tescherspallina.com> wrote:

Yes - but Eliot's counsel will probably hold things up

From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Monday, December 03, 2012 12:12 PM
To: Robert Spallina
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: Re: Proceeds

Hi Robert - scooter will send you but can you send out for signatures? Thanks

On Dec 3, 2012, at 9:48 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:



Please have him send me the document for my review and copy all. I want to make sure we have an agreement among all before I speak to the carrier.

From: Pam Simon [<mailto:pambsimon@icloud.com>]
Sent: Sunday, December 02, 2012 7:39 AM
To: Robert Spallina
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: Re: Proceeds

Hi Robert - can you call Scooter as he has a copy of the document you can circulate for signatures to release the proceeds. 312-909-0369 Thx

On Nov 19, 2012, at 12:14 PM, "David (Scooter) Simon"
<dsimon@stpcorp.com> wrote:

May be available to achieve Si's intended results through waiver and settlement agreement.

Please have Mr. Spallina call my cell phone 312 909 0369

On Nov 19, 2012, at 1:11 PM, "Pam Simon"
<pambsimon@icloud.com> wrote:

Is the 2000 trust an irrevocable trust?

On Nov 19, 2012, at 11:57 AM, Robert Spallina
<rspallina@tescherspallina.com> wrote:

We are not responding to them with the document from 2000. We discussed that and you are carved out under that document. We need to find the 1995 trust ASAP

From: Pam Simon
[\[mailto:pambsimon@icloud.com\]](mailto:pambsimon@icloud.com)
Sent: Monday, November 19, 2012
12:56 PM
To: Ted Bernstein
Cc: Robert Spallina
Subject: Re: Proceeds

Pls send the executed trust document before u respond to heritage

On Nov 19, 2012, at 9:13 AM, Ted Bernstein
<tbernstein@lifeinsuranceconcepts.com> wrote:

Highly unlikely they will use another trust - what is SOP when doc can't be found?

Ted Bernstein
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----
Subject: RE: Proceeds
From: Robert Spallina <rspallina@tescherspallina.com>
To: Pam Simon <pambsimon@icloud.com>
CC: RE: Proceeds

Heritage responded back that they need a copy of the trust instrument. We do not have a copy and the only executed trust document that we have in which the policy is listed as an asset is the 2000 trust prepared by Al Gortz.

-----Original Message-----

From: Pam Simon
[mailto:pambsimon@icloud.com]
Sent: Friday,
November 16, 2012
2:35 PM
To: Robert Spallina
Cc: Bernstein Ted
Subject: Proceeds

Hi Robert - any word
on the proceeds ?
Need help? Pam

Hi > his address is:

TESCHER & SPALLINA, P.A.
Boca Village
Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, Florida 33431

From: Pam Simon [mailto:psimon@stpcorp.com]
Sent: Thursday, December 06, 2012 10:52 AM
To: Jill Iantoni
Cc: Ted Bernstein; lisa.friedstein@gmail.com; iviewit@gmail.com; iviewit@iviewit.tv
Subject: Re: Life Insurance - agreement

Thanks theo - will email u signed one today and fed x spallina - do u have his address?

On Dec 6, 2012, at 10:00 AM, "Jill Iantoni" <jilliantoni@gmail.com> wrote:

Great. Thanks Ted for handling this!!

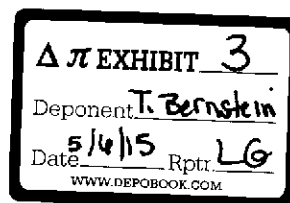
Jill

On Thu, Dec 6, 2012 at 8:58 AM, Ted Bernstein <tbernstein@lifeinsuranceconcepts.com> wrote:

Hello,

Good news; the Heritage Union Life Insurance company is ready to make payment on the policy that insured Dad. There was an exhaustive search for the original trust document from 1995, which is the beneficiary of the policy owned by Dad. Since we have not been able to locate it, the attached agreement will permit the insurance company to make payment to a Trust account that will then distribute the proceeds in equal parts to the 5 of us. Robert Spallina recommended that I distribute this document so it can be reviewed by each of you, signed and then it can be submitted to the carrier. Please sign the document where applicable. Then email to me the signature page and Fedex the original to Robert Spallina's office. Once we have all signatures, the carrier should release proceeds quickly.

2



TS004519

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is made and entered into this _____ day of _____, 2012, at Chicago, Illinois by and between each of the following defined entities and individuals.

PARTIES DEFINED

"TED", as defined herein, refers to and means Ted S. Bernstein an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"PAM", as defined herein, refers to and means Pamela B. Simon an individual residing in Chicago, Illinois, her heirs, successors and/or assigns.

"ELIOT" as defined herein, refers to and means Eliot I. Bernstein, an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"JILL" as defined herein, refers to and means Jill M. Iantoni, an individual residing in Highland Park, Illinois, her heirs, successors and/or assigns.

"LISA" as defined herein, refers to and means Lisa S. Friedstein residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"ALLY" as defined herein, refers to and means Alexandra L. Bernstein residing in White Plains, New York, an individual, her heirs, successors and/or assigns.

"ERIC" as defined herein, refers to and means Eric D. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MICHAEL" as defined herein, refers to and means Michael A. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MOLLY" as defined herein, refers to and means Molly N. Simon residing in Chicago Illinois, an individual, her heirs, successors and/or assigns.

"THE ELIOT CHILDREN" as defined herein, refers to and means Joshua, Jacob and Daniel Bernstein residing in Boca Raton, Florida, all individual(s), their heirs, successors and/or assigns.

"THE JILL CHILD" as defined herein, refers to and means Julia Iantoni residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"THE LISA CHILDREN" as defined herein, refers to and means Max and Carley Friedstein residing in Highland Park, Illinois, an individual(s), both heirs, successors and/or assigns.

DEFINITIONS

"Agreement", as defined herein, refers to and means, this Settlement Agreement and Mutual Release.

"Party" or "Parties", shall refer to and mean an individual defined above whom shall sign on and be bound by this Settlement Agreement, and Parties shall refer to the individuals collectively.

"Trust", as defined herein refers to and means the Simon L. Bernstein Irrevocable Insurance Trust dtd 6/21/95.

RECITAL'S

WHEREAS, the Parties are all of the children and grandchildren of the marriage of Simon L. Bernstein and Shirley Bernstein;

WHEREAS, Simon L. Bernstein established the Trust in 1995 for the benefit of his wife,

Shirley Bernstein, and their children, the Parties;

WHEREAS, Shirley Bernstein predeceased Simon L. Bernstein, and Simon L. Bernstein passed away on September 13, 2012;

WHEREAS, after a diligent search by the Parties, an executed copy of the Trust can not be found;

WHEREAS, the Trust is the beneficiary of life insurance policy number 1009208 issued by Heritage Union Life Insurance Company (the "Insurer") on the life of Simon L. Bernstein (the "Policy");

WHEREAS, the Parties desire to achieve the intent of Simon L. Bernstein on or about the date of the Trust and resolve any and all disputes and controversies that have arisen or may arise regarding the distribution of the death benefit proceeds of the Policy.

WITNESSETH

NOW THEREFORE, in consideration of the following covenants, promises and obligations, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged; it is agreed by and between the Parties as follows:

COVENANTS

- 1. TED is appointed and hereby accepts the appointment to act as Trustee of the Trust.**
- 2. That TED, as Trustee, shall open a bank account in the name of the Trust (the "Trust Account").**
- 3. That TED, as Trustee shall deposit or direct the Insurer to deposit the death benefit proceeds of the Policy into the Trust Account.**
- 4. That TED, as Trustee, shall pay expenses of the Trust including the cost of filing a tax return from the proceeds in the Trust Account.**
- 5. That TED, as Trustee, shall distribute all remaining proceeds in the Trust Account equally (in 20% shares) to each of TED, PAM, ELIOT, JILL and LISA.**

6. That TED, as Trustee, upon completing the distribution in ¶5 above and the filing of the tax return contemplated in ¶4 above shall close the Trust Account.
7. Upon receipt of the Settlement Agreement executed by all Parties and upon fulfillment of all of the covenants and obligations contained in ¶1 through ¶6 above, TED, PAM, ELIOT, JILL, AND LISA, ALLY, ERIC, MICHAEL, MOLLY, THE ELIOT CHILDREN, THE JILL CHILD AND THE LISA CHILDREN and each of them in their own individual capacity, shall respectively acquit, release, and forever discharge TED, both individually and as Trustee, and each and every other Party from any and all claims, demands, liabilities, obligations, causes and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected by each of them, which each of them now owns or holds or at any time heretofore owned or held as against each other arising out of any matter related to or associated with the Policy and/or the Trust, and without limiting the generality of the foregoing, all claims, demands, liabilities, obligations, causes and causes of action arising out of or in any way connected with: a) the receipt of the death benefit proceeds of the Policy by the Trust; b) arising out of or in any way connected to the operation and management of the Trust, or the actual terms of the Trust in the event it should be located subsequent to the date of this Agreement regardless as to whether all of the covenants and obligations of this Agreement have been executed to completion.
8. All demands and notices given hereunder shall be sent by mail addressed to the respective Parties with a copy to David B. Simon, The Simon Law Firm, 303 E. Wacker Dr., Suite 210, Chicago, IL 60601-5210.
9. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder. All Parties further represent that this Settlement Agreement has been duly executed and delivered.
10. This Settlement Agreement embodies the entire understanding of the Parties. All prior correspondence, conversations, memoranda and agreements have been merged into and replaced by this Settlement Agreement.
11. If a Party breaches this Settlement Agreement, the breaching Party shall reimburse the non-breaching Parties for all reasonable costs, attorney's fees, and expenses incurred by them in enforcing the terms and provisions of the Settlement Agreement.
12. This Settlement Agreement shall (i) be governed and construed in accordance with the laws of the State of Illinois and all claims or controversies arising out of this Settlement Agreement shall be brought within the exclusive jurisdiction of the State of Illinois; (ii) inure to the benefit of and be binding upon the Parties themselves, as well as their respective heirs, executors, predecessors, successors and assigns.
13. All Parties have been represented by counsel, or have had the opportunity to seek the advice of counsel, and if they have sought counsel then such counsel has reviewed this Settlement Agreement and recommended that their respective clients enter into it.
14. This Settlement Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute an original. Facsimile signatures of the Parties shall as valid and binding as original signatures.

15. **Should any provision contained in this Agreement be deemed illegal or unenforceable as a matter of law, the remainder of this Agreement shall remain binding and continue in full force and effect.**
16. **The signatories state that they have read and understand this Settlement Agreement and that they intend to be legally bound by the same.**

Agreed and accepted this date and year first written above.

TED S. BERNSTEIN

Witness: _____

Address: _____

PAMELA B. SIMON

Witness: _____

Address: _____

LISA S. FRIEDSTEIN

Witness: _____

Address: _____

ERIC BERNSTEIN

Witness: _____

Address: _____

MOLLY N. SIMON

Witness: _____

Address: _____

THE JILL CHILD

Jill Iantoni, Parent

Guy Iantoni, Parent

Address: _____

ELIOT I. BERNSTEIN

Witness: _____

Address: _____

JILL M. IANTONI

Witness: _____

Address: _____

ALEXANDRA L. BERNSTEIN

Witness: _____

Address: _____

MICHAEL BERNSTEIN

Witness: _____

Address: _____

THE ELIOT CHILDREN

Eliot I. Bernstein, Parent

Candace Bernstein, Parent

Address: _____

THE LISA CHILDREN

Lisa Friedstein, Parent

Jeffrey Friedstein, Parent

Address: _____

Robert Spallina

From: Robert Spallina
Sent: Tuesday, January 22, 2013 12:38 PM
To: 'Jill Iantoni'
Cc: Ted Bernstein, Lisa Friedstein, Pam Simon; Christine Yates; Kimberly Moran
Subject: RE: Heritage Policy

We can discuss on Thursday but yes and no

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Tuesday, January 22, 2013 12:36 PM
To: Robert Spallina
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

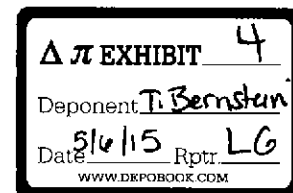
4855 Technology Way Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com



If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

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Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

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Robert Spallina

From: lisa.friedstein@gmail.com on behalf of lisa friedstein (lisa@friedsteins.com)
Sent: Friday, January 25, 2013 11:22 AM
To: Robert Spallina; JILL Iantoni
Subject: Re: Bernstein Estate 1/24/2013

Robert

I am not sure I am being understood...can you please call for a brief moment to discuss.. thank you.
Please call Jill at 3128042318 she then will call me.
Thank you.
Lisa

On Jan 25, 2013 8:11 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:
I need to see Pam's life insurance trust to answer the question.

Sent from my iPhone

On Jan 25, 2013, at 8:51 AM, "lisa friedstein" <lisa@friedsteins.com> wrote:

Robert

What are the details/provisions of how the 10 grand kids inheritance works. For example...can the parents of the minors spend the money for any reason in any way ...who watches over this?

If the court order is that the money goes to the Gran kids out of the estate can the parents of the minor kids spend the money in any way or are their provisions for how and when they use this money?

Please answer as soon as you can as it will help us make our decision for Monday.

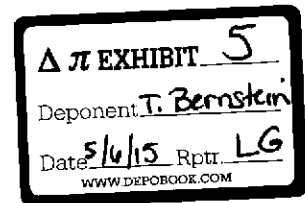
Thank you

Jill

On Jan 24, 2013 3:22 PM, "Jill Iantoni" <jilliantoni@gmail.com> wrote:

----- Forwarded message -----

From: Robert Spallina <rspallina@tescherspallina.com>
Date: Thu, Jan 24, 2013 at 2:57 PM
Subject: RE: Bernstein Estate 1/24/2013
To: Jill Iantoni <jilliantoni@gmail.com>



Lisa - You need the decision to be unanimous or moving forward is not going to be possible. If money goes to the estate it is subject to creditor claims and cannot be distributed until we close the estate after creditors are paid. Any legal fees incurred by a beneficiary are their own and not the estate's fees. Stansbury is trying to substitute the estate for your father. That hearing is next week. Hope this helps

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Robert Spallina
Sent: Friday, February 08, 2013 8:41 PM
To: Pam Simon
Cc: Eliot Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Iantoni, Jill M. Iantoni, Christine P Yates ~ Director @ Tripp Scott
Subject: Re: Heritage Policy

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed.

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you. This should be of no surprise to anyone.

Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

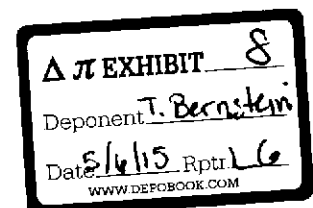
The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.

Sent from my iPhone

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <psimon@stpcorp.com> wrote:



BT000048

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off. Have a good weekend.

Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <iviewit@gmail.com> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out.

Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement.

Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely

what insurance companies do, albeit through the probate court. That is also why Mr Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Wednesday, February 06, 2013 3:49 PM
To: Eliot Bernstein (iviewit@gmail.com)
Cc: 'Pam Simon'; Jill Iantoni; Lisa Friedstein (lisa.friedstein@gmail.com); Robert Spallina
Subject: Heritage policy
Attachments: image001.jpg

Eliot,

I have pasted your analysis re the Heritage policy below. The email did not get to me, not sure why.

The problem with your analysis is that it is not factually correct and therefore, you are drawing conclusions that are incorrect.

Dad's desires concerning the policy are crystal clear. There has never been a question concerning his desire. He named his irrevocable trust as beneficiary of the policy and he never changed that. He was the owner. He could have changed it as often as he wanted. He never did, not ever.

In 1995, Dad did not have 10 grandchildren. Therefore, it was never his intent, concerning this policy, to leave it to all of his grandchildren.

He chose Robert Spallina and Don Tescher to be his estate and tax attorneys as well as his personal representatives. Robert Spallina has told us on several occasions what Dad's wishes were for this policy. Dad was well aware of this policy. He was intimately aware of who owned it and who he named as beneficiary. When he was considering a life settlement, all of this information was part of those discussions.

As Robert has stated, Heritage's policy when it comes to a lost irrevocable trust, is to not pay the proceeds to the estate. What you are saying here is not correct: "Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under (Article IV 2)) and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts."

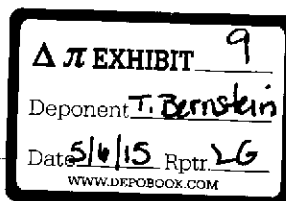
You are drawing conclusions for Heritage when you say, "nothing short of the actual 1995 trust document may be sufficient to Heritage." Why don't we let Heritage speak for Heritage, which I believe has already been done?

There is no fraudulent conveyance. These proceeds are not part of Dad's estate, they never were and Heritage has stated they do not intend to pay these proceeds to the estate of a person who clearly did not want them in his estate.

In late July of 2012, Dad executed his planning documents. He could have easily changed the beneficiary of the Heritage policy to be included in his estate. He was the owner, he could have done that with one change form. He did not. If he did not want to be bothered to do it himself, he could have asked Robert, his PR, to do it. People do this every day. Dad did not. Therefore, the proceeds remaining OUT of his estate, NOT payable to his grandchildren (who received everything else), is consistent with Dad's wishes. This policy is not in the domain of his will and trust agreement. To bring proceeds of a life insurance policy into the estate of a man who sold life insurance his entire career would go against everything Dad told every client he ever sold life insurance to during his career. It is unimaginable.

Therefore, the economic analysis is not correct. It simply is not necessary to address as it was never an option in this scenario.

This needs to be brought to resolution. Not only is it simple, it is black and white. Is your counsel involved in this matter for you? If so, has she spoken with Robert and communicated what you have said?



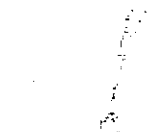
BT000051

We are going to do what is necessary to have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under {Article IV 2j} and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme. Regards,

Ted Bernstein - President



Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, FL 33487
Tel: 561.988.8984
Toll Free: 866.395.8984
Fax: 561.988.0833
Email: Tbernstein@lifeinsuranceconcepts.com
www.LifeInsuranceConcepts.com

Robert Spallina

From: Eliot Bernstein [vviewit@gmail.com]
 Sent: Saturday, February 09, 2013 5:40 PM
 To: 'Pam Simon'; 'Ted Bernstein'
 Cc: 'Lisa Sue Friedstein'; 'Jill Iantoni'; 'Jill M. Iantoni'; Robert Spallina; 'Christine P. Yates ~ Director @ Tripp Scott'; 'Irina Roach'
 Subject: RE: Heritage Policy

What meeting and for what? I am not doing anything with the insurance until I receive a copy of the policy from the carrier. Who at the carrier can I contact to have the policy sent to me on Monday and what is the number? eb

From: Pam Simon [mailto:psimon@stpcorp.com]
Sent: Saturday, February 9, 2013 5:35 PM
To: Ted Bernstein
Cc: Eliot Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Christine P. Yates ~ Director @ Tripp Scott; Irina Roach
Subject: Re: Heritage Policy

I'm good 10 am chicago time Sunday

On Feb 9, 2013, at 10:22 AM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:

Eliot - we do have the letter from Heritage that you refer to below. They will pay with an order from the court which is based on the agreement, among us, to pay the trust. It's not only easy, we already have the letter from them.

Why don't the 5 of us get on a call in the next day or two? There are a bunch of things to cover other than this policy, such as the property in the house.

Time suggestions??

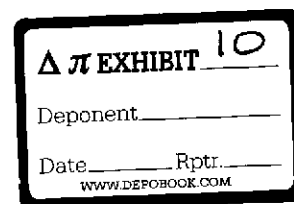
Ted
 561-988-8984
tbernstein@lifeinsuranceconcepts.com

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <psimon@stpcorp.com> wrote:

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off.
 Have a good weekend.
 Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <vviewit@gmail.com> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's



Robert Spallina

From: Eliot Ivan Bernstein [iviewit@viewit.tv]
Sent: Thursday, February 14, 2013 10:40 AM
To: 'Ted Bernstein'; Robert Spallina; 'Pamela Beth Simon'; 'JILL BERNSTEIN IANTONI'; Jill M. Iantoni; 'Lisa S. Friedstein'; 'Christine P. Yates ~ Director @ Tripp Scott'
Subject: RE: Eliot Representation

Please notify me of any probate court hearings so that I may attend and any actions by the carrier, as I have not consented to anything at this point or at the last group meeting I attended. Eliot

From: Ted Bernstein [mailto:tedbernstein@lifeinsuranceconcepts.com]
Sent: Thursday, February 14, 2013 8:33 AM
To: 'Eliot Ivan Bernstein'; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott
Subject: RE: Eliot Representation

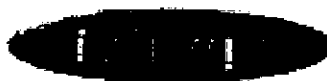
Robert,

Please move forward as we discussed in the last group phone call in which we decided to have Heritage pay your trust account or a trust that you would act as Trustee. Heritage has stated that they will pay based on a court order showing that there is consensus among the 1995 Trust beneficiaries. Let's get this done.

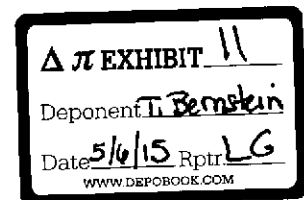
Ted

From: Eliot Ivan Bernstein [mailto:iviewit@viewit.tv]
Sent: Wednesday, February 13, 2013 8:52 AM
To: Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Ted Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott
Subject: Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



Eliot I. Bernstein



Robert Spallina

From: Eliot Ivan Bernstein [iviewit@iviewit.tv]
Sent: Wednesday, February 13, 2013 8:52 AM
To: Robert Spallina; Theodore S. Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jai M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott
Subject: Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. - DL
Iviewit Holdings, Inc. - DL (yes, two identically named)
Iviewit Holdings, Inc. - FL
Iviewit Technologies, Inc. - DL
Uviewit Holdings, Inc. - DL
Uview.com, Inc. - DL
Iviewit.com, Inc. - FL
Iviewit.com, Inc. - DL
I.C., Inc. - FL
Iviewit.com LLC - DL
Iviewit LLC - DL
Iviewit Corporation - FL
Iviewit, Inc. - FL
Iviewit, Inc. - DL
Iviewit Corporation
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245-8588 (o)
(561) 886-7628 (c)
(561) 245-8644 (f)
iviewit@iviewit.tv
<http://www.iviewit.tv>
<http://iviewit.tv/inventor/index.htm>
<http://iviewit.tv/wordpress>
<http://www.facebook.com/#!/iviewit>
<http://www.myspace.com/iviewit>

Kimberly Moran

From: Peter M. Feaman [pfeaman@feamanlaw.com]
Sent: Monday, February 04, 2013 3:59 PM
Subject: Read: Estate of Simon Bernstein

Your message

To: pfeaman@feamanlaw.com
Subject:

was read on 2/4/2013 3:59 PM.

Robert Spallina

From: Robert Spallina
Sent: Thursday, March 14, 2013 7:17 AM
To: Pam Simon
Cc: David (Scooter) Simon; Ted Bernstein
Subject: Re: Simon Bernstein

Waiting for carrier to clear up title and beneficiary designation. Did you get the email I sent everyone from the carrier last week? Scooter knows where we are in process.

Sent from my iPhone

On Mar 14, 2013, at 12:41 AM, "Pam Simon" <psimon@stpcorp.com> wrote:

Next step? By who? Or is it whom?

On Mar 13, 2013, at 7:42 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

Thanks.

Sent from my iPhone

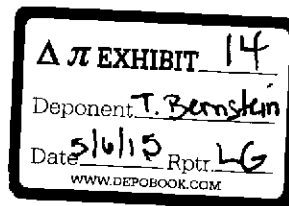
On Mar 13, 2013, at 6:02 PM, "David (Scooter) Simon" <dsimon@stpcorp.com> wrote:

last of the docs we can dig up.

Very Truly Yours,
David B. Simon
The Simon Law Firm
303 East Wacker Drive, Suite 210
Chicago, IL 60601

Phone: (312) 819-0730
Fax: (312) 819-0773
E-mail: dsimon@chicago-law.com

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From: Cheryl Sychowski
Sent: Wednesday, March 13, 2013 4:32 PM
To: David (Scooter) Simon
Subject: Simon Bernstein

<DOC (9).PDF>

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Saturday, March 16, 2013 5:26 PM
To: Robert Spallina
Cc: Pam Simon; David (Scooter) Simon; lisa.friedstein@gmail.com; Donald Tescher; Jill Iantoni
Subject: RE: Simon Bernstein Trust - Policy #1009208

Robert > Pam, Scooter, Jill, Lisa and I will be discussing several related issues over the weekend. I think one of my previous emails asked you to hold off doing anything concerning the life insurance policy after a specific date. Please continue to work with the insurance company on our behalf.

Thank you,

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Friday, March 15, 2013 1:30 PM
To: Ted Bernstein
Cc: Pam Simon; David (Scooter) Simon; lisa.friedstein@gmail.com; Donald Tescher; Jill Iantoni
Subject: RE: Simon Bernstein Trust - Policy #1009208

Ted – please respond to Jill’s inquiry. There still seems to be some confusion on what the course of action is despite our conversations last Friday and Monday this week, and the emails I forwarded from the carrier last Friday and yesterday.

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Friday, March 15, 2013 1:11 PM
To: Robert Spallina
Cc: Pam Simon; David (Scooter) Simon; Ted Bernstein; lisa.friedstein@gmail.com; Donald Tescher
Subject: Re: Simon Bernstein Trust - Policy #1009208

Robert,

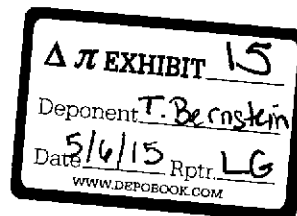
what do you mean in your email that we will be using your trust account? Are you referring to where the proceeds get paid out?

Thank you,

Jill

On Fri, Mar 15, 2013 at 11:03 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

All - The carrier is in control of things at this point. When title/beneficiary designation is cleared then we can discuss venue. Having said that, we have had discussions with Ted on Friday last week and Monday of this



week and he would like for things to continue as discussed here in Palm Beach County and using our trust account.

Ted - please confirm by reply email our conversation regarding the above and your desire to have us continue handling this matter until resolution in light of the email you sent us last Wednesday night on behalf of you and your siblings.

Regards,

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com

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From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Friday, March 15, 2013 9:09 AM
To: David (Scooter) Simon
Cc: Robert Spallina; Ted Bernstein; Jill Iantoni; lisa.friedstein@gmail.com

Subject: Re: Simon Bernstein Trust - Policy #1009208

Ok - who decides this?

On Mar 15, 2013, at 8:04 AM, "David (Scooter) Simon" <dsimon@stpcorp.com> wrote:

My only concern is forum. We should make sure we pick the venue for an inter pleader action. Lets also decide a time frame for the carrier.

On Mar 15, 2013, at 7:07 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

There is a break in title and beneficiary designation prior to getting where the confirmation letters state where we are today - Si as owner and the trust as beneficiary. They do not want to name every owner and beneficiary in a pleading and inter plead the funds as it will be costly and timely for them and everyone involved. Let's hope they are able to piece it together.

Sent from my iPhone

On Mar 15, 2013, at 7:59 AM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:

Robert > Do we know exactly what he is trying to accomplish? If we know that, maybe we can be more helpful.

From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Thursday, March 14, 2013 10:35 PM
To: Robert Spallina
Cc: Ted Bernstein; Jill Iantoni; lisa.friedstein@gmail.com; dsimon@stpcorp.com
Subject: Re: Simon Bernstein Trust - Policy #1009208

Is this after you sent the info scooter sent you Robert? Thx

On Mar 14, 2013, at 3:01 PM, Robert Spallina
<rspallina@tescherspallina.com> wrote:

FYI – this is from legal on the status of their search
to clear up title on the policy

From: Welling, Scott
[mailto:scott.welling@jackson.com]
Sent: Thursday, March 14, 2013 1:10 PM
To: Robert Spallina
Subject: RE: Simon Bernstein Trust - Policy
#1009208

Hey Bob,

Haven't forgotten about you. Am out tomorrow but
will touch base early next week. So far we have not
found much that is helpful.

From: Robert Spallina
[mailto:rspallina@tescherspallina.com]
Sent: Wednesday, March 06, 2013 5:32 PM
To: Welling, Scott
Subject: Simon Bernstein Trust - Policy #1009208

Scott – I understand you are out of the office until
tomorrow. We sent this to you previously and in
error addressed it to the wrong email address. We
would like to file this on Monday so if you could
take a few minutes to review it would be greatly
appreciated. We have not attached a copy of the
Order but it will obviously be in the form of the
relief requested.

Thanks,

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com

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Robert Spallina

From: Robert Spallina
Sent: Tuesday, April 16, 2013 10:43 AM
To: Ted Bernstein
Cc: Donald Tescher
Subject: RE: Simon Bernstein Irv Trust v Heritage Union

Ted - I'm done with this matter. I have bent over backwards for YOU to try to keep things in order out of respect for your father and mother but your family has gotten to the point of completely dysfunctional and I do not need the aggravation in my life. Handle the insurance matter as you please (or as your in-laws please which seems to be the case). I cannot and will not help people that do not want to help themselves. Don is a much more patient man than I so he may continue to assist you but I will not. Sorry.

From: Adam Simon [mailto:asimon21@att.net]
Sent: Tuesday, April 16, 2013 10:31 AM
To: Robert Spallina
Subject: Re: Simon Bernstein Irv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

From: Robert Spallina <rspallina@tescherspallina.com>
To: adam simon <asimon21@att.net>
Cc: Ted Bernstein <bernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stacorp.com>; Donald Tescher <dtescher@tescherspallina.com>
Sent: Tuesday, April 16, 2013 9:28 AM
Subject: RE: Simon Bernstein Irv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

From: adam simon [mailto:asimon21@att.net]
Sent: Tuesday, April 16, 2013 10:26 AM
To: Robert Spallina
Cc: Ted Bernstein; David (Scooter) Simon; Donald Tescher
Subject: Re: Simon Bernstein Irv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

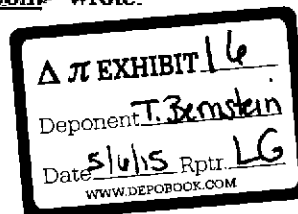
Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:



Please advise timing as we have not received a response on the below email.

From: Robert Spallina
Sent: Friday, April 12, 2013 11:22 AM
To: 'Adam Simon'
Cc: 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher
Subject: RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

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From: Robert Spallina
Sent: Monday, April 08, 2013 1:59 PM
To: 'Adam Simon'
Cc: 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher
Subject: RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

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From: Welling, Scott [<mailto:scott.welling@jackson.com>]
Sent: Monday, April 08, 2013 12:47 PM
To: 'Adam Simon'; Robert Spallina
Subject: RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

From: Adam Simon [<mailto:asimon21@att.net>]
Sent: Monday, April 08, 2013 12:15 PM
To: Welling, Scott
Subject: Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

Robert Spallina

From: Robert Spallina
Sent: Tuesday, April 16, 2013 10:36 AM
To: 'Adam Simon'; David (Scooter) Simon
Cc: Ted Bernstein; Donald Tescher
Subject: RE: Simon Bernstein Irrv Trust v Heritage Union

Problem is that you NEVER did speak with us before you did what you did...shame on you guys!

From: Adam Simon [mailto:asimon21@att.net]
Sent: Tuesday, April 16, 2013 10:31 AM
To: Robert Spallina
Subject: Re: Simon Bernstein Irrv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

From: Robert Spallina <rspallina@tescherspallina.com>
To: adam simon <asimon21@att.net>
Cc: Ted Bernstein <bernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@sipccorp.com>; Donald Tescher <dtescher@tescherspallina.com>
Sent: Tuesday, April 16, 2013 9:28 AM
Subject: RE: Simon Bernstein Irrv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

From: adam simon [mailto:asimon21@att.net]
Sent: Tuesday, April 16, 2013 10:26 AM
To: Robert Spallina
Cc: Ted Bernstein; David (Scooter) Simon; Donald Tescher
Subject: Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

Please advise timing as we have not received a response on the below email.

From: Robert Spallina
Sent: Friday, April 12, 2013 11:22 AM

Bernstein - Life Ins.

Donald Tescher

From: Donald Tescher
Sent: Friday, April 19, 2013 6:01 PM
To: 'Welling, Scott'; Robert Spallina
Cc: 'asimon21@att.net'; 'David (Scooter) Simon'; Ted Bernstein
Subject: RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.
 TESCHER & SPALLINA, P.A.
 4855 Technology Way, Suite 720
 Boca Raton, FL 33431
 Telephone: 561-997-7008
 Facsimile: 561-997-7308
 dtescher@tescherspallina.com

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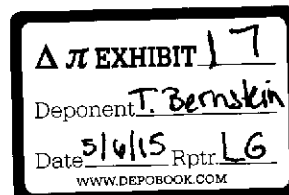
From: Welling, Scott [mailto:scott.welling@jackson.com]
Sent: Friday, April 19, 2013 5:26 PM
To: Robert Spallina; Donald Tescher
Subject: FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

From: adam simon [mailto:asimon21@att.net]

4/19/2013



TS006547

Sent: Friday, April 19, 2013 5:25 PM
To: Welling, Scott
Subject: Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Trustee of the Trust to file the action that was filed in Cook County.

Thank you,
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <scott.welling@jackson.com> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

4/19/2013

TS006548

Please give this matter your prompt attention.

From: Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]
Sent: Friday, April 19, 2013 3:48 PM
To: Welling, Scott
Cc: dtescher@tescherspallina.com; Adam Simon; Adam Simon
Subject: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

Cheryl Sychowski

The Simon Law Firm
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
P: (312) 819-0730
F: (312) 819-0773
E: cheryl@stpcorp.com

4/19/2013

TS006549

Robert Spallina

From: Donald Tescher
Sent: Friday, August 30, 2013 9:25 AM
To: Ted Bernstein; Pam Simon; Jill Iantoni; Lisa
Cc: Robert Spallina
Subject: Estates and Trusts of Shirley & Simon Bernstein and Related Entities

All –

Sorry for the delay in getting this to you as I had promised when I participated on our recent conference call. It takes me a little longer to turn around matters as I work from Cape Cod in the Summer.

In reviewing our billings to date, which encompass virtually a year, over the year we have billed your father's estate and trust a total of \$105,000 from Sep 2012 thru Aug 2013. For this purpose, the estate and trust includes unreimbursed fees on the Shirley Trust (approximately \$ 15-20K), the 1995 Insurance Trust (approximately \$20-25K) and Bernstein Family Realty, LLC (\$10,000). As a result, our fees on Si's estate and trust matters over the last year have been approximately \$50K-\$60K. In that regard we have opened the estate and filed the relevant documents, have consulted and met with outside counsel on the Stansbury litigation (and Eliot matters) and on another claim in litigation, dealt with Eliot and his counsel on all of his matters, worked with the accountants on tax return matters and related items, worked with JP Morgan on the asset management and loan matters, dealt with creditor issues, dealt with appraisers and potential purchaser of the jewelry, and communicated with Ted on a very regular basis as liaison for all of you in addition to our conference calls and individual calls over the last year. Unfortunately, your father's affairs were not left in the best order and the business litigation has spilled over to the trusts and estate making normal administration more difficult. Furthermore, his decision to by-pass you children in favor of his grandchildren has exasperated the issues in trying to deal with Eliot which has become a continuing, ongoing process with no resolution in site. I believe that we have adequately expressed our concerns in this regard to you.

As we discussed, under normal circumstances the Shirley Trust assets would have already been distributed to the Grandchildren's Trusts created under Si's Trust (based upon the exercise of his power of appointment under his will) but for the fact that the Shirley Trust is still a party in the Stansbury litigation and as to distributions to trusts for Eliot's children, we have advised Ted that the trustee of those trusts needs to sign off on a Receipt, Release and Refunding Agreement (or alternatively, Ted needs to prepare a formal accounting and serve it on all to commence the running of the 6 month statute of limitations to cut off a beneficiary's right to sue him).

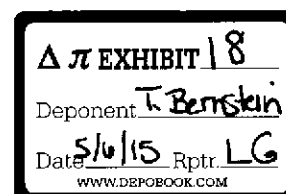
It is not our usual practice to serve as fiduciaries for our clients; however, in certain limited situations we have undertaken that role. Under the Florida Statutes, an attorney serving as a Personal Representative or Trustee can be compensated for both legal and fiduciary fees. We have not, nor do we intend to bill for Personal Representative fees or Trustee fees and have been conservative in our billing of the estate out of respect for your parents with whom we enjoyed a very nice relationship, and have attempted to minimize duplication of Robert's and my time. At the appropriate time we will provide a complete accounting of our fees and all estate expenses to date.

Having said that, we need to reign your brother in before he single handedly depletes the estate and trust assets with all of his nonsense. The amount of time, energy and effort that he is expending and the lies he is telling are incredible. We don't necessarily have an answer for this yet but we hope that somehow that one or more of you is able to reason with him and put an end to this. Your parents would certainly not appreciate the mockery he has made of their estates.

Again, sorry for the delay in getting this information to you. Going forward we will provide you with monthly bills so there is no further misunderstanding and better transparency.

Donald R. Tescher, Esq.
 TESCHER & SPALLINA, P.A.
 4855 Technology Way, Suite 720
 Boca Raton, FL 33431
 Telephone: 561-997-7908
 Facsimile: 561-997-7306
 dtescher@tescherspallina.com

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TS007019

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

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

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

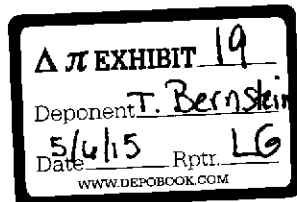
SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

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

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



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

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

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

Cross-Defendant)

and,)

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

Third-Party Defendants.)

AFFIDAVIT OF TED BERNSTEIN

Case: 1:13-cv-03643 Document #: 150-31 Filed: 03/27/15 Page 4 of 20 PageID #:2002

I, Ted Bernstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Boca Raton, County of Palm Beach, State of Florida and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My legal name is Ted Stuart Bernstein. I most often go by the name Ted Bernstein. I am also known as Ted S. Bernstein. I have also been referred to by the nickname "Theo" by friends and family.
3. I have been employed in the life insurance industry since 1980. I have been a licensed life insurance agent in Illinois since at least 1980, and in Florida since 2000.
4. When I use the term "Affidavit of Don Sanders" I mean that certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I am currently employed as President of Life Insurance Concepts, Inc. ("LIC"), a life insurance brokerage based in Boca Raton, FL.
19. I have been employed by LIC (or its predecessor) for the past 15 years, and have been employed in the life insurance industry for approximately 30 years.
20. From 2001 to 2012, my father, Simon Bernstein and I worked together at LIC, and shared office space in Boca Raton, FL.
21. Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ("Bernstein Trust"), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counter-defendant to the EB Claims. The Bernstein Trust is represented by counsel, Adam M. Simon.
22. Bank of America, N.A. ("Bank of America"), was named a party by virtue of Heritage's counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014.
23. Eliot Bernstein ("Eliot") was named a Party by virtue of Heritage's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well. Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter.

24. United Bank of Illinois, was named as a Third-Party Defendant in Heritage's counterclaim for Interpleader. United Bank of Illinois has never filed an appearance or answer.
25. I, Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. I am is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to the Eliot's Claims. I am the eldest of the five adult children of Simon Bernstein. I am represented by counsel, Adam M. Simon.
26. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (See ¶31 below).
27. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to the Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon.
28. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon.
29. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to the EB Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon.
30. Heritage is an Insurer as defined above. Heritage was terminated as a party on 2/18/2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court.
31. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan Chase Bank, N.A., as a successor to First Arlington National Bank (described above). J.P. Morgan Chase Bank, N.A. filed an answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation as party and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014.

32. William Stansbury filed a motion to intervene in this action, but his Motion to Intervene was denied and he was terminated as a non-party intervenor on January 14, 2014.
33. Adam M. Simon is counsel for the Bernstein Trust and the Consenting Children as defined below. Adam M. Simon is not counsel for Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims, and represents himself with regard to Eliot's claims. Adam M. Simon is the brother-in-law of Pamela Beth Simon, and the brother of David B. Simon.
34. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein and was named a Third-Party Defendant to Eliot's Claims. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. (*See Ex. 21*)
35. Donald R. Tescher, Esq. was named a Third-Party Defendant by virtue of the EB Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
36. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims on March 17, 2014.
37. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.
38. David B. Simon is the husband of Pamela Beth Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon.
39. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was voluntarily dissolved on April 3, 1998. (*See Ex. 9*).

40. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant to Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 upon dissolution of S.B. Lexington, Inc.
41. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
42. National Service Association, Inc. (Florida) was named a Third-Party Defendant to Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation and was dissolved in 2012. (See Ex. 22)
43. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation.
44. Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014.
45. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
46. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
47. Following the death of Simon Bernstein, I participated in and conducted diligent searches of Simon Bernstein's home, office and condominium all located in Palm Beach County, Florida. All of the records I located pertaining to the Policy and/or Bernstein Trust were turned over to Simon Bernstein's attorneys, whose names are Robert Spallina and Donald Tescher.
48. I am aware that the documents produced by Plaintiffs in this matter also contain documents located by David Simon and Pamela Simon in their offices in Chicago, Illinois.

49. As of the date of this Affidavit, no documents that I am aware of have been located and/or produced in this Litigation by any Party that appear to be the original Policy contract.
50. As of the date of this Affidavit, no documents that I am aware of have been produced in this Litigation by any Party that appear to be executed originals or executed copies of:
- (a) the "S.B. Lexington Employee Death Benefit Trust"; or
 - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
 - (c) any purported trust named the "Simon Bernstein Trust, N.A."
51. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million. (See Ex. 5 at Schedule Page, bates no. JCK001021).
52. The Insurer produced a document that is titled "Financial Activity from Issue" and references the Policy number. (See Ex. 1.)
53. The financial activity report produced by Insurer indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00. (See Ex. 1, at bates no. JCK0010201).
54. Plaintiffs have submitted a copy of the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry") which reflects a deposit of the Policy Proceeds, a total of \$1,703,567.09 deposited by the Insurer on June 26, 2013. (See Ex. 2).
55. According to the receipt, this deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. I concur with the calculation of the Policy Proceeds and that the amount reflected on the receipt evidences the Insurers payment of the Policy proceeds pursuant to its Interpleader Action. (See Ex. 2)
56. According to the Part I of the application for the Policy, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
57. According to Part I of the application, the beneficiary at issuance was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
58. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (See Ex. 3)

59. During the application process, the Insurer conducted a routine underwriting investigation of Simon Bernstein prior to approving his policy. Part of that investigation was conducted by a company called Equifax, which is a company widely used in the insurance industry for underwriting investigations. In the Equifax report, the purpose of the insurance being provided by the Policy was stated as follows: "The beneficiary of this policy is the First Arlington National Bank, trustee of the S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (See Ex. 20)
60. In 1982, the year the Policy was issued, I shared office space with Simon Bernstein in Chicago, IL and can confirm that at that time, Simon Bernstein was employed by S.B. Lexington, Inc., which was a life insurance brokerage located in Chicago, IL.
61. In the early 1980's, while I was sharing office space with Simon Bernstein and S.B. Lexington, Inc., I was a licensed insurance agent and participated in the marketing of qualified employee benefit plans for closely held corporations. The plans were qualified as Voluntary Employee Benefit Associations under I.R.S. Code Sec. 501(c)(9). The S.B. Lexington VEBA was designed to insure the lives of S.B. Lexington employees and the ultimate beneficiaries of the death benefit was each insured employee's designated beneficiary.
62. Simon Bernstein whom was also a licensed insurance agent also marketed the VEBA Plans on behalf of S.B. Lexington, Inc.
63. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer to the insurance agent whom would then deliver it to the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
64. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.

65. A document produced by Plaintiffs is a copy of a form entitled S.B. Lexington, Inc. Employee Death Benefit Plan and Trust Beneficiary Designation for plan member, Simon Bernstein (the "VEBA Beneficiary Designation"). (See Ex. 4)
66. Having worked for my father and with my father for many years, I have seen his signature on a multitude of occasions and am very familiar with it. I recognize the two signatures on Ex. 4 as the signatures of my father, Simon Bernstein.
67. The VEBA Beneficiary Designation form is dated "8-26-95", and in it Simon Bernstein designates the "Simon Bernstein Irrevocable Insurance Trust" as his beneficiary to receive the death benefit under the VEBA. (See Ex. 4)
68. A document bearing bates no. JCK1098-JCK1117 produced by the Insurer is a specimen policy form for the Policy. On page JCK001099, the specimen policy includes the product name "CURRENT VALUE LIFE". A document produced by the Insurer bearing bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million. (See Ex. 5).
69. A document produced by the Insurer bearing bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982. (See Ex. 6).
70. On or about June 5, 1992, a letter was submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (See Ex. 7).
71. The Policy records indicate that on or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
 - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
 - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary. (See Ex. 8)

72. Though the name of the Trust on the Request Letter was set forth as stated in Par. 69(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (See Ex. 8)
73. On November 27, 1995, Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries. (See Ex. 8)
74. On April 3, 1998, S.B. Lexington was voluntarily dissolved. (See Ex. 9)
75. Upon the dissolution of S.B. Lexington, Inc., the VEBA was also dissolved and the ownership of the Policy was changed in April of 1998. According to the Policy Records and the Aff. of Don Sanders, in April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (See Aff. of Don Sanders at ¶61 and Ex. 10)
76. After reviewing the Policy Records, and the Affidavit of Don Sanders, I concur with Don Sanders that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (See Ex. 8 and Aff. of Don Sanders, ¶56)
77. According to the Insurer's pleading of its Interpleader Action, following the death of Simon Bernstein, the Insurer received conflicting claims to the death benefit proceeds. The Insurer received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a conflicting claim in the form of a letter from Eliot Bernstein. (See Ex. 25 at p. 3)
78. Eliot Bernstein's wife is named Candice Bernstein, and they have three children named Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein.
79. According to the Policy Records and Aff. of Don Sanders, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶65)
80. According to the Policy Records and Aff. of Don Sanders, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶66)
81. According to the Policy Records and Aff. of Don Sanders, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶67)

82. According to the Policy Records and Aff. of Don Sanders, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶68)
83. According to the Policy Records and Aff. of Don Sanders, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy. (Aff. of Don Sanders at ¶69).
84. According to the Policy Records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate", "the Estate of Simon Bernstein" or "the Estate" as beneficiary.
85. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Aff. of Don Sanders at ¶72 and Ex. 8 all 4 pages).
86. According to the Policy Records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (See Aff. of Don Sanders and Ex. 11).
87. According to the Policy Records and the Aff. of Don Sanders, the Insurer received no notices of claims from any of the following individuals or entities:
- a) The VEBA;
 - b) Any of the Bank Trustees of the VEBA;
 - c) Adam Simon;
 - d) David Simon;
 - e) The Simon Law Firm ; or
 - f) STP Enterprises, Inc.

(See Aff. of Don Sanders at ¶77).

88. In 1995, I was sharing office space with Simon Bernstein in Chicago, IL. My sister, Pam Simon, and brother-in-law, David Simon also shared office space with us. In the summer of 1995, Simon Bernstein discussed with me that he was forming a life insurance trust for the Policy, and that I would be named one of the trustees for the life insurance trust. He also indicated that my mother, Shirley Bernstein would be named the initial trustee.

89. Prior to Shirley Bernstein's passing on December 8, 2010, I had never been asked to exercise any powers on behalf of the Bernstein Trust as Trustee, and I believed that Shirley Bernstein was then acting as Trustee.
90. My father, Simon Bernstein, passed away less than two years after my mother, and during that time prior to Simon Bernstein's passing, I was not asked or required to exercise any powers as Trustee of the Bernstein Trust.
91. A copy of the Death Certificate of Simon Bernstein is attached hereto. (*See Ex. 12*).
92. In 2011, the Policy lapsed due to a missed premium payment.
93. In 2011, I assisted my father with completing the necessary paperwork and underwriting required by the Insurer to reinstate the Policy. (*See Ex. 13*).
94. Approximately one year before his death, my father took the necessary administrative steps and paid the required premium, and the Policy was reinstated by the Insurer. (*See Ex. 14*).
95. During the reinstatement process in 2011, my father reinstated the Policy without making any changes to the Owner and Beneficiary of the Policy.
96. On or about July 25, 2012, my father executed his last Will which has been filed and is being administered in Probate Court in Palm Beach County, Florida. A true and accurate copy of the Will as filed with the Clerk of the Court in Palm Beach County is included in Movant's Appendix to its Statement of Undisputed Facts. In his Will at ¶9, Simon Bernstein expressly reaffirmed his beneficiary designations made under any insurance contract. (*See Ex. 24 at ¶9*).
97. Following the death of my father, my sister, Pamela Simon, and brother-in-law, David Simon conducted searches of their office files and records, and David Simon located two unexecuted drafts of the Bernstein Trust in their offices. One of the unexecuted drafts was found on David Simon's computer database which dates back to 1990's when David Simon, Pamela Simon, and Simon Bernstein shared office space in Chicago, Illinois. *Ex. 15* includes a printout of metadata from the computer file for this draft of the Bernstein Trust indicating it was last modified on June 21, 1995. (*See Ex. 15 and Aff. of D. Simon*).
98. A second draft of the Bernstein Trust was located as a hard copy inside a file folder within the stored files of David Simon. (*See Ex. 16 and Aff. of D. Simon*).

99. According to the drafts of the Bernstein Trust, and the facts surrounding the execution of the Bernstein Trust by Simon Bernstein, as told to me by David Simon, I was appointed as successor trustee of the Bernstein Trust. (See Ex. 15, and Ex. 16, and Aff. of D. Simon.)

100. I am willing and competent and have been acting as Trustee of the Bernstein Trust in accordance with the intent of the Grantor, Simon Bernstein and with the authorization and consent of the Consenting Children.

101. Both drafts of the Bernstein Trust at Article Seven have virtually identical provisions regarding the distribution of the Policy Proceeds upon the death of Simon Bernstein. Both drafts of the Bernstein Trust provide as follows: "Upon my death, the Trustee shall divide the property of the Trust into as many separate Trusts as there are children of mine who survived me and children of mine who predecease me leaving descendants who survive me. These trusts shall be designated respectively by the names of my children." One of the drafts goes on to identify the five children by name. (See Ex. 15 and Ex. 16 at Article Seven)

102. Simon Bernstein had five children, and all of them survived him. The five adult children of Simon Bernstein are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein.

103. The Five Children had a total of ten children, and as a result Simon Bernstein had ten grandchildren whose names, year of birth, and parent are as follows:

		<u>D.O.B.</u>	<u>PARENT</u>
i)	Alexandra Bernstein	1988	Ted
ii)	Eric Bernstein	1989	Ted
iii)	Molly Simon	1990	Pam
iv)	Michael Bernstein	1992	Ted
v)	Max Friedstein	1996	Lisa
vi)	Joshua Bernstein	1997	Eliot
vii)	Carly Friedstein	1998	Lisa
viii)	Jacob Bernstein	1999	Eliot
ix)	Julia Iantoni	2001	Jill
x)	Daniel Bernstein	2002	Eliot

104. In the draft of the Bernstein Trust attached hereto as Ex. 15, at Article Eight, the Five Children are each identified by name. None of the ten grandchildren's names appear in the document.

105. I have attached a diagram that illustrates Simon Bernstein's intention and plan to ensure that the Policy Proceeds were ultimately for the benefit of the Bernstein Trust. The diagram (Ex. 17) illustrates that in Option A had the Primary Beneficiary continued to exist at the time of Simon Bernstein's death, then by virtue of the VEBA Beneficiary Designation Simon Bernstein executed which named the Bernstein Trust as beneficiary of the VEBA Trust (Ex. 4), the Policy proceeds would have been paid from the Insurer to the VEBA Trust and distributed by the VEBA Trustee to the Bernstein Trust. (See Ex. 17)

106. In this case, as explained in ¶71 and ¶72 above, the VEBA ceased to exist in 1998, long before Simon Bernstein passed away. As a result there was no primary beneficiary in existence at the time the Insured's death. At the time of Simon Bernstein's death, the contingent beneficiary of the Policy was the Bernstein Trust. By naming the Bernstein Trust as Contingent Beneficiary, Simon Bernstein ensured that the Policy Proceeds would be paid to the Bernstein Trust whether or not the VEBA continued to exist. (See Option B on Ex. 17).

107. In addition to records relating to the Policy at issue, my sister Pamela Simon, located records relating to another life insurance policy issued by Lincoln Benefit Life on the life of Simon Bernstein in 1994 (the "Lincoln Policy"). This Policy was purchased through a life insurance brokerage known as STP Enterprises, Inc. which in the 1990's was co-owned by Simon Bernstein, Pamela Simon and David Simon.

108. This second policy was issued by Lincoln Benefit Life as policy no. U0204204 in June of 1994 with Simon Bernstein as the initial owner and insured (the "Lincoln Policy"). In August of 1995, the ownership of the Lincoln Policy was changed by Simon Bernstein to the Bernstein Trust. The Lincoln Benefit Life policy lapsed several years prior to Simon Bernstein's death. The transfer of ownership form contained the name of the Bernstein Trust and its tax identification number, identified Shirley Bernstein as trustee, and also contains the *witnessed signature* of Simon Bernstein. The Lincoln Policy lapsed in 2006 for non-payment of premium approximately six years prior to my father's passing.

109. The Consenting Children are all in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy and Policy proceeds:

- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
- b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children--Ted, Pam, Eliot, Jill and Lisa--to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";
- l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:
 - i) First to the payment of attorney Adam M. Simon's fees and costs;
 - ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional

expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares;

- iii) The balance to be split equally among the five adult children of Simon Bernstein;
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received; and
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

110. Plaintiffs, the Bernstein Trust, Ted Bernstein as Trustee and the Consenting Children submit the following evidence of the existence and terms of the trust:

- a) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and the signature of the initial trustee, Shirley Bernstein. (See Ex. 19);
- b) The VEBA Beneficiary designation form containing the name of the Bernstein Trust and the signature of the grantor, Simon Bernstein. (See Ex. 4);
- c) The Policy beneficiary designation form designating the Bernstein Trust as the contingent beneficiary. (See Ex. 8);
- d) A copy of two unexecuted drafts of the Bernstein Trust Agreement (See Ex. 15 and Ex. 16).
- e) My Affidavit and the Affidavits of David Simon, and each of the four consenting children.
- f) The Affidavit provided by the Insurer, of Don Sanders, also references Policy records that confirm the designation of the Bernstein Trust as contingent beneficiary of the Policy.

g) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

h) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report, "normally those benefits are paid to family members." (See Ex. 20).

111. Plaintiffs submit the following evidence of the terms of the Bernstein Trust, including its designated beneficiaries and trustees:

a) The two unexecuted copies (one of which contains contemporaneous handwritten notes) of the Bernstein Trust Agreement;

b) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

c) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and identifying the initial trustee, Shirley Bernstein. (See Ex. 19);

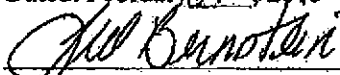
d) Declarations or Affidavits of Ted Bernstein, David Simon, Pam Simon, Jill Iantoni, and Lisa Friedstein.

e) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report of Simon Bernstein, "normally those benefits are paid to family members." (See Ex. 20).

112. I agree to waive and do not claim any compensation for acting as Trustee of the Bernstein Trust, but I do reserve the right to claim reimbursement for any costs I incur such as legal, or accounting fees in connection with the final distribution.


FURTHER AFFIANT SAYETH NAUGHT.

Dated: February 22th, 2015

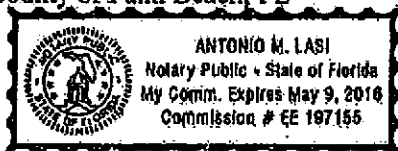


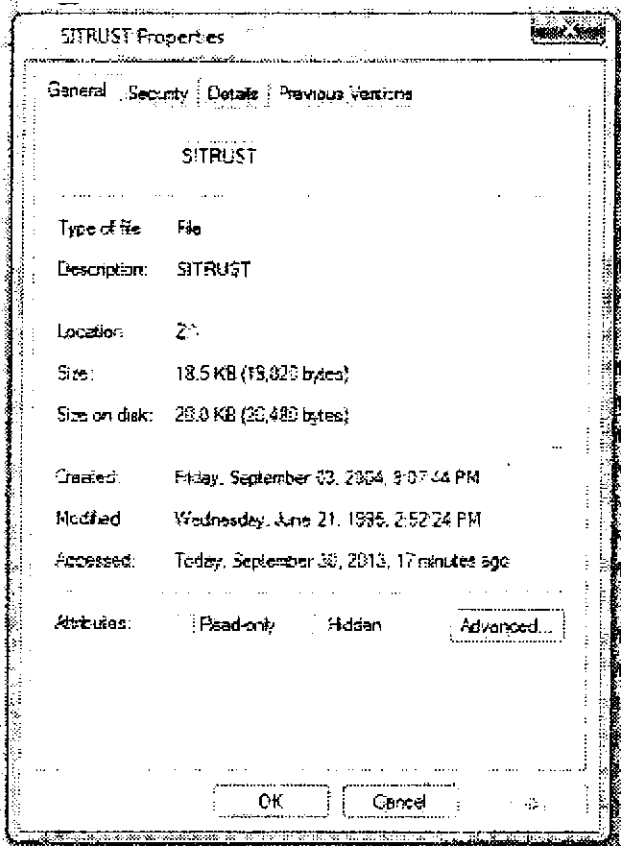
Ted Bernstein

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 22nd DAY OF FEBRUARY, 2015.



NOTARY PUBLIC
County of Palm Beach, FL





SITRUST 6/21/1995 2:52 PM File 18 KB

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



Δ π EXHIBIT 21
 Deponent: T. Bernstein
 Date: 5/4/15 Rptr: LG
 WWW.DEPOBOOK.COM

BT000002

IRREVOCABLE TRUST AGREEMENT

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

ARTICLE ONE

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

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

ARTICLE TWO

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

BT000003

ARTICLE THREE

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

ARTICLE FOUR

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

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

BT000004

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

ARTICLE FIVE

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

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

ARTICLE SIX

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

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

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

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

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

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

ARTICLE EIGHT

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

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

BT000006

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

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

ARTICLE NINE

For purposes under this instrument:

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

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

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

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

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

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

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

BT000007

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

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

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

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

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

L) The word "persons" includes corporations.

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

BT000008

ARTICLE TEN

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

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

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

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

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

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

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

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

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

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

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

BT000009

the policies for such purposes;

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

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

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

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

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

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

ARTICLE ELEVEN

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

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

BT000010

surplus and undivided profits of at least fifty million dollars.

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

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

ARTICLE TWELVE

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

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

ARTICLE THIRTEEN

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

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

Subscribed and Sworn to before
me this ___ day of _____, 199__.

Notary Public

BT000012

IRREVOCABLE TRUST AGREEMENT

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

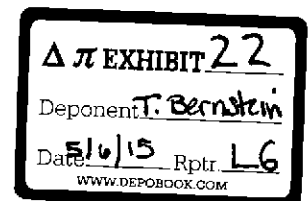
ARTICLE ONE

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

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

ARTICLE TWO

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



BT000013

ARTICLE THREE

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

ARTICLE FOUR

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

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

BT000014

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

ARTICLE FIVE

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

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

ARTICLE SIX

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

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

BT000015

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

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

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

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

ARTICLE EIGHT

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

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

BT000016

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

As of the date of this Agreement I currently have _____

children living, namely:

ARTICLE NINE

For purposes under this instrument:

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

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

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

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

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

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

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

taxes, expenses or compensation which it considers proper.

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

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

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

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

L) The word "persons" includes corporations.

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

BT000018

ARTICLE TEN

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

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

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

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

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

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

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

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

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

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

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

BT000019

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

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

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

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

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

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

ARTICLE ELEVEN

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

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

BT000020

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

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

ARTICLE TWELVE

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

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

ARTICLE THIRTEEN

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

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

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

Notary Public

SIMON BERNSTEIN
2000 INSURANCE TRUST

DATED *August 15, 2000*

PROSKAUER ROSE LLP

Attorneys at Law
2255 Glades Road, Suite 340 West
Boca Raton, FL 33431-7360

TS003992

Δ π EXHIBIT 23
Deponent *I. Bernstein*
Date *5/6/15* Rptr. *LG*
WWW.DEFOBOOK.COM

TRUST AGREEMENT dated this *15* day of *August*,
2000, between SIMON BERNSTEIN, as Settlor, and SHIRLEY BERNSTEIN
and ALBERT W. GORTZ, as Trustees.

1. As and for a gift, the Settlor hereby assigns and transfers to the Trustees and their successors (together, the "Trustees") the life insurance policies set forth in Schedule A annexed hereto, and the Settlor agrees to execute all such assignments and changes of beneficiary and to do such other acts and things as may be necessary in order to make the Trustees irrevocable absolute assignees of said life insurance policies. The Trustees shall hold said policies, together with any other property which may be received by them, in trust upon the terms and conditions set forth herein. This trust shall be known as the "SIMON BERNSTEIN 2000 INSURANCE TRUST."

2. (a) During the Settlor's lifetime, the Trustees shall hold the trust property, shall invest and reinvest the same, and shall pay so much of the income therefrom to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the Settlor's descendants, living from time to time, in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine, accumulating any balance of the income and adding the same to principal.

(b) During the Settlor's lifetime, the Trustees are further authorized and empowered, from time to time, to pay to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the

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2255 GLADES ROAD
BOCA RATON, FLORIDA 33431

Settlor's descendants, living from time to time, such sums out of the principal of the trust (even to the extent of the whole thereof), in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine; provided, however, that the Trustees shall notify the Settlor's wife and each of the Settlor's descendants of their intention to make any distribution pursuant to this subdivision, whereupon the Settlor's wife and each of said descendants shall have the right (prior to such distribution) to withdraw principal pursuant to subdivision (c) of this Article 2 within thirty days after receipt of such notice.

(c) In each calendar year (including the year in which the trust is first funded), with respect to any addition to principal,

(1) The Settlor's spouse is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to the fair market value of the property added to principal (valued as of the date the addition is made),

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to the Settlor's spouse (determined on the date the addition is made, after taking into

account all prior gifts to the Settlor's spouse by such individual and assuming that in the case of any such individual other than the Settlor, his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code,

and

(B) the amount from prior years (if any) that remains subject to his or her power of withdrawal.

(2) If the aggregate additions to the trust made in said year exceed the amount that the Settlor's spouse may withdraw pursuant to paragraph (1) of this subdivision (c), each of the Settlor's descendants, living from time to time, is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to,

(I) a) the fair market value of the property added to principal (valued as of the date the addition is made),

reduced by,

b) the amount subject to the power of withdrawal of the Settlor's spouse pursuant to paragraph (1) of this subdivision (c),

divided by,

(II) the number of the Settlor's descendants having a power of withdrawal under this paragraph (2) immediately after the addition is made,

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to such descendant (determined on the date the addition is made, after taking into account all prior gifts to said descendant by the individual making that addition and assuming that his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code),

and

(B) the amount from prior years (if any) that remains subject to said descendant's power of withdrawal.

(3) Said rights of withdrawal may be exercised only by written notice to the Trustees and any such withdrawals shall be made out of additions to principal made during the current year, and, to the extent that those additions are insufficient, out of the balance of the principal. The Trustees shall notify the Settlor's spouse and each of the Settlor's descendants, living from time to time, in writing of his or her power of withdrawal with respect to each addition within fifteen days after the date the addition is made.

(4) (A) Each beneficiary's power of withdrawal in any calendar year shall lapse at the end of that year to the extent of,

(i) the amount described in Section 2514(e) of the Code (which, if expressed as a percentage of the fair market value of trust principal, shall be that percentage determined as of the end of the year in question), combining, for this purpose, the fair market

values of the principal of the trust under this Agreement and of all other trusts as to which the beneficiary may have a power of withdrawal,

reduced (but not below zero) by,

- (ii) the amounts by which the beneficiary's powers of withdrawal with respect to each such trust shall have lapsed at the end of that year (assuming that, with respect to each beneficiary, his or her powers of withdrawal as to each such trust, including this trust, shall lapse in the order in which the trust granting such power was created).

(B) Each beneficiary's power of withdrawal shall lapse in its entirety, (i) upon the beneficiary's death, or (ii) upon the Settlor's death if any part of the principal of the trust is includable in the Settlor's gross estate for Federal estate tax purposes.

(5) Notwithstanding the foregoing, any individual making an addition to the principal shall have the right, by written instrument delivered to the Trustees when the addition is made, with respect to any power of withdrawal that otherwise would be created as a result of said addition, (A) to exclude any beneficiary from exercising his or her power of withdrawal that would otherwise be created, (B) to increase (but not exceeding the amount of his or her addition) or decrease the amount subject to any beneficiary's power of withdrawal, or (C) to change the period during which any beneficiary's powers of withdrawal may be exercised.

3. Upon the death of the Settlor, the then principal of the trust shall be held by the Trustees in further separate trust to pay the income therefrom in quarterly or more frequent installments to the Settlor's wife during her life.

The Trustees are authorized and empowered, from time to time, to pay to the Settlor's wife such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees, in their absolute discretion, deem in her best interests.

Upon the death of the Settlor's wife, the then principal of the trust shall pass to such of one or more of the Settlor's descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as the Settlor's wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon the Settlor's death if the Settlor's wife predeceases the Settlor, said principal shall be divided into shares, per stirpes, for such of the Settlor's children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, provided, however, that any share so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty shall be disposed of as provided in Article 4 of this Agreement.

4. All shares or portions above or below directed to be set aside for a grandchild or more remote descendant of the Settlor and directed to be disposed of as provided in this Article 4 shall be held by the Trustees in further separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as the Trustees deem necessary or advisable, accumulating any balance of the income and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

The Trustees are authorized and empowered, from time to time, to pay to the beneficiary such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees shall deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for the beneficiary's then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of the Settlor and who has

descendants then living, or, in default thereof, for the Settlor's then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of the Settlor who is then the beneficiary of a trust under this Article 4 shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article 4 shall be disposed of as provided in this Article 4.

5. The Trustees shall have the power, in their absolute discretion, at any time or from time to time: to apply for and to purchase contracts of insurance on the life of the Settlor; to make premium payments out of the income or principal on any policy of life insurance held by them hereunder; to exercise any of the rights or options with respect to any policy of life insurance held by them hereunder, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy, applying dividends against premiums or purchasing paid up additions, and exercising options with respect to conversion, surrender or payment of death proceeds.

6. If ALBERT W. GORTZ ceases to be qualified as a Trustee hereunder, the Settlor's daughter PAMELA BETH SIMON shall be entitled to qualify as successor Trustee in his place.

The Trustees from time to time qualified hereunder are authorized and empowered to designate one or more co-Trustees and, subject to the foregoing, a sole surviving Trustee at any time qualified hereunder is authorized and empowered to designate one or more successor Trustees to succeed himself or herself; provided, however, that the Settlor may not serve as a Trustee hereunder and that the Settlor's wife may not serve as a sole Trustee hereunder, and, provided further, that JEANNIE BERNSTEIN shall never be designated as or serve as a Trustee of any trust created hereunder.

An individual Trustee shall cease to be qualified as Trustee hereunder if he or she is under a legal disability or if by reason of illness or mental or physical disability, in the written opinion of two doctors then practicing medicine, he or she is unable to manage his or her affairs. Each Trustee acting hereunder hereby waives any doctor-patient privilege that may exist and authorizes said doctors to release all medical information that may be requested by the Trustees acting hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

No bond or other security shall be required for any reason whatsoever of any Trustee named herein or designated as herein provided.

7. The Trustees hereunder shall have the following discretionary powers in addition to those conferred by law:

(a) To make any payment or distribution (required or authorized under this Agreement) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard to the income tax basis of property allocated to any beneficiary.

(b) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article, so long as they, in their absolute discretion, deem it advisable.

(c) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable, without regard to any duty to diversify or, except with respect to any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.

(d) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but the Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to any trust hereunder.

(e) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(f) Severally to resign, by delivering to any successor or co-Trustee written notice of such resignation, to take effect at such date as said resigning Trustee may specify in said notice, without necessity for prior accounting or judicial approval.

(g) Severally to authorize, by instrument in writing, any person or corporation, including any co-Trustee, bank or trust company, to act in the place of said Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Trustee.

(h) To credit to principal or income or to apportion between them in such manner as they deem advisable any distributions from partnerships, any extraordinary, wasting or liquidating dividends, any dividends payable in the stock of the corporation paying the dividend or payable in the stock of another corporation and any so-called "capital gains dividends" declared by investment companies or investment trusts.

(i) To charge to principal or income or to apportion between them any ordinary or extraordinary expenses in such manner as they deem advisable.

(j) To determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money.

(k) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute and extending beyond the duration of the trusts herein), exchange, grant options to lease or to

buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder.

(l) To borrow such sums as they deem advisable for the proper administration of the trusts and to give security therefor.

(m) With respect to any property distributable absolutely to an infant remainderman: in their absolute discretion, to retain possession of and manage the same during his or her minority, with all the rights, powers and compensation of Trustees hereunder, and from time to time to apply so much of the income and principal thereof to the use of said infant as they deem advisable, accumulating any balance of the income and adding the same to principal at convenient intervals; upon said infant's attaining majority (or sooner death), the then principal and any accumulated income shall be distributed to said infant (or his or her estate); this power shall not affect the vesting of said property in said infant.

(n) In determining the amount of income or principal applicable to the use of an infant, to disregard the duty or ability of the parent or parents of said infant to support said infant; and to make payment of any income or principal, applicable to the use of or payable to an infant, (1) to the Guardian (qualified in any jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her Guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act and to select age twenty-one for termination of custodianship, or (4) to apply the same for his or her benefit; the receipt of such Guardian, parent or Custodian or the evidence of the application of such income or principal shall be a full discharge to the Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of the Settlor's grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(o) To remove any of the property held hereunder to or from any jurisdiction; to change the situs of administration of any trust hereunder from one jurisdiction to another and to elect the law of such other jurisdiction to govern the same.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held hereunder in exchange for securities thereof.

(q) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts

own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as the Trustees, in their absolute discretion, shall deem advisable.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make all necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person or by proxy.

(t) To the extent permitted by law, to register any of the property held hereunder in their names as Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(u) To lend such sums out of the income (other than of any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or State law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that under no circumstances may any loan be made to the Settlor.

(v) To exercise any settlement option with respect to the proceeds of any policy of life insurance payable to them as beneficiaries and, in the event of any controversy concerning the payment of such proceeds (or any other controversy with the insurer), to compromise any claim they may have, without the necessity of court approval; to receive such sums as may become payable to them as beneficiaries of any policy of life insurance, with authority to execute all necessary receipts and releases to the insurer, and, upon being advised of the death of the insured, to make efforts to collect such sums as may appear to be due them, without any obligation to institute suit or maintain any litigation to collect the proceeds of any such policy unless in possession of funds sufficient for that purpose or unless indemnified to their satisfaction for attorneys' fees, costs, disbursements and other expenses and liabilities to which they may be subjected by reason of such action; provided, however, that the Trustees may utilize any property held by them hereunder to pay expenses incurred in connection with enforcing the payment of any such sums due them. Any insurer issuing such policy shall, upon payment of the proceeds to the Trustees, be released

and discharged of any obligation to see that such proceeds are applied as provided in this Agreement and of any further liability to the Trustees or to any beneficiary hereof.

(w) To guarantee loans made to any beneficiary hereunder.

(x) To trade on margin (but only with the approval of the Settlor's spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, the Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

8. (a) All the powers granted in this Agreement may be exercised after the termination of the trusts in connection with the proper administration and distribution thereof.

(b) Except as otherwise provided in subdivision (o) of Article 7 of this Agreement, this Agreement shall be governed by and its validity, effect and interpretation determined by the laws of the State of Florida.

(c) This Agreement shall be irrevocable.

(d) In any judicial proceeding involving any trust hereunder and in any non-judicial settlement of the account of a Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(e) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether said life beneficiary or said person died first, then, for the purposes of this Agreement, said person shall be deemed to have died before said life beneficiary.

(f) Upon the commencement of the trusts herein and upon the death of an income beneficiary, or any other termination of the trusts herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which the Trustees are authorized in their discretion to accumulate shall be added to principal.

(g) Any income or principal payable to a beneficiary hereunder may, in the discretion of the Trustees, be applied by them for the benefit of said beneficiary.

(h) Notwithstanding any provision in this Agreement to the contrary, any power (including discretionary powers) granted to the Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause the Settlor's estate to lose all or part of the tax benefit afforded the Settlor's estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to any trust for the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, (1) subdivisions (h), (i), (j), (p), and (q) of the preceding Article of this Agreement and subdivision (f) of this Article shall not apply, and (2) the Settlor's spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(i) Any Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Trustee(s).

(j) With respect to any Trustee who is interested, in his or her individual capacity, in any firm or corporation in which the Settlor's estate or any trust hereunder may have an interest, said Trustee may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but, if one or more of said Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of said trust shall be made by said disinterested Trustee(s).

(k) A person from time to time qualified as Trustee hereunder shall not be disqualified from purchasing assets of the trust, provided (1) said purchaser shall not participate as Trustee in the decisions of the Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Trustee(s); and (2) in fixing said price, conditions and terms said other Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Trustee.

(l) The Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of said Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of said Trustees has no such interest, then as to all such matters the decision of the trusts hereunder shall be made by said disinterested Trustee(s).

(m) During the minority of any beneficiary, notice of his or her right to withdraw principal from a trust hereunder shall be given to and such right shall be exercisable on his or her behalf by his or her natural or legal guardian, his or her conservator, or his or her committee (in each case, other than the Settlor); provided, however, that no such notice shall be given to or exercisable by JEANNIE BERNSTEIN in any capacity as such beneficiary's natural or legal guardian, conservator, committee, parent or Custodian.

(n) The Settlor or any other person may from time to time add assets to the principal of the trusts hereunder, provided only that said assets are acceptable to the Trustees.

(o) All testamentary powers of appointment granted in this Agreement shall be exercisable only by specific reference to this Agreement and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the power holder or his or her estate or his or her creditors or the creditors of his or her estate.

(p) Notwithstanding the provisions of Article 4 of this Agreement, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article 4.

(q) Whenever property is directed to be held in a trust hereunder, the Trustees are authorized and empowered to establish two or more separate trusts for such property, with said trusts to have identical provisions, to the end that the

Federal generation-skipping transfer tax inclusion ratio, as defined in Section 2642(a) of the Code, of each trust will be either zero or one after allocation of the Settlor's available GST exemption pursuant to Section 2631 of the Code. The Trustees are further authorized and empowered to make different tax elections with respect to each such separate trust (including the allocation of the Settlor's available GST exemption), to invest such trusts in the same or different manners, to exercise any and all discretionary powers granted to them hereunder with respect to such separate trusts in the same or different manners, and to take any and all other actions consistent with the fact that such trusts are separate entities. The Settlor recommends (but does not direct) that no distribution of principal be made to a beneficiary from his or her trust(s) with a generation-skipping transfer tax inclusion ratio of zero until the trust(s) for his or her benefit with a generation-skipping transfer tax inclusion ratio of one shall first have been exhausted.

(r) Wherever in this Agreement property is directed to be added to an existing trust for a descendant of the Settlor hereunder, the Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(s) If, at any time, there shall be a trust created under the Settlor's Will, the Will of the Settlor's spouse or a trust created by the Settlor or the Settlor's spouse (or both of them) during the Settlor's lifetime, for the same beneficiaries and subject to the same provisions as a trust under this Agreement (or as a trust intended to be created under this Agreement), or if there shall be more than one trust under this Agreement for the same beneficiaries and subject to the same provisions, the Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code) to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the

provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(t) Wherever the context permits, the word "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(u) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being the Settlor's intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(v) In no event shall any addition to the trust be made less than thirty days before the end of any calendar year.

(w) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of this Agreement) in effect at the date of this Agreement, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(x) In determining whether or not to exercise any discretionary power to pay income or principal of any trust hereunder, the Trustees may, but shall not be required to, (1) with respect to the trust created under Article 3 of this Agreement, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) The Trustees must own each policy of insurance purchased by the Trustees or contributed to the trust. The Trustees shall have no liability or responsibility for any loss resulting from the failure of any insurance company and inability to pay its claim under any insurance policy purchased by the Trustees. The Trustees shall have the power to borrow any sum in accordance with the provisions of any such insurance contracts; however, the Trustees shall be under no obligation to invest any cash value accumulated in any life insurance policy owned by the trust regardless of the investment yield on such value within the policy as compared to the net investment yield which could be

obtained outside the policy. Except as expressly provided otherwise herein, the Trustees shall be under no duty or obligation to exercise any benefit, option or privilege granted by any insurance policy and the Trustees shall not be liable or accountable to anyone for the exercise or non-exercise of any such benefit, option or privilege, including the ability to borrow against the cash values to obtain a higher investment yield outside the policy.

(z) The Trustees shall be responsible for the proceeds of the policies only when, as and if collected by them, and the Trustees shall not be liable or accountable to anyone if, because of default in premium payments, failure of the insurance company or for any other reason whatsoever, the policies, or any of them, shall lapse or be otherwise uncollectible. The Trustees shall not be deemed, because of this trust, to have entered into any covenant to keep any insurance policies in force.

(aa) In determining the amount of any power to withdraw principal that may lapse under this Agreement, the Trustees may rely upon the written statement of the Trustees of any other trust to which this Agreement refers as to the fair market value of the principal thereof at the end of any year and shall have no duty to inquire as to the correctness of such statement.

(bb) Wherever reference is made in this Agreement to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

9. The term "descendants" as used in this Agreement shall specifically exclude the Settlor's daughter PAMELA BETH SIMON and her descendants. The Settlor has not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.


10. The Trustees hereby accept the trust herein and

agree to carry out the provisions hereof and faithfully to perform and discharge all of their duties as Trustees.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

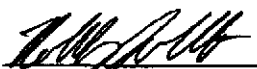
Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Settlor


GEORGE D. KARIBJANIAN

 (L.S.)
SIMON BERNSTEIN, Settlor

Print Name 183 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486


Robert Jacobowitz
Print Name
2415 NW 32nd St.
Address
Boca Raton, FL


Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Trustee

George Karibjanian
GEORGE D. KARIBJANIAN

 (L.S.)
SHIRLEY BERNSTEIN, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486


Robert Jacobowitz

Print Name 2415 NW 32nd St

Address Boca Raton, FL

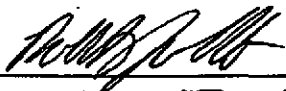
Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Trustee

George Karibjanian
GEORGE D. KARIBJANIAN

Albert W. Gortz (L.S.)
ALBERT W. GORTZ, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486



Robert Jacobowitz

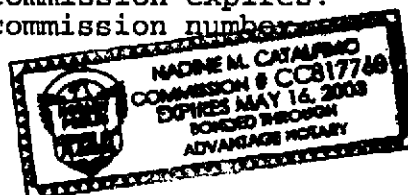
Print Name 2415 NW 32nd St

Address Boca Raton, FL

STATE OF FLORIDA)
) SS.:
COUNTY OF PALM BEACH)

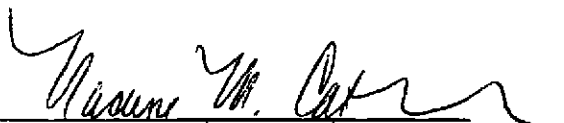
The foregoing instrument was acknowledged before me this 15th day of August, 2000 by SIMON BERNSTEIN, who is personally known to me or ~~has produced~~ _____ as identification.

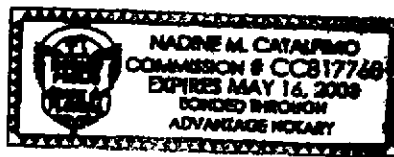

Notary Public (Affix Seal)
My commission expires:
My commission number:



STATE OF FLORIDA)
) SS.:
COUNTY OF PALM BEACH)

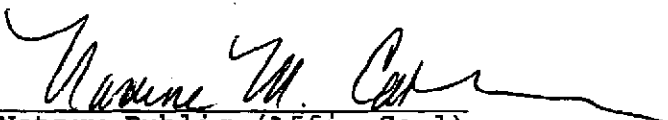
The foregoing instrument was acknowledged before me this 15th day of August, 2000 by SHIRLEY BERNSTEIN, who is personally known to me or ~~has produced~~ _____ as identification.

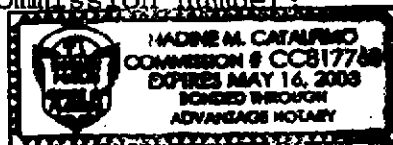

Notary Public (Affix Seal)
My commission expires:
My commission number:



STATE OF FLORIDA)
) SS.:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15th day of August, 2000 by ALBERT W. GORTZ, who is personally known to me or ~~has produced~~ _____ as identification.


Notary Public (Affix Seal)
My commission expires:
My commission number:



SCHEDULE A
TRUST AGREEMENT dated the 4th day
of August, 2000, between
SIMON BERNSTEIN, as Settlor,
and SHIRLEY BERNSTEIN AND
ALBERT W. GORTZ, as Trustees

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

Capitol Bankers Life Insurance Company,
Policy No.: 1009208

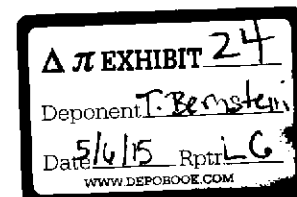
SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

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

LAW OFFICES
TESCHER & SPALLINA, P.A.



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SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

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AMENDED AND RESTATED TRUST AGREEMENT

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1. for his or her lineal descendants then living, *per stirpes*, or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

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AMENDED AND RESTATED TRUST AGREEMENT

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A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:


a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

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

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

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

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Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

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

K. Release of Medical Information.

I. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

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decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

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

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

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

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

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

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

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

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

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

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

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

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

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11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

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

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

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18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

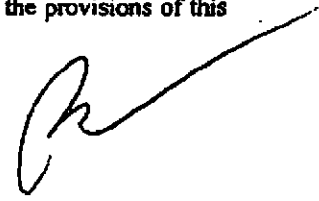
23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

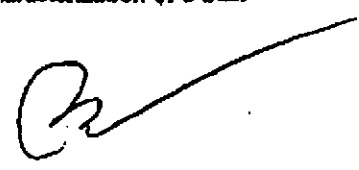
28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

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entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. **Power to Remove Trustee.** Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. **Method of Appointment of Trustee.** Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. **Limitations on Removal and Replacement Power.** Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. **Successor Fiduciaries.** No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. **Liability and Indemnification of Trustee.**

1. **Liability in General.** No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. **Indemnification of Trustee.** Except in regard to liabilities imposed on a Trustee under Subparagraph [V.G.], each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

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and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

L. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

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Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

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designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

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1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

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2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

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F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

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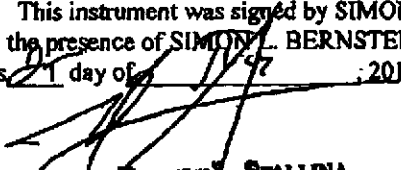
IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

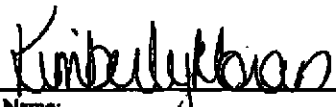
SETTLOR and TRUSTEE:



SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:


Print Name: ROBERT J. SPALLINA
Address: 7387 WISTERIA AVENUE
PALM BEACH, FL 33076

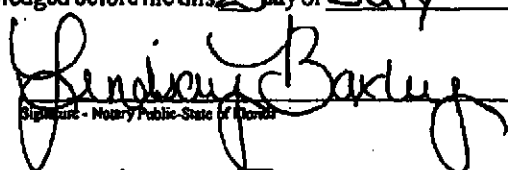

Print Name: Kimberly Moran
Address: 6362 LAS FLORES DRIVE
BOCA RATON, FL 33433

STATE OF FLORIDA


SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.


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

[Seal with Commission Expiration Date]

NOTARY PUBLIC STATE OF FLORIDA
 Lindsay Baxley
Commission # EEC92282
Expires: MAY 10, 2015
BOUNDED THRU ATLANTIC BONDING CO., INC.

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

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SIMON L. BERNSTEIN
IRREVOCABLE TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

$\Delta \pi$ EXHIBIT	25
Deponent	T. Bernstein
Date	5/6/15 Rptr. LG
WWW.DEPOBOOK.COM	

SIMON L. BERNSTEIN

IRREVOCABLE TRUST AGREEMENT

THIS AGREEMENT, made this 20 day of May, 2008, between SIMON L. BERNSTEIN, of Palm Beach County, Florida hereafter called "Trustor," and WILMINGTON TRUST COMPANY, a Delaware corporation, hereafter called "Trustee," WITNESSETH:

WHEREAS, Trustor desires to establish a trust of the property described in the attached "Schedule A" and other property which may be added from time to time, all of which is hereafter called the "trust fund;" and

WHEREAS, Trustee accepts such trust and agrees to administer it in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, Trustor hereby gives Trustee the property described in "Schedule A," in trust, for the following purposes:

SECTION 1: DISTRIBUTION.

A. During Trustor's Lifetime. During Trustor's lifetime, Trustee may, from time to time and subject to Subsection D of this Section 1, distribute all, some, or none, of the net income and principal to Trustor and Trustor's wife, SHIRLEY BERNSTEIN, as Trustee deems appropriate. Trustee shall take into account other sources of funds available to them. Trustee shall accumulate any net income not so distributed and add it to principal, to be disposed of as a part of it.

B. On Trustor's Death. On Trustor's death, Trustee shall distribute the trust fund to such person or persons, other than Trustor, Trustor's creditors, Trustor's estate, and the creditors of Trustor's estate, in such manner and amounts, and on such terms, whether in trust or otherwise, as Trustor effectively appoints by specific reference hereto in his Will. However, Trustor may, from time to time, release this special power of appointment, in whole or in part, by a written instrument delivered to Trustee during his lifetime. On Trustor's death, Trustee shall distribute the remaining assets of this Trust to the then serving Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 13, 2008, as may be amended and restated from time to time, to be held and administered as provided thereunder.

C. Contingent Gift. If at any time Trustee holds any portion of the principal of any trust not disposed of effectively under the previous provisions, then at such time Trustee shall distribute such principal, free from trust, to such then living person or persons as are then determined to be Trustor's distributees by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property then in effect, as though Trustor had died at that particular time, intestate, a resident of the State of Delaware and owning such property then so distributable.

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D. Distribution Adviser. Trustee shall exercise its discretionary power to distribute income and/or principal to Trustor's wife pursuant to Subsection A of this Section 1 only with the written consent of the distribution adviser who shall be Trustor, so long as he is willing and able to act in such capacity. If at any time there is no distribution adviser, or if such adviser fails to express in writing to Trustee consent or disapproval as to the exercise of any discretionary power within fifteen (15) calendar days after Trustee has sent a written request for such consent to such adviser's last known address by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), Trustee may act in the matter as it deems appropriate. The distribution adviser shall act in a fiduciary capacity and conform to the purposes of this agreement. Such adviser shall have no duty to inquire into or see to the performance by Trustee of its duties under this agreement. The distribution adviser shall receive no compensation and shall not be reimbursed for expenses incurred while acting as such adviser.

SECTION 2: MERGER WITH SIMILAR TRUSTS.

If at any time a trust is set aside for any person or persons under the terms of this agreement which is substantially the same as any other trust established for that person or persons by Trustor or Trustor's wife, Trustee may, in its sole discretion, merge the trust created hereunder with the other trust for such person or persons, and the two trusts shall thereafter be held, administered, and distributed as one.

SECTION 3: ALTERNATIVE METHODS OF DISTRIBUTION.

Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

SECTION 4: SPENDTHRIFT PROVISION.

No beneficiary (including Trustor) may alienate or in any other manner, whether voluntary or involuntary, assign, transfer, pledge, or mortgage his or her interest in any trust hereunder, and no one (including a spouse or former spouse) may attach or otherwise reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. The provisions of this Section shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This Section constitutes a restriction on the transfer of Trustor's beneficial interest in the trust fund that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any other similar or successor statute.

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SECTION 5: PAYMENT OF DEATH TAXES, DEBTS, AND EXPENSES OF ADMINISTRATION.

On the death of the Trustor, Trustee shall, unless otherwise directed by the beneficiary's Will or Revocable Trust Agreement, distribute to the Personal Representative of the beneficiary's estate an amount equal to the sum of all additional transfer taxes and costs of administration payable by such Personal Representative as a result of the inclusion of the trust in the Trustor's estate. Certification of such Personal Representative as to the amount of such additional taxes and costs will be determinative for all purposes. Trustee shall make such distributions directly to the appropriate payee, if so directed by such Personal Representative.

SECTION 6: TRUSTEE'S POWERS.

In addition to those powers granted by law, Trustee is specifically authorized and empowered, in its sole discretion, but subject to the provisions of Section 7:

A. To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property held hereunder, for such price and upon such terms and credits as it deems proper.

B. To invest in any kind of property, real, personal, or mixed, regardless of the laws governing investments by fiduciaries, without any duty to diversify investments.

C. Unless otherwise directed by the investment adviser named in Section 7 hereof, to execute securities transactions, without necessity of providing written confirmation thereof to such adviser at the time of settlement, and to execute securities transactions through any brokerage service, whether discount or full service, including Wilmington Brokerage Services at its normal rates of compensation, without diminution of compensation otherwise payable to Trustee, even if Wilmington Trust Company is serving as Trustee.

D. To vote directly or by proxy at any election or stockholders' meeting any shares of stock, excluding stock of Wilmington Trust Corporation.

E. To participate in any plan or proceeding, including any voting trust plan for liquidating, protecting, or enforcing any interest in any property, or for reorganizing, consolidating, merging, or adjusting the finances of any corporation issuing any such interest; to accept in lieu thereof any new or substituted stocks, bonds, notes, or securities, whether of the same or a different kind or class, or with different priorities, rights, or privileges; to pay any assessment or any expense incident thereto; and to do any other act or thing that it deems necessary or advisable in connection therewith.

F. To deposit, or arrange for the deposit of, securities at Depository Trust Company (DTC) and/or at any other securities depository or clearing corporation.

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G. To make any division or distribution in cash or in kind, or partly in cash and partly in kind; and to elect to recognize taxable gain or loss resulting from a distribution. Trustee may consider the income tax basis of the property then available for division or distribution, as well as the circumstances of the beneficiaries, and need not make division or distribution on a pro rata, asset-by-asset basis. Trustee shall not adjust the interest of any beneficiary as a result of any action taken or forbore under the provisions of this Subsection G.

H. To make loans, against adequate collateral, to any person including the Personal Representative of the estate of Trustor or any beneficiary and/or to purchase any property at its then fair market value from any person including such Personal Representative.

I. To borrow money from any person or corporation, including Trustee, and to pledge or mortgage as security any real or personal property.

J. To litigate, submit to arbitration, compromise, or settle any claim in favor of or against any trust hereunder, and to execute all agreements, deeds, and releases necessary or proper in connection therewith.

K. To retain attorneys-at-law, accountants, investment counsel, agents, and other advisers without diminution of compensation otherwise payable to Trustee.

L. To pay the taxes and expenses of maintaining, repairing, improving, and insuring any real property held hereunder.

M. To receipt for the proceeds of any life insurance made payable to Trustee, to institute any suit or proceedings, and to take any action necessary to collect such proceeds. However, Trustee need not institute any suit or proceeding unless its expenses, including counsel fees and costs, are available in the trust fund or are advanced or guaranteed in an amount and in a manner reasonably satisfactory to it.

N. To renounce, in whole or in part, any property or interest in property which may become payable to any trust hereunder, except to the extent that the distribution of such property resulting from such renunciation is fundamentally inconsistent with the provisions of this agreement.

O. To divide any trust hereunder into separate trusts if the purposes for which the trust was created are better served thereby.

P. To consider gains from the sale of capital assets in the trust to be part of a mandatory or discretionary distribution of principal to a beneficiary.

SECTION 7: INVESTMENT ADVISER

Trustee shall exercise the powers hereinbefore granted to it in Subsections A, B,

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D, E, H and I of Section 6 with respect to each trust hereunder only with the written consent or on the written direction of the investment adviser of such trust, provided that: (i) Trustee shall sell any Wilmington Trust Corporation stock held by it hereunder unless specifically directed to do otherwise by such adviser; (ii) the purchase, sale, and voting of Wilmington Trust Corporation stock shall be solely on the direction of the investment adviser; (iii) Trustee shall manage and invest the otherwise uninvested cash in each such trust in its sole discretion; (iv) the investment adviser may at any time, or from time to time, delegate to Trustee the authority to exercise in its sole discretion the power to buy or sell any property (or, having delegated the authority to do so, revoke such authority); and (v) if at any time during the continuance of any such trust there shall be no investment adviser of such trust, or if the investment adviser of such trust shall fail to communicate in writing to Trustee his or her consent, disapproval, or direction as to the exercise of any of the aforesaid powers for which exercise the consent or direction of such adviser shall be necessary, within twenty (20) days after Trustee shall have sent to such adviser, by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), at his or her last known address, a written request for such consent or direction (notwithstanding that Trustee shall be under no obligation to request any such direction), then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust. The investment adviser hereunder shall be Trustor and Trustor's wife, in the order named, while willing and able to act in such capacity. Initially, Trustee shall exercise such powers on the direction of the investment adviser, but the investment adviser may establish from time to time whether the Trustee shall exercise such powers with the consent or on the direction of such adviser. To qualify, any person appointed investment adviser of a trust hereunder shall deliver a written instrument to Trustee indicating acceptance and agreement that all powers conferred upon such adviser will be exercised in a fiduciary capacity for the exclusive interest of the beneficiaries. The investment adviser need not inquire into the Trustee's performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken in bad faith. The investment adviser shall serve without compensation, but the investment adviser (other than Trustor) may be reimbursed for out-of-pocket expenses, including investment counsel fees.

SECTION 8: ADDITIONS TO THE TRUST FUND.

With the consent of Trustee, any person may add property to any trust hereunder, and such property shall thereafter be held by Trustee as a part thereof.

SECTION 9: IRREVOCABILITY.

This trust shall be irrevocable and not subject to amendment by Trustor or any other person. However, Trustee is authorized to modify or amend the provisions of this agreement to ensure that this agreement is a qualified disposition under the Act. Trustee may rely upon the advice of counsel in taking any action pursuant to the authority given to Trustee, and Trustee shall be without liability therefor.

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TESCHER & SPALLINA, P.A.

SECTION 10: PAYMENT OF INCOME.

Except where otherwise provided, the payment of the net income of any trust hereunder shall be made at such times as are convenient to the beneficiary and agreed to by Trustee.

SECTION 11: NON-ACCRUAL OF INCOME.

Notwithstanding any statute or rule of law to the contrary, any income accrued or on hand and not actually distributed to a beneficiary upon the termination of his or her interest shall be treated as though it had, in fact, accrued thereafter. Any income accrued upon shares of stock or interest-bearing property when delivered to Trustee shall be treated as though such income had, in fact, accrued after such delivery.

SECTION 12: THIRD PARTIES NOT OBLIGED TO FOLLOW FUNDS.

No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the propriety of Trustee's exercising its powers, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

SECTION 13: TRUSTEE'S COMPENSATION.

Trustee shall receive compensation for its services hereunder from time to time in accordance with the current rates then charged by it for trusts of similar size and character. If Trustee renders any extraordinary services, it may receive additional compensation therefor.

SECTION 14: RESIGNATION AND REMOVAL OF TRUSTEE.

At any time during the remainder of Trustor's life, Trustee may resign by written notice delivered to Trustor, and WILLIAM E. STANSBURY may remove Trustee by written notice delivered to it. In either case, WILLIAM E. STANSBURY may appoint another bank or trust company that is described in Section 3570(9) of the Act, as successor Trustee by written notice delivered to Trustee. During Trustor's lifetime, Trustee shall be deemed to have resigned on the date on which: (i) it ceases to be a Trustee described in Section 3570(9) of the Act; or (ii) a court takes any action whereby such court declines to apply Delaware law in determining the validity, construction, or administration of any trust hereunder or of the effect of the spendthrift provision hereunder in any action brought against trustee. Unless objections are filed as provided below, Trustee shall, within ninety (90) days after it resigns or is removed, deliver any assets held hereunder to the successor Trustee. If WILLIAM E. STANSBURY does not appoint such a successor Trustee, Trustee may petition the appropriate court to appoint such a successor Trustee. Upon resignation or removal, Trustee shall deliver a statement of its activities to the

TESCHER & SPALLINA, P.A.

date of such resignation or removal for which it has not reported to the person to whom Trustee was directed to give notice of resignation or who was authorized to remove Trustee. Such person shall have sixty (60) days from receipt of such statement to file with Trustee any objections to its actions as Trustee. If no such objections are filed, Trustee shall be without any further liability or responsibility to any past, present, or future beneficiaries. No successor Trustee shall be required to examine into the acts of its predecessor Trustee, and each successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

SECTION 15: SIMULTANEOUS DEATH.

If Trustor and Trustor's wife die under circumstances where the order of deaths cannot be determined, and if any of the principal is includable in Trustor's estate for transfer tax purposes, then for the purposes of this agreement with respect to such principal, Trustor's wife shall be deemed to have survived Trustor and died immediately thereafter.

SECTION 16: TRUST SITUS.

This agreement creates a Delaware trust, and all matters pertaining to the validity, construction, and application of this agreement or to the administration of the trusts created by it shall be governed by Delaware law.

SECTION 17: DEFINITIONS.

A. "Trustor's wife" refers to SHIRLEY BERNSTEIN.

B. "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the date of this agreement. A reference to a specific section of the Code refers not only to that section but also to any corresponding provision of any federal tax statute enacted after the date of this agreement, as in effect on the date of application.

C. "Transfer taxes" means all applicable federal estate taxes (except additional estate taxes imposed under Section 2032A of the IRC), state estate or inheritance taxes, and generation-skipping transfer taxes imposed on any "direct skip" (as defined in Chapter 13 of the Code) other than a direct skip from a trust or resulting from a disclaimer, and any interest and penalties thereon. The term does not include federal or state gift taxes, generation-skipping transfer taxes imposed on a "taxable termination," a "taxable distribution," or a "direct skip" from a trust or resulting from a disclaimer, income taxes, real estate transfer taxes, or any tax or duty imposed by a foreign country or political subdivision thereof. In addition, the term does not include any tax imposed by Section 2056A of the Code or any corresponding provision of applicable state law.

TESCHER & SPALLINA, P.A.

D. "Act" means the Delaware Qualified Dispositions in Trust Act (12 Delaware Code Section 3570, et seq.), as amended, or any corresponding Delaware statute enacted after the date of this agreement. A reference to a specific section of the Act refers not only to that section but also to any corresponding provision of any Delaware statute enacted after the date of this agreement, as in effect on the date of application.


E. Use of any gender in this agreement includes the masculine, feminine and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.


F. "Personal Representative" means the executor or administrator of a decedent's estate and shall include all persons serving in such capacity from time to time.

G. Use of the verb "shall" in this agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

H. Captions, headings and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

IN WITNESS WHEREOF, SIMON L. BERNSTEIN, Trustor, has set his Hand and Seal the 17th day of July, 2008, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its Vice Presidents and its corporate seal to be affixed by one of its Assistant Secretaries, the _____ day of _____, 2008, all done in duplicate as of the date of execution by Trustor, which date shall be the effective date of this instrument.

WITNESS: 

 (SEAL)
SIMON L. BERNSTEIN, Trustor

WILMINGTON TRUST COMPANY, Trustee

By: _____
Vice President

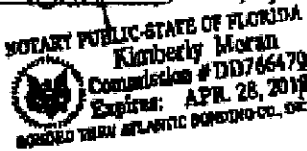
Attest: _____
Assistant Secretary

TESCHER & SPALLINA, P.A.

STATE OF FLORIDA)
) SS.
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this ^{en} 12th day of

May, 2008, by SIMON L. BERNSTEIN.



Kimberly Moran

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, a Vice President of Wilmington Trust Company, a Delaware corporation, on behalf of the corporation.

Notary Public

"SCHEDULE A"

Consisting of One Page

of

SIMON L. BERNSTEIN

Irrevocable Trust Agreement

Dated May 20, 2008

Between

SIMON L. BERNSTEIN

and

WILMINGTON TRUST COMPANY

* * *

CASH in the amount of One Dollar (\$1.00)

* * *

*

TESCHER & ¹¹SPALLINA, P.A.

TEXT OF PAM'S NOTES 1 & 2

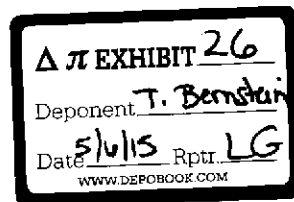
January 2012

Dear Dad,

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

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

TS006299



00090061

January 2012 |

Dear Dad:

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

1009006L

to take care of E/inf, using a healthy
 First and foremost:
 . The act of dismembering a child is
 unheard of and unimaginable. It is
 outrageous and considered psychologically
 violent. I am hopeful you are not
 aware of this and that you will
 make the changes necessary.

Love,



CASE NO. 12121312 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2
OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOSPY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOSPY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ON TO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF. RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF. THERE WERE 90.5 PILLS IN THE

printed by Employee Id #: 9285 on January 31, 2013 12:03:53PM

Δ π EXHIBIT A
Deponent: T. Bernstein
Date: 5/1/15 Rpt. LG
WWW.DEPOBOOK.COM

The Law Offices
of

PETER M. FEAMAN, P.A.
Strategic Counselors. Proven Advocates.™

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Jeffrey T. Royer, Esq.
Paula S. Marra, Esq. of Counsel



www.FeamanLaw.com

3695 W. Boynton Beach Blvd.
Suite 9
Boynton Beach, FL 33436
Telephone: 561-734-5552
Facsimile: 561-734-5554

August 26, 2016

Via Federal Express

Honorable John L. Phillips
NORTH COUNTY COURTHOUSE
3188 PGA Boulevard, Room 1414
Palm Beach Gardens, FL 33410

Re: Estate of Simon L. Bernstein; Case No.: 502012CP004391XXXXNB (IH)

Dear Judge Phillips:

With regard to *Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury*, set for hearing on **September 1, 2016 at 8:30 a.m.**, enclosed please find the following documentation:

1. Notice of Hearing;
2. Trustee's Motion to Approve Retention of Counsel and, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim against Estate by William Stansbury;
3. Objection to Trustee's Motion to Appoint Ted Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury; and,
4. Case law, Florida Statutes and Probate Code cited in the above-listed Objection:
 - A. *Funchess v. Gulf Stream Apartments of Broward County, Inc.*, 611 So.2d 43 (Fla. 4th DCA 1993);
 - B. *Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4th DCA 2004);
 - C. *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986);
 - D. *Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1st DCA, 1990)
 - E. §731.201(23), Fla. Stat. (2013);
 - F. §733.602(1), Fla. Stat. (2013); and,
 - G. Fla. Prob. R. 5.440.

Honorable John L. Phillips

Re: *In Re: Estate of Simon L. Bernstein*
Case No. 502012CP004391XXXXNB (IH)

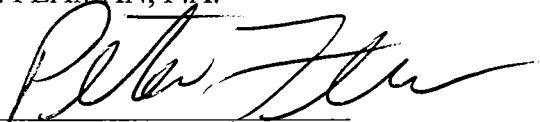
August 26, 2016

Page 2 of 2

Thank you for your consideration of this matter.

Respectfully submitted,
PETER M. FEAMAN, P.A.

By: _____



Peter M. Feaman

PMF/tr

Enclosures

cc: Alan Rose, Esq. (via email w/enclosures)
Brian O'Connell, Esq. (via email w/enclosures)
Gary R. Shendell, Esq. (via email w/enclosures)
Diana Lewis, Esq. (via email w/enclosures)
Eliot Bernstein (via email w/enclosures)
Jeffrey Friedstein and Lisa Friedstein (via email w/enclosures)
Pamela Beth Simon (via email w/enclosures)

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

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,
_____ /

NOTICE OF HEARING

Uniform Motion Calendar

YOU ARE HEREBY NOTIFIED that the undersigned has called up for a hearing on the following:

DATE: Thursday, September 1, 2016

TIME: 8:30 a.m.

JUDGE: Honorable John L. Phillips

PLACE: Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3, Palm Beach Gardens, FL 33410

MATTER(S) TO BE HEARD:

TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE, AND BRIAN O'CONNELL, AS PR OF THE ESTATE OF SIMON BERNSTEIN, REGARDING THE ESTATE'S PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE

TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT TED S. BERNSTEIN AS ADMINISTRATOR *AD LITEM* TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 23rd day of August, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone | (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST - CASE NO. 502012CP004391XXXXNBIJH

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
Email: (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Max Friedstein
2142 Churchhill Lane
Highland Park, IL 60035

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Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornincasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Telephone
Email: gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robbyne@shendellpollock.com

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 South Federal Hwy., Suite 500
Boca Raton, Florida 33432

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

Administrative Order No. 2.207-9/12

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

SPANISH

Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.

CREOLE

Si ou sè youn moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; téléfonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.

2

Filing # 44877594 E-Filed 08/05/2016 11:59:56 AM

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

CASE NO. 502012CP004391XXXXNB-IH
Probate – Judge John L. Phillips

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____ /

**TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT
TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM
AGAINST ESTATE BY WILLIAM STANSBURY**

Ted S. Bernstein, Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon's Trustee"), moves the Court to approve the retention of the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek-Law") as counsel to defend the Estate in an independent action brought by William Stansbury, and to appoint Ted Bernstein as Administrator Ad Litem to defend the claim against the estate by William Stansbury and states:

1. Claimant, William Stansbury, has sued the Estate of Simon Bernstein for more than \$2.5 million, a claim which vastly exceeds the value of all of the current assets and potential recoveries by the Estate in third party litigation. The Estate attempted to resolve Stansbury's claim in good faith at mediation, but was unable to reach agreement with Stansbury during the mediation and does not believe it is likely that the claim can be settled. In light of that, the Estate must vigorously defend the claim.

2. Stansbury's claim relates to his business relationship with the decedent, Simon Bernstein, through an entity known as Life Insurance Concepts, Inc. ("LIC"). That entity was a closely-held corporation owned primarily by Simon Bernstein and Ted Bernstein, with Stansbury

at one time owning 10% of non-voting stock. LIC was operated and managed by Simon Bernstein and Ted Bernstein, who had sole voting rights, and served on the Board of Directors.

3. Stansbury's claim arises from his employment by and ownership interest in LIC. Before Simon died, Stansbury sued Simon Bernstein, Ted Bernstein, LIC, and various subsidiaries of LIC, asserting a variety of claims. The Complaint was filed on July 30, 2012. Simon Bernstein died 45 days after the Complaint was filed, before any responsive pleading or motion to dismiss was filed. A suggestion of death was filed.

4. LIC actively defended and litigated against Stansbury's claim, and pursued a counterclaim against Stansbury, under the direction of Ted Bernstein. During this litigation, Ted Bernstein was the primary client contact for the defense of the claim for approximately two years before Stansbury settled his differences with LIC. Along the way, Stansbury also asserted a claim against The Shirley Bernstein Trust, which Ted Bernstein as Trustee defended.

5. LIC and the other defendants initially hired Greenberg Traurig. In April, 2013, LIC and Ted Bernstein retained Mrachek-Law, which formally appeared on April 12, 2013. Shortly thereafter, Stansbury served summonses on the co-PRs of Simon's Estate, and the Estate retained Mark Manceri as its counsel.

6. Alan Rose of Mrachek-Law served as lead counsel for LIC, Ted Bernstein, and The Shirley Bernstein Trust, and coordinated the defense work with the co-PRs and Mr. Manceri, taking the lead role in the discovery, depositions, and court hearings. Specifically, for more than a year until the claims against LIC, Ted Bernstein, and Shirley Bernstein Trust were settled, Mrachek-Law handled the production of substantial business records; interviewed witnesses; coordinated the defense strategy with Ted Bernstein and counsel for the Estate; and worked with LIC's accountants

and professionals in preparing the defense of the claims. As a result of that work, Mrachek-Law is familiar with the facts, circumstances, and events, and is prepared to represent this Estate if hired.

7. As a result of his involvement as a founder and a shareholder of LIC, and his participation in this litigation for approximately two years, Ted Bernstein is fully familiar with the issues in the case, the nature of the claims, the relevant documents, and has firsthand knowledge of certain of the facts. As Successor Trustee of the Simon Bernstein Trust, Ted Bernstein has a substantial and direct interest in seeing that the claim of Stansbury is properly defended and ultimately defeated. He has conferred with the beneficiaries of The Simon Bernstein Trust, including the Guardian *Ad Litem*, and all are in favor of Ted Bernstein directing the defense of the claim through the Mrachek-Law firm.

8. In contrast, and through no fault of his own, Brian O'Connell, successor PR of the estate has more limited knowledge of the factual and legal underpinnings of Stansbury's claim and LIC. Neither Mr. O'Connell nor his law firm has ever done work for Simon Bernstein (while alive) or LIC; they never worked for, at or with LIC; they never met Simon Bernstein; and they have no firsthand personal knowledge of any facts relevant to the case.

9. Accordingly, and having conferred with the Trustee and the beneficiaries of the Trust, Mr. O'Connell has agreed to have Mrachek-Law retained to represent the Estate in the Stansbury litigation so long as the Court appoints Ted Bernstein as Administrator *Ad Litem* to stand as the Estate's representative in defending and protecting the estate's interests in the Stansbury litigation. Although the estate will be responsible for the reasonable costs and attorneys' fees incurred by Mrachek-Law in defending the claim (as it would regardless of which law firm was retained), Ted Bernstein has agreed to serve as Administrator *Ad Litem* for no additional fee. In other words, there

will be no fee for the time Ted Bernstein expends working on the defense of the independent action by Stansbury against the estate, whereas there might be some additional expense incurred were Brian O'Connell forced to assume that role. The reasonable fees and costs relating to the defense of Simon's claim, and the eventual pursuit of attorneys' fees awards against Stansbury, will be paid by the Estate.

10. Thus, this plan will result is some significant savings to the Estate due to (a) Mrachek-Law's prior knowledge and involvement; and (b) Ted Bernstein's prior knowledge and involvement, and his willingness to serve for no additional fee.

11. For the foregoing reasons, Ted Bernstein believes it is in the best interests of the estate to retain the Mrachek-Law firm, rather than some other law firm which has no prior knowledge or involvement in this matter. The Trustee believes the granting of this motion will result in an overall reduced cost to defend the claim; will employ attorneys skilled in commercial litigation who happen to be very familiar already with the facts, circumstances, events, and documents relating to Stansbury's claim. As indicated above, the Trustee has conferred with not only Mr. O'Connell, but each of the beneficiaries of the Trust, which is the sole beneficiary of the estate, and all are in agreement.

WHEREFORE, Ted S. Bernstein respectfully requests that this Court enter an order approving the retention of Mrachek-Law to defend the Stansbury independent action and appointing Ted S. Bernstein as Administration *Ad Litem* to oversee the estate's defense.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached
Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission;
FedEx; Hand Delivery this 5th day of August, 2016.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

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Jo.B., Ja.B., and D.B.

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Individually and as trustee for her children, and
as natural guardian for J.I. a minor

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3

Filing # 45525929 E-Filed 08/22/2016 04:15:49 PM

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

IN RE: Case No. 50 2012 CP 004391 NB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

_____ /

**OBJECTION TO TRUSTEE'S MOTION TO APPOINT
TED S. BERNSTEIN AS ADMINISTRATOR *AD LITEM*
TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY**

COMES NOW Interested Person, William Stansbury, by and through his undersigned counsel and objects to Trustee's Motion to Appoint Ted S. Bernstein as Administrator *Ad Litem* to Defend His Claim Against Estate of Simon L. Bernstein, and as grounds therefor would show unto the Court as follows:

I. Stansbury has standing to assert this Objection.

Florida law provides that an administrator ad litem is akin to a personal representative, with the same duties of neutrality and fidelity as a personal representative. *See Funchess v. Gulf Stream Apartments of Broward County, Inc.*, 611 So.2d 43 (Fla. 4th DCA 1993). When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, "... **any interested person, by petition**, may commence a proceeding to remove a personal representative. ..." (emphasis added.) By logical extension an "interested person" would also have standing to object to the appointment of a particular individual as an administrator ad litem.

The provisions of §731.201(23), Fla. Stat. (2013) define an "interested person" as:

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved..."

Stansbury has filed a claim against the Estate of Simon Bernstein (the "Estate") and has sued the Estate in a separate lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. Stansbury, as a claimant of the Estate, has an interest in ensuring that the individual appointed by the court to serve as administrator ad litem, if any is appointed at all, will be free of conflicts of interest and will act without bias and in the best interests of the claimants, creditors and devisees of the Estate.

The Fourth District Court of Appeal has recognized that a claimant to an estate is an "interested person" and has standing in a proceeding to approve the personal representative's final accounting and petition for discharge. See, *Arzumán v. Estate of Prince Bander BIN Saud Bin. etc.*, 879 So.2d 675 (Fla. 4th DCA 2004). See also, *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an "interested person" under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.) Stansbury is therefore an "interested person" as to the outcome of this proceeding which will determine whether Ted Bernstein should be appointed administrator ad litem.

II. Ted Bernstein has Conflicts of Interest with the Estate which should preclude him from serving as Administrator Ad Litem. Ted Bernstein is a Plaintiff in a pending action where the Simon Bernstein Estate is a Defendant.

At the time of Simon Bernstein's ("Simon") death, it was determined that there was a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") insuring his life. Simon was listed on the company records as the owner of the policy. Heritage represented that the death benefit was approximately \$1.7 million. Heritage records also indicated that on November 27, 1995 there was a beneficiary change for the policy to read: LaSalle National Trust N.A., primary beneficiary and Simon Bernstein Ins. Trust dated 6/21/1995, contingent beneficiary. It was determined by Heritage that the primary beneficiary (LaSalle) no longer had

an interest in the death benefit and the contingent beneficiary would be paid the proceeds. At the time of Simon Bernstein's death the trust document establishing this alleged trust was not and, to date, has not been found.

Supposedly the beneficiaries of the Insurance Trust were Ted Bernstein and his siblings, Lisa Sue Friedstein, Pamela Beth Simon, Jill Iantoni and Eliot Bernstein (the "Bernstein Children"). Whether or not they were, in fact, beneficiaries was just an "educated guess" by attorney Robert Spallina, who was counsel to the Bernstein Children. See e-mail correspondence from Spallina to the Bernstein Children dated October 23, 2012, attached as **Exhibit "1."** If the Insurance Trust is no longer in existence, is lost, or if the insurance proceeds are not properly payable to this alleged trust, the proceeds would be payable to the Simon Bernstein Estate under Florida law.

Because no trust document could be found, Heritage refused to pay the claim for the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case was removed to Federal Court), styled *Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 CV 3643, United States District Court for the Northern District of Illinois (the "Insurance Litigation"). A copy of the Amended Complaint (the "Complaint") is attached as **Exhibit "2."** In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still lost, and requiring an "educated guess" to ascertain its beneficiaries, nonetheless also alleges that Ted Bernstein is the "trustee" of the Insurance Trust. No trust document exists establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, the representation in the Complaint that he is the trustee of the missing trust appears false.

More importantly, Ted Bernstein, as the putative “trustee” of the purported insurance trust and Plaintiff in the Illinois Action, is actively pursuing litigation that is contrary to the best interests of the Estate which he now seeks to represent as Administrator Ad Litem. The Estate intervened in the Insurance Litigation to assert that it, not the Bernstein Children, is the proper beneficiary of the life insurance proceeds. (Interestingly, Ted Bernstein opposed the intervention of the Estate.) As such, the Estate is an adverse party to the Insurance Trust for which Ted Bernstein is identified as trustee. The Estate is now a Defendant where Ted Bernstein is a Plaintiff. Thus, Ted Bernstein is actively and directly litigating against the very Estate for which he now seeks to serve as a fiduciary. His Motion to be appointed Administrator Ad Litem should be denied on this basis alone.

It is also important for the Court to note that Ted Bernstein is the Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement Dated 7/25/2012 (the “Residuary Trust”). The Residuary Trust is the residuary legatee of the Estate, and its beneficiaries are the grandchildren of Simon Bernstein. As a result of Ted Bernstein’s prosecution of the Insurance Litigation, Ted is, on the one hand, seeking to deprive the Estate of \$1.7 million in life insurance proceeds, while at the same time he serves as Successor Trustee of the Residuary Trust which will be deprived of the life insurance proceeds if he, Ted, succeeds in the Insurance Litigation. The conflict of interest is obvious and should disqualify Ted Bernstein from serving in any fiduciary capacity in the Estate.

Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative (which in this case would mean an administrator ad litem) shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (emphasis added.) While the ultimate outcome of the adjudication of the issues surrounding the Heritage life

insurance proceeds is as yet unknown, what is clear is that Ted Bernstein has advocated, and continues to advocate a position that is contrary to the best interests of the Estate and its beneficiaries. These two conflicting and contrary positions between the interests of Ted Bernstein as a Plaintiff in the Insurance Litigation versus his duty as an Administrator Ad Litem to act in the best interests of the Estate, including the claimants, creditors and beneficiaries, renders Ted Bernstein unfit to serve as fiduciary. *See Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1st DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

Finally, Ted Bernstein seeks to serve as Administrator Ad Litem to oversee the litigation between Stansbury and the Estate arising out of Stansbury's employment relationship with companies of which Ted Bernstein and Simon Bernstein were principle owners. Ted Bernstein is a key witness, if not the most important witness in the case, other than perhaps Stansbury. Ted Bernstein is conflicted in that, on the one hand, he seeks to serve as a fiduciary with respect to the management of the Stansbury litigation, but, on the other hand, as a key witness in the case, his testimony could contribute to an adverse result against the Estate, depending upon how the testimony is received by the trier of fact. This inherent conflict of interest should also serve to disqualify Ted Bernstein.

III. It was Simon Bernstein's intent, both expressed and implied, that Ted Bernstein not serve in a fiduciary capacity in his Estate.

The appointment of Ted Bernstein as Administrator Ad Litem for the Estate of Simon Bernstein conflicts with both the expressed intent and implied intent of the deceased, Simon Bernstein.

--- The 2008 Testamentary Documents ---

In 2008, Simon Bernstein prepared and executed his Last Will and Testament and his Revocable Trust. The designated Personal Representative under his 2008 Last Will and Testament was his wife, Shirley Bernstein and William Stansbury as Co-Personal Representatives, or either of them alone if the other was unable to serve. In his 2008 Trust, he designated himself as Trustee, and in the event a successor trustee was necessary, Shirley Bernstein and William Stansbury were appointed as Successor Co-Trustees, or either of them if the other was unable to serve. In the 2008 trust document, he specifically excluded Ted Bernstein by indicating that he was to be considered as having pre-deceased him:

Notwithstanding the foregoing [the definitions of "Children" and "Lineal Descendants"], as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children TUD 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. . . .

See, Simon L. Bernstein Trust Agreement dated May 20, 2008, Article III, Section E(1), page 7.

--- The 2012 Last Will and Testament ---

In 2012, Simon Bernstein revised and re-executed his Last Will and Testament (the "2012 Will") and amended his 2008 Trust (the "2012 Trust").

Even though Simon Bernstein could have appointed Ted Bernstein as his Personal Representative or as his Alternate Personal Representative under the 2012 Will, again he specifically chose not to. Rather, Simon Bernstein appointed Donald Tescher and Robert Spallina as Co-Personal Representatives of his Estate. When they were forced to resign, this Court appointed a Curator, Benjamin Brown, Esq. Even though Ted Bernstein filed a Motion to have himself appointed Curator or Administrator Ad Litem, the Court, through Judge Colin, denied his motion. *See* Order of Judge Colin dated February 19, 2014, **Exhibit "3"** attached.

Thereafter, when Curator Benjamin Brown passed away and a Successor Personal Representative was appointed, the Court again chose not to appoint Ted Bernstein, but instead appointed Brian O'Connell, Esq. who presently serves as Personal Representative. It is interesting that in this motion presently before the Court, the Movant is not the Personal Representative, Brian O'Connell, but rather Ted Bernstein, the Successor Trustee to the Trust.

--- The 2012 Trust ---

In 2012, Simon Bernstein also amended his Revocable Trust. Simon again specifically excluded Ted Bernstein, and he stated in even stronger language that Ted Bernstein should be considered as having predeceased him for all purposes of the Trust:

Notwithstanding the foregoing [the definitions of "Children" and "Lineal Descendants"], for all purposes of this Trust and dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL LANTONI and LISA FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012, Article III, Section E(1), page 6. (emphasis added)

A copy of the Trust is attached hereto as **Exhibit "4."** Obviously, Simon Bernstein did not want Ted Bernstein to ever serve in a fiduciary capacity in connection with his Estate and Trust matters.

IV. Ted Bernstein has failed to provide a Trust accounting to the trust beneficiaries as required by statute.

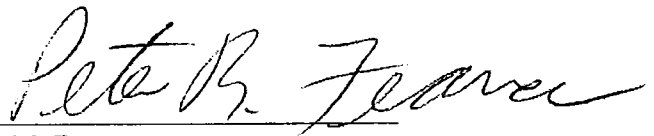
On or about January 14, 2014 Ted S. Bernstein became Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012. He was appointed by the previously disgraced Trustees, Donald Tescher and Robert Spallina. Despite having been the Successor Trustee since January of 2014, Ted S. Bernstein has never prepared and submitted and accounting to the beneficiaries. This violates his general duty to inform and account to the

beneficiaries as required by Section 736.0183, Fla. Stat., and specifically his duty to provide at least an annual accounting as mandated by Section 736.0183(1)(d), Fla. Stat.

WHEREFORE, for all of the foregoing reasons, to wit:

1. Ted Bernstein has a conflict of interest with the Estate;
2. Simon Bernstein's expressed intent;
3. Ted Bernstein's failure to account as a Successor Trustee;

Interested Person to the Estate of Simon Bernstein, William Stansbury, requests this Honorable Court to deny the Motion of Ted Bernstein to be appointed Administrator Ad Litem.


Peter M. Feaman

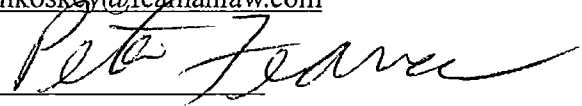
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Diana Lewis, Esq., ADA & Mediations Services, LLC, 2765 Tecumseh Dr., West Palm Beach, FL 33409, dzlewis@aol.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, jviewit@iviewit.tv; Gary R. Shendell, Esq., Shendell & Pollock, P.L., 2700 N. Military Trail, suite 150, Boca Raton, FL 33431, gary@shendellpollock.com; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Lisa Friedstein, 2142 Churchill Lane, Highland Park, IL 60035,

Lisa@friedsteins.com; Jill Iantoni, 2101 Magnolia Lane, Highland Park, IL 60035,
jilliantoni@gmail.com, on this 22nd day of August, 2016.

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By: _____


Peter M. Feaman

Florida Bar No. 0260347

Eliot Bernstein

Subject: FW: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, October 23, 2012 2:34 PM
To: Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein
Subject: RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.

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If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

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Case: 1:13-cv-03643 Document #: 66-1 Filed: 01/03/14 Page 2 of 12 PageID #:682

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

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

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

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

Counter-Defendant)

and,)

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

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland



Case: 1:13-cv-036 Document #: 66-1 Filed: 01/03/14 Page 3 of 12 PageID #:683

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.)

Case: 1:13-cv-036 Document #: 66-1 Filed: 01/03/14 Page 4 of 12 PageID #:684

PLAINTIFFS' FIRST AMENDED COMPLAINT

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case: 1:13-cv-03643 Document #: 66-1 Filed: 01/03/14 Page 7 of 12 PageID #:687

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

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

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

COUNT I

BREACH OF CONTRACT

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

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

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

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

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

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

COUNT II

DECLARATORY JUDGMENT

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

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

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

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

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

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

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

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

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

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

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

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

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

COUNT III

RESULTING TRUST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, PLAINTIFFS pray for an Order as follows:

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

By: s/Adam M. Simon
Adam M. Simon (#6205304)
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Chicago, IL 60601
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Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorneys for Plaintiffs and Third-Party
Defendants
*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*

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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

**ORDER ON MOTION FOR APPOINTMENT
OF CURATOR OR ADMINISTRATOR AD LITEM**

THIS MATTER came before this Court on Tuesday, February 18, 2014, upon the Motion for Appointment of Curator or Administrator Ad Litem, filed by Ted S. Bernstein, and the Court, having heard argument of counsel, and considered the evidence, it is

ORDERED AND ADJUDGED that:

DENIED, for the reasons
stated on the record.

DONE and ORDERED in Delray Beach, Palm Beach County, Florida, this 19 day of
February, 2014.



CIRCUIT COURT JUDGE

Copies to:

Alan Rose, Esq., PAGE, MRACHEK 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401;
John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401;
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 Boynton Beach Blvd., Boynton Beach, Florida 33436.



7/25/2012

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
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LAW OFFICES
TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES
TESCHER & SPALLINA, P.A.



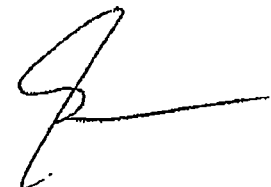
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph 11.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES
TESCHER & SPALLINA, P.A.



A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

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



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

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

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

K. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any



decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

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

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

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

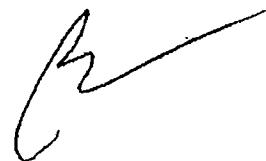
9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole



proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

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

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

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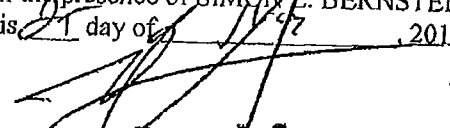
IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

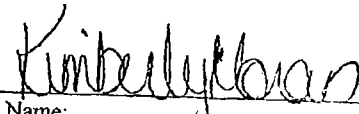
SETTLOR and TRUSTEE:



SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:


Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

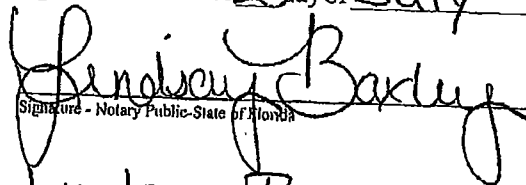

Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.


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

[Seal with Commission Expiration Date]

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

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

4

EXHIBIT A

611 So.2d 43
District Court of Appeal of Florida,
Fourth District.

Dareyl FUNCHESS, as personal representative
of the estate of Samantha McHellon Funchess,
deceased, on behalf of the estate and on behalf of the
survivors of the decedent, to wit: Dareyl Funchess,
surviving spouse; Lajuan Jamar Funchess, a minor;
Samuel McHellon, a minor, Helen White and
Donial McHellon, natural parents, Appellant,
v.
GULF STREAM APARTMENTS OF BROWARD
COUNTY, INC., John V. Tinglof, Robert
R. Tinglof and Iver A. Tinglof, Appellees.

No. 91-1716.

|

Dec. 23, 1992.

|

Rehearing and Rehearing En
Banc Denied Jan. 25, 1993.

Wrongful death action was brought in name of personal
representative of deceased. Administrator ad litem was
substituted as plaintiff. Defendants moved to dismiss. The
Circuit Court, Broward County, Patricia W. Cocalis, J.,
dismissed. Administrator appealed. The District Court of
Appeal, Dell, J., held that administrator ad litem could
maintain wrongful death action.

Reversed and remanded.

West Headnotes (2)

[1] Executors and Administrators

⇒ Authority and Duty in General

Administrator ad litem could maintain
wrongful death action originally brought in
name of personal representative; wrongful
death statute provided for liberal construction
and did not prohibit continuation of suit
in name of administrator ad litem and
defendants had not shown either prejudice or
any meaningful distinction between authority

of administrator ad litem and personal
representative to act as nominal plaintiff
in wrongful death action. West's F.S.A. §§
731.201(25), 733.308, 768.16, 768.20.

8 Cases that cite this headnote

[2] Executors and Administrators

⇒ Authority and Duty in General

Administrator ad litem must represent
beneficiaries of estate with same degree
of neutrality and fidelity as personal
representative and administrator ad litem is
also subject to supervision of appointing
court.

2 Cases that cite this headnote

Attorneys and Law Firms

*44 Edward A. Perse of Perse, P.A. & Ginsberg, P.A.,
and Ratiner & Glinn, P.A., Miami, for appellant.

Richard T. Woulfe and Peter R. Goldman of Bunnell,
Woulfe & Keller, P.A., Fort Lauderdale, for appellees.

Opinion

DELL, Judge.

Appellant contends the trial court erred when it dismissed
this action for the wrongful death of Samantha Funchess
and entered judgment for appellees.¹ We agree and
reverse and remand this cause for further proceedings.

The trial court's order neither contains findings nor states
reasons for its dismissal of appellant's action. Appellant
contends the trial court erred if it dismissed this action
based upon the inability of an administrator ad litem to
maintain a wrongful death action originally brought in
the name of a personal representative. In the alternative,
appellant contends the trial court abused its discretion if it
dismissed this suit based upon appellant's failure to timely
obtain the appointment of a personal representative.

[1] Appellant initially filed this wrongful death action in
the name of a personal representative properly appointed
by the probate division. The probate division thereafter

Funchess v. Gulf Stream Apartments of Broward County, Inc., 611 So.2d 43 (1992)

18 Fla. L. Weekly D92

removed the personal representative at the request of the decedent's mother and appointed John Spellacy as administrator ad litem of the estate. Appellees did not move to dismiss when the court appointed Spellacy as administrator ad litem. Only after Spellacy resigned and appellant failed to have a successor administrator ad litem appointed did appellees move to dismiss for lack of a personal representative.

Appellant argues an administrator ad litem may properly maintain a wrongful death action because the term "personal representative" encompasses the term "administrator ad litem". The wrongful death statute, *45 section 768.18, Florida Statutes (1989), does not define the term "personal representative". However, section 731.201(25) provides:

"Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

Section 733.308 provides the circumstances where a court must appoint an administrator ad litem:

When it is necessary that an estate be represented and there is no personal representative of the estate, the court shall appoint an administrator ad litem without bond for that particular proceeding.

Rule 5.120(a), Florida Rules of Probate and Guardianship, permits the appointment of an administrator ad litem in the following circumstances:

When it is necessary that the estate of a decedent ... be represented in any probate ... proceeding and there is no personal representative of the estate ..., or the personal representative ... is or may be interested adversely to the estate ..., or is enforcing his own debt or claim against the estate ..., or the necessity arises otherwise, the court may appoint an administrator ad

litem ... without bond or notice for that particular proceeding.

(emphasis added).

Appellant points out section 768.17, Florida Statutes (1989), provides the wrongful death statute "shall be liberally construed." Section 768.20 states in part:

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death.

The statute, therefore, requires a single action brought by a personal representative to recover damages for all beneficiaries under the act. By requiring the personal representative to bring a single action, the statute eliminates the potential for competing beneficiaries to race to judgment, preferential treatment of one or more beneficiaries in the disposition of their claims and, most significantly, multiple claims and lawsuits against the wrongdoer.

[2] An administrator ad litem must represent the beneficiaries of the estate with the same degree of neutrality and fidelity as a personal representative and an administrator ad litem is always subject to the supervision of the appointing court. The proceeds of any judgment recovered in the wrongful death action by an administrator ad litem would be protected and distributed as provided by the Probate Code. See *In re Estate of Cordiner*, 458 So.2d 418 (Fla. 2d DCA 1984); *Woolf v. Reed*, 389 So.2d 1026 (Fla. 3d DCA 1980). Furthermore, the substitution of an administrator ad litem would not affect appellees' exposure to multiple claims.

Appellees have not shown how they would suffer prejudice by the continuation of the action by the administrator ad litem nor have they shown any meaningful distinction between the authority of an administrator ad litem and a personal representative to act as a nominal plaintiff in a wrongful death action. Since the wrongful death statute provides for a liberal construction and does not prohibit the continuation of the suit in the name of an administrator ad litem, we hold the trial court erred

when it dismissed the action for lack of a “personal representative”.

We also reject appellee's argument that the trial court's order of dismissal should be affirmed because appellant failed to timely have a personal representative appointed and substituted as plaintiff. On January 9, 1991, the trial court required appellant to have a personal representative appointed by January 14. The probate division appointed Randolph Potter as successor administrator ad litem on January 10 and appellant filed a motion to substitute Potter for Funchess as plaintiff on January 14.

We have held an administrator ad litem can maintain this action to final judgment. Therefore, if the trial court dismissed this cause for lack of a personal representative, it erred. On the other hand, if it dismissed *46 this cause

as a sanction, the trial court relied upon an erroneous premise for its dismissal.

Accordingly, we reverse and remand this cause to the trial court with directions to vacate its judgment in favor of appellees and for further proceedings consistent with this opinion.

REVERSED and REMANDED.

HERSEY and STONE, JJ., concur.

All Citations

611 So.2d 43, 18 Fla. L. Weekly D92

Footnotes

1

The following summarizes the procedural history leading to the dismissal of appellant's action:

On January 26, 1989, Dareyl Funchess, nominal appellant, as personal representative of the estate of Samantha Funchess, his deceased wife, filed a wrongful death action against appellees, pursuant to section 768.16, Florida Statutes (1989). The decedent's mother petitioned for the removal of Dareyl Funchess as personal representative, and on June 19, 1989, the probate division entered an order which removed Dareyl Funchess as personal representative of the estate and appointed John Spellacy as administrator ad litem of the estate. On September 7, 1990, at Spellacy's request, the probate division entered an order discharging him as administrator ad litem.

On December 5, 1990, appellees moved to dismiss appellant's wrongful death action based upon the ground that the decedent's estate was no longer represented by Funchess or any other personal representative. On December 10, appellant moved to substitute Spellacy for Funchess as plaintiff. On January 9, 1991, the trial court entered an order on appellees' motion to dismiss which directed a personal representative shall be appointed by January 14, or the motion is granted and the action is dismissed. The next day, the probate division entered an order which noted its previous discharge of Spellacy as administrator ad litem and appointed Randolph Potter as successor administrator ad litem. On January 14, appellant filed a motion to substitute Potter for Funchess as plaintiff, and on January 29, the trial court entered an order substituting Potter as plaintiff.

On February 6, 1991, appellees moved to vacate the January 29 order claiming appellant obtained the order ex parte. On April 23, 1991, the trial court entered an order which vacated its January 29 order, granted appellees' motion to dismiss and dismissed appellant's action.

EXHIBIT B

879 So.2d 675
District Court of Appeal of Florida,
Fourth District.

Mark P. ARZUMAN, a/k/a Mark
P. Arzoumanian, Appellant,
v.
The ESTATE OF Prince Bander
BIN Saud Bin, etc., Appellee.

No. 4D03-2406.

|
Aug. 11, 2004.

Synopsis

Background: Personal representative of estate filed petition for discharge and approval of final accounting. The Fifteenth Judicial Circuit Court, Palm Beach County, Gary L. Vonhof, J., issued final order granting petition. Claimant against estate appealed.

[**Holding:**] The District Court of Appeal, Klein, J., held that appeal was not timely.

Affirmed.

West Headnotes (2)

[1] **Executors and Administrators**

↳ Persons Entitled to Object

Claimant against estate was an "interested person" in proceedings to approve final accounting and discharge personal representative. West's F.S.A. § 731.201(21).

1 Cases that cite this headnote

[2] **Executors and Administrators**

↳ Perfection of Appeal and Effect Thereof

Time for claimant against estate to appeal order approving settlement of separate wrongful death action against estate began to run when trial court approved settlement,

rather than when trial court granted personal representative's motion to disburse funds, approve final accounting, and discharge personal representative; order approving settlement finally determined right of claimant in that it resulted in estate having no assets with which to pay his claim. West's F.S.A. R.App.P.Rule 9.110(a)(2).

1 Cases that cite this headnote

Attorneys and Law Firms

*675 Mark P. Arzuman, a/k/a Mark P. Arzoumanian, Boca Raton, pro se.

Lawrence Bunin of Lawrence Bunin, P.A., Plantation, for appellee.

Opinion

KLEIN, J.

Appellant, a claimant against the appellee estate, appeals a final order granting the personal representative's motion to disburse funds, approve final accounting, and discharge personal representative. He argues that the trial court erred in approving the settlement of a wrongful death claim in which the estate was a plaintiff, but we conclude that this appeal is not timely as to the order approving the settlement, which was a final order.

*676 The decedent died in an airplane accident, and the estate filed a negligence suit which was settled for a total of \$750,000. The settlement, which apportioned \$700,000 to decedent's mother and \$50,000 to the estate, was approved by the court. The low amount to the estate resulted from the fact that the decedent reported no income. The aviation lawyer who obtained the recovery testified that the estate had no recoverable damages. Claimant, who had a pending lawsuit against the estate, filed an appeal from the March 2002 order approving the settlement, but subsequently dismissed it.

In April 2003, the personal representative filed a petition for discharge and approval of final accounting, noting that claimant's lawsuit was still pending, but asserting that the estate would have no assets to pay any judgment claimant might obtain in the future. Following a hearing

Arzuman v. Estate of Bin, 879 So.2d 675 (2004)

29 Fla. L. Weekly D1844

the court granted the petition, finding that if claimant obtained a judgment, it would be a class 8 claim under section 733.707, Florida Statutes, and that, after paying expenses having a higher priority, the estate would have no funds remaining. It is this order, which was entered in May 2003, which claimant has appealed, but his primary argument is that the court erred in approving the wrongful death settlement a year earlier.

[1] The estate argues that claimant is not an "interested person" under section 731.201(21), Florida Statutes (2002), which defines interested person as:

any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved... The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

The closest case is *Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986), in which a claimant's claim against an estate had been stricken, and the order striking the claim was on appeal. The second district held that the claimant was an interested party. We agree with that decision and conclude that claimant was an interested person.

[2] The estate next argues that claimant was required to appeal the order approving the settlement when it was entered. Final orders in probate proceedings are defined under rule 9.110(a)(2), as orders which "finally determine a right or obligation of an interested person as defined in the Florida Probate Code."

We conclude that the order approving the settlement of the tort claim did "finally determine a right" of

this claimant. Section 733.708, Florida Statutes (2002), which addresses the compromise of lawsuits filed by estates, provides that the probate court may authorize the settlement "if satisfied that the compromise will be for the best interest of the interested persons," and that an order authorizing settlement "shall relieve the personal representative of liability or responsibility for the compromise."

In this case once the order approving the settlement became final, the personal representative was, by statute, absolved of further responsibility. The order approving the settlement accordingly did finally determine a right of the claimant in that it resulted in the estate having no assets with which to pay his claim.

We are of course aware that, when we decide that an appellant should have appealed an earlier order, it can result in *677 grave consequences.¹ In probate cases, however, where the order of final discharge may not be entered for years after the opening of an estate, interim appeals of orders which finally determine rights or obligations are necessary for the orderly administration of the estate. If we were to review the order approving settlement at this late date, it is doubtful that any remedy would be available which would benefit claimant.

We have considered the issues which appellant has raised regarding the final order of discharge and find them to be without merit. Affirmed.

SHAHOOD, J., and EMAS, KEVIN M., Associate Judge, concur.

All Citations

879 So.2d 675, 29 Fla. L. Weekly D1844

Footnotes

1

Even if we had reviewed the order approving the settlement, we would have affirmed, because as we noted earlier, the estate had no damage recoverable in the wrongful death claim.

EXHIBIT C

KeyCite Yellow Flag - Negative Treatment

Distinguished by J.B. v. Florida Dept. of Children and Family Services, Fla., September 28, 2000

484 So.2d 73

District Court of Appeal of Florida,
Second District.

William T. MONTGOMERY, as Personal Representative of the Estate of Kenneth W. Montgomery, deceased, Appellant,
v.

Barbara CRIBB and Joseph A. Perez, as Co-Personal Representatives of the Estate of Vivian S. Perez, deceased, Appellees.

No. 85-1288.

March 5, 1986.

Personal representatives moved to strike claim against decedent's estate based on a summary judgment that had been entered in favor of estate in separate action. The Circuit Court, Highlands County, Dennis P. Maloney, J., did not rule on motion for continuance brought by claimant and entered an order granting personal representatives' motion to strike. The District Court of Appeal held that the court should not have ruled on motion to strike because claimant did not receive reasonable notice of hearing.

Reversed and remanded for consistent proceedings.

West Headnotes (4)

[1] **Executors and Administrators**

⇒ Findings and Decision

Trial court improperly ruled on personal representatives' motion to strike claim against the estate, where claimant received notice of hearing on motion to strike two days before the hearing was to be held and the trial court did not rule on claimant's motion for continuance which was based on his lack of reasonable notice of the hearing.

4 Cases that cite this headnote

[2] **Motions**

⇒ Service and Filing

Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person shall be served on interested persons where "interested persons" are those who reasonably may be expected to be affected by the outcome of the particular proceeding. West's F.S.A. § 731.201(21).

Cases that cite this headnote

[3] **Executors and Administrators**

⇒ Proceedings

For a hearing on a motion to strike claim against estate based on summary judgment that had been entered, two day notice to claimant against whom the summary judgment was directed was not a reasonable length of time under West's F.S.A. R.P. & G.P Rule 5.042(c).

2 Cases that cite this headnote

[4] **Executors and Administrators**

⇒ Persons Who May Contest Claims

Executors and Administrators

⇒ Proceedings

Decedent's personal representatives were not privileged to proceed ex parte in a motion to strike claim against the estate based on summary judgment that had been entered in a separate action, and claimant was entitled to reasonable notice of the hearing as claimant remained an interested person in the proceeding because an appeal was pending on an issue pertaining to his claim against the estate.

1 Cases that cite this headnote

Attorneys and Law Firms

*74 Carl J. Robie, III, Sarasota, for appellant.

Jon H. Anderson, Lakeland, for appellees.

Opinion**PER CURIAM.**

Appellant, William Montgomery, seeks review of an order granting a motion to strike filed by appellees, Barbara Cribb and Joseph A. Perez, personal representatives of the estate of Vivian S. Perez. We reverse.

Vivian Perez died on December 15, 1982. Her will was admitted to probate and the court appointed Barbara Cribb and Joseph Perez as personal representatives of the estate. On September 26, 1983, Kenneth Montgomery, a minor, drowned in a swimming pool located on the Perez estate. His father, the appellant, filed a statement of claim against the estate for damages arising out of the allegedly wrongful death of his son. The appellees timely objected to appellant's statement of claim and the appellant filed a separate civil action. The appellees filed an answer and affirmative defenses alleging, among other things, that appellant had accepted an offer of settlement but had refused to arrange for the execution of an appropriate release. The appellees then filed a motion to enforce settlement and a motion for summary judgment.

In addition to the reasons set forth in the motion to enforce settlement, the motion for summary judgment sought relief on the basis that the sole cause of the son's death had been inadequate parental supervision, that appellant's son had not been an invitee, and that the attractive nuisance doctrine did not, as a matter of law, apply. The trial court found there existed no substantial issue as to any material fact and, on September 21, 1984, granted summary judgment in favor of the appellees. The appellant voluntarily dismissed an appeal of that order, apparently in consideration of \$5000 tendered by the appellees. He later obtained new counsel who, without success, attempted to set aside dismissal of the appeal.

On November 15, 1984, appellees filed a motion for supplemental relief stating they were ready to perform the settlement agreement by tendering \$5000 into the registry of the court. On March 5, 1985, the court granted the motion, thereby releasing appellees from further liability.

The appellant filed, on April 11, 1985, a notice of appeal of that order. Eleven days later, the appellees filed a motion to require appellant to return their tender of \$5000. Appellees alleged that in exchange for their tender of \$5000, appellant had dismissed his appeal of the final summary judgment, that appellant had subsequently engaged new counsel to appeal the order granting the motion for supplemental relief, that the appellant had disavowed the settlement agreement entered into by his former attorney, and that appellant therefore had no basis for retaining the \$5000. The appellant then filed a stipulation agreeing to return appellees' tender. On appeal, this court temporarily relinquished jurisdiction to the trial court for the parties to secure a final order as to the effect of appellant's release of tender. That appeal is still pending.

Meanwhile, appellees had filed, on April 22, 1985, a motion to strike appellant's claim against the estate based upon the summary judgment that had been entered. On April 23, 1985, appellant received notice that a hearing on the motion to strike would be held on April 25, 1985. Prior to the hearing, appellant filed a motion for continuance on the basis that he had not been given reasonable notice of the hearing. The trial court did not rule on appellant's motion for continuance, and following the hearing, entered an order granting appellees' motion to strike. Appellant has timely appealed that order.

[1] [2] Appellant contends that the court erred in ruling on the motion to strike because appellant did not receive reasonable *75 notice of the hearing. We agree. Florida Rule of Probate and Guardianship 5.041(a), provides that unless the court orders otherwise, every petition or motion for an order determining rights of an interested person shall be served on interested persons. "Interested persons" are those who reasonably may be expected to be affected by the outcome of the particular proceeding. § 731.201(21), Fla.Stat. (1985).

[3] Florida Rule of Probate and Guardianship 5.042(c), provides that unless a motion is to be heard ex parte, a copy of the notice of the hearing on the motion must be served a reasonable length of time prior to the hearing. We find that two-day notice is not a reasonable length of time. See *Reynolds v. Reynolds*, 187 So.2d 372 (Fla. 2d DCA 1966); see also, *Hernandez v. Ward*, 437 So.2d 781 (Fla. 2d DCA 1983).

[4] Appellees argue they were privileged to proceed ex parte in this matter because, following this court's denial of appellant's motion to set aside the voluntary dismissal of the summary judgment appeal, appellant was no longer an "interested person." We disagree. Appellant remains an "interested person" in these proceedings because an appeal is pending on an issue pertaining to his claim against the estate. Appellant, therefore, was entitled to reasonable notice, and we, accordingly, reverse the trial court's order granting the motion to strike. Upon remand, after the appellant is given reasonable notice, the court may again rule upon the motion to strike.

Reversed and remanded for proceedings consistent herewith.

GRIMES, A.C.J., and DANAHY and SCHOONOVER, JJ., concur.

All Citations

484 So.2d 73, 11 Fla. L. Weekly 569

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EXHIBIT D

573 So.2d 57

District Court of Appeal of Florida,
First District.

In re the ESTATE OF Katherine V. BELL,
also known as Virginia Bell, Deceased.
William HUNTER, Daniel Hunter and
Marywil Hunter Croson, Appellants,

v.

Oleta JOHNSON, Personal Representative
of the Estate of Katherine V. Bell,
also known as Virginia Bell, Appellee.

No. 90-1318.

|

Dec. 26, 1990.

Will beneficiaries moved to compel production of estate assets or to remove another beneficiary as personal representative. The Circuit Court, Hamilton County, David E. Bembry, J., denied motion, and beneficiaries appealed. The District Court of Appeal, Nimmons, J., held that certificates of deposit were estate assets, even though beneficiary who was also personal representative was listed as trust beneficiary on one and co-owner of other, absent language in the power of attorney expressly authorizing gift of testatrix' assets to beneficiary.

Reversed in part; affirmed in part; and remanded.

West Headnotes (3)

[1] **Executors and Administrators**

☞ Trust Estates and Other Equitable Estates and Interests

Executors and Administrators

☞ Ownership of Property at Time of Death

Principal and Agent

☞ Purpose and Terms of and Consideration for Sale or Conveyance

Certificates of deposit purchased under power of attorney by beneficiary with testatrix' funds were assets of testatrix' estate, even though beneficiary was listed as trust beneficiary on one certificate and co-owner of other, where

power of attorney did not expressly authorize gift of testatrix' assets to beneficiary, and where testatrix did not document wish to make gift although she had ample opportunity to do so.

3 Cases that cite this headnote

[2] **Witnesses**

☞ Agency

Dead man's statute barred testimony of will beneficiary as to statements evidencing testatrix' intent to authorize gift to beneficiary under power of attorney. West's F.S.A. § 90.602.

4 Cases that cite this headnote

[3] **Executors and Administrators**

☞ Hostility or Adverse Interest

Personal representative who held conflicting and adverse interests against estate was required to be removed, where personal representative had purchased certificates of deposit under power of attorney for her own benefit with testatrix' funds, and where court found certificates were estate assets.

2 Cases that cite this headnote

Attorneys and Law Firms

*57 Thomas W. Brown and Donna Houghton Thames of Brannon, Brown, Haley, Robinson & Cole, P.A., Lake City, for appellants.

*58 David D. Eastman of Parker, Skelding, Labasky & Conry, Tallahassee, for appellee.

Opinion

NIMMONS, Judge.

Appellants, beneficiaries of decedent Katherine V. Bell's will, appeal a final order denying their motion to compel production of estate assets or remove the personal representative, and finding two certificates of deposit are not estate assets. We reverse in part and affirm in part.

On January 7, 1985, Katherine V. Bell, also known as Virginia Bell, executed her last will and testament. In the will she bequeathed all funds remaining in her estate, after debts had been paid, to Oleta Johnson (a first cousin), Marywil Hunter Croson (a niece), William Miles Hunter, Jr. (a nephew), and Daniel Thomas Hunter (a nephew), to be divided equally among them. Bell also bequeathed her home, the land upon which it was situated, and all household furniture and fixtures to Oleta Johnson, and named Johnson personal representative. At the same time the will was drawn, Bell executed a power of attorney naming Oleta Johnson as attorney-in-fact. Both of these documents were executed approximately three weeks after Bell entered a nursing home where she remained until her death on February 21, 1989. There was no dispute that Ms. Bell was alert and mentally competent until a few weeks before she passed away.

On April 12, 1985, Johnson, using the power of attorney, purchased with \$37,000 of Bell's funds a certificate of deposit in that sum at the First Federal Savings and Loan Association of Live Oak. That CD was set up with Bell's name as "trustee" and Oleta Johnson as "beneficiary." On July 12, 1985, in a similar fashion, Johnson purchased with \$40,000 of Bell's funds another Certificate of Deposit at the Hamilton County Bank, n/k/a Barnett Bank. That CD was set up in the names of "Katherine V. Bell or Oleta Johnson."

Following Bell's death, Johnson filed a petition for administration and was appointed as personal representative. In an inventory filed by Johnson, the two CD's were referred to with the statement that, notwithstanding the names of the owners of the CD's as reflected on the certificates themselves, Johnson intended "that all of the principal and accrued interest of [the certificates] shall be a part of the estate assets."

The appellants objected to the appellee's accounting of funds and monies received or disbursed from the estate, so the trial court required a full and complete accounting of all the estate funds from the time Johnson became cosigner on any of the decedent's accounts or from January 1, 1985, whichever was first.

A special report prepared by a certified public accountant was submitted, but the appellants remained unsatisfied and filed another motion to compel the personal

representative to make a full and complete accounting of the decedent's funds, including receipts from interest on the certificates of deposit, income tax refunds, and rental income. At the hearing on the motion, Johnson testified that she and Bell, her cousin, enjoyed a close relationship for over twenty years and when Bell was ill, Johnson willingly took care of her and visited her in the nursing home at least three times a week. Johnson testified Bell gave her the interest checks on the certificates of deposit after reviewing them and Johnson, with her power of attorney, would sign Bell's name to them. Johnson also testified the tenants renting Bell's home simply made the rental checks out to Johnson per Bell's wishes. Johnson indicated none of the other beneficiaries were close to Bell and had visited only a few times in the previous forty years.

The trial judge denied the appellants' motion to compel and the appellants filed another motion to compel production of the assets or, in the alternative, to remove the personal representative. Johnson filed a motion to withdraw the certificates of deposit from the estate's assets. In the trial court's order, the appellants' motion was denied and the certificates of deposit, the decedent's house, and all rental income associated with it were found to be the personal property of Johnson.

*59 The appellants raise three issues on appeal: (1) whether the trial court erred in finding the two certificates of deposit were not estate assets; (2) whether the trial court erred in denying the appellants' motion to compel a full and complete accounting; and (3) whether the trial court erred in not removing the personal representative based on a conflict of interest.

According to *Johnson v. Fraccacreta*, 348 So.2d 570 (Fla. 4th DCA 1977), a general power of attorney does not give the agent authority to make a gift of the principal's property. A conveyance that exceeds the scope of the power of attorney is void. In *Fraccacreta*, the decedent owned real property and, several months before her death, executed a power of attorney appointing her daughter as attorney-in-fact. The daughter used her power of attorney to execute a warranty deed conveying the decedent's property to the decedent and her husband as tenants by the entireties. The administrator ad litem brought the action contending the power of attorney did not authorize the attorney-in-fact/agent to make a gift. The court agreed and held that in construing an instrument creating a power of attorney, the court must look to the language of the

instrument and that an agent has no power to make a gift of the principal's property unless that power is expressly conferred by the instrument or unless such power arises as a necessary implication from the powers which are expressly conferred.

[1] [2] The power of attorney executed by Ms. Bell in the case at bar is devoid of any language purporting to authorize Johnson to use Ms. Bell's funds to purchase certificates of deposit in such a way as to create an individual pecuniary interest in Johnson. Furthermore, there were no witnesses to any oral agreement that may have existed between Bell and Johnson. Johnson is precluded, pursuant to the Dead Man's Statute,¹ from testifying as to any statements Bell may have made evidencing her intent to authorize Johnson to appropriate Bell's property for Johnson's own use and benefit.

Under *Hodges v. Surratt*, 366 So.2d 768 (Fla. 2d DCA 1978), the court held the attorney-in-fact for the decedent violated her fiduciary duty by transferring the principal's property to her husband and appropriating funds in the checking account for her own use absent clear language in the power of attorney authorizing such actions.

Hodges was cited with approval in *Krevatas v. Wright*, 518 So.2d 435 (Fla. 1st DCA 1988). Krevatas was a close friend and neighbor of Mrs. Fambrough, a childless widow with no local relatives. Mrs. Fambrough executed a power of attorney designating Krevatas attorney-in-fact and delivered it to him three years later. Approximately three weeks before she died, Fambrough changed her checking account, the balance of which never exceeded \$6,000, to a survivorship account, adding Krevatas' name. She also, via her will, left \$20,000 and her car to Krevatas, and during her last few weeks, signed documents making gifts to Krevatas and others. Krevatas used the power of attorney to transfer \$100,000 into the survivorship account from her other accounts and altered existing CD's totalling \$25,000 so that he and one of Mrs. Fambrough's nieces would have survivorship rights.

The court noted an absence of evidence indicating Mrs. Fambrough participated in the transfer of money into her checking account or the creation of survivorship interests in her certificates of deposit. Additionally, the court found Mrs. Fambrough did not intend to give Krevatas more money than was in the checking account at the time she changed it to a survivorship account. This apparent lack

of intent was based on the fact that Mrs. Fambrough documented a gift to Krevatas in the last few weeks of her life while she was still alert when she easily could have documented her desire for him to have the money. The court found that neither the power of attorney itself nor the circumstances surrounding the execution of the document demonstrated an express or implied authority for Krevatas to use the power for his personal benefit.

*60 In the case at bar, the facts indicate that the will and the power of attorney were executed approximately three weeks after Ms. Bell entered a nursing home where she remained alert for several years prior to her death in 1989. She had ample opportunity to document in writing her wishes regarding the disposition of her estate assets. However, the language of the power of attorney does not expressly authorize Johnson to make a gift of Bell's assets for her own personal benefit, nor does the will evidence Bell's intent for Johnson to have the funds. Further, there is no evidence of implied authorization from the circumstances surrounding the execution of the documents. Therefore, we reverse the trial court's finding that the two certificates of deposit were not estate assets.²

[3] In reversing the first issue, we must also reverse the third issue. According to Section 733.504(9), Florida Statutes, a personal representative may be removed for holding or acquiring conflicting or adverse interests against the estate which will adversely interfere with the administration of the estate as a whole. In holding that the certificates of deposit are to be considered estate assets, a conflict between the personal representative and the estate is created, requiring Johnson's removal as personal representative.

We affirm as to the second issue, since the trial court did not err in failing to compel a full and complete accounting. It is obvious from the record that the appellee testified as to the whereabouts of the funds the appellants claim are unaccounted for. The trial court did not err in refusing to order another accounting.

Accordingly, we reverse in part and affirm in part and remand for further proceedings consistent with this opinion.

SMITH and ZEHMER, JJ., concur.

16 Fla. L. Weekly 37

All Citations

573 So.2d 57, 16 Fla. L. Weekly 37

Footnotes

1
2

Section 90.602, Florida Statutes.

The trial court's order relied in part upon Section 658.56, Florida Statutes. However, that section has no application to the case at bar because Bell had nothing to do with the purchase of the two CD's.

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EXHIBIT E

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Chapter 731. Probate Code: General Provisions (Refs & Annos)
Part II. Definitions

West's F.S.A. § 731.201

731.201. General definitions

Effective: October 1, 2013

Currentness

Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

- (1) "Authenticated," when referring to copies of documents or judicial proceedings required to be filed with the court under this code, means a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.
- (2) "Beneficiary" means heir at law in an intestate estate and devisee in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after that person's interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a beneficiary of the estate.
- (3) "Child" includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.
- (4) "Claim" means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.
- (5) "Clerk" means the clerk or deputy clerk of the court.
- (6) "Collateral heir" means an heir who is related to the decedent through a common ancestor but who is not an ancestor or descendant of the decedent.
- (7) "Court" means the circuit court.
- (8) "Curator" means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(9) "Descendant" means a person in any generational level down the applicable individual's descending line and includes children, grandchildren, and more remote descendants. The term "descendant" is synonymous with the terms "lineal descendant" and "issue" but excludes collateral heirs.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

(11) "Devisee" means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a devisee.

(12) "Distributee" means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) "Domicile" means a person's usual place of dwelling and shall be synonymous with residence.

(14) "Estate" means the property of a decedent that is the subject of administration.

(15) "Exempt property" means the property of a decedent's estate which is described in s. 732.402.

(16) "File" means to file with the court or clerk.

(17) "Foreign personal representative" means a personal representative of another state or a foreign country.

(18) "Formal notice" means a form of notice that is described in and served by a method of service provided under rule 5.040(a) of the Florida Probate Rules.

(19) "Grantor" means one who creates or adds to a trust and includes "settlor" or "trustor" and a testator who creates or adds to a trust.

(20) "Heirs" or "heirs at law" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(21) "Incapacitated" means a judicial determination that a person lacks the capacity to manage at least some of the person's property or to meet at least some of the person's essential health and safety requirements. A minor shall be treated as being incapacitated.

(22) "Informal notice" or "notice" means a method of service for pleadings or papers as provided under rule 5.040(b) of the Florida Probate Rules.

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(24) "Letters" means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated "letters of administration."

(25) "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(26) "Other state" means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(27) "Parent" excludes any person who is only a stepparent, foster parent, or grandparent.

(28) "Personal representative" means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(29) "Petition" means a written request to the court for an order.

(30) "Power of appointment" means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property.

(31) "Probate of will" means all steps necessary to establish the validity of a will and to admit a will to probate.

(32) "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.

(34) "Residence" means a person's place of dwelling.

(35) "Residuary devise" means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, "residuary devise" or "residue" means a devise of all assets remaining after satisfying the obligations of the estate.

(36) "Security" means a security as defined in s. 517.021.

(37) "Security interest" means a security interest as defined in s. 671.201.

(38) "Trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act;¹ business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, except to the extent provided in s. 689.071(7); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(39) "Trustee" includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(40) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 4; Laws 1977, c. 77-174, § 1; Laws 1985, c. 85-79, § 2; Laws 1987, c. 87-226, § 66; Laws 1988, c. 88-340, § 1; Laws 1993, c. 93-257, § 7. Amended by Laws 1995, c. 95-401, § 6, eff. July 1, 1995; Laws 1997, c. 97-102, § 949, eff. July 1, 1997; Laws 1998, c. 98-421, § 52, eff. July 1, 1998; Laws 2001, c. 2001-226, § 11, eff. Jan. 1, 2002; Laws 2002, c. 2002-1, § 106, eff. May 21, 2002; Laws 2003, c. 2003-154, § 2, eff. June 12, 2003; Laws 2005, c. 2005-108, § 2, eff. July 1, 2005; Laws 2006, c. 2006-217, § 29, eff. July 1, 2007; Laws 2007, c. 2007-74, § 3, eff. July 1, 2007; Laws 2007, c. 2007-153, § 8, eff. July 1, 2007; Laws 2009, c. 2009-115, § 1, eff. July 1, 2009; Laws 2010, c. 2010-132, § 4, eff. Oct. 1, 2010; Laws 2012, c. 2012-109, § 1, eff. July 1, 2012; Laws 2013, c. 2013-172, § 16, eff. Oct. 1, 2013.

Editors' Notes

APPLICABILITY

<The introductory language to § 1 of Laws 2012, c. 2012-109, provides:>

<“Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of section 731.201, Florida Statutes, is amended to read:”>

Notes of Decisions containing your search terms (0)

[View all 133](#)

Footnotes

1

See § 710.101 et seq.

West's F. S. A. § 731.201, FL ST § 731.201

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EXHIBIT F

West's Florida Statutes Annotated

Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)

Chapter 733. Probate Code: Administration of Estates (Refs & Annos)

Part VI. Duties and Powers of Personal Representative

West's F.S.A. § 733.602

733.602. General duties

Effective: July 1, 2009

Currentness

(1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of the decedent's will and this code as expeditiously and efficiently as is consistent with the best interests of the estate. A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, for the best interests of interested persons, including creditors.

(2) A personal representative shall not be liable for any act of administration or distribution if the act was authorized at the time. Subject to other obligations of administration, a probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a proceeding challenging intestacy or a proceeding questioning the appointment or fitness to continue. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of interested persons.

Credits

Laws 1974, c. 74-106, § 1; Laws 1975, c. 75-220, § 74; Laws 1977, c. 77-87, § 27; Laws 1977, c. 77-174, § 1; Laws 1979, c. 79-400, § 270; Laws 1989, c. 89-340, § 3. Amended by Laws 1997, c. 97-102, § 1001, eff. July 1, 1997; Laws 2001, c. 2001-226, § 125, eff. Jan. 1, 2002; Laws 2006, c. 2006-217, § 37, eff. July 1, 2007; Laws 2009, c. 2009-115, § 11, eff. July 1, 2009.

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EXHIBIT G

West's Florida Statutes Annotated
Title XLII. Estates and Trusts (Chapters 731-740) (Refs & Annos)
Title 42-Appendix I Probate Rules (Refs & Annos)
Part II. Probate

Fla.Prob.R. Rule **5.440**

Rule **5.440**. Proceedings for Removal of Personal Representative

Currentness

(a) Commencement of Proceeding. The court on its own motion may remove, or any interested person by petition may commence a proceeding to remove, a personal representative. A petition for removal shall state the facts constituting the grounds upon which removal is sought, and shall be filed in the court having jurisdiction over the administration of the estate.

(b) Accounting. A removed personal representative shall file an accounting within 30 days after removal.

(c) Delivery of Records and Property. A removed personal representative shall, immediately after removal or within such time prescribed by court order, deliver to the remaining personal representative or to the successor fiduciary all of the records of the estate and all of the property of the estate.

(d) Failure to File Accounting or Deliver Records and Property. If a removed personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the removed personal representative to the remaining personal representative or to the successor fiduciary within the time prescribed by this rule or by court order, the removed personal representative shall be subject to contempt proceedings.

Credits

Amended Sept. 4, 1980, effective Jan. 1, 1981 (387 So.2d 949); Sept. 13, 1984, effective Jan. 1, 1985 (458 So.2d 1079); Sept. 29, 1988, effective Jan. 1, 1989 (537 So.2d 500); Sept. 24, 1992, effective Jan. 1, 1993 (607 So.2d 1306); May 2, 2002 (824 So.2d 849); July 12, 2007 (964 So.2d 140); Dec. 9, 2010 (51 So.3d 1146).

Editors' Notes

COMMITTEE NOTES

The revision of subdivision (a) of this rule by the addition of its final phrase represents a rule implementation of the procedure found in section 733.505, Florida Statutes. It is not intended to change the effect of the statute from which it was derived but has been reformatted to conform with the structure of these rules. It is not intended to create a new procedure or modify an existing procedure.

Rule History

1980 Revision: Subdivision (a) amended to require formal notice to interested persons and to delete requirement that court give directions as to mode of notice. Surety authorized to petition for removal.

1984 Revision: Editorial changes. Provisions in prior rule for contempt have been deleted since the court has the inherent power to punish for contempt. Committee notes revised.

1988 Revision: Last phrase of (a) added to implement the procedure found in section 733.505, Florida Statutes. Subdivision (b) amended to parallel interim accounting rules. Deletes ability to extend time to file and adds reference to court power to punish for contempt. Committee notes expanded. Editorial changes. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Entire rule amended. Contents of accountings by removed fiduciaries are now governed by rule 5.346. Editorial changes in (a), (c), and (d). Committee notes revised.

2003 Revision: Committee notes revised.

2007 Revision: Committee notes revised.

2010 Revision: Editorial change in title to clarify scope of rule.

2012 Revision: Committee notes revised.

Statutory References

§ 731.201(23), Fla. Stat. General definitions.

§ 733.504, Fla. Stat. Removal of personal representative; causes of removal.

§ 733.505, Fla. Stat. Jurisdiction in removal proceedings.

§ 733.506, Fla. Stat. Proceedings for removal.

§ 733.5061, Fla. Stat. Appointment of successor upon removal.

§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.

§ 733.509, Fla. Stat. Surrender of assets upon removal.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041 Service of pleadings and documents.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.150 Order requiring accounting.

Fla. Prob. R. 5.310 Disqualification of personal representative; notification.

Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.

Fla. Prob. R. 5.346 Fiduciary accounting.

Fla. R. Jud. Admin. 2.516 Service of pleadings and documents.

RESEARCH REFERENCES

Forms

Florida Pleading and Practice Forms § 53:64, Petition--To Remove Personal Representative [§§ 733.504 to 733.506, Fla. Stat.; Fla. Prob. R. **5.440**].

Florida Pleading and Practice Forms § 53:66, Petition--By Interested Party--Maladministration [§ 733.504(5), Fla. Stat.; Fla. Prob. R. **5.440**].

Notes of Decisions containing your search terms (0)

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West's F.S.A. Title 42, App. 1, Prob. Rule **5.440**, FL ST PROB Rule **5.440**

Florida Supreme Court Rules of Civil Procedure, Judicial Administration, Criminal Procedure, Civil Procedure for Involuntary Commitment of Sexually Violent Predators, Worker's Compensation, Probate, Traffic Court, Small Claims, Juvenile Procedure, Appellate Procedure, Certified and Court-Appointed Mediators, Court Appointed Arbitrators, Family Law, Certification and Regulation of Court Reporters, Certification of Spoken Language Interpreters, and Qualified and Court-Appointing Parenting Coordinators are current with amendments received through 06/01/16. All other State Court Rules are current with amendments received through 06/01/16.

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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

**Non-Movant Third Party Defendant Eliot I. Bernstein's Affidavit-Declaration In Opposition
to Intervenor's Motion for Summary Judgement**

1. I am the non-moving party in this matter opposing the Intervenor's motion for Summary Judgment and otherwise designated as a Third-Party Defendant pro se.
2. I am a natural son to Simon Bernstein and a natural beneficiary herein.
3. If called to testify, I would willingly and voluntarily be expected to testify in this matter as set out herein.
4. I had a close and personal relationship with my father Simon Bernstein throughout his lifetime and am familiar with the various insurance businesses he conducted over the course of the last 30 plus years.
5. In fact, during one period of time I had my own business in California that worked together with my father's businesses whereby I would sell his proprietary Life Insurance products my company would receive commissions from my father's businesses.
6. I was the leading producer for my father's companies for many years through my insurance agencies and my agents nationwide.
7. My father was a meticulous record keeper not only for himself but for all of his thousands of clients nationwide and he owned and operated multiple insurance agencies and

insurance related trust companies. My father created and marketed "Arbitrage Life Payment System: and managed approximately a billion dollars of insurance premium financing annually.

8. My father's Florida offices had storerooms of files for his clients and in fact maintained a mass of files regarding our technology companies and proprietary intellectual properties for my inventions, of which my father was a 30% owner of the companies and IP and I was 70% owner originally. My father was also Chairman of the Board in the beginning of the these technology companies.
9. My father was a leading producer of life insurance throughout his entire career in the insurance business and was the largest producer for several carriers nationwide.
10. My father was an expert in Estate and Trust planning and worked with extremely high net worth individuals (including several billion clients of mine) and businesses in placing insurance to protect their families and businesses. He designed proprietary insurance products that use complex trusts to achieve protection of the insurance from creditors and others and maximize the benefits. His plans he designed include VEBA's and Arbitrage Life Payment System both sold nationally through an extensive network of agents.
11. My father would never create a trust or have a client create a trust where any incident of ownership were maintained in the policy, which would invalidate the trust and leave the benefits open to risk.
12. On September 13, 2012, the day my father died, upon trying to log in to my father Simon's computer at his home to get his personal friends contact information to notify them of Simon's passing I noticed that the hard drives on all of Simon's computers in his home were missing or scrubbed and Petitioner found this highly irregular. Theodore stated he would look into where they had gone and question several people who

handled Simon's computers at his office and home if they knew anything. To this date those items appear to have been taken from the estate and never recovered.

13. That Simon's assistant Rachel Walker claimed only a few minutes after my father died upon returning to the hospital that she left the hospital while he was code blue and dying and went to Simon's home and stated to both me and my wife Candice (who went with her to the home) that she grabbed anything estate planning looking that she could find from his home files, including trusts, wills, etc., he had stored in his home office and claimed that Ted Bernstein had requested her to do at the hospital as Simon lay dying. When Ted was initially questioned by me about what was in the package Walker had given him Ted claimed they were estate documents, including trusts, wills, some medical records and some insurance documents. I requested copies and inventory of the documents removed and an inventory of the personal effects of my father he had taken from the hospital and Ted stated he would have copies and inventories of the items removed from the estate Post Mortem for everyone later that day. To this date I have never received the inventories or accounting for anything removed from the estate or Simon's personal effects taken from the hospital.
14. Initially after my father's death, both my sister and brother both claimed to have copies of his insurance policy involved in this litigation and when I demanded they turn them over they suddenly claimed that did not possess them and also then claimed not to have the trust that they were alleging was the beneficiary.
15. My father had made estate plans for my family and had promised me several million dollars was set aside for my interests in his insurance companies for compensation for a breach of contract by my sister Pam who failed to pay me contracted commissions and percentages of several hundred million dollars I raised with my agents for premium financing once she acquired the business from my father. This was my compensation

for the many years I worked for his companies and helped build them and did not get stock as my sister did.

16. Because of life threatening dangers my family was placed in when we discovered our patent attorneys from Proskauer Rose, Foley & Lardner and others were attempting to steal our IP and force us out of business and as federal and state complaints were filed a bomb went off in my family's vehicles. My father at that time set up a company, Bernstein Family Realty LLC and opened up trusts for my children who owned BFR to hold the entity and protect us from those trying to harm us financially and physically. In 2008 he and my mother created trusts and the Eliot Bernstein Family Trust was created as the vehicle to receive $\frac{1}{3}$ of the trust assets. The reason I would receive $\frac{1}{3}$ of the trust assets was because although there are five children, Ted and my sister Pam and their lineal descendants were wholly disinherited by my parents in the trusts, leaving only three children with interest. My father for many years prior to his death ran all of my family's expenses through BFR and put a home my children bought into their trusts, again all of this to protect my family and make sure that no matter what happened to me, my children and wife income would be taken care of while he was living and through my inheritancy long after he was dead.
17. My father and mother's relationship with my sister Pam and my brother Ted were strained for several years prior to their deaths.
18. That a scheme to defraud started at least by the time of my father's passing and likely dates back to at least 2010 with some of the parties at play such as Robert Spallina as shown by an All Writs Petition filed with this Court in Feb. of 2016 and that I have diligently filed with police and investigatory authorities to pursue the frauds herein and have filed multiple documents with the Florida Courts and this Court showing and claiming fraud and collusion and civil conspiracy and that my Answer and Counterclaims

herein, opposition to Plaintiffs' original Summary Judgment and Petition for All Writs filed in Feb. of 2016 with this Court support such claims.

19. Thus, what reasonable jurors could conclude in this case is that
- a) Being in the Insurance business himself for 50 years, Simon Bernstein in fact had at least one Policy of Life Insurance;
 - b) Being in the industry for 50 years and skilled in asset protection, Simon Bernstein in fact had a proper Trust to keep such policy proceeds out of his Estate;
 - c) Being successful in the business for 50 years and earning millions of dollars in the industry, Simon Bernstein was well aware of the need for accurate Record keeping and in fact had kept meticulous records;
 - d) That the absence of such records and actual policy and actual Trust from this Court is the product of conspiracy, collusion and intentional design by a variety of parties to keep proper proceeds from the rightful beneficiaries and that I and my children are some of those rightful beneficiaries;
 - e) That the Estate acting through PR O'Connell and Trial Counsel Stamos have deliberately failed to take proper action to find and produce the Records of Simon Bernstein in this case and that at least PR O'Connell has directly colluded with Ted Bernstein and his counsel.

WHEREFORE, Third-party Defendant pro se and non-movant Eliot I. Bernstein respectfully prays for an Order denying Summary Judgment to the Intervenor at this time and for the opening of Discovery as needed and for such other and further relief as to this Court may seem just and proper.

Declaration

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

and correct.

/s/ Eliot Ivan Bernstein

Executed on: August 26, 2016

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross

Plaintiff PRO SE

Eliot Ivan Bernstein

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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

**LOCAL RULE 56.1(b)(3) RESPONSE TO PLAINTIFF/MOVANT STATEMENT OF
UNDISPUTED MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C) STATEMENT OF
ADDITIONAL FACTS REQUIRING THE DENIAL OF PLAINTIFF/MOVANT
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:

I. 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. 1, Aff. of Ted Bernstein, ¶21)

ANSWER:

DISPUTED: At this time no valid legally executed “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”)” has been produced and thus does not at this time legally exist. Since the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”)” does not legally exist at this time it could not legally file a lawsuit. Since the Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”) does not

legally exist at this time and has not been produced in this action it cannot be legally represented by counsel, Adam M. Simon and David B. Simon of the Simon Law Firm.

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. 1, 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. 1, 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. 1, 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.”. There are no Policy records produced by the Insurer indicating that a policy owner ever submitted a beneficiary designation naming Simon Bernstein Trust, N.A. as a beneficiary of the Policy. No one has submitted a claim to the Policy Proceeds with the Insurer on behalf of an entity named “Simon Bernstein Trust, N.A.”. (Ex. 2, Aff. of Don Sanders, ¶69 and ¶78)

ANSWER:

DISPUTED: According to insurance company parole evidence records “Simon Bernstein Trust, N.A.” is the Primary Beneficiary of the lost, suppressed or destroyed insurance contract.

However, since no original policy or copy of an original policy has been produced in these matters for Simon Bernstein by any party to the litigation it cannot at this time be determined who the policy claims as beneficiary at this time.

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 Counter-defendant and 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. 1, Aff. of Ted Bernstein, ¶25)

ANSWER:

DISPUTE: Ted Bernstein is not "Trustee" of the "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" as no legally binding executed trust has been produced at this time in this litigation by any party giving anybody legal standing as a fiduciary of the lost, suppressed or destroyed alleged "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95."

Therefore, since no legally executed and binding copy of the trust has been produced at this time Ted Bernstein could not presume he was Trustee of a trust he claims to have never seen and therefore his counsel, Adam Simon, who knew at the time he filed this complaint that he, nor his client Ted, possessed a legally binding executed copy of the alleged trust giving anyone legal standing to act as a fiduciary or file a lawsuit claiming such capacity and suing parties based on this presumed capacity. Note Plaintiffs' did not start this action with a copy of said lost, destroyed or missing trust attached to the complaint and it was not until months later that they allege to have found unexecuted drafts with no ability to determine who drafted the trust as the pages are missing any legal firm markings and where the two markedly different alleged drafts have different successor trustees written in handwriting on them. Therefore, if Plaintiffs filed the Complaint knowing they did not possess the trust they would have had to sought legal standing as a fiduciary from this court prior to acting in any such alleged capacity.

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. 1, Aff. of Ted Bernstein, ¶26)

ANSWER:

DISPUTED:

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 now appearing pro se, and was formerly represented by counsel, Adam M. Simon. (Ex. 3, 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 appearing pro-se and was formerly represented by counsel, Adam M. Simon. (Ex. 4, 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 and is represented by counsel, Adam M. Simon. (Ex. 5, Aff. of Pam Simon, ¶2, ¶3, ¶6 and ¶38.)

ANSWER:

UNDISPUTED

11. Heritage is the successor life insurer to the original insurer, Capitol Banker Life, 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. 1, Aff. of Ted Bernstein, ¶30)

ANSWER:

DISPUTED: It is alleged that Jackson National acquired Heritage Union and it was Jackson National who deposited monies in the court registry. There are no “Policy Proceeds” that could have been deposited with the Court as no legally binding policy has been produced for Simon Bernstein at this time by any party to the litigation, including the insurers and reinsurers. Therefore, monies were deposited and there is not at this time anyway to prove that this amount of money deposited is what the policy states.

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. 1, 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. 1, Aff. of Ted Bernstein, ¶32)

ANSWER:

UNDISPUTED

14. Adam M. Simon is counsel himself, and for the Bernstein Trust, Ted Bernstein (individually and as trustee), Pamela B. Simon, David B. Simon, The Simon Law Firm, and STP Enterprises, Inc. four of the five adult children of Simon Bernstein. Adam M. Simon was named a third-party defendant to Eliot’s Claims. Adam M. Simon is the brother-in-law of Pamela B. Simon, and the brother of David B. Simon. (Ex. 1, Aff. of Ted Bernstein, ¶33)

ANSWER:

DISPUTED: Adam Simon is no longer representing “four of the five adult children of Simon Bernstein” as Jill Iantoni and Lisa Friedstein have removed Adam Simon from representing them and this Court has allowed them to represent themselves Pro-Se. Adam Simon cannot be counsel to a trust that has not been produced and at this time no legally executed binding original or copy of the original exists and no terms of the trust therefore exist. Similarly, since no legally binding executed copy or original exists, the fiduciaries of such lost, suppressed or destroyed trust cannot act with any legal authority, especially where no construction or validity hearings have been held to have a court of law determine any standing of any fiduciary.

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. 1, Aff. of Ted Bernstein, ¶34)

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. 1, Aff. of Ted Bernstein, ¶35)

ANSWER:

UNDISPUTED:

17. Tescher and Spallina, P.A. was a law firm whose principal offices were formerly 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. 1, 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. 6, 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. 1, Aff. of Ted Bernstein ¶39, Dep. of David Simon, p. 51:13-18)

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. 7, Dep. of David Simon, p.51:13-18; Ex. 30, Aff. of Ted Bernstein, ¶40)

ANSWER:

DISPUTED: No supporting information to prove the dissolution has been provided other than statements of David Simon and Ted Bernstein. No copy of the VEBA trust with its terms has been produced to this Court or any litigant in these matters.

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. 1, Aff. of Ted Bernstein, ¶41)

ANSWER:

DISPUTE: Robert Spallina is not a partner of the law firm Tescher & Spallina, PA as that firm has been claimed to be dissolved by both Robert Spallina and Donald Tescher, at sometime after this litigation and the Florida Probate and Trust litigations began. Robert Spallina is not a lawyer anymore after surrendering his law license after signing an SEC Consent Order for Insider Trading where he pled guilty to criminal misconduct in a separate complaint with Federal Authorities according to the consent agreement.

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. 5, 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. 1, Aff. of Ted Bernstein, ¶42).

ANSWER:

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". The Estate is represented by the law firm of Stamos & Trucco

in this matter. (Dkt. #126; Ex. 1, Aff. of Ted Bernstein ¶¶43-¶44)

ANSWER:

UNDISPUTED

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. 2, Aff. of Don Sanders at ¶¶38, ¶39, ¶48, ¶52; See Ex. 14). The amount of the Policy Proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. (Dkt. #101 and Ex. 1, Aff. of Ted Bernstein, ¶30). The Policy defines “Beneficiary” as follows:

A Beneficiary is any person named on our [the Insurer’s] records to receive proceeds of this policy after the insured dies. There may be different classes of Beneficiaries, such as primary and contingent. These classes set the order of payment. There may be more than one beneficiary in a class. Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order:
(emphasis added)

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

Any Beneficiary may be named an Irrevocable Beneficiary. An irrevocable beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in part 2. (SoF, ¶26; Ex. 7 at bates no. JCK00101)

ANSWER:

DISPUTE: A specimen policy was provided to the Court that is of the type that is submitted to the states by the carrier for approval or for other marketing purposes and is not a valid binding contract for insurance on the Life of Simon Bernstein. Therefore, none of the terms of the actual “Policy” can be compared to the Specimen policy as the “Policy” has not been produced and thus

none of the terms of the actual “Policy” can be proven at this time to be the same as the Specimen Policy as there is no legally binding insurance contract or policy on the life of Simon Bernstein before the Court.

III. MOVANTS’ CLAIMS TO THE POLICY PROCEEDS

27. Plaintiff’s claims to the Policy Proceeds are based on their allegations that the five adult children of decedent, INCLUDING ELIOT, are the beneficiaries of The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, and that this same Trust is the named beneficiary of the Policy Proceeds at issue (the “Stake”). (Ex. 8, Plaintiff’s First Amended Complaint).

ANSWER:

DISPUTE: Again, since there is no valid legally binding insurance policy produced at this time there cannot be “Policy Proceeds” that can be confirmed at this time to be the amount on the bona fide insurance contract, in fact, their claims would be to the interpled monies in this Court, which were paid to this Court as if there was a “Policy” that stated the exact amount under the contract to be deposited. The Court should also seek production of the “Policy” to confirm that the amount deposited was the amount listed in the “Policy” and what terms were selected under the “Policy” for payouts.

IV. ELIOT’S NON-EXISTENT CLAIM TO THE POLICY PROCEEDS

28. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation (“Eliot’s Claims”). (Ex. 9, Eliot’s Claims).

ANSWER:

UNDISPUTED

29. 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. Eliot’s Claims are devoid of any allegation or supporting facts to show that either Eliot or his children were ever named a beneficiary of the Policy Proceeds. (Ex. 9, Eliot’s Claims).

ANSWER:

DISPUTE: Eliot provided supporting facts to show that NO POLICY HAS BEEN PRODUCED

and that NO LEGALLY BINDING EXECUTED TRUST was provided to this Court or any party in this litigation making it wholly unknown who the beneficiaries are of the suppressed, destroyed or lost “Policy” are or who the beneficiaries of the suppressed, lost or destroyed Bernstein Trust are and thus Eliot has claims potentially to the policy and may in fact be the named beneficiary on the “Policy” once the “Policy” is discovered and produced or until this Court makes rulings regarding the beneficiaries under this convoluted and alleged fraudulent and abuse of process lawsuit. It is also alleged that all parties have conspired to suppress, lose or destroy the “Policy” and any copies that may have existed and have been held by any of the alleged prior fiduciaries or carriers involved have also been suppressed, lost or destroyed as part of scheme and artifice to defraud the true and proper beneficiaries of the policy.

30. This is confirmed by the 30(b)(6) witness designated by the Insurer affirming that 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. 2, Aff. of Don Sanders, ¶¶65-¶68).

ANSWER:

DISPUTED: Any changes of beneficiaries or owner forms would be governed by the insurance contract which under insurance laws would be made as attachments to the original policy and where the original policy has not been produced and appears suppressed, lost or destroyed there is no way to confirm at this time what changes were made to the insurance contract “Policy.”

V. ELIOT’S STATUS VIS-À-VIS THE ESTATE OF SIMON BERNSTEIN

31. The case styled as In Re Estate of Simon L. Bernstein, has been pending in the Probate Division of the Palm Beach County Circuit Court in Florida since 2012. In Re Estate of Simon L. Bernstein, No. 502012CP004391XXXNBIH.

ANSWER:

UNDISPUTED

32. A related case styled as Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et. al., has been pending in the same court before the same judges since 2014 involving matters related to a testamentary trust formed by Shirley Bernstein – Simon Bernstein’s spouse -- prior to her death. Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et. al, No. 502014CP003698XXXXNBIJ. For purposes of this motion, the actions pending in Palm Beach County are referred to as the “Probate Action(s)”.

ANSWER:

DISPUTED: The case above is actually styled as

“ Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd May 20, 2008, as amended

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B.SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,”

That it is recently learned from an email of Alan B. Rose to Eliot Bernstein and others, see attached Exhibit 2¹, that there are no trusts for Eliot’s minor children in existence at this time

¹ Alan Rose and Eliot Bernstein Emails
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160308%20Alan%20Rose%20Mrachek%20Letter>

named as parties to the lawsuit and despite Eliot being sued as Trustee under such nonexistent trusts. Again, another instance of alleged abuse of process and false process and fraud on the court in Palm Beach County.

Where further, there is no known “Simon L. Bernstein Trust Dtd 9/13/12” which would have had to been created in the few short hours of 9/13/12 that Simon lived that day, where Third Party Plaintiff Eliot Bernstein was with his father who was code blue in a critical care unit on that day and died shortly after 1am on the morning of 9/13/12 and there were no lawyers or estate planners present and Simon signed no documents or trusts on that day. No “Simon L. Bernstein Trust Dtd 9/13/12” has ever been produced to this court or any court at this time and thus any trusts alleged to be held under it cannot exist, as Mr. Rose has no admitted. Again, parties that are legally not existent are being sued through fraud on the court and more as is the case in this lawsuit.

That from Alan Rose’s emails exhibited already herein this Court can see that Mr. Rose references a different Simon Bernstein trust and attaches copies of an alleged trust and will titled “Simon Bernstein Will dtd 07-25-2012 conformed copy - original in courthouse.pdf; Simon L. Bernstein Amended and Restated Trust Agreement dtd 7-25-2012 - duplicate original.pdf” and where neither of these alleged testamentary documents are parties to the suit filed as the caption clearly shows and all pleadings show.

33. On December 15, 2015, after a trial was held in the Probate Actions, where Eliot Bernstein appeared and represented himself pro se, Judge John L. Phillips entered an Order including the following:

- a. This was a “Final Judgment” on Count II of the Amended Complaint;
- b. A trial was held on December 15, 2015 pursuant to the Court’s Order setting trial

on Amended Complaint Count II;

c. The Court received evidence in the form of documents and testimony of witnesses;

d. The Court heard argument from counsel and pro se parties who wished to argue;

e. The Court found that five testamentary documents, including the Will of Simon Bernstein and a Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 are “genuine and authentic, and are valid and enforceable according to their terms.”

f. That based on evidence presented, “Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents... Ted S. Bernstein played no role in any questioned activities of the law firm of Tescher & Spallina, P.A., who represented Simon and Shirley when they were alive. There is no evidence to support the assertion of Eliot Bernstein that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided or abetted others in forging or fabricating documents. The evidence shows Ted Bernstein played no role in the preparation of any improper documents, the presentation of any improper documents to the Court, or any other improper act, contrary to the allegations of Eliot Bernstein.

g. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure...” (Ex. 10, Probate Order of 12/15/15, Ted Bernstein, as Trustee of Shirley Bernstein Trust Agreement v. Alexandra Bernstein... Eliot Bernstein, et. al. No. 502014CP003698.) (ADD TRANSCRIPT SHOWING ELIOT ATTENDED?).”

ANSWER:

DISPUTE:

- a. The final judgment is being appealed although it is alleged that the appeal court is conflicted with Third Party Plaintiff Eliot Bernstein and is aiding and abetting the continued and ongoing fraud on and fraud by the court in efforts to shut down Eliot’s whistleblowing efforts against Officers of the Court, including but not limited to, three judges involved, several attorneys at law and their firms, a predatory guardian Diana Lewis (a former defrocked Judge) and others.

b. Count II of the Amended Complaint in the sham and fraudulent Shirley Trust

Construction case was heard in an improperly scheduled hearing from a status conference in Simon's Estate and in violation of Florida Probate Rules and Statutes regarding the scheduling of trials. Virtually no pre-trial procedures were followed in violation of Florida Probate Rules and Statutes.

- c. The court's only witness to the documents was Robert Spallina who admitted in court under oath in the hearing to have fraudulently created a Shirley Trust and sent it to Eliot's minor children's counsel, Christine C. Yates, Esq. of Tripp Scott law firm in Ft. Lauderdale, FL. Spallina also admitted he was under a consent agreement with the SEC for insider trading and misrepresented that he did not plead guilty to criminal misconduct under the consent as stated in the consent order he signed, making this a serious violation of his consent order. Spallina also admitted to mail fraud and other fraud on the court in the use of Simon Bernstein's identity Post Mortem to file documents to close his deceased wife's estate through a further elaborate fraud on the court and where he stated under oath that he had not notified authorities of certain of these crimes he admitted before Judge John Phillips. Judge John Phillips has taken no steps to report the crimes or follow the Florida procedures for fraud on the court and failed to follow his Judicial Canons, Attorney Conduct Codes and state and federal law for reporting the misconduct and admitted fraud of another attorney at law and in fact has moved to swiftly retaliate against Third Party Plaintiff Eliot Bernstein and his wife and children to silence their whistleblowing efforts by denying them wholly of their due process rights through a series of fraudulently issued orders designed to remove Eliot and his family's civil rights and rights to their properties. Spallina, even testified to the validity of the Shirley

Bernstein trust that he later under cross examination by Eliot admitted he fraudulently altered and sent via mail to his minor children's counsel, this done as part of an elaborate fraud on the beneficiaries to change the beneficiaries to benefit their client and close personal friend Ted Bernstein whose family was wholly disinherited in the estate and trust plans of Simon and Shirley Bernstein. No other parties who signed or witnessed the documents, who all live in the same county, were brought in to testify as witnesses.

- d. Eliot Bernstein's minor children were precluded a stay request to allow counsel to represent them who was already retained and waiting to file Pro Hac Vice to enter once she received copies of the trusts the children were sued under. Alan Rose refused to provide copies of the trusts the children were sued under and only later did we learn that they do not exist from Alan Rose as already evidenced herein and therefore three minor children, alleged to be beneficiaries were not represented by counsel or their parents at the hearing. The parents were precluded from representing their children as Rose claimed that Third Party Plaintiff Eliot Bernstein had a conflict of interest with his children that precluded him from representing them. That two other minor children were also wholly unrepresented by their parents (who would have had similar conflicts alleged by Rose) or any counsel at all. That none of the named beneficiaries of the alleged Shirley Bernstein trust were sued under the action or appeared at trial, namely, the Eliot Bernstein Family Trust, the Jill Iantoni Family Trust and the Lisa Friedstein Family Trust in violation of Florida Probate Rules and Statutes regarding the validity hearings and parties that must be joined. In fact, Mr. Rose sued instead the beneficiaries of a non-existent Simon Bernstein Trust dated on the day he died September 13, 12 and alleged trusts held thereunder that he admits in his email do not exist legally at this time.

Therefore, due to this suit being filed against non-existent parties the whole lawsuit and all orders etc. are further fraud on the court and fraud by the court, as the court is fully apprised of these issues of parties sued legally not existing and has done nothing to follow its own fraud policy and laws regarding fraud again and again in these matters, instead choosing a path of ignoring these facts and rushing to silence Eliot Bernstein and his family and further rob their properties held in the State of Florida's custody,

- e. The hearing was limited to a validity hearing on testamentary documents from several non-related cases whereby no original documents were produced at trial to authenticate the copies and it was learned in the hearing that no parties claim to have possession of the original testamentary documents that were supposed to be turned over by Tescher and Spallina as part of their court ordered production.

All of the COPIES of the alleged testamentary documents produced to this Court and Third Party Plaintiff Eliot come from a court ordered production² calling for "ALL" documents of Tescher and Spallina to be turned over to the Curator of the Estate of Simon at the time, Benjamin Brown, when Spallina and Tescher resigned as counsel and co-trustees and co-personal representatives of Simon's Estate and Trusts and all Bernstein family matters³, after their firm was found committing fraud, fraud on the court, fraud on the beneficiaries and fraud on beneficiaries counsel in the Estate and Trust litigations in Florida involving Simon and Shirley Bernstein. It has been learned that NO ORIGINAL DOCUMENTS were produced by Tescher and Spallina to Ben Brown or any

² February 18, 2014 Martin Colin Order for Production of ALL records from Tescher & Spallina
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20COLIN%20TESCHER%20SPALLINA%20TO%20TURN%20OVER%20ALL%20RECORDS%20PRODUCTION%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

³ January 14, 2014 Tescher Resignation Letter from all Bernstein family matters.
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140114%20Tescher%20and%20Spallina%20Resignation%20Letter%20as%20PR%20in%20estates%20of%20Simon%20and%20Shirley.pdf>

other party and only copies of alleged original testamentary documents were transferred which violates the court order that would have required the originals to be turned over so the copies could be validated against them.

Despite being advised by Eliot Bernstein of the failure of Spallina and Tescher to comply with the court order to produce ALL documents, which would have included ALL Original documents, neither Benjamin Brown, nor his successor in the Estate of Simon, Brian O'Connell, nor Ted Bernstein or his counsel Alan B. Rose, have sought to have Tescher and Spallina comply with the order or sought contempt charges.

Benjamin Brown was given copies of alleged original documents by Tescher and Spallina, see Exhibit 1 - ECF DOCKET #'s 258-1 to 258-8, It is further alleged that the copies and files tendered to Brown who then turned over the majority of them to parties in the litigation have been being tampered with, including changing files or modifying files used in online exhibits to this court, including the production link exhibited in several prior filings @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20ESTATE%20FILES%20FROM%20BEN%20BROWN%20CURATOR%20DELIVERED%20TO%20HIM%20BY%20TESCHER%20AND%20SPALLINA%20PRODUCTION.pdf> Third Party

Plaintiff, Eliot Bernstein, informed the court that file tampering in these matters was suspected and repeatedly in pleadings has urged the Court to print out and attach the documents at the linked URL's to any pleadings to avoid such hacking and alteration of the records before the court.

This failure to produce ANY original records in a case fraught with fraudulent documents, fraudulent notarizations and more, committed by multiple parties, with new

admissions by Spallina in a December 15, 2015 hearing of frauds he committed in the Estate and Trusts and had not revealed the crimes to any party until admitting them under oath in the hearing in Judge Phillips court, makes all records used in these matters questionable as to their authenticity if they come from the copies of alleged originals produced by Tescher and Spallina who are in violation of the court order to produce that would have required production of the originals and any copies.

- f. That the fraudulent order from the sham validity hearing attempts to vindicate Ted Bernstein of involvement in the preparation or transmission of fraudulent documents to the court that his attorneys that represented him submitted on his behalf that were to directly benefit his family from such fraud. The documents filed in Shirley's Estate that led to the re-opening of the Estate due to multiple fraudulent acts on the beneficiaries and the court were filed by Ted's attorneys representing him as alleged Personal Representative of the Estate and alleged Successor Trustee of the Shirley Trust and thus in essence were filed with the court by Ted as the Fiduciary, presumably Ted reviewed the work his counsel was filing on his behalf and thus responsible as a fiduciary. That there was NO EVIDENCE or TESTIMONY regarding Ted's involvement in the fraud at the validity hearing as the record of the hearing clearly reflects and Judge Phillips throughout the hearing precluded Eliot from asking questions of Ted and Spallina regarding the multiple frauds and their involvement claiming repeatedly it was a validity hearing and thus not relevant and the hearing was limited to validity and nothing else. This represents further fraud by the court in efforts to cover up the crimes of its court appointed officers and fiduciaries, including Ted, Judge Colin, Judge Phillips, Spallina, Tescher, et al.

34. On April 8, 2016, Hon. John. L Phillips entered another Probate Order including the following findings:

a. "This court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the "Trust") are Simon Bernstein's 'then living grandchildren'. Under that ruling, Simon's children -- including Eliot -- are not beneficiaries of the Trust." (insert footnote explaining that the Trust is beneficiary of the Will").

b. The Court has already determined in the related matter of the Shirley Bernstein Trust that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children's interest resulting in appointment of a guardian ad litem.

c. Accordingly, the Court appoints Diana Lewis to act as Guardian ad Litem to advance and protect the interests of Jo.B, Ja.B and D.B. as the guardian sees fit. The Guardian ad Litem will have full power and autonomy to represent the interests of the Children of Eliot Bernstein, subject to the jurisdiction and review of the court." (Ex. 11, Order entered 4/8/16, Eliot Bernstein, et. al v. Theodore Stuart Bernstein, et al., No. 502015CP001162)." (Ex. 11, Probate Order entered 4/8/16)

ANSWER:

DISPUTE:

g. This Court can see from the transcript and pleadings relating to the hearing, no Trust Construction hearing was held to determine beneficiaries at the validity only hearing on Count II and Judge Phillips signed prefabricated Orders that were prepared prior to the hearing by Alan Rose, which Order represents virtually nothing that was heard that day and which Third Party Plaintiff Eliot Bernstein was not given fair opportunity to see or object to the Orders prior to Phillips signing them and the Order claims that determinations were made regarding construction of the beneficiaries. Eliot is a named beneficiary in virtually every COPY of an alleged testamentary document that was produced and validated by Phillips at the hearing and the Order therefore even contradicts the copies of the documents alleged valid by Phillips. Phillips did not even care that Ted

and Rose claimed to not have possessed or seen the original documents they operate under.

35. In this same Probate Order, Judge Philips admonished Eliot that the court intended to use its “full measure of its coercive powers” to ensure Eliot’s, and anyone acting in concert with Eliot, non-interference with the guardian ad litem appointed for Eliot’s children. (emphasis added). (Ex. 11, Probate Order entered 4/8/16). For purposes of this motion, the two orders attached as Ex. 10 and Ex. 11 are referred to as the “Probate Orders”.

ANSWER:

DISPUTED: This part of the Order further evidences how Judge Phillips uses his Court as Weapon to extort Third Party Plaintiff Eliot and shut down his exposing the frauds in and by the court and holds predatory guardianship hearings to silence rights, through hearings again scheduled in violation of Florida Guardian Ad Litem Rules and Statutes and with no mandatory audio recording and no record created of such GAL hearings, to attempt to extort and bully and prey upon the children and deny Eliot and his minor and adult children and wife their due process rights through abuse of process, fraud on the court, fraud by the court, obstruction of justice with intent to deny deprive civil rights of litigants before his court. In fact, Phillips through his fraudulently gained Orders attempts to spin the case to portray Eliot as a problem and the allegations against Eliot to have guardians put on him by Alan Rose and Steven Lessne in the GAL hearings included to stop Eliot from accusing Judges and Attorneys of fraud, really. Diana Lewis the GAL assigned by Phillips and selected by Rose has been made aware of fraud and misconduct by Peter Feaman the attorney for William Stansbury and appears to ignore this information.

VI. THE ESTATE’S INTERVENOR COMPLAINT

36. 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. 12 at ¶12, Estate’s Intervenor Complaint).

ANSWER:

DISPUTE: Again, there is no “Policy” produced at this time. That again there is a Primary beneficiary, LaSalle National Trust, NA and a contingent beneficiary named by the carrier’s parole records as Simon Bernstein Trust, NA and until the whereabouts of these named beneficiaries or their successors is determined the Estate is not in line to receive any monies.

There are no “Policy Proceeds” as no policy has been produced to show the contractual policy amount.

VII. THE INSURER’S INTERPLEADER ACTION

37. A copy of the Insurer’s Interpleader Action is included in Movant’s Appendix to its Statement of Undisputed Facts as (Ex. 13, Insurer’s Interpleader Action). 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 potentially conflicting claim. (Ex. 13 at ¶22).

ANSWER:

DISPUTE: Eliot never filed any claim with the carrier. The only party who filed a formal claim is Robert Spallina acting as the alleged “Trustee” of the lost, suppressed or destroyed trust he claims to have never seen or possessed or had anything to do with. Spallina could also not prove that he was “Trustee” of the trust making the fraudulent claim and this appears to be the real reason for the declination.

Prior Opposition Incorporated by Reference:

Third Party Plaintiff Eliot hereby incorporates by reference my prior responses in my filing of the Opposition of Summary Judgement filed with this Court, see ECF Docket #258-9.

DATED: August 26, 2016

Respectfully submitted by,

/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

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Boca Raton, FL 33434

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 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)
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. 1:13-cv-3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**INTERVENOR’S MOTION FOR
EXTENSION OF TIME TO FILE
REPLY IN FURTHER SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Filer:
Brian O’Connell, as Personal Representative
of the Estate of
Simon L. Bernstein, Intervenor.

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.)

**INTERVENOR'S MOTION FOR EXTENSION OF TIME TO FILE REPLY
IN FURTHER SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Intervenor Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein (the "Estate"), pursuant to Fed. R. Civ. P. 6(b)(1), respectfully moves the Court for an extension of time up to and including October 27, 2016 to file a reply in further support of its motion for summary. In support of this Motion, the Estate states as follows:

1. On May 25, 2016, the Estate filed a Motion for Summary Judgment on its Complaint for Declaratory Judgment and Counts II and III of Plaintiffs' First Amended Complaint. *See* ECF Nos. 245-248.

2. The following day, the Court entered a briefing schedule applicable to the Estate's Motion for Summary Judgment and Plaintiffs' separate summary judgment motion regarding Eliot Bernstein's counterclaims, cross-claims and third-party claims. *See* ECF No. 250.

3. On July 18, 2016, the Court granted Eliot Bernstein's motion for an extension of time to respond to the summary judgment motions, entered a new briefing schedule pursuant to which replies are currently due by October 6, 2016, and rescheduled the previously-set status hearing to October 27, 2016. *See* ECF No. 254.

4. On September 7, 2016, one of the two attorney representing the Estate in this matter and who had primary responsibilities to prepare the reply unexpectedly fell ill and was out of the office until September 14. The other attorney representing the Estate has preexisting commitments which require him to be out of the country from September 20 until October 6. As a result, the six weeks this Court's briefing schedule allotted for replies is effectively reduced to just three.

5. Therefore, the Estate respectfully requests an extension of twenty-one (21) days, up to and including October 27, 2016, within which to file a reply brief in further support of its Motion for Summary Judgment and all related materials (*e.g.* a reply to opposing party's statement

of additional material facts). This request is not being made for purposes of delay and seeks an extension that is no longer than the three week period that was lost due to unforeseen illness and preexisting travel commitments.

6. The Estate respectfully submits that the foregoing constitutes “good cause” within the meaning of this Court’s Standing Order titled *Memoranda of Law*.

WHEREFORE, Intervenor Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein, respectfully requests that the Court enter an Order:

- A. Extending the time, up to and including October 27, 2016, for the Estate to file a reply and related materials in support of its Motion for Summary Judgment;
- B. Striking the status hearing currently scheduled for October 27, 2016; and
- C. Scheduling a status hearing for a date after October 27, 2016 that is convenient to the Court.

Dated: September 15, 2016

BRIAN M. O’CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor’s Attorneys

James J. Stamos (ARDC # 3128244)
Theodore H. Kuyper (ARDC # 6294410)
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Attorneys for Intervenor

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
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, September 19, 2016:

MINUTE entry before the Honorable John Robert Blakey: Intervenor's motion for extension of time to file reply [262] is granted. Intervenor's reply brief is now due 10/27/16. The 9/22/16 Notice of Motion date is stricken, and the parties need not appear. Additionally, the status hearing previously set for 10/27/16 is stricken and reset to 12/6/16 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.

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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)

**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
("Plaintiffs")**

**COUNTER-DEFENDANTS, CROSS-
DEFENDANTS, AND THIRD-PARTY
DEFENDANTS' REPLY TO
ELIOT BERNSTEIN'S RESPONSE TO
MOTION FOR
SUMMARY JUDGMENT**

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 Counter-defendants, Cross-defendants, and Third-Party Defendants, by and through their undersigned counsel, Adam M. Simon (“Movants”), and respectfully submit this memorandum of law in reply to Eliot Bernstein’s opposition to Movants’ motion for summary judgment.

I. ELIOT'S LAST DITCH ATTEMPT TO CO-OPT THE 1995 BERNSTEIN TRUST'S CLAIMS TO THE POLICY PROCEEDS UNDERMINE HIS OPPOSITION TO THIS MOTION FOR SUMMARY JUDGMENT.

Over three years into this litigation and in a desperate attempt to further his obstructionist campaign, Eliot has essentially co-opted the very claims he has been trying so desperately to refute. And as a result, Eliot's brazenly disingenuous allegations of fraud against his siblings and their attorneys are thoroughly debunked by Eliot's recent enlightenment that the claims asserted by the 1995 Bernstein Trust may in fact be correct. Eliot has the temerity to argue that Movants should somehow be sanctioned for moving for summary judgment because Plaintiffs' claims name Eliot as one of the beneficiaries of the 1995 Bernstein Trust. **(Dkt. #261, Eliot's opposition to summary judgment, p.6).**

Eliot's co-option of the 1995 Bernstein Trust's position is entirely *inconsistent* with his prior posture, but totally *consistent* with his perpetual disrespect for and abuse of the courts and opposing parties in both this litigation and the Probate Actions. The 1995 Bernstein Trust, on the other hand, has *consistently* asserted a claim to the proceeds on behalf of all five siblings, *including* Eliot. No party to this litigation has ever taken an action to prevent Eliot from dismissing his opposing pleadings in order to adopt the claims asserted by the 1995 Bernstein Trust and, if he so desires, appearing pro se' solely in his capacity as a beneficiary of the 1995 Bernstein Trust and on the Plaintiff side of the ledger.

Co-opting the position that Eliot's standing is derived from his status as a beneficiary of the 1995 Bernstein Trust belies all of his allegations that Movants have somehow tried to deny him his right to the Policy Proceeds. Since day one, the 1995 Bernstein Trust's complaint has alleged Eliot is one of the beneficiaries of the 1995 Bernstein Trust.

Conversely, nowhere in Eliot's response does he point to a single pleading he filed that alleges he has standing in the instant litigation by virtue of his beneficial interest in the 1995 Bernstein Trust. But at this late date to avoid being terminated from this litigation, Eliot's has made a sudden U-turn, and by doing so, Eliot is taking a position that is diametrically opposed to his own counterclaims, cross-claims and third-party claims. The logical inconsistency between Eliot's new position, and his prior claims, counterclaims, cross-claims and third-party claims, make Eliot's current posture in this case a *non sequitur*.

It is patently unjust to allow Eliot to take diametrically opposed positions, straddle the fence, and hope everyone else somehow perishes in the cross-fire. To effectuate the immediate stoppage of Eliot's obstructionism, but allow Eliot to formally adopt this new position, Movants propose an Order to be entered that includes the following:

- a. Granting Movants' motion for summary judgment as to all of Eliot's purported claims to the Policy Proceeds that are independent of the 1995 Bernstein Trust claims; and
- b. Entering summary judgment in favor of the 1995 Bernstein Trust, Ted Bernstein, Pamela B. Simon, David B. Simon, Adam M. Simon, The Simon Law Firm, and STP Enterprises, Inc. as Counter-defendants, Cross-Defendants, and/or Third-Party Defendants and against Eliot as to all of Eliot's cross-claims, counter-claims and third-party claims; and
- c. Granting Eliot ten days to file a motion for leave to file an amended pleading joining Plaintiff's First Amended Complaint, as a Co-Plaintiff and seeking distribution of the Policy Proceeds to the 1995 Bernstein Trust.

II. THE FLORIDA PROBATE COURT HAS RULED, AFTER TRIAL AND HEARINGS, THAT ELIOT HAS NO INTEREST OR STANDING AS A BENEFICIARY OF THE ESTATE EITHER ON HIS OWN BEHALF OR AS PARENT/GUARDIAN FOR HIS MINOR CHILDREN. THESE PROBATE ORDERS RESOLVE ISSUES THAT ARE GERMANE TO THE ISSUE OF ELIOT'S STANDING IN THE INSTANT LITIGATION.

In its motion for summary judgment and statement of undisputed facts movants set forth the Probate Orders that found: (i) Simon Bernstein's testamentary documents at issue in the Probate Actions are valid and enforceable, (ii) Ted Bernstein as personal representative and trustee for certain of the testamentary trusts is qualified and authorized to so act, (iii) Ted Bernstein did not engage in any wrongdoing in the administration of the Estates and Trusts at issue in the Probate Actions, (iv) Eliot Bernstein is not a beneficiary of the Estate, and (v) appointing a *guardian ad litem* to manage the affairs of Eliot Bernstein's children in the Probate Actions. (SoF, ¶31-¶35).

Eliot is also wrong about the preclusive effect of these orders pursuant to the doctrines of *collateral estoppel* and *res judicata*. First, Movants' answer and affirmative defenses did assert the doctrines of collateral estoppel and *res judicata* with regard to the Probate Actions and the Estate of Simon Bernstein. (See **Plaintiff's Answer and Aff. Defenses to Eliot's Claims, Dkt. #47, pg. 9 at ¶9**).

Also, this court can and should apply the doctrine of collateral estoppel to preclude any re-litigation of one very pertinent issue that was previously determined in the Probate Actions -- that Eliot has no interest in the Estate. The Probate Orders also stripped Eliot of any authority to represent the interests of his children by appointing a *guardian ad litem* to represent their interests in the Estate and Probate Actions. Since the Florida Probate Court already determined that Eliot is not a beneficiary in the Estate, and no longer has any authority to represents the interests of his own children, the Probate Orders are preclusive as to any relief Eliot seeks here

based on an interest in the Estate. Also, a pending appeal does not bar the application of either the doctrine of collateral estoppel or *res judicata*. *Black and Decker, Inc. v. Robert Bosch Tool Corp.*, 500 F. Supp.2d 864 (2007), *Prymer v. Ogden*, 29 F.3d 1208 (7th Cir.), *cert denied*, 513 U.S. 1057, 115 S.Ct. 1808, 149 L.E.2d 599 (1994).

III. ELIOT’S COUNTERCLAIMS IN THE INSTANT LITIGATION DO NOT SET FORTH AN AFFIRMATIVE CLAIM TO AN INDEPENDENT INTEREST IN THE POLICY PROCEEDS.

Eliot’s claims of a conspiracy to deprive him of his interest in the Policy Proceeds – that ironically Eliot otherwise denies exist – must be based on something more than vague allegations. At this stage, Eliot must provide factual support for a claim that he possesses an independent interest in the Policy Proceeds of which he was allegedly deprived. Since he has failed to do so, his claims of interference or conversion fail as a matter of law. *Edwards v. City of Chicago*, 389 Ill. App. 3d 350, 353, 905 N.E.2d 897, 900, 329 Ill.Dec. 59, 62 (1st Dist. 2009).

Eliot, in his opposition, has the temerity to argue that Movants’ should be sanctioned by moving for summary judgment when the 1995 Bernstein Trusts’ own claims name Eliot as one of its beneficiaries. In order for one to claim something was stolen or converted, one must first prove an immediate right of possession ownership interest in the property at issue. *General Motors Corporation v. Douglass*, 206 Ill.App.3d 881, 565 N.E.2d 93, 151 Ill.Dec. 822 (1st Dist., 1990). What is central to this motion for summary judgment is that Eliot has failed to set forth any affirmative evidence of his own legal or beneficial claim to the Policy Proceeds – independent of the 1995 Bernstein Trust. And what follows is that all of Eliot’s claims, counterclaims and cross-claims fail as a matter of law since Eliot has not and cannot prove such possessory interest. The dispositive undisputed issue is that Eliot has failed to set forth any

evidence of one essential element to all his claims -- that he has actually been *deprived* of the Policy Proceeds.

In his opposition, Eliot cites to two paragraphs of his counterclaims – Par. 115 and Pa. 136 – and then declares that these allegations are sufficient to defeat Movants’ motion for summary judgment. [Dkt. #261, p.3 of 13]. Eliot has it wrong. At this late stage, to survive summary judgment, Eliot must do more than make unsupported, conclusory allegations. Eliot must submit some actual evidence in support of his allegations. Eliot has failed to offer any such evidence, and his reliance on the substance of his own pleading simply does not suffice.

Eliot’s attempt to rely on this court’s own findings in denying Plaintiffs’ earlier motion for summary judgment also falls short. In its prior Order, the court merely pointed out certain factual issues that the court found prevented Plaintiffs from obtaining judgment as to the existence of the 1995 Bernstein Trust by virtue of a summary judgment motion, as opposed to after a trial on the merits.

But, none of the courts’ findings pertain to the issue central to this motion for summary judgment which is whether Eliot has an independent claim to the Policy Proceeds. And since Eliot’s response is devoid of any evidence supporting his independent claim of a possessory interest in the Policy Proceeds, there remains no triable issue of fact as to both Eliot’s purported independent claims to the Policy Proceeds, and his counterclaims, cross-claims and third-party claims which all rely on a showing that he has an independent interest in the Policy Proceeds. Since Eliot has failed to submit evidence of any such interest, the Counter-defendants. Cross-defendants and Third-Party defendants that Eliot countersued did not and could not have deprived Eliot of anything.

CONCLUSION

For all of the foregoing reasons, Movants' motion for summary judgment as to Eliot's claims, counterclaims, cross-claims and third-party claims should be granted in its entirety.

Respectfully Submitted,

/s Adam M. Simon

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Attorney for Movants

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

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

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

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

Counter-Defendant)

and,)

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

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

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

Cross-Defendant)

and,)

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

**Filers: Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee, et. al.**

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the documents set forth below to be served upon the undersigned via the Northern District's ECF filing system, and by U.S. mail if indicated, proper postage prepaid to the following on October 6, 2016:

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Estate of Simon Bernstein*

/s/ Adam M. Simon
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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.)

**Case No. 1:13-cv-3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**INTERVENOR'S REPLY TO
PLAINTIFFS' LOCAL RULE
56.1(b)(3)(C) STATEMENT OF
ADDITIONAL FACTS**

Filer:
Brian O'Connell, as Personal Representative
of the Estate of
Simon L. Bernstein, Intervenor.

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.

**INTERVENOR’S REPLY TO PLAINTIFFS’
LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS**

Intervenor Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (the “Estate”), pursuant to Local Rule 56.1(a), for his Reply to Plaintiffs’ Local Rule 56.1(b)(3)(C) Statement of Additional Facts, states as follows:

PREFACE

There are three preliminary issues related to ECF No. 255 (“Plaintiffs’ Statement of Additional Facts”).¹ First, that pleading cannot serve to dispute any of the material facts presented by the Estate. Pursuant to Local Rule 56.1(a)(3), the Estate filed a separate statement of facts in support of its motion for summary judgment. *See Intervenor’s L.R. 56.1(a)(3) Statement of Undisputed Material Facts* (“SoF”) (ECF No. 247). In order to dispute those statements, Plaintiffs were required to file “a response to each numbered paragraph in the moving party’s statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon.” *See* L.R. 56.1(b)(3)(a)-(b). “Unless controverted in this manner, ‘all material facts set forth in movant’s statement are deemed admitted.’” *Koursa, Inc. v. manroland, Inc.*, 971 F. Supp. 2d 765, 770 (N.D. Ill. 2013).

While it is unclear whether Plaintiffs’ Statement of Additional Facts was intended to serve this purpose, that document does not satisfy Local Rule 56.1(b)(3). *See* SoAF. Therefore, all material facts set forth in the Estate’s statement are deemed admitted and summary judgment in favor of the Estate is appropriate. *See* L.R. 56.1(b)(3)(C); *Malec v. Sanford*, 191 F.R.D. 581, 584 (N.D. Ill. 2000) (“Essentially, the penalty for failing to properly respond to a movant’s 56.1(a) statement is usually summary judgment for the movant (at least if the movant has done his or her job correctly) because the movant’s factual allegations are deemed admitted. *** We cannot stress

¹ Citations herein to ECF No. 255 will use the following format: “SoAF ¶ __.”

the importance of this document enough: a nonmovant's failure to adhere to these requirements is equivalent to admitting the movant's case.").

The second preliminary issue is that the averments in the Affidavit of Robert Spallina are not properly considered in deciding the Estate's motion for summary judgment. Plaintiffs' Statement of Additional Facts is insufficient to put before the Court any "additional" facts not contained therein, as it is settled law that Local Rule 56.1(b)(3)(C) "'provides the *only* acceptable means of presenting additional facts'" and "[s]imply providing additional facts in one's responsive memorandum is insufficient to put those facts before the Court." *Malec*, 191 F.R.D. at 584 (emphasis in original) (quoting *Midwest Imports, Ltd. v. Coval*, 71 F.3d 1311, 1317 (7th Cir. 1995)). Plaintiffs' Statement of Additional Facts does not contain any of the averments in the Affidavit of Robert Spallina, which are only addressed in Plaintiffs' brief. *Compare* Affidavit of Robert Spallina (ECF No. 255-2) with SoAF ¶¶ 76-78 and Plfs.' L.R. 56.1(b)(2) Memorandum of Law ("Resp.") at 6-7, 14-15 (ECF No. 256).² That is inadequate. As the Seventh Circuit explained in holding that the district court properly rejected additional facts that were presented only in the party's brief:

The rule ... provides the only acceptable means ... of presenting additional facts to the district court. *Midwest* chose not to employ these means, instead presenting the facts in a way it believed adequate. However, as the district court noted, it is not the parties prerogative to determine when a rule can be satisfied by other than what the rule requires. Hence, *Midwest* must suffer the consequences, harsh or not[.]

Midwest Imports, 71 F.3d at 1317. Thus, nothing in the Spallina Affidavit is properly considered in deciding the Estate's motion for summary judgment.

The third preliminary issue to be addressed is that a significant portion of Plaintiffs' Statement of Additional Facts does not consist of short numbered paragraphs setting forth facts

² Plaintiffs' Local Rule 56.1(b)(2) memorandum is inaccurately titled "*Plaintiffs' Supplemental Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment.*" See ECF No. 256.

and specifically-citing evidence in support, as required by Local Rule 56.1(b)(3)(C). *See* SoAF. Therefore, the Estate's reply to those portions cannot be set forth in "numbered paragraphs ... corresponding to" Plaintiffs' (non-existent) numbered paragraphs, as contemplated by the Local Rule. Notwithstanding Plaintiffs' failure to comply with any part of Local Rule 56.1(b), in order to comply with the spirit of the Local Rule and effectuate its purpose, the Estate's reply to the unnumbered portions of Plaintiffs' Statement of Additional Facts mirrors the general order and structure of those portions.

REPLY TO STATEMENT OF ADDITIONAL FACTS

I. INTRODUCTION

On March 27, 2015, Plaintiff's filed their initial statement of undisputed facts numbered 1-75, in support of their motion for summary judgment. [**Dkt. #150, Pltf's Statement of Undisputed Facts**].

REPLY: Disputed that ECF No. 150 does or ever did set forth "undisputed facts." Many of the facts set forth in that pleading were disputed, and the statements in that pleading were not limited to "facts" but also included opinions and legal conclusions. *See Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* (ECF No. 192). Otherwise, undisputed.

... Plaintiff [sic] is incorporating by reference its [sic] initial statement of undisputed facts and then filing this supplemental statement in order to set forth the additional undisputed facts contained in the Affidavit of Robert Spallina.

REPLY: Disputed that Plaintiffs' "supplemental statement" sets forth anything "contained in the Affidavit of Robert Spallina." *Compare* SoAF ¶ 76 *with* Affidavit of Robert Spallina (ECF No. 255-2). For its reply to the statements in ¶¶ 1-75 of Plaintiffs' "initial statement of undisputed facts" (ECF No. 150), the Estate incorporates by reference as if fully set forth herein its responses thereto set forth in *Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts* (ECF No. 192), including all evidentiary materials cited in support of those responses.

Furthermore, pursuant to Fed. R. Civ. P. 56(c)(2), the Estate objects that the averments in paragraphs 5-6, 8-11, 13-19 of the Spallina Affidavit cannot be presented in a form that would be admissible in evidence.

Plaintiffs recognize that its [sic] Initial Statement of Undisputed Facts contains references to certain testimony involving conversations between Plaintiffs (and interested persons) and the decedent that this court [sic] ruled were inadmissible under the Illinois Dead Man's Act. Plaintiffs' memorandum in opposition to the Estate's motion for summary judgment does not rely upon such excluded testimony.

REPLY: The first sentence is undisputed. The second sentence is disputed in that Plaintiffs' memorandum does rely on the testimony of David Simon and Plaintiffs that this Court held was barred by the Dead Man's Act. *See Resp.* at 8, 10-11, 15. Specifically, Plaintiff rely on the barred testimony as direct evidence attempting to satisfy the elements they must prove to establish the 1995 Trust. *See, e.g., id.* at 10-11 (arguing that affidavit and deposition testimony of David Simon and Ted Bernstein constitutes parol evidence of, *inter alia*, Simon Bernstein's intent to form the 1995 Trust and designate Ted successor trustee). Plaintiffs also implicitly rely on the barred testimony to authenticate documents that they contend establish certain of the elements they must prove to establish the 1995 Trust. *Intervenor's Reply to Plfs.' Resp. in Opposition to Motion for Summary Judgment* at 9 and n.6, contemporaneously filed herewith as ECF No. 267. *See also Resp.* at 10 (relying on purported drafts of the 1995 Trust); Fed. R. Evid. 901; *Estate of Brown v. Thomas*, 771 F.3d 1001, 1005-06 (7th Cir. 2014) (affirming summary judgment for defendant because plaintiff's evidence in opposition was inadmissible due to "fatal procedural error by its lawyer: failing to authenticate Gaut's expert report"); SoF ¶ 45 (David Simon's inadmissible testimony which is the only evidence through which the purported drafts can be authenticated).

II. PLAINTIFFS' SUPPLEMENTAL STATEMENT OF UNDISPUTED FACTS

76. In October of 2013, and then again in 2014 after the Estate intervened, Plaintiffs served all parties with Rule 26 disclosures which disclosed Donald Tescher and Robert Spallina (erroneously referred to at times as Ronald Spallina) and the law firm of Tescher & Spallina as potential witnesses in this matter. On July 15, 2016, Plaintiff served all parties in this litigation with the Affidavit of Robert Spallina who was Simon Bernstein's final estate planning attorney in the years before his death. Also, attached to the Affidavit of Robert Spallina are his contemporaneous notes from his 2012 estate planning meetings with Simon Bernstein to which he makes reference in his Affidavit. (**Ex. 37, Affidavit of Robert Spallina**).

REPLY: The first and second sentences are undisputed. Disputed that Mr. Spallina's notes "from his 2012 estate planning meetings with Simon Bernstein" are attached to Exhibit 37 in that Mr. Spallina avers that the attached notes are only "of a meeting with Simon Bernstein on February 1, 2012." Affidavit of Robert Spallina ¶ 5 (ECF No. 255-2) (emphasis added). The third sentence is otherwise undisputed. Furthermore, pursuant to Fed. R. Civ. P. 56(c)(2), the Estate objects that the averments in paragraphs 5-6, 8-11, 13-19 of the Spallina Affidavit cannot be presented in a form that would be admissible in evidence.

77. Currently and for the past several years, there have been several actions pending in the Palm Beach County Court, Probate Division. Certain testamentary trusts (not the insurance trusts at issue here) and the Will of Simon Bernstein have been filed with and submitted to the Probate Court.

REPLY: Disputed. Plaintiffs cite no evidence to support these statements of fact. Thus, those statements are a nullity. *See Malec*, 191 F.R.D. at 584.

78. On December 15, 2015, after a bench trial was held, and where Eliot Bernstein appeared and represented himself *pro se*, Judge John L. Phillips entered an Order including the following:

REPLY: Disputed to the extent that the citation to Plaintiffs' Exhibit 38 does not support the statement that "Eliot Bernstein appeared and represented himself *pro se*." Furthermore, the Estate objects to Plaintiffs' Exhibit 38 in that it is inadmissible due to Plaintiffs' failure to offer evidence

to authenticate it, and therefore should not be considered in deciding the Estate's motion for summary judgment. *See* Fed. R. Evid. 901; *Estate of Brown*, 771 F.3d at 1005-06.

- a. This was a "Final Judgment" on Count II of the Amended Complaint;

REPLY: Undisputed, but the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

- b. A trial was held on December 15, 2015 pursuant to the Court's Order setting trial on Amended Complaint Count II;

REPLY: Undisputed, but the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

- c. The Court received evidence in the form of documents and testimony of witnesses;

REPLY: Undisputed, but the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

- d. The Court heard argument from counsel and pro se parties who wished to argue;

REPLY: Undisputed, but the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

- e. The Court found that five testamentary documents, including the Will of Simon Bernstein and a Simon Bernstein Amended and Restate Trust Agreement dated July 25, 2012 are "genuine and authentic, and are valid and enforceable according to their terms."

REPLY: Undisputed, but the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

- f. That based on evidence presented, "Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents . . . Ted S. Bernstein played no role in any questioned activities of the law firm of Tescher & Spallina, P.A., who represented Simon and Shirley when they were alive. There is no evidence to support the assertion of Eliot Bernstein that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided or abetted others in forging or fabricating documents. The evidence shows that

Ted Bernstein played no role in the preparation of any improper documents, the presentation of any improper documents to the Court, or any other improper act, contrary to the allegations of Eliot Bernstein.

REPLY: Disputed in that the citation to Plaintiffs' Exhibit 38 does not support the presentation of these statements as affirmative facts. Undisputed that these statements are findings of fact that were made by Judge John L. Phillips and that Plaintiffs' Exhibit 38 contains the quoted material. Furthermore, the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

- g. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure..." (**Ex. 38, Probate Order of 12/15/15, *Ted Bernstein, as Trustee of Shirley Bernstein Trust Agreement v. Alexandra Bernstein...Eliot Bernstein, et al. No. 502014CP00369.***)

REPLY: Undisputed that Plaintiffs' Exhibit 38 contains the quoted material, but the Estate objects in that Plaintiffs' Exhibit 38 is inadmissible as set forth above.

Dated: October 27, 2016

Respectfully submitted,

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor's Attorneys

James J. Stamos (ARDC # 3128244)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Reply to Plaintiffs' Local Rule 56.1(b)(3)(C) Statement of Additional Facts** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

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Pro Se Litigant

on this 27th day of October, 2016.

/s/ 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.)

**Case No. 1:13-cv-3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**INTERVENOR'S REPLY TO
PLAINTIFFS' RESPONSE IN
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

Filer:
Brian O'Connell, as Personal Representative
of the Estate of
Simon L. Bernstein, Intervenor.

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.

**INTERVENOR’S REPLY TO PLAINTIFFS’ RESPONSE IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

Intervenor Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (the “Estate”), for his Reply to Plaintiffs’ response in opposition to the Estate’s motion for summary judgment, states as follows:

INTRODUCTION

Plaintiffs do not respond to the Estate’s summary judgment motion (“Motion”) with admissible evidence disputing any of the material facts submitted by the Estate. In fact, all of those facts are admitted under Local Rule 56.1(b)(3)(c) because Plaintiffs did not file a response pursuant to Local Rule 56.1(b)(3)(a)-(b). *See L.R. 56.1(b)*; ECF Nos. 255-256; *Malec v. Sanford*, 191 F.R.D. 581, 584 (N.D. Ill. 2000). Plaintiffs have also abandoned their claim for a resulting trust in Count III by ignoring the Estate’s request for summary judgment on that count and arguing only that the 1995 Trust was established as an express trust, effectively conceding summary judgment on Count III. *Plfs.’ L.R. 56.1(b)(2) Memorandum of Law (“Resp.”)* at 9 (ECF No. 256).¹

As a result, the only remaining issue is whether the evidence Plaintiffs offer is “of insufficient caliber or quantity,” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253-55 (1986), so “as to lead to only one conclusion” regarding (1) Simon Bernstein’s intent to create the 1995 Trust, (2) the property of that trust, (3) the identities of the trustee and (4) beneficiaries, (5) the specifications how it is to be performed, and (6) delivery of the trust property to the trustee, *Eychaner v. Gross*, 779 N.E.2d 1115, 1131 (Ill. 2002).

Plaintiffs offer three categories of “evidence” to oppose the Estate’s motion for summary judgment on Plaintiffs’ Count II: (i) testimony of Plaintiffs and one Plaintiff’s spouse, David

¹ Plaintiffs’ Local Rule 56.1(b)(2) memorandum is inaccurately titled “*Plaintiffs’ Supplemental Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment.*” *See* ECF No. 256.

Simon, *Resp.* at 8, 10-11, 15; (ii) two documents they contend are unexecuted “drafts” of the 1995 Trust and a number of hearsay forms they argue constitute “a comprehensive and cohesive bundle of evidence,” *id.* at 6, 8, 10-11; and (iii) the recently-procured Affidavit of Robert Spallina, *id.* at 6-7, 13-15. Plaintiffs’ evidence is of insufficient caliber and quantity to lead to only one conclusion as to each of the elements set forth in *Eychaner* and the Estate’s Motion should therefore be granted.

Because the Affidavit of Robert Spallina is the only one of the three categories of evidence not previously offered by Plaintiffs and addressed by the Court, the Estate first addresses the Affidavit in Section I, demonstrating the many reasons it is inadmissible. Argument regarding the other categories of evidence follows in Section II, and a discussion of the evidence together is contained in Section III.

ARGUMENT

I. The Spallina Affidavit Is Inadmissible Under Fed. R. Civ. P. 56 and Fed. R. Evid. 802.

“An affidavit or declaration used to ... oppose a motion for summary judgment must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). “On a motion for summary judgment, a court must not consider parts of an affidavit that fail to comply.” *Bitler Inv. Venture II, LLC v. Marathon Ashland Petro., LLC*, 653 F. Supp. 2d 895, 915 (N.D. Ind. 2009). The material averments in the Spallina Affidavit cannot serve to defeat the Estate’s motion for summary judgment because they do not satisfy those requirements of Fed R. Civ P. 56.

A. The Spallina Affidavit Is Hearsay and No Exception Applies.

The issue before the Court is whether the purported trust was formed in 1995 and what its terms were, while Mr. Spallina had no contact with Simon Bernstein until 2007, according to his

own affidavit. *See Affidavit of Robert L. Spallina* (“*Spallina Aff.*”) ¶ 2 (ECF No. 255-2). His affidavit also avers that Simon Bernstein never showed him the 1995 Trust. *Id.* ¶ 10. As a consequence, he cannot have had personal knowledge of its creation nor personal knowledge of its existence. Everything he says in the affidavit is hearsay, as discussed in detail below.

Under Rule 56(c)(4), “an affidavit’s hearsay assertion that would not be admissible at trial if testified to by the affiant is insufficient to create a genuine issue for trial.” *Patterson v. County of Oneida, N.Y.*, 375 F.3d 206, 219 (2d Cir. 2004). The following key averments by Mr. Spallina are hearsay because they simply recite statements allegedly made by Simon Bernstein, and are clearly being offered for their truth:

6. Simon Bernstein *told me* the *intended* beneficiaries of the Policy *were* his five children equally, through an irrevocable life insurance trust that *was* named beneficiary of the Policy.

8. ... Simon Bernstein *told me* ... that all of the proceeds *would go* equally to his five children through the 1995 Trust.

10. ... *we discussed* several times the *fact* that (i) the 1995 Trust *had been* created and, (ii) how that his wife had died, the beneficiaries of the 1995 Trust *were* his five adult children[.]

Spallina Aff. ¶¶ 6, 8, 10 (emphasis added); *accord id.* ¶ 5, 9. *See* Fed. R. Evid. 801(c); *Howard-Ahmad v. Chicago Sch. Reform Bd. of Trustees*, 161 F. Supp. 2d 857, 865 (N.D. Ill. 2001) (statement “I was told by Lydia DeJesus Casaliano ... that ...” held hearsay and stricken); 2 McCormick on Evid. § 276 (7th ed.) (“backward-looking statements of memory or belief are excluded”) (citing *Shepard v. United States*, 290 U.S. 96, 105-06 (1933)); *Knit With v. Knitting Fever, Inc.*, 742 F. Supp. 2d 568, 582 (E.D. Pa. 2010) (holding “statements related not her desire or intent to form a partnership, but rather the fact that she actually formed a partnership,” are inadmissible hearsay because they “are offered to prove the truth of a fact remembered”).²

² “Hearsay is not admissible” unless an exception applies. Fed. R. Evid. 802. “[T]he proponent of hearsay

Butler v. Butler, 114 N.W.2d 595 (Iowa 1962), relied on by Plaintiffs, is distinguishable. There, the court allowed an alleged trust beneficiary's widow to testify as to an out-of-court statement the settlor made to the widow and her husband *before* the trust was created based on the hearsay exception for "*a design or plan to do a specific act,*" as it was a forward-looking statement of then-existing intention. *Id.* at 613 (¶¶ 1-2), 15 (italics in original). The lawyer's testimony in *In re Estate of Stewart*, 652 N.E.2d 1151 (1st Dist. 1995), also cited by Plaintiffs, is likewise distinguishable. There, Mrs. Popham claimed the decedent entered into an oral contract to make a will leaving most of the estate to her. *Id.* at 1153-54. The lawyer testified that prior to the execution of the estate documents, the decedent "told him, 'Mrs. Popham was a real [expletive] to me as well as to [Mr. Popham], and she hurt him and she hurt me.'" *Id.* at 1158. This testimony was offered to prove indirectly the decedent's state of mind toward Mrs. Popham during the period in which she needed to show that the decedent had the intent to contract with her. *Id.* at 1161. The decedent's actual feelings regarding Mrs. Popham were not at issue in the case. *See id.*³ Simon Bernstein's alleged retrospective statements, in contrast to those in *Butler* and *Estate of Stewart*, purport to directly declare the intent to create the 1995 Trust and to make his children beneficiaries that the statements are offered to prove. Those statements are offered to prove retrospectively, the fact of his intent, not to prove his state of mind in 1995 with contemporaneous statements. That make the statements hearsay. *See Wright & Miller, Fed. Prac. & Proc.* § 7006 ("while a direct declaration of the existence of a state of mind or feeling which it is offered to prove is hearsay, declarations which only impliedly, indirectly, or inferentially indicate the state of mind or feeling

bears the burden of establishing the statement is admissible." *See, e.g., Hartford Fire Ins. Co. v. Taylor*, 903 F. Supp. 2d 623, 640 (N.D. Ill. 2012). Plaintiffs do not assert that any exception applies.

³ No party in *Estate of Stewart* appears to have objected to the testimony as hearsay. *See id.* at 1153-61.

of the declarant are not hearsay”).⁴

As a result, Simon Bernstein’s hearsay statements reported in paragraphs 5-6 and 8-10 of the Spallina Affidavit are barred by Fed. R. Evid. 802.

B. The Spallina Affidavit Does Not Set Out Admissible Facts Based On Personal Knowledge.

Beyond the hearsay declarations about what Simon Bernstein told him, the remainder of the Affidavit offers only Mr. Spallina’s conclusions and opinions about Simon Bernstein’s knowledge and intent:

11. *In light of ... our specific discussions* about the beneficiaries of the proceeds of the Policy, ... *I have no doubt* he intended [the Policy proceeds] to go to his children.

13. *Based upon ... discussing* matters with Simon Bernstein, and ... his *stated* intent, *I believe* that Simon Bernstein *was aware of and believed* that the 1995 Trust existed and was named as the sole beneficiary of the Policy, or that Simon Bernstein was aware of and believed that the beneficiaries of the 1995 Trust ... were his five adult children

15. *I also know from discussions* with Simon Bernstein that he ... *would not have desired or intended* to subject the proceeds of the Policy to the claims of his creditors.

16. Further, *I know from discussions with Simon Bernstein* that ... the beneficiary of the Policy was the 1995 Trust

18. ... *I do not believe* Simon Bernstein *would have ... misrepresent[ed]* to me that a 1995 Trust existed if one did not.”

19. *Based upon the foregoing, I believe* that Simon Bernstein *intended* the Policy proceeds to be paid to his 1995 Trust, for the benefit of his five children.

⁴ Plaintiffs misrepresent that *Michalski v. Chicago Title & Trust Co.* “allowed the testimony of the decedent’s attorney regarding decedent’s intent to transfer the real estate.” *Resp.* at 7-8. In fact, the attorney only testified that he witnessed the decedents execute the missing deeds—a non-hearsay fact of which he had personal knowledge, and which was not barred by the Dead Man’s Act—and the testimony was not used to prove intent, it was only used to prove the unrecorded deeds had once existed. 165 N.E.2d 654, 656-57 (1st Dist. 1977). Here, there is no analogous testimony because no one witnessed Simon Bernstein execute the alleged 1995 Trust, and David Simon’s testimony about seeing the executed document is barred by the Dead Man’s Act.

Spallina Aff. ¶¶ 11, 13, 15-16, 18, 19 (emphasis added); *see also id.* ¶¶ 14, 17.

“Statements in affidavits premised on hearsay and not personal knowledge cannot be used to defeat a motion for summary judgment.” *Sys. Dev. Integration, LLC v. Computer Scis. Corp.*, 739 F. Supp. 2d 1063, 1069, 1078 (N.D. Ill. 2010) (“assertions regarding the specific terms of the partnership agreement” based on hearsay must be disregarded in case where “parties dispute whether there is a partnership agreement” but “agree that there is no written, executed partnership agreement”); *Richardson v. Rush Presbyterian St. Luke's Med. Ctr.*, 63 Fed. Appx. 886, 890 (7th Cir. 2003) (“Lampkin’s averment [of what “she was informed by other patients”] is inadmissible hearsay and is not based upon her personal knowledge, so it cannot be used to defeat a motion for summary judgment.”); *Brozenec v. First Indus. Realty Trust, Inc.*, 09 C 6916, 2010 WL 5099995, *2 (N.D. Ill. Dec. 8, 2010) (“The court ... does not consider factual assertions based upon inadmissible hearsay testimony.”). Moreover, the averments in paragraphs 11, 13, 18 and 19 represent Mr. Spallina’s subjective beliefs, which cannot form the basis for an affidavit. *See In re Hermanson*, 273 B.R. 538, 549 (Bankr. N.D. Ill. 2002) (“Proper affidavits must be based upon the personal knowledge of definite facts, not upon ... subjective beliefs.”).

Paragraphs 11, 13, 15 and 16 must be disregarded for the separate reason that they represent conclusory speculation about what Simon Bernstein did or did not intend or believe, and would or would not have done or intended. *See Koursa, Inc. v. manroland, Inc.*, 971 F. Supp. 2d 765, 781 (N.D. Ill. 2013) (“Hawrysz ... attests to actions that manroland ‘would have taken’ Hawrysz’s statements ... are speculative and conclusory, and the Court therefore disregards them.”); *United States v. Wittje*, 333 F. Supp. 2d 737, 744-45 (N.D. Ill. 2004) (“Dunham’s testimony regarding the actions McMahon ... would have taken ... constitute[s] inadmissible speculation.”); *Ashwell & Co. v. Transamerica Ins. Co.*, 407 F.2d 762, 765-66 (7th Cir. 1969) (averment about what

“Transamerica ... *intended*” is “conclusory and should not be considered,” as it “does not set forth a specific fact shown to be within [affiant]’s personal knowledge which would be admissible in evidence”); *Patterson* , 375 F.3d at 219 (“Nor is a genuine issue created merely by the presentation of assertions that are conclusory.”).

II. The Testimony and Affidavit of Plaintiffs, David Simon and Don Sanders to Prove the Trust Are Inadmissible.

A. David Simon’s and Plaintiffs’ Testimony Is Still Inadmissible.

Plaintiffs offer the previously-filed Affidavits of themselves, Don Sanders and David Simon, and the deposition testimony of David Simon, arguing that this is “corroborating parole evidence of Simon Bernstein’s intent to 1) form the Bernstein Trust[;] (ii) designate the Bernstein Trust as the beneficiary of the Policy proceeds; (iii) designate his wife Shirley Bernstein, as initial trustee, and his son Ted, as successor trustee; and (iv) designate his five children as beneficiaries of the Bernstein Trust.” *Resp.* at 10-11. As Plaintiffs acknowledge, the Court already held that the testimony of David Simon, Ted Bernstein and 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.” *Order* at 3 (citing 735 ILCS 5/8-201); *Plfs.’ Supplemental Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment* (“SoAF”) at 1 (ECF No. 255).

The portions of David Simon’s affidavit and deposition testimony germane to the trust elements Plaintiffs must prove are reports of purported conversations with Simon Bernstein and/or events that took place in his presence, such as David Simon’s testimony that Simon Bernstein showed him an executed version of the 1995 Trust. *Intervenor’s L.R. 56.1(a)(3) Statement of Undisputed Material Facts* (“SoF”) ¶¶ 45-53 (ECF No. 247). This is precisely the testimony this Court correctly held is barred by the Dead Man’s Act. *See Order* at 3. The out-of-court statements

of Simon Bernstein and the alleged executed 1995 Trust are inadmissible hearsay as well. *See Intervenor's L.R. 56.1(a)(2) Mem. of Law in Support of Summary Judgment ("MSJ")* at 6-7, 10 (ECF No. 246).

The only averments in Ted Bernstein's Affidavit related to the trust elements Plaintiffs must prove by clear and convincing evidence, other than that Ted has never seen an executed copy of the 1995 Trust, are based on a statement Simon Bernstein supposedly made to Ted when no one else was present and Ted having seen two documents that *David Simon told him* were drafts of the 1995 Trust. SoF ¶¶ 54-57. The Court correctly held that the Dead Man's Act bars the testimony about what Simon Bernstein allegedly said to Ted. *Order* at 3; *MSJ* at 6. And that averment, along with Ted's testimony about what the drafts and David Simon allegedly said, is also inadmissible hearsay. Further, because that inadmissible evidence is Ted's only basis for his averment that he is trustee, that averment does not satisfy the personal knowledge requirement of Rule 56(c)(4). *MSJ* at 10.⁵

Similarly, the Affidavits of Pam Simon, Jill Iantoni, Lisa Friedstein and Don Sanders contain no averments purporting to establish their personal knowledge of facts relevant to any of the trust elements Plaintiffs must prove by clear and convincing evidence. *See* Plfs.' Exhibit 29 (ECF No. 150-30), Exhibit 31 (ECF No. 150-32), Exhibit 33 (ECF No. 150-34), Exhibit 34 (ECF No. 150-35). So those affidavits cannot defeat the Estate's Motion.

B. The Documents Plaintiffs Rely on Are Inadmissible.

Plaintiffs also offer six documents that they characterize as "a comprehensive and cohesive bundle of evidence" supporting their attempt to prove each element required to establish the 1995 Trust by clear and convincing evidence. *Resp.* at 6, 10. Each of those documents is inadmissible.

⁵ The same is true of his deposition testimony, though Plaintiffs do not rely on it. *See* SoF ¶ 57; *MSJ* at 10.

The two key documents are the purported unexecuted drafts of the 1995 Trust. *See Resp.* at 10 (¶ 4). But “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,” which the Court correctly held is barred by the Dead Man’s Act. The purported drafts are inadmissible because, without David Simon’s testimony that is barred by the Dead Man’s Act, they cannot be authenticated. *See Fed. R. Evid.* 901.⁶

The next document Plaintiffs offer is a Request Letter that they argue “designates the Bernstein Trust” as contingent beneficiary of the Policy. *Resp.* at 10 (¶ 3). This document refers to the “Bernstein Irrevocable Insurance Trust Dated June 21, 1995” at issue here, *see Plfs.’ Exhibit 8* (ECF No. 150-9), SoF ¶ 1, but the only thing this form unequivocally and unmistakably shows is that someone—*other than Simon Bernstein*—typed “SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED JUNE 21, 1995” on the line for “successor” beneficiary. *See Plfs.’ Exhibit 8* (ECF No. 150-9). This form does not support the assertion that Simon Bernstein intended to create *any* fiduciary relationship, much less foreclose any other conclusion, as required. As a result, it is irrelevant and inadmissible. *See Fed. R. Evid.* 401-402.

A fourth document Plaintiffs rely on is a Request for Service form they argue transferred ownership of the separate Lincoln Policy insuring Simon Bernstein’s life “to the Bernstein Trust.” *Resp.* at 10 (¶ 5). While the Request for Service refers to the 1995 Trust, *see Plfs.’ Exhibit 18*

⁶ The exception in subsection (c) of the Dead Man’s Act for “testimony competent under Section 8-401” does not apply to David Simon’s testimony authenticating the alleged drafts because Plaintiffs’ claim is not “founded on” those drafts as would be the case with, for example, a breach of contract claim. It is founded on the existence of the 1995 Trust; the so-called drafts are *at most* (and only in conjunction with evidence that does not exist) indirect evidence of the 1995 Trust’s existence. *See 735 ILCS 5/8-401; Theofanis v. Sarrafi*, 791 N.E.2d 38, 52 (1st Dist. 2003) (“Sarrafı’s medical notes similarly do not form the foundation for his defense of contributory negligence. Sarrafı founded his claim on Sofia’s allegedly unreasonable refusal to follow medical advice; the notes provided evidence of the refusal.”).

(ECF No. 150-19), SoF ¶ 1, as the Court already observed, “[t]his document refers to ‘ownership’ ... and does not affect the policy’s beneficiaries,” *Order* at 4. Thus, this document is irrelevant and inadmissible. *See* Fed. R. Evid. 401-402.

Plaintiffs also rely heavily on the VEBA Beneficiary Designation form which they argue “contains [Simon Bernstein’s] designation of *the Bernstein Trust* as his beneficiary” and “memorializes [his] intent that the Policy proceeds were to be paid to *the Bernstein Trust*,” thereby implying that this document refers to the same trust as the Request Letter and the Request for Service discussed above (*i.e.* the 1995 Trust at issue). *See Resp.* at 4, 10 (¶ 1) (emphasis added). As the Court already observed, however, “this document does not refer to the Trust at issue here, the ‘Simon Bernstein Irrevocable Insurance Trust dated 6/21/95.’” *Order* at 4. It refers instead to a different trust—the Simon Bernstein Irrevocable Insurance Trust. *See id.* at 10 (¶ 1); Plfs.’ Exhibit 4 (ECF No. 150-5).⁷ “It is unclear from the record of that was an oversight, or was intentionally done to refer to a distinct trust.” *Order* at 4. Plaintiffs offer nothing here to clarify the record in that regard. As a result, it is irrelevant, inadmissible and not of any assistance in helping Plaintiffs prove by clear and convincing evidence any of the elements that are necessary to establish the 1995 Trust as an express trust. *See* Fed. R. Evid. 401-402.

Finally, Plaintiffs rely on an IRS Form SS-4 that they characterize as referring to “the Bernstein Trust,” *Resp.* at 10 (¶ 2), and which in fact refers to the “Simon Bernstein Irrevocable

⁷ Because the VEBA Beneficiary Designation does not refer to the 1995 Trust at issue, there is no merit to Plaintiffs’ argument that “[u]nder the case law discussed above, this document alone is sufficient evidence of the establishment and existence of the Bernstein Trust.” *See Resp.* at 10 (¶ 1). The referenced “case law” is *Butler*, which Plaintiffs argue “held that an express trust may be proved by a writing signed by the grantor or trustee of the trust.” *Id.* at 9. That is another meritless argument, as *Butler* did not so hold. The portion of *Butler* Plaintiffs rely on was merely discussing cases about complying with “**the statute of frauds**” and quoted *Holmes v. Holmes* for the proposition that “[t]he written evidence of the trust which will satisfy **the statute** may come from the grantor ... or the trustee.” 114 N.W.2d at 612-13 (italics in original).

Insurance Trust,” Plfs.’ Exhibit 19 (ECF No. 150-20). But this document also does not establish that it is referring to the 1995 Trust at issue in this case. *See* SoF ¶ 1. Therefore, this document, like the VEBA Beneficiary Designation, is irrelevant, inadmissible and does not help Plaintiffs prove by clear and convincing evidence any of the elements that are necessary to establish the 1995 Trust as an express trust. *See* Fed. R. Evid. 401-402.

III. The Addition of The Spallina Affidavit Does Not Assist Plaintiffs In Demonstrating The Existence of a Triable Issue of Fact by The “Clear and Convincing” Standard.

As the court held in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) in considering a motion for summary judgment where the burden of proof on the plaintiff was the “clear and convincing” standard, the court must assess the evidence offered in light of that standard in judging whether a genuine issue of fact exists. *Id.* at 255-257. The Estate demonstrated in its initial paper how the aggregation of evidence Plaintiffs have offered, even if admissible, could not meet that standard. The only new evidence offered here is the affidavit of Mr. Spallina which, charitably, does not increase the volume of evidence available to meet the clear and convincing standard. Not only is Mr. Spallina’s Affidavit self-evidently not based upon personal knowledge, and self-evidently based entirely upon hearsay, but Plaintiffs have admitted that the author of that affidavit previously made an express, intentional misrepresentation to the insurer in a document seeking the proceeds of the Policy, attesting falsely that *he* was the trustee of the 1995 Trust. *See* SoF ¶ 27-29. And in their Response Memorandum describing the Spallina Affidavit, they oddly excuse its tardy introduction to the case by reporting that Mr. Spallina had to give up his law license as a consequence of an SEC investigation and complaint that resulted in civil penalties. *Resp.* at 6, 13-14. Plaintiffs do not explain why they could not have taken his deposition in the interim in order to obtain from him what they appear to believe is quite critical information.

Again, as described in detail above, the material averments of Mr. Spallina's Affidavit are inadmissible, as is virtually every piece of evidence Plaintiffs are asking the Court to consider. But even if admissible, the compromised Spallina Affidavit must be considered together with all of Plaintiffs' evidence combined. That combination of evidence includes the inconsistent drafts, David Simon's nonsensical explanation of how his notes on one draft were used to create the other draft, the inconsistencies between David Simon's testimony about his conversations with Simon Bernstein and his purported notes of those conversations, the inconsistent positions Plaintiffs, David Simon and Robert Spallina have taken regarding the identity of the trustees, David Simon's evolving explanations of how the person Plaintiffs currently claim is trustee came to be the trustee, and David Simon's absence of any explanation for why, despite the fact that an "exhaustive" search for the 1995 Trust was ongoing, he did not think to look for the "drafts" of the trust in his office computer for over a year. *See MSJ* § I(B). This evidence combined is of insufficient caliber and quantity to allow a rational factfinder to find that it is "clear and convincing" and leads to only one conclusion regarding each of the elements in the *Eychaner* case, and the Estate is therefore entitled to summary judgment.

CONCLUSION

For the foregoing reasons, the Estate respectfully requests that the Court grant summary judgment in favor of the Estate on its Complaint for Declaratory Judgment (ECF No. 112) and on Plaintiffs' First Amended Complaint (ECF No. 73).

Dated: October 27, 2016

Respectfully submitted,

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor's Attorneys

James J. Stamos (ARDC # 3128244)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Reply to Plaintiffs' Response in Opposition to Motion for Summary Judgment** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

Lisa Sue Friedstein
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Highland Park, IL 60035
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Pro Se Litigant

Jill Marla Iantoni
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jilliantoni@gmail.com
Pro Se Litigant

on this 27th day of October, 2016.

/s/ 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.)

**Case No. 1:13-cv-3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**INTERVENOR'S REPLY TO
ELIOT BERNSTEIN'S RESPONSE IN
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

Filer:
Brian O'Connell, as Personal Representative
of the Estate of
Simon L. Bernstein, Intervenor.

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.

**INTERVENOR’S REPLY TO ELIOT BERNSTEIN’S RESPONSE IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

Intervenor Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (the “Estate”), for his Reply to Eliot I. Bernstein’s (“Eliot”) response in opposition to the Estate’s motion for summary judgment, states as follows:

INTRODUCTION

In support of its motion for summary judgment (“Motion”), the Estate set forth separate statements of material fact and supported each with admissible evidence as required by Local Rule 56.1(a). *See Intervenor’s L.R. 56.1(a)(3) Statement of Undisputed Material Facts* (“SoF”) (ECF No. 247). The Estate also provided a detailed explanation of the reasons Plaintiffs’ evidence, even assuming its truth and making all justifiable inference in Plaintiffs’ favor, is “of insufficient caliber or quantity” so “as to lead to only one conclusion” regarding each element Plaintiffs must prove to establish the existence of the 1995 Trust as the valid designated beneficiary of the Policy. *See Intervenor’s L.R. 56.1(a)(2) Mem. of Law in Support of Summary Judgment* (“MSJ”) at § I (ECF No. 246).

Eliot does not respond to the Motion by arguing that a reasonable jury could conclude from the evidence that Plaintiffs have satisfied their burden, nor does he respond with any actual evidence to dispute a single material fact identified by the Estate. Instead, Eliot opposes the Estate’s Motion by relying upon arguments that range from misguided to entirely inapposite and unsupported, *see Memorandum of Law in Opp’n to Intervenor’s Mot. for Summary Judgment* (“Resp.”) (ECF No. 259), and he purports to “dispute” the Estate’s material facts with mere argument and claims of insufficient knowledge alone, *see L.R. 56.1(b)(3) Resp. to Intervenor Statement of Undisputed Material Facts and L.R. 56.1(b)(3)(C) Statement of Additional Facts Requiring the Denial of Intervenor Motion for Summary Judgment* (“Resp. to SoF”) (ECF No.

257).¹ Eliot's arguments and claimed factual disputes cannot defeat the Estate's Motion which, as further explained below, should be granted.

ARGUMENT

First, Eliot opposes the Estate's Motion by relying on the fact that this Court denied Plaintiffs' prior motion for summary judgment, quoting the following portion of the Order:

[T]he 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."

Resp. at 1-2 (quoting *Order* at 6 (ECF No. 220)). Eliot complains that the Estate has done "nothing to remove those Triable issues of fact" and has "brought nothing more to the Court in the way of evidence or affidavit despite the fact that this Court found ... that Plaintiffs had provided some evidence to support their position." *Resp.* at 2. These arguments misunderstand the Estate's Motion.

In denying Plaintiffs' summary judgment motion, the Court held that a reasonable jury could return a verdict for "the non-moving party," which non-moving party was *the Estate*. The Court's ruling perforce did not address the quality of Plaintiffs' evidence, as it was not at issue. *See Order* at 2.

¹ Notwithstanding the title of Eliot's pleading, it does not actually set forth any "additional facts." *See id.* It does purport to incorporate by reference Eliot's "responses in [his] filing of Undisputed Facts for the Opposition of Summary Judgment I filed with this Court as additional support herein, see Exhibit 2," *id.* at 23, but there was no "Exhibit 2" to any of Eliot's filings related to the Estate's Motion now before the Court, *see* ECF Nos. 257-259, or to Eliot's response to Plaintiffs' prior summary judgment motion, *see* ECF No. 186. More importantly, however, nowhere in any of those pleadings is there "a statement, consisting of short numbered paragraphs, of ... additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon," as required by Local Rule 56.1(b)(3)(C). Thus, Eliot's "additional facts" are a nullity to the extent they actually exist. *See Malec v. Sanford*, 191 F.R.D. 581, 584 (N.D. Ill. 2000) ("We emphasize ... that Rule 56.1(b)(3)(B) [sic] 'provides the *only* acceptable means of ... presenting additional facts.'" (emphasis in original) (quoting *Midwest Imports, Ltd. v. Coval*, 71 F.3d 1311, 1317 (7th Cir. 1995)).

Next, Eliot argues that there are “issues of material fact” regarding “the existence of the Primary Beneficiary which was LaSalle National Trust, NA (‘LaSalle’) and the failure of the parties to properly determine from a proper successor to LaSalle their interest as primary beneficiary,” reiterating that “there is [sic] presently material issues of fact as to the Primary Beneficiary’s claim to the proceeds.” *Resp.* at 2-3, 4. These arguments are without merit.

The Estate has provided the Court with undisputed evidence that the Primary Beneficiary of the Policy was “LaSalle National Trust, N.A., *as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust*” and that both S.B. Lexington, Inc. and its Employee Death Benefit Trust ceased to exist in 1998. *See* SoF ¶¶ 19-21 (emphasis added). Although Eliot claims these facts are “disputed,” he offers nothing but argument and claims of insufficient knowledge to support his denials. *See Resp.* to SoF ¶¶ 19-21. Thus, those facts are deemed admitted. *See* L.R. 56.1(b)(3); *Sec. & Exch. Comm'n v. Nutmeg Group, LLC*, 162 F. Supp. 3d 754, 763 (N.D. Ill. 2016) (“When a responding party’s statement fails to dispute the facts set forth in the moving party’s statement in the manner dictated by the rule, those facts are deemed admitted for purposes of the motion.’ ... That is true even when a litigant is *pro se*.”); *Apex Med. Research, AMR, Inc. v. Arif*, 145 F. Supp. 3d 814, 821 (N.D. Ill. 2015) (“To the extent that a party denies a statement of fact because it lacks knowledge, these facts will be deemed admitted.”); *Koursa, Inc. v. manroland, Inc.*, 971 F. Supp. 2d 765, 770 (N.D. Ill. 2013) (“a Rule 56.1(b)(3) response ‘is not the place for purely argumentative denials’”).

Eliot does not even purport to dispute the fact that neither the Death Benefit Trust nor any trustee of the Death Benefit Trust has made a claim to the Policy proceeds in this litigation or otherwise. *See* SoF ¶ 22 (and exhibits cited therein); *Resp.* to SoF ¶ 22. Therefore, the evidence conclusively shows that there was no “successor” to LaSalle National Trust, N.A.’s interest as

primary beneficiary of the Policy because that interest, which was held only in its capacity as trustee of the Death Benefit Trust, ceased to exist concurrently with the trust. Thus, there is no primary beneficiary of the Policy who possesses a “claim” to the proceeds. As such, this factual dispute Eliot relies upon simply does not exist.

Eliot then makes a number of arguments about what a reasonable jury “could” and “most likely” would find, which conspicuously omits any argument that such a jury could find that Plaintiffs have proven each element required to establish the 1995 Trust by clear and convincing evidence. For instance, Eliot argues that:

[T]he most likely finding of a reasonable jury at this stage is ... that collusion and conspiracy exist specifically designed to suppress and deny from this Court and the true beneficiaries the proper, actual policy, the proper actual Trust and the proper, actual terms of both.

Resp. at 3. He apparently bases that argument on his Affidavit-Declaration, *see id.* at 4, which he relies on together with certain pleadings in further arguing that:

[A] reasonable Jury could conclude that the Estate, acting through Illinois trial counsel Stamos and PR Brian O’Connell has colluded with Ted Bernstein and others to suppress and deny from this Court the actual policy (Policies), the actual true Trusts and who the proper beneficiaries are.

Id. at 5.

As an initial matter, Eliot cannot rely on his pleadings to defeat the Estate’s Motion. *See, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“a party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of his pleading”) (internal quotations omitted). Furthermore, Eliot’s arguments and Affidavit-Declaration utterly fail to present facts or to address the issue posed by the Estate’s Motion—*i.e.* whether a rational finder of fact can conclude that the available evidence is “so unequivocal and unmistakable as to lead to only one conclusion” regarding Simon Bernstein’s intent to create the

1995 Trust, the identities of the trustees, the specifications how it was to be performed, and whether the Policy proceeds are even the property of the 1995 Trust. *Compare Eliot I. Bernstein's Affidavit-Declaration* (“*Bernstein Aff.*”) (ECF No. 259-3) with *Eychaner v. Gross*, 779 N.E.2d 1115, 1131 (Ill. 2002) and *MSJ* § I(A)-(B).

In addition, the only paragraphs of Eliot’s Affidavit-Declaration that even *refer* to the 1995 Trust or Policy proceeds are inadmissible hearsay as to the Estate, are conclusory, and in any event, have nothing to do with any elements of an express trust put at issue by the Estate’s Motion. Specifically, Eliot avers that: (i) “my sister and brother both claimed to have copies of his insurance policy involved in this litigation and when I demanded they turn them over they suddenly claimed that did [sic] not possess them and also then claimed not to have the trust that they were alleging was the beneficiary,” *Bernstein Aff.* ¶ 14; and (ii) “what a reasonable jury could conclude in this case is that ... the absence of such ... actual policy and actual Trust from this Court is the product of conspiracy, collusion and intentional design by a variety of parties to keep proper proceeds from the rightful beneficiaries,” *id.* ¶ 19(d). The out of court statements made by Eliot’s siblings do not seem to controvert any of the undisputed facts the Estate offers. Eliot’s averment as to what a reasonable jury could find is conclusory speculation, not “made on personal knowledge” and “facts that would be admissible in evidence,” as required by Fed. R. Civ. P. 56(c)(4).

Eliot spends the remainder of his brief quoting extensively from the Deposition of Ted Bernstein and the Court’s Order denying Plaintiffs’ motion for summary judgment. *Resp.* at 6-12. While it is unclear whether this material is intended to be support for Eliot’s speculative conspiracy theory of collusion to suppress evidence or a separate argument of its own, either way it cannot defeat the Estate’s Motion because it is not evidence creating a genuine dispute as to any material

fact identified by the Estate and it has absolutely no bearing on the legal issue presented by that Motion.

CONCLUSION

For the foregoing reasons, the Estate respectfully requests that the Court grant summary judgment in favor of the Estate on its Complaint for Declaratory Judgment (ECF No. 112) and on Plaintiffs' First Amended Complaint (ECF No. 73).

Dated: October 27, 2016

Respectfully submitted,

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos
One of Intervenor's Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Reply to Eliot Bernstein's Response in Opposition to Motion for Summary Judgment** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

Lisa Sue Friedstein
2142 Churchill Lane
Highland Park, IL 60035
Lisa@friedsteins.com
Pro Se Litigant

Jill Marla Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Pro Se Litigant

on this 27th day of October, 2016.

/s/ James J. Stamos

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
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, December 2, 2016:

MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the status hearing previously set for 12/6/2016 is reset for 12/9/2016 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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
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, December 6, 2016:

MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the status hearing previously set for 12/9/2016 is reset for 1/25/2017 at 9:45 a.m. in Courtroom 1725. Mailed notice(gel,)

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.

Hon. John R. Blakey
United States District Court
ATTN: Courtroom Deputy -- Gloria Lewis
Room 1732
219 S. Dearborn St.
Chicago, IL 60604

**RE: Simon Bernstein Irrv. Trust Dtd 6/21/95 v. Heritage Union Ins. et al, No. 13 cv 3463 -
Clarification of Last Conference Call of Jan. 25, 2017 and pending Motions**

Courtroom Deputy Lewis:

I did want to Clarify a few matters from the last Court Conference of Wed, Jan. 25th 2017 last week and see from an Oct. 18, 2016 submission by Adam Simon that his office had contacted the Judge's law Clerk to clarify matters thus I am using the same procedure. (See Attached Adam Simon Letter of Oct. 18, 2016 delivered Via Messenger).

As you know, I had trouble getting On the Call last week on Jan. 25th as I had been waiting on the Conference Line until Disconnected and then called again and waited and then after I contacted your office and was told the case was being called by the time I got on the line the Judge was already moving forward with the parties. It was also difficult to fully hear everything and understand what was going on.

One of the issues I had planned to address with the Court by way of formal filing - motion before this Conference was the Oct. 18, 2016 Ex Parte Letter and Submission by Adam Simon's Office on behalf of the Plaintiff's and Ted Bernstein which enclosed Binders and Submissions to the Court which I never received a copy of. Part of what has been going on in the Florida Courts with these parties is Providing AND Filing Directly FALSE and Fraudulent Information to the Court that the Court then uses in making subsequent determinations.

Now first I want to point out that as far as I know, this Oct. 18th, 2016 Submission by Adam Simon is not part of the DOCKET Listed anywhere on PACER and I didn't know if this was a mistake or not?

Second, I want to get Access to the Exact Submissions that Adam Simon provided to this Court to Review and ensure that Further Fraud has not been committed by these parties after proven fraud has already occurred. It should also be noted that Adam Simon's Letter of Oct. 18, 2016 is incorrect in that the Exhibit referenced was 7,202 (seven-thousand two-hundred and two) pages, not 1100, thus raising an issue to clarify there as what has or has not been received and provided to the Court.

Third, I had planned to both Notify the Court and make a motion about important circumstances in the Florida Courts which I believe are consistent with what I notified this Court about in my All Writs petition where there is Direct collusion between the parties in the Florida proceedings which are impacting the Integrity of this Court's proceedings and path to Judgment. Specifically, that in Florida, the Estate of Simon Bernstein and PR Brian O'Connell are now directly acting in Unity with Ted Bernstein and Alan Rose and even permitting Ted Bernstein's attorney Alan Rose act as the Counsel for the Estate which is a major conflict of interest. This conflict has also been raised in Florida by the Creditor's attorney Peter Feaman and Hearings are scheduled in a few weeks in Florida to address this Conflict and it is also important to note that these hearings are before a new Judge, Judge Scher, and all the Orders that the Plaintiff's are relying upon for Collateral Estoppel before this Court were issued by a Judge Phillips who has now left the Bench prematurely and retired.

I believe I can show in a Motion how these Conflicts are relevant to this Court's proceedings and even the Motions for Summary Judgment and would seek Leave to file a

Supplemental Motion in this regard and also had planned to Ask for Leave anyway since the Plaintiff Ted Bernstein had in "essence" filed a New Summary Judgment Motion that had never been the Subject of a Briefing Schedule by this Court and thus I should have had further opportunity to respond in writing formally.

I had planned to bring these matters up previously but for months I was under Serious Life Threatening Medical Emergency and Doctor's Orders and kept trying to get Extensions in the Florida Courts so I could address matters in this Court as well and also preserve my life but had to continually respond to a series of multiple motions and filings in the Florida Courts which has delayed me in responding to this Court which had changed the Conference Dates on more than one occasion anyway.

I also wish to Note that filings with the new Judge in Florida will also be attacking and moving to Vacate many of the Orders relied upon by Plaintiffs in this Court as such Orders were issued at least in part on direct frauds.

Thus, I do want to file a Supplemental Motion for the Court to Consider before finalizing the Summary Judgment Decisions and at least want to be on Record that I am trying to get these matters to the Court immediately.

Because of the pending Decisions of this Court, I seek direction at this time.

Thank you,

/s/ Eliot Bernstein
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 30, 2017 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 34th St.
 Boca Raton, FL 33434
 Phone (561) 245-8588
 iviewit@iviewit.tv
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SERVICE LIST

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EXHIBIT 1

THE SIMON LAW FIRM

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ADAM M. SIMON
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*ALSO ADMITTED IN CA

VIA MESSENGER
October 18, 2016

Hon. John R. Blakey
United States District Court
ATTN: Courtroom Deputy -- Gloria Lewis
Room 1732
219 S. Dearborn St.
Chicago, IL 60604

Re: *Simon Bernstein Irrv. Trust Dtd 6/21/95 v. Heritage Union Ins. et al*,
No. 13 cv 3463 -- Counter-Party Motion for Summary Judgment as to the Claims of
Eliot Bernstein

Dear Judge Blakey:

Enclosed please find a three-ring binder containing courtesy copies of the following documents relating to the above-referenced motion for summary judgment:

1. Movants' Motion for Summary Judgment as to Eliot Bernstein's claims, counter-claims, cross-claims and third-party claims;
2. Movants' Memorandum of Law in Support of their Motion;
3. Movants' Statement of Undisputed Facts;
4. Movants' Appendix to Statement of Undisputed Facts- Exhibit List;
5. Movants' Exhibits No. 1-14;
6. Eliot Bernstein's Reply to Statement of Undisputed Facts;
7. Eliot Bernstein's Memorandum in Opposition to the Motion for Summary Judgment; and
8. Movants' Memorandum in Reply to Eliot Bernstein's Opposition.

Please note that respondent, Eliot Bernstein electronically filed an Exhibit in support of his opposition that is approximately 1100 pages in length. As a result, I contacted Judge Blakey's law clerk and confirmed that the court did not want this exhibit included in the courtesy copies due to its length. If needed, Movants will provide a hard copy of this Exhibit upon the court's request.

Thank you for your consideration of this motion.

Very truly yours,

Adam M. Simon
Attorney for Movants

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
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 Wednesday, January 25, 2017:

MINUTE entry before the Honorable John Robert Blakey: Enter Memorandum Opinion and Order. For the reasons stated in the accompanying Memorandum Opinion and Order, Plaintiffs' Motion for Summary Judgment [239] is granted and Intervenor's Motion for Summary Judgment [245] is denied. The status hearing previously set for 2/21/2017 at 9:45 AM in Courtroom 1725 to stand, at which time the parties shall be prepared to set a trial date. Mailed notice(gel,)

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.

**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. 1:13-cv-3643

Judge John Robert Blakey

HERITAGE UNION LIFE INSURANCE
COMPANY,

Counter-Plaintiff,

v.

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

Counter-Defendant,

and

FIRST ARLINGTON NATIONAL BANK,
et al.,

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff,

v.

TED BERNSTEIN, *et al.*,

Cross-Defendants,

and

PAMELA B. SIMON, *et al.*,

Third-Party Defendants.

MEMORANDUM OPINION AND ORDER

This action concerns the distribution of proceeds from a life insurance policy (the “Policy Proceeds”) previously held by decedent Simon Bernstein. The principal parties remaining in the case are: (1) Plaintiff Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “1995 Trust”); (2) the four Bernstein siblings who believe the Policy Proceeds should be distributed to the 1995 Trust (Ted Bernstein, Lisa Friedstein, Jill Iantoni and Pam Simon; collectively, the “Agreed Siblings”); (3) the fifth Bernstein sibling, Eliot Bernstein, a *pro se* third-party Plaintiff who disputes that approach (“Eliot”); and (4) the intervenor estate of Simon Bernstein (the “Estate”), which contends that the 1995 Trust was never actually created, such that the Policy Proceeds should default to the Estate.

Before the Court are two motions for summary judgment. In the first, [239] at 1-4, the 1995 Trust and the Agreed Siblings seek judgment on Eliot’s third-party claims. In the second, [245] at 1-6, the Estate seeks judgment against the 1995 Trust and the Agreed Siblings on their claims in the Second Amended Complaint, [73], and entry of judgment in the Estate’s favor on its Complaint for Declaratory Judgment. [112] at 1-17. For the reasons explained below, the former is granted while the latter is denied.

I. Background¹

A. Procedural Posture

Following Simon Bernstein's death on September 13, 2012, the 1995 Trust submitted a death claim to Heritage pursuant to Simon Bernstein's life insurance policy. [150] at 15; [240] at 13. After Heritage failed to pay, the 1995 Trust initiated this lawsuit in the Circuit Court of Cook County, alleging that Heritage had breached its contractual obligations. [1-1] at 1-3. On May 20, 2013, Jackson National Life Insurance Company ("Jackson"), as successor in interest to Heritage, removed the case to this Court. [1] at 1-2.

On June 26, 2013, Heritage, through Jackson, filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, seeking a declaration of rights under the life insurance policy. [17] at 1-10. Heritage was eventually dismissed in February of 2014 after interpleading the Policy Proceeds. [101] at 2.

On September 22, 2013, Eliot, a third-party Defendant to Jackson's interpleader claim, filed a 177-page Answer, Cross-Claim and Counter-Claim. [35] at 1-117. Eliot brought claims against the 1995 Trust, the Agreed Siblings, and

¹ The facts are taken from the parties' Local Rule 56.1 statements and the Court's previous rulings [106, 220]. [240] refers to Plaintiffs' statement of material facts. [247] refers to the Estate's statement of material facts. [255], which incorporates [150] by reference, refers to Plaintiffs' statement of additional facts. [257] refers to both Eliot's responses to Plaintiffs' statement of material facts and Eliot's statement of additional material facts. [260] refers to Eliot's responses to the Estate's statement of material facts. [266] refers to the Estate's responses to Plaintiffs' statement of additional facts.

The Estate correctly notes that [255] deviates in certain respects from the procedure enumerated in Local Rule 56.1. Given this lawsuit's convoluted history, and in the interests of justice and judicial economy, the Court nevertheless elects to consider [255] and [150] in support of Plaintiffs' opposition to the Estate's motion for summary judgment.

multiple third-party Defendants (including the law firm of Tescher & Spallina, P.A., The Simon Law Firm, Donald Tescher, Robert Spallina, David Simon, Adam Simon, S.B. Lexington, Inc., S.B. Lexington, Inc. Employee Death Benefit Trust, and S.T.P. Enterprises, Inc.). *Id.*

On January 13, 2014, the Agreed Siblings and the 1995 Trust filed their First Amended Complaint. [73] at 1-11. Plaintiffs alleged that: (1) the 1995 Trust was a common law trust established in Chicago by Simon Bernstein; (2) Ted Bernstein is the trustee of the 1995 Trust; and (3) the 1995 Trust was the beneficiary of Simon Bernstein's life insurance policy. *Id.* In addition, Plaintiffs alleged that all of Simon Bernstein's children, *including Eliot*, are equal beneficiaries to the Trust. *Id.*

On March 3, 2014, the Court dismissed Eliot's claims against Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina. [106] at 1-4. The Court explained that Eliot, as a third-party Defendant to an interpleader claim, was "not facing any liability" in this action, and he was accordingly not authorized to seek relief against other third parties. *Id.*

On June 5, 2014, the Estate filed its Complaint for Declaratory Judgment, [112] at 1-16, and on July 28, 2014, the Court granted the Estate's motion to intervene. [121] at 3-4.

Fact discovery closed on January 9, 2015, [123], and on March 15, 2016 the Court denied Plaintiffs' motion for summary judgment. [220] at 1-6. The Court found, *inter alia*, that while Plaintiffs were able to adduce "some evidence that the [1995] Trust was created," this evidence was "far from dispositive." *Id.* at 4.

B. Probate Actions

The Probate Division of the Palm Beach County Circuit Court recently resolved two other cases related to the disposition of Simon Bernstein's assets: *In re Estate of Simon L. Bernstein*, No. 502012CP004391XXXNBIH (Fla. Cir. Ct.) and *Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et al.*, No. 502014CP003698XXXXNBIJ (Fla. Cir. Ct.) (collectively, the "Probate Actions").

Judge John L. Phillips presided over a joint trial of the Probate Actions in December of 2015. A full recitation of Judge Phillips' findings is unnecessary here, but relevant portions of his final orders include:

- The testamentary document identified as the "Will of Simon Bernstein" was "genuine and authentic," and "valid and enforceable according to [its] terms."
- Ted Bernstein "was not involved in the preparation or creation of" the Will of Simon Bernstein, "played no role in any questioned activities of the law firm of Tescher & Spallina, P.A.," there was "no evidence to support the assertions of Eliot Bernstein that Ted Bernstein forged or fabricated" the Will of Simon Bernstein, and, in fact, "Ted Bernstein played no role in the preparation of any improper documents, the presentation of any improper documents to the Court, or any other improper act, contrary to the allegations of Eliot Bernstein."
- The beneficiaries of the testamentary trust identified in the Will of Simon Bernstein are "Simon Bernstein's then living grandchildren," while "Simon's children – including Eliot Bernstein – are not beneficiaries."
- Eliot "should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children's interest," such that it became necessary to appoint a *guardian ad litem*.

[240-11] at 2-5; [240-12] at 2-3.

II. 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). 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 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). In determining whether a genuine issue of material fact exists, this Court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. *See CTL ex rel. Trebatoski v. Ashland Sch. Dist.*, 743 F.3d 524, 528 (7th Cir. 2014).

III. Analysis

A. Motion for Summary Judgment on Eliot’s Claims

Eliot currently has seven claims pending against the 1995 Trust, the Agreed Siblings, David Simon, Adam Simon, The Simon Law Firm, S.B. Lexington, Inc., S.B. Lexington, Inc. Employee Death Benefit Trust, and S.T.P. Enterprises, Inc.²

² As Judge St. Eve (the District Judge originally assigned to this case) previously explained before dismissing third-party Defendants Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina: “Eliot is not an original Defendant to Plaintiffs’ First Amended Complaint Instead, Eliot is a Third-Party Defendant in Jackson’s interpleader action [such that] he is not facing any liability in this lawsuit Rule 14(a) does not authorize Eliot to seek any such relief in the present lawsuit because Eliot is not facing any liability in the first instance.” [106] at 3-4. This reasoning applies with equal force to the remaining third-party Defendants. The Federal Rules of Civil Procedure permit a defendant to “serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed. R. Civ. P. 14(a)(1). Here, Eliot is not facing any liability, and his claims against the remaining third-party Defendants are procedurally

[35] at 61-117. Eliot's causes of action sound in fraud, negligence, breach of fiduciary duty, conversion, abuse of legal process, legal malpractice, and civil conspiracy.³

1. Fraud, Negligence, Breach of Fiduciary Duty & Legal Malpractice

Plaintiffs argue that Eliot's claims for fraud, negligence, breach of fiduciary duty, and legal malpractice fail because Eliot "cannot show that he sustained damages or that he has standing to assert damages on behalf of his children or the Estate." [241] at 14; *see also Damato v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 878 F. Supp. 1156, 1162 (N.D. Ill. 1995) (damages are a requisite element of a claim for fraud); *Elliot v. Chicago Hous. Auth.*, No. 98-cv-6307, 1999 WL 519200, at *9 (N.D. Ill. July 14, 1999) (damages are a requisite element of a claim for negligence); *Pearson v. Garrett-Evangelical Theological Seminary, Inc.*, 790 F. Supp. 2d 759, 768 (N.D. Ill. 2011) (damages are a requisite element of a claim for breach of fiduciary duty); *Snyder v. Heidelberger*, 953 N.E.2d 415, 424 (Ill. 2011) (damages are a requisite element of a claim for legal malpractice).

First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court's rulings. The

defective. Because all of Eliot's claims also fail as a substantive matter, however, they are dismissed on that basis, as discussed *infra*.

³ The Court construes Eliot's arguments on each claim liberally, in light of his *pro se* status. *See Johnson v. Cook Cty. Jail*, No. 14-cv-0007, 2015 WL 2149468, at *2 (N.D. Ill. May 6, 2015) ("Motions for summary judgment involving *pro se* litigants are construed liberally for the benefit of the unrepresented party, so as to ensure that otherwise understandable filings are not disregarded if the *pro se* litigant stumbles on a technicality. That said, *pro se* litigants are not entitled to a general dispensation from the rules of procedure.") (internal quotations omitted).

Probate Court found, *inter alia*, that Simon Bernstein’s “children – including Eliot – are not beneficiaries” of the Will of Simon Bernstein or the related testamentary trust. [240] at 11. Instead, Simon Bernstein’s grandchildren (including Eliot’s children) are the testamentary trust’s beneficiaries. *Id.* Eliot also has no interest in the disposition of the testamentary trust vis-à-vis his own children, as the Probate Court was forced to appoint a *guardian ad litem* in light of Eliot’s “adverse and destructive” actions relative “to his children’s interest.” *Id.* These findings have preclusive effect in this case,⁴ such that Eliot cannot demonstrate cognizable damages relative to the disposition of the Estate or the testamentary trust.

Second, Eliot cannot identify cognizable damages relating to the disposition of the Policy Proceeds, as Plaintiffs have consistently argued that Eliot is entitled to

⁴ All four elements of collateral estoppel are present in this case. *See Westport Ins. Corp. v. City of Waukegan*, 157 F. Supp. 3d 769, 778 (N.D. Ill. 2016) (“Collateral estoppel applies if the following four elements are met: (1) the issue sought to be precluded must be the same as that involved in the prior action; (2) the issue must have been actually litigated; (3) the determination of the issue must have been essential to the final judgment; and (4) the party against whom estoppel is invoked must be fully represented in the prior action.”) (internal quotation omitted). Here, the “issue sought to be precluded” is Eliot’s lack of a cognizable interest in the Estate and the testamentary trust, precisely “the same as that involved” in the Probate Court. This issue was “actually litigated,” as the Probate Court held a full trial on this issue, and resolution of this question formed the crux of the Probate Court’s final judgments. Finally, Eliot, the party against whom estoppel is invoked, was “fully represented,” as he had a full and fair opportunity to litigate this question at trial. *See Murray v. Nationwide Better Health*, No. 10-cv-3262, 2014 WL 53255, at *4 (C.D. Ill. Jan. 7, 2014) (The “overarching concern when applying issue preclusion is that the party against whom the prior action is invoked must have had a full and fair opportunity to litigate the issue.”).

Eliot argues that the application of collateral estoppel is inappropriate, given that he was proceeding *pro se* in the Probate Court and the Probate Court’s orders were appealed. Neither of these concerns have merit. *See DeGuelle v. Camilli*, 724 F.3d 933, 938 (7th Cir. 2013) (The “idea that litigating *pro se* should insulate a litigant from application of the collateral estoppel doctrine, or, more broadly, the doctrine of *res judicata*, of which collateral estoppel is an aspect, is absurd.”); *Robinson v. Stanley*, No. 06-cv-5158, 2011 WL 3876903, at *5 (N.D. Ill. Aug. 31, 2011), *aff’d*, 474 F. App’x 456 (7th Cir. 2012) (The Seven Circuit “has adhered to the general rule in American jurisprudence that a final judgment of a court of first instance can be given collateral estoppel effect even while an appeal is pending.”) (internal quotation omitted).

an equal share of the same. [265] at 3 (asserting a claim to the Policy Proceeds “on behalf of all five siblings, *including* Eliot”) (emphasis in original).

In his response opposing summary judgment, Eliot fails to articulate a coherent response to Plaintiffs’ argument. *See generally* [261]. Indeed, Eliot does not identify any material in the record to support his vague and conclusory damages allegations. Eliot has simply recycled his previous arguments, and cited only his pleadings in support of the same. *See, e.g.*, [261] at 3 (“Moreover, the Counterclaims have express language seeking claims to the proceeds and damages from the wrongful conduct . . . See ECF No. 35.”).

Eliot’s exclusive reliance on his pleadings rather than evidence, at this point in the proceedings, is both: (1) inconsistent with Federal Rule of Civil Procedure 56, this district’s local rules, and this Court’s standing orders; and (2) insufficient to defeat a motion for summary judgment. *See Essex Crane Rental Corp. v. C.J. Mahan Const. Co.*, No. 07-cv-439, 2008 WL 3978345, at *10 (N.D. Ill. Aug. 25, 2008) (“Unlike a motion to dismiss, summary judgment is the put up or shut up moment in a lawsuit, and the nonmovant must do more than merely rest on its pleadings.”) (internal quotation omitted).

Plaintiffs have cited ample evidence in the record to support their argument that Eliot’s claims for fraud, negligence, breach of fiduciary duty, and legal malpractice must fail, as Eliot cannot adduce any evidence of the requisite damages. Eliot’s opposition fails to formulate a cogent response, much less cite any

countervailing evidence in the record. Plaintiffs' motion for summary judgment is accordingly granted with respect to these four claims.

2. Conversion

The elements of conversion under Illinois law are: "(1) the unauthorized and wrongful assumption of control or ownership by one person over the personalty of another; (2) the other person's right in the property; (3) the right to immediate possession of the property; and (4) a demand for possession." *Jordan v. Dominick's Finer Foods*, 115 F. Supp. 3d 950, 956 (N.D. Ill. 2015).

Plaintiffs argue that Eliot's claim for conversion fails, because Eliot cannot identify "a specific asset or piece of property that was converted" or "show an unfettered right of ownership to such property." [241] at 15. This argument similarly turns on Eliot's lack of legal interest in the Estate or testamentary trust, and the Plaintiffs' acknowledgement that Eliot, under their theory, is entitled to an equal share of the Policy Proceeds. *Id.*

Here again, Eliot has failed to formulate an intelligible response. His brief does not even mention his conversion claim. *See generally* [261]. Eliot makes no effort to either identify any purportedly converted property or cite material in the record in support of his conversion claim. *See id.* In light of the foregoing, Plaintiffs' motion for summary judgment is also granted with respect to Eliot's conversion claim.

3. Abuse of Process

Under Illinois law, abuse of process “is the misuse of legal process to accomplish some purpose outside the scope of the process itself.” *Neurosurgery & Spine Surgery, S.C. v. Goldman*, 790 N.E.2d 925, 929 (Ill. App. Ct. 2003). The “two distinct elements of an abuse of process claim are: (1) the existence of an ulterior purpose or motive; and (2) some act in the use of process that is not proper in the regular course of proceedings.” *Id.* at 930. The “tort of abuse of process is not favored under Illinois law,” and its “elements must be strictly construed.” *Id.*

Plaintiffs argue that Eliot cannot satisfy either element of his abuse of process claim. More specifically, they claim that the Probate Actions were simply “filed by the named beneficiary of a life insurance policy to pursue a death claim against a life insurer for the Policy Proceeds,” and that no “act in the use of” that process was improper. [241] at 13.

Eliot’s response does not specifically address his claim for abuse of process; indeed, the phrase “abuse of process” does not appear in his briefing. *See generally* [261]. Instead, Eliot asserts, without citation to the record, that Plaintiffs have “repeatedly taken action to barrage and occupy” him in one case in order “to improperly gain advantage” in the other. *Id.* at 6. These allegations, in addition to having no evidentiary basis in the record, are insufficient under Illinois law. *Goldman*, 790 N.E.2d at 930 (“abuse of process is a very narrow tort” typically “found only in cases in which a plaintiff has suffered an actual arrest or seizure of

property”). Plaintiffs are entitled to summary judgment on Eliot’s abuse of process claim.

4. Civil Conspiracy

Under Illinois law, the elements for a civil conspiracy are: (1) a combination of two or more persons; (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means; and (3) in the furtherance of the same, one of the conspirators committed an overt tortious or unlawful act. *See Fritz v. Johnston*, 807 N.E.2d 461, 470 (Ill. 2004). As “the third element of this test indicates, however, civil conspiracy is not an independent tort: if a plaintiff fails to state an independent cause of action underlying his conspiracy allegations, the claim for conspiracy also fails.” *Jones v. City of Chicago*, No. 08-cv-3501, 2011 WL 1898243, at *6 (N.D. Ill. May 18, 2011) (internal quotation omitted).

Plaintiffs argue that Eliot’s civil conspiracy claim fails, because it remains predicated upon his other deficient claims. Eliot fails to respond to this argument. *See Jones*, 2011 WL 1898243, at *6 (“Because defendants are entitled to summary judgment on Jones’s state law claim for malicious prosecution, and Jones’s conspiracy claim is predicated on her malicious prosecution claim, defendants are also entitled to summary judgment on count four.”); *Siegel v. Shell Oil Co.*, 656 F. Supp. 2d 825, 836 (N.D.Ill. 2009), *aff’d*, 612 F.3d 932 (7th Cir. 2010) (granting summary judgment in favor of defendants on plaintiff’s civil conspiracy claim because “Siegel has failed to establish his ICFA deceptive and unfair practices claim or his unjust enrichment claims”).

In short, Eliot “fails to present any evidence or legal arguments as to the underlying elements of his conspiracy claim,” such that the Plaintiffs are entitled to summary judgment. *Siegel*, 656 F. Supp. 2d at 836.

5. Additional Discovery

Eliot, in the alternative, also “respectfully seeks application of Federal Rules of Civil Procedure 56(f) to obtain either a continuance or Deposition and Discovery.” [261] at 11. The Court presumes that Eliot actually intended to invoke Federal Rule of Civil Procedure 56(d), which provides that a “nonmovant” may receive “time to obtain affidavits or declarations or to take discovery” when that same party demonstrates that it currently “cannot present facts essential to justify its opposition.” In either event, this effort is rejected. Eliot’s untimely request is not supported by the requisite “affidavit or declaration,” the discovery he seeks would not alter the Court’s analysis, and fact discovery has been closed since January of 2015. Fed. R. Civ. P. 56(d).

B. The Estate’s Motion for Summary Judgment

In the other summary judgment motion pending before the Court, the Estate argues that Plaintiffs cannot establish the existence of the 1995 Trust, such that the Estate is entitled to the Policy Proceeds as Simon Bernstein’s default beneficiary. The Trust and the Agreed Siblings essentially concede that: (1) absent valid countervailing provisions in the 1995 Trust, the Estate would be entitled to the Policy Proceeds; and (2) they are unable to produce the executed version of the 1995

Trust, and they must rely on extrinsic evidence to support their claim that the 1995 Trust actually exists.

A party “seeking to establish an express trust” by such evidence “bears the burden of proving the trust by clear and convincing evidence” and 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.*

1. Evidence Suggesting That The 1995 Trust Was Created

Plaintiffs’ extrinsic evidence falls into three discrete categories: (1) testimony from the Agreed Siblings (and Linda Simon’s spouse, David Simon) regarding the creation of the 1995 Trust by Simon Bernstein; (2) the affidavit of attorney Robert Spallina regarding the creation of the 1995 Trust and his understanding of Simon Bernstein’s intentions; and (3) six documents that Plaintiffs characterize as “a comprehensive and cohesive bundle of evidence” supporting their allegation that the 1995 Trust exists. *Id.* Before deciding whether a reasonable factfinder could infer that the 1995 Trust exists based on this evidence, however, the Court must first determine whether this material is cognizable on summary judgment.

a) The Agreed Siblings’ Testimony

As the Court previously explained, “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.” [220] at 3. The Agreed Siblings and their spouses remain “directly interested” in this action, and the Court accordingly disregards their testimony regarding “any conversation with the deceased person,” Simon Bernstein. 735 Ill. Comp. Stat. 5/8-201.⁵

b) Mr. Spallina’s Affidavit and Notes

In the affidavit relied upon by Plaintiffs, Mr. Spallina avers, *inter alia*, that:

- He “provided estate planning advice and represented Simon Bernstein in connection with the preparation and execution of various testamentary documents from late 2007 until his death on September 13, 2012.”
- “Simon Bernstein told me he owned a life insurance policy with a current death benefit of \$1.6 million (the ‘Policy’). This is reflected in my attached notes of a meeting with Simon Bernstein on February 1, 2012. During this meeting and over the course of the next few months, Simon Bernstein and I discussed the Policy as part of his estate planning.”
- “Simon Bernstein told me the intended beneficiaries of the Policy were his five children equally, through an irrevocable life insurance trust that was named beneficiary of the Policy.”
- “Simon Bernstein also wanted to change other parts of his estate plan in 2012. Primarily, he wanted to change his current estate plan, which benefitted only three of his five children, and had caused some family disharmony. As part of these discussions, Simon Bernstein and I again discussed the Policy. In the end, Simon Bernstein told me he had decided to leave the Policy unchanged, so that all of the proceeds would go equally to his five children through the 1995 Trust. Having thus provided for all of his children, Simon Bernstein decided to alter his testamentary documents and to exercise a power of appointment he

⁵ While it is true that “as a general rule federal rather than state law governs the admissibility of evidence in federal diversity cases, there are a number of express exemptions to this rule, including state dead man laws.” *Campbell v. RAP Trucking Inc.*, No. 09-CV-2256, 2011 WL 4001348, at *3 (C.D. Ill. Sept. 8, 2011).

held to leave all of his family's wealth to his ten grandchildren equally.”

- “Simon Bernstein never showed me the 1995 Trust, although we discussed several times the fact that (i) the 1995 Trust had been created, and (ii) now that his wife had died, the beneficiaries of the 1995 Trust were his five adult children: Ted, Pam, Eliot, Jill and Lisa, each of whom would receive one-fifth, or 20%, of the proceeds of the Policy.”
- “Having discussed these matters with Simon Bernstein, and based upon my years of experience as an estate planning lawyer, Simon Bernstein understood that he retained ownership of the Policy. Simon Bernstein always wanted maximum flexibility to change his estate plan, and putting ownership of the Policy into an irrevocable trust (such as the 2000 trust drafted by lawyers at Proskauer Rose) would have taken away Simon Bernstein's ability to change the Policy or the beneficiaries. Because Simon Bernstein remained the owner of the policy, he had the ability to change the beneficiary from the ILIT to a different beneficiary or beneficiaries up until the moment he died.”
- “In light of Simon Bernstein's overall estate plan, including our specific discussions about the beneficiaries of the proceeds of the Policy, Simon Bernstein in fact executed new testamentary documents. Under Simon Bernstein's new Will and his Amended and Restated Trust Agreement, both of which were formally executed on July 25, 2012, his ten grandchildren are the ultimate beneficiaries of all of his wealth other than the Policy, which I have no doubt he intended to go to his children.”
- “I believe that Simon Bernstein intended the Policy proceeds to be paid to his 1995 Trust, for the benefit of his five children.”

[255-2] at 2-7.

The Estate argues that these statements by Mr. Spallina constitute inadmissible hearsay or expressions of subjective belief, which “cannot be used to defeat a motion for summary judgment.” *Sys. Dev. Integration, LLC v. Computer Scis. Corp.*, 739 F. Supp. 2d 1063, 1069, 1078 (N.D. Ill. 2010); *see also Richardson v. Rush Presbyterian St. Luke's Med. Ctr.*, 63 Fed. App'x 886, 890 (7th Cir. 2003)

(“Lampkin’s averment [of what “she was informed by other patients”] is inadmissible hearsay and is not based upon her personal knowledge, so it cannot be used to defeat a motion for summary judgment.”); *Hammer v. Residential Credit Sols., Inc.*, No. 13-cv-6397, 2015 WL 7776807, at *12 (N.D. Ill. Dec. 3, 2015) (“A testimonial statement about contract formation would be a statement to the effect that a contract does or does not exist. Such an out-of-court statement would be impermissible hearsay.”); *Hindin/Owen/Engelke, Inc. v. GRM Indus., Inc.*, 869 F. Supp. 539, 544 (N.D. Ill. 1994) (“A statement by an employee that his employer agrees to make a proposal would be a statement offered for the truth of the matter asserted, *i.e.*, that his employer agreed to make a proposal, and constitutes hearsay.”); Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”).

The Estate, however, paints with too broad a brush. Mr. Spallina’s statements regarding his work for Simon Bernstein (including his statements regarding Simon Bernstein’s modifications to his testamentary documents) are based upon Mr. Spallina’s personal knowledge, and ostensibly are not hearsay. For example, Mr. Spallina might competently testify that: (1) Simon Bernstein modified his testamentary documents in 2012 to name his grandchildren (instead of his children) as the sole beneficiaries of his Estate; (2) when Simon Bernstein made those modifications in 2012, he was aware of the life insurance policy at issue here;

and (3) Simon Bernstein, in 2000, considered but ultimately decided against placing that same life insurance policy into an irrevocable trust. Considered in conjunction, this testimony suggests that Simon Bernstein provided for his children in a manner outside of his testamentary documents.

c) Plaintiffs' Documentary Evidence

In their attempt to resist the Estate's motion for summary judgment, Plaintiffs also identify six separate documents that they contend represent evidence of the 1995 Trust's existence.

The Court previously considered this same documentary evidence when it rejected *Plaintiffs'* motion for summary judgment in March of 2016. At that time, the Court noted that this documentary evidence does "provide some evidence that the Trust was created," though it was "far from dispositive." [220] at 4. Ultimately, while the party moving for summary judgment may have changed, the weight of this documentary evidence has not, as discussed below.

(1) Drafts Of The 1995 Trust

Two of the principal documents relied upon by Plaintiffs are unexecuted drafts of the 1995 Trust itself. As the Court previously explained, however, these "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," and that same testimony is excluded by the Illinois Dead Man's Act. *Id.* at 3.

(2) The Request Letter

Plaintiffs identify a “Request Letter” dated November 7, 1995 in support of their claim that the 1995 Trust actually exists. The Request Letter is a standardized form, which instructs Capitol Bankers Life to “Change Beneficiary As Follows”—the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” is the new “successor” to the Policy Proceeds. [150-9] at 2.

(3) The Request for Service

Plaintiffs also rely upon a “Request for Service” form dated August 8, 1995, which seeks to transfer ownership of the life insurance policy to the “Simon Bernstein Irrevocable Insurance Trust dtd 6/21/1995.” [150-19]. As the Court previously noted, however, this “document refers to ‘ownership’ of the policy, and does not affect the policy’s beneficiaries.” [220] at 4.

(4) The Beneficiary Designation

In a “Beneficiary Designation” dated August 26, 1995, Simon Bernstein designated the “Simon Bernstein Irrevocable Insurance Trust” as the beneficiary to receive his death benefits. Plaintiffs suggest that this designation is probative of the fact that the Trust actually exists; however, “this document does not refer to the Trust at issue here, the ‘Simon Bernstein Irrevocable Insurance Trust dated 6/21/95.’” [220] at 4. It remains “unclear from the record if that was an oversight, or was intentionally done to refer to a distinct trust.” *Id.*

(5) The IRS Form 22-4

Finally, Plaintiffs point to an IRS “Form 22-4” (or application for an Employer Identification Number) in support of their contention that the 1995 Trust exists as alleged. [150-20]. The Form 22-4 reflects that it was executed on behalf of the “Simon Bernstein Irrevocable Insurance Trust” and signed by Shirley Bernstein, Simon’s wife. *Id.* It is unclear from the record whether the Form 22-4 was actually submitted to, or approved by, the IRS. *Id.*

2. The Weight of the Evidence

As the Court previously explained, Plaintiffs’ documents, while not “dispositive,” provide “some evidence that the Trust was created.” [220] at 4. In fact, Plaintiffs’ case has improved since the Court first considered their evidence in March of 2016, in light of the new affidavit from Mr. Spallina, and the Court remains incapable of resolving these disputed factual questions on summary judgment.


A reasonable factfinder could infer, based upon both the potential testimony of Mr. Spallina and the documentary evidence previously discussed, that Simon Bernstein created the 1995 Trust in the manner alleged by Plaintiffs. The Estate’s motion for summary judgment is accordingly denied.

IV. Conclusion

For the foregoing reasons, Plaintiffs' motion for summary judgment on Eliot Bernstein's claims [239] is granted, and the Estate's motion for summary judgment [245] is denied.

Dated: January 30, 2016

Entered:


John Robert Blakey
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1
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

United Bank of Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, February 21, 2017:

MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 2/21/2017. Additional case management dates set as follows: the parties shall file their proposed final pretrial order and motions in limine on or before 7/3/2017; responses to motions in limine are due 7/10/2017; final pretrial conference set for 7/24/2017 at 1:30 p.m. in Courtroom 1725; bench trial set for 8/7/2017 at 10:00 a.m. in Courtroom 1725. The parties should review and strictly comply with the Court's standing orders, including the order on proposed pretrial procedures (including motions in limine) which is available on the Courts homepage at www.ilnd.uscourts.gov. Additionally, the case is set for a settlement conference on 7/14/2017 at 11:00 a.m. in Courtroom 1725. The parties are directed to exchange position letters as follows: Plaintiff shall provide Defendant with a demand letter by 7/3/2017, and Defendants shall provide a response by 7/10/2017. By 5:00 p.m. on 7/11/2017, Plaintiff shall submit copies of all letters exchanged by the parties to: Proposed_Order_Blakey@ilnd.uscourts.gov. Copies of the settlement conference letters shall not be filed with the Clerk's Office. The Parties shall come to the settlement conference on 7/14/2017 with an accounting of costs properly taxable under 28 U.S.C. §1920, both incurred in the litigation to date and an estimate of taxable costs that would be incurred should the matter proceed to trial. Parties with full and complete settlement authority must attend the conference personally. The term full and complete settlement authority includes the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of Plaintiff or any level as low as the offer provided by Defendant. Parties attending the conference should be sure to review and consider the settlement letters exchanged between the parties in advance of the conference. The Court generally will follow a mediation format; that is, each side will have an opportunity to make a presentation, followed by joint discussion with the Court and private meetings by the Court with each side individually. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. All statements made during the settlement conference will remain confidential and will not be admissible at trial. 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.

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

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

CASE NO.:1:13-cv-3643

HERITAGE UNION LIFE INSURANCE COMPANY,
Counter-Plaintiff,
v.
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95,
Filer:
Counter-Defendant.
and,
FIRST ARLINGTON NATIONAL BANK as Trustee of S.B. Lexington, Inc.
Employee Death Benefit Trust, UNITED BANK OF ILLINOIS, BANK OF
AMERICA, Successor in interest to LaSalle National Trust, N.A., SIMON
BERNSTEIN TRUST, N.A., TED BERNSTEIN, individually and as purported
Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95,
and ELIOT BERNSTEIN,
Third-Party Defendants.

ELIOT IVAN BERNSTEIN,
Cross-Plaintiff,
v.
TED BERNSTEIN, individually and as alleged Trustee of the Simon Bernstein
Irrevocable Insurance Trust Dtd 6/21/95 Cross-Defendant.
and,
PAMELA B. SIMON, DAVID B. SIMON, both Professionally and Personally
ADAM SIMON, both Professionally and Personally, THE SIMON LAW FIRM,
TESCHER & SPALLINA, P.A., DONALD TESCHER, both Professionally and
Personally, ROBERT SPALLINA, both Professionally and Personally, LISA
FRIEDSTEIN, JILL IANTONI S.B. LEXINGTON, INC. EMPLOYEE DEATH
BENEFIT TRUST, S.T.P. ENTERPRISES, INC. S.B. LEXINGTON, INC.,
NATIONAL SERVICE ASSOCIATION (OF FLORIDA),
NATIONAL SERVICE ASSOCIATION (OF ILLINOIS) AND JOHN AND JANE
DOES,
Third-Party Defendants.

BRIAN M. O'CONNELL, as Personal Representative of the Estate of
Simon L. Bernstein,
Intervenor.

**AMENDED NOTICE OF MEDIATION
(CHANGE OF RATES ONLY)**

Adam M. Simon, Esquire
Counsel for Simon Bernstein Irrevocable
Trust; and Ted Bernstein as Trustee
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YOU ARE HEREBY NOTIFIED, pursuant to the agreement of the parties, that a confidential Mediation Conference subject to the provisions of Florida Statutes Chapter 44 shall be held in this case as follows:

MEDIATOR: RONALD ALVAREZ
LOCATION: MATRIX MEDIATION, LLC
1655 PALM BEACH LAKES BOULEVARD SUITE 700-
THE FORUM
WEST PALM BEACH, FLORIDA 33401
PHONE: (712) 775-7085
ACCESS CODE 266885
DATE: THURSDAY, JUNE 01, 2017
TIME: 10:00 AM - 12:00 PM
**PARTIES ARE ENCOURAGED TO SUBMIT WRITTEN
MEDIATION SUMMARIES TO:** ron@matrixmediation.com

PRE PAYMENT REQUIRED

RONALD ALVAREZ – RESERVED HOURS, RATES AND POLICY FOR **TWO PARTIES**

Two (2) hours have been reserved for your case. The mediation charges are \$400.00 per party, (i.e. a total of \$800.00). Each side agrees to submit a payment in the amount of \$ 400.00 by May 31, 2017 made payable to Matrix Mediation. Any additional fees must be paid in full at the conclusion of mediation by Counsel or their client. For the convenience of parties, payment may be made by major credit card. Should the total number of hours spent in mediation, including a potential ½ to hour fee for preparation, exceed the number of reserved

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

IN THE UNITED STATES DISTRICT COURT
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CASE NO.:1:13-cv-3643


HERITAGE UNION LIFE INSURANCE COMPANY,
Counter-Plaintiff,
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SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95,
Filer:
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and,
FIRST ARLINGTON NATIONAL BANK as Trustee of S.B. Lexington, Inc.
Employee Death Benefit Trust, UNITED BANK OF ILLINOIS, BANK OF
AMERICA, Successor in interest to LaSalle National Trust, N.A., SIMON
BERNSTEIN TRUST, N.A., TED BERNSTEIN, individually and as purported
Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95,
and ELIOT BERNSTEIN,
Third-Party Defendants.

ELIOT IVAN BERNSTEIN,
Cross-Plaintiff,
v.
TED BERNSTEIN, individually and as alleged Trustee of the Simon Bernstein
Irrevocable Insurance Trust Dtd 6/21/95 Cross-Defendant.
and,
PAMELA B. SIMON, DAVID B. SIMON, both Professionally and Personally
ADAM SIMON, both Professionally and Personally, THE SIMON LAW FIRM,
TESCHER & SPALLINA, P.A., DONALD TESCHER, both Professionally and
Personally, ROBERT SPALLINA, both Professionally and Personally, LISA
FRIEDSTEIN, JILL IANTONI S.B. LEXINGTON, INC. EMPLOYEE DEATH
BENEFIT TRUST, S.T.P. ENTERPRISES, INC. S.B. LEXINGTON, INC.,
NATIONAL SERVICE ASSOCIATION (OF FLORIDA),
NATIONAL SERVICE ASSOCIATION (OF ILLINOIS) AND JOHN AND JANE
DOES,
Third-Party Defendants.

BRIAN M. O'CONNELL, as Personal Representative of the Estate of
Simon L. Bernstein,
Intervenor.

hours the additional required payment will be automatically billed to your credit card. If the case is cancelled, then a refund of the payments will be made, less any applicable cancellation fee. All mediations will include when applicable a charge for preparation. **The parties are guaranteeing payment for two (2) hours minimum** at the mediator's rate of **\$400.00 per hour**. *Notice of cancelation or postponement of a scheduled mediation conference must be received 5 business days prior to the scheduled commencement of the mediation conference otherwise a two (2) hour cancelation fee will be split between all parties. Parties are encouraged to submit written mediation summaries no later than the day before mediation and the mediator may contact any counsel or pro-se parties prior to mediation. "By their appearance, all participants agree that the Mediation Confidentiality and Privilege Act (F.S. §44.404) will apply to this mediation process."* If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance, please contact Krista Garber, ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida, 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this order; if you are hearing or voice impaired, call 1-800-955-8771. I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via facsimile or email to the above-named addressees this 26th day of May, 2017. DP



BY: 
Rodney G. Romano, Esquire
Florida Bar No.: 0559482
1655 Palm Beach Lakes Boulevard
Suite 700, The Forum
West Palm Beach, Florida 33401
Phone: (561) 340-3500 Fax: (561) 584-7792

**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,)
)
Defendants.)
)
_____)

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

NOTICE OF FILING

To: SEE CERTIFICATE OF SERVICE ATTACHED

PLEASE TAKE NOTICE that the following document, a copy of which is attached, was electronically filed with the Clerk of the Court on the date indicated in the time stamp above:

- Matrix Mediation – Notice of Mediation scheduled for June 1, 2017

DATED: MAY 31, 2017

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 on May 31, 2017:

/s/ Adam M. Simon
Adam Simon, Esq.
#6205304
303 East Wacker Drive, Suite 2725
Chicago, Illinois 60601
Attorney for Plaintiffs
(312) 819-0730

U.S.C.A. - 7th Circuit
RECEIVED

JUN 19 2017 AB

GINO J. AGNELLO
CLERK

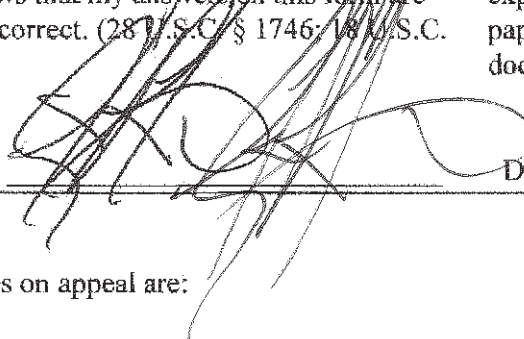

UNITED STATES DISTRICT COURT

Northern for the
DISTRICT OF Illinois

Ted Bernstein et al.)
)
Plaintiff s)
)
v.)
)
Heritage Union Life et al.)
)
Defendant s)

Case No. 13-cv-03643

AFFIDAVIT ACCOMPANYING MOTION
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p>
Signed: 	Date:  May 26, 2017

My issues on appeal are:

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$0.00	\$1200.00	\$0.00	\$1200.00
Self-employment	\$0.00	\$0.00	\$0.00	\$0.00
Income from real property (such as rental income)	\$0.00	\$0.00	\$0.00	\$0.00
Interest and dividends	\$0.00	\$0.00	\$0.00	\$0.00
Gifts	\$0.00	\$0.00	\$0.00	\$0.00
Alimony	\$0.00	\$0.00	\$0.00	\$0.00
Child support	\$0.00	\$0.00	\$0.00	\$0.00
Retirement (such as social security, pensions, annuities, insurance)	\$0.00	\$0.00	\$0.00	\$0.00
Disability (such as social security, insurance payments)	\$0.00	\$0.00	\$0.00	\$0.00
Unemployment payments	\$0.00	\$0.00	\$0.00	\$0.00
Public-assistance (such as welfare)	\$0.00	\$386.00	\$0.00	\$386.00
Other (specify):	\$0.00	\$0.00	\$0.00	\$0.00
Total monthly income:	\$0.00	\$1586.00	\$0.00	\$1586.00

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
Iviewit Technologies	2753 NW 34th St Boca Raton FL 33434	1997-Present	\$0.00
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
Upworks	Online	Current	\$ 1200.00
			\$
			\$

4. How much cash do you and your spouse have? \$ 300.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
US Bank	Debit	\$0.00	\$ 120.00
Paypal	Debit	\$0.00	\$66.00
		\$0.00	\$0.00

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	Other real estate	Motor vehicle #1
(Value) \$ 0.00	(Value) \$ 0.00	(Value) \$ @8,000
		Make and year: 2008 Volvo
		Model: SC90
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$5,000.00	(Value) \$5,000.00	(Value) \$
Make and year: Kia 2013		
Model: Kia		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
n/a	\$n/a	\$n/a
	\$	\$
	\$	\$
	\$	\$

7. State the persons who rely on you or your spouse for support.

Name [or, if under 18, initials only]	Relationship	Age
Joshua Ennio Zander Bernstein	Son	19
Jacob Noah Archie Bernstein	Son	18
Daniel Elijsha Abe Ottomo Bernstein	Son	14

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 0.00	\$ 0.00
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		

Utilities (electricity, heating fuel, water, sewer, and telephone)	\$0.00	\$1000.00
Home maintenance (repairs and upkeep)	\$0.00	\$200.00
Food	\$0.00	\$800.00
Clothing	\$0.00	\$200.00
Laundry and dry-cleaning	\$0.00	\$100.00
Medical and dental expenses	\$0.00	\$0.00
Transportation (not including motor vehicle payments)	\$0.00	\$150.00
Recreation, entertainment, newspapers, magazines, etc.	\$0.00	\$100.00
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$0.00	\$0.00
Life:	\$0.00	\$0.00
Health:	\$0.00	\$0.00
Motor vehicle:	\$0.00	\$424.00
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$0.00	\$0.00
Installment payments		
Motor Vehicle:	\$0.00	\$0.00
Credit card (name):	\$0.00	\$0.00
Department store (name):	\$0.00	\$0.00
Other:	\$0.00	\$0.00
Alimony, maintenance, and support paid to others	\$0.00	\$0.00
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$0.00	\$0.00
Other (specify):	\$0.00	\$0.00
Total monthly expenses:	\$0.00	\$2974.00

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit? Yes No

If yes, how much? \$ _____

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

Our family inheritancy has intentionally been delayed in the Courts through Fraud on the Courts and Fraud on the Beneficiaries committed by Officers of the Court of the 15th Judicial Probate Court in West Palm Beach FL and the Illinois Federal Court Northern District. Also we anticipate Intellectual Properties royalties that amount to hundreds of millions of dollars, interfered with through alleged thefts of the IP by counsel

12. State the city and state of your legal residence.

Boca Raton Florida

Your daytime phone number: (561) 245-8588

Your age: 54 Your years of schooling: College Grad BS Psych

Last four digits of your social-security number: 2566

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
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

United Bank of Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, June 26, 2017:

MINUTE entry before the Honorable John Robert Blakey: Eliot Ivan Bernstein has filed a Notice of Appeal, seeking review of this Court's summary judgment decision. He seeks leave to appeal in forma pauperis. Federal Rule of Appellate Procedure 24(a)(1) requires a party seeking leave to proceed on appeal in forma pauperis to attach an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal. Eliot's affidavit satisfies subparts (A) and (B): his financial affidavit includes a statement claiming an entitlement to redress and also indicates that he is unemployed and earns no income, that his wife earns less than \$1,600 per month, and that their combined monthly expenses total almost \$3,000. Eliot's affidavit does not, however, set forth the issues he plans to present on appeal, as required by Rule 24(a)(1)(C). In fact, he left that section of the form blank. Accordingly, his motion for leave to appeal in forma pauperis [283] is denied. 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.

UNITED STATES DISTRICT COURT
 for the
 Northern DISTRICT OF Illinois

Ted Bernstein et al.)	
)	
Plaintiff s)	
)	
v.)	
	)	Case No. 13-cv-03643
Heritage Union Life et al.)	
)	
Defendant s)	
)	

**AFFIDAVIT ACCOMPANYING MOTION
 FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: </p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: 6/27/17</p>

My issues on appeal are:

The In Pauperis Form was transmitted to the US District Court by the 7th Circuit Court of Appeals upon Appellant's filings that included a Motion to Accept Late Jurisdictional Statement, Permission for Electronic Filing at the 7th Circuit, In Forma Pauperis and Leave to correct any other deficiencies and related relief. It appears that the 7th Circuit did not Transmit to the District Court a copy of the Motion itself which is now attached that outlines the meritorious good faith issues to be pursued on Appeal...see attached Issues on Appeal Continued

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$
Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	\$	\$	\$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. *How much cash do you and your spouse have? \$_____*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if under 18, initials only]	Relationship	Age

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$	\$
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		

Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$
Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
Total monthly expenses:	\$	\$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

Yes No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit? Yes No*

If yes, how much? \$ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *State the city and state of your legal residence.*

Boca Raton Florida

Your daytime phone number: (____) _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____

Issues on Appeal Continued

The In Pauperis Form was transmitted to the US District Court by the 7th Circuit Court of Appeals upon Appellant's filings that included a Motion to Accept Late Jurisdictional Statement, Permission for Electronic Filing at the 7th Circuit, In Forma Pauperis and Leave to correct any other deficiencies and related relief. It appears that the 7th Circuit did not Transmit to the District Court a copy of the Motion itself which is now attached that outlines the meritorious good faith issues to be pursued on Appeal which include but are not limited to: The US District Court abused it's discretion and acted clearly erroneously by impermissibly changing the burden of proof on Summary Judgment to the non-moving party without the moving party satisfying the burden; Even if Plaintiffs could succeed in their complaint at trial Reasonable Jurors could also simultaneously find the Plaintiffs and Fiduciaries withheld, destroyed and secreted away documents and evidence such as the actual Life Insurance Policy, actual operative Trust and related documents causing substantial Delay damages to Appellant; the US District Court abused it's discretion by applying the wrong law on collateral estoppel erroneously applying Illinois state law instead of Florida state law in a Diversity Jurisdiction case as shown by Appellant during Summary Judgment; the US District Court clearly erroneously applied collateral estoppel standards; the US District Court abused its discretion by failing to require Plaintiffs to provide actual competent proof and evidence to support the false claim that Appellant is not a Beneficiary in the Estate of Simon Bernstein with standing and instead the District Court simply "copied and pasted" false statement of Facts by Plaintiffs without any support by an actual Court Order provided; NOTE: As shown the 7th Circuit Court of Appeals, there has been a change of circumstances in Florida consistent with the Notice Appellant provided to the District Court on Jan. 30, 2017 as newly discovered Evidence and newly issued Order since the entry of the District Court's Decision on Summary Judgment shows Appellant is in fact a beneficiary of the Estate of Simon Bernstein both according to the express language of the Simon Bernstein "validated" Will and by Court Order of new Judge Scher in the 15th Judicial and statement and testimony by PR Brian O'Connell; The US District Court abused its discretion by not adding indispensable and necessary parties back in the action such as Heritage, Jackson, Reassured, the primary Beneficiary La Salle and or successor Bank of America and other parties as argued in both rounds of Summary Judgment; the US District Court abused its discretion by repeatedly denying Appellant's motions to reopen Discovery which should include Depositions including but not limited to Estate Drafters and Planners Tescher and Spallina who should have at least copies of the operative documents, Depositions at Jackson and Heritage and Reassured on the Policy, Record Retention policies and actions, and efforts to locate the alleged Lost Policy, and other; the US District Court abused its discretion by not scheduling proper proceedings for Hearing the Motion for Injunction under the All Writs Act and granting a narrowly tailored injunction; the District Court abused its discretion by denying Appellant's motion to Amend the Complaint; the District Court abused its discretion by not sorting out Conflicts of Interest and exercising its Inherent Powers and conducting a Winkler v Eli inquiry into "side agreements" by conflicted parties orchestrating proceedings to defeat the proper path to Judgment; and related issues.

See attached Motion to Accept Late Filing and Jurisdiction Statement filed in the 7th Circuit.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

U.S.C.A. - 7th Circuit
RECEIVED
JUN 19 2017 AB
GINO J. AGNELLO
CLERK

APPEAL NO. 17-1461

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

APPELLANT - CROSS AND COUNTERPLAINTIFF ELIOT I. BERNSTEIN,
PRO SE, hereinafter referred to as Appellant, respectfully submits the following
Jurisdictional Memorandum in response to this Court's Order of May 14, 2017
Order and shows this court as follows:
Appellant asserts that this Court has federal Appellate Jurisdiction under 28 USC
Sec. 1291 and 28 USC Sec. 1292(a)(1) as set out further herein.

BACKGROUND AND PROCEDURAL SUMMARY

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

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

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

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

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

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

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

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

Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16 Page 7 of 132 PageID

#:3641.

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

While these parties at least on paper appear to be “adversaries” in the District Court, Appellant showed multiple orchestrated actions where BOTH Fiduciaries had intentionally failed to obtain Florida Court Ordered Discovery from the outgoing PRs and Co-Trustees attorneys Tescher and Spallina who were also the Estate Planners and Drafters for Simon and Shirley Bernstein and who,

presumably, as part of due diligence and common professional practices, would at least have actual copies of the operative documents, Trusts and Life Insurance policies now “alleged” to be “lost” and “missing” in this action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Conclusion For the foregoing reasons, Plaintiffs’ motion for summary judgment on Eliot Bernstein’s claims [239] is granted, and the Estate’s motion for summary judgment [245] is denied.” See Docket Entry No. 273.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Successes and Properties of Simon and Shirley Bernstein

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

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

Direct Knowledge of Record Keeping Practices of Simon Bernstein

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

Other Business Agreements with Simon Bernstein and “Iviewit

Technologies”; Simon Bernstein’s “Missing Stock:

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

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

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

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

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

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

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

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

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

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

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

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

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

JURISDICTIONAL STATEMENT

Jurisdiction of the District Court:

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

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

Appellate Jurisdiction of the 7th Circuit Court of Appeals:

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

28 U.S.C. Sec. 1291

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

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

Yet, as the US Supreme Court held in *EISEN v. CARLISLE & JACQUELIN*, “Restricting appellate review to “final decisions” prevents the debilitating effect on judicial administration caused by piecemeal appellate disposition of what is, in practical consequence, but a single controversy. While the application of 1291 in most cases is plain enough, determining the finality of a particular judicial order may pose a close question. No verbal formula yet devised can explain prior finality decisions with unerring accuracy or provide an utterly reliable guide for the future. **9 We know, of course, that 1291 does not [417 U.S. 156, 171] limit appellate review to “those final judgments which terminate an action . . .,”** *Cohen v. Beneficial Loan Corp.*, 337 U.S., at 545 , but rather that the requirement of finality is to be given a **“practical rather than a technical construction.”** *Id.*, at 546. The inquiry requires some evaluation of the competing considerations underlying all questions of finality - “the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.” *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950) (footnote omitted).”, See, *EISEN v. CARLISLE & JACQUELIN*, 417 U.S. 156 (1974).

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

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

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

MINUTE entry before the Honorable John Robert Blakey: Enter Memorandum Opinion and Order. For the reasons stated in the accompanying Memorandum

Opinion and Order, Plaintiffs' Motion for Summary Judgment 239 is granted and Intervenor's Motion for Summary Judgment 245 is denied. The status hearing previously set for 2/21/2017 at 9:45 AM in Courtroom 1725 to stand, at which time the parties shall be prepared to set a trial date. Mailed notice (gel,) (Entered: 01/30/2017)

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

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

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

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

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

28 USC Sec. 1292(a)(1)

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

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

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

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

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

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

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

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

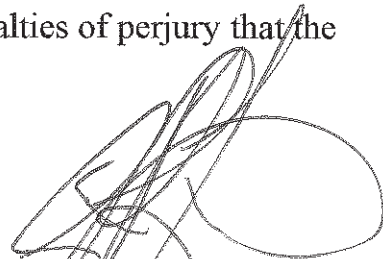
Appellant reserves the right to supplement this Statement as law and justice allows and fully seeks to brief the Appeal on the merits.

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

Declaration

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

DATED: June 15, 2017



/s/ Eliot Ivan Bernstein

Cross and Counter-
Plaintiff, Appellant PRO
SE

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CERTIFICATE OF SERVICE

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

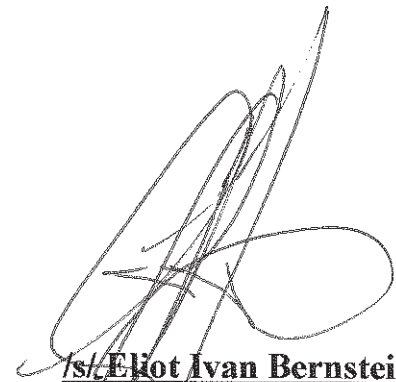
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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

U.S.C.A. - 7th Circuit
RECEIVED
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CLERK

APPEAL NO. 17-1461

SIMON BERNSTEIN IRREVOCABLE) Appeal from the United States
INSURANCE TRUST DTD. 6/21/95,) District Court, Northern District of
et al. ,) Illinois, Eastern Division.
Plaintiffs-Appellees,)
V.) LC No. 1:13-CV-03643
) John Robert Blakey, Judge
HERITAGE UNION LIFE)
INSURANCE CO., et al.,)
Defendants-Appellees.) APPELLANT'S MOTION
) TO ACCEPT LATE
) JURISDICTIONAL
) MEMORANDUM AND
) PERMISSION TO
) ELECTRONICALLY FILE
) AND OTHER RELIEF
APPEAL OF:
ELIOT BERNSTEIN,
Cross and Counter-Claimant-
Appellant.

COMES NOW ELIOT I. BERNSTEIN, APPELLANT PRO SE, WHO
RESPECTFULLY PLEADS AND SHOWS THIS COURT AS FOLLOWS:

- 1. I, Eliot Ivan Bernstein, am Appellant pro se.
2. I respectfully make this Motion to Accept my late filing of the Statement of
Jurisdiction in response to this Court's Orders and further for permission to File
Electronically through the ECF system in the future, to accept my Informa
Pauperis statement, to exceed the Page limits on my Jurisdiction statement if
needed, and for leave to cure any other defects or requirements by this Court.

3. It is respectfully submitted to this Court that good cause is shown in the filing of this motion which I believe has merit and is not frivolous and request that the motions be granted so this Appeal may be fully heard on the merits.
4. As shown herein, in addition to substantial recurring electrical and power problems at Appellant's home spanning over the last 2 months and ongoing causing computers and other work equipment to go out and other Hacking into Appellant's online "repository" of documents and website, Appellant has been continually engaged in unraveling and sorting out massive frauds which is something Appellant repeatedly notified the US District Court about and where Appellant has repeatedly had to seek extensions of time in the Florida State Courts due to repeated sharp practices and fraudulent filings.

CHANGE OF CIRCUMSTANCES, LAW SINCE ENTRY OF ORDER ON APPEAL

5. There has been a substantial change of circumstances since the entry of the District Court's Order on Summary Judgment which was directly predicated in part upon a clearly erroneous factual and legal determination that Appellant Eliot Bernstein was not a "beneficiary" with "standing" in either the Estates or Trusts of Simon and Shirley Bernstein which was then used by the District Court in its Summary Judgement Order on Appeal on "collateral estoppel" grounds which was clearly erroneous on multiple grounds including applying the clearly erroneous "legal

standard” for Collateral Estoppel by applying Illinois law instead of the law of Florida where the Orders occurred as this is a Diversity of Citizenship case for jurisdiction as cited in Appellant’s response to the Summary Judgment (“Round 2”).

6. Respectfully, this Court should see that Appellant was clearly a “beneficiary” “with standing” and remains such in the Simon Bernstein Estate case where there has Never been an Order of any Court to the contrary, but Appellant also is and always was a “beneficiary with Standing” in the Shirley Bernstein Estate case and by the express terms of the Shirley Trust was an expressly “named” Beneficiary of the Shirley Trust which became “irrevocable” upon her passing which was prior to Simon Bernstein’s passing.
7. Appellant had moved for “Injunctive relief” in the State Court of Florida even prior to the “removal” of the “Insurance litigation” herein to Federal Court on or about May 16, 2013.
8. This “Injunctive” relief filed in the State Court was predicated upon the “then discovered” Frauds and forgeries of Dispositive documents filed in the Shirley Bernstein Estate case by attorneys working for and with Ted Bernstein, the alleged “Trustee” and Plaintiff in this action being attorneys at Tescher and Spallina who were the Estate Planners for Simon and Shirley Bernstein and made themselves Personal Representatives of the Estates and Co-Trustees of Trusts.

9. As shown by Appellant's Answer and Counterclaims in this case and by a Motion for Injunctive Relief filed in the US District Court in this action in Feb. of 2016, the "same parties" involved with the frauds in the State of Florida cases are the same as those frauds before the US District Court where no "original" documents have been produced and all key dispositive Documents like the Insurance Policy and alleged controlling Trust have all allegedly become "lost" and "missing".
10. To the contrary, Appellant has alleged this is all part of a fraudulent scheme to "control" the Assets and Disposition of Assets and take away Appellant's "standing" and right to be heard after Appellant has exposed frauds and crimes in both actions and reported same to Federal and State investigative authorities.
11. Attached is a recent Order of Florida 15th Judicial Circuit Judge Scher which confirms that I, **Appellant, Eliot I. Bernstein am in fact a Beneficiary of the Simon Bernstein Estate which thus changes the circumstances and facts upon which the District Court issued its Order.**
12. Further, Judge Scher has also found that Ted Bernstein, who is the Plaintiff in this case, is adverse to the Estate of Simon Bernstein and has a conflict of interest involving the Illinois Insurance action and yet as later shown herein, continues to act "in unity" with the Estate PR Brian O'Connell to "control" Discovery and documents and the frauds and litigation in both this "Insurance" action and the Florida cases.

13. As this Court will note, while I have attempted in good faith to cite to the Docket Entries in the Record of the US District Court of the Northern District of Illinois in both the Jurisdiction Statement and this motion herein, there are references to newly discovered facts and change of circumstances which have occurred after the issuance of the Order being Appealed and this Court's Orders which I believe are important and while I have attached some of these items in hard copy print, it would be burdensome to do so for the entire motion and would further delay the filing of these papers and I request permission to Electronically file in the future and if required by this Court, to supplement my filings Electronically.

UNDISPUTED CLEAR AND CONVINCING PROOF OF ONGOING FRAUD BY PLAINTIFF TED BERNSTEIN, HIS COUNSELS ALAN B. ROSE, ESQ. AND ADAM SIMON, ESQ. AND INTERVENOR PR BRIAN O'CONNELL, ESQ. FOR THE ESTATE OF SIMON BERNSTEIN ACTING IN CONCERT AND ACTIVE CONCEALMENT OF THE FRAUD DIRECTLY IMPACTING THE US DISTRICT COURT'S ORDER ON SUMMARY JUDGMENT "NEWLY DISCOVERED" AFTER ISSUANCE OF THE SUMMARY JUDGMENT ORDER ON APPEAL; FRAUD THAT HAS BEEN CONCEALED FROM BOTH THE US DISTRICT COURT AND NOW THIS 7TH CIRCUIT US COURT OF APPEALS DESPITE APPELLANT'S REQUEST OF FLORIDA 15TH JUDICIAL CIRCUIT JUDGE SCHER TO NOTIFY ALL PROPER AUTHORITIES

14. The U.S. District Court below, Northern District of Illinois, abused its discretion acting clearly erroneously by failing to determine any actual proof or evidence in the Record and submitted on Summary Judgment by the Plaintiffs to support the

False and Fraudulent claim by Ted Bernstein and Counsels Adam Simon and Alan Rose that Appellant Eliot Bernstein is not a beneficiary of the Estate of Simon Bernstein, lacks standing and is barred from that Probate action lacking standing asserted as collateral estoppel which was improperly relied upon by the District Court in granting Summary Judgment dismissing all of Appellant's claims.

15. On Jan. 30th, 2017, Appellant notified the US District Court prior to the actual issuance of the Order now on Appeal in part "about important circumstances in the Florida Courts which I believe are consistent with what I notified this Court about in my All Writs petition where there is Direct collusion between the parties in the Florida proceedings which are impacting the Integrity of this Court's proceedings and path to Judgment. Specifically, **that in Florida, the Estate of Simon Bernstein and PR Brian O'Connell are now directly acting in Unity with Ted Bernstein and Alan Rose and even permitting Ted Bernstein's attorney Alan Rose to act as the Counsel for the Estate which is a major conflict of interest.** This conflict has also been raised in Florida by the Creditor's attorney Peter Feaman, Esq. and **Hearings are scheduled in a few weeks in Florida to address this Conflict** and it is also important to note **that these hearings are before a new Judge, Judge Scher, and all the Orders that the Plaintiffs are relying upon for Collateral Estoppel before this Court were**

issued by a **Judge Phillips who has now left the Bench prematurely and retired.**” See, US District Court Docket No. 271 filed Jan. 30, 2017.

16. This Court should note that the “Ted Bernstein” Plaintiffs and the Estate of Simon Bernstein as Intervenor are the only remaining parties left in the case and yet these parties are not only acting in “unity” but doing so in such a “controlled manner” as to further and protect the frauds at play as shown in the All Writs but now further proof has emerged showing this scheme even further where **there is no “real controversy”** left before the District Court but instead an **“inside, secret deal and negotiation”** amongst parties acting in fraud and misconduct.
17. The US District Court was repeatedly apprised of these Conflicts including in the All Writs Act Motion for Injunction of Feb. 2016, Par. 4, providing in part, **“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”** (emphasis added). See, Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16 Page 3 of 132 PageID #:3637.
18. Further in the All Writs Motion for Injunction Appellant moved the District Court stating **“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)” (**emphasis added**). See, Document #: 214 Filed: 02/24/16 Page 11 of 132 PageID #:3645.

19. Thus, the District Court had been moved for relief under *Winkler v. Eli Lilly & Co.* 101 F.3d 1196, 1202 (7th Cir. 1996) and the All Writs Motion itself set out sufficient grounds for relief. Appellant respectfully asserts that further grounds now exist for Injunctive relief and notifies this Court that it will be moving for Injunctive relief under the Rules.
20. The U.S. District Court’s Order on Appeal (Docket Entry No. 273) appears in all material respects in this part of the Order to be no more than a simple “copy and paste” by the Court of False statements and arguments submitted by Plaintiffs’ attorney Adam Simon which have been regurgitated into an official federal Court Order with no evidence, proof or documents in support, a “fraud within a fraud” in an ongoing series of frauds.
21. Plaintiffs and their attorney Adam Simon had wholly failed to submit ANY Order or Judgment from Florida showing Appellant was not a Beneficiary in the Estate of Simon Bernstein and lacked standing in the Estate of Simon Bernstein. Of course, legally, the Plaintiffs and Adam Simon could not submit such an Order as No Such

Order exists as this never happened in the Florida state Courts but instead Plaintiffs and Counsel Adam Simon simply knowingly “stated False Facts” to the US District Court that this was the case and such an Order existed in efforts to wholly remove Plaintiffs Constitutionally protected Due Process and Procedure Rights .

22. The US District Court below appears to have bought into this fraud “hook, line and sinker” without requiring any Proof or evidence as the Order on Appeal not only makes reference to these False Facts stated by Adam Simon but instead of Citing to some actual Order or Judgment document from Florida provided in the Summary Judgment filings, the District Court simply cites to the Statement of Facts submitted by Counsel Adam Simon for Plaintiffs.
23. For example, the US District Court states in the Order on Appeal, “First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court’s rulings. The Probate Court found, inter alia, that Simon Bernstein’s “children – including Eliot – are not beneficiaries” of the Will of Simon Bernstein or the related testamentary trust. [240] at 11.” See, US District Court Order Docket No. 273 pages 7-8. The US District Court had made it clear in FOOTNOTE 1 that, “The facts are taken from the parties’ Local Rule 56.1 statements and the Court’s previous rulings [106, 220]. [240] refers to Plaintiffs’ statement of material facts.” Thus, the US

District Court simply ruled based upon a section of False Statement of Facts from Plaintiffs citing to Plaintiffs Statement of Facts [240] at 11 that had NO Orders attached or submitted used to provide the Findings and language that the District later gives “preclusive effect to” and thus, a fraud within a fraud, a lie within a lie.

**SORTING OUT THE FRAUD AND THE FRAUDS WITHIN THE FRAUD,
UNPEELING THE ONION:**

24. Part of the basis for Appellant to respectfully move this Court to accept the separate Jurisdictional Statement is for this Court to consider, as shown and stated to the US District Court, the painstaking amount of time it takes and has taken to continually unravel the “lie within a lie of a lie” or “fraud within a fraud of a fraud” that this case has been from the outset as pleaded by the Appellant in the original Answer (Docket No. 35 Filed: 09/22/13) and multiple other filings including a Motion for Injunctive Relief under the All Writs Act filed Feb. 24, 2016 (Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16) and of course Docket No. 271 above and other filings.

25. I respectfully request this Court to **carefully examine Appellant’s Motion for Injunction under the All Writs Act filed by Appellant Feb. 24, 2016** as it is not only relevant to this Court’s Jurisdiction to hear this Appeal having moved for Injunctive relief at the District Court, but further provides a roadmap to the **Documented “Missing Millions” Unaccounted for in these cases, “Missing**

Originals” and documents and Discovery in general, “Missing Witnesses”, pervasive frauds herein and “sharp practices” by the parties against Appellant including the pervasive “conflicts of interest” which have been “controlling the withholding of Discovery” and “Discovery used as a Weapon” throughout these related proceedings.

26. This Court is respectfully referred to Exhibit 10 of Plaintiffs’ Summary Judgment motion (1 of 2 “Probate Orders submitted by Plaintiffs) which is a “Final Judgment” on “validity” of Testamentary instruments from Judge Phillips in Florida issued Dec. 16, 2015 while the parties were awaiting the first Summary Judgment determination from the US District Court (Summary Judgment filings “No 1 from summer of 2015).

27. Paragraph 2 of that Final Judgment provides: “Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, *and are valid and enforceable according to their terms.*” See, Adam Simon and Plaintiffs “Round 2” Summary Judgment filing Exhibit 10, Case: 1:13-cv-03643 Document #: 240-11 Filed: 05/21/16 Page 3 of 6 PageID #:4193.

28. **Instead of the Plaintiffs actually attaching the Will of Simon Bernstein so the US District Court could see the “terms” of the Will of Simon Bernstein, Plaintiffs attorney Adam Simon simply made False Statements of Fact in the Statement of**

Facts submitted on Summary Judgment “Round 2” and in the Memorandum supporting the motion quoting from Attorney at Law Adam Simon presently licensed as follows:

“The Probate Orders entered after trial include findings that (i) Eliot is not beneficiary of the Estate of Simon Bernstein; (ii) appoint a guardian ad litem for Eliot’s children; and (iii) Eliot has no standing in the Probate Actions on behalf of himself, the Estate or his children.” See, Case: 1:13-cv-03643

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29. Further from Adam Simon, **“The Probate Orders bar Eliot from the Probate Actions to represent his own interests,”** See, Case: 1:13-cv-03643 Document #: 241 Filed: 05/21/16 Page 11 of 17 PageID #:4263

**ATTORNEY ADAM SIMON ACTING FOR TED BERNSTEIN
CONTINUING FALSE AND FRAUDULENT STATEMENTS NOW USED
BY THE US DISTRICT COURT IN THE ORDER ON APPEAL WHICH
BEGAN WITH TED BERNSTEIN’S COUNSEL ALAN B. ROSE MAKING
FALSE AFFIRMATIVE STATEMENTS OF FACT AND FRAUD UPON
THE COURT IN FLORIDA:**

30. This “fraud” that Appellant was not a “beneficiary” in the Simon Bernstein Estate case that Ted Bernstein’s attorney Adam Simon has used before the US District Court below began with Ted Bernstein’s attorney Alan Rose falsely claiming this to then “new” Judge Phillips in Florida in an after hours filing on the eve of a

Status Conference in the Simon Bernstein Estate case. See Ted Bernstein and Attorney Alan Rose Status Conference filing in Florida as follows:

Ted and Rose in Filing # 32030300 E-Filed 09/14/2015 05:18:25 PM

“TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE”

“Introduction - The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.” (See, full document to be uploaded upon Permission to file Electronically or supplement this filing)

31. As shown in my All Writs filing, this lead to Appellant being denied fundamental rights to be heard and due process even in the “Scheduling” of the alleged “one day” “Validity Trial” that has then been used before this Court to wrongly dismiss all my claims and remove me from the action which had been scheduled in the Shirley Bernstein Trust case which was not even “Noticed for Status Conference” and thus in direct violation of Florida Procedural Laws. See, All Writs Motion Feb. 2016.

32. On or about Jan. 4, 2016 just a few weeks after this “Validity Trial”, Ted Bernstein’s attorney made the following False and clearly Fraudulent Affirmative

Statement of Fact in a Motion to the Florida Court to remove my “standing” in the cases as follows:

“As a result of upholding these documents, the Court has determined that Eliot Bernstein, individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon's and Shirley's Trusts, in amounts to be determined by further proceedings. **Eliot lacks standing to continue his individual involvement in this case.**” See, Jan. 4, 2016 Motion by Ted Bernstein-Alan Rose to be submitted Electronically upon permission or to be supplemented.

33. This statement, however, by this attorney at law Alan Rose, was clearly False and Fraudulent as Judge Phillips had Never done the Acts being claimed as already occurring and none of these alleged acts or findings are in existence in the “Final Judgment” (See, Adam Simon and Plaintiffs “Round 2” Summary Judgment filing Exhibit 10 Probate Order, Case: 1:13-cv-03643 Document #: 240-11 Filed: 05/21/16 Page 3 of 6 PageID #:4193.) and the Transcript of the Validity Trial. Instead, this is simply a FALSE and Fraud Upon the Court scheme and narrative that continued for over a year in the Florida Courts and as alleged in the Appellant’s All Writs Motion for Injunctive relief is part of the wrongful scheme to gain “collateral estoppel” advantage in these proceedings.

ACTUAL WILL LANGUAGE OF SIMON BERNSTEIN

34. While Appellant maintains various legal arguments and objections to any determination of “validity” of Testamentary Wills and Trusts from the Florida proceedings, ARTICLE I of the Simon Bernstein Will upheld and used by Plaintiffs for “collateral estoppel” actually provides by its express terms:

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SHIRLEY, if SHIRLEY survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, **and if SHIRLEY does not survive me, I give this property to my children who survive me, [emphasis added]** divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SHIRLEY nor any child of mine survives me, this property shall pass with the residue of my estate.”

35. Thus, being a natural born child and son to Simon Bernstein who has survived him, the express language of the Will itself which Judge Phillips held to be enforceable “by its terms” establishes Appellant as a “beneficiary” in the Estate of Simon Bernstein with Standing. See, Will of Simon Bernstein 2012 to be submitted upon permission to file Electronically.

ACTUAL WILL LANGUAGE OF SHIRLEY BERNSTEIN HAS SAME LANGUAGE MAKING APPELLANT A “BENEFICIARY” WITH STANDING IN THE SHIRLEY BERNSTEIN ESTATE WHERE

APPELLANT WAS EXPRESSLY NAMED AS A BENEFICIARY IN THE NOTICE OF ADMINISTRATION:

36. The actual Will language of the Shirley Bernstein "Will" which was "validated" by the Probate Order (Exhibit 10) advanced by Plaintiffs and Adam Simon expressly makes Appellant a beneficiary with Standing.

WILL OF
SHIRLEY BERNSTEIN
Dated May 20, 2008

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SIMON L. BERNSTEIN ("SIMON"). My children are TED S. BERNSTEIN ("TED"), PAMELA B. SIMON, **ELIOT BERNSTEIN [EMPHASIS ADDED]**, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SIMON, if SIMON survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, **and if SIMON does not survive me, I give this property to my children who survive me**, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SIMON nor any child of mine survives me, this property shall pass with the residue of my estate.

37. Thus, while there was an “Order” issued in Florida claiming I am not a Beneficiary of the Shirley Bernstein Estate (but No Order in the Simon Bernstein Estate), this Order was clearly erroneous and the product of fraud and Appellant is pursuing motions to vacate in the Florida Courts and will further seek a narrowly tailored Injunction in these federal proceedings.
38. In both the Simon Bernstein Estate and Shirley Bernstein Estate, Appellant was formally Noticed as a Beneficiary in both Notices of Administration. See, documents to be filed Electronically or supplemented.
39. Likewise, in a “resignation letter” by Estate Planner and Ted Bernstein attorney Donald Tescher from Jan. of 2014 after forgeries in the Shirley Estate case were discovered, Donald Tescher stated affirmatively that Appellant was in fact a Beneficiary of the Shirley Bernstein Trust yet Donald Tescher was never produced or called as a Witness in the “validity” Trial despite this letter and despite signing the Notice of Administration in the Simon Bernstein Estate naming Appellant a Beneficiary.

NEWLY DISCOVERED EVIDENCE OF FEB. 9, 2017 AFTER ISSUANCE OF DISTRICT COURT ORDER ON APPEAL WITH ESTATE OF SIMON BERNSTEIN PR BRIAN O’CONNELL ADMITTING THE LANGUAGE MAKING APPELLANT A BENEFICIARY IN THE SIMON BERNSTEIN ESTATE IN STATEMENT CONCEALED AND WITHHELD BY TED BERNSTEIN AND ALAN ROSE SINCE AT LEAST DEC. 22, 2016

40. While Appellant submits to this Court and the Florida Courts the involved attorneys “had to know” the express language of the Wills made Appellant a Beneficiary with Standing, “newly discovered evidence” emerged on Feb. 9, 2017 after issuance of the Summary Judgment Order on Appeal in a filing by Ted Bernstein Attorney Alan Rose in relation to Hearings in the Florida Court for Ted Bernstein and Alan Rose to “act for the Estate” working hand in hand with PR O’Connell despite being “adverse” in this Insurance case.
41. This evidence consisted of a Statement by the PR which is “undated” but which by the submission from Alan Rose shows this Statement was “emailed” to Creditor Attorney Peter Feaman as of Dec. 22, 2016 (See Exhibit 1) **yet withheld from Appellant until Feb. 09, 2017 and concealed from this Court and the US District Court to this very day.**
42. The language of PR O’Connell in this undated “Statement” in part is as follows: “Based upon the Will upheld during a probate trial conducted last December, resulting in a Final Judgment dated December 16, 2015, Simon Bernstein's children are the named devisees of certain personal property,” (emphasis added) . Appellant, as a natural child of Simon Bernstein, is a beneficiary with standing under at least this express language in the Will.

**APPELLANT MOVED TO VACATE CERTAIN SCHEDULING ORDERS
BASED UPON THE FRAUD AND A NEW ORDER OF FLORIDA JUDGE
SCHER UPHOLDS APPELLANT’S STATUS AS A BENEFICIARY IN THE**

ESTATE OF SIMON BERNSTEIN WITH STANDING WHERE FLORIDA JUDGE SCHER HAS “WITNESSED” THE MULTIPLE FILINGS AND ACTS OF TED BERNSTEIN’S ATTORNEY ALAN ROSE FALSELY CLAIMING APPELLANT IS NOT A BENEFICIARY OF ANYTHING:

43. In several of the new Hearings in Florida that Appellant notified the District Court below were about to occur in Appellant’s Jan. 30, 2017 filing (Docket No. 271) the following exchanges have occurred in the Transcript of Proceedings. As will be shown to the Court, *Attorney Alan Rose has only “changed his story” in Florida after being exposed for repeated fraud:*

PROCEEDINGS BEFORE THE HONORABLE ROSEMARIE SCHER THURSDAY,
FEBRUARY 16, 2017

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170216%20HEARING%20TRANSCRIPT%20JUDGE%20SCHER%20CLEAN%20COPY.pdf> 2:38 p.m. -

4:46 p.m.- Simon Bernstein Estate

P. 33 – Rose Addressing the Court

**“14 MR. ROSE: I would just state for the
15 record that he has been determined to have no
16 standing in the estate proceeding as a
17 beneficiary.**

**18 THE COURT: I thought that was in the
19 Estate of Shirley Bernstein.**

**20 MR. ROSE: It’s the same ruling --
21 (Overspeaking.)**

22 THE COURT: Please, I will not entertain

23 more than one person.

24 MR. ROSE: By virtue of Judge Phillips'

25 final judgment upholding the documents, he is

P. 34

1 not a beneficiary of the residuary estate. He

2 has a small interest as a one-fifth beneficiary

3 of tangible personal property, which is –

4 THE COURT: I understand.”

**ESTATE OF SIMON L. BERNSTEIN PROCEEDINGS BEFORE THE
HONORABLE ROSEMARIE SCHER VOLUME II THURSDAY, MARCH
2, 2017 1:35 - 3:39 P.M. TRANSCRIPT EXCERPTS**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170216%20and%2020170302%20Hearing%20Transcripts%20Combined%20WITH%20EXHIBITS%20JUDGE%20SCHER%20CLEAN%20COPY.pdf>

Page 127 – Eliot addressing the Court

“9 forthcoming. And I think we'll be able to show

13:42:51 10 that there's been fraud on this Court. The

11 other date in that hearing if you look at the

12 transcript Mr. Rose claimed that I had no

13 standing, and you overruled that, or whatever

14 you call it, you did.

13:43:03 15 THE COURT: I did.”

Page 138 – Court Addressing Eliot

“13:51:55 10 THE COURT: You don't have to. You have

11 standing. You are sitting there. I have
 12 allowed it. I have allowed it. You are a
 13 tangible beneficiary whatever assets remain
 14 outside of the Simon trust. I think everyone
 13:52:08 15 is on the same page. If it's a dollar or if
 16 it's ten dollars, that's where you have -- now,
 17 I have no idea the dollar figures in any of
 18 this.
 19 MR. ELIOT BERNSTEIN: None of us do.”

44. As will be further shown when Appellant moves for a Stay and Injunctive relief in these federal proceedings, there has Never been any “Construction Hearings” in Florida on the meaning of any of the documents including the alleged “power of appointment” exercised by Simon Bernstein nor any hearing on the Shirley Bernstein Trust where multiple documents to this day have never been produced. While parts of this new Order from Judge Scher are on Appeal by Appellant, the new Order does Find as follows:

April 27, 2017 Scher Order stating APPELLANT ELIOT BERNSTEIN IS A

BENEFICIARY:

“Elliot Bernstein joins Stansbury's opposition to the appointment of Mrachek Firm.

Elliot is a residuary beneficiary of any tangible property of the Estate. All

other beneficiaries (Trust Beneficiaries) approve the retention of the Mrachek Firm.” (See Attached Order Exhibit 2).

APPELLANT REQUESTS LEAVE TO SUPPLEMENT FILINGS AS NEW FILINGS BY TED BERNSTEIN'S ATTORNEY ALAN ROSE SHOW TED BERNSTEIN DIRECTLY ACTING TO "CONTROL" THE HIRING AND PAYMENT OF THE ESTATE'S COUNSEL TO "CHALLENGE" TED BERNSTEIN IN THIS VERY FEDERAL CASE OVER "INSURANCE"

45. Appellant seeks leave to supplement these filings and file Electronically to show the "Inherent Conflicts of Interest" which continue despite Appellant's Motion for Injunctive Relief in Feb. of 2016 showing the District Court the inherent conflicts of interest and need for use of the "inherent powers" an Eli "probe" of side deals and agreements. See, All Writs Injunction Motion Feb. 2016.
46. In what is inherently conflicting and bizarre, it has been the Creditor William Stansbury who has been forced to pay for the Estate of Simon Bernstein's counsel in this Federal case over the Insurance even though the Creditor and Estate are adverse in a separate action in Florida where the Creditor seeks nearly \$3 million in damages.
47. The All Writs Injunction motion filed by Appellant had already shown the US District Court that there is a "secret" undisclosed "settlement" between Creditor Stansbury and Ted Bernstein who settled for himself "individually" with Stansbury while also acting in conflict as the Trustee of the Shirley Bernstein Trust and on behalf of certain Simon Bernstein entities who were also sued by Stansbury.
48. In documenting many "Missing Millions" in the All Writs filed with the US District Court in Feb. 2016 which was "Denied" by "Minute Order" but not

“stricken” from the Record as a pleading, this Writ showed there has never been Any Accounting in the Shirley Bernstein Estate or Trust and Appellant asserts this is part of the reason for the scheme to deny Appellant’s “standing” in order to “silence” Appellant from exposing the frauds, crimes and missing assets.

49. These conflicts have continued by the same parties who have “controlled” Discovery and access to documents throughout, Documents which should answer the very central issues in this action of “where is the Trust”, what is the “right Trust” and “where is the Insurance Policy”. See All Writs Motion Feb. 2016.
50. The Conflicts persist where again Ted Bernstein and Estate PR O’Connell while “adverse” in this action are working in “unity” in the Florida courts where now the PR of the Estate has sought to “hire” Ted Bernstein’s Attorney Alan Rose and Mrachek law firm while being “adverse” here in Illinois yet where the Estate did not oppose Ted Bernstein and Alan Rose coming in to “control” the Illinois Insurance litigation attorney for the Estate in this case on a motion by the Creditor Stansbury to be “discharged” from further paying for the Illinois Insurance counsel of the Estate.
51. In its recent Order of April 2017, Judge Scher specifically made findings of this Conflict involving Ted Bernstein and the Estate in the Illinois insurance case as follows: “The Court finds Mr. O’Connell to be credible. Conserving the Estate’s assets by not having to pay the Personal Representative to be involved in the

Stansbury litigation is a laudable goal; nonetheless, the Court cannot ignore the fact that the Estate and Ted are adverse in the Illinois lawsuit. Moreover, Mr. O'Connell is capable of representing the Estate. While the Illinois action is still pending, the Court declines to appoint Ted as Administrator Ad Litem." (emphasis added). See attached Exhibit 2.

52. Appellant asks this Court to take notice that not only is Appellant in the process of filing other motions to vacate in the Florida Courts based on various frauds as the "onion is peeled back" layer by layer, Appellant will also be filing to Remove both Ted Bernstein in all capacities as Trustee in Florida and PR Brian O'Connell also to be removed as PR of the Estate of Simon Bernstein on multiple grounds of misconduct and fraud including but not limited to the fraud in Denying Appellant's status as Beneficiary and concealing this fraud from the Federal Courts and statutory grounds in Florida for failing to account and other grounds shown in the All Writs Motion of Feb. 2016.

53. Appellant points out to this Court as shown to new US District Court Judge Blakey in the All Writs Motion for Injunction of Feb. 2016 that prior Judge St. Eve had "stayed Discovery" due to no proof that Ted Bernstein was a proper Trustee and yet somehow while never determining this, Discovery then was opened and closed and Appellant has repeatedly moved for opening Discovery on specific topics.

54. Par. 20 of the Writ provided, “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 Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16 Page 9 of 132 PageID #:3643 Page 9 of 132 remains disputed. The Trustee/Trust/Beneficiaries/Policy issues remains undetermined presently and this Court’s jurisdiction is imminently threatened by the permanent loss of evidence, documents and discovery by the parties orchestrating proceedings in Florida where this evidence and the parties in possession of such evidence should be enjoined herein.” See, Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16 Page 9 of 132 PageID #:3643.
55. Appellant will show this Court that the District Court’s Order was clearly erroneous, used improper standards switching the burden of proof on Summary Judgment, was an abuse of discretion and further clearly improperly as even taking the District Court’s claim that Plaintiffs in this case have said I am a 1/3 “beneficiary of the Insurance proceeds thus I can not show “damages” if the Plaintiffs win, this is erroneous as it fails to consider the “delay” damages by the wrongful coverup of operative documents and related damages to be fully briefed on Appeal.

56. Until the frauds and inherent conflicts are resolved and addressed by the Courts, no further action should continue and Appellant will be filing for a formal Stay and Injunctive relief in the federal actions according to the Rules including seeking an “inquiry” of the conflicted counsels.

APPELLANT HAS REQUESTED FLORIDA JUDGE SCHER TO NOTIFY THIS COURT AND ALL AUTHORITIES OF THE ONGOING FRAUDS UPON THE COURT IN RECENT LETTER MOTION OPPOSING ANOTHER “UMC” (UNIFORM MOTION CALENDAR - NON EVIDENTIARY) HEARING BY TED BERNSTEIN AND ALAN ROSE ON CLEARLY CONTESTED ITEMS IN THE SHIRLEY TRUST AND ESTATES, A LETTER COPIED TO US. DEPT OF JUSTICE CIVIL RIGHTS SECTION HEAD, US ATTORNEY IN SDNY, AND “DC NO. 1”

57. It is further noted for this Court that Appellant has specifically requested Florida Judge Scher who has been a “Witness” to the frauds upon the Court by Ted Bernstein and Alan Rose and inherent conflicts of interest to notify proper authorities including the US District Court and this US 7th Circuit Court of Appeals.

58. Upon information and belief, neither Attorney Adam Simon for Ted Bernstein, nor Alan Rose for Ted Bernstein, nor PR Brian O’Connell for the Estate of Simon Bernstein, nor Chicago counsel Stamos have Notified the US District Court nor this US 7th Circuit Court of Appeals of the fraud or sought to correct the fraud by correcting the erroneous statements and pleadings that Appellant Eliot I. Bernstein is in fact a Beneficiary with Standing thus far in at least the Simon Bernstein

Estate. A copy of this Letter request also transmitted to Federal Investigative authorities is attached as (See Exhibit 3).

ADDITIONAL REASONS TO ACCEPT LATE FILING; ONGOING ELECTRICAL OUTAGES, EMAIL AND WEBSITE DOCUMENT HACKING

59. I was granted permission to file Electronically in the District Court and respectfully request permission of this Court to do so for future filings in this Appeal.
60. I note for this Court that I did not receive the initial Orders sent US Mail from this very Court and only received any of the Orders by Mail for the first time on April 11, 2017 just entering the Jewish Passover time and other religious holidays.
61. I have no knowledge of why this Court's prior Orders were not received by the US mail and notified one of the Clerk's about this who also maintained another Order that I had also not received and appeared not to have been sent to me at that time.
62. I contacted the 7th Circuit Clerk's Office to notify the Court that I did not receive these original Orders by the US Mail and then had received Orders on or about April 11, 2017.
63. I further notified one of this Court's Clerks that to my knowledge I am now on the ECF filing system with the 7th Circuit and would be submitting this Motion to accept my Statement of Jurisdiction and also for further extensions of time to cure any other deficiencies in the Appeal filings in this case.

64. I was not aware until after business hours on the day of this Court's most recent deadline of May 26, 2017 that while I had "registered" with the ECF for this 7th Circuit Court of Appeals, I was not actually able to "submit" filings as I apparently needed to file a separate motion to get permission to file Electronically which I now request.
65. This Court's April Order had indicated a filing deadline of April 17, 2017 and I spoke with the Clerk's Office again on April 18, 2017 after also getting access to Pacer information from the District Court of the Northern District of Illinois under Case No. 1:13-CV-O3643 to first discover that there were several entries relating to this Appeal on file with the District Court that was requiring action on my part and yet I never received any of the filings Electronically through the District Court either despite having been granted permission and was able to File electronically and receive documents and notices Electronically in the underlying case for well over three years.
66. That on April 09, 2017 Appellant's home power began massive surges resulting in ongoing power outages that resulted in our oven almost catching on fire and blown out and other electrical items being destroyed including computer and network equipment.
67. Thus, in addition to not receiving Court documents via the US Mails and not receiving Electronic Notice and Documents via the US District Court of the

Northern District of Illinois, that my Home has been experiencing serious and significant power and electrical “abnormalities” for over 2 months frequently knocking out the Internet and home computers and causing substantial delays in the processing of documents and responses to matters both in this Illinois insurance case and the related Florida State Court Trust and Estate cases.

68. I have had to file multiple motions for Extensions of time in both the 4th District Court of Appeals in Florida and the 15th Judicial Circuit where these Florida state Court cases are pending and have received extensions for multiple filings thus far.
69. That Florida Power & Light was contacted about the problems that almost set the home oven on fire and sent workers to the home who immediately removed our home from the power box and plugged our power into the neighbor’s power box through a “temporary line” above ground and opened a ticket for service to take out what appeared to be faulty wiring in our yard.
70. Despite reconnecting the power to the neighbor the surges continued and continued to disrupt power, often for hours of the day and during such time all power, internet, phones, etc. used for working on filings was down. FPL then connected the home directly to the transformer and again the power surges continued and it was discovered that the transformer wires were melted and in contact with each other causing part of the problem.

71. The Internet Comcast Box was blown out and had to be replaced leaving us with 3 days of no Internet services.
72. The transformer was fixed and our home was re-connected directly to the power source and yet the problem still continues and FPL now is investigating the wiring to our home as also faulty.
73. These problems have caused us massive loss of time to work as Appellant works from home. Appellant can produce Witnesses who have been to our home that has seen these electrical problems first hand and Appellant has submitted proof of multiple Electrical work "Tickets" with FPL to the State Courts of Florida.
74. In addition to all of the electrical and power issues, Appellant has further been receiving Notices from a company called Canaca located in Canada that hosts my website and mail where I maintain an online storage and "Docket system" for the filings and pleadings in multiple cases including this Illinois insurance action.
75. Canaca has been notifying me of multiple "spamming" events through my website that I have no knowledge of and also discovered that somehow my Password and email system was hacked where I have had substantial delays in receiving Electronic notices of Court filings via email at iviewit@iviewit.tv.
76. This has also caused further delays as I use this online website docketing system to organize and review and refer to Court filings in order to respond to new motions for file motions of my own and have discovered certain document entries which

appear to be tampered with by either having the wrong Dates associated with the filing or being in the wrong time period which has resulted in significant time to check, double check and cross check filings for accuracy.

77. This constant and continuous checking and cross-referencing of documents and filings is further exaggerated by the pervasive Frauds Upon the Court and actual proven frauds in Documents filed by parties and attorneys connected with Plaintiff Ted Bernstein and perhaps others all of which has been extremely difficult and time consuming with repeated electrical and internet outages many of which have specifically targeted and impacted my home computer systems.
78. In fact just 10 days or so before this Illinois Insurance action was first “removed” to Federal Court in the US District Court of the Northern District of Illinois on or about May 16, 2013 , I had just filed for Emergency Injunctive “Freeze” Assets and Documents relief on May 6, 2013 in the Florida Estate case of my deceased mother Shirley Bernstein and separately in the Florida Trust case after I discovered that Plaintiff Ted Bernstein’s counsels Tescher & Spallina had begun filing “forged” and fraud documents in the Shirley Estate case in October of 2012 falsely using my then recently Deceased father Simon Bernstein to file documents in that case to try and “close” the Estate when in fact Simon had passed away in September of 2012.

79. This lead not only to Florida State Court Judge Colin stating on the record in Sept. of 2013 that he had enough information to read certain attorneys, Robert Spallina, Esq., Mark Manceri, Esq. and Donald Tescher (who failed to appear) and fiduciaries (Spallina, Ted Bernstein and Tescher) their “Miranda Warnings” but also lead to a Criminal prosecution and guilty plea by Tescher & Spallina Paralegal and Notary Public Kimberly Moran after the Governor Rick Scott’s Office of Florida began an investigation upon my complaint of Notary fraud in the case and then referred it to the Palm Beach County Sheriff for investigation where it was learned she had forged six parties names on documents submitted to the FL court by the law firm of Tescher & Spallina, PA in my mother’s estate case, including forging my deceased father’s signature and my own.
80. This time period of October of 2012 when the Shirley Estate frauds were occurring shortly after the passing of my father Simon Bernstein in Sept. of 2012 is also the same time period that Plaintiff Ted Bernstein’s counsel and Estate and Trust co-drafter and planner Robert Spallina was falsely and fraudulently filing to Collect the Insurance proceeds in this case as the alleged “Trustee” of the alleged “lost” missing Trust without informing the Carrier that Murder allegations had been made by Plaintiff Ted Bernstein on the night of Simon Bernstein’s passing at the Hospital and that an open Palm Beach Sheriff Investigation (PBSO) was pending.

81. Somehow, both Tescher and Spallina who not only were the “Drafters” and Estate and Trust Planners for Simon and Shirley Bernstein, Co-Trustees and Co-PR’s in my father’s estate and trust and counsel to their close friend and business associate Ted Bernstein who was alleged Successor Trustee and Successor PR of my mother’s estate and trust but both Tescher and Spallina were also involved in the frauds and the most obvious parties to have Maintained Records relevant to this case were allowed to be Dismissed from this Insurance action which I opposed without ever being allowed to be Deposed or required to provide Discovery which I have sought in the District Court on multiple occasions but denied thus far.
82. As noted in my Jurisdictional Statement, I did move for Injunctive Relief in the District Court under the All Writs Act specifically seeking Injunctive relief to preserve and protect Documentary evidence and records from all of the involved parties but was denied.
83. As noted in my pleadings before the District Court and the Jurisdiction Statement herein, I also have extensive Insurance Industry experience and now state to this Court that to my knowledge and research thus far, this is a case of first impression and occurrence in that it allegedly involves Insurance Carriers who have allegedly “Lost” the Actual Policy at issue despite being a highly regulated industry with rigorous Record Retention requirements.

84. This is “unheard of” in the Industry and I can produce other witnesses from the Insurance Industry that would support this and yet, “somehow”, all of the Carriers were also let out of the District Court case with no Depositions or additional Discovery which was objected to by Appellant who repeatedly moved the District Court to reopen Discovery.
85. It is just as unlikely that there are “**No Original Documents**” produced from any of my Father’s affairs and cases having had multiple businesses, earned millions of dollars and having multiple “professional” Attorneys and Fiduciaries involved and just as unlikely that there are so many “**missing**” and “**lost**” Documents from my Father’s businesses and life and I submitted a further Declaration to the District Court about the extensive Record Keeping practices of my father Simon Bernstein and his businesses which is why my claims and version is the most “reasonable” and that “**reasonable jurors**” would likely agree that this action is really about Fraud and intentional record hiding, spoliation or destruction as set out in my Summary Judgment responses and the related claims advanced in my pleadings which I sought to Amend more than once but was also Denied by the District Court.
86. During all of this time up to the present and as raised originally in my Motion for Injunctive Relief under the All Writs Act filed in Feb. 2016, Appellant, who is Pro Se and not a law firm has been assailed with a mass of court pleadings due, court

appeals due and hearings, in the 14 cases relating to these matters in the Florida Courts and has been late or needed extensions in virtually all of them as a result of these issues.

87. I received No Notice from the District Court whatsoever that “somehow” I was “removed” from receiving Filings by the District Court electronically and thus have no idea why I did not receive this Court’s Orders electronically from the District Court which are on the Docket below.

88. Thus, in addition to moving this Court to accept as late my Jurisdictional Statement, I further move for a reasonable extension of time to cure any other deficiencies in my filings and to further brief the Jurisdictional issues if necessary.

89. This Court should be aware that there is massive “fraud” in the underlying proceedings and also in the related Florida Court Estate and Trust cases that impact not only the merits of each case but even my ability to timely respond to matters as there is a constant “unraveling” of existing frauds, including PROVEN forgery of dispositive documents, discovery and admission of new frauds by fiduciaries and counsel, including but not limited to additional frauds on the court, and related items that take significant amounts of time on a regular basis to address in each of approximately 14 individuals legal actions involving the Estates and Trusts of my family and all while not being a law firm but rather a Pro Se litigant.

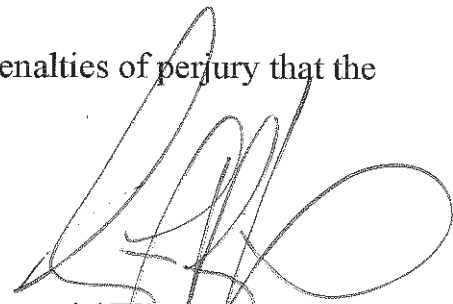
90. In fact, as I have alleged, the mere “filing” of the underlying action which is the subject of this Appeal which was a State Court filing in Cook County in April of 2013 until “removed” to Federal Court in May of 2013 by one of the involved “Insurance Carriers” is itself an act in “fraud” and “fraud upon the court” that has never been fully addressed or properly addressed by the District Court of the Northern District of Illinois.

WHEREFORE, for all of the foregoing reasons, Appellant prays for an Order accepting my Jurisdictional Statement as late, accepting my informa pauperis statement, granting permission to file Electronically in the ECF system for future filings, granting permission to exceed the page lengths where necessary herein and for such other and further relief as may be just and proper.

Declaration

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

DATED: June 15, 2017



/s/ Eliot Ivan Bernstein

Cross and Counter-
Plaintiff, Appellant PRO
SE

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CERTIFICATE OF SERVICE

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

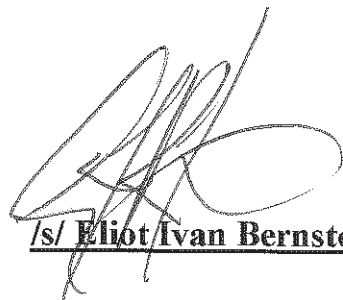
SERVICE LIST

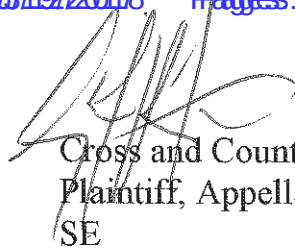
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EXHIBIT 1

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

IN RE: CASE NO. 502012CP004391XXXXNBH
ESTATE OF SIMON L. BERNSTEIN,

**PR'S STATEMENT OF ITS POSITION THAT THERE IS NO CONFLICT
AND HIS WAIVER OF ANY POTENTIAL CONFLICT**

I, Brian O'Connell, am the court-appointed Personal Representative ("PR") of The Estate of Simon L. Bernstein ("Estate"). Based upon the Will upheld during a probate trial conducted last December, resulting in a Final Judgment dated December 16, 2015, Simon Bernstein's children are the named devisees of certain personal property, but the sole residuary beneficiary of the Estate is the current trustee of the Simon L. Bernstein Amended and Restated Trust dated July 25, 2012 ("Trust"). That role is currently being fulfilled by Ted S. Bernstein, as Successor Trustee ("Trustee").

There are certain persons who have asserted potential claims against the Estate. The largest such claim is an independent action styled *William E. Stansbury, Plaintiff, v. Estate of Simon L. Bernstein and Bernstein Family Realty, LLC, Defendants*, in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No.: 50 2012 CA 013933 MB AN (the "Stansbury Lawsuit"). In that action, Stansbury is suing the Estate for more than \$2.5 million, asserting claims for breach of oral contract; fraud in the inducement; civil conspiracy; unjust enrichment; equitable lien; and constructive trust. Each of these claims arises from Stansbury's employment with and involvement in an insurance business in which the principal shareholders were Ted Bernstein and Simon Bernstein.

EXHIBIT 2

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION "IH"

Case No. 50 2012-CP-4391 XXXX NB

IN RE: THE ESTATE OF:
SIMON BERNSTEIN,
Deceased.

ORDER DENYING MOTION TO VACATE
AND
DENYING MOTION TO DISQUALIFY FOR INAPPROPRIATE JURISDICTION,
ALTERNATIVELY, DENYING ON ITS MERITS, AND
ORDER DENYING APPOINTMENT OF TED BERNSTEIN AS ADMINISTRATOR AD
LITEM

THIS MATTER came before the Court February 16, 2017, March 2, 2017, and March 16, 2017 on the following matters:

1. October 7, 2016, D.E. 496, Stansbury's Motion to Vacate in Part the Court's Ruling on September 7, 2016, and/or Any Subsequent Order, Permitting the Estate of Simon Bernstein to Retain Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel and Motion for Evidentiary Hearing to Determine Whether Rose and Page, Mrachek are Disqualified from Representing the Estate Due to an Inherent Conflict of Interest.
2. November 28, 2016, D.E. 507, Stansbury's Motion to Disqualify Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.¹ as Legal Counsel for the Estate of Simon Bernstein Due to an Inherent Conflict of Interest.
3. Evidentiary Hearing on Trustee's Motion to Approve Retention of Counsel and to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against the Estate by William Stansbury, D.E. 471, Objection to Trustee's Motion to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury, D.E. 475, and Order Granting Retention of Counsel and Deferring on Administrator Ad Litem, D.E. 495

¹ Hereafter, "Mrachek Firm" unless quoted separately from an Order or document.

proceedings in any jurisdiction for the protection of the estate and of the personal representative.

3. On September 1, 2016 the parties presented to the Court on Successor Trustee's [Brian O'Connell's] Motion to Approve Retention of Counsel AND, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury.
4. On September 29, 2016, D.E. 495, this Court entered its Order Approving Retention of Counsel and Deferring Ruling on Appointment of Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury. This Order states, "The Court, having reviewed the Motion and the record, *having been advised in the Motion that the PR and the beneficiaries of the Estate believe this relief will result in a benefit to the Estate, having been advised that William Stansbury has filed a written objection to Ted S. Bernstein serving as Administrator. . . .*" (emphasis added).
5. Notwithstanding the Personal Representative's statutory right to retain counsel without court approval, the September 29, 2016 Order then grants in part and defers in part, stating as follows:

2. The Court approves the retention of the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek-Law") to serve as counsel for Brian O'Connell, as Personal Representative of the Estate of Simon L. Bernstein, for the purpose of defending the Estate in an independent action brought by William Stansbury. The reasonable costs and attorneys' fees incurred by Mrachek-Law in defending the claim shall be paid by the Estate.

3. Unless Stansbury withdraws his objection, the Court will need to conduct an evidentiary hearing on that portion of the motion which seeks the appointment of an administrator

ad litem. The Court will determine at the evidentiary hearing whether to appoint Ted S. Bernstein as administrator ad litem under Rule 5.120, which provides that when necessity arises, "the court may appoint an administrator ad litem . . . without bond or notice for that particular proceeding." Until the evidentiary hearing, the Court defers ruling on the administrator ad litem issues.

6. Noteworthy is the fact that in the Court's Order appointing the Mrachek Firm, no objection from Stansbury was noted; the only objection noted is to appointment of Ted as administrator ad litem to which an evidentiary hearing would be required.
7. The 2012 independent action brought by William Stansbury referenced in the Court's Order cited above is a 2012 case pending in the Civil Division, 50-2012-CA-013933, Division AN, wherein Stansbury seeks to recover in excess of \$2.5 million from the Estate of Simon Bernstein based upon alleged misconduct of Simon Bernstein. (After Simon's death the Personal Representative of the Estate was substituted as the real party in interest.)
8. Stansbury's claims arise from Stansbury's part ownership and employment with LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC ("AIM"), two companies founded by Simon and Ted Bernstein. Stansbury has asserted claims against the Estate of Simon Bernstein for breach of contract, fraudulent inducement, conspiracy, equitable lien, and constructive trust. Stansbury is a claimant, not a creditor, against the Estate. On June 23, 2014 in the independent civil case, 50-2012-CA-013933, the Court entered an Order of Dismissal with Prejudice of Certain Parties and Claims; specifically, the Court dismissed Defendants, Ted S. Bernstein, individually, LIC Holdings, Inc., Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC and the Shirley Bernstein Trust Agreement dated May 20, 2008, D.E. 214.
9. Pending ending in Illinois is the case of *Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95, Ted Bernstein, et al. v. Heritage Union Life Insurance Company, et al.*, Case No. 13

12. On October 7, 2016, D.E. 496, in the instant probate action Stansbury filed his Motion to Vacate in Part the Court's Ruling on September 7, 2016, and/or Any Subsequent Order, Permitting the Estate of Simon Bernstein to Retain Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel and Motion for Evidentiary Hearing to Determine Whether Rose and Page, Mrachek are Disqualified from Representing the Estate Due to an Inherent Conflict of Interest.
13. In D.E. 496, Stansbury's Motion to Vacate, Stansbury states as follows:
 1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein ("Simon"), Ted Bernstein ("Ted") and several corporate defendants in August of 2012 to collect compensation, and other damages due Stansbury arising out of an insurance business in which Stansbury, SIMON and TED were principals. Stansbury asserted claims against Simon and Ted both as agents of the corporate defendants and in their individual capacities (the claims against TED and the companies have settled). The Shirley Bernstein Trust was dropped as a Party.
14. After Simon died, the Estate was substituted into the lawsuit; Ted Bernstein serves as Trustee of the July 25, 2012 "Simon Trust". It is undisputed that Stansbury has settled the claims against Ted, individually, and as to the corporate defendants. It is undisputed that Mrachek Firm represented some of the dismissed corporate defendants in the civil independent lawsuit set forth above.
15. Mrachek Firm represents Ted Bernstein, as Trustee of the Simon Trust, the sole residuary beneficiary of the Estate with the exception of certain personal property, in the current probate litigation involving the Estate of Simon, 50-2012-CP-4391. The Simon Trust is a pour over trust and Simon's ten grandchildren are the beneficiaries of the Simon Trust.

16. On November 28, 2016, D.E. 507, Stansbury filed his Motion to Disqualify Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel for the Estate of Simon Bernstein Due to an Inherent Conflict of Interest.
17. Elliot Bernstein joins Stansbury's opposition to the appointment of Mrachek Firm. Elliot is a residuary beneficiary of any tangible property of the Estate. All other beneficiaries (Trust Beneficiaries) approve the retention of the Mrachek Firm.
18. Stansbury's Motion to Vacate, D.E. 496, and Stansbury's Motion to Disqualify, D.E. 507, are *not* based on perceived conflict arising out of the Mrachek Firm and alleged association or representation of William Stansbury, Plaintiff in the civil suit. *It is undisputed that the Mrachek Firm never represented Stansbury, obtained any confidential information from Stansbury, or attempted to use, obtained, or are in possession of privileged information regarding Stansbury and now must be disqualified.* In fact, there was no evidence that Mrachek has obtained or used any information that would prejudice a current or former client.
19. Stansbury is objecting to the Personal Representative's choice of counsel for the Estate based on a perceived conflict from Mrachek's Firm's representation of Ted as Trustee of the Simon Trust.
20. With regard to the Motion to Vacate Judge Phillip's Order, the Court finds, without court order, the Personal Representative has the right to retain counsel to defend lawsuits. Independent of the same, after a hearing wherein no objection was raised, Judge Phillips granted the retention of the Personal Representative's choice of counsel. This Court denies the motion to vacate.
21. With regard to the Motion to Disqualify, the parties have all stipulated and agreed that the undersigned judge should decide this matter versus the civil judge in the probate proceeding.

27. The Estate's goal in the Stansbury litigation is to defend against Stansbury's claim and minimize Stansbury's recovery. The Mrachek Firm has extensive knowledge of this lawsuit. Given Stansbury is the Plaintiff in that lawsuit, the Court embraces the Comment to Rule 4-1.7 and heeds its warning. The Court finds no conflict in affirming the Personal Representative's choice of counsel, the Mrachek Firm, to defend the Estate in the Stansbury litigation. Additionally, this Court finds that if in fact there is a conflict, it has been waived by the Personal Representative.

28. The Court now turns to the question of whether Ted Bernstein should be appointed by the Court as an Administrator Ad Litem on behalf of the Estate in the Stansbury litigation.

29. Florida Statute 733.308 Administrator ad litem states as follows:

When an estate must be represented and the personal representative is *unable to do so*, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding. The fact that the personal representative is seeking reimbursement for claims against the decedent does not require appointment of an administrator ad litem.

(emphasis added).

30. Brian O'Connell testified in Court that it is his position that the appointment of Ted would be in the best interest of the Estate for the following reasons: Ted has the most knowledge of the claims; Ted will not charge the estate and Mr. O'Connell would charge for his time; the appointment is limited to the civil litigation and has no overlap with the Insurance Litigation in Illinois; Mr. O'Connell's busy schedule would delay the litigation's progress; and, he would still be intricately involved with any negotiations on behalf of the Estate. There is no indication that Mr. O'Connell is unable to represent the Estate.

31. The parties stipulated to the March 13, 2017 deposition of Brian O'Connell coming into evidence. Stansbury's counsel, Mrachek Firm, and Elliot all had the opportunity to question Mr. O'Connell regarding his positions regarding the Estate being represented by Ted as administrator ad litem. Additionally, all parties questioned Mr. O'Connell regarding his

EXHIBIT 3

Eliot Ivan Bernstein

From: Eliot Ivan Bernstein <iviewit@gmail.com>
Sent: Thursday, May 18, 2017 6:05 AM
To: Rosemarie Scher (CAD-divisionfh@pbcgov.org); Cindy Hoekstra (philadelphia.complaints@ic.fbi.gov); 'tom.wheeler@usdoj.gov'; joon.kim@usdoj.gov; Frank Brady aka Kevin McKeown @ Expose Corrupt Courts (CorruptCourts@gmail.com); Serena H. Olsen (serenaholsen@gmail.com); nicolemerritt611@gmail.com; John Pacenti ~ Reporter @ Palm Beach Post (jpacenti@pbpost.com); 'Alan B. Rose Esq. (arose@pm-law.com)'; 'Anderson, Charlene'; 'arose@mrachek-law.com'; 'Brian M. O'Connell PA ~ Partner @ Ciklin Lubitz Martens & O'Connell (boconnell@ciklinlubitz.com)'; 'Charles D. Rubin ~ Managing Partner @ Gutter Chaves Josepher Rubin Forman Fleisher Miller PA (crubin@floridatax.com)'; 'ddustin@tescherspallina.com'; 'Diana Lewis @ ADR & MEDIATIONS SERVICES, LLC - Fla. Bar No. 351350 (dzlewis@aol.com)'; 'Don Tescher'; 'JILL BERNSTEIN IANTONI (jilliantoni@gmail.com)'; 'John J. Pankauski (courtfilings@pankauskilawfirm.com)'; 'john@pankauskilawfirm.com'; 'Kimberly Moran ~ Legal Assistant / Notary Public @ Tescher & Spallina, P.A. (kmoran@tescherspallina.com)'; 'L. Louis Mrachek Esq. @ PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. (lmrachek@mrachek-law.com)'; 'Lindsay Baxley aka Lindsay Giles @ Life Insurance Concepts (lindsay@lifeinsuranceconcepts.com)'; 'Lisa Friedstein'; 'Mark R. Manceri, Esquere @ Mark R. Manceri, P.A. (mrmlaw@comcast.net)'; 'mrmlaw1@gmail.com'; 'Pamela Beth Simon (psimon@stpcorp.com)'; 'Peter Feaman (mkoskey@feamanlaw.com)'; 'Peter Feaman, Esq. ~ Attorney at Law @ Peter M. Feaman, P.A. (pfeaman@feamanlaw.com)'; 'Robert Spallina'
Cc: 'Andrew Dietz @ Rock-It Cargo USA, Inc. (andyd@rockitcargo.com)'; Barbara Stone (bstone12@hotmail.com); Barbara Stone Gmail (bstone575@gmail.com); 'CANDICE BERNSTEIN (tourcandy@gmail.com)'; Candice Schwager (attycandie@gmail.com); Candice Schwager ~ Attorney at Law @ Schwager Law Firm (schwagerlawfirm@live.com); 'Caroline Prochotska Rogers Esq. (caroline@cprogers.com)'; 'Eliot I. Bernstein (iviewit@iviewit.tv)'; iviewit@gmail.com; JoAnne M. Denison Esq. (jmdenison@gmail.com); Kevin R. Hall (kh.itconsultingsalesoffices@gmail.com); 'Michele M. Mulrooney ~ Partner @ Venable LLP (mmulrooney@Venable.com)'
Subject: Improperly Scheduled UMC Hearing brought by Attorney Alan Rose for Ted Bernstein; Judicial Obligations to Report Fraud and Misconduct of Attorneys, etc.
Attachments: 20170511 Feaman Stansbury Reply_Response to Trustees Motion for Approval of Settlement.pdf; 20170427 ORDER SCHER BERNSTEIN Simon Order Denying M.Vacate Denying Motion Disqualify etc 2012-CP-4391.pdf; 20160224 FINAL ESIGNED MOTION FOR INJUNCTION ECF STAMPED COPY.pdf; 20161109 Simon Estate Case 4391 - Trustee Motion (i) APPROVE COMPROMISE AND SETTLEMENT, Appoint Trustee for Trusts Created for Josh Jake Danny & Comp for Guardian.pdf

Tracking:

Recipient	Read
Rosemarie Scher (CAD-divisionfh@pbcgov.org)	Read: 5/18/2017 7:33 AM
Cindy Hoekstra (philadelphia.complaints@ic.fbi.gov)	
'tom.wheeler@usdoj.gov'	Read: 5/18/2017 6:14 AM
joon.kim@usdoj.gov	
Frank Brady aka Kevin McKeown @ Expose Corrupt Courts (CorruptCourts@gmail.com)	

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
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

United Bank of Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, July 5, 2017:

MINUTE entry before the Honorable John Robert Blakey: Oral motion to extend deadline for submitting the pretrial order is granted. Pretrial order shall be submitted on or before 7/7/2017. 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.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
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

United Bank of Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, July 10, 2017:

MINUTE entry before the Honorable John Robert Blakey: The 7/7/17 final pretrial order due date and the 7/14/17 settlement conference date are stricken. This case is set for a status hearing on 7/13/17 at 9:45 a.m. in Courtroom 1725. Parties wishing to appear by phone should contact the Courtroom Deputy, Gloria Lewis, at (312) 818-6699 by noon on 7/12/17. 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 6.1.1.2
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

United Bank of Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, July 13, 2017:

MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 7/13/2017 and continued to 8/29/2017 at 9:45 a.m. in Courtroom 1725. All other deadlines and hearings are stricken. Status will be stricken if parties file dismissal documents prior to the next hearing. Mailed notice(gel,)

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

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
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

United Bank of Illinois

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, August 29, 2017:

MINUTE entry before the Honorable John Robert Blakey: Status hearing held on 8/29/2017 and continued to 12/6/2017 at 9:45 a.m. in Courtroom 1203. 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.

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

SIMON BERNSTEIN IRREVOCABLE)	
INSURANCE TRUST DTD 6/21/95,)	
)	
Plaintiff,	)	Case No. 13 cv 3643
	)	Honorable John Robert Blakey
	)	Magistrate Mary M. Rowland
v.)	
)	
HERITAGE UNION LIFE INSURANCE)	
COMPANY,)	
)	
Defendant,	)	<u>Filers:</u> Simon Bernstein Irrevocable
	)	Insurance Trust Dated 6/21/95,
	)	Ted Bernstein, as Trustee and
	)	Individually,
HERITAGE UNION LIFE INSURANCE	)	Pamela B. Simon, Brian O’Connell, solely
COMPANY	)	in his capacity as successor personal
	)	representative of the Estate of Simon L.
Counter-Plaintiff	)	Bernstein, Jill Iantoni and Lisa
	)	Friedstein.
v.)	
)	
SIMON BERNSTEIN IRREVOCABLE)	
INSURANCE TRUST DTD 6/21/95)	
)	
Counter-Defendant)	

**JOINT MOTION TO ENTER FINAL JUDGMENT INCLUDING
 A DISBURSEMENT ORDER
 PURSUANT TO THE STIPULATION AND
 SETTLEMENT OF THE REMAINING PARTIES**

Now comes Plaintiffs, Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 (“1995 Trust”), Ted Bernstein, and Pamela B. Simon, by and through their attorney, Adam M. Simon, Intervenor, Brian O’Connell, solely in his capacity as successor personal representative for the Estate of Simon Bernstein (“Intervenor” or “Estate”), by and through his attorney, James Stamos, and co-Plaintiffs, Lisa Friedstein and Jill Iantoni, each appearing *pro se*’ (all of the

aforementioned remaining parties are collectively referred to herein as “movants”), and move this court for entry of a Final Judgment and a separate Disbursement Order pursuant to a Settlement and Stipulation of the Parties, Fed. Rule Civ. Pro. 58, and 28 U.S.C. 1335, in support thereof movants state as follows:

1. On or about July 5, 2017, Movants entered into a Settlement Agreement of the remaining issues in this litigation including but not limited to the terms regarding distribution of the Policy Proceeds that remain on deposit with the Registry of this Court.
2. Intervenor, Brian O’Connell, as personal representative of the Estate, subsequently filed a motion to approve the Settlement with the 15th Judicial Circuit of Florida, In and For Palm Beach County where the Estate of Simon Bernstein has been probated and administered.
3. On October 19, 2017, following an evidentiary hearing on Intervenor’s motion to approve the Settlement, Judge Rosmarie Scher, 15th Circuit Court Judge for Palm Beach County, FL, entered an Order granting Intervenor’s motion and approved the Settlement. A true and correct copy of the Order approving granting the Estate’s motion is attached hereto and made a part hereof as **Exh. 1**.
4. Here, movants jointly move to enter a final judgment in a form substantially similar to the Proposed Orders submitted to chambers on or about the time of filing of this motion.

5. As part of the final judgment, movants seek a separate disbursement order of interpleaded Funds, pursuant to 28 U.S.C. 1335. (See the proposed Disbursement Order submitted to chambers.)
6. Movants further request, pursuant to Fed. R. Civ. Pro. 58(a) and (d), that this court direct and authorize the Clerk to timely issue a “separate document” evidencing the final judgment entered herein.

WHEREFORE, movants respectfully request that this court grant their joint motion to enter final judgment and disbursement order pursuant to movants’ stipulation and settlement, and such further relief as this court may deem just and proper.

Respectfully submitted,

/s/ Adam Simon
Adam Simon, Esq.
ARDC #6205304
303 East Wacker Drive
Suite 2725
Chicago, Illinois 60601
(312) 819-0730
Attorney for Plaintiffs. 1995 Trust,
Ted Bernstein and Pam Simon

/s/ James Stamos
James Stamos, Esq.
ARDC #3128244
STAMOS & TRUCCO LLP
One East Wacker Drive, 3rd Floor
Chicago, IL 60601
Attorney for Intervenor, Brian O’Connell,
solely in his capacity as successor personal
representative, for the Estate of Simon L. Bernstein

/s/ Jill Iantoni

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
Appearing *Pro Se*

/s/ Lisa Friedstein

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
Appearing *Pro Se*

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

PROBATE DIVISION

FILE NO.: 502012CP004391XXXXNB IH _____

IN RE: ESTATE OF

SIMON L. BERNSTEIN,

Deceased. _____ /

**ORDER ON SUCCESSOR PERSONAL REPRESENTATIVE'S
VERIFIED MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
ENTERED IN ILLINOIS FEDERAL ACTION**

THIS CAUSE having come upon Successor Personal Representative, Brian M. O'Connell's, Verified Motion for Approval of Settlement Agreement Entered in Illinois Federal Action ("Motion"), and the Court being duly advised on the premises, it is thereupon

ORDERED AND ADJUDGED as follows:

1. The Motion is GRANTED DENIED.

*After hearing testimony + witnesses, the Court finds
it is appropriate to approve Settlement.*

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida, this _____
day of 10/19/2017, 2017.



Rosemary Scher

ROSEMARY SCHER, Circuit Judge
ROSEMARY (10)

**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)

**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, Brian O'Connell, solely
in his capacity as successor personal
representative of the Estate of Simon L.
Bernstein, Jill Iantoni and Lisa
Friedstein.**

NOTICE OF MOTION

To: See Certificate of Service

PLEASE TAKE NOTICE that on the 14th day of November, 2017, at 9:45 a.m., or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable John Robert Blakey in Room 1203, United States District Courthouse, at 219 South Dearborn Street, Chicago, Illinois, or before any other judge that may be sitting in his place and stead and shall then and there present Movants' Joint Motion to Enter Final Judgment and a Disbursement Order Pursuant to Stipulation and Settlement of the Parties has been filed electronically and is herewith served upon you.

Dated: November 7, 2017

Respectfully submitted,

/s/ Adam Simon

Adam Simon, Esq.

#6205304

303 East Wacker Drive,

Suite 2725

Chicago, Illinois 60601

(312) 819-0730

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused copies of the Notice of Motion, Motion to Enter Final Judgment and a Disbursement Order Pursuant to the Stipulation and Settlement of the Parties *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:

James J. Stamos
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
*Attorney for Intervenor,
Estate of Simon Bernstein*

/s/ Jill Iantoni
Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
Appearing *Pro Se*

/s/ Lisa Friedstein
Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
Appearing *Pro Se*

on this 7th day of November, 2017.

/s/ Adam Simon
Adam Simon, Esq.
#6205304
303 East Wacker Drive, Suite 2725
Chicago, Illinois 60601
(312) 819-0730
Attorney for Plaintiffs