

# THE SIMON LAW FIRM

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DAVID B. SIMON\*

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ADAM M. SIMON

E-Mail: asimon@chicago-law.com

\*ALSO ADMITTED IN CA

*VIA CERTIFIED MAIL AND E-MAIL*

Mr. Eliot Bernstein  
2753 NW 34<sup>TH</sup> Street  
Boca Raton, FL 33434

Re: Simon Bernstein Irrevocable Trust dtd 6/21/95 v. Heritage Union Insurance

Dear Eliot,

Enclosed is an executed Settlement Agreement entered into by the remaining parties to the above-captioned litigation. Though you have opposed and harassed your siblings and their counsel at every turn, they still have consented to offer you a one-fifth (20%) share of the net Policy Proceeds that will be distributed to the 1995 Bernstein Trust.

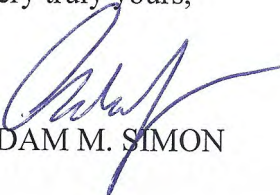
If you review the Settlement Agreement, you will see that your siblings have provided a mechanism for you to sign on and consent to the Settlement Agreement and accept your share. In the event you consent, once the funds are distributed I will distribute the funds to you, after all rights to appeal have expired. You will be required to sign a receipt or provide proof of receipt of the funds.

In the event you fail to respond with 15 days or reject the Settlement Agreement, then your siblings intend to fulfill your fathers' wishes as expressed in the drafts of the 1995 Trust and your share will be distributed to the separate trusts that have been established for each of your three children.

The Settlement Agreement provides that your share shall not be distributed unless and until all rights of appeal have expired. In the event you pursue an appeal, all costs and fees incurred by the responding parties will first be deducted from your share before distribution of the remaining proceeds, if any.

Your reply to me is required in writing by the close of business on July 27, 2017. If you choose to accept, then sign on the signature line with your name under it and return to me by the close of business on July 27, 2017. Your failure to respond by that time will be treated as a rejection of the Settlement Agreement.

Very truly yours,



ADAM M. SIMON

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, )

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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, et al., )

Third-Party Defendants. )  
\_\_\_\_\_ )

Case No. 13 cv 3643  
Honorable John Robert Blakey

**SETTLEMENT AGREEMENT**

The remaining parties to this action, Brian O'Connell, solely in his capacity as successor  
Personal Representative ("PR") of the Estate of Simon L. Bernstein (the "Estate"); Ted S. Bernstein,

in his capacity as Trustee of Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ("1995 Trust"); and the Individual Claimants, Ted S. Bernstein, an individual ("Ted"); Pamela B. Simon, an individual ("Pam"); Jill Iantoni, an individual ("Jill"); and Lisa S. Friedstein, an individual ("Lisa"), agree as follows:

1. There is presently a dispute between the Estate and the 1995 Trust with respect to the proceeds arising from a life insurance policy ("Policy") issued by Capitol Bankers Life Insurance Company, which later became Heritage Union Life Insurance Co. ("Heritage") through corporate succession. The Policy insured the life of Simon L. Bersntein.

2. Ted, Pam, Jill and Lisa are parties to this action.

3. Eliot Ivan Bernstein ("Eliot") was a party, but his claims were disposed of by summary judgment.

4. Heritage was a party, but has interpleaded the Policy Proceeds in this action, and was dismissed.

5. The 1995 Trust asserts that it is the sole beneficiary of the Policy Proceeds based upon a "Beneficiary Designation" dated August 26, 1995, in which Simon Bernstein allegedly designated as beneficiary the "Simon Bernstein Irrevocable Insurance Trust." The 1995 Trust, joined by Plaintiffs, Ted, Pam, Jill and Lisa, assert that the their father Simon Bernstein duly formed the 1995 Trust and that Ted, Pam, Jill, Lisa and Eliot are the beneficiaries of the 1995 Trust to share equally. Eliot disputed the Plaintiffs' claims prior to being dismissed from the litigation. Plaintiffs further assert that the 1995 Trust is the sole surviving beneficiary of the beneficiaries duly designated and recorded on the Insurer's records.

6. The Estate asserts that there is no validly named and existing beneficiary designated to receive the death benefits, therefore the Policy Proceeds should go to the Estate by operation of law because the Policy was owned by Simon Bernstein at the time of his death.

7. In the Lawsuit, other than the disposition of Eliot's claims, and dismissal of certain Bank parties that were former VEBA Trust Trustees, this Court has denied Plaintiffs' motion for summary judgment against the Estate, and the Estate's motion for summary judgment against Plaintiffs, and has scheduled a bench trial for August 7, 2017.

8. The Estate; the 1995 Trust; and Ted, Pam, Jill and Lisa individually, agree to settle their differences and agree to divide the Policy Proceeds held in the Registry of this District Court, in the approximate amount of \$1,708,349.38, as follows:

a. The sum of \$1,000,000 to the 1995 Trust, payable to the Simon Bernstein Irrevocable Insurance Trust dated 6/21/1995 and its attorney Adam M. Simon for deposit to The Simon Law Firm Client Trust Account; and

b. The remaining balance, including all accrued interest (estimated to be approximately \$708,349.08, but agreed to be a minimum of \$708,000) to the Estate.

9. As far as the proceeds to the Estate under ¶8b, these sums will be allocated to pay the Estate's outstanding attorneys' fees and costs to the Stamos firm (estimated to be approximately \$55,000),<sup>1</sup> and to reimburse William Stansbury in accordance with the probate Order dated June 12, 2014 (Stansbury asserts he has paid \$73,677.41 to date), with the remainder (estimated to be

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<sup>1</sup> The Simon Bernstein Trust has agreed to pay \$10,000 to the Estate to partially pay the attorneys' fees incurred by the Estate's counsel participating in mediation and as part payment of post-Stansbury attorneys' fees and costs, which payment will be made within 5 days of the disbursement from the Court Registry.)

approximately \$589,000) to the PR on behalf of the Estate.<sup>2</sup>

10. As far as the proceeds to the putative beneficiaries of the 1995 Trust under ¶8a, these sums will be allocated to pay attorneys' fees and then equal one-fifth shares, as follows:

- i. \$100,000 to Adam M. Simon, for attorneys' fees and costs;
- ii. \$180,000 to Ted;
- iii. \$180,000 to Pam;
- iv. \$180,000 to Jill;
- v. \$180,000 to Lisa;
- vi. \$180,000 to Eliot ("Eliot's Share"), because Ted, Pam, Lisa and Jill are willing

to give one-fifth to Eliot, even though his claims were dismissed, subject to the following: Eliot shall have 15 days to accept in writing the Eliot Share of the Settlement Agreement, from his receipt of a copy of this Settlement Agreement Court by email. If Eliot accepts, the Eliot Share will be paid to Eliot. If Eliot fails to accept for any reason, the Eliot Share will be paid to Eliot's children, one-third each, into their respective trusts created by the Simon L. Bernstein Amended and Trust Agreement.

11. This Settlement Agreement is contingent on approval by the Florida Probate Court with jurisdiction over the probate of the Estate and from the U.S. District Court for the Northern District of Illinois. As soon as practicable after the full execution of this Settlement Agreement, the

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<sup>2</sup> Upon final approval of the settlement by the Florida Probate Court and the United States District Court in Illinois, the Estate shall repay to William Stansbury all monies he advanced out-of-pocket to pay for the legal fees and costs incurred by the Estate's Illinois counsel, and any monies he paid directly to the Curator, per the Order dated June 12, 2014. Such reimbursement will be a requirement of the motion seeking court approval in Florida. The remaining balance, after payment to the Stamos firm, will become property of the Estate, to be administered by the PR in accordance with Florida law and the terms of Simon Bernstein's will.

parties will seek approval this Court and from the Probate Court, and upon approval this Court will issue an order directing the Clerk of this Court to disburse funds from the Court Registry in accordance with ¶¶7-9 above.

12. Given the uncertainties of litigation and the anticipated expense of litigation, whether counsel is retained on an hourly or contingency basis, and given the anticipated amount of time needed for finality in the Illinois litigation after the expected trial and anticipated appeal proceedings, the PR of the Estate believes in the exercise of his business judgment that the settlement outlined above is in the best interest of the Estate as a whole, including creditors, professionals and beneficiaries, and taking into account the interest of persons with potential claims against the Estate.

13. To the extent necessary, a more formal agreement may be drafted and signed to replace this agreement. But this is intended to be a binding agreement, subject only to the entry of approval orders by the Probate Court and the Illinois federal court. *Part of the motivation and consideration for the compromises reflected in this Settlement Agreement is the expectation of immediate payment of the Policy Proceeds upon court approval, unless the Probate Court or the Northern District Court enters a stay of the approval order. Otherwise, the parties anticipate this Court will order the Clerk of this Court to immediately disburse funds from the registry.*

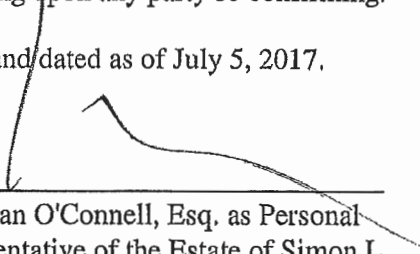
14. To effectuate this Settlement Agreement and the dismissal of the Lawsuit the Parties shall file a joint motion to dismiss pursuant to the Settlement Agreement and seek entry of an Agreed Order or Agreed Orders as follows:

- a. an order dismissing the Lawsuit with prejudice;
- b. an order directing the Clerk to disburse the Policy Proceeds as set forth in the Settlement Agreement;

c. the parties shall execute such additional documents as might reasonably be necessary to accomplish and effectuate the terms of this Settlement Agreement, including, a declaratory order to be entered by the court, if necessary.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission (email or facsimile) of a signature page shall be binding upon any party so confirming.

Signed and dated as of July 5, 2017.

  
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By: Brian O'Connell, Esq. as Personal  
Representative of the Estate of Simon L.  
Bernstein

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Ted S. Bernstein as Trustee of the Simon  
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AS TO ELIOT:

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WITHIN 15 DAYS, signed by:

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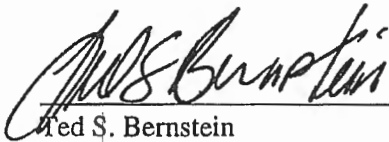
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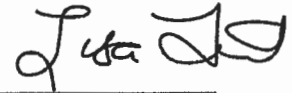
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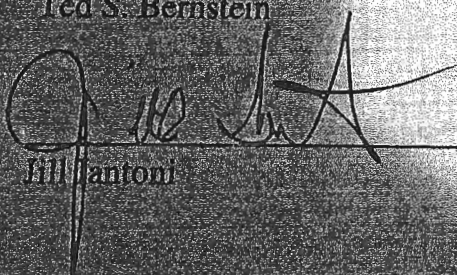
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