TO: JJS

FR: KPH

RE: Draft Outline for January 5, 2015 Deposition of David Simon

The primary areas of inquiry for David Simon’s deposition will be the terms and details of the purported 1995 Trust; the steps taken to recover an executed original or copy of the purported 1995 Trust; an examination into the ‘intent’ of Simon Bernstein relative to the proceeds of the Policy; and the bias of the Plaintiffs (4 of 5 Bernstein children who are proponents of 1995 Trust, including David Simon as son-in-law).

1. **The 1995 Trust**
2. Per Cmplt., David Simon met with Simon before Simon went to Hopkins & Sutter to finalize document. Who was Hopkins & Sutter attorney? On what date did the meeting take place? Where
3. Also per Cmplt., David Simon saw the executed copy after the Hopkins & Sutter meeting. Where did meeting take place? Who else was there? What did Simon do with the Trust documents?
4. The Complaint alleges Ted Bernstein as successor trustee of the 1995 Trust. Two (2) versions of a purported 1995 Trust have been produced in discovery. One has blanks for who will act as successor Trustees (with handwriting – Simon’s?) designating David and Pam, the other lists David Simon as successor trustee after Shirley Bernstein’s (wife’s) death. Is there a third version that David Simon believes is out there that does what the Complaint says?
5. Why does David believe that Ted is the successor Trustee and not David (as outlined in draft document produced in discovery)?
6. **Steps Taken to Locate Original**
7. Who originally suggested “responding” to the Insurance Company with the 1995 Trust (as opposed to the 2000 trust documents, 2008 trust documents, or the 2012 trust documents)?
8. Hopkins & Sutter is now Foley & Lardner. Who was contacted at Foley & Lardner to locate the 1995 Trust. On what date?
9. Simon maintained businesses with different children (STP in Chicago; LIC in Florida etc.). Whose offices were searched for the 1995 Trust? Were they?
10. Was Robert Spallina or Donald Tescher contacted regarding the 1995 Trust and did they have a copy of the trust?
11. Was Al Gortz (estate attorney for 2000 trust documents) contacted?
12. Was Steven I Greenwald (Simon’s attorney in 2001) contacted to find a copy?
13. **Intent**

**OTHER ESTATE DOCUMENTS**

1. Simon Bernstein executed several subsequent iterations of end-of-life documents (wills and trusts). Is David Simon aware of the 2000 Will and Trust executed by Al Gortz? Why didn’t he and the other Plaintiffs ‘respond’ to the Insurance company with that document?
2. Is he aware that under the terms of the 2000 Trust, Pam (his wife) is ‘carved out’ as a beneficiary?
3. Is David Simon aware of the 2008 Will and Trust of Simon Bernstein prepared by Tescher & Spallina?
4. Is David aware that under the terms of the 2008 Trust, Shirley and William Stansbury are named as personal representatives? Or that Ted and Pam are to be treated as pre-deceasing Simon, or ‘carved out’ as beneficiaries? Is David aware that the 2008 exclusion of Pam and Ted extends to their children? And David Simon’s children?
5. Is David Simon aware of the 2012 Amended Trust Agreement of Simon Bernstein also prepared by Tescher & Spallina?
6. Is David aware that under the terms of this document, Donald Tescher and Robert Spallina are named as successor Trustees, and the proceeds of the Trust are to go to all of Simon’s Grandchildren equally?
7. Has David ever seen Simon’s holographic Will, drafted on September 9, 2012, bequeathing $150,000 to Maritza Puccio (girlfriend) and 20% investment in Telemetry Co., and $100,000 from his current insurance policy?

**CHANGE OF BENEFICIARY**

1. Per the Complaint, Plaintiffs claim that Simon designated the purported 1995 Trust as the beneficiary of the Policy proceeds.
2. Is David Simon aware that the Insurance company wrote to Simon on at least six (6) separate occasions (09/1999; 11/1999, 04/2010; 02/2012; 05/2012; and 06/2012) enclosing “Requested Change of Beneficiary Designations?”
3. Is David aware that the correspondence from the Insurance company was transmitted to Simon Bernstein via the facsimile numbers and addresses for STP Enterprises and/or Life Insurance concepts (Pam’s company and Ted’s company, respectively)?
4. **Bias**

\*\*The background questions included in this section may have to go at the top of the exam.\*\*

1. How long has David Simon been at the 30 East Wacker address?
2. Has STP Enterprises always shared office space with Simon Law Firm?
3. What is David’s interest in STP? What does it stand for?
4. What was the history of David’s business dealings with Simon?
5. Why did Simon disinherit Pam and/or Ted in various subsequent estate planning documents?
6. How many children do David and Pam have? Ted and his wife? Lisa and Husband? Jill and Husband? Eliot and Wife?
7. If proceeds were allowed to pass to Simon’s Estate, David’s children would receive the benefit; if they are passed to the 1995 Trust, they get nothing (but David’s wife receives 1/5 of $1.6M).