

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

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

Plaintiff,

v. Case No. 13 cv 3643
HERITAGE UNION LIFE INSURANCE
COMPANY,

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.

1 APPEARANCES

2 ON BEHALF OF TED BERNSTEIN:

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14 ON BEHALF OF THE ESTATE OF SIMON BERNSTEIN:

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16 KEVIN P. HORAN, ESQ.
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23 Boca Raton, Florida 33434

24 ALSO PRESENT: William Stansbury
25 Candice Bernstein (as noted)

1 ELIOT IVAN BERNSTEIN,
2 Cross-Plaintiff

v.

3 TED BERNSTEIN, individually and as
4 alleged Trustee of the Simon Bernstein
5 Irrevocable Insurance Trust Dtd
6 6/21/95,
7 Cross-Defendant

8 and,

9 PAMELA B. SIMON, DAVID B. SIMON, both
10 Professionally and Personally, ADAM
11 SIMON, both Professionally and Personally,
12 THE SIMON LAW FIRM, TESCHER & SPALLINA,
13 P.A., DONALD TESCHER, both Professionally
14 and Personally, ROBERT SPALLINA, both
15 Professionally and Personally, LISA
16 FRIEDSTEIN, JILL IANTONI, S.B. LEXINGTON,
17 INC. EMPLOYEE DEATH BENEFIT TRUST, S.T.P.
18 ENTERPRISES, INC., S.B. LEXINGTON, INC,
19 NATIONAL SERVICE ASSOCIATION (OF FLORIDA),
20 NATIONAL SERVICE ASSOCIATION (OF ILLINOIS),
21 AND JOHN AND JANE DOES
22 Third-Party Defendants.

23

24 DEPOSITION OF
25 TED BERNSTEIN
Taken on behalf of the Estate of Simon Bernstein

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

Stenographically Reported by:
Lisa Gropper, R.P.R., F.P.R.

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5

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.

7

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

6

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

8



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 you are 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

9

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.

11

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?

10

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.

12



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?

13

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.

15

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

14

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?

16



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?

17

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

18

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?

19

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.

20



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

21

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

23

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

22

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

24

Pages 21 to 24



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

25

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.

27

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.

26

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.

28

Pages 25 to 28



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

29

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.

30

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?

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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

32

Pages 29 to 32



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

33

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

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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.

35

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

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Pages 33 to 36



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

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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

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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.

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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.

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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.

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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.

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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

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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

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Pages 41 to 44



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

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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

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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

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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

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Pages 45 to 48



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

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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?

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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 --

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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.

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Pages 49 to 52



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

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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.

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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?

55

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?

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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.

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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.)

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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.

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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,

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Pages 57 to 60



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

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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,

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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

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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?

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Pages 61 to 64



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

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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?

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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.

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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,

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Pages 65 to 68



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.

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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 Chicago?

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 of
23 the life insurance trust and need to withdraw from
24 further representation," do you see that?

25 A I do.

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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

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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

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Pages 69 to 72



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.

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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?

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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

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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

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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

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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

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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.

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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

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Pages 77 to 80



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

81

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. ELIOT 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.

83

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?

82

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.

84

Pages 81 to 84



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

85

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.

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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?

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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,

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Pages 85 to 88



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,

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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.

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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.

91

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?

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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.

93

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

95

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?

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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?

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Pages 93 to 96



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.

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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?

98

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

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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.

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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.

101

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

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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.

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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.

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Pages 101 to 104



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?

105

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

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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?

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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?

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Pages 105 to 108



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.

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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: Elliot, 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.

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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.

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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.

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Pages 109 to 112



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-EXAMINATION
25 BY MR. SIMON:

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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

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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 RECROSS 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?

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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

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Pages 113 to 116



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.)

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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.

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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

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1 MR. ELIOT BERNSTEIN: Okay. I have one last
2 question.
3 MR. STAMOS: Let me ask -- let me follow that
4 up.
5 REDIRECT EXAMINATION
6 BY MR. STAMOS:
7 Q Where do you understand to be the third
8 possibility as the destination for the proceeds of the
9 policy?
10 A So there's, you know, all kinds of
11 possibilities of where insurance proceeds can go when
12 they're up for grabs like that and --
13 MR. SIMON: And I'm going to object, because
14 this is all legal conclusion for the judge to
15 decide.
16 MR. STAMOS: I'm just following up your
17 question. You asked him was there a third
18 possibility; he said yes. I'm just trying to find
19 out what third possibility he understands that
20 there is.
21 MR. SIMON: I said third possibility that the
22 judge would determine. That was my question.
23 MR. STAMOS: Yeah. Well, Adam, I'm just
24 asking what he understands. If he has no
25 understanding, he can tell me that and we can go

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Pages 117 to 120



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. ELIOT BERNSTEIN: Okay. I have one last
 6 question.
 7 RECROSS EXAMINATION
 8 BY MR. ELIOT 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

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1 ERRATA-SIGNATURE PAGE
 2 SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE UNION
 3 LIFE INSURANCE
 4 Case No. 13 CV 3643
 5 DEPOSITION TAKEN May 6, 2015
 6 Page ____ Line ____:
 7 Now Reads: _____
 8 Should Read: _____
 9 Reason for Change: _____
 10 Page ____ Line ____:
 11 Now Reads: _____
 12 Should Read: _____
 13 Reason for Change: _____
 14 Page ____ Line ____:
 15 Now Reads: _____
 16 Should Read: _____
 17 Reason for Change: _____
 18 Page ____ Line ____:
 19 Now Reads: _____
 20 Should Read: _____
 21 Reason for Change: _____
 22 Page ____ Line ____:
 23 Now Reads: _____
 24 Should Read: _____
 25 Reason for Change: _____
 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


123

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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122

1
 2 CERTIFICATE OF OATH
 3
 4
 5 STATE OF FLORIDA)
 6)
 7 COUNTY OF PALM BEACH)
 8
 9 I, Lisa Gropper, Registered Professional Reporter,
 10 Florida Professional Reporter, Notary Public, State of
 11 Florida, certify that TED BERNSTEIN personally appeared
 12 before me on the 6th day of May, 2015 and was duly
 13 sworn.
 14 WITNESS MY HAND AND OFFICIAL SEAL this 19th day of
 15 May, 2015.
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Lisa Gropper
 LISA GROPPER, RPR, FPR
 Notary Public, State of Florida
 My Commission No.: EE136111
 My Commission Expires: 11/18/2015




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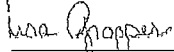
CERTIFICATE OF REPORTER

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.

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McCorkle Litigation Services, Inc.
200 N. LaSalle Street - Suite 2900
Chicago, Illinois 60601
(312) 263-0052

May 19, 2015

The Simon Law Firm
303 East Wacker Drive
Suite 2725
Chicago, Illinois 60601
ATTN: Adam M. Simon, Esq.

RE: SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE
UNION LIFE INSURANCE

Dear Mr. Simon,


Enclosed please find the deposition transcript of
TED BERNSTEIN in the above-captioned case taken on
May 6, 2015.

Please have Mr. Bernstein read your transcript copy
and sign the attached errata sheet. Make a copy of the
errata sheet to attach to your copy of the transcript,
and then please forward the original errata sheet back
to our office.

Please make arrangements to have this accomplished
as soon as possible. The failure to read and sign the
deposition could be constituted as a waiver if not
accomplished within a reasonable period of time.

Your attention to this matter is appreciated.

Sincerely,



Lisa Gropper, RPR, FPR



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5:5 55:20,22,24					
69					
5:6 55:17					
6th					
124:11					
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30:9 57:25					
7:07					
68:5					
70					
32:19					
71					
5:8					
75					



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

CASE NO. 502012CP004391XXXXNB-IH

Plaintiff: In Re: Estate of: Simon L. Bernstein

Defendant: N/A

Item: NOTICE OF FILING CHICAGO LITIGATION
DEPOSITION TRANSCRIPT OF TED
BERNSTEIN ON MAY 6, 2015

Filed by the: PLAINTIFF
 DEFENDANT
 COURT

FOR IDENTIFICATION as exhibit # 6

DO NOT WRITE BELOW THIS LINE - FOR COURT USE ONLY

ADMITTED INTO EVIDENCE AS exhibit # 6
this date _____

SHARON R. BOCK, Clerk & Comptroller

By: _____ D.C.