

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

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

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HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

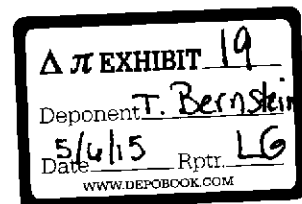
SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

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



Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

AFFIDAVIT OF TED BERNSTEIN

I, Ted Bernstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Boca Raton, County of Palm Beach, State of Florida and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My legal name is Ted Stuart Bernstein. I most often go by the name Ted Bernstein. I am also known as Ted S. Bernstein. I have also been referred to by the nickname "Theo" by friends and family.
3. I have been employed in the life insurance industry since 1980. I have been a licensed life insurance agent in Illinois since at least 1980, and in Florida since 2000.
4. When I use the term "Affidavit of Don Sanders" I mean that certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I am currently employed as President of Life Insurance Concepts, Inc. ("LIC"), a life insurance brokerage based in Boca Raton, FL.
19. I have been employed by LIC (or its predecessor) for the past 15 years, and have been employed in the life insurance industry for approximately 30 years.
20. From 2001 to 2012, my father, Simon Bernstein and I worked together at LIC, and shared office space in Boca Raton, FL.
21. Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ("Bernstein Trust"), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counter-defendant to the EB Claims. The Bernstein Trust is represented by counsel, Adam M. Simon.
22. Bank of America, N.A. ("Bank of America"), was named a party by virtue of Heritage's counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014.
23. Eliot Bernstein ("Eliot") was named a Party by virtue of Heritage's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well. Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter.

24. United Bank of Illinois, was named as a Third-Party Defendant in Heritage's counterclaim for Interpleader. United Bank of Illinois has never filed an appearance or answer.
25. I, Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. I am is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to the Eliot's Claims. I am the eldest of the five adult children of Simon Bernstein. I am represented by counsel, Adam M. Simon.
26. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (See ¶31 below).
27. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to the Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon.
28. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon.
29. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to the EB Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon.
30. Heritage is an Insurer as defined above. Heritage was terminated as a party on 2/18/2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court.
31. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan Chase Bank, N.A., as a successor to First Arlington National Bank (described above). J.P. Morgan Chase Bank, N.A. filed an answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation as party and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014.

32. William Stansbury filed a motion to intervene in this action, but his Motion to Intervene was denied and he was terminated as a non-party intervenor on January 14, 2014.
33. Adam M. Simon is counsel for the Bernstein Trust and the Consenting Children as defined below. Adam M. Simon is not counsel for Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims, and represents himself with regard to Eliot's claims. Adam M. Simon is the brother-in-law of Pamela Beth Simon, and the brother of David B. Simon.
34. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein and was named a Third-Party Defendant to Eliot's Claims. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. (*See Ex. 21*)
35. Donald R. Tescher, Esq. was named a Third-Party Defendant by virtue of the EB Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
36. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims on March 17, 2014.
37. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.
38. David B. Simon is the husband of Pamela Beth Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon.
39. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was voluntarily dissolved on April 3, 1998. (*See Ex. 9*).

40. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant to Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 upon dissolution of S.B. Lexington, Inc.
41. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
42. National Service Association, Inc. (Florida) was named a Third-Party Defendant to Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation and was dissolved in 2012. (See Ex. 22)
43. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation.
44. Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014.
45. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
46. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
47. Following the death of Simon Bernstein, I participated in and conducted diligent searches of Simon Bernstein's home, office and condominium all located in Palm Beach County, Florida. All of the records I located pertaining to the Policy and/or Bernstein Trust were turned over to Simon Bernstein's attorneys, whose names are Robert Spallina and Donald Tescher.
48. I am aware that the documents produced by Plaintiffs in this matter also contain documents located by David Simon and Pamela Simon in their offices in Chicago, Illinois.

49. As of the date of this Affidavit, no documents that I am aware of have been located and/or produced in this Litigation by any Party that appear to be the original Policy contract.
50. As of the date of this Affidavit, no documents that I am aware of have been produced in this Litigation by any Party that appear to be executed originals or executed copies of:
- (a) the "S.B. Lexington Employee Death Benefit Trust"; or
 - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
 - (c) any purported trust named the "Simon Bernstein Trust, N.A."
51. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million. (See Ex. 5 at Schedule Page, bates no. JCK001021).
52. The Insurer produced a document that is titled "Financial Activity from Issue" and references the Policy number. (See Ex. 1.)
53. The financial activity report produced by Insurer indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00. (See Ex. 1, at bates no. JCK0010201).
54. Plaintiffs have submitted a copy of the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry") which reflects a deposit of the Policy Proceeds, a total of \$1,703,567.09 deposited by the Insurer on June 26, 2013. (See Ex. 2).
55. According to the receipt, this deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. I concur with the calculation of the Policy Proceeds and that the amount reflected on the receipt evidences the Insurers payment of the Policy proceeds pursuant to its Interpleader Action. (See Ex. 2)
56. According to the Part I of the application for the Policy, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
57. According to Part I of the application, the beneficiary at issuance was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
58. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (See Ex. 3)

59. During the application process, the Insurer conducted a routine underwriting investigation of Simon Bernstein prior to approving his policy. Part of that investigation was conducted by a company called Equifax, which is a company widely used in the insurance industry for underwriting investigations. In the Equifax report, the purpose of the insurance being provided by the Policy was stated as follows: "The beneficiary of this policy is the First Arlington National Bank, trustee of the S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (See Ex. 20)
60. In 1982, the year the Policy was issued, I shared office space with Simon Bernstein in Chicago, IL and can confirm that at that time, Simon Bernstein was employed by S.B. Lexington, Inc., which was a life insurance brokerage located in Chicago, IL.
61. In the early 1980's, while I was sharing office space with Simon Bernstein and S.B. Lexington, Inc., I was a licensed insurance agent and participated in the marketing of qualified employee benefit plans for closely held corporations. The plans were qualified as Voluntary Employee Benefit Associations under I.R.S. Code Sec. 501(c)(9). The S.B. Lexington VEBA was designed to insure the lives of S.B. Lexington employees and the ultimate beneficiaries of the death benefit was each insured employee's designated beneficiary.
62. Simon Bernstein whom was also a licensed insurance agent also marketed the VEBA Plans on behalf of S.B. Lexington, Inc.
63. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer to the insurance agent whom would then deliver it to the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
64. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.

65. A document produced by Plaintiffs is a copy of a form entitled S.B. Lexington, Inc. Employee Death Benefit Plan and Trust Beneficiary Designation for plan member, Simon Bernstein (the "VEBA Beneficiary Designation"). (See Ex. 4)
66. Having worked for my father and with my father for many years, I have seen his signature on a multitude of occasions and am very familiar with it. I recognize the two signatures on Ex. 4 as the signatures of my father, Simon Bernstein.
67. The VEBA Beneficiary Designation form is dated "8-26-95", and in it Simon Bernstein designates the "Simon Bernstein Irrevocable Insurance Trust" as his beneficiary to receive the death benefit under the VEBA. (See Ex. 4)
68. A document bearing bates no. JCK1098-JCK1117 produced by the Insurer is a specimen policy form for the Policy. On page JCK001099, the specimen policy includes the product name "CURRENT VALUE LIFE". A document produced by the Insurer bearing bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million. (See Ex. 5).
69. A document produced by the Insurer bearing bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982. (See Ex. 6).
70. On or about June 5, 1992, a letter was submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (See Ex. 7).
71. The Policy records indicate that on or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
 - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
 - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary. (See Ex. 8)

72. Though the name of the Trust on the Request Letter was set forth as stated in Par. 69(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (See Ex. 8)
73. On November 27, 1995, Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries. (See Ex. 8)
74. On April 3, 1998, S.B. Lexington was voluntarily dissolved. (See Ex. 9)
75. Upon the dissolution of S.B. Lexington, Inc., the VEBA was also dissolved and the ownership of the Policy was changed in April of 1998. According to the Policy Records and the Aff. of Don Sanders, in April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (See Aff. of Don Sanders at ¶61 and Ex. 10)
76. After reviewing the Policy Records, and the Affidavit of Don Sanders, I concur with Don Sanders that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (See Ex. 8 and Aff. of Don Sanders, ¶56)
77. According to the Insurer's pleading of its Interpleader Action, following the death of Simon Bernstein, the Insurer received conflicting claims to the death benefit proceeds. The Insurer received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a conflicting claim in the form of a letter from Eliot Bernstein. (See Ex. 25 at p. 3)
78. Eliot Bernstein's wife is named Candice Bernstein, and they have three children named Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein.
79. According to the Policy Records and Aff. of Don Sanders, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶65)
80. According to the Policy Records and Aff. of Don Sanders, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶66)
81. According to the Policy Records and Aff. of Don Sanders, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶67)

82. According to the Policy Records and Aff. of Don Sanders, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶68)
83. According to the Policy Records and Aff. of Don Sanders, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy. (Aff. of Don Sanders at ¶69).
84. According to the Policy Records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate", "the Estate of Simon Bernstein" or "the Estate" as beneficiary.
85. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Aff. of Don Sanders at ¶72 and Ex. 8 all 4 pages).
86. According to the Policy Records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (See Aff. of Don Sanders and Ex. 11).
87. According to the Policy Records and the Aff. of Don Sanders, the Insurer received no notices of claims from any of the following individuals or entities:
- a) The VEBA;
 - b) Any of the Bank Trustees of the VEBA;
 - c) Adam Simon;
 - d) David Simon;
 - e) The Simon Law Firm ; or
 - f) STP Enterprises, Inc.

(See Aff. of Don Sanders at ¶77).

88. In 1995, I was sharing office space with Simon Bernstein in Chicago, IL. My sister, Pam Simon, and brother-in-law, David Simon also shared office space with us. In the summer of 1995, Simon Bernstein discussed with me that he was forming a life insurance trust for the Policy, and that I would be named one of the trustees for the life insurance trust. He also indicated that my mother, Shirley Bernstein would be named the initial trustee.

89. Prior to Shirley Bernstein's passing on December 8, 2010, I had never been asked to exercise any powers on behalf of the Bernstein Trust as Trustee, and I believed that Shirley Bernstein was then acting as Trustee.
90. My father, Simon Bernstein, passed away less than two years after my mother, and during that time prior to Simon Bernstein's passing, I was not asked or required to exercise any powers as Trustee of the Bernstein Trust.
91. A copy of the Death Certificate of Simon Bernstein is attached hereto. (*See Ex. 12*).
92. In 2011, the Policy lapsed due to a missed premium payment.
93. In 2011, I assisted my father with completing the necessary paperwork and underwriting required by the Insurer to reinstate the Policy. (*See Ex. 13*).
94. Approximately one year before his death, my father took the necessary administrative steps and paid the required premium, and the Policy was reinstated by the Insurer. (*See Ex. 14*).
95. During the reinstatement process in 2011, my father reinstated the Policy without making any changes to the Owner and Beneficiary of the Policy.
96. On or about July 25, 2012, my father executed his last Will which has been filed and is being administered in Probate Court in Palm Beach County, Florida. A true and accurate copy of the Will as filed with the Clerk of the Court in Palm Beach County is included in Movant's Appendix to its Statement of Undisputed Facts. In his Will at ¶9, Simon Bernstein expressly reaffirmed his beneficiary designations made under any insurance contract. (*See Ex. 24 at ¶9*).
97. Following the death of my father, my sister, Pamela Simon, and brother-in-law, David Simon conducted searches of their office files and records, and David Simon located two unexecuted drafts of the Bernstein Trust in their offices. One of the unexecuted drafts was found on David Simon's computer database which dates back to 1990's when David Simon, Pamela Simon, and Simon Bernstein shared office space in Chicago, Illinois. *Ex. 15* includes a printout of metadata from the computer file for this draft of the Bernstein Trust indicating it was last modified on June 21, 1995. (*See Ex. 15 and Aff. of D. Simon*).
98. A second draft of the Bernstein Trust was located as a hard copy inside a file folder within the stored files of David Simon. (*See Ex. 16 and Aff. of D. Simon*).

99. According to the drafts of the Bernstein Trust, and the facts surrounding the execution of the Bernstein Trust by Simon Bernstein, as told to me by David Simon, I was appointed as successor trustee of the Bernstein Trust. (See Ex. 15, and Ex. 16, and Aff. of D. Simon.)

100. I am willing and competent and have been acting as Trustee of the Bernstein Trust in accordance with the intent of the Grantor, Simon Bernstein and with the authorization and consent of the Consenting Children.

101. Both drafts of the Bernstein Trust at Article Seven have virtually identical provisions regarding the distribution of the Policy Proceeds upon the death of Simon Bernstein. Both drafts of the Bernstein Trust provide as follows: "Upon my death, the Trustee shall divide the property of the Trust into as many separate Trusts as there are children of mine who survived me and children of mine who predecease me leaving descendants who survive me. These trusts shall be designated respectively by the names of my children." One of the drafts goes on to identify the five children by name. (See Ex. 15 and Ex. 16 at Article Seven)

102. Simon Bernstein had five children, and all of them survived him. The five adult children of Simon Bernstein are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein.

103. The Five Children had a total of ten children, and as a result Simon Bernstein had ten grandchildren whose names, year of birth, and parent are as follows:

	<u>D.O.B.</u>	<u>PARENT</u>
i) Alexandra Bernstein	1988	Ted
ii) Eric Bernstein	1989	Ted
iii) Molly Simon	1990	Pam
iv) Michael Bernstein	1992	Ted
v) Max Friedstein	1996	Lisa
vi) Joshua Bernstein	1997	Eliot
vii) Carly Friedstein	1998	Lisa
viii) Jacob Bernstein	1999	Eliot
ix) Julia Iantoni	2001	Jill
x) Daniel Bernstein	2002	Eliot

104. In the draft of the Bernstein Trust attached hereto as Ex. 15, at Article Eight, the Five Children are each identified by name. None of the ten grandchildren's names appear in the document.

105. I have attached a diagram that illustrates Simon Bernstein's intention and plan to ensure that the Policy Proceeds were ultimately for the benefit of the Bernstein Trust. The diagram (Ex. 17) illustrates that in Option A had the Primary Beneficiary continued to exist at the time of Simon Bernstein's death, then by virtue of the VEBA Beneficiary Designation Simon Bernstein executed which named the Bernstein Trust as beneficiary of the VEBA Trust (Ex. 4), the Policy proceeds would have been paid from the Insurer to the VEBA Trust and distributed by the VEBA Trustee to the Bernstein Trust. (See Ex. 17)

106. In this case, as explained in ¶71 and ¶72 above, the VEBA ceased to exist in 1998, long before Simon Bernstein passed away. As a result there was no primary beneficiary in existence at the time the Insured's death. At the time of Simon Bernstein's death, the contingent beneficiary of the Policy was the Bernstein Trust. By naming the Bernstein Trust as Contingent Beneficiary, Simon Bernstein ensured that the Policy Proceeds would be paid to the Bernstein Trust whether or not the VEBA continued to exist. (See Option B on Ex. 17).

107. In addition to records relating to the Policy at issue, my sister Pamela Simon, located records relating to another life insurance policy issued by Lincoln Benefit Life on the life of Simon Bernstein in 1994 (the "Lincoln Policy"). This Policy was purchased through a life insurance brokerage known as STP Enterprises, Inc. which in the 1990's was co-owned by Simon Bernstein, Pamela Simon and David Simon.

108. This second policy was issued by Lincoln Benefit Life as policy no. U0204204 in June of 1994 with Simon Bernstein as the initial owner and insured (the "Lincoln Policy"). In August of 1995, the ownership of the Lincoln Policy was changed by Simon Bernstein to the Bernstein Trust. The Lincoln Benefit Life policy lapsed several years prior to Simon Bernstein's death. The transfer of ownership form contained the name of the Bernstein Trust and its tax identification number, identified Shirley Bernstein as trustee, and also contains the *witnessed signature* of Simon Bernstein. The Lincoln Policy lapsed in 2006 for non-payment of premium approximately six years prior to my father's passing.

109. The Consenting Children are all in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy and Policy proceeds:

- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
- b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children--Ted, Pam, Eliot, Jill and Lisa--to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

"The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";
- l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:
 - i) First to the payment of attorney Adam M. Simon's fees and costs;
 - ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional

expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares;

- iii) The balance to be split equally among the five adult children of Simon Bernstein;
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received; and
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

110. Plaintiffs, the Bernstein Trust, Ted Bernstein as Trustee and the Consenting Children submit the following evidence of the existence and terms of the trust:

- a) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and the signature of the initial trustee, Shirley Bernstein. (See Ex. 19);
- b) The VEBA Beneficiary designation form containing the name of the Bernstein Trust and the signature of the grantor, Simon Bernstein. (See Ex. 4);
- c) The Policy beneficiary designation form designating the Bernstein Trust as the contingent beneficiary. (See Ex. 8);
- d) A copy of two unexecuted drafts of the Bernstein Trust Agreement (See Ex. 15 and Ex. 16).
- e) My Affidavit and the Affidavits of David Simon, and each of the four consenting children.
- f) The Affidavit provided by the Insurer, of Don Sanders, also references Policy records that confirm the designation of the Bernstein Trust as contingent beneficiary of the Policy.

g) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

h) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report, "normally those benefits are paid to family members." (See Ex. 20).

111. Plaintiffs submit the following evidence of the terms of the Bernstein Trust, including its designated beneficiaries and trustees:

a) The two unexecuted copies (one of which contains contemporaneous handwritten notes) of the Bernstein Trust Agreement;

b) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

c) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and identifying the initial trustee, Shirley Bernstein. (See Ex. 19);

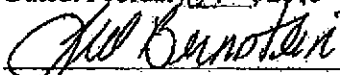
d) Declarations or Affidavits of Ted Bernstein, David Simon, Pam Simon, Jill Iantoni, and Lisa Friedstein.

e) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report of Simon Bernstein, "normally those benefits are paid to family members." (See Ex. 20).

112. I agree to waive and do not claim any compensation for acting as Trustee of the Bernstein Trust, but I do reserve the right to claim reimbursement for any costs I incur such as legal, or accounting fees in connection with the final distribution.

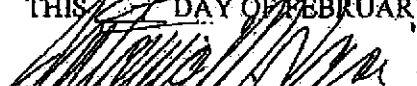
FURTHER AFFIANT SAYETH NAUGHT.

Dated: February 22th, 2015



Ted Bernstein

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 22 DAY OF FEBRUARY, 2015.



NOTARY PUBLIC
County of Palm Beach, FL

