IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF	CASE NO. 502011CP00653XXXXSB
SHIRLEY BERNSTEIN,	PROBATE DIVISION
DECEASED	JUDGE MARTIN H. COLIN

ELIOT IVAN BERNSTEIN, PRO SE

PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL), ROBERT L. SPALLINA (BOTH PERSONALLY & PROFESSIONALLY), DONALD R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY), THEODORE STUART BERNSTEIN, AS PERSONAL REPRESENTATIVES ET AL., TRUSTEES, SUCCESSOR TRUSTEES AND ESTATE COUNSEL AND JOHN AND JANE DOES,

RESPONDENTS.

_____/

MOTION TO REMOVE PERSONAL REPRESENTATIVES

PLEASE TAKE NOTICE that upon the accompanying affirmation; Pro Se Petitioner Eliot Ivan Bernstein will move this Court before the Honorable Judge Martin H. Colin, Circuit Judge, at the South County Courthouse, 200 West Atlantic Ave., Delray Beach, FL 33401, at a date and time to be determined by the Court, for an order to remove the Personal Representatives Tescher & Spallina P.A., Donald Tescher & Robert Spallina as Personal Representatives and Theodore

Bernstein as Trustee, Successor Trustee, Personal Representative and any other capacity they may have claimed in the estates of Simon and Shirley ("Estates") and have them immediately deliver all Estates assets, records, accountings, inventories, documents, papers, and other property of or concerning the Estates in the removed Personal Representatives and Trustees possession or control to the remaining Personal Representative or successor fiduciary or this Court. That this Court then turn all relevant documents over to the appropriate state and federal authorities for further investigation of alleged Forgery and Fraud and other violations of state and federal law and for such other relief as the Court may find just and proper.

Dated: Palm Beach County, FL

_____, 2013

X_____
Eliot I. Bernstein
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Boca Raton, FL 33434
(561) 245-8588

To: Respondents sent Certified Mail

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Interested Parties and Trustees for Beneficiaries

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Highland Park IL 60035

Jill Marla Iantoni
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RESPONDENTS.

_____/

MOTION TO REMOVE PERSONAL REPRESENTATIVES

I, Eliot Ivan Bernstein, make the following affirmation under penalties of perjury:

I, Eliot Ivan Bernstein, am the Pro Se Petitioner in the above entitled action, and respectfully move this Court to issue an order to remove the Personal Representatives, Tescher & Spallina P.A., Donald Tescher ("Tescher") & Robert Spallina ("Spallina"), collectively herein as the ("Personal Representatives") and Theodore Bernstein ("Ted") as purported Trustee, Successor

Trustee, Personal Representative and any other fiduciary capacities they claim to have in the estates of Simon Bernstein ("Simon") and Shirley Bernstein ("Shirley"). Further, this Court should have them all immediately deliver all Estates assets, records, documents, accountings, inventories, papers, and other property of or concerning the Simon and Shirley Estates in the removed Personal Representatives, Trustees, Successor Trustees possession or control to the next Personal Representative or Successor Fiduciary and this Court. That this Court then turn all relevant original documents over to the appropriate state and federal authorities for further investigation of alleged Forgery and Fraud[1] and now Insurance Fraud (as defined herein) and for such other relief as the Court may find just and proper.

The reasons why I am entitled to the relief I seek are the following:

I. INTRODUCTION:

1. That due to, including but not limited to, all of the following reasons, Breach of Trust and Fiduciary Responsibilities, Conflict of Interests, Self-Dealings, Violating Court Orders, Committing Crimes including Forgery, Fraud, Insurance Fraud, Mishandling of Estate Assets, Failing to Provide Accounting to Beneficiaries and this Court, Hiding Assets, Not Handling Duties in Proper Legal Matters which have resulted in Financial Losses to the Estate and Concealing Financial Information from Beneficiaries and Interested Parties as fully described in the May 06, 2013 Petition filed by Petitioner and additionally herein, the Personal Representatives and other acting Fiduciaries should immediately be removed and sanctioned by this Court.

[1] Formal Criminal Complaints have been filed with the Florida Governor Notary Public Division and the Palm Beach County Sheriff's Office. The Palm Beach County Sheriff claimed jurisdiction since the Forged and Fraudulent documents were submitted to this Court directly in the Del Ray Beach courthouse as part of a Fraud on the Court and the Beneficiaries. Petitioner will also be filing Insurance Fraud complaints based on the evidence presented herein.

2. That on May 6, 2013 Petitioner filed an **EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE** ("Petition") to appoint new personal representatives, investigate Forged and Fraudulent documents submitted to the Court by the Personal Representative to the Beneficiaries and other Interested Parties and to rescind the signature of Eliot Bernstein on documents that are alleged Forged and part of a larger series of Frauds against the Estates of Shirley and Simon.

3. That in the aforesaid Petition, Petitioner prayed to this Court already to remove the Personal Representatives on multiple legal grounds stated in said Petition. In addition to the grounds stated in the Petition known at that time, the Petitioner has recently found new grounds and evidence to immediately remove the purported Personal Representatives and any purported Trustees to preserve assets and reduce the chance for further criminal acts to take place.

II. NEW EVIDENCE OF FIDUCIARY BREACHES AND ALLEGED CRIMINAL ACTS BY PURPORTED PERSONAL REPRESENTATIVES AND SUCCESSOR TRUSTEES:

A. Insurance Fraud and More

4. That without notice and knowledge of Petitioner and other Beneficiaries, Simon's son Ted, claims to be the "Trustee" of a lost trust, **The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95** ("Simon Trust") and filed a lawsuit in such presumed fiduciary capacity, Case No. 13 cv 3643 in the United States District Court for the Northern District of Illinois

Eastern Division, against Heritage Union Life Insurance Company ("Heritage"), in efforts to claim the benefits of Simon. L. Bernstein's Insurance Policy No. 1009208 ("Policy"). Simon Bernstein's daughter, Pamela Simon ("Pam") and her husband David Simon ("David") and his brother Adam Simon ("Adam") through the Simon Law Firm ("SLF"), believed to be Adam and David Simon's firm, worked with Ted and Spallina to attempt to get the life insurance benefits of the Policy paid to a post mortem trust they created and named themselves as partial beneficiaries by claiming the Simon Trust was lost and the new trust and new beneficiaries would replace the unknown ones. The Simon Trust that Tescher & Spallina, Spallina, Tescher, Ted and Pam were responsible for keeping, Tescher & Spallina who did the estate planning work concerning the Policy and Ted and Pam because they too had possession of the Simon Trust, as the Bernstein family insurance agency sold the Policy and administered trusts concerning the Policy and now suddenly everyone claims it to be missing. Petitioner instead alleges that Spallina & Tescher, Ted and Pam have **suppressed** said Simon Trust because Ted and Pam are excluded as beneficiaries of the Policy, as they were wholly excluded from the estates of Simon and Shirley. The Personal Representatives have worked exclusively with Ted and Pam who are both wholly excluded from benefits of the Estates and have completely shut out all of the true Beneficiaries and Interested from ALL administration, information and assets of the Simon and Shirley estates for over two years in the Shirley Estate and eleven months in the Simon estate.

5. That since claiming the Simon Trust is "lost/suppressed" they are demanding in their lawsuit that Heritage pay the benefits to a newly created post mortem trust that Tescher & Spallina, Spallina, David, Pam and Ted created and whereby they are electing new beneficiaries after Simon has passed, yes, a post mortem trust designating new beneficiaries.

That the insurance carrier has rejected their claim, stating they cannot prove the assertions made as to whom the beneficiaries are claimed to be. Whereby Ted claims in the lawsuit to be the "purported" Trustee of the missing Simon Trust but cannot prove such claim causing the carrier to counter sue and not pay the claim until a court decides. Ted is misusing his "alleged" legal powers in the estate of Shirley, as already described in the Petition with this Court and now Ted makes efforts to assume fiduciary powers in handling assets of Simon's estate in an attempt to obtain all the benefits of the Heritage Policy by deceiving Beneficiaries, attempting to deceive an insurance company and now perpetrating a Fraud on not only this Court but the US District Court in Illinois.

6. That Tescher & Spallina, Spallina, SLF, Pam, David, Adam and Ted have filed this lawsuit without proper notice to all of the potential beneficiaries of their US District Court lawsuit. Both SLF and Ted have conflicts of interest in acting in any legal capacities in the lawsuit, since Ted would be getting benefits directly to himself while acting as the "purported" Trustee of the missing Simon Trust and Pam would get benefits directly to her from the efforts of her husband's law firm SLF's efforts if they are successful. Neither Ted nor Pam would gain any benefits of the Policy without their attempted scheme. If the Policy benefits were paid to the Estate due to the missing/suppressed named Beneficiary, the Simon Trust and then tendered to this Probate Court, the benefits would be paid to either three of five of Simon and Shirley's children (Eliot Bernstein, Jill "Bernstein" Iantoni and Lisa "Bernstein" Friedstein) or to Simon and Shirley's ten grandchildren in equal shares, the Beneficiaries will be determined by this Court's ruling on if the Forged and Fraudulent documents exhibited in the Petition stand or fail. In either scenario, NO benefits would go to Ted and Pam, only their adult children and only if the near deathbed Forged and Fraudulent

documents created weeks before Simon passed prevail in this Court. It should be noted again that without the Forged and Fraudulent documents submitted to this Court, Tescher & Spallina, Spallina, Tescher and Ted would have NO legal capacities to act as Personal Representatives or otherwise over any estate assets and Ted and Pam and their children would be wholly excluded from the estates of Simon and Shirley. The legal course in the event of a missing Beneficiary(ies) appears to be that the death benefits of the Policy would flow to this Court as part of the probate estate to be divided amongst the estate Beneficiaries.

7. That the problem created is that the Simon Trust that is claimed to be lost by Tescher & Spallina, Spallina, Ted, Pam and David, is now the plaintiff in the US District Court lawsuit and where it seems impossible that the plaintiff suing the carrier could be a missing/suppressed Simon Trust, as apparently there is no such Simon Trust existing, as they themselves claim. Since the Simon Trust is lost/suppressed, Ted in his unfounded suit claims to be Trustee of the lost/suppressed Simon Trust based on his self-professed claim that he recalls seeing it once upon a time and remembers he was the Trustee. Petitioner claims since Pam, Ted and David were involved in the creation, implementation and control of the Simon Trust at various times, in capacities with Fiduciary Responsibilities and Liabilities, they have chosen instead to **suppress** the documents and thereby hide the true and proper Beneficiaries from the insurance carriers and the Beneficiaries since allegedly they were wholly excluded from the policy, as they were wholly excluded from any interests in the estates of Simon and Shirley.

8. That Ted, Pam, David and Adam all are in the life insurance business, are life insurance agents and inherited ALREADY in part the Simon insurance businesses, agencies that wrote

the Simon Trust and issued the policy and administered the VEBA Trust that controlled the Policy and know this lawsuit is an unprecedented attempt to convert Policy proceeds to a purported Trustee of a missing/suppressed Simon Trust that is being replaced by a post mortem trust **created after Simon's death and designating new beneficiaries** to receive the benefits that now includes them as direct beneficiaries and trustees. The attempt to deceive the insurance carrier via Ted acting as a self-purported "Trustee" of the missing Simon Trust, attempts also to have the Policy proceeds circumvent this Court and the Beneficiaries of the Simon Trust and get the Policy benefits paid to the new post mortem trust whose beneficiaries are presumably Ted, Pam, Eliot, Lisa and Jill, instead of the Estates Beneficiaries of either Eliot, Jill and Lisa or the ten grandchildren. The newly created trust is presumably the same trust that was exhibited in the Petition, as part of a proposed Settlement and Mutual Agreement between the estate Beneficiaries that would have created this post mortem trust to pay new Beneficiaries. In the Petition (Pages 34-41 under Section VII. INSURANCE PROCEED DISTRIBUTION SCHEME) the proposed settlement agreement that creates a new trust is contained in the Petition on Pages 173-179 "Settlement Agreement and Mutual Release ("SAMR"), see Exhibit 7 [of the Petition] - Settlement Agreement and Mutual Release, drafted on or about December 06, 2012 by an unknown Attorney at Law or Law Firm, as no law firm markings are again on the pages.") The new trust that was to be created if the SAMR was signed is termed hereinafter as the ("SAMR Trust") and would be the first of its kind post mortem insurance trust created. That the SAMR was never signed by Petitioner and without knowledge of any of the other Beneficiaries and Petitioner rejected such SAMR and SAMR Trust as a scheme that constituted Insurance Fraud and more and therefore refused to sign the SAMR. In the

Petition the SAMR is alleged to be an attempt by Ted and Pam to redirect the Policy proceeds from their very own adult children to themselves, as they were excluded if it flowed through the estate and all of these acts were aided by the purported Personal Representatives.

9. That upon the first attempt to have the benefits paid without proper proof of beneficial interests, Reassure America Life Insurance Company informed Tescher & Spallina P.A. (who originally created the SAMR and SAMR Trust), Robert Spallina, Ted, Pam and David to get **a court order** from this Court stating whom to release the funds to, after determining who the true and proper Beneficiaries were, as the **Simon Trust** was declared missing from the estate of Simon. Petitioner herewith produces the said letter dated January 08, 2013 from Reassure America Life Insurance Company Letter, as **Exhibit 1**. The attempt to release the funds to their proposed post mortem SAMR Trust scheme due to **their** losing the Simon Trust that was the named beneficiary, is all a result of Tescher & Spallina P.A., Tescher and Spallina failing to legally document the beneficiaries of the Policy, then losing/suppressing the missing Simon Trust while they were the Estates lawyers and is more fully defined already in the Petition filed with this Court.

10. That instead of seeking this Court's determination of the beneficiaries by order as demanded by the carrier, and knowing that Petitioner refused to sign the SAMR, Ted and Pam with the aid initially of Tescher & Spallina P.A., Spallina and Tescher and then later in the US District Court with Adam Simon, Esq., replacing Tescher & Spallina P.A., they attempted an end around of this Court, its determination and the estate Beneficiaries, by filing an undisclosed lawsuit against the carriers to force them to pay the SAMR Trust. First they

first filed the lawsuit with a Cook County, Illinois state court and then re-filed said suit with the Federal US District Court Northern Illinois.

11. That Petitioner was only notified of this new lawsuit to convert the death benefits through this scheme when he received a summons regarding this lawsuit from the Attorney at Law for Jackson National Life Insurance Company ("JNL"), successor in interest to Heritage, and where Petitioner was added as a Counter Defendant in the Counter Complaint[2] filed by the carrier. Petitioner herewith produces JACKSON'S (1) ANSWER TO COMPLAINT AND (2) COUNTERCLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER, as **Exhibit 2**. Many interesting facts are presented in the Answer and Counter Complaint filed by JNL that support Petitioner's claims of foul play, including but not limited to,

    i. JNL counter sues Ted and defines him using the following language "TED BERNSTEIN, individually **and as purported Trustee** of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6121/95." It is evident that Ted has not proven his capacity to act as Trustee of the missing Simon Trust to the carrier either and is claimed instead to be a "purported Trustee."

    ii. The suit claims "Heritage has breached its obligations under the Policy by refusing and failing to pay the Policy's death benefits to the Bernstein Trust as beneficiary of the Policy despite Heritage's receipt of due proof of the Insured's death."

[2] Docket Entries from US District Court Northern District of Illinois

06/26/2013 18 NOTICE by Heritage Union Life Insurance Company re answer to complaint, third party complaint, counterclaim, (Marks, Alexander) (Entered: 06/26/2013)
06/26/2013 17 SUMMONS Issued as to Third Party Defendants Bank of America, Eliot Bernstein, Ted Bernstein, First Arlington National Bank, Simon Bernstein Trust, N.A., United Bank of Illinois (ym,) (Entered: 06/26/2013)

"ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and fling its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph."

iii. JNL states, "Jackson admits it, as a successor to Heritage, is obligated to pay the death benefits to the beneficiary(ies) of the Policy, but denies that the remainder of paragraph 13 accurately and fully states the obligations of a beneficiary in submitting a claim under the Policy" clearly showing that there is no legal validity to the claimed beneficiaries assertion and that the beneficial interests were not proven based on the claim filed.

iv. JNL states, "Ted S. Bernstein is a resident and citizen of Florida. **He is alleged** in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individua1ly, upon information and belief a beneficiary of the Bernstein Trust (as Simon Bernstein's son)."

v. JNL states in Paragraph 9 of the counter complaint, "The 'Simon Bernstein Trust' is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. **However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately**." Paragraph 3 states, "The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the

settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

This Court should note that this variance in the titles of the trust(s) is alleged herein **not to be** the same trust but that through a crafty name game appears similar but instead is two separate trusts with confusingly similar names. Petitioner states the "Bernstein Trust" referenced and listed in Paragraph 3 is the missing/suppressed "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and that the "Simon Bernstein Trust" is the **POST MORTEM CREATED** SAMR Trust that is being substituted for the Simon Trust, with a similar name as the missing Simon Trust, so as to confuse the carrier, which obviously according to the carrier, as evidenced further herein, such efforts have worked in confusing them enough to deny the claim and counter sue. Again, the SAMR Trust is believed to be a post mortem trust created by Tescher & Spallina P.A., Robert Spallina, Donald Tescher, Ted, Pam, David and Adam with no legal standing to make a claim to the proceeds of the Policy as it is legally invalid, as it was created after the Policy owner's death. The fact that this "Simon Bernstein Trust" is claimed to have been a "contingent beneficiary" elected by Simon in the Policy would appear impossible if the "Simon Bernstein Trust" aka SAMR Trust was not created until after Simon had died. Dead men do not assign new contingent beneficiaries, yet we also find in the estates of Simon and Shirley that the same dead man also notarizes and signs documents months after being deceased that make major near changes to long established estate plans, while under extreme physical and emotional duress and then present them to this Court, as exhibited

already in the Petition[3]. This Simon Bernstein Trust aka SAMR Trust scheme may represent Insurance Fraud and more.

vi. JNL states on Page 8 Paragraph 18 of the Answer and Counter Complaint, "Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel **(who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation),** submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, **purportedly as the trustee** of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in 1998, **leaving the Bernstein Trust as the purported sole surviving Policy beneficiary** at the time of the Decedent's death."

That Petitioner is flabbergasted by this claim that Ted was advised by counsel, presumably Tescher & Spallina P.A., Tescher and Spallina acting as Personal Representatives who concocted this scheme originally, whom suddenly withdrew as counsel in the lawsuit and had ADVISED Ted that he did not have authority or basis to file this suit and yet Ted, David, Pam, SLF and Adam then pursued the Federal lawsuit, despite Estate Counsel/Personal Representatives advice?

This brings up several fascinating questions, such as why is the estate counsel again legally advising Ted as if he were his personal counsel while retained by the estate as counsel and purported Personal Representative? Then the question becomes if estate

[3] Petition Pages 44-47 Section, "IX. FORGED AND FRAUDULENT DOCUMENTS FILED IN THE EST ATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE" and in the Petition Pages47-48 Section, "X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE" and in the Petition Pages 48-49 "XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE."

counsel and Personal Representatives Tescher & Spallina P.A., Tescher and Spallina were aware that this lawsuit was being filed on an assets of the Estate, why have they not filed a response on behalf of the Beneficiaries of the estate to protect their interests??? The conflicting relationship between Tescher, Spallina and Ted has already been exposed in the Petition already filed with this Court, Pages 88-94, Section "XIX. CONFLICTS OF INTEREST BY PERSONAL REPRESENTATIVES, ESTATE COUNSEL AND TRUSTEES DISCOVERED" and this adds additional circumstantial evidence of a special relationship that exists between Ted and Tescher & Spallina P.A., Tescher and Spallina, whereby they are acting in alleged criminal conspiracy in all of the alleged crimes taking place.

vii. JNL states, "However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel [Tescher & Spallina P.A.] stating: In as much as the above policy provides a large death benefit in excess of $1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim." That on the first FAILED attempt to convert the benefits through this type of scheme, Tescher & Spallina P.A., Tescher, Spallina, Ted and Pam proposed the SAMR scheme for the Beneficiaries to sign and then they stated they would file the SAMR Trust with this Court for approval and an order to then take to the carrier. Petitioner and Petitioner's children counsel refused to sign the SAMR without first having a copy of the Policy, a copy of the trusts involved, a copy of all loans against the policies and more, yet Petitioner and Petitioner's children counsel were both refused these documents by Tescher & Spallina, Tescher,

Spallina, Pam, Ted and Heritage despite repeated requests, therefore Petitioner never executed a signature on the SAMR and believed the issue was dropped.

viii. JNL further states, “Presently, the Bernstein Trust still has not been located. Accordingly, **Jackson is not aware whether the Bernstein Trust even exists**, and if it does whether its title is the ‘Simon Bernstein Insurance Trust dated 6/21/1995, Trust,’ as captioned herein, or the ‘Simon Bernstein Trust, N.A.’, as listed as the Policy's contingent beneficiary (or otherwise), **and/or if Ted Bernstein is in fact its trustee.** In conjunction, **Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.**”

ix. JNL states, “In addition, it is not known whether "LaSalle National Trust, N.A. was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. **Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved.**

x. JNL states, “Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of ‘LaSalle National Trust, N.A.’ (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.”

xi. JNL states, “Justice and equity dictate that Jackson should not be subjected to disputes between the defendant parties and competing claims **when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.**” Here we see that as they

were unable to produce satisfactory evidence to Petitioner and Petitioner's children counsel showing a clear path to the beneficial interest, they too could not prove their claims to the carrier to claim the benefits.

12. That only after receiving said lawsuit from JNL was Petitioner informed about the case filed by Tescher & Spallina, Spallina, Ted, Pamela, David and Adam Simon. This is new prima facie evidence of a **Breach of Fiduciary Duty and Law** by the Personal Representatives and Ted, representing possible further, **Fraud on the Beneficiaries, Fraud on courts and now Insurance Fraud**. All of these problems are due to the lack of duty and care and alleged criminal and civil violations of law by Tescher & Spallina, Spallina and Tescher in failing to protect the rightful Beneficiaries of the Policy and delineating a clear legal path to the Policy proceeds for them in preparing the estate of Simon and Shirley. The loss/suppression of an insurance trust, insurance policy, etc. with no documentation to show reason for such failure to document the Beneficiaries or retain a copy of the trust included in the estate plans of Simon and Shirley that they paid top dollar to have executed and now claim to have missing essential pieces of the estates by Tescher & Spallina that expose all the Beneficiaries to liabilities represents further incomprehensible errors, alleged violations of law and further intentional torts. Therefore, all legal costs and other costs resulting from the acts described in the Petition and herein, encumbered by any/all parties, should therefore be paid for by Tescher & Spallina, Spallina and Tescher and NOT from the estate proceeds or individually by the Beneficiaries or Interested Parties. That any financial losses to the Estates and Beneficiaries be recovered from the Personal Representatives and Successor Trustee as they are both personally and professionally liable. These costs are all a result of

the failures of the Estate Counsel and Personal Representatives and appear to have been done with scienter.

B. Abuse of Attorney / Abuse of Legal Process

13. That Christine P. Yates, Esq., ("Yates") is a Partner at Tripp Scott law firm and the attorney initially for the Eliot Bernstein family and then later, due to conflicts caused by the lost Simon Trust and the new beneficiaries created, which caused Petitioner and his children to have conflicting interests, from that point forward, Yates represented only Petitioner's children and Petitioner has been unable to secure counsel for reasons already explained in the Petition. Recently, Tripp Scott has resigned as counsel to the children, for all of the following reasons:

    i. the inability to gain documents from Tescher & Spallina, Tescher and Spallina after extensive efforts to obtain such documents and doubling their anticipated costs in merely trying to get information necessary to ascertain the beneficial interests of Petitioner's children,

    ii. the enormous billings caused as a result of Tescher & Spallina, Tescher and Spallina's evasions, suppressed/lost documents, Forged and Fraudulent documents, lost/suppressed trusts and an insurance Policy and more,

    iii. the guilt of finding that Tripp Scott billings were being paid by a school trust account. From a letter to another Attorney at Law, Yates claimed, "the reasons for the termination of my representation were due to the insufficiency of funds in the trust accounts…" That this statement refers to depleting all of the trust funds to pay for

legal counsel. To be more specific to this Court, the trust funds Yates refers to are Petitioner's children school trust funds that have been depleted through further Fraud by Spallina to pay Petitioner's living expenses. Where these school trusts were set up several years prior to the death of Simon and Shirley and were funded to pay for Petitioner's children school tuitions. Initially after Simon passed, Spallina took possession of a Legacy Bank of Florida account that Simon had been paying Petitioner's family expenses of $100,000.00 per year for approximately 6 years per an agreement between Petitioner and Simon, as fully exhibited already in the Petition (Pages 86-89 Section "XVI. THE ADVANCED INHERITANCE AGREEMENT ("AIA")", which was for $100,000.00 per year. Simon paid the home expenses per the AIA for the home purchased by Petitioner's children through the Legacy account. The home was purchased outright through Petitioner's children's already established and funded investment trust accounts at that time.

Several months after Simon passed Spallina directed Eliot and Candice "Candice" Bernstein to take over the Legacy Bank account and write checks for expenses out of it. Petitioner refused such request to write checks from an account that was Simon's without first getting authorization from Legacy Bank. Eliot and Rachel Walker ("Walker") (Simon's assistant who was handling the Legacy Account but who was fired by Spallina and therefore turning the account over to Eliot and Candice at Spallina's request) called Legacy Bank together and Legacy claimed that not only was Walker not authorized to sign checks or listed in any capacity on the account or Petitioner but that Legacy was shocked that no one had notified them that Simon had

passed, that his bank accounts were being used post mortem and therefore Legacy instantly froze the account. Spallina was the only person they could talk to further.

Spallina then directed Candice to send over the Legacy Account checkbooks, credit cards, etc. to Janet Craig ("Craig") at Oppenheimer and that she would now be paying the expenses, replacing the recently fired Walker. Craig stated that the funds had been unfrozen by Legacy to Spallina and she would now be paying the expenses. That only later was it learned that the Legacy Bank funds were not paying the expenses but that somehow the funds were now coming out of school trust funds of Petitioner's children, trusts that Spallina had not shown Petitioner and therefore he had to get them from Craig. That all these actions were directed by Spallina, who had told Petitioner at that time not to worry that the expenses were covered in the estate plans and trusts for the children and it would take a few weeks before they were funded and there would be no discontinuity in the monthly expenses as Simon and Shirley had planned for the special circumstances of Petitioner's family, as fully defined in the Petition. That Spallina is now claiming that there is no money in the estates and telling Petitioner he will receive virtually nothing in inheritance and is further executing a foreclosure on the Petitioner's children's home in another complete Fraud and Hoax, as more fully defined in the Petition, Section "XIII. THREATENED FORECLOSURE ON SIMON'S GRANDCHILDREN'S HOME BYSIMON'S ESTATE POST MORTEM", Pages 52-55. There is now virtually no money left in the school trust funds and at the burn rate of the living expenses for the children and their school expenses being depleted for these, one can see the calamity this will cause Petitioner and his family in a few days, the children will be forced out of the school and without

necessary and fundamental living expenses. This is quite to the opposite of what Simon and Shirley intended for Petitioner and Petitioner's children, if actions are not taken instantly by this Court to protect and preserve the assets and Beneficiaries. Petitioner Exhibits herein a recent letter from Janet Craig of Oppenheimer describing the emergency this presents to Petitioner and his family caused by Spallina with scienter, as **Exhibit 3**. As with Craig, Yates recently became aware that the funds for school and living expenses are almost wholly exhausted by Spallina and that her legal bill for problems almost wholly created by Spallina were being paid from these school accounts and this is truly an uncompromising position. That Spallina was not even paying legal costs encumbered by Petitioner and Petitioner's children caused by his failures, including but far from limited to,

iv. the lost/suppressed Simon Trust and need for counsel caused by his failures to maintain a clear path to the beneficial interest in the Policy,

v. two sets of lawyers needed, independent counsel for Petitioner and a separate counsel for Petitioner's children, due to the conflicting beneficial interests created by the lost Simon Trust and the costs to legally analyze the SAMR scheme they concocted to replace such "lost" or suppressed trust,

vi. the need for counsel to Revoke a Forged and Fraudulent signature in the estate of Shirley,

vii. the cost of counsel to analyze Fraudulent and Legally Deficient documents in the estates created by Tescher & Spallina, Tescher and Spallina

viii. the cost in failed efforts by Yates for months to get documents and information from Tescher & Spallina and Spallina. As Yate's states in her letters exhibited herein,

ix. the need for counsel now as Yates claims in her letters that both the Petitioner and his children would now have to litigate Spallina and the estates.

x. Further in correspondences between Yates and Attorney at Law Marc Garber who referred Yates to Petitioner, claims are made that Spallina must be reported to the Court and more. Petitioner herewith produces the email of Yates and Garber as **Exhibit 4.** In the said emails Marc states,

a. "Further, and as you [Christine Yates, Esq.] implied, with all the time you expended, Spallina gave us very little, in terms of everything; from documents to involvement in the administration." This statement clearly indicates that in spite of repeated request and continuous efforts made by Yates, Spallina did not provide documents to Yates who is counsel to certain Beneficiaries. This is clear evidence of breach of Fiduciary duty.

b. "I had difficulty sleeping, as I was sorting through our conversation. What troubles me has troubled me in prior situations. Spallina is not the first 'bully lawyering' situation I have seen or heard about."

c. "It truly troubles me [Marc Garber, Esq.] that Spallina continues to spin his web of deceit, and I believe this conduct is further circumstantial evidence that "something is very wrong". I am very glad Eliot filed whatever he filed and I do hope he prevails. I also hope Spallina is removed and perhaps punished for all he is doing."

C. Improper Sale of Real Estate Property

14. That without the knowledge and notice to Petitioner and other Beneficiaries, Ted acting in his presumed capacity as purported Successor Trustee in the estate of Shirley has sold a condominium owned by the estates of Simon and Shirley (it remains unclear due to missing documents suppressed by Spallina which estate the real estate was in at the time of their deaths) a property located at 2494 S Ocean Blvd APT C5, Boca Raton, FL 33432 ("Condo"). Petitioner and other Beneficiaries had rights in this Condo and Ted had no beneficial interest in the property. Yet, Ted has sold it at major price reduction of approximately 30% below market value without consent of the Beneficiaries or even notification to the Beneficiaries of any details of the transaction. In fact, until all the original estate documents can be analyzed for further evidence of Fraud and Forgeries, all these fiduciaries acting in the estates are suspect. Finally, Petitioner and other Beneficiaries not only do not have any information about the said transaction but also where the sale funds have gone. Petitioner herewith produces the Zillow estimate of the properties immediately after the sale showing an increase in value of $500,000 over the purchase price days after sale as **Exhibit 5,** which clearly shows sale of said Condo far below market value and the realtor who sold the property is not revealed.

15. That the real estate was removed from the listing agent Nestler Poletto Sotheby's International Realty after months of them listing the property for Simon, two weeks prior to the sale and then brokered by an unknown party.

16. That prior to the sale Petitioner and Petitioner's children counsel Tripp Scott had requested that any transactions of any properties of the estates be transacted only after first notifying

the Beneficiaries of all terms and conditions and instead this sale was done behind the backs of Petitioner, Beneficiaries and Petitioner's children counsel Yates and without any prior notice.

D. Exposing Estate to Potential Liabilities from Failure to Distribute Automobile

17. That the estate remains at risk due to the retained ownership of an automobile fully paid for that was given as a gift from Simon to his grandson Joshua for his 15th birthday, two week before Simon's passing[4]. As more fully described in the Petition, Spallina has known this automobile was in the possession of 15 year old Joshua as a gift and that the paperwork to transfer title and ownership was in the process of being completed when Simon passed suddenly and unexpectedly. That since the time of Simon's passing Spallina has refused to tender the title and make proper transfer and to Petitioner's knowledge maintain insurance on the vehicle or even maintain the vehicle for the estate. Instead Spallina has left the entire estate at risk, as in the State of Florida if the car for any reason were involved in accident of any sort the estate could be liable for damages and without proper insurance this further could be damaging to the Beneficiaries of the estate.

III. CONCLUSION

[4] http://statewideprobate.com/blog/comments/move-cars-out-of-estate-quickly
Under Florida law the owner of a vehicle is normally liable for accidents caused by the car, and that liability is not limited to the car insurance limits. So an estate with $200,000 in stocks and bonds can see all of that disappear in the event of an auto accident claim exceeding policy limits. Given that many auto owners carry liability coverage of $300,000 or less, many serious personal injury claims can exceed the coverage and threaten the estate assets. "Move Cars Out of Estate Quickly" Posted by Bruce McDonald September 12, 2011

That Tescher & Spallina for all the reason stated herein and in the Petition have failed to properly administer the Estates and have instead worked with adverse interest to the Beneficiaries to keep them in the dark while various assets appear to go missing with every turn. That Tescher & Spallina have already tendered Forged and Fraudulent documents in the Estates of Simon and Shirley. Documents that enabled their powers as Personal Representatives and therefore all actions they have done may have been executed with legal powers that were gained through Forged documents as part of a Fraud on this Court and the Beneficiaries. That it appears that every minute this Court delays in removing Personal Representatives and Successor Trustees a new theft of Estate assets is taking place.

IV. ARGUMENTS

FLORIDA ESTATE RULES

1. Under RULE 5.310. DISQUALIFICATION OF PERSONAL REPRESENTATIVE: NOTIFICATION, since Tescher & Spallina P.A., Donald Tescher and Robert Spallina all appear to be acting Personal Representatives and Ted acting as purported "Successor Trustee" and where Petitioner claims none of them were qualified to act at the time of appointment and whose appointments were made through Fraudulent and Forged and incomplete documentation submitted to this Court and Petitioner as described herein and in the Petition. Petitioner believes none of them would be qualified for appointment at that time, this time or any time. That Petitioner files and serves herein on all parties this notice describing why the Personal Representatives and Successor Trustee should be removed due to the alleged unlawful acts and violations of fiduciary responsibilities evidenced herein and in the Petition, which show that Tescher & Spallina, Spallina and Tescher were not

qualified at the time of appointment to be Personal Representatives for the Estates. For the reasons already stated herein and in the Petition these Personal Representatives would not be qualified for appointment if application for appointment were again made based on the recently uncovered facts and evidence contained herein and in the Petition. That the Court should instantly remove and replace these Personal Representations and grant Petitioner immediate monetary and injunctive relief that this Court deems just in light of the damages already done described herein and in the Petition and any other relief this Court deems just.

2. This Court should sanction and report to the appropriate authorities all those alleged to have gained fiduciary powers through a series of Forged and Fraudulent documents tendered to this Court as part of a Fraud on this Court and any subsequent transactions of the assets using such illegally gained fiduciary powers as evidence of further civil and criminal violations of law in the administration of the estate.

3. Under RULE 5.320. OATH OF PERSONAL REPRESENTATIVE, the Court should note that at no time before the granting of letters of administration, did Ted, one of the "acting" Personal Representatives/Successor Trustee in the Estates, file an oath to faithfully administer the estate of the decedents with this Court or to the Beneficiaries or the Trustees for the Beneficiaries and this Court should take all steps necessary to remedy this failure, including but not limited to making null and void any actions or sales of Ted as Personal Representative/Successor Trustee in Shirley's estate or as Personal Representative in Simon's estate or any capacity whatsoever in these matters and any other relief this Court sees fit. Ted and Pam have NO beneficial interests in the estates and in fact have adverse and conflicting interests.

4. Under RULE 5.235. ISSUANCE OF LETTERS, BOND, due to the problems caused by the Personal Representatives, Estate Counsel and Ted with the missing/lost/suppressed Simon Trust, the Forged and Fraudulent documentation already exhibited in the Petition to this Court in the Estates and unlawful activities alleged and evidenced herein and in the Petition, Petitioner requests the Court consider requiring the Personal Representatives to give bond to require additional surety great enough to cover all potential losses and all immediate legal fees to the Beneficiaries and other Interested Parties.

5. Under RULE 5.340. INVENTORY, the Personal Representatives, Tescher & Spallina P.A., Tescher and Spallina have failed to serve a copy of the inventory and all supplemental and amended inventories to each heir at law, each residuary beneficiary and did not serve a copy to Petitioner who requested it both orally and in writing for the Estates and acting as Guardian and Trustee for his children. Therefore, this Court should take appropriate actions for this violation and demand all inventories prepared by the Personal Representatives, Goldstein Lewin/CBIZ MHM, LLC, Ted or any other party that has made or maintains an inventory of any assets of the Estates, be instantly turned over to this Court and that all inventories submitted to this Court that may be sealed or marked confidential in any way in the Estates be turned over to Petitioner and all Beneficiaries and Interested Parties.

6. There is an inventory for the personal property of Simon and Shirley that was submitted by Ted to Pam, Jill, Lisa and Petitioner, whereby Ted was acting in an unauthorized capacity as a Personal Representative in the estate of Simon. That this inventory was not verified by the Personal Representatives, Tescher and Spallina that were supposedly designated by Simon in the Amended Trust and therefore this Court should take appropriate actions for

this failure of the Personal Representatives to verify this inventory and discard the inventory by Ted and have these items re-evaluated by a new firm and new Personal Representative(s).

7. That there is an inventory list of Jewelry that was removed from the Estates by Pamela, Jill and Lisa along with millions of dollars of Jewelry and these properties and inventories should be immediately secured by this Court from any parties in possession and all assets returned to the Court for proper distribution to the proper Beneficiaries.

8. Under RULE 5.341. ESTATE INFORMATION, the Personal Representatives Tescher, Spallina and Theodore have failed on reasonable and numerous requests in writing, to provide interested persons, including but not limited to, Petitioner and Petitioner's children's counsel, information about the Estates and its administration and therefore this Court should take all actions necessary to rectify this violation and force them to immediately turn over all records in the Estates of Simon and Shirley and all of their records regarding any party named herein, in entirety, to review by this Court and Petitioner for further evidence of Fraud, Theft, Forgery and more.

9. Under RULE 5.341. ESTATE INFORMATION, records this Court should demand and tender to Petitioner and Petitioner's children's counsel, include but are not limited to,

    a. 1995 Insurance Trust / Simon Trust

    b. 2008 Trust of Simon that was executed prior to the 2012 Amended Trust that was completed with Forged and Fraudulent Documents immediately prior to Simon's death as evidenced in the Petition.

c. Full documentation for Proskauer Rose's Will Exhibit in the Will of Simon Bernstein and all estate work Proskauer has for Simon and Shirley their children and grandchildren and Petitioner and Candice and their children and grandchildren.

d. All trusts created by any party named herein for the Beneficiaries, children or grandchildren of the decedents Simon and Shirley.

e. All records for both Estates, including but not limited to, banking, investment, business, accounting, real estate, transfers, titles, deeds, insurance, IRA's, pensions, retirement plans and any other records necessary to ascertain the assets in the Estates.

f. All investment account records from Stanford, JP Morgan, Legacy and Oppenheimer and any banking accounts or other asset accounts, with any beneficiary designations for Transfer on Death "TOD" accounts.

g. All medical records of Simon and Shirley from all doctors involved in their care for the years 2007-2012.

h. All post mortem medical records, coroner records and hospital records.

10. Under Title XLII ESTATES AND TRUSTS Chapter 733 PROBATE CODE: ADMINISTRATION OF ESTATES 733.509 this Court enter an order removing the Personal Representatives and have them immediately deliver all Estates assets, records, documents, papers, and other property of or concerning the Estates in the removed personal representative's possession or control to the remaining personal representative or successor fiduciary or this Court and this Court turn relevant documents over to the appropriate state and federal authorities for further investigation of alleged Forgery and Fraud.

V. PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth in detail herein, Petitioner respectfully requests that this Court in the interest of justice issue an immediate order to remove the Personal Representatives, Tescher & Spallina P.A., Tescher & Spallina and Ted as Trustee, Successor

Trustee, Personal Representative and any other capacity they claim in the estates of Simon and Shirley and have them immediately deliver all Estates assets, records, inventories, accountings, documents, papers, and other property of or concerning the Estates in the removed Personal Representatives possession or control to a new personal representative or successor fiduciary or this Court. Then this Court then turn the relevant documents over to the appropriate state and federal authorities for further investigation of alleged Forgery and Fraud and for such other relief as the Court may find just and proper.

Respectfully submitted,

Dated: Palm Beach County, FL

_____

_____, 2013

Eliot I. Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588

PROOF OF SERVICE BY MAIL

I, Eliot Ivan Bernstein, the Petitioner, certify that I served this notice by mailing a copy to

Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431

Donald Tescher, Esq.
Tescher & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431

Theodore Stuart Bernstein
880 Berkley Street
Boca Raton, FL 33487

Interested Parties and Trustees for Beneficiaries

Lisa Sue Friedstein
2142 Churchill Lane
Highland Park IL 60035

Jill Marla Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

Pamela Beth Simon
950 North Michigan Avenue
Suite 2603
Chicago, IL 60611

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434

and depositing the same in the U.S. Mail on the _____ day of

_____, _____,

with proper postage prepaid.

Date _____, _____

X_____

Signature

EXHIBIT 1

JANUARY 08, 2013 REASSURE AMERICA LIFE INSURANCE COMPANY LETTER RE SIMON BERNSTEIN POLICY

Reassure America Life
Insurance Company

J. L. McDonald, ALHC, LTCP
Vice President

12750 Merit Drive
Suite 500
Dallas, TX 75251

Telephone (972) 776-8535
Fax (260) 435-8773

January 8, 2013

Mr. Robert Spallina
Attorney at Law
Tescher & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way, Suite 720
Boca Raton, FL 33431

Re: Simon Bernstein, Dec's
Policy # 1009208

Dear Mr. Spallina:

This will acknowledge your letters the most recent of which is dated December 21, 2012.

In as much as the above policy provides a large death benefit in excess of $1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process the claim.

Please let us know how we may assist you in this process.

Sincerely,

Jim McDonald, ALHC, LTCP
Vice President
Claims Oversight

FAX

To: Robert Spallina
Company:
Fax: 915619977308

From: Kellie Walker
Phone:

NOTES:

Insured Simon Bernstein #1009208

Date and time of transmission: Tuesday, January 15, 2013 11:49:30 AM

Number of pages including this cover sheet: 02

EXHIBIT 2

JACKSON'S (1) ANSWER TO COMPLAINT AND (2) COUNTERCLAIM

AND THIRD-PARTY COMPLAINT FOR INTERPLEADER

BURKE, WARREN, MACKAY & SERRITELLA, P.C.

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22ND FLOOR
CHICAGO, ILLINOIS 60611-3607
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ALEXANDER DAVID MARKS
DIRECT DIAL NUMBER
(312) 840-7022
amarks@burkelaw.com

July 1, 2013

VIA FEDEX REQUIRING SIGNATURE RECEIPT

Eliot Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

Re: Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company, et al.
Case No. 2013 cv 03643

Dear Mr. Bernstein:

We represent Jackson National Life Insurance Company, successor in interest to Heritage Union Life Insurance Company in the above-matter. Please find enclosed a copy of a counterclaim and third-party complaint that was filed on June 26, 2013 in the United States District Court for the Northern District of Illinois under the case number shown above. You were named as a party in this suit because of a potential interest you have in an insurance policy of which Simon Bernstein was the insured.

Why are you getting this?

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days from the date shown above, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date above) to answer the third-party complaint.

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date above.

Very truly yours,

Alexander D. Marks/sc

Alexander D. Marks

Enclosures
cc: Frederic A. Mendelsohn
1449378.1

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

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, Plaintiff, v. HERITAGE UNION LIFE INSURANCE COMPANY, Defendant.	Case No. 13 cv 3643 Honorable Amy J. St. Eve Magistrate Mary M. Rowland
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.	

JACKSON'S (1) ANSWER TO COMPLAINT AND (2) COUNTERCLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER

Defendant, Jackson National Life Insurance Company ("Jackson"), as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union

Life Insurance Company, makes the following (1) answer to Plaintiff's complaint and (2) counterclaim and third-party complaint for interpleader:

ANSWER

1. At all relevant times, the Bernstein Trust was a common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the State of Illinois.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

2. Ted S. Bernstein is the Trustee of the Bernstein Trust.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. At all relevant times, the Bernstein Trust was a beneficiary of a life insurance policy insuring the life of Simon L. Bernstein, and issued as policy number 1009208 (the "Policy").

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

4. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capital Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

5. At the time of issuance and delivery of the Policy in 1982, CBLIC was an insurance company licensed and doing business in the State of Illinois, and the insured, Simon L. Bernstein, was a resident of the state of Illinois.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

6. Heritage subsequently assumed the Policy from Capital Bankers and thus became the successor to CBLIC as "Insurer" under the Policy.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

7. In 1995, the VEBA, as owner of the Policy, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee of the VEBA, as primary beneficiary of the Policy, and the Bernstein Trust as the contingent beneficiary.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. Upon the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon L. Bernstein, individually.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. At the time of his death, Simon L. Bernstein was the owner of the Policy, and the Bernstein Trust was the sole surviving beneficiary under the Policy.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

11. The insured under the Policy, Simon L. Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

ANSWER: Jackson admits the allegation of this paragraph.

12. Following Simon L. Bernstein's death, the Bernstein Trust, by and through its counsel in Palm Beach County, FL, submitted a death claim to Heritage under the Policy including Simon L. Bernstein's death certificate and other documentation.

ANSWER: Jackson admits the allegation of this paragraph.

13. The Policy, by its terms, obligates Heritage to pay the death benefits to the beneficiary of the Policy upon Heritage's receipt of the due proof of the insured's death.

ANSWER: Jackson admits it, as a successor to Heritage, is obligated to pay the death benefits to the beneficiary(ies) of the Policy, but denies that the remainder of paragraph 13 accurately and fully states the obligations of a beneficiary in submitting a claim under the Policy, and/or when the obligation for Jackson to make such payment becomes due and therefore denies the same.

14. Heritage has breached its obligations under the Policy by refusing and failing to pay the Policy's death benefits to the Bernstein Trust as beneficiary of the Policy despite Heritage's receipt of due proof of the Insured's death.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and filing its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph.

15. Despite the Bernstein Trust's demands Heritage has not paid out the death benefits on the policy to the Bernstein Trust.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and filing its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph.

16. As a direct result of Heritage's refusal and failure to pay the death benefits to the Bernstein Trust pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds $1,000,000.

ANSWER: Jackson denies the allegation of this paragraph.

WHEREFORE, Defendant, Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, respectfully requests that it be dismissed from this lawsuit, and requests such other and further relief as the Court deems just and proper.

COUNTER-CLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER

INTRODUCTION

1. Jackson National Life Insurance Company ("Jackson") brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the "Death Benefit Proceeds") have been tendered to this Court.

PARTIES AND VENUE

2. Jackson, successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Lansing, Michigan. Jackson did not originate or administer the

subject life insurance policy, Policy Number 1009208 (the "Policy"), but inherited the Policy and the Policy records from its predecessors.

3. The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the "Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

4. Ted S. Bernstein is a resident and citizen of Florida. He is alleged in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein's son).

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy as Simon Bernstein's son, presumably under the Bernstein Trust.

6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the purported trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust" (the "Lexington Trust"). The Lexington Trust was, upon information and belief, created to provide employee benefits to certain employees of S.B. Lexington, Inc., an insurance agency, including Simon Bernstein, but it is unclear if such trust was properly established.

7. United Bank of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

8. Bank of America, N.A., is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

9. The "Simon Bernstein Trust" is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

11. Personal jurisdiction is proper over Ted Bernstein because he, purportedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this interpleader action occurred in this District.

FACTS

15. On December 27, 1982, upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the purported insured (the "Insured").

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National

Trust, N.A., Trustee"; "LaSalle National Trust, N.A."; "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"; and "Simon Bernstein Trust, N.A."

17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are $1,689,070.00, less an outstanding loan.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

> In as much as the above policy provides a large death benefit in excess of $1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or the "Simon Bernstein Trust, N.A.", as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as *Exhibit 1*, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper beneficiaries of the Policy), and requesting that no distributions of the Death Benefit Proceeds be made.

COUNT I- INTERPLEADER

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

24. Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of "LaSalle National Trust, N.A." (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy, which Jackson has been unable to do by reason of uncertainty and potential competing claims.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

WHEREFORE, counter- and third-party plaintiff Jackson National Life Insurance Company respectfully requests pursuant to 28 U.S.C. 1335 that this Court enter an Order:

a. That counter-defendants be temporarily enjoined during the pendency of this suit and thereafter permanently and perpetually enjoined from commencing any proceedings or prosecuting any claim against Jackson in any state or federal court or other forum with respect to the Policy;

b. That judgment be entered in favor of Jackson on the Complaint in Interpleader;

c. That upon determination that the proper parties have been made subject to this suit, Jackson be excused from further attendance upon this case, be dismissed from this case with an express finding of finality pursuant to Rule 54(b) of the Federal Rules of Civil Procedure;

d. That Jackson be awarded actual court costs and reasonable attorneys' fees incurred in connection with this interpleader action to be paid out of the admitted liability deposited by it with the Clerk of the Court; and

e. That Jackson be granted such other and further relief as this Court deems just and appropriate.

JACKSON NATIONAL LIFE INSURANCE COMPANY,
By: /s/ Alexander D. Marks
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)
Alexander D. Marks (ARDC No. 6283455)
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave., 22nd Floor
Chicago, Illinois 60611
312-840-7000
312-840-7900 (facsimile)

CERTIFICATE OF SERVICE

The undersigned, an attorney, states that on June 26, 2013 he caused a copy of the foregoing Answer to Complaint and Counter-Claim and Third-Party Complaint for Interpleader to be filed electronically with the Northern District of Illinois electronic filing system, and electronically served upon the following:

Adam M. Simon
The Simon Law Firm
303 E. Wacker Drive, Suite 210
Chicago, IL 60601

/s/ Alexander D. Marks

1434759.1

Friday, May 3, 2013

Reassure America Life Insurance Company
J. L. McDonald, ALHC LTCP
Vice President
12750 Merit Drive
Suite 600
Dallas, TX 75251
Telephone (972) 776-8535
Fax (260) 435-8773

RE: URGENT RE Policy #1009208

Dear Mr McDonald,

I, Eliot I. Bernstein, son of Simon L. Bernstein, and my children have been notified that we are possible beneficiaries of the life insurance policy on my deceased father. I am in receipt of your attached letter and I have retained counsel, Christine Yates at Tripp Scott in FL, for my children's interests in the policy and am currently seeking counsel regarding my interest in the policy and request that you send me and Yates a copy of the policy and all pertinent policy information immediately at the addresses below.

I have been told by the estate planning attorney, Robert Spallina, that he does not have a copy of the policy, schedules, riders, loans, attachments etc. and that he is also missing a trust document that may have been the beneficiary. I am requesting that your company make NO distribution of any policy proceeds without both my written personal consent and my children's counsel consent, to any party. I am aware of claims that there is also a missing trust of Simon that may have been a Beneficiary and any information you maintain regarding the beneficiaries would be helpful in trying to establish who the rightful beneficiaries are. I, nor my children have consented to any agreements for distribution and have no proper paperwork to rely on.

I have been informed that parties are attempting to make distribution without my or my children's counsel knowledge and consent.

Please contact me at your earliest convenience so that we may discuss this further or you can write or email at my addresses below.

Address information for Christine Yates,

Christine P. Yates
Tripp Scott
110 Southeast 6 Street
Fort Lauderdale, FL 33301
(954) 525-7500
CTY@trippscott.com

Thank you for your cooperation in these matters,

Eliot I. Bernstein
Inventor
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245-8588 (o)
(561) 886-7628 (c)
(561) 245-8644 (f)
iviewit@iviewit.tv

NOTE: When the print dialogue box appears, be sure to uncheck the Annotations option.

AO 399 (Rev. 05/00)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

Waiver of Service of Summons

TO: Alexander D. Marks, attorney for Jackson National Life Insurance Company
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, _____, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of Simon Bernstein Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company, et al.,
(CAPTION OF ACTION)

which is case number 13-cv-03643 in the United States District Court
(DOCKET NUMBER)

for the Northern District of Illinois.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after July 1, 2013,
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

_____ _____
(DATE) (SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

NOTE: When the print dialogue box appears, be sure to uncheck the Annotations option.

AO 399 (Rev. 05/00)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

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(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

_____ _____
(DATE) (SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

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EXHIBIT 3

LETTER FROM JANET CRAIG OF OPPENHEIMER DESCRIBING THE EMERGENCY

Eliot Bernstein

From: Craig, Janet <Janet.Craig@opco.com>
Sent: Tuesday, July 16, 2013 1:56 PM
To: 'Robert Spallina (rspallina@tescherspallina.com)'; 'Eliot Ivan Bernstein (iviewit@gmail.com)'; 'Candice Bernstein (tourcandy@gmail.com)'
Cc: Worth, Hunt; Sigalos, Janet; Vereb, Patricia
Subject: Bernstein Family Realty

Robert, Eliot and Candice,

As you are aware, during his lifetime, Simon Bernstein paid the household expenses for Eliot and Candace. Upon his death those funds were frozen and the only funds available to pay the household expenses were the education trusts that Simon set up for Daniel, Jacob and Joshua.

We are now at a point where the education trusts have insufficient assets to pay the 2013/2014 tuition for the three boys and will soon be depleted to the point where the household expenses cannot be paid. The market values of the four accounts are listed below.

Please let me know as soon as possible if the Estate of Simon Bernstein intends to reimburse the education trusts for the household expenses paid to date. If this is not possible, for any reason, Oppenheimer Trust Company will have no recourse but to Resign as Trustee in favor of Eliot and Candice Bernstein and to name them as the Successor Manager of Bernstein Family Realty. At that point we will present an Accounting for all the trusts, request a Release and Receipt for our period of administration and transfer all funds to the management of the Successor Trustee and Manager and terminate the trusts.

Please note I will be out of the office from July 20th through July 29th. I will be addressing this matter upon my return.

S. Bernstein Trust fbo Daniel	$19,465.15
S. Bernstein Trust fbo Jacob	$19,267.41
S. Bernstein Trust fbo Joshua	$ 9,268.52
Bernstein Family Realty	$12,311.94
Total	$60,313.02

Thank you for your prompt attention to this matter.

Janet Craig, CTFA
Senior Vice President & Compliance Officer
Oppenheimer Trust Company
18 Columbia Turnpike
Florham Park, NJ 07932
Tel: 973-245-4635
Fax: 973-245-4699
Email: Janet.Craig@opco.com

EXHIBIT 4

EMAIL BETWEEN YATES AND MARC

From: marcrgarber@gmail.com
To: cty@trippscott.com
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status
Date: Thu, 13 Jun 2013 11:02:40 -0400

Christine:

I had difficulty sleeping, as I was sorting through our conversation. What troubles me has troubled me in prior situations. Spallina is not the first "bully lawyering" situation I have seen or heard about. "If you scream loud enough and pound the table hard and often, the other side will cave". It troubles me that many times this approach works. Sometimes it becomes a fee and time matter, other situations result in the good lawyer becoming tired of dealing with "hard headed" uncompromising opponent. I have heard some people actually seek out a bully lawyer for these reasons. The reasons include the fact that they win using this approach. Further, and as you implied, with all the time you expended, Spallina gave us very little, in terms of everything; from documents to involvement in the administration.

It truly troubles me that Spallina continues to spin his web of deceit, and I believe this conduct is further circumstantial evidence that "something is very wrong". I am very glad Eliot filed whatever he filed and I do hope he prevails. I also hope Spallina is removed and perhaps punished for all he is doing. It also troubles me that once he learns of your withdrawal, Spallina will celebrate his victory. If I was licensed in Florida, I would take this on pro bono. Simply out of principal, and I would make certain a probate judge learns of Spallina's behavior. Unfortunately, I am not a Florida lawyer. If Eliot is able to get his motions before a probate judge, I hope he asks and you agree to testify as to how Spallina treated you. A judge may take real notice of that testimony.

Thanks,

Marc

Regards,

MARC R. GARBER

Date: Thu, 13 Jun 2013 13:05:50 +0000
From: cty@TrippScott.com
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status
To: marcrgarber@gmail.com; iviewit@iviewit.tv; iviewit@gmail.com

Marc, it was nice to speak with you yesterday. As we discussed, the reasons for the the termination of my representation were due to the insufficiency of funds in the trust accounts and the the corresponding increase in litigation that would need to be filed in order to move this case forward. It is always a difficult decision as an attorney to proceed with litigation, using all funds in a trust to do so without a guarantee of results. This leaves the attorney in a difficult position with the trust beneficiary, their client. Also, I was concerned that attorney/client communications via email were being filed in court proceedings by Eliot in his case. I want to be able to be assured that information on behalf of my client's remains confidential.

Thank you again for you time in speaking with me yesterday.

110 SE Sixth Street, Suite 1500
Fort Lauderdale, FL 33301
954-525-7500

Christine T. Yates
Director

Direct: (954) 760-4916
Fax: (954) 761-8475
cty@trippscott.com

From: Marc Garber [mailto:marcrgarber@gmail.com]
Sent: Saturday, June 08, 2013 11:15 AM
To: Christine Yates
Subject: Fwd: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Christine please call me about this. Marc Garber. 856 236 6567

---------- Forwarded message ----------
From: "Eliot Ivan Bernstein" <iviewit@iviewit.tv>
Date: Jun 8, 2013 10:12 AM
Subject: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status
To: "Marc R. Garber, Esquire @ Flaster Greenberg P.C." <marc.garber@flastergreenberg.com>, "Marc R. Garber Esq. @ Flaster Greenberg P.C." <marcrgarber@verizon.net>, "Marc R. Garber Esq." <marcrgarber@gmail.com>
Cc:

What is going on here? Give me a call when you get a sec.

From: Christine Yates [mailto:cty@TrippScott.com]
Sent: Friday, June 7, 2013 11:57 AM
To: 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'
Cc: Ibis A. Hernandez
Subject: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Eliot and Candace, first I am glad that you are feeling better Eliot.

I have made no progress with Spallina in regards to obtaining documents and in my last call with him and Mark Manceri, Mr. Spalllina reiterated his position that the mortgage on the property you are currently residing in was what your father wanted, and that any information regarding the trust of your father would have to be addressed to your brother as trustee.

At this time, in order to receive the information you want, I believe you will need to institute legal proceedings against the estate and trust. Since a new course of action will need to be undertaken, at this time, I will be withdrawing as counsel for your children, and believe that you should now hire separate litigation counsel for them. I will be happy to assist your new counsel in providing them with any information and thank you for the opportunity you gave me to assist you.

110 SE Sixth Street, Suite 1500
Fort Lauderdale, FL 33301
954-525-7500

Christine T. Yates
Director

Direct: (954) 760-4916
Fax: (954) 761-8475
cty@trippscott.com

EXHIBIT 5

ZILLOW LISTING CONDO

Zillow

2494 S Ocean Blvd APT C5, Boca Raton, FL 33432

Sold on 5/6/13:

$1,600,000

Zestimate®: $2,125,592

Est. Mortgage:$6,364/mc

Bedrooms:	3 beds
Bathrooms:	4 baths
Single Family:	3,764 sq ft
Lot:	43,560 sq ft
Year Built:	1996
Last Sold:	May 2013 for $1,600,000
Heating Type:	Other

Description

ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room...

Cooling	Parking	Basement Type
Central	Garage - Attached	Unknown
Fireplace Unknown	**Floor Covering** Unknown	**Attic** Unknown

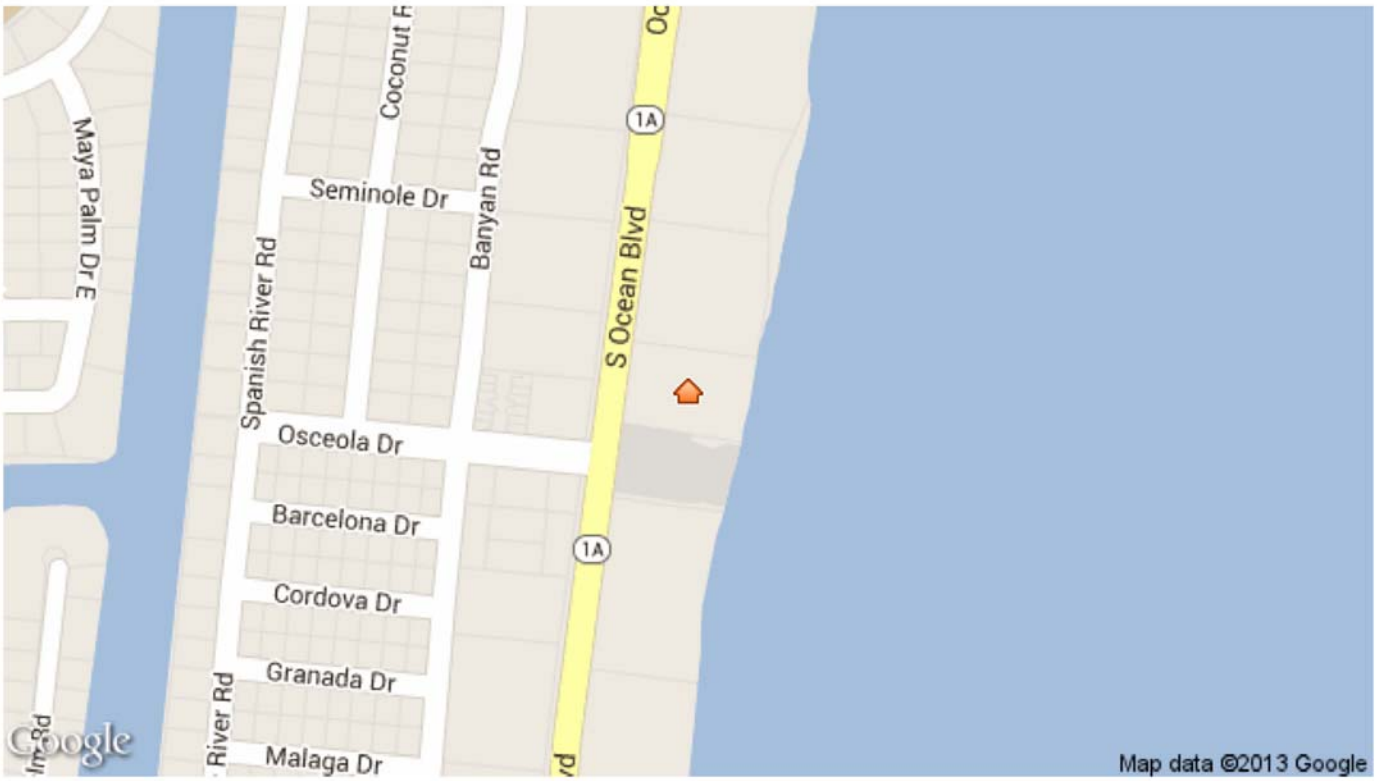
Other

Appliances Included
Dishwasher, Dryer, Microwave, Range / Oven, Refrigerator, Washer

Covered Parking Spaces 0	**Laundry** In Unit	**Parcel #** 06434732380020035
Price/sqft $425	**Roof Type** Other	**Structure Type** Other

Unit Count	View	Zillow Home ID
1	Water	46731264

Map

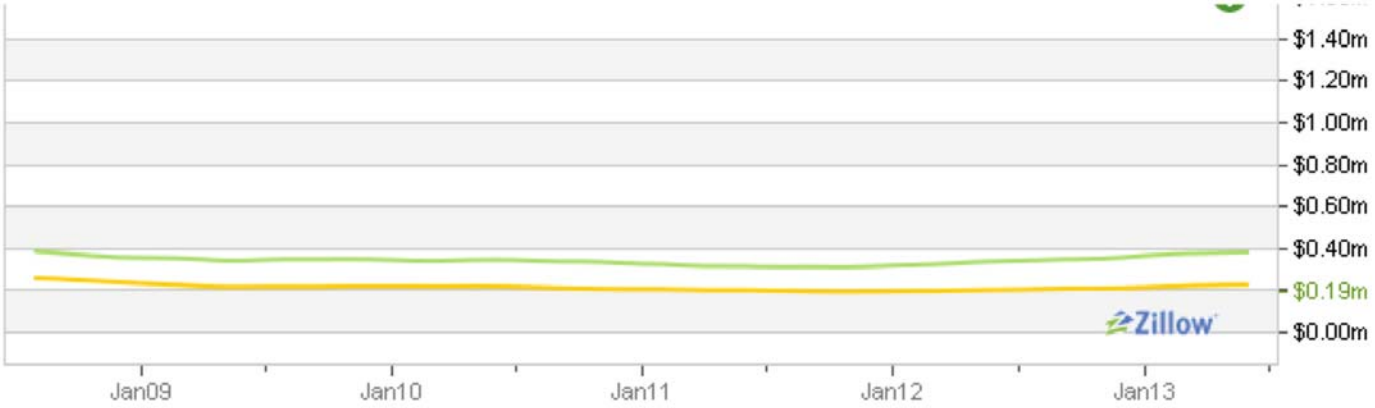


Zestimates

	Value	Range	30-day change	$/sqft	Last updated
Zestimate	$2,125,592	$1.81M – $2.51M	+$89,258	$564	07/11/2013
Rent Zestimate	$7,579/mo	$5.1K – $14K/mo	+$427	$2.01	07/08/2013

Owner tools

Market guide Zillow predicts 33432 home values will increase 3.4% next year, compared to a 3% increase for Boca Raton as a whole. Among 33432...



This home

Price History

Date	Description	Price	Change	$/sqft	Source
05/06/2013	Sold	$1,600,000	-20.0%	$425	Public Record
04/13/2013	Listing removed	$1,999,000	--	$531	Nestler Poletto Sotheby's International Realty
09/30/2012	Price change	$1,999,000	-8.9%	$531	Nestler Poletto Sotheby's International Realty
02/01/2012	Listed for sale	$2,195,000	37.2%	$583	Nestler Poletto Sotheby's International Realty
07/13/2004	Sold	$1,600,000	--	$425	Public Record

Tax History

Year	Property taxes	Change	Tax assessment	Change
2012	$22,883	15.1%	$1,127,500	10.0%