

UNITED STATES DISTRICT COURT  
for the  
Northern District of Illinois

SIMON BERNSTEIN IRREVOCABLE INSURANCE )  
Plaintiff )  
v. )  
HERITAGE UNION LIFE INSURANCE COMPANY )  
Defendant )  
Civil Action No. 13 cv 3643

**NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS**

To: Robert Spallina - Tescher & Spallina, P.A.

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

## Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

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 60 days (*give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, 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 below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

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, or the entity you represent, 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 below.

Date: 09/22/2013

*Signature of the attorney or unrepresented party*

Eliot Ivan Bernstein

Printed name

2753 NW 34th St  
Boca Raton FL 33434

### *Address*

[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
*E-mail address*

561-245-8588  
*Telephone number*

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
**Waiver of Service of Summons**

TO: Eliot Ivan Bernstein  
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Donald Tescher, acknowledge receipt of your request  
(DEFENDANT NAME)

SIMON BERNSTEIN IRREVOCABLE  
that I waive service of summons in the action of INSURANCE TRUST DTD 6/21/95,  
(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 09/22/13,  
(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:

Donald Tescher

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.

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

AO 399 (Rev. 05/00)

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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.

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
                                  )  
Plaintiff,                    )  
                                  )  
v.                            )  
                                  )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY,                    )  
                                  )  
Defendant.                    )  
----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY,                    )  
                                  )  
Counter-Plaintiff,            )  
                                  )  
v.                            )  
                                  )  
SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
                                  )  
Counter-Defendant,            )  
                                  )  
and,                            )  
                                  )  
FIRST ARLINGTON NATIONAL )  
BANK, as Trustee of S.B. Lexington, )  
Inc. Employee Death Benefit Trust, )  
UNITED BANK OF ILLINOIS, BANK )  
OF AMERICA, successor in interest to )  
LaSalle National Trust, N.A.,        )  
SIMON BERNSTEIN TRUST, N. A.,        )  
TED BERNSTEIN, individually and    )  
as alleged Trustee of the Simon    )  
Bernstein 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 )  
Berustein 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, INC. )  
(OF FLORIDA) NATIONAL )  
SERVICE ASSOCIATION, INC. )  
(OF ILLINOIS) AND )  
JOHN AND JANE DOE'S )

Third Party Defendants.

**ELIOT IVAN BERNSTEIN (“ELIOT”) (1) ANSWER TO JACKSON NATIONAL LIFE INSURANCE COMPANY (“JACKSON”) ANSWER AND COUNTER-CLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER AND (2) CROSS CLAIM**

ELIOT a third party defendant and an alleged beneficiary of a life insurance policy Number 1009208 on the life of Simon L. Bernstein (“Policy(ies)”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” and a “Simon Bernstein Trust, N.A.” that are at dispute in the Lawsuit, makes the following (1) Response to Jackson’s Answer and Counterclaim and (2) Cross claim.

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief and as a Pro Se Litigant<sup>1</sup>:

**ANSWER TO JACKSON’S COUNTER-CLAIM AND THIRD PARTY COMPLAINT**  
**FOR INTERPLEADER**

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.

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<sup>1</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)." In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

**ELIOT ANSWER:** To the extent Par. 1 of Jackson's counter-claim/third-party complaint contain conclusions of law, no response is required. However, ELIOT denies that Jackson has tendered the death benefit to the court, as when ELIOT contacted Jackson's counsel Alexander David Marks ("MARKS") he stated at that time, after Jackson's Answer was filed, that the death benefit had not been paid to this Court.

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.

**ELIOT ANSWER:** ELIOT 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. 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."

**ELIOT ANSWER:** ELIOT 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. 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).

**ELIOT ANSWER:** ELIOT admits that Ted S. Bernstein ("TED") is a resident of Florida. ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the

remainder of the allegations of this paragraph and therefore denies the same. That ELIOT claims that TED makes his claims in this Lawsuit acting as alleged “trustee” of the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” but also TED alleges this trust and any executed copies cannot be located. Therefore, it would be almost impossible for TED to make assertions to who the true and proper trustees and beneficiaries of such lost trust are. ELIOT claims that the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” was not the final beneficiary of the Policy(ies). On information and belief the beneficiary of the Policy(ies) at the time of Simon L. Bernstein (“SIMON”) death, as according to Jackson’s Counter Claim the beneficiary at the time of death was the “Simon Bernstein Trust, N.A.” and thus the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” may have no valid claim as a prior beneficiary.

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(ies) as Simon Bernstein's son, presumably under the Bernstein Trust.

**ELIOT ANSWER:** ELIOT admits residency and citizenry of Florida and that he has asserted that he and/or his children are potential beneficiaries as SIMON's son and grandchildren. ELIOT denies his claims were made under the Bernstein Trust, which according to TED's response to Jackson's Counter Claim, “Ted Bernstein and the Bernstein Trust admit that to its knowledge no one has been able to locate an executed original or an executed copy of the Bernstein Trust, but denies that no one has located a copy of the Bernstein Trust.” In other words the executed “Bernstein Trust” is lost and no one has a copy and herein the term “lost” trust will refer to the “Bernstein Trust” and any other names it is referenced as.

6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the alleged 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.

**ELIOT ANSWER:** ELIOT 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. 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.

**ELIOT ANSWER:** ELIOT 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. 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.

**ELIOT ANSWER:** ELIOT 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. 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.

**ELIOT ANSWER:** ELIOT 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. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

**ELIOT ANSWER:** ELIOT 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. Personal jurisdiction is proper over Ted Bernstein because he, allegedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that TED cannot assert with any proof or contract or trust that he is the trustee of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka "Bernstein Trust" as TED claims the trust is lost and no executed copies exist.

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.

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

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.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph regarding personal jurisdiction and therefore

denies the same. ELIOT denies that TED or ELIOT can assert an ownership or beneficial interest in the lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka "Bernstein Trust," as if the trust is lost they cannot prove through contract anyone's interests or rights.

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.

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

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

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The Court should note that after repeated attempts by ELIOT to secure copies of the underlying policies and trusts pertinent to this Lawsuit from the parties, he has been denied and refused all such suppressed and denied information and documents to form any opinion on the validity of the claims.

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."

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The Court should

note that after repeated attempts by ELIOT to secure copies of the underlying policies and trusts pertinent to this Lawsuit from the parties, he has been denied and refused all such suppressed and denied requested information and documents to form any opinion on the validity of the claims.

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.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations regarding the beneficiaries of the Policy(ies) and therefore denies the same. ELIOT denies that the Policy(ies) Death Benefit Proceeds are \$1,689,070.00, as it was initially represented by TED, Robert Spallina, Esq. ("SPALLINA") and others that the death benefit was \$2,000,000.00 less outstanding loans. When ELIOT asked TED and SPALLINA and others for copies of the policies loans or any other Policy(ies) information it was denied and suppressed. After repeated attempts by ELIOT to secure copies of the underlying policies, trusts and carrier information pertinent to this Lawsuit from the parties, he has been denied and refused all such requested information and documents to form any opinion on the validity of the claims.

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**), [emphasis added] submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, allegedly 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 alleged sole surviving Policy beneficiary at the time of the Decedent's death.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims, on information and belief that TED's counsel that withdrew from representation after advising TED that he did not have “authority” to file this Lawsuit is believed to be Robert Spallina, Esq. (“SPALLINA”) and Donald Tescher, Esq. (“TESCHER”) of Tescher & Spallina, P.A. (“TSPA”), who are acting as estate counsel for SIMON’s estate and as alleged Personal Representatives for the estate of SIMON.

That ELIOT does not have the necessary files from this Court’s records to determine whom the original counsel who drafted and filed this Lawsuit were and if withdrawal of counsel papers were filed after the filing of the suit or withdrawal was prior to filing. That ELIOT believes that any claims of any fiduciary capacities claimed by TED on behalf of any party that is a litigant in this Lawsuit are allegedly fraudulently acquired and are part of a larger **insurance fraud and fraud on the beneficiaries of the estate**. The alleged criminal acts are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate (“Probate Court”) case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:

- i. May 6, 2013 ELIOT filed Docket #23 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 1").

- a. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
- b. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582

- ii. May 29, 2013, ELIOT filed Docket #28 "RENEWED EMERGENCY PETITION" ("Petition 2")
  - a. [www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf)
- iii. June 26, 2013, ELIOT filed Docket #31 "MOTION TO: CONSIDER IN ORDINARY COURSE THE 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 FILED BY PETITIONER" ("Petition 3")
  - a. [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf)
- iv. July 15, 2013, ELIOT filed Docket #32 "MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS" ("Petition 4")
  - a. [www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf)
- v. July 24, 2013, ELIOT filed Docket #33 "MOTION TO REMOVE PERSONAL REPRESENTATIVES" **for insurance fraud and more.** ("Petition 5")
  - a. [www.iviewit.tv/20130724SIMONMotionRemovePR.pdf](http://www.iviewit.tv/20130724SIMONMotionRemovePR.pdf)
- vi. August 28, 2013, ELIOT filed Docket #TBD "NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS" ("Petition 6")

a. [www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf](http://www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf)

vii. September 04, 2013, ELIOT filed Docket #TBD "NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN; MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE. ("Petition 7")

a. [www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf)

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. [Emphasis Added]

ELIOT ANSWER: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that the counsel referred to here as "Ted Bernstein's counsel" is believed to be SPALLINA and TESCHER and the law firm of TSPA, as the Heritage Union Life Insurance Company's letter referenced in Jackson's response demands a "court order" to approve of the TSPA,

SPALLINA, TESCHER, TED and Pamela Beth Simon (“P. SIMON”) insurance trust and beneficiary scheme they presented in their death benefit claim. Other correspondences were sent to TSPA, SPALLINA and TESCHER directly by the carrier(s) in their capacity as counsel representing the estate of SIMON and as alleged Personal Representatives of the estate of SIMON.

However, instead of complying with the carriers request to obtain a “court order” to determine the beneficiaries, the instant Lawsuit was instead filed to try and reap the benefits through this Breach of Contract suit and without first obtaining a court order approving the beneficiaries as demanded by the carrier. The initial insurance and trust scheme prepared by TSPA is fully described, defined and exhibited in Petition 1, Section VII - “Insurance Distribution Scheme” Pages 30-37 and Pages 170-175, exhibit 7 - “Settlement Agreement and Mutual Release” (“SAMR”). The trust that would have been created under the SAMR to replace the lost “Bernstein Trust” aka “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is termed herein as the SAMR TRUST (“SAMR TRUST”). The SAMR TRUST was to act as the proposed trust instrument by which the alleged conversion of proceeds was to be used funneled to allegedly intentionally post mortem elected wrong beneficiaries, as defined more fully in Petition 1, Pages 142-168 and 258-259, exhibits 5, 6 and 25.

That TSPA, SPALLINA and TESCHER are SIMON’s estate counsel and alleged Personal Representatives of SIMON’s estate, and yet, also appear in this Lawsuit to have acted in apparent conflict with the estate beneficiaries, acting as TED’s counsel in this Lawsuit. ELIOT claims these conflicts enable part of an alleged larger fraud against the estates of SIMON and SHIRLEY as further evidenced and exhibited in the Petitions 1-7 and Petition 1,

Section XIX. CONFLICTS OF INTEREST BY PERSONAL REPRESENTATIVES,  
ESTATE COUNSEL AND TRUSTEES DISCOVERED, Pages 88-90.

The documents giving TSPA, SPALLINA, TESCHER and TED fiduciary powers in the estates of SIMON and SHIRLEY are also currently under investigations and questioned as to their validity in complaints filed by ELIOT with the Governor of Florida Notary Public Division, the Palm Beach County Sheriff's Office, Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate and have been simultaneously been tendered to the US District Court of New York Southern District.

In the Notary Public investigation at the Florida Governor's Office, the Licensed Notary Public, who is an employee of TSPA, **ADMITTED TO ILLEGALLY NOTARIZING** documents and it is alleged that she forged documents after he was deceased and also improperly Notarized documents, including a Will and **Amended Trust** of SIMON and documents that allegedly grant Simon's estate counsel, TSPA, SPALLINA and TESCHER their fiduciary capacities as alleged Personal Representatives of the estates of SIMON.

That the Licensed Notary Public Kimberly MORAN ("MORAN"), admitted to committing six instances of Fraud by falsely Notarizing documents and allegedly Forged documents in the estate of SHIRLEY. The alleged forgeries included a document **ILLEGALLY NOTARIZED** in SIMON's name and with a fraudulent signature **affixed**, done two months after SIMON's passing and submitted to the Probate Court **and** others as part of official records in the estates. These acts are illegal felony crimes. The Notary Public MORAN's Response to the complaints filed against her with the Governor of Florida's office in an ongoing investigation, including her Admission to the allegations, the Response filed by

ELIOT to MORAN's Response and the original Notary Public original complaint, all can be found as exhibits in Petition 7, exhibits 1,2 &3.

20. Presently, the Bernstein Trust still has not been located. **Accordingly, Jackson is not aware whether the Bernstein Trust even exists**, [EMPHASIS ADDED] 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**. [Emphasis Added] 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.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT admits that the "Bernstein Trust" is unknown if it exists. ELIOT admits that TED is questionably the trustee of the "Bernstein Trust" and believes TED has no basis or authority to file this Lawsuit or a death benefit claim with the carrier.

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."

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

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.

**ELIOT ANSWER:** ELIOT admits in part and denies in part and lacks sufficient information and knowledge in part to form a belief as to the truth of the remainder of the allegations of this paragraph and therefore denies the same. ELIOT admits that he and/or his children are the beneficiaries. ELIOT denies sending correspondence to Jackson but instead sending such correspondence to Reassure America Life Insurance Company (“RALIC”) after failing to reach Heritage after several attempts. RALIC may have tendered the correspondence to Jackson without ELIOT authorization or knowledge. ELIOT admits stating that NO DISTRIBUTION OF DEATH BENEFITS BE MADE and further until both CIVIL AND CRIMINAL REMEDIES ARE NOW RESOLVED, regarding the Policy(ies).

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

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT makes no answer to the allegations in Par. 23 as they are conclusions of law.

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.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that Jackson has not tendered the Policy(ies) Proceeds to the registry of this Court after

conversations with Jackson's Attorney at Law, MARKS, who denied benefits have been paid into the registry of this Court at that time.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated therewith; (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.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT admits that "Jackson is presently unable to discharge its admitted liability under the Policy(ies)."

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(ies), which Jackson has been unable to do by reason of uncertainty and potential competing claims. ELIOT claims the death benefit amount is unknown with conflicting claims as to the amount due to the to be determined beneficiaries and therefore cannot determine how much the admitted liability is. Until ELIOT receives all Policy(ies) records and information ELIOT denies that Jackson has no interest in the benefits payable under the Policy(ies) and thus should not be released from this Lawsuit at this time. There may also be other liabilities that are unknown at this time regarding record keeping of beneficiaries and more and these liabilities may be due to any of the parties of this Lawsuit and is yet still unknown, leaving further reason for this Court to leave Jackson a party to the Lawsuit.

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

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.

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

ELIOT shall not be liable to Jackson for any fees or any type of damages.

#### **RELIEF**

**WHEREFORE**, ELIOT prays that:

- i. Even if this court comes to the conclusion that Jackson should be paid attorney fees, then these fees should be paid by TSPA, TESCHER, SPALLINA, TED, Simon Law Firm (“SLF”), David Simon (“D. SIMON”), Pamela Beth Simon (“P. SIMON”) and Adam Simon (“A. SIMON”) directly, as all these costs have resulted from the allegedly fraudulent and illegal acts of TSPA, SPALLINA, TESCHER, TED, P. SIMON, SLF D. SIMON and A. SIMON, in attempting to convert the Policy(ies) proceeds through an alleged Fraud on this Court and fraud on the true and proper beneficiaries of the Policy(ies).
- ii. ELIOT and his children be paid their legal share of the Policy(ies) proceeds as beneficiaries after a “court order” determining the beneficiaries is made.
- iii. under no circumstances should ELIOT or other beneficiaries or interested parties be made liable for attorney fees or any other damages to Jackson or any other party.

- iv. bonding be required if this Court finds that Abuse of Process has occurred in the filing of this Lawsuit.
- v. Jackson should not pay the Policy(ies) proceeds to this Court registry at this time until all beneficiary disputes are wholly resolved by a court of law.
- vi. this Court should not release Jackson from the remainder of the proceedings, as their interest in Heritage makes them a party to this suit and any damages, which may result from their actions or those of Heritage's are still unknown, and so it would be prudent to leave them in at the present time.
- vii. this Court demand all parties release all insurance policy(ies) records, trust documents and any other information regarding the Policy(ies) or any other insurance or other contracts held to ELIOT immediately so that he may better prepare pleadings for this Lawsuit as he has been denied all such records and information to this point, and,
- viii. leave to amend this Answer.

### **CROSS CLAIM / COUNTER CLAIM**

#### **INTRODUCTION**

1. ELIOT brings this cross claim under FRC Rule 13(g) against the Cross Defendant Ted Stuart Bernstein ("TED") and requests this court under FRC Rule 19 to add Pamela B. Simon ("P. SIMON"), David B. Simon ("D. SIMON"), Adam Simon ("A. SIMON"), The Simon Law Firm ("SLF"), Tescher & Spallina P.A. ("TSPA"), Donald Tescher ("TESCHER"), Robert Spallina ("SPALLINA"), Jill Iantoni ("IANTONI"), Lisa Friedstein ("FRIEDSTEIN"), S.T.P. Enterprises ("STP"), S.B. Lexington, Inc. Employee Death Benefit Trust ("SBI"), SB

Lexington, Inc. ("SBL"), National Service Association, Inc. (of Florida) ("NSA"), National Service Association, Inc. (of Illinois) ("NSA2") and John and Jane Doe's to this case as additional Third Party Defendants and further requests this Court to:

- i. To seize all records and demand that all records of all parties concerning either Shirley Bernstein ("SHIRLEY") or Simon Bernstein ("SIMON") held by all parties be turned over to ELIOT, as NO documents have been tendered to him regarding these Policies;
- ii. Award Court Costs not from the Policy(ies) but from alleged conspirators and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless Lawsuit in efforts to perpetrate a fraud;
- iii. ELIOT has requested the Probate Court to remove TSPA, SPALLINA, TESCHER, TED and P. SIMON of any fiduciary capacities regarding the estates of SIMON and SHIRLEY on multiple legal grounds stated in said Petitions and Motion 1-7 and hereby requests this Court remove them as well from acting in any conflicting capacities or self-representations based on the Prima Facie evidence of Forgery, Fraud, Fraud on the Probate Court and Mail and Wire Fraud, already evidenced in Petition 7. **That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin told TED, SPALLINA, TESCHER and their counsel, Mark Manceri, that he [Hon. Judge Colin] should read them all their Miranda Rights right at that moment, after hearing how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased and how there was a fraud upon his court and**

**himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing of the admitted criminal misconduct before his Court, twice in fact.**

- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court as further defined herein is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from further representing any parties, sanctioned and all Cross Defendants and Third Party Defendants forced to retain non conflicted counsel further in these proceedings.
- v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.
- vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.
- vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions during this time period and ELIOT thanks Your Honor for the additional extensions in light of these medical maladies.

viii. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

### **JURISDICTION**

2. Personal jurisdiction is proper over Ted S. Bernstein because he, allegedly claims to be Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.
3. Personal jurisdiction is proper over Pamela B. Simon, David. B. Simon, Adam Simon, Lisa S. Friedstein and Jill M. Iantoni to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have a beneficial interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State. Tescher & Spallina, P.A., Donald Tescher and Robert Spallina, as each are Personal Representatives, Trustees and estate counsel of the estate of SIMON.
4. Personal jurisdiction is proper over The Simon Law Firm, , S.T.P. Enterprises, S.B. Lexington, Inc. Employee Death Benefit Trust, SB Lexington, Inc., National Service Association, Inc. , of Florida, National Service Association, Inc. Illinois, and John and Jane Doe's to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have business in this State.

### **PARTIES AND VENUES**

5. Eliot Ivan Bernstein ("ELIOT") is a resident and citizen of Florida. ELIOT and/or his children are beneficiaries of the Policy(ies).
6. Theodore Stuart Bernstein is a resident and citizen of Florida. He is claiming to be Successor Trustee of the lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka

“Bernstein Trust” and alleging he is a beneficiary of the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” regarding Heritage Policy #1009208 (“Policy(ies”). He is the son of SIMON and SHIRLEY.

3. David B. Simon, Esq. is a resident and citizen of Illinois and an Attorney at Law. He is a partner in The Simon Law Firm and married to P. SIMON, daughter of SIMON and SHIRLEY.
4. Adam Simon, Esq. is a resident and citizen of Illinois and an Attorney at Law. He is a partner in the SLF law firm and is brother to D. SIMON.
5. The Simon Law Firm is believed to be a law firm licensed in Illinois.
6. Pamela Beth Simon is a resident of Illinois and citizen of Illinois. She is daughter to SIMON and SHIRLEY and married to D. SIMON and sister-in-law to A. SIMON.
7. Tescher & Spallina, P. A. is believed to be a Florida law firm.
8. Robert L. Spallina, Esq. is a resident of Florida and citizen of Florida and an Attorney at Law.
9. Donald R. Tescher is a resident of Florida and citizen of Florida and an Attorney at Law.
10. Jill Marla Iantoni is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.
11. Lisa Sue Friedstein is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.
12. S.T.P. Enterprises Inc. is believed to be an Illinois insurance agency believed to be owned by P. SIMON as President and D. SIMON as VP.
13. S.B. Lexington, Inc. Employee Death Benefit Trust, is a trust alleged to be managed by P. SIMON and D. SIMON.

14. S.B. Lexington, Inc. is an Illinois insurance agency managed by D. SIMON and P. SIMON.
15. National Service Association, Inc. is a Florida insurance consulting firm believed to be managed by SIMON prior to his death.
16. National Service Association, Inc. is an Illinois insurance consulting firm believed to be managed by P. SIMON and D. SIMON.

## **FACTS**

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief and as a Pro Se Litigant:

17. That the alleged criminal acts defined herein are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate ("Probate Court") case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:

- i. May 6, 2013 ELIOT filed Docket #23 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 1").

- b. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
    - c. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582
- ii. May 29, 2013, ELIOT filed Docket #28 "RENEWED EMERGENCY PETITION" ("Petition 2")
  - d. [www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf)
- iii. June 26, 2013, ELIOT filed Docket #31 "MOTION TO: CONSIDER IN ORDINARY COURSE THE 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 FILED BY PETITIONER" ("Petition 3")
  - e. [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf)
- iv. July 15, 2013, ELIOT filed Docket #32 "MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS" ("Petition 4")
  - f. [www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf)
- v. July 24, 2013, ELIOT filed Docket #33 "MOTION TO REMOVE PERSONAL REPRESENTATIVES" **for insurance fraud and more.** ("Petition 5")

g. [www.iviewit.tv/20130724SIMONMotionRemovePR.pdf](http://www.iviewit.tv/20130724SIMONMotionRemovePR.pdf)

vi. August 28, 2013, ELIOT filed Docket #TBD “NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS” (“Petition 6”)

h. [www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf](http://www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf)

vii. September 04, 2013, ELIOT filed Docket #TBD “NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE. (“Petition 7”)

i. [www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf)

18. That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin ("Hon. Colin") told TED, SPALLINA, TESCHER and their counsel, Mark Manceri ("MANCERI"), that he should read them all their Miranda Rights after hearing their explanation how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased, Hon. Colin stated this fact twice in the hearings.
19. That further upsetting Hon. Colin in the hearing to the reopen the estate of SHIRLEY, which was ordered reopened, was that at no time after SIMON had passed had the court been notified by estate counsel of SIMON's death and that documents were being submitted to the Court after SIMON was deceased as if he was alive. The documents in SHIRLEY's ESTATE now admittedly fraudulently crafted by a TSPA contracted Legal Assistant/Notary Public and alleged forged after SIMON's death, were then filed with his Court and used to close the estate as if SIMON were alive at the time. Hon. Colin realized they had committed a fraud upon his court and him personally as he signed off to close the estate using these bogus documents.
20. From an excerpt from that hearing transcript, see attached, Exhibit 1 on September 13, 2013,

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They  
1 should not have been notarized in the absentia  
2 of the people who allegedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you [ referring to TED, SPALLINA, TESCHER  
an MANCERI ] might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon  
1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes.

21. That the alleged insurance fraud taking place through the instant Breach of Contract Lawsuit in this Court is allegedly being committed by similar parties of the alleged estate frauds described herein and in Petitions 1-7, again misusing their fiduciary and professional powers to convert estate assets and TED, A. SIMON, the SLF should all be removed from further representing any parties in this Lawsuit, sanctioned and forced to retain non conflicted counsel in these proceedings.
22. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and on the Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred, until these alleged criminal and civil matters are fully resolved by this Court, the Probate Court, the Palm Beach County Sheriff and Florida Governor Notary Public Division.

#### **FIRST ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT**

23. That the first attempt to convert the life insurance Policy #1009208 ("Policy(ies)") proceeds on SIMON's life by TSPA, TESCHER, SPALLINA, TED and P. SIMON took place on or about January 2013 when a death benefit claim was made according to Jackson National Insurance Company's ("Jackson") Counter Complaint for the Policy(ies) proceeds to be paid to a beneficial designations unknown by ELIOT.
24. That ELIOT and his children's former counsel after repeated requests have no records of the death benefit claim filed or any other records requested including the Policy(ies) and have been denied the information upon request by TSPA, TESCHER, SPALLINA, TED, P.

SIMON, Heritage Union Life Insurance Company (“Heritage”) and Reassure America Life Insurance Company (“RALIC”).

25. That Heritage refused to pay the Policy(ies) proceeds based on the death benefit claim filed, claiming it was legally deficient and they would therefore need a “court order” to determine if the beneficiary claimed was the legal beneficiary and thus the first attempt to claim the benefits failed.

**SECOND ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT – THE SAMR & SAMR TRUST**

26. That the SAMR and SAMR TRUST is fully described, defined and exhibited in Petition 1, Section VII - “Insurance Distribution Scheme” Pages 30-37 and Pages 170-175, exhibit 7 - “Settlement Agreement and Mutual Release” (“SAMR”). The post mortem trust that would have been created under the SAMR to replace the lost “Bernstein Trust” aka “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is termed herein as the SAMR TRUST (“SAMR TRUST”).
27. That once the death benefit claim was denied and a “court order” was necessary to pay the Policy(ies) proceeds, the SAMR and SAMR TRUST insurance trust and beneficiary fraud scheme, as further defined herein, was then proposed to ELIOT by TSPA, TESCHER, SPALLINA, TED, P. SIMON and D. SIMON.
28. That the SAMR & SAMR TRUST was proposed as a post mortem trust replacement created to remedy for an allegedly lost trust created by SIMON that is claimed to be the alleged

beneficiary of the Policy(ies), the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95.”

29. That the SAMR TRUST was proposed by TSPA, SPALLINA, TESCHER, TED and P. SIMON as a means to convert the insurance proceeds from going to the estate of SIMON due to an alleged lost trust and where the proceeds under the SAMR TRUST they claimed would not go to the estate and would instead flow into the newly created post mortem SAMR TRUST, where a newly elected post mortem “trustee” TED, would then divvy it up to newly elected by TED beneficiaries of the SAMR TRUST.
30. That in this Court proceeding, in a response filed by A. SIMON, we learn who is divvying up the proceeds when he claims (“4/5”) of SIMON’s children, TED, P. SIMON, IANTONI and FRIEDSTEIN agree with the beneficiary designation that was filed in this Lawsuit.
31. That TSPA, TESCHER, SPALLINA, TED and P. SIMON further claimed that the SAMR TRUST was necessary to keep the proceeds estate tax free and free from creditors of the estate, despite that this would be a new post mortem trust designating new trustees and beneficiaries who were not elected by SIMON while he was alive.
32. That this post mortem SAMR TRUST was to be created without SIMON’s knowledge, consent or keeping with his wishes he documented while alive, as it was done post mortem and thus ELIOT claims that it could not then be used to escape estate taxes or creditors legally and would be construed as an artifice to defraud.
33. That ELIOT sent letters to TSPA, SPALLINA, TESCHER, TED and P. SIMON and claimed that the SAMR TRUST appeared to be a sham trust and beneficiary scheme that was

potentially illegally attempting to circumvent SIMON's estate creditor liabilities and federal and state estate taxes.

34. That ELIOT refused to participate in the SAMR or SAMR TRUST and sent TSPA, SPALLINA, TESCHER, TED and P. SIMON a letter telling them to cease and desist any attempt at collection of the death benefit until ELIOT and his children could seek independent counsel to review the legality of the SAMR and SAMR TRUST.
35. That after ELIOT had the plan reviewed by legal counsel and was advised to not sign the SAMR or SAMR TRUST, as evidenced in Petition 1, and ELIOT sent letters to TSPA, SPALLINA, TESCHER, TED, P. SIMON and other potential beneficiaries notifying them of his findings that the SAMR and SAMR TRUST appeared a sham that could be construed as insurance fraud, tax evasion, creditor fraud and more.
36. That further ELIOT noticed them that no one appeared to be representing the grandchildren's alleged beneficial interests in the estate in the SAMR and SAMR TRUST, which was in conflict now with TED, P. SIMON, IANTONI and FRIEDSTEIN's interests beneficial interest to be gained in the Policy(ies) through the SAMR TRUST, as newly named trustees and beneficiaries in the SAMR TRUST.
37. That if the monies flowed to the estate and were paid to the estate beneficiaries, TED, P. SIMON, IANTONI and FRIEDSTEIN would not receive monies directly and only manage the money of their children as trustees for them and therefore since they would not be beneficiaries they were not in conflict but the SAMR TRUST or any scheme that inures Policy(ies) proceeds to them directly does put them in direct conflict and no one seemed to

be looking out for their own children, in fact, blindly looking the other way while attempting to convert the monies to themselves. This is an abomination of fiduciary duties and trust as trustees for their alleged children beneficiaries.

38. That IANTONI asked SPALLINA if she needed to get counsel for herself and her children due to conflicts created in the SAMR and SAMR TRUST, as ELIOT had stated her beneficial interests conflicted with her daughters beneficial interests, especially where the payout is substantially different depending on if her daughter received the benefit through the estate (1/10 share) or if she received it directly under the SAMR TRUST (1/5 share). The conflict here is significant and where IANTONI would favor the SAMR TRUST scheme versus a “court order,” which would favor her daughter.
39. That IANTONI further asked SPALLINA if her daughter could later sue her for taking the proceeds directly under the SAMR TRUST and SPALLINA stated that “only if she finds out” or words to that effect.
40. That SIMON’s daughter, P. SIMON, her husband D. SIMON and his brother A. SIMON through the SLF, believed to be A. SIMON and D. SIMON’s law firm that works out of P. SIMON’s offices at STP, worked with TSPA, SPALLINA, TESCHER, TED and P. SIMON in attempts to get the life insurance benefits of the Policy(ies) paid to the newly created post mortem SAMR TRUST created after SIMON’s death and go against the beneficial wishes and desires and estate contracts of SIMON and SHIRLEY, as designated in their estate plans.
41. That initially, the SAMR TRUST was proposed to replace an allegedly lost “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95,” with TED acting as the Trustee of the newly

created post mortem SAMR TRUST, as evidenced in the SAMR, by claiming he was the “trustee” of the lost trust that allegedly no executed copies exist for and therefore he was the “trustee” of the newly created SAMR TRUST with all the unknown fiduciary powers granted in the alleged lost trust, of which again, no executed copies or originals exist as claimed in TED’s response to Jackson’s Counter Claim.

42. That TED, TSPA, TESCHER, SPALLINA and P. SIMON all claimed that “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” was “lost” and that through TED, as the self-elected “trustee” of the new post mortem SAMR TRUST, they would then designate new beneficiaries that would replace the unknown ones in the lost trust. New beneficiaries designated by TED based on his belief that TED, P. SIMON, IANTONI and FRIEDSTEIN and possibly, without ELIOT’s knowledge or consent, ELIOT, were beneficiaries under the lost trust.
43. That TSPA, SPALLINA, TESCHER, TED and P. SIMON have various alleged fiduciary capacities as estate counsel, personal representatives and trustees responsible for keeping and maintaining records of the Policy(ies) and the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” that SPALLINA, TESCHER, TED, P. SIMON, D. SIMON and A. SIMON claimed was the last known beneficiary on the Policy(ies).
44. That P. SIMON over the years since the Policy(ies) was issued acted as a fiduciary of several of the trusts that controlled the Policy(ies) and the distribution of proceeds for beneficiaries who are elected as contingent beneficiaries by employees in a Voluntary Employee Beneficiary Association VEBA 501(c)(9) life insurance trust she controls, that held

SIMON's Policy(ies) and many other thousands of policies, through several companies owned and operated by SIMON and then P. SIMON and D. SIMON.

45. That TSPA, SPALLINA and TESCHER have various alleged fiduciary capacities regarding the Policy(ies) and the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" as they did the estate planning work concerning the Policy(ies) and trusts and failed to properly protect the beneficiaries of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and the estate beneficiaries by properly documenting the beneficiaries in the alleged Wills and Trusts of SIMON.
46. That by failing to properly document the beneficiaries of the lost trust, failing to maintain records of the Policy(ies) and trusts and failing to clearly define the beneficiaries, TSPA, SPALLINA and TESCHER have caused liabilities by damaging all of the beneficiaries of the estate and Policy(ies).
47. That TED has various alleged fiduciary capacities as the self-appointed alleged "trustee" of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95," including the alleged power to file suit on its behalf and yet TED has no documented evidence to support this claim according to Jackson. TED is misusing alleged fiduciary powers to convert Policy(ies) proceeds to himself, P. SIMON, IANTONI & FRIEDSTEIN, secreted from ELIOT and his counsel and to the disadvantage of ELIOT and his children.
48. That TED and P. SIMON both claim to have once upon a time been in possession of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and have claimed to have witnessed the language contained therein. From their recollections they claim recalling that

TED was “trustee” of the lost trust and they were named “beneficiaries.” These legally insufficient claims are also made by two people who stand to gain individually from their recollections putting them in conflict with other potential beneficiaries, including their own children.

49. That these alleged fiduciary roles of TED for the lost trust now are being asserted in attempts to process a death benefit claim without any signed or executed copy of the lost trust. From Jackson’s Counter Claim there appears to be insufficient evidence to pay a claim to this insurance trust and beneficiary fraud scheme.
50. That after claiming to have lost the Policy(ies) and trust and assigning TED alleged fiduciary responsibilities, TED and P. SIMON then attempt to redirect and convert benefits by naming themselves as newly elected post mortem designated beneficiaries of the Policy(ies). That ELIOT alleges that this misleading information in the death benefit claim may constitute a basis for insurance fraud and more.
51. That Bernstein family insurance agencies founded by SIMON allegedly sold the Policy(ies) and administered the trusts concerning the Policy(ies). Suddenly, when SIMON, a meticulous record keeper, passes away, all those with control of the Policy(ies) and who have fiduciary responsibilities and liabilities regarding the Policy(ies) and trusts involved in this Lawsuit, now claim that the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is missing and lost with no executed copies in existence and that it was the last known beneficiary.

52. That all parties with fiduciary responsibilities for the Policy(ies) and the trusts named in this Lawsuit are alleged to have fiduciary liabilities and in certain instances with the Attorneys at Law, professional liabilities, from the damages to the true and proper beneficiaries for their actions or inactions and for the damages caused by their breaches of fiduciary and professional responsibilities and alleged violations of law.

53. That ELIOT claims that TSPA, SPALLINA, TESCHER, TED and P. SIMON have allegedly instead **suppressed and denied** the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” and have not “lost” it or found it to be “missing” as they claim and this was done with intent to commit fraud upon the true and proper beneficiaries of the Policy(ies), this Court and the estate beneficiaries.

54. That ELIOT states that TED and P. SIMON were excluded as beneficiaries of the Policy(ies) and trusts, as TED and P. SIMON were wholly excluded and disinherited from the estates of both SIMON and SHIRLEY and therefore allegedly excluded in all insurance contracts and policies **thereunder**.

55. That if the estate received the Policy(ies) proceeds and then determined the beneficiaries, there is very little likelihood that TED and P. SIMON would be entitled to **any** Policy(ies) proceeds in their name if they flowed into the estate to the estate beneficiaries, as they have been wholly excluded from the estates of both SIMON and SHIRLEY.

56. That it should be noted by this Court that TED and P. SIMON are alleged in Petition 1 to be the cause of attempting to force SIMON to allegedly change the beneficiaries in his estate

plan, in near deathbed changes allegedly made weeks before his death and while under extreme physical and emotional duress at the time.

57. That it is now unclear due to the Notary Public ADMITTED Fraud and alleged Forgery in the estate of SHIRLEY and the alleged Fraudulent and Legally Defective estate documents in SIMON, if SIMON actually signed any changes to his estate plan prior to his death or if the documents were signed and notarized for him after he died, in efforts to change SIMON's estate disposition and wants.
58. That prior to the alleged near deathbed changes made by SIMON, under duress, TED, P. SIMON and their children were wholly disinherited from the estates of both SIMON and SHIRLEY.
59. From the alleged May 20, 2008 "Shirley Bernstein Trust Agreement"<sup>2</sup> the language regarding beneficiaries is as follows,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my

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<sup>2</sup> That Shirley's May 20, 2008 trust language was used here, as the May 20, 2008 "Simon Bernstein Trust Agreement" has been suppressed and denied to ELIOT by TSPA, TESCHER and SPALLINA for over a year now. They have refused to release the SIMON original trust despite repeated oral and written requests from ELIOT and his children's former counsel, Christine Yates at Tripp Scott law firm in Fort Lauderdale, FL. The language is presumed to be the same although cannot be verified at this time.

children, **TED S. BERNSTEIN ("TED") and P. SIMONELA B. SIMON ("P. SIMON")**, and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided[emphasis added], however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and P. SIMON, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder."

60. From the alleged November 18, 2008 "First Amendment to Shirley Bernstein Trust Agreement" the language is as follows,

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, **TED S. BERNSTEIN ("TED") and P. SIMONELA B. SIMON ("P. SIMON")**, shall be deemed to have predeceased the survivor of my spouse and me [emphasis added], provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and P. SIMON shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

61. That even after the near deathbed changes allegedly made by SIMON under duress or perhaps made post mortem, as now TSPA's Notary Public Kimberly Moran has admitted to notarizing documents in his name, months after his death, TED and P. SIMON were again wholly disinherited from the estates of SIMON and SHIRLEY and only their adult children are alleged beneficiaries.

62. That from the alleged July 25, 2012 "Simon L. Bernstein Amended and Restated Trust Agreement" the language is as follows,

"Children Lineal Descendants. The terms "child," "children," "grandchild," "grandchildren" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal

descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. **Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, P. SIMONELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime [emphasis added].**

63. That the alleged Personal Representatives to the estates, TSPA, TESCHER and SPALLINA, have since SIMON's passing worked and shared information almost exclusively with TED and P. SIMON, the two children who were both wholly excluded from benefits of the estates of SIMON and SHIRLEY in any Will or Trust established. Both TED and P. SIMON are alleged to have been on bad terms with SIMON and SHIRLEY at the time of their deaths due to their exclusion from further benefits in the estates, as they already had been compensated while living as they inherited family businesses worth fortunes and ELIOT, IANTONI and FRIEDSTEIN did not.
64. That after SHIRLEY passed until the day of SIMON's death almost twenty two month, TED and P. SIMON led an assault on SIMON and recruited IANTONI and FRIEDSTEIN and together the four of them banned and precluded their seven children from seeing SIMON, their grandfather, claiming it was over his relationship with his companion, as fully defined in Petition 1. That this is why SIMON considered altering he and SHIRLEY's long established estate plans in May 10, 2012 and sought agreement from his children that if he chose to make any changes to his estate plan it would put an end to these disputes and torture of his soul.

65. That in a May 10, 2012 conference call with TSPA, TESCHER, SPALLINA, TED, P. SIMON, ELIOT, IANTONI and FRIEDSTEIN, SIMON sought and received verbal agreement from his children to have ELIOT, IANTONI and FRIEDSTEIN give up their inheritances and divide it to the grandchildren equally to resolve any duress and disputes that were causing him pain and suffering.

66. That the disputes and banning of themselves and all their children of SIMON however did not stop after the May 10, 2012 meeting as agreed and SIMON appears to have had a change of mind and never made the changes to his or SHIRLEY's estate plans and the changes appear to have been done post mortem, as essential documents to the alleged changes are all Legally Defective and therefore NULL and VOID.

67. That despite repeated requests, TSPA, TESCHER, SPALLINA, TED and P. SIMON have shut out ELIOT and his children's counsel from virtually ALL estate information, documents and assets, including but not limited to, accountings, inventories, Policy(ies) information, insurance contracts, corporate accountings, asset liquidation details, accountings and legal documents, various trusts information and all assets of the SIMON and SHIRLEY estates.

68. That for over a year, with the aid of TSPA, TESCHER, SPALLINA, TED, P. SIMON and others have rushed to liquidate assets and looted the estate in a variety of schemes behind the backs of ELIOT and his children's former counsel and if it were not for Jackson's adding ELIOT as Defendant in the Lawsuit, ELIOT would never have known about this alleged fraudulent Lawsuit and the insurance policy and trust scheme being attempted to convert the Policy(ies) proceeds.

69. That this suppression and denial of virtually all information and documents in the estates from certain beneficiaries to the advantage of others, including this Lawsuit, which was filed without certain beneficiaries knowledge and consent , has gone on for almost three years in SHIRLEY's estate and over a year in SIMON's estate.
70. That it is alleged that these acts of suppression and denial of information and more are intended to hide criminal activities taking place to loot the estates through a variety of alleged financial and other crimes, as fully set forth in Petitions 1-7.
71. That the SAMR and SAMR TRUST that was proposed to ELIOT by TSPA, SPALLINA, TESCHER, TED and P. SIMON was never signed by ELIOT. ELIOT noticed all parties involved that he rejected such SAMR and SAMR TRUST as a scheme to reassign beneficiaries with post mortem designated beneficiaries through suppression and denial of trust documents that allegedly would constitute, Insurance Fraud, Conversion and more.
72. That ELIOT noticed all parties that he rejected such plan as an attempt to improperly avoid Estate Taxes through a sham trust that was created post mortem and therefore how could SIMON have made it irrevocable or anything at all.
73. That ELIOT noticed all parties that he rejected such plan as an attempt to improperly attempt to hide assets from creditors of the estate using a post mortem trust to convert assets with known creditors to the estate.
74. That without ELIOT or his children's counsel approval of the SAMR and SAMR TRUST scheme and while ELIOT was led by TSPA, TESCHER, SPALLINA, TED, P. SIMON,

IANTONI and FRIEDSTEIN to believe that they were seeking a “court order” to approve their SAMR scheme and new and secreted plan was hatched.

**THIRD ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT – THE JACKSON LAWSUIT FOR BREACH OF CONTRACT**

75. That without ELIOT and his children’s counsel knowledge or consent the third failed attempt to convert the Policy(ies) proceeds was hatched by TSPA, TESCHER, SPALLINA, TED, P. SIMON, D. SIMON, A. SIMON, IANTONI and FRIEDSTEIN working together and secreted from ELIOT and his children’s counsel with scienter.
76. That this third attempt to convert the Policy(ies) proceeds began with the filing of this frivolous “breach of contract” Lawsuit to attempt to convert the benefits against the wishes of SIMON’s beneficiary designation, in order to profit for themselves at the detriment of the true and proper beneficiaries, including allegedly their own children.
77. That once the SAMR and SAMR TRUST failed to get ELIOT or his children’s counsel approval, without notice and knowledge of ELIOT and other beneficiaries, TED, instead of seeking the demanded “court order” to determine the beneficiaries as requested by RALIC, claimed to be the “trustee” and a “beneficiary” of the “lost” trust, the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” and instead filed this Lawsuit with TED acting in a self-professed and self-appointed fiduciary capacity for the “lost” trust and Policy(ies) and designating himself and others as newly elected beneficiaries.
78. That since claiming “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is “lost” and “missing” and then unable to get the SAMR TRUST approved by all parties and the Probate

Court to be the beneficiary, TED represented by A. SIMON instead filed this Lawsuit demanding that Jackson now pay the death benefits based on a breach of contract suit for Jackson's refusal to pay the death benefit claim based on the legally deficient death benefit claim initially submitted, as indicated in Jackson's Counter Claim for damages.

79. That through this Lawsuit, TSPA, TESCHER, SPALLINA, TED and P. SIMON are now attempting to avoid having to obtain a court order as requested by RALIC, to first determine who the beneficiary(ies) is and instead are attempting to convert the Policy(ies) proceeds through this baseless breach of contract action that TED was advised by counsel he had no "authority" to file according to Jackson.
80. That ELIOT alleges that this Lawsuit is an attempt to have this Court pay the Policy(ies) proceeds to a newly created post mortem trust similar to the SAMR TRUST or other improper beneficiaries, through a smoke and mirrors illusion, mired in a "Name Game" further defined herein, using alleged former Policy(ies) beneficiaries names, including but not limited to the "lost" "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" in order to replace the allegedly unknown beneficiaries of the "lost" trust with newly elected beneficiaries, possibly in a new post mortem trust attempting to be inserted into this Lawsuit in the confusion created with the variety of names being asserted as beneficiary.
81. That Jackson claims in their Answer that they are unclear if TED has the alleged fiduciary capacities in the trusts and Policy(ies) he claims necessary to institute the Lawsuit or the death benefit claim and they are unclear of the names asserted in the complaint as they are confusing and even question the existence of certain trusts entirely.

82. That TED and P. SIMON are attempting to designate new beneficiaries after SIMON has passed, claiming that they “believe” they were beneficiaries of the “lost” trust and therefore they would be beneficiaries of two fifths of the Policy(ies) proceeds but providing no evidence or proof of such claims other than their beliefs.

83. That TED, P. SIMON, D. SIMON and A. SIMON are all career life insurance professionals with extensive trust knowledge and legal knowledge.

84. That TED is allegedly misusing his “alleged” fiduciary powers in the estates of SHIRLEY and SIMON, fully described in the Petitions 1-7 and in this Lawsuit where his fiduciary claims are imagined and undocumented.

85. That TED now makes efforts in this Lawsuit to assume fiduciary powers in handling assets of SIMON’s estate, based on his belief that he was “trustee” of the lost trust and on his own belief a “beneficiary” and where TED has no fiduciary capacities whatsoever in the estate of SIMON or through any trusts of SIMON that are not “lost.” That supporting TED’s beliefs and the actions taken based on those beliefs in effort to convert the Policy(ies) proceeds are P. SIMON, IANTONI and FRIEDSTEIN, all who stand to gain from such insurance beneficiary and trust scheme.

86. That TED’s filing of this Lawsuit as an imagined fiduciary of a “lost” trust is an attempt to convert benefits of the Policy(ies) for the benefit of TED and P. SIMON, by deceiving the beneficiaries of the Policy(ies), the beneficiaries of the estate of SIMON, deceiving insurance companies Heritage, RALIC and Jackson are all an attempt to perpetrate a fraud on, this

Court, the Probate Court, the true and proper beneficiaries of the estate of SIMON, the beneficiaries of the Policy(ies) and the beneficiaries of the trusts of SIMON.

87. That TSPA, SPALLINA, TESCHER, SLF, P. SIMON, D. SIMON, A. SIMON and TED have filed this Lawsuit without proper notice to all of the potential beneficiaries and on information and belief have worked together, with IANTONI and FRIEDSTEIN, to secret this Lawsuit from ELIOT and his children's former counsel.
88. That IANTONI and FRIEDSTEIN are also alleged in TED's Answer to Jackson's Counter Complaint to be part of "4/5" of SIMON's children (TED, P. SIMON, IANTONI & FRIEDSTEIN) who are in agreement with the payout to the proposed beneficiary of this Lawsuit and have conspired together to convert the Policy(ies) proceeds.
89. That the "4/5" of SIMON's children in agreement of the beneficiaries of the Policy(ies) includes themselves personally and is to the detriment of their own children who are alleged beneficiaries of the estate, where they are trustees to their children who would allegedly be entitled to the Policy(ies) proceeds if the estate were determined to be the beneficiary.
90. That TED has numerous conflicts of interest in acting in legal and fiduciary capacities in this Lawsuit with various parties. TED would be getting benefits directly to himself while acting as the "alleged" Trustee of the missing "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and electing himself as a beneficiary to convert the funds, while also simultaneously acting as a trustee for his children beneficiaries of the estate of Simon and Shirley, where the children would get the Policy(ies) proceeds if they flowed through to the estate versus the insurance fraud beneficiary and trust scheme.

91. That P. SIMON and D. SIMON would get benefits paid directly to their family from the efforts of D. SIMON's SLF law firm, as SLF represents TED in this Lawsuit and if they are successful in converting the benefits to the proposed insurance **fraud** beneficiary and trust scheme, SLF, P. SIMON and D. SIMON would benefit directly by splitting part of the loot, which poses conflicts in SLF and A. SIMON's representation of TED and the lost trust.
92. That additionally, P. SIMON and D. SIMON would be doing this conversion of benefits directly to themselves while acting as trustee for their child beneficiary of the estate of Simon and Shirley, where their child would get the Policy(ies) proceeds if they flowed through to the estate versus the insurance **fraud** beneficiary and trust scheme.
93. That neither TED nor P. SIMON would gain any benefits of the Policy(ies) without their attempted **beneficiary** and trust scheme because if the Policy(ies) benefits were paid instead to the estate, due to the missing and "lost" trust, the benefits would then distributed to either three of five of SIMON and SHIRLEY's children, ELIOT, IANTONI and FRIEDSTEIN or to SIMON or SHIRLEY's ten grandchildren in equal shares, again either way TED and P. SIMON are wholly excluded.
94. That ELIOT states on information and belief that a policy with a missing **beneficiary**(ies) would legally be paid to the estate and the Probate court would then rule on whom the final beneficiaries of the insurance proceeds would be.
95. That Jackson and Heritage and RILAC have found flaws in the death benefit claim filed for the Policy(ies) and have refused to pay claims based on fundamental deficiencies.

96. That this alleged shell “Name Game<sup>3</sup>” being played in this Lawsuit uses the names of trusts and beneficiaries and then attempts to confuse the names by renaming them in a confusing manner, in order to have the “lost” trust renamed under a variety of confusing names, as evidenced in Jackson’s Answer and then have the Court pay out an improper beneficiary(ies).

97. That the alleged intentional confusion and misdirection involving these names is what has caused the denial of payment of the proceeds in part by the carrier and ELIOT claims this insurance trust and beneficiary fraud naming scheme is being perpetrated in this Court with scienter, in efforts to mislead this Court and Jackson so that they may pay the wrong beneficiary(ies) the Policy(ies) proceeds and convert the Policy(ies) proceeds.

98. That this “Name Game” being attempted in this Lawsuit to confuse the parties through this trust and beneficiary insurance fraud naming scheme is also in efforts to have the Policy(ies) proceeds circumvent the Probate Court and the estate beneficiaries and get the Policy(ies) benefits instead paid through this Court to improper beneficiaries in substitution for the lost trust alleged beneficiaries and to evade seeking a “court order.”

99. That only if the Cross Defendants and Third Party Cross Defendants can confuse this Court to now payout the death benefit according to their insurance trust and beneficiary fraud scheme can they derive benefits from the Policy(ies), as their attempt to pull the wool over the insurance companies’ eyes and have the benefits paid to their alleged fraudulent death benefit claim and the designated new beneficiaries thereunder has failed and led to this baseless Lawsuit.

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<sup>3</sup> <http://www.youtube.com/watch?v=GOgNkrQBrdU> “Name Game” performed by Jessica Lange for the television show “American Horror Story”

100. That in Petition 1, Pages 34-41 under Section "VII. INSURANCE PROCEED DISTRIBUTION SCHEME", the proposed "Settlement Agreement and Mutual Release" agreement that would create the new SAMR TRUST to replace the lost trust is contained in Petition 1 on Pages 173-179 and titled "Settlement Agreement and Mutual Release", as exhibit 7 and ELIOT claims that the SAMR TRUST is being secreted into this Lawsuit in a confusing name with a prior beneficiary as a "lost" trust cannot be the beneficiary and therefore they must substitute a new trust identical or similar to the proposed SAMR TRUST or wholly new beneficiary designations that ELIOT is unaware of having not seen the death benefit claim submitted.

101. That the SAMR was drafted on or about December 06, 2012 by an unknown Attorney at Law and law firm, as no law firm markings are on any of the pages, however, on information and belief, the unknown law firm is believed to be TSPA and Attorneys at Law TESCHER and SPALLINA.

102. That the SAMR was distributed by TSPA, SPALLINA and TED to various parties through mail and wire.

103. That the names for the trusts in the "Name Game" being played in this Lawsuit as part of the alleged insurance and trust fraud scheme and their aliases are believed to be as follows:

- a. "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" alleged "lost" with no original executed document or copies of or as ELIOT claims, suppressed and denied. TED claims to be "Trustee" and a "Beneficiary" however, he cannot apparently prove these claims as the "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" is

“lost” or suppressed and denied and therefore these claims to interests in the “lost” trust are merely conjecture. “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” is used interchangeably with the following trust names in this Lawsuit thus far,

1. “Bernstein Trust” abbreviated by TED in the initial complaint and
2. “Simon Bernstein Trust” according to Jackson’s response this trust MAY also be called “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” see item 9 of their response.
3. “Simon Bernstein Insurance Trust dated 6/21/1995, Trust” (note the addition of the word Trust inside the quotations) is from Jackson Answer in 20 and is stated to be a former named beneficiary on the Policy(ies) and may refer to “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” That it is believed that this may be a variance in the name “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95”, however due to the variance in names it has been listed as a separate trust herein.
4. “The Bernstein Trust” with a capitalized T in the “The” within the quotations. This trust is never defined in the pleadings but is used in TED’s response to Jackson’s Counter Claim frequently and apparently interchangeably with the “Bernstein Trust.” This trust is almost identical in name to the “Bernstein Trust” and yet, perhaps they too are different as will be advanced further herein. However, due to the slight variance in titles it has been listed as a separate trust herein until properly defined.
5. “Simon Bernstein Trust” according to Jackson in 9 of their response, “is, upon information and belief, the Bernstein Trust listed in paragraph 3, [listed as the

“Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 ” 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.” That ELIOT is uncertain at this time where Jackson pulled this reference to a “Simon Bernstein Trust” from, as it is undefined in any pleadings and suddenly falls from the sky in their response. What is this “Simon Bernstein Trust” and the Court should demand copies of any records relating to this trust be provided to all parties of the Lawsuit and have it properly defined in the pleadings.

b. “Simon Bernstein Trust, N.A.” according to Jackson IS **the “Contingent Beneficiary” named at the time of SIMON’s death!**<sup>5</sup> However, in TED’s response to Jackson’s Counter Complaint, TED claims that the “lost” the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” was the “sole” Beneficiary at the time of SIMON’s death and according to Jackson’s records this is wholly untrue. This difference in beneficiaries at time of death is a major and significant discrepancy in who the actual beneficiaries are alleged to be by the parties to this Lawsuit.

That if Jackson is correct on the Policy(ies) primary and contingent beneficiaries at SIMON’s death, then the claim in TED’s response to Jackson, in the original complaint filed and further stated in written and oral statements by TSPA, TESCHER, SPALLINA, TED, P. SIMON, D. SIMON and A. SIMON, that the “sole” beneficiary was “Simon

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<sup>5</sup> “LaSalle National Trust, N.A.” was according to Jackson the “primary beneficiary,” which they appear unclear if it was acting as trustee to the “SIMON Bernstein Trust, N.A.”

Bernstein Irrevocable Insurance Trust Dated 6/21/95" becomes a false and misleading statement as to the true and proper beneficiaries at the time of SIMON's death.

That if the final primary beneficiary was "LaSalle National Trust, N.A." and the final contingent beneficiary listed on the Policy(ies) is the "Simon Bernstein Trust, N.A." the questions then are where are copies of the "Simon Bernstein Trust, N.A., who drafted and executed this trust and who are the trustees and beneficiaries of this trust and why has this information been suppressed and false and misleading information proposed instead?

That it therefore appears that the final Policy(ies) beneficiary(ies) must first be determined to be either "Simon Bernstein Trust, N.A." or "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95, Trust" or "Simon Bernstein Insurance Trust dated 6/21/1995" or other unknown. If the contingent beneficiary at the time of death is determined to be according to Jackson's account "Simon Bernstein Trust, N.A., then "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" and any variation of its title or any earlier beneficial interests become moot and this Lawsuit further becomes baseless and an Abuse of Process, other than as evidence of, an attempted insurance fraud on the "Simon Bernstein Trust N.A." beneficiaries, Insurance Fraud on the insurance carriers, Fraud on this Court, Fraud on the Probate Court, Fraud on the estate beneficiaries of SIMON's estate and more.

- c. "SAMR TRUST" – is the Settlement & Mutual Release Trust as exhibited in Petition 1 in a draft of the post mortem trust proposed to replace the "lost" trust and to present to a judge for a court order that never took place.

That ELIOT alleges that the SAMR TRUST or some variation of it, is being referred to in these pleading as “The Bernstein Trust” or the “Simon Bernstein Trust” or any of the UNDEFINED trusts referenced herein and in Jackson’s Answer, so as to cause confusion and hope no one notices that these undefined trusts actually reference the proposed SAMR TRUST or some similar trust and beneficiary scheme, with alleged new beneficiaries and trustees designated after SIMON’s passing by a “alleged trustee” of a “lost” trust.

That ELIOT refused to sign the SAMR as further defined herein and the undefined trusts attempting to claim benefits through this Lawsuit may be trusts done without his knowledge or consent and used in this Lawsuit to attempt to circumvent the true and proper beneficiaries on record with the insurance carriers through a cleverly crafted name game.

- d. “S.B. Lexington, Inc. Employee Death Benefit Trust” used interchangeably with the “Lexington Trust” by Jackson in their response.
- i. “LaSalle National Trust, N.A.” the “primary beneficiary” according to Jackson’s Counter Complaint at the time of SIMON’s death.

- e. “S.B. Lexington, Inc. 501(c)(9) VEBA Trust”

104. That the named beneficiaries of the Policy(ies) according to Jackson’s Counter Complaint are as follows,

- a. "Simon Bernstein " – This appears impossible however, as it would be impossible for one to name oneself as beneficiary of an insurance policy.

- b. "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"
- c. "United Bank of Illinois"
- d. "LaSalle National Trust, N.A."
- e. "LaSalle National Trust, N.A., Trustee of the VEBA trust"
- f. "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"
- g. "Simon Bernstein Trust, N.A." the final "contingent beneficiary" according to Jackson that is listed on the Policy(ies) at the time of SIMON's death.

105. That according to Jackson at the time of SIMON's death the Primary Beneficiary is "LaSalle National Trust, N.A." and the Contingent Beneficiary is the "Simon Bernstein Trust, N.A."<sup>6</sup> Paragraph 15-16 of their response.

106. That TED claims to this Court that the lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" aka "Bernstein Trust" was the "sole" beneficiary of the Policy(ies) at the time of SIMON's death to this Court.

107. That TED, TSPA, SPALLINA, TESCHER and P. SIMON have similarly given this allegedly misleading information regarding the beneficiary at the time of death to the beneficiaries of the estate and counsel for certain beneficiaries, while suppressing, denying and secreting the

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<sup>6</sup> On information and belief, ELIOT claims that ELIOT and his wife Candice Bernstein and their three children were the named beneficiaries at the time of SIMON's death under whatever trusts where in existence at the time or directly, including but not limited to, the "SIMON Bernstein Trust, N.A." and that SIMON may have also added Maritza Puccio for a share of the benefits prior to his death.

legal named beneficiary "Simon Bernstein Trust, N.A." and thereby secreting from the designated beneficiaries thereunder their interests.

108. That Jackson claims in Paragraph 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**) [emphasis added], submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, allegedly as the trustee of the "Bernstein Trust."

That ELIOT alleges that this Lawsuit was still filed after being advised by counsel of the legal defects but now with new conflicted counsel, SLF and A. SIMON, knowing of the lack of authority TED was advised by counsel of and this represents Abuse of Process.

109. That Jackson claims in Paragraph 19 that neither TED, nor anyone else, could locate the "Bernstein Trust" that TED claims is the beneficiary of the Policy(ies).

110. That instead of seeking the Probate Court determination and getting a "court order" as to who the beneficiaries would be in the event of a missing beneficiary designation and "lost" trust, this suit was instead filed in apparent effort to evade the determination of the Probate Court and secretly convert the Policy(ies) proceeds before ELIOT was alerted and despite his protestations that no distributions be made until he and his children's counsel could review

their alleged insurance trust and beneficiary fraud scheme and approve of it with a “court order.”

111. That an old beneficiary designation of a “lost” trust is now being used to make claims for the Policy(ies) proceeds in this Lawsuit, instead of the beneficial designation with the insurance carriers at SIMON’s death, namely the “Simon Bernstein Trust, N.A.”
112. That therefore, despite whether the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” is “lost” or not or what it is called, **it was not the Beneficiary at the time of SIMON’s death according to Jackson** and therefore, would not be entitled to make a claim for the Policy(ies) proceeds. Perhaps this is why all of the records of the Policy(ies) and trusts have been secreted from certain estate beneficiaries and their counsel by TSPA, TESCHER, SPALLINA and TED, so as to hide from them whom the beneficiaries under the “Simon Bernstein Trust, N.A.” trust are to the advantages of some and disadvantage of others and mislead everyone by misrepresenting the real beneficiary(ies) and converting the Policy(ies) proceeds.
113. That ELIOT claims that Jackson, Heritage and RALIC should have copies of the “Simon Bernstein Trust, N.A.,” as well as, TSPA, SPALLINA and TESCHER and possibly P. SIMON and others named in the Lawsuit.
114. That ELIOT and others were misinformed, allegedly with intent, by TSPA, TESCHER, SPALLINA, TED and P. SIMON, that the beneficiary of the Policy(ies) was “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” at the time of SIMON’s death. Where they stated they had spoken to the carriers and were “friendly” with

them and received the beneficiary designations directly from the insurance carriers and at first claimed to have copies of the Policy(ies) and only later, when ELIOT began demanding to see the Policy(ies), did they then claim to have “lost” their copies or not possess them at all, similar to the “lost” trust claims.

115. That ELIOT alleges the copies of the Policy(ies) are instead suppressed and denied to the beneficiaries, in order to perfect their insurance and trust fraud scheme and deny the true and proper beneficiaries of the “Simon Bernstein Trust, N.A.” of the Policy(ies) proceeds and convert them to themselves and others.

116. That Jackson further asserts in Paragraph 20, “**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.” [emphasis added].

117. That the “otherwise” referenced by Jackson above, may be the SAMR TRUST or some variation of it, that is being allegedly secreted into this Lawsuit and again this may also be the undefined trusts or misnamed trusts referenced in pleadings by TED and causing Jackson to deny the claim and file a counter complain to this breach of contract Lawsuit.

118. That in TED’s August 30, 2013 Answer to Jackson’s Counter Complaint TED and A. SIMON start off the “Name Game” in the caption by using an abbreviated naming of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” naming it the “Bernstein Trust.” However, in their caption in their answer to Jackson, which is all capitalized and

reads, **THE BERNSTEIN TRUST**, it is impossible to tell whether this reference in the caption is the undefined “The Bernstein Trust” or if it is the “Bernstein Trust” due to the use of capitalization in the caption. Yet, if it is not the same, this changes everything in the pleading to read wholly different and who the beneficiaries are and who is making representations in the pleadings.

119. That TED then claims through his brother-in-law counsel that TED is the “trustee” of the “Bernstein Trust” and therefore trustee of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” Let this Court read their response without renaming the alleged “lost” “Simon Bernstein Insurance Trust dated 6/21/1995” as the renamed “Bernstein Trust” or any other abbreviation given, in order to clarify the matters and it then becomes apparent that a “lost” trust with no executed copies is attempting to make a claim for the Policy(ies), and where the lost trust was not even the beneficiary on the Policy(ies) at the time of SIMON’s death.

120. That this Court should note that no matter the name of the trust, if the trust is “lost” as alleged, how can anyone claim to be the “trustee” or be a “beneficiary” or know what the terms of the trust are with any certainty and why it is believed a “court order” was requested by the life insurance company HERITAGE.

121. That in their Answer to Jackson, in response to Jackson’s assertion 1, TED claims, “Ted Bernstein and “The Bernstein Trust” [emphasis added and note that The is within the quotations] admit that Jackson has tendered the death benefit to the court.” ELIOT states the “The Bernstein Trust” cannot make any claims or assertions in the pleadings when it has not been defined in the pleadings and thus does not exist.

122. That even if this “The Bernstein Trust” is a grammatical error in name used in the pleadings and it refers to the allegedly lost “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” defined as “Bernstein Trust” **not** “The Bernstein Trust” it would be unable to assert anything on anyone’s behalf, as there are no apparent records of it and just best guesses as to who the trustees and beneficiaries are and where it is not even the final beneficiary according to Jackson.

123. That with all these confusing names and baseless claims asserted in this Lawsuit, Jackson did not just pay the claim on demand for breach of contract **but** instead filed a counter complaint and thus the third attempt to convert the Policy(ies) proceeds to the wrong beneficiaries has hit another “bump in the road.”

124. That both D. SIMON and A. SIMON and the SLF law firm are conflicted from handling this Lawsuit and pleading in these matters, as D. SIMON would directly benefit from this scheme through conversion of the Policy(ies) proceeds to his wife and family directly, therefore neither his law firm or his brother, for similar conflicts, would be able to legally file this Lawsuit and thus may represent a knowing Abuse of Process.

125. That the failure to properly know whom the beneficiaries of the Policy(ies) are is primarily a result of TSPA, TESCHER and SPALLINA’s failure to legally document the beneficiaries of the Policy(ies) **and** maintaining copies of the trusts and Policy(ies) or other necessary documents to prove the beneficial interests in lieu of not possessing the key documents when preparing and executing the estate plans of SIMON and SHIRLEY.

126. That in an investigation with the Florida Governor's Office Notary Complaint Division pertaining to the documents that give TSPA, TESCHER, SPALLINA and TED alleged fiduciary powers in the estates of SIMON and SHIRLEY, the Licensed Notary Public who Notarized certain of the estates documents has now ADMITTED AND ACKNOWLEDGED that she has committed Fraud by ILLEGALLY NOTARIZING certain documents, including Fraudulently Notarizing SIMON's signature on a document and allegedly forging the signature months after he was deceased.

127. That these acts are illegal and the documents that give TSPA, TESCHER, SPALLINA and TED fiduciary powers in the estates of SIMON and SHIRLEY may have been illegally obtained after death of SIMON. ELIOT has produced the Response of the Notary Public, ELIOT's Response to the Notary and the original complaint filed against the Notary, in exhibits contained in Petition 7, exhibit No. 1, 2 & 3.

128. That it is alleged that the Cross Defendant and Third Party Defendants have committed Civil Conspiracy, Professional Malpractice, Insurance Fraud, Mail and Wire Fraud, Abuse of Legal Process, Fraud on Beneficiaries and Interested Parties and Fraud on the courts<sup>7</sup> in attempts to convert the Policy(ies) proceeds to themselves, against the wishes and desires and beneficiary designations made by SIMON prior to his death.

**COUNT I**

**FRAUD**

---

<sup>7</sup> Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed simply to harass someone. If the Court determines that you have filed a lawsuit for an improper or unnecessary reason, it may impose sanctions against you, including ordering you to pay any legal fees of the party that you sued.

## **FRAUD ON BENEFICIARIES, JACKSON, HERITAGE AND COURTS**

129. That this is an action for Fraud within the jurisdiction of this Court. This is also a supplemental action for other civil claims of Fraud pursuant to the state laws of Illinois and Federal law.
130. That Cross Plaintiff, ELIOT, repeats and realleges each and every allegation contained in paragraph "1" through "129", as though fully set forth herein.
131. That Cross Defendants and Third Party Defendants filed this case without the knowledge and information of ELIOT, certain beneficiaries and interested parties of the estate of SIMON, with the intention allegedly to fraudulently convert ELIOT and other beneficiaries Policy(ies) proceeds.
132. That Cross Defendant and Third Party Defendants created a post mortem trust, assigning new post mortem beneficiaries or other unverifiable beneficiaries, allegedly fraudulently, to make illegal gains from the Policy(ies).
133. That the Cross Defendant and Third Party Defendants committed fraud on Cross Petitioner, ELIOT, by participating in fraud to deprive the beneficial rights of Cross Petitioner, his children, even their own adult and minor children and other rightful beneficiaries of the Policy(ies).
134. That as a direct and proximate result of such conduct on the part of Cross Defendant and Third Party Defendants, Cross Plaintiff, ELIOT, has been damaged by the alleged fraud and more committed by the conspiratorial actions of Cross Defendant and Third Party Defendants.

135. That this alleged Fraud was committed through an alleged Fraudulent legal proceeding before this Court, constituting not only an alleged Abuse of Process but an alleged Insurance Fraud and this should make this Court take Judicial Notice of the alleged crimes herein and in Petitions 1-7 and take immediate actions to notify all authorities, state and federal, of these alleged crimes, on its own motions.

136. That as a result of the acts of Cross Defendant and Third Party Defendants, Cross Plaintiff now suffers from delays in distribution of the Policy(ies) proceeds to the true and proper beneficiaries and he and his family will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

## COUNT II

### **BREACH OF FIDUCIARY & PROFESSIONAL DUTIES AS TRUSTEES, LEGAL COUNSEL & PERSONAL REPRESENTATIVES OF ESTATE OF SIMON**

137. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "136", as though fully set forth herein.

138. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants, the law firm TSPA and Attorneys at Law, TESCHER and SPALLINA, acting as TED's Personal Counsel in this Lawsuit, as SIMON's estate counsel and tax attorney and as Personal Representatives of the SIMON estate, as per the state laws of Illinois and Federal law.

139. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants, the law firm SLF and Attorneys at Law, D. SIMON and A. SIMON as counsel in this Lawsuit in conflict and representing TED as Trustee of the Bernstein Trust as per the state laws of Illinois and Federal law.

140. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants per the state laws of Illinois and Federal law.

141. That the Cross Defendant and Third Party Defendants have conspired and filed this case breaching their fiduciary and professional duties to defraud the Cross Plaintiff, ELIOT, and take away his and others rights to the benefits of the Policy(ies).

142. That Cross Plaintiff alleges through the conspiratorial actions of Cross Defendant and certain Third Party Defendants, through Abuse of Legal Process, Fraud on this Court, Violations of State and Federal Law, Breaches of Fiduciary Duties and Violations of Attorney Conduct Codes attempted to perpetrate an insurance fraud and more to defraud Cross Plaintiff.

143. As a result of Cross Defendant and Third Party Defendants acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00), as well as, punitive damages, costs and attorney's fees.

COUNT III



## **LEGAL MALPRACTICE**

144. That Cross Plaintiff, ELIOT, repeats and realleges each and every allegation contained in paragraph "1" through "143", as though fully set forth herein.

145. That this is a supplemental action for other civil claims for legal malpractice by Cross Defendant and Third Party Defendants, TSPA, TESCHER, SPALLINA, SLF, D. SIMON and A. SIMON pursuant to the state laws of Illinois and Federal law.

146. That the conspiratorial actions of the Third Party Defendants that are licensed to practice law and acted as Attorneys at Law or law firms in bringing this suit, whether withdrawn or admitted, or any other Attorney at Law that aided and abetted this alleged insurance fraud scheme and more in any way, have through the alleged crimes claimed already herein caused liabilities to Cross Plaintiff and others.

147. That as a result of the defendants acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

## **COUNT IV**

### **ABUSE OF LEGAL PROCESS**

148. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "147", as though fully set forth herein.

149. That this is a supplemental action for other civil claims for abuse of legal process by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

150. That Cross Defendant and Third Party Defendants have abused legal process to defraud Cross Plaintiff by misleading this court and others and filing this case without knowledge of Cross Plaintiff and against the advice of counsel and with knowledge of a different beneficiary designation than that they filed a death benefit claim for.

151. That as a result of the Cross Defendant and Third Party Defendants acts to Abuse Legal Process in order to perpetrate an alleged insurance fraud, Cross Plaintiff now suffer and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

**COUNT V**

**CIVIL CONSPIRACY**

152. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "151", as though fully set forth herein.

153. That this is a supplemental action for other civil claims for civil conspiracy by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

154. That Cross Defendant and Third Party Defendants have conspired together to defraud Cross Plaintiff by misleading this court and others regarding the beneficiary(ies) of the Policy(ies) , who they knew had direct beneficial interests in the Policy(ies) and filing this case without

knowledge of Cross Plaintiff and his children's counsel in attempts to convert the Policy(ies) Proceeds.

155. That as a result of the defendants' acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

#### **COUNT VI**

#### **CONVERSION OF PROPERTY**

156. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "155", as though fully set forth herein.

157. That this is a supplemental action for Conversion of Property by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

158. That Cross Defendant and Third Party Defendants have conspired together to deprive Cross Plaintiff of his right to Estate as a beneficiary by their fraudulent acts ad creating false documents.

159. That as a result of the defendants' acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

#### **COUNT VII**

## **NEGLIGENCE**

160. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "159", as though fully set forth herein.

161. At all times relevant herein, the Cross Defendant and Third Party Defendants, acting as trustees and representatives of Trusts and Insurance policies, had a duty to exercise reasonable care and skill to maintain the estate and to discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing of the state on behalf of SIMON and the beneficiaries.

162. In taking the actions alleged above, and in failing to take the actions as alleged above, the Cross Defendant and Third Party Defendants breached their duty of care and skill towards maintenance of the estate. Cross Defendant and Third Party Defendants have mismanaged the estate of SIMON and fraudulently created documents and allegedly forged them without having the legal authority and/or proper documentation to do so.

163. As a direct and proximate result of the negligence and carelessness of the Cross Defendant and Third Party Defendants as set forth above, Cross Plaintiff suffered general and special damages in an amount to be determined by this Court or at trial.

## **RELIEF**

**WHEREFORE**, Cross Plaintiff ELIOT prays to this Court:

- i. To seize all records and demand that all records of all parties concerning either SHIRLEY or SIMON held by all parties be turned over to ELIOT, as NO documents have been tendered to him regarding these Policies;

- ii. Award Court Costs not from the Policy(ies) but from alleged conspirators and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless Lawsuit in efforts to perpetrate a fraud;
- iii. ELIOT has requested the Probate Court to remove TSPA, SPALLINA, TESCHER, TED and P. SIMON of any fiduciary capacities regarding the estates of SIMON and SHIRLEY on multiple legal grounds stated in said Petitions and Motion 1-7 and hereby requests this Court remove them as well from acting in any conflicting capacities or self-representations based on the Prima Facie evidence of Forgery, Fraud, Fraud on the Probate Court and Mail and Wire Fraud, already evidenced in Petition 7. **That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin told TED, SPALLINA, TESCHER and their counsel, Mark Manceri, that he [Hon. Judge Colin] should read them all their Miranda Rights right at that moment, after hearing how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased and how there was a fraud upon his court and himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing the criminal misconduct admitted to in his Court, twice in fact.**
- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from

further representing any parties, sanctioned and forced to retain non conflicted counsel further in these proceedings.

v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.

vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.

vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions and ELIOT thanks Your Honor for the additional extensions in light of this medical incident.

viii. Award damages sustained to date and continuing in excess of at least **EIGHT MILLION DOLLARS** (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

Dated  
1/6/21, 2013

Respectfully submitted,

/s/ Eliot Ivan Bernstein

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

**Certificate of Service**

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, US Mail and by E-mail on September 21, 2013 to the following parties:

**US Mail and Email**

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Pamela Beth Simon and  
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/s/ Eliot Ivan Bernstein

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

EXHIBIT 1

TRANSCRIPT OF ESTATE COURT HEARING ON SEPTEMBER 13, 2013

In Re\_ The Estate of Shirley Bernstein.txt  
00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
2 PROBATE/GUARDIANSHIP DIVISION IY  
3 CASE NO.: 502011CP000653XXXXSB  
IN RE: THE ESTATE OF:

4 SHIRLEY BERNSTEIN,  
Deceased

5 \_\_\_\_\_ /

ELIOT IVAN BERNSTEIN, PRO SE,  
6 Petitioner,

VS.

7

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
8 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD  
9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
11 DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_ /

13 TRANSCRIPT OF PROCEEDINGS

14 BEFORE

15 THE HONORABLE MARTIN H. COLIN

16

17 South County Courthouse  
200 West Atlantic Avenue, Courtroom 8  
18 Delray Beach, Florida 3344

19

20 Friday, September 13, 2013  
1:30 p.m. - 2:15 p.m.

21

22

23

24 Stenographically Reported By:

JESSICA THIBAULT

25

00002

1 APPEARANCES

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



2  
3 On Behalf of the Petitioner:  
4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6

Page 1  
In Re\_ The Estate of Shirley Bernstein.txt  
7  
8 On Behalf of the Defendants:  
9 LAW OFFICE OF MARK MANCERI, P.A.  
2929 East Commercial Blvd., Ste. 702  
10 Fort Lauderdale, Florida 33308  
(954) 491-7099  
11 mrmlaw@comcast.net  
BY: MARK MANCERI, ESQ.

12  
13  
14  
15  
16  
17  
18  
19  
20

21 Also present:  
22 Robert Spallina, Esq.  
23 Theodore Bernstein  
24 Mrs. Bernstein, Petitioner's wife  
25

00003

1 P R O C E E D I N G S

2 THE COURT: All right, we're here on the  
3 Shirley Bernstein estate, 2011CP000653.  
4 Counsel, make your appearances.  
5 MR. MANCERI: Good afternoon, your Honor,  
6 Mark Manceri. I'm here on behalf of Robert  
7 Spallina and Donald Tescher, named respondents.  
8 MR. ELIOT BERNSTEIN: Good afternoon, your  
9 Honor, my name is Eliot Bernstein, and I'm  
10 representing myself pro se.  
11 MR. THEODORE BERNSTEIN: Your Honor, Ted  
12 Bernstein, trustee of the estate, and I'm here  
13 representing myself today.  
14 THE COURT: Okay, thanks.  
15 Let me just get the case up on the  
16 computer, please.  
17 All right, so I set oral argument based



18 upon Mr. Bernstein's emergency motions, and I  
19 did so with the cautionary language in the  
20 notice of hearing that I assume both of you  
21 have, that indicates that I first want to hear  
22 what makes this matter emergency as defined by  
23 our law, so, because you're pro se,  
24 Mr. Bernstein, I want to make sure you're aware

Page 2

In Re\_ The Estate of Shirley Bernstein.txt  
25 of that particular aspect of what I just said.  
00004

1 Counsel knows. This is not an emergency in  
2 your mind. It's an emergency as the law calls  
3 it an emergency. You're probably going to show  
4 me a case or an administrative order and tell  
5 me how this is an emergency.

6 The second part of it is what type of  
7 evidentiary hearing we need to have, so you're  
8 up first.

9 MR. ELIOT BERNSTEIN: Okay, you want me to  
10 step up or?

11 THE COURT: You could do it right from  
12 there.

13 MR. ELIOT BERNSTEIN: It's an emergency  
14 because three of the beneficiaries --

15 THE COURT: Say again? I couldn't -- you  
16 mumbled, I couldn't hear you.

17 MR. ELIOT BERNSTEIN: It's an emergency  
18 because three of the beneficiaries of the  
19 estates lives have been put in danger.

20 THE COURT: Okay, so they're about to be  
21 killed?

22 MR. ELIOT BERNSTEIN: They're about to be  
23 cut off of school, insurance, the necessary  
24 care that was set aside in the estates.

25 THE COURT: So it's not physical harm?

00005

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So it's financial harm?

3 MR. ELIOT BERNSTEIN: Correct.

4 THE COURT: Educational harm?

5 MR. ELIOT BERNSTEIN: Correct.

6 THE COURT: Show me in either the law or  
7 the administrative order where that is defined  
8 as an emergency.

9 MR. ELIOT BERNSTEIN: If it's not then I  
10 made a mistake.

11 THE COURT: You're supposed to know that.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



12 That's why we're having this hearing.  
13 MR. ELIOT BERNSTEIN: Well, I'm pro se.  
14 THE COURT: I know. We brought all this  
15 judicial effort here. No, sir, this is not a  
16 free shot for you.  
17 MR. ELIOT BERNSTEIN: I thought that it  
18 was an emergency.

Page 3

In Re\_ The Estate of Shirley Bernstein.txt

19 THE COURT: No, it's not your thought.

20 MR. ELIOT BERNSTEIN: Okay.

21 THE COURT: I cautioned you in the notice  
22 of hearing you so came today -- I kind of  
23 cautioned you whether this is an emergency,  
24 okay? So you need to demonstrate to me where  
25 under our laws this situation that you say the  
00006

1 evidence would show is imminently happening,  
2 imminent means today, okay, where an emergency  
3 exists.

4 The last two emergencies I did, someone  
5 was on the way to the airport waiting to be  
6 taken illegally to Iran, a non-hate convention  
7 country. We had to get an order out so that  
8 Homeland Security would rush down with armed  
9 guards and protect a child from going overseas  
10 and never coming back to the U.S.

11 The other one was we had to get an order  
12 so police could break down the door to prevent  
13 someone from being physically killed or harmed  
14 physically.

15 Those two were emergencies. Is this an  
16 emergency like that?

17 MR. ELIOT BERNSTEIN: I believe so.

18 THE COURT: Okay, all right, so let me  
19 tell you, I'm going to let you go forward. If  
20 I do not believe so, get your checkbook out.

21 MR. ELIOT BERNSTEIN: Okay.

22 THE COURT: You're going to personally pay  
23 for the cost of this.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: It doesn't seem so based upon  
00007

1 what you've told me, but you have this belief  
2 that it is. Remember, show me that it's a  
3 legal emergency like I gave the example of it.  
4 Someone is going to die, be taken out of the  
5 jurisdiction, someone's wellbeing today is



6 going to be -- you know, they're going to be  
7 without food, they'll be on the street  
8 tomorrow.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: So is that the type of hearing  
11 I need?

12 MR. ELIOT BERNSTEIN: Yes.

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In Re\_ The Estate of Shirley Bernstein.txt

13 THE COURT: Okay. So tell me how that --  
14 what evidence is there that this is an  
15 emergency along those lines?

16 MR. ELIOT BERNSTEIN: Okay, the estate  
17 representatives when my parents died told us  
18 that they were understanding the special  
19 circumstances we and my three children are in,  
20 and that funds had been set aside and not to  
21 worry, there would be no delay of paying their  
22 living costs and everything that my father and  
23 mother had been paying for years to take care  
24 of them, and then they were paying that out of  
25 a bank account at Legacy Bank.

00008

1 THE COURT: Who is they?

2 MR. ELIOT BERNSTEIN: Mr. Spallina had  
3 directed Rachel Walker to pay the expenses of a  
4 Legacy bank account. It was being paid. And  
5 then Mr. Spallina stated that I should or that  
6 Rachel should -- she was fired, she should now  
7 turn the accounts over to my wife to start  
8 writing checks out of an account we've never  
9 seen.

10 So I said I didn't feel comfortable  
11 writing checks out of an account, especially  
12 where it appeared my dad was the signer, so I  
13 called Legacy Bank with Rachel and they were  
14 completely blown away that checks had been  
15 being written out of a dead person's account.  
16 Nobody had notified them that Simon had  
17 deceased. And that no -- by under no means  
18 shall I write checks out of that account, and  
19 so then Mr. Spallina told me to turn the  
20 accounts over to Janet Craig of Oppenheimer,  
21 and Oppenheimer was going to pay the bills as  
22 it had been done by Rachel in the past. And so  
23 we sent her the Legacy account. We thought all  
24 that was how things were being done and, you  
25 know, he doesn't give us any documents



00009

1 whatsoever in the estate, so we don't know, you  
2 know, what he's operating out of, but  
3 Oppenheimer then started to pay the things --  
4 first they said, wait a minute, these are  
5 school trust funds -- well, they actually said  
6 that after they started paying, and they were a  
Page 5

In Re\_ The Estate of Shirley Bernstein.txt  
7 little hesitant that these funds were being  
8 used for personal living expenses of everybody,  
9 which the other Legacy account had been paying  
10 for through an agreement between and my  
11 parents. And then what happened was  
12 Mr. Spallina directed them to continue, stating  
13 he would replenish and replace the funds if he  
14 didn't get these other trusts he was in the  
15 process of creating for my children in place  
16 and use that money he would replenish and  
17 replace it.

18 So the other week or two weeks or a few  
19 week ago Janet Craig said that funds are  
20 running low and she contacted Mr. Spallina who  
21 told her that he's not putting any money into  
22 those trusts and that there's nothing there for  
23 me, and that basically when that money runs out  
24 the kids' insurance, school, their home  
25 electricity and everything else I would

00010

1 consider an emergency for three minor children  
2 will be cut off, and that was not --  
3 THE COURT: Let me ask you a question.

4 MR. ELIOT BERNSTEIN: Yes, sir.

5 THE COURT: At the time when you say  
6 things were as they should be, your parents  
7 were alive and they were paying bills of you  
8 and your children?

9 MR. ELIOT BERNSTEIN: Correct,  
10 100-percent, through an agreement.

11 THE COURT: An agreement with them?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. Then who died first?

14 MR. ELIOT BERNSTEIN: My mom.

15 THE COURT: Because this is what -- you  
16 filed it under your mom's estate.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: Is your father alive or dead?

19 MR. ELIOT BERNSTEIN: My father is



20 deceased today a year ago.

21 THE COURT: All right. So you're saying  
22 that after your father died, however it  
23 happened, bills for you and your children  
24 continued to be paid somehow?

25 MR. ELIOT BERNSTEIN: First out of an

00011

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1 account that they shouldn't have been being  
2 paid out of.

3 THE COURT: And then it stopped?

4 MR. ELIOT BERNSTEIN: It stopped. Then it  
5 was transferred to Oppenheimer.

6 THE COURT: And they paid for a little  
7 while?

8 MR. ELIOT BERNSTEIN: Correct.

9 THE COURT: And when did that stop?

10 MR. ELIOT BERNSTEIN: Correct, just on  
11 August 28th, with one-day's notice.

12 THE COURT: Okay. So the bills that they  
13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,  
17 electricity, water, food, clothing, everything,  
18 100-percent.

19 THE COURT: When did the emergency take  
20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.  
22 They told me if I didn't sign releases that  
23 Robert wanted me to sign and turn the money  
24 over to my brother, the remaining corpus of the  
25 trust, that they were going to shut the funds

00012

1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100-percent  
4 sure, because then I asked them for their  
5 operating documents that Mr. Spallina had sent  
6 them, and once again we've got un-notarized  
7 documents --

8 THE COURT: We'll talk about the notary  
9 thing in a second.

10 MR. ELIOT BERNSTEIN: Okay. Then we have  
11 new improperly notarized documents authorizing  
12 the trust to operate, and they sent me  
13 incomplete documents which are unsigned on



14 every page of the trust agreement, so they're  
15 telling me and I've asked them three times if  
16 they have signed copies and three times they've  
17 sent me unsigned copies.

18 THE COURT: Okay, but what bills today --

19 MR. ELIOT BERNSTEIN: All of them.

20 THE COURT: What bills are unpaid as  
21 overdo today?

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22 MR. ELIOT BERNSTEIN: Health insurance is  
23 one.

24 THE COURT: What's overdue today?

25 MR. ELIOT BERNSTEIN: Health insurance is  
00013

1 one.

2 THE COURT: All right, name the health  
3 insurance company.

4 MR. ELIOT BERNSTEIN: It's COBRA.

5 THE COURT: COBRA is not a company.

6 MR. ELIOT BERNSTEIN: Blue Cross.

7 THE COURT: Blue Cross, okay. How much is  
8 overdue to Blue Cross today?

9 MR. ELIOT BERNSTEIN: \$2,000 or so.

10 THE COURT: It's not \$2,000 a day.

11 MR. ELIOT BERNSTEIN: A month.

12 THE COURT: \$2,000 a month is the health  
13 insurance bill?

14 MR. ELIOT BERNSTEIN: Correct.

15 THE COURT: When was that bill due?

16 MR. ELIOT BERNSTEIN: Well, this is the  
17 problem. All of the bills are going to them  
18 and they don't share with me any of that.

19 THE COURT: So how do you know that you  
20 don't have health insurance coverage?

21 MR. ELIOT BERNSTEIN: Only because it's  
22 paid by them on that date. Usually on the  
23 first.

24 THE COURT: September 1st?

25 MR. ELIOT BERNSTEIN: Yes. As of  
00014

1 September 1st I don't believe they have --

2 THE COURT: Is the coverage in effect

3 today?

4 MR. ELIOT BERNSTEIN: I don't know.

5 THE COURT: If you don't know, how do you  
6 know that it's an emergency?

7 MR. ELIOT BERNSTEIN: I just know they



8 haven't paid it.

9 THE COURT: Okay, so --

10 MR. ELIOT BERNSTEIN: I don't have --

11 THE COURT: So you have coverage you said

12 as of August 31st you had coverage?

13 MR. ELIOT BERNSTEIN: We don't know. We  
14 don't have an accounting if she stated that,  
15 I'm sorry.

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16 THE COURT: Okay, so you may be covered,  
17 you may not be covered?

18 MR. ELIOT BERNSTEIN: Correct.

19 THE COURT: What other bill is unpaid as  
20 of today.

21 MR. ELIOT BERNSTEIN: And that's my wife  
22 and my children too.

23 THE COURT: Okay.

24 MR. ELIOT BERNSTEIN: Again, they have all  
25 the bills, so when they're due, like the  
00015

1 electric was due on the 28th, then they usually  
2 pay it. I don't even get the bills. So the  
3 bills are going straight to Oppenheimer.

4 THE COURT: How do you know  
5 authoritatively that they're not being paid?

6 Ma'am, you can't speak. You're not a  
7 lawyer, right?

8 MRS. BERNSTEIN: No.

9 THE COURT: Up, move to the back.

10 MR. ELIOT BERNSTEIN: You want her to go  
11 back?

12 THE COURT: Yes, because she's disruptive.  
13 I can't speak to you and hear her.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: So stay there in absolute  
16 silence. You could write something if you  
17 want, is that agreed?

18 MRS. BERNSTEIN: Yes.

19 THE COURT: Okay, go ahead. How do you  
20 know these monthly bills are not being paid?  
21 How do you know the way you know today is  
22 Friday, you know what your name is, know  
23 meaning indisputable knowledge.

24 MR. ELIOT BERNSTEIN: I can't say for  
25 certainty since I don't receive it and manage  
00016

1 and pay the bills.



2 THE COURT: Well then how is it an  
3 emergency if you don't know?  
4 MR. ELIOT BERNSTEIN: Well, because we  
5 know that within this next month if electricity  
6 isn't paid and there's no money to pay it and  
7 he doesn't reimburse the trusts that all those  
8 bills on whatever date they were due were  
9 lapsing in the next few hours.

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10 THE COURT: From today?

11 MR. ELIOT BERNSTEIN: From the 28th.

12 THE COURT: The 28th of August?

13 MR. ELIOT BERNSTEIN: Correct, sir.

14 THE COURT: All right. So you don't know  
15 if they've been paid or not. You still have  
16 your electric on?

17 MR. ELIOT BERNSTEIN: Yes.

18 THE COURT: Are any services shut off?

19 MR. ELIOT BERNSTEIN: No.

20 MR. ROTHMAN: Maybe like things like lawn  
21 and stuff, the lawn guys have been coming, said  
22 we owe them money, which we've never heard that  
23 from this guy knocking on the door.

24 THE COURT: All right. Is the lawn an  
25 emergency situation?

00017

1 MR. ELIOT BERNSTEIN: No. You just asked  
2 if any bills --

3 THE COURT: These are not emergencies  
4 then.

5 MR. ELIOT BERNSTEIN: Okay.

6 THE COURT: Remember, you filed a motion  
7 that stopped the courthouse from working.

8 MR. ELIOT BERNSTEIN: I'm very sorry.

9 THE COURT: We thought you were ready to  
10 die on the day you filed the motion.

11 MR. ELIOT BERNSTEIN: I'm very sorry.

12 THE COURT: Okay.

13 MR. ELIOT BERNSTEIN: I believed it was an  
14 emergency. The minor children are in there.

15 THE COURT: Let me ask, how old are you?

16 MR. ELIOT BERNSTEIN: I'm 50.

17 THE COURT: Can you pay an electric bill?

18 MR. ELIOT BERNSTEIN: No.

19 THE COURT: Why not?

20 MR. ELIOT BERNSTEIN: I don't have any  
21 employment.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



22 THE COURT: Why not? If there's an  
23 emergency and you're not eating and you have  
24 children --

25 MR. ELIOT BERNSTEIN: It's very  
00018

1 complicated, but --

2 THE COURT: Well, could you work to pay  
3 your electric bill? If that made a difference?

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4 MR. ELIOT BERNSTEIN: No, I haven't been  
5 able to gain employment due to

6 Ricco-related-type crimes that have been  
7 committed against me and my family.

8 THE COURT: So your kids are without food,  
9 you would have them starve rather then go over  
10 to Burger King or Dunkin Donuts and get a job  
11 doing --

12 MR. ELIOT BERNSTEIN: I've tried all those  
13 things.

14 THE COURT: And they won't hire you?

15 MR. ELIOT BERNSTEIN: Let me explain.

16 THE COURT: Will they hire you to make  
17 enough money?

18 MR. ELIOT BERNSTEIN: No. And that's why  
19 my father and mother had set aside these funds  
20 to pay those bills because they understood the  
21 gravity --

22 THE COURT: So here's what we'll do, we're  
23 going to have a hearing, tell me if you're  
24 comfortable, whether there's any employment you  
25 could get, so I'm going to bring the people  
00019

1 from Florida State Employment who tell me  
2 there's hundreds of jobs today that you could  
3 work.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: You could start today as a  
6 laborer right outside this courthouse. Why  
7 don't you do that?

8 MR. ELIOT BERNSTEIN: Well, because if I  
9 do that I have tax liens that are --

10 THE COURT: Who cares? You want to feed  
11 your children. They're going to pay you money  
12 to feed your children.

13 MR. ELIOT BERNSTEIN: Okay, I'll explain.

14 I have tax liens which are under investigation  
15 by the inspector general of the tax



16 administration department, currently ongoing,  
17 that were put on me as part of the efforts in a  
18 Ricco-related lawsuit that I'm involved in.

19 These are just the facts, I'm just telling  
20 you --

21 THE COURT: What's to stop you from  
22 working as a laborer?

23 MR. ELIOT BERNSTEIN: Because they then  
24 attach my wages --

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25 THE COURT: They don't even know that

00020

1 you're working, and you have an emergency, you  
2 could feed your children.

3 MR. ELIOT BERNSTEIN: They know I'm  
4 working.

5 THE COURT: How do they know you're  
6 working?

7 MR. ELIOT BERNSTEIN: Well, actually, if  
8 you read the last articles I put in the  
9 petition six or five, one of those two, I put  
10 in the articles that have been released in the  
11 press that say that they were misusing joint  
12 terrorism task force funds and resources to  
13 monitor and violate our rights through the  
14 Patriot Act violations, and that they have done  
15 that to me in the related cases in the federal  
16 court.

17 THE COURT: All right, whatever you say.

18 I don't think you want -- if you want a hearing  
19 on whether you could go to work today,  
20 physically go to work and pay, I'll give you  
21 that hearing right now and I'll get someone  
22 from Florida Employment. Here's the deal, you  
23 lose all your motions as soon as they tell you  
24 that you could go outside and work.

25 Do you want that hearing or not? You

00021

1 could physically earn enough money to pay for  
2 food for your children today, you tell me you  
3 can't do -- that someone is going to tackle you  
4 and stop you from working outside as a laborer  
5 to get enough money to feed your children?

6 That's the emergency, your children are  
7 starving. You're a parent. You're going to  
8 tell me you're going to let your children  
9 starve and not work to earn enough money to



10 feed them, that's what you're telling me,  
11 correct?  
12 MR. ELIOT BERNSTEIN: No. Well, I won't  
13 tell you that because, I guess, if you say  
14 there's some job that you could get me I'll get  
15 it.

16 THE COURT: There's tons of jobs.

17 MR. ELIOT BERNSTEIN: I know, I've applied  
18 for so many over the years --

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In Re\_ The Estate of Shirley Bernstein.txt  
19 THE COURT: I mean maybe not as a CEO of a  
20 company. \$10, \$9.00 an hour jobs --  
21 MR. ELIOT BERNSTEIN: I've applied for  
22 minimum wage and had trouble, believe me.  
23 THE COURT: I'm talking about getting work  
24 today -- if you tell me you can't work today  
25 I'll have a hearing on that.

00022

1 MR. ELIOT BERNSTEIN: I can work today.  
2 THE COURT: Well, then you could feed your  
3 children today.

4 MR. ELIOT BERNSTEIN: Okay, if I could get  
5 a job --

6 THE COURT: That's not an emergency. You  
7 might have a hearing on it down the line, but  
8 it's not an emergency.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: An emergency means my kids are  
11 starving, they haven't eaten, there's no food,  
12 and I can't legally get them food because I  
13 can't work. I have people who are blind, who  
14 have no arms and legs, and they can't work.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: That's different, that's not  
17 you.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Okay. Can't work and don't  
20 want to work, think they're reasons not to work  
21 are two different things.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Okay. What's your position on  
24 the emergency before we go to some of these  
25 others issues which concern me about what he

00023

1 said.

2 MR. MANCERI: Good afternoon, your Honor.  
3 As I stated in my opening, I represent Robert



4 Spallina and Mr. Tescher. I would like to  
5 apologize --  
6 THE COURT: So their roles are what in  
7 this case?  
8 MR. MANCERI: They were counsel or are  
9 counsel for the estate of Shirley Bernstein, as  
10 well as counsel for the estate of Simon  
11 Bernstein, who is in front of Judge French.  
12 THE COURT: Okay.

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13 MR. MANCERI: But before I make my  
14 presentation, I would just like to apologize  
15 for Mr. Tescher's absence. He's out of town  
16 for the holiday.

17 THE COURT: Okay. Who are the PR's that  
18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein  
20 there is no technically any PR because we had  
21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from  
24 Mr. Bernstein's 57-page filing, which falls  
25 lawfully short of any emergency, was a petition  
00024

1 to reopen the estate, so technically nobody has  
2 letters right now.

3 Simon Bernstein, your Honor, who died a  
4 year ago today as you heard, survived his wife,  
5 Shirley Bernstein, who died December 10, 2010.  
6 Simon Bernstein was the PR of his wife's  
7 estate.

8 As a result of his passing, and in attempt  
9 to reopen the estate we're looking to have the  
10 estate reopened. So nobody has letters right  
11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's  
13 estate it was closed January of this year,  
14 there was an order of discharge, I see that.

15 Is that true?

16 MR. ELIOT BERNSTEIN: I don't know.

17 THE COURT: Do you know that that's true?

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the  
20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I  
23 want to be discharged, my wife's estate is



24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it  
00025

1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that  
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

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7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.

14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of  
00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the



18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They  
00027

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1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon  
00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of  
Page 16

In Re\_ The Estate of Shirley Bernstein.txt  
22 the estate.

23 THE COURT: What about the fact, counsel,  
24 let me see who signed this. Okay, they're all  
25 the same as to -- so let me ask this, I have a  
00029

1 document where Eliot, you're Eliot, right?

2 MR. ELIOT BERNSTEIN: Yes, sir.

3 THE COURT: Where you purportedly waived  
4 accounting, agreed to a petition to discharge  
5 on May 15th, and you signed that. Do you  
6 remember doing that? Do you remember that or  
7 not? I'm looking at it.

8 MR. ELIOT BERNSTEIN: I remember signing  
9 it and sending it with a disclaimer that I was  
10 signing it because my father was under duress  
11 and only to relieve this stress that he was  
12 being --

13 THE COURT: Well, I don't care -- I'm not  
14 asking you why you signed it.

15 MR. ELIOT BERNSTEIN: I also signed it  
16 with the expressed -- when I signed it I was  
17 coned by Mr. Spallina that he was going to send  
18 me all the documents of the estate to review.  
19 I would have never lied on this form when I  
20 signed it. It's saying that I saw and I never  
21 saw --

22 THE COURT: Let me ask you --

23 MR. ELIOT BERNSTEIN: I lied.

24 THE COURT: Did you have your signature  
25 notarized?

00030

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: Kimberly Moran never signed or  
3 notarized his signature?

4 MR. MANCERI: Yes, your Honor, and that's  
5 been addressed with the Governor's office.



6 THE COURT: You need to address this with  
7 me.

8 MR. MANCERI: I am going to address it  
9 with you.

10 THE COURT: Here's what I don't understand  
11 because this is part of the problem here, is  
12 that Shirley has an estate that's being  
13 administered by Simon.

14 MR. MANCERI: Correct.

15 THE COURT: There comes a time where they

Page 17

In Re\_ The Estate of Shirley Bernstein.txt  
16 think it's time to close out the estate.

17 MR. MANCERI: Correct.

18 THE COURT: Waivers are sent out, that's  
19 kind of SOP, and people sign off on that.

20 MR. MANCERI: Right.

21 THE COURT: And why are they held up for  
22 six months, and when they're filed it's after  
23 Simon is already deceased?

24 MR. MANCERI: They were originally filed  
25 away, your Honor, under the signature of the  
00031

1 people.

2 THE COURT: No, they weren't filed, that's  
3 the whole thing. I'm looking at the file date,  
4 filed with The Court.

5 MR. MANCERI: No, they were returned by  
6 the clerk because they didn't have  
7 notarization. We have affidavits from all  
8 those people, Judge.

9 THE COURT: Well you may have that they  
10 got sent up here.

11 MR. MANCERI: We have affidavits from all  
12 of those people.

13 MR. ELIOT BERNSTEIN: Including Simon?

14 THE COURT: Slow down. You know how we  
15 know something is filed? We see a stamp.

16 MR. MANCERI: It's on the docket sheet, I  
17 understand.

18 THE COURT: So it's stamped in as filed in  
19 November. The clerk doesn't have -- now, they  
20 may have rejected it because it wasn't  
21 notarized, and that's perhaps what happened,  
22 but if in the meantime waiting cured the  
23 deficiency of the document, two things happen  
24 you're telling me, one, Simon dies.

25 MR. MANCERI: Correct.



00032

1 THE COURT: And when those documents are  
2 filed with the clerk eventually in November  
3 they're filed and one of the documents says, I,  
4 Simon, in the present.

5 MR. MANCERI: Of Ms. Moran.

6 THE COURT: No, not physically present, I  
7 Simon, I would read this in November Simon  
8 saying I waive -- I ask that I not have to have  
9 an accounting and I want to discharge, that

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10 request is being made in November.

11 MR. MANCERI: Okay.

12 THE COURT: He's dead.

13 MR. MANCERI: I agree, your Honor.

14 THE COURT: Who filed that document?

15 MR. MANCERI: Robert, do you know who

16 filed that document in your office?

17 MR. SPALLINA: I would assume Kimberly

18 did.

19 MR. MANCERI: Ms. Moran.

20 THE COURT: Who is she?

21 MR. MANCERI: She's a staff person at

22 Tescher and Spallina.

23 THE COURT: When she filed these, and one  
24 would think when she filed these the person who  
25 purports to be the requesting party is at least

00033

1 alive.

2 MR. MANCERI: Understood, Judge.

3 THE COURT: Not alive. So, well -- we're  
4 going to come back to the notary problem in a  
5 second.

6 MR. MANCERI: Okay.

7 THE COURT: In the meantime, based upon  
8 all that I discharge the estate, it's closed.  
9 Here's what I don't understand on your  
10 side, you're representing yourself, but the  
11 rules still apply. You then file, Eliot  
12 Bernstein, emergency petitions in this closed  
13 estate, it's closed.

14 MR. ELIOT BERNSTEIN: You reopened it.

15 THE COURT: When did I reopen it?

16 MR. MANCERI: No, it hasn't been reopened,  
17 your Honor.

18 THE COURT: There's an order that I  
19 entered in May of 2013 denying an emergency



20 petition to freeze assets. You filed this one  
21 in May. Do you remember doing that?

22 MR. ELIOT BERNSTEIN: I believe so.

23 THE COURT: And what you said was there's  
24 an emergency in May, you want to freeze the  
25 estate assets appointing you PR, investigate  
00034

1 the fraud documents, and do a whole host of  
2 other things, and the estate had been closed.  
3 The reason why it was denied among other

Page 19

In Re\_ The Estate of Shirley Bernstein.txt  
4 things, one, it may not have been an emergency,  
5 but, two, the case was not reopened. There's  
6 no reopen order.

7 MR. ELIOT BERNSTEIN: I paid \$50 to  
8 someone.

9 THE COURT: You may have paid to file what  
10 you filed, but there's no order reopening the  
11 estate.

12 MR. ELIOT BERNSTEIN: Okay, that's my  
13 mistake.

14 THE COURT: It's closed, the PR is  
15 discharged, they all went home.

16 MR. ELIOT BERNSTEIN: And I filed to  
17 reopen because we discovered the fraudulent  
18 documents.

19 THE COURT: But then you still had to ask  
20 to reopen --

21 MR. ELIOT BERNSTEIN: And notice, your  
22 Honor, that they haven't come to you in all of  
23 that time, he said he just got notified from  
24 the governor the other day about this fraud, I  
25 put it in your court and served him months ago  
00035

1 and he never came to me or you or anybody else  
2 to know that the police are calling him, the  
3 sheriff and the governor's Office.

4 THE COURT: Then you filed another  
5 emergency similarly, served you folks, Tescher  
6 and Spallina. I denied it because it wasn't an  
7 emergency because nothing was happening I  
8 thought had to happen on the day or two after.

9 MR. ELIOT BERNSTEIN: Well, now that I  
10 understand emergency --

11 THE COURT: The estate wasn't open and it  
12 really wasn't an emergency at the time. And  
13 then you filed a motion in the ordinary course



14 to have things heard, and a motion to -- bunch  
15 of other motions, to remove PR.

16 MR. ELIOT BERNSTEIN: Well, with each  
17 successive crime we found -- by the way, that's  
18 kind of why this is an emergency because with  
19 the use of these fraudulent documents a bunch  
20 of other crimes are taking place.

21 THE COURT: Okay. Representing yourself  
22 is probably not the easiest thing.

23 MR. ELIOT BERNSTEIN: I had counsel, your  
24 Honor, but Mr. Spallina abused her so much and  
Page 20

In Re\_ The Estate of Shirley Bernstein.txt  
25 she ran up a \$10,000 bill.

00036

1 THE COURT: Doesn't help me.

2 MR. ELIOT BERNSTEIN: Doesn't help you,  
3 okay.

4 THE COURT: Then in August you started  
5 again, September you started again, and at  
6 least I set the hearing because it's kind of  
7 hard when I read your allegations I couldn't  
8 figure it out. Now I think, okay -- so now let  
9 me ask you this, counsel.

10 MR. MANCERI: Yes, sir.

11 THE COURT: So the pleadings get filed,  
12 the estate gets closed.

13 MR. MANCERI: Correct.

14 THE COURT: Simon dies. So what happened  
15 with Shirley's estate?

16 MR. MANCERI: Shirley's estate is closed,  
17 as you said.

18 THE COURT: I know the administration is  
19 closed. What happened with her estate? Where  
20 did that go? Did she have a will?

21 MR. MANCERI: Her assets went into trusts,  
22 and her husband had a power of appointment  
23 which he exercised in favor of Mr. Bernstein's  
24 children.

25 THE COURT: Okay.

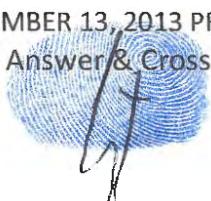
00037

1 MR. MANCERI: And that leads to the trust  
2 that he mentioned at Oppenheimer which he  
3 mislead The Court as to what's happening with  
4 that.

5 THE COURT: Let me slow you down.

6 MR. MANCERI: Okay.

7 THE COURT: So her estate assets went into



8 a trust?

9 MR. MANCERI: Correct.

10 THE COURT: And that trust is --

11 MR. MANCERI: And Ted Bernstein, I  
12 believe, is the trustee of that trust.

13 THE COURT: And you're brothers?

14 MR. THEODORE BERNSTEIN: That's correct.

15 THE COURT: All right. So then -- so

16 Simon really wasn't alive long when he died as  
17 trustee?

18 MR. MANCERI: Not terribly long.

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19 THE COURT: All right. So he was a  
20 trustee. Was she a trustee as well?

21 MR. MANCERI: He died, your Honor. Again  
22 she died December 10, 2010. He died September  
23 of 2012.

24 THE COURT: Right, but was he a trustee  
25 also of Shirley's trust?

00038

1 MR. MANCERI: Yes.

2 THE COURT: So she dies, the estate is  
3 closed, her assets are in a trust. Simon then  
4 dies. What happened with his estate? Judge  
5 French is hearing it, but tell me what  
6 happened.

7 MR. MANCERI: My understanding is that  
8 money went into a trust for the grandchildren.

9 THE COURT: Grandchildren of Eliot?

10 MR. MANCERI: Well there's actually ten of  
11 them, ten grandchildren, which he has three.

12 THE COURT: So the beneficiary level for  
13 Simon was he skipped over his children and gave  
14 everything to the grandchildren?

15 MR. MANCERI: That's correct.

16 MR. ELIOT BERNSTEIN: No.

17 THE COURT: That's not what happened with  
18 your father's estate?

19 MR. ELIOT BERNSTEIN: No.

20 THE COURT: That's not what the rule says  
21 to do?

22 MR. ELIOT BERNSTEIN: No.

23 THE COURT: What does the rule say to do?

24 MR. ELIOT BERNSTEIN: The rule is not  
25 properly notarized. He didn't appear --

00039

1 THE COURT: What did the will say that The



2 Court used?  
3 MR. ELIOT BERNSTEIN: The Court filed a  
4 will and amended trust, both improperly  
5 notarized.

6 THE COURT: You didn't answer my question,  
7 so stop speaking.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: If you don't answer me you  
10 give up your right to participate. Stop, don't  
11 speak, all right, because you waived your right  
12 because you refused to answer my question,

Page 22

In Re\_ The Estate of Shirley Bernstein.txt  
13 okay. So I'll let you answer it.

14 MR. MANCERI: If I can, your Honor.

15 THE COURT: Go ahead.

16 MR. MANCERI: The ten grandchildren shares  
17 -- and I want to be clear on this, this  
18 gentleman is only a tangible personal property  
19 beneficiary. He and his own proper person.  
20 And the mother. That's all he's entitled to.  
21 No cash request, nothing directly to him,  
22 because of his financial problems among other  
23 issues.

24 THE COURT: Okay.

25 MR. MANCERI: He has been asked to  
00040

1 establish accounts for the benefit of his  
2 children and he refused to do it.

3 THE COURT: I'm not interested in that,  
4 here's what I'm interested in.

5 MR. MANCERI: All right.

6 THE COURT: So before this latest realm of  
7 pleadings were filed, both parents are  
8 deceased?

9 MR. MANCERI: Yes.

10 THE COURT: They both have trusts?

11 MR. MANCERI: Right.

12 THE COURT: Simon's trusts are for the  
13 benefit of the grandchildren?

14 MR. MANCERI: Correct.

15 THE COURT: And Shirley's trust is for the  
16 benefit of who?

17 MR. MANCERI: The grandchildren now  
18 because Simon died.

19 THE COURT: So children-level, Eliot, Ted  
20 were skipped over as beneficiaries?

21 MR. MANCERI: That's correct, your Honor.



22 THE COURT: Now, tell me the best you can  
23 the way Eliot described that there was some  
24 deal that had been in effect with Shirley and  
25 Simon while they were alive that kept on going  
00041

1 after Shirley died to help support his  
2 children.

3 MR. MANCERI: That I can't comment on  
4 personally, your Honor, because I never met  
5 either one of them.

6 THE COURT: Do you know anything about  
Page 23

In Re\_ The Estate of Shirley Bernstein.txt  
7 that?

8 MR. MANCERI: He was the draftsman. His  
9 firm was the draftsman.

10 THE COURT: So did Shirley and --

11 MR. ELIOT BERNSTEIN: They didn't draft --

12 THE COURT: Stop. Next time you speak out  
13 of turn you will be held in contempt of court.

14 MR. ELIOT BERNSTEIN: Sorry.

15 THE COURT: Why get yourself in trouble?  
16 You're being rude.

17 MR. ELIOT BERNSTEIN: Sorry.

18 THE COURT: So is it true that when they  
19 were alive they were helping to support Eliot's  
20 family?

21 MR. SPALLINA: To the best of my  
22 knowledge, yes, sir.

23 THE COURT: So after Shirley died, did  
24 that continue?

25 MR. SPALLINA: Yes, I assume so, that Si  
00042

1 was paying bills.

2 THE COURT: And when he died in September  
3 of last year, what happened, if anything?

4 MR. SPALLINA: There was an account that  
5 we set up in the name of Bernstein Family  
6 Reality. That was owned by three old trusts  
7 not that we created, but were created by  
8 Mr. Bernstein in 2006 that owned the house that  
9 the family lives in, so there was an LLC that  
10 was set up, Bernstein Family Realty, LLC,  
11 there's the three children's trust that own the  
12 membership interest in that, and there was a  
13 bank account at Legacy Bank that had a small  
14 amount of money that Si's assistant Rachel had  
15 been paying the bills out of on behalf of the



16 trusts.

17 When Mr. Bernstein died, Oppenheimer, as  
18 trustee of the three trusts and in control of  
19 the operations of that entity, assigned  
20 themselves as manager, had the account moved  
21 from Legacy to Oppenheimer, and continued to  
22 pay the bills they could with the small amount  
23 of money that was in the Legacy account.

24 At this time, the Legacy account was  
25 terminated because there were no funds left,  
00043

Page 24

In Re\_ The Estate of Shirley Bernstein.txt  
1 they started using the funds inside the three  
2 trusts at Oppenheimer to pay for health,  
3 education, maintenance and support --  
4 THE COURT: Of the grandchildren?  
5 MR. SPALLINA: Of the grandchildren. And  
6 it was probably at the time that Mr. Bernstein  
7 died about \$80,000 in each of those trusts last  
8 September.

9 THE COURT: Okay, so then what happened?

10 MR. SPALLINA: So over the course of the  
11 last year -- the kids go to private school,  
12 that's an expensive bill that they pay, think  
13 it's approximately \$65,000. There were other  
14 expenses throughout the year. The trust assets  
15 as of this week I spoke to Janet Craig, have  
16 depleted down collectively across the three  
17 trusts for about \$25,000.

18 THE COURT: Total left?

19 MR. SPALLINA: Total left in the three  
20 trusts.

21 THE COURT: Any other trusts?

22 MR. SPALLINA: Again, this is not part of  
23 the estate right now, so let's leave the estate  
24 of Shirley and Si completely separate. Just  
25 trying to get to the issue that Mr. Bernstein  
00044

1 spoke about first.

2 THE COURT: Right.

3 MR. ELIOT BERNSTEIN: Oppenheimer called  
4 me and said that the trusts are coming to the  
5 end of their useful life, it doesn't pay to  
6 administer them anymore. They're going to make  
7 final distribution to Mr. Bernstein and his  
8 wife as the guardians of their children.

9 They sent out standard waivers and

10 releases for him to sign in exchange for the  
11 remaining money that was there. There was a  
12 disagreement that ensued and I have the e-mail  
13 correspondence between Eliot and Janet Craig at  
14 Oppenheimer that this is extortion and that  
15 Mr. Spallina and you have devised a plan not to  
16 give us the rest of the money. That's not the  
17 case at all. In fact, we told them to  
18 distribute the rest of the money, there's been  
19 \$12,000 in bills submitted to them that they  
20 are either paying today or on Monday, and the  
21 \$14,000 or some-odd dollars that would be left

Page 25

In Re\_ The Estate of Shirley Bernstein.txt  
22 are in securities that they have to liquidate,  
23 supposedly they would have good funds today,  
24 but there was some threats of litigation and so  
25 they said that it might be prudent to hold onto  
00045

1 this. There's also some expenses outstanding  
2 on accounting fees and tax preparation fees.

3 THE COURT: Let me ask you this, what's  
4 the other part of the estate planning that  
5 Shirley or Simon had, another trust?

6 MR. SPALLINA: Both of their estates say  
7 that at the death of the second of us to die,  
8 pursuant to Si's exercise over his wife's  
9 assets, that all of those assets would go down  
10 to ten grandchildren's trust created under  
11 their dockets.

12 Mr. Bernstein was on a call while his  
13 father was alive with his other four siblings  
14 where he had called me and said, Robert, I  
15 think we need to do a phone call with my  
16 children to explain to them that I'm going to  
17 give this to the ten grandchildren.

18 THE COURT: And that happened?

19 MR. SPALLINA: And that happened.

20 THE COURT: So right now the status,  
21 there's a trust that deals with that, or more  
22 than one trust.

23 MR. SPALLINA: There's both Si's estates  
24 and Shirley's estates basically say after and  
25 again there is some litigation.

00046

1 THE COURT: And that's different than this  
2 \$14,000 --

3 MR. SPALLINA: Yeah, those are three



4 trusts that were just designed to hold.

5 THE COURT: Who's administering those  
6 trusts?

7 MR. SPALLINA: Those trusts, Ted Bernstein  
8 is the trustee of his mother's trust and holds  
9 three assets.

10 THE COURT: Who is the trustee of the  
11 father's trust?

12 MR. SPALLINA: Don Tescher and myself.

13 THE COURT: And what are those trusts  
14 doing with trust assets?

15 MR. SPALLINA: On the estate side there

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In Re\_ The Estate of Shirley Bernstein.txt  
16 was a claim filed by a former employee of  
17 Mr. Bernstein for \$2.5 million-plus, so there's  
18 litigation that's been pending in the estate  
19 now for basically since this date, and those  
20 funds are just sitting in a partnership account  
21 at JP Morgan with no distributions that have  
22 been made at all.

23 THE COURT: So what's the total corpus of  
24 the what I'll call the ten grandchildren's  
25 trust of both grandparents?

00047

1 MR. SPALLINA: Not taking into account the  
2 litigation?

3 THE COURT: Well, no, you haven't paid  
4 anything out yet.

5 MR. SPALLINA: I would say it's  
6 approximately \$4 million.

7 THE COURT: So there's litigation going on  
8 in Simon's --

9 MR. SPALLINA: Estate.

10 THE COURT: And at some point when that  
11 claim is resolved the trust will then be  
12 administered by your firm and...

13 MR. SPALLINA: No, that's not the case.

14 Each of the adult children for their own  
15 children are designated to serve as trustee of  
16 their children's trust.

17 THE COURT: So a distribution takes place  
18 then once the money gets to the trust age?

19 MR. SPALLINA: Correct, and today again  
20 the Shirley Bernstein trust does have liquid  
21 assets in it. There was two properties, real  
22 estate properties, the residential home and a  
23 condo on the beach. The condo on the beach



24 sold back in April or May. There were funds  
25 that came into the account at that time. Ted  
00048

1 was going to make partial distribution. He  
2 sent out an e-mail with tax I.D. numbers and  
3 the naming of the trust to the five children  
4 for the purposes of them opening up the  
5 accounts.

6 THE COURT: Okay, what happened?

7 MR. SPALLINA: Seven of ten accounts were  
8 opened and were actually funded this week with  
9 \$80,000.

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10 THE COURT: Total or each?

11 MR. SPALLINA: Each.

12 THE COURT: Three of Eliot's --

13 MR. SPALLINA: Are not open. And we've  
14 asked multiple --

15 THE COURT: And he executed documents to  
16 open \$240,000 immediately or very quickly go  
17 into those accounts?

18 MR. SPALLINA: Yes, sir.

19 THE COURT: Go ahead.

20 MR. SPALLINA: Now, there was a question  
21 from our client as trustee of his mother's  
22 trust because he has apprehension as do the  
23 other siblings as to whether or not  
24 Mr. Bernstein is the proper trustee for that  
25 trust.

00049

1 THE COURT: Okay, all right.

2 MR. SPALLINA: We had discussions about  
3 possibly making emergency distributions to pay  
4 the expenses, but not necessarily --

5 THE COURT: Not giving the money directly  
6 to him.

7 MR. SPALLINA: Not necessarily put in all  
8 \$80,000 in all three of those trusts.

9 THE COURT: Does the trust pay expenses  
10 directly or give money to the parent who pays  
11 the expenses? Do you pay the electric bill or  
12 do you give money to Eliot to pay the electric  
13 bill?

14 MR. SPALLINA: Today?

15 THE COURT: Now, how does that work with  
16 the others kids?

17 MR. SPALLINA: They were just funded, but



18 normally the trustee of the trust would pay for  
19 expenses on behalf of the beneficiary if  
20 they're minor children. Some of the children  
21 here are adults. So to the extent they're  
22 adults they would make distribution.

23 THE COURT: So what's the resolution of  
24 the notary problem? Has that been resolved?

25 MR. SPALLINA: I can speak to it.

00050

1 MR. MANCERI: Please, Robert, go ahead.  
2 The Judge is addressing you, be my guest.

3 MR. SPALLINA: In April of last year we

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In Re\_ The Estate of Shirley Bernstein.txt  
4 met with Mr. Bernstein in April of 2012 to  
5 close his wife's estate.

6 THE COURT: No, I know that part.

7 MR. SPALLINA: Okay.

8 THE COURT: I mean everyone can see he  
9 signed these not notarized. When they were  
10 sent back to be notarized, the notary notarized  
11 them without him re-signing it, is that what  
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with  
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed  
17 affidavit from each of the children other than  
18 Mr. Bernstein that the original documents that  
19 were filed with The Court were in fact their  
20 original signatures which you have in the file  
21 attached as Exhibit A was the original document  
22 that was signed by them.

23 THE COURT: It was wrong for Moran to  
24 notarize -- so whatever Moran did, the  
25 documents that she notarized, everyone but

00051

1 Eliot's side of the case have admitted that  
2 those are still the original signatures of  
3 either themselves or their father?

4 MR. SPALLINA: Yes, sir.

5 THE COURT: I got it.

6 MR. MANCERI: And we can file those  
7 affidavits, Judge, at any time.

8 THE COURT: So now I'm trying to deal with  
9 the oral argument for today.

10 So I only have in front of me Shirley's  
11 estate. Shirley's estate is closed.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



12 MR. MANCERI: Your Honor, could I bring  
13 you up to speed on one thing maybe you're not  
14 seeing on your docket.

15 THE COURT: Yes.

16 MR. MANCERI: We actually filed a motion  
17 to actually reopen the estate when we learned  
18 about the deficiency in the affidavit issue.

19 THE COURT: Okay.

20 MR. MANCERI: And that was signed  
21 August 28th of this year. Do you have a copy  
22 of that, Judge, can I approach?

23 THE COURT: Hold on, it should be here,  
24 but let's see. Because I have an August 28th  
Page 29

In Re\_ The Estate of Shirley Bernstein.txt  
25 file, I have that.

00052

1 MR. MANCERI: You have that.

2 THE COURT: Motion to reopen the estate.

3 MR. MANCERI: Right, your Honor. We set  
4 it for an evidentiary hearing.

5 THE COURT: When is it set?

6 MR. MANCERI: It's set for October 28th,  
7 your Honor, for an hour at 11:00 a.m.

8 THE COURT: I'm going to decide on  
9 Shirley's case whether to open it and how to  
10 deal with whatever issues pertain to this, but,  
11 Eliot, on your side you have an emergency  
12 motion to freeze assets of the estate, so I  
13 would say to you with a closed estate where the  
14 PR, Simon, has been already discharged, and a  
15 petition for discharge approved, what assets  
16 are there in a closed estate where the estate  
17 assets have already been distributed that I can  
18 now in your motion freeze?

19 MR. ELIOT BERNSTEIN: The petition --

20 THE COURT: Listen to my question. It's  
21 artful. What assets now that the estate's been  
22 closed, that the estate's been fully  
23 administered, and the estate has been  
24 discharged, can I freeze that I could identify  
25 still belong to Shirley's estate?

00053

1 MR. ELIOT BERNSTEIN: I can't tell you  
2 because I never got a document regarding the  
3 assets.

4 THE COURT: But when you say it's an  
5 emergency hearing --



6 MR. ELIOT BERNSTEIN: But I was supposed  
7 to get those documents, correct?  
8 THE COURT: Well, I don't know what  
9 documents --  
10 MR. ELIOT BERNSTEIN: I was a beneficiary,  
11 unlike they said, me, my brother was cut out of  
12 my mother's estate and my older sister.  
13 THE COURT: They said you were a  
14 beneficiary of personal property.  
15 MR. ELIOT BERNSTEIN: No, I was the third  
16 beneficiary to the entire estate.  
17 THE COURT: All right, I don't know.  
18 MR. SPALLINA: At one point he was.

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In Re\_ The Estate of Shirley Bernstein.txt  
19 MR. MANCERI: Early on, your Honor.  
20 THE COURT: But on the will that was  
21 probated?  
22 MR. MANCERI: No.  
23 THE COURT: Okay, so maybe you don't know  
24 then, your mother changed her will, they say.  
25 MR. ELIOT BERNSTEIN: Did my mother change  
00054  
1 her will?  
2 MR. SPALLINA: You know that your father  
3 did.  
4 MR. ELIOT BERNSTEIN: No, he asked if my  
5 mother did.  
6 MR. SPALLINA: Oh, yes.  
7 THE COURT: Okay, all right --  
8 MR. ELIOT BERNSTEIN: After she was dead  
9 using alleged --  
10 THE COURT: Not after she was dead.  
11 MR. ELIOT BERNSTEIN: No, your Honor, my  
12 father went back into my mother's estate and  
13 made changes after we believe he was dead using  
14 documents that are signed forged, by the way  
15 those documents you're looking at --  
16 THE COURT: Here's the thing.  
17 MR. ELIOT BERNSTEIN: Yes.  
18 THE COURT: You want me to freeze assets  
19 of an estate that's already been fully  
20 probated. I can't freeze something that  
21 doesn't exist.  
22 MR. ELIOT BERNSTEIN: Can you reopen it  
23 because it was closed on fraudulent documents?  
24 THE COURT: They asked for the estate to  
25 be reopened. They want to have a hearing on



00055

1 that.

2 MR. ELIOT BERNSTEIN: Okay.

3 THE COURT: Do you have responses to your  
4 motion?

5 MR. MANCERI: Mr. Spallina filed it, but I  
6 don't believe so yet, your Honor.

7 THE COURT: So we know one person wants to  
8 reopen it, Eliot, correct? Who did you notice  
9 of that motion?

10 MR. MANCERI: This motion was served on  
11 Ted Bernstein, Pamela --

12 THE COURT: Ted, do you want the estate  
Page 31

In Re\_ The Estate of Shirley Bernstein.txt  
13 reopened, Shirley's estate reopened?

14 MR. THEODORE BERNSTEIN: I think you're  
15 asking me a legal question, your Honor.

16 THE COURT: Does anyone represent you?

17 MR. MANCERI: Not at the moment, your  
18 Honor. I may depending on how far this goes.

19 THE COURT: All right, well, what I'm  
20 getting at is, is anyone opposing the reopening  
21 of the estate?

22 MR. MANCERI: No, your Honor. We want to  
23 open it to cure what his allegation is.

24 THE COURT: First step, one, is reopen.

25 MR. MANCERI: Correct.

00056

1 THE COURT: So why do we have to wait  
2 until the end of October to reopen the estate  
3 when we could do that in mid-September?

4 MR. MANCERI: No reason, your Honor.

5 THE COURT: Any reason why we need to  
6 wait?

7 MR. ELIOT BERNSTEIN: No.

8 THE COURT: All right, so...

9 MR. MANCERI: You haven't heard any  
10 objections to this from anybody else, have you  
11 Robert?

12 MR. SPALLINA: No.

13 THE COURT: All right, so get me up an  
14 agreed order that I could open up the estate.

15 MR. MANCERI: Okay, you'll take care of  
16 that, Robert?

17 MR. SPALLINA: Uh-Huh.

18 MR. MANCERI: We'll take the October  
19 hearing off your docket.



20 THE COURT: You don't need an evidentiary  
21 hearing to prove it, I'm going to do it, and  
22 under these circumstances that makes sense.

23 Okay, so I'm going to have it reopen the  
24 estate. So now the question is --

25 MR. MANCERI: Your Honor, just so I'm  
00057  
1 clear.

2 THE COURT: Yes, Shirley's estate.

3 MR. MANCERI: The reason we asked to  
4 reopen it is to cure or address this alleged  
5 fraud.

6 THE COURT: But all I'm physically doing  
Page 32

In Re\_ The Estate of Shirley Bernstein.txt  
7 is saying, Rich, reopen.

8 MR. MANCERI: Agreed. I just wanted to be  
9 clear.

10 THE COURT: I don't want you to get rid of  
11 the hearing.

12 MR. MANCERI: Oh, you don't, okay.

13 THE COURT: So at the hearing whatever it  
14 is in relief that you want now that the estate  
15 is open, I'll hear that.

16 MR. MANCERI: Okay.

17 THE COURT: And, Mr. Bernstein, whatever  
18 you want relief-wise to happen with respect to  
19 Shirley's estate, not Shirley's trust, but  
20 Shirley's estate, you could have a hearing on  
21 that. I'll combine everyone who has an  
22 interest in getting some relief.

23 MR. MANCERI: Only thing I was going to  
24 say, your Honor, after this was noticed I got  
25 into this matter. I have a conflict on the  
00058

1 28th at that hour. If we could move it to the  
2 afternoon I'd appreciate it.

3 THE COURT: I'll get my book and see.

4 Maybe I can, I don't know.

5 MR. MANCERI: That's my only issue on the  
6 28th.

7 THE COURT: I don't know, I'll look.

8 So let me try to make some progress, all  
9 right.

10 So today is whether in Shirley's estate  
11 there's an emergency, here is my order, no.

12 Okay?

13 MR. MANCERI: Okay.



14 THE COURT: Next, whether -- what type of  
15 evidentiary hearing, if any, needs to be held.  
16 For Shirley's estate purposes I guess I have to  
17 figure out the following: It appears that  
18 there could be some problem in the documents  
19 that took place to lead Shirley's estate to be  
20 closed and distributed as it took place, okay  
21 because --

22 MR. MANCERI: Right.

23 THE COURT: It took place pursuant to  
24 documents that may have been improperly  
25 notarized. Now. That doesn't mean that

00059

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1 anything happened, it just means the documents  
2 may have a taint to them themselves.

3 MR. MANCERI: Right.

4 THE COURT: But I'll take a look at it and  
5 see whether there's anything that has to happen  
6 differently than what already happened with  
7 respect to that.

8 MR. MANCERI: Judge, in furtherance in  
9 making that determination, would you like us to  
10 submit these to you?

11 THE COURT: What are those?

12 MR. MANCERI: These are the original  
13 affidavits. I haven't made copies.

14 THE COURT: File them.

15 MR. MANCERI: Just file them, okay. Very  
16 good, we'll file them and serve them.

17 THE COURT: Mr. Bernstein, I want you to  
18 understand something. Let's say you prove what  
19 seems perhaps to be easy, that Moran notarized  
20 your signature, your father's signature, other  
21 people's signatures after you signed it, and  
22 you signed it without the notary there and they  
23 signed it afterwards. That may be a wrongdoing  
24 on her part as far as her notary republic  
25 ability, but the question is, unless someone

00060

1 claims and proves forgery, okay, forgery,  
2 proves forgery, the document will purport to be  
3 the document of the person who signs it, and  
4 then the question is, will something different  
5 happen in Shirley's estate then what was  
6 originally intended? Originally intended they  
7 say, the other side, was for Simon to close out



8 the estate. The estate they say was small.  
9 The estate gave everything to the trust and  
10 that's what it did, and that was the end of the  
11 estate.

12 Remember, this is not everything about  
13 your parents and their estate planning. This  
14 is one small component, Shirley's estate alone,  
15 not her trust, and nothing to do with what  
16 happened with Simon, okay, because that's not  
17 before me. Simon's case is before Judge  
18 French.

19 Having said that, one of the other reasons  
20 why I have to consider whether your matter is  
21 an emergency, even if there was something that  
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22 I could enter an order on or have a hearing on  
23 immediately that could free up money from  
24 Shirley that you personally would be entitled  
25 to, you tell me you don't even know that you  
00061

1 were not a beneficiary of the estate, so  
2 certainly you're not doing your groundwork to  
3 tell me if it's an emergency or not because it  
4 could be an emergency if you were a beneficiary  
5 of her will that was probated, but you don't  
6 even know one way or the other. So you could  
7 be a stranger to the estate. She may have  
8 disinherited you from the estate. She may have  
9 chosen to only give you personal property. So  
10 if you're not entitled to anything, you don't  
11 have an emergency. You're not entitled to  
12 anything. Go ahead.

13 MR. ELIOT BERNSTEIN: I never was  
14 noticed --

15 THE COURT: It doesn't matter.

16 MR. ELIOT BERNSTEIN: -- by the estate  
17 planner when she died.

18 THE COURT: Okay.

19 MR. ELIOT BERNSTEIN: So he's supposed to  
20 notify the beneficiaries.

21 THE COURT: Who?

22 MR. ELIOT BERNSTEIN: Mr. Spallina.

23 THE COURT: Of what?

24 MR. ELIOT BERNSTEIN: That there are  
25 beneficiaries of the estate.

00062

1 THE COURT: But what if you weren't a

2 beneficiary?

3 MR. ELIOT BERNSTEIN: I was at that time.

4 My dad doesn't change that until a

5 year-and-a-half later. Are you following?

6 THE COURT: This may be about it, but

7 you're interested in some financial relief. If  
8 you don't want to go out and get a laborer job  
9 today to feed your children that's your choice.

10 MR. ELIOT BERNSTEIN: I didn't say that.

11 THE COURT: I'm not in charge of feeding  
12 your children or paying your electric bills,  
13 you are. You have to do what a parent does to  
14 take care of their children. It doesn't sound  
15 like you're doing everything that you can, but

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16 that's technically not before me.

17 But in the meantime not knowing a whole

18 lot about this case, it's my first time I'm  
19 really having this type of dialogue. I heard  
20 some voice that said there's cash to feed your  
21 children that could become readily in your  
22 pocket or in someone's pocket to pay bills that  
23 could help your children. I heard that. They  
24 say the stumbling block to your children  
25 getting the benefit of that money is you. I

00063

1 don't know whether that's true or not, but if  
2 you want your children to imminently get money  
3 and they have imminent money to give your  
4 children, maybe you want to sit with Ted and  
5 that other side and see if there's some money  
6 that could come to your children.

7 MR. ELIOT BERNSTEIN: Excuse me.

8 THE COURT: Sure.

9 MR. ELIOT BERNSTEIN: That's like asking  
10 me to participate in what I allege is a fraud.

11 THE COURT: No, it doesn't --

12 MR. ELIOT BERNSTEIN: Listen, if the money  
13 comes to my children and it was supposed to  
14 have gone to me, and these documents that are  
15 all shady and unsigned wills with --  
16 un-notarized wills and trusts don't stand. The  
17 money comes to me personally, Eliot Bernstein.

18 MR. MANCERI: Your Honor --

19 THE COURT: Let me just say this to you.

20 Maybe two, three years from now as a result of  
21 the same trust litigation you'll be right, but



22 in the meantime according to you there's money  
23 that could feed your children that you don't  
24 want to touch because you think the money  
25 should go to you instead of your children that  
00064

1 they're willing to --

2 MR. ELIOT BERNSTEIN: Well, I think there  
3 are other beneficiaries.

4 THE COURT: -- put in accounts to go for  
5 the benefit of your children.

6 MR. ELIOT BERNSTEIN: I think there are  
7 other beneficiaries that are also --

8 THE COURT: They signed off.

9 MR. ELIOT BERNSTEIN: No, just their  
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10 parents have. The children don't even know.

11 They're not even represented.

12 THE COURT: Well, the parents represent  
13 the child.

14 MR. ELIOT BERNSTEIN: No, but they have  
15 conflicting interests.

16 THE COURT: Well, you say that --

17 MR. ELIOT BERNSTEIN: Our attorney wrote a  
18 subpoena and said it. I had to get two lawyers  
19 because my attorney couldn't represent both  
20 sides of this.

21 MR. MANCERI: I'm very concerned about  
22 something Mr. Bernstein just told The Court.  
23 He's the one objecting they're in conflict,  
24 he's stating from what I'm piecing together  
25 that he believes that his children are getting  
00065

1 money that the parents really was supposed to  
2 go to him personally. He's got the inherent  
3 conflict with that mindset.

4 MR. ELIOT BERNSTEIN: I'm not saying I  
5 don't.

6 THE COURT: Okay, here's the point, if  
7 you're at a point where you're asking The Court  
8 for an emergency because you can't feed  
9 children, and there's someone around the corner  
10 that's holding out a \$20 bill and says you  
11 could have it to feed your children, and you  
12 go, you know, I'm not going to take that to  
13 feed my children because I want to have a court  
14 determine that it really was mine, then I don't  
15 know that you're treating this as an emergency.



16 Emergencies mean you figure out a way of  
17 getting the money to your children sooner than  
18 later, and they say it's happening imminently,  
19 cash that could pay bills for your children.  
20 That's what they say. If it's an emergency and  
21 your kids are starving, and you as the parent  
22 say that might be my money and not my kids', so  
23 I want to wait for two or three years and let  
24 the money stay in a bank account until I could  
25 figure it out, and not feed my children, I  
00066

1 think you need to reflect upon some of your  
2 decisions.

3 MR. MANCERI: Your Honor --

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4 THE COURT: What?

5 MR. MANCERI: I'm not saying we're going  
6 to do this, Judge, but this sounds like this  
7 may need an ad litem for these kids.

8 THE COURT: Well, I don't know, let's not  
9 add fuel to the fire.

10 MR. MANCERI: Because I'm troubled by what  
11 he's saying.

12 THE COURT: All right, so --

13 MR. ELIOT BERNSTEIN: Here's why I have  
14 not taken that money.

15 THE COURT: Why?

16 MR. ELIOT BERNSTEIN: Because if you told  
17 me, your Honor, that you just murdered him, and  
18 here's \$20 from his pocket to feed your kids  
19 from the crime --

20 THE COURT: If they were starving I would  
21 take the \$20.

22 MR. ELIOT BERNSTEIN: On that advice, I'll  
23 take the money.

24 THE COURT: If they were starving --

25 MR. ELIOT BERNSTEIN: On that advice --

00067

1 THE COURT: Your kids are starving. I'm  
2 not giving you advice.

3 MR. ELIOT BERNSTEIN: On that advice, I  
4 will --

5 THE COURT: The \$20 didn't murder anybody,  
6 did it? Did the \$20-bill murder someone?

7 MR. ELIOT BERNSTEIN: It's stealing money  
8 from people.

9 THE COURT: They're not -- this isn't



10 stolen money. This is your parents' money.  
11 MR. ELIOT BERNSTEIN: If I take that money  
12 and put it in my kids' accounts, it's actually  
13 taking money from what we believe are the true  
14 and proper beneficiaries --

15 THE COURT: Which is you.

16 MR. ELIOT BERNSTEIN: No, through -- one  
17 of, through --

18 THE COURT: So meanwhile if your kids are  
19 starving and you don't take the money, all I  
20 could say to you, there's obviously -- if you  
21 look at the documents I mean you're not going  
22 to confess to killing Kennedy as part of  
23 receiving the money, but if they want to give  
24 you money for your children and you don't want

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25 to take it because you think it's yours, and  
00068

1 you want to wait years --

2 MR. ELIOT BERNSTEIN: That's not why I  
3 want to dispute it.

4 THE COURT: You think that there's some --

5 MR. ELIOT BERNSTEIN: I think that it's  
6 part of a fraud that forged documents were used  
7 to --

8 THE COURT: But it's still your parents  
9 money --

10 MR. ELIOT BERNSTEIN: -- convert estate  
11 assets to the wrong beneficiary.

12 THE COURT: But they want to now get it to  
13 you.

14 MR. ELIOT BERNSTEIN: No, not me.

15 THE COURT: To your children.

16 MR. ELIOT BERNSTEIN: Listen, I'll take  
17 the money without explanation on it. I agree.  
18 Listen, the only reason I didn't want to take  
19 the money was so I wouldn't be part of a fraud.

20 THE COURT: You're not, obviously no one  
21 is accusing you of fraud. If they give you  
22 money to care for --

23 MR. ELIOT BERNSTEIN: But then I could  
24 accuse them of fraud if I'm participating.

25 THE COURT: I mean all you're doing is  
00069

1 signing a receipt. You don't know where the  
2 money came from. You're not signing off --  
3 you're not saying that you make a declaration



4 that the money came from them, the other side  
5 to you in only legal means. You're just  
6 signing a receipt.

7 MR. MANCERI: But he is signing off on  
8 that he's going to honor the terms of the  
9 trust. If he is signing off to that --

10 THE COURT: If it comes to you as trustee  
11 for your children, you are -- you have a duty  
12 to only use it for the children, not yourself.  
13 Not you. You still have to work for you. Now,  
14 you don't have to work for your children,  
15 maybe. You still have to support yourself.

16 MR. ELIOT BERNSTEIN: Yeah.

17 THE COURT: The money has to get spent on  
18 your children if that's how you get it.

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19 MR. ELIOT BERNSTEIN: Right.

20 THE COURT: That's all we're talking about  
21 is money to feed your children.

22 MR. ELIOT BERNSTEIN: You see, if the  
23 money came to me, it's also for me and my wife  
24 and feeds our children.

25 THE COURT: That's not what they said. It  
00070

1 does not go to support you and your wife.

2 MR. ELIOT BERNSTEIN: If the money comes  
3 to me as a beneficiary, it does. If all these  
4 nonsense documents that are forged and --

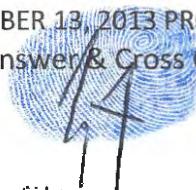
5 THE COURT: If they want to give it to you  
6 only under their condition this is because  
7 their version is it belongs to your children.

8 MR. ELIOT BERNSTEIN: Right.

9 THE COURT: Don't accept it, you don't get  
10 it. If you accept it, it goes to your  
11 children. You may not like that, but it only  
12 could be used for your children, because that's  
13 the deal that they make. You take that deal  
14 because you don't want your kids to starve.

15 You may not like it, you want to be  
16 supported too, but they don't want to support  
17 you. They don't think it's your money, they  
18 think it's your children's money. So why turn  
19 that -- maybe you're entitled to it, but why  
20 turn down money that could help support your  
21 children in the meantime.

22 MR. ELIOT BERNSTEIN: If your logic is  
23 correct, your Honor, I agree.



24 THE COURT: Well, I don't know if my logic  
25 is correct.

00071

1 MR. ELIOT BERNSTEIN: Here's the legal  
2 problem --

3 THE COURT: Stop, no, the hearing is over.  
4 I'm not giving more legal advice. Your hearing  
5 goes on, okay, see you.

6 MR. MANCERI: Your Honor, any chance of  
7 resetting it?

8 THE COURT: I'm going to ask my office to  
9 flip it around to the afternoon. I'll take  
10 care of that.

11 MR. MANCERI: Thank you, your Honor.

12 We'll submit an order to your Honor.

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13 THE COURT: Okay, clear it with him and  
14 see if you could actually get something that  
15 makes sense. It's really narrow.

16 MR. MANCERI: It's very narrow. We've got  
17 the transcript, Judge.

18 THE COURT: It's only really that there's  
19 no emergency here. Everything everyone raises  
20 on the 28th.

21 MR. MANCERI: Very good, Judge. Do you  
22 think we can do it in an hour, Judge?

23 THE COURT: We'll try.

24 MR. MANCERI: Okay.

25 MR. ELIOT BERNSTEIN: I'm sorry, your

00072

1 Honor, for calling an emergency.

2 THE COURT: All right. Just there's a lot  
3 of work when you call something an emergency.

4 MR. ELIOT BERNSTEIN: I didn't understand  
5 what you go through.

6 THE COURT: Okay, bye.

7 MR. MANCERI: It's an evidentiary, Judge,  
8 we're going to call witnesses.

9 THE COURT: Witnesses and evidence.

10 MR. MANCERI: Very good.

11 - - -

12 (The proceeding was concluded at 2:15 p.m.)

13

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1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA )

4 COUNTY OF PALM BEACH )

5

6 I, Jessica Thibault, a Court Reporter,

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7 certify that I was authorized to and did

8 stenographically report the proceedings in the

9 above-styled cause before the Honorable Martin H.

10 Colin, pages 1 through 72; and that the transcript

11 is a true record of my stenographic notes.

12

13 I further certify that I am not a

14 relative, employee, attorney, or counsel of any of

15 the parties, nor am I a relative or employee of any

16 of the parties' attorneys or counsel connected with

17 the action, nor am I financially interested in the

18 action.

19

20 Dated this 17th day of September, 2013.

21

22

23 Jessica Thibault

Court Reporter

24

25

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EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING  
Answer & Cross Claim



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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. 13-cv-03643  
 )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
 )  
Defendant. )  
----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
 )  
Counter-Plaintiff, )  
 )  
v. )  
 )  
SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
 )  
Counter-Defendant, )  
 )  
and, )  
 )  
FIRST ARLINGTON NATIONAL )  
BANK, as Trustee of S.B. Lexington, )  
Inc. Employee Death Benefit Trust, )  
UNITED BANK OF ILLINOIS, BANK )  
OF AMERICA, successor in interest to )  
LaSalle National Trust, N.A., )  
SIMON BERNSTEIN TRUST, N. A., )  
TED BERNSTEIN, individually and )  
as alleged Trnste of the Simon )  
Bernstein Irrevocable Insurance Trust )  
Dtd. 6/21/95, and ELIOT BERNSTEIN, )  
 )  
Third-Party Defendants. )  
----- )

NOTICE OF APPEARANCE



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, INC. )  
(OF FLORIDA) NATIONAL )  
SERVICE ASSOCIATION, INC. )  
(OF ILLINOIS) AND )  
JOHN AND JANE DOE'S )  
Third Party Defendants. )



**NOTICE OF APPEARANCE**

TO THE CLERK OF THE ABOVE COURT:

You will please enter my appearance of record Pro Se as third party Defendant and Cross Plaintiff in the above styled cause.

Dated this 21 Day of September, 2013

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein, Pro Se

Address  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

By

Date 9/21/13