

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) Honorable Amy J. St. Eve
COMPANY,) Magistrate Mary M. Rowland
)
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)
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.)

POTENTIAL BENEFICIARIES¹:

¹ Parents act as beneficiary Trustees in the estate of Simon L. Bernstein to their children, where Simon's estate may be the ultimate beneficiary of the policy and their children named below would be the ultimate beneficiaries of the policy proceeds. The failure of the grandchildren to be represented in these matters and listed as potential beneficiaries is due to an absolute conflict with their parents who are trying to get the benefits paid to them directly. This is gross violations of fiduciary duties and may be viewed as criminal in certain aspects as the lawsuit attempts to convert the benefits from the grandchildren to 4/5 of the children of SIMON by failing to inform their

**JOSHUA ENNIO ZANDER BERNSTEIN
(ELIOT MINOR CHILD);
JACOB NOAH ARCHIE BERNSTEIN
(ELIOT MINOR CHILD);
DANIEL ELIJSHA ABE OTTOMO
BERNSTEIN (ELIOT MINOR CHILD);
ALEXANDRA BERNSTEIN (TED
ADULT CHILD);
ERIC BERNSTEIN (TED ADULT
CHILD);
MICHAEL BERNSTEIN (TED ADULT
CHILD);
MATTHEW LOGAN (TED'S SPOUSE
ADULT CHILD);
MOLLY NORAH SIMON (PAMELA
ADULT CHILD);
JULIA IANTONI – JILL MINOR CHILD;
MAX FRIEDSTEIN – LISA MINOR
CHILD;
CARLY FRIEDSTEIN – LISA MINOR
CHILD;**

INTERESTED PARTIES:

**DETECTIVE RYAN W. MILLER –
PALM BEACH COUNTY SHERIFF
OFFICE;
ERIN TUPPER - FLORIDA GOVERNOR
OFFICE NOTARY EDUCATION - THE
OFFICE OF THE GOVERNOR OF
FLORIDA RICK SCOTT**

**MOTION TO: (I) STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF
ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN
INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN
INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND
BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER
PLEADINGS AND MORE; AND (II) MOTION FOR DEFAULT JUDGMENTS**

children (some minors) or have them represented in these matters. The Court should take Judicial Notice of this, especially in the interests of the minor grandchildren who may lose their benefits if the proceeds of the insurance policy are converted to the knowingly wrong parties.

Eliot Ivan Bernstein (“ELIOT”) a third party defendant and his three minor children, Joshua, Jacob and Daniel Bernstein, are alleged beneficiaries 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 MOTION TO: (I) STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND MORE; AND (II) MOTION FOR DEFAULT JUDGMENTS.

I, Eliot Ivan Bernstein (“ELIOT”), make the following statements and allegations to the best of my knowledge and on information and belief as a Pro Se Litigant².

² 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 Cir 1990), 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 which holds that all pleadings shall be construed to do substantial justice.

MOTION TO STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND MORE

1. That ELIOT apologizes in advance to this Court for the length of this filing, however due to the number of willful misstatements and multitudes of legally complex frauds taking place in the proposed Amended Complaint to advance a Fraud on this Court and others it was virtually impossible as a lay person, unskilled in the art of Legalese, to whittle it down.
2. That the Motion seeking Leave to Amend filed by Adam Simon, Esq., ("A. SIMON") appears to attempt to pepper the Court record with False Statements of facts and materially change the Original Complaint, after A. SIMON reviewed production documents and evidence filed with this Court by ELIOT and others. This proposed Amended Complaint is alleged part of a continuing and ongoing Fraud on this Court to commit Insurance Fraud through the misuse of this Court as a host to facilitate the crime.
3. That the proposed Amended Complaint states,

"22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation."

This statement is factually incorrect as Robert Spallina, Esq. ("SPALLINA") filed and SIGNED the insurance claim form as Trustee of an alleged lost "Simon Bernstein

Irrevocable Trust dtd. 6/21/95" ("Lost or Suppressed Trust") acting not as counsel to the Lost or Suppressed Trust but as "Trustee." This Lost or Suppressed Trust is a trust that SPALLINA has made written statements that he has never seen or had copies of and thus his claim that he is "Trustee" appears fraudulent and as an Attorney at Law acting as "Trustee" of a Trust he claims not to have ever possessed seems bizarre. The claim now asserted in the proposed Amended Complaint is that SPALLINA was acting as counsel to the Lost or Suppressed Trust when he filed an insurance claim with HERITAGE and allegedly acted in that legal capacity according to A. SIMON. However, one look at the insurance claim form submitted will prove to this Court that SPALLINA filed the insurance claim form impersonating as the Trustee of the Lost or Suppressed Trust with intent to defraud the carrier to pay him the benefits and it gets much worse, as evidenced further herein. See EXHIBIT 1 – SPALLINA INSURANCE CLAIM SIGNED AS TRUSTEE OF THE LOST OR SUPPRESSED TRUST.

4. The statement the "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" is ALLEGED LOST or SUPPRESSED and NO COPIES OF AN ORIGINAL EXECUTED TRUST or COPY have been tendered to this Court since the filing of the Complaint and therefore the Lost or Suppressed Trust continues to have no legal standing as an entity as it does not exist and therefore anyone's claims to be Trustee and/or Beneficiaries is a best guess at this point.
5. That defendant SPALLINA knew he was not the "Trustee" of the Lost or Suppressed Trust, as he has claimed repeatedly that he has NEVER seen a copy and everything therefore was an "educated guess" and not factual as A. SIMON tries to state in the proposed Amended Complaint, SPALLINA claiming in emails,

From: Robert Spallina [<mailto:rspallina@tescherspallina.com>]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: **Kimberly Moran** [emphasis added]
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), [emphasis added] I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

and

From: Robert Spallina <rspallina@tescherspallina.com>
Sent: Tuesday, October 23, 2012 2:34 PM
To: Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein
Subject: RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. [emphasis added] Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.
Robert L. Spallina, Esq.

6. That if the beneficiaries of the Lost or Suppressed Trust are at best an “educated guess” according to SPALLINA, so are who the trustees would be and according to SPALLINA’S own words, “As none of us can be sure exactly what the 1995 trust said” it is hard to imagine that A. SIMON can now represent with legal authority to this Court anything about the Lost or Suppressed Trust as fact and fail to state the truth that nobody knows what it says. SPALLINA’S insurance claim filed as Trustee of the Lost or Suppressed Trust was therefore DENIED as no proof of the true and proper beneficiaries could be made and further the Beneficiaries listed with HERITAGE on the Lost or Policy do not even include the Lost or Suppressed Trust at the time of SIMON’S death. The claim was further not paid when none of the information requested and legally necessary to pay a claim by HERITAGE was provided, proving either the Trusteeship claimed or who the legal beneficiaries were that SPALLINA claimed and thus there was no way for HERITAGE to legally pay the benefits to the “educated guess” beneficiaries and trustees.
7. That in correspondences included in JACKSON’S production for this Lawsuit we find shocking new information of alleged INSTITUTIONAL TRUST COMPANY Fraud and more. From JACKSON’S files, Bates #JCK001262, there is a letter regarding the filing of a claim dated October 09, 2012, sent from HERITAGE to SPALLINA with SPALLINA addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.” On Bates #JCK001281, in a letter dated November 05, 2012 from HERITAGE to SPALLINA, SPALLINA is again addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA,

ATTORNEY AT LAW" address "4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431" and the Letter starts "Dear Trustee." Then again, on Bates # JCK001290, in a letter dated November 29, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as "LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW" address "4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431" and the Letter starts "Dear Trustee." Then again on Bates # JCK001301, in a letter dated December 07, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as "LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW" address "4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431" and the Letter starts "Dear Trustee." See EXHIBIT 2 – LETTERS TO SPALLINA FROM HERITAGE.

8. That ELIOT states that after an exhaustive online search at Google the only listing at the address 4855 Technology Way Suite 720 Boca Raton, FL 33431 is the law offices of defendant Tescher & Spallina, P.A. and there appears no reference to a listing for an INSTITUTIONAL TRUST COMPANY named "LaSalle National Trust, N.A." at SPALLINA'S address in Boca Raton, FL, where SPALLINA'S law office now resides.
9. That the only address found for the INSTITUTIONAL TRUST COMPANY named "LaSalle National Trust, N.A." is 135 South LaSalle Street Chicago, IL 60603 and the INSTITUTIONAL TRUST COMPANY of that name appears to have been acquired several years ago by "Chicago Title Land Trust Company" (part of the Fidelity National Financial family of companies), as Successor, which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603. That the proposed Amended Complaint and the Original Complaint

both claim erroneously that "LaSalle National Trust, N.A." was acquired by Bank of America, however ELIOT was unable to find records of Bank of America acquiring it ever or selling it to "Chicago Title Land Trust Company" as part of Bank of America's acquisition of LaSalle National Bank's other holdings.

10. That in letters from HERITAGE addressing SPALLINA as "TRUSTEE" of the INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A.," addressed to "LaSalle National Trust, N.A." at his business office, it appears SPALLINA impersonated not only a Trustee but the actual INSTITUTIONAL TRUST COMPANY and had HERITAGE send forms to him as such imposter and such fictitious address for LaSalle National Trust, N.A. and the number of felony criminal code violations this imparts is staggering, from IMPERSONATING AN INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust N.A." located at a fictitious address of SPALLINA'S law firm, to IMPERSONATING A TRUSTEE OF AN INSTITUTIONAL TRUST COMPANY at "LaSalle National Trust, N.A." at SPALLINA'S address, to INSURANCE FRAUD. These letters and other evidence implicate SPALLINA gave his address to HERITAGE as the address for "LaSalle National Trust, N.A." while impersonating as a "TRUSTEE" of that INSTITUTIONAL TRUST COMPANY at his law firms address. To be clear, SPALLINA impersonated to HERITAGE that he was both an INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A." located at his office address, while simultaneously impersonating himself as TRUSTEE of that INSTITUTIONAL TRUST COMPANY at his address, all in efforts to convert and comingle a life insurance contract death benefit for SIMON'S beneficiaries and have it fraudulently converted to his Law Firm, Tescher &

Spallina P.A.'s trust account in the capacities he claimed fraudulently to be acting in when filing the claim.

11. That SPALLINA from October 09, 2012 through December 07, 2012 through several letters and correspondences further fails to ever notify the carrier that he is NOT either LaSalle National Trust located at his office or that he is not the "TRUSTEE" of the INSTITUTIONAL TRUST COMPANY "LaSalle National Trust, N.A." and that the address for "LaSalle National Trust, N.A." and the title "Trustee" they address him as in the letters are wholly factually and legally incorrect. As an Attorney at Law SPALLINA knew this was all untrue when he received and replied to the HERITAGE letters and filed a fraudulent claim but never made corrections and this evidences further intent to defraud.
12. That this impersonation of SPALLINA as an INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A." at his address and further acting as "TRUSTEE" of this INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A." ELIOT alleges was intentional, to cause the appearance to HERITAGE that SPALLINA was the INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A." because that is who the named Primary Beneficiary of the Policy is according to HERITAGE and if these false claims were accepted as true by HERITAGE, SPALLINA would have been paid the claim fraudulently as the legal Primary Beneficiary.
13. That to cover all the bases in trying to secure the Policy proceeds with his Fraudulent insurance claim process, SPALLINA further then impersonates the "Trustee" of the Lost or Suppressed Trust when signing the claim form in this fiduciary capacity and not filing it as A. SIMON attempts to falsely assert in his Amended Complaint, as counsel for the Lost and

Suppressed Trust. Again, because A. SIMON contends that the Lost or Suppressed is who the named Contingent Beneficiary of the Policy is (not HERITAGE who claims it is SIMON BERNSTEIN TRUST, N.A.) and again if these False Claims that SPALLINA was the Trustee of the Lost or Suppressed Trust were accepted as true by HERITAGE, SPALLINA would have been paid the claim fraudulently as the legal Contingent Beneficiary, if they could have then proven that the Lost or Suppressed were the legal Contingent Beneficiary, which as of today they have not.

14. That now with SPALLINA acting as both the TRUSTEE of “LaSalle National Trust, N.A.” and as Trustee of the Lost or Suppressed Trust, HERITAGE would have to legally pay him as either the Primary or the Contingent Beneficiary in his fraudulent Legal and Fiduciary roles.
15. That these are not one off mistakes made by an Attorney at Law but implicate that SPALLINA was acting with Intent to Defraud in these multiple imposter Legal and Fiduciary capacities that were Aided and Abetted by a one, Kimberly Moran (“MORAN”) who coordinated the efforts between SPALLINA and HERITAGE, in efforts to try and secure the death benefits as either the Primary or Contingent Beneficiary claiming to HERITAGE to be Trustee of both in order to convert and comingle the benefits to Tescher & Spallina, P.A. law firm’s trust account and Defraud the True and Proper Legal Beneficiaries of their death benefits. ELIOT alleges this was all done knowingly and with scienter in conspiracy between THEODORE, P. SIMON, SPALLINA, TESCHER, A. SIMON, D. SIMON and others with the help of MORAN. THEODORE and P. SIMON without this scheme would

have no claim to the Policy proceeds as they were wholly disinherited from their parents' estate plans.

16. That it was learned in a September 13, 2013 hearing and an October 28, 2013 Evidentiary Hearing that SPALLINA and TESCHER used SIMON POST MORTEM as if he were alive to file a series of documents to close SHIRLEY'S estate and pulled a Fraud on the Court and Fraud on the Estate Beneficiaries, whereby Judge Colin stated upon discovering these facts that he had enough at that time that he should read SPALLINA, TESCHER and TED their Miranda Warnings, twice. The closed estate of SHIRLEY was then reopened and remains open today.
17. That MORAN who prepared the documents for this alleged Insurance Fraud and Institutional Trust Company Fraud has already been arrested in related matters to the Estate of SHIRLEY and has admitted to filing Forged and Fraudulently Notarized documents in SHIRLEY'S estate on six different documents, for six different people, including SIMON who was deceased at the time his name was Forged and Fraudulently Notarized and then her documents were filed by SPALLINA and TESCHER in official proceedings before the Florida Probate court. From MORAN'S statement to Palm Beach County Sheriff officers, "Moran stated that at this time, she took it upon herself to trace [aka FORGE] each signature of the six members of the Bernstein family onto another copy of the original waiver document. She then notarized them and resubmitted them to the courts." This statement also contradicted her prior statement to the Governor's Notary Public office where she claimed the documents were identical other than her notary stamp, thus the crime of perjury and False Statements in official proceedings are now being pursued as well with authorities. This lie

about the documents not being Forged was also echoed by MORAN'S employer SPALLINA in the September 13, 2013 hearing before Colin when SPALLINA knowingly lied to Judge Colin and claimed the signatures were also not forged despite Moran's admission,

8 THE COURT: I mean everyone can see he [ELIOT]
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?

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

These statements by SPALLINA to Judge Colin contradict the statement of MORAN to the Palm Beach Sheriff Department that they were her FORGED signatures and not those of the original signors, including a FORGED document for SIMON POST MORTEM and further evidence Fraud on a Court by SPALLINA who tries to convince the Judge that they were identical documents that MORAN just innocently placed a Fraudulent Notarization on for six separate peoples signed documents, yet her later confession reveals this as false and SPALLINA knew of her confession while stating this lie to the Court and attempting to continue to conceal the truth from the record and Judge Colin. All very similar to what is

occurring in this Courtroom and the same cast of characters is involved, just different crimes for different assets of the Estates of SIMON and SHIRLEY.

18. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he was "involved" with MORAN in her Fraud and Forgery as the Attorney at Law.
19. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the Estate of SHIRLEY, SPALLINA did admit that he had presented documents to the court on behalf of SIMON to close the estate of SHIRLEY and failed to notify the court that SIMON was DEAD at the time he was using him as if he were alive as acting as Personal Representative / Executor, thus acknowledging that he perpetrated a Fraud on the Court and Fraud on the Estate Beneficiaries and more to illegally close the Estate of SHIRLEY, illegally using a DEAD Personal Representative / Executor and Trustee, SIMON.
20. That in an October 28, 2013 Evidentiary Hearing before Judge Colin, it was learned that THEODORE had been acting in fiduciary capacities that he did not have legal standing prior, again similar to what is happening with the claims that he is Trustee of the Lost or Suppressed Trust, including acting as Personal Representative / Executor and Trustee for the estate of SHIRLEY for a year, when no Letters had been issued to him prior and he took no

legally required steps to notify any beneficiaries of his alleged and assumed Fiduciary roles he undertook and transacted multiple fraudulent transactions in so doing.

21. That due to the Fraud on the Probate court using SIMON'S identity, after he was deceased as if alive, to close the Estate of SHIRLEY, no successors were elected or appointed by the court after SIMON died and therefore at the hearings, no one represented the estate, as no Successors were chosen after the DEAD SIMON closed the Estate. SPALLINA acting as SIMON'S counsel POST MORTEM posited these fraudulent documents on behalf of SIMON and failing to notify the court that SIMON, the Personal Representative / Executor and Trustee was DEAD and continued for four months to use SIMON and file documents on his behalf to close her estate, instead of simply notifying the court of his death and electing successors to legally close the estate. All of these events further support a Pattern and Practice of Continuing and Ongoing Frauds to loot the estates of SIMON and SHIRLEY and deny the True and Proper Beneficiaries their inheritances.

22. That from JACKSON'S production their notes indicate QUESTIONS and RED FLAGS arose almost immediately when SPALLINA contacted them in fraudulent fiduciary capacities with no proof or legal contract produced to validate his claims for the death benefits.

23. That on JACKSON'S Bates # JCK001228 & JCK001229, the following language is found in the carriers records on December 31, 2012,

“\$1,689,070.00 - Received letter and death cert with cause and manner on 12/26/12 from attorney advising that they are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated Jun 1, 1995, “LaSalle National Trust, N.A.”, trustee, the beneficiary of record, page 20 of source CPG. (A claim form was completed by

Robert Spallina as Trustee?) [Emphasis Added] However, indication is made that they know Shirley Bernstein was the initial beneficiary (now deceased) and the Bernstein children were the secondary beneficiaries. The attorney is offering to have the proceeds paid to the firm's Trust account so that distribution can be made to the five children. They have also offered an Agreement and Mutual Release be prepared from the children for Heritage Life. **A Robert Spallina has signed the claim form but there is nothing to document that he is the current trustee of the Trust. Please advise how to proceed.”** [emphasis added]

24. The False Statement in the proposed Amended Complaint that SPALLINA filed the claim acting as Attorney at Law to the Lost or Suppressed Trust and not truthfully stating that he acted as “Trustee” of the Lost or Suppressed Trust or as the “TRUSTEE” of the INSTITUTIONAL TRUST COMPANY, “LaSalle National Trust, N.A.” to this Court, is merely an attempt to cover up for SPALLINA’S fraudulent insurance claims with new false statements made in the proposed Amended Complaint to this Court to attempt to vindicate him by changing the role he played.
25. That Defendant A. SIMON puts forth these False Statements of fact about SPALLINA’S role as counsel in filing the insurance claim, knowing SPALLINA’S true capacity as Trustee when filing the fraudulent insurance claim and after having seen ELIOT’S pleadings and the evidence against them contained therein. A. SIMON is privy to the same records as ELIOT and knowing these same facts desperately attempts to paint a new picture than in his Original Complaint and this proposed Amended Complaint is to try and further cover up their initial complaints flaws and try to convince this Court of a whole new set of bogus claims and perpetrate a continuing and ongoing pattern and practice of Fraud on this Federal Court, Fraud on an Insurance Company and Fraud on the True and Proper beneficiaries of SIMON’S policy.

26. That a sudden switch in fiduciary roles is also noted when defendant A. SIMON filed this tort acting now as Counsel to the Lost or Suppressed Trust, instead of SPALLINA who A. SIMON claims in the proposed Amended Complaint filed the fraudulent insurance claim weeks earlier acting allegedly as “counsel” to the Lost or Suppressed Trust. Another important switch of fiduciary occurs on the way to this Federal Court as THEODORE then becomes the “Trustee” of the Lost or Suppressed Trust when filing this fraudulent Breach of Contract Lawsuit and defendant SPALLINA is replaced in that capacity and then attempts to disappear from scene during the next step in this ongoing and continuing Fraud when the Federal Breach of Contract Lawsuit is filed with Your Honor.

27. That in the Original Complaint filed based upon HERITAGE'S denial of SPALLINA'S fraudulent insurance claim, there is no mention and no appearance of SPALLINA as “Trustee” of the Lost or Suppressed Trust or “TRUSTEE” of “LaSalle National Trust, N.A.” or as counsel for the Lost or Suppressed Trust until their legally flawed Amended Complaint tries to now state. SPALLINA is not present in the Original Complaint or the proposed Amended Complaint as Personal Representative / Executor of SIMON'S estate on behalf of the to be determined estate Beneficiaries that have interests in the Policy(ies).

28. That the Court should note that Attorneys at Law, SPALLINA and TESCHER and their law firm have all failed to respond to the Waiver of Service and Cross Claim ELIOT served upon them in their personal and professional capacities and join the action voluntarily as indispensable parties under Rule 19 of Federal Procedures, where they must be joined. Perhaps the Court can take it on its own Motion to immediately compel SPALLINA and TESCHER and their law firm to join and save ELIOT and others involved in this Lawsuit the

expense and cost of chasing Attorneys at Law who appear afraid to appear in this Lawsuit that they are centrally involved in and whose actions have resulted in this alleged fraudulent Breach of Contract Lawsuit. Never has ELIOT heard of lawyers fearing a lawsuit and dodging service.

29. That Judicial Notice should be taken at this point by this Court to the Fraudulent activity described and evidenced with Prima Facie evidence herein and in ELIOT'S prior pleadings and take it on the Court's own Motion to report these Attorneys at Law, SPALLINA, TESCHER, A. SIMON and D. SIMON to the proper State and Federal authorities for investigation of the probable cause and Prima Facie evidence exhibited in ELIOT'S pleadings, implicating all of them in,

- i. False Statements to this Court,
- ii. Improper Filing of Pleadings,
- iii. Knowingly filing this Lawsuit after being advised by counsel that they had no standing and or legal basis in filing this Lawsuit,
- iv. the alleged IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY FRAUD,
- v. The alleged IMPERSONATION OF A "TRUSTEE" OF AN INSTITUTIONAL TRUST COMPANY,
- vi. INSURANCE FRAUD,
- vii. Fraud on a Federal Court by an Officer of the Court A. SIMON,
- viii. Fraud on ELIOT,
- ix. Fraud on other MINOR AND UNREPRESENTED beneficiaries,

and instantly put a stop to these vexatious, frivolous and fraudulent series of pleadings, which are fraught with False Statements and all causing a huge wastes of time and effort by the injured parties and this Court who have had to sift through this proverbial “bull honky” and damaging the True and Proper Legal Beneficiaries by delaying their receipt for the death benefits for now over a year through this smorgasbord of various attempts to fraudulently obtain the benefits to the wrong parties.

30. That this Court should not wait for ELIOT acting in a Pro Se legal capacity to formulate proper pleadings for these alleged crimes that are taking place on and in Your Honor's Court by Officers of Your Honor's Court, especially when the pleadings that originated this Lawsuit and those seeking Leave to Amend that Original Complaint are steeped in Fraud and False Statements to this Court giving more probable cause for this Court to take action and notify the proper State and Federal Authorities.

31. That the proposed Amended Complaint starts with the False Statement,

“NOW COMES Plaintiffs, SIMON BERNSTEIN
IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED
BERNSTEIN, as Trustee”

ELIOT states “where comes the trust?” when it does not exist and no executed copies exist and none was attached to the Original Complaint or proposed Amended Complaint, so it comes to this Court as a figment of one's imagination not as a qualified legal entity. “Ted Bernstein” is also alleged to not be a legal name for Theodore Stuart Bernstein and despite it being a minor technicality it remains another misrepresentation of the proposed Amended

Complaint and the Original Complaint, which make them both legally fail as pleadings and would have to be corrected and refiled if this farce is allowed to continue.

32. That as for the claim in the proposed Amended Complaint that THEODORE is factually “Trustee” of the Lost or Suppressed Trust, in addition to the fact that it cannot be proven as there is no Legal and Binding contract put forth evidencing the claim, there is now also contradictory evidence provided to the Court that SPALLINA stated he was “Trustee” for the Lost or Suppressed Trust when filing the fraudulent insurance claim only weeks earlier and more questions are raised as to THEODORE’S claims that he is now Trustee. Further, information confirming the fallacy of this authoritative claim by A. SIMON and THEODORE that he is “Trustee” of the Lost or Suppressed Trust as falsely stated in both the Original Complaint and the proposed Amended Complaint comes from JACKSON’S request to Affirm or Deny that were posed by A. SIMON to them in this Lawsuit, whereby virtually every Affirmation/Denial is answered with the following statement,

“ANSWER: JACKSON OBJECTS TO THE REQUESTS BECAUSE AN EXECUTED COPY OF THE TRUST HAS NOT BEEN PRODUCED, AND THUS TO THE EXTENT ANY FINDING IS SUBSEQUENTLY MADE THAT THE TRUST WAS NOT ESTABLISHED AND/OR IS NOT VALID, IT WILL NOT HAVE BEEN A PROPER PARTY PLAINTIFF TO THIS SUIT, INCLUDING PROPOUNDING THESE REQUESTS. REGARDLESS, EVEN IF THE TRUST IS ESTABLISHED, TED BERNSTEIN, UPON INFORMATION AND BELIEF, IS NOT THE PROPER TRUSTEE OF THE TRUST, AND THEREFORE HE DOES NOT HAVE STANDING TO PURSUE THIS MATTER ON BEHALF OF THE TRUST, INCLUDING PROPOUNDING THESE REQUESTS.” [EMPHASIS ADDED]

33. That the next false statement to this Court in the proposed Amended Complaint by Defendant A. SIMON claims,

“4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.”

Since no Legally Binding Contract exist to show who the “Trustee” is, who the successor is would also be an unknown and again this claim is not a factual statement but based on nothing but imagination of what a nonsexist Lost or Suppressed Trust is claimed to have said by THEODORE, FAVORING THEODORE. Again, ELIOT thought SPALLINA was “Trustee/Successor Trustee” of the Lost or Suppressed Trust as stated when he filed his Fraudulent insurance claim that this Lawsuit is based upon. If THEODORE were the “successor trustee” in fact, why did he not file the insurance claim as Trustee instead of having his close personal friend and business associates TESCHER and SPALLINA file a Fraudulent insurance claim as “Trustee?”

34. That the next question is what did THEODORE do in his alleged fiduciary capacity once he had knowledge of the Fraud SPALLINA attempted to secure the death benefit? Nothing but aid and abet the ongoing and continuing Fraud by filing this Lawsuit and concealing the truth about the last failed attempt of SPALLINA.
35. That if A. SIMON believes that Theodore is the true “Trustee” then why has he not notified this Court, the State Bar and the State and Federal Authorities of SPALLINA’S fraudulent insurance claim, acting as alleged “Trustee” of his client the Lost and Suppressed Trust? This reporting of SPALLINA is Legally and Ethically required of A. SIMON as an Officer of this Court mandated by Attorney Conduct Codes and State and Federal Law. When and Attorney at Law knows of alleged criminal acts of another Attorney at Law they must report and yet we find A. SIMON (who has interests in the outcome) instead furthering the ongoing

and continuing Fraud and concealing this Felony misconduct of another Attorney at Law and instead filing this Legally Void Lawsuit full of False Statements to this Tribunal while ignoring his legal obligations to report SPALLINA to this Court and others? This may impart Misprision of a Felony³ or two and more.

36. That the next false statement to this Court in the proposed Amended Complaint by defendant
A. SIMON claims,

“5. The beneficiaries of the BERNSTEIN TRUST as named in the
BERNSTEIN TRUST Agreement are the children of Simon
Bernstein.”

Since no legally valid or executed copy of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 exists this claim is not a factual statement but based on nothing Legally Binding just imagination, yet it is claimed as fact to this Court. ELIOT quotes SPALLINA in an email sent to ELIOT stating,

From: Robert Spallina <rspallina@tescherspallina.com>
Sent: Tuesday, October 23, 2012 2:34 PM
To: Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein
Subject: RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust

³ 18 U.S. Code § 4 - Misprision of felony

Current through Pub. L. 113-52. (See Public Laws for the current Congress.)

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.
Robert L. Spallina, Esq.

If the beneficiaries of the Lost or Suppressed trust are at best an “educated guess” so would it be an “educated guess” as to whom the trustees would be. Yet, A. SIMON appears in his proposed Amended Complaint to try and make this “educated guess” a statement of fact to Your Honor, despite knowing it is only a guess. In fact, A. SIMON does not even qualify his claim of who the beneficiaries are as a guess but instead states it as fact when later divvying up the loot in the proposed Amended Complaint between what he claims are the factual beneficiaries, thereby these statements being included in the proposed Amended Complaint attempt to further prejudice the case with misstatements of fact.

37. That the next False Statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims,

“7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.”

Where ELIOT states that if the Beneficiaries of the Lost or Suppressed trust are a best guess than what percentages they own are also hot air guesstimates, that is if this Court buys into the five children are the True and Proper Beneficiaries based on no valid legally binding contract. The 4/5th of SIMON’S children who are making this anointment of THEODORE as

“Trustee” seems odd too, as why would THEODORE need consent if he could prove he was “Trustee” of the Lost or Suppressed trust legally? Further, these are the same 4/5th of SIMON’S children who for almost two years prior to his death were so angry with SIMON that they boycotted him and refused to let their children see or talk to him and left him after the death of his beloved wife SHIRLEY alone, refusing to speak to him if he did not change his and SHIRLEY’S beneficiaries (THEODORE & P. SIMON) and did not stop seeing his companion Maritza Puccio Rivera (THEODORE, P. SIMON, IANTONI and FRIEDSTEIN) and Tough Loved him, with an already frail heart, to bend to their ways and give in to their demands.

38. That in a letter from THEODORE he states the following,

From: Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]
Sent: Friday, January 18, 2013 6:04 PM
To: 'Jill Iantoni'; Lisa Friedstein (lisa.friedstein@gmail.com); Eliot Bernstein (iviewit@gmail.com); 'Pam Simon'
Subject: UPDATE > HERITAGE INSURANCE POLICY

Hello > I hope everyone is well.

Heritage Life Insurance company has made a decision concerning dad’s life insurance policy. They will require a court order to pay the proceeds, based on the large face amount of the policy (\$1.7MM). They have sent a letter to Robert Spallina. The letter was sent by a senior attorney within the company. It is short and to the point.

From here, this should be simple and straightforward. Assuming that we (5 children) agree to create an agreement, we will need to hire a Palm Beach attorney to draft the agreement that will be submitted to the judge. It is my understanding that the agreement can be drafted to reflect our agreement to split the proceeds among the 5 of us or in such a way that would enable one or more of us to effectively refuse our individual share in favor of our children. I am not sure, but I believe that disclaiming our share in favor of our children will put that share at risk of creditors of dad’s estate. Seems to me that we should do whatever we can to keep the proceeds out of the reach of potential creditors.

As the successor trustee of the trust that cannot be found, I will be happy to act as trustee of a trust that would receive the proceeds under the new agreement, created by us. Once the court order is issued, the insurance company should pay quickly and I will distribute the proceeds immediately.

Please let me know that you will agree to be a party to the agreement between us (and possibly the grandchildren who will need to acknowledge and agree to the language). If you could do that in the next day or so, we can then decide the most cost effective way to get the agreement created and submitted. It makes no sense at this point to leave the proceeds at the insurance company.

Call me with any questions or maybe we should establish a call between the 5 of us.

Take care...
Ted

39. That from the above email one can see that THEODORE has not followed any of the statements in the letter regarding doing a new POST MORTEM trust for the Policy(ies) proceeds that he would then act as Successor Trustee too based on his belief that he was "Successor Trustee" to the Lost or Suppressed Trust. This was to be done after preparing a Settlement and Mutual Release agreement and getting a Probate Court order to approve of the Beneficiary scheme they then proposed once their initial claim was DENIED by HERITAGE. Instead, this Lawsuit was done secretly behind ELIOT and his children's counsel backs and they ditched all those crazy plans in his email attempting to create new POST MORTEM insurance trusts for SIMON, skipped the requested Probate Court order by HERITAGE and tried this crazy and alleged fraudulent Lawsuit.
40. That now THEODORE and A. SIMON make claims to the Court that contradict their own prior statements, the evidence submitted thus far in this Lawsuit and even their own prior actions and try to pepper the record in the Lawsuit with factually incorrect statements to continue to try and defraud ELIOT, the True and Proper Beneficiaries, this Court, the Insurance Carrier and even Creditors through this proposed Amended Complaint.
41. That the Court should ponder why in THEODORE'S email the grandchildren would have to acknowledge and agree to the fate of the insurance proceeds and would have to have their

names signed and rights waived in the proposed Settlement & Mutual Release (“SAMR”) and (“SAMR TRUST”) (see ELIOT’s Answer and Cross Complaint for a copy of both the SAMR and SAMR TRUST) as being released from their claims to the proceeds and suddenly when filing this Lawsuit, those parties have been dispensed of and the information that a suit was filed concealed from them and in fact, ELIOT to was dispensed of as party when they filed this Lawsuit. The reason to hide this suit from interested parties, as explained in the prior pleadings is that THEODORE, P. SIMON, IANTONI and FRIEDSTEIN did not want their children to know that they could have received the benefits through the Estate. In the SAMR, their parents would act as their children’s trustees for their alleged estate inheritances and were willing to waive their children’s claims acting as their trustees of their estate inheritances and convert the monies directly into their pockets from their children’s. SIMON may have intended the proceeds to go through his estate plan to the grandchildren if they are determined to be the ultimate Beneficiaries of his estate and these conflicts for the proceeds between ELIOT and his children, due to the Lost or Suppressed Trust and this new scheme proposed by SPALLINA, are what forced ELIOT’S counsel, Tripp Scott, to state that ELIOT could not act in both capacities without running into legal problems and perhaps committing criminal acts as a fiduciary for his children.

42. That again the need for these schemes is because in the estate plans of both SIMON and SHIRLEY both THEODORE and P. SIMON would get nothing if the proceeds flowed through the estate plans, as they were wholly disinherited by their parents for compensation received while alive in the form of multimillion dollar businesses and later for bad behavior and bad blood between SIMON and SHIRLEY with THEODORE and P. SIMON in the

waning years of their lives. SIMON was tortured for almost two years after SHIRLEY passed in attempts to put THEODORE and P. SIMON back into the estate plans by the withholding of SIMON'S grandchildren from seeing or talking with him and even recruited IANTONI and FRIEDSTEIN into the isolation of SIMON claiming they had to work together in a pack to "Tough Love" their father over his companion, Maritza Puccio, who they claimed was an "Anna Nicole" despite her having absolutely no interest in the Estates, unlike an Anna Nicole. When approached to boycott SIMON by THEODORE'S children, ELIOT and his children refused to participate in the "Tough Love" of his Father and in fact, he, his wife and three children retaliated with ANTI TOUGH LOVE and began to see SIMON even more trying to offset the damages being inflicted on him by his four other children and seven other grandchildren. Simon was so Depressed and Distraught over the torture that he sought medical psychological help to cope with them in the last years of his life to his dying day.

43. That the next false statement to this Court in the proposed Amended Complaint by defendant
- A. SIMON claims,

"8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter."

This statement is factually incorrect, as it again assumes there is a valid and legally binding BERNSTEIN TRUST that defines valid and legal beneficiaries and their interests, again

based on an “educated guess” not fact as posited in the proposed Amended Complaint, again an attempt to pepper the record with False Statements in official proceedings by A. SIMON and THEODORE.

44. That further this statement is also factually incorrect as ELIOT did not choose to pursue his own purported claims, pro se, in this matter. ELIOT was forced to pursue his claims in this matter when he was notified by JACKSON that this fraudulent Lawsuit was in progress and was sued as a Third Party Defendant by JACKSON. Up to JACKSON’S suit naming ELIOT in this matter, ELIOT was unaware the Lawsuit was even taking place, as he was conned that the Probate court order the carrier requested to approve the SAMR scheme was being sought to approve the claim filed by SPALLINA as Trustee that was DENIED by HERITAGE.

45. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

“19. From the time of Simon Bernstein’s designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.”

From JACKSON’S production, Bates # JCK000110, on April 23, 2010, SIMON was sent a letter by HERITAGE confirming the current Primary Beneficiary of the Policy as “LaSalle National Trust, N.A.” and “SIMON BERNSTEIN TRUST, N.A.” as the Contingent Beneficiary and no records indicate that SIMON rejected these as his Beneficiaries or

corrected them with the carrier. ELIOT states that SIMON BERNSTEIN TRUST, N.A. may be a trust that is further being suppressed in these matters.

46. That further, after reviewing production documents from JACKSON and A. SIMON, it appears no Legally Binding POLICY or TRUST exists in this Lawsuit and ELIOT alleges the insurance company records may have been tampered with by A. SIMON, P. SIMON and others, with insiders at their “friendly insurance carrier” that was willing, according to SPALLINA’S email evidenced herein, to pay the claim without a legally binding valid trust agreement expeditiously.
47. That this Court should take notice that with no legally binding trust or policy put forth the whole Lawsuit appears based on a mirage with no legal basis and this Court should demand, as it did in the first hearing ELIOT attended that these Lost or Suppressed Trust documents and the Lost or Suppressed Policy, both essential to the lawsuit having any basis be produced and if they cannot be produced and authenticated than a Default Judgment in favor of ELIOT should be granted.

48. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims,

“20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.”

That as stated above, the sole surviving beneficiary according to the records provided by JACKSON is SIMON BERNSTEIN TRUST, N.A., not the BERNSTEIN TRUST and not SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95. Again, instead

of just stating the facts to Your Honor, A. SIMON tries to bend the truth and pepper the record with the continuous drumbeat that the beneficiary is something factual and legal that it is not. As already evidenced, LaSalle National Trust, N.A. is still an active surviving beneficiary of the Policy(ies) that needs to be joined in this Lawsuit and discovery had to see if they have the information that they were responsible for maintaining regarding the Policy(ies) and Lost or Suppressed Trust.

49. That the next statements that deserves mention are,

“24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE’S receipt of due proof of the insured’s death.”

“25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE’S receipt of due proof of the insured’s death.”

These claims are further ludicrous as HERITAGE is obligated to pay the POLICY(IES) proceeds to a legal beneficiary where a clear path to the legal beneficiary is proven as stated in their claim form by legitimate parties to the proceeds and not just because the insured was proven dead. No insurance carrier ELIOT knows would pay a claim to a Lost or Suppressed trust with claims made by people impersonating Trustees and Beneficiaries when no valid legally binding proof of their claims to the death benefits are made. The claim was DENIED allegedly due to the fraudulent nature of the assertions made by SPALLINA and when clarification was not received back and the requested court order was not even attempted to

be secured, this ploy of a Breach of Contract lawsuit was initiated to try and force HERITAGE to pay without first proving to them legally that their beneficiary schemes were legitimate through the requested Probate court order or providing HERITAGE with a legally binding contract.

50. That the next statements of the proposed Amended Complaint suffer from having any lack of legal standing as parole evidence in efforts again to pepper the file with False Statements now based on a hearsay account by defendant D. SIMON who has a direct interest in making such claims, as he is direct benefactor of the proceeds if this Lawsuit succeeds through his spouse P. SIMON who stands to gain 1/5th of the benefits. The hearsay account claims “30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein’s signature.” Then following statement that almost blends together as a continuing affirmation of D. SIMON but does not, states, “31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.” ELIOT states that defendant D. SIMON is not stating in 31 above that he attests that the final version he allegedly saw SIMON’S signature upon had the children of SIMON as beneficiaries and the statement is made without his alleged attestation and is supported by worthless parole evidence of an alleged unsigned, undated, un-authored draft of the Lost or Suppressed Trust submitted after the filing of the Original Complaint when the Court demanded something be produced. At no time prior to this Lawsuit was this alleged unsigned, undated, un-authored alleged draft

sent to any parties and suddenly it just drops from the sky after supposed exhaustive searches were made for the Lost or Suppressed Trust as stated in the proposed Amended Complaint.

51. That defendant A. SIMON claims in the proposed Amended Complaint that defendant D. SIMON, his brother and partner in the law firm, defendant The Simon Law Firm, saw this Lost or Suppressed trust in 1995 leaving the law offices of Hopkins & Sutter, now known as Foley & Lardner, LLP and that unsigned ALLEGED drafts submitted to this Court by A. SIMON somehow validate the claim that SIMON elected his children as beneficiaries. The problem here is that the UNSIGNED UNDATED UN-AUTHORED draft that was submitted to this Court by A. SIMON, Bates # BT000003 through BT000021, is basically BLANK paper other than the text, with absolutely no identifying marks of Hopkins & Sutter law firm and where in all the years ELIOT saw draft after draft of work done by Hopkins & Sutter for SIMON, he cannot recall a single instance where their letterhead and author was missing from their work product, no author even listed, no file number stated, no date, no cover letter accompanying the document, just words on an unidentified ALLEGED “draft” produced allegedly by their law firm. The ALLEGED draft could have been done by anyone, anywhere, at any time and one would think if A. SIMON had retained this draft, why they did not retain the original signed and executed agreements or copies and why he is waited until the court demanded some kind of proof that the Lost or Suppressed Trust existed. This draft in no way proves the assertions made and may prove instead evidence of the continuing and ongoing pattern and practice of Fraud on the Court and the True and Proper Beneficiaries.

52. That the next False Statement to this Court in the proposed Amended Complaint by A.

SIMON claims,

“32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.”

Again, if there is no copy of the executed “final version” and the beneficiaries and trustees are at best an “educated guess” according to SPALLINA, then how can A. SIMON and THEODORE now try and state with authority that this claim that THEODORE was successor Trustee is a fact to this Court? Why, if they knew this all along, did SPALLINA then file his claim impersonating the Trustee of the Lost or Suppressed trust and not THEODORE? Again, this statement appears another attempt to pepper the record of this case with False Statements of fact and hope Your Honor is a fool to believe any of this and distribute the proceeds to improper beneficiaries based on a hoax fraught with imaginary and fraudulent, Trustees and Beneficiaries, a fraudulent INSTITUTIONAL TRUST COMPANY at a fictitious address with an imposter Trustee SPALLINA, a Lost or Suppressed Trust, a Lost or Suppressed Policy and more. The whole story appears based on False Statements of fact in an official proceeding made by an Officer of the Court, A. SIMON, whose brother, their law firm and his brother and his wife have direct conflicting financial interests in the outcome of the matters that are adverse with ELIOT and the True and Proper Beneficiaries.

53. That the next false statement to this Court in the proposed Amended Complaint by A.

SIMON claims,

“33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.”

The drumbeat of false statements continues with this claim that tries to pepper the record again and again with this False Statement asserted as fact as to who the legal beneficiaries on the Policy(ies) are. The defined and legal Primary and Contingent beneficiaries are not proven to be the BERNSTEIN TRUST or the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 but instead HERITAGE claims LaSalle National Trust, N.A. is the Primary beneficiary and the SIMON BERNSTEIN TRUST, N.A., is the factual Contingent beneficiary no matter how many times the proposed Amended Complaint tries to pound this misstatement into the record. Further, since the Chicago Title Land Trust Company, as Successor to “LaSalle National Trust, N.A.” still exists, which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603, it appears that BERNSTEIN TRUST is not the sole surviving beneficiary either.

54. That further, it appears that no searches were conducted of SIMON’S possessions for the “SIMON BERNSTEIN TRUST, N.A.” the named Contingent beneficiary.

55. That the next series of statements to this Court in the proposed Amended Complaint by A. SIMON are revealing and claim,

“35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;

ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,

iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and

iv) the offices of The Simon Law Firm.”

56. That a series of searches was allegedly done for the Lost or Suppressed Policy and the Lost or Suppressed Trust and one wonders first why THEODORE and other unknown Bernstein family members would search SIMON'S home and business office POST MORTEM and why this search was not conducted by the ALLEGED Personal Representative / Executor, defendants SPALLINA and TESCHER who did not conduct this search of SIMON'S home and office records. Why would SPALLINA let others search the files that may have interests in suppressing and denying the information to benefit themselves at the expense of others, especially where THEODORE and P. SIMON have no interests in the Estate or Trusts of SIMON?

57. That in fact, on the night ELIOT'S father SIMON passed away, a one, Rachel Walker, assistant to SIMON, removed from SIMON'S home, directed by THEODORE, minutes after SIMON was pronounced dead, a large amount of files from the home of SIMON, including many estate documents and brought them to the hospital to THEODORE. These documents were never accounted for and remain missing and when ELIOT requested copies from both

THEODORE and SPALLINA he was refused. That for more on that factual account of events of that night, please see ELIOT'S first Petition in the Estate of SIMON and SHIRLEY with the Florida Probate Courts of Judge Martin Colin and Judge David E. French, Titled **“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 ESTATES OF SIMON/SHIRLEY BERNSTEIN AND MORE”** @

- www.iviewit.tv/20130506PetitionFreezeEstates.pdf 15th Judicial Florida Probate Court and
- www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf US District Court Southern District of New York case before The Most Honorable Shira A. Scheindlin. Pages 156-582.

58. That a search then was conducted of the law firm defendant Tescher & Spallina, P.A. and one must wonder how and why if SPALLINA claims he did not ever see or have possession of the Lost or Suppressed Trust or Policy(ies) why a search would be conducted at his offices at all. From an email from Robert Spallina one can see he claims allegedly to never have seen the Lost or Suppressed Trust or Policy but in fact claims he knew of it and knew who the beneficiaries were to be and as the Attorney at Law who did the estate plans of SIMON he then took no steps to protect the Beneficiaries by securing the Policy(ies) and Lost or Suppressed Trust or having SIMON even write a letter stating who the Beneficiaries were or any other steps to insure the beneficiary designations since he did not allegedly possess the

Lost or Suppressed Trust and Policy(ies), the Beneficiaries he claims to have known about were protected in the estate plan and therefore the liabilities caused by this failure that have led to this circus of Fraud In and Upon this Court, Fraud on an Insurance Carrier and Fraud on ELIOT and the True and Proper Beneficiaries are all directly related to SPALLINA and TESCHER'S incompetent or purposeful inactions. From SPALLINA'S email, ELIOT quotes,

From: Robert Spallina
To: Pam Simon
Cc: Eliot Bernstein; Ted Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Christine P. Yates ~ Director @ Tripp Scott
Subject: Re: Heritage Policy
Date: Friday, February 8, 2013 8:41:25 PM

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed. [Emphasis Added]

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you.

This should be of no surprise to anyone. Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.
[Emphasis Added]

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.
Sent from my iPhone

59. That Spallina's email above reveals and insurance company records provided in JACKSON'S discovery documents support this claim that SIMON was requesting change of Beneficiaries forms near the time of his death but ELIOT is unclear who he was changing it to, as SPALLINA fails to identify the party(ies) he "counseled" him not to change it too. Further, if SPALLINA did not ever have a copy of the Policy why would he search his offices for the missing Policy and Lost or Suppressed Trust that he claims never to have seen? If SPALLINA were the "Trustee" of the Lost or Suppressed Trust or the "Trustee" of INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A.", as he falsely claimed when filing his fraudulent insurance claim acting as such, then he would have had reason to search his offices. Why on the other hand if SPALLINA did not have a copy or ever saw the Lost or Suppressed Policy and never saw or possessed a copy of the Lost or Suppressed Trust, how in G-d's name he made a claim in these fiduciary titles he gave himself when filing a claim with HERITAGE?????????????????????????

60. That the law offices of Foley & Lardner LLP were then searched but apparently no copies of the executed Lost or Suppressed Trust or copies of it appear to have been located, as they appear to have vanished into thin air with no copies or evidence of its existence left according to the proposed Amended Complaint?

61. That on information and belief, Foley & Lardner may have claimed to have sent all the documents to Proskauer Rose LLP who also claims to have not to have any executed copies or originals in their records and it is interesting to note here that Proskauer was left out of the proposed Amended Complaint's list of places searched as SPALLINA references a one, Albert Gortz of Proskauer as having information relating to the insurance from prior estate planning he did for SIMON in his email evidenced herein.

62. That the reason ELIOT believes this was omitted is because both Foley & Lardner LLP and Proskauer Rose LLP are the two main alleged perpetrators of the theft of ELIOT and SIMON'S Intellectual Properties that have an estimated value in the TRILLIONS of dollars, as they have profoundly changed the world and have been quoted by leading engineers as "The Holy Grail" of the Internet and "Digital Electricity" and more. To further understand how Proskauer and Foley may be influencing all of these efforts to deprive ELIOT and his family of their inheritances and the Policy(ies) proceeds the way SIMON and SHIRLEY designed them to intentionally sabotaging ELIOT'S continued efforts to prosecute them by depriving him with intent from his properties. For more information of ELIOT'S continued RICO efforts and more, see the Federal Court filing @ www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf, Pages 217-242, Section **"XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND**

PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.” The Court should note here that previous efforts to silence ELIOT and his family to stop their efforts to have fair and impartial due process against those that stole his Intellectual Properties, mainly criminals disguised as Attorneys at Law and Public Officials and reclaim his Intellectual Property Royalties, please visit the graphic images of the TERRORIST STYLE CAR BOMBING ATTEMPTED MURDER of ELIOT and his wife and children @ www.iviewit.tv .

63. The final search for the Lost or Suppressed Trust and Lost or Suppressed Policy according to defendant A. SIMON’S statement in the proposed Amended Complaint was conducted in his very own law firm, defendant The Simon Law Firm, that is located inside the offices of defendant P. SIMON’S companies that she received from SIMON worth millions, in exchange for her rights to any later inheritances and partially why she was wholly excluded from the Estates and Trusts of both SIMON and SHIRLEY.
64. That this search of A. SIMON’S law firm further supports ELIOT’S claims in his “**(1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL”**

www.iviewit.tv/20131208MotionStrikePleadingAdamSimonForFraudOnCourt.pdf filed

with this Court, that defendants, The Simon Law Firm, A. SIMON and D. SIMON cannot represent these matters not only due to their Adverse Interests with ELIOT and other potential beneficiaries but because they are conflicted with the matters having direct financial interest in the outcome. The search of their offices shows further that they have firsthand knowledge and involvement in these matters beyond those that independent counsel would have and therefore will be deposed and called as material and fact witnesses. They also stand to gain part of the death benefits to themselves and their immediate families, at the detriment of the True and Proper beneficiaries, including P. SIMON and D. SIMON'S own children, if they succeed with this farce before Your Honor. Why would The Simon Law Firm have copies and where did they go? Were they responsible to maintain copies of the Policy(ies) and trusts under the VEBA trust and/or the Lost or Suppressed Trust and are they liable if they are lost? Why do they have an unidentifiable ALLEGED draft of the Lost or Suppressed Trust on hand that they suddenly inserted in their production after filing this Lawsuit and why are they missing executed copies of the Lost or Suppressed Trust and the Lost or Suppressed Policy, or even unexecuted copies which have the author, dates and other pertinent information that can be verified or used as solid parole evidence of their claims? Why did they not have other witnesses to their claims of what SIMON'S trust said and who the Trustees and Beneficiaries were, say for example the authors, especially after contacting the law firms who allegedly drafted and executed these documents with SIMON? Are they liable and responsible for the maintenance and safe keeping of the records? Do they have LIABILITIES for failure to retain records, which would further their adverse interests and

conflicts? Were copies of the Lost and Suppressed trust sent to their law firm and where did they go? What were their roles as Attorneys at Law in the insurance affairs of SIMON and SHIRLEY and SIMON'S companies where they have both been employed since graduating college? Were copies sent to their law firm as attorneys for the VEBA trust, what roles did they play as Trustee's for the VEBA? From these questions alone and the fact that they have direct interests in suppressing these documents and policies to inure benefits directly to their family members and their law firm, makes the Conflicts and Adverse Interests prohibitive of A. SIMON further representing any parties in this lawsuit, other than himself as a Pro Se defendant. The fact that A. SIMON, D. SIMON and their law firm The Simon Law Firm are all defendants and other reasons already defined herein are just and good cause for this Court to report them for this misconduct and violations of Attorney Conduct Codes and State and Federal Laws and demand that they retain counsel and discontinue further representing any parties in this lawsuit.

65. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims, "36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012." This statement is also incorrect as none of the Plaintiffs provided HERITAGE with due proof of death, as defendant Attorney at Law SPALLINA and his legal assistant / notary public, a one Kimberly Moran provided this information to HERITAGE and they are not Plaintiffs in these matters. Where ELIOT has evidenced already in prior pleadings that MORAN has been arrested and admitted to FORGING and FRAUDULENTLY NOTARIZING six separate signatures for six separate people on six separate documents that were then posited in the

Probate court by defendants, SPALLINA, TESCHER and their law firm Tescher & Spallina P.A. on behalf of a Deceased SIMON who acted as Personal Representative / Executor while dead, as if alive, to serve documents to the Probate court in another Fraud on the Court under Judge Martin Colin, leading Judge Colin when discovering that a Fraud on his Court had occurred, to state he had enough to read Attorneys at Law, SPALLINA, TESCHER and Mark Manceri and THEODORE their Miranda Warnings, twice, for the crimes he discovered took place in his courtroom and were admitted to in part at the hearing.

66. That this next misleading statement claims,

“39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein’s death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.”

That ELIOT states that this “unexecuted draft” of the Lost or Suppressed trust is a further hoax as the trust was done by law firm Hopkins & Sutter and drafts as mentioned earlier would be identifiable and the draft submitted as part of their “proof” offers very little in legal proof of anything, as it has no author, no dates, no year even and could have been done the morning it was sent to this Court by A. SIMON who also knows this document proves nothing but possibly further Fraud on the Court and the True and Proper Beneficiaries of the Lost or Suppressed Policy(ies) and Lost or Suppressed Trust.

67. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

“41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN

TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.”

While this statement sounds great who did Simon express this intent to, as it was not to his estate planners who would have then secured the trust or documentary evidence of his intent or have mass exposure for their lack of duty and care. It was not expressed to HERITAGE as even when sent a letter to confirm the Primary and Contingent Beneficiaries he did not offer any changes in reply. It was not expressed to his children, for in JACKSON'S production it is noted that certain of his children were to receive NO information on his Policy for unknown reasons at this time and again this evidences a peppering of the record with biased, unproven and false statements of fact.

68. That to attempt to establish the beneficiary of the lost trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the Beneficiary was changed to the lost trust in 1995. Yet, in JACKSON'S discovery documents produced thus far, evidence is found that SIMON was sent a letter April 23, 2010, which stated,

“Dear Simon Bernstein: Thank you for contacting Heritage Union Life Insurance Company. Our records indicate the following beneficiary designation for the above referenced contract number:

Primary Beneficiary/Beneficiaries: LaSalle National Trust, N.A.

Contingent Beneficiary/Beneficiaries: Simon Bernstein Trust, N.A.

Where there is no further record from SIMON disputing this beneficiary designation with the carrier after receiving the letter.

69. That the next statement claims,

“38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein’s estate and by Ted Bernstein, and others, its whereabouts remain unknown.”

ELIOT claims if the Lost or Suppressed Trust and Lost or Suppressed Policy are in fact lost and the Trustees and Beneficiaries therefore are not known, then despite their efforts to claim they now suddenly know as fact who the Beneficiaries and Trustees were does not really matter as when the beneficiaries of a policy are lost or missing at the time of death of the insured the benefits are legally to be paid to the estate of the decedent. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's death, the policy is payable to the insured, and thus, in this case, the insured's Estate. *Harris v. Byard*, 501 So.2d 730, 12 Fla. L. Weekly 429.

70. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

“43. At the time of Simon Bernstein’s death, the beneficiary of the Policy was the BERNSTEIN TRUST.”

Again, this is not factually correct as the Primary Beneficiary of the Policy(ies) at the time of SIMON’S death was factually according to HERITAGE, “LaSalle National Trust, N.A.” as

Primary and Contingent was factually, "Simon Bernstein Trust, N.A." and at the time of his death it is NOT the BERNSTEIN TRUST aka SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95" as A. SIMON falsely asserts as fact, when knowing it is not correct and puts in no qualifying statements as to his assertion to this Court.

71. That the next false statements to this Court in the proposed Amended Complaint by A. SIMON claims,

"48. "LaSalle National Trust, N.A.", was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA."

"49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to "LaSalle National Trust, N.A." has disclaimed any interest in the Policy."

Eliot states that "LaSalle National Trust, N.A." was and IS still acting as Trustee when the insurance claim was filed on their behalf by SPALLINA who impersonated the INSTITUTIONAL TRUST COMPANY "LaSalle National Trust, N.A." at SPALLINA'S address and place of business and further impersonated himself as an OFFICER / TRUSTEE of LaSalle National Trust, as already defined herein. Also, ELIOT does not believe that A. SIMON'S alleged information and belief that Bank of America, N.A. is the Successor to "LaSalle National Trust, N.A." is true and again an intentional attempt to mislead this Court and others from the fact that "Chicago Title Land Trust Company" appears as Successor to "LaSalle National Trust, N.A. currently and actively, which is located at 10 South LaSalle

Street, Suite 2750 Chicago, Illinois 60603 and no listing at SPALLINA'S address appears in any records search conducted by ELIOT for this INSTITUTIONAL TRUST COMPANY, "Chicago Title Land Trust Company either. That this may impart that not only did SPALLINA commit INSTITUTIONAL TRUST COMPANY FRAUD by impersonating LaSalle National Trust, N.A. but that he may have also committed INSTITUTIONAL TRUST COMPANY FRAUD on "Chicago Title Land Trust Company" the current Successor Trustee of LaSalle National Trust, N.A. by acting as a TRUSTEE of their properties at his address. Further, A. SIMON tries to advance this false statement when a simple records search would have afforded him the same information, again making this proposed Amended Complaint a further abuse of process.

That this Court should further act on its own Motion to Join under Federal Rule 19, "LaSalle National Trust, N.A." and its Successor "Chicago Title Land Trust Company" to this action as indispensable parties that have been concealed from the Court through False Statements in the pleadings with intent.

72. That the next fallacious statement claims,

"50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court."

That ELIOT states this statement is merely conjecture as there is nothing legally valid in the proposed Amended Complaint to prove they should receive the benefits as it is made mainly of false statements in an official proceeding by an Officer of this Court knowingly while

acting with adverse interests and conflicts whom is also a defendant in the matters and who has failed to respond to ELIOT'S Cross Claim and defaulted knowingly and without excuse.

73. That this patchwork effort to now amend their Original Complaint in order to craft further false statements in the record and attempt to cover up evidence provided in the pleadings and production documents already released in this Lawsuit filed by both ELIOT and other parties is a carefully attempt to change their original statements and is a bit late and is wholly reprehensible. Contrary to their claims in their Motion to Seek Leave to Amend that "6. Plaintiff seeks leave of the court to file its first amended complaint to add four of the beneficiaries (children of Simon Bernstein) as Plaintiffs and to add two additional claims and/or theories of recovery" after review of the proposed amendments this is not all they are trying to do, they are factually trying to change the pleading in significant other ways defined already herein.

74. That further A. SIMON'S claims to the Court in the Motion for Leave to Amend, "There will be very little or no prejudice to the other parties to the litigation as this First Amended Complaint is being submitted with sufficient time left to conduct discovery, and the parties have already had time to initiate discovery because the new Plaintiffs are not new parties to the litigation."

However, the proposed Amended Complaint does prejudices parties to this Lawsuit by attempting to pepper the record with a stream of further False Statements in Official proceedings that are pled as statements of fact that are factually prejudicial as they are wholly false and misleading with intent.

75. That ELIOT states that further wastes of time and monies by ELIOT and this Court and the delays caused to the Beneficiaries by allowing these improper pleadings from Defendants A. SIMON, D. SIMON and the The Simon Law Firm who have failed to Answer the complaint served upon them have therefore defaulted as third party defendants and should be removed from the lawsuit in any/all legal capacities. That responding to this almost wholly false proposed Amended Complaint was torturous enough as they try to pepper the record with false statements and questionable parole documents in official proceedings and asserting this hogwash as facts before this Court.

76. That the proposed Amended Complaint may also invoke the Probate Exception to Federal Jurisdiction in this matter. Whereby the proceeds paid to this Court by the carrier should instantly be returned to the carrier and the matter turned over to the Florida Probate court to rule on this life insurance claim as the beneficiary was lost and missing allegedly at the time of SIMON'S death.

77. That for the all the reasons stated herein ELIOT prays this Court STRIKE THE AMENDED COMPLAINT DUE TO EVIDENCE OF ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND MORE

MOTION FOR DEFAULT JUDGMENTS

78. That the proposed Amended Complaint is filed by A. SIMON for a limited number of defendants only and ELIOT requests the Court clarify if parties not represented in these

matters that were served and failed to respond have defaulted by failure to appear in these matters despite being served. In A. SIMON'S pleading for LEAVE TO AMEND he states he is representing the following,

“Attorneys for Plaintiffs and Third-Party Defendants Simon L.

Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, and individually, Pamela Simon, Lisa Friedstein and Jill Iantoni.”

However, many parties sued by ELIOT do not appear at the moment to have counsel or filed any responsive pleadings and thus have defaulted already, including but not limited to, all of the following,

- i. DAVID B. SIMON, PERSONALLY was sued and served ELIOT'S cross claim and A. SIMON does not represent him personally and appears to have left him off the represented third party defendants in this capacity and as he has failed to respond timely and has defaulted.
- ii. DAVID B. SIMON, PROFESSIONALLY was sued and served ELIOT'S cross claim and A. SIMON does not represent him personally and appears to have left him off the represented third party defendants in this capacity and as he has failed to respond timely and has defaulted.
- iii. ADAM SIMON, PERSONALLY was sued and served ELIOT'S cross claim and A. SIMON does not represent himself personally as a third party defendant and appears to have left himself off in this capacity and he has also failed to respond timely to ELIOT'S cross claim and therefore has defaulted.

- iv. ADAM SIMON, PROFESSIONALLY was sued and served ELIOT'S cross claim and A. SIMON does not represent himself personally as a third party defendant and appears to have left himself off in this capacity and he has also failed to respond timely to ELIOT'S cross claim and therefore has defaulted.
- v. THE SIMON LAW FIRM, was sued and served and has failed to respond and therefore has defaulted.
- vi. TESCHER & SPALLINA, P.A., were served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join the Law Firm as an indispensable party before having ELIOT forced to serve them at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit.
- vii. DONALD TESCHER, PERSONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law TESCHER as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.
- viii. DONALD TESCHER, PROFESSIONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law TESCHER as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part

by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.

- ix. ROBERT SPALLINA, PERSONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law SPALLINA as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.
- x. ROBERT SPALLINA, PERSONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.

79. That all of the above parties sued and served in these matters have failed to timely respond or respond at all and a Default Judgment should be awarded ELIOT and there can be no excuses or leniency for failing to respond by any of the parties served and sued that are Attorneys at Law who knowingly have chosen to fail to respond and especially A. SIMON who conceals himself from his list of third party defendants he represents to hide his obvious conflicts and

adverse interests in representing himself as a Pro Se defendant while representing others in matters as counsel and he should not be representing anyone other than himself Pro Se further.

80. That many of ELIOT'S contentions challenging the legality of the Original Complaint filed can be found in ELIOT'S "MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL" filed with this Court on December 08, 2013 and those arguments are further included herein by reference in further support for this Court to STRIKE both the Original Complaint and the proposed Amended Complaint and award damages to ELIOT.

81. That for the reasons stated herein ELIOT prays for Default Judgments against all parties who have failed to respond in any way to these matters knowingly.

Wherefore, for all the reasons stated herein, ELIOT prays this Court STRIKE the proposed Amended Complaint and award Default Judgments and further Sanction and Report the Attorneys at Law involved for their violations of Attorney Conduct Codes and State and Federal Law. 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 and any other relief this Court deems just and proper.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Dated

Sunday, January 12, 2014

Eliot I. Bernstein
2753 NW 34th St.
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(561) 245-8588

Certificate of Service

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, and E-mail on December 08, 2013 to the following parties:

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**EXHIBIT 1 – SPALLINA INSURANCE CLAIM SIGNED AS TRUSTEE OF THE LOST
OR SUPPRESSED TRUST.**

EXHIBIT 2 – LETTERS TO SPALLINA FROM HERITAGE

EXHIBIT 3

EXHIBIT 4