

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

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
Plaintiff,)
)
v.)
)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)
)
Defendant,)
)
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, et al.)
)
Third-Party Defendants,)
)
and)
)
ELIOT IVAN BERNSTEIN,)
)
Cross-Plaintiff)
)
v.)
)
TED BERNSTEIN, individually et al.)
)

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

MOTION IN OPPOSITION TO
SUMMARY JUDGEMENT

Filers:

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-Plaintiff.

Third-Party Defendants_)
)
BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)
)
Intervenor.)
/

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

COMES NOW Eliot Ivan Bernstein ("Eliot"), a Third Party Defendant, Pro Se and files this "Motion in Opposition to Summary Judgement" and states under information and belief as follows:

Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff's improper at this time. In some instances, it is asserted that Plaintiffs' statement of facts are fraudulent and Plaintiffs have withheld material facts and information from this Court and thus, Plaintiffs should be subject to Federal Rule 11 or appropriate sanctions. Summary Judgement to Plaintiffs must be denied at this stage of litigation and further Discovery proceedings scheduled together with a hearing on sanctions and such other and further relief as to this Court may be just and proper.

DISPUTED FACTS

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged "Policy" at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent,

MOTION IN OPPOSITION TO SUMMARY JUDGEMENT

Wednesday, June 3, 2015

and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the “Policy” are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic “Specimen Policy” not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the “Policy” are in genuine dispute. .
3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon Bernstein (“Simon”) including but not limited to further document and record production from Heritage Union Life Insurance Company (“HERITAGE”), Jackson National Life Insurance Company (“JACKSON”), LaSalle National Trust, NA (“LASALLE”) in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein (“TED”), EBTs of Pamela Beth Simon (“PAM”), David Simon (“D. SIMON”), Robert L. Spallina, Esq. (“SPALLINA”), Donald R. Tescher, Esq. (“TESCHER”) and Don Sanders (“SANDERS”) at minimum.
4. It is noted for this Court that Judge Martin Colin (“COLIN”) of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the

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Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.
6. The Disqualification motion¹ in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.
7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

¹ COLIN Disqualification Motion

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

8. The fact is there is no executed “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.
9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.
10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs’ Summary Judgment itself at this time. See Plaintiffs’ Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs’ own document submissions.
11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs’ own document submissions have not been brought in as a party in these proceedings by Plaintiffs

nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.
13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital² and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.
14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte "recuses" after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact

² Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

witnesses to the frauds committed by TESCHER and SPALLINA'S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order³.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim⁴ in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust.
16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit ("Action") filed for breach of contract and the Action is based on the carrier denial⁵ of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.
17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA

³ COLIN Recusal Order

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

⁴ Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

⁵ Reassure America Life Insurance Company Decline Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.
19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.
20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for LASALLE when filing his death benefit claim⁶, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.
21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent

⁶ HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP⁷ that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.
23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust⁸ and sanctions or a sanctions hearing should be granted and further Discovery allowed.
24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the

⁷ 2000 Simon Bernstein Life Insurance Trust - Proskauer

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

⁸ TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, **the primary beneficiary was designated as LaSalle National Trust, N.A.**

[emphasis added] as Successor Trustee...,”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.
27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015⁹ from six cases after

⁹ Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as “Legally Insufficient

his denial of Eliot's Petition for Disqualification¹⁰ as "Legally Insufficient" on May 18, 2015¹¹, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases¹² of the Bernstein family.
29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

¹⁰ Petition for Disqualification of Judge Martin Colin

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

¹¹ Judge Colin Denial of Disqualification

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

¹²

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
3. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502014CP003698XXXXSB – Shirley Trust Construction
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB
6. Case # TBD – Creditor Claim – Eliot v. Estate of Simon

from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.
31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and

other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.
33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.
34. The matters need to be investigated by the carrier as a possible murder of Simon¹³ which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.
35. There are Petitions that were unheard by COLIN'S court at the time of his recent recusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover

¹³ Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446>, which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.
37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,
- a. Records from insurers and reinsurers,
 - b. Records from the Primary Beneficiary LaSalle National Trust, NA,
 - c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,
 - d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,

e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.

38. There is need for further affidavits, declaration and further discovery, especially after TED'S deposition, which opens new discovery, including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract¹⁴.

LINE BY LINE OBJECTIONS TO:
“AMENDED MOTION FOR SUMMARY JUDGEMENT AS TO COUNT 1 MOVANTS
CLAIMS TO POLICY PROCEEDS”

39. Eliot will now present a line by line objection to each statement in Plaintiffs Summary Judgement and supporting documents with each numbered statement of Plaintiffs addressed with an answer below it.

“NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 56(a) and Local Rule 56.1, move the Court for summary judgment as to Counts I and II of their Claims to the Policy Proceeds, and in support thereof states as follows:”

ANSWER

40. There is a primary beneficiary LASALLE and it appears that no one has contacted the Primary Beneficiary or its Successors and this Summary Judgement is instead attempting to have this Court pay a Contingent Beneficiary instead of the Primary. When there is the existence of a Primary Beneficiary the contingent beneficiary cannot be paid benefits.

¹⁴ TED Deposition Pages 116-118

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

41. No executed copy of a “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” the alleged by Plaintiff Contingent Beneficiary has been produced to this Court to establish this legally nonexistent trust and give it legal standing as a Plaintiff or a Contingent Beneficiary. Again, the insurance company records state the Contingent Beneficiary is the Simon Bernstein Trust, NA on the day Simon died not the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95.
42. As no executed copy of the 95 Legally Nonexistent Unexecuted Trust has been presented by Plaintiffs and produced to this Court, the legal standing of TED as a legally valid trustee of such nonexistent trust is therefore disputed and Plaintiff’s have failed to bring forward competent proof to demonstrate the absence of material issues of fact on this matter and therefore Summary Judgment must be denied. Thus, it is disputed whether this Trust even exists and without competent proof and-or further discovery, the Trust and alleged Trustee must be presumed to not exist or at minimum certainly not proven sufficient for Summary Judgment at this stage of litigation.
43. There is also an executed 2000 insurance trust done by Proskauer Rose that would supersedes any 95 Legally Nonexistent Unexecuted Trust already exhibited herein which the Plaintiffs and attorney SPALLINA coordinated and colluded to secret.
44. There is also a missing Simon Bernstein Trust, NA that the carrier production records show was the Contingent Beneficiary at Simon’s death that would supersede any 95 Legally Nonexistent Unexecuted Trust.
45. It is noted that Adam Simon is brother to David Simon who is married to Pam Bernstein-Simon. Without this lawsuit scheme, if the money passes to the estate instead of the 95 Legally Nonexistent Unexecuted Trust, then Pam Bernstein Simon and Ted Bernstein would

receive NO benefits. Their children may receive benefits depending on the outcome of estate beneficiary disputes ongoing in Florida. Adam Simon represents TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust and the alleged beneficiaries of the trust and the Plaintiffs of this lawsuit, which may present conflicts of interest.

1. The undisputed facts and evidence supporting this motion are set forth more fully in the accompanying Plaintiff’s Statement of Material Undisputed Facts Pursuant to Local Rule 56.1(a); the Appendix of Exhibits; and the Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment.

ANSWER

46. Virtually all the “undisputed facts” presented by Plaintiffs are disputed by Eliot.

2. “This action was originally filed by the Simon Bernstein Irrevocable Insurance Trust dated 6/21/95 against Heritage Union Life Insurance Company (the “Insurer”) in the Circuit Court of Cook County. The Action related to Plaintiff’s claim to certain death benefit proceeds (“Policy Proceeds”) payable under a life insurance policy (the “Policy”) insuring the life of Simon Bernstein who passed away in September of 2012.”

ANSWER

47. As affirmatively stated above, there is no “Policy” that has been produced by any Plaintiff or any party to this action and thus this fact that there is a life insurance “Policy” at this time in this Action is disputed.

48. As there is no legally binding insurance contract proven or provided or produced, and there is no “Policy” proven, provided or produced, as such there can be no “Policy Proceeds.” determined to award Plaintiffs Summary Judgment at this time. Further Discovery proceedings should be ordered.

49. This lawsuit is a Breach of Contract lawsuit spawned from a denied insurance claim that arose after attorney SPALLINA first began illegally attempting to act as the Trustee of

LASALLE by correspondences already exhibited herein, which was done within weeks after Simon Bernstein passed away and thus this is not a dispute between various claimants as Plaintiffs suggest to this Court.

50. There is no copy or record of the 95 Legally Nonexistent Unexecuted Trust produced in these matters and thus Plaintiff's standing is disputed. If there is no trust there is no Trustee and therefore TED'S legal standing is disputed. Further, Plaintiffs individually, TED, Pamela Simon, Jill Iantoni and Lisa Friedstein, likewise have legal standing issues in dispute, as if the trust does not exist then they have no rights thereunder and whereby they have no claims to this Court or the carrier that they are beneficiaries of the missing policy deserving standing in any individual capacity. Thus, their lawsuit should be dismissed or at least reviewed and-or investigated as a fraud upon this Court and their attorneys at law involved should all be reported to the proper authorities and sanctioned for intentional misconduct and acting with scienter in tortious interference with an expectancy.
51. While corresponding with HERITAGE as the Trustee of LASALLE the Primary Beneficiary, SPALLINA then filed a death benefit claim on behalf of the alleged Contingent Beneficiary, the 95 Legally Nonexistent Trust, not on behalf of the primary beneficiary LASALLE (for unknown reasons) and that claim was DENIED because SPALLINA could not provide ANY document to HERITAGE to evidence a legally binding trust instrument to pay and this is the reason for the Breach of Contract lawsuit being filed.
52. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of LASALLE or provides any authority to act as same and thus within six weeks of the death of Simon Bernstein, attorney SPALLINA on behalf of his

legal client TED was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in correspondences with the carrier, SPALLINA was attempting to convert the monies to his law firm's trust account¹⁵.

53. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of a 95 Legally Nonexistent Unexecuted Trust or provides any authority to act as same and thus on November 01, 2012 within 6 weeks after the death of Simon Bernstein, attorney SPALLINA was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in the exhibited claim form attempting to convert the monies to his law firm's trust account.
54. The claim form submitted by SPALLINA on November 01, 2012 makes no mention of the fact that at that time there were ongoing investigation by the Palm Beach County Sheriff and an autopsy being performed to determine if Simon had been murdered.
55. The initial breach of contract action was not even filed in Cook County Illinois until after the Law Office of SPALLINA and TESCHER had already filed fraudulent documents in the Palm Beach County Circuit Court of COLIN on or about Oct. 24, 2012, including but not limited to, a false Petition of Discharge (full Waiver)¹⁶ of Simon Bernstein dated April 9,

¹⁵ SPALLINA Letter to HERITAGE to pay death benefit to Tescher & Spallina PA law firm trust account. Page 11, Bullet Number 5.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

¹⁶ April 09, 2012 Petition for Discharge (full Waiver)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

2012, which sought to use a document allegedly executed by Simon Bernstein and witnessed by SPALLINA five months earlier, submitted POST MORTEM for Simon who was now deceased, enabling a deceased Simon to act as Personal Representative while dead to close the Estate of his wife Shirley Bernstein. In addition to the fraudulent submission of the document, the document contained numerous false and fraudulent recitals of acts allegedly signed to by Simon Bernstein, which clearly had not occurred by the date of the alleged signing on April 9, 2012, for instance Simon claims to have all beneficiaries Waivers and the waivers were not sent to beneficiaries until May of 2012 and certain beneficiaries did not submit them until after Simon died.

56. While the precise circumstances of COLIN'S knowledge and possible involvement in the fraud are not presently fully known, after certain frauds had been exposed even COLIN stated on the record in a hearing on September 13, 2013¹⁷ that he had enough evidence at that time to read TED, TESCHER, SPALLINA and their counsel their Miranda Rights.
57. That the law firm of Tescher & Spallina, PA also submitted to the Court forged and fraudulent Waivers for six parties, including POST MORTEM forgery and fraudulent notarizations of Simon's, also used to close the Estate of Simon's deceased wife Shirley using Simon while dead to act as the Personal Representative as part of an elaborate fraud on the court of COLIN, the beneficiaries, the creditors and others.
58. Upon learning of the six fraudulent waivers, including POST MORTEM forgery and fraudulent notarization for Simon, COLIN again stated he had enough evidence at that

¹⁷ September 13, 2013 Hearing - Colin discovers Fraud Upon the Court - Pages 14-18

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tesch%20Ted%20Manceri.pdf>

moment to read them all their Miranda Rights (See exhibited September 13, 2013 Hearing Pages 14-18).

59. The Court should note that COLIN however failed to take any corrective or administrative actions against those involved and in fact proceeded as if a crime had not taken place and allowed TESCHER, SPALLINA and TED to continue to be fiduciaries and counsel in the proceedings and forced Eliot and others to spend years attempting to remove them through pleading after pleading evaded by COLIN who should have removed them with himself once he discovered the Fraud in and on his court committed by his appointed Fiduciaries, Counsel and involving him and his employees directly.
60. COLIN further failed to inform this Court of the crimes related parties to this Action were involved in in his court and instead began a two year denial of due process and procedure and retaliation against Eliot who was exposing the crimes of his court, while he was mandated under Judicial Canons to disqualify on his own initiative due to his direct involvement as a material and fact witness to the criminal acts that took place in and on his court that were committed by his appointed Officers and Fiduciaries, attorneys at law, TESCHER, SPALLINA and TED and other retained counsel, MANCERI and PANKAUSKI.
61. COLIN also acted outside the color of law as he could not investigate his own court, himself, his court appointed fiduciaries and officers without exuding the Appearance of Impropriety and Judicial Canons require mandatory disqualification in such situations, yet he hung on as long as he could despite numerous attempts to remove him and force disqualification on his own initiative.

62. That the law firm of Tescher & Spallina, PA also used Simon Bernstein POST MORTEM to close the Estate of Shirley in January 2013 where Simon who died on September 13, 2012 and was dead for four months closed the Estate of Shirley. At no time prior to Simon closing Shirley's estate while dead did TESCHER and SPALLINA who were acting as his counsel while he was dead notify the Florida probate court that Simon had passed away. At least there is no proof or record in the probate court that shows COLIN was so notified by Tescher & Spallina.
63. That when Simon died no Successor Personal Representative for Shirley's Estate was legally chosen and instead TESCHER, SPALLINA and TED used Simon to close Shirley's Estate as they needed for Simon to appear alive at the time of the closing of Shirley's Estate in order to attempt to then have Simon (while appearing alive) fraudulently change Shirley's Irrevocable Trust Beneficiaries that were set in stone two years earlier upon her death on December 08, 2010.
64. A fair review of the evidence thus far shows this complex scheme was created and designed in order for TESCHER, SPALLINA, TED et al. to seize Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then begin to steal assets of the estates and trusts, including through this secreted insurance scheme, while they breached fiduciary duties and law and denied beneficiaries access to information and accounting for any of the assets, all in violation of a mass of Probate Rules and Statutes and felony criminal laws and resulting in a mass of civil torts against beneficiaries and creditors and all allowed to continue through the closed eyes of COLIN.
65. That upon the resignations of TESCHER and SPALLINA after it was admitted and proven that their law firm committed fraud and forgery on the court, COLIN allowed them as their

last act to transfer Trusteeship in the Florida Simon Trust despite having acted as TED'S counsel to commit the frauds that directly benefited TED, in order to continue the cover up of the crimes committed in his court.

66. Simultaneous and in connection with the frauds in the Florida probate courts of COLIN and FRENCH were the illegal attempts by TESCHER, SPALLINA, TED and PAMELA SIMON to get the HERITAGE insurance proceeds initially converted illegally outside of the true and proper beneficiaries of the Estate and Trusts by SPALLINA impersonating himself as Trustee of the institutional trust company LASALLE, the alleged Primary Beneficiary of the missing insurance policy at the center of this Action.
67. Attorney SPALLINA then filed a death benefit claim with HERITAGE with SPALLINA now allegedly acting and signing the claim as the Trustee of the 95 Legally Nonexistent Unexecuted Trust (the Contingent Beneficiary alleged by Plaintiff of the missing insurance policy) which no Plaintiff or party working in concert with the Plaintiffs or any party who responded in this complaint have yet been able to provide to this Court or any court and certainly which has never been produced by Plaintiffs to myself, Eliot Bernstein.
68. Numerous ancillary crimes were committed once Dominion and Control were seized are under ongoing investigations, including this insurance fraud scheme, with the primary suspects alleged to be the fiduciaries and counsel in the matters, including but not limited to, TED, ROSE, TESCHER, SPALLINA, PAMELA SIMON, MANCERI, SWERGOLD and now to be added COLIN and FRENCH.
69. The fraudulent death benefit claim was filed by attorneys at law, SPALLINA and TESCHER, acting as counsel to TED and in simultaneously in conflict acting as counsel to

the Estate of Simon where there are different beneficiaries in this lawsuit and the Simon Estate and Florida Trust.

70. TESCHER and SPALLINA were acting at the same time in many other conflicting capacities to fraudulently maintain complete control of the Estates and Trusts, including but not limited to;

- a. Alleged “Trustee” of the 95 Legally Nonexistent Unexecuted Trust when filing the death benefit claim,
- b. Counsel to TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust, prior to their falling out after the claim was denied and Adam Simon then replacing TESCHER and SPALLINA upon filing of this lawsuit, which according to Jackson National’s initial Answer¹⁸ TED was advised by SPALLINA as his Counsel that he had no legal standing to file this lawsuit, “Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation)...” Where TED further filed the lawsuit while not possessing a copy, executed or not executed or even a draft copy, of the alleged 95 Legally Nonexistent Unexecuted Trust and only upon repeated demand by this Court then over a year later produced alleged drafts that have no legal authority as they are wholly unexecuted,
- c. Alleged “Trustee” of LaSalle National Trust, NA,

¹⁸ Jackson National Answer and Counter Complaint (Page 8)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130626%20Jackson%20Answer%20to%20Complaint%20and%20Counterclaim%20and%20Third%20Party%20for%20Interpleader.pdf>

- d. Co-Personal Representatives of the Simon Bernstein Estate,
 - e. Co-Trustees of the Simon Bernstein Trust,
 - f. Counsel to themselves as Co-Personal Representatives and Co-Trustees for Simon's Estate and a Florida Simon Trust,
 - g. Counsel to TED as alleged Successor Trustee of the Shirley Bernstein Trust, and,
 - h. Counsel to TED as Successor Personal Representative to the Shirley Bernstein Estate.
71. Where TESCHER and SPALLINA then resigned¹⁹ from the fiducial capacities listed above amidst the admission in an ongoing investigation with Palm Beach County Sheriff Investigators²⁰ that they fraudulently altered and disseminated a Shirley Trust document and potentially many others under investigation at this time.
72. There is no legally binding insurance contract that has been produced by any Plaintiff or any party to this action and thus this fact alleged by Plaintiffs that there is a life insurance policy is again disputed.
73. As there is no legally binding insurance contract, there is no "Policy" and as such there can be no "Policy Proceeds" and therefore the existence of "Policy Proceeds" is also disputed.

3. "The Insurer removed this Action from Cook County to the Northern District, and filed an Interpleader Action."

¹⁹ TESCHER and SPALLINA Resignation Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2014014%20Tesch%20Spallina%20Manceri%20Resignation%20Letters%20and%20Withdrawal%20as%20Counsel%20and%20Executors.pdf>

²⁰ Sheriff Reports (Page 6 of 51)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Croner%20Reports.pdf>

ANSWER

74. The insurer not only removed the case to this Court but also added Eliot as third party defendant, as the lawsuit had been secreted from him despite claims from Plaintiffs that he is entitled to benefits.

4. “The Insurer did not dispute its liability under the Policy. Instead, the Insurer sought to interplead conflicting claimants to the Policy Proceeds, and deposit the Policy Proceeds with the Registry of the Court. The Insurer accomplished this and after depositing the Policy proceeds, the Insurer was dismissed from the litigation.”

ANSWER

75. The fact that the insurance carrier failed to produce a bona fide insurance policy is a liability to the carrier that should have caused them to remain in this lawsuit and the Court erred in allowing them to be dismissed prematurely and they should be re-entered in the lawsuit by this Court enjoining them until such time that a bona fide policy is produced to this Court and an explanation and analysis of the law regarding LOST or MISSING insurance policies and liabilities resulting from such loss of contract is litigated before this Court.

76. There were no conflicting “claimants” to the proceeds as suggested as Eliot never filed a claim on his or anyone else’s behalf and the insurer misled the Court that there was a dispute when interpleading their funds and did not correctly notify the Court that a fraudulent death benefit claim had been made by SPALLINA that was denied and abdicated their responsibilities through this misrepresentation.

5. “The remaining parties have had access to the Policy records and all documents produced in this litigation, and have had ample time to conduct discovery. The fact discovery deadline set by Judge St. Eve passed on January 9, 2015. [Dkt. #123]”

ANSWER

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77. The discovery needs to be expanded due to new evidence in the Estate and Trust cases of Simon and Shirley Bernstein that may have significant impact on this lawsuit.
78. That discovery needs to be expanded due to new information gained from the Deposition of Ted Bernstein.
79. That discovery needs to be expanded to contact the Primary Beneficiary before any payment can be made to any alleged contingent beneficiary.
80. Eliot has been denied access to estate and trust documents of Simon and Shirley in violation of Probate Rules and Statutes as part of an effort to conceal the fraudulent activities of TESCHER, SPALLINA, TED and others that has been exposed and in certain instances prosecuted already in the estates and trusts of Simon and Shirley Bernstein and which crimes are under a series of ongoing state and federal investigations.
81. This lawsuit has been stymied and delayed for over a year while Plaintiffs attempted to find an executed trust document to give them standing and still they have failed to produce such document. Additionally, it took over a year and half for Eliot to get Judge COLIN to allow counsel to represent the Estate's potential interest, which was blocked by the fiduciaries and their counsel acting in conflicts of interest to deny such intervenor. Finally, documents have been secreted from this Court, the beneficiaries and others for over two and half years making discovery almost impossible. The need for further discovery is essential to determining the facts in this matter and until TED'S qualifications as a legitimate Trustee are heard and it determined if he is now qualified, discovery is blocked due to TED'S alleged fiduciary roles and his failure to investigate or provide information regarding the fraudulent activities of his former counsel and others on his behalf.

6. “The matter is now ripe for the court to determine which claimant is the beneficiary of the Policy Proceeds.”

ANSWER

82. There are no “Policy Proceeds” as there is no “Policy” and thus the court cannot make an informed decision at this time without further discovery and litigation of the matters of who the beneficiary of anything is due to the numerous frauds committed and ongoing.

7. “In its memorandum and submissions, Plaintiff has established a rock solid foundation of undisputed evidence in support of its motion. Plaintiff’s memorandum of law explains each element of that foundation building to the inescapable conclusion that Simon Bernstein formed the Bernstein Trust and intended for it to be the beneficiary of the Policy Proceeds.”

ANSWER

83. The evidence submitted by Plaintiffs is disputed and does not support Plaintiffs motion and in fact their own evidence and that of third party defendant Eliot’s herein contradicts their conclusion that Simon Bernstein intended the Contingent Beneficiary to be the 95 Legally Nonexistent Unexecuted Trust.

84. In fact, the 95 Legally Nonexistent Unexecuted Trust is only an alleged Contingent Beneficiary and thus should not be paid as Plaintiffs admit that LASALLE is the Primary Beneficiary and no one has proven that it is not a viable beneficiary that should be paid before any Contingent Beneficiary would be considered.

85. There is NO legally existent “Policy” and thus there are no “Policy Proceeds.”

8. Finally, Plaintiffs will show that Ted Bernstein was to be the successor trustee of the Bernstein Trust and/or should be so appointed, and that the five children of Simon Bernstein were the designated beneficiaries of the Bernstein Trust.

ANSWER

86. There is no legally executed 95 Legally Nonexistent Unexecuted Trust and therefore the legality of TED being the trustee at all is questioned. No valid evidence exists to show TED as a Successor Trustee.
87. TED is being petitioned to be removed in the Florida probate court as Successor Personal Representative of Shirley's Estate, alleged Successor Trustee of Simon's Trust and Successor Trustee of Shirley's Trust, as he is not now qualified to be Trustee for a multitude of reasons, including but not limited to,
- a. breaches of fiduciary duties,
 - b. conflicts of interest,
 - c. adverse interests,
 - d. alleged violations of state and federal laws under ongoing investigations,
 - e. the fact that the language in the Florida Simon Trust he alleges to be trustee of, precludes him from such fiduciary roles as the Successor Trustee cannot be related to the issuer (his father Simon) and TED is considered PREDECEASED for all purposes of the Florida Simon Trust,
 - f. the fact that it was TED'S former attorneys at law TESCHER and SPALLINA and their law firm members, who were acting as TED's counsel while simultaneously acting as fiduciaries in Simon's Estates and Trusts, committed a series of crimes to benefit their client and business associate TED by altering illegally dispositive documents, forging documents for six parties (including POST MORTEM forgery), fraudulently notarized dispositive documents (including POST MORTEM fraudulent notarizations) and committing fraud upon the court in the Florida Probate and Trust cases directly related to these matters and more, and,

g. even if TED were the Successor Trustee of the 95 Legally Nonexistent Unexecuted Trust, TED's failure to take any action regarding SPALLINA'S fraudulent insurance claim that was filed with SPALLINA executing the claim as the alleged Trustee of 95 Legally Nonexistent Unexecuted Trust that led the carrier to DENY the claim and led to this instant Action where TED magically appears as Trustee/Plaintiff. This dereliction and breach of fiduciary duty would be cause for TED to be removed, as TED'S knowing failure²¹ to take action against his attorneys, friends and business associates, TESCHER and SPALLINA, who aided and abetted the insurance fraud scheme indicates TED'S protecting them versus the beneficiaries of the 95 Legally Nonexistent Unexecuted Trust.

88. TED is also conflicted acting as the alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust and at the same time acting as the ALLEGED Successor of the Simon Bernstein Trust in Florida, where TED would receive 1/5th of the missing policy proceeds in the event this bogus illegal lawsuit action is successful and would receive 0% if the proceeds are paid to the Estate and/or Trusts of Simon in Florida.
89. TED has already acted with his counsel in this lawsuit to block the estate/trust beneficiaries in Florida from being represented in this matter and acted in his own self-dealing best interests at the expense of the estate/trust beneficiaries, which is cause for his instant

²¹ TED Deposition Statement Regarding SPALLINA acting as Trustee (Pages 35-37)
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

removal in these matters as alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust²².

90. O'CONNELL, the newly appointed Successor Personal Representative/Executor of the Simon Estate has filed an affirmative defense²³ that claims that TED is acting as an illegal alleged Successor Trustee of the Simon Bernstein Trust in Florida, based on the fact that the language in the alleged Simon Trust precludes the Successor Trustee from being a related party to the issuer and thus TED as Simon's son is not a valid Trustee and also TED is considered predeceased for all purposes of the trust.
91. TED has admitted in his deposition that despite having alleged his father may have been murdered and contacting and opening a Sheriff investigation and Coroner Autopsy that TED did not feel there was any need to notify this Court or the insurance carrier that his father may have been murdered while simultaneously with his attorneys at law TESCHER and SPALLINA filed claims for the death benefits from the carrier and then filed this instant Action attempting to further abscond with insurance proceeds.

9. In addition, once this court grants Movants' motion for summary judgment, Movant will be prepared to promptly move for summary judgment as Eliot's Claims which go beyond the scope of this litigation and do not relate directly to the Policy Proceeds. Movants request that the court grant Movants and the

²² Attorney at Law Peter Feaman Letter to O'CONNELL regarding alleged misconduct of TED and ROSE in the Illinois Insurance Litigation.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O%27Connell.pdf>

²³ O'CONNELL Affirmative Defense that TED is not a legally valid Trustee.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf>

remaining Third-Party Defendants sixty days to file a dispositive motion as to all of the remaining Eliot Claims after the Court grants Movants' current motion for summary judgment.

ANSWER

92. As there is no basis for Summary Judgement to be granted at this stage of litigation with voluminous genuine issues of material fact presented and multiple areas of further Discovery warranted, any statement by Plaintiffs of what they may do in the future regarding my claims is premature and irrelevant at this time.

“WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for summary judgment as to counts I and II of their first amended complaint in its entirety, and enter an Order finding and/or declaring as follows:

- a. On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;”

ANSWER

92. Since there is no legally existent “Policy” produced in these matters the Owner and Beneficiary of the “Policy” are still disputed and further discovery is needed to contact all parties, insurers and reinsurers to determine where the legal policy contract is and determine if it is missing who is liable and for what damages
93. This statement itself by Plaintiffs is fraudulent and false before this Court since Plaintiffs’ know of the existence of the Primary Beneficiary LASALLE and have done nothing to bring LASALLE into their lawsuit other than attorney SPALLINA fraudulently acting as Trustee of LASALLE and Plaintiffs should be subject to Rule 11 sanctions in the bringing of this motion for Summary Judgement. .

94. The primary beneficiary LASALLE and/or its successor has not been contacted by the life insurance carriers or the Plaintiffs and thus again further discovery is needed as to what happened to LASALLE and what the terms of the VEBA trust they acted as Successor Trustee for that was beneficiary of the policy and what happened upon the alleged dissolution. Movant David Simon's affidavit claims that he dissolved the VEBA trust but he was not the Trustee of LASALLE who would have had legal obligations to dissolve the VEBA and distribute any assets held by it to the plan participants according to the VEBA trust instrument, which again has not been produced to this Court by Plaintiffs who maintained the trust document at their offices.
95. The Contingent Beneficiary according to the insurance parole evidence is not the 95 Legally Nonexistent Unexecuted Trust but instead the Simon Bernstein Trust, NA and this contradiction remains disputed. The only evidence produced by Plaintiffs contrary to the records is an affidavit produced by a Jackson National Insurance Company executive stating that the name of the Contingent Beneficiary was a mistake but where the insurance company produced NO legally existent policy to prove such claim showing the policy beneficiary and where SANDERS statements are made in conflict as the carrier has an interest in having this case resolved without a policy as if it is determined that they have lost the policy the liabilities from potential beneficiaries could be enormous.
96. There is a 2000 Irrevocable Trust that exists that is executed done by Proskauer Rose, LLP that has the missing policy identified as the beneficiary of the policy and this would supersede any 95 Legally Nonexistent Unexecuted Trust and shows that Simon's intent had changed as to the beneficiaries since the 95 Legally Nonexistent Unexecuted Trust is claimed to have existed.

97. That SPALLINA, TESCHER, TED, PAM and DAVID SIMON are acting fraudulently before this Court by their intentional secreting of this 2000 Trust document (until turned over when TESCHER and SPALLINA resigned and were court Ordered to turn over their records) with the intent to defeat the wishes and intent of Simon Bernstein, best illustrated at TED'S recent deposition²⁴ where it is shown that the 2000 Trust was intentionally secreted from the carrier by SPALLINA, TESCHER, TED and PAM as it did not suit their ends to produce the document as it cut certain parties out any benefits.
98. This concealment of pertinent evidence constitutes a fraud on the court and the beneficiaries and other interested parties who have been damaged by this intentional and with scienter obstruction and this deserves both sanctions and reporting of the intentional fraud on the court and others to the proper authorities by the long and strong arm of the law exercised through this Court.
- b. Following the death of Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;

ANSWER

99. The "drafts" of the alleged 95 Legally Nonexistent Unexecuted Trust prove that there is no legally executed trust that allows Plaintiff to have standing in these matters and have no legal basis to attempt to act as a contingent beneficiary.
100. The "drafts" while alleged to have been done by Hopkins and Sutter law firm before they were acquired by Foley & Lardner, LLP are suspiciously missing any law firm markings to

²⁴ TED'S Deposition - Exhibits 1, 2 and 23 (Simon Bernstein 2000 Insurance Trust dated August 15, 2000) and Testimony Pages 37-53. 82-87
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

identify their work and one of the drafts was supposedly created on the date the trust was signed and has missing information and blank spots, no law firm markings or letters accompanying the alleged draft and appear to have come off David Simon, an interested party in this litigation computer.

101. Simon Bernstein's intent on the day he died cannot be known but prior to his death his intent is clear from the evidence in his estate plans which was to have TED and PAMELA SIMON excluded from any inheritances and Simon had considered them predeceased with his wife Shirley from all trusts while living in 2008.

c. Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee;

102. Each of the "Consenting Children" have conflicted interests with their own children in these matters as if this Action is successful each child will receive 1/5th of the missing policy benefits and if unsuccessful in this Action all of them will receive nothing from the missing policy. If the estate is successful in this Action and the beneficiaries are determined to be Simon's grandchildren again the children will get nothing. The beneficiaries of the Estate and Trusts of Simon Bernstein are all in question in the probate court due to the frauds committed by TED'S former counsel and former fiduciaries of the Estate and Trusts of Simon Bernstein, TESCHER and SPALLINA. Finally, the grandchildren may not be beneficiaries in Simon's Estate either as the dispositive documents have been challenged and have already been found by Governor Rick Scott's Notary Public Division to have been improperly notarized and they are alleged fraudulent and under ongoing investigations.

103. TED would again not be a qualified trustee as he is conflicted and adverse to beneficiaries of the Estate due to his direct interest in the outcome of this Action.

- d. The beneficiary of the Policy Proceeds is the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;

ANSWER

104. The beneficiary remains disputed and unknown at this time, even according to the Court's recent Order denying Eliot's claim for emergency interim distribution until resolution of the beneficiaries is determined.

105. There are no "Policy Proceeds" as there has not been produced a legally binding policy at this time.

106. There is no 95 Legally Nonexistent Unexecuted Trust that has standing as a Plaintiff or as an alleged beneficiary.

- e. The beneficiaries of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 are the five adult children—Ted Bernstein, Pamela B. Simon, Eliot I. Bernstein, Jill Iantoni and Lisa Friedstein--to share equally;

ANSWER

107. There is no legally valid 95 Legally Nonexistent Unexecuted Trust and thus the alleged beneficiaries are not legally valid.

- f. That upon entry of the Order counsel, Adam M. Simon, shall be authorized to present the judgment to the Registry of the Court and have the Registry distribute the Policy Proceeds in a check payable as follows: "The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";

ANSWER

108. That if the Court were to rule in favor of the 95 Legally Nonexistent Unexecuted Trust than Eliot would request that due to the disputes with the other beneficiaries and their attempts to deprive Eliot through fraud of his inheritance in multiple schemes currently under

investigation and some proven already, Eliot would request any share be paid directly to him.

109. There are no “Policy Proceeds” as no legally binding policy has been produced to this Court by any party.

- g. Adam M. Simon shall deposit the Policy Proceeds in The Simon Law Firm Client Trust Account and then disburse the Policy Proceeds as follows:
 - i. First to the payment of attorney Adam M. Simon’s fees and costs;
 - ii. Second, \$5,000.00 shall be retained in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance of the \$5,000.00 after payment of such expenses shall be distributed to the five adult children in equal shares;
 - iii. The balance to be split equally among the five adult children of Simon Bernstein;
 - iv. Each Beneficiary that receives a share of the Policy Proceeds shall execute and deliver to the Adam M. Simon a signed receipt for such payment; and
 - v. Following the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.”

ANSWER

110. N/A

- h. Movants and Third-Party Defendants are granted leave to file a dispositive motion as to Eliot’s Claims within sixty days;

ANSWER

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111. N/A

- i. Movants are entitled to such further relief as this court may deem just and proper.

ANSWER

112. N/A

LINE BY LINE OBJECTIONS TO:
20150327 MOTION FOR SUMMARY JUDGEMENT MOVANT STATEMENT OF
FACTS

THE PARTIES

“The following is a review of the Parties (and entities named as potential parties) listed on the Civil Docket for this matter:”

1. Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counterdefendant to Eliot’s Claims. The Bernstein Trust is represented by counsel, Adam M. Simon. (Ex. 30, Aff. of Ted Bernstein, ¶21).

ANSWER

113. There is no executed legally valid 95 Legally Nonexistent Unexecuted Trust that can act as

Plaintiff in this matter and as an alleged Contingent Beneficiary. The insurance carrier

HERITAGE already declined to pay the proceeds to the legally nonexistent 95 Legally

Nonexistent Unexecuted Trust for failure to produce an executed copy of the said trust.

114. Counsel, A. Simon cannot represent a legally non-existent trust.

115. TED cannot act as alleged “Trustee” of a legally non-existent trust.

2. Bank of America, N.A. (“Bank of America”), was named a party to Heritage’s counterclaim for Interpleader. Bank of

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America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014. (Dkt. #97; Ex. 30, Aff. of Ted Bernstein, ¶22)

ANSWER

116. N/A

3. Eliot Bernstein (“Eliot”) was named a Party by virtue of Heritage’s counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well (“Eliot’s Claims”). Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter. (Ex. 30, Aff. of Ted Bernstein, ¶23)

ANSWER

117. N/A

4. United Bank of Illinois, now known as PNC Bank, was named as a Third-Party Defendant in Heritage’s counterclaim for Interpleader. PNC Bank was served on August 5, 2013, and has never filed an appearance or answer. (Dkt. #25; Ex. 30, Aff. of Ted Bernstein, ¶24)

ANSWER

118. This failure to answer is cause for further discovery.

119. I, Eliot Bernstein, should be granted Court Ordered Discovery as I cannot gain discovery to United Bank of Illinois since I am not an Executor/Personal Representative or Trustee.

5. Simon Bernstein Trust. N.A.” was named a Party to Heritage’s counterclaim for interpleader. “Simon Bernstein Trust, N.A.”, however, is merely a misnomer by the Insurer as a result of a data entry error in the database of the Insurer. There is no evidence that any entity exists or was formed under the name “Simon Bernstein Trust. N.A.” No one submitted a claim to the Policy Proceeds with the Insurer on behalf of an entity named “Simon Bernstein Trust, N.A.” (Ex. 29, Aff. of Don Sanders, ¶69 and ¶78).

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ANSWER

120. The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally nonexistent “Policy” that is the subject contract of this Breach of Contract Lawsuit filed by the Plaintiff and where Sanders testimony could be construed as efforts to cover up for said liabilities resulting from losing an insurance policy, an unheard of event in insurance that would expose the carrier Jackson National Life to a variety of liabilities to beneficiaries and others.
121. There is evidence in production that shows that Simon Bernstein requested and was given the exact name of the beneficiaries, which were the Primary as LASALLE and the Contingent as Simon Bernstein Trust, NA in 2010 and Simon did not respond to the names as incorrect and the insurance carrier referred to no truncation or abbreviation of the Contingent Beneficiaries name in their letter.
122. SANDER’S statement that the name “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” was truncated by a computer system due to length or entered in error by an employee and thus was transformed into “Simon Bernstein Trust, N.A.” does not fit any known computer system software that truncates data strings by eliminating the end of strings after the maximum character recognition is exceeded. Where the name of the beneficiary is not subject to interpretation by employees as the beneficiaries name must be exact and the beneficiary forms must be attached to the executed policy contract, which at this time no legally valid insurance contract has been produced to confirm SANDER’S claims and thus needs further discovery and litigation.

123. That there are frauds that have already been proven in the Estate and Trusts of Simon and Shirley Bernstein and there are missing trusts and other documents in the Estates and Trusts of Simon and Shirley Bernstein and Ted Bernstein according to his deposition testimony does not know what he did with a mass of dispositive documents brought to him minutes after his father died and these documents may have additional information that is intentionally being secreted from beneficiaries, the insurance carrier and this Court for Plaintiffs to attempt to steal off with the insurance proceeds deposited with the Court.

6. Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. Ted Bernstein, is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to Eliot's Claims. Ted Bernstein is the eldest of the five adult children of Simon Bernstein. Ted Bernstein is represented by counsel, Adam M. Simon. (Ex. 30, Aff. of Ted Bernstein, ¶25)

ANSWER

124. TED is not a valid "Trustee" of the 95 Legally Nonexistent Unexecuted Trust as there is no legally executed and binding trust document produced.

125. No retainer of A. Simon's services has been produced to beneficiaries. Since there is no 95 Legally Nonexistent Unexecuted Trust produced, the acts of the alleged Trustee and his counsel are legally invalid and where neither the alleged Trustee or his alleged Counsel are acting within the law.

126. TED retained SPALLINA as his counsel to file the fraudulent claim to the insurance carrier, whereby SPALLINA claimed to be the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust and the claim was DECLINED by the carrier leading to this Breach of Contract lawsuit and then TED retained A. Simon as his counsel and with no notice to the alleged

beneficiaries became suddenly the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

127. That TED was advised by his own counsel SPALLINA that he had no standing to file this lawsuit. TED then retained his sister Pam’s husband’s brother, Adam Simon, to represent him as the new Trustee. Where Adam Simon is partner with his brother David Simon in a law firm that primarily worked for Simon Bernstein in his offices since each graduated college and where David Simon and his firm stand to benefit directly from this action not only from legal fees but D. Simon will get with his wife Pamela 1/5th of the proceeds if this lawsuit is successful for Plaintiffs.

128. Similar to TED, is his sister Pamela Bernstein-Simon, who both were considered predeceased in the Estates and Trusts of Simon and Shirley Bernstein and if the monies are paid to the Estate or other vehicles and not the 95 Legally Nonexistent Unexecuted Trust, both stand to get nothing for them or their families. Their children may be beneficiaries but that is still to be determined via ongoing probate and trust actions due to the FRAUD that has occurred by TED and his counsel TESCHER and SPALLINA and others.

7. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage’s counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank’s alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (Dkt. #44; see also JP Morgan Chase Bank at Par. 12 below; Ex. 30, Aff. of Ted Bernstein, ¶26)

ANSWER

129. The fact that Plaintiffs claim that JP Morgan Chase Bank is an “alleged” successor calls for further discovery in these matters.

8. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon. (Ex. 34, Aff. of Lisa Friedstein, ¶2, ¶3, ¶6 and ¶23)

ANSWER

130. N/A

9. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon. (Ex. 33, Aff. of Jill Iantoni, ¶2, ¶3, ¶6 and ¶23)

ANSWER

131. N/A

10. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon. (Ex. 31, Aff. of Pam Simon, ¶2, ¶3, ¶6 and ¶38.)"

ANSWER

132. N/A

11. Heritage is the successor Insurer to Capitol Banker Life Insurance Company that originally issued the Policy in 1982. Heritage was terminated as a party on February 18, 2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court pursuant to an Agreed Order. The amount of the Policy Proceeds (plus interest) on deposit with the Registry exceeds \$1.7 million. (Dkt. #101 and Ex. 30, Aff. of Ted Bernstein, ¶30 and Ex. 2.)

ANSWER

133. From the Idaho Department of Insurance @

<http://www.doi.idaho.gov/insurance/Succession.aspx?AID=1315>

The Certificate of Authority #1315 belongs to an active company with former names.

Start	End	Former Names
12/29/1980	12/12/2000	CAPITOL BANKERS LIFE INSURANCE COMPANY
12/12/2000	8/29/2008	ANNUITY & LIFE REASSURANCE AMERICA, INC.
8/29/2008		HERITAGE UNION LIFE INSURANCE COMPANY (1315)

134. That information from Annuity & Life Reassurance America has not been obtained in this lawsuit and they may have retained copies of the missing insurance policy and thus need for further discovery. Eliot cannot obtain this information as he is not an Executor/Personal Representative of the Estate and Trusts of Simon.

135. JACKSON is believed to have then acquired HERITAGE and entered this case on behalf of HERITAGE and then suddenly disappeared after depositing funds in the court registry.

136. HERITAGE when interpleading the funds to this Court misled this Court to believe that there was a valid binding life insurance policy with “Policy Proceeds” equal to the amount interpled, when factually they failed to produce such policy showing that this in fact was the correct amount stated in the legally binding contract that remains missing.

137. There can be no “Policy Proceeds” without a legally binding policy produced and this is misleading.

138. There are conflicting evidences of the amount of insurance of the missing policy²⁵.

²⁵ HERITAGE application to increase Death Benefit from 2 to 3 Million.

12. J.P. Morgan Chase Bank, N.A., (“J.P. Morgan”) was named as a Third-Party Defendant by virtue of Heritage’s counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan, as a successor to First Arlington National Bank (described above). J.P. Morgan filed an appearance and answer to Heritage’s counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation, and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014. (Dkt. #105; Ex. 30, Aff. of Ted Bernstein, ¶31)

ANSWER

139.N/A

13. William Stansbury filed a motion to intervene in this action, but his motion to intervene was denied, and he was terminated as a non-party intervenor on January 14, 2014. (Dkt. #74; Ex. 30, Aff. of Ted Bernstein, ¶32)

ANSWER

140.N/A

14. Adam M. Simon is counsel for the Bernstein Trust and four of the five adult children of Simon Bernstein. Adam M. Simon is not counsel for the fifth adult child, Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot’s Claims. Adam M. Simon is the brother-in-law of Pam Simon, and the brother of David B. Simon. (Ex. 30, Aff. of Ted Bernstein, ¶33)

ANSWER

141. That Adam Simon representing the Trustee and the beneficiaries appears conflicted.

15. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. There is no record of Eliot having

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

obtained service of process upon National Service Association, Inc. because it is dissolved and has been for over 7 years. (Ex. 30, Aff. of Ted Bernstein, ¶34; Ex. 21)

ANSWER

142. N/A

16. Donald R. Tescher, Esq. was named a Third-Party Defendant to Eliot's Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's claims on March 17, 2014. (Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶35)

ANSWER

143. N/A

17. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims. (Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶36)

ANSWER

144. N/A

18. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.

ANSWER

145. N/A

19. David B. Simon is the husband of Pam Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon. (Ex. 32, Aff. of David Simon, ¶20 and ¶29)

ANSWER

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146. N/A

20. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was dissolved on April 3, 1998. (Ex. 30, Aff. of Ted Bernstein ¶39; Ex. 35; Dep. of David Simon, p. 51:13-18 and Ex. 9)

ANSWER

147. N/A

21. S.B. Lexington, Inc. Employee Death Benefit Trust (the “VEBA Trust”) was named a Third-Party Defendant by virtue of Eliot’s Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 concurrently with the dissolution of S.B. Lexington, Inc. (Ex. 35, Dep. of David Simon, p. 51:13-18 and Ex. 9; Ex. 30, Aff. of Ted Bernstein, ¶40)

ANSWER

148. The Primary Beneficiary LASALLE was the trustee and administrator for the VEBA plan that the missing policy is a part of according to the records produced and thus LASALLE or its Successors must be contacted by the carrier as they remain the Primary Beneficiary.

149. What happened on dissolution of the VEBA to the assets of the VEBA, including any insurance benefits and policies, where the insured’s chosen beneficiaries of the policies issued for the VEBA were defined through the VEBA plan not by the missing policy’s named beneficiaries, which was LASALLE and Simon Bernstein Trust, NA. The VEBA plan trust must be produced to know the plan beneficiaries and what happens to the VEBA trust assets upon dissolution and this needs further discovery or litigation to determine.

22. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot’s Claims. Robert Spallina is a partner of in the firm of

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Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014. (Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶41)

ANSWER

150. N/A

23. S.T.P. Enterprises, Inc. was named a Third-Party Defendant to Eliot's Claims. S.T.P. Enterprises, Inc. has filed an appearance and responsive pleading and is represented by counsel, Adam M. Simon. (Dkt. #47; Ex. 31, Aff. of Pam Simon, ¶25)

ANSWER

151. N/A

24. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation formed by Simon L. Bernstein. National Service Association, Inc. (Florida) was named a Third-Party Defendant in Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) dissolved in 2012. (Ex. 30, Aff. of Ted Bernstein, ¶42; Ex. 22)

ANSWER

152. It appears that this corporation was dissolved by TED immediately after his father died and no records of this entity have been turned over to beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein in Florida and thus further discovery needs to take place or further litigation to determine what assets were in this entity.

25. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation. (Dkt. #121). Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014. For purposes of this motion, Movants refer to this party as the "Estate of Simon Bernstein"

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or the “Estate”. (Dkt. #126; Ex. 30, Aff. of Ted Bernstein ¶¶43-
¶44)

ANSWER

153. That Adam Simon represented Ted Bernstein as an alleged trustee of the 95 Legally Nonexistent Unexecuted Trust and filed opposition pleadings to block the entry of the Estate of Simon from intervening in this lawsuit. This was done in conflict and with improper representation as TED was simultaneously acting as Trustee for a Simon Bernstein Trust in Florida that would also possibly receive the proceeds and where Ted alleges to be a beneficiary of the 95 Legally Nonexistent Unexecuted Trust who stands to gain 20% of any proceeds paid and where TED and/or his children may get nothing if the proceeds are paid to the Estate and Trust beneficiaries in Florida, once those beneficiaries are determined. In no event will TED receive benefits if not paid through the 95 Legally Nonexistent Unexecuted Trust scheme in this Action.
154. That this conflict of TED’S that led him to file opposition papers to the Estate being joined in these matters has caused delays in the Estate being represented in these matters, compounding the delays in inheritances caused by TED’S prior counsel and the prior fiduciaries of the Estate of Simon, Co-Executors/Personal Representatives and Co-Trustees, TESCHER and SPALLINA, who intentionally blocked the Estate and Trust of Simon from entering this case (working against the interest of the Estate and Trust beneficiaries), as they were working as TED’s counsel to convert the proceeds through the 95 Legally Nonexistent Unexecuted Trust scheme whereby TESCHER and SPALLINA filed the fraudulent insurance claim that led to this Breach of Contract Lawsuit in efforts to defeat their clients they represented in the Estate of Simon to benefit TED instead. Where the claim asserted by the Plaintiff is that the insurance company breached the missing insurance contract terms

by failing to pay the fraudulent death benefit claim submitted by TESCHER and SPALLINA and where SPALLINA represented that he was the trustee of the 95 Legally Nonexistent Unexecuted Trust that TED now claims to be the alleged Trustee of in this lawsuit.

155. That due to these intentional delays and interferences with expectancies both Eliot and the Estate have been denied proper time to fully complete discovery and thus discovery must be extended, especially where it was intentionally interfered with to attempt to close this Action before allowing known possible beneficiaries to participate. At this time, none of the grandchildren, including minor children are represented in this case by counsel, except Eliot's children who are represented Pro Se by Eliot.

I. THE POLICY AND POLICY PROCEEDS

26. In 1982, Simon Bernstein, as Insured, applied for the purchase of a life insurance policy from Capitol Bankers Life Insurance Company, issued as Policy No. 1009208 (the "Policy"). A specimen policy and a copy of the Schedule Page of the Policy are included in Movant's Appendix to the Statement of Facts. (Ex. 29, Aff. of Don Sanders at ¶38, ¶39, ¶48, ¶52; Ex. 5). The amount of the Policy Proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. (Dkt. #101 and Ex. 30, Aff. of Ted Bernstein, ¶30 and Ex. 2.)

ANSWER

156. A specimen policy was provided, which is not a legally valid executed and legally binding copy of the actual insurance policy that is subject of this lawsuit. A specimen policy is an insurance carrier policy submitted to each state the policy is being applied for in as a sample of what a policy will look like for a consumer.

157. There is no policy presently produced or proven by Plaintiffs so no "Policy Proceeds" can be determined from a specimen and the attempt to define the specimen as the actual

“Policy” on Simon is misleading to the Court and requires further discovery as to where the actual policy is.

158. That the affidavit of SANDER’S states that the specimen policy amount of insurance is not the correct amount and would not be the amount stated in the missing life insurance contract and this is cause for further discovery and litigation into what exactly the missing policy death benefit amount is.

159. That the Specimen policy also contains no beneficiaries of the missing policy as the beneficiaries are not defined thereunder.

27. The Capitol Bankers Life Insurance Application, dated March 2, 1982 designates Simon Bernstein, as the Insured and lists S.B. Lexington as his employer. On page one of the Application, the Owner of the Policy is designated as follows: “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”. (Ex. 29, Aff. Don Sanders, ¶48; Ex. 3)

ANSWER

160. The application is not complete as submitted in production as parts appear missing, a verified copy would need to be obtained showing the entire document and cause for further discovery.

161. Don Sanders affidavit is in question due to conflicts and adversity.

162. There is alleged evidence that shortly before his death Simon’s policy lapsed and was reinstated, a new application was taken and appears missing from the records which may also contain new application information pertinent to this lawsuit and the reinstatement should have caused a new or reinstated policy to be produced as indicated in letters to Simon by HERITAGE and this lack of a reinstated policy is highly suspect that this information is missing from the carriers production.

28. Also, on page one of the Application the beneficiary was designated as follows: “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”. (See Ex. 3--Part 1 of application); and (ii) Premium notices were to be sent to S.B. Lexington Inc. Employee Death Benefit Plan and Trust c/o National Service Association, Inc., 9933 Lawler Ste. 210, Skokie, IL 60077; and (iii) Simon Bernstein’s occupation was listed as an Executive with S.B. Lexington, Inc.; (iv) Simon Bernstein was the insured and on the application his residence address was in Glencoe, Illinois and he was a citizen of the state of Illinois; and (v) Simon Bernstein was the listed as the selling agent on the application; (vi) the application was signed in Illinois; and (vii) the Policy would have been delivered by the Insurer via its agent to the initial Policy Owner. (Ex. 29, Aff. Don Sanders, ¶48, Ex. 31; Aff. Pam Simon, ¶¶21-¶23; Ex. 3)

ANSWER

163. This application is not known to be the actual application of the policy as no policy is produced at this time proving what application is attached to the policy, especially after alleged re-issue and where insurance contracts, policies, have attached to them the policy applications as part of the legally required contractual documents attached to the issued policy. Therefore, this evidence is questionable and needs further discovery to determine if in fact this application was the defining application of the original issued policy. The final application is required to be attached to the policy.

164. (ii) The records and policies for the VEBA plan participants are sent to Simon’s companies and office location at that time, as the policies were sold by Simon and the VEBA was administered with many other VEBA policies he sold through the trust company he established (Simon was the founder of death benefit VEBA programs and the leading broker nationwide in such sales.)

165. (iii) Simon Bernstein was an executive and leading insurance salesman nationwide who brokerage sold billions of dollars of life insurance premium.
166. (iv) N/A
167. (v) N/A
168. (vi) N/A
169. (vii) This would indicate that the missing policy should be with the original owner or its successors and would require additional discovery to determine where it is, although it is the ultimate responsibility of the insurance carrier to maintain a copy of the actual policy and policy records according to law and underwriting and administrative procedures, as well as would be required by any reinsurers that risk was ceded to.

II. THE S.B. LEXINGTON EMPLOYEE DEATH BENEFIT TRUST THE “ V E B A ”)

29. The S.B. Lexington Employee Death Benefit Trust was a Voluntary Employee Benefit Trust (“VEBA”) established by S.B. Lexington, Inc. to provide death benefits to the beneficiaries of its employees. The Policy was purchased by the VEBA, with the VEBA listed as both owner and beneficiary of the Policy on the application. The Policy would have been delivered by the agent (Simon Bernstein) to the Owner at the offices of its Bank trustee in Illinois. (Ex. 3; Ex. 31, Aff. Pam Simon, ¶21-¶23); Ex. 30, Aff. Ted Bernstein, ¶56 and ¶57; Ex. 29, Aff. Don Sanders ¶48)

ANSWER

170. That the VEBA information is critical to the payment of any proceeds of any policy once one is found, as LASALLE being the Trustee for the primary beneficiary of the VEBA plan would then have specific duties to pay beneficiaries determined in the VEBA plan by the employees to their named **plan** beneficiaries.

171. That if LASALLE dissolved the VEBA the benefits would be allocated according to law and the terms of the VEBA trust and again why further discovery is necessary to determine the role of the Primary Beneficiary and its obligations under the VEBA plan upon dissolution.

172. That the VEBA information and copies of the trust should be maintained as well by Pam and David Simon who ultimately controlled the administration of the many VEBA plans sold by Simon Bernstein and thus should have been produced in these matters but have not been.

173. It is alleged that the VEBA plan or its Successor plan may have had over \$50,000,000.00 of assets in it as late as 2009²⁶.

30. Part 1 of the application for the Policy indicates that First Arlington National Bank, was acting as Trustee of the VEBA. As part of the application and underwriting process, a company named Equifax conducted an interview with Simon Bernstein about his application for the Policy. The Equifax report states that Simon Bernstein told the investigator the Policy would be owned by the VEBA, that (i) the insurance [benefits] would be paid to the VEBA, (ii) the VEBA would determine to whom the benefits are paid, and (iii) the benefits are normally paid to family members. (Ex. 29, Aff. Don Sanders ¶48, ¶74-¶75; Ex. 3 and Ex. 20)

ANSWER

174. This statement contradicts Plaintiffs' own claims that a contingent beneficiary (with a different name than the insurance company's own records which claim the contingent to be Simon Bernstein Trust, NA) should be paid while the primary beneficiary LaSalle National

²⁶ S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A showing 50 Million + of assets in 2009

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/SBLexingtonDeathBenefitPlanUnitedBankOfIllinois.pdf>

Trust, NA is according to the carrier of the nonexistent policy the Primary Beneficiary and where Equifax was told the VEBA would be responsible for paying the insurance benefits.

31. On June 5, 1992, Sandy Kapsa (an employee of S.B. Lexington and an affiliated company, National Service Association, Inc.) submitted a letter to Capitol Bankers Life Insurance Company informing them that LaSalle National Trust was being appointed successor trustee of the VEBA. On June 17, 1992, the Insurer acknowledged the change of trustee listing the owner of the Policy as LaSalle National Trust, N.A., as Successor Trustee. (Ex. 31, Aff. of Pam Simon, ¶31, and Ex. 7)

ANSWER

175. N/A

32. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named the Bernstein Trust as the “person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and Adoption Form adopted by my Employer.” (Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)

ANSWER

176. That while this may have been the initial VEBA plan beneficiary designated by Simon there is evidence, including a 2000 Insurance Trust and the subsequent Simon Bernstein Trust NA that would suggest that Simon had changed the beneficiary of the VEBA plan and this would need discovery from LASALLE through its successor, Chicago Title to determine who the VEBA plan beneficiary now is.

33. On or about November 27, 1995, Capitol Bankers received a “Request Letter” signed by LaSalle National Trust, N.A. in their capacity as Trustee of the VEBA which owned the Policy, and the following policy changes were made a part of the Policy by way of endorsement issued by the Company: LaSalle National Trust, N.A. as Trustee (the “VEBA”) was designated as the Primary Beneficiary of the Policy; and The Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 (the “Bernstein

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Trust”) was designated the contingent beneficiary. According to the Insurer’s records, the VEBA and the Bernstein Trust were the primary and contingent beneficiaries of record on the date of death of the Insured. (Ex. 29, Aff. of Don Sanders, ¶56, ¶64 and Ex. 8)

ANSWER

177. According to the Insurance records the Primary beneficiary was LASALLE and the contingent beneficiary was not the “Bernstein Trust” aka 95 Legally Nonexistent Unexecuted Trust as alleged by Plaintiffs but in fact the Simon Bernstein Trust, NA.

178. Again with a legally existent Primary Beneficiary the Contingent Beneficiary does not even become a viable recipient of the death benefit, which could make Summary Judgement more fraud if the Contingent is paid while the parties all knew of an existing Primary Beneficiary.

179. At death the VEBA was the Primary Beneficiary according to this account.

34. On November 27, 1995, Capitol Bankers sent correspondence acknowledging the change in beneficiary referenced above in Par. 33, and that correspondence was sent to “LaSalle National Trust, N.A., as Successor Trustee”. (Ex. 29, Aff. of Don Sanders, ¶60 and Ex. 8)

ANSWER

180. SANDER’S affidavit has claimed to be steeped in conflict as his employer JACKSON has a vested interest in the outcome of the litigation, especially if they have lost the insurance contract and are exposed to liabilities resulting from such loss.

35. The records above establish that First Arlington National Bank, N.A., and LaSalle National Trust, N.A. were original and successor trustees of the VEBA, respectively. This is confirmed by Pamela B. Simon who worked on the VEBA insurance program for both S.B. Lexington and NSA. (Ex. 31, Aff. of Pam Simon, ¶22 and ¶31)

ANSWER

181. N/A

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36. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved by its shareholder(s), and the VEBA was likewise terminated at this time. (Ex. 9). As a part of the dissolution, ownership of the Policy was changed from the VEBA to Simon Bernstein, individually. (Ex. 31, Aff. of Pam Simon, ¶36; Ex. 9 and Ex. 10)

ANSWER

182. The dissolution papers are missing to confirm the veracity of Pam's affidavit which violates

the Il Dead Man's Act as it relates to the "shareholders" of which Simon was one.

183. While it is claimed that the owner was changed from LASALLE it is not claimed that the

Primary Beneficiary was changed from LASALLE and again this would make LASALLE

the beneficiary of the proceeds of the missing/lost/suppressed contract.

37. Neither First Arlington National Bank nor LaSalle National Trust, N.A. have made any claim to the Policy proceeds. First Arlington National Bank's successor-in-interest, J.P. Morgan Bank filed a responsive pleading and then a motion for judgment on the pleadings disclaiming any interest in the Policy Proceeds and requesting to be dismissed from the litigation. J.P. Morgan's motion was granted and it was dismissed as a party on March 12, 2014. (Dkts. #60 and 105)

ANSWER

184. Note that no efforts were made to contact LaSalle National Trust NA or its Successor by

HERITAGE or any party to this lawsuit and thus further discovery and litigation of these

matters is still necessary and the insurance company must be rejoined as an indispensable

party and this Court demand they answer why they have failed to contact the Primary

Beneficiary.

38. None of the Bank Parties whose names appear on the docket have tendered a claim to the Insurer for the Policy proceeds. (Ex. 29, Aff. of Don Sander, ¶77(b))

ANSWER

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185. The only party with claims to the benefits of the missing policy would according to insurance company records would be the primary beneficiary LaSalle National Trust, NA.

186. That documents are missing in the Estate and Trusts of Simon Bernstein and thus it is highly probable that like the 2000 Insurance Trust that was secreted from this Court the alleged Contingent Beneficiary by HERITAGE, the Simon Bernstein Trust NA is also being suppressed and secreted by Plaintiffs in their efforts to fraudulently convert the monies.

39. The docket also reflects that none of the Bank Parties whose names appear on the docket in this matter have filed a claim in this litigation for the Policy Proceeds.

ANSWER

187. LASALLE or its successors would appear to be the only financial institutions with claims to the litigation proceeds and the carrier nor any parties in this litigation have notified LASALLE or its successors they are the Primary Beneficiary of an alleged insurance policy death benefit.

III. MOVANTS' CLAIMS TO THE POLICY PROCEEDS

40. On or about June 21, 1995, Simon Bernstein as Grantor formed the Simon Irrevocable Insurance Trust dtd 6/21/95. Simon Bernstein, appointed his wife, Shirley Bernstein, as Trustee of the Trust. (Ex. 32, Aff. of David B. Simon, ¶30; Ex. 19)

ANSWER

188. Even if this were the case, this 95 Legally Nonexistent Unexecuted Trust would be only a Contingent Beneficiary and there is still a Primary Beneficiary and then there is the 2000 Proskauer Trust that supersedes the 95 Legally Nonexistent Unexecuted Trust and then there is a Simon Bernstein Trust, NA that supersedes the 95 Legally Nonexistent Unexecuted Trust as Contingent Beneficiary as of the year 2010 and confirmed by Simon Bernstein as such.

41. On June 21, 1995, the date of the Trust Agreement, David Simon assisted Shirley Bernstein to obtain a tax identification number for the Bernstein Trust. The tax identification number for the Bernstein Trust is X5-XXXX916. In order to obtain the tax identification number David Simon completed an IRS SS-4 form. Shirley Bernstein is identified as trustee of the Bernstein Trust and Shirley's signature, and the name of the Bernstein Trust also appear on this SS-4 form. (Ex. 32, Aff. of David Simon at ¶30; Ex. 19)

ANSWER

189. That this new information leads one to need discovery to get all the tax records regarding the VEBA trust and tax records for the missing 95 Legally Nonexistent Unexecuted Trust and tax records for all of the other trusts involved.
190. It should be noted that the Curator of the Estate of Simon who replaced TESCHER and SPALLINA, attorney at law Benjamin Brown, Esq. ("Brown") had requested from the IRS over a year ago tax returns for Simon and Shirley individually and for entities they owned and only days after he stated he thought he had received them, he unexpectedly died at age 49 from a heart attack. Upon receiving records from Brown, O'CONNELL the Personal Representative that replaced Brown stated the long anticipated tax returns were not with the records Brown turned over. Several months ago O'CONNELL stated his firm had ordered new "certified" copies of the tax returns and they would be produced shortly but as of this date they have not been produced to any parties. This is further reason that discovery should be continued as the tax returns will provide valuable information that may influence the outcome of this litigation.

42. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named the Bernstein Trust as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and Adoption Form

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adopted by my Employer.” Simon Bernstein’s signature and the name of the Bernstein Trust appear on this document. (Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)

ANSWER

191. This may be true at that time in 1995 but again this would only show that the VEBA controls whom the beneficiary would be and with LASALLE still the Primary Beneficiary this indicates that even if the VEBA had been dissolved as alleged, the VEBA trust provided that LASALLE or its Successor would pay the former VEBA plan participants benefits after dissolution of the VEBA.

192. That again even if proved that the 95 Legally Nonexistent Unexecuted Trust existed and were valid it would still be only a Contingent Beneficiary. Again, there are competing claims that the Contingent Beneficiary was changed by Simon to the Simon Bernstein Trust NA.

43. As of August 26, 1995, the VEBA was the owner and primary beneficiary of the Policy, and on August 26, 1995, Simon Bernstein’s execution of the VEBA Beneficiary Designation form evidenced his intent that the Policy proceeds flow through the VEBA to the Bernstein Trust. (Ex. 31, Aff. of Pam Simon, ¶32 and ¶35; Ex. 30, Aff. of Ted Bernstein; ¶65- ¶67; Ex. 4)

ANSWER

193. Here the Plaintiffs are claiming the benefits are paid to the VEBA Trust through LASALLE as the Primary Beneficiary to then be paid by LASALLE to the VEBA and the administrator would then pay the VEBA plan participant's beneficiary election, which they claim is the missing 95 Legally Nonexistent Unexecuted Trust. In this scenario, the 95 Legally Nonexistent Trust would not be listed as the Contingent Beneficiary on the insurance

contract, as apparently, according to the records produced it has never been named as the Contingent Beneficiary on the missing contract.

44. The next Policy change in November of 1995, as described in Par. 32 above, again confirmed Simon Bernstein's intent with regard to the death benefit proceeds. The primary beneficiary he named was the VEBA and Simon Bernstein's beneficiary of the VEBA was the Bernstein Trust. In addition, the Bernstein Trust was designated as contingent beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶56, ¶57 and ¶62; Ex. 8). Movants have included a diagram, explained in the Aff. of Ted Bernstein illustrating Simon Bernstein's intent with regard to the ultimate beneficiaries of the Policy Proceeds. (Ex. 30, Aff. of Ted Bernstein ¶106; Ex. 17).

ANSWER

194. Simon's intent changed over time and at the time of his death he had removed Ted and Pam from receiving any benefits of the Estate planning Trusts of Simon and they were considered predeceased.

195. Simon Bernstein's intent as of 2000 was more defined in the 2000 Proskauer Insurance Trust that at that time would have been the beneficiary and the 95 Legally Nonexistent Unexecuted Trust would have replaced it.

196. Simon Bernstein's intent as of 2010 was more defined when he confirmed with HERITAGE that the Contingent Beneficiary was the Simon Bernstein Trust NA.

45. The Policy Records indicate that on April 23, 2010, Heritage sent Simon Bernstein a letter in response to Simon Bernstein having contacted Heritage. (Ex. P. 36). The letter provides confirmation to Simon Bernstein that the primary beneficiary is the VEBA, listed as LaSalle National Trust as Trustee, and the letter states that the contingent beneficiary is "Simon Bernstein Trust, N.A."

ANSWER

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197. This evidence contradicts Plaintiffs claims that the missing policy Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust.

46. According to the Policy records as confirmed by the testimony of Don Sanders, the misnomer “Simon Bernstein Trust, N.A.” was an error or abbreviation of the name of the actual Contingent Beneficiary, “Simon Bernstein Insurance Trust dated 6/21/95”. Don Sanders also confirmed that there is no change of beneficiary in the Policy records that was submitted by an Owner designating Simon Bernstein Trust, N.A. as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders, ¶¶71-¶72, and Ex. P. 36)

ANSWER

198. SANDERS statement is made on hearsay evidence as he does not claim to be the party responsible for the error in entering the full formal name of the beneficiary. SANDERS also states that it is common practice for the insurance carrier to rename a beneficiary to an entirely different name and retain no formal evidence of the actual name of the contingent beneficiary.

199. That SANDERS statements are based on the records he reviewed but it is OBVIOUS that the records reviewed are missing key pertinent records, including but not limited to, THE ACTUAL POLICY, copies of the trusts and more and so his statements are based on an incomplete set of records.

200. Simon Bernstein allegedly requested confirmation of the beneficiaries and the letter was sent indicating the Contingent Beneficiary as the Simon Bernstein Trust, NA, which to Eliot’s knowledge, no one has conducted investigation to see if this trust exists and there are ongoing investigations into missing and suppressed and fraudulent and altered estate documents ongoing that may materially affect the outcome of this case and make Summary Judgement Premature when records are released that are being withheld or suppressed.

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47. In 2011, the Policy had lapsed for non-payment of premium, and Simon Bernstein executed the paperwork necessary and paid the required premium to the Insurer to reinstate the Policy without making any change to the beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶56, ¶57 and ¶62; Ex. 30, Aff. of Ted Bernstein, ¶91-¶93; Ex. 13 and Ex. 14)

ANSWER

201. Exhibit 14 indicates that a NEW POLICY COPY was issued by the carrier and sent to Simon's home address. This would indicate that insurer would have had a recent COPY of the missing policy available at that time but did not retain a copy with their letter sent to Simon or produce the letter with the copy sent at that time.

202. The reinstated policy may differ than any other earlier policy in key areas such as face amount, beneficiaries, health ratings, etc., which could materially affect the outcome of this lawsuit.

203. If the Primary Beneficiary did not change at this time then LASALLE is the receiver of any monies resulting from this lawsuit or the policy if it is found at some point through further discovery.

48. That no party to this litigation, including movants and the Insurer, have been able to locate an executed original or copy of the Bernstein Trust Agreement. However, two unexecuted drafts of the Bernstein Trust have been located and produced by Movants in this litigation. (Ex. 30, Aff. of Ted Bernstein, ¶97-¶98; Ex. 32, Aff. of David Simon, ¶28 and ¶29; Ex. 31, Aff. of Pam Simon, ¶37; Ex. 15 and Ex. 16)

ANSWER

204. That a death benefit claim and this instant legal Action were both filed with NO DRAFT COPY in the possession of the alleged trustees of the 95 Legally Nonexistent Unexecuted

Trust for over a year until they magically appeared when the Court was demanding that an executed copy be found to give Plaintiffs standing.

205. That these unexecuted drafts are not legally binding in any way and thus do not give standing in this lawsuit and do not qualify to be paid beneficiaries, as indicated when the insurance carrier DECLINED the death benefit request filed by SPALLINA who could not produce an executed trust as required by the carrier.

49. In 1995, David B. Simon, Ted S. Bernstein, Pam Simon, and Simon L. Bernstein all shared common office space at 600 West Jackson Blvd., Ste. 800, Chicago, IL 60606, and all were engaged in the life insurance business. Simon Bernstein was a licensed life insurance agent for at least 30 years and owned and operated several insurance brokerages. (Ex. 30, Aff. of Ted Bernstein, ¶88; Ex. 32, Aff. of David Simon, ¶19, ¶20, and ¶24; Ex. 31, Aff. of Pam Simon, ¶33)

ANSWER

206. N/A

50. In 1995, David and Pamela Simon created irrevocable insurance trusts with the assistance of attorneys from the Chicago firm of Hopkins and Sutter. (Ex. 31, Aff. of Pam Simon, ¶34, Ex. 32, Aff. of David Simon, ¶23; Ex. 35, Dep. Of David Simon, p.41:7-41:10)

ANSWER

207. N/A

51. David B. Simon and Simon Bernstein discussed Simon Bernstein's desire to form a similar irrevocable insurance trust to protect his family. (Ex. 32, Aff. of David Simon, ¶24)

ANSWER

208. Illinois Dead Man rule disqualifies this affidavit statements relating to conversations or events involving Simon.

52. One unexecuted draft of what would become The Simon Bernstein Irrevocable Trust dated 6/21/95 include David Simon's handwritten notations which he made to show Simon Bernstein where his name and others would go in the trust. According to David Simon, Simon Bernstein went to the firm of Hopkins and Sutter and executed the Bernstein Trust Agreement. (Ex. 32, Aff. of David Simon, ¶28; Ex. 35, Dep. Of David Simon, p.40:17-41:1, and Ex. 16)

ANSWER

209. The draft has no law firm markings and is wholly unexecuted and is disputed as to its legal validity in toto and nothing within the document can therefore be relied upon.

210. Why would David Simon handwrite in names to show Simon where names go in the trust?

What significance does this have?

53. According to the terms of this draft of the Bernstein Trust Agreement, the proceeds in the trust were to be split into as many separate Trusts as there were "children of mine who survive me and children of mine who predecease me leaving descendants who survive me." (Ex. 32, Aff. of David Simon, ¶28; Ex. 16 at §7)

ANSWER

211. The terms of this draft are not binding if they are in fact a draft of the 95 Legally

Nonexistent Unexecuted Trust that to date does not exist in the Court record.

54. On David Simon's law firm database, David and Adam Simon located a computer file named "SITRUST" and the file date on the metadata for the file is June 21, 1995, the date of the Bernstein Trust. This draft contains virtually identical language to Ex. 16, and also directs that all proceeds be split by the surviving children of Simon Bernstein. (Ex. 32, Aff. of David Simon, ¶29; Ex. 15 at §7)

ANSWER

212. This document is an alleged draft on the date of the trust and yet no law firm has markings upon the document. There are other problems with the datafile that put it in dispute as a valid document.

213. The File Created date is September 03, 2004.

214. The file Modified date is June 21, 1995? How was it modified in 1995 when it was created in 2004?

215. Accessed “Today, September 30, 2013.”

55. On September 13, 2012, the date of Simon Bernstein’s death, he had five adult children whom survived him, Ted S. Bernstein, Pamela B. Simon, Eliot I. Bernstein, Jill Iantoni, and Lisa Friedstein. (Ex. 30, Aff. of Ted Bernstein, ¶102)

ANSWER

216. N/A

56. Simon Bernstein’s five children had a total of ten children of their own, so Simon Bernstein had ten grandchildren that survived him, whose names and year of birth are set forth in Ted Bernstein’s Affidavit. (Ex. 30, Aff. of Ted Bernstein, ¶103)

ANSWER

217. Ted Bernstein has a stepson making it 11 grandchildren if included.

57. In Ex. 16, Simon Bernstein names his wife Shirley Bernstein, as Trustee, and he was going to name either David Simon, or Ted Bernstein or Pam Simon as successor trustee. (Ex. 32, Aff. of David Simon, ¶25; Ex. 16)

ANSWER

218. The fact is disputed in their own statement above as to who the trustee of this alleged draft of the 95 Legally Nonexistent Unexecuted Trust was going to be, which makes this a disputed fact.

58. At a meeting in 1995 prior to Simon Bernstein executing the trust, David Simon recalls discussing the fact that for various reasons involving family dynamics, Ted Bernstein should be the first successor trustee to Shirley Bernstein rather than David Simon. (Ex. 32, Aff. of David Simon, ¶25)

ANSWER

219. The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

59. On or about June 21, 1995, David Simon assisted his mother-in-law, Shirley Bernstein, as Trustee of the Bernstein Trust, with obtaining a tax identification number from the Internal Revenue Service. Prior to obtaining the Tax Identification number, David Simon saw the executed Bernstein Trust Agreement with Simon Bernstein's signature on it. By this time, David Simon also confirmed that Shirley was the initial Trustee and Ted Bernstein was the successor trustee. I then completed an SS-4 form indicating the name of the trust, and the tax identification number issued by the Internal Revenue Service. The SS-4 document contains the signature of Shirley Bernstein, as trustee of the Bernstein Trust. (Ex. 32, Aff. of David Simon, ¶30, Ex. 35, Dep. of David Simon, p.42:6-p.43:9, p. 88:17-89:22; Ex. 19)

ANSWER

220. The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

60. The executed Bernstein Trust Agreement like the drafts referenced above designated the five surviving children of Simon Bernstein as the beneficiaries to the Trust in equal shares. (Ex. 32, Aff. of David Simon, ¶25, ¶26, ¶28, ¶29 and ¶30; Ex. 15 at §7; Ex. 16 at §7)

ANSWER

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221. The “executed Bernstein Trust Agreement” does not exist and thus it is unknown what it would say if it existed.

61. Four of five of the adult children (the “Consenting Children”) have executed Affidavits indicating their stipulation to the following:
- a. That Simon Bernstein formed the Bernstein Trust on June 21, 1995;
 - b. That the five surviving children of Simon Bernstein were named as beneficiaries;
 - c. That Ted S. Bernstein is authorized to act as Trustee of the Bernstein Trust, and with the assistance of counsel, Adam Simon, Ted Bernstein is authorized to cause the release and distribution of the Policy proceeds from the Registry of the Court for deposit to The Simon Law Firm, and to distribute the Policy proceeds (less legal fees and costs associated with this litigation) to the five adult children of Simon Bernstein in equal shares, and to obtain vouchers of receipt therefore”

ANSWER

222. a) N/A

223. b) N/A

224. c) There is no “Bernstein Trust” that exists and thus again TED has no standing to act as a Trustee. Adam Simon should be sanctioned for attempting to claim that TED is a legally valid Trustee of a trust that does not exist and filing this lawsuit as Fraud on this Court.

Adam Simon and the Plaintiffs should be reported for this Fraud on this Court to the proper authorities by this Court.

62. Prior to his death, Simon Bernstein was also the insured under a separate Policy of insurance issued by Lincoln Benefit Life Insurance Company, as Policy No. U0204204 (the “Lincoln Policy”). (Ex. 30, Aff. of Ted Bernstein, ¶108; Ex. 31, Aff. of Pam Simon, ¶26-¶27)

ANSWER

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225. That the Lincoln Benefit Life Insurance Company policy should also have a copy any 95 Legally Nonexistent Unexecuted Trust and the Lincoln Benefit policy and this is hearsay evidence from interested parties to the litigation.

226. The Lincoln Benefit Life contract or any evidence suggesting the veracity of the claims made has not been produced by Plaintiffs.

63. The Lincoln Policy lapsed in 2006 six years prior to Simon Bernstein's death. (Ex. 30, Aff. of Ted Bernstein, ¶108; Ex. 31, Aff. of Pam Simon, ¶27)

ANSWER

227. No proof that a lapse occurred is presented.

64. While the Lincoln Policy was in force and less than two months after the formation of the Bernstein Trust, Simon Bernstein, as Lincoln Policy owner transferred his ownership interest in the Lincoln Policy to the Simon Bernstein Irrevocable Insurance Trust on August 8, 1995. This form contains the name of the Bernstein Trust, the same tax identification number that appears of the IRS Form SS-4 form signed by the trustee, the name and address of the trustee, Shirley Bernstein, and the signature of Simon Bernstein. (Ex. 31, Aff. of Pam Simon, ¶27; Ex. 18)

ANSWER

228. This Lincoln Policy also is controlled by the 2000 Proskauer Rose Irrevocable Trust and supersedes any alleged 95 Legally Nonexistent Unexecuted Trust interest.

IV. ELIOT'S CLAIMS

65. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation the ("Eliot's Claims"). (Ex. 26)

ANSWER

229. That until Eliot's counterclaims, third party claims and cross claims are heard Summary Judgement is premature.

66. The pleading setting forth Eliot's Claims—not including exhibits—is seventy-two pages long and consists of one hundred and sixty-three separate paragraphs. (Ex. 26)

ANSWER

230. N/A

67. No Owner of the Policy ever submitted any change of beneficiary forms which were received by the Insurer that designated Eliot, or any of Eliot's children as a beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶¶65-¶68)

ANSWER

231. Eliot never submitted a claim form to the carrier claiming he or his children were named beneficiaries.

V. INTERVENOR CLAIMS BY ESTATE OF SIMON BERNSTEIN

68. In its intervenor complaint, the Estate of Simon Bernstein, asserts that it has an interest in the policy because "Plaintiff cannot prove the existence of a Trust document; cannot prove that a trust was ever created; thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy Proceeds are payable to the Petitioner [Estate].....". (Ex. 26 at ¶12)

ANSWER

232. Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

69. The Estate of Simon Bernstein produced no documents pursuant to Fed. R. Civ. P. 26 indicating that the Estate of Simon Bernstein was ever designated as a beneficiary of the Policy.

ANSWER

233. Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

70. The Policy Records contain no documents indicating that the Estate of Simon Bernstein was ever designated a beneficiary or contingent beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶70)

ANSWER

234. Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

71. The Will of Simon L. Bernstein which was duly executed on July 25, 2012 and has been admitted to Probate in Palm Beach County, Florida. The Will of Simon L. Bernstein was filed in this action as an Exhibit to William Stansbury's motion to intervene (See Dkt. #56-2). A true and correct copy of the Will of Simon L. Bernstein is included in Movant's Appendix to their Statement of Undisputed facts as (Ex. 24.) A true and correct copy of the Palm Beach County Death Certificate for Simon Bernstein is included in Movant's Appendix of Exhibits. (Ex. 30, Aff. of Ted Bernstein, ¶96; Ex. 12)

ANSWER

235. The 2012 Will of Simon Bernstein has been challenged on its validity and there are pending motions and petitions filed regarding the validity and the construction that remain unheard.

236. The Florida Governor Rick Scott's Notary Public Division has determined that the Will is improperly notarized by TED's assistant, Lindsay Baxley. The document is under ongoing investigation and challenged on validity and construction in the probate case.

72. A copy of Plaintiff's Amended Complaint is included in Movant's Appendix to its Statement of Undisputed Facts as (Ex. 25.)

ANSWER

237. N/A

73. A copy of the Estate of Simon Bernstein's Intervenor Complaint is included in Movant's Appendix to its Statement of Undisputed Facts attached hereto as (Ex. 27.)

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ANSWER

238. N/A

74. A copy of Eliot's Counterclaims, Cross-claims and Third-Party Claims is included in Movant's Appendix to its Statement of Undisputed Facts as (Ex. 26.)

ANSWER

239. Eliot's counter/cross/third party claims present evidence that confutes and puts into dispute the Plaintiffs arguments herein and thus make Summary Judgement premature and litigation necessary.

VI. THE INSURER'S INTERPLEADER ACTION

75. A copy of the Insurer's Interpleader Action is included in Movant's Appendix to its Statement of Undisputed Facts as (Ex. 28). In its Interpleader Action, the Insurer alleges that it failed to pay the Bernstein Trust's death claim because the claimants could not produce an original or copy of an executed trust agreement, and because the Insurer received a letter from Eliot setting forth a conflicting claim. (Ex. 28 at ¶22)

ANSWER

240. The reason the carrier declined the SPALLINA filed death benefit claim was because an executed copy of the alleged 95 Legally Existent Trust was not produced and thus is the same reason this Court should not pay the claim to the alleged 95 Legally Nonexistent Unexecuted Trust.

WHEREFORE, Eliot I. Bernstein, Pro Se Third party defendant, respectfully prays for an Order denying Plaintiffs' Summary Judgement motion in it's entirety, dismissing the Plaintiffs' claims if appropriate, Ordering further Discovery as requested, ordering sanctions or a hearing on sanctions against Plaintiffs if appropriate, and for such other and further relief as this Court deems just and proper.

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I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: June 03, 2015

Note: All URL'S contained herein are hereby incorporated by reference in entirety herein.

/s/ **Eliot Ivan Bernstein**
Third Party Defendant/Cross Plaintiff PRO SE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 03, 2015 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

/s/ **Eliot Ivan Bernstein**
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