

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 502012CP 004391XXXXNB (IH)

IN RE: ESTATE OF SIMON L.
BERNSTEIN,

Deceased.

REQUEST FOR JUDICIAL NOTICE

COMES NOW, Creditor, WILLIAM E. STANSBURY ("Stansbury"), by and through undersigned counsel, pursuant to Florida Statutes §90.202 and §90.203, and moves this Court to take judicial notice of the following:

1. The document entitled "Successor Personal Representative's Petition for Authorization to Enter into Contingency Agreement with Illinois Counsel in Pending Life Insurance Litigation" filed in the above-styled case by Successor Personal Representative, Brian M. O'Connell, on December 2, 2015 [Docket Entry Number 403] and the fact that Mr. O'Connell filed it. The document which Stansbury asks this Court to take judicial notice of is attached hereto as **Exhibit "A."**

2. The fact that Mr. O'Connell filed his Successor Personal Representative's Petition for Authorization to Enter into Contingency Agreement with Illinois Counsel in Pending Life Insurance Litigation with the Clerk of the Court on December 2, 2015 and that the Petition is found at Docket Entry Number 403 in the above-styled case. Pertinent excerpts from the Docket are attached hereto as **Exhibit "B."**

WHEREFORE, Creditor, WILLIAM E. STANSBURY, respectfully requests that this Court take judicial notice of the documents attached hereto as Exhibits A and B, take judicial notice of the known facts set forth above, and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those listed on the attached service list, on this 26 day of May, 2017.

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IN THE CIRCUIT COURT IN AND FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/IH

Deceased.

**SUCCESSOR PERSONAL REPRESENTATIVE'S PETITION FOR AUTHORIZATION
TO ENTER INTO CONTINGENCY AGREEMENT WITH ILLINOIS COUNSEL IN
PENDING LIFE INSURANCE LITIGATION**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Successor Personal Representative," "Estate" and "Decedent," respectively), petitions this Court for Authorization to Enter into Contingency Agreement with Illinois Counsel in Pending Life Insurance Litigation, and as grounds, therefore, states as follows:

1. By Order dated May 23, 2014, pursuant to a Petition filed by William Stansbury this Court authorized then-acting Curator, Benjamin Brown, to intervene on behalf of the Estate in litigation pending in the United States District Court for the Northern District Illinois (hereinafter "District Court" and the "Life Insurance Litigation," respectively). *See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 cv 3643 (N.D. Ill., E. Div.).

2. This Court ordered that all fees and cost incurred in the Life Insurance Litigation be borne by William Stansbury.

3. On June 5, 2014, the Estate, by and through counsel in Illinois, James J. Stamos, Esq. of Stamos & Trucco LLP (hereinafter "Illinois Counsel"), filed a Motion to Intervene, which the District Court granted on July 28, 2014.

EXHIBIT

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4. On June 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative.

5. The legal fees to date in the Life Insurance Litigation have been paid by William Stansbury ("Mr. Stansbury"), however, Mr. Stansbury has filed a Motion for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate ("Motion for Discharge"). The Motion for Discharge is attached hereto as Exhibit "A".

6. The value of the life insurance policy at issue in the Life Insurance Litigation is approximately \$1,700,000.00.

7. The Successor Personal Representative believes it is in the best interest of the Estate to continue with the Life Insurance Litigation.

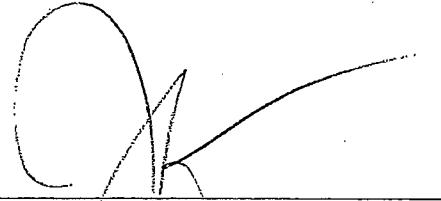
8. Illinois Counsel has agreed to waive the outstanding balance currently due and enter into a contingency agreement ("Contingency Agreement"), in which Illinois Counsel receives a percentage of recovery, in lieu of charging on an hourly basis. The Contingency Agreement is attached hereto as Exhibit "B".

9. Given the above, the Successor Personal Representative requests authorization to enter into the Contingency Agreement.

WHEREFORE, the Successor Personal Representative respectfully requests the Court enter an Order authorizing Successor Personal Representative to enter into the Contingency Agreement with Illinois Counsel, and for his attorneys' fees and costs, and such other relief as the Court deems just and proper.

In Re: Estate of Simon L. Bernstein
File No: 502012CP004391XXXXSB

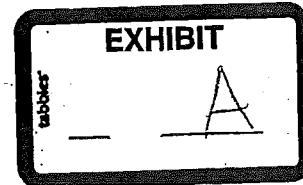
I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 2 day of December, 2015 to the parties on the attached Service List.



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Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34 th St. Boca Raton, FL 33434 iviewit@iviewit.tv	Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com	Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com Beneficiary
Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com		



IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,
Deceased. Division: IY

MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE
FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S
PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR
ASSUMPTION OF RESPONSIBILITY BY THE ESTATE

COMES NOW, William E. Stansbury ("Stansbury"), Creditor of the Estate of Simon Bernstein (the "Estate"), by and through his undersigned counsel, and moves this Court for an Order discharging Stansbury from further responsibility for the funding of the Estate's participation in the "Chicago life insurance litigation", and for the Estate to assume responsibility for funding the Chicago life insurance litigation, and states:

1. At the time of Simon Bernstein's death it was determined that there existed a life insurance policy on the life of Simon Bernstein issued by Heritage Union Insurance Company ("Heritage"). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the "Insurance Trust").

2. The alleged Insurance Trust submitted a death claim to Heritage and demanded that Heritage pay the policy proceeds to the so-called "trustee" of the Insurance Trust. If paid to the Insurance Trust, the death benefit would not be included as an asset of the Estate. However, neither the original nor a copy of the "Insurance Trust" exists.

3. As a result, Heritage refused to pay the death benefit of \$1.7 million to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois. The case was subsequently removed to Federal Court. (The "Life Insurance Litigation") See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) A copy of the Amended Complaint filed in U.S. District Court is attached as Exhibit "1."

4. The Estate of Simon Bernstein was not made a party to the Life Insurance Litigation, even though the Estate will clearly be affected by the outcome of the litigation.

5. The original co-personal representatives of the Estate, Donald Tescher and Robert Spallina, failed or refused to intervene on behalf of the Estate.

6. After they resigned, Stansbury brought the Life Insurance Litigation to the attention of the Curator of the Estate and this Court. By Order dated May 23, 2014, pursuant to a Petition filed by Stansbury, this Court appointed the then-acting Curator, Benjamin Brown ("Brown"), as Administrator Ad Litem to pursue intervention in the Life Insurance Litigation in order to protect the interests of the Estate. This Court also ordered that all fees and costs incurred in the Life Insurance Litigation, "including for the Curator in connection with this work as Administrator Ad Litem and any counsel retained by Administrator Ad Litem, will initially be borne by William Stansbury." A copy of the May 23, 2014 Order is attached as Exhibit "2."

7. On June 5, 2014, the Estate, by and through counsel in Chicago, James J. Stamos, Esq., filed a Motion to Intervene.

8. On July 28, 2014, the United States District Court for the Northern District of Illinois granted the Estate's Motion to Intervene. In granting the Motion, the court stated at page 3 of the Order:

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the policy proceeds must be paid to the Estate as a matter of law. (*citing Harris v. Byard*, 501 So.2d 730, 734 (Fla. App. 1st DCA, 1987) (“Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than the decedent’s estate for administration and distribution.”)

The Court concluded that the Estate demonstrated a sufficient interest justifying intervention. A copy of the Order of the District Court Order is attached as Exhibit “3.”

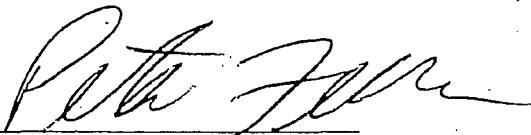
9. Additionally, James J. Stamos, the attorney in Chicago hired by the Estate to represent it in the Life Insurance Litigation, has stated that the Estate has a meritorious case, has a reasonable likelihood of success on the merits, and recommends that the Estate continue to participate.

10. As a result of the foregoing, Stansbury respectfully submits that due to his actions on behalf of the Estate, he has enabled the Estate to intervene and advance a meritorious position in the pending Life Insurance Litigation. There is now created a realistic expectation that the assets in the Estate could be more than doubled should the Estate’s position prevail. As such, Stansbury should be discharged from further responsibility to pay attorney fees and costs in connection with the Estate’s participation in the Life Insurance Litigation, and the responsibility to pay attorney fees and costs in the case should henceforth be assumed by the Estate.

WHEREFORE, Petitioner, William E. Stansbury, requests that this Court issue an Order stating that: a) Stansbury is hereby discharged from further responsibility to pay attorney fees and costs in connection with the Estate’s participation in the Life Insurance Litigation; and, b) the responsibility to pay future attorney fees and costs in the case are hereby to be assumed by

the Estate and the Estate is hereby authorized to proceed.

Respectfully submitted,



Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, ijb@ijblegal.com, on this 13 day of October, 2014.

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By: 

Peter M. Feaman
Florida Bar No. 0260347

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

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

)
Plaintiff,)
)
)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

v.)
)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)
)

)
Defendant,)
)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)
)
)

)
Counter-Plaintiff)
)

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

Counter-Defendant)
and,)
)

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

EXHIBIT 1

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)
)
Third-Party Defendants.)
)
)
ELIOT IVAN BERNSTEIN,)
)
Cross-Plaintiff)
)
)
v.)
)
TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)
)
Cross-Defendant)
and,)
)
PAMELA B. SIMON, DAVID B. SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)
)
Third-Party Defendants.)
)

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

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

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

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

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating 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 the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

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

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

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

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

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

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

COUNT I

BREACH OF CONTRACT

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

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

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

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

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

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

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

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

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

COUNT III

RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

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

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

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

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

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

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

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

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

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein; Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: sl/Adam M. Simon

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Attorneys for Plaintiffs and Third-Party Defendants

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

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB
PROBATE DIV.

ESTATE OF SIMON L. BERNSTEIN,
Decedas.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING
LIFE INSURANCE PROCEEDS ON THE DECEASED'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

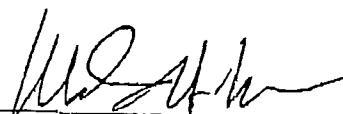
ORDERED and ADJUDICED that

1. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.



MARTIN COLIN
Circuit Court Judge

Copies to:

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John P. Martinsey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, john@martinseylaw.com;
Benjamin P. Brown, Esq., Matwiozyk & Brown, L.L.P., 625 So. Flagler Drive, Suite 401, West Palm Beach, FL 33401, brown@matwiozyk.com

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

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
 Plaintiff,) Case No. 13 C 3643
)
 v.) Judge Amy St. Eve
)
 HERITAGE UNION LIFE INSURANCE)
 COMPANY,)
)
 Defendant.)

ORDER

The Court grants Benjamin P. Brown's motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company ("Defendant" or "Jackson"), as successor in interest to Heritage Union Life Insurance Company ("Heritage"), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court's diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust ("Bernstein Trust") alleged a breach of contract claim against Heritage based on Heritage's failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown's ("Brown") motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown's motion brought pursuant to Rule 24(a)(2).

BACKGROUND

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,

the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. *See, e.g., New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); *see Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); *see also Estate of Wilkenning*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

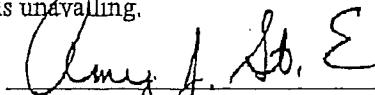
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). *See Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. *See Walker*, 705 F.3d at 658; *see also Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. *See Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

Dated: July 28, 2014



AMY J. ST. EVE
United States District Court Judge

EXHIBIT

B

STAMOS & TRUCCO LLP

Attorneys at Law

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November 25, 2015

Brian O'Connell
Ciklin Lubitz & O'Connell
515 North Flagler Drive
20th Floor
West Palm Beach, FL 33401

Re: Revised Retention Agreement
Estate of Simon Bernstein – Intervention of Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Mutual Life Insurance Company
Case No. 13 cv 3643 (No. Dist. of Ill. Eastern Div. – Chicago)

Dear Mr. O'Connell:

This will confirm that, in your capacity as Personal Representative of the Estate of Simon Bernstein, you have retained my firm and me to represent the Estate in the captioned interpleader action, already underway in federal court in Chicago, on a contingent fee basis. Our fees to date have been paid directly by Mr. William Stansbury, a claimant against the Estate. The outstanding balance of our fees and costs is currently \$15,164.78.

Upon execution of this retention agreement, and its approval by the Probate Court, we will waive the outstanding balance and our fee agreement going forward will be as follows:

- (1) We will receive as a fee 1/3 of the gross amount recovered by settlement of the above-captioned matter at any time prior to the completion of the final pretrial conference or, if none, prior to the morning of the first day upon which trial actually commences, plus any costs incurred including, but not limited to, filing fees, travel costs, copying, telefax, court reporting fees and online research.
- (2) We will receive as a fee forty (40) percent of the gross amount recovered, by settlement or otherwise, at any point after the completion of the final pretrial

Brian O'Connell
October 19, 2015
Page 2 of 2

conference or, if none, at any time beginning on the morning of the first day upon which trial actually commences, plus any costs incurred as defined in paragraph 1.

- (3) Upon your execution of this Agreement and its approval by the Probate Court, Mr. Stansbury will be relieved of his obligation to pay any further litigation costs and/or fees.
- (4) In the event you instruct us to dismiss the case prior to final adjudication such that we are deprived of the opportunity to earn a fee based upon an amount paid in judgment or settlement, the Estate agrees to pay us immediately upon dismissal an amount equal to the number of hours we will have worked on the case through dismissal, multiplied by the hourly rates of \$420 for my time, \$210 for time billed by my associates, including Kevin Horan, other partner time at \$325 and paralegal time at \$105, in addition to any costs incurred as defined in paragraph 1, plus the current outstanding balance of \$15,164.78. It is further understood that any amounts paid under this paragraph 4 will be subject to the usual requirement that all fees charged in litigation be reasonable.

If you agree to these terms, please print this page, sign where indicated and return it to me along with a copy of the court's Order approving your entry into this Agreement on behalf of the Estate.

I look forward to hearing from you.

Very truly yours,



James J. Stamos

JJS:kph

AGREED AND ACCEPTED

Brian M. O'Connell, as Personal Representative
of the Estate of Simon Bernstein

403

12/02/2015 PETITION

INCLUDING FRIDAY, JANUARY 15, 2015; AND THURSDAY AND FRIDAY, JANUARY 21 AND 22, 2016 F/B ATTY FEAMAN Filed by ATTORNEY PETER M FEAMAN

404

12/04/2015 NOTICE OF HEARING

FOR AUTHORIZATION TO ENTER INTO CONTINGENCY AGREEMENT WITH ILLINOIS COUNSEL IN PENDING LIFE INSURANCE LITIGATION - F/B BRIAN O'CONNELL

405

12/04/2015 PETITION

DECEMBER 10, 2015 F/B ATTY O'CONNELL Filed by PERSONAL REPRESENTATIVE BRIAN M O'CONNELL

406

12/09/2015 NOTICE OF CANCELLATION

AMENDED - FOR AUTHORIZATION TO ENTER INTO CONTINGENCY AGREEMENT OR HOURLY FEE AGREEMENT WITH ILLINOIS COUNSEL IN PENDING LIFE INSURANCE LITIGATION - F/B BRIAN O'CONNELL

407

12/23/2015 PETITION FOR ATTORNEY'S FEES

OF HEARING DECEMBER 10, 2015 @ 8:30 AM

PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR JULY 1, 2015 THROUGH AUGUST 31, 2015 F/B ATTY O'CONNELL Filed by PERSONAL REPRESENTATIVE BRIAN M O'CONNELL

408

12/23/2015 NOTICE OF UNAVAILABILITY

1/1/16 THROUGH 1/31/16 Filed by PETITIONER ELIOT IVAN BERNSTEIN

409

12/28/2015 EMERGENCY MOTION

AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L PHILLIPS - F/B ELIOT BERNSTEIN

410

12/28/2015 EMERGENCY MOTION

AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L PHILLIPS - F/B ELIOT BERNSTEIN

411

12/28/2015 PETITION FOR ATTORNEY'S FEES

PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR SEPTEMBER 1, 2015 THROUGH OCTOBER 31, 2015 F/B BRIAN O'CONNELL Filed by PERSONAL REPRESENTATIVE BRIAN M O'CONNELL

412

01/04/2016 ORDER DENYING

EFILED ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF JUDGE JOHN L. PHILLIPS SIGNED BY JUDGE JOHN L PHILLIPS ON JAN 4, 2016 Filed by JUDGE JOHN L PHILLIPS

413

01/14/2016 MOTION

FOR CASE MANAGEMENT CONFERENCE F/B WILLIAM E STANSBURY

419

01/19/2016 NOTICE OF HEARING

FOR FEB 18, 2016 F/B ATTY FEAMAN

