

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

**JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR  
REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING**

COMES NOW, William E. Stansbury ("Stansbury"), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §733.308, Fla. Stat. (2013) and Fla. Prob. R. 5.120 (2013), files this Motion to Join the Petition filed by Eliot Ivan Bernstein for Removal of Trustee and for a Trust Accounting (the "Eliot Petition"), and in support states as follows:

**I. Stansbury has standing to Join the Eliot Petition**

1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars.

2. Simon Bernstein died in September of 2012 and his estate was substituted as a party defendant in Stansbury's lawsuit. Stansbury also asserted claims against the Estate of Simon Bernstein (the "Estate") in this Court.

3. The provisions of §731.201(23), Fla. Stat. (2013) define an “interested person” as:

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved...”

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the Estate is administered without bias and in the best interests of the devisees and creditors of the Estate. This means Stansbury has an interest in ensuring that the Estate marshals all the assets to which the Estate is entitled for the benefit of devisees and creditors.

5. The Fourth District Court of Appeal has recognized that a claimant or creditor to an estate is an “interested person” and has standing in a proceeding to approve the personal representative’s final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4<sup>th</sup> DCA 2004). *See also, Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an “interested person” under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.)

6. Pursuant to §733.707(3), Fla. Stat.:

Any portion of the trust with respect to which a decedent who is the grantor has at the decedent’s death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them...** (emphasis added)

7. As a matter of law, the assets of the Revocable Trust are available to pay creditors of the Estate such as Stansbury under §733.707(3) in the event the Estate has insufficient assets to meet all its obligations. Stansbury is therefore an “interested person” in the Estate, and therefore he is entitled to file this Motion to Join the Eliot Petition. Further, Stansbury has standing to argue before the Court for the appropriate resolution of the issues affecting the Revocable Trust.

**II. This Court has the Authority Under Florida Law to Resolve the Issues Raised in the Eliot Petition Relating to the Revocable Trust.**

8. Under Florida law, this Court has broad authority to affect trust administration.

More specifically, under §736.0201, Fla. Stat. (2013), the Court has the following power:

**736.0201 Role of court in trust proceedings**

\* \* \* \* \*

- (4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:
- (a) Determine the validity of all or part of a trust;
  - (b) Appoint or remove a trustee;
  - (c) Review trustees' fees;
  - (d) Review and settle interim or final accounts;
  - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
  - (f) Obtain a declaration of rights;
  - (g) Determine any other matters involving trustees and beneficiaries.

9. The two issues raised in the Eliot Petition pertain to: a) the removal of current putative trustee of the Revocable Trust, Ted Bernstein; and, b) the right of the Petitioner to an accounting relating to the administration of the trust. Both issues are within the authority of this Court to resolve.

**III. Ted Bernstein Should Be Removed as Trustee of the Revocable Trust.**

**A. Ted Bernstein is Not Eligible to Serve as Trustee under the very terms of the Revocable Trust.**

10. The previous co-trustees of the Revocable Trust were Donald Tescher and Robert Spallina by virtue of the Successor Trustee provision set forth in Article IV, Section C of the Revocable Trust. By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, Donald Tescher for himself and on behalf of Robert Spallina, resigned as co-trustees of the Revocable Trust (and the Shirley Bernstein Trust and stated, "If the majority of the

Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity.”

11. Whether Ted Bernstein was actually appointed trustee is not clear. The Revocable Trust, at Article IV, Section C(3), specifically states, “The appointment [of the successor trustee] will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee...” Whether such document was ever executed with respect to Ted’s appointment is not known to Stansbury, but Stansbury assumes Ted Bernstein has assumed the role of successor trustee, either *de facto* or *de jure*, based on the exercise of the power by the previous trustee.

12. If Ted Bernstein has succeeded as trustee of the Revocable Trust, he should be removed as he was ineligible under the terms of the Revocable Trust to serve as successor trustee. Article IV, Section C(3) of the Revocable Trust states:

**A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust.**

13. The Revocable Trust, under Article II, Subsection E(7) defines a “Related or Subordinate Party” as follows:

**A “Related or Subordinate Party” to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms “related or subordinate party” are defined under Code Section 672(c).**

Under Subsection E(2), “Code” is defined as **“the Internal Revenue Code of 1986...”**

14. A **“Related or subordinate party”** under the Code means any **nonadverse party** who is **“ . . . (2) any one of the following: The Grantor’s father, mother, issue brother or sister; . . . ”**

15. Ted Bernstein is the son, or an "issue" of the Grantor, Simon Bernstein, and a related party to the beneficiary, Ted's son, Simon's grandson. Therefore, Ted Bernstein is ineligible as a Related or Subordinate Party to serve as a successor trustee.

**B. Misconduct in the Shirley Bernstein Estate**

16. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

17. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "A.")

18. Ted Bernstein's involvement in such activity involving the Estate of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust.

**C. The "lost" Insurance Trust**

19. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (*See* SS-4 Application for EIN as Exhibit "B.")

20. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives of the Estate of Simon Bernstein and a resigning Co-Trustee of the Revocable Trust, submitted a claim form to Heritage on behalf of

the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (See Exhibit "C") Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (See Exhibit "D" attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay creditors of the Estate of Simon Bernstein such as Stansbury.

21. Spallina, with the knowledge of Ted Bernstein, represented that he was "Trustee" of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

22. Heritage refused to pay the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still "lost," alleges that Ted Bernstein is the "trustee" of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted's representation, like that of Spallina, appears plainly false.

23. Ted Bernstein's misrepresentations in connection with the Insurance Trust should disqualify him from serving as Successor Trustee of the Revocable Trust.

**C. Ted Bernstein has a Conflict of Interest in The Insurance Trust Case.**

24. Ted Bernstein has a conflict of interest precluding him from faithfully executing the duties of fiduciary on behalf of the Revocable Trust.

25. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

26. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 9 thru 12 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (See, selected e-mail messages, attached hereto as Composite Exhibit "E".) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

27. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (Emphasis added.) Additionally, a conflict of interest is a proper basis for the removal of a trustee. See DeMello v. Buckman, 914 So. 2d 1090 (Fla. 4<sup>th</sup> DCA 2005).

28. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. See Estate of Bell v. Johnson, 573

So.2d 57 (Fla. 1<sup>st</sup> DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative). This means Ted Bernstein is similarly conflicted as Trustee of the Revocable Trust and should be removed.

**E. Ted Bernstein has a Conflict of Interest as a Co-Defendant with the Estate in the William Stansbury Case.**

29. Ted Bernstein and his father Simon Bernstein were initially joined as Co-Defendants in the case brought by Stansbury captioned *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. The Estate was substituted as the party Defendant upon Simon Bernstein's death in September of 2012.

30. The allegations against Ted and Simon Bernstein, among others, are that they made false misrepresentations relied upon by Stansbury to his detriment, and, contrary to those representations, siphoned capital from the Arbitrage International Management, LLC and LIC Holdings, Inc., the Defendant Companies, for their own personal use to the further detriment of Stansbury.

31. The Estate of Simon Bernstein and Ted Bernstein have potential cross-claims against each other for contribution or indemnity that could further conflict Ted Bernstein. If he is permitted to remain Trustee of the Revocable Trust, which is a significant asset of the Estate, he will find himself in the conflicted position of managing a significant asset of the Estate against whom he potentially is a claimant. Additionally, it raises the further risk that funds of the Revocable Trust could be used for the prosecution of Ted's cross-claim, or the defense of a cross-claim by the Estate, both of which violate the trust documents. For this reason this Court should recognize that Ted Bernstein has an additional conflict of interest that warrants his removal as Trustee.



**IV. Stansbury Supports Eliot Bernstein's Efforts to Secure an Accounting of the Revocable Trust.**

32. Qualified beneficiaries are entitled to an accounting pursuant to §736.0813(1)(c), Fla. Stat. (2014). According to the Revocable Trust, the beneficiaries are separate Trusts established for his various grandchildren. Upon information and belief, Eliot Bernstein is the Trustee of the Trust established for the benefit of his children.

33. Under the circumstances, Eliot Bernstein is entitled to an accounting.

WHEREFORE, William E. Stansbury joins in the Petition of Eliot Bernstein and prays that the apparent successor trustee Ted Bernstein be removed and that the Court require the filing of a Trust Accounting.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above Motion was forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [eservice@palmettobaylaw.com](mailto:eservice@palmettobaylaw.com), and to Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com) on this 22 day of May, 2014.

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By: \_\_\_\_\_

  
Peter M. Feaman

Florida Bar No. 0260347

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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 PROBATE/GUARDIANSHIP DIVISION IY

CASE NO.: 502011CP000653XXXXSB

IN RE: THE ESTATE OF:

4 SHIRLEY BERNSTEIN,  
Deceased

5 \_\_\_\_\_/  
6 ELIOT IVAN BERNSTEIN, PRO SE,  
Petitioner,

vs.

7  
8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
9 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
10 (BOTH PERSONALLY & PROFESSIONALLY); DONALD  
11 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_/  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE

15 THE HONORABLE MARTIN H. COLIN

16  
17 South County Courthouse  
18 200 West Atlantic Avenue, Courtroom 8  
19 Delray Beach, Florida 33344

20 Friday, September 13, 2013  
21 1:30 p.m. - 2:15 p.m.

22  
23  
24 Stenographically Reported By:  
JESSICA THIBAUT

25  
♀

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1 APPEARANCES

2  
3 On Behalf of the Petitioner:

4 ELIOT IVAN BERNSTEIN, PRO SE  
5 2753 NW 34th Street  
6 Boca Raton, Florida 33434

In Re\_ The Estate of Shirley Bernstein.txt

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

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

MR. ELIOT BERNSTEIN: Oh.

THE COURT: So let me see when he actually filed it and signed the paperwork. November. What date did your dad die?

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

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

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

THE COURT: No, it's waivers of

accountings.

MR. MANCERI: Right, by the beneficiaries.

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

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

THE COURT: November 21st.

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

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

MR. MANCERI: Who signed that?

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

MR. MANCERI: Your Honor, what happened was is the documents were submitted with the waivers originally, and this goes to Mr. Bernstein's fraud allegation. As you know, your Honor, you have a rule that you have to have your waivers notarized. And the original waivers that were submitted were not notarized, so they were kicked back by the clerk. They were then notarized by a staff person from Tescher and Spallina admittedly in error. They

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

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

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

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

14 MR. MANCERI: Okay.

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

18 MR. MANCERI: April 9th, right.

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

♀

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

5 MR. MANCERI: Okay.

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

9 MR. MANCERI: Okay.

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

12 MR. SPALLINA: I'm sorry?

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

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

Form **SS-4**  
(Rev. August 1989)  
Department of the Treasury  
Internal Revenue Service

# Application for Employer Identification Number

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

OMB No. 1545-0043  
Expires 7-31-91

1 Name of applicant (True legal name) (See instructions.)

Simon Bernstein Irrevocable Insurance Trust

2 Trade name of business, if different from name in line 1

3 Executor, trustee, "care of name"

Shirley Bernstein

4a Mailing address (street address) (room, apt., or suite no.)

7020 Lions Head

5a Address of business. (See instructions.)

4b City, state, and ZIP code

Boca Raton, FL 33496

5b City, state, and ZIP code

6 County and state where principal business is located

7 Name of principal officer, grantor, or general partner (See instructions.)

Simon Bernstein, Sec. 179A 371-32-5211

8a Type of entity (Check only one box.) (See instructions.)

☐ Individual SSN

☐ Estate

☒ Trust

☐ REMIC

☐ Personal service corp.

☐ Prop. administrator SSN

☐ Partnership

☐ State/local government

☐ National guard

☐ Other corporation (specify)

☐ Farmers' cooperative

☐ Other nonprofit organization (specify)

☐ Federal government/military

☐ Church or church controlled organization

☐ Other (specify)

If nonprofit organization enter GEN (if applicable)

9a If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated

Foreign country

State

10 Reason for applying (Check only one box)

☐ Started new business

☐ Changed type of organization (specify)

☐ Hired employees

☐ Purchased going business

☐ Created a pension plan (specify type)

☒ Created a trust (specify) Insurance Trust

☐ Banking purpose (specify)

☐ Other (specify)

11 Date business started or acquired (Mo., day, year) (See instructions.)

June 1, 1995

12 Enter closing month of accounting year. (See instructions.)

December 31

13 First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).

14 Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."

Nonagricultural

Agricultural

Household

15 Does the applicant operate more than one place of business?  
If "Yes," enter name of business.

☐ Yes

☐ No

16 Principal activity or service (See instructions.)

17 Is the principal business activity manufacturing?

If "Yes," principal product and raw material used

☐ Yes

☐ No

18 To whom are most of the products or services sold? Please check the appropriate box.

☐ Public (retail)

☐ Other (specify)

☐ Business (wholesale)

19 Has the applicant ever applied for an identification number for this or any other business?  
Note: If "Yes," please complete lines 18b and 18c.

☐ Yes

☒ No

18b If you checked the "Yes" box in line 19, give applicant's true name and trade name, if different than name shown on prior application.

True name

Trade name

18c Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.

Approximate date when filed (Mo., day, year)

City and state where filed

Previous EIN

Under penalty of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Name and title (Please type or print clearly.)

Shirley Bernstein, Trustee

Telephone number (include area code)

407-477-9991

Signature

X

Date June 21, 1995

Please leave blank

Gov.

Notes: Do not write below this line. For official use only.

Ind.

Class

Size

Reason for applying

For Paperwork Reduction Act Notice, see attached instructions.

U.S. Government Printing Office: 1989-267-101-101-101

Form SS-4 (Rev. 8-89)

EXHIBIT

B

000104

# CLAIMANT STATEMENT

## DECEDENT INFORMATION

1. Name of Deceased (Last, First Middle) <b>Bernstein, Simon Leon</b>		2. Last 4 digits of Deceased's Social Security No. <b>5211</b>	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, and name derivative form of first and/or middle name or an alias, please provide them below			
4. Policy Number(s) <b>1009208</b>		5. If policy is lost or not available, please explain: <b>Unable to locate, policy is 30 years old</b>	
6. Deceased's Date of Death <b>09/13/12</b>	7. Cause of Death <b>natural causes</b>	8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	

## CLAIMANT INFORMATION

9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. <b>Simon Bernstein Irrevocable Insurance Trust</b>			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number <b>65-6178916</b>		16. Relationship to Deceased
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <div style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div>			

## CLAIMANT INFORMATION (to be completed by 2<sup>nd</sup> claimant, if any)

20. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number		27. Relationship to Deceased
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <div style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</div>			

**YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.**

EXHIBIT

C

BT000100

# CLAIMANT STATEMENT

## SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

Name of Settlement Option from Policy

## Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

## SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

## SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

For Residents of New York: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

For Residents of All Other States: See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Claimant and Title

Date

Signature of Second Claimant, if any, and Title

Date

BT000101

# CLAIMANT STATEMENT

## TRUSTEE CERTIFICATION

**TRUSTEE CERTIFICATION (to be completed only if trust is claiming benefits)**

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS

Please include a copy of the trust agreement, including the signature page(s) and any amendments

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

### Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- ☐ 1 The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes
- ☐ 2 The GST tax does not apply because the GST tax exemption will offset the GST tax
- ☒ 3 The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person
- ☐ 4 The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply)
- ☐ 5 The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust

Simon Bernstein Irrevocable Insurance Trust

Date of Trust Agreement

06/01/1995

Date of all Amendments

Trust Tax ID

Number

65-0178916

Printed Name of Trustee(s)

Signature(s)

a

Robert L. Spallina

b

c

d





LAW OFFICES

TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
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ATTORNEYS  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein  
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

*Robert L. Spallina/km*  
ROBERT L. SPALLINA

RLS/km

Enclosures

EXHIBIT D

BT0000083

...e are going to do what is necessary. Have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under [Article IV 2j] and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Regards,

Ted Bernstein - President

.....

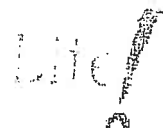
 Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487  
Tel: 561.988.8984  
Toll Free: 866.395.8984  
Fax: 561.988.0833  
Email: [Tbernstein@lifeInsuranceConcepts.com](mailto:Tbernstein@lifeInsuranceConcepts.com)  
[www.LifeInsuranceConcepts.com](http://www.LifeInsuranceConcepts.com)

EXHIBIT E

## Robert Spallina

**From:** Christine Yates [cty@TrippScott.com]  
**Sent:** Wednesday, January 30, 2013 6:17 AM  
**To:** Robert Spallina  
**Cc:** 'Eliot Ivan Bernstein'  
**Subject:** RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Tuesday, January 29, 2013 11:43 AM  
**To:** Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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---

**From:** Robert Spallina  
**Sent:** Wednesday, January 23, 2013 1:14 PM  
**To:** Ted Bernstein  
**Cc:** Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran  
**Subject:** Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

BT000053

## Robert Spallina

---

**From:** Jill Iantoni [jilliantoni@gmail.com]  
**Sent:** Tuesday, January 29, 2013 3:39 PM  
**To:** Robert Spallina  
**Subject:** Re: Heritage Policy

Thanks

Jill Iantoni  
[jill@ne.bah.com](mailto:jill@ne.bah.com)  
Recruiting Services  
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

The claim could be open for a long time but if it is cleared up then the money would be free from creditor claims. I do not know if there is a time frame for a pay out but if the proceeds are paid to the estate then your father's intent is not carried out.

**From:** Jill Iantoni [<mailto:jilliantoni@gmail.com>]  
**Sent:** Tuesday, January 29, 2013 12:45 PM  
**To:** Robert Spallina  
**Cc:** Jill Iantoni  
**Subject:** Re: Heritage Policy

Hi Robert,

If the money stays at the insurance company until the Bill S. claim is cleared up, can we then decide if ALL five are in agreement and if not, wouldn't that money be free from creditors at that point? Is there a time fram that the money has to leave the insurance company and be paid out?

Thanks.  
Jill

On Tue, Jan 29, 2013 at 10:42 AM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

**From:** Jill Iantoni [mailto:[jilli\\_ni@gmail.com](mailto:jilli_ni@gmail.com)]  
**Sent:** Thursday, January 24, 2013 3:12 PM  
**To:** Robert Spallina  
**Cc:** Jill Iantoni  
**Subject:** Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

**Robert Spallina**

**From:** Robert Spallina  
**Sent:** Tuesday, January 22, 2013 12:38 PM  
**To:** 'Jill Iantoni'  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** RE: Heritage Policy

We can discuss on Thursday but yes and no

**From:** Jill Iantoni [mailto:jilliantoni@gmail.com]  
**Sent:** Tuesday, January 22, 2013 12:36 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks  
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

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

Robert L. Spallina, Esq.

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4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: [561-997-7008](tel:561-997-7008)

Facsimile: [561-997-7308](tel:561-997-7308)

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

## **Robert Spallina**

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Tuesday, January 22, 2013 1:34 PM  
**To:** Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

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

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

Robert L. Spallina, Esq.

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