

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
 )  
Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
 )  
Defendant. )

Case No. 13 cv 3643

Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

**JACKSON'S MOTION FOR AN EXTENSION OF TIME  
TO FILE ITS ANSWER AND COUNTERCLAIM TO PLAINTIFFS' COMPLAINT**

Defendant, Jackson National Life Insurance Company ("Jackson"), a corporation formed under the law of the State of Michigan, and with its principal place of business in Michigan, as successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), hereby moves for an extension of time to file its answer and counterclaim for interpleader as to the Complaint at Law (the "Complaint") underlying the above captioned action. In support of this Motion, Jackson states:

1. On April 5, 2013, the plaintiff filed its Complaint in the Law Division of the Circuit Court of Cook County, Illinois, case number 2013-L-003498. The Complaint was served on April 17, 2013, and timely removed by the proper party defendant – Jackson – by way of its Notice of Removal, filed on May 16, 2013, to this Court. Pursuant to Fed. R. Civ. P. 81(c), Jackson has seven (7) days after filing its Notice of Removal to file its answer to the Complaint.

2. The plaintiff in this action is alleged to be the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 (the "Trust"), acting by its trustee, Ted S. Bernstein, and having been established in Chicago, Illinois. Ted Bernstein is one of several children of Simon

Bernstein, who is deceased, having passed away last year. At the time of his death, Simon Bernstein was resident of Florida. So, too, is Ted Bernstein, and his brother, Elliot I. Bernstein.

3. The sole cause of action alleged in the Complaint is breach of contract, relating to a life insurance policy (the "Policy") purportedly first issued by Capital Banker's Life Insurance Company to S.B. Lexington, Inc., a Voluntary Employees' Association Trust ("VEBA") as provided for under Section 501 of the Internal Revenue Code. According to the records of the Illinois Secretary of State, S.B. Lexington, Inc. was an Illinois corporation, whose President was Simon Bernstein (the deceased alleged insured), and whose registered agent is counsel to the plaintiff Trust.

4. The Complaint further details how, allegedly, Heritage came to acquire the book of business of Capital Banker's Life Insurance Company, and further how the Trust came to be beneficiary of the Policy, including allegations that the S.B Lexington, Inc. VEBA was dissolved and the Policy was assigned to Simon Bernstein, individually. Despite that the actual Trust document is not appended to the Complaint (as is required by the Section 2-606 of the Illinois Code of Civil Procedure when filing an action founded upon a written agreement in the absence of an affidavit detailing the failure to do so), the Trust is alleged to be the beneficiary of the Policy and entitled to payment of the death benefits thereunder which are alleged to exceed \$1 million (the "Policy Death Benefit"). In fact, the Policy Death Benefit is \$1.6 million.

5. The Trust asserts a breach of contract claim based on the failure of Heritage to pay the Policy Death Benefit to the Trust. Although not named in the Complaint, Jackson acknowledges that it is the successor in interest to Heritage, by virtue of its acquisition of the business of Reassure, and is the proper defendant in this case. Jackson, however, has received competing claims to the Policy Death Benefit, as it has been notified in writing by Eliot Bernstein, who claims to have an interest in the Policy, and to be a possible beneficiary of the

Policy, along with his children. A copy of Eliot Bernstein's claim letter is attached as *Exhibit 1*. At this point, Jackson does not know the number of children of Eliot Bernstein, but on information and belief understands them to be residents of Florida (and certainly non-residents of Michigan).

6. Given that Jackson (1) did not originally issue or administer the Policy, (2) does not know the extent of the Bernstein family tree, including the number of potential children asserted by Eliot Bernstein to be possible beneficiaries of the Trust, and (3) is still seeking to locate key records relevant to the Policy, such as the Trust, it does not know all potential known beneficiaries under the Policy. Nor does Jackson know if there are potential unknown beneficiaries of the Policy. As such, Jackson requires an extension of time to answer the Complaint (essentially on behalf of Heritage), and to ferret out those parties who need to be named in an interpleader action (filed as a counterclaim), which Jackson intends to file as to the Policy, seeking direction from this Court as to who are the proper beneficiaries of the Policy.

7. As to the Policy Death Benefit, Jackson has filed contemporaneous with this Motion for Extension its Motion to Tender Insurance Policy Proceeds to Court (the "Tender Motion"). By the Tender Motion, Jackson seeks to deposit, now, with the Clerk of this Court, the proceeds from the Policy, to avoid further disputes. Jackson is fully intent on seeking relief as to the Complaint by way of an interpleader action, such that no reason exists not to allow it to tender the Policy Death Benefit to the Clerk of this Court, while it further investigates and ultimately files its interpleader action.

8. In light of the foregoing, Jackson seeks an additional 30 days, without prejudice to its Tender Motion, to answer the Complaint and file as a counterclaim its interpleader action. The complexity of this matter clearly warrants the request made herein by Jackson, and such

request is not in any way made to unnecessarily delay these proceedings and/or prejudice the rights of any party, including those of self-identified competing beneficiaries.

WHEREFORE, Defendant, Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, respectfully move this Court to extend the time for it to file its answer and counterclaim for interpleader as to the Complaint, 30 days after ruling hereon by this Court, and requests such other and further relief as the Court deems just and proper.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks  
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
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312-840-7000  
312-840-7900 (facsimile)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that he caused a copy of the foregoing Motion for Extension of Time to be filed electronically with the Northern District of Illinois, and manually served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

By U.S. mail, postage prepaid, this 23rd day of May, 2013.

/s/ Alexander D. Marks

1418221.1

Friday, May 3, 2013

Reassure America Life Insurance Company  
J. L. McDonald, ALHC LTCP  
Vice President  
12750 Merit Drive  
Suite 600  
Dallas, TX 75251  
Telephone (972) 776-8535  
Fax (260) 435-8773

RE: URGENT RE Policy #1009208

Dear Mr. McDonald,

I, Eliot I. Bernstein, son of Simon L. Bernstein, and my children have been notified that we are possible beneficiaries of the life insurance policy on my deceased father. I am in receipt of your attached letter and I have retained counsel, Christine Yates at Tripp Scott in FL, for my children's interests in the policy and am currently seeking counsel regarding my interest in the policy and request that you send me and Yates a copy of the policy and all pertinent policy information immediately at the addresses below.

I have been told by the estate planning attorney, Robert Spallina, that he does not have a copy of the policy, schedules, riders, loans, attachments, etc. and that he is also missing a trust document that may have been the beneficiary. I am requesting that your company make NO distribution of any policy proceeds without both my written personal consent and my children's counsel consent, to any party. I am aware of claims that there is also a missing trust of Simon that may have been a Beneficiary and any information you maintain regarding the beneficiaries would be helpful in trying to establish who the rightful beneficiaries are. I, nor my children have consented to any agreements for distribution and have no proper paperwork to rely on.

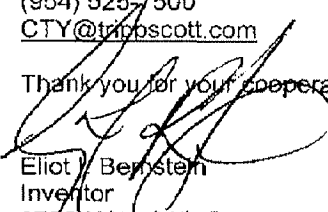
I have been informed that parties are attempting to make distribution without my or my children's counsel knowledge and consent.

Please contact me at your earliest convenience so that we may discuss this further or you can write or email at my addresses below.

Address information for Christine Yates,

Christine P. Yates  
Tripp Scott  
110 Southeast 6 Street  
Fort Lauderdale, FL 33301  
(954) 525-7500  
[CTY@trippscott.com](mailto:CTY@trippscott.com)

Thank you for your cooperation in these matters,



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