

**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, )

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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 )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

Third-Party Defendants. )

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

**INITIAL STATUS REPORT**

Pursuant to the court's standing order, counsel for the parties identified below participated in a conference to prepare the following Initial Status Report.

**I. The Nature of the Case**

**A. Attorneys for Parties of Record, including lead trial attorney**

- 1) Plaintiff, Simon Bernstein Irrevocable Trust dtd 6/21/95 (the "Bernstein Trust"), and Third-Party, Defendant, Ted Bernstein, individually are represented by Adam M. Simon whom will also be lead trial attorney.
- 2) Defendant Jackson National Insurance Company ("Jackson"), is successor to Heritage Union Life Insurance Company and the successor Insurer under the Life Insurance Policy. Jackson is represented by attorneys Frederic Mendelsohn and Alexander Marks. Frederic Mendelsohn will be the lead trial attorney (to the extent Jackson is not dismissed pursuant to its Interpleader action).

**B. Basis for Federal Jurisdiction.**

Jackson removed this action from the Circuit Court of Cook County, Illinois, and in its claim for Interpleader, Jackson asserts subject-matter jurisdiction under 28 U.S.C. §1335. Jackson also sets forth several potential claimants of diverse citizenship as a basis to assert jurisdiction under 28 U.S.C. §1335.

**C. Describe the nature of the claims asserted in the complaint and any counterclaims.**

The litigation originated by way of a breach of contract claim filed by the Bernstein Trust against Heritage Union Life Insurance Company. The original complaint was filed in the Circuit Court of Cook County and removed by Defendant, Jackson, as successor to Heritage Union Life Insurance Company. The breach of contract claims against Jackson arose out of Jackson's failure to pay death benefit proceeds from a life insurance policy (the "Policy") insuring the life of Simon Bernstein (the "Insured") whom passed away on September 13, 2012, based on Jackson's receipt of conflicting claims for the Policy proceeds (the "Death Benefit Proceeds"). Jackson has deposited the Death Benefit Proceeds, at issue, with the Registry of the Court.

The Bernstein Trust claims to be the sole surviving beneficiary of the Policy at the time of death of the Insured, and alleges that it has provided Jackson with due proof of the insured's death. At the time of his death, Simon Bernstein had five surviving adult children, and no surviving spouse.

Jackson removed the lawsuit to the United States District Court for the Northern District of Illinois based on diversity jurisdiction. Plaintiffs and Defendants are citizens of different states, and the amount in controversy equals the Death Benefit Proceeds which exceed \$1.6 million. Jackson filed an answer, counterclaim and third-party claim for interpleader, naming, The Bernstein Trust, Ted Bernstein, Eliot Bernstein and certain banks that were purportedly formerly Trustees of an SB Lexington VEBA Trust that was at one time a beneficiary of the Policy. Jackson also received correspondence from Eliot Bernstein (one of Simon Bernstein's adult children) asserting his interest and that of his children (Simon Bernstein's grandchildren) in the Death Benefit Proceeds.

Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment (Death Benefit Proceeds) under the Policy. Over the years the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and insurer has changed. Jackson also has not received an executed original or copy of the Bernstein Trust, and therefore is not even aware if such exists.

In its claim for Interpleader, Jackson alleges that it has received competing claims to the Death Benefit Proceeds. Jackson has named as Defendants to the Interpleader action all persons and entities that it believes have potential claims to the Death Benefit Proceeds, and seeks dismissal from the suit while the Court determines the proper beneficiary(ies) of the Death Benefit Proceeds.

#### **D. Major Factual Issues**

Plaintiff and Ted Bernstein believe that himself and three of his siblings, which represent 4/5ths of Simon Bernstein children, agree that The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/1995 was duly formed and at the time of Simon Bernstein's death was the sole surviving beneficiary of the Policy. Plaintiff believes the evidence will show that the Bernstein Trust beneficiaries were each of the five children who were to share equally in the death benefit proceeds pursuant to the terms of the Trust.

As the Bernstein Trust has not been located, Jackson raises factual issues as to the Trust's existence, its proper title, and who are the proper beneficiaries

of the Policy based on the conflicting claims.

**E. The relief sought by Plaintiffs**

Plaintiff is seeking the Court's determination that the Bernstein Trust is the sole surviving beneficiary of the insurance proceeds, and that the five surviving children of Simon L. Bernstein are the beneficiaries, in equal shares, of the Bernstein Trust.

Counter-plaintiff Jackson, now that it has deposited the Death Benefit Proceeds with the court, seeks dismissal from the suit.

**F. Named Parties that have not appeared as of the date of this report**

Eliot Bernstein has returned an executed a waiver of service, and has an answer due on August 30, 2013.

Bank of America, N.A. was served on or about 7/29/13, and was to file an answer by August 19, 2013. No answer or appearance has yet been filed.

United Bank of Illinois n/k/a as PNC Bank was served on or about 7/25/13 and had its answer due on August 15, 2013. No answer or appearance has yet been filed.

First Arlington Bank has not yet been served, and Jackson National has not yet been able to determine the current location, existence or successor of this bank.

**II. Pending Motions and Case Plan**

A. Pending Motions: None at this time.

B. Proposal for Discovery Plan:

- i) Primarily written discovery is required, however it is possible that Plaintiff anticipates that it may need to take approximately five depositions. Expert testimony is not anticipated at this time, but both parties reserve the right to conduct Expert discovery as set forth herein.
- ii) Rule 26(a)(1) Disclosures by October 1, 2013;
- iii) Written Discovery to be issued by October 15, 2013;
- iv) Fact discovery to be completed by February 17, 2013;
- v) Plaintiffs expert report shall be due by March 10, 2014;

- vi) Defendants expert report shall be due by March 31, 2014
- vii) Expert Discovery completed by April 30, 2014;
- viii) Dispositive Motions to be filed by May 30, 2014.

**III. Consent to Proceed Before a Magistrate Judge**

The parties do not unanimously consent to proceed before a magistrate judge.

Dated: 8/26/13

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