

**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 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

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.)

**SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95 (“BERNSTEIN
TRUST”), AND TED BERNSTEIN’S, INDIVIDUALLY
AND AS TRUSTEE OF THE BERNSTEIN TRUST, ANSWER TO COUNTERCLAIM
AND THIRD-PARTY COMPLAINT FOR INTERPLEADER**

Plaintiff/Counter-Defendant, Simon Bernstein Irrevocable Trust dtd 6/21/95 (“Bernstein Trust”) and Third Party Defendant, Ted Bernstein, individually and as Trustee of the Bernstein Trust, by and through their attorney, Adam M. Simon, makes the following answer to Defendant/Counter-Plaintiff, Jackson National Insurance Company’s (“Jackson”) counterclaim and third-party complaint for interpleader:

**ANSWER TO COUNTER-CLAIM AND THIRD PARTY COMPLAINT
FOR INTERPLEADER**

INTRODUCTION

1. Jackson National Life Insurance Company (“Jackson”) brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. §1335 (a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the “Death Benefit Proceeds”) have been tendered to this Court.

ANSWER: To the extent Par. 1 of Jackson’s counter-claim/third-party complaint contain conclusions of law, no response is required. Ted Bernstein and The Bernstein Trust admit that Jackson has tendered the death benefit to the court, but deny that a final determination has been made of the total interest due on the death benefit from the date of Simon Bernstein’s (“Insured”) death through the date of deposit.

PARTIES AND VENUE

2. Jackson, as successor in interest to Reassure America Life Insurance Company (“Reassure”), successor in interest to Heritage Union Life Insurance Company (“Heritage”), is a corporation organized and existing under the laws of the State of Michigan, with its principal

place of business located in Lansing, Michigan. Jackson did not originate or administer the subject life insurance policy, Policy Number 1009208 (the “Policy”), but inherited the Policy and the Policy records from its predecessors.

ANSWER: Ted Bernstein and The Bernstein Trust lack sufficient information to form a belief as to the allegations contained in Par. 2 but verily believes that Jackson is the successor-in-interest to Heritage Union Life Insurance as Insurer of the Policy and believes that Jackson administers the Policy. Ted Bernstein and The Bernstein Trust deny that Jackson “inherited” the Policy and Policy records from its predecessor.

3. The Simon Bernstein Irrevocable Trust Dtd 6/21/95 (the “Bernstein Trust”) is alleged in the underlying suit to be a “common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois”

ANSWER: Ted Bernstein and The Bernstein Trust admit the allegations contained in Par 3.

4. Ted S. Bernstein is a resident and a citizen of Florida. He is alleged in the underlying suit to be the “trustee” of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein’s son).

ANSWER: Ted Bernstein and the Bernstein Trust admit the allegations contained in Par. 4.

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy as Simon Bernstein’s son, presumably under the Bernstein Trust.

ANSWER: Ted Bernstein and The Bernstein Trust admit that Eliot Bernstein is a resident and citizen of Florida. Ted Bernstein and The Bernstein Trust verily believe that Eliot Bernstein has communicated in writing and/or via email with Jackson regarding potential claims on the Policy, and affirmatively state that such written communications speak for themselves.

6. First Arlington Bank is upon information and belief, a bank in Illinois, that was, at one point, the purported trustee for the S.B. Lexington, Inc. Employee Death Benefit Trust” (the “Lexington Trust”). The Lexington Trust was, upon information and belief, created to provide employee death benefits to certain employees of S.B. Lexington, Inc., an insurance agency, but it is unclear if such trust was properly established.

ANSWER: Ted Bernstein and The Bernstein Trust lack sufficient information to admit or deny the allegations contained in Par. 6 and to the extent such allegations contain conclusions of law regarding the “proper formation” of the Lexington Trust no response is required.

7. United Bank Of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

ANSWER: Ted Bernstein and The Bernstein Trust deny the allegations contained in Par. 7.

8. Bank of America, N.A. is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

ANSWER: Ted Bernstein and The Bernstein Trust deny the allegations contained in Par. 8.

9. The “Simon Bernstein Trust” is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

ANSWER: Ted Bernstein and The Bernstein Trust deny that that the Simon Bernstein Trust is a separate trust from The Bernstein Trust, but admit that The Bernstein Trust was named as a contingent beneficiary of the Policy.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

ANSWER: Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 10.

11. Personal jurisdiction is proper over Ted Bernstein because he, purportedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

ANSWER: Ted Bernstein admits the allegations contained in Par. 11.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

ANSWER: Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 12.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist under the laws of and to be administered within this State.

ANSWER: Ted Bernstein and The Bernstein Trust admit only that personal jurisdiction is proper over Ted Bernstein and Eliot Bernstein. Ted Bernstein denies he has an ownership in the Bernstein Trust but affirmatively states he has a beneficial interest in the Bernstein Trust.

14. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) in that a substantial part of the event giving rise to this interpleader action occurred in this District.

ANSWER: Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 14.

15. On December 27, 1982 upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the purported insured (the “Insured”).

ANSWER: Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 15.

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National Trust, N.A., Trustee; LaSalle National Trust, N.A.; Simon Bernstein Insurance Trust dated 6/21/95; and "Simon Bernstein Trust, N.A."

ANSWER: Ted Bernstein and The Bernstein Trust (i) admit that over the years owners, beneficiaries and contingent beneficiaries may have changed; (ii) lack sufficient information to admit or deny which of the entities listed by Jackson in Par. 16 were named as beneficiaries from time to time over the life of the policy; and (iii) deny that the "issuer" changed.

17. At the time of the Insured's death, it appears LaSalle National Trust, N.A. was the named primary beneficiary of the Policy, and the Simon Bernstein Trust, N.A. was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

ANSWER: Ted Bernstein and The Bernstein Trust deny that LaSalle National Trust, N.A. was named the primary beneficiary of the Policy, and affirmatively state that to the extent LaSalle National Trust, N.A. was named as a beneficiary it was named solely in its capacity as Trustee of the SB Lexington VEBA Trust. Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny that (i) the Simon Bernstein Trust, N.A. was named a contingent of the Policy; or (ii) to admit or deny the exact amount of the death benefit.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as trustee of the Bernstein Trust. Ted Bernstein claimed that Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

ANSWER: Ted Bernstein and the Bernstein Trust admit Ted Bernstein submitted a claim through Florida counsel seeking payment of the Death Benefit Proceeds as trustee of the Bernstein Trust, and claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the sole surviving Policy beneficiary at the time of decedent's death, but deny all remaining allegations contained in Par. 18.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.

ANSWER: Ted Bernstein and the Bernstein Trust admit that to its knowledge no one has been able to locate an executed original or an executed copy of the Bernstein Trust, but denies that no one has located a copy of the Bernstein Trust. Ted Bernstein and the Bernstein Trust neither admit nor deny the remaining allegations but state that any such correspondence dated January 8, 2013 speaks for itself.

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the “Simon Bernstein Insurance Trust dated 6/21/95, Trust” as captioned herein, or the “Simon Bernstein Trust, N.A.” as listed as the Policy’s contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant action on behalf of the Bernstein Trust.

ANSWER: Ted Bernstein and the Bernstein Trust admit only that neither an executed original nor an executed copy of the Bernstein Trust Agreement has been located. Ted Bernstein and the Bernstein Trust lack sufficient information regarding what Jackson “is aware of” in connection with the Trust or Trustee. Ted Bernstein and the Bernstein Trust deny that Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

21. In addition, it is not known whether “LaSalle National Trust N.A.” was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust) or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust which was allegedly dissolved.

ANSWER: Ted Bernstein and the Bernstein Trust deny the allegations contained in Par. 21.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as Exhibit 1, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper beneficiaries of the Policy), and requesting that no distribution of the Death Benefit Proceeds be made.

ANSWER: Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny the allegations in Par. 22 and state that Exhibit 1 speaks for itself.

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

ANSWER: Ted Bernstein and the Bernstein Trust make no answer to the allegations in Par. 23 as they are conclusions of law.

24. Jackson does not dispute the existence of the Policy or its obligations to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

ANSWER: Ted Bernstein and the Bernstein Trust make no answer to the allegations in Par. 24 to the extent they contain conclusions of law, but admit that Death Benefit Proceeds were tendered into the registry of the court. Ted Bernstein and the Bernstein Trust have reserved their right to contest the amount of interest due on the Death Benefit Proceeds.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of LaSalle National Trust N.A. (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

ANSWER: Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny the allegations contained in Par. 25.

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy, which Jackson has been unable to do by reason of uncertainty and potential competing claims.

ANSWER: Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny the allegations contained in Par. 26.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

ANSWER: Ted Bernstein and the Bernstein Trust deny the allegations in Par. 27.

Wherefore, Plaintiff/Counter-Defendant, Bernstein Trust, and Third Party Defendant, Ted S. Bernstein respectfully request that this Court (i) enter judgment for Plaintiff on its complaint against Jackson, all Defendants, and Third Party Defendants; (ii) award the Death Benefit Proceeds to the Bernstein Trust; and grant Plaintiff such further relief as the court deems just and proper.

Affirmative Defenses

Ted Bernstein and the Bernstein Trust, for its affirmative defenses and without waiver of Jackson's obligation to prove each and every element of its counterclaim, states as follows:

1. To the extent any Third-Party Bank Defendant (i) cannot be located or found to exist by Jackson, and (ii) has not sent any claim for the Death Benefit Proceeds to Jackson, such Third-Party Bank Defendant should be dismissed from this action with prejudice because such party does not qualify as a "potential claimant" to the Death Benefit Proceeds.

2. Jackson's counterclaim and cross-claim for Interpleader arises out of its succession to and assumption of the Policy in the ordinary course of its business as an Insurer. Upon information and belief, Jackson became the successor Insurer of the Policy as a result of its purchase of the Policy from another insurance company, or by virtue of Jackson's acquisition of another life insurance company whom was the Insurer under the Policy. Because (i) the counterclaim for interpleader was filed in response to Plaintiff's breach of contract action and in order to protect Jackson from liability, (ii) such action is an ordinary part of its insurance business; and (iii) no extraordinary measures were taken, Jackson is not entitled to reimbursement of its attorney's fees and costs from the Death Benefit Proceeds pursuant to the Interpleader Act.

By: s/Adam M Simon

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*Simon Bernstein Irrevocable Trust Dtd 6/21/95
and Third-Party Defendant, Ted Bernstein,
individually.*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the foregoing Notice of Motion to be filed and served *via* electronic means with the Northern District of Illinois, pursuant to the Court's Electronic Case Filing (ECF) procedures and also served upon the following persons and entities *via* U.S. mail, proper postage prepaid:

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on this 30th day of August, 2013.

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