

**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,)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff)

v.)

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

Counter-Defendant)

and,)

JPMORGAN CHASE BANK, N.A.,)
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

MOTION TO INTERVENE
PURSUANT TO FED. R. CIV.
P. 24 BY INTERESTED PARTY
WILLIAM E. STANSBURY

_____)
)
 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.)

William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, by and through his undersigned counsel, pursuant to Fed. R. Civ. P. 24, files this Motion to Intervene in this action and in support states as follows:

1. Stansbury filed a lawsuit the Circuit Court of 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. (A copy of the Complaint is attached as Exhibit "A").

2. Simon Bernstein died in September of 2012. A Petition for Administration was filed on October 2, 2012, and is pending in the Circuit Court of Palm Beach County, Florida, under the Court No. 502012 CP 4391XXXXSB. (A copy of the Petition for Administration is attached hereto as Exhibit "B"). Simon Bernstein's estate was substituted as a party defendant in Stansbury's lawsuit.

3. Stansbury also asserted claims against the Estate of Simon Bernstein (the "Estate") in the Probate Court of Palm Beach County, Florida. As a result, Stansbury is a creditor of the Estate. (A copy of Stansbury's claim filed in the Probate Court against the Estate is attached hereto as Exhibit "C").

4. The alleged beneficiary of the life insurance policy that is at issue in the instant litigation is designated as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust"), established June 21, 1995, with Simon Bernstein's wife, Shirley Bernstein, identified as Trustee. Shirley Bernstein predeceased Simon Bernstein in 2010. The Trust is the Plaintiff in the instant action.

5. Representatives of the Trust claim that Shirley Bernstein was the initial beneficiary of the Trust, but she predeceased Simon Bernstein. The representatives also claim that the children of Simon and Shirley Bernstein are the secondary beneficiaries of the Trust, but they also acknowledge that the written Trust document cannot be found. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit "D"). Thus, the Trust no longer exists.

6. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's death, the policy is payable to the insured, and thus, in this case, the insured's Estate. Harris v. Byard, 501 So.2d 730, 12 Fla. L. Weekly 429.

7. Under the circumstances of this case the proceeds of the life insurance policy should be paid to the Estate and made available to pay creditors such as Stansbury.

8. Stansbury is entitled to Intervention of Right under Fed. R. Civ. P. 24(a)(2) in that Stansbury, as a substantial creditor of the Estate, claims an interest in the life insurance proceeds that are the subject of this action and is so situated that disposing of this action without his intervention may as a practical matter impair Stansbury's ability to protect his interest in the life insurance proceeds that are or may be payable to the Estate and available to pay creditors such as Stansbury.

9. The parties to this action will not adequately represent Stansbury's interest in this litigation. The proponents of the Trust and the children of Simon Bernstein will advocate that the Trust exists and that the children are the proper beneficiaries, which means the life insurance proceeds will be paid directly to the children and outside the Probate Estate, making the life insurance proceeds unavailable to pay creditors of the Estate such as Stansbury. None of the current parties, upon information and belief, will advocate that the life insurance proceeds at issue are and should be payable to the Estate and made available to pay creditors such as Stansbury.

10. Stansbury is also entitled to Permissive Intervention under Fed. R. Civ. P. 24(b)(1)(B) in that Stansbury has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds that are the subject of this action.

11. Plaintiff is alleged to be a Trust formed in Chicago, Illinois. Defendant is a Minnesota corporation and Stansbury is a resident of the State of Florida. Therefore, Stansbury's intervention will not destroy diversity of citizenship.

12. A pleading that sets out the claim for which intervention is sought is attached hereto as Exhibit "E".

WHEREFORE, proposed Intervenor, William E. Stansbury moves this Honorable Court for an Order permitting him to intervene in this action pursuant to Fed. R. Civ. P. 24 (a)(2) or 24 (b)(1)(B).

WILLIAM E. STANSBURY

By: /s/ John M. O'Halloran
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2013, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

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