

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

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

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)

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

**PLAINTIFFS MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT**

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

Third-Party Defendants.)

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.)

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED S. BERNSTEIN, as Trustee, (collectively referred to as “BERNSTEIN TRUST”), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and moves this Honorable Court for Leave to File their First Amended Complaint stating as follows:

BACKGROUND

1. The BERNSTEIN TRUST filed a breach of contract action against HERITAGE in the Circuit Court of Cook County, Illinois arising out of HERITAGE’S failure to pay a death claim on a life insurance policy.
2. On May 16, 2013, HERITAGE filed a notice of removal to the United States District Court for the Northern District of Illinois and filed a counterclaim for interpleader.
3. Subsequently, HERITAGE, with leave of the court, deposited the proceeds of the life insurance policy with the Registry of the Court.
4. On September 22, 2013, Eliot Bernstein filed certain cross-claims and third-party claims.
5. On December 5, 2013, William Stansbury filed a motion to intervene and that motion is pending and currently being briefed by the parties.
6. Plaintiff seeks leave of the court to file its first amended complaint to add four of the beneficiaries (children of Simon Bernstein) as Plaintiffs and to add two additional claims and/or theories of recovery. A copy of the proposed First

Amended Complaint is attached hereto as Exhibit A.

7. Fact discovery is not scheduled to close until February 17, 2014.
8. The additional parties being added as Plaintiffs have been parties to the litigation as counter-defendants and/or third-party defendants since November 4, 2013 when they filed their appearance and responsive pleadings to Eliot Bernstein's cross-claims and third-party claims.
9. There will be very little or no prejudice to the other parties to the litigation as this First Amended Complaint is being submitted with sufficient time left to conduct discovery, and the parties have already had time to initiate discovery because the new Plaintiffs are not new parties to the litigation.
10. FRCP Rule 15(b)(2) states as follows:

Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
11. For all of the foregoing reasons, Plaintiffs request that this Court grant them leave to file its first amended complaint, instanter.

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WHEREFORE, PLAINTIFFS, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, Ted Bernstein, as Trustee and individually, Pamela Simon, Jill Iantoni, and Lisa Friedstein pray for an Order granting leave to file their first amended complaint, instanter, and for such other relief as this court deems just and proper.

Dated: January 3, 2014

By: s/Adam M. Simon

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorneys for Plaintiffs and Third-Party
Defendants

*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*