

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

REPLY TO PLAINTIFF'S
MEMORANDUM OF LAW
IN OPPOSITION TO
INTERESTED PARTY
WILLIAM E. STANSBURY'S
MOTION TO INTERVENE
PURSUANT TO FED. R. CIV. P. 24

_____)
)
 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 Reply to Plaintiff’s Memorandum of Law in Opposition to William Stansbury’s Motion to Intervene, and states:

I. Federal Courts should construe Fed. R. Civ. P. 24 liberally and should resolve all doubts in favor of allowing intervention.

1. Federal courts should apply Rule 24, Fed. R. Civ. P., and should resolve all doubts in favor of allowing a party to intervene. *Miami Tribe of Oklahoma v. Walden*, 206 F.R.D. 238, 241 (S.D. Ill. 2001) (federal courts should resolve all doubts in favor of permitting a party to intervene; a court should not deny a motion to intervene unless it is certain that the proposed intervenor cannot succeed in the case under any set of facts).

2. In the present case, Stansbury should clearly be permitted to intervene. If the Plaintiff fails prove the valid existence of the purported Trust, as it is required to do, by clear and convincing evidence, the insurance proceeds at issue will inure to the benefit of the estate of the decedent, including creditors of the estate, like Stansbury. Because it is doubtful that the Plaintiff will be able to prove the existence of a valid Trust, Stansbury should clearly be permitted to intervene. *Estate of Wilkening v. Nicholson*, 441 N.E. 2d 158, 163 (Ill. App. Ct. 1982) (the evidence necessary to establish a trust must be unequivocal both as to its existence and to its terms and conditions). Indeed, Plaintiff presents no copy of the alleged Trust and no writing or evidence of the purported Trust's terms and conditions. Without such evidence, Plaintiff cannot prove the existence of a valid Trust under Illinois law. *Id.*

II. A significant potential creditor of an Estate, like Stansbury, has standing to intervene in an action involving a determination of entitlement to insurance proceeds.

3. As a significant claimant against the Estate of Simon Bernstein, Stansbury has standing to intervene in this proceeding, which will determine the entitlement to the insurance proceeds. *Reassure America Ins. Co. v. Shomers*, 265 F.R.D. 672 (S.D. Fla. 2010) (potential creditor of estate would be entitled to intervene in action because beneficiary of the insurance policy was disputed; potential creditor was entitled to intervene to dispute alleged trust's right to insurance proceeds as trust was alleged to be invalid); *First Penn-Pacific Life Ins. Co. v. Evans*,

200 F.R.D. 532 (D. Md. 2001) (representatives of creditors/investors were permitted to intervene in action involving life insurance policy where action could deprive creditors/investors of a substantial sum that was claimed to be an asset of the estate); *Munford, Inc. v. TOC Retail, Inc.*, 115 B.R. 388 (N.D. Ga. 1990) (unsecured creditor's committee was allowed to intervene because creditors had a direct interest in the outcome of the proceedings).

III. When no valid beneficiary is designated by life insurance policy, the proceeds pass to the decedent's Estate.

4. Since the beneficiary of the insurance policy is disputed, it is very likely, if the Court finds that the trust cannot be proven by clear and convincing evidence, that the proceeds of the insurance policy will inure to the benefit of the Estate of Simon Bernstein and such proceeds will be available to pay the claims of such claimants as Stansbury.

5. If no valid beneficiary is found to exist, the insurance proceeds will pass to the Estate of Simon Bernstein. See *New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Knights of Columbus v. Virginia Trust*, No. 2:12-cv-00688-JCM-VCF, 2012 WL 4963758, at *3 (D. Nev. Dec. 5, 2012) (where no valid beneficiary existed at time of decedent's death, the decedent's estate became beneficiary of the insurance policy proceeds).

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).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 13, 2014, 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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By: /s/ John M. O'Halloran
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