

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

PETITION FOR APPOINTMENT OF ADMINISTRATOR AD LITEM
(WITH ATTACHED EXHIBITS)

COMES NOW, William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §733.308, Fla. Stat. (2013) and Fla. Prob. R. 5.120 (2013), files this Motion for Appointment of Administrator Ad Litem and in support states as follows:

I. Stansbury has standing to bring this Petition

1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, 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.

2. Simon Bernstein died in September of 2012 and his estate was substituted as a party defendant in Stansbury’s lawsuit. Stansbury also asserted claims against the Estate of Simon Bernstein (the “Estate”) in this Court.

3. The provisions of §731.201(23), Fla. Stat. (2013) define an “interested person” as:

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved...”

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the Estate is administered without bias and in the best interests of the devisees and creditors of the Estate. This means Stansbury has an interest in ensuring that the Estate marshals all the assets to which the Estate is entitled for the benefit of devisees and creditors.

5. The Fourth District Court of Appeal has recognized that a claimant or creditor to an estate is an “interested person” and has standing in a proceeding to approve the personal representative’s final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4th DCA 2004). *See also, Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an “interested person” under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.)

6. Stansbury is therefore an “interested person” entitled to file and advance this Petition for Appointment of Administrator Ad Litem.

II. The Life Insurance Litigation

7. At the time of Simon Bernstein’s death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company (“Heritage”). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the “Insurance Trust”).

8. Robert Spallina, one of the now-resigned Co-Personal Representatives, submitted a claim form to Heritage on behalf of the alleged Insurance Trust for the benefit of the grown

children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “1,” attached.) If the alleged Trust instrument cannot be found and the beneficiaries of the Trust cannot be established, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay the devisees and creditors of the Estate. The devisee of the Estate is the Simon Bernstein Trust. The beneficiaries of the Simon Bernstein Trust are the grandchildren of Simon Bernstein, not the grown children of Simon Bernstein.

9. Spallina represented that he was “Trustee” of the Insurance Trust in an effort to collect the insurance proceeds for the benefit of the grown children of Simon Bernstein, and to circumvent the Estate.

10. Heritage refused to pay the life insurance proceeds to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois, and the case was subsequently removed to Federal Court. (The “Life Insurance Litigation”) See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) (A copy of the original Complaint filed in state court is attached as Exhibit “2.”) There, Ted Bernstein represented to the court that he was the trustee of the Insurance Trust, even though the Trust has never been located.

11. The Estate of Simon Bernstein is not a party to the action, even though the Estate will clearly be affected by the outcome of the litigation.

12. The current parties in the Life Insurance Litigation will not adequately represent the interests of the Estate. The Plaintiff Trust and the grown children of Simon Bernstein are

advocating that the Insurance Trust exists and that the Simon Bernstein grown children are the proper beneficiaries. If they prevail, the life insurance proceeds will be paid directly to the grown children of Simon Bernstein, circumventing the Estate. The life insurance proceeds would then be unavailable to pay devisees (the grandchildren of Simon Bernstein as beneficiaries of his trust) and creditors of the Estate. None of the current parties to the action in Illinois will advocate or are advocating that the life insurance proceeds are or should be payable to the Estate and made available to pay the devisees and creditors.

13. As a consequence of the foregoing, it is imperative that this Court appoint an Administrator Ad Litem to represent the interests of the Estate to intervene in the Life Insurance Litigation. At present, there is no Personal Representative representing the interests of the Estate as this Court recently appointed a Curator. As such, the interests of the Estate will go unrepresented if an Administrator Ad Litem is not appointed.

14. Section 733.309, Fla. Stat. (2013) gives this Court the authority to appoint an Administrator Ad Litem under these circumstances. That statute specifically states:

733.308. Administrator ad litem. When an estate must be represented and the personal representative is unable to do so, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding.

15. Additionally, Fla. Prob. R. 5.120 states:

Rule 5.120. Administrator Ad Litem and Guardian Ad Litem

(a) Appointment. When it is necessary that the estate of a decedent...be represented in any probate...proceeding and there is no personal representative...or the necessity arises otherwise, the court may appoint an administrator ad litem...without bond or notice for that particular proceeding....

16. There currently is only a curator of the Estate of Simon Bernstein. Additionally, the Life Insurance Litigation is a matter that requires that the Estate intervene in order to protect

its interests and the interests of its devisees, Simon Bernstein's grandchildren and creditors of the Estate.


WHEREFORE, Interested Person, William E. Stansbury moves this Honorable Court for an Order Appoint an Administrator Ad Litem to protect the interests of the Estate of Simon Bernstein in Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.), together with any other relief this court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Motion was forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com on this 14th day of March, 2014.

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By: _____


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December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/km

Enclosures

EXHIBIT 1

BT000083

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, LAW DIVISION

FILED LAW DIVISION
 2013 APR -5 AM 11:45
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL

SIMON BERNSTEIN IRREVOCABLE)
 INSURANCE TRUST DTD 6/21/95)
)
 Plaintiff)
 v.)
)
 HERITAGE UNION LIFE INSURANCE)
 COMPANY, a Minnesota corporation)
)
 Defendant.)

Case No.

COMPLAINT AT LAW

NOW COMES Plaintiff, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, ("BERNSTEIN TRUST" or "Plaintiff"), by its attorney, Adam M. Simon and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, a Minnesota corporation ("HERITAGE") and states as follows:

COUNT I

BREACH OF CONTRACT

1. At all relevant times, the BERNSTEIN TRUST was 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.
2. Ted S. Bernstein is the Trustee of the BERNSTEIN TRUST.
3. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon L. Bernstein, and issued as policy number 1009208 (the "Policy").

EXHIBIT 2

The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA (the "VEBA") from Capital Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

5. At the time of issuance and delivery of the Policy in 1982, CBLIC was an insurance company licensed and doing business in the State of Illinois, and the insured, Simon L. Bernstein, was a resident of the state of Illinois.

6. HERITAGE subsequently assumed the Policy from Capital Bankers and thus became the successor to CBLIC as "Insurer" under the Policy.

7. In 1995, the VEBA, as owner of the Policy, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee of the VEBA, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

8. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

9. Upon the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon L. Bernstein, individually.

10. At the time of his death, Simon L. Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary under the Policy.

11. The insured under the Policy, Simon L. Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

12. Following Simon L. Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including Simon L. Bernstein's death certificate and other documentation.

13. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the Insured's death.

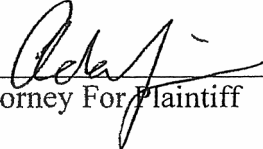
14. HERITAGE has breached its obligations under the Policy by refusing and failing to pay the Policy's death benefits to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the Insured's death.

15. Despite the BERNSTEIN TRUST'S demands HERITAGE has not paid out the death benefits on the Policy to the BERNSTEIN TRUST.

16. As a direct result of HERITAGE's refusal and failure to pay the death benefits to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, prays for a judgment to be entered in its favor and against Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, for an amount in excess of \$1,000,000.00 plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

RESPECTFULLY SUBMITTED,

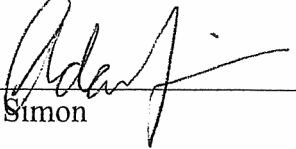


Attorney For Plaintiff

Adam M. Simon
The Simon Law Firm
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Chicago, IL 60601
(312) 819-0730
Firm. No. 34436

VERIFICATION OF DAMAGES

Adam M. Simon, an attorney, certifies that he reasonably believes that the damages incurred by Plaintiff as a result of the occurrence described in the attached complaint exceed \$1,000,000.00.



Adam M. Simon