

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

IN RE: ESTATE OF SIMON L. BERNSTEIN
PROBATE DIVISION
CASE NO. 5021012CP004391XXXXSB

**CURATOR'S MOTION FOR INSTRUCTION/DETERMINATION
REGARDING ESTATE ENTITLEMENT TO LIFE INSURANCE PROCEEDS**

COMES NOW, Curator, Benjamin P. Brown ("Curator"), by and through undersigned counsel, files this Motion for Instructions/Determination Regarding Estate Entitlement to Life Insurance Proceeds, and states as follows:

1. On February 25, 2014, this Court entered an Order on "Interested Person" William Stansbury's Motion For the Appointment of a Curator or Successor Personal Representative ("Order Appointing Curator"), appointing Benjamin P. Brown as Curator. On March 11, 2014, this court entered Letters of Curatorship in Favor of Benjamin Brown ("Letters of Curatorship").

2. Litigation involving life insurance proceeds on the Decedent's life is currently pending in federal court in Illinois (*Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13CV3643 (N.D. Ill., E.Div) (the "Illinois Case"). The Illinois Case was commenced by the Simon Bernstein Irrevocable Insurance Trust, dated June 1, 1995 (the "ILIT"), and seeks to compel payment of approximately \$1.7 million life insurance proceeds ("Proceeds") to the ILIT. The Estate is not a party in the Illinois Case.

3. If the Proceeds are paid to the ILIT, they would pass outside of probate and, upon information and belief, to the decedent's five adult children, who are the alleged beneficiaries of the ILIT. Under this scenario, the Proceeds would not be subject to

creditor claims. On the other hand, if the Proceeds are paid to the Estate, they would be subject to creditor claims and would eventually pour over into the decedent's revocable trust which, in turn, would distribute the proceeds to the decedent's grandchildren.

4. On March 14, 2014, William Stansbury ("Stansbury"), a purported creditor of the Estate, filed a Petition for Appointment of Administrator Ad Litem ("Petition for Appointment") wherein he requested this Court appoint an administrator ad litem for the purposes of representing the Estate in the Illinois Case. A copy of the Petition for Appointment is attached hereto as Exhibit A, and contains additional alleged facts germane to this motion.

5. The Curator believes that the Estate's rights to the Proceeds should be determined by this Court. The Estate proceeding was pending prior to the filing of the Illinois Case, the subject life insurance policy was owned by a Florida domiciliary and the Proceeds will pass either pursuant to a Florida Will or, upon information and belief, to the Decedent's Florida ILIT, to the extent it exists. The Estate has, to the Curator's knowledge, no connections whatsoever to the state of Illinois.

6. The Curator believes the Estate would incur unnecessary and substantial expense and delay if the Curator caused the Estate to intervene in the Illinois Case to attempt to have the Estate's right to the Proceeds adjudicated. That would require retention of Illinois federal trial counsel, and federal court litigation is undoubtedly more costly and slower than litigation in this Court.

7. The Estate is entitled to have its rights adjudicated by this Court, rather than having to intervene in the Illinois Case.

WHEREFORE, the Curator respectfully requests that this Court enter an Order providing that this Court will determine the Estate's interests, if any, in the Proceeds, as described above, and awarding such other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon Alan Rose, Esq., Page Mrachek, 505 S. 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 S. Olive Ave., Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com, Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, Palm Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay FL 33157, bill@palmettobaylaw.com, on this 17th day of March, 2014.

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By: _____



Benjamin P. Brown
Florida Bar No. 841552

EXHIBIT A

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**

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.

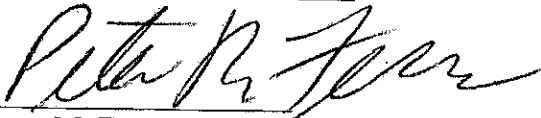
WHEREFORE, Interested Person, William E. Stansbury moves this Honorable Court for an Order Appoint an Administrator Ad Litem to protect the interests of the Estate of Simon Bernstein in Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill.,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