

**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 )  
INSURANCE 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 )  
Irrevocable Insurance Trust Dtd 6/21/95, )

**Case No. 13 cv 3643**  
**Honorable John Robert Blakey**  
**Magistrate Mary M. Rowland**

**JOINT REASSIGNMENT  
STATUS REPORT**

**Filers:**

Brian O'Connell, as Personal  
Representative of the Estate of  
Simon L. Bernstein, Intervenor;

Simon Bernstein Irrevocable Insurance Trust  
Dtd. 6/21/95, Plaintiff;

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. )  
) )  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
) )  
Intervenor. )

## REASSIGNMENT STATUS REPORT

### I. Nature of the Case

#### A. Attorneys of Record

Adam M. Simon (#6205304)  
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**Attorney for:**

*Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.*

James J. Stamos (#3128244)  
Kevin P. Horan (#6310581)  
STAMOS & TRUCCO LLP  
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**Attorney for:**

*Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor*

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434

*Pro Se*

#### B. Basis for Federal Jurisdiction

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

#### C. Nature of the Claims Asserted

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. A claim for the insurance policy death benefit was filed on behalf of a purported trust titled "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"), as contingent beneficiary of the Policy. The death benefit claim was denied by the carrier when an executed trust document was not produced.

After the claim was denied, four out of five of Mr. Bernstein's adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee, claiming a right to the proceeds of the Policy as alleged beneficiaries under the 1995 Trust. Because (i) no executed original or executed copy of the 1995 Trust could be located, and (ii) Eliot I. Bernstein, the fifth adult child of Simon Bernstein and third party defendant/cross-plaintiff, objected to the claim, the Defendant insurance company, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the Policy proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014.

**D. Relief Sought by Parties**

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:

- a. The 1995 Trust is the beneficiary of the Policy Proceeds;
- b. The Trustee of the 1995 Trust is Ted Bernstein;
- c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L. Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The

Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

3. Third Party Defendant/Cross-Plaintiff Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

## **II. Discovery and Pending Motions**

### **A. Pending Motions**

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

### **B. Discovery**

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's

docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

### **C. Substantive Rulings Issued to Date**

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);
2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

### **III. Trial**

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery, and is preparing to file a dispositive motion by March 6, 2015. Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

### **IV. Settlement and Referrals**

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will

continue. The parties should be in a position to report on the status of that settlement at the next status hearing. Despite the efforts of counsel to file an agreed Joint Reassignment Status Report, a consensus could not be reached. Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

Respectfully submitted,

*/s/ Kevin P. Horan*

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 2, 2015 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.

Respectfully submitted,

*/s/ Kevin P. Horan*

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

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