

**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;

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-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

1. That the following Non-Joint Minority Status Report is filed by Third Party Defendant / Cross Plaintiff, Eliot Bernstein (“Eliot” or Cross Plaintiff), as he was unable to speak with all parties to have his suggestions heard due to a refusal by Plaintiff’s Attorney Adam Simon, Esq. (“A. Simon”) to speak with him regarding adding significant changes to the “facts” regarding the status of the case.
2. In efforts to have his changes made, the estate of Simon Bernstein’s counsel, Mr. Kevin Horan, Esq. (“Horan”) tried to have Eliot’s comments added but A. Simon appears to have refused virtually all of the clarifying comments and refused to speak with Eliot.
3. In order to have Eliot’s concerns with the Status Report heard, Eliot spoke with Horan and he suggested filing a separate report since it appeared futile to reach a joint agreement on the language with A. Simon’s refusal to speak to Eliot or make appropriate changes.
4. Therefore, the easiest way to make the Court aware of the problems that necessitated two reports appears to be to exhibit to the Court the drafts that were circulated to Eliot and Eliot’s redlined version which he sent to Horan, so that the Court can see what the disagreements were that led to separate Status Reports and thus both sides can be heard.
5. Attached as Exhibit A, is the initial report sent to Eliot by Horan, after he and A. Simon worked together, without Eliot’s input to formulate such.
6. Attached as Exhibit B, is Eliot’s redlined version of the initial Status Report sent.
7. Attached as Exhibit C, is a letter from A. Simon to Horan showing his refusal to compromise or discuss the changes suggested by Eliot that forced Eliot to file this separate report.
8. Attached as Exhibit D, is a letter from Horan to Eliot with a final copy of the Status Report that Horan and A. Simon submitted, the attachment is omitted it was filed ECF with the

Court already. Eliot was to have a chance to review the final as well but do an office snafu in Horan's office as described in his email, Eliot was not sent a final to review before they filed with Your Honor.

9. Eliot did not review the email with their filing until 2:49am on 2/3/2015, which was after the deadline to submit a Status Report according to Your Honor's request and Eliot prays the Court understand his untimely filing.
10. Eliot requests the Court use Exhibit B as Eliot's final Status Report submitted to the Court.
11. After reviewing the final submitted to the Court by Simon and Horan, Eliot would like to add the following substantive facts he suggested to Horan that were omitted from their final Joint Status, as these are significant misstatements of fact that remain.
 - a. In reference to A. Simon's claim in the Status Report that Eliot's Motion to Remove him for conflicts of interest and more being denied by the Court, Eliot would like the Court to take Judicial Notice of the attached Exhibit E, which is a letter from the Creditor of Estate of Simon's attorney, Mr. Peter Feaman, Esq. ("Feaman") and the newly appointed Personal Representative / Executor of the Estate of Simon Bernstein, Mr. Brian O'Connell, Esq. ("O'Connell") describing Attorney at Law ethical and possible criminal continued misconduct regarding the representations in this litigation. That due to this letter amongst Attorneys at Law describing continued attorney and fiduciary misconduct in these matters regarding Simon L. Bernstein the decedent, the misconduct further described in Exhibit B, a thorough review by this Court of the misconduct should be undertaken before allowing A. Simon to continue what may be knowingly conflicted and perhaps illegal representations of parties in this matter.

b.

Respectfully submitted,

/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
Telephone (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 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.

EXHIBIT A

INITIAL STATUS REPORT TENDERED TO ELIOT BY HORAN FOR COMMENT

Eliot Ivan Bernstein

From: Kevin Horan <KHoran@stamostrucco.com>
Sent: Friday, January 30, 2015 12:07 PM
To: Adam Simon; Eliot Ivan Bernstein
Cc: James J. Stamos
Subject: Estate of Bernstein: Joint Status Report
Attachments: Joint Status Report for E. Bernstein Review.DRAFT.doc

Adam and Eliot,

Attached please find a revised draft of the Joint Status Report, due to be filed on February 2, 2015. The current version reflects edits and revisions which were made and agreed upon by me and Adam this morning. Adam, if any of my revisions do not comport with your understanding of our earlier conversation, please let me know. Eliot, please review and respond with any suggested additions, deletions, or revisions.

Thanks in advance for your cooperation.

Best wishes,

Kevin

Kevin P. Horan
Stamos & Trucco LLP
One East Wacker Drive
Third Floor
Chicago, IL 60601
[\(312\) 630-1208](tel:(312)630-1208) Direct
[\(312\) 630-7979](tel:(312)630-7979) Main
[\(312\) 630-1183](tel:(312)630-1183) Fax
www.stamostrucco.com

The preceding email message is confidential and protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Stamos & Trucco LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

**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;

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-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)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 312-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com

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
One East Wacker Drive, Third Floor
Chicago, IL 60601
Telephone: (312) 630-7979
Facsimile: (312) 630-1183

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. After Mr. Bernstein’s death, four out of five of his adult children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a trust they describe as the “Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95.” (the “1995 Trust”). Because (i) no executed original or executed copy of the 1995

Trust could be located, and (ii) Eliot Bernstein, the fifth adult child of Simon Bernstein, filed a letter asserting a competing 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, 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.

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.

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.

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

James J. Stamos (ARDC 03128244)
Kevin P. Horan (ARDC 06310581)
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
Telephone: (312) 630-7979
Facsimile: (312) 630-1183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 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.

EXHIBIT B

ELIOT'S REDLINED VERSION OF THE INITIAL STATUS REPORT

**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;

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-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)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 312-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com

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
One East Wacker Drive, Third Floor
Chicago, IL 60601

Telephone: (312) 630-7979

Facsimile: (312) 630-1183

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 by the Estate Counsel and Co-Personal Representative/Executor Robert Spallina, Esq. who acted as an alleged Trustee of an alleged Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). This trust is alleged to be the Contingent Beneficiary of the policy and the Primary Beneficiary is

LaSalle National Trust, NA who is alleged by the carrier to be the beneficiary. The death benefit claim of Spallina's was DENIED by the carrier as Spallina was unable to prove a beneficial interest or produce a legally binding executed trust.

That Spallina and his legal partner Mr. Donald Tescher, Esq. have resigned and been removed by the Probate Court in Florida and their law firm has been found to have committed fraud on the probate court of Judge Martin Colin, forged documents POST MORTEM for Simon Bernstein, used Simon Bernstein POST MORTEM to close his wife's estate, which was reopened and fraudulently notarized and forged documents for six parties, in efforts to convert benefits to alleged improper parties. The following Estate and Trust cases for Simon and Shirley Bernstein are ongoing.

- i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- ii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- iii. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- iv. Case # 502014CP003698XXXXSB – Shirley Trust Construction
- v. Case # 502014CA014637XXXXMB – Eliot Bernstein v. Trustee Simon Trust

After the claim was denied Mr. Bernstein's death, four out of five of Mr. Bernstein's his adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee for the lost trust claiming a right to the proceeds of the Policy as alleged beneficiaries under a trust they describe as the “Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95.”

(the “1995 Trust”). Because (i) no executed original or executed copy of the 1995 Trust could be located the claim was denied. The lawsuit was then filed as a breach of contract and Heritage Union notified Eliot Bernstein, and (ii) Eliot Bernstein, the fifth adult child of Simon Bernstein who was excluded without notice by his siblings from their lawsuit, that he was a third party

~~defendant in the matter by suing him as such. , filed a letter asserting a competing claim, the Defendant insurance company,~~ Heritage Union Life Insurance Company (WAS THIS JACKSON NATIONAL?), as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013, 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 alleged Policy (no legally executed Policy has been produced to this Court or any party by the Plaintiffs or the Insurance Carrier and further discovery is necessary) 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. That this is a breach of contract lawsuit and where there is no legal insurance contract that has been produced and the lawsuit was filed by a legally non-existent entity whereby Plaintiff has failed to produce a legally executed Trust document to give them standing.

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. Cross Plaintiff Eliot Bernstein seeks this Court,

1. Pay the Primary Beneficiary LaSalle National Trust NA that is now Chicago Title and Trust Co (check name exactly), which is Trustee and beneficiary for a Bernstein family benefit plan or have LaSalle National Trust NA produce their records to this Court to determine the proper course of payment of the proceeds after them.
2. Deny that the lost trust is a contingent beneficiary with any standing.
3. Determine Plaintiff has filed a frivolous, vexatious and fraudulent lawsuit as part of a Fraud on the Court.
4. Determine that there are no beneficiaries of a 1995 lost trust as it is a legally nonexistent entity and has been superseded by other dispositive documents of Simon Bernstein.
5. Acknowledge a 2000 trust that replaced any prior 1995 trust to deal with the life insurance policy and would make the prior trust moot. This trust may be the beneficiary of the Bernstein family qualified plan that LaSalle National Trust NA is the trustee for and beneficiary of the policy proceeds. The qualified plan may

have other assets in it as well. No records have been turned over by LaSalle National Trust, NA/Chicago Title.

6. Refer the case to Federal Authorities to investigate the fraudulent insurance application of Spallina, as Ted Bernstein filed that his father Simon may have been murdered on the day he died and contacted the Sheriff and the Coroner.

7. Take note that Eliot Bernstein has alleged in a Federal RICO action that the crimes in the Probate Courts already proven and admitted, committed by the Fiduciaries and Attorneys at Law in those matters, may all be part of a larger RICO regarding inventions of Eliot's and Simon's (his partner) worth and estimated Billions to Trillions. The following cases have been filed,

a. United States District Court - New York Sothern District Case 1:07-cv-11196-SAS¹

b. United States District Court – Nevada Case No. 2:12-cv-02040-JAD-PAC

1-8. To have the estate counsel or this Court now join Robert Spallina and Donald Tescher into the case as Defendants and indispensable parties to the action.

II. Discovery and Pending Motions

A. Pending Motions

¹ RELATED CASES TO CHRISTINE C. ANDERSON, ESQ., WHISTLEBLOWER CASE (07cv09599) Anderson v The State of New York, et al., (07cv11196) Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al., (07cv11612) Esposito v The State of New York, et al., (08cv00526) Capogrosso v New York State Commission on Judicial Conduct, et al., (08cv02391) McKeown v The State of New York, et al., (08cv02852) Galison v The State of New York, et al., (08cv03305) Carvel v The State of New York, et al., and (08cv4053) Gizella Weissshaus v The State of New York, et al. (08cv4438) Suzanne McCormick v The State of New York, et al.

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.

3. That pleadings to deny the Estate a right to intervene were filed by Ted Bernstein, who is simultaneously acting as alleged Trustee of a Simon Bernstein Trust that would receive the insurance benefits if granted to the Estate. Ted Bernstein also filed actions in the Estate of Simon to block intervention, which were denied by Judge Martin Colin. The Court should note that Ted Bernstein stands to inherit a twenty percent interest in the policy if this lawsuit is successful and zero interest if the proceeds are paid to the Estate and then the trusts, as Ted and his sister Pamela, both Plaintiffs have been disinherited entirely and considered predeceased for all purposes of the Estate and Trusts of Simon Bernstein and Shirley Bernstein. This conflict of interest and adversity to the beneficiaries of the Estate and Trust should be sanctioned by this Court.

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. Defendant 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. (Strike as this is wholly untrue.)~~ The parties should be in a position to report on the status of that settlement at the next status hearing.

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

James J. Stamos (ARDC 03128244)
Kevin P. Horan (ARDC 06310581)
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
Telephone: (312) 630-7979
Facsimile: (312) 630-1183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, 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.

EXHIBIT C

EMAIL FROM A. SIMON TO HORAN

Eliot Ivan Bernstein

From: Kevin Horan <KHoran@stamostrucco.com>
Sent: Saturday, January 31, 2015 7:02 PM
To: Adam Simon
Cc: Eliot Bernstein; James J. Stamos
Subject: RE: Estate of Bernstein: Joint Status Report

Adam:

I will edit the current draft and attempt to synthesize our respective positions. I will circulate a draft in advance of any conference we may have Monday morning. I would think we'd all agree that we'd prefer not to have a minority report.

Thanks,
Kevin

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Adam Simon <asimon21@att.net>
Date: 01/31/2015 11:02 AM (GMT-06:00)
To: Adam Simon <asimon21@att.net>, Kevin Horan <KHoran@stamostrucco.com>
Cc: Eliot Bernstein <iviewit@iviewit.tv>, "James J. Stamos" <JStamos@stamostrucco.com>
Subject: Re: Fwd: Estate of Bernstein: Joint Status Report

Kevin and Eliot:

I have looked over the changes suggested by Eliot. With his suggested modifications, the joint status report does not comport with the Court's template or its Order regarding the content and length of the report.

Also, on behalf of my client, there is simply no way we could consent to 90% of Eliot's suggested modifications. At this point, I would suggest two options:

- 1) Kevin you can attempt to include, based on what Eliot provided, a brief summary of the nature of his claims and relief requested, and recirculate for all to approve and then we can submit a joint report in accordance with the Court's order; or
- 2) Eliminate all of Eliot's suggested modifications, and then Plaintiff's and the Estate of Simon Bernstein can file a joint report indicating we could not come to agreement with Eliot on the content, and then Eliot can file a separate report. I will reserve my client's rights to seek to strike the report if it contains much of the substance that is contained in these modifications.

I can think of no other options that would result in our compliance with Judge Blakey's order. Let me know your thoughts.

Adam M. Simon
The Simon Law Firm
303 E. Wacker Drive

EXHIBIT D

HORAN EMAIL TO ELIOT WITH A FINAL COPY OF THE STATUS REPORT

Eliot Ivan Bernstein

From: Kevin Horan <KHoran@stamostrucco.com>
Sent: Monday, February 2, 2015 5:33 PM
To: Eliot Ivan Bernstein
Subject: RE: Fwd: Estate of Bernstein: Joint Status Report
Attachments: Joint Status Report.Agreed.pdf

Eliot,

I just saw that the attached Status Report was filed and served via ECF (our staff is much more efficient than I am, it seems). Attached is an un-stamped copy of the Report as agreed to by myself and Adam Simon. I will be sending courtesy copies of the attached, per the Court's standing orders, to Judge Blakey's chambers tomorrow. Please let me know if you'd like me to have your Status Report, once filed, delivered as well. In speaking with Adam this afternoon, he agreed to notice his Motion (for leave to file an Answer to our Complaint) for Tuesday the 17th.

Thank you for taking the time to speak with me this morning. I look forward to speaking with you in the future. In the meantime, should you have any questions or concerns, please feel free to contact me.

Best wishes,

Kevin

Kevin P. Horan
Stamos & Trucco LLP
One East Wacker Drive
Third Floor
Chicago, IL 60601
[\(312\) 630-1208](tel:(312)630-1208) Direct
[\(312\) 630-7979](tel:(312)630-7979) Main
[\(312\) 630-1183](tel:(312)630-1183) Fax
www.stamostrucco.com

The preceding email message is confidential and protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Stamos & Trucco LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

From: Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]
Sent: Monday, February 02, 2015 10:36 AM
To: Kevin Horan
Subject: RE: Fwd: Estate of Bernstein: Joint Status Report

Hi Kevin, I still have some concerns with the language and I think we can discuss first and then if you think necessary contact Adam or file separate responses. I am available now if you have a few minutes. eb

EXHIBIT E

**EMAIL BETWEEN ATTORNEY AT LAW PETER FEAMAN, ESQ. AND THE
PERSONAL REPRESENTATIVE/EXECUTOR OF THE ESTATE OF SIMON
BERNSTEIN, BRIAN O'CONNELL, ESQ.**

Eliot Ivan Bernstein

Subject: FW: Bernstein Estate

Subject: Bernstein Estate

Date: Tue, 16 Dec 2014 15:57:54 -0500

From: pfeaman@feamanlaw.com

To: boconnell@ciklinlubitz.com

CC: jroyer@feamanlaw.com

Brian,

When you and I spoke last week you indicated that you were in favor of the settlement that Mr. Stansbury had signed and sent to you for signature.

You indicated that you had to work out funding with the trust.

Meanwhile, the Life insurance litigation in Chicago is moving forward.

Our attorneys are taking a deposition in Chicago the week after New Years of "Scooter" Bernstein, I think.

They also want to depose Ted Bernstein and Robert Spallina in early January as well.

I offered my office as a locale for those depositions.

Deposing Ted Bernstein in the Chicago action poses some serious conflict of interest issues for Ted Bernstein and ethical issues for Mr. Rose as the Florida attorney for Mr. Ted Bernstein.

He is being deposed as a party Plaintiff in the Chicago action, the purpose of which is to direct \$1.7 million in life insurance to the 5 adult children of Simon Bernstein away from the Bernstein estate.

Yet Mr. Rose represents Ted Bernstein as Successor Trustee to the Simon Bernstein Trust, the beneficiaries of which are the GRANDCHILDREN OF Simon Bernstein, and the Trust is the beneficiary of the Simon Estate which is directly opposed to the position of Ted Bernstein as Plaintiff in the Chicago Life Insurance litigation.

Just as Ted Bernstein cannot wear both hats, it seems that Alan Rose cannot represent a client so conflicted.

Further, it would seem to me that the estate (you as Personal Representative) has an absolute duty to demand Ted's resignation as Successor Trustee, as his continued role as such imperils the interests of the grandchildren, to whom you owe a fiduciary duty as the Personal Representative.

The bottom line is that the more this drags on, the worse it is going to get for all concerned.

At some point, respectfully, I think you are going to have to take the bull by the horns and 1.) demand that Ted Bernstein resign as Successor Trustee and 2.) Take an active role in directing the attorneys in Chicago to push the case in order to bring it to a successful resolution on behalf of the estate, either by settlement or trial. This means taking over the responsibility for the litigation from Mr. Stansbury in light of the favorable position that the Estate is now in as a result of Mr. Stansbury's efforts.

I welcome your thoughts on this.

Peter M. Feaman

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Boulevard

Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

Facsimile: 561-734-5554

www.feamanlaw.com

Confidentiality: The email message and any attachment to this email message may contain privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you receive this communication in error, please immediately notify the sender by return email and delete this message.