

**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 Blakey
Magistrate Mary M. Rowland**

**Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee**

**MOTION FOR LEAVE TO FILE
ANSWER TO INTERVENOR
COMPLAINT OF BENJAMIN
BROWN, AS ADMINISTRATOR
AD LITEM, FOR THE ESTATE
OF SIMON BERNSTEIN**

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.)
 _____)

NOW COMES Plaintiff, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, (The “Bernstein Trust”) and, pursuant to Fed. R. Civ. P. Rules 12(a) and 15(a)(2), moves this Honorable Court for leave to file an Answer to the Intervenor Complaint of Benjamin Brown, as *Administrator ad Litem*, for the Estate of Simon Bernstein, as follows:

NATURE OF THE CASE

This matter involves a dispute over the proper disposition of certain life insurance proceeds from a life insurance policy insuring the life of Simon L. Bernstein whom passed away in 2012. After being served with a breach of contract action for refusal to pay the Policy proceeds to the Bernstein Trust, the Insurer filed an interpleader action and has since been dismissed after it deposited the Policy proceeds with the Registry of the court.

As more fully described below, this motion pertains to Plaintiff’s request to file an answer to a subsequent intervenor complaint filed by the Estate of Simon Bernstein.

INTRODUCTION

1. In the first half of 2013, the Bernstein Trust filed a complaint in the Circuit Court of Cook County against former Defendant Heritage Union/Jackson National Insurance Company (collectively “Heritage”).
2. On or about May 16, 2013, former Defendant (since dismissed) Heritage filed a notice of removal to this court. [Dkt.#4]
3. On May 29, 2013, the court granted Heritage’s motion to deposit the Policy Proceeds with the Registry, and then Heritage did deposit the Policy proceeds with the court. [Dkt. #15].

4. On September 22, 2013, Eliot Bernstein filed Third-Party Claims, Cross-Claims and Counterclaims against Plaintiffs, Ted Bernstein, individually, Pam Simon, Jill Iantoni, Lisa Friedstein, Adam Simon, David Simon and other (referred to generally as the “Eliot Claims”). [Dkt. #35]
5. The Bernstein Trust and certain other of these additional named parties whom are represented by Adam Simon filed their answer to the Eliot Claims on November 4, 2013. [Dkt.#47]
6. On December 5, 2013, a potential creditor of the Estate of Simon Bernstein, William Stansbury, filed a motion to intervene in the instant litigation. [Dkt. #56]
7. On January 6, 2014, the Plaintiffs filed their responsive pleading in opposition to Mr. Stansbury’s motion to intervene. [Dkt. #68]
8. On January 14, 2014, Judge St. Eve denied Mr. Stansbury’s motion to intervene. [Dkt. #74]
9. Approximately five months passed and then Mr. Stansbury initiated a motion with the Probate Court for the Estate of Simon Bernstein in Palm Beach County, Florida, to file a motion to intervene through an Administrator ad Litem. To induce the court and curator of the Estate to consent to efforts to intervene here, Mr. Stansbury committed to pay for the Estate’s litigation expenses in or to intervene in the instant action. This background, including Mr. Stansbury’s involvement, surrounding the Estate’s efforts to intervene in this action have been discussed in open court before Judge St. Eve and in the presence of all counsel and were undisputed.

10. On June 5, 2014, Benjamin Brown as Administrator ad Litem of the Estate filed a motion to intervene in the instant action and attached to the motion was their intervenor complaint. [Dkt. #112]
11. On June 28, 2014, Plaintiffs filed their responsive pleading in opposition to the motion to intervene. [Dkt. #114]
12. On July 28, 2014, the Court granted the Estate's motion to intervene. [Dkt #121]
13. In the Court's order granting the motion to intervene no mention was made as to the status of intervenor's complaint nor was any pleading schedule set for Plaintiff or other parties' to answer or otherwise plead to intervenor's complaint.
14. In the subsequent court status dates, there were discovery deadlines and dispositive motion deadlines set by the court, but no mention was made of a need or time to respond to intervenor's complaint.
15. After it had intervened and in open court, counsel for the intervenor, Estate of Simon Bernstein, admitted that it would not be disclosing any witnesses nor producing any documents pursuant to Rule 26 because it had none. The Estate's only position is that if no other beneficiary of the Policy can be proven, then the Estate should take by default.
16. The Bernstein Trust promptly after the motion to intervene was granted, provided the Estate of Simon Bernstein with copies of all Rule 26 disclosures made by all parties.
17. Several court status dates were held where all parties appeared and no mention was made by the court or counsel for the Estate regarding an additional responsive pleading to the intervenor complaint.

18. On October 31, 2014, counsel for the Estate filed a motion to substitute Brian O'Connell as intervenor for Benjamin Brown. Again, no mention was made of intervenor's complaint.
19. Also, since the Estate's intervention in the instant litigation, the Estate has not filed a motion for default as to its complaint against any party.
20. As is evident by the seven pages of various named and terminated parties, the number of docket entries including Plaintiff's responses, and the multiple parties coming, going and intervening, Plaintiffs have been diligent at every turn with regard to this case.
21. With regard to the motion to intervene and the substance of the complaint, Plaintiff did file a responsive pleading in the form of its opposition to the Motion to Intervene, and Plaintiff's prior responsive pleading is consistent with Plaintiffs' proposed answer to intervenor's complaint.
22. Based on the foregoing posture of the case, no party will be prejudiced if the Bernstein Trust is given leave to file its answer that simply denies the Estate's right to relief because the Bernstein Trust can establish the existence and terms of the Bernstein Trust, that the Bernstein Trust was the contingent beneficiary at the time of Simon Bernstein's death, and that the primary beneficiary no longer existed. The Bernstein Trust may also prevail on alternative theories of relief as set forth in Plaintiff's complaint.
23. Based on the foregoing history it is not completely clear to Plaintiffs, that leave of the court is required to file their Answer, but Plaintiffs have sought leave to avoid any dispute over the matter.

24. After the filing of this motion, Movants shall serve their proposed answer by email to the court, and to the other parties. The Bernstein Trust shall only file its Answer by ECF once leave is granted by the court.

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court grant them leave to file their Answer to Intervenor's Complaint, instanter.

Dated: February 10, 2015

/s Adam M. Simon

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