

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
Plaintiff,)

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

v.)
)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

**Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Jill Iantoni, and
Lisa Friedstein
("Plaintiffs" or "Movants")**

HERITAGE UNION LIFE INSURANCE)
COMPANY)
)
Counter-Plaintiff)

**AMENDED MOTION FOR
SUMMARY JUDGMENT AS TO
COUNTS I AND II OF MOVANTS'
CLAIMS TO THE POLICY PROCEEDS**

v.)
)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)
)
Counter-Defendant)

and,)
)

FIRST ARLINGTON NATIONAL BANK)
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,)
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 Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and pursuant to Fed. R. Civ. P. 56(a) and Local Rule 56.1, move the Court for summary judgment as to Counts I and II of their Claims to the Policy Proceeds, and in support thereof states as follows:

1. The undisputed facts and evidence supporting this motion are set forth more fully in the accompanying Plaintiff's Statement of Material Undisputed Facts Pursuant to Local Rule 56.1(a); the Appendix of Exhibits; and the Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment.

2. This action was originally filed by the Simon Bernstein Irrevocable Insurance Trust dated 6/21/95 against Heritage Union Life Insurance Company (the "Insurer") in the Circuit Court of Cook County. The Action related to Plaintiff's claim to certain death benefit proceeds ("Policy Proceeds") payable under a life insurance policy (the "Policy") insuring the life of Simon Bernstein who passed away in September of 2012.

3. The Insurer removed this Action from Cook County to the Northern District, and filed an Interpleader Action.

4. The Insurer did not dispute its liability under the Policy. Instead, the Insurer sought to interplead conflicting claimants to the Policy Proceeds, and deposit the Policy Proceeds with the Registry of the Court. The Insurer accomplished this and after depositing the Policy Proceeds, the Insurer was dismissed from the litigation.

5. The remaining parties have had access to the Policy records and all documents produced in this litigation, and have had ample time to conduct discovery. The fact discovery deadline set by Judge St. Eve passed on January 9, 2015. **[Dkt. #123]**

6. The matter is now ripe for the court to determine which claimant is the beneficiary of the Policy Proceeds.

7. In its memorandum and submissions, Plaintiff has established a rock solid foundation of undisputed evidence in support of its motion. Plaintiff's memorandum of law explains each element of that foundation building to the inescapable conclusion that Simon Bernstein formed the Bernstein Trust and intended for it to be the beneficiary of the Policy Proceeds.

8. Finally, Plaintiffs will show that Ted Bernstein was to be the successor trustee of the Bernstein Trust and/or should be so appointed, and that the five children of Simon Bernstein were the designated beneficiaries of the Bernstein Trust.

9. In addition, once this court grants Movants' motion for summary judgment, Movant will be prepared to promptly move for summary judgment as Eliot's Claims which go beyond the scope of this litigation and do not relate directly to the Policy Proceeds. Movants request that the court grant Movants and the remaining Third-Party Defendants sixty days to file a dispositive motion as to all of the remaining Eliot Claims after the Court grants Movants' current motion for summary judgment.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for summary judgment as to counts I and II of their first amended complaint in its entirety, and enter an Order finding and/or declaring as follows:

- a) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;
- b) Following the death of Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;

- c) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee;
- d) The beneficiary of the Policy Proceeds is the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995;
- e) The beneficiaries of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 are the five adult children—Ted Bernstein, Pamela B. Simon, Eliot I. Bernstein, Jill Iantoni and Lisa Friedstein—to share equally;
- f) That upon entry of the Order counsel, Adam M. Simon, shall be authorized to present the judgment to the Registry of the Court and have the Registry distribute the Policy Proceeds in a check payable as follows:

“The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”;

- g) Adam M. Simon shall deposit the Policy Proceeds in The Simon Law Firm Client Trust Account and then disburse the Policy Proceeds as follows:
 - i) First to the payment of attorney Adam M. Simon's fees and costs;
 - ii) Second, \$5,000.00 shall be retained in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance of the \$5,000.00 after payment of such expenses shall be distributed to the five adult children in equal shares;
 - iii) The balance to be split equally among the five adult children of Simon Bernstein;
 - iv) Each Beneficiary that receives a share of the Policy Proceeds shall execute and deliver to the Adam M. Simon a signed receipt for such payment; and
 - v) Following the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

- h) Movants and Third-Party Defendants are granted leave to file a dispositive motion as to Eliot's Claims within sixty days;
- i) Movants are entitled to such further relief as this court may deem just and proper.

Dated: March 27, 2015

Respectfully Submitted,

/s/ Adam M. Simon

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Attorney for Movants

*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela B. Simon, Jill Iantoni and
Lisa Friedstein*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused copies of the foregoing Amended Motion for Summary Judgment to be filed and served *via* electronic means with the Northern District of Illinois, pursuant to the Court's Electronic Case Filing (ECF) procedures and also served upon the following persons and entities *via* U.S. mail if indicated, proper postage prepaid:

ELIOT IVAN BERNSTEIN
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*Attorney for Intervenor,
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on this 27th day of March, 2015.

/s/ Adam Simon
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