

**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,)
and ELIOT BERNSTEIN,)
))
Third-Party Defendants.)
))
ELIOT IVAN BERNSTEIN,)
))
Cross-Plaintiff)

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

**EMERGENCY MOTION TO ENTER
AGREED BRIEFING SCHEDULE AND
FOR EXTENSION OF TIME TO
DEPOSE WITNESSES**

Filer:
Brian O’Connell, as Personal
Representative of the Estate of
Simon L. Bernstein, Intervenor.

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.)

**INTERVENOR’S EMERGENCY MOTION TO ENTER BRIEFING SCHEDULE AND
 FOR EXTENSION OF TIME TO DEPOSE WITNESSES**

NOW COMES Intervenor, Brian M. O’Connell, Personal Representative of the Estate of Simon L. Bernstein (“Intervenor”), and moves this Court to enter an agreed briefing schedule with respect to Plaintiffs’ Motion for Summary Judgment and to extend the deadline to depose witnesses. In support of his motion, Intervenor states as follows:

1. Currently pending before the Court is Plaintiffs' Motion for Summary Judgment (Dkt. No. 148)¹.

2. On April 13, 2015, this Court granted Intervenor's oral motion to reopen discovery to permit the depositions of Ted Bernstein and Don Sanders and set a deadline for of April 27, 2015 for completion of the depositions (Dkt. No. 162).

3. On April 20, 2015, the Court granted Third-Party Defendant/Counter-claimant Eliot Bernstein's Motion for an extension of time to file his Response to Plaintiffs' Motion for Summary Judgment (Dkt. No. 166). The briefing schedule entered by the Court granted Eliot Bernstein an additional three weeks to file his Response (on or before June 5, 2015) and three additional weeks for Plaintiffs to file any Reply thereto (on or before June 21, 2015).

4. Pursuant to Local Rule 37.2, Counsel for Intervenor and Plaintiffs conferred via telephone and electronic mail on April 17, April 20, and April 21, 2015 (*See* Group Exhibit 1, attached hereto).

5. Counsel for Intervenor requested that the same briefing schedule for Eliot Bernstein's Response be applied to Intervenor's Response to the pending Motion for Summary Judgment and for a commensurate extension of time in which to complete depositions (an additional three weeks).

6. Counsel for Intervenor is currently engaged in trial in the Circuit Court of Cook County, Illinois, and expects the trial to continue for at least one more week. Counsel for Intervenor informed Plaintiffs' counsel of this trial conflict and attempted to schedule Ted Bernstein's deposition for April 24, 2015, in the event the case settled (*See* Group Exhibit 1).

¹ Plaintiffs filed their Amended Motion for Summary Judgment (Dkt. No. 153) on March 27, 2015.

7. Plaintiffs' counsel has agreed to an extension of the briefing schedule (an additional three weeks) but has not agreed to a commensurate extension of time in which to complete depositions.

8. This motion is not brought with the intention to delay the proceedings. Counsel for Intervenor has not requested an extension of time beyond the deadline currently set for Third-Party Defendant/Counter-claimant Eliot Bernstein's Response to Plaintiffs' Motion for Summary Judgment and Plaintiffs' Response thereto.

9. Intervenor brings this motion on an emergent basis because this Court's Motion Schedule will not allow for a timely hearing on the matters asserted herein, causing serious harm to Intervenor.

10. Counsel for Intervenor has submitted a proposed order via electronic mail in accordance with this Court's standing orders.

11. No party will be prejudiced by the granting of this Motion.

WHEREFORE, Intervenor prays that the Court enter an Order which reflects the following:

- a. Intervenor shall file his response to Plaintiffs' Motion for Summary Judgment on or before June 5, 2015;
- b. Plaintiffs shall file their reply, if any, on or before June 26, 2015;
- c. Depositions authorized by the Court's April 13, 2015 Order shall be completed on or before May 18, 2015.

Dated: April 21, 2015

Respectfully submitted,

/s/ *Kevin P. Horan*

One of the attorneys for Intervenor, Brian M. O'Connell, 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 April 21, 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.

Adam M. Simon
The Simon Law Firm
303 E. Wacker Drive, Suite 210
Chicago, IL 60601

Eliot Ivan Bernstein, *Pro Se*

/s/ **Kevin P. Horan**
Kevin P. Horan

Kevin Horan

From: adam simon [asimon21@att.net]
Sent: Friday, April 17, 2015 5:32 PM
To: Kevin Horan
Subject: Re: Deposition of Ted Bernstein

I have sent word to Ted to keep the dates open.

Sent from my iPhone

On Apr 17, 2015, at 5:03 PM, Kevin Horan <KHoran@stamostrucco.com> wrote:

Adam:

I called earlier this afternoon regarding scheduling but missed you. Please keep open April 23 and 24 for Ted Bernstein's deposition (the 24th looking like the most likely day to take Mr. Bernstein's deposition in person). As I mentioned in my voicemail, we anticipate getting out of the case which is set for trial next week and Jim is optimistic that we will know by Tuesday at the absolute latest. I will be in touch with you as soon as I get confirmation. In the meantime, if you have any questions or wish to discuss anything further, please give me a call.

Thanks,

Kevin

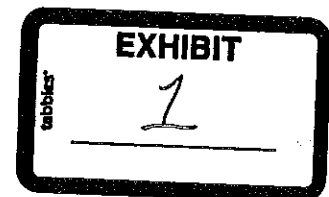
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From: asimon21@att.net [<mailto:asimon21@att.net>]
Sent: Monday, April 13, 2015 4:55 PM
To: James J. Stamos; Kevin Horan
Subject: Deposition of Ted Bernstein

Jim and Kevin:



Please be advised that Ted Bernstein would be amenable to an evening deposition by video conference, provided it starts at 5 p.m. (eastern time) and is limited by agreement to two hours.

If the deposition will be held by video conference, I may or may not travel to Florida for the deposition.

The following dates work for Ted and me:

April 15, 16
April 22, 23 or 24

Please get back to me as soon as possible so I can make final arrangements with my client for this deposition.

Thanks.

Adam Simon
cell: 312-320-4491

Sent from Windows Mail

Kevin Horan

From: adam simon [asimon21@att.net]
Sent: Tuesday, April 21, 2015 5:33 PM
To: Kevin Horan
Subject: Re: Ted deposition

Kevin: plaintiffs position remains unchanged. I promptly provided dates both last week and this week. Yet again the Estate chose not to take the dep.

It obviously goes without saying that Jim Stamos is not the only lawyer in your firm. Don't see how you couch this as an emergency but that's your call not mine.

Thanks.

Sent from my iPhone

> On Apr 21, 2015, at 5:21 PM, Kevin Horan <KHoran@stamostrucco.com> wrote:

>

> Dear Adam:

>

> Following up on the voicemail message I left you earlier today, I will be filing our Emergency Motion for extension of time in which to complete Ted Bernstein's deposition this evening. As you previously agreed to my request to apply Eliot's briefing schedule to our Response (granting an additional three weeks to respond), I asked that you also agree to a commensurate extension of time to complete the depositions. As you know, our office is currently engaged in a trial in Cook County which is anticipated to last into next week. I had hoped that your agreement to my request would obviate the need to bring an emergency motion; I will notice it for hearing Thursday morning before Judge Blakey.

>

> I will file the motion later this evening. Should you wish to discuss further, please feel free to contact me.

>

> Best wishes,

>

> Kevin

>

> Kevin P. Horan

> Stamos & Trucco LLP

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>

> -----Original Message-----

> From: adam simon [mailto:asimon21@att.net]

> Sent: Tuesday, April 21, 2015 12:54 PM

> To: Kevin Horan

> Cc: James J. Stamos

> Subject: Ted deposition

>

> Kevin: please proceed according to the conversation we had yesterday. Plaintiffs will agree to the same briefing schedule as Eliot for summary judgment but object to any further extensions for discovery or depositions.

>

> Thanks.

>

> Adam Simon

>

> Sent from my iPhone

>