

**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)

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

**Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Jill Iantoni, Lisa
Friedstein, David Simon, Adam Simon,
The Simon Law Firm, and STP
Enterprises, Inc. (“Plaintiffs” or
“Movants”)**

**MOTION TO STRIKE
ELIOT BERNSTEIN’S MOTION FOR
INTERIM DISTRIBUTION;
OR FOR A BRIEFING
SCHEDULE
AND TO REQUIRE
ELIOT BERNSTEIN’S
IN PERSON APPEARANCE
AT ANY HEARING ON THE MOTION**

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 moves this court to strike Eliot Bernstein's Motion for an Interim Distribution; or alternatively to set a Briefing Schedule and Require the Personal Appearance of Eliot Bernstein for any hearings on the motion, and in support thereof Plaintiffs state as follows:

MOTION TO STRIKE

Eliot Bernstein has recently filed a series of motions -- the first two motions for federal protection and other relief -- both of which were stricken or denied as moot by the court. The third motion is Eliot's request for the Court to make an interim distribution to Eliot and/or his Children. It is critical to note that Eliot has filed over 150 pages worth of motions over the last 14 days all while he has a response due to a pending motion for summary judgment. Obviously, time is no issue for Eliot.

The first reason the court should strike the motion is Eliot provides absolutely no legitimate legal authority or statute that would permit the court to make an interim distribution for interpleader funds in this instance.

More importantly, the court should strike Eliot's motion since it runs afoul of his own counterclaims and third party claims that remain pending in this action. Given that the current state of Eliot's answer, counterclaim and other pleadings filed thus far in this action would effectively negate any potential claim on the Policy, Eliot cannot now claim in his motion for an interim distribution to be entitled to anything. Again, Plaintiff will further explain Eliot's conundrum in its brief in opposition to Eliot's most recent motion if it is not stricken first.

It is also very important for the court to be made aware, that in the Florida Probate Action it is a matter of public record that Eliot has up to this point steadfastly refused any court approved interim distributions because Eliot maintains that he cannot accept funds that he believes are somehow tainted. The availability of those funds, totaling at least \$240,000.00 to be held in trusts for Eliot's three children and his refusal to facilitate acceptance of those amounts are reason enough for his motion to be stricken when here Eliot contests anyone's right to receive the Policy Proceeds.

In addition, Eliot Bernstein has applied to the personal representative of the Estate of Shirley Bernstein for a loan that awaits approval from the Probate Court. This is another avenue for Eliot or his children to potentially receive funds that are not currently in dispute.

Due to the nature of this motion and the extraordinary relief requested, Plaintiffs also respectfully request that the court require Eliot's personal appearance in court for any oral argument or hearing on this motion. Plaintiffs strongly believe that any hearing on such motion must be in person so the court can properly evaluate (i) the credibility and competency of the witness making the allegations in the motion; (ii) whether the court has the power, authority and jurisdiction to grant the relief sought by Eliot; and (iii) whether Eliot's position and argument in the litigation is consistent with the relief he requests in the motion for interim distribution.

Alternatively, if the court refuses to strike the motion, and a briefing schedule is to be set, Plaintiffs request that they be granted until June 17, 2015 to respond to the instant motion. If Eliot maintains many of the positions he has taken thus far in the litigation in his response to the motion for summary judgment due on June 5th, than his own summary judgment response will effectively bar his request for an interim distribution rendering the motion moot.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order as follows:

- a. Striking Eliot Bernstein's Motion for Interim distribution for the reasons set forth herein; or
- b. Granting Plaintiff until June 17, 2015 to file its response in opposition;
- c. Setting a hearing date thereafter if needed;
- d. Requiring Eliot Bernstein to personally appear in court for any hearings on this motion; and
- e. Granting any further relief this court deems just and proper. .

Dated: May 20, 2015

Respectfully Submitted,

/s/ Adam M. Simon

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