

**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, )

**Simon Bernstein Irrevocable  
Insurance Trust Dated 6/21/95,  
Ted Bernstein, as Trustee and  
Individually, Pam Simon,  
and Adam M. Simon  
(Respondents)**

HERITAGE UNION LIFE INSURANCE )  
COMPANY )  
Counter-Plaintiff )

**RESPONSE TO ELIOT BERNSTEIN'S  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

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 )

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 RESPONDENTS, by and through their attorney, Adam M. Simon, and state in response to Eliot Bernstein's Motion for Leave to File an Amended Complaint as follows:

**RESPONSE**

**1. Eliot's motion for leave to file an amended complaint should be denied because it is vexatious on its face.**

Eliot's motion for leave to file an amended complaint is vexatious on its face as it attempts to name approximately 60 parties as defendants or third-party defendants. Eliot ignores disregards prior orders entered in the Probate court in Florida which ultimately resulted in the loss of Eliot's standing to participate in the Probate actions in Florida not only on his own behalf but also on behalf of his minor children. Orders entered by Hon. John L. Phillips on December 15, 2015 and April 8, 2016 in *Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated 5/20/2008 v. Alexandra Bernstein, et. al.*, Case No. 502014CP003698, and *In Re Estate of Simon Bernstein*, Case No. 502012CP004391 (Cir. Ct. of Fifteenth Judicial Circuit, Palm Beach County, Florida).

**(The Probate Orders are attached hereto as Ex. A and Ex. B.)**

Why did Eliot lose standing to represent the interests of his own children? Because after an evidentiary hearing on the matter, the Judge Phillips found that Eliot was acting to the detriment of his own minor children and as a result appointed a guardian *ad litem* to act on their behalf. **(See Ex. B).** Clearly one of the motivations in Eliot seeking leave to file an amended complaint here is in furtherance of his efforts to avoid the effect of the Probate Orders.

Eliot also ignores prior Orders entered in the instant litigation including those (i) closing discovery [Dkt. #123] and (ii) dismissing Eliot's claims against parties he now seeks to re-file against such as former third-party defendants, Tescher and Spallina. [Dkt. 106], and (iii) admonishing Eliot to limit an "Omnibus Emergency Motion" to issues over which the Northern District has jurisdiction over. [178].

The claims Eliot seeks to reinstate against Tescher and Spallina are dilatory and likely barred as they are being brought more than two years after the Order dismissing them from the litigation. These same claims are futile for all of the reasons set forth in Judge Ste. Eve's Order. [Dkt. 106]. In fact, Judge Ste. Eve's reasoning provides a basis for denying Eliot's motion for leave to amend against all Third-Party defendants currently sued by Eliot in this litigation, and all parties he seeks to reinstate or add.

Like all vexatious litigants, Eliot's motion reflects his never-ending compulsive search for alternate theories and forums to re-litigate *ad nauseum* issues previously litigated and decided adversely to him in prior proceedings.

**2. Eliot's motion for leave to file an amended complaint should be denied because it fails to attach the proposed amended complaint and fails to adequately describe the proposed amendments.**

Eliot has failed to attach a proposed amended complaint to his motion. The motion itself is really nothing more than another one of Eliot's missives with no rational connection between thoughts that result in nothing more than faux conclusions of law.

Take for example Eliot's attempted linkage between a rather mundane motion for leave to withdraw as counsel for two parties filed by Adam Simon, and a tragic suicide of the buyer of the former personal residence of Simon Bernstein. Eliot alludes that these two events are somehow meaningful, but fails to provide an explanation or evidence of any nexus between the two. Eliot fails to even allege that any of the parties he references, Jill Iantoni, Lisa Friedstein and Adam Simon, all of whom reside in Illinois were even in the state of Florida anywhere near the time of this tragic death. Eliot also never mentions that Jill Iantoni, Lisa Friedstein or Adam Simon have ever met or spoken to this person prior to his death. Eliot makes absolutely no connection between these events and a cognizable claim.

Eliot fails to specify what legal claims he seeks to add and against which parties. More importantly he fails to specify how any of his ramblings amount to a set of facts which sets forth an actual claim for which relief can be granted against a specific party. In light of the Probate Orders entered and described above, it is almost certain any such claims would be futile, but in any case Eliot has failed to provide the substance of his proposed amendment such that this court could even make such a determination.

**3. Eliot's motion for leave to file an amended complaint should be denied because the motion fails to satisfy the legal standards Eliot sets forth in his own motion.**

Eliot's motion includes recitation of the following standard on motions for leave to amend, "In the absence of delay, undue prejudice to the party opposing the motions, or futility of the amendment, leave should be freely given." (Eliot's motion for leave, p.3). Eliot's efforts to add fifty plus parties and litigate issues not germane to the narrow issue

in this case, including those that have been previously decided in prior proceedings, will surely prejudice the existing parties to this litigation because of undue delay and needlessly increased costs.

Eliot's motion seeks to add or reinstate previously dismissed parties to litigation and re-open discovery in an interpleader action filed over three years ago involving a single non-probate asset where discovery has been closed for over one year. Eliot's thinly veiled allegations of a §1983 conspiracy involving the Florida Probate Court is actually no conspiracy at all but rather just a series of adverse rulings in the Probate Court that correctly determined (i) the validity of the testamentary documents at issue in Florida, (ii) that Ted Bernstein was a duly authorized Trustee of the various Trusts in Florida, and had not taken part in any wrongdoing alleged by Eliot; (iii) Eliot was not a beneficiary of the Trusts or Estates in Florida; and (iv) Eliot's children required a Guardian Ad Litem because of Eliot's persistent actions which adversely impacted his children's interests. **(Ex. A and Ex. B).**

Given the procedural history of both the instant litigation and the Probate action in Florida it is virtually certain any such amendments, even if they had been properly pled and timely, would be futile. For example, here Judge St. Eve has already dismissed the claims brought against Tescher and Spallina, and Eliot's rambling motion fails to set forth any specific new facts which entitle him to re-plead, and of course this is in addition to the fact that Eliot's claims against Tescher and Spallina were dismissed by Judge St. Eve over two years ago.

The same reasoning used by Judge St. Eve likely applies to all of Eliot's existing and proposed new claims as well. And that is, Eliot is not faced with any liability in the instant litigations so his efforts to bring cross-claims in this case against third parties when Eliot faces no liability for the third-party to share is misplaced. **[Dkt. 106]**.

**4. Eliot's motion for leave to file an amended complaint should be denied because this court lacks subject-matter jurisdiction.**

Eliot's motion is an improper attempt to use this U.S. District Court as a quasi-appellate court to circumvent Orders entered in the Probate action. Eliot seeks an alternate forum in an obvious attempt to re-litigate the exact same issues previously litigated in Florida over the last four years, and to try to regain standing in Probate proceedings where Eliot has none. This court has no subject-matter jurisdiction over the probate matters being litigated in Florida. **[178]**, and *Storm v. Storm*, 328 F.3d 941 (7<sup>th</sup> Cir., 2003).

And despite Eliot's representations to the contrary, all of Eliot's counterclaims, cross-claims, and third-party claims go well beyond the singular issue presented in the instant litigation which is the determination of the beneficiary of the Policy Proceeds.

**Conclusion**

For all the foregoing reasons, Eliot's motion for leave to file an amended complaint should be denied.

Respectfully submitted,

/s/ Adam Simon

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