

APPEAL,ROWLAND,TERMED

United States District Court
Northern District of Illinois – CM/ECF LIVE, Ver 6.2.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:13-cv-03643
Internal Use Only

Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v.
Heritage Union Life Insurance Company
Assigned to: Honorable John Robert Blakey
Case in other court: 17-01461
17-03595
Circuit Court of Cook County, 2013 L
003498

Date Filed: 05/16/2013
Date Terminated: 11/21/2017
Jury Demand: None
Nature of Suit: 110 Contract: Insurance
Jurisdiction: Diversity

Cause: 28:1441 Petition for Removal

Date Filed	#	Page	Docket Text
06/28/2014	<u>116</u>	5	MEMORANDUM by Ted Bernstein(an individual), Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 in Opposition to motion to intervene <u>110</u> (Attachments: # <u>1</u> Exhibit Exh. A– Transcript, # <u>2</u> Exhibit Exh. B– Aff. of Don Sanders)(Simon, Adam) (Entered: 06/28/2014)
07/15/2014	<u>117</u>	97	REPLY by Intervenor Benjamin P Brown <i>in Support of Motion to Intervene</i> (Stamos, James) (Entered: 07/15/2014)
07/23/2014	<u>118</u>	103	MOTION by Intervenor Benjamin P Brown for extension of time of <i>Deadline of Filing Dispositive Motions</i> (Stamos, James) (Entered: 07/23/2014)
07/28/2014	<u>120</u>	108	MINUTE entry before the Honorable Amy J. St. Eve: The Court grants Intervenor's motion for an extension of time <u>118</u> and will discuss the dispositive motion deadline at the next status hearing on 8/14/14. No appearance is required on the 7/29/14 notice date. Mailed notice(maf) (Entered: 07/28/2014)
07/28/2014	<u>121</u>	109	ORDER Entered by the Honorable Amy J. St. Eve on 7/28/2014: The Court grants Benjamin P. Brown's motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) <u>110</u> . Mailed notice (tlm) (Entered: 07/28/2014)
08/14/2014	<u>122</u>	113	MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 8/14/2014 and continued to 8/28/2014 at 08:30 AM.Mailed notice (kef,) (Entered: 08/14/2014)
08/28/2014	<u>123</u>	114	MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 8/28/2014 and continued to 11/3/2014 at 08:30 AM. Fact discovery shall be completed by 1/9/15. Any dispositive motions, with supporting memoranda, shall be filed by 3/6/15. Mailed notice (kef,) (Entered: 08/28/2014)
10/31/2014	<u>124</u>	115	MOTION by Intervenor Plaintiff Benjamin P Brown to substitute party <i>pursuant to Fed.R.Civ. P. 25(c)</i> (Horan, Kevin) (Entered: 10/31/2014)
11/03/2014	<u>126</u>	122	

			ORDER Entered by the Honorable Amy J. St. Eve on 11/3/2014: Status hearing held on 11/3/14 and continued to 1/6/15 at 8:30 a.m. Intervenor's uncontested motion to substitute party <u>124</u> is granted. The Clerk's Office is directed to substitute Brian M. O'Connell as Intervenor in place of Benjamin P. Brown. Notice motion date of 11/10/14 is stricken. Mailed notice (tln) (Entered: 11/04/2014)
01/06/2015	<u>129</u>	123	MINUTE entry before the Honorable Amy J. St. Eve: Status hearing set for 1/6/15 is stricken and reset to 1/20/2015 at 08:30 AM.Mailed notice (kef,) (Entered: 01/06/2015)
01/15/2015	<u>130</u>	124	EXECUTIVE COMMITTEE ORDER: It appearing that, pursuant to the Executive Committee Order entered on December 30, 2014, the civil cases on the attached list have been selected for reassignment to form the initial calendar of the Honorable John Robert Blakey; therefore IT IS HEREBY ORDERED that the attached list of 306 cases be reassigned to the Honorable John Robert Blakey. IT IS FURTHER ORDERED that this order shall become effective on January 15, 2015. Case reassigned to the Honorable John Robert Blakey for all further proceedings. Signed by Executive Committee on 1/15/15. Mailed notices. (sj) (Entered: 01/15/2015)
01/15/2015	<u>131</u>	139	MINUTE entry before the Honorable Amy J. St. Eve: This case having been reassigned, status hearing set for 1/20/15 before Judge St. Eve is stricken. Mailed notice (kef,) (Entered: 01/15/2015)
01/20/2015	<u>132</u>	140	MOTION by Plaintiff Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for leave to file <i>Answer to Intervenor Complaint</i> (Attachments: # <u>1</u> Certificate of Service cert of service– motion for leave)(Simon, Adam) (Entered: 01/20/2015)
01/22/2015	<u>133</u>	149	MINUTE entry before the Honorable John Robert Blakey:The following case has been reassigned to form the initial calendar of the Honorable John Robert Blakey. Unless otherwise ordered by the court, all previously–set discovery and briefing schedules and deadlines remain intact, and all existing referrals to the assigned magistrate judge remain in place. All previously–set status and motion hearing dates are stricken. The court may, in due course, set the case for a reassignment status conference. The parties are directed not to file or notice any motions, with the exception of emergency motions, prior to appearing at the reassignment status conference. For all emergency motions arising prior to the date scheduled for the reassignment status conference, the parties are directed to contact chambers at (312) 435–6058, or Judge Blakey's courtroom deputy, Gloria Lewis, at (312) 818–6699.To assist the court with its review of the case, the parties are directed, within 10 calendar days of this order's entry, to confer and then prepare and file a joint Reassignment Status Report, not to exceed five pages. A template of the Reassignment Status Report is available on Judge Blakey's homepage at www.ilnd.uscourts.gov . Additional dates will be set in a future order, as needed.Mailed notice (gel,) (Entered: 01/22/2015)
01/23/2015	<u>134</u>	150	MINUTE entry before the Honorable John Robert Blakey:Minute order dated 1/22/2015 is corrected as follows: This case has been reassigned to form the initial calendar of the Honorable John Robert Blakey. Unless otherwise ordered by the court, all previously set discovery and briefing schedules and deadlines remain intact, and all existing referrals to the assigned magistrate judge remain

			in place. All previously set status hearing and motion hearing dates are stricken. To assist the court with its initial review of the case, the parties are directed, within 10 calendar days of this order's entry, to confer and then prepare and file a joint Reassignment Status Report, not to exceed five pages. A template of the Reassignment Status Report is available on Judge Blakey's homepage at www.ilnd.uscourts.gov . The parties are directed not to file or notice any motions, with the exception of emergency motions, prior to filing the joint Reassignment Status Report. For all emergency motions arising prior to the due date for the Reassignment Status Report, the parties are directed to contact chambers at (312) 435-6058, or Judge Blakey's courtroom deputy, Gloria Lewis, at (312) 818-6699. Additional dates will be set in a future order, as needed. Mailed notice (gel,) (Entered: 01/23/2015)
02/02/2015	<u>135</u>	151	STATUS Report by <i>Plaintiff and Estate</i> by Brian M. O'Connell (Horan, Kevin) (Entered: 02/02/2015)
02/03/2015	<u>136</u>	159	STATUS Report by Eliot Ivan Bernstein, Eliot Bernstein (Bernstein, Eliot) (Entered: 02/03/2015)
02/10/2015	<u>137</u>	204	MOTION by Plaintiffs Ted Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for leave to file <i>Answer to Intervenor Complaint</i> (Simon, Adam) (Duplicate filing of Motion <u>132</u> .Docket Text Modified by Clerk's Office on 2/10/2015) (mr,). (Entered: 02/10/2015)
02/10/2015	<u>138</u>	211	MINUTE entry before the Honorable John Robert Blakey: The case is set for a status hearing 3/11/15 at 9:45 a.m. in Courtroom 2201. Mailed notice (gel,) (Entered: 02/10/2015)
02/11/2015	<u>140</u>	212	MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion for leave to file an answer to intervenor complaint <u>132</u> , <u>137</u> is entered and continued to the scheduled status hearing on 3/11/15 at 9:45 a.m. The 2/17/15 Notice of Motion date is stricken; the parties need not appear on that date. Mailed notice (gel,) (Entered: 02/11/2015)
03/02/2015	<u>141</u>	213	MOTION by Intervenor Plaintiff Brian M. O'Connell for extension of time of <i>the Dispositive Motion Deadline</i> (Horan, Kevin) (Entered: 03/02/2015)
03/03/2015	<u>143</u>	218	MINUTE entry before the Honorable John Robert Blakey: Plaintiff's motion for leave to file an answer to Intervenor's complaint <u>132</u> <u>137</u> is granted. Plaintiff is directed to file its answer as a separate docket entry by the close of business on 3/5/15. Additionally, Intervenor's motion to extend the deadline for filing dispositive motions <u>141</u> is granted. Dispositive motions are now due 4/3/15. The 3/5/15 Notice of Motion date is stricken; the parties need not appear. The status hearing set for 3/11/15 is also stricken and reset to 4/13/15 at 9:45 a.m. in Courtroom 2201. Mailed notice (gel,) (Entered: 03/03/2015)
03/05/2015	<u>144</u>	219	<i>PLAINTIFFS ANSWER</i> to Intervenor Complaint by Ted Bernstein(an individual), Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (Attachments: # <u>1</u> Certificate of Service Notice of Filing/Cert of Serv)(Simon, Adam) (Entered: 03/05/2015)
03/16/2015	<u>145</u>	229	MOTION by Plaintiffs Eliot Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance

			Trust Dtd 6/21/95 for leave to file excess pages <i>in Plaintiffs' memorandum of law</i> (Simon, Adam) (Entered: 03/16/2015)
03/16/2015	<u>147</u>	232	MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion for leave to file a brief in excess of fifteen pages <u>145</u> is granted. The 3/19/15 Notice of Motion date is stricken; the parties need not appear. Mailed notice (gel,) (Entered: 03/16/2015)
03/27/2015	<u>148</u>	233	MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Jill Marla Iantoni, Lisa Sue Friedstein, Pamela Beth Simon, Ted Bernstein for summary judgment <i>as to Count I of Claims to Policy Proceeds</i> (Simon, Adam) (Entered: 03/27/2015)
03/27/2015	<u>149</u>	239	NOTICE by Ted Bernstein(an individual), Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 re MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Jill Marla Iantoni, Lisa Sue Friedstein, Pamela Beth Simon, Ted Bernstein for summary judgment <i>as to Count I of Claims to Policy Proceeds</i> <u>148</u> <i>NOTICE TO PRO SE LITIGANT</i> (Simon, Adam) (Entered: 03/27/2015)

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

SIMON BERNSTEIN IRREVOCABLE)
 INSURANCE TRUST DTD 6/21/95,)
 by Ted S. Bernstein,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
 COMPANY,)

Defendant,)

-----)
 HERITAGE UNION LIFE INSURANCE)
 COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
 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 Tstee of the Simon Bernstein)
 Irrevocable Insurance Trust Dtd 6/21/95,)
 and ELIOT BERNSTEIN)
 Third-Party Defendants.)

**Case No. 13 cv 3643
 Honorable Amy J. St. Eve
 Magistrate Mary M. Rowland**

**PLAINTIFFS MEMORANDUM OF LAW
 IN OPPOSITION TO ESTATE OF SIMON
 BERNSTEIN'S MOTION TO
 INTERVENE**

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, (collectively referred to as “BERNSTEIN TRUST”), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein’s Motion to Intervene as follows:

INTRODUCTION

On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury -- a potential creditor of the Estate of Simon Bernstein. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”¹

Now, six months later, Stansbury seeks a second bite at the apple. Stansbury petitioned the Florida Probate Court to have an administrator ad litem appointed on behalf of the “Estate” to further Stansbury’s own agenda against the express wishes of decedent, Simon Bernstein. In fact, had Stansbury’s motion been granted in its entirety by the Florida court, Stansbury himself would have been appointed administrator ad litem. Instead, the Florida Court appointed the Curator (Mr. Brown) as administrator ad litem, but that appointment was expressly made subject to the conditions placed on the record in the Probate Court which will be discussed later.

What will become apparent is that this motion is a motion of the Estate in name only. This court should apply the law of the case established by its January 14th Order to deny Stansbury’s second effort to intervene in this lawsuit.

¹ Order entered January 14, 2014 [Dkt. #110].

FACTUAL BACKGROUND

1. After this court denied Stansbury's first motion to intervene, Stansbury filed a petition in the Florida Probate Court to have himself appointed as administrator ad litem.²

2. Benjamin Brown had been appointed curator of the Estate of Simon Bernstein following the resignation of the Estate's personal representative.

3. During the hearing counsel for the various interested parties in the probate matter, either objected to the appointment of any administrator ad litem so as to preserve estate assets, and/or objected to the appointment of William Stansbury. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem.

4. As stated in the Probate Court's Order appointing Benjamin Brown, such appointment was made subject to the conditions that were made part of the record during the hearing.³

5. During the hearing on the motions, the discourse between counsel for the various interested parties and the judge made it clear that the instant motion to intervene would only occur with the legal fees and costs being funded not by the Estate, but by William Stansbury.⁴

6. One condition demanded by William Stansbury since he was funding this excursion was that he be kept advised by the Curator and his counsel and have input with how this litigation is prosecuted.⁵

² See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein at pg. 5-6. A true and accurate copy of the transcript is attached hereto as **Exh. A**. See

³ See Probate Court Order attached to the Estate's motion to intervene as **Exhibit B** (Dkt. #).

⁴ See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein. **Exh. A** pg. 13-14, 34-35, 39.

⁵ See Transcript, **Exh. A** at pg. 28-29.

7. The sole factual basis asserted by the Estate for its motion to intervene is set forth in its Complaint for Intervenor as follows: “Intervenor Benjamin Brown seeks a judgment from this Court declaring that *no* valid beneficiary is named under the Policy and the proceeds of the Policy must therefore be paid to the Estate.”

8. It has been over six months since the court entered its Order denying Stansbury’s motion. Stansbury chose not to pursue any motion for reconsideration or appellate review of the Order. Instead, Stansbury initiated and funded the Estate’s motion to intervene.

9. The Insurer, in response to a Notice for a Rule 30(b)(6) deposition provided the Affidavit of its witness, Don Sanders.⁶ A true and correct copy of the Aff. of Don Sanders is attached hereto as **Exh. B**.

10. At the time of the making of his Affidavit, Don Sanders was familiar with the Insurer’s Policy records. (Aff. of Don Sanders, **Exh. B** at ¶33).

11. According to the Policy records as verified by Don Sanders, no owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate” or “the Estate” as beneficiary. (Aff. of Don Sanders, **Exh. B** at ¶70).

12. According to the Policy records as verified by Don Sanders, “on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as ‘LaSalle National Trust, N.A. as Successor Trustee’, and the Contingent Beneficiary was designated as ‘Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995.’ ” (Aff. of Don Sanders, **Exh. B** at ¶62).

⁶ The Affidavit of Donald Sanders is attached hereto and made a part hereof as **Exh. B**.

STANDARD OF REVIEW

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 Ill. App. (1st) 123025, 373 Ill. Dec. 620, 994 N.E.2nd 105 (1st Dist., 2013).

This court's summary of the standard of review for a motion to intervene included the following:

“Whether an applicant has a sufficient interest to intervene is a highly fact-specific making comparison to other cases of limited value.” “Permissive intervention under Rule 24(b), permits “anyone to intervene who... has a claim or defense that shares with the main action a common question of law or fact,” unless intervention would “*unduly delay or prejudice the adjudication of the original parties rights.*”⁷ (emphasis added).

ARGUMENT

A. This court should apply the law of the case to bar the Estate's motion to intervene since the Estate is in privity with Stansbury whose own motion to intervene was previously denied in this same litigation.

Over six months ago, this Court denied Stansbury's motion to intervene. The holding was based, in part, on the tenuousness of the connection between the instant litigation over the Policy proceeds and Stansbury's claims pending in Florida against certain corporate defendants' and the Estate of Simon Bernstein relating to unpaid insurance commissions. The court rejected both of Stansbury's arguments for intervention as a matter of right, and for permissive intervention. Stansbury did not file any motion to reconsider or seek appellate review.

⁷ See Order of January 14, 2014 [Dkt. #110]

The basis for Stansbury's motion to intervene was identical to that set forth by the Estate in the instant motion to intervene. Both Stansbury and the Estate argue that the Estate's purported interest in the Policy proceeds is solely as a beneficiary of last resort. Neither Stansbury nor the Estate set forth any affirmative argument or evidence attempting to establish that the Estate was the named beneficiary of the Policy proceeds.

The doctrine of collateral estoppel applies to avoid relitigation of a substantially similar issue arising between the same parties (or their privies) where such issue has already been determined in the course of a separate proceeding. *Rekhi v. Wildwood Industries, Inc.*, 61 F.3d 1313, 130 Lab Cas. P57, 969, 2 Wage & Hour Cas.2d 1428 (7th Cir., 1995).

The doctrine of law of the case also applies to avoid relitigation of substantially similar issues but in the *same* proceeding. In *Radwill v. Manor Care of Westmont, IL LLC*, 2013 IL App (2d) 120957, 369 Ill. Dec. 452, 986 N.E.2d 765 (2nd Dist., 2013), the court explained the rationale behind the law of the case doctrine as follows:

“The law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec 867, 824 N.E.2d 1117 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case. *Long v. Elborno*, 397 Ill.App.3d 982, 989, 337 Ill.Dec. 432, 922 N.E.2d 555 (2010). Issues previously decided include issues of both law and fact. *Alwin v. Village of Wheeling*, 371 Ill.App.3d 898, 910, 309 Ill.Dec. 656, 864 N.E.2d 897 (2007).

As set forth in the transcript of the Probate hearing appointing the Curator as administrator ad litem, the Estate, in this instance, is in privity with Stansbury. It is a matter of public record that Stansbury is funding this venture, and was granted direct involvement in litigating this matter under the auspices of the “Estate”.

The arguments set forth by the Estate mirror those contained in the prior motion made by Stansbury. Because the issues, and arguments are virtually identical, and the moving party (the Estate) is in privity with the prior movant (Stansbury), the law of the case must apply to bar relitigation of this issue. The court spoke in its Order of January 14, 2014, and nothing contained in the Estate’s motion or complaint to intervene necessitates revisiting the issue.

B. The unrefuted sworn testimony of Don Sanders, Vice-President of Operations for the Insurer both supports Plaintiff’s claim that it is the named beneficiary of the Policy proceeds and negates the Estate’s claims. (go through the Paragraphs and cite in the statement of unrefuted facts).

As indicated in Plaintiffs’ Statement of Undisputed Facts, the Insurer has provided its Policy records and the Affidavit of Don Sanders as evidence in this case. Don Sanders reviewed the Policy records and in his Affidavit Don Sanders declares that the Estate was never named a beneficiary of the Policy proceeds. The Estate has offered nothing to dispute this essential truth.

C. The Estate’s motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on efforts to negate the claims of the true beneficiary.

As stated above, the Estate’s motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the motion merely attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983).

Here, the Estate argues that no one is representing its interests. But, the Estate, like Stansbury before it, fails to articulate any facts that support an affirmative claim by the Estate to the Stake.

The Estate argues that if all other claims are negated and thus fail then the Estate would have a claim by default. As such, the Estate needs no representation because under the Estate's theory it would simply be the beneficiary of last resort.

More importantly, in order to enforce the intent of Simon Bernstein as expressed in his Will, the Curator or Personal Representative of the Estate should be disclaiming any interest in the Stake. Instead, the Curator seeks to ignore the Will of the Simon Bernstein in order to unjustly enrich the Estate largely for the benefit and at the behest of a potential third-party creditor, and at the expense of the ultimate beneficiaries, decedent's five children. That's just plain wrong.

In Stansbury's prior motion to intervene, he attached the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will was incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:

Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or *insurance contract*; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons in the manner provided in such designation which is incorporated herein by reference.⁸

Here, the designations of beneficiary of the Policy proceeds point directly to one such beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. None of the Bank Defendants whose names appear in the caption above, and whom acted as corporate trustees of the VEBA from to time has made a claim to the Stake. In fact, the only Bank party to have appeared in this matter was dismissed on their own motion after having expressly disclaimed any such interest.⁹

In his Will, Simon Bernstein instructs the executor to disclaims the Estate's interest in the Policy proceeds at issue. Simon Bernstein's instructions were that in the case of an invalid testamentary disposition the instrument designating the beneficiary shall be incorporated into the Will and the proceeds shall be gifted to the intended beneficiaries as established by the beneficiary designation.

⁸ See (Dkt. #56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)

⁹ See Motion for Judgment on the Pleadings filed by JPMorgan Bank, and the Order dismissing JP Morgan . (Dkts. #102 and #106).

Here, it is clear that Simon Bernstein expressed his intent by named the Bernstein Trust as beneficiary of the Policy proceeds, that the Policy proceeds should go to the Bernstein Trust beneficiaries (the five Bernstein children) even in the event that the beneficiary designation is ruled to be an invalid testamentary disposition such as the Estate argues.

D. As set forth above, the Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.

The Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the Estate attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983). Here, the Estate argues that no one is representing the claims of the Estate. But, the Estate fails to articulate any facts that support a claim by the Estate to the Stake.

It appears the Estate is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is the Estate's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate. Simon Bernstein, in his Will, expressly reaffirmed his beneficiary designations and in so doing he essentially disclaimed the Estate's interest in the Policy proceeds.

E. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.

The Estate's request for permissive intervention is based on its conclusory assertion that it "has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds in excess of \$1,000,000.00."¹⁰

This language again mirrors the language in Stansbury's prior motion to intervene.¹¹ And like Stansbury, this conclusory allegation is totally unsupported by any evidence establishing a claim to the stake. Without any factual allegations of a claim, the court is left with nothing additional to determine as a result of the motion and complaint to intervene. Since the Estate has nothing to offer in support of its claim, there is no reason whatsoever for this court to add it to this litigation especially at this late date.

F. Public policy concerns mitigate against the Estate's motion.

Should the court grant the Estate's motion to intervene it will provide precedent to other similarly situated claimants who lack any factual basis for its claim. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the stake.

¹⁰ See Dkt. #110, Estate motion to intervene at ¶9.

¹¹ See Dkt. #56-5 at ¶9, Stansbury Motion to Intervene.

CONCLUSION

For all of the foregoing reasons (including the reasons set forth by this court in its prior Order of January 14, 2014) this court should deny the Estate's motion to intervene.

By: /s/Adam M. Simon

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Attorneys for Plaintiffs and Third-Party
Defendants

Simon L. Bernstein Irrevocable

Insurance Trust Dtd 6/21/95; Ted

Bernstein as Trustee, and individually,

Pamela Simon, Lisa Friedstein and Jill

Iantoni

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to the Estate of Simon Bernstein Motion to Intervene to be served upon the following persons and entities electronically by ECF notification and/or by US Mail (if so indicated):

Eliot Ivan Bernstein
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Via ECF and Mail
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Ad Litem for the Estate of Simon Bernstein

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Ad Litem for the Estate of Simon Bernstein

on the 28th day of June, 2014.

/s/ Adam M. Simon
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Attorney for Plaintiffs

EXHIBIT A

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN

NOTICE OF FILING

Curator, Benjamin P. Brown, hereby gives notice of filing the transcript of the hearing on May 23, 2014, attached hereto as Exhibit A, in connection with matters being heard on June 11, 2014.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon Alan Rose, Esq., Page Mrachek, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq, Pankauski Law Firm, 120 S. Olive Ave., Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com, Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, Palm Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay FL 33157, bill@palmettobaylaw.com, on this 24th day of June, 2014.

MATWICZYK & BROWN LLP
625 N. Flagler Drive, Suite 401
West Palm Beach, FL 33401
Telephone: (561) 651-4004
Fax: (561) 651-4003

By: _____/s/
Benjamin P. Brown
Florida Bar No. 841552

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXSB

IN RE: THE ESTATE OF SIMON L. BERNSTEIN

-----/

PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: MAY 23, 2014

TIME: 9:00 a.m. to 10:00 a.m.

1 APPEARANCES:

2

3 APPEARING ON BEHALF OF WILLIAM STANSBURY:

4 MR. PETER M. FEAMAN, ESQ.

MR. JEFFREY T. ROYER, ESQ.

5 PETER M. FEAMAN, P.A.

3695 W. Boynton Beach Blvd., Suite 9

6 Boynton Beach, FL 33436

7

8 APPEARING OF BEHALF OF TED BERNSTEIN:

9 MR. ALAN ROSE, ESQ.

PAGE MRACHEK

10 505 S. Flagler Drive

West Palm Beach, FL 33401

11

12 APPEARING ON BEHALF OF FOUR ADULT GRANDCHILDREN:

13 JOHN P. MORRISSEY, ESQ.

JOHN P. MORRISSEY, P.A.

14 330 Clematis Street, Suite 213

West Palm Beach, FL 33401

15

16 APPEARING AS THE CURATOR:

17 BENJAMIN BROWN, ESQ.

MATWICZYK & BROWN, LLP

18 625 N. Flagler Drive, Suite 401

West Palm Beach, FL 33401

19

20 APPEARING PRO SE:

21 ELIOT BERNSTEIN

22

23

24

25

1

2

BE IT REMEMBERED, that the following

3

proceedings were taken in the above-styled cause

4

before Honorable MARTIN COLIN at the Palm Beach

5

County Courthouse, 200 West Atlantic Avenue, in the

6

City of Delray Beach, County of Palm Beach, State of

7

Florida, on Friday, the 23rd day of May, 2014, to

8

wit:

9

10

THE COURT: Good morning. Let me get my

11

computer on. We're here in the Bernstein case.

12

Appearances.

13

MR. BERNSTEIN: Eliot Bernstein, pro se.

14

MR. FEAMAN: Peter Feaman on behalf of

15

William Stansbury. And from my office, Jeff

16

Royer.

17

MR. MORRISSEY: John Morrissey on behalf

18

of four of the adult grandchildren.

19

MR. ROSE: Alan Rose on behalf of Ted

20

Bernstein.

21

MR. BROWN: Ben Brown as curator of the

22

estate.

23

THE COURT: All right. What do we have

24

for today?

25

MR. ROSE: Before we get to that, I have

1 one -- sort of an important issue that came up
2 last night.

3 THE COURT: Go ahead.

4 MR. ROSE: It will take 30 seconds.

5 Ted Bernstein sent me an email. And he
6 replied to an email, and accidentally the email
7 went to Eliot Bernstein. It was
8 attorney-client privileged communication
9 directly to me from my client Ted Bernstein.
10 The email went to Eliot Bernstein. Under Rule
11 1.285 I sent to Mr. Eliot Bernstein an email
12 immediately asking him to delete or return the
13 privileged materials.

14 I discussed the issue with Mr. Eliot
15 Bernstein this morning and he advised me that
16 he has emailed the document to 2,000 people.

17 He's had a history of posting things on
18 the internet. Because it's attorney-client
19 privileged information it's very sensitive and
20 I'd request the Court to instruct him to comply
21 with Rule 1.285. It was a reply to an email
22 that had a bunch of names and accidentally it
23 went to him. Mr. Bernstein advised me
24 immediately and I advised Eliot immediately.

25 THE COURT: Mr. Bernstein, did you get an

1 email from counsel?

2 MR. BERNSTEIN: I did not get his email.

3 I got an email from my brother addressed to me
4 only. I read it, as usual when I get something
5 bizarre that's attacking and threatening me, or
6 whatever. It was from Ted Bernstein to Eliot
7 Bernstein.

8 THE COURT: It was from --

9 MR. BERNSTEIN: Ted Bernstein to Eliot
10 Bernstein.

11 THE COURT: Not from the lawyer?

12 MR. BERNSTEIN: No. He misrepresents
13 everything.

14 THE COURT: We'll take it up at the end.
15 There's other things scheduled. If you
16 remember, we'll take it up.

17 MR. ROSE: Fine.

18 THE COURT: Go ahead.

19 MR. FEAMAN: May it please the Court.

20 Peter Feaman, Your Honor, on behalf of William
21 Stansbury, interested person in the estate.

22 This is Mr. Stansbury's petition for the
23 appointment of an administrator ad litem which
24 has been submitted to Your Honor together with
25 a supplement to the petition to the requested

1 relief.

2 We're asking this Court to appoint
3 Mr. Stansbury as an administrator ad litem of
4 the estate for the sole purpose of making an
5 appearance on behalf of the estate in some
6 litigation that is currently pending in
7 Illinois involving a life insurance policy on
8 Simon Bernstein's life, the deceased, with a
9 death benefit of \$1.7 million.

10 That litigation has been pending for over
11 a year from what I can tell, or about a year.
12 And it has not involved the estate which is
13 very interesting because the documents that
14 I've recently obtained since the filing of our
15 motion, Your Honor, we found out that insurance
16 policy, according to internal records of the
17 insurance company, is actually owned by the
18 deceased Simon Bernstein. So arguably not only
19 is it an asset of the estate, that insurance
20 policy, and the proceeds therefrom, but any
21 litigation concerning the distribution of those
22 proceeds should be in this court, Your Honor.

23 Now that's jumping ahead. But the point
24 is that we're dealing with an asset of the
25 estate and, therefore, this court has every

1 interest in seeing that the estate's assets are
2 marshaled. The first step for that, Your
3 Honor, would be to appoint an administrator ad
4 litem to at least intervene in that federal
5 court action that's up in Illinois.

6 The former personal representatives of
7 this estate, Your Honor, were doing everything
8 they could to keep the money out of the estate
9 from that life insurance policy. They have
10 alleged that the beneficiary is the life
11 insurance trust. The problem is nobody can
12 find the original life insurance trust. Nobody
13 can find even a copy of the life insurance
14 trust. And the records that we show show that
15 the beneficiaries are not, in fact, a life
16 insurance trust. But the first beneficiary,
17 according to Heritage, which is the insurance
18 company, is LaSalle National Trust. The second
19 beneficiary is the Simon Bernstein Trust,
20 whatever that is. But it's not the Simon
21 Bernstein Irrevocable Insurance Trust that is
22 being alleged up in Illinois.

23 Now if there's no clear beneficiary, as
24 Your Honor is aware, then the life insurance
25 proceeds would go to the estate and become an

1 asset, or liquid assets for the estate. Now
2 that money presently has been put into the
3 registry of the court up in Illinois by the
4 insurance company. They were first requested
5 by the personal representatives of this estate,
6 the former, to pay it to others. And the
7 insurance company said we don't have any
8 documentation to justify that. So they just
9 impleaded the funds.

10 The litigation has been pending, and
11 despite the fact that the estate is the owner
12 of the policy, the estate has never been
13 represented in that action. Now the estate has
14 a high probability of success, we believe, in
15 this case. Because if they're going to try to
16 establish a lost instrument without the
17 original or without a copy it's going to be
18 based, I assume, on oral testimony from people.
19 And that is a high burden. Interestingly we
20 found out at first, on this so-called insurance
21 trust, Mr. Spallina (phonetic), who was the
22 personal representative, formerly, of this
23 estate, represented to the insurance company
24 that he was the trustee of this insurance
25 trust. When that didn't work, Your Honor -- we

1 have a document that we'll show to the court up
2 in Chicago -- when that didn't work they're now
3 in court up there saying that Mr. Ted Bernstein
4 is the trustee, or successor trustee, of that
5 insurance trust. Yet there is no copy of that
6 trust before the court in any fashion. The
7 plaintiffs in that lawsuit are now not only the
8 insurance trust, the so-called insurance trust,
9 it's now all the adult children of Mr. Simon
10 Bernstein. Interestingly enough, Your Honor
11 the adult children are not beneficiaries of
12 this estate, Your Honor. It's the ten
13 grandchildren who are the residual
14 beneficiaries as a result of the pour-over
15 provision of the will that leaves all the
16 liquid assets in a trust. The beneficiaries of
17 that trust are the ten grandchildren. So the
18 adults, the adult children of Mr. Simon
19 Bernstein, have every incentive, Your Honor, to
20 see that the estate is not inherited with these
21 life insurance proceeds because if they succeed
22 in this action in Illinois then the adult
23 children inherit or receive the proceeds of the
24 life insurance not the ten grandchildren over
25 whom you have jurisdiction as the beneficiaries

1 in this estate.

2 The curator, Your Honor, has no objection.

3 Mr. Brown --

4 THE COURT: Let me stop and hear from Mr.

5 Brown. What's your position on their motion?

6 MR. BROWN: I'm not taking a position on

7 the motion, Your Honor. I can get into it

8 further, I don't really want to interrupt

9 Mr. Feaman. But it would seem to me that if

10 the main estate creditor wants to try to

11 intervene in Chicago on behalf of the estate to

12 bring assets into the estate without looking to

13 the estate for current payment of his fees, in

14 other words, if he finally succeeds then he can

15 then come back to this Court and ask to have

16 his fees reimbursed, then that would seem to be

17 a benefit to the estate as far as marshaling

18 the assets of the estate and, of course, the

19 curator and/or personal representative has a

20 duty to the creditors also to try to marshal

21 the assets of the estate.

22 THE COURT: I got your position.

23 Mr. Rose?

24 MR. ROSE: Our position is pretty simple.

25 And I -- this is an evidentiary hearing --

1 THE COURT: It's an opening to tell me
2 what's going on. I just want your position.
3 MR. ROSE: Tetra (phonetic) and Spallina,
4 who were the prior PRs, believe that the claim
5 to the insurance policy by the estate had no
6 merit because of their discussions with their
7 client, because of their investigation of
8 facts. These people have no evidence to
9 support -- they have no parol evidence. This
10 is a fight over an insurance policy that only
11 beneficiary -- there's no dispute that the
12 beneficiary the insurance company has on
13 record, there was a prior beneficiary which was
14 a company pension plan that the company is
15 dissolved, and that's out -- the only
16 contingent beneficiary, and there's an
17 affidavit that's been filed attached to one of
18 their motions in this Court where the insurance
19 company says the only other beneficiary ever
20 named was the Simon Bernstein Irrevocable Life
21 Insurance Trust. There's a shorthand in a
22 computer system, where somebody shorthanded it
23 in the computer, and the affidavit in the
24 insurance company addressing that which says
25 that's shorthand, but in our forms the only

1 beneficiary ever listed is this irrevocable
2 life insurance trust, their only piece of
3 evidence supporting their claim is that the
4 insurance trust cannot be found. But the trust
5 did exist. It has a tax ID number from -- a
6 federal tax ID number. There's numerous
7 references to it between different lawyers and
8 nobody can find the trust document now. That's
9 an issue that's going to be resolved in
10 Illinois. But they have no evidence -- other
11 than the fact that the trust doesn't exist --
12 they don't have any parol evidence. They don't
13 have any documents. They don't have anything
14 on behalf of the estate.

15 Our concern is they're going to spend the
16 precious few estate assets that are remaining
17 to go to Illinois and fight an issue that has
18 no merit, can subject the estate to a claim,
19 you know, for fees or indemnification or
20 prevailing party attorney's fees award.

21 The policy was owned by Simon Bernstein.
22 That means it's included in his taxable estate.
23 But it does not mean it's owned in his probate
24 estate. The beneficiary is the beneficiary.
25 The policy proceeds are in Illinois. They've

1 been deposited into the court --

2 THE COURT: What's the issue that the
3 Illinois judge is being asked to decide?

4 MR. ROSE: Being asked to decide, among
5 competing claims, to the proceeds of this race.
6 Eliot Bernstein is there asserting the exact
7 position that Mr. Stansbury wants to go there
8 to assert. Eliot is asserting that the money
9 should go to the estate and not the irrevocable
10 life insurance trust. That issue is going to
11 require, you know, a summary judgment or a
12 trial with parol evidence to determine who the
13 beneficiary is of that policy.

14 Mr. Stansbury has gone there to intervene
15 and was denied by the judge the right to
16 intervene in the case already once.

17 Our main concern really is twofold. The
18 expense on both -- what's actively being spent.
19 We want to make sure no estate funds are being
20 expended to pursue this. In an estate that
21 has a very limited amount of funds here --

22 THE COURT: Mr. Feaman says that his
23 client will not seek fees for his role as
24 administrator ad litem unless and until a
25 recovery might take place and then he'll make

1 an application with funds then available,
2 meaning the \$1.7 million would then apparently
3 come into the estate.

4 MR. ROSE: I haven't heard testimony to
5 that effect yet.

6 THE COURT: That's a representation.

7 MR. ROSE: He'd also need to represent
8 that he would indemnify and hold the estate
9 harmless if there's any adverse action as a
10 result of him intervening in that case and
11 losing either an award of attorneys fees or --

12 THE COURT: I'm not sure about that part
13 yet. I got your position.

14 MR. ROSE: And then the final point is
15 Mr. Stansbury is a potential creditor of the
16 estate. To the extent he goes and -- even if
17 he would win that lawsuit and bring money into
18 the estate I don't think it's fair to let him
19 get a -- I don't know what his fee arrangement
20 would be.

21 THE COURT: I'd hear that. Under the
22 statute he has to prove that he provided a
23 benefit to the estate.

24 MR. ROSE: We don't even know if his claim
25 will still exist --

1 THE COURT: It may or may not.

2 Mr. Morrissey?

3 MR. MORRISSEY: To address first the last
4 point why should Mr. Stansbury not be allowed
5 to act even though his fees may or may not come
6 at the end. Well, he's a claimant. He's not a
7 creditor. There's a distinction here. As a
8 claimant he might not be privy, or should not
9 be privy, to certain information because he
10 doesn't have a judgment. He's not one of the
11 eight classes of people. If he's allowed to
12 intervene as a claimant in the Illinois action
13 he may, in fact, become privy to certain
14 information that we, or the estate, does not
15 want him to become privy to because we may end
16 up having to negotiate with a claimant to
17 satisfy a claim. We don't want him privy to
18 certain information. We don't want him
19 intervening in actions, and certainly in
20 actions that he's already sought intervention
21 and been denied.

22 THE COURT: Was he denied because he
23 didn't have standing because he hadn't been
24 appointed as an administrator? Is that the
25 reason why he was denied?

1 MR. MORRISSEY: He attempted to intervene
2 individually and was denied. He was denied
3 because -- I've attached the order. I filed an
4 opposition and attached the order. And I can
5 read from a couple of sections of the order to
6 indicate and let Your Honor know why he was
7 denied.

8 THE COURT: Hold on. I see it here.

9 MR. MORRISSEY: The court there went
10 through an extensive analysis, legal standard
11 and analysis in its order speaking of
12 intervention as a right, and permissive
13 intervention. And the court said, "The fact
14 that you might anticipate a benefit from a
15 judgment in favor of one of the parties to a
16 lawsuit, maybe, for example, you're a creditor
17 of one of them, does not entitle you to
18 intervene in their lawsuit." That is really
19 the position that Mr. Stansbury is in. The
20 court went on, "Here Stansbury's claimed
21 interest is merely an economic interest that is
22 too remote for purposes of the rule because the
23 estate is not a party to this lawsuit. And
24 Stansbury does not assert that he or the estate
25 are beneficiaries to the life insurance

1 proceeds nor the Bernstein Trust."

2 THE COURT: You represent, Mr. Morrissey,
3 who?

4 MR. MORRISSEY: I represent the four
5 grandchildren.

6 THE COURT: Who, according to Mr. Feaman,
7 may benefit if this money comes to the estate?

8 MR. MORRISSEY: Correct.

9 THE COURT: So the way the case is being
10 litigated now -- is the only plaintiff the
11 Simon Bernstein Irrevocable Insurance Trust vs.
12 the life insurance company?

13 MR. MORRISSEY: Well --

14 THE COURT: That's the way the style of
15 the case is. Are there more plaintiffs than
16 that?

17 MR. FEAMAN: They amended subsequently and
18 joined the adult -- four of the five of the
19 adult children were joined as plaintiffs.

20 THE COURT: And who is representing them?

21 MR. FEAMAN: Somebody up in Chicago in
22 that action.

23 THE COURT: Okay.

24 MR. ROSE: I think technically the lawsuit
25 was started by the trust against the insurance

1 company. The insurance company filed an
2 interpleaded, probably by counterclaim. My
3 understanding is, subject to someone correcting
4 me, the insurance company was granted
5 interpleader. They put the funds in the
6 registry of the court. The insurance company
7 is out of the case and even though you have the
8 original style what's left is people asserting
9 a claim to the proceeds.

10 Eliot is there, I think, advocating the
11 claim on behalf of the estate --

12 THE COURT: Eliot is pro se. I want -- we
13 recognize that. From Mr. Morrissey's point of
14 view, do you take a position that your clients,
15 the grandchildren, may have an interest in
16 these monies?

17 MR. MORRISSEY: No -- well, our position
18 is the following --

19 THE COURT: That question first.

20 MR. MORRISSEY: Our position -- no, on
21 behalf of the four grandchildren.

22 THE COURT: You waive any -- on behalf of
23 those children you waive any claim to that
24 money?

25 MR. MORRISSEY: I'm not going to waive on

1 the record.

2 THE COURT: You have to stand on one side
3 of the fence or the other on that.

4 MR. MORRISSEY: Quite honestly, I haven't
5 asked them that question. I can't waive
6 something on behalf of my clients when I
7 haven't asked them that question point blank.

8 THE COURT: All right. So you have -- who
9 -- the Simon Bernstein Irrevocable Trust is
10 represented by Chicago --

11 MR. BERNSTEIN: Adam Simon who is the
12 brother to David Simon who is married to my
13 sister Pam Simon who stands to benefit if the
14 money goes through Illinois.

15 THE COURT: Illinois counsel, okay. And
16 the four children are represented by one
17 lawyer?

18 MR. FEAMAN: That's Adam Simon.

19 THE COURT: Because of the impleading of
20 the funds the battle right now is between the
21 trust and these four children because those are
22 the parties that are now competing for the
23 money?

24 MR. ROSE: I don't think -- I don't know
25 if the four children are technically parties.

1 I think they're just -- the battle I think is
2 between Eliot who is asserting that these funds
3 should come into this estate --

4 THE COURT: Eliot was allowed to
5 intervene?

6 MR. BERNSTEIN: I got sued in the case,
7 Your Honor, because they had gone behind my
8 back to try to steal this policy -- around you
9 too -- and they were told by the insurance
10 company, when Robert Spallina submitted what I
11 allege is a fraudulent insurance claim, and
12 they were told by the insurance company that
13 the claim was denied and they needed a probate
14 court order from you to approve the beneficiary
15 scheme they were proposing using some mashugana
16 lost trust --

17 THE COURT: Eliot, you're named as a
18 cross-plaintiff, so you are --

19 MR. BERNSTEIN: Now I've somehow become a
20 plaintiff -- a defendant that you showed me
21 last week, or two weeks ago, when you handed me
22 that order. I haven't quite figured out how
23 I'm the named defendant.

24 Your Honor, I'm representing their -- my
25 children's interests.

1 THE COURT: Hold it. I'm reading
2 something. I see a entity in the style of the
3 case up there called the Simon Bernstein Trust,
4 N.A. What's that? Is that something different
5 than the Simon Bernstein Irrevocable Trust?

6 MR. ROSE: It's in the affidavit that was
7 filed, I think attached to Mr. Brown's recent
8 petition for instructions, but... In the
9 insurance company's computer they shorthanded
10 the name of the trust. The beneficiary is the
11 Simon Bernstein Irrevocable Life Insurance
12 Trust which is the --

13 THE COURT: Ted Bernstein is an individual
14 in this suit now. And who is representing him?

15 MR. ROSE: I don't know that he is an
16 individual. If he's an individual he's
17 represented by Adam Simon.

18 THE COURT: I'm reading it. That's where
19 I get it. They're individually and/or as
20 purported trustee of the irrevocable trust.
21 Eliot is a cross-plaintiff -- that's where
22 you're named, Eliot -- vs. Ted, individually
23 and as trustee of the irrevocable trust. And
24 then a bunch of other people and entities are
25 cross-defendants. Right now the competing

1 parties in Illinois are the irrevocable trust
2 and Eliot. Is that basically it --

3 MR. ROSE: Yes.

4 THE COURT: -- who are active; is that
5 true?

6 So the question is should the claimant be
7 declared here an administrator ad litem for the
8 purposes of being permitted to ask the court to
9 be able to intervene, which the court may or
10 may not do?

11 MR. ROSE: There's one other part of my
12 opening I missed on my notes --

13 THE COURT: Go ahead. Sure.

14 MR. ROSE: Mr. Morrissey touched on it and
15 reminded me. If you're going to appoint an
16 administrator ad litem it should not be
17 Mr. Stansbury. You can appoint somebody and
18 Mr. Stansbury could fund it, he could pay the
19 expenses of, let's say, Mr. Brown or an
20 independent person to hire a Chicago lawyer
21 and, you know, advance the case. But you would
22 then be preserving issues of privilege and you
23 would be preserving the integrity of the system
24 rather than have Mr. Stansbury, who is a
25 claimant, who is adverse on multiple levels to

1 the estate, as the active person he would be
2 funding the litigation and, in my view, he
3 should be required to indemnify. But you'd
4 have a neutral third person doing it rather
5 that Mr. Stansbury which I think makes a lot
6 more sense.

7 THE COURT: What do you say about the
8 latter comment? That's the only one I want you
9 to address.

10 MR. FEAMAN: The fact that Mr. Stansbury
11 will become privy to confidential information

12 --

13 THE COURT: Well, we're not at --

14 MR. FEAMAN: Ben Brown --

15 THE COURT: -- I'll allow someone else to
16 intervene to appropriately determine whether
17 the estate has an interest in this money or
18 not. That's the issue, correct?

19 MR. FEAMAN: Yes.

20 THE COURT: All right. Right now the
21 person technically doing that is Eliot who
22 tries his best as a pro se. But it's pretty
23 tough --

24 MR. FEAMAN: That's right. He doesn't
25 represent the estate.

1 THE COURT: He represents himself
2 individually. So someone who may look for the
3 interest of the estate. And, you know, these
4 type of litigation, obviously, the Illinois
5 judge is going to have to take evidence -- I'm
6 not going to do that in my hearing -- on who
7 the beneficiary is of this policy. That's what
8 has to be determined.

9 MR. FEAMAN: That's correct.

10 THE COURT: The issue is narrow and I
11 think everyone agrees with that.

12 MR. FEAMAN: And --

13 THE COURT: What I'm thinking about is
14 you kind of want to be able to make sure that
15 everyone who, perhaps, could ultimately be a
16 beneficiary of this policy have a voice in that
17 litigation. That's the due process part of it.
18 So my thought is, having heard everybody say
19 what they said, I rarely find it to be a
20 problem allowing someone to intervene -- unless
21 they're a stranger, this wouldn't be a
22 stranger -- because a voice is a good thing to
23 have. We allow interventions all the time here
24 on my cases. I just hear from someone else.
25 They don't win or lose unless there's merit to

1 them. Someone right now is hovering the
2 position that the Simon Bernstein Irrevocable
3 Trust is the beneficiary. They're lawyered up.
4 The only other person that seems to suggest
5 that that may not be the case and it is the
6 estate that's the beneficiary is Eliot. So I'm
7 considering having someone other than Eliot --
8 or in addition to Eliot, because he's there
9 individually on behalf of himself and he's not
10 representing the estate -- someone represent
11 the interest of the estate.

12 And so the proposal is that that be
13 someone funded by your client, Mr. Feaman, but
14 not -- but someone who is more neutral like Mr.
15 Brown or something like that. What do you say
16 about that?

17 MR. FEAMAN: We came up with Mr. Stansbury
18 because if he's the one that's willing to fund
19 the intervention and to fund the person -- the
20 lawyer -- to make sure that the estate is going
21 to be protected --

22 THE COURT: He has more -- he's like
23 Eliot. He has his own interests, personal
24 interest.

25 MR. FEAMAN: He does. He has interests in

1 money coming into the estate, absolutely.

2 THE COURT: But someone who is more
3 neutral may be the right move there. If that's
4 where I'm going on this, what is your position
5 on that?

6 MR. FEAMAN: If that's where you're going
7 on that then Ben Brown is acceptable in that
8 regard. I would just -- since Mr. Stansbury is
9 the one that's volunteering, if you will, to
10 fund initially the cost of this, then he needs,
11 through me, some input with Mr. Brown.

12 THE COURT: Sure.

13 MR. FEAMAN: On all matters.

14 THE COURT: You'd be allowed to have input
15 with him. But Mr. Brown would be there,
16 assuming he's willing to take the assignment,
17 to preserve issues of confidentiality and other
18 concerns that could exist. He sounded, all
19 along, from the beginning, as the perfect
20 centerpiece to do this. What do you say?

21 MR. BROWN: Actually, I -- a few things to
22 say, Your Honor. The first thing is with
23 regard to the privilege issue. I'm not aware
24 of any privilege that would apply.

25 THE COURT: And I'm not either. But let's

1 get past that point.

2 MR. BROWN: The testamentary exception,
3 this is squarely in the testamentary exception,
4 so there is no privilege in my view of this.

5 THE COURT: Okay.

6 MR. BROWN: The second issue is that I
7 promised David Simon, I've given to you before,
8 this email thread where he sent me an email and
9 said you're trying to have Mr. Stansbury
10 appointed as administrator ad litem, the estate
11 should not be appearing in Illinois, you're
12 going to be wasting estate assets and you have
13 a conflict of interest because you're the
14 curator and the estate pours over into the
15 revocable trust and the beneficiaries of the
16 revocable trust don't want this policy to go to
17 the estate. I've been accused of conflict of
18 interest. I've been accused of breaches of
19 fiduciary duty already by David Simon who,
20 apparently, is Adam Simon's brother and the
21 father of some of the grandchildren.

22 My third issue is that, I think it's from
23 the Vietnam War, this comes within the category
24 of mission creek. I'm supposed to be temporary
25 interim limited curator. There's supposed to

1 be a personal representative appointed at some
2 point. I've been asked by the parties to
3 consider being the personal representative.
4 Frankly, Your Honor, this case is -- goes off
5 in a lot of different directions. Whoever the
6 personal representative is going to spend a lot
7 of money just dealing with the different
8 parties and the different people who are
9 involved. And, frankly, I don't know that I
10 have the time. And I really don't want to be
11 the personal representative.

12 THE COURT: Okay.

13 MR. BROWN: If I'm appointed administrator
14 ad litem it seems like I'm in there for the
15 long run on a federal case. They do move them
16 pretty quickly here in the Southern District of
17 Florida. I know that from experience. I don't
18 know about the Northern District of Illinois.

19 MR. FEAMAN: Well, there's been -- I can
20 answer that question.

21 THE COURT: Okay.

22 MR. FEAMAN: There's been a notification
23 of a docket entry entered by the judge on -- it
24 said that all case dispositive motions are to
25 be filed by mid-July, July 13. So it sounds

1 like we're on a rocket docket to me, Your
2 Honor.

3 And on behalf of Mr. Stansbury I would
4 like to, since he is running the cost, be able
5 to work with whomever it is to pick counsel up
6 in Chicago. And that -- and to review
7 counsel's bills from Chicago and to help
8 strategize with that counsel the best way to
9 proceed up there should Your Honor go that
10 direction.

11 THE COURT: All right. So let me ask this
12 question: Is there also before me a petition
13 to appoint or determine a PR?

14 MR. FEAMAN: Not today.

15 THE COURT: Not today, okay.

16 MR. BROWN: Your Honor, I don't know if
17 that's set for hearing at all. Although I
18 request that it be set for hearing. The other
19 issue with a PR versus a curator is that
20 Mr. Stansbury has active litigation going on in
21 front of Judge Blanc right now. So far there
22 hasn't been any conflict as far as Ted
23 Bernstein and the estate defending against
24 Mr. Stansbury's claim, but there have been
25 multiple instances where people in this case,

1 in this room, basically, have said that there
2 could eventually be a conflict of interest
3 because there could be some finger pointing in
4 cross claims.

5 THE COURT: It's hard to purify a case
6 like this and not have it -- not have a
7 situation where it's allegation free of a
8 purported conflict of interest. But it just
9 sounds logical that if -- especially when I'm
10 looking at the latest heading out of the case
11 in Illinois -- if this is, in its simplest
12 form, a dispute as to who the beneficiary of
13 this life insurance policy is, I mean that's a
14 -- that's kind of a narrow hearing. We do
15 those types of things in state court. You
16 know, you need some discovery. And then you
17 present the evidence and the judge makes a
18 decision. Kind of like the way you do in
19 contract cases. And so the parties who claim
20 to be beneficiaries of the policy seem to be
21 Simon Bernstein's Irrevocable Trust and their
22 representative. I'm treating Simon Bernstein
23 Trust as the same party for the purpose of this
24 discussion. Eliot, individually, he's there.
25 And no one who may have a voice to say I want,

1 on behalf of the estate, because there's no PR.
2 If there's a PR the PR would take care of that.
3 Especially where Mr. Stansbury is willing to
4 front the cost of the fees for that up front it
5 sounds beneficial to have that voice.

6 So I'll put it this way, Mr. Brown, I
7 would expand your curator duties, if you're
8 willing, to take the assignment. If not, we
9 got to go elsewhere. It's up to you.

10 MR. BROWN: The curator duties basically
11 to just effectively be the party who's
12 intervening using Mr. Stansbury's counsel?

13 THE COURT: No. You would be the party.
14 You would hire a lawyer. You're allowed to,
15 like in any other case, you and your lawyer can
16 hear, because your phones work and your emails
17 work, from anyone else including Mr. Feaman and
18 Mr. Rose and Mr. Morrissey, and anyone else can
19 stick their two sense in. That's the way
20 litigation goes. But it seems to be that this
21 isn't an issue that's a finger-pointing issue.
22 This is who the beneficiary of the policy is.
23 The judge is going to look at the documents and
24 either say it's clear on its face or else take
25 parol evidence and we're on our way. This

1 isn't a personal type of litigation. And so,
2 you know, the strategies are legal strategies
3 that would be in charge of you and the lawyer
4 you hire.

5 MR. BROWN: I understand that, Your Honor.
6 Basically what you just described is something
7 that Mr. Stansbury could very easily do and pay
8 for himself.

9 THE COURT: Right. But he's -- but I
10 don't want him to be the party to do that
11 because I think there's -- he's a claimant.
12 There's -- I'm not comfortable there.

13 MR. BROWN: Okay.

14 THE COURT: And, you know, you're the
15 neutral person looking out for the estate's
16 interest. He has -- he's not -- he's looking
17 out for the estate's interest but in a
18 different manner. So hypothetically if you
19 went up into the litigation and you got
20 convinced by looking at everything you looked
21 at, you and your lawyer, that the beneficiary
22 was the Simon Bernstein Irrevocable Insurance
23 Trust, whatever that is, and not the estate,
24 you have a duty to argue in good faith. You
25 follow what I'm saying? That's where the

1 neutrality part comes in. But you are more
2 advocating, primarily, to the estate at --
3 that's the assignment.

4 MR. BROWN: I understand that, Your Honor.
5 But -- and I know there's a lot of buts here --
6 the estate has about 6 to \$700,000 worth of
7 assets, that includes the jewelry.

8 THE COURT: Remember, I'm having
9 Mr. Stansbury pay.

10 MR. BROWN: Oh, you are having Mr.
11 Stansbury, okay.

12 THE COURT: That was the deal.

13 MR. BROWN: And just using his counsel
14 that he already has retained and already tried
15 to intervene with?

16 THE COURT: No. No. You pick the lawyer.
17 He pays.

18 MR. BROWN: Your Honor, I will do it
19 subject to whatever personal representative is
20 appointed going ahead and taking over --

21 THE COURT: Ultimately if we get to the
22 stage where there's a PR taking the place of
23 you, that would be different. This is -- let
24 me just tell you, I mean a couple of reasons
25 why I think that works is Mr. Brown has worked

1 with me as curator in a lot of cases. I mean I
2 haven't had one challenge to the reasonableness
3 of the fees ever. He keeps control of the
4 lawyers. You know, and he does really a good
5 job there. So I really, you know, I can't
6 think of a better person to deal with this
7 issue given everyone's competing interest.
8 He'll be fair on what he argues on behalf of
9 the estate. He's not going to run up fees.
10 He's not going to allow the lawyer to run up
11 fees. If you want, I don't think he should be
12 the lawyer probably because I don't think he's
13 admitted in Illinois --

14 MR. BROWN: No.

15 THE COURT: -- and he'll be able to best
16 determine how to filter whatever the
17 information is that other counsel want to give
18 to them. Again, it's a narrow issue. Okay,
19 everyone is jumping up.

20 MR. MORRISSEY: If I could respond on
21 behalf of four of the grandchildren. We're now
22 talking about having to pay, you know, from my
23 client's perspective pockets, Mr. Brown's fees,
24 an attorney up in Illinois --

25 THE COURT: I just said that won't be the

1 case.

2 MR. MORRISSEY: That could potentially be
3 the case.

4 THE COURT: It would only be the case if
5 there was a recovery for the estate to which
6 then Mr. Stansbury would say, under the
7 statute, I performed a benefit for the estate.
8 How could that not benefit -- and from what I'm
9 told your clients, the grandchildren, would be
10 the people who would benefit from that. So why
11 would you complain about that if that's what
12 wound up happening? There's not a dollar
13 coming out of the estate unless there's a
14 recovery basically, and then the recovery would
15 take place and he would seek some recovery of
16 fees.

17 MR. MORRISSEY: And he would seek that --

18 THE COURT: Here.

19 MR. MORRISSEY: Here?

20 THE COURT: Sure. You can say what I
21 think you're going to say, it's okay.

22 MR. MORRISSEY: I just want to go back to
23 the basics. The fact that the estate is only a
24 taker in default. So the estate doesn't need
25 to be represented in the Illinois action.

1 It's, for example, there was even talk, I
2 believe, in the Illinois case by one of the
3 banks or insurance companies that it's possible
4 if there's no beneficiary then the State of
5 Illinois could be the taker in default. Well,
6 the State of Illinois wasn't named as a party.
7 They don't have counsel there. Likewise, why
8 should the estate have counsel in an action
9 where they're only the taker of last resort?

10 THE COURT: Because if they're the taker
11 as a matter of law -- I mean -- I don't really
12 follow your argument because let's say there's
13 a hearing, which there will be, and the trust
14 is there, Eliot is there, and the estate is
15 there, and the judge hears it all and says the
16 decision is the beneficiary should be the
17 estate, would we say that that's a ridiculous
18 thing that we had the estate participate? I
19 don't think so.

20 MR. MORRISSEY: I don't know what -- I
21 mean there is no evidence that anyone on behalf
22 of the estate can present that they have ever
23 been named as a beneficiary --

24 THE COURT: That could be. It may be then
25 that once Mr. Brown and counsel intervene, see

1 the documents -- I mean you're not talking --
2 how many pages of documents could the
3 beneficiary forms be? It can't be that many.
4 When we sign our life insurance forms we sign a
5 page or two, that's about it. It's not like
6 it's going to be really exotic litigation.
7 This is a narrow, single issue who the
8 beneficiary is of this policy. You know, it
9 may be that it is clear that it's this
10 irrevocable trust and then they'll go from
11 there to see whether that really is an entity
12 that exists. That may be a separate issue. If
13 the judge says -- someone can name on the life
14 insurance policy, you know, the Star Spangled
15 Banner Fund and if that doesn't exist then we
16 know from contract law what happens if you name
17 a beneficiary that doesn't exist. You go to
18 the next level. You certainly want the life
19 insurance funds going somewhere. That's what
20 we would determine if that took place. Step 1,
21 step 2, step 3, doesn't sound to be that
22 complexed. Last word.

23 MR. ROSE: If I understand what you are
24 saying, which makes sense, Mr. Brown will keep
25 separate time for the time he spends as curator

1 working on the Illinois issue. He will hire
2 counsel and the fees of Mr. Brown and the
3 Illinois counsel, under his direction and his
4 discretion, would be paid by Mr. Stansbury?

5 THE COURT: That's the case. Subject to a
6 claim for reimbursement under the statute.

7 MR. ROSE: I'd want to hear from
8 Mr. Stansbury under oath that he's willing to
9 undertake that expense. Not to talk out of
10 school, but I haven't had discussion with
11 counsel and I didn't necessarily get the sense
12 that that was going to be the case.

13 THE COURT: All right. Well, Mr. Feaman
14 can represent them.

15 MR. FEAMAN: I am representing as an
16 officer of the Court, Your Honor.

17 THE COURT: Okay.

18 MR. FEAMAN: My only concern is if
19 there's -- basically Mr. Stansbury is funding
20 this there's -- there has to be some type of, I
21 don't want to use the word control, but real
22 input into the process.

23 THE COURT: Well, he's allowed to, like
24 anyone else in cases like this, you could have
25 conversations with Mr. Brown and his lawyer.

1 You can show them what documents there are.
2 You can ask them to discuss things with them.
3 And, you know, I mean they -- they obviously
4 know he has an interest. And to the extent
5 that they're comfortable I think it's
6 appropriate they'll discuss these things with
7 them.

8 MR. FEAMAN: On behalf of Mr. Stansbury, I
9 would like assurances.

10 THE COURT: I'm not going to -- I have to
11 keep the -- there's a line of demarcation I
12 don't want to cross up front.

13 MR. FEAMAN: And I'm not objecting that
14 it's not Mr. Stansbury. I just want to make
15 sure the person who --

16 THE COURT: The person who is appointed is
17 going to advocate for the estate.

18 MR. FEAMAN: Right. Agree with that.

19 THE COURT: But let me tell you this, the
20 reason I appoint a curator to do this is the
21 curator is not advocating for Mr. Stansbury.
22 He's advocating for the estate. There's times
23 when the curator could say, after doing
24 everything, I don't think, for example, the
25 estate has a bona fide interest. That may be

1 bad news for your side. But if that's what
2 they conclude then that's what they conclude.
3 If they conclude they do they will continue
4 advocating. It's things we do as lawyers all
5 the time. We go after cases with merit, and
6 shy away from those we think don't have merit.

7 MR. FEAMAN: Yes.

8 THE COURT: There's multilevel here. If
9 someone says that the Bernstein Irrevocable
10 Trust is the beneficiary but that it doesn't
11 exist there may be an argument that could be
12 made how then still as a result of that the
13 estate should get the funds, that would be
14 something that Mr. Brown and counsel could
15 consider advocating. But it's all in good
16 faith stuff.

17 MR. FEAMAN: Sure. I just want to make
18 sure --

19 THE COURT: You'll get copies of the
20 bills. You'll be able to see what's that. If
21 at anytime you think that Mr. Brown and the
22 lawyer are, you know, going way beyond what you
23 think they should, from an expense point of
24 view, you can always come back to me.

25 MR. FEAMAN: I'm less concerned with the

1 expense, although it is important, more with
2 being able to pick up the phone and speak to
3 counsel in Chicago and say, hey, have you
4 considered this, I have information that may
5 help your case.

6 THE COURT: I'm not going to micromanage
7 that part. Today if you want to call Mr. Brown
8 for this hearing, for example, and say, Mr.
9 Brown, this is what I think, what do you think,
10 you're allowed to have a discussion on that.
11 That happens all the time, doesn't it?

12 MR. BROWN: It does. It does with
13 everybody in the case, emails and phone calls.

14 THE COURT: You guys email between each
15 other like crazy now.

16 MR. BROWN: That's true. Your Honor, the
17 only -- as far as keeping my time, if I kept my
18 time at my rate as curator is Mr. Stansbury
19 supposed to pay for that, or is that still
20 payable by the estate?

21 THE COURT: Your time and the lawyer's
22 time are the only rate I approve --

23 MR. BROWN: Paid by Mr. Stansbury.

24 THE COURT: -- the hourly rate, I approve
25 of 350.

1 MR. BROWN: I also propose, it doesn't
2 have to go on the order, it would seem to me,
3 there's nothing wrong, once I retain a Chicago
4 attorney, there's nothing wrong with Mr. Feaman
5 calling that Chicago attorney and me telling
6 the Chicago attorney don't get me on the phone
7 --

8 THE COURT: I agree. There's no question.
9 You're the conduit.

10 MR. BROWN: As far as the claim, I'll
11 absolutely rely on Illinois counsel.

12 THE COURT: All right. I think this is
13 pretty clear how it's going to be handled.

14 Yes, sir.

15 MR. ROSE: A couple of minor concerns, I
16 think Mr. Brown went too far. Mr. Stansbury
17 would not pay for all the curator fees, only
18 the curator fees directly related to the
19 Illinois matter.

20 THE COURT: That's what he said. Separate
21 times sheets, sure.

22 MR. ROSE: I'm concerned if they -- he's
23 going to hire a Chicago lawyer, a Chicago
24 lawyer is going to be expensive. That's what
25 our main concern is --

1 THE COURT: Hold on. Mr. Brown --

2 MR. ROSE: He's a practical guy --

3 THE COURT: -- he's going to find a good
4 lawyer with a reasonable rate, and that's a
5 little higher. He's not going to hire a
6 \$1,000-an-hour-guy.

7 MR. ROSE: But if he hires a lawyer and
8 the bill is \$12,000 and Mr. Stansbury's counsel
9 looks at it and says we don't think we should
10 pay it, Mr. Brown is retaining the person on
11 behalf of the estate, we need to have not a
12 chance for them to complain about bills.

13 THE COURT: Okay. I'm not worried about
14 that now. There's too much -- I'm not finding,
15 you know -- I mean one -- part of this is what
16 I think is the sincerity of Mr. Feaman's side
17 here. And it's kind of a good thing that we
18 have the ability to be able to use
19 Mr. Stansbury's funds that way. They've made
20 the pledge to do it. I don't think they're
21 going to go back on their word.

22 MR. ROSE: I understand. I think
23 Mr. Stansbury should at least, under oath --

24 THE COURT: Your request is denied.
25 Mr. Feaman is an officer of the court. He

1 represents --

2 MR. ROSE: -- it would be enforceable as a
3 judgment if he doesn't pay -- the estate would
4 have a claim against Mr. Stansbury if he, for
5 example, didn't pay some invoices and we got
6 stuck paying the bill for a Chicago lawyer.

7 THE COURT: You want me to rule on that
8 now? Your answer is no. You're real premature
9 on that. Draft an order along the lines I
10 mention.

11 What else for today?

12 MR. BROWN: Your Honor, I had two motions
13 for instructions.

14 THE COURT: One had to do with this issue,
15 right?

16 MR. BROWN: That one I basically just took
17 a backseat to because of the administrator ad
18 litem motion.

19 The other, Eliot Bernstein sends me a lot
20 of emails with a lot of requests. I'm not
21 saying it's a bad thing. But he asks me
22 questions I don't necessarily know I can
23 answer. For instance, he got the accounting by
24 Tetra and Spallina and then sent me an email
25 that I've attached to the motion. I don't know

1 if you have the motion for instructions.

2 THE COURT: I do.

3 MR. BROWN: That had 44 different
4 questions, not including subparts, and asked
5 that I hire a forensic accountant, an analyst
6 and acquire account statements from a number of
7 third-party institutions.

8 THE COURT: Is that the motion? I don't
9 have the attachments. It says motion for
10 instructions -- that's the life insurance one.
11 Hold on.

12 MR. BROWN: It's not necessarily
13 important. Eliot is very thorough. But,
14 again, the estate has limited assets. My view
15 of what the curator should do with respect to
16 the accounting is not take the lead on
17 objecting to what Tetra and Spallina did,
18 investigating the underpinnings of the
19 accounting, that's up to -- we have a lot of
20 beneficiaries here who are very, very
21 passionate and interested in what's going on
22 with the estate.

23 THE COURT: Stop. You don't have to go
24 further. That position, that's the law. You
25 don't do that. If there's an accounting,

1 there's a rule on objections, the parties
2 object. They don't use you -- you don't work
3 for them.

4 MR. BROWN: Okay.

5 THE COURT: You work for the court.

6 MR. BROWN: I'll try and craft an order
7 that deals with that motion in that regard.

8 Also, there also was a motion, Eliot has
9 concerns about the 2012 will and its validity.
10 I think your ruling would be the same on that.
11 I don't have a role in trying to contest that
12 will --

13 THE COURT: Exactly. You're not an
14 advocate. You don't investigate things that
15 the parties may be interested in. They can do
16 what they think they need to do based on the
17 rules of procedure and statutes.

18 MR. BROWN: That's it.

19 MR. ROSE: If I may address the privilege
20 issue?

21 THE COURT: Okay. The privilege issue,
22 okay.

23 MR. ROSE: May I approach?

24 THE COURT: Yes.

25 MR. ROSE: I can file a copy of this.

1 This is the email in question. Without reading
2 the email, if you look at who it is addressed
3 to at the very top. Mr. Bernstein is saying,
4 this is Ted, telling me he sent it to Eliot by
5 mistake. Last night at 10:12 he got off an
6 airplane and wanted to tell me things. It's to
7 Eliot by accident. If you just read --

8 THE COURT: When you say to Eliot by
9 accident, the only person this is sent to is
10 Eliot.

11 MR. ROSE: Correct. He was trying to send
12 it to me. If you look below the word analysis,
13 the first word of the email is Alan.

14 THE COURT: So this was is supposed to go
15 to you and it went to Eliot?

16 MR. ROSE: By mistake. And Mr. Bernstein
17 has advised me this morning he sent it to 2,000
18 people already. He plans on publicizing it --

19 THE COURT: I'm sure he didn't do that
20 because if he wants to participate in the case
21 he's obligated to have and comply with the
22 rules of court.

23 MR. BERNSTEIN: Your Honor --

24 THE COURT: When you --

25 MR. BERNSTEIN: I was sent an email to me.

1 Like I do when I get a letter that has
2 threatening stuff to me I sent it to my friends
3 who are lawyers. I sent it to a number of
4 people. Actually, I got so busy sending it to
5 people, because it scared me a little bit that
6 it was very threatening to people, that by the
7 time I was done my wife stopped me and said we
8 got to go to court. All I know is my brother
9 sent me an email that seems pretty threatening.
10 It was addressed to me. I was the intended
11 recipient.

12 THE COURT: Let me ask you, when the email
13 starts off Alan --

14 MR. ROSE: I get a million emails --

15 THE COURT: That say Alan?

16 MR. BERNSTEIN: That say whoever's name.

17 THE COURT: Okay. All right. You know
18 what, I don't buy anything you just told me.

19 MR. BERNSTEIN: I thought my brother was
20 sending me a copy of an email --

21 THE COURT: Stop. Stop. Stop speaking.
22 I'm going to look at the rule for a second.

23 MR. BERNSTEIN: Okay.

24 MR. ROSE: It's 1.285.

25 THE COURT: Okay.

1 MR. BERNSTEIN: I haven't been prepared
2 for this, so...

3 THE COURT: Okay.

4 MR. BERNSTEIN: I haven't looked at the
5 rules.

6 THE COURT: Okay.

7 MR. BERNSTEIN: I can show you several
8 instances in my email of people sending me
9 letters addressed to other people, several
10 thousands of those.

11 THE COURT: So, all right. Everyone has
12 to take a deep breath. This situation is done
13 pursuant to Rule 1.285. So Mr. Rose, on your
14 side, correct me if you think I'm wrong,
15 Subsection A says, "When you" -- your client --
16 "takes a position that there's been an
17 inadvertent disclosure of privileged materials
18 to another person" -- which is what you say
19 happened, correct?

20 MR. ROSE: Correct, sir.

21 THE COURT: It says here, "In order to
22 assert the privilege the party, person or
23 entity shall, within 10 days of actually
24 discovering the inadvertent disclosure, serve
25 written notice of the assertion of privilege on

1 the party to whom the materials were disclosed.
2 The notice shall specify with particularity" --
3 etc. And then there's a procedure.

4 MR. ROSE: I did that last night. I
5 emailed him last night.

6 THE COURT: I didn't know that. So you
7 gave him the written notice. I assume he got
8 it. Can I see a copy of the notice?

9 MR. ROSE: I'm trying to get a copy of the
10 notice. Perhaps -- I'm not trying to have the
11 whole argument heard today. I just --

12 THE COURT: The rule applies.

13 MR. ROSE: Right.

14 THE COURT: So once he gets notice, the
15 rule applies. So the notice will have -- you
16 sent it by email?

17 MR. ROSE: I have it here now. I do find
18 it, sir. May I approach?

19 THE COURT: What's the time and date of
20 the notice?

21 MR. ROSE: May 22, 2014 at 11:07 p.m. I
22 said, "You received an email from Ted intended
23 solely for me, and accidentally sent to you by
24 mistake. The email was sent around 10:12 p.m.
25 tonight. Please delete the email immediately

1 without reading it and confirm that deletion by
2 email. The communication was attorney-client
3 protected and you are not entitled to read or
4 possess the email due to the accidental
5 transmission. Thank you in advance. And if
6 you fail to comply with this request we'll be
7 forced to take corrective action with the
8 court." Signed by me sent to the same email
9 address that --

10 THE COURT: Okay. All right. So the rule
11 says, to Eliot, he sent that to you, Rule
12 1.285, Subsection B tells you what you're
13 supposed to do.

14 MR. BERNSTEIN: I haven't seen it yet.

15 THE COURT: Okay.

16 MR. BERNSTEIN: He's saying he sent it
17 after Ted's email. The last email I read was
18 Ted's email. So I haven't seen it.

19 THE COURT: So open that email --

20 MR. BERNSTEIN: Okay.

21 THE COURT: Okay. And do what the rule
22 says.

23 MR. BERNSTEIN: Don't send it to anybody
24 else.

25 THE COURT: Well, okay, that, but it also

1 says some other things of what you're supposed
2 to do. You're supposed to return or destroy
3 it. That's one thing you're supposed to do.
4 And you are to notify anyone else who you
5 disclosed it to that they're to do the same
6 thing and you're also to take reasonable steps
7 to retrieve the materials disclosed --

8 MR. BERNSTEIN: I'll do all that.

9 THE COURT: And the only exception to this
10 is if you want to challenge that assertion that
11 you were provided an inadvertent privileged
12 matter. And then the rule says what could
13 happen and we can have litigation and spend a
14 lot of money.

15 MR. BERNSTEIN: No. I'll do whatever it
16 is -- whatever the law says, as always.

17 THE COURT: There's nothing for me to do.

18 MR. ROSE: I understand. I just want to
19 make sure you --

20 MR. BERNSTEIN: Your Honor, it went out to
21 a lot of people. Like I said, I have a broad
22 base --

23 THE COURT: Take a look. When you leave
24 the courthouse --

25 MR. BERNSTEIN: Okay. I'll notify

1 everybody though.

2 THE COURT: Go and take a look at the rule
3 and just do what the rule says.

4 MR. ROSE: And it's not to be posted on
5 social media.

6 THE COURT: You see, I'm not allowed to
7 have dialogue on that now. Other than signing
8 the order, hearing over. Thank you.

9 (Whereupon the hearing is concluded at 10:00 a.m.)

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CERTIFICATE OF COURT REPORTER

I, JULIE ANDOLPHO, do hereby certify that the foregoing transcript of the proceedings, consisting of pages numbered 1 through 54, inclusive, is a true and correct transcript of the proceedings taken by me before the Honorable MARTIN COLIN, on May 23, 2014.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under direct control and/or direction of the reporter.

Dated this 27th day of May, 2014.

Julie Andolpho

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<p>_____</p> <p style="text-align: center;">Y</p> <hr/> <p>yet 9:5 14:5,13 51:14</p> <p>You'll 40:19,20</p>			
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EXHIBIT B

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

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
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 Amy J. St. Eve
Magistrate Mary M. Rowland

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.)

AFFIDAVIT OF DON SANDERS

1. I, Don Sanders, am a resident of the City of Mansfield, County of Tarrant, State of Texas and am over the age of 18. If I were called and sworn as a witness in this matter I could competently and voluntarily testify to the facts set forth in this Affidavit.
2. When I use the term Capitol Bankers, I mean Capitol Bankers Life Insurance Company.
3. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
4. When I use the term "Jackson" I mean Jackson National Life Insurance Company.
5. When I use the term "Insurer", I mean the life insurance company that was the insurer of the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
6. When I use the term "Policy" herein, I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
7. When I use the term "Insured", I mean Simon Bernstein.
8. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
9. When I use the term "Policy Proceeds", I mean either the amount that was payable by the Insurer under the Policy upon the death of the insured and/or the amount that was actually paid by the Insurer to the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
10. When I use the term "Policy records", I mean the records of the Insurer relating to the Policy as produced by Jackson during the Litigation.
11. When I use the term "Litigation", I mean the above-captioned litigation.
12. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
13. I am currently employed as Assistant Vice-President of Operations for Jackson.
14. I have been employed in Jackson's operations department for the past 11 years, and have been employed in the life insurance industry for approximately 32 years.

15. In my role as Assistant Vice President of Operations with Jackson, I have personal knowledge regarding the policy administration and death claim practices and procedures Jackson utilizes with regard to the Capitol Bankers Life Insurance Policy at issue.
16. I am aware that I am being presented as a witness pursuant to Fed. R. Civ. P. 30(b)(6), on behalf of Jackson in response to a Subpoena for Deposition served upon Jackson by the Plaintiffs in the above-captioned matter.
17. I am aware that pursuant to Rule 30(b)(6) my statements and this Affidavit shall be relied upon as the statements of Jackson, itself.
18. I have had access to counsel for Jackson with regard to my testimony and affidavit prior to having signed this Affidavit.
19. I understand that since Heritage paid the Policy Proceeds to the Registry of the Court, Heritage has been dismissed and is no longer a party to the Litigation.
20. I have no personal or business interest in the outcome of the Litigation including no interest in the determination by the court of the beneficiary(ies) of the Policy Proceeds.
21. No one from Jackson has any interest in the outcome of this Litigation including determination by the court of the beneficiary(ies) of the Policy Proceeds.
22. I have received no compensation from any party to the Litigation in exchange for my testimony.
23. The Policy was issued by Capitol Bankers in 1982.
24. In June 1998, Capitol Bankers was acquired by Swiss Re Life & Health America, Inc.
25. In May of 2000, Capitol Bankers entered into a one hundred percent Coinsurance/Administrative Reinsurance Agreement with Reassure America Life Insurance Company.
26. In May 2000, one hundred percent of stock of the Capitol Bankers was sold to Annuity & Life Reassurance.
27. In December of 2000, Capitol Bankers changed its name to Annuity & Life Reassurance America, Inc.

28. In August 2005, Annuity & Life Reassurance America, Inc. was acquired by Wilton Re Group.
29. In August 2008, Annuity & Life Reassurance America, Inc. changed its name to Heritage Union Life Insurance Company.
30. In 2012, Jackson acquired and merged Reassure America Life Insurance Company into Jackson, and as a result, Jackson became administrator and reinsurer of the Policy.
31. Since at least 2000, Jackson (and/or its predecessor Reassure America Life Insurance Company) has been in possession of the Policy records.
32. I have personal knowledge regarding the record-keeping procedures and practices utilized by Jackson with regard to its administration of the Policy and others like it.
33. I have reviewed and made myself familiar with the Policy records.
34. The Policy records start with bates no. JCK000001 and end at bates no. JCK001275. I have reviewed these bates-stamped records, and can attest that the bates-stamped records are a true, accurate and complete set of the Policy records in Jackson's possession pertaining to the Policy.
35. The Policy records do not contain an original or executed duplicate of the Policy, which was issued in 1982.
36. The Policy records do include a specimen policy form, a copy of the Insured's application, and copies of the schedule pages that were included with the original Policy.
37. Also, the Policy records do not include:
 - (a) an original or copy of the "S.B. Lexington Employee Death Benefit Trust"; or
 - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
 - (c) any purported trust named the "Simon Bernstein Trust, N.A."
38. Bates no. JCK001099 to JCK001117 is a Capitol Bankers Life Insurance Company specimen policy form of the Capitol Bankers whole life insurance product referred to as "Current Value Life". This specimen policy is a sample of the policy form issued on the life of Simon Bernstein as Policy No. 1009208 (the "Policy").
39. This specimen policy form contains the same policy language that is contained in Policy No. 1009208. The only pages that are different are pages that relate to the variable policy

specifications that pertain primarily to Simon Bernstein's age, underwriting classification, sum insured and statement of policy costs and benefits.

40. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million.
41. The Policy is a whole life, flexible premium, life insurance contract, which is a type of policy that builds cash value as premium payments are made.
42. The Insurer will deduct the monthly cost of insurance charges from any existing cash value in the Policy, but when the cash value is insufficient to cover the cost of insurance, then the Policy will go into a grace period and eventually lapse if no premium payment is made. A brief summary description of these features of the Policy are contained in a letter from the Insurer dated November 9, 2010, to the Owner. (Bates No. JCK000131).
43. If premium payments are not made according to schedule, or Policy loans are taken against the cash value, this reduces the cash value which negatively impacts the Policy's performance and eventually results in a reduction in the Policy proceeds.
44. The Policy records indicate that premiums were not made according to schedule, and Policy loans occurred with regard to the Policy such that at the time of the Insured's death, the net death benefit payable by the Insurer was \$1,689,070.00 (the "Policy Proceeds").
45. Bate stamp no. JCK001252-JCK001258 is a financial history report that is titled "Financial Activity from Issue."
46. On page JCK001258, the financial history report indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00.
47. I have reviewed the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry"), and according to the receipt the Policy Proceeds, a total of \$1,703,567.09, was deposited by the Insurer to the Registry on June 26, 2013. This deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. (Bates No. BT000106)
48. Part I of the Policy application is contained in the Policy records as Bates No. JCK000419. The owner and beneficiary sections of Part I set forth the initial policy owner and beneficiary(ies) of the Policy.

49. According to Part I of the application, the Policy Owner at issuance was “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”.
50. Also according to Part I of the application, the beneficiary was designated as follows: “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”.
51. According to Part I of the application, Simon Bernstein’s employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (JCK000419).
52. Bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy No. 1009208 was a “Current Value Life” plan issued on December 27, 1982, insuring the life of Simon Bernstein with a “sum insured” of \$2 million.
53. Bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982.
54. On or about November 7, 1989 the Insurer acknowledged a change of ownership designating United Bank of Illinois as trustee. (JCK000811). This first change of trustee likely occurred as early as July 6, 1983, because the Insurer received and recorded a Request Letter making this same change in trustee. (JCK000935)
55. On or about June 5, 1992, a letter submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (Bates No. JCK000365).
56. On or about November 27, 1995, Capitol Bankers received a “Request Letter” signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
 - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
 - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary.

57. Though the name of the Trust on the Request Letter was set forth as stated in Par. 30(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (Bates No. JCK000370, JCK000372, JCK000514, JCK000554, 599, 601).
58. As a matter of standard policy and procedures at Jackson and as set forth in the Policy itself, the designation of the Owner and Beneficiary is governed by the Request Letter or Direction of the Owner and not by how the name of the owner or beneficiary is input by employees into the Insurer's systems as part of policy administration.
59. In my experience in operations, Insurers' systems require employees to abbreviate names of owners and/or beneficiaries at times when the names contain too many characters for the Insurer's systems capabilities.
60. On November 27, 1995 Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries as referenced in Par. 56 above.
61. In April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (Bates No. JCK000560).
62. After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (Bates No. JCK000370).
63. Capitol Bankers Life Insurance Company acknowledged receipt of the "executed beneficiary change" in its correspondence to the Owner of the Policy dated November 27, 1995. (JCK000372).
64. According to Jackson's records, following the death of Simon Bernstein, Heritage or Jackson received competing claims to the death benefit proceeds. Jackson or Heritage received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a competing claim in the form of a letter from Eliot Bernstein either on his own behalf or on behalf of his children.

65. According to Jackson's records on the Policy, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
66. According to Jackson's records on the Policy, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
67. According to Jackson's records on the Policy, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
68. According to Jackson's records on the Policy, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
69. According to Jackson's records on the Policy, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy.
70. According to Jackson's records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary.
71. From my review of the records, and my experience in the industry and with Insurer database systems, it is evident that the name Simon Bernstein Trust, N.A. was either entered by an employee of the Insurer either as an abbreviation for the actual contingent beneficiary or in error. In any case, the document that contains the Owner's actual last beneficiary designation prior to the death of the insured is Bates No. JCK000601. In this document, the Owner designates Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as the contingent (or successor) beneficiary.
72. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Bates No. JCK000370 and JCK000372).
73. According to Jackson's records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (JCK000563 and 566).
74. According to Jackson's records, a company named Equifax conducted an interview in connection with the application and underwriting for the Policy. The Equifax report indicates that Simon Bernstein was interviewed on March 25, 1982. The report says on

its face that it was prepared for Life Insurance Underwriting purposes only.
(JCK001074).

75. Contained in the Equifax Report from Simon Bernstein's interview is the following description of the intended purpose of the insurance:

"BENEFICIARY-PURPOSE OF INSURANCE: The beneficiary of this policy is First Arlington National Bank, S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (JCK001084).

76. Since the death of Simon Bernstein, Jackson (and "Heritage") has received notices of potential claims from the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95, and from Eliot Bernstein, purportedly on his own behalf and on behalf of his children. I am aware that a person named William Stansbury filed a petition to intervene in the above-captioned litigation but that his petition to intervene was denied by the court. I am aware that in Plaintiff's First Amended Complaint, that Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein have filed claims seeking imposition of a Resulting Trust and as such First Amended Complaint does represent additional potential claims to the Policy Proceeds.

77. The Policy records do not include any notices of claims from any of the following individuals or entities:

- a) The VEBA;
- b) Any Bank Trustee of the VEBA;
- c) Adam Simon;
- d) David Simon;
- e) The Simon Law Firm ; or
- f) STP Enterprises, Inc.

78. I am unaware of any claims having been received by Jackson or Heritage as to the Policy proceeds from any persons or entities, other than those described in Par. 76 above.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: April 8, 2014

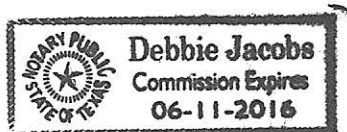


Don Sanders, Assistant Vice-President
Jackson National Life Insurance Company

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 8th DAY OF APRIL, 2014.



NOTARY PUBLIC
County of Dallas, TX



**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., TED BERSTEIN, individually)
and as alleged Trustee of the Simon)
Bernstein Irrevocable Insurance Trust Dtd.)
6/21/95 and ELIOT BERNSTEIN,)

Third Party Defendants)

_____)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

Case No. 13 cv 3643

**Honorable Amy J. St. Eve
Magistrate Mary M. Rowland**

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., EMPLOYEE DEATH
BENEFIT TRUST, S.T.P. ENTERPRISES,
INC., S.B. LEXINGTON, INC.,
NATIONAL SERVICE ASSOCIATION,
INC. (OF FLORIDA) NATIONAL
SERVICE ASSOCIATION, INC,
(OF ILLINOIS) AND JOHN AND
JANE DOE'S

Third Party Defendants

BENJAMIN P. BROWN, as Curator and
Administrator Ad Litem of the Estate of
Simon L. Bernstein,

Intervenor.

**REPLY IN SUPPORT OF ESTATE OF SIMON L. BERNSTEIN'S
MOTION TO INTERVENE**

NOW COMES Benjamin P. Brown, as Curator and *Administrator Ad Litem* of the Estate
of Simon L. Bernstein (the "Estate"), by and through his undersigned counsel, and submits this
Reply in Support of his Motion to Intervene pursuant to Fed. R. Civ. P. 24:

I. Plaintiff's Response Does Not Refute the Estate's Entitlement to Intervene

Plaintiff's response to the Estate's Motion to Intervene offers nothing to refute the principal basis justifying intervention: the Estate is entitled to Intervention of Right under Fed. R. Civ. P. 24(a)(2) because the Estate is entitled to the Policy proceeds as a matter of law unless Plaintiff is successful in this litigation. But for Plaintiff's claim, the Estate would have no competing claim to the proceeds of the Policy, as the Estate is admittedly the default beneficiary under both Florida and Illinois law. *New York Life Ins. Co. v. RAK*, 180 N.E.2d 470 (Ill. 1962); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) As a consequence, the Estate's interest in this matter is "direct, significant, and legally protectable," as this court required in its Order denying Mr. Stansbury's Petition to Intervene. (Dkt. No. 74 at 2, *citations omitted*)

The instant litigation will produce only one outcome: the Policy proceeds will either be paid to the Plaintiff or to the Estate. Intervention is the Estate's sole avenue to secure its rival claim. If the Estate is not allowed to intervene, there will be no party present competent to challenge Plaintiff's claim to this very large sum of money. The Estate's direct, significant and legally protectable interest in the Policy proceeds cannot be protected absent intervention. The Estate's entitlement to intervene is patent and this motion must be allowed.

II. The Fact that William Stansbury is Provisionally Paying the Fees to Pursue Intervention is Irrelevant to Whether the Estate is Entitled to Intervene

Plaintiff contends that the Estate's Motion to Intervene should be denied because Mr. William Stansbury, one of the claimants against the Estate, is paying the fees to pursue intervention. First, the party bringing this motion is Benjamin Brown, as curator and administrator *ad litem* of the Estate of Simon L. Bernstein. Mr. Brown was appointed by the probate court in Florida to curate the Estate and separately to bring this motion. The order of the probate court instructed Mr. Brown to "assert the interest of the Estate in the Illinois Litigation

involving life insurance proceeds.” (Dkt. No. 110 at 4) This motion is brought by the Estate expressly at the order of the probate court in Florida.

Second, the fact that Mr. Stansbury is financing the motion has no bearing whatsoever on its validity. In fact, Mr. Stansbury is financing this motion at the behest of the Florida Probate Court. (*See* Dkt. No. 116-1 at 33:8-9) It is not uncommon for estates to allow potential claimants to finance their activity, to be reimbursed if the activity benefits the estate. Nothing about that arrangement changes the fact that if this motion results in an order in favor of the Estate, the money will be paid to the Estate, not to Mr. Stansbury.

Third, while Mr. Stansbury has made a claim upon the Estate, and very much hopes to recover a substantial judgment against the Estate, no such judgment currently exists. If the money is ultimately paid to the Estate as a consequence of this motion, Mr. Stansbury will still have to prove his claim and its amount. And any amount not paid to Mr. Stansbury will be paid to the other beneficiaries of the Estate who include the grandchildren of Simon Bernstein. The Probate Court acknowledged this reality when it instructed the Estate to seek intervention in this action, financed by Mr. Stansbury. (*See* Dkt. No. 116-1 at 35:4-16)

III. The Court Should not Rely on the Affidavit of Mr. Sanders for Any Purpose Until the Estate has had the Opportunity to Challenge and Controvert It

Plaintiff must prove the existence and validity of the purported Trust by clear and convincing evidence. *Estate of Wilkening v. Nicholson*, 441 N.E.2d 158, 163 (Ill. App. Ct. 1982) Such evidence must be “unequivocal as to both its existence and to its terms and conditions.” *Id.* Upon intervention, the Estate expects to demonstrate that Plaintiff cannot meet its burden. And Plaintiff’s reliance on the Affidavit of Don Sanders in resisting this Motion illustrates precisely why the Estate must be allowed to offer such evidence: Plaintiff asks the court to accept

everything in the Affidavit as "essential truth" while simultaneously asking the Court to prevent the rival claimant to the proceeds from testing and challenging the Affidavit.

Plaintiff correctly states in its Response that the "testimony" of Don Sanders has gone "unrefuted" to date. (Dkt. No. 116 at 6) But that has only been because the Estate has not had the opportunity to test the Affidavit and to offer controverting evidence. The Court cannot determine the validity and credibility of Plaintiff's evidence until the Estate has the opportunity to employ the normal processes of discovery and litigation to test it. And the "bald assertions" to which Plaintiff derisively refers are either actual facts (i.e., Plaintiff cannot locate the trust document (*See* Dkt. No. 116 at 6)) or are propositions the Estate expects to prevent Plaintiff from proving (i.e., that the Trust ever existed).

This Court, in its Order denying Mr. Stansbury's Motion to Intervene, described Rule 24 Intervention as of Right as requiring "a direct, significant, and legally protectable interest in the question at issue in the lawsuit." (Dkt. No. 76 at 2, *citations omitted*) Mr. Stansbury's interest as a potential claimant did not qualify for intervention by that standard. However, no interest could be more "direct, significant, and legally protectable" than the Estate's rival claim to the same interpleaded funds claimed by Plaintiff. *Id.* As such, the Estate must be allowed to intervene under Fed. R. Civ. P. 24.

Respectfully submitted,

/s/ James J. Stamos

One of the attorneys for Proposed Intervenor,
Benjamin P. Brown, Curator and Administrator Ad
Litem on behalf of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)
Kevin P. Horan (ARDC 06310581)
STAMOS & TRUCCO LLP
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Chicago, IL 60601
PH: (312) 630-7979 FX: (312) 630-1183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 2014, 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.

**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., TED BERSTEIN, individually)
and as alleged 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)

Case No. 13 cv 3643

**Honorable Amy J. St. Eve
Magistrate Mary M. Rowland**

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., EMPLOYEE DEATH)
BENEFIT TRUST, S.T.P. ENTERPRISES,)
INC., S.B. LEXINGTON, INC.,)
NATIONAL SERVICE ASSOCIATION,)
INC. (OF FLORIDA) NATIONAL)
SERVICE ASSOCIATION, INC,)
(OF ILLINOIS) AND JOHN AND)
JANE DOE’S)

Third Party Defendants)

BENJAMIN P. BROWN, as Curator and)
Administrator Ad Litem of the Estate of)
Simon L. Bernstein,)

Intervenor.)

**MOTION TO EXTEND THE DEADLINE FOR FILING
DISPOSITIVE MOTIONS**

NOW COMES Intervenor, Benjamin P. Brown, as Curator and Administrator Ad Litem of the Estate of Simon L. Bernstein (“Intervenor”), and moves this court to extend the deadline for filing dispositive motions beyond the current date of August 8, 2014. In support of his motion, Intervenor states as follows:

1. Intervenor recognizes the unorthodox nature of this Motion to Extend but begs the court's indulgence. Intervenor hopes by this motion to facilitate an orderly process in the event the court grants his Petition to Intervene.

2. Intervenor has filed his Petition to Intervene, which is currently pending before the court. He filed his Reply Brief in Support of his Motion on July 15, 2014; the issue of intervention is therefore fully briefed. The parties do not know when the court will rule but Intervenor is very hopeful the court will grant his motion.

3. In the event his motion is granted, Intervenor will desire to file a dispositive motion. However, due to the rapidly approaching deadline, it would appear impossible to engage in the activity necessary to prepare for and present such a motion by August 8, 2014.

4. Moreover, at about the time Intervenor filed his Motion to Intervene, documents were disclosed to the parties in this lawsuit related to a Trust (other than the purported Trust referred to in the Complaint) which itself appears to claim to be a beneficiary of the life insurance policy at issue. *See* Dkt. No. 113, 5-28. As the court can see, it purports to relate in some way to the insurance policy, the proceeds of which have been interpleaded into court.

5. The existence of this document was previously unknown to Intervenor but appears to have been known to Plaintiff. *See* Dkt. No. 114, 5-8. While Intervenor has no interest in creating undue delay in the resolution of this case, it would appear that some amount of discovery will be necessary to establish the provenance, significance and impact of this second trust and it is impossible such discovery can be completed between the time this court might rule on Intervenor's motion and the date for filing dispositive motions.

6. In the event the court makes a favorable ruling, Intervenor, and all the parties, will require sufficient time to develop an adequate record for the court to make a judgment on the proper beneficiary of the large sum of money at issue.

WHEREFORE, Intervenor prays that the court extend the deadline for filing dispositive motions to a date at some reasonable point after which the court rules on the pending Motion to Intervene.

Respectfully submitted,

/s/ James J. Stamos

One of the attorneys for Proposed Intervenor,
Benjamin P. Brown, Curator and Administrator Ad
Litem on behalf of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)
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Chicago, IL 60601
Telephone: (312) 630-7979
Facsimile: (312) 630-1183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 23, 2014, 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.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable Amy J.
St. Eve

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, July 28, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: The Court grants Intervenor's motion for an extension of time [118] and will discuss the dispositive motion deadline at the next status hearing on 8/14/14. No appearance is required on the 7/29/14 notice date. Mailed notice(maf)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**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 C 3643
v.)	
)	Judge Amy St. Eve
)	
HERITAGE UNION LIFE INSURANCE)	
COMPANY,)	
)	
Defendant.)	

ORDER

The Court grants Benjamin P. Brown’s motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company (“Defendant” or “Jackson”), as successor in interest to Heritage Union Life Insurance Company (“Heritage”), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court’s diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust (“Bernstein Trust”) alleged a breach of contract claim against Heritage based on Heritage’s failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown’s (“Brown”) motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown’s motion brought pursuant to Rule 24(a)(2).

BACKGROUND

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,

the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. *See, e.g., New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); *see Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); *see also Estate of Wilkening*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

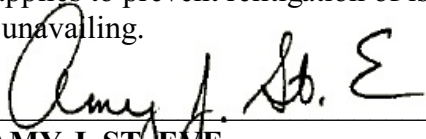
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). *See Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. *See Walker*, 705 F.3d at 658; *see also Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. *See Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

Dated: July 28, 2014



AMY J. ST. EVE
United States District Court Judge

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable Amy J.
St. Eve

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, August 14, 2014:

MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 8/14/2014 and continued to 8/28/2014 at 08:30 AM.Mailed notice(kef,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable Amy J.
St. Eve

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, August 28, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing held on 8/28/2014 and continued to 11/3/2014 at 08:30 AM. Fact discovery shall be completed by 1/9/15. Any dispositive motions, with supporting memoranda, shall be filed by 3/6/15. Mailed notice(kef,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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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,

Case No. 13 cv 3643

Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

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., TED BERSTEIN, individually
and as alleged 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)
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BENEFIT TRUST, S.T.P. ENTERPRISES,)
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NATIONAL SERVICE ASSOCIATION,)
INC. (OF FLORIDA) NATIONAL)
SERVICE ASSOCIATION, INC,)
(OF ILLINOIS) AND JOHN AND)
JANE DOE'S)

Third Party Defendants)

BENJAMIN P. BROWN, as Curator and)
Administrator Ad Litem of the Estate of)
Simon L. Bernstein,)

Intervenor.)

**UNCONTESTED MOTION TO SUBSTITUTE PARTY
PURSUANT TO FED. R. CIV. P. 25(c)**

NOW COMES Intervenor, Benjamin P. Brown, as Curator and Administrator *Ad Litem* of the Estate of Simon L. Bernstein ("Brown"), and moves to substitute Brian M. O'Connell as Intervenor in place of Benjamin P. Brown. In support of his motion, Brown states as follows:

1. At the time his Motion to Intervene was filed, Brown was the Curator and Administrator *Ad Litem* of the Estate of Simon L. Bernstein (the "Estate").

2. Brown's Motion to Intervene was granted on July 29, 2014.

3. As of July 24, 2014, Brown is no longer the Curator and Administrator *Ad Litem* of the Estate.

4. Brian M. O'Connell is now the successor Personal Representative of the Estate pursuant to an order of the Palm Beach County Circuit Court. (A copy of the Order appointing O'Connell as successor Personal Representative is attached hereto as Exhibit A)

5. Pursuant to Fed.R.Civ.P. 25(c), "If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party."

6. Given that intervention was granted to permit Intervenor to assert the interests of the Estate in this litigation, and a new Personal Representative of the Estate has been appointed, Brown requests that this Court enter an order of substitution pursuant to Fed.R.Civ.P. 25(c) substituting Brian M. O'Connell, in his capacity as Personal Representative of the Estate of Simon L. Bernstein, as Intervenor for the former Curator and Administrator *Ad Litem*, Benjamin P. Brown.

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

WHEREFORE, Intervenor prays that the court enter an order substituting Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein, as Intervenor in lieu of Benjamin P. Brown, in this action.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Proposed Intervenor,
Benjamin P. Brown, Curator and Administrator Ad
Litem on behalf 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 October 31, 2014, 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.

SERVICE LIST

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 arose@pm-law.com Attorney for Ted S. Bernstein</p>	<p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Ave., 7th Floor West Palm Beach, FL 33401 (561) 514-0900 john@PankauskiLawfirm.com Attorney for Ted S. Bernstein</p>	<p>Irwin J. Block, Esq. The Law Office of Irwin J. Block, PL 700 South Federal Highway, Suite 200 Boca Raton, FL 33432 ijb@ijblegal.com</p>	<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Bivd., uite 9 Boynton Beach, FL 33436 pfeaman@feamanlaw.com</p>
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<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Elliot Bernstein 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>
<p>Joshua, Jacob and Daniel Bernstein, Minors c/o Elliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Benjamin P. Brown, Esq. Matwiczuk & Broaw LLP 625 N. Flagler Dr., #401 West Palm Beach, FL 33401 bbrown@matbrolaw.com</p>	

IN THE CIRCUIT COURT IN AND FOR THE 15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXSB

Deceased.

ORDER APPOINTING SUCCESSOR PERSONAL REPRESENTATIVE

The instrument presented to this court as the last will of SIMON L. BERNSTEIN deceased, having been executed in conformity with law, and made self-proved by the acknowledgement of the decedent and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will in the form required by law, the Court having admitted the Will to probate on (or about) October 2, 2012, the parties having agreed to the appointment of BRIAN M. O'CONNELL, as successor personal representative, it is

ADJUDGED that BRIAN M. O'CONNELL is appointed successor personal representative of the estate of the decedent, and that upon taking the prescribed oath, filing designation and acceptance of resident agent, and entering into bond in the sum of -0- (bond waived) letters of administration shall be issued.

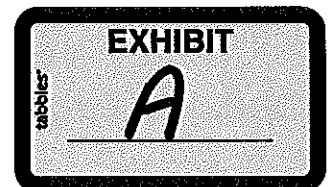
DONE and ORDERED in chambers in Delray Beach, Florida on the _____ day of

_____, 2014.

MARTIN H. COLIN, CIRCUIT JUDGE

SIGNED & DATED
JUL 24 2014
JUDGE MARTIN H. COLIN

Copies furnished to all on the Service List attached



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

Simon Bernstein Irrevocable Trust

v.

Heritage Union Life Ins. Co.

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)
)
)
)
)

Case No. 13 C 3643

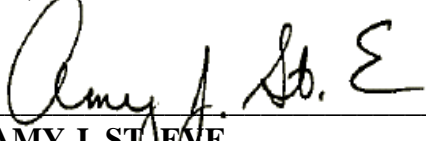
Judge Amy J. St. Eve

ORDER

(0:03) Status hearing held on 11/3/14 and continued to 1/6/15 at 8:30 a.m. Intervenor's uncontested motion to substitute party [124] is granted. The Clerk's Office is directed to substitute Brian M. O'Connell as Intervenor in place of Benjamin P. Brown. Notice motion date of 11/10/14 is stricken.

Dated: November 3, 2014

ENTERED



AMY J. ST. EVE
United States District Court Judge

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable Amy J.
St. Eve

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, January 6, 2015:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing set for 1/6/15 is stricken and reset to 1/20/2015 at 08:30 AM.Mailed notice(kef,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

ORDER OF THE EXECUTIVE COMMITTEE

It appearing that, pursuant to the Executive Committee Order entered on December 30, 2014, the civil cases on the attached list have been selected for reassignment to form the initial calendar of the Honorable John Robert Blakey; therefore

IT IS HEREBY ORDERED that the attached list of 306 cases be reassigned to the Honorable John Robert Blakey.

IT IS FURTHER ORDERED that this order shall become effective on January 15, 2015.

ENTER:

FOR THE EXECUTIVE COMMITTEE



Hon. Rubén Castillo, Chief Judge

Dated at Chicago, Illinois this 15th day of January, 2015

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Marvin E. Aspen

1:12-cv-04840 PNC Bank v. Dalan/Midco/BPD HP, LLC, et al.
1:13-cv-02421 Montjoy v. Gallardo, et al.
1:13-cv-08895 Libby v. Lowe, et al.
1:14-cv-03416 Montenegro v. Cook County Juvenile Probation and Court Services
Administration, et al.
1:14-cv-04104 Malagon v. Particulate Solid Research, Inc.
1:14-cv-04284 Rios v. KARD Protection Group, Inc., et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Elaine E. Bucklo

1:11-cv-04482 Williams v. Wexford Health Sources Inc., et al.
1:13-cv-00706 McGhee v. Lemke, et al.
1:13-cv-05330 Banks, et al. v. Rogers, et al.
1:13-cv-08378 Harris v. FedEx Freight, Inc., et al.
1:14-cv-01022 Goodman v. Hangtime, Inc.
1:14-cv-01252 Salam v. Hangtime, Inc.
1:14-cv-02901 Snow v. Vision Financial Services, Inc.
1:14-cv-04613 Torres v. Guy Scopelliti Original Landscaping Co., Inc.
1:14-cv-05483 Davis v. Varley, et al.
1:14-cv-06446 Rosen v. Spirit Airlines, Inc.
1:14-cv-06784 Trustees of the Chicago Painters and Decorators Welfare Fund v. Hard
Surface Finishers, Inc.
1:14-cv-09078 J & J Sports Productions, Inc. v. Rodriguez, et al.
1:14-cv-09873 Hill v. Kendra Lake Towing

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Rubén Castillo

1:12-cv-07052 Netherland Insurance Co., et al. v. Bank of America
1:14-cv-03887 Cardenas v. First Midwest Bancorp, Inc., et al.
1:14-cv-05362 Bond, et al. v. City of Chicago, et al.
1:14-cv-08310 Mensah v. Blitt & Gaines, P.C., et al.
1:14-cv-08959 Sawyer v. Vivint, Inc.
1:14-cv-09770 J & J Sports Productions, Inc. v. Mucerino, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Edmond E. Chang

1:12-cv-00047 Shatner v. Williams
1:13-cv-01029 Allied Waste Transportation, Inc. v. Bellemead Development Corp.
1:13-cv-06111 Hanks, et al. v. Dart, et al.
1:14-cv-03329 Hanks v. Moreci, et al.
1:14-cv-00974 Espinoza, et al. v. National Railroad Passenger Corporation
1:14-cv-03209 Brown v. Williams, et al.
1:14-cv-05033 Gayden v. Dart, et al.
1:14-cv-06217 Allen v. City of Chicago, et al.
1:14-cv-07205 Alejandre, et al. v. City of Chicago, et al.
1:14-cv-08120 First American Bank, et al. v. RBS Citizens, N.A., et al.
1:14-cv-08768 Abusara v. Rodriguez, et al.
1:14-cv-09794 J & J Sports Productions, Inc. v. Lee
1:14-cv-10085 Nantelle, et al. v. Meridian Financial Services, Inc.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Sharon Johnson Coleman

1:11-cv-01324 Mori v. East Side Lenders LLC, et al.
1:12-cv-02146 United States of America, et al. v. Mobile Doctors USA, L.L.C., et al.
1:13-cv-01490 The United States of America, et al. v Lake MI
Mobile Doctors, P.C., et al.
1:14-cv-04581 Kaufman v. Mobile Doctors Management, LLC, et
al.
1:13-cv-01665 U.S. Bank National Association v. Diaz, et al.
1:13-cv-05659 Meadows v. Popeyes Louisiana Kitchen
1:13-cv-08747 Malone v. Securitas Security Services, et al.
1:14-cv-02399 James McHugh Construction, Co. v. International Fidelity Insurance
Company
1:14-cv-03457 Mitchell v. City of Elgin, et al.
1:14-cv-04897 Wagner v. Pomeroy IT Solutions, Inc.
1:14-cv-06397 Williamson v. City of Chicago, et al.
1:14-cv-07557 Dallas Buyers Club, LLC. v. Does 1-15
1:14-cv-08481 Rinos Distributors, Inc. v. Lasso
1:14-cv-09575 Salem v. Johnson, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. John W. Darrah

1:12-cv-05175	Daniels, et al. v. City of Chicago, et al.
1:13-cv-02651	Jones v. Dart, et al.
1:13-cv-07988	Manzanales v. Slavin, et al.
1:14-cv-00640	Albanese, et al. v. Wasilenko, et al.
1:14-cv-01141	Malibu Media LLC v. Doe, subscriber assigned IP address 50.158.111.136
1:14-cv-02779	O'Dell v. PepsiCo, Inc., et al.
1:14-cv-04368	Chance v. Brack, et al.
1:14-cv-05692	Gardner v. Illinois Student Assistance Commission
1:14-cv-06880	Sallis v. Harrington, et al.
1:14-cv-07816	Finch v. Real Page, Inc.
1:14-cv-08936	Malibu Media LLC v. Doe, subscriber assigned IP address 24.13.130.8
1:14-cv-09781	Malibu Media LLC v. Doe

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Samuel Der-Yeghiayan

1:12-cv-09564	Clutch Auto Limited v. Navistar, Inc.
1:13-cv-06391	Harleysville Lake States Insurance Company v. Lancor Equities, Ltd., et al.
1:13-cv-08812	Bodum USA, Inc. v. Bed Bath & Beyond, Inc.
1:14-cv-01572	Westfield Insurance Company v. National Decorating Service, Inc., et al.
1:14-cv-03663	Central States, Southeast and Southwest Areas Pension Fund, et al. v. Sidney Truck & Storage, Inc., et al.
1:14-cv-08004	BBCN Bank v. Woo Lae Oak, Inc. Chicago, et al.
1:14-cv-08108	Gibson v. Wells Fargo Bank, N.A.
1:14-cv-08530	Sanders v. Dart, et al.
1:14-cv-09370	Zamudio v. Filter Technology, Inc.
1:14-cv-09591	U.S. Bank National Association v. Granat's First Count, Inc., et al.
1:14-cv-09980	Bulgari, S.p.A. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"
1:14-cv-09988	Milton v. Ferrara Candy Company, Inc., et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Robert M. Dow Jr.

1:09-cv-02481 Holmes v. City of Chicago, et al.
1:11-cv-08609 Laborers' Pension Fund, et al. v. Paul Herrera Construction Company,
Ltd., et al.
1:12-cv-07638 Trustees of the Glaziers, Architectural Metal and Glass Workers Local
Union No. 27 Welfare and Pension Funds v. Arrow Glass & Door, Inc.
1:13-cv-03863 Board of Trustees of the Pipe Fitters Retirement Fund, Local 597, et al. v.
Ind Construction Service, Inc., et al.
1:13-cv-07465 Bridgeport Pain Control Center, Ltd. v. MedPlus, Inc., et al.
1:14-cv-01267 Fitbit, Inc. v. Fitbug, Inc.
1:14-cv-03290 Hall v. The Board of Education of the City of Chicago
1:14-cv-04825 Harmon v. Metropolitan Life Insurance Company
1:14-cv-06129 Cannon v. Chinski
1:14-cv-07245 Hernandez v. City of Waukegan
1:14-cv-08340 Industrial Models, Inc. v. SNF, Inc.
1:14-cv-09369 Cohn v. Guaranteed Rate, Inc., et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Thomas M. Durkin

1:10-cv-03233 Brodsky v. HumanaDental Insurance Company
1:12-cv-04991 Meagher, et al. v. Hoatson, et al.
1:13-cv-00653 O'Neal v. Shinseki
1:13-cv-04624 Window World of Chicagoland, LLC, et al. v. Window World, Inc., et al.
1:13-cv-08592 Colin v. Pfister, et al.
1:14-cv-01767 Kulek v. Lease Finance Group LLC
1:14-cv-03883 ACT, Inc. v. Cambridge Educational Services, Inc.
1:14-cv-05152 Barnett v. Board of Education City of Chicago
1:14-cv-06538 Able Home Health, LLC v. Cardiac Diagnostics, Inc., et al.
1:14-cv-07841 Davis v. Asset Acceptance, LLC
1:14-cv-08941 Malibu Media LLC v. Doe, subscriber assigned IP address 67.186.104.254
1:14-cv-09602 Summers v. Blatt, Hasenmiller, Leibsker & Moore, LLC

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Sara L. Ellis

1:12-cv-01906 Anthony Marano Company v. J & S Produce Corp., et al.
1:12-cv-07962 Armstrong v. BNSF Railway Company
1:13-cv-00188 Marshall, et al. v. The Boeing Company, et al.
1:13-cv-07860 Ryszko, et al. v. Polskie Linie Lotnicze Lot S.A.
1:13-cv-08507 Saunier, et al v. The Boeing Company, et al.
1:13-cv-01844 The International Brotherhood of Teamsters Union Local No. 710 Pension
Fund, et al. v. The Bank of New York Mellon Corporation
1:13-cv-03756 Duffer v. United Continental Holdings, Inc., et al.
1:13-cv-04860 Rogers v. North Middle School District 45, et al.
1:13-cv-06436 Halley v. Aetna Life Insurance Company
1:13-cv-08629 Jucha v. City of North Chicago, Illinois
1:14-cv-01045 Sederholm v. Mumford, et al.
1:14-cv-01996 Miller v. Cook County, et al.
1:14-cv-01407 Miller v. County of Cook, et al.
1:14-cv-02883 Hartford Casualty Insurance Company v. Karlin, Fleisher & Falkenberg,
LLC, et al.
1:14-cv-03465 Gonzalez v. Pfister, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Gary Feinerman

1:12-cv-07240 Hill, et al. v. Wells Fargo Bank, N.A., et al.
1:13-cv-04336 7421 W. 100th Place Corp. v. Village of Bridgeview
1:13-cv-06219 McLemore-Jordan v. Wells Fargo Bank, N.A.
1:13-cv-07531 Sheet Metal Workers Local 265 Welfare Fund, et al. v. Fortin
1:13-cv-08947 Khan v. John Stroger of Cook County Hospital
1:14-cv-02363 Liberty Mutual Insurance Co, et al. v. First Health Group Corp, et al.
1:14-cv-03876 United States of America v. Ladany
1:14-cv-05270 Loving v. Chicago Police Department
1:14-cv-06543 Barnes v. Godinez, et al.
1:14-cv-07519 Ramirez v. Perez, et al.
1:14-cv-08563 Malibu Media LLC v. Doe, subscriber assigned IP address 50.158.134.226
1:14-cv-09539 Khan v. Midwestern University

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Robert W. Gettleman

1:12-cv-02986	Eaves v. Village of Dolton, et al.
1:13-cv-03975	United States of America v. Funds in the amount \$182,074.65 seized from JP Morgan Chase Bank Account No. XXXXX 9280, et al.
1:13-cv-07626	Ortiz v. USA, et al.
1:14-cv-00601	Munoz v. C.C.D.O.C., et al.
1:14-cv-02305	Bryant v. BNSF Railway Company
1:14-cv-03407	True 52 Productions LLC, et al. v. Styron
1:14-cv-05131	Costa v. People of the State of Illinois, et al.
1:14-cv-07754	Gray v. LTD Financial Services I, Inc.
1:14-cv-08492	Lange v. Jewel Osco
1:14-cv-09278	PNC Bank, National Association v. Wilbur, et al.
1:14-cv-09790	Trustees of the Cement Masons Pension Fund, Local 502, et al. v. Ruane Construction, Inc.
1:14-cv-09963	Bell, et al. v. Dart, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Joan B. Gottschall

1:12-cv-09134	Bester, et al. v. United States of America
1:13-cv-06698	Laborers' Pension Fund, et al. v. W.R. Weis Company, Inc.
1:14-cv-01759	Belcher v. The City of Chicago, et al.
1:14-cv-05072	Illinois Department of Revenue v. United Central Bank, et al.
1:14-cv-08118	Lamkins, et al. v. Dressbarn, Inc., et al.
1:14-cv-10126	Griffin, et al. v. Shoe Time Cicero, Inc., et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Ronald A. Guzman

1:12-cv-00019	Kendrick v. Carter, et al.
1:13-cv-06835	Republic Bank of Chicago v. Desmond
1:14-cv-00169	Citibank, N.A. v. Automart International Inc., et al.
1:14-cv-02614	Haley v. United Airlines, Inc.
1:14-cv-04118	Whitehead v. Harrington
1:14-cv-05293	Bahaa Ales v. Will County Jail, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. James F. Holderman

1:13-cv-01020	Kestian v. Correctional Officer #1, et al.
1:13-cv-06593	Wells Fargo Bank, National Association v. Renkas, et al.
1:13-cv-09315	Shumate v. City of Chicago, et al.
1:14-cv-01416	Van Noppen v. InnerWorkings, Inc., et al.
1:14-cv-02306	Chambers v. Menard, Inc., et al.
1:14-cv-03581	Brown v. Office of the Transitional Administrator, et al.
1:14-cv-06676	Harris v. The Office of the Chief Judge of the Circuit Court of Cook County, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Virginia M. Kendall

1:11-cv-05162	Engelhard v. Wyeth Consumer Healthcare, Ltd., et al.
1:13-cv-01354	Walker v. Ghosh, et al.
1:13-cv-04258	Baez v. Target Corporation
1:13-cv-06543	Slysz v. CRW Taylor, et al
1:13-cv-08819	Cooney v. The Trustees of the Will County Carpenters, Local 174, Pension Fund, et al
1:14-cv-05212	Board of Trustees of the Automobile Mechanics' Local No. 701 Union and Industry Pension Fund v. Northwest Lincoln-Mercury, Inc., et al.
1:14-cv-06076	Sanchez v. Roekman, et al.
1:14-cv-06849	Ramirez v. Shine Restaurant Corp., et al.
1:14-cv-07511	Almeroth v. Johnson & Johnson, et al.
1:14-cv-08226	Gonzalez v. Assi Plaza Chicago, Inc.
1:14-cv-08981	Top Tobacco, L.P., et al. v. Fantasia Distribution, Inc.
1:14-cv-09488	Milazzo, et al. v. Windy City Limousine Company, LLC, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Matthew F. Kennelly

1:12-cv-03738	Goldsmith v. Correct Care Solutions, et al.
1:13-cv-05631	Johnson v. City of Chicago Board of Education
1:13-cv-08744	Griffin v. Butler
1:14-cv-02070	Sawyer, MD v. Stericycle, Inc., et al.
1:14-cv-03543	Farmer v. Wal-Mart Stores, Inc.
1:14-cv-04488	Nieves v. The County of Cook, et al.
1:14-cv-05598	Green v. City of Chicago
1:14-cv-06762	Malibu Media LLC v. Doe
1:14-cv-07527	Greenwood v. Hewitt Associates, LLC, et al.
1:14-cv-08346	Manjarres v. BNSF Railway Company
1:14-cv-09066	Smith v. Fedex
1:14-cv-09955	Winston v. Dart, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Charles P. Kocoras

1:12-cv-02970	Franklin, et al. v. Hardy, et al.
1:13-cv-07242	Jones, et al. v. Carter, et al.
1:14-cv-02646	Braman, et al. v. The CME Group, Inc., et al.
1:14-cv-05198	Laborers' Pension Fund, et al. v. Crossmark Site Utilities, Inc.
1:14-cv-07503	Dyer v. Sanford Kahn, Ltd
1:14-cv-09214	United Airlines, Inc., et al. v. Zaman

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. John Z. Lee

1:10-cv-02023	Dugas-Filippi, et al. v. JP Morgan Chase & Co.
1:12-cv-00238	Moore v. Wilson, et al.
1:12-cv-09612	Bank of America, National Association v. LaSalle Commercial Mortgage Securities, Inc.
1:13-cv-05605	LaSalle Commercial Mortgage Securities, Inc. v. Bank of America N.A.
1:13-cv-02916	Muhammad v. City of Chicago, et al.
1:13-cv-06680	Gregory Kairson v. Doe
1:14-cv-01406	Lyles v. Gambine, et al.
1:14-cv-03116	Barnes v. Northwest Repossession, LLC, et al.
1:14-cv-05139	DeShazo v. Baneski, et al.
1:14-cv-06245	Vujovic v. Vorm
1:14-cv-07670	DePriest v. Clines, et al.
1:14-cv-08674	Federal Deposit Insurance Corporation v. Shah, et al.
1:14-cv-09441	Speers v. Chamberlain College of Nursing, LLC.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Joan Humphrey Lefkow

1:12-cv-08511	Laborers' Pension Fund, et al. v. P.S. Demolition, Inc., et al.
1:13-cv-00898	HSBC Bank USA, N.A. v. Sullivan, et al.
1:13-cv-07346	Slep-Tone Entertainment Corporation v. Elwood Enterprises, Inc.
1:14-cv-03214	Monaghan v. Invenergy, LLC
1:14-cv-05866	Intelio Technologies, Inc. v. Ryko Solutions, Inc.
1:14-cv-08494	Simmons v. Kotas, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Harry D. Leinenweber

1:12-cv-05751	Lopez v. City of Chicago, Illinois, et al.
1:13-cv-02245	Rehco, LLC v. Spin Master Ltd.
1:13-cv-06528	Dupree v. Hardy, et al.
1:14-cv-00011	Pineda, et al. v. Raymond's Tacos, et al.
1:14-cv-03112	J&J Sports Productions, Inc. v. Urbina, et al.
1:14-cv-04381	Root Consulting, Inc., et al. v. Insull
1:14-cv-05702	Vences v. Target Corporation
1:14-cv-07116	Pihl v. Law Office of Keith S. Shindler, Ltd.
1:14-cv-07872	Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"
1:14-cv-08874	Williams v. Colvin
1:14-cv-09588	McKinnie v. Dart, et al.
1:14-cv-10048	U.S. Bank, National Association v. JKM Mundelein LLC, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Charles R. Norgle Sr.

1:09-cv-06370	Hill v. The City of Chicago, et al.
1:12-cv-03849	Haskett v. Village of Frankfort, et al.
1:13-cv-00671	Harvey v. Chicago Police Department, et al.
1:13-cv-04185	AmTrust International Underwriters Limited v. Cornhusker RBM, LLC, et al.
1:13-cv-08788	Gordon v. Viking Pump Inc., et al.
1:14-cv-02757	Davis v. Jackson Park Hospital, et al.
1:14-cv-03821	Alex v. The City of Chicago, et al.
1:14-cv-05103	Charles v. Wieberg, et al.
1:14-cv-06416	Bolender v. Care Specialists, Inc.
1:14-cv-07570	DiPaola, et al. v. Walgreen Co
1:14-cv-08588	Tosoni v. Mortell, et al.
1:14-cv-09393	Barrett v. Village of Sauk Village, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Rebecca R. Pallmeyer

1:13-cv-05693 First National Bank and Trust Company of Rochelle, Illinois v. The McGraw Hill Companies, Inc, et al.
1:13-cv-05907 Neal v. Target Corporation, et al.
1:13-cv-08562 Board of Trustees of the Pipe Fitters Retirement Fund, Local 597, et al. v. Northern Weathermakers HVAC, Inc., et al.
1:13-cv-08576 Sehgal, et al. v. Beers, et al.
1:14-cv-01698 Campbell v. Lemke, et al.
1:14-cv-03565 Burke v. City of Chicago, et al.
1:14-cv-04931 Comdesco Group, Inc. v. Gigabit Squared, LLC
1:14-cv-09336 Gigabit Squared, LLC v. Comdesco Group, Inc.
1:14-cv-06226 United States of America v. Funds in the Amount of \$15,000 in United States Currency, et al.
1:14-cv-07196 Trustees of the Chicago Painters and Decorators Welfare Fund v. TPL Sign Services, Inc., et al.
1:14-cv-08117 Old Republic General Insurance Company v. Allianz Global Risks US Insurance Company
1:14-cv-09025 Foster v. BPI Sports, LLC, et al.
1:14-cv-09857 Trustees of the Will County Local 174 Carpenters Pension Trust Fund, et al. v. Brookwood Builders, Inc.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Milton I. Shadur

1:11-cv-04559 Bank of America, N.A. v. Hilton Trading Corp.
1:12-cv-05824 Anderson v. United States of America
1:13-cv-03255 Lee v. Wexford Health Sources Inc., et al.
1:13-cv-07098 Jensen v. IFCO, Inc.
1:13-cv-08993 Jones v. Dupage County Sheriff's Office
1:14-cv-02253 Technology Insurance Company v. B & R Insurance Partners, LLC
1:14-cv-03053 J&J Sports Productions, Inc. v. Bauer, et al.
1:14-cv-05348 Cobb, et al. v. Falcon Holdings, LLC
1:14-cv-06715 Mehra v. Law Offices of Keith S. Shindler, Ltd
1:14-cv-08887 Mahmoud v. The Vanguard Group, Inc., et al.
1:14-cv-09500 Burkard v. The DuPage County Health Department
1:14-cv-10021 Brown v. Social Security Administration

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Manish S. Shah

1:11-cv-04109 Wilder v. Wexford Health Sources, Inc., et al.
1:12-cv-07110 Madden v. City of Chicago, et al.
1:13-cv-02106 City of Evanston v. Chevron U.S.A. Inc., et al.
1:13-cv-05507 Birdo v. Johnson, et al.
1:13-cv-06864 Birdo v. Gomez, et al.
1:13-cv-07965 G. Neil Garrett, D.D.S., P.C. v. Albertson's, LLC, et al.
1:14-cv-00866 Sullens v. Graham, et al.
1:14-cv-01835 Cohan v. Medline Industries, Inc.
1:14-cv-07072 Internet Media v. Sears Roebuck and Co.
1:14-cv-07793 Trustees of the Chicago Regional Council of Carpenters Pension Fund, et al. v. Bryn Mawr Flooring, Inc.
1:14-cv-08116 Trustees of the Will County Local 174 Carpenters Pension Trust Fund and Will County Local 174 Welfare Fund v. Pullara, Inc., et al.
1:14-cv-09021 Hawk Technology Systems, LLC v. McCain Foods USA, Inc.
1:14-cv-09898 PhD Marketing, Inc., et al. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Amy J. St. Eve

1:12-cv-08234 Baier v. Rohr-Mont Motors, Inc., et al.
1:13-cv-00870 Rutledge v. City of Chicago, et al.
1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company
1:13-cv-08808 P-Americas LLC v. Central States Southeast and Southwest Areas Pension Fund, et al.
1:14-cv-01881 Bonner v. Village of Burnham, et al.
1:14-cv-03197 National Fair Housing Alliance, Inc., et al. v. Ryan Companies US, Inc., et al.
1:14-cv-04004 Dallas Buyers Club, LLC v. Does 1-33
1:14-cv-04434 Tully v. Board of Education of the City of Chicago
1:14-cv-05725 Howard v. Frito Lay, Inc.
1:14-cv-06000 Davis v. Dart, et al.
1:14-cv-06913 Heidbreder Building Group, LLC v. Association of the Wall and Ceiling Industry, et al.
1:14-cv-07553 Dallas Buyers Club, LLC v. Does 1-14

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. John J. Tharp Jr.

1:09-cv-06016	Demouchette, et al. v. Sheriff of Cook County Thomas Dart, et al.
1:11-cv-07386	Taylor v. Wexford Health Sources, Inc., et al.
	1:12-cv-10103 Taylor v. Butler-Winters, et al.
	1:13-cv-07501 Taylor v. Wexford Health Sources, Inc., et al.
1:12-cv-08049	Blaga, et al. v. Old Dominion Freight Line, Inc.
1:13-cv-03426	Allen v. City of Chicago, et al.
1:13-cv-08282	Smuk v. Specialty Foods Group, Inc.
1:14-cv-01803	McCann v. Semplinski, et al.
1:14-cv-03839	Braddock v. United Parcel Service, et al.
1:14-cv-05398	Lopez, et al. v. Smart, et al.
1:14-cv-06788	Wright v. Nagpal
1:14-cv-07936	Umberger v. Mac's Convenience Stores, LLC
1:14-cv-08924	Etro v. Blitt & Gaines, P.C.
1:14-cv-09754	Champion Laboratories, Inc. v. Central Illinois Manufacturing Company

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. Andrea R. Wood

1:12-cv-04110	McFadden v. Pryor, et al.
1:12-cv-06801	HSBC Bank USA, National Association v. Davis
1:12-cv-09714	Beley, et al. v. City of Chicago
1:13-cv-03640	US Foods, Inc. v. Noble, et al.
1:13-cv-06172	Trustees of the Glaziers, Architectural Metal and Glass Workers Local Union No. 27 Welfare and Pension Funds v. Architectural Glass
1:14-cv-00174	Powell, et al. v. Roseland Community Hospital Association, et al.
1:14-cv-03469	Melendez-Santa v. Costco Wholesale Corporation
1:14-cv-05736	Shure v. First Midwest Bancorp, Inc., et al.
1:14-cv-06175	Coleman v. Wal-Mart Stores, Inc.
1:14-cv-07468	Saffold v. Manning
1:14-cv-08173	Szykowny v. Freedman Anselmo Lindberg, LLC, et al.
1:14-cv-09275	Greene v. Village of Lansing, et al.

List of Cases to be Reassigned to the Initial Calendar of
Judge John Robert Blakey from the Hon. James B. Zagel

1:10-cv-08023	Haschak, et al. v. Fox & Hound Restaurant Group, et al.
1:12-cv-04192	Innovative Sports Management, Inc. v. Lassak, et al.
1:13-cv-00093	Council v. Village of Dolton, et al.
1:13-cv-05958	Holt, et al. v. Capitol Cement Company, Inc.
1:13-cv-08948	Perez v. Aguirre, et al.
1:14-cv-02021	Smith v. Ling, et al.
1:14-cv-03763	Anderson v. American Laser Skincare, LLC
1:14-cv-05009	Wozniak, et al. v. Zielinski, et al.
1:14-cv-06866	Craftwood Lumber Company v. Senco Brands, Inc.
1:14-cv-07955	James v. City of Chicago, et al.
1:14-cv-09224	Antic v. Johnson, et al.
1:14-cv-10111	Central States Southeast & Southwest Areas Health & Welfare Fund, et al. v. Holcomb, et al.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, January 15, 2015:

MINUTE entry before the Honorable Amy J. St. Eve: This case having been reassigned, status hearing set for 1/20/15 before Judge St. Eve is stricken. Mailed notice(kef,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**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. 12(a) and 15, 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 Plaintiff, 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 Bernstein Trust filed its motion 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 a need for 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, Plaintiff has always done its very best to be diligent at every turn with regard to this case.
21. 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.
22. Prior to the initial hearing on this matter, The Bernstein Trust shall submit its proposed answer by email or courtesy copy to the court, and to the other parties. The Bernstein Trust shall file its answer by ECF once leave is granted.

WHEREFORE, Plaintiff, the Bernstein Trust, respectfully requests that this Honorable Court grant it leave to file its Answer to the Intervenor's Complaint, instanter.

Dated: January 20, 2015

/s Adam M. Simon

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorney for
Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee.

**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 Blakely
Magistrate Mary M. Rowland**

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

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.)
 _____)

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the foregoing Plaintiff's Motion for Leave to File Answer to Intervenor's Complaint to be served upon the following persons and entities via ECF filing (and/or otherwise if indicated below) to:

James J. Stamos
Kevin P. Horan
Stamos & Trucco LLP
One East Wacker Drive
Ste 300
Chicago, IL 60601

And *via* U.S. Mail, proper postage prepaid to:

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434

on the 20th day of January, 2015.

/s Adam M.Simon
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorney for
*Simon L. Bernstein Irrevocable Insurance Trust Dtd
6/21/95; Ted Bernstein as Trustee.*

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, January 22, 2015:

MINUTE entry before the Honorable John Robert Blakey: The following case has been reassigned to form the initial calendar of the Honorable John Robert Blakey. Unless otherwise ordered by the court, all previously-set discovery and briefing schedules and deadlines remain intact, and all existing referrals to the assigned magistrate judge remain in place. All previously-set status and motion hearing dates are stricken. The court may, in due course, set the case for a reassignment status conference. The parties are directed not to file or notice any motions, with the exception of emergency motions, prior to appearing at the reassignment status conference. For all emergency motions arising prior to the date scheduled for the reassignment status conference, the parties are directed to contact chambers at (312) 435-6058, or Judge Blakey's courtroom deputy, Gloria Lewis, at (312) 818-6699. To assist the court with its review of the case, the parties are directed, within 10 calendar days of this order's entry, to confer and then prepare and file a joint Reassignment Status Report, not to exceed five pages. A template of the Reassignment Status Report is available on Judge Blakey's homepage at www.ilnd.uscourts.gov. Additional dates will be set in a future order, as needed. Mailed notice (gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, January 23, 2015:

MINUTE entry before the Honorable John Robert Blakey: Minute order dated 1/22/2015 is corrected as follows: This case has been reassigned to form the initial calendar of the Honorable John Robert Blakey. Unless otherwise ordered by the court, all previously set discovery and briefing schedules and deadlines remain intact, and all existing referrals to the assigned magistrate judge remain in place. All previously set status hearing and motion hearing dates are stricken. To assist the court with its initial review of the case, the parties are directed, within 10 calendar days of this order's entry, to confer and then prepare and file a joint Reassignment Status Report, not to exceed five pages. A template of the Reassignment Status Report is available on Judge Blakey's homepage at www.ilnd.uscourts.gov. The parties are directed not to file or notice any motions, with the exception of emergency motions, prior to filing the joint Reassignment Status Report. For all emergency motions arising prior to the due date for the Reassignment Status Report, the parties are directed to contact chambers at (312) 435-6058, or Judge Blakey's courtroom deputy, Gloria Lewis, at (312) 818-6699. Additional dates will be set in a future order, as needed. Mailed notice(gel,)

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**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 Robert Blakey
Magistrate Mary M. Rowland**

**JOINT REASSIGNMENT
STATUS REPORT**

Filers:

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

Simon Bernstein Irrevocable Insurance Trust
Dtd. 6/21/95, Plaintiff;

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.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)

REASSIGNMENT STATUS REPORT

I. Nature of the Case

A. Attorneys of Record

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com

Attorney for:

Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.

James J. Stamos (#3128244)
Kevin P. Horan (#6310581)
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601

Telephone: (312) 630-7979
Facsimile: (312) 630-1183

Attorney for:

Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434

Pro Se

B. Basis for Federal Jurisdiction

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

C. Nature of the Claims Asserted

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. A claim for the insurance policy death benefit was filed on behalf of a purported trust titled "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"), as contingent beneficiary of the Policy. The death benefit claim was denied by the carrier when an executed trust document was not produced.

After the claim was denied, four out of five of Mr. Bernstein's adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee, claiming a right to the proceeds of the Policy as alleged beneficiaries under the 1995 Trust. Because (i) no executed original or executed copy of the 1995 Trust could be located, and (ii) Eliot I. Bernstein, the fifth adult child of Simon Bernstein and third party defendant/cross-plaintiff, objected to the claim, the Defendant insurance company, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the Policy proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014.

D. Relief Sought by Parties

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:

- a. The 1995 Trust is the beneficiary of the Policy Proceeds;
- b. The Trustee of the 1995 Trust is Ted Bernstein;
- c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L. Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The

Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

3. Third Party Defendant/Cross-Plaintiff Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

II. Discovery and Pending Motions

A. Pending Motions

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

B. Discovery

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's

docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

C. Substantive Rulings Issued to Date

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);
2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

III. Trial

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery, and is preparing to file a dispositive motion by March 6, 2015. Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

IV. Settlement and Referrals

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will

continue. The parties should be in a position to report on the status of that settlement at the next status hearing. Despite the efforts of counsel to file an agreed Joint Reassignment Status Report, a consensus could not be reached. Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as 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 February 2, 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.

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/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

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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,)

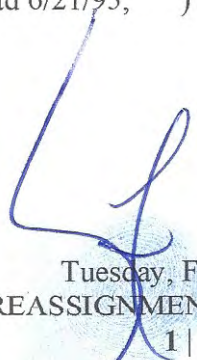
FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)

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

NON-JOINT REASSIGNMENT
MINORITY STATUS REPORT

Filers:

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-Plaintiff.



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.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

REASSIGNMENT STATUS REPORT

1. That the following Non-Joint Minority Status Report is filed by Third Party Defendant / Cross Plaintiff, Eliot Bernstein (“Eliot” or “Cross Plaintiff”), as he was unable to speak with all parties to have his suggestions heard due to a refusal by Plaintiff’s Attorney, Adam Simon, Esq. (“A. Simon”) to speak with him regarding adding significant changes to the “facts” regarding the status of the case.
2. That Eliot was not a filer of the Status Report Submitted already to this Court as it states on the cover page and objects to his name in that capacity.
3. In efforts to have Eliot’s suggested changes considered for inclusion in the other Status Report submitted without him, the estate of Simon Bernstein’s counsel, Mr. Kevin Horan, Esq. (“Horan”) tried honorably to have Eliot’s comments and concerns added but A. Simon appears to have refused virtually all of Eliot’s clarifying comments and refused to speak with Eliot as indicated in the attached exhibited emails from A. Simon.
4. In order to have Eliot’s concerns with the Status Report heard, Eliot spoke with Horan after he spoke with A. Simon and he suggested filing a separate report since it appeared futile to reach a joint agreement on the language with A. Simon, especially with his refusal to speak to Eliot or make, or even discuss civilly the suggested changes making the attempt to comport with the Court’s Order impossible to achieve.
5. Therefore, the easiest way to make the Court aware of the problems that necessitated two Status Reports appears to be to exhibit to the Court the drafts that were circulated to Eliot and Eliot’s redlined version, which he sent back to Horan and A. Simon, so that the Court can see

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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- what the disagreements were that led to separate Status Reports being filed and thus both sides can be heard.
6. Attached as Exhibit A, is the initial report sent to Eliot by Horan, after he and A. Simon worked together, without Eliot's input to formulate such, sending their compilation to him for a first review on 1/30/15, with only two days until the deadline.
 7. Attached as Exhibit B, is Eliot's redlined version of the initial Status Report sent to him and whereby Eliot's comments are extensive as he had no input in the creation of the first draft.
 8. Attached as Exhibit C, is a letter from A. Simon to Horan showing his refusal to compromise or discuss the changes suggested by Eliot that forced Eliot to file this separate report. An attempt by Horan to modify the document was made but A. Simon then refused to talk with Eliot to discuss the minor changes Eliot wanted in the revision and thereby forced Eliot to file separately after making the concerns noted to Horan.
 9. Attached as Exhibit D, is a letter from Horan to Eliot with a final copy of the Status Report that Horan and A. Simon submitted, the attachment is omitted it was filed ECF with the Court already. Eliot was to have a chance to review the final as well but do an office snafu in Horan's office as described in his email, Eliot was not sent a final to review before they filed with Your Honor.
 10. Eliot did not review the email with their filing until 2:49am on 2/3/2015, which was after the deadline to submit a Status Report according to Your Honor's request and Eliot prays the Court understand his untimely filing.
 11. Eliot requests the Court use Exhibit B submitted herein as Eliot's final Status Report submitted to the Court.

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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12. After reviewing the final submitted to the Court by Simon and Horan, Eliot would like to add the following substantive facts he suggested to Horan that were omitted from their final Joint Status, as these are significant misstatements of fact that remain.

- a. In reference to A. Simon's claim in the Status Report that Eliot's Motion to Remove him for conflicts of interest and more being denied by the Court, Eliot would like the Court to take Judicial Notice of the attached Exhibit E, which is a letter from the Creditor of Estate of Simon's attorney, Mr. Peter Feaman, Esq. ("Feaman") and the newly appointed Personal Representative / Executor of the Estate of Simon Bernstein, Mr. Brian O'Connell, Esq. ("O'Connell") describing Attorney at Law ethical and possible criminal continued misconduct regarding the representations in this litigation. That due to this letter amongst Attorneys at Law describing continued attorney and fiduciary misconduct in matters regarding Simon L. Bernstein the decedent's Estate and Trusts, the misconduct further described in Exhibit B, a thorough review by this Court of the misconduct should be undertaken before allowing A. Simon to continue what may be knowingly conflicted and perhaps illegal representations of parties in this matter, despite Judge Amy St. Eve's order to allow him to continue without certain new and germane facts contained in the exhibited letter.
- b. The Joint Status produced by Horan and Simon continues to refer to an alleged "Policy" when no such legally executed insurance contract has been produced by any party in this matter.

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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- c. The Joint Status continues to attempt to define “beneficiaries” of the nonexistent “Policy,” where the beneficiaries are not yet known as the “Policy” naming them is missing and not produced to this Court. Reinsurers of the “Policy” have not been contacted to produce their records and copies of the “Policy” and further discovery will be necessary.
- d. The Joint Status refers to “beneficiaries” of the Estate of Simon Bernstein and the Court should note that there are upcoming hearings before Judge Martin Colin to determine if the dispositive documents in the Estate are legally valid and thus the beneficiaries different than what is alleged. The Governor of Florida, Rick Scott’s Notary Public Division has already investigated the dispositive documents notarization and determined that they were not properly notarized according to Florida Notary Public rules and regulations.
- e. That the Joint Status report fails to address the Primary Beneficiary as a viable beneficiary and attempts to claim benefits can be paid to the Contingent Beneficiary instead, without the Primary Beneficiaries consent or knowledge, which could lead to further fraudulent conversion of the benefits.
- f. That Ted Bernstein is an alleged “Trustee” of a legally nonexistent trust that claims to be the Plaintiff in this case, which trust is further an alleged Contingent Beneficiary of an alleged “Policy” that legally does not exist at this time. Where Ted mysteriously replaced Robert Spallina as the new Trustee when this lawsuit was filed several weeks after the claim was denied that was filed by Ted’s former counsel Spallina with Heritage Union Life, where Spallina acted as Trustee of the non-

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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existent trust at that time in efforts to collect the proceeds to his law firm trust account.

- g. That the denied claim by a legally nonexistent beneficiary is what led to this Breach of Contract Lawsuit (the contract breached however is still not produced to this Court by any party after Rule 26 disclosures and no legally executed trust has been produced) and this is the genesis of the issues leading up to the this “breach of contract: suit filed by Ted acting as Plaintiff and alleged Trustee of a legally nonexistent entity, now trying to have proceeds converted to himself directly.
- h. That Eliot has not been included in any settlement talks that would obfuscate the need for this case to be tried and thus does not agree with the statement in the Joint Status referencing such alleged settlement.

Respectfully submitted,

DATED: Tuesday, February 3, 2015

/s/ Eliot Ivan Bernstein
Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
Telephone (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

7 | Page

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 2/3/15, 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.

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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EXHIBIT A

INITIAL STATUS REPORT TENDERED TO ELIOT BY HORAN FOR COMMENT



Eliot Ivan Bernstein

From: Kevin Horan <KHoran@stamostrucco.com>
Sent: Friday, January 30, 2015 12:07 PM
To: Adam Simon; Eliot Ivan Bernstein
Cc: James J. Stamos
Subject: Estate of Bernstein: Joint Status Report
Attachments: Joint Status Report for E. Bernstein Review.DRAFT.doc

Adam and Eliot,

Attached please find a revised draft of the Joint Status Report, due to be filed on February 2, 2015. The current version reflects edits and revisions which were made and agreed upon by me and Adam this morning. Adam, if any of my revisions do not comport with your understanding of our earlier conversation, please let me know. Eliot, please review and respond with any suggested additions, deletions, or revisions.

Thanks in advance for your cooperation.

Best wishes,

Kevin

Kevin P. Horan
Stamos & Trucco LLP
One East Wacker Drive
Third Floor
Chicago, IL 60601
[\(312\) 630-1208](tel:3126301208) Direct
[\(312\) 630-7979](tel:3126307979) Main
[\(312\) 630-1183](tel:3126301183) Fax
www.stamostrucco.com

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**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)
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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 Robert Blakey
Magistrate Mary M. Rowland**

**JOINT REASSIGNMENT
STATUS REPORT**

Filers:

Brian O'Connell, as Personal
Representative of the Estate of
Simon L. Bernstein, Intervenor;

Simon Bernstein Irrevocable Insurance Trust
Dtd. 6/21/95, Plaintiff;

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-Plaintiff.



and ELIOT BERNSTEIN,)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

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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)
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REASSIGNMENT STATUS REPORT

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Attorney for:

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Pro Se

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Attorney for:

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B. Basis for Federal Jurisdiction

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

C. Nature of the Claims Asserted

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. After Mr. Bernstein's death, four out of five of his adult children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a trust they describe as the "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). Because (i) no executed original or executed copy of the 1995



Trust could be located, and (ii) Eliot Bernstein, the fifth adult child of Simon Bernstein, filed a letter asserting a competing claim, the Defendant insurance company, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013, filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the Policy proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014.

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- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L. Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are

not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

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A. Pending Motions

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

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C. Substantive Rulings Issued to Date

Please see chronology at I. C. *supra*. Please also note:

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The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will continue. The parties should be in a position to report on the status of that settlement at the next status hearing.



Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

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Facsimile: (312) 630-1183



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EXHIBIT B

ELIOT'S REDLINED VERSION OF THE INITIAL STATUS REPORT



**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 Robert Blakey
Magistrate Mary M. Rowland**

**JOINT REASSIGNMENT
STATUS REPORT**

Filers:

Brian O'Connell, as Personal
Representative of the Estate of
Simon L. Bernstein, Intervenor;

Simon Bernstein Irrevocable Insurance Trust
Dtd. 6/21/95, Plaintiff;

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-Plaintiff.



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.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)



REASSIGNMENT STATUS REPORT

I. Nature of the Case

A. Attorneys of Record

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com

Attorney for:

Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
Pro Se

James J. Stamos (#3128244)
Kevin P. Horan (#6310581)
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
Telephone: (312) 630-7979
Facsimile: (312) 630-1183

Attorney for:

Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor

B. Basis for Federal Jurisdiction

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

C. Nature of the Claims Asserted

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. A claim for the insurance policy death benefit was filed by the Estate Counsel and Co-Personal Representative/Executor Robert Spallina, Esq. who acted as an alleged Trustee of an alleged Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). This trust is alleged to be the Contingent Beneficiary of the policy and the Primary Beneficiary is

LaSalle National Trust, NA who is alleged by the carrier to be the beneficiary. The death benefit claim of Spallina's was DENIED by the carrier as Spallina was unable to prove a beneficial interest or produce a legally binding executed trust.

That Spallina and his legal partner Mr. Donald Tescher, Esq. have resigned and been removed by the Probate Court in Florida and their law firm has been found to have committed fraud on the probate court of Judge Martin Colin, forged documents POST MORTEM for Simon Bernstein, used Simon Bernstein POST MORTEM to close his wife's estate, which was reopened and fraudulently notarized and forged documents for six parties, in efforts to convert benefits to alleged improper parties. The following Estate and Trust cases for Simon and Shirley Bernstein are ongoing.

- i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- ii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- iii. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- iv. Case # 502014CP003698XXXXSB – Shirley Trust Construction
- v. Case # 502014CA014637XXXXMB – Eliot Bernstein v. Trustee Simon Trust

After the claim was denied Mr. Bernstein's death, four out of five of Mr. Bernstein's his adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee for the lost trust claiming a right to the proceeds of the Policy as alleged beneficiaries under a trust they describe as the "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). Because (i) no executed original or executed copy of the 1995 Trust could be located the claim was denied. The lawsuit was then filed as a breach of contract and Heritage Union notified Eliot Bernstein, and (ii) Eliot Bernstein, the fifth adult child of Simon Bernstein who was excluded without notice by his siblings from their lawsuit, that he was a third party

~~defendant in the matter by suing him as such.~~ ~~filed a letter asserting a competing claim, the Defendant insurance company,~~ Heritage Union Life Insurance Company (WAS THIS JACKSON NATIONAL?), as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013, filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the alleged Policy (no legally executed Policy has been produced to this Court or any party by the Plaintiffs or the Insurance Carrier and further discovery is necessary) proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014. That this is a breach of contract lawsuit and where there is no legal insurance contract that has been produced and the lawsuit was filed by a legally non-existent entity whereby Plaintiff has failed to produce a legally executed Trust document to give them standing.

D. Relief Sought by Parties

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:

- a. The 1995 Trust is the beneficiary of the Policy Proceeds;
- b. The Trustee of the 1995 Trust is Ted Bernstein;
- c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L.

Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

3. Cross Plaintiff Eliot Bernstein seeks this Court,

1. Pay the Primary Beneficiary LaSalle National Trust NA that is now Chicago Title and Trust Co (check name exactly), which is Trustee and beneficiary for a Bernstein family benefit plan or have LaSalle National Trust NA produce their records to this Court to determine the proper course of payment of the proceeds after them.
2. Deny that the lost trust is a contingent beneficiary with any standing.
3. Determine Plaintiff has filed a frivolous, vexatious and fraudulent lawsuit as part of a Fraud on the Court.
4. Determine that there are no beneficiaries of a 1995 lost trust as it is a legally nonexistent entity and has been superseded by other dispositive documents of Simon Bernstein.
5. Acknowledge a 2000 trust that replaced any prior 1995 trust to deal with the life insurance policy and would make the prior trust moot. This trust may be the beneficiary of the Bernstein family qualified plan that LaSalle National Trust NA is the trustee for and beneficiary of the policy proceeds. The qualified plan may

have other assets in it as well. No records have been turned over by LaSalle National Trust, NA/Chicago Title.

6. Refer the case to Federal Authorities to investigate the fraudulent insurance application of Spallina, as Ted Bernstein filed that his father Simon may have been murdered on the day he died and contacted the Sheriff and the Coroner.

7. Take note that Eliot Bernstein has alleged in a Federal RICO action that the crimes in the Probate Courts already proven and admitted, committed by the Fiduciaries and Attorneys at Law in those matters, may all be part of a larger RICO regarding inventions of Eliot's and Simon's (his partner) worth and estimated Billions to Trillions. The following cases have been filed,

a. United States District Court - New York Sothern District Case 1:07-cv-11196-SASⁱ

b. United States District Court – Nevada Case No. 2:12-cv-02040-JAD-PAC

±.8. To have the estate counsel or this Court now join Robert Spallina and Donald Tescher into the case as Defendants and indispensable parties to the action.

II. Discovery and Pending Motions

A. Pending Motions

¹ RELATED CASES TO CHRISTINE C. ANDERSON, ESQ., WHISTLEBLOWER CASE
(07cv09599) Anderson v The State of New York, et al.,
(07cv11196) Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al.,
(07cv11612) Esposito v The State of New York, et al.,
(08cv00526) Capogrosso v New York State Commission on Judicial Conduct, et al.,
(08cv02391) McKeown v The State of New York, et al.,
(08cv02852) Galison v The State of New York, et al.,
(08cv03305) Carvel v The State of New York, et al., and,
(08cv4053) Gizella Weissshaus v The State of New York, et al.
(08cv4438) Suzanne McCormick v The State of New York, et al.

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

B. Discovery

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

C. Substantive Rulings Issued to Date

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);
2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

3. That pleadings to deny the Estate a right to intervene were filed by Ted Bernstein, who is simultaneously acting as alleged Trustee of a Simon Bernstein Trust that would receive the insurance benefits if granted to the Estate. Ted Bernstein also filed actions in the Estate of Simon to block intervention, which were denied by Judge Martin Colin. The Court should note that Ted Bernstein stands to inherit a twenty percent interest in the policy if this lawsuit is successful and zero interest if the proceeds are paid to the Estate and then the trusts, as Ted and his sister Pamela, both Plaintiffs have been disinherited entirely and considered predeceased for all purposes of the Estate and Trusts of Simon Bernstein and Shirley Bernstein. This conflict of interest and adversity to the beneficiaries of the Estate and Trust should be sanctioned by this Court.

III. Trial

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery, and is preparing to file a dispositive motion by March 6, 2015. Defendant Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

IV. Settlement and Referrals

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. ~~There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will continue. (Strike as this is wholly untrue.)~~ The parties should be in a position to report on the status of that settlement at the next status hearing.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as 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 _____, 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.



EXHIBIT C

EMAIL FROM A. SIMON TO HORAN

Eliot Ivan Bernstein

From: Kevin Horan <KHoran@stamostrucco.com>
Sent: Saturday, January 31, 2015 7:02 PM
To: Adam Simon
Cc: Eliot Bernstein; James J. Stamos
Subject: RE: Estate of Bernstein: Joint Status Report

Adam:

I will edit the current draft and attempt to synthesize our respective positions. I will circulate a draft in advance of any conference we may have Monday morning. I would think we'd all agree that we'd prefer not to have a minority report.

Thanks,
Kevin

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Adam Simon <asimon21@att.net>
Date: 01/31/2015 11:02 AM (GMT-06:00)
To: Adam Simon <asimon21@att.net>, Kevin Horan <KHoran@stamostrucco.com>
Cc: Eliot Bernstein <iviewit@iviewit.tv>, "James J. Stamos" <JStamos@stamostrucco.com>
Subject: Re: Fwd: Estate of Bernstein: Joint Status Report

Kevin and Eliot:

I have looked over the changes suggested by Eliot. With his suggested modifications, the joint status report does not comport with the Court's template or its Order regarding the content and length of the report.

Also, on behalf of my client, there is simply no way we could consent to 90% of Eliot's suggested modifications. At this point, I would suggest two options:

- 1) Kevin you can attempt to include, based on what Eliot provided, a brief summary of the nature of his claims and relief requested, and recirculate for all to approve and then we can submit a joint report in accordance with the Court's order; or
- 2) Eliminate all of Eliot's suggested modifications, and then Plaintiff's and the Estate of Simon Bernstein can file a joint report indicating we could not come to agreement with Eliot on the content, and then Eliot can file a separate report. I will reserve my client's rights to seek to strike the report if it contains much of the substance that is contained in these modifications.

I can think of no other options that would result in our compliance with Judge Blakey's order. Let me know your thoughts.

Adam M. Simon
The Simon Law Firm
303 E. Wacker Drive

EXHIBIT D

HORAN EMAIL TO ELIOT WITH A FINAL COPY OF THE STATUS REPORT



Eliot Ivan Bernstein

From: Kevin Horan <KHoran@stamostrucco.com>
Sent: Monday, February 2, 2015 5:33 PM
To: Eliot Ivan Bernstein
Subject: RE: Fwd: Estate of Bernstein: Joint Status Report
Attachments: Joint Status Report.Agreed.pdf

Eliot,

I just saw that the attached Status Report was filed and served via ECF (our staff is much more efficient than I am, it seems). Attached is an un-stamped copy of the Report as agreed to by myself and Adam Simon. I will be sending courtesy copies of the attached, per the Court's standing orders, to Judge Blakey's chambers tomorrow. Please let me know if you'd like me to have your Status Report, once filed, delivered as well. In speaking with Adam this afternoon, he agreed to notice his Motion (for leave to file an Answer to our Complaint) for Tuesday the 17th.

Thank you for taking the time to speak with me this morning. I look forward to speaking with you in the future. In the meantime, should you have any questions or concerns, please feel free to contact me.

Best wishes,

Kevin

Kevin P. Horan
Stamos & Trucco LLP
One East Wacker Drive
Third Floor
Chicago, IL 60601
[\(312\) 630-1208](tel:3126301208) Direct
[\(312\) 630-7979](tel:3126307979) Main
[\(312\) 630-1183](tel:3126301183) Fax
www.stamostrucco.com

The preceding email message is confidential and protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Stamos & Trucco LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

From: Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]
Sent: Monday, February 02, 2015 10:36 AM
To: Kevin Horan
Subject: RE: Fwd: Estate of Bernstein: Joint Status Report

Hi Kevin, I still have some concerns with the language and I think we can discuss first and then if you think necessary contact Adam or file separate responses. I am available now if you have a few minutes. eb

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.)

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INSURANCE TRUST DTD 6/21/95)

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and,)

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Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
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as purported Trustee of the Simon Bernstein)
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Honorable John Robert Blakey
Magistrate Mary M. Rowland

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Simon Bernstein Irrevocable Insurance Trust
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and ELIOT BERNSTEIN,)

Third-Party Defendants.)

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Cross-Plaintiff)

v.)

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as alleged Trustee of the Simon Bernstein)
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Cross-Defendant)
and,)

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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,)
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ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
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(OF ILLINOIS) AND JOHN AND JANE)
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Third-Party Defendants.)

BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)

Intervenor.)



REASSIGNMENT STATUS REPORT

I. Nature of the Case

A. Attorneys of Record

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com

Attorney for:

Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.

James J. Stamos (#3128244)
Kevin P. Horan (#6310581)
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
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Telephone: (312) 630-7979
Facsimile: (312) 630-1183

Attorney for:

Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor

Eliot Ivan Bernstein
2753 NW 34th St.
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Pro Se

B. Basis for Federal Jurisdiction

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

C. Nature of the Claims Asserted

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. A claim for the insurance policy death benefit was filed on behalf of a purported trust titled "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"), as contingent beneficiary of the Policy. The death benefit claim was denied by the carrier when an executed trust document was not produced.

After the claim was denied, four out of five of Mr. Bernstein's adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee, claiming a right to the proceeds of the Policy as alleged beneficiaries under the 1995 Trust. Because (i) no executed original or executed copy of the 1995 Trust could be located, and (ii) Eliot I. Bernstein, the fifth adult child of Simon Bernstein and third party defendant/cross-plaintiff, objected to the claim, the Defendant insurance company, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the Policy proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014.

D. Relief Sought by Parties

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:

- a. The 1995 Trust is the beneficiary of the Policy Proceeds;
- b. The Trustee of the 1995 Trust is Ted Bernstein;
- c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L. Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The

Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

3. Third Party Defendant/Cross-Plaintiff Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

II. Discovery and Pending Motions

A. Pending Motions

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

B. Discovery

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's

docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

C. Substantive Rulings Issued to Date

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);
2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

III. Trial

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery and is preparing to file a dispositive motion by March 6, 2015. Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

IV. Settlement and Referrals

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will

continue. The parties should be in a position to report on the status of that settlement at the next status hearing. Despite the efforts of counsel to file an agreed Joint Reassignment Status Report, a consensus could not be reached. Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as 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) 630-1185

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 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.

Respectfully submitted,

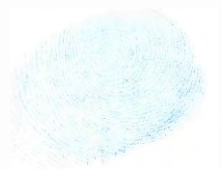
/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)
Kevin P. Horan (ARDC 06310581)
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One East Wacker Drive, Third Floor
Chicago, IL 60601
Telephone: (312) 630-7979
FACSIMILE: (312) 630-1183

EXHIBIT E

**EMAIL BETWEEN ATTORNEY AT LAW PETER FEAMAN, ESQ. AND THE
PERSONAL REPRESENTATIVE/EXECUTOR OF THE ESTATE OF SIMON
BERNSTEIN, BRIAN O'CONNELL, ESQ.**



Eliot Ivan Bernstein

Subject: FW: Bernstein Estate

Subject: Bernstein Estate
Date: Tue, 16 Dec 2014 15:57:54 -0500
From: pfeaman@feamanlaw.com
To: boconnell@ciklinlubitz.com
CC: jroyer@feamanlaw.com

Brian,

When you and I spoke last week you indicated that you were in favor of the settlement that Mr. Stansbury had signed and sent to you for signature.

You indicated that you had to work out funding with the trust.

Meanwhile, the Life insurance litigation in Chicago is moving forward.

Our attorneys are taking a deposition in Chicago the week after New Years of "Scooter" Bernstein. I think

They also want to depose Ted Bernstein and Robert Spallina in early January as well.

I offered my office as a locale for those depositions.

Deposing Ted Bernstein in the Chicago action poses some serious conflict of interest issues for Ted Bernstein and ethical issues for Mr. Rose as the Florida attorney for Mr. Ted Bernstein.

He is being deposed as a party Plaintiff in the Chicago action, the purpose of which is to direct \$1.7 million in life insurance to the 5 adult children of Simon Bernstein away from the Bernstein estate.

Yet Mr. Rose represents Ted Bernstein as Successor Trustee to the Simon Bernstein Trust, the beneficiaries of which are the GRANDCHILDREN OF Simon Bernstein, and the Trust is the beneficiary of the Simon Estate which is directly opposed to the position of Ted Bernstein as Plaintiff in the Chicago Life Insurance litigation.

Just as Ted Bernstein cannot wear both hats, it seems that Alan Rose cannot represent a client so conflicted.

Further, it would seem to me that the estate (you as Personal Representative) has an absolute duty to demand Ted's resignation as Successor Trustee, as his continued role as such imperils the interests of the grandchildren, to whom you owe a fiduciary duty as the Personal Representative.

The bottom line is that the more this drags on, the worse it is going to get for all concerned.

At some point, respectfully, I think you are going to have to take the bull by the horns and 1.) demand that Ted Bernstein resign as Successor Trustee and 2.) Take an active role in directing the attorneys in Chicago to push the case in order to bring it to a successful resolution on behalf of the estate, either by settlement or trial. This means taking over the responsibility for the litigation from Mr. Stansbury in light of the favorable position that the Estate is now in as a result of Mr. Stansbury's efforts.

I welcome your thoughts on this.

Peter M. Feaman

PETER M. FEAMAN, P.A.

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Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

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**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

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, February 10, 2015:

MINUTE entry before the Honorable John Robert Blakey: The case is set for a status hearing 3/11/15 at 9:45 a.m. in Courtroom 2201. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, February 11, 2015:

MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion for leave to file an answer to intervenor complaint [132], [137] is entered and continued to the scheduled status hearing on 3/11/15 at 9:45 a.m. The 2/17/15 Notice of Motion date is stricken; the parties need not appear on that date. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**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**

**MOTION TO EXTEND THE
DISPOSITIVE MOTION DEADLINE**

Filers:

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.)

**MOTION TO EXTEND THE DEADLINE FOR FILING
DISPOSITIVE MOTIONS**

NOW COMES Intervenor, Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein ("Intervenor"), and moves this court to extend the deadline for filing dispositive motions beyond the current date of March 6, 2015. In support of his motion, Intervenor states as follows:

1. The parties to this action are scheduled to appear before the Court on March 11, 2015. However, a deadline of March 6, 2015 for filing dispositive motions was previously set prior to this case's reassignment. (Dkt. No. 123).

2. In its Joint Status Report¹, Intervenor advised the Court of a proposed settlement in an underlying probate matter in Florida which could materially affect the rights of the parties and Intervenor's involvement in this suit. Intervenor further advised the Court that, depending upon the status of the proposed settlement, leave would be sought to conduct additional discovery and additional time would be requested in order to do so. (Dkt. No. 135).

3. The parties have been advised of a pending settlement in the Florida probate matter. Intervenor is charged with preserving Estate assets and, to that end, has directed undersigned counsel to postpone conducting additional discovery until the details of the Florida probate settlement have been discerned and finalized.

4. To date, Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants (approximately 10,000 pages). In addition, Intervenor deposed David B. Simon on January 5, 2015. At that time, settlement discussions in the Florida probate matter were in their infancy. Intervenor intended to seek an extension of time to conduct additional discovery at the previously-scheduled status hearing on January 6, 2015, in advance of the fact discovery deadline of January 9, 2015 (Dkt. No. 123). That status hearing was postponed to January 20, 2015 at the request of Plaintiff's counsel. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's docket. Intervenor anticipates conducting additional discovery, including likely five (5) additional

¹ Eliot I. Bernstein did not join in the Joint Reassignment Status Report and filed a separate Status Report with the Court on February 3, 2015. (Dkt. No. 136).

depositions; further discovery in this action may be dependent upon the finalization of the pending Florida probate settlement.

5. Undersigned counsel has been in contact with Intervenor and is in the process of determining the status of the Florida settlement and should be in a position to report on the status (and effect) of that settlement at the next status hearing.

6. In the interim, Intervenor requests that the date for filing dispositive motions be extended beyond the current deadline and that new dates be set for further discovery and pretrial activity in the matter.

7. In addition to Intervenor's request, Plaintiff's Motion for Leave to File an Answer to Intervenor's Complaint (Dkt. No. 137) is currently pending before the Court. Furthermore, Intervenor is advised that Third-Party Defendant/Cross-Plaintiff Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

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

WHEREFORE, Intervenor prays that the Court extend the deadline for filing dispositive motions to a date at some date after which the Court can be advised of the status of any pending settlement and further discovery.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Proposed 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 March 2, 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.

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, March 3, 2015:

MINUTE entry before the Honorable John Robert Blakey: Plaintiff's motion for leave to file an answer to Intervenor's complaint [132] [137] is granted. Plaintiff is directed to file its answer as a separate docket entry by the close of business on 3/5/15. Additionally, Intervenor's motion to extend the deadline for filing dispositive motions [141] is granted. Dispositive motions are now due 4/3/15. The 3/5/15 Notice of Motion date is stricken; the parties need not appear. The status hearing set for 3/11/15 is also stricken and reset to 4/13/15 at 9:45 a.m. in Courtroom 2201. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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**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**

HERITAGE UNION LIFE INSURANCE)
COMPANY,)
)
Defendant,)

**Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually, Pam Simon, Jill Iantoni, and
Lisa Friedstein**

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

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

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 Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, (The “Bernstein Trust”), Ted Bernstein, Individually, Pam Simon, Jill Iantoni, Lisa Friedstein, and states as their Answer to the Intervenor Complaint of the Estate of Simon Bernstein, as follows:

INTRODUCTION

1. This declaratory judgment action is filed pursuant to Fed. R. Civ. P. 57 and seeks a declaration that there exists no designated beneficiary of the life insurance policy proceeds at issue in the instant action and that the proceeds of the policy must be paid to the Estate of Simon Bernstein, currently pending in Palm Beach County, Florida.

Answer:

Respondents make no answer to ¶1 as the allegations are merely descriptive and contain no allegations of fact requiring a response.

2. Benjamin P. Brown is an Intervening Party pursuant to Fed. R. Civ. P.24 and is a resident of Palm Beach County, Florida.

Answer: Admit.

3. The purported Simon Bernstein Irrevocable Insurance Trust is alleged in Plaintiff’s original complaint to have been established in Chicago, Illinois.

Answer: Admit the Bernstein Trust was formed in Chicago, Illinois.

4. Heritage Union Life Insurance Company, a Minnesota corporation, is the successor corporation to the insurer that issued the life insurance policy (the “Policy”) at issue in the instant litigation.

Answer: Admit.

5. The death benefit under the Policy proceeds exceeds \$1 million dollars.

Answer: Admit.

6. This court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00.

Answer: The Bernstein Trust admits this court has jurisdiction over this matter pursuant to 28 U.S.C. §1335 as pled in Heritage's counterclaim for interpleader.

7. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of curatorship in favor of Benjamin Brown were issued on March 11, 2014 (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

Answer: Admit.

8. At the time of Simon Bernstein's death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy"). The Policy's current proceeds are \$1,689,070.00, less an outstanding loan. (see Dkt. No. 17 at ¶17).

Answer: Admit that Dkt. 17 reflects the deposit of the Policy proceeds with the Registry of the Court by Heritage pursuant to its Interpleader Action.

9. After Mr. Bernstein's death, several of his children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the "Simon Bernstein Irrevocable Insurance Trust (the "Trust"). The Bernstein children acknowledge that they have been unable to produce an executed Trust document under which they assert their rights.

Answer:

Admit only that a complaint was filed on behalf of the Bernstein Trust in the Circuit Court of Cook County, and that, to date, no executed original or executed copy of a formal written trust agreement has been located by any party. Deny that no documents and signed writings have been produced evidencing the existence of the Bernstein Trust and its terms.

10. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company, removed the case to this Court on June 12, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a), in conjunction with its Answer to Plaintiff's Complaint. (*See* Dkt. 17). In its Complaint for Interpleader, Heritage asserts the following:

“Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the “Simon Bernstein Trust, N.A.”, as listed as the Policy’s contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.”

ANSWER: Neither admit nor deny the allegations in ¶10, as the Complaint for Interpleader speaks for itself.

11. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the “Estate”) and, more specifically, directed by the Probate Court in Palm Beach County “to assert the interests of the Estate in the Illinois Litigation involving life insurance on the Decedent’s life.”

ANSWER: Neither admit nor deny the allegations in ¶11, and states that the Order referenced in ¶11 speaks for itself.

12. Plaintiff cannot prove the existence of a Trust document, cannot prove that a trust was ever created, thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy proceeds are payable to Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida Law. *See New York Life Ins. Co. v. RAK, 180 N. E.2d 470 (Ill. 1962)* (where beneficiary no longer existed, proceeds of life insurance policy passed to decedent's estate); *Harris v. Byard, 501 So.2d 730 (Fla. Dist. Ct. App. 1987)* (in the absence of a named beneficiary, no basis in law for directing payment of insurance proceeds to anyone other than decedent's estate for administration and distribution)

ANSWER: Deny.

13. Intervenor Benjamin Brown seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to the Estate.

Answer: Deny that Intervenor is entitled to any of the relief sought in ¶13.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny any of the relief sought by Intervenor in his Complaint, enter judgment against Intervenor, and award Plaintiffs their costs and such other relief as this court deems just and proper.

Dated: March 5, 2015

Respectfully Submitted,

/s Adam M. Simon

Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorney for Answering Plaintiffs
*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela B. Simon, Jill Iantoni and
Lisa Friedstein*

**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.)
_____)

**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, Pam Simon, Jill Iantoni,
and
Lisa Friedstein**

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,)
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.)
_____)

NOTICE OF FILING

To: SEE CERTIFICATE OF SERVICE ATTACHED

PLEASE TAKE NOTICE that the following document, a copy of which is attached, was electronically filed with the Clerk of the Court on the date indicated in the time stamp above:

- Plaintiffs' Answer to Intervenor Complaint

DATED: March 5, 2015

RESPECTFULLY SUBMITTED,

/s/Adam Simon
Adam M. Simon
#6205304
303 E. Wacker Drive,

Ste. 2725
Chicago, IL 60601
(312) 819-0730

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the documents set forth below to be filed and served via ECF with the Clerk of the Court, and via U.S. mail, proper postage prepaid (if indicated) to the following on March 5, 2015:

ELIOT IVAN BERNSTEIN
2753 NW 34 St.
Boca Raton, FL 33434
Appearing Pro Se
(By U.S. Mail)

James J. Stamos
Kevin Horan
STAMOS & TRUCCO LLP
One East Wacker Drive, Third Floor
Chicago, IL 60601
*Attorney for Intervenor,
Estate of Simon Bernstein*

Dated: March 5, 2015

/s/ Adam M. Simon
Adam Simon, Esq.
#6205304
303 East Wacker Drive, Suite 2725
Chicago, Illinois 60601
Attorney for Answering Plaintiffs
(312) 819-0730

**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 Robert Blakey
Magistrate Mary M. Rowland**

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

**MOTION FOR LEAVE TO
FILE A BRIEF IN EXCESS OF
FIFTEEN PAGES**

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.)
 _____)

Plaintiffs, pursuant to Local Rule 7.1, respectfully move this honorable court for an order granting leave to file a memorandum of law in support of their motion for summary judgment in excess of the fifteen page limit, and in support thereof states as follows:

1. Plaintiffs are prepared to file their motion for summary judgment as to Count I of their claims to the Policy Proceeds.
2. This matter is not overly complicated, and is ripe for summary judgment, but as is evident from the seven pages of parties listed on the Docket there is quite a bit of factual and procedural history surrounding this matter which requires review and explanation.
3. Plaintiffs believe that they have dealt with the issues presented by this case in an efficient and succinct manner, but their memorandum of law exceeds fifteen pages. Plaintiffs anticipate that their final brief will not exceed twenty pages.

WHEREFORE, Plaintiffs pray for an Order granting them leave to file a memorandum of law in support of their motion for summary judgment as to Count I of their claims that exceeds the fifteen page limit.

Dated: March 16, 2015

Respectfully submitted,

/s/ Adam Simon

Adam Simon, Esq.

#6205304

303 East Wacker Drive,

Suite 2725

Chicago, Illinois 60601

(312) 819-0730

Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd
6/21/95, et al.

Plaintiff,

v.

Case No.:
1:13-cv-03643
Honorable John
Robert Blakey

Eliot Bernstein

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, March 16, 2015:

MINUTE entry before the Honorable John Robert Blakey: Plaintiffs' motion for leave to file a brief in excess of fifteen pages [145] is granted. The 3/19/15 Notice of Motion date is stricken; the parties need not appear. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

**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)

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 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, and
Lisa Friedstein
("Plaintiffs" or "Movants")**

**MOTION FOR
SUMMARY JUDGMENT AS TO
COUNT I OF MOVANTS'
CLAIMS TO THE POLICY PROCEEDS**

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 Count I 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 Movants' motion for summary judgment 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

Adam M. Simon (#6205304)

303 E. Wacker Drive, Suite 2725

Chicago, IL 60601

Phone: 312-819-0730

Fax: 312-819-0773

E-Mail: asimon@chicagolaw.com

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*

**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 Robert Blakey
Magistrate Mary M. Rowland**

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

NOTICE TO *PRO SE* LITIGANT

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.)
 _____)

NOTICE TO *PRO SE* LITIGANT

To: Eliot Ivan Bernstein
2753 NW 34 St.
Boca Raton, FL 33434
Pro Se Litigant

Plaintiffs have moved for summary judgment against you. This means that plaintiffs are telling the judge that there is no disagreement about the important facts of the case. The plaintiffs are also claiming that there is no need for a trial of your case and is asking the judge to decide that the plaintiffs should win the case based on its written argument about what the law is.

In order to defeat the plaintiffs' request, you need to do one of two things: you need to show that there is a dispute about important facts and a trial is needed to decide what the actual facts are or you need to explain why the plaintiffs are wrong about what the law is.

Your response must comply with Rule 56(e) of the Federal Rules of Civil Procedure and Local Rule 56.1 of this court. These rules are available at any law library. Your Rule 56.1 statement needs to have numbered paragraphs responding to each paragraph in the plaintiff's statement of facts. If you disagree with any fact offered by plaintiffs you need to explain how and why you disagree with the plaintiffs. You also need to explain how the documents or declarations that you are submitting support your version of the facts. If you think some of the facts offered by plaintiffs are immaterial or irrelevant you need to explain why you believe those facts should not be considered.

In your response, you must also describe and include copies of documents which show why you disagree with the plaintiffs about the facts of the case. You may rely on your own declaration or the declaration of other witnesses. A declaration is a signed statement of a witness. The declaration must end with the following phrase:

"I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct", and must be dated.

If you do not provide the Court with evidence that shows that there is a dispute about the facts, the judge will be required to assume that the plaintiffs' factual contentions are true, and if the plaintiffs are also correct about the law, the plaintiff's motion for partial summary judgment will be granted.

If you choose to do so, you may offer the Court a list of facts that you believe are in dispute and require a trial to decide. Your list of disputed facts should be supported by your documents or declarations support your position. If you do not do so, the judge will be forced to assume you do not dispute the facts which you have not responded to.

Finally, you should explain why you think the plaintiffs are wrong about what the law is.

Dated: March 27, 2015

Respectfully submitted,

/s/ Adam Simon
Adam Simon, Esq.
#6205304
303 East Wacker Drive,
Suite 2725
Chicago, Illinois 60601
(312) 819-0730
Attorney for Plaintiffs-Movants