

**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,)
)
<u>Third-Party Defendants.</u>)
)
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)
)
<u>Third-Party Defendants.</u>)
)
BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)
)
<u>Intervenor.</u>)

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: 312-819-0730
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 trusted titled 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"), as contingent beneficiary of the Policy. —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 DENIED by the carrier when an executed trust document was not produced. 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, and (ii) ~~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 and third party/counter plaintiff, asserted a competing claim, the Defendant insurance company, ce 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, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013 ~~(thought this was Jackson)~~, 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 ~~(there is no policy at this point and we do not know if the right proceeds were paid, what riders, etc.)~~ 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 (this is being challenged and the dispositive documents have already been determined to be improperly notarized and the beneficiaries are questionable.-

3. Cross-Plaintiff Eliot Bernstein seeks this Court:

a. Pay the Policy proceeds to the Primary Beneficiary (LaSalle National Trust, N.A.);

b. Deny that the 1995 Trust is a contingent beneficiary with any standing;

c. Determine that there are no beneficiaries of the 1995 Trust as it is a legally nonexistent entity and has been superseded by other dispositive documents of Simon L. Bernstein

what about the 2000 trust

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.

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.