

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,
v.

STEVEN JACOB, et al.

Defendants.

**PLAINTIFFS' NOTICE OF FILING DEPOSITION TRANSCRIPTS IN OPPOSITION
TO DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by and through undersigned counsel, hereby give notice of filing of the following deposition transcripts¹ in support of their opposition to Defendants Frank Avellino and Michael Bienes' Joint Motion for Judgment on the Pleadings and For Summary Judgment as to Fraudulent Transfer (Count IV):

1. The deposition transcript of Michael Bienes dated September 10, 2015, attached hereto as **Exhibit "A."**
2. The deposition transcript of Frank Avellino dated September 9, 2015, attached hereto as **Exhibit "B"**.
3. The deposition transcript of Michael Sullivan dated December 1, 2015, attached hereto as **Exhibit "C"**.
4. The deposition transcript of Michael Sullivan dated December 17, 2015, attached hereto as **Exhibit "D"**.

¹ Due to the large amount of information that would otherwise need to be redacted, the exhibits to the below referenced deposition transcripts will separately be filed under seal.

5. The deposition transcript of Michael Sullivan dated March 8, 2016. **Exhibit “E”**.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on February 20, 2017, a copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic Mail by the E-filing Portal upon:

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EXHIBIT A

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1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
2 IN AND FOR BROWARD COUNTY, FLORIDA
3 CASE No.12-034123(07)

4 P&S ASSOCIATES, GENERAL PARTNERSHIP,
5 a Florida limited partnership, et al.,
6 Plaintiffs,

7 -vs-

8 MICHAEL D. SULLIVAN, et al.,

9 Defendants.

10 DEPOSITION OF MICHAEL BIENES
11 VIDEOTAPED

12 VOLUME I
13 PAGES 1 - 83

14 Thursday, September 10, 2015
15 10:03 a.m. - 12:08 p.m.

16 Berger Singerman LLP
17 One Town Center Road
18 Suite 301
19 Boca Raton, Florida 33486

20 Reported By:
21 Gabrielle Cardarelli, FPR, RPR
22 Notary Public, State of Florida
23 Esquire Deposition Services
24 Job #22282
25

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1 ALSO PRESENT:

2 BRIAN TERRINONI - VIDEOGRAPHER
3 PHIL VON KAHLE
4 FRANK AVELLINO

5 - - -
6 I N D E X
7 - - -

8 WITNESS: DIRECT CROSS REDIRECT RECROSS

9 MICHAEL BIENES

10 BY MR. SAMUELS 5

11 - - -
12 E X H I B I T S
13 - - -

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<p style="text-align: right;">Page 5</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">- - -</p> <p>Deposition taken before Gabrielle Cardarelli, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, in the above cause.</p> <p style="text-align: center;">- - -</p> <p>VIDEOGRAPHER: Today's date is September 10th, 2015. The time on the video monitor is 10:03 a.m. This is the video recorded deposition of Michael Bienes, in the matter of P&S Associates, et al., versus Michael D. Sullivan, et al.</p> <p>This deposition is being conducted at Berger Singerman, LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301. The court reporter is Gabby Cardarelli and the videographer is Brian Terrinoni. Will counsel please identify themselves for the record.</p> <p>MR. SAMUELS: Leonard Samuels of Berger Singerman on behalf of the plaintiffs, S&P, P&S and Phil Von Kahle. With me is Steve Weber, Tom Zeichman and Phil Von Kahle.</p> <p>MR. ETRA: Jonathan Etra of Broad and Cassel, on behalf of Mr. Bienes.</p>	<p style="text-align: right;">Page 7</p> <p>A Yeah.</p> <p>Q In a lawsuit brought against you and others?</p> <p>A Yes.</p> <p>Q Okay. Okay. I want to -- I want to go over some of the ground rules with you here today and how this is going to occur. I'm going to be asking you a series of questions. You've been placed under oath, so you're required to testify truthfully as though you were in front of a judge and a jury today, okay?</p> <p>A Yes, sir.</p> <p>Q If you don't understand any questions, please let me know and I will rephrase the questions to hopefully make them in a manner that you will understand them, okay?</p> <p>A Yes, sir.</p> <p>Q And please continue to answer verbally so the court reporter can take everything down, all right?</p> <p>A Yes.</p> <p>Q I was handed by counsel before we started today a list of various surgeries you've had, it looks like since 1980, and some medications that you are on. I'm going to name a couple of the medications, and if you can answer me if you're still on them today because it's not clear.</p> <p>MR. SAMUELS: Is he -- is he still on these?</p>
<p style="text-align: right;">Page 6</p> <p>MR. WOODFIELD: Gary Woodfield, on behalf of Frank Avellino.</p> <p>COURT REPORTER: Please raise your right hand. (Oath administered.)</p> <p>THE WITNESS: I do.</p> <p>COURT REPORTER: Thank you.</p> <p style="text-align: center;">- - -</p> <p>Thereupon, (MICHAEL BIENES) having been first duly sworn or affirmed, was examined and testified as follows:</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>BY MR. SAMUELS:</p> <p>Q Good morning. My name is Leonard Samuels. As I announced, I'm counsel for the plaintiffs in this matter. Can you please state your name?</p> <p>A Michael Bienes.</p> <p>Q Have you ever had your deposition taken?</p> <p>A I think so, yes.</p> <p>Q And when do you think you had your deposition taken last?</p> <p>A Few years ago.</p> <p>Q Okay. And what matter was that in?</p> <p>A Irving Picard.</p> <p>Q Irving Picard?</p>	<p style="text-align: right;">Page 8</p> <p>MR. ETRA: I don't know. Feel free to ask him.</p> <p>MR. SAMUELS: Okay.</p> <p>MR. ETRA: Can you make that an exhibit because I don't have a copy?</p> <p>MR. SAMUELS: Sure. I'll mark this as Exhibit Number 29.</p> <p>MR. ETRA: It will be part of the record, thank you.</p> <p>MR. SAMUELS: Sure. That's fine. (Plaintiffs' Exhibit No. 29 was marked for identification.)</p> <p>BY MR. SAMUELS:</p> <p>Q So I'm just going to ask you about a couple of the medications listed here and you can let me know if you're still taking these medications: Furosemide?</p> <p>A Yes.</p> <p>Q Pot chloride?</p> <p>A Yes.</p> <p>Q Amlodipine?</p> <p>A Yes.</p> <p>Q Levothyroxin?</p> <p>A Yes.</p> <p>Q Lisinopril?</p> <p>A Yes.</p>

<p style="text-align: right;">Page 9</p> <p>1 Q Losartin?</p> <p>2 A Yes.</p> <p>3 Q Atorvastatin?</p> <p>4 A Yes.</p> <p>5 Q Xarelto?</p> <p>6 A Yes.</p> <p>7 Q Multaq?</p> <p>8 A Yes.</p> <p>9 Q Magnesium oxide?</p> <p>10 A Yes.</p> <p>11 Q Lupron?</p> <p>12 A Yes.</p> <p>13 Q Prilosec?</p> <p>14 A Yes.</p> <p>15 Q Equate?</p> <p>16 A Yes.</p> <p>17 Q Are you on any other medications?</p> <p>18 A Prescription, no.</p> <p>19 Q How about nonprescription meds?</p> <p>20 A When needed.</p> <p>21 Q And you're not -- are you currently on any of</p> <p>22 those?</p> <p>23 A No.</p> <p>24 Q Okay. I'm going to hand this to the court</p> <p>25 reporter to mark as Exhibit 29, and we'll make copies</p>	<p style="text-align: right;">Page 11</p> <p>1 Q I understand that.</p> <p>2 A They will all have side effects.</p> <p>3 Q Okay. I understand you're not a doctor. And</p> <p>4 like I said, I'm not trying to trip you up. It's just</p> <p>5 if you know if any of these might affect your ability to</p> <p>6 recall events. That's all you can do is tell me what</p> <p>7 you know.</p> <p>8 A That's really what I know.</p> <p>9 Q That's your belief. Okay.</p> <p>10 When was your deposition taken in the Picard</p> <p>11 matter?</p> <p>12 A Couple of years ago.</p> <p>13 Q And -- okay. And do you know if that would</p> <p>14 have been in an -- an examination, a 2004 examination or</p> <p>15 something like that?</p> <p>16 A 2004?</p> <p>17 Q Was it in a court proceeding? Were you in a</p> <p>18 courtroom?</p> <p>19 A No.</p> <p>20 Q It was a private deposition?</p> <p>21 A Yes.</p> <p>22 Q Okay. And were you represented by counsel?</p> <p>23 A By Mr. Etra.</p> <p>24 Q Okay. When else do you recall being deposed?</p> <p>25 A I don't.</p>
<p style="text-align: right;">Page 10</p> <p>1 later for everybody.</p> <p>2 Of any of those medications listed, do you</p> <p>3 believe any of them will impact your ability to answer</p> <p>4 questions truthfully today?</p> <p>5 A To answer?</p> <p>6 Q Yes, to answer truthfully.</p> <p>7 A No. Truthfully, definitely not.</p> <p>8 Q Not a problem. Okay. And do you believe any</p> <p>9 of those medications may impact your ability to recall</p> <p>10 events?</p> <p>11 A Yes.</p> <p>12 Q And which of those medications do you think</p> <p>13 might negatively impact your ability to recall events?</p> <p>14 And if you want to look at the list in front of you,</p> <p>15 it's not a trick question.</p> <p>16 A Several.</p> <p>17 Q Several?</p> <p>18 A Several.</p> <p>19 Q So let's go to -- let's go here, to the bottom</p> <p>20 and if you can tell me which of these medications you</p> <p>21 think might impact your ability to recall events, please</p> <p>22 note that.</p> <p>23 A Multaq.</p> <p>24 Q Okay.</p> <p>25 A Lupron -- I'm not a doctor. I don't know.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Okay.</p> <p>2 A I don't.</p> <p>3 Q What is your residential address?</p> <p>4 A 3200 Port Royal Drive, Fort Lauderdale.</p> <p>5 Q And how long have you resided at Port Royal</p> <p>6 Drive?</p> <p>7 A Since 2009.</p> <p>8 Q And where did you live before that?</p> <p>9 A Before that, 141 Bay Colony Drive.</p> <p>10 Q Also in Fort Lauderdale?</p> <p>11 A Yes.</p> <p>12 Q And how long did you reside there?</p> <p>13 A I would have to say 99 -- over 20 years.</p> <p>14 Q All right. And when did you first move to</p> <p>15 South Florida?</p> <p>16 A In the early '70s.</p> <p>17 Q Okay. What is your highest level of</p> <p>18 education?</p> <p>19 A I have an MBA.</p> <p>20 Q And from what institution did you receive your</p> <p>21 MBA, and in what year?</p> <p>22 A Baruch College. I think 1966 -- '5 or '6.</p> <p>23 Q Okay. And that's in New York City?</p> <p>24 A Yes, sir.</p> <p>25 Q Okay. And what did you do after you got your</p>

<p style="text-align: right;">Page 13</p> <p>1 MBA for work?</p> <p>2 A I was still employed by the Internal Revenue</p> <p>3 Service.</p> <p>4 Q And did you begin working for the IRS after</p> <p>5 college?</p> <p>6 A No.</p> <p>7 Q Okay. When did you start working at the IRS?</p> <p>8 A 1960.</p> <p>9 Q Okay. And when did you graduate from college</p> <p>10 and with what degree and where?</p> <p>11 A 1958, from New York University. I received a</p> <p>12 bachelor's of science.</p> <p>13 Q Do you hold any professional licenses?</p> <p>14 A I did.</p> <p>15 Q And what professional license did you hold?</p> <p>16 A Certified public accountant.</p> <p>17 Q And where did you receive your CPA -- what</p> <p>18 state were you a CPA in?</p> <p>19 A New York.</p> <p>20 Q And when did you become a CPA?</p> <p>21 A I think 19 -- I -- '69.</p> <p>22 Q Okay. Do you have any other licenses, other</p> <p>23 than a CPA in New York?</p> <p>24 A No, sir, not to my knowledge.</p> <p>25 Q And did there come a point in time where you</p>	<p style="text-align: right;">Page 15</p> <p>1 didn't know you were going to ask. I'm making an</p> <p>2 oral application.</p> <p>3 MR. SAMUELS: An oral application for</p> <p>4 protective order? So are you -- as to that</p> <p>5 particular question, are you going to allow that</p> <p>6 or --</p> <p>7 MR. ETRA: As I -- as I -- as I'm thinking it</p> <p>8 through -- let me have the question back.</p> <p>9 (A portion of the record read by reporter.)</p> <p>10 MR. ETRA: The status of whether or not he</p> <p>11 owes money to his law firm is irrelevant. If you</p> <p>12 want to ask him if someone else is paying his fees,</p> <p>13 I will -- I -- I don't have a motion for that.</p> <p>14 MR. SAMUELS: My -- that was kind of what I</p> <p>15 was asking. Were you paying --</p> <p>16 MR. ETRA: It's probably what you intended to</p> <p>17 ask.</p> <p>18 MR. SAMUELS: I'll rephrase it.</p> <p>19 MR. ETRA: Thank you.</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q Are you paying your legal fees in this matter</p> <p>22 or is someone paying them on your behalf?</p> <p>23 A We are paying them.</p> <p>24 Q You are paying your own legal fees? You're</p> <p>25 paying your lawyers?</p>
<p style="text-align: right;">Page 14</p> <p>1 either relinquished it, it was taken away from you or</p> <p>2 you just quit paying dues? Or what happened?</p> <p>3 A I -- I believe, in the early '80s, I placed my</p> <p>4 license into inactive status. Inactive.</p> <p>5 Q And has it remained inactive since that time?</p> <p>6 A Yes, sir.</p> <p>7 Q And what caused you to place it in inactive</p> <p>8 status?</p> <p>9 A Did not need it.</p> <p>10 Q Okay. Have you ever -- let me just backtrack</p> <p>11 a little and ask you a few questions about your</p> <p>12 representation. Are you represented by counsel today?</p> <p>13 A Yes.</p> <p>14 Q And who is that?</p> <p>15 A Mr. Jonathan Etra.</p> <p>16 Q Okay. And have you been paying the legal fees</p> <p>17 of your counsel or has somebody been paying them on your</p> <p>18 behalf?</p> <p>19 MR. ETRA: I have a motion for protective</p> <p>20 order on his finances, so if you just would ask him</p> <p>21 if someone else is paying on his behalf, that's</p> <p>22 fine.</p> <p>23 MR. SAMUELS: What do you mean by a motion for</p> <p>24 protective order? You filed something?</p> <p>25 MR. ETRA: Well, I didn't file anything. I</p>	<p style="text-align: right;">Page 16</p> <p>1 A Yes, sir.</p> <p>2 Q So neither Mr. Avellino or Mr. Sullivan or any</p> <p>3 third party are paying legal fees for you in this</p> <p>4 matter?</p> <p>5 A No.</p> <p>6 Q Okay. When did you first meet Mr. Frank</p> <p>7 Avellino?</p> <p>8 A Either at the end of 1967 or the beginning of</p> <p>9 '68.</p> <p>10 Q And what were the circumstances in your</p> <p>11 meeting Mr. Avellino?</p> <p>12 A You mean, how did I meet him?</p> <p>13 Q Yeah, how did you meet him.</p> <p>14 A Okay. I received a call from an accountant</p> <p>15 that I knew and that knew me from the IRS, and he asked</p> <p>16 me, "Did you ever hear of a firm called Alpern &</p> <p>17 Heller?"</p> <p>18 I said, "no."</p> <p>19 He said, "Heller, who I know, just died</p> <p>20 suddenly and his surviving partner is looking for a tax</p> <p>21 man. This might be an opportunity for you." That's</p> <p>22 how -- I made a call and I went.</p> <p>23 Q So you then called -- was the firm then known</p> <p>24 as Alpern & Heller?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q Okay. And was Mr. Avellino employed by Alpern 2 & Heller?</p> <p>3 A I believe so, yes.</p> <p>4 Q And did you interview with Mr. Avellino?</p> <p>5 A No.</p> <p>6 Q Okay. And were you hired into Alpern & 7 Heller?</p> <p>8 A Yes.</p> <p>9 Q Okay. And were you hired as a tax accountant?</p> <p>10 A More or less, yes.</p> <p>11 Q Okay. And what else were you doing at Alpern 12 & Heller when you joined, other than tax work?</p> <p>13 A Very little else.</p> <p>14 Q Okay. And did Alpern & Heller then become 15 Alpern & Avellino?</p> <p>16 A I'm not sure.</p> <p>17 Q Okay. Does the firm name Alpern & Avellino 18 sound familiar to you?</p> <p>19 A No.</p> <p>20 Q Okay. Do you recall Mr. Avellino becoming a 21 named partner at the -- with Mr. Alpern at the firm, 22 prior to your having your name on the door?</p> <p>23 A No.</p> <p>24 Q Okay. And was Alpern & Avellino investing in 25 Bernard Madoff, at that time when you joined?</p>	<p style="text-align: right;">Page 19</p> <p>1 Q Okay. And so, at that point in time, you and 2 Mr. Avellino were the owners of the accounting firm 3 Avellino & Bienes?</p> <p>4 A Yes.</p> <p>5 Q And were you -- was Avellino & Bienes 6 providing accounting services when it was first formed?</p> <p>7 A We were a CPA firm.</p> <p>8 Q Okay. And were you providing services other 9 than accounting services?</p> <p>10 MR. ETRA: Objection. Who's the "you"?</p> <p>11 MR. SAMUELS: Mr. Bienes.</p> <p>12 MR. ETRA: Thank you.</p> <p>13 THE WITNESS: I was providing tax services.</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q Was the firm Avellino & Bienes providing 16 services, aside from accounting services?</p> <p>17 A No.</p> <p>18 Q Okay. At any point in time, did the firm 19 Avellino & Bienes begin investing money with Madoff?</p> <p>20 A Yes.</p> <p>21 Q Do you recall when that first occurred, either 22 with Avellino & Bienes or the predecessor firm, Alpern & 23 Heller?</p> <p>24 A I don't really remember.</p> <p>25 Q Okay. Do you know how it came about that</p>
<p style="text-align: right;">Page 18</p> <p>1 A I wouldn't know.</p> <p>2 Q And by the way, Mr. Madoff had an investment 3 firm, Bernardo Madoff Investment Services, LLC. Are you 4 familiar with that?</p> <p>5 A Not all the things after his name.</p> <p>6 Q Okay. So today, I may be asking you 7 questions, as you heard yesterday at Mr. Avellino's 8 deposition, about investing in Madoff. So when I talk 9 about investing in Madoff, you understand that to mean 10 Bernie Madoff or whatever firm he was operating under?</p> <p>11 Is that okay?</p> <p>12 A Yes.</p> <p>13 Q Okay. How did you first meet Mr. Madoff?</p> <p>14 A I went to his office downtown and there I met 15 him.</p> <p>16 Q And what caused you to go to his office?</p> <p>17 A I'm sorry. I can't recollect.</p> <p>18 Q That's quite all right. Did Alpern -- did the 19 firm that you went to work for, Alpern & Heller, did 20 that firm eventually, at some point in time, become 21 Avellino & Bienes?</p> <p>22 A Yes.</p> <p>23 Q Okay. And do you remember when it became 24 Avellino & Bienes?</p> <p>25 A Not exactly. Sometime in the '70s.</p>	<p style="text-align: right;">Page 20</p> <p>1 Avellino & Bienes began investing with Madoff? Like 2 what were the circumstances? Whose idea was it? How 3 did it come about?</p> <p>4 A It was there. I don't know.</p> <p>5 Q It was there, so there were investments being 6 made in Madoff before you joined?</p> <p>7 A I don't know that.</p> <p>8 Q Okay. Do you remember, in the 1970s, the firm 9 investing money with Bernie Madoff?</p> <p>10 A Do I remember, in the 1970s --</p> <p>11 Q Do you recall, in the 1970s, the accounting 12 firm investing money with Bernie Madoff?</p> <p>13 MR. ETRA: Objection to form.</p> <p>14 THE WITNESS: I recall a -- an account. They 15 were connected in some way. I don't know.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q Okay. At some point in time, did you 18 personally begin having your clients invest with Madoff, 19 clients, friends or family members?</p> <p>20 A My -- I -- it was the firm's clients.</p> <p>21 Q Okay.</p> <p>22 A And the question?</p> <p>23 Q Yeah. When you were working there, do you 24 remember having any of your friends, clients or family 25 members begin investing -- investing with Bernie Madoff?</p>

<p style="text-align: right;">Page 21</p> <p>1 A No. Not that I can recollect.</p> <p>2 Q So you have in front of you exhibits that were</p> <p>3 marked in the deposition yesterday. So I'm going to be</p> <p>4 referring to some of those from time to time. They're</p> <p>5 in order right now. So I'd like to start by showing you</p> <p>6 what's been marked as exhibit -- exhibit -- let's start</p> <p>7 with exhibit -- let's start with Exhibit 2.</p> <p>8 Sir, this is a letter on Avellino & Bienes</p> <p>9 letterhead, and it's signed by Lola Kurland. Do you</p> <p>10 know who Lola Kurland is?</p> <p>11 A Yes.</p> <p>12 Q And who is Lola Kurland?</p> <p>13 A She was the secretary and typist for the</p> <p>14 accounting firm.</p> <p>15 Q Of Avellino & Bienes?</p> <p>16 A Yes, sir.</p> <p>17 Q Okay. So here's a letter she wrote, and I</p> <p>18 want to go through some of it with you, okay? And the</p> <p>19 date of this letter is August 7th, 1991.</p> <p>20 In the second paragraph -- or the first</p> <p>21 paragraph, it says: "What we do at Avellino & Bienes is</p> <p>22 to accommodate relatives, friends and former clients</p> <p>23 that we serviced when we were certified public</p> <p>24 accountants." And then it says -- excuse me --</p> <p>25 "Avellino & Bienes invests in one particular Wall Street</p>	<p style="text-align: right;">Page 23</p> <p>1 Bienes." Okay. Was the Wall Street broker who is being</p> <p>2 referred to in this letter, on your company's</p> <p>3 letterhead, Bernie Madoff?</p> <p>4 A Must have been.</p> <p>5 Q Okay. Because that is the broker who you were</p> <p>6 doing business with, correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. And do you recall that, at least as of</p> <p>9 this time in 1991, that Avellino & Bienes, your company,</p> <p>10 was accommodating relatives, friends and former clients,</p> <p>11 by giving them an opportunity to invest with -- in</p> <p>12 Avellino & Bienes, who was then investing in Madoff?</p> <p>13 MR. ETRA: Objection to form.</p> <p>14 THE WITNESS: I'm not sure I understand what</p> <p>15 you're asking me.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q Okay. So let's go to the first paragraph.</p> <p>18 "What we do at Avellino & Bienes is to accommodate</p> <p>19 relatives, friends and former clients that we have</p> <p>20 serviced when we were certified public accountants." Do</p> <p>21 you recall, in 1991, if Avellino & Bienes was no longer</p> <p>22 providing services as certified public accountants?</p> <p>23 MR. ETRA: Objection to form. Go ahead.</p> <p>24 THE WITNESS: Yes.</p> <p>25</p>
<p style="text-align: right;">Page 22</p> <p>1 broker, the same company we first started doing business</p> <p>2 with over 25 years ago, who buys and sells stocks and</p> <p>3 bonds in the name of Avellino & Bienes." So let's stop</p> <p>4 there for a moment.</p> <p>5 So do you recall Avellino -- so Avellino &</p> <p>6 Bienes, according to Lola, is investing in "one</p> <p>7 particular Wall Street broker, who buys and sells stocks</p> <p>8 and bonds in the name of Avellino & Bienes." Is she</p> <p>9 referring to Madoff as the broker who Avellino & Bienes</p> <p>10 was investing with?</p> <p>11 MR. ETRA: Objection.</p> <p>12 THE WITNESS: I don't know. Excuse me.</p> <p>13 BY MR. SAMUELS:</p> <p>14 Q You don't know who she's referring to?</p> <p>15 A I didn't say that.</p> <p>16 Q Okay.</p> <p>17 A You asked me what was in her mind.</p> <p>18 Q I did not ask you what was in her mind.</p> <p>19 A Please repeat the question.</p> <p>20 Q Yes. I'm asking you, this -- this is a letter</p> <p>21 on company letterhead, okay, and this indicates that</p> <p>22 "Avellino & Bienes invests with one particular Wall</p> <p>23 Street broker, the same company that we first started</p> <p>24 doing business with over 25 years ago, who buys and</p> <p>25 sells stocks and bonds in the name of Avellino &</p>	<p style="text-align: right;">Page 24</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q Okay. What services was Avellino & Bienes</p> <p>3 providing, in 1991, when it discontinued providing</p> <p>4 services as certified public accountants?</p> <p>5 A We were handling investors.</p> <p>6 Q Okay. So I understand how this worked, and</p> <p>7 correct me if I'm wrong, was Avellino & Bienes working</p> <p>8 with relatives, friends, and former clients to have them</p> <p>9 loan money to Avellino & Bienes, at which time Avellino</p> <p>10 & Bienes would provide promissory notes with a</p> <p>11 guaranteed rate of return to those people?</p> <p>12 MR. ETRA: Objection.</p> <p>13 THE WITNESS: You know, these are Lola's</p> <p>14 words, not mine.</p> <p>15 BY MR. SAMUELS:</p> <p>16 Q I'm asking you what you understand of the</p> <p>17 transaction. So here's the understanding I have, from</p> <p>18 everything I've read and all the documents -- and I can</p> <p>19 take the time to walk you through the documents if you</p> <p>20 don't recall.</p> <p>21 But let me ask you a question, based on my</p> <p>22 understanding: Was Avellino & Bienes obtaining money</p> <p>23 from other people, be it friends, former clients,</p> <p>24 relatives, people who were referred to you, were they</p> <p>25 obtaining money from these people, then giving these</p>

<p style="text-align: right;">Page 25</p> <p>1 people promissory notes with guaranteed rates of return, 2 and then Avellino & Bienes would take that money and 3 invest it in Madoff? Is that what Avellino & Bienes was 4 doing? 5 MR. ETRA: Objection. 6 THE WITNESS: I can't swear to it. I just, 7 you know -- I was not really around. 8 BY MR. SAMUELS: 9 Q Where were you in 1991, if you weren't really 10 around? 11 A Traveling, living in New York, socializing. 12 Q Where did you get all the money to travel and 13 socialize and live in New York? 14 A From Avellino & Bienes. 15 Q Okay. And were you -- you were working at 16 Avellino & Bienes then but you just said you weren't 17 around. How often -- how many days a week were you 18 working? 19 MR. ETRA: Objection. Timeframe? 20 MR. SAMUELS: 1991 -- 21 MR. ETRA: Thank you. 22 MR. SAMUELS: -- 1990, early 1990s, before the 23 SEC came in. You remember the SEC coming in? 24 THE WITNESS: Yes. 25</p>	<p style="text-align: right;">Page 27</p> <p>1 Q And were those other people generally friends, 2 former clients and relatives, and people who were 3 otherwise known to Avellino & Bienes? 4 A I can't respond to that because I was not into 5 the details. I don't know. 6 Q Well, this is what you said in your interview 7 on TV. Were you telling -- were you telling the truth 8 in your interview? 9 MR. ETRA: Objection. 10 THE WITNESS: To the best of my recollection, 11 I tried. 12 BY MR. SAMUELS: 13 Q So if you mentioned in your TV interview that 14 you were only accepting funds from people who you knew, 15 such as friends, family and relatives, would that be a 16 true statement? 17 MR. ETRA: Objection. 18 THE WITNESS: It's what I said at the time on 19 the TV interview. I was not at the top of my game. 20 My life had just blown up. I was up against a 21 professional and I had a TV camera on me. So I was 22 trying to, I don't know, make a statement. 23 BY MR. SAMUELS: 24 Q Okay. And did anyone force you to do that 25 interview or did you do it voluntarily?</p>
<p style="text-align: right;">Page 26</p> <p>1 BY MR. SAMUELS: 2 Q And you entered a consent order, right? 3 So let's talk about a few years before that, 4 while Avellino & Bienes is accepting funds from friends, 5 relatives, former clients. That timeframe, okay? 6 MR. ETRA: Objection. 7 BY MR. SAMUELS: 8 Q Do you recall receiving money during that 9 timeframe from third parties, who were providing money 10 to Avellino & Bienes to enable that money to then get 11 invested in Madoff? 12 A This was all done by the staff. I -- you 13 know, they did it, not me. 14 Q Did you have an understanding of how these -- 15 of how the investments were being made in Madoff by 16 Avellino & Bienes? 17 A I don't understand the question. 18 Q Okay. You mentioned that Avellino & Bienes' 19 business was investing and that they were investing with 20 Madoff, correct? 21 A Yes. 22 Q Okay. Do you have an understanding as to 23 where Avellino & Bienes was getting the money to invest 24 in Madoff? 25 A Generally, other people.</p>	<p style="text-align: right;">Page 28</p> <p>1 A Voluntarily. 2 Q And would you admit that your recollection of 3 events that transpired in the Avellino & Bienes' days, 4 was better at the time that you gave the TV interview 5 than it is as you're sitting here today? 6 A I can't judge that. I don't know. I don't 7 know. 8 Q Okay. So let's continue on with this letter, 9 okay? Let's go to the third paragraph, please. And 10 so -- actually, above that she says, "We have been very 11 profitable in all the years we have been mutually 12 involved in business. We'll continue the same as in the 13 past to our best abilities." 14 Now, I want to ask you about this next 15 paragraph: "We do not encourage new accounts and, 16 therefore, do not solicit same." Do you recall that 17 Avellino & Bienes was not soliciting new accounts from 18 people that were unknown to them? 19 A I certainly wasn't. 20 Q Do you know if Avellino & Bienes' policy was 21 not to solicit new accounts from people who were unknown 22 to them? 23 A I don't know. I know I didn't. 24 Q And if you mentioned -- strike that. 25 Let's go to the next paragraph, in terms of</p>

<p style="text-align: right;">Page 29</p> <p>1 Lola mentioning how these transactions work, okay? It 2 says: "Let me clarify one important thing: The money 3 that is sent to A & B" -- that's Avellino & Bienes -- 4 "is a loan to Avellino & Bienes, who, in turn, invests 5 it on behalf of Avellino & Bienes, for which our clients 6 receive quarterly interest payments. This is evidenced 7 by a form 1099 at the end of the year." 8 Do you recall that as being the way that 9 Avellino & Bienes was obtaining money from clients, that 10 would then be invested in Madoff? 11 A I can't say I don't. It seems to be, more or 12 less, what we were doing. 13 Q Okay. Do you have a different or better way 14 of describing what you were doing with investing in 15 Madoff? 16 A I wouldn't attempt that, no. No. 17 Q You don't recall? 18 A No. I really don't. 19 Q And you don't dispute what Lola is saying, in 20 terms of how the transactions were structured? 21 A I was -- I was not really involved in it, so I 22 wouldn't know. 23 Q Okay. 24 MR. SAMUELS: We're going to mark this as 25 Exhibit 30.</p>	<p style="text-align: right;">Page 31</p> <p>1 injunction? 2 A Yes, it seems. 3 Q Okay. So let's go to page 5. See on page 5 4 of this order, where there was a civil penalty in the 5 amount of \$250,000 for Avellino & Bienes, \$50,000 for 6 Avellino and \$50,000 for Bienes. Do you see that? 7 A Yes. 8 Q So, sir, why did you agree to pay \$50,000, if 9 you weren't involved in the receipt of money from third 10 parties into Avellino & Bienes or the investment of that 11 money into -- into Madoff? 12 MR. ETRA: Objection. 13 THE WITNESS: Why did I agree? 14 MR. SAMUELS: Yes. 15 THE WITNESS: The attorney said, "We can close 16 this thing out and end it, and this is what it's 17 going to cost. Are you good for that?" 18 And I said, "If my partner is, I certainly 19 am." 20 He said, "Good decision." 21 BY MR. SAMUELS: 22 Q So you did it on advice of counsel? 23 A Yes. 24 Q Okay. And we then have, at the end of this 25 document, it's a consent of Michael S. Bienes. And it</p>
<p style="text-align: right;">Page 30</p> <p>1 (Plaintiffs' Exhibit No. 30 was marked for 2 identification.) 3 BY MR. SAMUELS: 4 Q Okay. Do you remember the Securities Exchange 5 Commission investigating Avellino & Bienes? 6 A Yes. 7 Q Okay. And do you recall agreeing to a final 8 judgment of permanent injunction with the Securities and 9 Exchange Commission? 10 A I know we agreed to something on the advice of 11 counsel. What it was, I don't know. 12 Q Do you understand that, as a result of this 13 order, you agreed that you would no longer be involved 14 in the sale of securities? 15 A Yes. Yes. 16 Q Okay. And let's go to page 4, please. Where 17 it says that it's ordered, adjudged and decreed that 18 defendants, Avellino & Bienes -- Avellino & Bienes, et 19 cetera. 20 And then let's go to A: "Offering for sale, 21 selling or delivering after sale, for the use of mails 22 or any means or instrumentalities of interstate 23 commerce, any security or any interest in security" -- 24 does that purport with your understanding that you were 25 precluded from selling securities as a result of this</p>	<p style="text-align: right;">Page 32</p> <p>1 starts out by saying -- 2 MR. ETRA: Just -- I'm not sure he has the 3 page. 4 Do you have the page? 5 THE WITNESS: What -- what page? 6 MR. SAMUELS: I can get it. 7 MR. ETRA: Would you mind getting it for him? 8 MR. SAMUELS: Sure. 9 THE WITNESS: Yeah. 10 MR. ETRA: Thanks. 11 MR. SAMUELS: No problem. 12 BY MR. SAMUELS: 13 Q Consent of Michael S. Bienes. And it starts 14 out by saying, "Defendant, Michael Bienes, having read 15 and understood the terms of the annexed final judgment 16 of permanent injunction" -- and then it talks about your 17 consent to the final judgment. I want to ask you if 18 that's your signature on the last page of this document. 19 A It looks like my signature, yes. 20 Q Okay. Was your wife a partner in Avellino & 21 Bienes? 22 A No. 23 Q If we stay on this document and go to page -- 24 MR. SAMUELS: If we go -- here. Let me just 25 turn to the page. It's called a resolution of</p>

<p style="text-align: right;">Page 33</p> <p>1 Avellino & Bienes. Here. Let me find it.</p> <p>2 MR. ETRA: You have Bates numbers on this?</p> <p>3 Can you just give us the Bates numbers?</p> <p>4 MR. SAMUELS: Yeah. 3588.</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q It says: "Resolution of Avellino & Bienes."</p> <p>7 And it's got a signature for Frank Avellino, Michael S.</p> <p>8 Bienes and Dianne K. Bienes. And lists her as a general</p> <p>9 partner of Avellino & Bienes. Was she, in fact, a</p> <p>10 general partner of Avellino & Bienes, in June of 1993?</p> <p>11 A I don't recollect. If -- she must have been.</p> <p>12 They told her to sign. She signed.</p> <p>13 Q Okay. So, do you recall if all the people who</p> <p>14 invested in Avellino & Bienes were paid back in full,</p> <p>15 after the SEC stopped Avellino & Bienes from selling</p> <p>16 securities?</p> <p>17 A I do recollect that monies went out, and it</p> <p>18 seemed that everyone got their money.</p> <p>19 Q Okay. And do you know where the money came</p> <p>20 from to pay everyone back?</p> <p>21 A Obviously, from the Madoff Organization.</p> <p>22 Q And were you in communication with anyone at</p> <p>23 the Madoff Organization, in connection with them paying</p> <p>24 back the investors of Avellino & Bienes?</p> <p>25 A Not that I can remember.</p>	<p style="text-align: right;">Page 35</p> <p>1 had investments with Madoff.</p> <p>2 Q When did you or friends or relatives or</p> <p>3 clients brought into the accounting firm, specifically</p> <p>4 by you, first begin investing in Madoff?</p> <p>5 MR. ETRA: Objection.</p> <p>6 THE WITNESS: I don't understand. They were</p> <p>7 there and it just grew.</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q Okay. So at the time you got there, clients,</p> <p>10 friends, family members of yours --</p> <p>11 A Not mine.</p> <p>12 Q -- clients -- okay. So forget about firm</p> <p>13 clients when you were there. I'm talking about</p> <p>14 people -- I'm talking about you, companies in which</p> <p>15 you're affiliated, friends of yours or relatives of</p> <p>16 yours. When did they first start investing in Madoff?</p> <p>17 MR. ETRA: Objection.</p> <p>18 THE WITNESS: I can't recall any relatives of</p> <p>19 mine or any friends of mine investing in Madoff.</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q When did you or your wife or any entities in</p> <p>22 which you were involved start investing in Madoff?</p> <p>23 A I remember in the early '70s, my then wife</p> <p>24 told me, "I saved up \$5,000. Aren't you proud of me?"</p> <p>25 I said, "Oh, yes."</p>
<p style="text-align: right;">Page 34</p> <p>1 Q Did -- back in that timeframe, did Madoff ever</p> <p>2 guarantee -- ever guarantee investors in Madoff a rate</p> <p>3 of return?</p> <p>4 MR. ETRA: What timeframe? You said "that</p> <p>5 timeframe."</p> <p>6 MR. SAMUELS: 1990s.</p> <p>7 THE WITNESS: Investors in Madoff?</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q Or investors in Avellino & Bienes, who</p> <p>10 invested in Madoff. Whoever's money ultimately ended up</p> <p>11 in Madoff, were they ever guaranteed a rate of turn?</p> <p>12 MR. ETRA: Objection.</p> <p>13 THE WITNESS: By Madoff?</p> <p>14 MR. SAMUELS: By Madoff.</p> <p>15 THE WITNESS: Oh, not to my knowledge.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q Was there ever any point in time where</p> <p>18 Madoff -- ever any point in time where Madoff provided a</p> <p>19 guaranteed rate of return?</p> <p>20 A Not to my knowledge.</p> <p>21 Q When did you or clients or friends or</p> <p>22 relatives of yours first start investing money in</p> <p>23 Madoff?</p> <p>24 A Clients were invested with Madoff and</p> <p>25 friends -- not mine. When I first came to the firm they</p>	<p style="text-align: right;">Page 36</p> <p>1 She says, "Do you think Bernie would open an</p> <p>2 account for me, Bernie Madoff?"</p> <p>3 I said, "I'll have somebody call him." I</p> <p>4 didn't call. I had no relationship. And he did. And</p> <p>5 she opened an account with Madoff with, I believe --</p> <p>6 don't hold me -- 5,000.</p> <p>7 Q Okay. And was that money jointly yours and</p> <p>8 your wife's?</p> <p>9 A (Indicating).</p> <p>10 Q It was her money?</p> <p>11 A Her money.</p> <p>12 Q Okay. And is that Dianne or --</p> <p>13 A Dianne K. Bienes.</p> <p>14 Q And how long have you been married? What year</p> <p>15 were you married? How's that? That might be an easier</p> <p>16 one.</p> <p>17 A Good thing she's not here. 1973.</p> <p>18 Q Okay. And how was your wife aware of the fact</p> <p>19 that Madoff was accepting funds to be invested?</p> <p>20 A I told her.</p> <p>21 Q Okay. Aside from your wife's initial \$5,000,</p> <p>22 when did you or family members or -- let's just stick to</p> <p>23 you or family members -- start investing in Madoff?</p> <p>24 MR. ETRA: Objection.</p> <p>25 THE WITNESS: I don't remember doing that.</p>

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1 BY MR. SAMUELS:

2 Q You, personally, Michael Bienes, do not
3 remember investing in Madoff?

4 MR. ETRA: Objection.

5 THE WITNESS: I don't recall I did.

6 BY MR. SAMUELS:

7 Q Ever? Through today's date, you've never
8 invested in Madoff?

9 A Wait a minute, now. After the SEC and we
10 closed everything out --

11 Q Yes.

12 A -- and we regrouped, we created some entities
13 for ourselves. So, yes, you could consider that Michael
14 Bienes investing in Madoff.

15 Q Yeah. And that's what I'm asking about.

16 A Yeah.

17 Q Okay. So you're saying the first time you
18 invested in Madoff was after the SEC order?

19 A Not into him. I was in an entity that
20 invested.

21 Q I understand. But the first time was after
22 Avellino & Bienes?

23 A Yes.

24 Q So while Avellino & Bienes was in existence,
25 you did not directly or indirectly or any -- or any of

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1 your family members, aside from maybe your wife's
2 \$5,000, invest in Madoff; is that your testimony?

3 A I can't relect -- recollect doing so.

4 Q Okay.

5 A Anything is possible but I truly don't
6 remember.

7 Q All right. Have you heard of an entity called
8 Grosvenor Partners?

9 A Yes.

10 Q And were you involved in that entity?

11 A Yes.

12 Q And what was your involvement in that entity?

13 A I was a partner in that entity.

14 Q And did Grosvenor Partners invest funds in
15 Madoff?

16 A To my knowledge, yes.

17 Q And did you -- did you invest money in Madoff,
18 through Grosvenor?

19 A I don't remember. I don't remember adding on
20 to my -- that, I don't remember.

21 Q Well, I'm trying to figure -- what account did
22 you have and when, for the first time?

23 A After the SEC?

24 Q Yes. Did you have a personal account or was
25 it through an entity?

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1 A Through an entity.

2 Q And I'm going to name a couple entities and
3 you tell me when I got the name right, okay? Grosvenor,
4 Mayfair Ventures General Partnership, Aster Associates,
5 St. James Associates, Mayfair Pension Plan,
6 Knightsbridge of South Florida, Mayfair Bookkeeping
7 Services, Inc. Any of those?

8 MR. ETRA: Objection to form. I'm not -- I
9 don't know what the question is.

10 MR. SAMUELS: I'm naming entities to see --
11 to -- first of all, it's not appropriate to object
12 to the form, if you don't know what the question
13 is.

14 MR. ETRA: Objection to form. I don't know
15 what the question is.

16 MR. SAMUELS: You don't know what the question
17 is because you didn't listen.

18 MR. ETRA: No. I listened, but I'm not sure
19 it's clear. That's fine. Objection to form.

20 BY MR. SAMUELS:

21 Q All right. So I'm going to name entities for
22 you. You said you had an account, right? You said you
23 had an account with Madoff.

24 A No, I didn't.

25 Q Did you have an account with Madoff?

Page 40

1 A When?

2 Q Directly or indirectly -- you said immediately
3 after Avellino & Bienes shut down.

4 A A personal account?

5 Q An account with your money, yes.

6 A But through an entity?

7 Q But through an entity.

8 A Yes.

9 Q Okay. So I am going to -- you said you didn't
10 remember the name of the entity, right? Do you remember
11 it?

12 A I tried to.

13 Q Okay. Can you tell me the name of the entity?

14 A Grosvenor.

15 Q Okay. So Grosvenor is the first entity in
16 which you took -- you personally invested in Madoff?

17 A To the best of my recollection, yes.

18 Q Okay. All right.

19 Now, I'm going to name -- now, Mr. Avellino
20 was also involved in Grosvenor, right?

21 A Yes.

22 Q Did you have other friends or family members
23 or clients of yours invested in Madoff through
24 Grosvenor?

25 A I had my mother-in-law and father-in-law

<p style="text-align: right;">Page 41</p> <p>1 invested through Grosvenor, yes.</p> <p>2 Q Okay. Anybody else?</p> <p>3 A No.</p> <p>4 Q Okay. How about Mayfair Ventures General</p> <p>5 Partnership? Did you invest through that?</p> <p>6 A Yes.</p> <p>7 Q Okay. And did any of your friends or family</p> <p>8 members also invest in Mayfair?</p> <p>9 A No.</p> <p>10 Q Aster Associates, did you invest in Madoff</p> <p>11 through Aster Associates?</p> <p>12 A No.</p> <p>13 Q Did you invest in Madoff through St. James</p> <p>14 Associates?</p> <p>15 A Yes.</p> <p>16 Q Okay. And your wife, as well?</p> <p>17 A St. James?</p> <p>18 Q Uh-huh.</p> <p>19 A Yes.</p> <p>20 Q Any other friends or family members or clients</p> <p>21 invest in Madoff through St. James Associates?</p> <p>22 A No.</p> <p>23 Q Okay. Did you invest in Madoff, directly or</p> <p>24 indirectly, through Mayfair Pension Plan?</p> <p>25 A We were participants in the plan.</p>	<p style="text-align: right;">Page 43</p> <p>1 A Yes.</p> <p>2 Q And how did you meet Michael Sullivan?</p> <p>3 A At the end of the SEC litigation, I was</p> <p>4 informed that the Internal Revenue Service was going to</p> <p>5 conduct an audit, tax audit of certain entities for</p> <p>6 certain tax years, but I don't recollect which entities</p> <p>7 and which tax years.</p> <p>8 Q So how did that -- what does that have to do</p> <p>9 with you needing Michael Sullivan?</p> <p>10 A I remember, not the details, but that Frank</p> <p>11 Avellino said, "What do you think about the idea of</p> <p>12 having an outsider represent us before the IRS, rather</p> <p>13 than us?"</p> <p>14 And I said, "It sounds reasonable."</p> <p>15 He said -- and I don't recollect the</p> <p>16 conversation, so. I do know that a recommendation to</p> <p>17 the name of the firm called Sullivan and Powell in Fort</p> <p>18 Lauderdale was given me.</p> <p>19 Q Was that recommendation from Mr. Avellino?</p> <p>20 A I would assume so, yes.</p> <p>21 Q Okay. And when was that, the 1992/'93</p> <p>22 timeframe?</p> <p>23 A It could be '93 or '4.</p> <p>24 Q And were your offices located at 6550 Federal</p> <p>25 Highway at that time?</p>
<p style="text-align: right;">Page 42</p> <p>1 Q Okay. You and your wife?</p> <p>2 A Yes.</p> <p>3 Q And as participants in the plan, you had money</p> <p>4 invested in Madoff through that plan?</p> <p>5 A I believe so, yes.</p> <p>6 Q Okay. How about Knightsbridge of South</p> <p>7 Florida, Inc.?</p> <p>8 A No.</p> <p>9 Q Ascent, Inc.?</p> <p>10 A No.</p> <p>11 Q Mayfair Bookkeeping Services, Inc.?</p> <p>12 A No.</p> <p>13 Q You were listed as a director on that. Are</p> <p>14 you sure that you didn't invest through that?</p> <p>15 A Which one?</p> <p>16 Q Mayfair Bookkeeping Services, Inc.</p> <p>17 A No. That wasn't an investment vehicle.</p> <p>18 Q Okay. How about -- okay.</p> <p>19 MR. SAMUELS: Thirty-one.</p> <p>20 (Plaintiffs' Exhibit No. 31 was marked for</p> <p>21 identification.)</p> <p>22 (Discussion held off the record.)</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q Do you know a gentleman by the name of Michael</p> <p>25 Sullivan?</p>	<p style="text-align: right;">Page 44</p> <p>1 A We had rented office space at 6550, but we had</p> <p>2 never activated the office.</p> <p>3 Q And when did you rent the office space at</p> <p>4 6550?</p> <p>5 A I don't recollect.</p> <p>6 Q Okay. And before Mr. Avellino recommended</p> <p>7 Mr. Sullivan to you to assist in the IRS issues, did you</p> <p>8 know that you were on the same floor in the office</p> <p>9 building as Mr. Sullivan?</p> <p>10 A He may have told me, but I don't remember.</p> <p>11 Q Okay. So you -- at that time, when</p> <p>12 Mr. Avellino recommended Mr. Sullivan to you, you were</p> <p>13 unaware of the fact that Mr. Sullivan was in your same</p> <p>14 building on the same floor?</p> <p>15 MR. ETRA: Objection.</p> <p>16 MR. WOODFIELD: Objection.</p> <p>17 THE WITNESS: I didn't say that. I just don't</p> <p>18 remember.</p> <p>19 BY MR. SAMUELS:</p> <p>20 Q Okay. And when you say the office wasn't</p> <p>21 activated, who was the tenant in that office space? Was</p> <p>22 it Avellino & Bienes?</p> <p>23 A I believe so, yes.</p> <p>24 Q And so, where did you conduct business on</p> <p>25 behalf of Avellino & Bienes, if that office space was</p>

<p style="text-align: right;">Page 45</p> <p>1 not activated?</p> <p>2 MR. ETRA: Objection.</p> <p>3 THE WITNESS: I didn't.</p> <p>4 BY MR. SAMUELS:</p> <p>5 Q You didn't? Prior to the time the SEC shut</p> <p>6 you down, where did you conduct your business for</p> <p>7 Avellino & Bienes?</p> <p>8 A Prior to the SEC?</p> <p>9 Q Uh-huh.</p> <p>10 A New York City.</p> <p>11 Q Okay. And when did you move down to Florida?</p> <p>12 A When did I --</p> <p>13 Q Yes.</p> <p>14 A -- move down to Florida?</p> <p>15 Q Uh-huh.</p> <p>16 A It wasn't the move. It was a gradual transfer</p> <p>17 over a period of many years.</p> <p>18 Q So when Avellino & Bienes was shut down by the</p> <p>19 SEC, Avellino & Bienes was operating out of New York,</p> <p>20 not in Florida?</p> <p>21 A That would be a correct statement, yes.</p> <p>22 Q And at what point in time did you begin</p> <p>23 conducting business in Florida, as opposed to New York?</p> <p>24 MR. ETRA: Objection.</p> <p>25 THE WITNESS: To my memory, we never did.</p>	<p style="text-align: right;">Page 47</p> <p>1 moment. And this is a letter to Avellino & Bienes from</p> <p>2 S&P Investment Group, Michael Sullivan and Gregory</p> <p>3 Powell.</p> <p>4 MR. ETRA: Which page are you on?</p> <p>5 MR. SAMUELS: Exhibit 3, page 2. Do you see</p> <p>6 that?</p> <p>7 MR. ETRA: Page 2.</p> <p>8 THE WITNESS: You said where?</p> <p>9 MR. ETRA: Page 2, Michael, page 2.</p> <p>10 MR. SAMUELS: Page 2 of the exhibit.</p> <p>11 THE WITNESS: Oh.</p> <p>12 BY MR. SAMUELS:</p> <p>13 Q Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Okay. So on page 2, do you see there's a</p> <p>16 letter from S&P Investment Group to Avellino & Bienes?</p> <p>17 A Yes.</p> <p>18 Q And do you see on the letterhead there's a</p> <p>19 gentleman -- there's two gentlemen, Michael Sullivan and</p> <p>20 Gregory Powell?</p> <p>21 A Yes.</p> <p>22 Q Were you aware, prior to the SEC shutting</p> <p>23 Avellino & Bienes down, that an entity called S&P</p> <p>24 Investment Group, of which Michael Sullivan was</p> <p>25 involved, was investing in or sending investors to</p>
<p style="text-align: right;">Page 46</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q So after Avellino & Bienes shut down, in 1992,</p> <p>3 what did you do for work?</p> <p>4 A Nothing.</p> <p>5 Q Nothing. You were not employed?</p> <p>6 A I was retired.</p> <p>7 Q And at that point in time, was all your money</p> <p>8 invested in Madoff?</p> <p>9 A I would say the major portion.</p> <p>10 Q Okay. How old were you when you retired?</p> <p>11 A Late 40s.</p> <p>12 Q Okay. Okay. Let's go now to what's been --</p> <p>13 so in terms of Mr. Sullivan, when did you become aware</p> <p>14 that Mr. Sullivan -- strike that.</p> <p>15 When did you first hear of a company called</p> <p>16 S&P Associates or P&S Associates? Actually, by the way,</p> <p>17 let me back up a little bit. And let's turn to</p> <p>18 Exhibit 3 for a moment. Next one. There you go.</p> <p>19 That's seven. I guess it's out of order.</p> <p>20 THE WITNESS: Do you want to help me?</p> <p>21 MR. SAMUELS: Yeah.</p> <p>22 THE WITNESS: Thank you, sir.</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q Here we go. Okay.</p> <p>25 So I just want to show you Exhibit 3 for a</p>	<p style="text-align: right;">Page 48</p> <p>1 Avellino & Bienes?</p> <p>2 A I was not aware.</p> <p>3 Q Okay. So you're saying now, the first time</p> <p>4 you met Mr. Sullivan was not through his work or</p> <p>5 investing in Avellino & Bienes, but when he was retained</p> <p>6 to assist you in tax issues?</p> <p>7 (At 11:08 a.m., Mr. Messana entered the</p> <p>8 proceedings.)</p> <p>9 A That would be a correct statement.</p> <p>10 Q Okay. All right. Well, now's a good time for</p> <p>11 a break, so.</p> <p>12 VIDEOGRAPHER: Off the record at 11:09 a.m.</p> <p>13 (Thereupon, a recess was taken from 11:09 a.m.</p> <p>14 to 11:18 a.m.)</p> <p>15 VIDEOGRAPHER: Back on the record at</p> <p>16 11:18 a.m.</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q Mr. Bienes, I want to show you what's been</p> <p>19 marked as Exhibit 31, which is a letter that S&P</p> <p>20 Associates, care of Sullivan and Powell -- you</p> <p>21 understood that S&P Associates -- you understood S&P and</p> <p>22 P&S to be entities that were investing people's money in</p> <p>23 Madoff, correct?</p> <p>24 A If you say so, yes.</p> <p>25 Q It's not if I say so, sir, it's I'm asking you</p>

<p style="text-align: right;">Page 49</p> <p>1 a question. Don't assume that what I'm saying is true. 2 You received a lot of money from this organization. If 3 you want to say, if I say so, and you want to tell the 4 jury you're basing it on what I say so, that's fine. If 5 you want to answer the question I ask, that's what 6 you're here to do, okay? 7 MR. ETRA: Keep your voice down and don't 8 lecture my client. Just ask questions and he'll 9 answer them. 10 MR. SAMUELS: I'm asking -- he's asking me if 11 I say so, and I'm responding to him and telling 12 him -- 13 MR. ETRA: Respond without lecturing. 14 BY MR. SAMUELS: 15 Q So -- so here's the issue, Mr. Bienes, do you 16 understand how it works today? It's not what I say. 17 I'm not under oath. At the beginning of this deposition 18 I reminded you that you're here to testify truthfully, 19 as though you're in front of a judge and a jury. Are 20 you going to tell me that you do not know whether or not 21 S&P and P&S invested in Madoff? Is that your testimony, 22 sir? 23 MR. ETRA: Objection. 24 THE WITNESS: I do not know if they -- 25</p>	<p style="text-align: right;">Page 51</p> <p>1 from -- 2 A From -- 3 Q -- to allow you to guess that S&P and P&S were 4 investing people's money in Madoff? 5 A I can't give you a specific answer. I don't 6 know. 7 Q You don't know where you got that information? 8 A No. 9 Q Okay. 10 A Just generally understood it. 11 Q Okay. And what are you basing that 12 understanding on? 13 A I don't understand you now. 14 Q You said you generally understood that S&P and 15 P&S were investing people's money in Madoff. Where did 16 you get that understanding from? 17 A I don't know. I can't recollect anyone 18 telling me. 19 Q Okay. All right. So let's look at what's 20 been marked as Exhibit 31, which is a letter from Fred 21 Zittel to S&P Associates. Do you know Fred Zittel? 22 A No, I do not. 23 Q Okay. So this letter -- let's read it. It 24 says: "In a talk with a good friend, who is a relative 25 of Michael and Dianne Bienes, concerning the effect of</p>
<p style="text-align: right;">Page 50</p> <p>1 BY MR. SAMUELS: 2 Q Here's -- do you know whether or not S&P 3 invested people's money in Madoff? 4 A I have no firsthand knowledge. 5 Q So you don't know, sir? 6 A I don't know if they did, no. 7 Q Okay. And how about P&S? Do you know if P&S 8 invested people's money in Madoff? 9 A That would be the same answer. 10 Q You do not know, is your answer? 11 A I don't know, no. 12 Q What do you believe that they did with 13 people's money? 14 A Invested. 15 Q Invested where, sir? 16 A If you want me to guess, you know, I would 17 say -- if you want me to guess. 18 Q I would like you to guess, sir, yes. What is 19 your guess? 20 A I would think Madoff. 21 Q You would? 22 A Yeah. 23 Q And what are you basing that on? 24 A Just my general knowledge. 25 Q And where did you obtain the general knowledge</p>	<p style="text-align: right;">Page 52</p> <p>1 inflation on our present finances, she mentioned that 2 probably your organization could be helpful in investing 3 some of our CDs. I suppose if you have a brochure, all 4 of my questions could be answered. If so, would you 5 kindly send me one. 6 "I am mainly concerned to know if there is a 7 specific amount I must invest and if there is a minimum. 8 Once I have made an investment, can I add or withdraw 9 thereto or therefrom? Your cooperation in this matter 10 would be greatly appreciated." Do you see that? 11 A Yes. 12 Q Fred Zittel. So she got Mr. Sullivan's name, 13 the name of S&P Associates, apparently, from a relative 14 of Michael and Dianne Bienes. Did you ever mention to 15 any of your relatives the fact that S&P or P&S or 16 Michael Sullivan or Mr. Powell were investing people's 17 money? 18 A I can't recollect doing that, no. 19 Q Okay. Do you know if Mr. Zittel ever did 20 invest money? 21 A I don't know Mr. Zittel. 22 MR. SAMUELS: Okay. Let's go now to -- I'm 23 going to mark this as Exhibit 32. 24 (Plaintiffs' Exhibit No. 32 was marked for 25 identification.)</p>

<p style="text-align: right;">Page 53</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q Do you know Benjamin Millman?</p> <p>3 A Never heard of him.</p> <p>4 MR. WOODFIELD: Just a point of reference, is</p> <p>5 this a document that's been produced?</p> <p>6 MR. SAMUELS: I don't know. It doesn't have a</p> <p>7 Bates label on it. I'm not sure if it's been</p> <p>8 produced or not.</p> <p>9 MR. WOODFIELD: What are those numbers in the</p> <p>10 lower left? Is that not something you added or do</p> <p>11 you know what those are?</p> <p>12 MR. SAMUELS: No. Oh, maybe it is. I -- I</p> <p>13 honestly don't know. I'll try to get an answer for</p> <p>14 you.</p> <p>15 MR. ETRA: I don't know either, but the judge</p> <p>16 said in the hearing -- I don't think you were</p> <p>17 present then -- that he only wants documents that</p> <p>18 were produced and used during deposition. So I</p> <p>19 don't want to argue with you about whether this was</p> <p>20 produced or not, but if it wasn't, then it</p> <p>21 shouldn't be used.</p> <p>22 MR. SAMUELS: I'll need to find -- I'll need</p> <p>23 to find --</p> <p>24 MR. ETRA: I don't know if it was or not, but</p> <p>25 I'm objecting, if it's used, but I'm not going to</p>	<p style="text-align: right;">Page 55</p> <p>1 Mr. Millman, a former client of Avellino & Bienes, was</p> <p>2 able to locate P&S Associates or Michael Sullivan?</p> <p>3 A No idea.</p> <p>4 Q Let's turn now to Exhibit 5. Exhibit 5 is a</p> <p>5 bill from Ahearn Jasco & Company to S&P Associates</p> <p>6 General Partnership. In 1994, at this point in time,</p> <p>7 were you and Mr. Avellino, through entities investing --</p> <p>8 and we went through some of them -- at this point in</p> <p>9 time, were you investing in Madoff directly or</p> <p>10 indirectly?</p> <p>11 A '94?</p> <p>12 Q Uh-huh.</p> <p>13 A Yes.</p> <p>14 Q Okay. And were you and Mr. Avellino doing</p> <p>15 that, in some instances, through the same entity?</p> <p>16 A You mean Grosvenor?</p> <p>17 Q Grosvenor would be one, yes.</p> <p>18 A Yes.</p> <p>19 Q Okay. And were you in frequent communication</p> <p>20 with Mr. Avellino through this timeframe?</p> <p>21 A Frequent, no.</p> <p>22 Q Were you social -- did you socialize with</p> <p>23 Mr. Avellino over the years?</p> <p>24 A Very rarely.</p> <p>25 Q You consider him a friend of yours, right?</p>
<p style="text-align: right;">Page 54</p> <p>1 stop the deposition on it if it's --</p> <p>2 MR. SAMUELS: All I can tell you is I will</p> <p>3 try, during a break, to determine whether or not</p> <p>4 this has been produced.</p> <p>5 MR. WEBER: I don't think that's exactly what</p> <p>6 the judge said.</p> <p>7 MR. ETRA: I don't have the transcript in</p> <p>8 front of me. That's my best recollection.</p> <p>9 BY MR. SAMUELS:</p> <p>10 Q All right. So you don't know a Benjamin</p> <p>11 Millman?</p> <p>12 A No, sir.</p> <p>13 Q Okay. So he is saying here in a letter, P&S</p> <p>14 Associates, care of Sullivan and Powell: "I recently</p> <p>15 learned from associate and dear friend, Sam Rosen, of</p> <p>16 the formation of P&S Associates. Previously, I had</p> <p>17 invested in Avellino & Bienes." Do you see that?</p> <p>18 A Yes, sir.</p> <p>19 Q Okay. Do you know who Sam Rosen is?</p> <p>20 A No. No.</p> <p>21 Q Okay. Were you aware that Sam Rosen -- I'm</p> <p>22 sorry. Were you aware that Mr. Millman had previously</p> <p>23 invested in Avellino & Bienes?</p> <p>24 A No.</p> <p>25 Q Okay. And do you know how it is that</p>	<p style="text-align: right;">Page 56</p> <p>1 A I consider him my brother.</p> <p>2 Q Okay. And for how long have you considered</p> <p>3 him your brother?</p> <p>4 A From the first time I laid eyes on him.</p> <p>5 Q Okay. So he's been your brother for decades?</p> <p>6 A Yes, sir.</p> <p>7 Q And you trust him?</p> <p>8 A With my life.</p> <p>9 Q Okay. And let's now go to this invoice. Do</p> <p>10 you know why Mr. Avellino was meeting with Ahearn Jasco</p> <p>11 & Company on behalf of S&P Associates?</p> <p>12 MR. WOODFIELD: Object to the form.</p> <p>13 THE WITNESS: This is the first time I've seen</p> <p>14 this. I have no idea.</p> <p>15 BY MR. SAMUELS:</p> <p>16 Q Do you recall Mr. Avellino discussing -- ever</p> <p>17 discussing with you the fact that S&P and P&S were being</p> <p>18 set up as vehicles to invest in Madoff?</p> <p>19 MR. ETRA: Objection to form.</p> <p>20 THE WITNESS: I do not recollect such a</p> <p>21 conversation.</p> <p>22 BY MR. SAMUELS:</p> <p>23 Q Okay. Do you remember in your TV interview,</p> <p>24 indicating that it was your belief that Mr. Avellino put</p> <p>25 Sullivan and Powell in touch with Bernie Madoff to open</p>

<p style="text-align: right;">Page 57</p> <p>1 up accounts?</p> <p>2 MR. ETRA: Objection.</p> <p>3 THE WITNESS: Did I say that?</p> <p>4 MR. SAMUELS: Yes.</p> <p>5 THE WITNESS: It was belief. If I said it, it</p> <p>6 was belief, not -- not knowledge.</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q So if it was your belief that he did that,</p> <p>9 during a television interview, do you understand now</p> <p>10 that S&P and P&S were investing in Madoff?</p> <p>11 A After the collapse of Madoff I certainly did,</p> <p>12 but not really before.</p> <p>13 Q Okay. And what -- what happened after the</p> <p>14 collapse of Madoff that led you to understand that S&P</p> <p>15 and P&S were investing in Madoff?</p> <p>16 A All of the surrounding events, newspaper</p> <p>17 articles, people. I had to figure once they were so</p> <p>18 involved, it had to be Madoff.</p> <p>19 Q So what people in particular are you referring</p> <p>20 to?</p> <p>21 A None. Just generally. The press.</p> <p>22 Q Okay. So you remember reading articles about</p> <p>23 Sullivan and Powell or S&P? Strike that.</p> <p>24 You remember reading newspaper articles about</p> <p>25 Michael Sullivan or an entity in which he was involved</p>	<p style="text-align: right;">Page 59</p> <p>1 referred?</p> <p>2 A The first one, Professor Marvin Seperson.</p> <p>3 Q And did Professor Marvin Seperson invest with</p> <p>4 Michael or any of his entities?</p> <p>5 A Months after I gave him the recommendation, he</p> <p>6 said to me that he had gone to Sullivan's office with</p> <p>7 his wife and they had made an investment.</p> <p>8 Q Okay. And who's the other person?</p> <p>9 A Sandra Dydo.</p> <p>10 Q And going back to Marvin Seperson, how did you</p> <p>11 know Marvin Seperson?</p> <p>12 A We were high school classmates.</p> <p>13 Q Okay. And Sandra Dydo, how do you know Sandra</p> <p>14 Dydo?</p> <p>15 A She is my ex sister-in-law.</p> <p>16 Q And do you know if she ever invested with</p> <p>17 Michael Sullivan or in any of Michael Sullivan's</p> <p>18 entities?</p> <p>19 A I believe she did.</p> <p>20 Q What did you know of the type of investments</p> <p>21 Michael Sullivan was doing to enable you to recommend</p> <p>22 people to him or his companies?</p> <p>23 A He was, I assumed -- I don't know if it was</p> <p>24 S&P, P&S. He was with Madoff and I was with Madoff, so.</p> <p>25 Q So at the time that you made the</p>
<p style="text-align: right;">Page 58</p> <p>1 with having invested in Madoff?</p> <p>2 A Vaguely. Vaguely.</p> <p>3 Q Okay. Because you -- you said that's how you</p> <p>4 came to understand that S&P and P&S or Sullivan invested</p> <p>5 in Madoff. So you have a vague understanding of seeing</p> <p>6 something in the newspaper? Yes?</p> <p>7 A Yes.</p> <p>8 Q And you said you understood from people.</p> <p>9 Father Kelly talked to you about it?</p> <p>10 A No.</p> <p>11 Q So what people are you referring to?</p> <p>12 A I can't recollect. I just don't. Just the</p> <p>13 whole swirl of events.</p> <p>14 Q So the whole swirl of events after Madoff is</p> <p>15 what led you to believe that S&P and P&S were investing</p> <p>16 in Madoff?</p> <p>17 A More or less, yes. More or less, yes.</p> <p>18 Q Now, do you recall referring any people to</p> <p>19 Michael Sullivan to invest in S&P or P&S?</p> <p>20 A Yes.</p> <p>21 Q And who did you refer to Michael Sullivan to</p> <p>22 invest in S&P or P&S?</p> <p>23 A I referred two people to Michael Sullivan.</p> <p>24 Nothing with P&S and S&P. That had no meaning to me.</p> <p>25 Q Okay. And who were the two people you</p>	<p style="text-align: right;">Page 60</p> <p>1 recommendations to Marvin Seperson and Sandra Dydo --</p> <p>2 A Dydo.</p> <p>3 Q -- Dydo, you were aware that Sullivan and/or</p> <p>4 the entities that he was involved, was investing in</p> <p>5 Madoff?</p> <p>6 A Pretty much, yes.</p> <p>7 Q When did you first become aware of the fact</p> <p>8 that Sullivan, or the entities in which he was operating</p> <p>9 through, were investing in Madoff?</p> <p>10 A Sometime in the 1990s. I think Frank Avellino</p> <p>11 mentioned to me -- and I don't recollect the</p> <p>12 conversation -- that the guys had gone into business and</p> <p>13 were doing what we used to do.</p> <p>14 Q "The guys," being Sullivan and Powell?</p> <p>15 A Yes, sir.</p> <p>16 Q And were you aware that Mr. Avellino had a</p> <p>17 close relationship with Mr. Sullivan?</p> <p>18 MR. ETRA: Objection.</p> <p>19 THE WITNESS: I don't know what you mean by</p> <p>20 "close." I never knew him.</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q What did you know of the relationship between</p> <p>23 Mr. Avellino and Mr. Sullivan?</p> <p>24 A I know they pray at the same church.</p> <p>25 Q Did you know that they went to weekly Bible</p>

<p style="text-align: right;">Page 61</p> <p>1 study sessions together?</p> <p>2 A No, I don't believe so.</p> <p>3 Q Okay. So I asked you earlier about licenses.</p> <p>4 You're not a licensed investment adviser, correct?</p> <p>5 A That is correct.</p> <p>6 Q Okay. I want to ask you the names of some</p> <p>7 people. And you can let me know if you know who they</p> <p>8 are, okay?</p> <p>9 A Yes, sir.</p> <p>10 Q Vincent T. Kelly?</p> <p>11 A Yes.</p> <p>12 Q And who's Vincent T. Kelly?</p> <p>13 A Vincent T. Kelly is Monsignor Kelly, a Roman</p> <p>14 Catholic priest.</p> <p>15 Q And what church is he a priest at?</p> <p>16 A I believe he is pastor of St. John the Baptist</p> <p>17 Roman Catholic church, in Fort Lauderdale.</p> <p>18 Q Okay. And are you a member of that</p> <p>19 congregation?</p> <p>20 A We were.</p> <p>21 Q Okay. And for what years were you a member of</p> <p>22 that congregation?</p> <p>23 A Best estimate?</p> <p>24 Q Yeah.</p> <p>25 A Early 1980s to about 2010 or '11.</p>	<p style="text-align: right;">Page 63</p> <p>1 did, you're telling me he would not be telling the</p> <p>2 truth?</p> <p>3 A He would be mistaken.</p> <p>4 Q Okay. Do you know how it is that Father Kelly</p> <p>5 came to be an investor in S&P or P&S or Michael --</p> <p>6 through Michael Sullivan?</p> <p>7 A No.</p> <p>8 Q Let me rephrase -- let me rephrase that</p> <p>9 question. Do you know how Father Kelly came to be an</p> <p>10 investor in -- through -- with Michael Sullivan or one</p> <p>11 of his entities?</p> <p>12 A I do not.</p> <p>13 Q Okay. Okay. I'm going to ask you the names</p> <p>14 of some people and -- Sam -- do you know Sam Rosen? I</p> <p>15 may have asked you that.</p> <p>16 A You did. I don't.</p> <p>17 Q Donna Lipworth?</p> <p>18 A No.</p> <p>19 Q Margaret Lipworth?</p> <p>20 A That's a name I remember from years and years</p> <p>21 ago. I may have met her socially, once or twice.</p> <p>22 Q Did you ever discuss with her at all anything</p> <p>23 having to do with Bernie Madoff or investments in</p> <p>24 Madoff?</p> <p>25 A Absolutely not.</p>
<p style="text-align: right;">Page 62</p> <p>1 Q And what caused -- and so you no longer go to</p> <p>2 that church?</p> <p>3 A That is correct.</p> <p>4 Q And what caused you to stop going to that</p> <p>5 church after all those years?</p> <p>6 A Various reasons. Personal reasons.</p> <p>7 Q And were -- did any of those personal reasons</p> <p>8 have to do with the fact that members of that church had</p> <p>9 invested in Madoff, through your recommendation?</p> <p>10 MR. ETRA: Objection.</p> <p>11 THE WITNESS: Absolutely not.</p> <p>12 BY MR. SAMUELS:</p> <p>13 Q Did any of those personal reasons have to do</p> <p>14 with the fact that a number of the members of the church</p> <p>15 lost money in Madoff?</p> <p>16 A Absolutely not.</p> <p>17 Q You're aware, are you not, that Father Kelly</p> <p>18 invested in Madoff through Sullivan or one of Sullivan's</p> <p>19 entities, correct?</p> <p>20 A I -- I am aware of it, yes.</p> <p>21 Q And are you the person who suggested to Father</p> <p>22 Kelly that he invest with Michael Sullivan or one of his</p> <p>23 entities?</p> <p>24 A Absolutely, I did not.</p> <p>25 Q And if he were to say, under oath, that you</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Do you know a Margaret or Stephen Mariaro</p> <p>2 (phonetic)?</p> <p>3 A No.</p> <p>4 Q Do you know Teresa Mataragus (phonetic)?</p> <p>5 A No.</p> <p>6 Q Lewis and Adele McVellin -- I'm sorry, McVain</p> <p>7 (phonetic)?</p> <p>8 MR. ETRA: Again. I'm sorry.</p> <p>9 MR. SAMUELS: McVain.</p> <p>10 MR. ETRA: And you said Adele McVain.</p> <p>11 BY MR. SAMUELS:</p> <p>12 Q Lewis and Adele, do you know either of them?</p> <p>13 A No, sir.</p> <p>14 Q How about Greg or Beth Powell?</p> <p>15 A I met Greg Powell once.</p> <p>16 Q Where do you recall meeting him?</p> <p>17 A In his office.</p> <p>18 Q When?</p> <p>19 A When I went there to meet with Sullivan and</p> <p>20 Powell, RE: the upcoming income tax audit, to meet them.</p> <p>21 Q Okay. Did you ever discuss with Greg or Beth</p> <p>22 Powell investing in Madoff or Bernie Madoff at all?</p> <p>23 A No.</p> <p>24 Q Do you know Edith Rosen?</p> <p>25 A No.</p>

<p style="text-align: right;">Page 65</p> <p>1 Q Gertrude Gordon?</p> <p>2 A No.</p> <p>3 Q Have you ever heard of a foundation called</p> <p>4 Kelco Foundation?</p> <p>5 A Yes.</p> <p>6 Q And what is Kelco Foundation?</p> <p>7 A I don't know.</p> <p>8 Q You've heard of it. Do you know anything --</p> <p>9 do you know anyone who's involved in it or what it does?</p> <p>10 A I heard it from Monsignor Kelly.</p> <p>11 Q And what do you know about it?</p> <p>12 A Really, nothing.</p> <p>13 Q Have you ever directly or indirectly made any</p> <p>14 contribution to the Kelco Foundation?</p> <p>15 A No.</p> <p>16 Q Johnny Mulchin (phonetic), have you ever met</p> <p>17 him?</p> <p>18 A Johnny Mulchin?</p> <p>19 Q Correct.</p> <p>20 A No.</p> <p>21 Q Nicolas or Marry O'Gorman (phonetic)?</p> <p>22 A O'Gorman. No.</p> <p>23 Q Joseph Spazio (phonetic)?</p> <p>24 A No.</p> <p>25 Q St. Thomas Aquinas Trust.</p>	<p style="text-align: right;">Page 67</p> <p>1 A How did my name come on?</p> <p>2 Q Yeah. Who suggested it? Was it because you</p> <p>3 donated money? Did somebody make a recommendation? How</p> <p>4 did it happen?</p> <p>5 A I would assume it was because I donated money.</p> <p>6 Q Okay. And -- okay. And have you had any</p> <p>7 discussions with anyone at St. Thomas Aquinas High</p> <p>8 School, about the fact that the money that you donated</p> <p>9 to put on the Bienes Center was money that you received</p> <p>10 from a Ponzi scheme in which others have lost millions</p> <p>11 and millions of dollars?</p> <p>12 A I don't understand your question.</p> <p>13 Q Yeah. The money that you had put on -- to</p> <p>14 give to St. Thomas Aquinas High School, came from the</p> <p>15 money you made through investments in Bernie Madoff,</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q Okay. And you're aware that Bernie Madoff was</p> <p>19 running a Ponzi scheme?</p> <p>20 A I was aware that Bernie Madoff was running a</p> <p>21 Ponzi scheme the day Bernie Madoff announced to the</p> <p>22 world that he was running a Ponzi scheme.</p> <p>23 Q And you didn't know before that?</p> <p>24 A Absolutely not.</p> <p>25 Q Okay. And over the years, how much money did</p>
<p style="text-align: right;">Page 66</p> <p>1 A Trust?</p> <p>2 Q Trust.</p> <p>3 A No.</p> <p>4 Q Over the years, is it fair to say that you've</p> <p>5 donated substantial sums of money to various Catholic</p> <p>6 charities and organizations?</p> <p>7 A It would be fair to say that.</p> <p>8 Q Okay. And is there currently -- is there</p> <p>9 something called the Bienes Center for the Arts at</p> <p>10 St. Thomas Aquinas High School?</p> <p>11 A Yes, there is.</p> <p>12 Q And is that named for you and Dianne Bienes?</p> <p>13 A Yes.</p> <p>14 Q Okay. Have you ever notified the high school</p> <p>15 that the money that you used to receive -- to -- strike</p> <p>16 that.</p> <p>17 Did you donate money to St. Thomas Aquinas</p> <p>18 High School in order to have your name --</p> <p>19 MR. ETRA: Objection.</p> <p>20 MR. SAMUELS: -- on the Arts Center? Strike</p> <p>21 that.</p> <p>22 BY MR. SAMUELS:</p> <p>23 Q How did it come that the -- how -- how did</p> <p>24 your name come on to the Center for the Arts of</p> <p>25 St. Thomas Aquinas High School?</p>	<p style="text-align: right;">Page 68</p> <p>1 you make from your investments with Bernie Madoff?</p> <p>2 A I have no idea.</p> <p>3 Q Hundreds of millions of dollars?</p> <p>4 A That would seem very high.</p> <p>5 Q Okay. So you understand that there were a lot</p> <p>6 of innocent people who lost a lot of money in the Ponzi</p> <p>7 scheme, correct?</p> <p>8 A Take out the word "innocent," and I'll say</p> <p>9 yes.</p> <p>10 Q Okay. So you understand a lot of people lost</p> <p>11 money in the Bernie Madoff Ponzi scheme?</p> <p>12 A Including us.</p> <p>13 Q Okay. So your losses were not as a result of</p> <p>14 your being innocent?</p> <p>15 MR. ETRA: Objection.</p> <p>16 MR. SAMUELS: You said "take out the word</p> <p>17 'innocent.'"</p> <p>18 I said, "a lot of innocent people." You don't</p> <p>19 believe a lot of innocent people lost money --</p> <p>20 THE WITNESS: What do you mean by "innocent"?</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q People who engaged in no wrongdoing.</p> <p>23 A Who did what?</p> <p>24 Q Who didn't do anything wrong, other than</p> <p>25 invest money with Bernie Madoff.</p>

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1 A That's us.
 2 Q So your claim is that you did nothing wrong
 3 and you're just a victim of the Ponzi scheme?
 4 A Yes.
 5 Q Okay. How much money did you -- did you have
 6 directly or indirectly with Bernie Madoff at the time
 7 that the Ponzi -- it became known there was a Ponzi
 8 scheme?
 9 A I don't remember or recollect.
 10 Q Approximate amount?
 11 A Multi millions.
 12 Q Multi millions could be two million or it
 13 could be a hundred million. Could you give me a better
 14 estimate, please?
 15 A I will try, but it's only an estimate. If you
 16 go in around 50 to 60, you'd be there. It could be a
 17 little more or less.
 18 Q There is also the Michael and Dianne Bienes
 19 Comprehensive Care Center at the Holy Cross Hospital
 20 named after you, correct?
 21 A Correct.
 22 Q And is that named after you and your wife, as
 23 a result of charitable contributions made to the
 24 hospital?
 25 A Yes.

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1 Q Okay. And have you had any discussions with
 2 anyone at Holy Cross at all, about the fact that the
 3 money that you donated to the Comprehensive Care Center
 4 at Holy Cross Hospital, came from money that you
 5 received from a Ponzi scheme in which many people lost
 6 millions and millions of dollars?
 7 MR. ETRA: Objection.
 8 THE WITNESS: No.
 9 BY MR. SAMUELS:
 10 Q Now, is it true that you donated money to the
 11 Broward Center for the Performing Arts?
 12 A Yes.
 13 Q And is your name on the wall or displayed at
 14 the Broward Center for Performing Arts?
 15 A I believe it is.
 16 Q Okay. You and your wife?
 17 A I believe it is.
 18 Q And again, that money came from your making
 19 money on investments in Bernie Madoff, correct?
 20 A Yes.
 21 Q Okay. And did you ever have any discussions
 22 with anyone at the Broward Center for Performing Arts,
 23 to tell them that the money that you provided to them
 24 came from money that you made on a Ponzi scheme, in
 25 which people lost millions and millions of dollars?

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1 A No.
 2 Q Okay. Let's continue on with some names here.
 3 Nicolas or Mary O'Gorman, do you know who they are?
 4 MR. WOODFIELD: Asked and answered.
 5 MR. SAMUELS: Okay. Thank you. Joseph --
 6 MR. WOODFIELD: You did him, too.
 7 MR. SAMUELS: Okay. I got it. I got it. I'm
 8 in my place.
 9 BY MR. SAMUELS:
 10 Q Joseph T. Stash (phonetic). Do you know who
 11 that is?
 12 A No.
 13 Q Ellen Ziffer?
 14 A Elaine Ziffer?
 15 Q Elaine Ziffer. Thank you.
 16 A Yes.
 17 Q And how do you know Elaine Ziffer?
 18 A We were, at one time, friends -- friendly and
 19 friends with her.
 20 Q Socially?
 21 A Socially, yes.
 22 Q Okay. And during what time period?
 23 A The '90s.
 24 Q Okay. And was Ms. Ziffer directly or
 25 indirectly an investor in Avellino & Bienes?

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1 A I don't know.
 2 Q Okay. Did -- did you refer Ms. Ziffer to
 3 Michael Sullivan or any of his entities, to enable her
 4 to invest in Madoff?
 5 A No.
 6 Q Did you ever, at any time, become aware of the
 7 fact that Ms. Ziffer, directly or indirectly, invested
 8 in Michael Sullivan or one of his entities?
 9 A No.
 10 Q James and Valerie Judd, do you know either of
 11 them?
 12 A Yes.
 13 Q And how -- do you know them both?
 14 A Yes.
 15 Q And how do you know them?
 16 A We were involved, at one time, with the then
 17 Florida Philharmonic Orchestra.
 18 Q During what time were you involved in the
 19 Florida Philharmonic Orchestra?
 20 A Again, I can't -- like the '90s or something.
 21 I don't know. I just don't.
 22 Q Okay. Do you recall referring either Michael
 23 or Valerie Judd to Michael Sullivan to invest?
 24 A I never did.
 25 MR. SAMUELS: Okay. Let's mark this as

<p style="text-align: right;">Page 73</p> <p>1 exhibit --</p> <p>2 COURT REPORTER: Thirty-three.</p> <p>3 MR. SAMUELS: Thirty-three.</p> <p>4 (Plaintiffs' Exhibit No. 33 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. SAMUELS:</p> <p>7 Q Okay. I'm showing you Defendant James Judd's</p> <p>8 notice of serving objections and answers to plaintiffs'</p> <p>9 first set of interrogatories, in the case of Philip J.</p> <p>10 Von Kahle versus Jannet A. Hooker charitable Trust.</p> <p>11 And I'd like to show you first on page 4,</p> <p>12 where James Judd indicates he had numerous conversations</p> <p>13 with you regarding the Florida Philharmonic, as you are</p> <p>14 on one of the boards. One conversation, the Judds were</p> <p>15 family and could become investors in S&P, although you</p> <p>16 would not normally qualify.</p> <p>17 Do you recall having a discussion -- and does</p> <p>18 this refresh your recollection in any way -- with James</p> <p>19 Judd, indicating to him that he could invest in S&P or</p> <p>20 P&S or one -- or through Michael Sullivan?</p> <p>21 A I never did.</p> <p>22 Q So your -- what you're saying here is that</p> <p>23 James Judd's recollection and sworn testimony is</p> <p>24 incorrect?</p> <p>25 MR. ETRA: Objection.</p>	<p style="text-align: right;">Page 75</p> <p>1 MR. ETRA: Don't -- don't tell him what we --</p> <p>2 I don't want you -- don't talk about your</p> <p>3 discussions with me, if that's what you're</p> <p>4 referring to. I mean, you could reference that it</p> <p>5 would relate to discussions with counsel, but don't</p> <p>6 discuss --</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q I'm not interested in hearing about your</p> <p>9 discussions with counsel. But you're indicating you</p> <p>10 first found out that they were -- that they had invested</p> <p>11 with Michael Sullivan when you learned of their</p> <p>12 depositions.</p> <p>13 A I'm not sure when I learned, but I knew from</p> <p>14 legal stuff that they were involved.</p> <p>15 Q Okay.</p> <p>16 A Don't ask me how.</p> <p>17 Q Did they ever ask you to assist them in paying</p> <p>18 money back to S&P or P&S that they owed to the</p> <p>19 partnership?</p> <p>20 A No.</p> <p>21 Q After Madoff -- after his announcement that</p> <p>22 Madoff was a Ponzi scheme, did they ever discuss with</p> <p>23 you the fact that they were invested in Madoff or lost</p> <p>24 money in Madoff?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 74</p> <p>1 THE WITNESS: I am saying I never did.</p> <p>2 BY MR. SAMUELS:</p> <p>3 Q Okay. Let's go to the next page.</p> <p>4 "Question: State all the facts and/or</p> <p>5 circumstances that led to any investment by you and</p> <p>6 S&P."</p> <p>7 MR. WOODFIELD: What number is that?</p> <p>8 MR. SAMUELS: On page 5, question 5.</p> <p>9 MR. WOODFIELD: Thanks.</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q "Answer: See answer to interrogatory four as</p> <p>12 to recommendation of Michael Bienes, which I relayed to</p> <p>13 Valerie. Other board members spoke highly of Michael</p> <p>14 Bienes' recommendations." Do you see that?</p> <p>15 A Yes, I do.</p> <p>16 Q So does this refresh your recollection of you</p> <p>17 invest -- you recommending to -- to James Judd that he</p> <p>18 invest with Michael Sullivan or one of his entities?</p> <p>19 A I never did, so it would not refresh anything.</p> <p>20 Q Did you ever become aware of the fact that</p> <p>21 Valerie and James Judd invested with Michael Sullivan or</p> <p>22 his entities?</p> <p>23 A Yes.</p> <p>24 Q And when did you first become aware of that?</p> <p>25 A When he was deposed by you and stuff.</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. SAMUELS: Okay. What number?</p> <p>2 MR. WOODFIELD: Thirty-four.</p> <p>3 MR. SAMUELS: Thirty-four. All right.</p> <p>4 (Plaintiffs' Exhibit No. 34 was marked for</p> <p>5 identification.)</p> <p>6 (Discussion held off the record.)</p> <p>7 VIDEOGRAPHER: We need a break in about five</p> <p>8 minutes.</p> <p>9 MR. SAMUELS: What did you say?</p> <p>10 MR. WEBER: He said he'll need to break.</p> <p>11 VIDEOGRAPHER: I'm going to need to break in</p> <p>12 about five minutes.</p> <p>13 MR. SAMUELS: That may be a good time for</p> <p>14 lunch, anyway, so.</p> <p>15 BY MR. SAMUELS:</p> <p>16 Q Okay. I'd like to show you what's been marked</p> <p>17 as Exhibit 4, which are the -- Valerie Judd's answers to</p> <p>18 interrogatories. And if we can go now to page four. At</p> <p>19 the bottom. Valerie Judd indicates as to you, you had</p> <p>20 numerous conversations regarding the Philharmonic in our</p> <p>21 wedding. Do you recall having conversation -- were you</p> <p>22 at their wedding?</p> <p>23 A Yes.</p> <p>24 Q Okay. So you were friends with them?</p> <p>25 A At one time, yes.</p>

<p style="text-align: right;">Page 77</p> <p>1 Q Okay. And did you go to other social events 2 with them, more charitable events with them? 3 A Yes. 4 Q How frequently? 5 A Over the years, numerous. 6 Q Okay. And over the years, let's talk about 7 the 1990s and up until 2008, when Bernie Madoff became a 8 Ponzi scheme publicly, did you have charitable events 9 and fundraisers at your home? 10 A Yes. 11 Q How often? Frequently? 12 A "Frequently" is a broad term. Let's say 13 numerous over the years. 14 Q You also attended numerous charitable events 15 around the community over the years? 16 A Yes. 17 Q In particular, in relation to St. Thomas and 18 various Catholic charities and the Philharmonic and the 19 Broward County Performing Arts Center and Holy Cross, 20 among others? 21 A Yes. 22 Q Okay. Are there any other charities in which 23 you are actively involved, not just writing a check but 24 actively involved, that we haven't gone over yet? 25 MR. ETRA: Objection.</p>	<p style="text-align: right;">Page 79</p> <p>1 Julian Kreeger? 2 A I've heard the name. 3 Q Have you had any discussions with him 4 recently? 5 A No. 6 Q Okay. So you just heard the name? You 7 don't -- you're saying you don't know him? 8 A Personally? 9 Q Uh-huh. 10 A No. 11 Q Okay. We need to change a tape and it's ten 12 after 12 and we have food here. All those things 13 combined, it's probably a good time to take a lunch 14 break, okay? Does that work with everybody? 15 MR. ETRA: Yes. 16 MR. SAMUELS: Okay. 17 VIDEOGRAPHER: We are off the record at 12:08 18 p.m. 19 (Thereupon, a recess was taken from 12:08 p.m. 20 to 12:52 p.m.) 21 (Proceedings continued on Volume 2.) 22 23 24 25</p>
<p style="text-align: right;">Page 78</p> <p>1 THE WITNESS: Miami City Ballet. 2 MR. SAMUELS: Okay. 3 THE WITNESS: Florida Grand Opera, Broward 4 County Public Library, African American Research 5 and Cultural Center, Archbishop McCarthy High 6 School, Pine Crest School. That's all I can -- 7 MR. SAMUELS: Okay. 8 THE WITNESS: -- reasonably give you now. 9 BY MR. SAMUELS: 10 Q Going back to the answers to interrogatories 11 and before we take a break, Valerie Judd, number five, 12 indicates the same thing that her husband indicated in 13 his answers to interrogatories. "State all facts and 14 circumstances that led to any investment by you in S&P." 15 And the answer is: "Investment was made when 16 James told me of Michael Bienes' advice." 17 A Wait a minute. Where are you, sir? 18 Q Number five on the very top of page 5. 19 A Yeah. "Investment was made when James told 20 me" -- yeah, I see that. 21 Q Okay. Do you agree with that statement of 22 Valerie Judd, that they invested with Michael Sullivan 23 or one of his entities based upon your advice? 24 A Not at all. 25 Q Okay. Do you know a gentleman by the name of</p>	<p style="text-align: right;">Page 80</p> <p>1 2 CERTIFICATE OF OATH 3 THE STATE OF FLORIDA 4 COUNTY OF BROWARD 5 6 7 I, the undersigned authority, certify that 8 MICHAEL BIENES personally appeared before me and was 9 duly sworn. 10 11 Dated this 10th day of September, 2015. 12 13 14 15 16 17 Gabrielle Cardarelli, RPR, FPR 18 Notary Public - State of Florida 19 20 21 22 23 24 25</p>

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C E R T I F I C A T E
THE STATE OF FLORIDA
COUNTY OF BROWARD

I, Gabrielle Cardarelli, Florida Professional Reporter and Notary Public in and for the State of Florida at large, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

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

Dated this 25th day of September, 2015.

 Gabrielle Cardarelli, RPR, FPR

DEPOSITION ERRATA SHEET

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MICHAEL BIENES

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DEPOSITION ERRATA SHEET

Our Assignment No. 22282

Case Caption: P&S Associates v. Michael D. Sullivan

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20____.

 MICHAEL BIENES

DEPOSITION ERRATA SHEET

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SIGNATURE: _____ DATE: _____

MICHAEL BIENES

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1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
2 IN AND FOR BROWARD COUNTY, FLORIDA
3 CASE No.12-034123(07)

4 P&S ASSOCIATES, GENERAL PARTNERSHIP,
5 a Florida limited partnership, et al.,
6 Plaintiffs,
7 -vs-

8 MICHAEL D. SULLIVAN, et al.,
9 Defendants.

10 DEPOSITION OF MICHAEL BIENES
11 VIDEOTAPED

12 VOLUME II
13 PAGES 85 - 215

14 Thursday, September 10, 2015
15 12:52 p.m. - 4:50 p.m.

16 Berger Singerman LLP
17 One Town Center Road
18 Suite 301
19 Boca Raton, Florida 33486

20 Reported By:
21 Gabrielle Cardarelli, FPR, RPR
22 Notary Public, State of Florida
23 Esquire Deposition Services
24 Job #22282
25

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1 APPEARANCES:

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Phone: (561) 627-8100

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1 ALSO PRESENT:
2 BRIAN TERRINONI - VIDEOGRAPHER
3 PHIL VON KAHLE
4 FRANK AVELLINO
5
6
7
8 - - -

9 E X H I B I T S
10 - - -

12 NUMBER	13 DESCRIPTION	14 PAGE
15 PLAINTIFFS' EX. 35	16 LETTER	17 11
18 PLAINTIFFS' EX. 36	19 PAYMENTS ON BEHALF OF	20 14
	21 AVELLINO AND BIENES	
22 PLAINTIFFS' EX. 37	23 PBS.ORG PRINTOUT	24 89
25 PLAINTIFFS' EX. 38	ARTICLE	121

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1 P R O C E E D I N G S

2 - - -
3 Deposition taken before Gabrielle Cardarelli,
4 Registered Professional Reporter and Notary Public in
5 and for the State of Florida at Large, in the above
6 cause.

7 - - -
8 (Proceedings continued from Volume I.)

9 VIDEOGRAPHER: Beginning disk number two. We
10 are back on the record at 12:52 p.m.

11 BY MR. SAMUELS:

12 Q Good afternoon. I want to go back and talk
13 about the Judd's interrogatory answers, where they say
14 that you referred him to Sullivan or S&P and P&S. Is it
15 possible that you're mistaken about that, when you say
16 that you didn't refer them?

17 A Anything is possible, but I'm sure in this
18 case I never did.

19 Q In terms of the Judds, you mentioned you were
20 at their wedding; is that right?

21 A Yes. I attended their wedding.

22 Q And did you, in fact, walk Valerie Judd down
23 the aisle at her wedding?

24 A I don't remember doing that.

25 Q Do you recall giving the keys to your Ferrari

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1 to James Judd on occasion, to allow him to drive it?

2 A Yes.

3 Q And do you recall James Judd playing piano at
4 your house at parties?

5 A As an entertainer?

6 Q Do you recall him playing the piano at your
7 house, at charitable functions?

8 A I don't recall it specifically, no.

9 Q And if Mr. Judd were to say that he, in fact,
10 did play the piano at your house during charitable
11 functions, would you agree that he could be right about
12 that?

13 A If he said so. And since I don't recollect,
14 of course he could be right.

15 Q Okay. Now I want to talk to you about S&P and
16 P&S. You -- well, actually, before I do that, do you
17 know someone by the name of Vonia Duarte?

18 MR. ETRA: I'm sorry. Could you spell that or
19 something?

20 MR. SAMUELS: V-O-N-I-A Duarte.

21 THE WITNESS: No.

22 BY MR. SAMUELS:

23 Q You don't know Ms. Duarte?

24 A I don't know Duarte.

25 Q Is she maybe your housekeeper or --

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1 A Never had a housekeeper by that name.

2 Q Okay. So you don't recall referring
3 Ms. Duarte in to -- in to -- over to Mr. Sullivan?

4 A I don't recall Ms. Duarte.

5 Q Do you keep an e-mail account?

6 A Yes, sir.

7 Q And what is your e-mail address?

8 A Michaelbienes@AOL.com.

9 Q And how long have you maintained that e-mail
10 address?

11 A I got my first computer in '07. And I -- we
12 signed up for AOL and I've had that address ever since.

13 Q Okay. And do you maintain all of your
14 e-mails?

15 A Maintain?

16 Q Yeah. Do you keep them? Do you keep your
17 e-mails?

18 A No.

19 Q Or do you have a practice of deleting them?

20 A I delete them.

21 Q How often do you delete them?

22 A Sometimes daily.

23 Q Okay. And if you -- have you been deleting
24 e-mails routinely and sometimes daily, since 19 -- since
25 2007?

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1 A Yes.

2 Q Okay. And you maintain that through today?

3 A Yes.

4 Q Okay. Do you share that e-mail address with
5 anybody or is it just yours?

6 A It's just mine.

7 Q Okay. And does your wife have an e-mail
8 address?

9 A Yes.

10 Q And what is her e-mail address?

11 A Dmbienes@AOL.com.

12 Q And what -- how long have you had your current
13 computer?

14 A I don't have a computer anymore. I mean, I
15 have one but it's in the closet.

16 Q Do you not use a computer?

17 A I have a tablet.

18 Q Oh, okay.

19 A iPad.

20 Q Okay. And how long have you had your iPad?

21 A Oh, say about a little over three years,
22 estimated.

23 Q Okay. And the hard drive for your computer is
24 in your closet, as well?

25 A The computer is in the closet.

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1 Q Right. Okay. Just -- all right. And the
2 computer in the closet, is it a desktop or a laptop?

3 A Laptop.

4 Q Okay. And what make is it, do you know?

5 A I think Sony.

6 Q In terms of -- in terms of your being -- of
7 your involvement in the church, I understand you were
8 knighted by the Catholic church; is that right?

9 A I received a knighthood from the Holy Father.

10 Q And when was that?

11 A There were three ranks: The first rank, the
12 first time, I can't remember the year. It could have
13 been in the 1990s, but I'm very vague on the date and
14 time.

15 Q And were you born Catholic or did you convert
16 to Catholicism?

17 A I converted.

18 Q And when did you convert?

19 A I believe 1983. That's -- I think.

20 Q Okay. And you said you were -- you talked
21 about a knighting. Were there three stages in which you
22 were involved?

23 A Yes, sir.

24 Q And you said the first one was in the 1990s --
25 was very vague. Tell me about the other stages.

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1 A Same thing. You get a letter, something; you
 2 go to the cathedral and you are elevated. That's the
 3 second stage.
 4 Q And when was that?
 5 A A few years after the first.
 6 Q Okay. And what's the third stage?
 7 A Third stage is called "con placa" (phonetic),
 8 which means, "with star."
 9 Q And when was that?
 10 A A few short years after the second stage.
 11 Q Okay.
 12 A I'm sorry about this. I just can't --
 13 Q And was Father Vincent Kelly with you during
 14 these three stages?
 15 A The inauguration, you mean? The installation?
 16 Q You mentioned there were three stages.
 17 A Yeah, knighthood was --
 18 Q Was he with you at all three of those stages?
 19 A I don't understand the question.
 20 Q Okay. You mentioned that something took place
 21 in the 1990s. Was that an actual ceremony?
 22 A Yes, sir.
 23 Q Was it at St. John the Baptist Church?
 24 A No.
 25 Q Okay. Was Father Kelly present when that

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1 happened?
 2 A I vaguely recollect he was, yes.
 3 Q Okay. And you said there was a second stage,
 4 where you were elevated. Was Father Kelly with you
 5 then?
 6 A I vaguely recollect he was.
 7 Q Okay. And you said there was a third stage,
 8 when you got a star?
 9 A Con placa.
 10 Q A con placa. Was Father Kelly with you then?
 11 A I vaguely recollect he was, yes.
 12 Q And during this entire process, is it fair to
 13 say that Father Vincent Kelly is your spiritual adviser?
 14 A That would be a fair statement.
 15 Q Okay. And did anything of this involve going
 16 to the Vatican?
 17 A No.
 18 Q Have you ever been received -- have you ever
 19 been to the Vatican?
 20 A Years ago, outside as a tourist.
 21 Q Okay. You were never -- you've never been
 22 received at the Vatican as a guest, in light of your
 23 being knighted?
 24 A No.
 25 Q Okay.

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1 MR. SAMUELS: What number are we on?
 2 COURT REPORTER: Thirty-five.
 3 MR. SAMUELS: We'll mark this as Exhibit 35.
 4 (Plaintiffs' Exhibit No. 35 was marked for
 5 identification.)
 6 BY MR. SAMUELS:
 7 Q Okay. I want to show you what's been marked
 8 as Exhibit 35. And the first thing I want to ask you
 9 is, do you know who Mike McCarthy is?
 10 A No.
 11 Q Okay. Mr. McCarthy writes a letter saying
 12 that last night, Father Vincent Kelly called to say that
 13 there's a new group doing the same thing --
 14 MR. ETRA: The witness is reading the letter.
 15 Could you just let -- give him a minute --
 16 MR. SAMUELS: That's fine.
 17 MR. ETRA: -- to finish.
 18 MR. SAMUELS: Yeah, that's no problem.
 19 MR. ETRA: Thank you.
 20 MR. WOODFIELD: Again, is this a document
 21 that's been previously produced?
 22 MR. SAMUELS: First of all, I'm sorry I did
 23 not check during the break on the last one, like I
 24 mentioned I would. So I owe you a check on that
 25 one and this one.

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1 MR. WOODFIELD: The HG?
 2 MR. WEBER: That one, yeah. HG, that would
 3 have been produced with our production, either E13.
 4 MR. WOODFIELD: Like Friday dump?
 5 MR. WEBER: No, not like Friday dump. On
 6 August 13th.
 7 MR. SAMUELS: We'll get back to -- we'll get
 8 back to you on it. How's that?
 9 MR. WOODFIELD: Fine.
 10 BY MR. SAMUELS:
 11 Q Okay. Have you had a chance to look at this
 12 exhibit?
 13 A Yes, sir.
 14 Q Okay. So this indicates that Father Kelly
 15 called to say there's a new group doing something, the
 16 same as Avellino & Bienes. Was Father Kelly a direct or
 17 indirect investor in Avellino & Bienes?
 18 A I believe he may have been.
 19 Q You're not sure?
 20 A I am not sure.
 21 Q Okay. So he goes on to say, "there's a new
 22 group doing something the same as A & Bienes. They work
 23 through Madoff investing people." Do you see that?
 24 A Yes.
 25 Q "And two new people are taking over what is

<p style="text-align: right;">Page 97</p> <p>1 called a limited partnership. Sullivan and Powell. The 2 two are Michael Sullivan and Greg Powell." Do you see 3 that? 4 A Yes. 5 Q Okay. Then it says: "Father Kelly said he is 6 going to use Sullivan and Powell, himself." You got 7 that? 8 A Yes. 9 Q In the letter? Okay. 10 So he's talking about a new group. So your 11 understanding that the new group, working through Madoff 12 and investing people, that the new group, Sullivan and 13 Powell, was in essence taking the place of the old 14 group, Avellino & Bienes, in terms of enabling people to 15 invest in Madoff? 16 MR. ETRA: Objection to form. 17 THE WITNESS: I have no such understanding. 18 BY MR. SAMUELS: 19 Q Okay. So we now have Father Kelly saying he's 20 going to use Sullivan and Powell. Are you the person 21 that, given your relationship with Father Kelly, as well 22 as your relationship with Madoff, are you the person 23 that recommended to Father Kelly that he invest with 24 Michael Sullivan or one of his entities? 25 A Not to my recollection.</p>	<p style="text-align: right;">Page 99</p> <p>1 Q And you recall Mr. Avellino testifying that 2 both you and he received payments from S&P, P&S or 3 Michael Sullivan, correct? 4 MR. ETRA: Objection. 5 THE WITNESS: I recall him saying it. 6 BY MR. SAMUELS: 7 Q Okay. And you recall him indicating that 8 those payments were classified as commissions? 9 A I'm sorry. I don't recall. 10 Q Okay. Do you recall the testimony about 11 commissions or management fees being paid to both you 12 and Mr. Avellino? 13 MR. WOODFIELD: Objection. 14 THE WITNESS: I've heard the term but I don't 15 really recollect. It was a long day. 16 BY MR. SAMUELS: 17 Q No. No. I'm talking about -- you don't 18 recollect yesterday? 19 A Yes. 20 Q There's a lot of testimony about -- I'll go 21 through with you now, as well, about payments request by 22 either commissions or management. Do you remember that? 23 A Yes, of course. 24 Q Okay. And if those fees went to you and 25 Mr. Avellino or entities in which you instructed them to</p>
<p style="text-align: right;">Page 98</p> <p>1 Q Okay. So if Father Kelly were to testify that 2 he learned of Sullivan and his ability to invest in 3 Madoff, through Sullivan or one of Sullivan's entities, 4 and he learned of that from you, you have no reason to 5 dispute that, would you? 6 A If I can't recollect, I can't deny. 7 Q Okay. All right. When did you first become 8 aware of Father Kelly, directly or indirectly, investing 9 with Sullivan or one of Sullivan's entities. 10 A You mean timeframe? 11 Q Yeah. 12 A I have no idea. 13 MR. SAMUELS: What number are we on? 14 COURT REPORTER: Thirty-six. 15 MR. SAMUELS: Exhibit 36. 16 (Plaintiffs' Exhibit No. 36 was marked for 17 identification.) 18 BY MR. SAMUELS: 19 Q So Exhibit 36, the first several pages are, 20 just for the record, identical to what was previously 21 marked as Exhibit 8. And I'd like to go over this 22 Exhibit 36 with you. 23 You were here for Mr. Avellino's deposition 24 yesterday, right? 25 A Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 go to; do you recall that testimony? 2 MR. ETRA: Objection. 3 THE WITNESS: Yes. 4 BY MR. SAMUELS: 5 Q Okay. And you don't -- do you have any reason 6 to believe that Mr. Avellino's testimony in that regard 7 under oath was false? 8 A No. 9 Q So you would agree then that you received 10 payments from S&P or P&S or Michael Sullivan, that would 11 be considered either commissions or management fees, 12 correct? 13 MR. WOODFIELD: Objection. 14 MR. ETRA: Objection. 15 THE WITNESS: Would you state the question 16 again? 17 MR. SAMUELS: Sure. Would you read that back, 18 please? 19 (A portion of the record read by reporter.) 20 MR. WOODFIELD: Objection. 21 MR. ETRA: Same. 22 THE WITNESS: No. Not correct. 23 BY MR. SAMUELS: 24 Q Okay. Let's look at the first page of 25 Exhibit 36. It says: "Payments on behalf of Avellino &</p>

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1 Bienes." Do you see that?
 2 A First --
 3 Q First page, right there?
 4 A Yeah.
 5 Q Okay. The payments on this page total
 6 \$481,162.96. Do you see that?
 7 A Yes.
 8 Q Okay. And so there's a payment -- this
 9 document indicates there's a payment on February 10th,
 10 2003, in the amount of 15,000 to FPOM, Inc. What is
 11 FPOM, Inc.?
 12 A Florida Philharmonic Orchestra Musicians.
 13 Q And is that a group in which you were actively
 14 involved?
 15 A Yes.
 16 Q Okay. And what was the level of your
 17 involvement?
 18 A We created it and ran it.
 19 Q Okay. All right. On 2/10/2003, the "we"
 20 would be you and your wife?
 21 A Yes. Yes.
 22 Q Okay. On -- also, on February 10th, 2003, it
 23 indicates a payment of \$42,500 to American Friends of
 24 Covant Garden, Inc. And it has paren, Bienes, close
 25 paren. What is American Friends of Covant -- Covent

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1 Garden, Inc.?
 2 A From my knowledge, it was an American-based
 3 support group for the Royal Opera House in London.
 4 Q And you were involved in that organization?
 5 A No.
 6 Q Okay. Was it an organization in which you --
 7 which you made charitable contributions?
 8 A I'm sorry. I don't remember.
 9 Q Okay. Do you know if it's an organization
 10 which Michael Sullivan was involved or made charitable
 11 contributions?
 12 A I would have no knowledge of that.
 13 Q Okay. Let's go now to Arlington House, LLC.
 14 On March 4th, 2004, there's a payment of \$51,836.62 to
 15 56 Arlington House, LLC. Open paren, Michael Bienes,
 16 close paren. What is Arling -- 56 Arlington House?
 17 A Well, it's -- it's an LLC. It's a
 18 corporation.
 19 Q Do you care to tell me what it is? I didn't
 20 ask what form it was.
 21 MR. ETRA: Objection. Argumentative.
 22 THE WITNESS: 56 Arlington House was our
 23 address in London. It was a flat that we had.
 24 BY MR. SAMUELS:
 25 Q And were you a member of this LLC, 56

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1 Arlington House?
 2 A I would assume I am.
 3 Q Okay. And were there any other members of 56
 4 Arlington House?
 5 A I would think my wife.
 6 Q Okay. And 56 Arlington House is not a
 7 charitable entity, right? It's an owner of real estate?
 8 A Two parts. It is not a charitable entity. It
 9 owns no real estate.
 10 Q Okay. It lets -- what did you say, again?
 11 A It is not a charity. It owns no real estate.
 12 Q Right. But what did you say it did, again? I
 13 thought you said it's an address in London.
 14 A Yes.
 15 Q Okay. What is its purpose?
 16 A To pay the rent on that flat.
 17 Q Okay. And did you -- have you and your wife
 18 spent time at that flat?
 19 A Yes.
 20 Q Now, would you agree that these payments on
 21 behalf of Avellino & Bienes -- and we'll just focus on
 22 the ones to Bienes: To FPOM Inc., to 56 Arlington
 23 House, LLC; and to American Friends of Covent Garden,
 24 Inc., were made by S&P or P&S or Michael Sullivan or one
 25 of his entities?

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1 MR. ETRA: Objection.
 2 MR. SAMUELS: -- at your -- as a referral fee
 3 for you referring investors into Michael Sullivan
 4 or one of his entities?
 5 MR. ETRA: Objection. I thought you were
 6 done.
 7 THE WITNESS: No.
 8 BY MR. SAMUELS:
 9 Q Why were these payments made by S&P, P&S,
 10 Michael Sullivan or one of his entities?
 11 MR. ETRA: Objection.
 12 THE WITNESS: I don't know his mind,
 13 Mr. Sullivan. I don't know his mind.
 14 BY MR. SAMUELS:
 15 Q So your answer is you do not know why these
 16 payments were made?
 17 A I could guess.
 18 Q And your guess is what?
 19 A Well, you showed me a letter that accompanied
 20 a check. It was to support Dianne and my charitable
 21 interests.
 22 Q Okay. And why would Michael Sullivan be
 23 supporting Dianne and your charitable interests?
 24 A That letter gives you a hint.
 25 Q Well, I'm asking you.

<p style="text-align: right;">Page 105</p> <p>1 A Well, again, I don't know his mind as to the 2 why. 3 Q Okay. 4 A Ask him. 5 Q Well, surely, you were aware of payments going 6 to Arlington House, LLC; and surely, you were aware of 7 payments going to FPOM, Inc., a charity which you 8 created and ran, correct? 9 MR. ETRA: Objection. 10 THE WITNESS: I am aware that from these 11 documents that these payments -- 12 BY MR. SAMUELS: 13 Q Forget about the documents for a second, sir. 14 Okay? You created and opened FPOM, Inc., right? 15 MR. ETRA: Objection. 16 THE WITNESS: We didn't own it. 17 BY MR. SAMUELS: 18 Q I'm sorry. You created and ran FPOM, Inc., 19 right? 20 A Yes. Yes. 21 Q And there's a check received for \$15,000 from 22 Michael Sullivan or S&P or P&S or one of his entities, 23 correct? 24 MR. ETRA: Objection. 25 MR. SAMUELS: Yes?</p>	<p style="text-align: right;">Page 107</p> <p>1 MR. ETRA: Objection. 2 MR. SAMUELS: Is that right? 3 THE WITNESS: I don't remember specifically 4 opening an envelope and seeing a check, no. 5 BY MR. SAMUELS: 6 Q Do you remember getting a charitable 7 contribution from Michael Sullivan or any of his 8 entities to FPOM? 9 A I just answered. No. 10 Q Okay. Same question as to American Friends of 11 Covent Gardens. Do you recall receiving a check for 12 \$42,500 from Michael Sullivan or one of his entities? 13 A American Friends of Covent Garden? 14 Q Yeah. 15 A He would have sent it there, wouldn't he? 16 Q Okay. Were you aware -- were you aware of 17 that? 18 A I don't know at this time. 19 Q Did you instruct him or request that he send 20 it? 21 A I may have. 22 Q Okay. And why would you be requesting Michael 23 Sullivan to send a check to American Friends of Covent 24 Gardens? 25 A He wanted to support our charitable interests,</p>
<p style="text-align: right;">Page 106</p> <p>1 THE WITNESS: I don't remember getting it. 2 BY MR. SAMUELS: 3 Q You don't remember getting any money from 4 Michael Sullivan or one of his entities for FPOM? 5 A I can't recollect. 6 Q So your testimony is, A, you don't remember 7 getting it and, B, you don't know why he would have made 8 the payment? 9 MR. ETRA: Objection as to form. 10 MR. SAMUELS: Is that right? 11 THE WITNESS: No, it's not. 12 BY MR. SAMUELS: 13 Q Well, tell me why were you getting payment? 14 Why was FPOM getting payment? 15 A It's a charity. 16 Q Why was it receiving a payment from Michael 17 Sullivan or one of his entities? 18 A To support our charitable interests. 19 Q And did you thank him for that? 20 A Personally? 21 Q Personally. 22 A No. 23 Q Okay. So you got a \$15,000 check and you 24 didn't thank him? In fact, you don't even remember 25 getting it?</p>	<p style="text-align: right;">Page 108</p> <p>1 and the Royal Opera House in London was one of our 2 charitable interests. 3 Q Now, were you friends or business associates 4 with Michael Sullivan in 2003? 5 A Friends, no. Business associates, no. 6 Q So what is it about your relationship with 7 Michael Sullivan that would cause him to want to support 8 one of your charities that you support, to the tune of 9 \$42,500? 10 A Again, I don't know his mind. 11 Q So you don't recall having -- you said you may 12 have requested that he did it, right? 13 A Where to send it. 14 Q Okay. And so what is it about your 15 relationship with S&P or P&S or Michael Sullivan that 16 would cause him to want to support one of your 17 charities? 18 A I had no relationship with S&P and P&S. 19 Q Or Michael Sullivan? 20 A Or Michael Sullivan. People give. 21 Q So let's now talk about the money that he gave 22 that was not to a charitable organization. And it says 23 that it's on your behalf. And that's the Arlington 24 House. You mentioned Arlington House is not a charity. 25 It received payments of \$81,616 and \$62,804. That's</p>

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1 over \$140,000, right?

2 MR. ETRA: Objection.

3 THE WITNESS: Whatever you say.

4 BY MR. SAMUELS:

5 Q No. It's not what I say, sir. I'm asking you

6 a question.

7 A Eighty-one -- six -- it's saying 81 --

8 MR. SAMUELS: And 62 is over \$140,000,

9 correct?

10 THE WITNESS: And 62?

11 MR. SAMUELS: Yes. And if you look on your

12 check of January 16th, 2008 --

13 THE WITNESS: Oh, 2008. Okay. January 16th,

14 yeah. 62,804.49.

15 MR. SAMUELS: Okay.

16 THE WITNESS: Yeah.

17 BY MR. SAMUELS:

18 Q So over \$140,000, correct?

19 A That's what it says.

20 Q Okay. Sir, now we're not talking about a

21 charity, because you just testified that 56 Arlington

22 House was not a charity. So what is it that caused

23 Michael Sullivan or one of his entities to send the

24 Arlington House over \$140,000?

25 MR. ETRA: Objection.

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1 MR. SAMUELS: 56 Arlington House.

2 THE WITNESS: I don't know.

3 BY MR. SAMUELS:

4 Q So he's making payments of \$140,000 to an

5 entity that's established for the purpose of paying rent

6 on your flat, and you don't know why he's doing it? Is

7 that what your testimony is?

8 A To support my charitable interests.

9 Q Arlington House is not -- you just testified,

10 under oath, 56 Arlington House is not a charity,

11 correct?

12 A Correct.

13 Q So how is it that Michael Sullivan is

14 supporting your charitable interests, by paying money to

15 an LLC that is established to pay rent on a flat owned

16 by you and your wife?

17 A Perhaps tax purposes, on his behalf.

18 Q Okay. So you're formerly a CPA, you worked

19 for the IRS and tax is your specialty. Can you explain

20 to me what tax benefit Michael Sullivan would have by

21 paying over a hundred -- or his entities would have by

22 paying over \$140,000 to 56 Arlington House, LLC, which

23 is not charitable, and is set up to pay the rent on a

24 flat for you and your wife?

25 A I don't know how he treated it on his books.

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1 You said the term "consulting and fees." He may have

2 classified it as that on his books to get a

3 charitable -- to get a tax deduction. A tax deduction

4 that he might not otherwise be able to utilize if he

5 gave it directly to one of my charities. I'm only

6 giving you a hypothesis, without having the numbers and

7 the facts.

8 Q If Michael Sullivan were to call it a

9 commission or a referral fee, is that in fact what that

10 is?

11 A It is not.

12 Q Okay. It is not a commission or referral fee?

13 Is it a management fee?

14 A It is not.

15 Q Okay. So Michael Sullivan paid an LLC set up

16 to pay rent for you in a flat in London so that he can

17 get a tax benefit?

18 MR. ETRA: Objection.

19 BY MR. SAMUELS:

20 Q Is that what you're saying, sir? Is that what

21 you're telling the jury?

22 A He's calling it a "commission;" he would get a

23 tax deduction, wouldn't he? He's calling it a

24 "consulting fee"; he would get a tax deduction, wouldn't

25 he? He's calling it whatever he's calling it; he would

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1 get a tax deduction, unless the IRS --

2 Q How did he know to make the payment to 56

3 Arlington House?

4 A Somehow, I must have forwarded that

5 information to him, but I don't know at this point how.

6 Q And you would have forwarded the information

7 to him to enable him to pay -- to make a payment to 56

8 Arlington House, LLC?

9 A Just the name.

10 Q To enable him to make a payment to 56

11 Arlington House, LLC?

12 A Yes.

13 Q Okay. And why would you have wanted him to

14 make a payment to 56 Arlington House, LLC, which is an

15 LLC set up to pay rent on your flat?

16 A Flip the script. I didn't want him to. He

17 wanted to.

18 Q And you were comfortable with him doing that?

19 A No.

20 Q So why did you send him the information?

21 A Because I wanted the money for my charitable

22 interests.

23 Q So did 56 Arlington House, LLC make charitable

24 contributions with that money?

25 A No.

<p style="text-align: right;">Page 113</p> <p>1 Q Okay. What did 56 Arlington House, LLC</p> <p>2 classify the payment as?</p> <p>3 A I believe, vaguely, miscellaneous income.</p> <p>4 Q Did Mr. Sullivan ever tell you that he</p> <p>5 intend -- he and one of his entities was going to be</p> <p>6 making the payment at 56 Arlington House, LLC, so he</p> <p>7 could support your charitable work?</p> <p>8 A That was the understanding.</p> <p>9 Q Okay. And so why didn't he just send it to</p> <p>10 the charity?</p> <p>11 A Exactly.</p> <p>12 Q Why didn't he?</p> <p>13 A For reasons known to him, he didn't want to.</p> <p>14 Q Do you have your returns for Arlington House,</p> <p>15 LLC?</p> <p>16 A Oh, no. No.</p> <p>17 Q So if Mr. Sullivan were to testify that these</p> <p>18 payments were made on your request, to pay you</p> <p>19 commissions for referring business to S&P and P&S, are</p> <p>20 you saying that he would be lying under oath?</p> <p>21 MR. ETRA: Objection.</p> <p>22 THE WITNESS: He would be misinformed and</p> <p>23 mistaken.</p> <p>24 BY MR. SAMUELS:</p> <p>25 Q Did 56 Arlington House have other income?</p>	<p style="text-align: right;">Page 115</p> <p>1 Q So you don't agree with Michael Sullivan, you</p> <p>2 don't agree with Frank Avellino. You have a different</p> <p>3 way of looking at this than they do?</p> <p>4 MR. WOODFIELD: Objection.</p> <p>5 MR. SAMUELS: Is that right?</p> <p>6 THE WITNESS: I look at it as it is.</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q Okay. And as it is, I'm looking at it. It</p> <p>9 says "commission." So you're looking at it as it is in</p> <p>10 what manner?</p> <p>11 MR. ETRA: Objection.</p> <p>12 THE WITNESS: I have no control over what he</p> <p>13 puts on his books and records, or what he calls any</p> <p>14 particular expenditure.</p> <p>15 BY MR. SAMUELS:</p> <p>16 Q So let me ask something: How did he -- how</p> <p>17 did Michael Sullivan send you money to 56 Arlington to</p> <p>18 support your charitable endeavors, if 56 Arlington is</p> <p>19 set up to pay rent on your flat?</p> <p>20 A Bear with me. Money is spongeable. If he had</p> <p>21 not, we would have had to fund 56 Arlington out of our</p> <p>22 own personal funds from somewhere else so that there</p> <p>23 would be money there to pay the rent. By him putting it</p> <p>24 there, that money somewhere else was literally freed up.</p> <p>25 And I would make sure that that freed-up money would be</p>
<p style="text-align: right;">Page 114</p> <p>1 A To my knowledge, no.</p> <p>2 Q Okay. I'm going to go through some of these</p> <p>3 documents with you. Let's go now to the third page.</p> <p>4 And if you look at the bottom, okay, it's going to say</p> <p>5 A-V-E, in this document, number three, okay?</p> <p>6 A Okay.</p> <p>7 Q And this says 56 Arling -- and the one, two,</p> <p>8 three --</p> <p>9 A I see it.</p> <p>10 Q -- the fourth entry?</p> <p>11 A Uh-huh.</p> <p>12 Q It says 56 -- well, let's go to the fifth one:</p> <p>13 27 Cliff, LLC; Republic Bank; commission, Frank</p> <p>14 Avellino. Do you see that?</p> <p>15 A Yes, sir.</p> <p>16 Q Do you remember Mr. Avellino testifying, in</p> <p>17 fact, that it was a commission that he received?</p> <p>18 MR. WOODFIELD: Objection.</p> <p>19 THE WITNESS: I remember him saying something</p> <p>20 like that.</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q Okay. And so now, you have 56 Arlington</p> <p>23 House, LLC; commission, Michael Bienes. Do you agree</p> <p>24 that this was a commission payment for you?</p> <p>25 A I do not.</p>	<p style="text-align: right;">Page 116</p> <p>1 used for charitable purposes, because I felt morally</p> <p>2 obligated to do so.</p> <p>3 All it was was bookkeeping, back and forth.</p> <p>4 But money is money. It does not matter.</p> <p>5 Q Let's go to the page on the bottom that says</p> <p>6 four. So we have the sixth entry on that page: 56</p> <p>7 Arlington House, \$81,616.87. Let me ask you something.</p> <p>8 If a charitable -- if he's making a payment to be</p> <p>9 charitable for you, do you know why he's using -- why</p> <p>10 he's not just using a round number? Like the first</p> <p>11 payment was \$15,000. Why is he using a number of</p> <p>12 \$80,616.87? Isn't that odd to do, to make a charitable</p> <p>13 donation?</p> <p>14 A But he wasn't making on his books a charitable</p> <p>15 contribution. For his books' sake and for the</p> <p>16 reflection of the Internal Revenue, he was paying a</p> <p>17 commission.</p> <p>18 Q Isn't it more beneficial for him to just make</p> <p>19 an outright charitable contribution than make a</p> <p>20 commission payment?</p> <p>21 A I don't know. I don't know his tax status,</p> <p>22 his books or even the current law.</p> <p>23 Q Okay. Okay. Let's continue on.</p> <p>24 A You left a question hanging.</p> <p>25 Q Well, you can answer it.</p>

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1 A Why was it an odd number? Many times, when I
2 was in practice, I would say to a client who was writing
3 out a check for something and calling it something else,
4 "Don't use round numbers." A commission check would
5 look better with dollars and cents.

6 Q So you're telling me, as a CPA, you would
7 sanction people not using round numbers, to make it look
8 like something other than what it was?

9 A I never said that.

10 Q Sounds that way to me. Okay.

11 A Well, it's not to me. You asked me a
12 question. I said -- that's what people will sometimes
13 do, and I would recommend it if it's something that they
14 want to do.

15 Q So you're recommending that people not use
16 round numbers so they don't get caught by the IRS?

17 A No. I did not say that.

18 Q Okay. Let's continue on. Now, on the bottom,
19 if you go to page 26. Okay. Page 26. It says: "S&P
20 management fees to A & B." Do you recall receiving
21 management fees from S&P or P&S or Michael Sullivan or
22 any entity relating to them?

23 A Are you referring to the other numbers, the
24 other checks?

25 Q At all, do you recall receiving management

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1 fees from S&P or P&S or Michael Sullivan or any entity
2 in which Michael Sullivan was involved?

3 A No.

4 (Brief interruption.)

5 MR. SAMUELS: Sorry about that. Is the video
6 still going?

7 MR. ETRA: The electricity is working.

8 (Discussion held off the record.)

9 VIDEOGRAPHER: Can we go off the record for a
10 moment?

11 MR. SAMUELS: Okay.

12 VIDEOGRAPHER: Off the record at 1:38 p.

13 (Thereupon, a recess was taken from 1:38 p.m.
14 to 1:46 p.m.)m.

15 VIDEOGRAPHER: Back on the record at 1:46 p.m.

16 BY MR. SAMUELS:

17 Q Okay. Mr. Bienes, we are now on page 26,
18 where it says: "Management fees to A & B" on top. "S&P
19 Associates."

20 A Yes.

21 Q Management fees to A & B. Here it says:
22 "Name: Judd, \$1,321.81." Do you know why a management
23 fee is being paid to you and/or Mr. Avellino in
24 conjunction with Mr. Judd?

25 A No.

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1 Q Okay. Was it your understanding that you and
2 Mr. Avellino were to get management fees from --
3 emanating from clients of S&P, who were referred to S&P
4 by you and/or Mr. Avellino?

5 A No.

6 Q All right. Let's go now to page 30. There
7 is, again, "management fees to A & B." Do you know why
8 a management fee is being calculated for
9 Avellino & Bienes on the books and records of S&P
10 Associates in conjunction with Alves?

11 A Wait a minute. Alves?

12 Q Alves.

13 A Her maiden name is Duarte.

14 Q Okay. And that's the person I asked you about
15 earlier?

16 A Correct.

17 Q And do you know Alves?

18 A Alves.

19 Q Alves.

20 A Yes.

21 Q And who is Alves?

22 A She's a lady who lives in Fort Lauderdale.

23 Q And how do you know her?

24 A She began with us as a domestic employee and
25 was with us for a number of years. And then we gave her

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1 the job of manager of the house and secretary, for lack
2 of a better term.

3 Q Okay. And did you recommend to her that she
4 invest with Michael Sullivan or one of his entities?

5 A Not to my recollection.

6 Q Do you know if your wife did?

7 A I would not know.

8 Q Sir, do you know how your domestic employee,
9 who then became the manager of your house, ended up
10 investing in S&P and then, ultimately, Madoff?

11 A I do not know.

12 Q Okay. So she -- your -- did you ever mention
13 to your -- to Alves --

14 A Alves.

15 Q -- Alves -- did you ever mention to Alves --
16 Alvez. Alves -- that the money -- that -- that you were
17 able to retire early or the money that you had and the
18 lifestyle you had was attributable to the investments
19 that you made in Madoff?

20 A To my recollection, I never had a discussion
21 like that with her.

22 Q Did she know how you made your money, since
23 you had retired at 44?

24 A I wouldn't know, but she knew or thought she
25 knew.

<p style="text-align: right;">Page 121</p> <p>1 Q Well, did you ever discuss it with her?</p> <p>2 A I just told you, no.</p> <p>3 Q And how long did she work for you?</p> <p>4 A Multiple years, but I don't want to put a</p> <p>5 number because I can't -- I'm not good with that.</p> <p>6 Q How did she end up investing with Madoff?</p> <p>7 A I don't know.</p> <p>8 Q And you never discussed it with her?</p> <p>9 A No.</p> <p>10 Q Have you ever heard of the Hooker Trust?</p> <p>11 A Not until after this thing began.</p> <p>12 Q Okay. Do you know why the books and records</p> <p>13 of S&P Associates show a management fee going to you for</p> <p>14 the Hooker Trust?</p> <p>15 A I haven't the slightest idea.</p> <p>16 Q Okay. Let's go to page 38. Okay. So this</p> <p>17 mentioned Jordan. Do you know why the books and records</p> <p>18 of S&P showed management fees going to Mr. Avellino on</p> <p>19 account of Jordan?</p> <p>20 A I have no idea.</p> <p>21 Q Do you know who Jordan is?</p> <p>22 A I can only guess.</p> <p>23 Q And who is it?</p> <p>24 A There's a man in town who I've heard of</p> <p>25 mentioned in various circumstances called Jim Jordan.</p>	<p style="text-align: right;">Page 123</p> <p>1 mention his name in a very positive light. I was only</p> <p>2 once, at a little dinner at Frank's house, and the</p> <p>3 Reverend Wills and his wife were there. Oh, at his</p> <p>4 church. I was at Frank and Nancy's wedding and he</p> <p>5 officiated. I was introduced to him there, again.</p> <p>6 Yeah.</p> <p>7 Q Now, we can go to 41. Do you know who Esteban</p> <p>8 is?</p> <p>9 A No.</p> <p>10 Q Do you know why the books and records of S&P</p> <p>11 show management fees going to you and Mr. Avellino, in</p> <p>12 conjunction with F. Esteban and M. Esteban?</p> <p>13 A No.</p> <p>14 Q Okay. By the way, when -- coming back to the</p> <p>15 Arlington House, when Mr. Sullivan or one of his</p> <p>16 entities sent money to the Arlington House in the amount</p> <p>17 of over \$140,000, did you make any effort to return that</p> <p>18 money?</p> <p>19 A When he sent the money to Arlington House --</p> <p>20 Q Did you, on behalf of Arlington House, make</p> <p>21 any effort to return the money?</p> <p>22 A No.</p> <p>23 Q Okay. So you thought it was money that was</p> <p>24 appropriately sent to Arlington House?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 122</p> <p>1 Q Do you know Jim Jordan?</p> <p>2 A No. No.</p> <p>3 Q How do you know his name?</p> <p>4 A As I told you, I heard it mentioned in -- a</p> <p>5 few times. If you ask me where I heard your name, I</p> <p>6 could not tell you but I've heard it.</p> <p>7 Q So you're not sure why you're receiving</p> <p>8 management fees on behalf of Jordan?</p> <p>9 MR. ETRA: Objection.</p> <p>10 MR. WOODFIELD: Objection.</p> <p>11 THE WITNESS: It is my contention I never</p> <p>12 received management fees.</p> <p>13 BY MR. SAMUELS:</p> <p>14 Q Okay. Go to page 40.</p> <p>15 A Yes.</p> <p>16 Q This shows Wills.</p> <p>17 A Yes.</p> <p>18 Q Do you know why the books and records of S&P</p> <p>19 Associates show a management fee to Avellino & Bienes in</p> <p>20 conjunction with Wills?</p> <p>21 A I have no idea.</p> <p>22 Q Do you know who Bishop Wills is?</p> <p>23 A Yes.</p> <p>24 Q And how do you know Bishop Wills?</p> <p>25 A On certain occasions, Frank Avellino would</p>	<p style="text-align: right;">Page 124</p> <p>1 Q All right. Next, page 50. Seperson. You had</p> <p>2 mentioned Seperson as being someone who you referred to</p> <p>3 Mr. Sullivan or his entities, correct?</p> <p>4 A Yes.</p> <p>5 Q And do you know if that's why S&P had Seperson</p> <p>6 as someone who you and Mr. Avellino had received</p> <p>7 management fees for?</p> <p>8 MR. ETRA: Objection.</p> <p>9 MR. WOODFIELD: Objection.</p> <p>10 THE WITNESS: Would you just clarify? I'm</p> <p>11 sorry.</p> <p>12 MR. SAMUELS: Yeah.</p> <p>13 THE WITNESS: I slipped away, mentally.</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q Do you know if the reason why S&P had Seperson</p> <p>16 listed under management fees to Avellino & Bienes, was</p> <p>17 because you referred Seperson to Sullivan or Sullivan's</p> <p>18 entities?</p> <p>19 A I wouldn't have no knowledge of why the books</p> <p>20 and records of Sullivan were anything. I never saw</p> <p>21 them.</p> <p>22 Q Okay. Do you have knowledge of any of the</p> <p>23 partners, other than Michael Sullivan, reviewing the</p> <p>24 books and records of S&P or P&S?</p> <p>25 MR. ETRA: Objection.</p>

<p style="text-align: right;">Page 125</p> <p>1 THE WITNESS: Any of the other partners of</p> <p>2 who, sir?</p> <p>3 MR. SAMUELS: Of Michael Sullivan's entities</p> <p>4 ever reviewing the books and records of any of</p> <p>5 Michael Sullivan's entities?</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q Okay. Let's go now to page 62. Carone</p> <p>9 Pension. Do you see that?</p> <p>10 A Yes.</p> <p>11 Q Do you know any of the Carones?</p> <p>12 A Yes.</p> <p>13 Q Who do you know?</p> <p>14 A I know Matt Carone, his late wife. I forget</p> <p>15 her name. Oh, my God. I knew his late wife. I knew</p> <p>16 his son, David. That's who I knew.</p> <p>17 Q And how do you know Matt Carone?</p> <p>18 A He was an art dealer with a studio on Las</p> <p>19 Olas. He was a good friend of James. This, I can do.</p> <p>20 Every year he would let James and the orchestra have the</p> <p>21 use of his studio, which was quite big, move in a piano</p> <p>22 and stuff for a concert fundraiser.</p> <p>23 One year we went, attended, and he introduced</p> <p>24 me to Matt. Matt asked us, after we got friendly, to</p> <p>25 underwrite future concerts at his studio, and we did.</p>	<p style="text-align: right;">Page 127</p> <p>1 then when we were living in London, he had an apartment</p> <p>2 there, too, and we attended a few events together. And</p> <p>3 I recollect, vaguely, going for lunch with him once,</p> <p>4 just the two of us.</p> <p>5 Q And did you ever discuss with Don Lacon the --</p> <p>6 Madoff or investing in Madoff?</p> <p>7 A No. Not that I can remember, no.</p> <p>8 Q Did you ever recommend to Don Lacon that he or</p> <p>9 any of his entities contact Michael Sullivan in order to</p> <p>10 enable him to invest in Madoff?</p> <p>11 A Not that I can recollect, no.</p> <p>12 Q So let me ask you a question: You've spoken</p> <p>13 about two people who you recall referring to Michael</p> <p>14 Sullivan. Is there anybody else you recall referring to</p> <p>15 Michael Sullivan, who may have chosen not to invest with</p> <p>16 Sullivan or his entities?</p> <p>17 A No.</p> <p>18 Q Do you recall getting -- after -- or during</p> <p>19 the whole SEC process and after -- with</p> <p>20 Avellino & Bienes and after Avellino & Bienes shut down,</p> <p>21 do you recall being contacted by anyone who previously</p> <p>22 invested with Avellino & Bienes to discuss with you how</p> <p>23 it is that they could invest in Madoff?</p> <p>24 A It's a long time ago. I do vaguely remember a</p> <p>25 few people calling me. I don't know the names. It's</p>
<p style="text-align: right;">Page 126</p> <p>1 Q Did you ever have any discussion with Matt</p> <p>2 Carone about Madoff?</p> <p>3 A Not that I can recollect, no.</p> <p>4 Q Did you ever recommend to Carone that he</p> <p>5 invest with Sullivan or any of Sullivan's entities?</p> <p>6 A I can never -- I cannot recollect doing so,</p> <p>7 no.</p> <p>8 Q Okay. Have you heard of an entity called</p> <p>9 Paragon Ventures?</p> <p>10 A Not until now.</p> <p>11 Q Okay. So you have not previously heard of</p> <p>12 them?</p> <p>13 A Well --</p> <p>14 Q In the case?</p> <p>15 A When this case began, the name popped up in</p> <p>16 the papers. In your papers.</p> <p>17 Q Sir, why were you and Bienes [sic.] shown as</p> <p>18 receiving management fees in connection with Paragon</p> <p>19 Ventures?</p> <p>20 A I would not know.</p> <p>21 Q Do you know a gentleman by the name of Don</p> <p>22 Lacon (phonetic)?</p> <p>23 A I knew Don Lacon, yes.</p> <p>24 Q How did you know Don Lacon?</p> <p>25 A I think I met him through Matt Carone. And</p>	<p style="text-align: right;">Page 128</p> <p>1 gone. And they said, "What can we do?"</p> <p>2 And I said, "I have problems of my own."</p> <p>3 And they said, "Do you think we could call</p> <p>4 Madoff?"</p> <p>5 And I remember saying, "he always took my</p> <p>6 calls. Thank you for the call and goodbye." I wasn't</p> <p>7 too kind to any of them. I wasn't in a mood to be so.</p> <p>8 That's it. A handful.</p> <p>9 Q How many times did you talk to Mr. Madoff,</p> <p>10 personally, up until the time that the SEC concluded its</p> <p>11 investigation with the injunction order?</p> <p>12 A Please clarify the timeframe.</p> <p>13 Q Okay. Let's talk about while you were working</p> <p>14 as a CPA.</p> <p>15 A Oh, this is the whole thing. The whole thing?</p> <p>16 Q Hold on.</p> <p>17 A Okay.</p> <p>18 Q Timeframe: While you were working as a CPA</p> <p>19 for Avellino & Bienes or its predecessor entity, how</p> <p>20 often would you talk to Mr. Madoff?</p> <p>21 A Recollection: Once, maybe twice a year.</p> <p>22 Q Would that be in person at his office or on</p> <p>23 the phone?</p> <p>24 A Sometimes on the phone; infrequently, at his</p> <p>25 office.</p>

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1 Q How about during the timeframe where
2 Avellino & Bienes was operating as an entity that
3 invested in Madoff and was no longer a CPA firm? How
4 often did you talk with or meet with Mr. Madoff at that
5 time, up until the time of the SEC injunction order?

6 A No more than I originally said.

7 Q Which is how much?

8 A Once or twice a year.

9 Q Okay. And do you recall people from Madoff's
10 operation assisting Avellino & Bienes in putting
11 together books and records or fixing books and records
12 of Avellino & Bienes to provide to the SEC?

13 MR. ETRA: Objection.

14 THE WITNESS: I do not recollect any such
15 thing.

16 BY MR. SAMUELS:

17 Q You've seen those allegations made against you
18 before, right?

19 MR. ETRA: Objection.

20 THE WITNESS: Yes.

21 BY MR. SAMUELS:

22 Q Okay. And do you deny those or you just don't
23 have knowledge of it?

24 A That's a two-prong question. I, personally,
25 deny it vehemently. If it ever happened, and I'm not

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1 saying it did, I would have no knowledge of it.

2 Q Okay. Now, how about the timeframe after --
3 after Avellino & Bienes entered an injunction order from
4 the SEC, and got started in other entities in which you
5 were directly/indirectly investing in Madoff, how often
6 did you speak with or meet with Mr. Madoff between then
7 and 2008 -- December of 2008, when Madoff was exposed as
8 a Ponzi scheme?

9 A Not at all.

10 Q Not at all during that entire timeframe?

11 A Serendipitously, we went for lunch, my wife
12 and I, in London, and when we sat down, the restaurant
13 was fairly empty. It was early on. And my wife looked
14 up across a bunch of tables and said, "that's Bernie
15 Madoff." I looked, and you know how it is when someone
16 stares at you. He looked and saw us.

17 He smiled, got up, walked across some tables.
18 We were sitting in the corner. He grabbed a chair and
19 sat down in front of us. He kissed my wife, handshake
20 to me. "How you doing?"

21 "Fine."

22 "How's Ruth?"

23 "Good."

24 "I don't like this restaurant, but I come
25 here."

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1 I said, "Well, we do." Thirty seconds more of
2 idle chat, he got up and went back to his table with
3 businessmen in suits. And I said to my wife, "I'll give
4 you ten to one he'll never send over a drink." I won
5 the bet.

6 Q And what made you think he wouldn't send you
7 over a drink? What did you know about him or how did
8 you know him to reach that conclusion?

9 A The few times over the years I went to his
10 office, he never even offered me a glass of tap water.
11 That's why.

12 Q So it's your testimony that between the time
13 of the injunction order and the time that Bernie Madoff
14 was exposed as a Ponzi scheme, in December of 2008, that
15 that was the only time that you met with him in person?

16 A Let's be careful on your dating. I don't know
17 when the day of the order was. I do know that in '93,
18 we had a final meeting.

19 I had a final meeting with Madoff and my wife,
20 Frank Avellino and his wife in Madoff's office. And I
21 do remember that it's in the book. Some guy wrote a
22 book, and it's in the book that I went to the office.

23 And I won't forget it because, for the first
24 time in my life, I stood up to him. And I said,
25 "Bernie, this is your goddamn fault. You should have

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1 found out and told us we must be registered. And if we
2 had been, all would be fine. And look what you've led
3 us into here." And I went on a little bit more.

4 And then he was like sitting back and saying,
5 "All right. That's it. I'm getting a little edgy now.
6 Cut it." And he was Madoff, so I cut it. And when we
7 left, I guess it wasn't on the best of terms.

8 Q Was Mr. Avellino with you?

9 A He was there with his wife.

10 Q Okay. So talking now between -- let's talk
11 about that meeting, all right, which happened during the
12 SEC investigation or after?

13 A I said after.

14 Q Okay. How many times after that meeting did
15 you meet with Bernie Madoff?

16 A None.

17 Q Okay. So there's that, there's the
18 restaurant. Those are the only two times that you met
19 with him, between the time of the SEC investigation
20 until Bernie Madoff becoming -- going public as a Ponzi
21 scheme, in December, 2012?

22 A Yeah. Yes.

23 MR. WOODFIELD: 2008.

24 MR. ETRA: You said '12.

25 MR. SAMUELS: I'm sorry. 2008.

<p style="text-align: right;">Page 133</p> <p>1 MR. ETRA: Yeah.</p> <p>2 BY MR. SAMUELS:</p> <p>3 Q And how frequently did you speak with</p> <p>4 Mr. Madoff on the phone, let's say, from the time of the</p> <p>5 injunction order of the SEC through December, 2008?</p> <p>6 MR. ETRA: Objection.</p> <p>7 THE WITNESS: To -- to my recollection, not</p> <p>8 once.</p> <p>9 BY MR. SAMUELS:</p> <p>10 Q Okay. Okay. Let's go back now to the</p> <p>11 document we were working on, which is page number 71.</p> <p>12 At the bottom, it mentions Ziffer. Is that Elaine</p> <p>13 Ziffer? Do you know if that's Elaine Ziffer who we were</p> <p>14 speaking of earlier?</p> <p>15 A I don't know. I don't know many people with</p> <p>16 the name of Ziffer.</p> <p>17 Q And do you know why you were receiving</p> <p>18 management -- you and Mr. Avellino were receiving a</p> <p>19 management fee in conjunction with Ms. Ziffer's</p> <p>20 investment?</p> <p>21 MR. ETRA: Objection.</p> <p>22 THE WITNESS: To my mind, I was receiving no</p> <p>23 management fees. That's what the document says,</p> <p>24 not what I say.</p> <p>25</p>	<p style="text-align: right;">Page 135</p> <p>1 call and thank him for supporting your -- or meet with</p> <p>2 him to thank him for his supporting your charitable</p> <p>3 endeavors?</p> <p>4 A Most of the time, I was not in the United</p> <p>5 States, okay. I was living in London. I had other</p> <p>6 things on my mind starting in 2003, major project. So</p> <p>7 probably I just may not have done it.</p> <p>8 Q And what major project was that?</p> <p>9 A Staying alive.</p> <p>10 Q What was -- did you have health issues that</p> <p>11 you were concerned about?</p> <p>12 A Very serious.</p> <p>13 Q And what was that?</p> <p>14 A In 1997, I was diagnosed, at the age of 61,</p> <p>15 with prostate cancer, with a Gleason of six or seven.</p> <p>16 And I was told by three doctors, three major doctors,</p> <p>17 that surgery was the only way to go. Yet, if I opted</p> <p>18 for any part of a plan B and it didn't work, I could not</p> <p>19 go back to plan A. I would die. So I took the surgery.</p> <p>20 I don't want to go into it further.</p> <p>21 After five-plus years, my urologist shook my</p> <p>22 hand and said, "you did it." Five and-a-half years,</p> <p>23 2'03. Six months later, my PSA started to rise. And</p> <p>24 when you have no prostate, you should have no PSA. What</p> <p>25 would make it rise? Arnold Schwarzenegger: "I'll be</p>
<p style="text-align: right;">Page 134</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q So what is it about your relationship with</p> <p>3 Mr. Sullivan that caused him to want to support your</p> <p>4 charitable endeavors?</p> <p>5 A I'd have to theorize, and I'm under oath. I</p> <p>6 can't do that.</p> <p>7 Q Well, you can if I ask you to, because why --</p> <p>8 what is your theory in terms of why he was sending</p> <p>9 hundreds of thousands of dollars to support your</p> <p>10 charitable endeavors?</p> <p>11 MR. ETRA: Do not speculate.</p> <p>12 THE WITNESS: If I don't speculate, I can't</p> <p>13 answer you. I don't know.</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q Did you ever thank Mr. Sullivan for doing it?</p> <p>16 A I don't -- I don't remember.</p> <p>17 Q So he sends you hundreds of thousands -- he</p> <p>18 sends hundreds of thousands of dollars to you or your</p> <p>19 entities, right, to support your charitable endeavors?</p> <p>20 That's a lot of money, right?</p> <p>21 MR. ETRA: Objection.</p> <p>22 THE WITNESS: Compared to what I was giving</p> <p>23 away, no.</p> <p>24 BY MR. SAMUELS:</p> <p>25 Q Okay. So you didn't find it appropriate to</p>	<p style="text-align: right;">Page 136</p> <p>1 back." The cancer returned.</p> <p>2 I really had no head for details. I was</p> <p>3 just -- I can't describe it. And then they had to put</p> <p>4 me on a medication that I am on, to this day. One</p> <p>5 thing, physically; now it's mental. It drives out all</p> <p>6 the testosterone, that which makes us men. Without the</p> <p>7 physicality, I am a eunuch. This stuff was not</p> <p>8 important to me.</p> <p>9 I kept busy with charities and a lot of other</p> <p>10 social things to try to -- in London. That's why I</p> <p>11 didn't want to be here. Didn't want to be here.</p> <p>12 As time has gone on and I see other people</p> <p>13 falling by the wayside, I have come to terms with it.</p> <p>14 One of the things was Greg Powell. Hey, come on. I'm</p> <p>15 still vertical. This guy got it in the brain. And</p> <p>16 that's why we give so much to so many causes.</p> <p>17 Q I'll ask you something about these management</p> <p>18 fees.</p> <p>19 A Yes.</p> <p>20 Q Have you -- when these checks were coming in</p> <p>21 to the entities that we went over, which would be the</p> <p>22 Arlington House, FPOM, American Friends of Covent</p> <p>23 Gardens -- and by the way, you were on the board of</p> <p>24 American Friends of Covent Gardens, correct?</p> <p>25 A No. I was never.</p>

<p style="text-align: right;">Page 137</p> <p>1 Q Okay. So in conjunction -- in conjunction</p> <p>2 with those checks that were coming in, did you ever</p> <p>3 discuss it with Mr. -- Mr. Avellino?</p> <p>4 A I don't recollect doing so, no.</p> <p>5 Q Well, you knew Mr. Avellino had a relationship</p> <p>6 with Mr. Sullivan, correct?</p> <p>7 A That is so.</p> <p>8 Q Okay. So these checks were arriving at</p> <p>9 FPOM -- FM -- FPOM, American Friends of Covent Gardens</p> <p>10 and Arlington House, LLC, and you didn't discuss with</p> <p>11 Mr. Avellino as to why these checks were coming in?</p> <p>12 A I knew why.</p> <p>13 Q The reason being that Mr. Sullivan wanted to</p> <p>14 support your charitable endeavors?</p> <p>15 A Yes.</p> <p>16 Q Okay. And did you ever discuss with</p> <p>17 Mr. Avellino as to why Mr. Sullivan would be interested</p> <p>18 in supporting Michael Bienes' charitable endeavors?</p> <p>19 A The why, you mean?</p> <p>20 Q Yeah.</p> <p>21 A No. Why ask why? Tell me now you want to</p> <p>22 give me \$100,000 for my cancer center; I will not ask</p> <p>23 you why.</p> <p>24 Q Has anyone else ever given money to the</p> <p>25 Arlington House, LLC, in an effort to support your</p>	<p style="text-align: right;">Page 139</p> <p>1 "Oh," He said, "we have a company that handles</p> <p>2 all our stuff. I'll give you their information.</p> <p>3 They'll set you up right."</p> <p>4 And I said, "Okay. I'll keep it in mind. I'm</p> <p>5 not quite ready yet." I did not take the information</p> <p>6 and I left. It was a quickie.</p> <p>7 The second time, I believe -- I don't know</p> <p>8 which is second or third here -- Sandra Dydo, my</p> <p>9 sister-in-law. I recommended Sullivan. I told her</p> <p>10 where he was.</p> <p>11 My sister-in-law is a high school dropout and</p> <p>12 very insecure. She would walk into this room and drop</p> <p>13 dead. She really would. She could not deal and never</p> <p>14 did. "I'm a country girl."</p> <p>15 Well -- so I said, "Sandra, they're nice</p> <p>16 people. Just go over."</p> <p>17 "Take me."</p> <p>18 "I'll take you, but when you talk to Mike</p> <p>19 Sullivan, you'll do it privately. I cannot be part of</p> <p>20 the conversation. Is that acceptable?"</p> <p>21 "Take me." And so I did. Introduced them.</p> <p>22 He took her into a conference room. I remember chatting</p> <p>23 up Susan Morse. I don't know how much time passed.</p> <p>24 He came out. He said, "Come on in, Michael.</p> <p>25 All is done. Sandy is well set up. She knows what to</p>
<p style="text-align: right;">Page 138</p> <p>1 charitable endeavors?</p> <p>2 A Not to my knowledge, no.</p> <p>3 Q And why haven't you instructed anyone else</p> <p>4 who's interested in supporting your charitable</p> <p>5 endeavors, to make payments to 56 Arlington House?</p> <p>6 MR. ETRA: Objection.</p> <p>7 THE WITNESS: Because nobody else ever was.</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q Was interested in supporting your charitable</p> <p>10 endeavors?</p> <p>11 A Correct.</p> <p>12 Q Outside of Mr. Sullivan?</p> <p>13 A Yes. Correct.</p> <p>14 Q And let's talk about the timeframe, 2003 and</p> <p>15 2008, when these checks -- how many times did you meet</p> <p>16 with Mr. Sullivan?</p> <p>17 A Let me try to do this. I can recollect three</p> <p>18 times.</p> <p>19 Q Okay. And tell me about these three times.</p> <p>20 A All right. One, I can't get them in</p> <p>21 chronological order, though I'm trying. One was a</p> <p>22 quickie, standing up. I saw him in there and I said,</p> <p>23 "Michael, I'm thinking of getting my first computer. I</p> <p>24 don't want to be a virgin anymore and I don't know what</p> <p>25 to do."</p>	<p style="text-align: right;">Page 140</p> <p>1 do."</p> <p>2 I said, "Sandy is very bright. Sandy, you</p> <p>3 good?" A load of papers. I never looked at them.</p> <p>4 And then he says -- I remember this -- "Let us</p> <p>5 get on our knees now and pray." So we -- so we did.</p> <p>6 She liked that. "He's a nice man. I like</p> <p>7 him." She has to deal with an individual. She can't</p> <p>8 feel -- she'd fall over. She couldn't.</p> <p>9 And then I took her away. And I said, "All</p> <p>10 right. Now, you remember, he's a good man. Don't let</p> <p>11 your husband, my brother-in-law, get wind of any money</p> <p>12 because he'll go through it like a hot knife through</p> <p>13 butter."</p> <p>14 The next time, the third time that I can</p> <p>15 recollect -- and I think I've got it in the right</p> <p>16 chronological order -- I don't know. I was in his</p> <p>17 office talking to Susan and he came in, and he said,</p> <p>18 "Michael, can I speak to you?"</p> <p>19 I said, "sure". We went into the conference</p> <p>20 room. And he -- I don't want to do this -- he wanted to</p> <p>21 speak to me about something private about, not me, his</p> <p>22 family. He thought I might be able to be somebody who</p> <p>23 he could reach out to. And we chatted about it.</p> <p>24 I could empathize very clearly. And he said,</p> <p>25 if so and so calls you, will you take the call and meet</p>

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1 with him? I said, "yes, of course." But the call never
 2 came and that was the end of it.
 3 Q So those are the three meetings that you had?
 4 A That I can recollect.
 5 Q Okay. And so those would be three meetings
 6 between the years of 2003 and 2008, that you recollect?
 7 A Yes.
 8 Q So less than once a year you met with him?
 9 A That's the arithmetic.
 10 Q And so, how often would you speak to him on
 11 the phone or e-mail with him?
 12 A To my recollection, not once.
 13 Q Okay. So you had three encounters. How about
 14 three encounters, in person, over the course of these
 15 six years, right? So why is it that he would be
 16 interested in supporting your charitable endeavors, if
 17 you met him three times over that entire period of time?
 18 MR. ETRA: Objection.
 19 THE WITNESS: Can I speculate, because I don't
 20 know.
 21 BY MR. SAMUELS:
 22 Q It's not making any sense, so what -- what's
 23 going on?
 24 A Not making any sense?
 25 MR. ETRA: Object -- object to the comment.

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1 BY MR. SAMUELS:
 2 Q Yes, sir. Why is he supporting your
 3 charitable endeavors?
 4 A Because he's a charitable man, and he was well
 5 aware of our charitable activities. He was suitably
 6 impressed by the cancer center. That really -- that
 7 really set him up for it. Or why not? His partner died
 8 from it.
 9 Q How do you know he was impressed about the
 10 cancer center?
 11 A He told me.
 12 Q When?
 13 A I don't remember.
 14 Q You only met with him three times.
 15 A Maybe the first time. I don't know. I don't
 16 know.
 17 Q When --
 18 A I don't know when -- maybe -- no. Wait a
 19 minute. Maybe before 2003, but he didn't do anything
 20 about it. He may have been one of those many people who
 21 gave me a pat on the back and "good going" and "hey,
 22 that's really wonderful. What a thing for the
 23 community." Don't you think?
 24 Q How many times have you met with -- how many
 25 times have you met with Michael Sullivan in your life?

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1 A Well, there was those three and the meeting
 2 about the tax order. That's four. Can't be more than
 3 five or six times.
 4 Q Total?
 5 A Total.
 6 Q And how many times did you speak to him?
 7 A Five or six times.
 8 Q No. I'm sorry. Those were -- five or six
 9 times, including meetings and speaking to him --
 10 A Yeah.
 11 MR. ETRA: Objection.
 12 MR. SAMUELS: -- on the phone, e-mails, all
 13 that?
 14 THE WITNESS: No e-mails.
 15 MR. SAMUELS: Okay.
 16 THE WITNESS: No phone calls.
 17 BY MR. SAMUELS:
 18 Q Do you recall going to his office and meeting
 19 with any of his office people?
 20 MR. ETRA: Objection.
 21 THE WITNESS: I told you I met, when she was
 22 there, Susan Morse.
 23 BY MR. SAMUELS:
 24 Q Other than who we've spoken about today?
 25 A Other people?

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1 Q Yeah. Did you ever walk down the hall to his
 2 office?
 3 A Well, to get to his office I had to walk down
 4 the hall.
 5 Q Other than these times, did you otherwise go
 6 to his office?
 7 A Not that I can recollect.
 8 Q Okay. Do you recall ever walking down to his
 9 office, complaining that a distribution check to one of
 10 your family members was late?
 11 A Absolutely not.
 12 Q So with Sandra and your sister-in-law, when
 13 she went in to meet with Michael Sullivan, why is it
 14 that you could not be part of that conversation?
 15 A I didn't want to be.
 16 Q So you couldn't be part of the conversation by
 17 choice? You just didn't care to be?
 18 A Choice. Mine.
 19 Q Okay. Yeah. So we're talking about the
 20 family issue that Michael Sullivan wanted to talk to you
 21 about. What, specifically, was it that he wanted to
 22 talk to you about his family?
 23 A Must you ask that?
 24 Q Yes.
 25 MR. ETRA: Michael, there's no privilege.

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1 THE WITNESS: Then I must answer and I will.
2 And I will. This is one of the -- see, with me, I
3 don't care, but somebody else.

4 He said to me, "Susan mentioned to me that
5 when you were chatting her up" --

6 I said, "I'm sorry if I took her" --

7 "No. No. No. No. Just listen to me," he
8 said. "That -- when you were with the IRS, you put
9 yourself in positions where you had to speak
10 publicly. You became an agent instructor, you were
11 on the Speaker's Bureau and other things, and you
12 did this because you were trying to finally
13 overcome a stutter, a speech defect that you had
14 had since childhood."

15 And I said, "that is correct. There's a
16 problem; don't run away from it, go towards it.
17 Force yourself."

18 He said, "Michael, my son is in high school
19 and he suffers from a severe speech defect. He
20 stutters. And the kids tear him apart."

21 I said, "I've been there. Four years of my
22 life I bled inside because teenage boys, it's a
23 right of passage." And we talked a little bit and
24 I said, "you know, have you gotten help for him?"
25 "Well, he doesn't want it and I don't know."

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1 He said, "Michael, would you meet with him if he
2 called you?"

3 And I said, "of course. More than happy. Any
4 time, any place."

5 And he said, "Thank you."

6 And I said, "Listen, Michael, it will be much
7 easier after he gets out of high school. People
8 are kinder. But in high school, it's an animal
9 pit, what I went through." And some teachers in
10 those days were not kind.

11 So I felt -- and I didn't want to bring this
12 up but, you know, he's -- that's 8 years ago. He's
13 out of high school. He's out of college, so it's
14 not going to hurt him. Okay. Right. It's not
15 going to hurt him. I got to get my timeframe
16 right.

17 BY MR. SAMUELS:

18 Q Okay. So you shared your personal experience
19 with -- as a stutterer with Michael?

20 A Yes.

21 Q Okay. Do you recall anything else about that
22 conversation?

23 A No. No.

24 Q Did you share anything else with him about
25 your personal life?

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1 A No. I wouldn't do that.

2 Q Okay. I'm going to ask you about some people
3 who invested with Michael Sullivan. Now, you heard
4 Mr. Avellino testify -- you know, actually, before I get
5 to that, do you know why Mr. Avellino testified that the
6 money that he received, which is also money you
7 received, why he agreed that they were commissions and
8 you are not agreeing they're commissions?

9 MR. ETRA: Objection.

10 MR. WOODFIELD: Objection.

11 THE WITNESS: I have no idea.

12 BY MR. SAMUELS:

13 Q You never talked to Mr. Avellino and said, why
14 are you agreeing that these are commission payments?

15 MR. WOODFIELD: Objection.

16 MR. ETRA: Objection.

17 THE WITNESS: No.

18 BY MR. SAMUELS:

19 Q Did you ever talk to Mr. Avellino and say, why
20 are you agreeing that these were payments that we
21 received for referring clients to Mr. Sullivan?

22 A No.

23 Q Did you ever talk to Mr. Avellino and say, why
24 are you agreeing that these are management fees that we
25 are receiving?

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1 MR. WOODFIELD: Objection.

2 THE WITNESS: No.

3 BY MR. SAMUELS:

4 Q Do you intend to ask him?

5 MR. ETRA: Don't answer that question.

6 MR. SAMUELS: What do you mean, don't answer
7 it?

8 MR. ETRA: Testimony is -- testimony is
9 present recollection of past events. What he
10 intends to do --

11 MR. SAMUELS: Okay. Okay. So you're
12 instructing him not to answer; is that right?

13 MR. ETRA: I'll withdraw the instruction. Go
14 ahead.

15 THE WITNESS: I don't know.

16 BY MR. SAMUELS:

17 Q Okay. By the way, do you have any sort of
18 joint-defense agreement or common-interest agreement
19 with Mr. Avellino, in connection with this case?

20 A You'd have to ask my lawyer. I don't know
21 what even those terms are.

22 Q Okay. How about connection with the Picard
23 proceedings, do you know?

24 A Same answer.

25 Q Okay. Who was your lawyer in the Picard

<p style="text-align: right;">Page 149</p> <p>1 proceedings?</p> <p>2 A As far as I know, Mr. Etra.</p> <p>3 Q Okay. Let's go to Exhibit 13 now.</p> <p>4 MR. ETRA: Thirteen, one-three?</p> <p>5 MR. SAMUELS: One-three.</p> <p>6 BY MR. SAMUELS:</p> <p>7 Q Okay. You have before you a document that I</p> <p>8 discussed with Mr. Avellino yesterday, and it's a letter</p> <p>9 from him to Mr. Greg Powell at Sullivan and Powell. And</p> <p>10 it's dated June 5th, 2000.</p> <p>11 It says: "Dear Greg, thank you for responding</p> <p>12 with this list. The two names I recognize on the</p> <p>13 P&S Associates list is John Crawly, Michael and Dianne's</p> <p>14 friend. Do you see that?</p> <p>15 A Yes, sir.</p> <p>16 Q And Michael, would you agree that Mr. John</p> <p>17 Crawly is a friend of you and your wife's?</p> <p>18 A He was.</p> <p>19 Q At that time, 2000?</p> <p>20 A No, he wasn't.</p> <p>21 Q Before that he was?</p> <p>22 A Years before, yes.</p> <p>23 Q Okay. And do you recall telling Mr. Crawly</p> <p>24 that he could or should contact Michael Sullivan to</p> <p>25 invest with him or one of his entities?</p>	<p style="text-align: right;">Page 151</p> <p>1 Leonardo (phonetic). Do you know why?</p> <p>2 MR. ETRA: Objection.</p> <p>3 THE WITNESS: I have no idea.</p> <p>4 BY MR. SAMUELS:</p> <p>5 Q Okay. Now, Patricia Hidalgo (phonetic), is</p> <p>6 that someone who you told should or could speak to</p> <p>7 Michael Sullivan about possibly investing with Michael</p> <p>8 Sullivan or one of his entities?</p> <p>9 A I could say, absolutely not.</p> <p>10 Q Okay. Now, you have Stanley and Emile --</p> <p>11 A Emily.</p> <p>12 Q Emily?</p> <p>13 A Leonardi.</p> <p>14 Q Leonardi. Is that, in fact, your wife's</p> <p>15 uncle?</p> <p>16 A An aunt, and she married Leonardi.</p> <p>17 Q Okay. And they ended up investing in -- with</p> <p>18 Mr. Sullivan?</p> <p>19 A It says that.</p> <p>20 Q Or one of his entities?</p> <p>21 A I didn't know but it says that.</p> <p>22 Q Did you at any time ever know that Dianne's</p> <p>23 aunt and uncle had money invested with Madoff?</p> <p>24 A Yes, I did.</p> <p>25 Q And did you learn that before Madoff was</p>
<p style="text-align: right;">Page 150</p> <p>1 A I never did that.</p> <p>2 Q Okay.</p> <p>3 A I had no more contact with him.</p> <p>4 Q Have you now learned, through documents in</p> <p>5 this case, that the monies that were paid to FROM --</p> <p>6 A FPOM.</p> <p>7 Q -- I'm sorry -- FPOM, 56 Arlington House, and</p> <p>8 American Friends of Covent Gardens, that those -- the</p> <p>9 monies that were paid, the amount of monies that were</p> <p>10 paid were tied into monies received by Michael</p> <p>11 Sullivan's entities, in conjunction with specific</p> <p>12 investments by specific people?</p> <p>13 MR. ETRA: Objection.</p> <p>14 THE WITNESS: I know that's what his books</p> <p>15 claimed.</p> <p>16 MR. SAMUELS: Okay.</p> <p>17 THE WITNESS: But I don't know.</p> <p>18 BY MR. SAMUELS:</p> <p>19 Q Okay. Now, let's go through this document.</p> <p>20 Now, there is -- do you know why Mr. Avellino is</p> <p>21 mentioning to Mr. Powell at Sullivan and Powell that</p> <p>22 there were accounts attributable to our old accounts,</p> <p>23 Vania --</p> <p>24 MR. ETRA: Alves. I'm sorry.</p> <p>25 MR. SAMUELS: -- Alves, Stanley and Emily</p>	<p style="text-align: right;">Page 152</p> <p>1 exposed publicly as a Ponzi scheme?</p> <p>2 A I don't recollect too long ago. I don't</p> <p>3 recollect.</p> <p>4 Q So, my question is -- well, I'll ask another</p> <p>5 question.</p> <p>6 Did either you or Dianne tell Stanley or</p> <p>7 Emile --</p> <p>8 A Emily.</p> <p>9 Q -- Emily, that they should or could contact</p> <p>10 Mr. Sullivan to invest with Mr. Sullivan or one of his</p> <p>11 entities?</p> <p>12 MR. ETRA: Objection.</p> <p>13 THE WITNESS: Speaking for myself, I did not.</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q Okay. Do you know why the books and records</p> <p>16 of S&P indicate that you were receiving commission</p> <p>17 payments in conjunction with investments made by</p> <p>18 Dianne's aunt and uncle?</p> <p>19 A I do not.</p> <p>20 Q Okay. Mr. Avellino then says, if you can turn</p> <p>21 to the document: "In summary, the P&S accounts with</p> <p>22 Monsignor Kelly may be the only accounts we may have</p> <p>23 some claims on." Do you know what claim Mr. Avellino is</p> <p>24 referring to?</p> <p>25 A I do not.</p>

<p style="text-align: right;">Page 153</p> <p>1 Q Would it be claims to commissions?</p> <p>2 A I don't know.</p> <p>3 Q Claims to referral fees?</p> <p>4 A I don't know.</p> <p>5 Q Okay. Let's turn now to page 6. So -- here</p> <p>6 it says --</p> <p>7 MR. ETRA: I'm sorry. It doesn't have a</p> <p>8 page -- oh, I'm sorry. Yes.</p> <p>9 MR. SAMUELS: At the bottom.</p> <p>10 MR. ETRA: I got it.</p> <p>11 BY MR. SAMUELS:</p> <p>12 Q "Sullivan and Powell, 2004, P&S accounts."</p> <p>13 A Yes.</p> <p>14 Q Total, \$3,501,472. Then it says, a management</p> <p>15 fee of \$115,153.18. Fifty percent of that is</p> <p>16 \$57,576.50. And then there's a column for, "MB,"</p> <p>17 Michael Bienes and, "FA," Frank Avellino. Do you see</p> <p>18 that?</p> <p>19 A Yes.</p> <p>20 Q That indicates \$28,788.30 to each of you,</p> <p>21 correct?</p> <p>22 A That's what it says.</p> <p>23 Q Okay. And do you know if those monies were</p> <p>24 paid to you and Mr. Avellino or paid to others at your</p> <p>25 direction?</p>	<p style="text-align: right;">Page 155</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q Told him what? You may have told him what?</p> <p>3 A If he doesn't want to give to my charities</p> <p>4 direct for whatever reason, but he still wants to give,</p> <p>5 then let him make out the check to 56 Arlington. I'm</p> <p>6 surmising now. I can't bring that conversation into my</p> <p>7 mind's eye and ear. I don't have it like I did with the</p> <p>8 conversation of Sullivan's son. That, I can do.</p> <p>9 Q If he wanted to take the tax deduction by</p> <p>10 paying commissions to you, and while at the same time</p> <p>11 supporting your charities, couldn't he just have paid</p> <p>12 you directly?</p> <p>13 A You mean, to my own name?</p> <p>14 Q Yeah.</p> <p>15 A Oh, yes. Yes, he could have.</p> <p>16 Q So why wouldn't he do that?</p> <p>17 A Because I asked him, through Frank Avellino,</p> <p>18 to do it through 56 Arlington.</p> <p>19 Q And why would it be better for you to do it</p> <p>20 through 56 Arlington, than just get the money --</p> <p>21 A It was not better.</p> <p>22 Q -- if you were going to be paying the money to</p> <p>23 charity, anyway?</p> <p>24 A It was not better, it was not worse -- worse,</p> <p>25 it was just a simplification.</p>
<p style="text-align: right;">Page 154</p> <p>1 A I don't know.</p> <p>2 Q Did you ever direct or instruct Mr. Sullivan,</p> <p>3 or anyone on his behalf, to make payments to any entity,</p> <p>4 including but not limited to those we've already</p> <p>5 discussed?</p> <p>6 A Not directly, no.</p> <p>7 Q How about indirectly?</p> <p>8 A Oh, sorry. Oh, my God. I lost the</p> <p>9 microphone. You're going to have to find it. I thought</p> <p>10 it -- stupid little thing.</p> <p>11 MR. ETRA: Can you set this up -- set him up</p> <p>12 with this, please?</p> <p>13 VIDEOGRAPHER: Do we go off the record?</p> <p>14 MR. ETRA: You can stay on the record just --</p> <p>15 THE WITNESS: I know I can do this. He showed</p> <p>16 me how to do it. That doesn't mean I can do it,</p> <p>17 but he showed me how to do it. He said this is the</p> <p>18 way to do it. Is this good?</p> <p>19 VIDEOGRAPHER: Perfect.</p> <p>20 THE WITNESS: Okay. See. We're good.</p> <p>21 MR. ETRA: Can I get the question back?</p> <p>22 (A portion of the record read by reporter.)</p> <p>23 THE WITNESS: I may have spoken to</p> <p>24 Mr. Avellino and told him, but I don't recollect</p> <p>25 the conversation. I can't bring it in.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q So adding an LLC into the mix makes it</p> <p>2 simpler?</p> <p>3 A No. No. You forgot. The LLC was set up to</p> <p>4 pay rent. It would have to be funded from our funds,</p> <p>5 our general funds. By him putting it into 56 Arlington,</p> <p>6 I didn't have to use those general funds.</p> <p>7 The checking account would have been funded,</p> <p>8 at least for a portion of the rent or maybe all of it.</p> <p>9 It was just bookkeeping and, again, money is spongeable.</p> <p>10 You just make journal entries. That's all you have to</p> <p>11 do.</p> <p>12 Q Let's go now to Exhibit 10, please. Okay. In</p> <p>13 connection with Exhibit 10, this is a document of</p> <p>14 S&P Associates, management fees to Avellino & Bienes.</p> <p>15 It lists people that we went over earlier.</p> <p>16 And I wanted to direct you to the bottom part</p> <p>17 where it says: "Give year-to-date management fee to</p> <p>18 Frank verbally, in January, after year end, and he will</p> <p>19 decide split, 50 percent hopefully, and how much to pay</p> <p>20 to whom."</p> <p>21 Do you recall having discussions with</p> <p>22 Mr. Avellino -- Mr. Avellino that the money that was to</p> <p>23 be paid by S&P or P&S or Sullivan to you and</p> <p>24 Mr. Avellino, or entities on your behalf, should be</p> <p>25 split 50/50?</p>

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1 A Not at all.
 2 Q Okay. Let's go now to Exhibit 15.
 3 VIDEOGRAPHER: We're going to need a break in
 4 like ten minutes.
 5 MR. SAMUELS: I'm sorry?
 6 VIDEOGRAPHER: Ten minutes.
 7 BY MR. SAMUELS:
 8 Q All right. So I want to ask you if you've
 9 ever seen this letter that's been marked as Exhibit 15.
 10 A Yes.
 11 Q When did you first see it?
 12 A I don't recollect. I know I saw it yesterday.
 13 Q Do you remember seeing it before yesterday?
 14 A Yes.
 15 Q Okay. I want to go to the fourth paragraph.
 16 And there's a letter from Michael Sullivan to Betty
 17 Anne. Are you aware that Michael Sullivan considered
 18 the S&P and P&S businesses to be a gift given to him by
 19 Frank Avellino?
 20 A That's what he's writing to the widow.
 21 Q Uh-huh.
 22 A Yes. He's writing that to the widow.
 23 Q Did you know that Mr. Sullivan considered S&P
 24 and P&S businesses to be gifts given to him by your
 25 "brother," Frank Avellino?

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1 A Not until I read this letter, and that's what
 2 he says. That's what he writes, but I never knew it
 3 before. That's what he's telling the Widow Powell.
 4 Q Do you know why he's telling that to
 5 Ms. Betty?
 6 A Because he doesn't want to give her any more
 7 money.
 8 Q Okay. Let's go to this next paragraph -- I'm
 9 sorry. The paragraph after that -- where it says: "I
 10 am the person who deals with the main source, Frank
 11 Avellino." Do you know -- did you know that
 12 Mr. Avellino was the "main source" for the S&P and P&S
 13 businesses?
 14 A I know what I read, but I don't know if it's
 15 true.
 16 Q You don't know if it's true or not?
 17 A Of course not.
 18 Q You don't know whether it's true or not, one
 19 way or the other?
 20 A I do not.
 21 Q Okay. Let's go to the last paragraph on the
 22 next page. In the last sentence on the last line of
 23 that page, Mr. Sullivan stating: "The business would be
 24 worth nothing if he died, the market crashed, or Frank
 25 or Bernie dies." Do you know why the S&P or P&S

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1 businesses would be worth nothing if Mr. Avellino would
 2 die?
 3 MR. ETRA: Objection.
 4 THE WITNESS: I have no idea.
 5 BY MR. SAMUELS:
 6 Q Okay. Let's go now to Exhibit 21. Prior to
 7 being sued in this case, were you aware that there were
 8 investors in S&P and P&S who wanted to sue you?
 9 A I did not.
 10 Q So, before you got sued, you had no knowledge
 11 of that?
 12 A I did not.
 13 Q Did Mr. Avellino or Mr. Bienes ever mention to
 14 you that there were investors involved with Michael
 15 Sullivan in some way?
 16 MR. ETRA: You said did Mr. Avellino and
 17 Mr. Bienes mention to you.
 18 MR. SAMUELS: Thank you.
 19 MR. ETRA: You're welcome.
 20 BY MR. SAMUELS:
 21 Q Did Mr. Sullivan or Mr. Avellino ever mention
 22 to you, prior to your getting sued in this case, that
 23 there were certain people who invested with Michael
 24 Sullivan or his entities, that were contemplating filing
 25 a lawsuit against you?

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1 A Not to my knowledge.
 2 Q Okay. In the fourth bullet point -- this is
 3 the letter from Mr. Sullivan to partners -- it says that
 4 Avellino & Bienes have never had any control over the
 5 partnerships. Do you know why Mr. Sullivan --
 6 A I'm looking for the -- I'm sorry.
 7 Q Sure. It's the fourth bullet point on the
 8 first page.
 9 A Oh, on the first page. I got it.
 10 Q It says: "Avellino & Bienes have never had
 11 any control over the partnerships."
 12 Do you know why Mr. Sullivan is telling the
 13 partners that that's the case, despite the fact that he
 14 mentioned to Betty Anne that Mr. Avellino was in control
 15 of the partnerships?
 16 MR. ETRA: Objection.
 17 THE WITNESS: Do I know why he said that?
 18 MR. SAMUELS: Yeah, in spite of the fact that
 19 he told Betty Anne that Avellino, in fact, was in
 20 control of the partnerships?
 21 MR. ETRA: Objection.
 22 THE WITNESS: I have no idea.
 23 BY MR. SAMUELS:
 24 Q When's the last time you've spoken to
 25 Mr. Sullivan?

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1 A Wait. Last time -- oh, wait a minute. Two
 2 years ago, approximately.
 3 Q And that was after this lawsuit was filed,
 4 right?
 5 A Oh, yeah. Oh, yeah.
 6 Q So what was the basis of that discussion?
 7 A No discussion.
 8 Q When did you see him?
 9 A We were having lunch, my wife and I, in a
 10 restaurant on Atlantic Boulevard called Johnny's. And I
 11 look up and he's walking through to a table that was
 12 around the corner -- so I couldn't see him -- and he sat
 13 down.
 14 I got up, I walked around. I think I said,
 15 "Hello, Mike."
 16 He said, "Hello, Michael." He said, "Michael,
 17 this is Steve Jacob."
 18 I said, "Hello, Steve." I said, "How is
 19 everything?"
 20 He says, "How could it be?" You know, I don't
 21 know.
 22 I said, "Well, bless us both." Shook hands
 23 and went around to my table, and that was that.
 24 Q When did you first meet Mr. Jacob?
 25 A That was the first time.

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1 Q You had not met him before that?
 2 A No, sir.
 3 Q Were you aware that Mr. Jacob did the books
 4 for Michael Sullivan's entities?
 5 A I was not.
 6 Q Okay. Were you aware that Father Kelly or the
 7 Kelco Foundation was receiving payments from P&S, S&P,
 8 Michael Sullivan or an entity connected with Michael
 9 Sullivan?
 10 A I was not.
 11 Q Did you ever ask -- did you ever mention to
 12 Michael Sullivan that if he wanted to support any of
 13 your charitable endeavors, that he could make payments
 14 to any Catholic-related charities?
 15 A I did not and I would not.
 16 Q And why would you not?
 17 A As a courtesy.
 18 Q Is that because he's not Catholic?
 19 A Exactly.
 20 Q Okay. Were you aware of any payments made by
 21 Michael Sullivan or any entities in which he was
 22 involved with, to any other individuals or entities,
 23 aside from the charitable entities that we've discussed
 24 with you today or the entities that received payments on
 25 behalf of Mr. Bienes that we -- Mr. Avellino that we

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1 discussed yesterday?
 2 A You mean, anyone else?
 3 Q Uh-huh.
 4 A Okay. no, I am not.
 5 Q Okay.
 6 VIDEOGRAPHER: Excuse me. We need to take a
 7 break.
 8 MR. SAMUELS: Sure. Okay.
 9 VIDEOGRAPHER: Ending disc number two. We are
 10 off the record at 2:58 p.m.
 11 (Thereupon, a recess was taken from 2:58 p.m.
 12 to 3:12 p.m.)
 13 VIDEOGRAPHER: Back on the record. This is
 14 the beginning of disc number three. The time is
 15 3:12 p.m.
 16 BY MR. SAMUELS:
 17 Q Okay. I've got some questions I want to ask
 18 you about S&P and P&S. Do you recall ever discussing
 19 the affairs of S&P and P&S with Michael Sullivan?
 20 A No, I do not.
 21 Q Do you recall ever discussing with Michael
 22 Sullivan the fact that he was investing through his
 23 partnerships in Madoff?
 24 A No, I do not.
 25 Q Do you recall ever receiving quarterly reports

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1 from Mr. Sullivan concerning S&P and P&S?
 2 A I do not recall ever receiving such reports.
 3 Q Do you recall receiving reports -- summary
 4 statements that Mr. Avellino had testified about
 5 yesterday, summary statements that would support the
 6 amount that was owed to you and Mr. Avellino?
 7 MR. ETRA: Objection.
 8 THE WITNESS: I do not recall anything like
 9 that.
 10 BY MR. SAMUELS:
 11 Q Do you remember Mr. Avellino testifying
 12 yesterday that he would receive summaries, monies that
 13 were due for commissions? Do you recall that testimony?
 14 A Vaguely, yes.
 15 Q Okay. And do you recall ever seeing any of
 16 those same summaries that Mr. Avellino was receiving?
 17 A No. No.
 18 Q Okay. Do you know Mr. Brett Stapleton
 19 (phonetic)?
 20 A No, sir.
 21 Q Do you know Jodi Crupi?
 22 A I do not know her. I know of her, and I spoke
 23 to her on the telephone no more than five times.
 24 Probably a little bit less.
 25 Q And who is she?

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1 A She was a Madoff employee.
 2 Q Did you ever advise Mr. Sullivan to call
 3 Ms. Crupi, with any issues he may have concerning
 4 Madoff?
 5 A I do not recall any such thing.
 6 Q Okay. Are you aware of Father Kelly advising
 7 other parishioners and members of St. John the Baptist
 8 Catholic Church to invest with Mr. Sullivan?
 9 A I never saw or heard Father Kelly do any such
 10 thing.
 11 Q Were you aware of him doing it?
 12 A I certainly was not aware because I don't
 13 recall him ever doing it.
 14 Q Now, you made a lot of money on Madoff, right,
 15 over the years?
 16 A I made substantial money, yes.
 17 Q Okay. And you would agree that not anyone can
 18 open an account with Mr. Madoff, correct? You had to be
 19 referred to him by a friend or family member or existing
 20 client; is that right?
 21 A I do not know how -- what his rules were.
 22 Q Okay.
 23 A I have no idea.
 24 Q So you don't know if his rules were like the
 25 rules at Avellino & Bienes, where it would be just

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1 friends, family members, clients, and people referred by
 2 clients?
 3 MR. ETRA: Objection.
 4 THE WITNESS: I have no idea what Madoff's
 5 policies in his business were.
 6 BY MR. SAMUELS:
 7 Q Okay. How often would you go to church or
 8 attend church functions back in the 2003/2004 timeframe?
 9 A I believe we went to church mass most Sundays
 10 or Saturday night.
 11 Q Did you otherwise participate in church
 12 functions?
 13 A Very rarely.
 14 Q Okay. And as a result of your attendance at
 15 church and affiliation with the church, did you come to
 16 learn that there were other parishioners who were able
 17 to invest funds in Madoff, either directly or
 18 indirectly?
 19 A I did not.
 20 Q Were you aware that the partnership paid
 21 Bishop Wills' mortgage?
 22 MR. ETRA: Objection.
 23 THE WITNESS: I was not.
 24 BY MR. SAMUELS:
 25 Q Did you ever discuss issues pertaining to

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1 Madoff with Sullivan?
 2 A I cannot recall ever doing any such thing.
 3 Q How about Powell?
 4 A As I stated, I met Powell only once.
 5 Q Who were your accountants?
 6 A Ahearn Jasco.
 7 Q And who at Ahearn Jasco do you deal with?
 8 A Rebecca McDonough.
 9 Q And how did you come to have a relationship
 10 with Ahearn Jasco?
 11 A I was recommended to them by a Frank Brogan of
 12 Greenberg Traurig.
 13 Q And when were you referred to Ahearn?
 14 A I would say in the '90s.
 15 Q Okay. In the complaint in this case, it's
 16 been alleged that either your entities controlled or
 17 affiliated with you or your charities, received over
 18 \$357,000 in payments from S&P, P&S, Michael Sullivan or
 19 entities controlled by Michael Sullivan. Prior to
 20 receiving this lawsuit, were you aware that you or those
 21 entities had received over \$350,000?
 22 MR. ETRA: Objection.
 23 THE WITNESS: I never thought about it, in my
 24 mindset.
 25

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1 BY MR. SAMUELS:
 2 Q \$350,000 wasn't enough for you to think about?
 3 A Was that in one year?
 4 Q No.
 5 A Over four years?
 6 Q Approximately, yeah.
 7 A No. It wasn't really that much to think
 8 about.
 9 Q Okay.
 10 A With respect.
 11 Q After Madoff was discovered to be a Ponzi
 12 scheme or became -- strike that.
 13 After it was public that Madoff was a Ponzi
 14 scheme, did you -- did any other investors with Madoff
 15 contact you?
 16 MR. ETRA: Objection.
 17 THE WITNESS: Not that I can recollect.
 18 BY MR. SAMUELS:
 19 Q So you don't recall -- did you ever talk to
 20 any other investors in Madoff, after Madoff -- the
 21 Madoff Ponzi scheme became public, in December of 2008?
 22 A Not that I can recollect, no.
 23 Q How about Mr. Avellino, did you talk to him
 24 about it?
 25 A Yes.

<p style="text-align: right;">Page 169</p> <p>1 Q And what did you and Mr. Avellino discuss?</p> <p>2 A That our world was turned upside down, that we</p> <p>3 were just blown away by this, that -- what could you say</p> <p>4 to each other?</p> <p>5 Q So let me ask you something: Starting when</p> <p>6 you first began investing in Madoff, all the way up to</p> <p>7 2008, was there ever a year where you did not receive a</p> <p>8 return on your investment of at least ten percent?</p> <p>9 A I would say that's a fair statement.</p> <p>10 Q So you always received at least ten percent or</p> <p>11 more on your money?</p> <p>12 A You're getting too specific, now. I don't</p> <p>13 want to say yes to something. It's a long stretch. The</p> <p>14 way you put it the first time, I said it's a fair</p> <p>15 statement.</p> <p>16 Q Okay. Were you aware of the accounting firm</p> <p>17 that was used by Mr. Madoff while you were investing</p> <p>18 with him?</p> <p>19 A When the accountant was Jerome Horowitz, I was</p> <p>20 aware. After Horowitz retired I was not aware.</p> <p>21 Q So you didn't -- were you aware that the</p> <p>22 accounting firm he used was Fricling and Horowitz?</p> <p>23 A No. No.</p> <p>24 Q Were you aware that he used an accounting firm</p> <p>25 with three or four accountants?</p>	<p style="text-align: right;">Page 171</p> <p>1 up.</p> <p>2 So this time I asked the name and say, thank</p> <p>3 you. And he said, "Frank."</p> <p>4 I said, "Oh, Frank. Okay. Thank you, Frank."</p> <p>5 And I assume that was Frank DiPascali. I assume.</p> <p>6 Q Where do you recall that telephone call?</p> <p>7 A I don't.</p> <p>8 Q So would you agree that it was not possible to</p> <p>9 simply set up a friend or partnership to invest with</p> <p>10 Madoff, without a referral or a firm reference from</p> <p>11 someone who had a prior relationship with Madoff?</p> <p>12 A I don't know. I told you that. I don't know</p> <p>13 what his policies were.</p> <p>14 Q Why did you tell -- why did you disclose in</p> <p>15 the interview, on PBS FRONTLINE, that it must have been</p> <p>16 Avellino who facilitated Sullivan's ability to invest</p> <p>17 with Madoff, because it wasn't you?</p> <p>18 MR. WOODFIELD: Objection.</p> <p>19 THE WITNESS: I took that interview in</p> <p>20 February, two months after Madoff. I was so far</p> <p>21 down I didn't know where I was. I was in a spin.</p> <p>22 Financially, I was in very, very deep trouble,</p> <p>23 very deep trouble. I knew the house that we were</p> <p>24 doing the interview in, my house, we would have to</p> <p>25 get out of in a month. Very quickly. We couldn't</p>
<p style="text-align: right;">Page 170</p> <p>1 A No.</p> <p>2 Q Is it fair to say that you made hundreds of</p> <p>3 millions of dollars, directly or indirectly, through</p> <p>4 Madoff?</p> <p>5 A It might be fair but I don't think it's</p> <p>6 accurate.</p> <p>7 Q Is it accurate to say?</p> <p>8 A No. No.</p> <p>9 Q Do you know who Frank D. DiPascali is?</p> <p>10 A Was. Yes.</p> <p>11 Q And who was he?</p> <p>12 A From what I read, he was a key Madoff</p> <p>13 employee.</p> <p>14 Q And did you ever meet with him and -- before</p> <p>15 he passed away?</p> <p>16 A No.</p> <p>17 Q Did you ever talk to him?</p> <p>18 A Once.</p> <p>19 Q Where do you recall that conversation?</p> <p>20 A I called Madoff and usually it was a girl.</p> <p>21 Madoff -- but this time it was a man. And I just asked</p> <p>22 a very simple question. That's all I ever had. It took</p> <p>23 a minute. And I always ask at the end, "Who am I</p> <p>24 speaking to, please?" And, usually, the girl said,</p> <p>25 Jodi. And I would say, thank you, Jodi, and she'd hang</p>	<p style="text-align: right;">Page 172</p> <p>1 maintain it. I was by my attorneys. "Put it for</p> <p>2 sale with a good broker" --</p> <p>3 MR. ETRA: Stop. Stop. Stop.</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. ETRA: Don't.</p> <p>6 MR. SAMUELS: Okay.</p> <p>7 MR. ETRA: Don't -- don't say what your</p> <p>8 attorneys told you. You can answer the question,</p> <p>9 just don't talk about what your attorneys did.</p> <p>10 MR. SAMUELS: Well, you can tell me what you</p> <p>11 did, just don't tell me about what your attorneys</p> <p>12 told you to do.</p> <p>13 THE WITNESS: All right. We knew we were</p> <p>14 going to leave. I was not on my game. I was under</p> <p>15 great pressure. I was totally devastated.</p> <p>16 It was a TV show. You know, some of the</p> <p>17 things I said, I wish -- I wasn't -- I wasn't clear</p> <p>18 in my mind. Big TV camera. I knew it was going to</p> <p>19 record on PBS. Martin Smith, very tough. He makes</p> <p>20 you look easy, and that's not easy to do. And I</p> <p>21 said what I said. Whether I was right or wrong or</p> <p>22 knew what I was talking about, I don't know. I</p> <p>23 don't know why I answered certain things in certain</p> <p>24 ways. It's six years ago, and I don't -- I wish I</p> <p>25 hadn't taken the interview, because I wasn't ready</p>

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1 for it.

2 BY MR. SAMUELS:

3 Q Do you know if you're currently under

4 correct -- any criminal action?

5 A Not to my knowledge.

6 Q Okay. All right.

7 MR. SAMUELS: What number are we at?

8 MR. WOODFIELD: Thirty-seven would be next.

9 MR. SAMUELS: Thirty-seven. Okay.

10 (Plaintiffs' Exhibit No. 37 was marked for

11 identification.)

12 MR. ETRA: I -- I assume you don't want him to

13 read the whole thing right now.

14 MR. SAMUELS: No. No. No. Please don't read

15 the whole thing.

16 MR. ETRA: Okay.

17 MR. SAMUELS: I'm going to refer you to

18 certain pages, and this has to do with the

19 interview you gave that you're referring to, okay?

20 THE WITNESS: Okay.

21 BY MR. SAMUELS:

22 Q So I want to talk to you about some of the

23 things that you said. And you would agree that six

24 years ago, you would have had a better memory of certain

25 events that transpired than you do now, correct?

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1 A Relatively speaking, maybe, yes.

2 Q Okay. Okay. So let's turn now -- these pages

3 do have Bates numbers on them. They're pretty small,

4 unfortunately.

5 MR. WOODFIELD: Are -- are these -- that's not

6 a familiar Bates stamp.

7 MR. SAMUELS: AVE0 --

8 MR. WEBER: It's the Bates stamp.

9 MR. SAMUELS: -- 2917. It's early -- it's

10 one -- if you flip the page, it's one -- to the

11 back of the second page.

12 MR. WOODFIELD: I don't have a back. We only

13 have the even-numbered pages. We don't have the

14 backs.

15 MR. ETRA: You don't have copies?

16 MR. WEBER: This one has the backs. Are you

17 sure?

18 MR. WOODFIELD: Yeah.

19 MR. SAMUELS: He's got front and backs.

20 MR. ETRA: I have a back.

21 MR. WOODFIELD: Thanks.

22 MR. SAMUELS: Okay.

23 BY MR. SAMUELS:

24 Q Okay. Here I'm just going to quote you and

25 just ask you if this is true, okay? This is talking

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1 about Saul Alpern. It says: "One of the first things

2 Saul Alpern said to me when I went to work for him was:

3 'Listen, yeah, listen. You got money, you can invest it

4 with my son-in-law Bernie. You'll get 20 percent.'"

5 All right. You mentioned that on TV. Do you

6 recall that being one of the first things that Saul

7 Alpern said to you?

8 A Yes, I do.

9 Q Okay. I'm now on page 02919. And I'm just

10 going to talk to you about some things that you said and

11 ask if it's truthful or not, okay?

12 (Discussion held off the record.)

13 BY MR. SAMUELS:

14 Q "What my partner Frank told me -- because

15 Frank started with the firm in 1958. He went directly

16 from college to Alpern & Heller. He was a fixture

17 there. He was the key employee.

18 "He said he remembered Bernie coming in in '59

19 and '60, and using part of a desk in their office on

20 42nd Street, and working a phone line he had put in."

21 Is that truthful?

22 A Yeah.

23 Q Okay.

24 A Yes, it is.

25 Q All right. I'm now on page 21. The question

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1 was: "When did you get into investing other people's

2 money with Bernie Madoff?"

3 You said, "Saul, his father-in-law, had been

4 doing it since the late '60s, I think, if not before."

5 Is that your recollection in terms of when

6 Saul -- you were aware of Saul starting to invest in

7 Bernie?

8 A Yes.

9 Q Okay. Then the question is: "And the guy had

10 a hot hand?"

11 And you say, "You see, what Bernie said -- he

12 took a few straight accounts from Saul's people in the

13 beginning, and then he said to his father-in-law: 'No,

14 I cannot handle small accounts like this. This is a

15 pain in the neck and a pain in the butt.'"

16 "So Saul, being smart, said: 'Look, open up

17 an account called A&A and I'll do the record keeping.

18 I'll handle the checks. I'll do it all.'

19 "Yeah, he gave Frank a piece and I got a piece

20 when I became a partner. It became like a client of the

21 firm. It's was only about \$2 million and-a-half, \$2.5

22 million in the account. That was big money to me. And

23 we made a little bit off the top or backs. A business

24 in millions, a profit in pennies; it's true.

25 "So he would do this, and then when he

<p style="text-align: right;">Page 177</p> <p>1 retired, he says: 'I'm taking the green book down to 2 Florida. It'll give me work to do and I'll mail stuff 3 up to Nanette, and she'll type up the checks to send 4 out.'" Do you recall that?</p> <p>5 A Yes, I do.</p> <p>6 Q Okay. So now, we're talking about -- if you 7 go down, "What was the major business at the time, in 8 '70, still accounting?"</p> <p>9 "We were accountants. Oh, yeah."</p> <p>10 "How much of your business at that time was 11 investing with Bernie?"</p> <p>12 "Oh, maybe ten percent, at most. I can't 13 remember."</p> <p>14 So you recall that, in 1970, about ten percent 15 of your business was investing in Bernie Madoff?</p> <p>16 A Would that be right? I was guessing.</p> <p>17 Q Okay. Approximately -- is that an 18 approximation?</p> <p>19 A I don't know. I was guessing.</p> <p>20 Q Okay.</p> <p>21 A I could be wrong. I wanted to give him an 22 answer.</p> <p>23 Q Okay. So on the bottom of page 23, you're 24 saying: "Oh, yes. Oh, yes, it did. We knew that and 25 we always said there's not a corporation in the carload.</p>	<p style="text-align: right;">Page 179</p> <p>1 Q So, does that refresh your recollection that 2 you were the only ones trading money into Bernie Madoff 3 in the '70s?</p> <p>4 MR. ETRA: Objection.</p> <p>5 THE WITNESS: It doesn't have to refresh my 6 recollection. It's what I thought.</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q Okay. Very good.</p> <p>9 So let's go now to page 26. "Why did you need 10 to know? I mean, it's money."</p> <p>11 You say, "No. No. No. It's not the money; 12 it's people. I don't want bad people. I don't want 13 people we don't know. I don't want people who shouldn't 14 be giving us money."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q So you were careful in terms of who you were 18 taking money from, right?</p> <p>19 A I would say so.</p> <p>20 Q Why is that?</p> <p>21 A Obvious reasons. Are you not careful who 22 you're taking as clients?</p> <p>23 Q I'm asking you. It's a deposition.</p> <p>24 A Because we're running a financial service, and 25 we didn't want people who were not going to be solid and</p>
<p style="text-align: right;">Page 178</p> <p>1 It's always us as GPs.</p> <p>2 "We didn't create one of those partnerships -- 3 you know, and the trick is who's a general partner? A 4 shell corporation is a general partner. Who owns the 5 shell? The boys. We never did that. There was no 6 corporation. We always stood behind it. That's how 7 much we believed in Bernie.</p> <p>8 "So you were promising people how much?"</p> <p>9 And you said, "All depends. Big amounts, 10 18 percent; smaller amounts, 17, 16, even as low as 15."</p> <p>11 Do you see that?</p> <p>12 A I'm on page --</p> <p>13 Q Now, I'm over on page 24.</p> <p>14 A Oh, okay. Wait a minute. Yeah, I see that.</p> <p>15 Q So you recall promising people 18 percent; 16 smaller amounts, 17, 16, or even as low as 15?</p> <p>17 A Uh-huh. Yeah.</p> <p>18 Q Okay. And then on page 25, it says: "At the 19 time, were you the only people that you were aware of 20 that were feeding Bernie Madoff money?"</p> <p>21 And you said, "Yes. Yes."</p> <p>22 "In the '70s?"</p> <p>23 "Yes. Yes. We thought we were the only 24 ones." Do you see that?</p> <p>25 A Yes, sir.</p>	<p style="text-align: right;">Page 180</p> <p>1 comply by the rules.</p> <p>2 Q Okay. So now, on page 28 at the bottom, it 3 says: "So it was all Madoff starting in the '80s?"</p> <p>4 And you say, "83."</p> <p>5 A Yes.</p> <p>6 Q "All Madoff, because they forced us out of the 7 accounting business. Not that I care. Don't cry for 8 me. I hate it. I hated it."</p> <p>9 So by --</p> <p>10 MR. ETRA: I'm sorry. What page? I 11 apologize. What page?</p> <p>12 MR. WOODFIELD: Twenty-eight.</p> <p>13 MR. SAMUELS: Twenty-eight.</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q So by -- on or about by 1983, your entire 16 business was investing in Madoff?</p> <p>17 A After we closed -- after we closed the 18 accounting practice, in '83, I believe Madoff was all 19 that was left. We couldn't get insurance to do anything 20 else.</p> <p>21 Q Okay. Let's now go to 31. Now, you're 22 talking about Mr. Avellino. "Yeah, I refer to him as 23 'my partner.' I could just as easily say 'my brother.' 24 That's the feeling, but we're not technically partners 25 anymore.</p>

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1 "What's the nature of your contacts with
2 Bernie?
3 "Meetings at his office. He never came to
4 ours. The only socializing we ever did with him was he
5 invited us to one of his son's bar mitzvahs, because his
6 father-in-law was there and we were still in practice
7 with him, so he had to invite us."
8 So you had meetings at Mr. Madoff's office?
9 A When -- when we met with him.
10 Q Do you recall other meetings that we have not
11 yet discussed today?
12 A I do not.
13 Q Okay. Now, let's go to page 33. Third
14 paragraph, you say, "From day to day, week to week, and
15 month to month, we would see the buys and the sells and
16 the profits and the few losses and how it was coming.
17 So we're not flying blind because, to be more exact, we
18 had it pinpointed every day when the transactions came
19 in. Oh, my heavens. Of course."
20 "And at the end of the month those
21 transactions were on a monthly statement and you just
22 analyzed that out and you tied it in. You balanced it
23 out. This was regular accounting work. You reconciled
24 the accounts. So that, we did.
25 "Oh, my. No. You just didn't put money in

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1 and take money back and send money out. That's
2 insanity. No."
3 So you were then keeping track of your
4 statements that you were receiving from Madoff?
5 A I personally wasn't.
6 Q Okay. You would see the buys and sells every
7 day?
8 A No, I would not.
9 Q Month to month?
10 A No.
11 Q Okay. Now, on page 38, the bottom, it says:
12 "Why didn't you just get yourself licensed?"
13 And the answer is, "Because you just can't do
14 that, because Bernie didn't want us to."
15 It's going on to the next page. Do you see
16 that?
17 A I see.
18 Q Did Bernie ever tell you he didn't want you to
19 be licensed?
20 A I told you, I think, earlier. I asked -- we
21 asked him at a meeting, Bernie, are we doing anything
22 wrong? Should we be licensed or something, or
23 regulated? And he said, "You're just taking money in
24 and sending it to me."
25 I said, "Yeah."

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1 He says, "There's no need for it, then.
2 You're just another investment account with me. That's
3 all." I believe he went on to say, "I've spoken to and
4 I know the biggest lawyers on the street, and they say
5 it's A-okay."
6 We knew no one.
7 Q Okay. And you didn't question that?
8 A How could I? I had no knowledge.
9 Q Now, on page 44 --
10 A Yes.
11 Q -- it says: "The SEC ordered Madoff to
12 convert all of our funds into T-bills, treasuries,
13 safeties, all of it, which he did immediately. Then
14 they said, 'send it back to them in money to the
15 account' which the SEC controlled, okay? And we were
16 told to pay back the principal, plus the accrued
17 interest."
18 Do you remember that?
19 A Yes, I do.
20 Q And then it says you had about 3,200 clients?
21 A I would say that's about right.
22 Q Okay. Okay. Then it says, "What happens
23 next? You're out of business?"
24 You're saying, "We are out of business. And
25 we got the money back. And now we're sitting, waiting,

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1 in '93, because the SEC could have gone after us to
2 disgorge profits we shouldn't have made. And we were on
3 tenterhooks with that. And then I think in April the
4 phone rang and my wife screamed out, 'Michael, it's Ira
5 Sorkin.'
6 "I said, 'Ira, how are you?'
7 "He says, 'listen, here's the thing. Here's
8 what it's going to be."
9 So Ira Sorkin was your lawyer with the SEC
10 matters?
11 A I believe he was the lead lawyer, yes.
12 Q Okay. Then he says, "Around that time, your
13 charitable giving from what I can tell picks up?"
14 And you say, "yes."
15 He says, "what was going on?"
16 "No, because we were able to get back to
17 Bernie and reinvest in our own name with the funds that
18 we had."
19 So is that what you're talking about Grosvenor
20 and Mayfair and the other funds?
21 A Yes, sir.
22 Q Okay. "How much did you have at that point?"
23 And you say, 50 -- and the question is: "Fifty million?"
24 And you say, "Oh, God, no. Not even half of
25 that. In '93."

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1 Then it says: "And you start making a lot of
2 gifts at this point."
3 "We started slowly then. Not big. No. No.
4 No. We started slowly. We picked it up in the late
5 '90s. In the 21st century, we're really into it big
6 time, because we were adding on and not taking the money
7 from our account. We were letting it grow, grow, grow.
8 "Your investment with Bernie?
9 "Of course.
10 "So, approximately, how much do you got
11 investing with Bernie at that point, in '92?"
12 You said, "I don't remember. You know, it
13 could be \$15 million, it could be \$18 million,
14 \$17 million."
15 Is that your recollection --
16 MR. ETRA: Objection.
17 MR. SAMUELS: -- judging on what you have in
18 front of you?
19 BY MR. SAMUELS:
20 Q Is that your recollection of how much you had
21 invested with Bernie then?
22 A Pretty much.
23 Q Okay. On page 48 -- let's see. Let's
24 actually go to page 49, where it says, "But there are
25 all these people running around now talking, saying they

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1 were advised by Avellino or Mike Bienes to put their
2 money --"
3 You said, "If they called I said: 'Listen,
4 the only advice I can give you is call Bernie if you
5 want to get in. I don't know if he'll take you."
6 "Or call Michael Sullivan."
7 And then you say, "No, absolutely not.
8 "Why does that push a button?
9 "Because it's not so, and that really bugs
10 me."
11 Then you say, "You got people saying they were
12 advised." And you say, "I don't care what people say.
13 They're lying."
14 Now, you testified earlier that there are a
15 few people who you sent over to Michael Sullivan,
16 correct?
17 A Yeah, two.
18 Q Okay. Only those two?
19 A Two.
20 Q As well -- and then the Judds testified that
21 they were sent over by you, as well?
22 A Absolutely not.
23 Q Okay.
24 A Son of a bitch.
25 Q So now we're talking about on North Federal

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1 Highway.
2 MR. WOODFIELD: What page?
3 MR. SAMUELS: Page 2950.
4 BY MR. SAMUELS:
5 Q You say, "Yeah, I met them quickly because
6 Avellino said to me, 'we're being audited by the IRS.'
7 I knew this was going to follow the SEC thing. It
8 always does. And I said, 'okay. We'll handle it.'"
9 "He says: 'Michael, I'd like Sullivan and
10 Powell to handle it.' They're too emotional -- 'you're
11 too emotional.'"
12 "So I went up to their office and I met them,
13 and I saw the Bible and the crucifix and the lama ding
14 dong. And he says, 'You know, Frank really said it.'"
15 "I said: 'Look guys, I'm going to give you a
16 word of advice: Do it right. Do it right. Be precise.
17 If there's any question about who gets what, give it to
18 your client.'"
19 So at this point in time, after the SEC thing,
20 you were, in fact, aware that Sullivan was going to be
21 investing with Madoff, correct?
22 MR. ETRA: Objection to form.
23 THE WITNESS: I'm too confused. I don't
24 remember. I wasn't under oath and I was trying to
25 be cooperative.

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1 BY MR. SAMUELS:
2 Q Well, when you're saying, "look guys, I'm
3 going to give you a word of advice: Do it right. Do it
4 right. Be precise," were you referring to his going to
5 do business with Madoff?
6 A I don't remember ever saying it to them.
7 Q Then you say, "Who introduced Sullivan, Powell
8 and Jacob to Bernie Madoff?"
9 And you say, "My partner must have. I
10 certainly didn't"; is that right?
11 A I said that.
12 Q And is that your understanding?
13 A Not now.
14 Q What is your understanding in terms of who
15 introduced Sullivan?
16 A You didn't need an introduction. You just had
17 to pick up the phone.
18 Q And where did you get that understanding from?
19 A From reading the list of 6,500 names that were
20 invested with Madoff, and all the banks and hedge funds
21 and everybody else. You didn't need an introduction.
22 Those people were not introduced, they called or wrote
23 or sent a carrier pidgeon.
24 Q And how do you know how those people -- you
25 don't know how those people got to Madoff, right?

<p style="text-align: right;">Page 189</p> <p>1 A No, I do not. I don't even know 95 percent of 2 them. I didn't think it through.</p> <p>3 Q Okay. Now going on page 51. It says: "So 4 people that I'm talking to in the community say that 5 they were guided by you and your partner or friend -- 6 you and your partner Frank to Sullivan are lying?"</p> <p>7 And your answer is: "If they're saying I did, 8 they'd have to be. They'd have to be. Wait a minute. 9 No. I'll tell you. I was getting ready to leave for 10 London last year and the car was coming to take me to 11 the airport."</p> <p>12 "And the guard comes to the door and he says, 13 'One of your neighbors would like to speak to you.' I 14 know her. She lives in the area. And she comes and 15 says, 'I don't want to bother you, but I know you know 16 about invest --' I said, 'look, I've told your husband I 17 don't want anything to do with this.'"</p> <p>18 "So she says, 'no, no. Harry doesn't know 19 anything about this. I read that there's this firm that 20 handles money.'"</p> <p>21 "And I said, 'who?'."</p> <p>22 "And she said, 'Sullivan.'"</p> <p>23 "I said, 'I know him. He's an upright man. I 24 know he's licensed; I think he's licensed, so you do 25 what you want.'"</p>	<p style="text-align: right;">Page 191</p> <p>1 A Harry.</p> <p>2 Q Okay.</p> <p>3 A Two nuts. They really were. She mentioned 4 Sullivan. I didn't. I just responded, and I was on my 5 way out the door.</p> <p>6 Q And do you know if -- if there were management 7 fees indicated on the books and records of S&P or P&S or 8 any Sullivan entity, showing you getting a management 9 fee for Acker?</p> <p>10 A I am not so aware.</p> <p>11 Q Okay. Can you turn to Exhibit 36, the last 12 page. Do you see that?</p> <p>13 A Yes.</p> <p>14 Q What is -- what are both of their names, 15 Acker?</p> <p>16 A Harry, and I knew her as A.J.</p> <p>17 Q A.J., so -- is that the A. Acker?</p> <p>18 A Could be.</p> <p>19 Q Okay. And did you ever come to learn that you 20 were receiving commissions or management fees or monies 21 paid to charities that you were involved with, as a 22 result of Acker's investment in --</p> <p>23 MR. ETRA: Objection.</p> <p>24 THE WITNESS: No, absolutely not.</p> <p>25</p>
<p style="text-align: right;">Page 190</p> <p>1 "She says, 'Oh.'"</p> <p>2 "I said, 'What are you looking to invest?"</p> <p>3 "She says, 'well, I have 20 million.'"</p> <p>4 "I said, 'Are you out of your mind? Are you 5 out of your total head? If you want to go with anybody, 6 you open very small. You open modestly. I mean, tiny. 7 You don't buy the whole pie.' I didn't take her over 8 there."</p> <p>9 Who was that person you were referring to?</p> <p>10 A Her last name was Acker, A-C-K-E-R.</p> <p>11 Q And do you know if Acker ever invested with 12 Sullivan?</p> <p>13 A I have no idea.</p> <p>14 Q And did you contact Sullivan about Acker?</p> <p>15 A Absolutely not.</p> <p>16 Q And the question then goes on: "So you were 17 telling her to be careful with Sullivan?"</p> <p>18 And you say, "Yes, very careful. But she 19 brought it up. She came to my door and rang the bell."</p> <p>20 "Why were you telling her to be very careful 21 with Sullivan?"</p> <p>22 A She said 20 million-dollars. She's a lunatic, 23 okay? I don't want to get involved with her because 24 she's offbeat, so is her crazy husband.</p> <p>25 Q And what's her husband's name?</p>	<p style="text-align: right;">Page 192</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q Did you ever at any time become aware of 3 whether or not Acker invested in S&P or P&S or Sullivan?</p> <p>4 A I never was.</p> <p>5 Q Okay. Now we're asking questions about -- now 6 I want to go back to your interview about Grosvenor.</p> <p>7 A Grosvenor.</p> <p>8 Q Grosvenor. Silent S.</p> <p>9 A Correct.</p> <p>10 Q Page 52: "When we went back with Madoff in 11 '93, went back in an account, partnership account, my 12 partner and I and the wives, of course."</p> <p>13 "Bernie said, 'I'll let you back in, but I 14 don't want to see your name on the books.' So we had to 15 make up a name, Grosvenor."</p> <p>16 Did Bernie say to you that he didn't want your 17 name on the books?</p> <p>18 A Me, personally?</p> <p>19 Q Uh-huh.</p> <p>20 A Not that I can recollect.</p> <p>21 Q How do you know that Bernie said that he'd let 22 you in, as long as your name wasn't on his books?</p> <p>23 A I think Frank may have told me.</p> <p>24 Q Do you recall discussing that with anybody at 25 Bernie Madoff's operation?</p>

<p style="text-align: right;">Page 193</p> <p>1 A I discussed nothing at Bernie Madoff's 2 operation. 3 Q Then on page 54 -- on page 54, where it says, 4 "How many companies are we talking about, here? 5 It says: "Three. Grosvenor, Mayfair Ventures 6 and Mayfair Bookkeeping -- or Mayfair Pension Plan. 7 Those are the three accounts with Madoff." 8 Is that correct, that those are the three 9 accounts involved with Madoff? 10 A That's what I knew I was involved in. 11 Q Okay. Do you know why Madoff didn't want your 12 names on the books? 13 A No. 14 Q Did you ever discuss with Frank Avellino why 15 Madoff didn't want your names on the books? 16 A No. 17 Q Now, let's go to page 57. Why didn't you 18 discuss with Mr. Avellino why you couldn't have your 19 names on the books? 20 A I didn't think it was important. 21 Q Okay. Actually, on page 52, going back to 52, 22 I'll just read it to you. It says: "So why doesn't 23 Bernie want your name -- see your name?" 24 And you said, "I don't ask him. Oh, because 25 we screwed up. We were to blame. We were to blame."</p>	<p style="text-align: right;">Page 195</p> <p>1 accurate? 2 A Within a range, fairly so, yeah. 3 Q And how much of your net worth was in -- was 4 with Madoff? 5 A Almost all. 6 Q And did you -- did you make any claims, 7 specific or otherwise, to get your money back? 8 A Yes, I did. 9 Q And have you received any money back? 10 A No, I haven't. 11 Q And what is happening with your claim? 12 A I don't know. 13 Q Is your claim being held up as a result of the 14 current lawsuit? 15 A I don't know. 16 Q Okay. And how much is your claim for? 17 A I don't know, because I don't have the 18 document. I don't know. 19 Q Okay. 20 A It was sizable, but that's it. 21 Q Okay. What's Telfran? 22 A To my knowledge, Telfran was a company that 23 was owned by a firm called -- accounting firm called 24 Glantz & Levy. 25 Q And did you do business with them?</p>
<p style="text-align: right;">Page 194</p> <p>1 Is that your understanding? 2 A That was my thought -- 3 Q Okay. 4 A -- not my knowledge. 5 Q All right. So now, at page 57: "How much 6 money have you given away to charity over the years?" 7 And your answer is, "I would say between 35 8 and 40 million." 9 A I see it now. 10 Q Is that accurate? 11 MR. ETRA: I apologize. I'm sorry. What 12 page? 13 MR. WOODFIELD: Fifty-seven. 14 MR. ETRA: Thanks. 15 THE WITNESS: Accurate to what degree? 16 BY MR. SAMUELS: 17 Q Well, 35 and 40 is a big range. Is that a 18 correct approximation of how much you gave to charity? 19 A As far as I can recollect, without saying 20 definitely, because I don't have the documents. It 21 could be less. 22 Q And then you're asked: "Prior to 23 December 11th, when Madoff was arrested, what was your 24 assumed net worth?" 25 And you say, "Over 70 million." Is that</p>	<p style="text-align: right;">Page 196</p> <p>1 A You mean Ray Madoff? 2 Q Did you -- did you or any -- or Avellino & 3 Bienes or Grosvenor or any of those entities that you 4 invest in Madoff through do business with them? 5 A We may have, but since I didn't handle any 6 books and records, I could not tell you. 7 Q You, on page 70, say, "Let me tell you, in 8 '93, after settling out with the SEC, we asked for a 9 meeting at Bernie's office with Bernie, which took place 10 around 5:30 in the afternoon." 11 "Up at the Lipstick Building. 12 "The Lipstick Building. When I got there and 13 they showed us into the conference room, my partner and 14 his wife were sitting there and Bernie was sitting at 15 this -- 16 "Frank and Nancy?" 17 You say, "Frank and Nancy at the same side of 18 the table, and Dianne and I sat down on the other side 19 of the table." 20 "Just the five of you? 21 "Just the five of us." 22 And what do you recall about that meeting? 23 A That we had a meeting and that the table was 24 set up the way I said. I remember that Bernie was in a 25 short sleeve and was very relaxed in his chair. I</p>

<p style="text-align: right;">Page 197</p> <p>1 remember that Frank and Bernie were talking about 2 setting up entities to go back with him on our own, 3 without any customers or anybody else. I remember that. 4 And I remember -- it was technical stuff. I 5 wasn't even following it, because I was seething. And 6 finally, it just popped out of my mouth. I told you 7 this. 8 Q Okay. Then on page 77, it says: "How many 9 years were you investing with him?" 10 Then you say, "Bernie, from the beginning. 11 About 35." 12 Is that accurate, that you invested with 13 Bernie Madoff for approximately 35 years? 14 A Approximately, yes. 15 Q Okay. 16 A It wouldn't be far off the mark. 17 Q Then you're asked, "Did you ever have a down 18 year?" 19 And the answer is, "Never. Not once"; is that 20 correct? 21 A That's correct. 22 Q Then on page 70 -- I'm sorry. Yes. Page 79, 23 when you're talking about Jerry Horowitz. 24 A Okay. 25 Q "He was Bernie's accountant. Saul Alpern once</p>	<p style="text-align: right;">Page 199</p> <p>1 Q Does he realize auditing is pretty labor 2 intensive and requires a lot of accounting? 3 A You could say that. Yes, it does. 4 Q Okay. 5 A There are other things that have changed it 6 over the years. 7 Q So you're saying here, on page 79: "To me, I 8 was always wondering about it because I'll tell you 9 something, Martin: Auditing is a very labor-intensive 10 business. That's why all the accounting firms wanted to 11 get into consulting. It's just auditing is so labor 12 intensive, they can't make a profit. And I was always 13 wondering about Jerry doing this." 14 Is that true, were you always wondering about 15 Jerry's ability to do an audit for a company like 16 Madoff's? 17 A Not really. I was just puffing. 18 Q Okay. Let's take a break. 19 VIDEOGRAPHER: Off the record at 4:11 p.m. 20 (Thereupon, a recess was taken from 4:11 p.m. 21 to 4:33 p.m.) 22 VIDEOGRAPHER: Back on the record at 4:33 p.m. 23 BY MR. SAMUELS: 24 Q Okay. Come back to 56 Arlington for a moment. 25 Do you have the tax returns going back seven years?</p>
<p style="text-align: right;">Page 198</p> <p>1 said, 'You know, I think we'll take the account back.' 2 Because Saul Alpern used to handle Bernie's accounting, 3 yes? He said, "I'll handle Bernie," right? 4 A I remember that happening. I remember Saul 5 saying that. 6 Q And then Bernie said, "I'm not going back to 7 you. Jerry is my accountant." 8 Then it says, you said to yourself, "what's 9 with this old man? He can't be Bernie's accountant. 10 He's not independent. But Jerry was Bernie's accountant 11 and Jerry was a one-man show." 12 Did that trouble you as a red flag that Madoff 13 used a small accounting firm? 14 A It did not trouble me. It was not a red flag, 15 because he was -- he was not a public company and did 16 not have to file quarterly statements with the SEC and 17 other regulatory agencies. To my knowledge, he didn't 18 have to file -- he didn't need to do, what I thought, a 19 certified statement. He could get by, maybe, with a 20 compilation. I don't know what the SEC would require 21 from him. 22 Apparently, it was okay because Jerry Horowitz 23 stayed there. For all I know, he may have had another 24 bigger firm doing year-end audit for the regulatory 25 agencies. I would not know.</p>	<p style="text-align: right;">Page 200</p> <p>1 A No. 2 Q You know that you're required to keep them 3 going back seven years? 4 A It is my understanding it's three years. 5 Q Okay. And who are the accountants for 56 6 Arlington? 7 A I would think Ahearn and Jasco. 8 Q So Ahearn and Jasco were also the accountants 9 for S&P an P&S and Sullivan? Do you know how S&P an P&S 10 got to them? 11 A I have absolutely no idea. 12 Q Okay. Take a look at Exhibit 23, please. 13 Exhibit 3 is a letter -- 14 MR. WOODFIELD: Twenty-three. 15 MR. ETRA: Twenty-three or three? 16 MR. SAMUELS: I'm sorry 23 -- is a letter from 17 Helen Davis Chaitman. It says, "Dear friend." You 18 understand Helen Davis Chaitman is an attorney, 19 correct? 20 THE WITNESS: Yes, I do. 21 BY MR. SAMUELS: 22 Q Okay. And are you aware of the fact that she 23 represents Mayfair, an entity in which you are involved? 24 A I have no knowledge of that. 25 Q Has Helen Chaitman ever represented you, or</p>

Page 201	Page 203
<p>1 any entity in which you have a direct or indirect 2 interest, to your knowledge? 3 A Not to my knowledge. 4 Q Okay. Do you know if she is trying to receive 5 funds from SIPC on behalf of Mayfair? 6 A Sir, this is the first I've ever heard of 7 this. 8 Q Do you know -- who is your lawyer? Strike 9 that. 10 Who is the lawyer for Grosvenor Partners, in 11 connection with their SIPC claim? 12 A I don't know. 13 Q How about Mayfair, do you know? 14 A I do not know. 15 Q How about St. James, do you know? 16 A I do know that I have no lawyer. 17 Q Okay. Has St. James made a SIPC claim? 18 A Yes, it has. 19 Q Without counsel? 20 A Without counsel. 21 Q And by the way, at the time you made the 22 statement to -- that we just spent a lot of time going 23 over, with FRONTLINE, were you represented by counsel at 24 that time? 25 A Yes.</p>	<p>1 Q In fact, is he related to your ex-wife? 2 A Jeffrey Picower is my -- was my ex-wife's 3 brother, younger brother. 4 Q And what was your ex-wife's name? 5 A Emily. 6 Q And were you married to Emily in 1992, when 7 you were going through the SEC issues? 8 A Oh, no. 9 Q Okay. Have you heard allegations that it is 10 Jeffrey Picower who provided the funding, to enable the 11 investors in Avellino & Bienes to receive a return of 12 all their principal and interest? 13 A Yes. 14 Q Okay. And is that -- are those allegations 15 true? 16 A I have no idea. 17 Q Have you ever discussed them with Mr. Picower? 18 A I heard those allegations for the first time 19 yesterday. 20 Q Okay. 21 A So I could not discuss it with Mr. Picower, 22 nor do I have any wanting to do so. 23 Q How many years were you married to Emily? How 24 many years was Mr. Picower actually your brother-in-law? 25 A Approximately, sir, approximately, 14 years.</p>
Page 202	Page 204
<p>1 Q Okay. So you knew that -- you went to that 2 statement voluntarily? Nobody forced you to do it, 3 right? 4 A The interview with FRONTLINE? 5 Q Uh-huh. 6 A Definitely voluntarily. 7 Q Okay. All right. And like I said earlier, 8 back at the time of the interview, the action 9 surrounding Madoff and your investments with Madoff and 10 your history with Madoff, were more recent in your mind 11 than they were today, correct? 12 MR. ETRA: Objection. 13 THE WITNESS: I would surmise. That's the 14 best I could say. 15 BY MR. SAMUELS: 16 Q Okay. Have you ever seen what's been marked 17 as Exhibit 23? 18 A Yes. 19 Q And when did you see this? 20 A Yesterday. 21 Q Have you ever seen it prior to yesterday? 22 A No. 23 Q Okay. Now, I want to talk to you about 24 Jeffrey Picower. You know him, correct? 25 A Yes, sir.</p>	<p>1 Q And were you living in New York at the time? 2 A No. 3 Q You were living in Florida? 4 A No. I was living on Long Island. 5 Q Okay. And was Mr. Picower affiliated in any 6 way with Mr. Madoff or his office, during that 14-year 7 period? 8 A I would have no idea. 9 Q You didn't know what he did, even though he 10 was your brother-in-law? 11 A I knew he was a CPA and an attorney. That, I 12 knew. He had a master's degree and an LLM. He was 13 brilliant. 14 I knew he went to work for a rather large New 15 York accounting firm. I think -- please don't hold me 16 to this -- Horwath & Horwath, maybe. Something of a 17 medium size, not one of the majors. That, I knew. 18 Q Okay. And did you ever at any time, including 19 up through today, learn of Mr. Picower's affiliation or 20 association with Madoff or Madoff's firm? 21 A After the collapse of Madoff, I read a lot 22 about Jeffrey Picower. 23 Q What did you read about? 24 A That he was -- this was -- that he was very 25 successful.</p>

<p style="text-align: right;">Page 205</p> <p>1 Q Where did you read about him in connection 2 with Madoff? 3 A In the press. 4 Q Right. What did you read about him in the 5 press, in connection with Madoff? 6 A That he was a friend and he had a \$900 million 7 foundation invested with Madoff. 8 Q Were you involved in his decision to have that 9 investment? 10 A When Jeffrey Picower died, in 2009, in the 11 press, both his widow and his lawyer stated: We haven't 12 seen the Bienes or had any contact with them for 32 13 years, and that is a true statement. I knew nothing 14 about Jeffrey or his activities. 15 MR. SAMUELS: What number are we on? 16 MR. WOODFIELD: Thirty-eight would be next. 17 (Plaintiffs' Exhibit No. 38 was marked for 18 identification.) 19 BY MR. SAMUELS: 20 Q This is an article in the New Times called 21 "The House That Madoff Money Built." 22 A Uh-huh. 23 Q Have you ever seen this article? 24 A Not that I can remember. 25 Q In the second paragraph, it says, "You have to</p>	<p style="text-align: right;">Page 207</p> <p>1 Q Okay. Was it sold at a foreclosure or -- 2 A Yes. Oh, no. No. Excuse me. I don't know 3 how it was sold. That was done through the bank. The 4 bank handled it all. We had no say. 5 Q Were there foreclosure proceedings brought 6 against you? 7 A I don't know. I don't remember them. I think 8 we left the house and turned over the keys. 9 Q Okay. Going to page 3 of 6, it talks about, 10 "Malcom Farrell, president for Philharmonics Board of 11 Trustees introduced Bienes, who introduced the 12 musicians. And of course, he had to rib his pal, Judd, 13 first: 'Listen, don't shoot the pianist if he's no 14 good,' he said. 'He's doing the best he can.'" 15 "But then he told how just four days before, 16 in St. James Palace, in London, Judd had conducted the 17 English Chamber Orchestra before an audience that 18 included Prince Charles. It included the Bienes, too. 19 They saw and heard the whole thing." 20 Do you remember that? 21 MR. ETRA: Objection. 22 THE WITNESS: Do I remember going to St. James 23 Palace? 24 MR. SAMUELS: Yes. 25 THE WITNESS: For a concert?</p>
<p style="text-align: right;">Page 206</p> <p>1 look at how Fort Lauderdale's Michael Bienes lived." Do 2 you see that? 3 A Uh-huh. 4 Q "I've written a lot about the philanthropist 5 who claims he too has been ruined by the Madoff scandal, 6 who was shut down by the SEC after he and partner Frank 7 Avellino raised \$441 million for Madoff without 8 securities licenses," but that just -- "but he just 9 turned around and put all those same investors back in 10 with Madoff and retained the ties with the Ponzi schemer 11 extraordinaire." 12 Do you agree with Mr. Norman's assessment that 13 you turned around and put all the same investors back in 14 with Madoff? 15 MR. ETRA: Objection. 16 THE WITNESS: Not only do I disagree, he's a 17 goddamn liar. 18 BY MR. SAMUELS: 19 Q And it talks about the house being a -- did 20 you -- did you hire architects Ed Baywaters and Charles 21 Duemmling, to design a 10,000 square-foot party house 22 that was completed in 1991? 23 A I believe we did, yes. 24 Q Okay. And did you sell the house? 25 A It was sold.</p>	<p style="text-align: right;">Page 208</p> <p>1 MR. SAMUELS: With Prince Charles. 2 THE WITNESS: With Prince Charles conducted by 3 James Judd? 4 MR. SAMUELS: Yes. 5 THE WITNESS: Yes, sir. I do remember that. 6 BY MR. SAMUELS: 7 Q Okay. And this article also talks about James 8 and Valerie Judd. You were very close with them 9 socially, weren't you? 10 A No. We were friends. 11 Q Okay. There's a January 10th, 1995 Miami 12 Harold article on page 4 of 6 that mentions you. Talks 13 about "Millionaire philanthropist, Michael and Dianne 14 Bienes, hosting another one of their dinner parties in 15 their lavish Fort Lauderdale home, December 12th. This 16 one was for Grace Kelly biographer, Robert Lacey and 17 county literary luminaires." 18 "The guests were relaxing over coffee and 19 desert, discussing a project the Broward Public Library 20 Foundation was revving up to complete: A rare books and 21 special collections room in the main library in Fort 22 Lauderdale. 23 "How much money do you need?" asked Michael 24 Bienes. 25 "One million dollars," said Kay Harvey, the</p>

<p style="text-align: right;">Page 209</p> <p>1 foundation director.</p> <p>2 "The group held its collective breath. After</p> <p>3 a moment, Bienes responded, 'Okay. You've got it.'"</p> <p>4 Do you remember that?</p> <p>5 MR. ETRA: Objection.</p> <p>6 THE WITNESS: I remember the dinner. I</p> <p>7 remember Kay Harvey and Robert Lacey being there.</p> <p>8 I remember Sam Morrison, the then library director</p> <p>9 being there. But it did not happen that way.</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q Do you remember committing to give a million</p> <p>12 dollars?</p> <p>13 A At the end, yes, I do. I made that</p> <p>14 commitment.</p> <p>15 Q Okay. We have no further questions right now.</p> <p>16 In light of what we've heard today about the e-mails and</p> <p>17 the computer, we're keeping this deposition open.</p> <p>18 MR. ETRA: I don't know what you're talking</p> <p>19 about. The deposition is closed in my view.</p> <p>20 MR. SAMUELS: What I'm talking about is the</p> <p>21 fact that the e-mails have continued to be deleted.</p> <p>22 MR. ETRA: We disagree.</p> <p>23 MR. SAMUELS: Well, that's what the testimony</p> <p>24 is.</p> <p>25 MR. ETRA: We disagree.</p>	<p style="text-align: right;">Page 211</p> <p>1 CERTIFICATE OF OATH</p> <p>2 THE STATE OF FLORIDA</p> <p>3 COUNTY OF BROWARD</p> <p>4</p> <p>5</p> <p>6 I, the undersigned authority, certify that</p> <p>7 MICHAEL BIENES personally appeared before me and was</p> <p>8 duly sworn.</p> <p>9</p> <p>10 Dated this 10th day of September, 2015.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>_____ Gabrielle Cardarelli, RPR, FPR Notary Public - State of Florida</p>
<p style="text-align: right;">Page 210</p> <p>1 MR. SAMUELS: Well, that's fine. The judge</p> <p>2 will decide.</p> <p>3 MR. WOODFIELD: As always, it's been a</p> <p>4 pleasure, gentlemen. Thank you.</p> <p>5 (Discussion held off the record.)</p> <p>6 VIDEOGRAPHER: Concluding today's deposition.</p> <p>7 We are off the record at 4:50 p.m.</p> <p>8 COURT REPORTER: Order instructions for the</p> <p>9 record?</p> <p>10 MR. ETRA: We're reading.</p> <p>11 MR. SAMUELS: We'll take copy.</p> <p>12 COURT REPORTER: Copies?</p> <p>13 MR. ETRA: Yes.</p> <p>14 COURT REPORTER: Sir, copy?</p> <p>15 MR. WOODFIELD: Yes.</p> <p>16 (Witness excused.)</p> <p>17 (Deposition was adjourned at 4:50 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 212</p> <p>1 C E R T I F I C A T E</p> <p>2 THE STATE OF FLORIDA</p> <p>3 COUNTY OF BROWARD</p> <p>4</p> <p>5 I, Gabrielle Cardarelli, Florida Professional</p> <p>6 Reporter and Notary Public in and for the State of</p> <p>7 Florida at large, do hereby certify that I was</p> <p>8 authorized to and did report said deposition in</p> <p>9 stenotype; and that the foregoing pages are a true</p> <p>10 and correct transcription of my shorthand notes of</p> <p>11 said deposition.</p> <p>12 I further certify that said deposition was</p> <p>13 taken at the time and place hereinabove set forth and</p> <p>14 that the taking of said deposition was commenced and</p> <p>15 completed as hereinabove set out.</p> <p>16</p> <p>17 I further certify that I am not attorney or</p> <p>18 counsel of any of the parties, nor am I a relative or</p> <p>19 employee of any attorney or counsel of party connected</p> <p>20 with the action, nor am I financially interested in the</p> <p>21 action.</p> <p>22</p> <p>23 The foregoing certification of this transcript</p> <p>24 does not apply to any reproduction of the same by any</p> <p>25 means, unless under the direct control and/or direction</p> <p>of the certifying reporter.</p> <p>Dated this 25th day of September, 2015.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>_____ Gabrielle Cardarelli, RPR, FPR</p>

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1 DEPOSITION ERRATA SHEET

3 Our Assignment No. 22282

4 Case Caption: P&S Associates v. Michael D. Sullivan

6 DECLARATION UNDER PENALTY OF PERJURY

7 I declare under penalty of perjury that I have read
 8 the entire transcript of my Deposition taken in the
 9 captioned matter or the same has been read to me, and
 10 the same is true and accurate, save and except for
 11 changes and/or corrections, if any, as indicated by me
 12 on the DEPOSITION ERRATA SHEET hereof, with the
 13 understanding that I offer these changes as if still
 14 under oath.

15 Signed on the _____ day of _____, 20____.

18 MICHAEL BIENES

Page 214

2 DEPOSITION ERRATA SHEET

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5 Reason for change: _____

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24 SIGNATURE: _____ DATE: _____

25 MICHAEL BIENES

Page 215

1 DEPOSITION ERRATA SHEET

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24 SIGNATURE: _____ DATE: _____

25 MICHAEL BIENES

EXHIBIT B

Page 1

Page 3

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA
COMPLEX LITIGATION UNIT
CASE NO.: 12-034123(07)

P&S ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

One Town Center Road
Suite 301
Boca Raton, Florida 33486
Wednesday, 10:10 a.m. - 12:59 p.m.
September 9, 2015

DEPOSITION OF FRANK AVELLINO

VOLUME 1 of 2
(Pages 1 through 143)

Taken on behalf of the Plaintiffs before
SUSAN MATOS, Court Reporter and Notary Public in and
for the State of Florida at Large, pursuant to
Plaintiffs' Third Re-Notice of Taking Videotaped
Deposition in the above cause.

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PLAINTIFFS' EXHIBITS

NUMBER DESCRIPTION PAGE

Exhibit 1 Stipulation and Order in the10

Matter of the SEC versus Avellino &

Bienes;

Bates-Stamped BIENES 3RFP-005455 - 58

Exhibit 2 2-Page Letter dated August 7, 1991 ...51

from Avellino & Bienes;

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Exhibit 3 Various documents IN RE: Ersica70

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08-13-15 PLAINTIFFS_0014392 - 95

08-13-15 PLAINTIFFS_0014470 and

08-13-15 PLAINTIFFS_0017438

Exhibit 4 March 12, 1993 Letter from Frank109

Avellino to Rev. Richard Wills, Jr.

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PLAINTIFFS' EXHIBITS CONTINUED

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Exhibit 7	Amended and Restated Partnership131	
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Thereupon:

FRANK AVELLINO

was called as a witness, and having been duly sworn and responding "I do," was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SAMUELS:

Q. Good morning. Please state your name for the record.

A. Frank Avellino.

Q. Mr. Avellino, my name is Leonard Samuels. As I just indicated, I represent Mr. Phil von Kahle, S&P and P&S, two partnerships that are plaintiffs in this case.

Please -- please provide your residential address.

A. 223 Coral Lane, Palm Beach, Florida.

Q. And are you currently employed?

A. No.

Q. How many times have you had your deposition taken?

A. I can't remember. Three times, four times. In this case itself?

Q. No. Generally.

A. About three times.

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THE VIDEOGRAPHER: On the record. Today's date is September 9, 2015. The time on the video monitor is 10:10 a.m.

This is the video-recorded deposition of Frank Avellino in the matter of P&S Associates et al. This deposition is being conducted at Berger Singerman, LLP, One Town Center Road, Suite 301, Boca Raton, Florida 33486.

The court reporter is Susan Matos. And the videographer is Brian Terrinoni.

Would counsel please identify themselves for the record.

MR. SAMUELS: Leonard Samuels of Berger Singerman on behalf of Phil von Kahle, S&P and P&S.

Also in the room with me is Steven Weber, Tom Messana and Tom Zeichman.

MR. WOODFIELD: And on the phone?

MR. WEBER: Zachary Hyman.

MR. SAMUELS: Zachary Hyman will be on the phone periodically, I believe.

MR. WOODFIELD: Gary Woodfield on behalf of the witness and defendant, Frank Avellino.

MR. ETRA: Jonathan Etra present for Mr. Bienes.

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Q. Okay. And have you ever had your deposition taken in any matter that pertained in any way to investments made with Bernard Madoff?

A. Yes.

Q. Okay. And what matters were those?

A. They were matters that were in Massachusetts. Securities Exchange Commission in New York. Those are -- those are the two.

Q. And who is the plaintiff -- who are the parties in the Massachusetts action?

A. It was -- the parties in Massachusetts were -- I was the defendant, and the parties in Massachusetts were some relatives that I had.

Q. And were allegations made against you in connection with investments that they had made through one of your entities?

A. I think so, yes.

Q. Did that case go to trial?

A. No.

Q. Was it settled?

A. It was settled.

Q. And what were the terms of the settlement?

A. The terms of the settlement were --

MR. WOODFIELD: Excuse me.

THE WITNESS: -- were not -- were not --

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Page 11

MR. WOODFIELD: Stop. Let me get back to my...

THE WITNESS: Please.

MR. WOODFIELD: Yeah. The settlement is confidential. The terms of the settlement are confidential. He's not going to testify as to --

You hear me on that?

THE VIDEOGRAPHER: I can hear you, but it's better if you put the microphone on.

MR. WOODFIELD: Okay.

BY MR. SAMUELS:

Q. So it's -- your counsel just indicated the terms of that settlement agreement are confidential.

Is that your understanding as well?

A. Yes.

Q. And you mentioned that you provided your deposition in New York in -- in an SEC matter that also involved Bernie Madoff. Is that correct?

A. I believe so, yes.

Q. And was that in connection with the SEC's investigation of Avellino & Bienes around 1992, 1993?

A. Yes.

Q. And did that investigation result in an

that.

Q. Okay. Pursuant to a -- an agreement with the SEC or an order by the SEC, correct?

A. Yes.

Q. Okay. And do you remember this particular order being entered, the one that's in front of you as Exhibit 1?

A. No.

Q. What was the basis of the SEC investigation; do you recall?

A. I recall they said I was selling securities that were not registered.

Q. And what do you recall your defense to that being?

A. As far as I was concerned, I didn't know they were securities.

Q. And what was it that Avellino & Bienes was selling that you did not believe was securities?

A. We had issued some notes with certain clients, not all of them, maybe 30 percent or 40 percent of them, and we were told by the SEC that they were securities.

Q. Did those notes guarantee a certain rate of return?

A. I don't know if it guaranteed it, but it

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order precluding you from selling securities?

A. No.

Q. What was the result of that matter?

A. Again, I think it was confidential.

MR. SAMUELS: Let's mark this as Exhibit 1.

(Plaintiffs' Exhibit 1 was marked for Identification by the reporter.)

MR. SAMUELS: You guys may need to share a little bit today.

MR. ETRA: If we have to, we will.

MR. SAMUELS: I happen to have one here.

BY MR. SAMUELS:

Q. This is a stipulation and order in the matter of the SEC versus Avellino & Bienes and Frank Avellino and Michael Bienes.

What was the nature of this proceeding?

A. I don't remember. I'm looking at it, but I'm reading it, doesn't mean a thing to me. If you want to elaborate, fine. I don't know what --

Q. All right. Well, rather than getting into this, I just want to ask you if you recall being precluded in any way from engaging in the sale of securities as a result of action taken by the SEC?

A. Yes. I wasn't selling securities after

might have stated it.

Q. It stated a --

A. A rate of return.

Q. -- return that Avellino & Bienes was obligated to pay.

A. Yes.

Q. Okay. And the money that Avellino & Bienes received from these people you provided notes to, did that money get invested into Bernie Madoff?

A. All of it was, yes.

Q. Did the SEC review the books and records of Avellino & Bienes?

A. By the firm of Price Waterhouse.

Q. Excuse me?

A. By the firm of Price Waterhouse.

Q. Price Waterhouse on behalf of the SEC?

A. Yes.

Q. Okay. And how is it that Avellino & Bienes was comfortable providing notes with a rate of return based upon investments that were being made by these people into Bernie Madoff?

A. Experience dictated it.

Q. Okay. Experience being the returns that were previously obtained through investments with Bernie Madoff?

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Page 15

1 A. Yes.

2 Q. And did -- did Madoff ever guarantee
3 Avellino & Bienes a certain rate of return on
4 investment?

5 A. No.

6 Q. Was Mr. Bienes also preclude by the SEC
7 from selling securities?

8 A. It was Avellino & Bienes. I'm assuming
9 that Bienes was part of it.

10 Q. And who was your counsel in that?

11 A. I think it was Lee Sorkin.

12 Q. Are you currently a defendant in an action
13 being brought by Irving Picard?

14 A. Yes.

15 Q. And have you had your deposition taken in
16 that case?

17 A. Not that I recall.

18 Q. And I want to ask you about a couple
19 allegations that are in that complaint concerning
20 documents and statements of Avellino & Bienes that
21 you said were reviewed by Price Waterhouse.

22 Did Bernie Madoff or anyone from his
23 company assist Avellino & Bienes in putting together
24 statements that were provided to the SEC?

25 A. Not that I recall.

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1 Q. Are you aware of allegations being made by
2 Bernie Picard [sic] against Avellino & Bienes
3 that -- that Avellino & Bienes sent statements to
4 Bernie Madoff Investments so that Madoff and his
5 employees can alter them and conceal the original
6 statements from the SEC?

7 A. No. Nope. I'm not aware of it, no.

8 Q. Are you aware that -- that -- strike that.

9 And there's also an allegation that Bernie
10 Madoff created an entirely new set of account
11 statements for production to the SEC and/or the
12 receiver which eliminated certain transactions and
13 replaced them with other fictitious transactions
14 more consistent with the false testimony and
15 representations Avellino & Bienes made to the SEC.

16 Are you aware of that allegation?

17 A. No.

18 Q. And is that allegation true?

19 A. No.

20 Q. Okay. And so is the allegation that
21 Bernie Madoff -- Bernie Madoff's firm assisted in
22 preparing or altering statements to be provided by
23 Avellino & Bienes to the SEC, is that statement true
24 or false?

25 A. I don't know. I don't think so. No, it's

1 false.

2 Q. It's false?

3 A. Yeah.

4 Q. Did you personally oversee the statements
5 of Avellino and Bienes that were prepared and
6 provided to the SEC?

7 A. Over the years?

8 Q. During the investigation in 1990 -- 1991,
9 1992, 1993 time frame?

10 MR. WOODFIELD: Objection to the form of
11 the question as being vague or oversought.

12 Can you just clarify?

13 BY MR. SAMUELS:

14 Q. Do you understand the question?

15 A. It doesn't make sense. You said did I
16 prepare -- say it again. I...

17 Q. Were you involved in the preparation of
18 statements that were provided to the SEC in
19 conjunction with their investigation in the early
20 1990s?

21 A. Again, over the years. Not that day, not
22 that time. Over the years.

23 Q. I'm talking about the statements that were
24 presented to the SEC while they were investigating
25 Avellino & Bienes in 1992 --

Page 16

1 A. I answer again --

2 Q. -- 1993 time frame.

3 A. -- over the years, all of the statements
4 were provided to the SEC. Those statements you're
5 indicating were part of it, then, yes, of course, I
6 did.

7 Q. And do you have knowledge of anyone from
8 Bernie Madoff's firm assisting Avellino & Bienes in
9 preparing statements or altering statements to be
10 provided to the SEC --

11 A. No.

12 Q. -- in connection with the investigation in
13 the early '90s?

14 A. No.

15 Q. So to the extent those allegations are
16 being made by Mr. Picard, you would either deny them
17 or say you have no knowledge of them?

18 A. No knowledge of them and I deny them
19 emphatically.

20 Q. Now, I intended originally when I spoke
21 about your depositions to go over some of the ground
22 rules of the deposition. We've gone a little far
23 before I did that, but I just want to do that now
24 anyway --

25 A. Sure.

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Page 19

1 Q. -- to get those on the record and make
 2 sure that we're on the same page as we go along.
 3 A. Right.
 4 Q. So as you can tell, I'm going to be asking
 5 you a series of questions. As you know, you've been
 6 put under oath and are required to answer the
 7 questions truthfully as though you were in front a
 8 judge and jury. Okay?
 9 A. Sure.
 10 Q. Also, if you don't understand any
 11 questions, please let me know and I'll rephrase them
 12 to make them understandable to you. Okay?
 13 A. Okay.
 14 Q. And for purposes of the court reporter, I
 15 would ask that you do what you have been doing, and
 16 that is answer verbally as opposed to the nodding of
 17 head. Okay?
 18 A. Sure.
 19 Q. All right.
 20 Do you -- do you have an e-mail address?
 21 A. Yes.
 22 Q. And what is your e-mail address?
 23 A. It's Franknanc@aol.com.
 24 Q. And how long have you used that e-mail
 25 address?

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1 A. Oh, since I've had e-mail.
 2 Q. Do you recall about the time that would
 3 be?
 4 A. Probably ten years, twelve years.
 5 Q. And do you maintain e-mails going back
 6 that far?
 7 A. No.
 8 Q. How long do you maintain e-mails for?
 9 A. Three days. I -- I'm not an e-mail
 10 person, so...
 11 Q. And so up to three days, you would hit the
 12 delete button?
 13 A. I delete them overnight if I have to.
 14 Q. Okay. All right. And so have you made
 15 any effort to -- to locate or find or get your hands
 16 on any e-mails that you've previously deleted?
 17 A. No.
 18 Q. So you've done -- made no effort to
 19 retrieve deleted e-mails?
 20 A. No.
 21 Q. And what type of computer do you use?
 22 A. It's an ancient computer now --
 23 Q. It's what? I'm sorry?
 24 A. I think it's a -- a Sony, I think.
 25 Q. And how long have you had this computer?

1 A. Four years.
 2 Q. And is it a desktop or a laptop?
 3 A. Laptop.
 4 Q. And have you used any other computers
 5 during that four-year period --
 6 A. No.
 7 Q. -- for personal --
 8 A. No.
 9 Q. Okay. And do you know what computer you
 10 had before that?
 11 A. No. I can't -- as I said, I'm not a
 12 computer person, so...
 13 Q. And do you share the use of that computer
 14 with anybody else since --
 15 A. My wife.
 16 Q. And your wife's name is Nancy Avellino?
 17 A. Right.
 18 Q. And do you share the e-mail address with
 19 your wife?
 20 A. Yes. It's FrankNanc.
 21 Q. So you both use the same e-mail for --
 22 A. Same one.
 23 Q. Okay. Have you used any other e-mail
 24 addresses in the past?
 25 A. Not that I recall.

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1 Q. So you believe this has been your e-mail
 2 address since you started using e-mail?
 3 A. Yes.
 4 Q. And you're currently represented by
 5 Mr. Gary Woodfield in this matter?
 6 A. Yes. Yes.
 7 Q. Okay. Do you have any other law firms
 8 other than Mr. Woodfield's firm representing you in
 9 this action?
 10 A. This S&P action?
 11 Q. Mm-hmm.
 12 A. No.
 13 Q. Okay. And who are -- who's your counsel
 14 up in the Irving Picard lawsuit?
 15 A. What is it -- I'll have to defer to my....
 16 Q. Well, here's --
 17 MR. WOODFIELD: It's your memory.
 18 You've --
 19 BY MR. SAMUELS:
 20 Q. Here's what we'll do. Here's what we'll
 21 do. We'll go on your memory. If you don't know,
 22 that's a fair answer. If your lawyer wants to tell
 23 me, he can, but --
 24 A. I know it.
 25 Q. -- he's not obligated to, so...

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Page 23

1 A. I'm trying to remember who -- it's Frankel
2 is the name.

3 Q. Frankel? Okay.

4 A. That's the one that is there for me.

5 Q. Okay.

6 Do you know Mr. Michael Bienes?

7 A. Yes, I do.

8 Q. Okay. And he is the Bienes of Avellino &
9 Bienes that we've been speaking of, correct?

10 A. Yes.

11 Q. And he's been a business associate of
12 yours for many years?

13 A. Yes, he has.

14 Q. Okay. Are you personally or through any
15 of your entities paying for the legal representation
16 of Mr. Bienes?

17 A. No.

18 Q. So as far as you know, he's paying his own
19 lawyers?

20 A. As far as I know.

21 Q. Do you have any -- any joint defense
22 agreement or a common interest agreement with any of
23 the defendants in this case, including Mr. Bienes?

24 A. Not that I know of.

25 Q. I just want to go over another question

Page 22

1 that's kind of preliminary, and I'm asking this
2 because I know that you've missed a couple of
3 noticed depositions and your lawyers represented to
4 the Court that that's because of health issues that
5 you've had.

6 A. Yes.

7 Q. Are you currently on my medications?

8 A. Too many.

9 Q. Okay. Are you on any medications that you
10 believe would affect your ability to recall events
11 or to answer questions truthfully today?

12 A. Not that I know of.

13 Q. What is your highest level of education?

14 A. Bachelor's degree.

15 Q. And what is that in? Where is it from and
16 what --

17 A. Baruch College in New York.

18 Q. Okay. And when did you receive that?

19 A. 1958, I believe.

20 Q. Okay. Do you hold any professional
21 licenses?

22 A. No.

23 Q. Do you have any background in accounting?

24 A. Yes.

25 Q. What is your background in accounting?

1 A. Certified public accountant.

2 Q. And in what states -- are you currently a
3 licensed --

4 A. No. I'm not licensed now, no.

5 Q. And in what states were you previously
6 licensed?

7 A. New York.

8 Q. Ever licensed in Florida?

9 A. Not that I recall.

10 Q. In what years did you maintain your C.P.A.
11 license in New York or when did you last maintain
12 it?

13 A. I can't recall.

14 Q. Did you relinquish it voluntarily or were
15 you forced to surrender it?

16 A. No I relinquished it.

17 Q. Do you recall approximately how many years
18 ago?

19 A. No.

20 Q. Did you have -- okay.

21 Have you ever heard of an entity called
22 Alpern & Heller?

23 A. Yes.

24 Q. And what was Alpern & Heller?

25 A. They were the original and only people I

Page 24

1 ever went to work for right out of college.

2 Q. Okay. And what business is Alpern &
3 Heller in?

4 A. They were accountants.

5 Q. Okay. And what was your job at Alpern &
6 Heller?

7 A. Junior accountant.

8 Q. And did you ever rise above the rank of
9 junior accountant?

10 A. Yes.

11 Q. What was your highest level that you
12 obtained at Alpern & Heller?

13 A. It wasn't Alpern & Heller anymore, it was
14 Alpern Avellino.

15 Q. And when did it go from Alpern & Heller to
16 Alpern Avellino?

17 A. I can't recall. In the '70s.

18 Q. When did either Alpern or Heller or --
19 strike that.

20 Did Alpern & Heller directly or indirectly
21 invest with Bernie Madoff?

22 A. Not that I know of.

23 Q. Okay. Did Alpern & Heller have clients
24 who invested in Bernie Madoff?

25 A. Not that I know of.

Page 25

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1 Q. And what was your job duties and
2 responsibilities at Alpern & Avellino?

3 A. I was the junior partner. And I did
4 auditing, tax returns.

5 Q. So you were an owner in the firm?

6 A. I think I was a 20 percent owner in the
7 firm.

8 Q. So you did auditing. What else?

9 A. Auditing, tax returns, tax examinations.

10 Q. Mm-hmm.

11 A. That was what my job was.

12 Q. Okay. What -- what size companies were
13 you auditing?

14 A. They were all small, individual and
15 partnerships.

16 Q. How many employees did Alpern Avellino
17 have?

18 A. At the time, besides myself, Alpern, two
19 others.

20 Q. And when you did audits, did you typically
21 do it with other staff or accountants at your firm?

22 A. Sometimes.

23 Q. Did you ever do audits by yourself?

24 A. Yes.

25 Q. Small companies?

1 A. I basically sat with Saul Alpern who
2 interviewed him.

3 Q. Okay. And were you in favor of hiring
4 Mr. Bienes?

5 A. Definitely.

6 Q. Okay. And so then Mr. -- what year did
7 Mr. Bienes join you; do you know?

8 A. I don't remember.

9 Q. Did Alpern & Heller have clients who
10 invested in -- with Bernie Madoff or any of his --
11 or Bernie Madoff Investment Securities?

12 A. No, not that I know of. I don't think so.

13 Q. How about when it became Alpern, Avellino
14 & Bienes, did Alpern, Avellino & Bienes directly
15 invest with Bernie Madoff or Bernie Madoff
16 Investment Securities?

17 A. Not that I recall.

18 Q. And did Alpern, Avellino & Bienes
19 recommend that any clients invest with Bernie Madoff
20 or Bernie Madoff Investment Securities?

21 A. Not that I recall.

22 Q. So you didn't send any clients over to
23 Bernie Madoff --

24 A. No.

25 Q. -- or Bernie Madoff Investments?

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Page 28

1 A. Small companies.

2 Q. Did the nature of the services of Alpern &
3 Heller provide ever change?

4 A. Not that I recall.

5 (Mr. von Kahle entered the deposition
6 room.)

7 BY MR. SAMUELS:

8 Q. And did Alpern & Heller ever change its
9 name?

10 A. Not that I recall.

11 Q. Did that morph into Avellino & Bienes or
12 no?

13 A. I think it was Alpern, Avellino & Bienes.

14 Q. Alpern?

15 A. Avellino & Bienes.

16 Q. Avellino & Bienes.

17 And when -- and that would be Michael
18 Bienes?

19 A. Yes.

20 Q. And when did you first -- when did you
21 first meet Mr. Bienes?

22 A. I met him in my office as a prospective
23 partner probably in the 1970s.

24 Q. So you interviewed him as a prospective
25 partner?

1 A. Nope.

2 Q. Okay. And when did you first meet
3 Bernard L. Madoff?

4 A. I think he was coming out of college and
5 wanted a job. And when I say I met him, he was --
6 he was Ruth Madoff's husband, so, you know, I really
7 don't recall when I met, what I talked and what I
8 did.

9 Q. And how did you meet Ruth Madoff?

10 A. Could have been at a -- something to do
11 with Saul Alpern.

12 Q. They were related, right?

13 A. Saul was Ruth's father.

14 Q. An so you met Bernie Madoff as a result of
15 your relationship with Saul Alpern?

16 A. Definitely.

17 Q. Okay. Do you know when that would have
18 been?

19 A. No.

20 Q. Do you recall at what time Mr. Madoff
21 became involved in -- in the investment business?

22 A. No.

23 Q. Can you approximate that?

24 A. No.

25 Q. Are you aware that Mr. Madoff was a

Page 29

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1 principal in Bernard L. Madoff Investment Securities
 2 LLC, correct?
 3 A. Yes.
 4 Q. Did you know Mr. Madoff at the time he
 5 formed Bernie L. Madoff Investment Securities LLC?
 6 A. Did I know? Is that what the question
 7 was?
 8 Q. Yes.
 9 A. No.
 10 Q. When did you first start investing,
 11 personally or through any of your entities, with
 12 Mr. Madoff?
 13 A. I can't recall.
 14 Q. Approximately?
 15 A. I can't recall.
 16 Q. 1970s?
 17 A. Could have been.
 18 Q. And did you have an account in your
 19 personal name or with the name of you and your wife
 20 with Mr. Madoff?
 21 A. I don't recall.
 22 Q. Did you ever, at any time, have an account
 23 in your own personal name or the name of you and
 24 your wife?
 25 A. I may have.

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1 Q. How many accounts did you have -- strike
 2 that.
 3 What is the most number of accounts that
 4 you had with Mr. Madoff involving you either
 5 directly -- strike that. Let me rephrase that.
 6 How many accounts did you have with
 7 Mr. Madoff in which you had a direct or indirect
 8 interest?
 9 A. I don't know.
 10 Q. More than 20?
 11 A. I don't know.
 12 Q. More than 10?
 13 A. I don't know.
 14 Q. Can you -- can you name some of the
 15 entities in which you invested with Mr. Madoff?
 16 A. No.
 17 Q. Can't name any of them?
 18 A. Not that I recall.
 19 Q. Okay. So Alpern, Avellino & Bienes at any
 20 point in time become Avellino & Bienes?
 21 A. Yes.
 22 Q. And what year do you believe that was?
 23 A. The year that Mr. Alpern retired. It
 24 could have been in 1970 -- late '70s.
 25 Q. And in Avellino & Bienes, were you and

1 Mr. Bienes the two owners?
 2 A. Yes.
 3 Q. Did Avellino & Bienes invest with Bernie
 4 Madoff?
 5 A. I think so. I can't honestly say it was
 6 Avellino & Bienes.
 7 Q. Okay. So when I talk about Mr. Madoff and
 8 investing in Madoff, I'm also talking about Bernard
 9 L. Madoff Investments Securities LLC, his entity,
 10 okay? Just for purposes of this deposition.
 11 MR. WOODFIELD: Maybe also for clarity,
 12 you're using Avellino & Bienes, you mean the
 13 entity A&B?
 14 MR. SAMUELS: Yes. Correct.
 15 MR. WOODFIELD: Yeah. I mean, so I think
 16 we understand that.
 17 MR. SAMUELS: Yeah. If I'm referring to
 18 them individually, I'll note them individually.
 19 BY MR. SAMUELS:
 20 Q. Okay. Did Avellino & Bienes refer clients
 21 or investors to Madoff to invest their money?
 22 A. Not that I recall.
 23 Q. Okay. Did you, individually or through
 24 any of your entities, refer people to invest in
 25 Mr. Madoff or his company?

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1 A. Not that I recall.
 2 Q. Never?
 3 A. Not that I recall.
 4 Q. Okay. So through all the years, 1970s
 5 until 2008, you don't recall ever saying to anybody
 6 you thought it would be a good idea to invest with
 7 Madoff?
 8 A. Using your words, no.
 9 Q. Okay.
 10 A. You said any good idea to invest. No.
 11 Circumstances were probably different in 1992, '93.
 12 So would I say that I recommend anybody? No.
 13 Q. Okay. So in the circumstances 1992 and
 14 1993 -- well, we spoke earlier before then where you
 15 would have issued notes, right, to people in
 16 Avellino & Bienes, and then the money that you
 17 received, the proceeds, would then be invested with
 18 Mr. Madoff, correct?
 19 A. Yes.
 20 Q. Did the people he issued the notes to
 21 understand that the money that they were giving you
 22 was going to be invested with Mr. Madoff or his
 23 company?
 24 A. I don't know. I don't remember.
 25 Q. You don't remember if you told them what

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1 you were doing with their money?

2 A. No.

3 Q. Okay. So do you recall any discussions
4 with any of those investors asking you how it is you
5 would be able to give them any type of return noted
6 in the promissory notes?

7 A. No.

8 Q. Do you recall having discussions with any
9 investors in Avellino & Bienes about the fact that
10 their money ultimately was going to be invested with
11 Madoff?

12 A. I don't recall. I may have, but I don't
13 recall.

14 Q. Okay. In fact, all the notes that -- all
15 the notes that Avellino & Bienes issued to
16 investors, that money went into Madoff, right?

17 A. Yes.

18 Q. Okay. And so your testimony is that you
19 don't recall discussing with any of those people the
20 fact that their money was going to be invested with
21 Madoff?

22 A. No.

23 Q. Okay. Under what premise did these people
24 give you money?

25 A. On the premise that I was Avellino &

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1 Bienes and I had a reputation of being an honest
2 person. Basically that's what it was all about.

3 Q. I'm going to ask you the names of some
4 other entities.

5 A. Mm-hmm.

6 Q. And one is Grosvenor?

7 A. Grosvenor.

8 Q. Grosvenor Partners Limited. Is that an
9 entity in which you were involved, directly or
10 indirectly?

11 A. Yes.

12 Q. And what was your involvement in
13 Grosvenor?

14 A. I was probably a partner.

15 Q. And did Grosvenor, directly or indirectly,
16 invest money in Madoff?

17 A. All of it.

18 Q. All of it.

19 A. Mm-hmm.

20 Q. And when you would obtain investors
21 with -- for Grosvenor --

22 A. Grosvenor. The S is silent.

23 Q. The S is silent. Thank you.

24 A. Grosvenor.

25 Q. Grosvenor.

1 Okay. When you would have people invest
2 money in Grosvenor, did they understand that their
3 money was ultimately going to be invested with --
4 with Madoff?

5 MR. WOODFIELD: Object to the form of the
6 question.

7 You can answer, if you can.

8 Assumes facts not in evidence.

9 MR. SAMUELS: Okay.

10 BY MR. SAMUELS:

11 Q. Did -- do you understand the question?

12 A. I understand the question. But you're
13 saying when people invested in Grosvenor, did you
14 tell them it was -- Grosvenor was a family entity.
15 Only family members were in it.

16 Q. Okay. There were no investors outside of
17 the family?

18 A. Not that I recall, no.

19 Q. And you don't recall -- what is the name
20 of your church?

21 A. Christ Church.

22 Q. You don't recall Christ Church giving any
23 money to Grosvenor?

24 A. I gave the money for Christ Church.

25 Q. And then did Christ Church then give the

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1 money to Grosvenor?

2 A. It was my money that was in there and I
3 put their name in it.

4 Q. Okay. So you would give money to the
5 church as a charitable contribution?

6 A. No. I just take money, give it to Bernie
7 Madoff and put Christ Church United Methodist. It
8 was my money to Bernie in Christ Church's name.

9 Q. Okay. Now, Mayfair Ventures General
10 Partner, what was your involvement in that?

11 A. I was a partner there. I was a partner.

12 Q. And was your wife a partner?

13 A. I don't recall.

14 Q. And did -- did people invest in Mayfair
15 Ventures General Partnership?

16 A. Mayfair Ventures was also a family entity.
17 No outsiders.

18 Q. Okay. And did the family members who put
19 money into Mayfair understand -- then have that
20 money go into Madoff?

21 A. Totally, yes.

22 Q. Aster Associates, what is that?

23 A. A family account.

24 Q. Did anyone outside of the family invest in
25 Aster Associates?

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1 A. Not that I recall, no.
 2 Q. Did all the money put into Aster
 3 Associates end up with Madoff?
 4 A. Yes.
 5 Q. St. James Associates, is that...
 6 A. That was --
 7 MR. WOODFIELD: Wait for a question,
 8 please.
 9 Is there a question?
 10 BY MR. SAMUELS:
 11 Q. Are you familiar -- do you know an entity
 12 by the name of St. James Associates?
 13 A. I know the name.
 14 Q. And what is it?
 15 A. I believe it was the same counterpart of
 16 Aster Associates that was for the Bienes family.
 17 Q. Okay. And do you know if the money in
 18 St. -- invested in St. James all went to Madoff?
 19 A. I would assume, yes.
 20 Q. Okay. And Strattham Partners, what is
 21 that?
 22 A. Strattham Partners was a firm that my son
 23 Thomas had.
 24 Q. And do you know if the money invested in
 25 Strattham all went to Madoff?

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1 A. As far as I know, yes.
 2 Q. Kenn Jordan Associates, what is that?
 3 A. Also a firm that was inherited. And the
 4 monies were in Bernard L. Madoff's accounts.
 5 Q. And inherited from whom by whom?
 6 A. Kenneth Jordan.
 7 Q. Inherited by?
 8 A. Me.
 9 Q. And who is Kenn Jordan?
 10 A. Kenn Jordan was a client of mine who died
 11 in 1999.
 12 Q. And he left money to you?
 13 A. He left money to me.
 14 Q. Okay. And was Kenn Jordan Associates
 15 invested in Madoff before the money was left to you?
 16 A. I don't recall if it was.
 17 Q. Kenn Jordan Foundation, are you familiar
 18 with that?
 19 A. Yes.
 20 Q. And what is that?
 21 A. Charitable foundation.
 22 Q. Okay. And did Kenn Jordan Foundation
 23 invest all of its money in Madoff?
 24 A. Yes.
 25 Q. Mayfair Pension Plan, what is that?

1 A. It's exactly what it says, a pension plan.
 2 Q. And did that pension plan invest all of
 3 its money in Madoff?
 4 A. Yes.
 5 Q. Okay. So in terms of Grosvenor, Mayfair,
 6 Aster, Strattham, Kenn Jordan Associates, Kenn
 7 Jordan Foundation and Mayfair Pension Plan, all of
 8 them invested all of their money in Madoff.
 9 Did they all invest their money in Madoff
 10 at your recommendation?
 11 A. At my recommendation?
 12 Q. Yes.
 13 A. I was the principal, so I put it there.
 14 Q. Okay. So the answer would be yes?
 15 A. Yes.
 16 Q. Okay. Knightsbridge of South Florida,
 17 Inc., do you know what that is?
 18 A. No. I mean, I know the name, but I don't
 19 remember what it was about.
 20 Q. Ascent, Inc.?
 21 A. Ascent?
 22 Q. Yes.
 23 A. That's a -- another company that Thomas,
 24 my son, had. It's his company.
 25 Q. Okay. And did Ascent, Inc. invest all of

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1 its money in Madoff?
 2 A. I have no idea.
 3 Q. Mayfair Bookkeeping Services, Inc., what
 4 is that?
 5 A. It's exactly what it says. It's a
 6 bookkeeping service Inc. I don't know if it was
 7 the -- I don't know why it was set up, but it was
 8 there.
 9 Q. Did they invest any money?
 10 A. Not that I know of.
 11 Q. 27 Cliff, LLC, what is that?
 12 A. That's a -- it's a company.
 13 Q. And what is the purpose of that company?
 14 A. It was tax planning that was set up by my
 15 debt attorney.
 16 Q. Who is the attorney?
 17 A. Francis Brogan.
 18 Q. And are you and your wife the managers of
 19 that limited liability company?
 20 A. I am.
 21 Q. You are. Okay.
 22 And 27 Cliff, LLC, did they -- did that
 23 company have a checking account to pay the personal
 24 expenses of yours?
 25 A. Yes.

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1 Q. And did it pay personal expenses of your
2 wife as well?
3 A. Not that I know of.
4 Q. Okay. And do you know -- is 27 Cliff, LLC
5 still active?
6 A. No.
7 Q. Do you know when it became inactive?
8 A. No.
9 Q. Did 27 Cliff, LLC ever receive any money
10 from Michael Sullivan or any of his entities?
11 A. Yes.
12 Q. And why did 27 Cliff, LLC receive money
13 from Michael Sullivan or any of his entities?
14 A. I don't recall why he sent it there.
15 Q. Was it money owed to you?
16 A. I don't recall. Maybe.
17 Q. Okay. And under what circumstances would
18 Mr. Sullivan have owed you money?
19 A. That we have to ask him.
20 Q. Are you familiar with the Avellino Family
21 Trust?
22 A. Yes.
23 Q. And did the Avellino Family Trust invest
24 money in Madoff?
25 A. No.

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1 Q. What is the Avellino Family Trust?
2 A. Again, it was estate planning.
3 Q. Did Mr. Brogan assist you with that?
4 A. Yes.
5 Q. Have you heard of the Avellino & Bienes
6 Pension Plan & Trust?
7 A. Yes.
8 Q. And what is that?
9 A. It's a pension plan that we had, you know.
10 Q. And did that -- did that pension plan
11 invest money with Madoff?
12 A. I don't recall.
13 Q. Frank J. Avellino Revocable Trust Number 1
14 as Amended and Restated January 26, 1990 as Amended,
15 are you familiar with that?
16 A. Yes.
17 Q. And did that trust invest money with
18 Madoff?
19 A. No.
20 Q. Frank J. Avellino Grantor Retained Annuity
21 Trust Under Agreement dated June 24, 1992, are you
22 familiar with that?
23 A. Yes.
24 Q. And did that entity invest money with
25 Madoff?

1 A. No.
2 Q. Frank Avellino Grantor Retained Annuity
3 Trust Agreement Number 2, did that trust invest
4 money with Madoff?
5 A. No.
6 Q. So going back now to the Avellino Family
7 Trust, the Avellino & Bienes Pension Plan & Trust,
8 the Frank J. Avellino Revocable Trust Number 1, the
9 Frank J. Avellino Grantor Retained Annuity Trust,
10 the Frank J. Avellino Grantor Retained Annuity Trust
11 Agreement Number 2, those are the ones I've
12 mentioned to you so far, did those entities receive
13 any money or transfers from Madoff?
14 A. Not that I recall.
15 Q. Frank J. Avellino Revocable Trust Number 1
16 Under Declaration Trust Number 1 dated June 30,
17 1988, what is that?
18 A. This was all part of estate planning,
19 so -- also by Mr. Brogan.
20 Q. Okay. And did that entity either invest
21 money in Madoff or receive any money or transfers
22 from Madoff?
23 A. Not that I recall.
24 Q. Do you recall -- in the Avellino Family
25 Trust Foundation, did that receive any money or

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1 invest any money in Madoff?
2 A. Not that I recall.
3 Q. So just to clarify the record: Receive
4 any money from or invest money in Madoff, the answer
5 is you don't recall.
6 A. I don't recall.
7 Q. So it may have, you just don't know.
8 A. I don't know.
9 Q. And we spoke about Thomas as being your
10 son. Do you have other children?
11 A. Yes.
12 Q. And what are their names?
13 A. Joseph.
14 Q. Joseph Avellino?
15 A. Yes.
16 Q. Okay.
17 A. And Lorraine.
18 Q. Lorraine?
19 A. L-o-r-r-a-i-n-e.
20 Q. Okay.
21 A. McEvoy.
22 Q. Okay. Any other children?
23 A. Not mine, no.
24 Q. Okay. And is -- where is Thomas located?
25 A. He lives in New -- New Jersey.

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1 Q. What part? What city?
 2 A. Holmdel.
 3 Q. And what does -- what does he do?
 4 A. I don't know now.
 5 Q. Do you know if he's employed?
 6 A. I don't think so.
 7 Q. What was the last job you recall him
 8 having?
 9 A. I don't speak to him much, so I don't
 10 know.
 11 Q. Do you recall at any point in time him
 12 being involved in computer software?
 13 A. Yes.
 14 Q. And do you recall at any point in time
 15 Thomas Avellino assisting S&P or P&S in establishing
 16 or -- a computer software system?
 17 A. He might have sent them a software
 18 calculation package.
 19 Q. And you're saying he might have.
 20 A. Might have. He may have. May have
 21 just -- I don't know. I think he did.
 22 Q. And would that have been done at your
 23 recommendation to Mr. Sullivan?
 24 A. Probably.
 25 Q. Okay. And why did you recommend that

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1 Mr. Sullivan use a software package from your son
 2 Thomas?
 3 A. Make his life a lot easier.
 4 Q. Mr. Sullivan's life?
 5 A. Sullivan and Greg Powell, the accounting.
 6 Q. And why would it make their life a lot
 7 easier?
 8 A. Well it was a calculation of -- if you saw
 9 it, you'd understand it.
 10 Q. Did --
 11 A. And add percentage dates. It was a -- it
 12 was a formula.
 13 Q. And how did the formula work; do you
 14 recall?
 15 A. You put a dollar and you look at the time
 16 and you look at the rate of return and days, and it
 17 would calculate the income for each one of those
 18 accounts.
 19 Q. Okay. And did Thomas provide software for
 20 the -- any of the other entities that we've
 21 mentioned: Mayfair, Grosvenor, any of those?
 22 A. Not that I know of, no.
 23 Q. Do you know if Thomas ever provided any
 24 software to any entity in which you were involved?
 25 A. No.

1 Q. No, you're unaware of that?
 2 A. No, I don't think he did.
 3 Q. And what does Joseph Avellino do?
 4 A. Nothing.
 5 Q. And where does he live?
 6 A. He lives in New Jersey.
 7 Q. Where?
 8 A. Where? I don't know. I don't remember.
 9 I don't know where he's at.
 10 Q. Okay. And what was the last employment
 11 you recall him having?
 12 A. So many years ago. I don't remember.
 13 Q. He's been not working for a while?
 14 A. He's not working.
 15 Q. Is he physically able to work?
 16 A. I don't know. I really don't know.
 17 Q. Are you in touch with him at all or no?
 18 A. Once a year on my birthday he calls.
 19 Q. Okay. And Lorraine McEvoy?
 20 A. She's a -- she's a teacher.
 21 Q. Where does she live?
 22 A. She lives in Red Bank, New Jersey.
 23 Q. And what is her -- is she married?
 24 A. She's divorced.
 25 Q. What is her ex-husband's name?

1 A. Michael.
 2 Q. Do you know anything about his
 3 whereabouts?
 4 A. No.
 5 Q. And who is Rachel Anne Rosenthal?
 6 A. That's Nancy's daughter.
 7 Q. And what are the names of Nancy's
 8 children?
 9 A. That's it, Rachel.
 10 Q. Rachel Rosenthal.
 11 A. It's Rachel Liersch, L-i-e-r-s-c-h.
 12 Q. And you're familiar with a Rachel Anne
 13 Rosenthal Trust U/A dated June, 29, 1990?
 14 A. Yes. Again, it was set up by Mr. Brogan.
 15 Q. Do you know if that trust either invested
 16 in Madoff and/or received funds from Madoff?
 17 A. No, it didn't invest with Madoff.
 18 Q. How about Rachel Anne Rosenthal Trust
 19 Number 3, do you know if that invested in or
 20 received funds from Madoff?
 21 A. Not -- not that I know.
 22 Q. Who is Heather Carroll Lowles?
 23 A. Lowles. It's Nancy's niece.
 24 Q. And do you know if any trust in which
 25 she's involved with ever received money or invested

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1 money with Madoff?
 2 A. I can't recall.
 3 Q. How about Tiffany Joy Lowles?
 4 A. Another niece.
 5 Q. Same question as to Tiffany.
 6 A. I don't remember.
 7 Q. Mary Ann Lowles, who's that?
 8 A. Melanie.
 9 Q. Melanie, I'm sorry.
 10 A. That's the third niece of the same family.
 11 Q. Do you know if she ever, through her
 12 trust, received money from Madoff or --
 13 A. I don't recall.
 14 Q. So when you say you don't recall, it's
 15 possible.
 16 A. It could be, but I don't recall.
 17 Q. Taylor Ashley McEvoy, who's that?
 18 A. Taylor is Lorraine's daughter.
 19 Q. Do you know if any trust established for
 20 her ever invested in or received money from Madoff?
 21 A. I don't recall.
 22 Q. Madison Alyssa McEvoy, who's that?
 23 A. That's Lorraine's second daughter. She's
 24 the older -- she's the older of the two.
 25 Q. Do you know of any trusts of hers ever

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1 invested in or received money from Madoff?
 2 A. Not that I know of.
 3 Q. Do you know what the S.A. Grantor Retained
 4 Annuity Trust is?
 5 A. Say it again, the what?
 6 Q. Do you know what the S.A. Grantor Retained
 7 Annuity Trust is?
 8 A. It's an annuity. I can't recall that one.
 9 Q. And do you know if it ever invested in or
 10 received money from Madoff?
 11 A. No.
 12 Q. And do you have any ownership or
 13 beneficial interest in that S.A. Grantor Retained
 14 Annuity?
 15 A. Not that I know of.
 16 Q. Did you -- when do you recall first
 17 investing, either directly or indirectly, with
 18 Mr. Madoff?
 19 A. I personally?
 20 Q. Mm-hmm.
 21 A. No. I don't know when.
 22 Q. You don't recall?
 23 A. No.
 24 Q. Okay. And how about to entities in which
 25 you had an ownership or beneficial interest, when

1 did you first start with Mr. Madoff?
 2 A. I can't recall.
 3 MR. SAMUELS: Let's mark this as
 4 Exhibit 2.
 5 (Plaintiffs' Exhibit 2 was marked for
 6 Identification by the reporter.)
 7 BY MR. SAMUELS:
 8 Q. I'm showing you a letter dated August 7,
 9 1991 from Lola Kurland.
 10 Who is Lola Kurland?
 11 A. Lola Kurland was the secretary in the New
 12 York office.
 13 Q. Of Avellino & Bienes?
 14 A. Yes.
 15 Q. It's unclear who this is to, but it says,
 16 "What we" -- in the first paragraph, "What we do at
 17 Avellino & Bienes is to accommodate relatives,
 18 friends and former clients that we serviced when we
 19 were certified public accountants."
 20 Do you see that?
 21 MR. ETRA: Can you say where you are?
 22 THE WITNESS: Yes.
 23 MR. ETRA: I'm sorry.
 24 Can I ask you where you are in the letter?
 25 MR. SAMUELS: First paragraph.

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1 MR. ETRA: Thank you.
 2 BY MR. SAMUELS:
 3 Q. So at a point -- at any point in time did
 4 Avellino & Bienes provide accounting services?
 5 A. To whom?
 6 Q. Clients.
 7 A. Did we -- did we -- we were certified
 8 public accountants.
 9 Q. Okay. Well, I'm asking because it says,
 10 "What we do at Avellino & Bienes is to accommodate
 11 relative, friends and former clients that we
 12 serviced when we were certified public accountants."
 13 So my question is: In 1991, were you
 14 and -- and Mr. Bienes still working as certified
 15 public accountants at Avellino & Bienes?
 16 A. No, we weren't.
 17 Q. In here it mentions "Avellino & Bienes
 18 invests with one particular Wall Street broker (the
 19 same company since we first started doing business
 20 over 25 years ago)."
 21 Do you see that?
 22 A. Yes.
 23 Q. Okay. So it then says, "who buys and
 24 sells stocks and bonds in the name of Avellino &
 25 Bienes." Correct?

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1 A. That's what it says.
 2 Q. So is this Mr. Madoff you're referring to
 3 or his company?
 4 A. I'm not referring to anybody. This is
 5 Lola's letter.
 6 Q. Okay. This letter is referring to a
 7 company.
 8 A. I hear that, but I didn't sign this
 9 letter.
 10 Q. All right. I'm asking you a question.
 11 A. I know you are, but you're giving a
 12 general thing that Lola is yakking about, if you
 13 will, and...
 14 Q. I -- I'm just going to -- I'm just using
 15 this letter to see it if refreshes your
 16 recollection --
 17 A. Okay. Go right ahead.
 18 Q. -- in any way about your relationship,
 19 when it started with Mr. Madoff.
 20 A. Okay.
 21 Q. And I also want to ask you about the
 22 business of Avellino & Bienes.
 23 A. Mm-hmm. Sure.
 24 Q. So approximately what time frame did
 25 Avellino & Bienes discontinue providing services as

1 sells stocks and bonds in the name of Avellino &
 2 Bienes?
 3 A. Yes.
 4 Q. And that then became the business of
 5 Avellino & Bienes?
 6 A. Yes.
 7 Q. And that one particular broker would be
 8 Madoff, correct?
 9 A. Madoff, mm-hmm.
 10 Q. Does this refresh your recollection in any
 11 way in when you started investing with -- with
 12 Madoff?
 13 A. No. The thing I do like here that Lola
 14 did say, which is the accusation over and over again
 15 is: We do not encourage new accounts and do not
 16 solicitate [sic] same.
 17 Q. And where --
 18 MR. WOODFIELD: Just answer the question.
 19 BY MR. SAMUELS:
 20 Q. Okay. And let's see what you're looking
 21 at.
 22 A. It's the third paragraph.
 23 Q. Okay. "We do not encourage new accounts
 24 and therefore do not solicit same." Is that right?
 25 A. Yes.

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1 certified public accountants?
 2 A. Probably in 1980s.
 3 Q. And what was the business of Avellino &
 4 Bienes when it discontinued acting as certified
 5 public accountants?
 6 A. We went out of business.
 7 Q. Did you still use the Avellino & Bienes
 8 letterhead?
 9 A. Yes. It never said C.P.A.s on it, so --
 10 it said Avellino & Bienes.
 11 Q. Okay. Did it used to say Avellino &
 12 Bienes, C.P.A.s?
 13 A. No, never did.
 14 Q. Okay. So in 1991, Avellino & Bienes is
 15 still in business, it appears. Is that right?
 16 A. Yes.
 17 Q. Okay. So when Avellino & Bienes
 18 discontinued operating as certified public
 19 accountants in 1980s, what did the business of
 20 Avellino & Bienes become?
 21 A. It became the one that '92 became a
 22 problem, whatever it was.
 23 Q. Okay. Would that be a business -- and
 24 let's look at the second paragraph -- that invested
 25 with one particular Wall Street broker who buys and

1 Q. And you do like to accommodate individuals
 2 that are recommended, correct?
 3 A. Not necessarily.
 4 Q. Okay. So Avellino & Bienes then would
 5 invest money of relatives, friends and former
 6 clients through Avellino & Bienes in Madoff,
 7 correct?
 8 A. Yes.
 9 Q. Okay. So would it also accept new clients
 10 or -- strike that.
 11 So Avellino & Bienes then would receive
 12 income as a result of these investments, correct?
 13 A. The investments were by Avellino & Bienes.
 14 Q. And so -- how did Avellino & Bienes make
 15 money.
 16 A. Buying and selling securities through
 17 Bernard L. Madoff.
 18 Q. Okay. And then paying a return to
 19 investors on the notes that they were given?
 20 A. Well, this looks like it is a note.
 21 Q. Okay. And -- and then Avellino & Bienes
 22 would make the difference between the return and the
 23 note minus whatever --
 24 A. Yes.
 25 Q. Minus whatever fees were paid to --

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1 A. Theoretically, yes.

2 Q. Okay. All right. And that was the
3 business model.

4 A. Yes.

5 Q. Okay. Now, in terms of new people, would
6 you accept new people who were recommended by you --
7 I'm sorry, by former clients, relatives and friends?

8 A. Maybe. I don't know. I don't think so.

9 Q. Who is -- who, out of you and Mr. Bienes,
10 was in charge of getting new people to invest with
11 Avellino an Bienes?

12 A. Evidently Lola.

13 Q. Lola worked to obtain new accounts?

14 A. Evidently.

15 Q. Did you work to obtain new accounts?

16 A. No.

17 Q. And if you're making money on these
18 accounts, why were you not interested in
19 obtaining --

20 A. Because I wasn't.

21 Q. You were not making money?

22 A. I wasn't interested.

23 Q. In getting new accounts.

24 A. Yes.

25 Q. And why is that?

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1 A. I didn't want to.

2 Q. Is there a reason why you wanted to limit
3 your income --

4 A. Well --

5 Q. Excuse me. Let me just finish the
6 question. I'm not trying to be rude.

7 A. Go ahead. No, no. I know you're not. Go
8 ahead.

9 Q. It's really for the court reporter. So if
10 you've allow me to finish and then you start to
11 answer it would be better.

12 But if -- Avellino & Bienes, presumably,
13 was in the business of wanting to earn a profit,
14 correct?

15 A. Mm-hmm.

16 Q. Yes?

17 A. Yes.

18 Q. Okay. And Avellino & Bienes then was
19 making money on people who were investing or
20 providing money to Avellino & Bienes to invest in
21 Madoff, correct?

22 A. Yes.

23 Q. Okay. So why is it you were not
24 interested in obtaining new accounts?

25 A. That was my mental state at the time.

1 Q. Okay. And it -- and let's talk about this

2 1991 time frame. Was Mr. -- was Mr. Madoff or his
3 company guaranteeing any returns to Avellino &
4 Bienes?

5 A. No.

6 Q. And in the fourth paragraph it says, "Let
7 me clarify one important thing. The money that is
8 sent to A&B is a loan to A&B, who, in turn, invests
9 on behalf of A&B for which our clients receive
10 quarterly interest payments." Correct?

11 A. Yes.

12 Q. And that was the business model.

13 A. That was the note.

14 Q. Okay. And did Avellino & Bienes have
15 other -- receive money from other investors to place
16 with Madoff that was provided to them, other than
17 through a note?

18 A. Not at -- not at that time, no.

19 Q. Okay. And that would have been -- did
20 that change at any time up until the time that the
21 SEC precluded you and Mr. Bienes from selling
22 securities?

23 A. At the time we started giving notes, it
24 never changed.

25 Q. Okay. And does this refresh your

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1 recollection in any way in how -- in the time frame
2 prior to 1991, in which you began, either directly
3 or indirectly, making investments with Mr. Madoff?

4 A. No.

5 Q. Did you and Mr. Madoff ever work at the
6 same company or firm?

7 A. No.

8 Q. And during the time that you were given
9 notes, you understood that the -- and when did you
10 start providing notes, Avellino & Bienes?

11 A. I can't recall when.

12 Q. 1980s?

13 A. No. Much, much, much later. I know that.

14 Q. Later because the SEC came in in 1993.

15 A. Right.

16 Q. There was an order entered, so --

17 A. I thought it was '92, but it's...

18 Q. So it would have been a couple years
19 before that?

20 A. Probably.

21 Q. And if these -- if the returns from Bernie
22 Madoff were less than the amount of interest you
23 agreed to pay in the note, then Avellino & Bienes
24 would have lost money, correct?

25 A. Yes.

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1 Q. Okay. And at the time that you were
2 entering into the note transactions, you were aware,
3 generally, that the stock market was volatile, and
4 it would be impossible for any investment advisor to
5 guarantee a rate of return on investment and stocks,
6 correct?

7 A. No. I don't know.

8 Q. You didn't -- did you know at that point
9 in time the stock market was volatile?

10 A. It was volatile for the -- all the years
11 that I was an accountant.

12 Q. Okay. So you knew that the stock market
13 was a risky investment and had volatility.

14 A. Always.

15 Q. So given the volatility of the stock
16 market, how is it you were willing to guarantee a
17 rate of return on a note?

18 A. I don't -- I don't recall why, but that's
19 what it was.

20 Q. Did you believe that to be risky or did
21 you believe it not to be risky in light of
22 Mr. Madoff's prior performance?

23 A. Prior performance was always good, so I
24 would assume it's not risky.

25 Q. You'd agree that it would be impossible to

1 there might have been positives.

2 Q. So did Mr. Madoff, in any given year, ever
3 have a negative return in all the years that you
4 were with him?

5 A. I can't recall.

6 Q. You don't recall any negative returns?

7 A. No. No, I don't.

8 Q. You can't recall whether he had a negative
9 return or you can't recall him having a negative
10 return?

11 A. I can't recall if he had a negative return
12 or whether he reported to us on securities a
13 negative return.

14 Q. In terms of Bernie Madoff's securities,
15 was that -- could anyone from the public invest with
16 Mr. Madoff?

17 A. I'm assuming so.

18 Q. Do you know if you had to be referred to
19 Mr. Madoff in order to open an account?

20 A. I don't know.

21 Q. Did Mr. Madoff ever tell you what rate of
22 return you would receive when you began investing
23 with him?

24 A. No.

25 Q. Did there ever come a time when you were

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1 have a guaranteed rate of return that are premised
2 upon investments in the stock market, correct?

3 A. Yes.

4 Q. Yes, it would be impossible.

5 A. Yes.

6 Q. Okay. And you would agree that over,
7 let's say, in a 20-year period, it would be
8 impossible to have funds invested in stocks that
9 never sustained a loss.

10 A. I would qualify the question.

11 Q. How would you qualify it?

12 A. Well, you said never sustained a loss.
13 During the period there were losses and there were
14 profits, and the net result was profits.

15 Q. So you believe it's possible to have funds
16 invested in a variety of equities that would never
17 sustain a loss, let's say, over a period of
18 20 years?

19 A. Yes, I did.

20 Q. Even in years when the stock market is
21 down, say, 20 percent?

22 A. Evidently, yes.

23 Q. And you're saying "evidently, yes." Why?

24 A. Because it didn't happen when the markets
25 were down. There were losses and the next year

1 no longer investing with Mr. Madoff?

2 A. Say it again. I'm sorry.

3 Q. Did there ever come a point in time where
4 you were no longer invested with Madoff?

5 A. Yes.

6 Q. And when was that?

7 A. 2008.

8 Q. And how much money do you have invested
9 with Mr. Madoff directly or indirectly in 2008?

10 A. Oh, I can't recall.

11 Q. Approximately?

12 A. Combined pension plans, could have been
13 over \$100 million.

14 Q. And how much money did you earn with
15 Mr. Madoff over the years?

16 A. I don't know.

17 Q. Combined.

18 A. I couldn't -- I don't know.

19 Q. Well over the 100 million that you had in
20 at the end, right?

21 A. Not that I know of. No.

22 Q. So is it your position that in a total of
23 your direct and indirect investments which you had
24 an interest, that you, over the years, lost money
25 with Mr. Madoff?

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1 A. Counting 2008?
 2 Q. Counting 2008.
 3 A. Lost it all.
 4 Q. I understand you lost it all in 2008, but
 5 in terms of --
 6 A. Over the --
 7 Q. -- the money that you made over the years,
 8 did you make more than the money that you had left
 9 in?
 10 A. Not that I know of.
 11 Q. Prior to 2008, did you ever experience a
 12 loss on any of your investments with Mr. Madoff in
 13 any given year?
 14 A. Not that I recall.
 15 Q. So we mentioned some entities here today,
 16 Grosvenor, Mayfair, Aster and some others. Were
 17 there any other entities that I did not mention
 18 today that you are aware of in which you invested
 19 directly or indirectly in Madoff?
 20 A. Not that I recall.
 21 Q. Do you know how many accounts you had,
 22 directly or indirectly, with Madoff at any given
 23 time?
 24 A. No.
 25 Q. If I were to -- want to figure out how

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1 much money you earned on your Madoff investments in
 2 any given year, would your tax returns disclose
 3 that?
 4 A. They should.
 5 Q. Okay. And what other documents that
 6 you -- would you have that would disclose that?
 7 A. Now?
 8 Q. Mm-hmm. Now.
 9 A. None.
 10 Q. Nothing other than your tax returns.
 11 A. Right. Only the open years.
 12 Q. And how many years are open right now?
 13 A. Right now, I had -- I think we have five
 14 years.
 15 Q. What year did you last put new, fresh
 16 money into an investment with Madoff, directly or
 17 indirectly, through the entities that we've
 18 discussed?
 19 A. Oh, I can't recall.
 20 Q. And what records would you look at to
 21 determine that?
 22 A. There are no records now.
 23 Q. You would have no ability to look at
 24 records to determine that?
 25 A. There are none, no, that I have.

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1 Q. Who is your C.P.A.?
 2 A. I don't have any. I have a C.P.A. that's
 3 recommended that is employed by my attorney, and
 4 it's Rebecca McDonough.
 5 Q. And what firm is Ms. McDonough --
 6 A. Ahearn & Jasco.
 7 Q. Why is your C.P.A. employed by your
 8 attorney as opposed to you?
 9 A. Yes.
 10 Q. Why?
 11 MR. WOODFIELD: If you know.
 12 THE WITNESS: I don't know.
 13 BY MR. SAMUELS:
 14 Q. Okay. Have you -- who was your -- how
 15 long has your C.P.A. been retained by your attorney
 16 as opposed to you directly?
 17 A. I don't remember.
 18 Q. Approximately?
 19 A. I don't remember.
 20 Q. Do you ever recall a point in time where
 21 you directly employed your C.P.A.?
 22 A. Oh, sure.
 23 Q. And when was that?
 24 A. Whenever tax returns were filed before
 25 2008, I'm assuming.

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1 Q. Okay. So did you ever employ your C.P.A.
 2 directly after 2008?
 3 A. Not that I recall.
 4 Q. So after 2008, your attorney retained your
 5 C.P.A. for you.
 6 A. Yes.
 7 Q. And you don't know why that is?
 8 A. No.
 9 Q. And have you had meetings since -- since
 10 2008 with your C.P.A.?
 11 A. When I bring her tax returns, which is
 12 maybe once a year. Sometimes I just FedEx the
 13 information.
 14 Q. Is your attorney with you when you work
 15 on -- when you meet with her?
 16 A. No. I just leave the papers and -- she's
 17 down in Pompano Beach.
 18 Q. And who pays her for the work that she
 19 does?
 20 A. I do.
 21 Q. You pay her -- you pay her as opposed to
 22 your attorney?
 23 A. Yes.
 24 Q. So why do you say that your attorney has
 25 retained her?

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1 A. This is because -- I think you'd have to
2 ask my attorney.

3 Q. You don't know?

4 A. No.

5 Q. What was Madoff's investment strategy for
6 Avellino & Bienes?

7 A. Strategy is buy and sell securities.

8 Q. Anything more specific than that?

9 A. Well, we -- when I say we, Avellino &
10 Bienes would buy securities, and it was the Bernard
11 L. Madoff company that sold -- owned the securities
12 and sold it to A&B. We used to say we sell, we
13 bought. It was Madoff buying/selling to A&B.

14 Q. And did -- did Avellino & Bienes receive
15 statements showing what Avellino & Bienes had
16 invested in Madoff?

17 A. Every quarter.

18 Q. And where did they come from?

19 A. They came from Bernard L. Madoff's office.

20 Q. Okay. And who were you dealing with at --
21 primarily at the Bernard L. Madoff's office?

22 A. Whomever would answer the phone.

23 Q. Did you have a social relationship with
24 Bernie Madoff at any time?

25 A. No.

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1 Q. Did you ever go out to dinner with him?

2 A. No.

3 Q. What types of securities did he invest in?

4 A. All of the main securities, you know, IBM,
5 Microsoft.

6 Q. Did he ever invest in Treasury bills?

7 A. Always.

8 Q. Always.

9 A. Always at the end of the year he would
10 convert all of his -- all of the portfolios to U.S.
11 Treasuries.

12 Q. Why was that part of what he did?

13 A. He said that was the safety factor of U.S.
14 Treasuries.

15 Q. And then would he sell the Treasuries and
16 reinvest in stock?

17 A. Yes.

18 MR. SAMUELS: Number 3.
19 (Plaintiffs' Exhibit 3 was marked for
20 Identification by the reporter.)

21 BY MR. SAMUELS:

22 Q. I'd like to show you what's been marked as
23 Exhibit 3.

24 S&P Investment Group, Inc. This first
25 page of Exhibit 3 is on a letterhead of

1 S&P Investment Group, Inc. Michael Sullivan and
2 Gregory Powell are shown in the left-hand corner on
3 their letterhead.

4 Are you aware of S&P Investment Group,
5 Inc. being an entity involving Mr. Sullivan and/or
6 Mr. Powell?

7 A. I'm aware of it, yes.

8 Q. And are you aware of S&P Investment Group,
9 Inc. being an entity that invested in Avellino &
10 Bienes?

11 A. No.

12 Q. Do you recognize them as being an entity
13 that referred clients of theirs to Avellino & Bienes
14 for investment?

15 A. No.

16 Q. We're going to get to the point in time
17 where the partnerships come into existence and
18 Mr. Sullivan begins, through those partnerships,
19 investing in Mr. Madoff.

20 And you understand that to be part of this
21 lawsuit, right?

22 A. Yes.

23 Q. Okay. So we're talking a period of time
24 before then when Avellino & Bienes was still
25 operating. And my question is, and maybe this will

1 refresh your recollection, do you recall Michael
2 Sullivan or his entity being an investor in -- or
3 being an investor in Avellino & Bienes?

4 A. I don't recall, but evidently it was.

5 Q. So this first letter shows S&P sending to
6 Mr. Gianna [sic] indicating they received \$100,000
7 for Mr. Gianna.

8 A. Mm-hmm.

9 Q. Then let's turn to the next page.

10 A. (Witness complies.)

11 Q. We now have on that same date
12 S&P Investment Group, Inc., again, indicating
13 Michael Sullivan and Gregory Powell on the
14 letterhead, sending a check to Avellino & Bienes for
15 \$100,000.

16 Do you see that?

17 A. Yes.

18 Q. And it asked to credit the savings account
19 of Ersica P. Gianna.

20 Do you see that?

21 A. Yes.

22 Q. Okay. And so this indicates that
23 S&P Investment Group, Inc. is sending \$100,000 on
24 behalf of Ms. Gianna to Avellino & Bienes, correct?

25 A. Yes.

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1 Q. Okay. And that the request being made for
2 Ms. Gianna to get quarterly statements with interest
3 earned to be sent to her.

4 And is that normally what would happen in
5 terms of Avellino & Bienes sent statements out and
6 then 1099s?

7 A. Yes.

8 Q. Okay. So here it indicates that there
9 would be a 15 percent to Ms. Gianna, and 1 percent
10 to S&P Investment Group, Inc., correct?

11 A. Yes.

12 Q. Do you know why Avellino & Bienes was
13 paying 1 percent to S&P Investment Group, Inc., an
14 entity involving Mr. Sullivan and Mr. Powell?

15 A. No.

16 Q. Do you know if Avellino & Bienes had a
17 policy of paying individuals or entities a percent
18 of money that they send to Avellino & Bienes on
19 behalf of others?

20 A. No.

21 Q. No, you're unaware of that policy?

22 A. No. I don't remember it.

23 Q. And here it indicates that Ms. Gianna
24 would get 15 percent, right?

25 A. Yes.

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1 Q. So my question is: How are -- in 1992,
2 how are you able to guarantee Ms. Gianna a
3 15 percent return, and S&P an additional 1 percent
4 monies that were going to be invested with Madoff?

5 A. Evidently, I did. I don't know.

6 Q. But financially, how were you able to
7 guarantee such a return if the money was going into
8 the stock market?

9 A. It was. I don't know. I mean, I can't
10 recall.

11 Q. You don't know why you were able to
12 guarantee a 15 percent return to Ms. Gianna and
13 1 percent to S&P --

14 A. No.

15 Q. -- for a total of 16 percent on money that
16 ultimately was going to the stock market?

17 A. No.

18 Q. Did Mr. Madoff ever assure you that you
19 would be receiving in excess of 16 percent of money
20 that you sent up?

21 A. No.

22 Q. Did anyone at Madoff's firm ever assure
23 you that you would be receiving money in excess of
24 16 percent from money that you sent up to Madoff?

25 A. No.

1 Q. Do you recall being concerned about
2 entering into notes with a rate of return of
3 15 percent or greater on money that was going to be
4 invested in the stock market?

5 A. No.

6 Q. You weren't concerned about losing money
7 on this?

8 A. No.

9 Q. And why were you not concerned about
10 losing money on guaranteeing the rate of return to
11 someone whose money eventually was getting invested
12 in the stock market?

13 A. I don't know. I can't recall.

14 Q. Let's turn to the fourth page of the
15 exhibit.

16 A. (Witness complies.)

17 Q. Which is from Lola Kurland at your office,
18 indicating that funds credited to her would be
19 returned at the annual rate of 15 percent interest
20 compounded quarterly, correct?

21 A. Which one is that one?

22 Q. If you look at --

23 MR. WOODFIELD: Page 4.

24 MR. SAMUELS: Page 4 of the exhibit.

25 THE WITNESS: Oh, I'm sorry.

1 And the question is?

2 BY MR. SAMUELS:

3 Q. The question is: This is a letter from
4 Avellino & Bienes to Ms. Gianna indicating that she
5 would receive an annual rate of 15 percent
6 compounded quarterly, correct?

7 A. Yes.

8 Q. Okay. Now, in the next page we have a
9 letter to note holder indicating that enclosed
10 you'll find a check representing your total
11 principal note amount of Avellino & Bienes plus
12 interest on that note as of November 16, 1992. This
13 check is being sent to you as a result of a consent
14 between Avellino & Bienes and the Securities
15 Exchange Commission requiring this redemption of
16 your donated interest.

17 Do you see that?

18 A. Yes.

19 Q. Okay. Did Avellino & Bienes return all of
20 the principal amounts on their notes plus interest
21 to all of its investors who had notes?

22 A. Yes.

23 Q. Okay. And was the money provided to
24 Avellino & Bienes by Madoff or anyone on his behalf?

25 A. It came from Madoff's office.

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1 Q. Madoff's office sent you the money?
 2 A. Yes.
 3 Q. Okay. And do you know how Madoff's office
 4 got the money to return to you?
 5 A. I have no clue.
 6 Q. Did you make any inquiry how they were
 7 able to get all the money back?
 8 A. At that point, I didn't care.
 9 Q. Did you ever come to learn that the money
 10 provided Mr. Madoff to pay you back came from
 11 Mr. Picower?
 12 A. No.
 13 Q. At any point in time did you ever learn
 14 that?
 15 A. No.
 16 Q. So sitting here today, you're unaware of
 17 that.
 18 A. No.
 19 Q. Do you know how Mr. Sullivan --
 20 Mr. Sullivan came to be an investor or someone who
 21 provided investors to Avellino & Bienes?
 22 A. I'm assuming he knew me and saw the way I
 23 lived. I was never around, but the way I lived, and
 24 from the church group, must have talked.
 25 Q. Did you ever tell Mr. Sullivan that you're

1 first became affiliated with Christ Church?
 2 A. Yes.
 3 Q. And that's in Fort Lauderdale?
 4 A. Yes.
 5 Q. When did you first become a resident of
 6 Fort Lauderdale?
 7 A. I became a Florida resident in
 8 Lauderdale-by-the-Sea in 1980. And Fort
 9 Lauderdale -- oh, I can't remember, not too long
 10 after that.
 11 Q. Okay. Well, I'm more interested when you
 12 came to South Florida. So 1980?
 13 A. 1980.
 14 Q. Okay. And did you become a member of
 15 Christ Church on or about that time?
 16 A. No. Because it was 1988 or '89 that I
 17 became a member of Christ Church.
 18 Q. And given that fact that you became a
 19 member in '88 or '89, do you recall when that Monday
 20 meeting first occurred with Bishop Wills?
 21 A. No.
 22 Q. And do you recall Mr. Michael Sullivan
 23 being at that very first Monday meeting for Bible
 24 study?
 25 A. Yes.

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1 making more money than you knew what to do with?
 2 A. Did I tell him? Excuse me?
 3 Q. Did you ever tell Mr. Sullivan something
 4 to the effect that you were making more money than
 5 you knew what to do with back in this time frame?
 6 A. I can't recall that.
 7 Q. Do you ever recall telling him that?
 8 A. No.
 9 Q. Okay. When did you first meet
 10 Mr. Sullivan?
 11 A. I met him at Christ Church when a group of
 12 men was assembled on Monday mornings by Bishop
 13 Wills, for the very first time. Men were meeting
 14 each other so that we could have Bible study and
 15 share our faith.
 16 Q. And what denomination is that?
 17 A. Methodist.
 18 Q. And how long, prior to that meeting, that
 19 first meeting on Monday morning, had you been a
 20 member of Christ Church?
 21 A. I married Nancy, who is a methodist, and
 22 she insisted I become a methodist. And, of course,
 23 loving her, I became a methodist. And that was
 24 1988, '89.
 25 Q. And was it at that point in time where you

1 Q. Do you know if it would have been prior
 2 to -- prior to 1992 when S&P Investment Group sent
 3 Ms. Gianna's check up to A&B?
 4 A. Oh, yes.
 5 Q. It would have been prior to that?
 6 A. Yes.
 7 Q. Okay. And how often did the Bible study
 8 group meet after it initially commenced on Monday?
 9 A. Every Monday for years.
 10 Q. And how many -- during what time frame did
 11 Bishop Wills run the bible study?
 12 A. I can't remember when it ended.
 13 Q. But it did end?
 14 A. I moved eventually and it was probably
 15 then. I think he was appointed bishop and left the
 16 church.
 17 Q. When he moved and left that church, did
 18 the Bible study get discontinued at that time?
 19 A. We had a small group that I would meet
 20 with Michael and maybe two other people, but not on
 21 that Monday morning. We just met -- we got so
 22 involved in Bible study that we would sit and meet
 23 and study some more.
 24 Q. Okay. How long did that take place after
 25 bishop left the church?

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1 A. I can't recall when.

2 Q. And when did you move from Broward County?

3 A. I believe it was 2004.

4 Q. And did you continue attending Christ
5 Church after you moved from Broward County?

6 A. No, not at all.

7 Q. Okay. And do you still participate in a
8 Bible study group?

9 A. No.

10 Q. So the Bible study group would have been
11 from around '88 or '99 until 2004, those would be
12 the years that you would have participated --

13 A. Probably. Probably, yes.

14 Q. -- with Michael Sullivan and Bishop Wills?

15 A. Not 2004. I think he left way before
16 then.

17 Q. Okay. And how often did it meet, every
18 Monday?

19 A. Every Monday.

20 Q. And were you a regular attendee?

21 A. Yes.

22 Q. And was Mr. Sullivan a regular attendee?

23 A. Yes.

24 Q. Is that the first time you met him on that
25 Monday meeting?

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1 A. Very first time.

2 Q. And did you mention to him that you were
3 part of Avellino & Bienes and that Avellino & Bienes
4 was a company that invested with Madoff?

5 A. Not at all.

6 Q. He did come to learn that through Bible
7 study?

8 A. Probably learned as we spoke about things
9 and what we did and how we did it. And watching my
10 contributing personally to Christ Church, you know,
11 a lot of funds, a lot of things being -- happening.
12 And, you know, you sit there and you talk and you do
13 things.

14 Q. And what did you learn about Michael
15 Sullivan's professional life?

16 A. I think he was a -- he and Greg Powell
17 were tax examiner, tax agents. I -- that's what
18 they did.

19 Q. So where -- what office was Avellino &
20 Bienes in in South Florida?

21 A. At the 6550 North Federal Highway.

22 Q. And Avellino & Bienes was a tenant there?

23 A. Yes.

24 Q. And how did you come to learn of that
25 space?

1 A. I was looking for a space when I was --

2 when I moved to Florida and stayed in Florida, and I
3 was commuting back and forth to New York. Nancy and
4 I decided it would be a lot easier if we got rid of
5 the New York office and moved down to Florida, which
6 we did.

7 And that space was available, because I
8 was looking for another space, another building.
9 And I sat there and I gave them all the information,
10 and they started filling it up and they never called
11 me.

12 And then I met Scott Holloway, who was
13 also in the Bible study, and he said, you know, I
14 manage a building, and I said, Okay. And that was
15 basically, in essence, what happened. I wound up at
16 6550.

17 Q. And was Mr. Sullivan in that space at that
18 time?

19 A. I didn't know.

20 Q. But did you come to learn that he was
21 there before you were there or --

22 A. I -- to this day, I was trying to rack my
23 memory and find out if he was there before me,
24 during me. I know I was -- I rented that space in
25 1991.

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1 Q. Okay. And did there ever come a point in
2 time when you learned that Michael Sullivan also had
3 office space at 6550 North Federal?

4 A. Eventually, yes.

5 Q. Eventually, yes?

6 A. Yes.

7 Q. Okay. And you understood him to be a tax
8 consultant of some type?

9 A. Yes.

10 Q. And did you ever become aware of an entity
11 called Michael D. Sullivan & Associates, LLC?

12 A. Yes.

13 Q. And do you know if they were a tenant in
14 the building?

15 A. Whatever Michael Sullivan and Greg Powell
16 were in that building, that's what I recall.

17 Q. What business do you believe Michael D.
18 Sullivan & Associates, LLC to be in?

19 A. I know they were tax people, but that's
20 all I remember.

21 Q. And have you ever heard of an entity
22 called Fresh Start Tax?

23 A. No.

24 Q. And how long did you maintain office space
25 at 6550, from when until when?

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1 A. When the lease expired I think we -- I
2 can't remember the date we got out. I rarely went
3 there, so...

4 Q. What did you say, you --

5 A. Probably, I think -- I think we had moved
6 out of Fort Lauderdale a long time, so I can't
7 recall.

8 Q. When you say "we had moved out of Fort
9 Lauderdale a long time" --

10 A. Nancy and I did.

11 Q. Okay. So just so I got the years straight
12 again, approximately when do you believe you leased
13 the office space at 6550?

14 A. 1991.

15 Q. Okay. And you would have moved out of
16 Lauderdale when?

17 A. 2004.

18 Q. 2004. So --

19 A. Well, we sold the house in 2000. It might
20 have been before that.

21 Q. Okay.

22 A. I think we vacated the house, oh, way
23 before that.

24 Q. And so from 1991 through, approximately,
25 let's say, 2003, whenever it was you would have

1 A. It was an office. I -- I didn't recall
2 going there more than once a week.

3 Q. So when you're operating as Avellino &
4 Bienes in -- up until the time you stopped operating
5 as Avellino & Bienes, how many times a week would
6 you go to the office space --

7 A. Before --

8 Q. -- at 6550?

9 A. Say it again.

10 Q. While you were operating as Avellino &
11 Bienes, until the time that Avellino and Bienes quit
12 doing business, how often would you go to the office
13 space at 6550?

14 A. I can't recall, maybe once a month.

15 Q. Okay. And now you said you would go once
16 a week.

17 A. Well, when it was supposed to be starting,
18 it was once a week. But then after that, it was
19 maybe once a month. I'm just guessing. I don't
20 like to guess.

21 Q. All right. So after Avellino & Bienes
22 ceased operating, what did you next do for work?

23 A. Nothing.

24 Q. That is the last job that you had was
25 Avellino & Bienes?

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1 moved out of Fort Lauderdale --

2 A. Yes.

3 Q. -- was that your primary work address?

4 A. It might have ended before. I don't
5 remember.

6 Q. But once you moved into 6550 North Federal
7 Highway, did that become your primary work address?

8 A. Yes, that was it.

9 Q. Okay. And when you got there you were
10 operating as Avellino & Bienes?

11 A. Yes.

12 Q. Okay. And did there ever come a point in
13 time when Avellino & Bienes ceased operating?

14 A. Oh, yes.

15 Q. And when was that?

16 A. I can't recall.

17 Q. Would it have been after the SEC order?
18 Shortly after the SEC order?

19 A. I don't recall.

20 Q. Did Avellino -- so Avellino & Bienes would
21 have stopped operating before 2003 and 2004.

22 A. Definitely.

23 Q. Okay. And so when that was your primary
24 office space up until 2003/2004 time frame, what
25 business were you operating out of there?

1 A. Yes.

2 Q. Okay. How did you earn income after --
3 strike that.

4 After Avellino & Bienes ceased operating,
5 did you have money directly or indirectly invested
6 with Madoff?

7 A. Yes.

8 Q. And so you continued to get returns up
9 until 2008?

10 A. Yes.

11 Q. Okay. What other sources of income did
12 you have?

13 A. None.

14 Q. That was it, all through Madoff?

15 A. All through Madoff.

16 Q. Okay. And you received some money from
17 S&P and P&S, and we'll get to that later. So you
18 had income there too, right?

19 A. Yes.

20 Q. And that came from people investing in
21 Madoff, right, directly --

22 A. From S&P?

23 Q. Yeah.

24 A. Yes.

25 Q. And P&S. Okay.

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1 Were there any other vehicles in which you
 2 had people invest ultimately in Madoff that we
 3 haven't mentioned today?
 4 A. Not that I know of.
 5 Q. So while you were in -- so your Bible
 6 study period was from '88 or '89 through
 7 approximately 2004. During that time frame, did you
 8 have any social relationship with Mr. Sullivan
 9 outside of the Bible study?
 10 A. Maybe. Not much.
 11 Q. What's his wife's name?
 12 A. Gail.
 13 Q. Did you and your wife ever go out with
 14 Michael and his wife, Gail?
 15 A. No. If we went out, it was the four of
 16 us. Maybe once or twice, that's about it.
 17 Q. That the four of you had gone out?
 18 A. Yes.
 19 Q. Okay. How about you and Michael grabbing
 20 lunch or --
 21 A. No.
 22 Q. -- doing things like that?
 23 A. No. We didn't eat lunch.
 24 Q. Okay. All right. And during the time
 25 that you were in the office, did you -- were you on

1 investments, are you?
 2 A. Not that I know of.
 3 Q. And prior to the formation of S&P and P&S,
 4 you're not aware of Mr. Sullivan having any
 5 experience outside of his tax business in finance.
 6 A. Exactly, yes.
 7 Q. No experience.
 8 A. No experience.
 9 Q. Okay. And prior to S&P or P&S, you're not
 10 aware of Mr. Sullivan having any experience in the
 11 brokerage business.
 12 A. Not that I know of.
 13 Q. And he's not a C.P.A.?
 14 A. No.
 15 Q. And do you know who Michael Powell was?
 16 A. Greg Powell?
 17 Q. Greg Powell. I'm sorry.
 18 A. It was his partner.
 19 Q. Okay. And prior to P&S and S&P, are you a
 20 aware of Mr. Powell having any background in
 21 investments?
 22 A. Not that I know of.
 23 Q. Or securities?
 24 A. Not that I know of.
 25 Q. Or finance?

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1 the same floor as him?
 2 A. Yes.
 3 Q. Did you frequently walk down the hall to
 4 say hello and see what he was up to?
 5 A. No.
 6 Q. Did you do that ever?
 7 A. Maybe. I can't recall if I did or didn't.
 8 Q. And did he come by your office?
 9 A. No.
 10 Q. Aside from S&P and P&S, which we're going
 11 to talk about, did you have any other business
 12 relationship with Michael Sullivan or any of his
 13 entities?
 14 A. Not that I know of.
 15 Q. Did you or your entities ever hire Michael
 16 Sullivan or any of his entities to assist you with
 17 any tax advice or issues that --
 18 A. I was told -- I was told, because it was
 19 brought to my memory, that he may have done a tax
 20 case for us. Long time ago, and I don't remember
 21 when.
 22 Q. So prior to -- prior to Mr. Sullivan --
 23 Mr. Sullivan's involvement with S&P and P&S, again
 24 which we're going to talk to, you're not aware of
 25 Mr. Sullivan having any experience in the area of

1 A. Not that I know of.
 2 Q. I don't believe I asked you about Michael
 3 Sullivan's experience in securities. Are you aware
 4 of Mr. Sullivan having any experience in securities
 5 prior to S&P or P&S?
 6 A. Not that I know of.
 7 Q. And are you aware of whether or not
 8 Mr. Powell is a C.P.A.?
 9 A. I had no -- no idea.
 10 Q. Do you know if Mr. Sullivan or Mr. Powell,
 11 prior to S&P and P&S, had any experience in
 12 financial planning?
 13 A. Not that I know of.
 14 Q. In providing financial advice to anybody?
 15 A. Not that I know of.
 16 Q. In recommending investments?
 17 A. Not that I know of.
 18 Q. Aside from the Bible --
 19 MR. WOODFIELD: Excuse me a second. I
 20 don't know whether you went over the ground
 21 rules, if you ever need to take a break, you
 22 know, you can take --
 23 THE WITNESS: Oh, I will.
 24 MR. SAMUELS: I didn't mention that, but,
 25 certainly, any time you need a break, you just

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1 let me know because we've been going for a
2 little while, so...

3 THE WITNESS: Sure.

4 BY MR. SAMUELS:

5 Q. Aside from the Bible study groups with
6 Mr. Sullivan over the years that met on every
7 Monday, did you also worship with Mr. Sullivan at
8 church?

9 A. He was in attendance when service was
10 being performed.

11 Q. Did you routinely attend church on
12 Sundays?

13 A. Yes.

14 Q. Did Mr. Sullivan routinely attend church
15 on Sundays?

16 A. Not that I know of.

17 MR. SAMUELS: I think now would be a good
18 time for a break.

19 MR. WOODFIELD: Okay.

20 MR. SAMUELS: So why don't we do that.

21 THE VIDEOGRAPHER: Ending Disk Number 1.
22 We're off the record at 11:57 a.m.

23 (A brief break was taken.).

24 THE VIDEOGRAPHER: We are now back on the
25 record. This is the beginning of Disk 2. The

1 remember.

2 MR. WOODFIELD: Just answer his question.

3 THE WITNESS: Well, I --

4 MR. WOODFIELD: If you can.

5 THE WITNESS: Well, that's...

6 BY MR. SAMUELS:

7 Q. Okay. So -- so you mentioned charities.

8 Were you directing Michael Sullivan to make
9 contributions to charities on your behalf?

10 A. He did it on his own on my behalf.

11 Q. On your behalf, without consulting with
12 you?

13 A. Evidently, because I found things later on
14 that were sent to different charities, especially
15 Christ Church entities.

16 Q. And was that money that you were entitled
17 to receive?

18 A. I don't know.

19 Q. Well, did you have an arrangement with
20 Mr. Sullivan where you were going to be receiving
21 money for any -- anything that you did in connection
22 with S&P or P&S?

23 A. The only arrangement I had was his
24 arrangement, not mine.

25 Q. And his arrangement was what?

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1 time is 12:10 p.m.

2 BY MR. SAMUELS:

3 Q. Ready?

4 A. Yes.

5 Q. Okay. We spoke earlier of receiving
6 payments at Cliff 27 into S. Sullivan. What was
7 your understanding in terms of why Cliff 27 was
8 receiving money from S&P or P&S or Michael Sullivan
9 or one of his entities?

10 A. I -- the only indication I have is it
11 started in 2004, and I think it was charitable --
12 charitable for charities. So I -- that's the only
13 thing I could remember. I never asked for it.

14 Q. He sent money to Cliff 27 for charities?

15 A. He sent to money for 27 Cliff --

16 Q. 27 Cliff.

17 A. -- for -- not for charities, but he
18 decided to send it there. In the past it was going
19 to charities, to different entities.

20 Q. And what is the "it"?

21 A. Monies that he was sending to Christ
22 Church, to other entities that were charitable that
23 he decided to do. Because the more I looked at it,
24 when I saw this, I said, why did it start in 2004
25 instead of so-called the beginning. That's all I

1 A. He was gonna -- he and Greg decided to
2 give me and Mr. Bienes money. It's his --

3 Q. For what?

4 A. -- doing --

5 For accounts that were with him,
6 evidently.

7 Q. For accounts that you brought to S&P and
8 P&S?

9 A. Whether I brought, whether it had my name
10 on it, that's another question. If I brought it,
11 it's another story. But I didn't know if I brought
12 it. But the questions [sic] were earmarked in
13 Bienes's name and my name.

14 Q. Accounts that were earmarked for your name
15 and Bienes's name and you received money.

16 A. Yes.

17 Q. And that -- some of that money made its
18 way to 27 Cliff?

19 A. All of it did.

20 Q. All of it did. Okay.

21 And when that money arrived at 27 Cliff,
22 did you ever ask Mr. Sullivan why he was sending
23 money to 27 Cliff?

24 A. No.

25 Q. 27 Cliff just accepted the money?

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1 A. It's a gift. Why not take it?

2 Q. It's a gift.

3 A. Well, I would assume so. If somebody
4 gives you money, you take it.

5 Q. Was it declared as a gift on the tax
6 return?

7 A. No. It was a fee.

8 Q. Declared as income.

9 A. As fee.

10 Q. A fee for what?

11 A. For accounts that Madoff -- that was
12 directed from Madoff to S&P and earmarked for Frank
13 and Michael.

14 Q. And what were the criteria which would
15 have an account earmarked for Frank and Michael?

16 A. I don't know, each one was different.

17 Q. What were -- why were some -- do you know
18 why any of the accounts were earmarked to you?

19 A. He associated them with -- with me.

20 Q. And why did he associate them with you?

21 A. That's for him to answer. I don't -- I
22 don't know.

23 Q. Did you have an understanding with
24 Mr. Sullivan or Mr. Powell that accounts that you
25 were able to bring to S&P or P&S to invest with

1 Q. Did you have an arrangement with either

2 Mr. Sullivan or Mr. Powell that they would pay you a
3 fee in connection with accounts that you would bring
4 to P&S or S&P?

5 A. I have no idea, no.

6 Q. No.

7 A. No.

8 Q. Did you bring accounts to S&P or P&S?

9 A. I didn't bring any accounts to S&P or P&S.

10 Q. None?

11 A. None.

12 Q. Did you recommend any former investors of
13 Avellino & Bienes to invest with S&P or P&S?

14 A. I may have.

15 Q. And did any of those investors you
16 recommended invest in P&S or S&P, actually invest in
17 S&P or P&S?

18 A. Yes, they did.

19 Q. And who do you recall being amongst those
20 people?

21 A. Well, if you give me the list, I'll go
22 over the list.

23 Q. Okay. And were you then paid by S&P or
24 P&S a fee for bringing those people in that you
25 recommended?

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1 Madoff that you would get paid a percent on?

2 A. I had no arrangements with them.

3 Q. No arrangements.

4 A. Nope.

5 Q. You just got paid money.

6 A. Yes.

7 Q. And it wasn't a gift.

8 A. No.

9 Q. It was a fee.

10 A. It was a fee.

11 Q. And when you received the money you
12 understood it to be a fee.

13 A. It was a fee.

14 Q. My question is: When you received the
15 money, did you understand it to be a fee?

16 A. I had to earmark it on a tax return, so I
17 called it a fee.

18 Q. You called it a fee.

19 A. Right.

20 Q. Okay. And when you were calling -- when
21 you were telling the government it was a fee, it was
22 a fee for what?

23 A. I don't know. Just a fee.

24 Q. Just a fee.

25 A. Report it to the IRS, and they're happy.

1 A. At that point, yes, by them. By Greg and
2 by Michael.

3 Q. And how was that fee calculated, do you
4 know?

5 A. Well, he had sent statements that said
6 50 percent of fees, half to Mr. Bienes, half to me;
7 which means 50 percent of 100 percent.

8 Q. And so you would get statements?

9 A. He would send a -- a summary, if you will.

10 Q. Okay. And did you ever tell him something
11 to the effect of why are you paying me?

12 A. Did I ever ask him?

13 Q. Yes.

14 A. No.

15 Q. Okay. So you got a summary and you were
16 paid a fee, based upon people who you referred into
17 the partnership.

18 A. People I may have spoken to. Did I refer
19 them to them? I'm not so sure I referred them in.

20 Q. Spoken to about their ability to invest in
21 S&P and P&S, and that their money would then be
22 invested in Madoff.

23 A. Each one was different, so I can't give a
24 broad answer on that.

25 Q. You mentioned that you delete e-mails

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1 every three days, roughly?

2 A. Maybe every day. Maybe every once a week.

3 I mean, I -- yes, I delete them.

4 Q. And you've been doing that since you
5 started using e-mail about ten years ago?

6 A. Yes.

7 Q. And it's been your practice ever since?

8 A. It's a practice. It's a matter of getting
9 them off the computer.

10 Q. Okay. And so your personal practice is to
11 remove e-mails every three days or so, and it has
12 been since you've had e-mail.

13 A. Yes.

14 Q. Did it ever become a point in time where
15 you stopped that practice?

16 A. Did I stop the practice of deleting?

17 Q. Yes.

18 A. No. It's random.

19 Q. And that's been going on since about 2004?

20 A. Since e-mails.

21 Q. Okay. Since at least 2004?

22 A. Yeah.

23 Q. Okay. Now, in terms of the A -- Avellino
24 & Bienes documents and statements and records, where
25 are those?

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1 A. There are none.

2 Q. Where did they go?

3 A. They were shredded.

4 Q. And when were they shredded?

5 A. 2004, maybe.

6 Q. And who instructed they be shredded?

7 A. I did.

8 Q. Why?

9 A. I didn't need them. I had no space. I
10 moved.

11 Q. Now, during the time frame that you had
12 6550 Federal Highway, did you also maintain an
13 office in your home?

14 A. No.

15 Q. Did Mr. Sullivan ever go to your home?

16 A. He went there on a Christmas holiday when
17 the rest of Christ Church was there with us.

18 Q. So you would have church events at your
19 home?

20 A. We had one event.

21 Q. One. And Mr. Sullivan was there?

22 A. With 50 other people from Christ Church.

23 Q. Do you recall any other instances of
24 Mr. Sullivan being in your house?

25 A. Not that I recall.

1 Q. Do you know who Mr. Steven F. Jacob is?

2 A. I believe he was a person that worked in
3 Michael Sullivan's office?

4 Q. Okay. And what -- do you recall him doing
5 books and records for S&P or P&S at any point in
6 time?

7 A. Not that I know of.

8 Q. Did you ever discuss with him the
9 maintaining of the books and records for S&P or P&S?

10 A. Never spoke to him about any books or
11 records.

12 Q. You don't recall ever meeting with him
13 and -- and teaching him how to do books and records
14 for S&P or P&S?

15 A. No.

16 Q. You mentioned earlier that Thomas Avellino
17 provided software to Sullivan to make it easier for
18 Sullivan?

19 A. To Greg Powell.

20 Q. To Greg Powell. What is it about the
21 software that would make it easier for him?

22 A. Calculation of profits and losses.

23 Q. For people who were investing with Madoff?

24 A. People that were invested with S&P.

25 Q. Who eventually -- whose monies went all

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1 with Madoff.

2 A. Evidently.

3 Q. Are you aware of the fact that all the
4 money invested in S&P was invested in Madoff?

5 A. I don't know.

6 Q. Did you ever know?

7 A. Whether it was all with Madoff?

8 Q. Mm-hmm.

9 A. I don't know. I don't know if it had
10 other things too. I don't know.

11 Q. Did you know that it was at least
12 primarily, if not exclusively, invested with Madoff?

13 A. Primarily, I would say yes.

14 Q. Okay. Did Mr. Jacob ever attend Bible
15 study?

16 A. Not that I know of.

17 Q. Was he a member of the church?

18 A. No.

19 Q. Have you or anyone on your behalf ever
20 paid any expenses of Mr. Sullivan?

21 A. I don't understand the question.

22 Q. Have you ever paid any living expenses for
23 Mr. Sullivan or his family?

24 A. Not that I know of.

25 Q. Well, who would know?

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1 A. I can't remember. Why would I pay? I
2 don't know. I don't think so.

3 Q. Okay. And have you ever paid any of his
4 legal expenses or costs in connection with this
5 lawsuit or anything having to do with S&P or P&S?

6 A. No.

7 Q. When is the last time you've spoken to
8 Mr. Sullivan?

9 A. I can't even recall.

10 Q. Was it less than a year ago?

11 A. Not that I -- no, I don't think so.

12 Q. Have you ever had discussions with
13 Mr. Sullivan about this lawsuit?

14 A. No.

15 Q. Has Mr. Sullivan ever discussed with you
16 any discussions he may have had with Mr. von Kahle
17 or my office or any of Mr. von Kahle's lawyers?

18 A. No.

19 Q. Going back to your relationship with
20 Mr. Madoff, how often did you go up to New York to
21 meet with Mr. Madoff during the time frame of, let's
22 say, when you were operating Avellino & Bienes down
23 here in South Florida?

24 A. I can't recall.

25 Q. Was it frequent?

1 invested with Mr. Madoff?

2 A. Pension plans, personal, maybe
3 \$60 million.

4 Q. I thought you said you left 100 million on
5 the table.

6 A. No. That was -- that was at the end.
7 That was 100 million.

8 Q. So you had --

9 A. With Avellino & Bienes. There were two --
10 there were four of us. I'm not talking about me.

11 Q. I'm talking about you and any entity you
12 were involved in, directly or indirectly. You
13 had -- at one point in time you must have had about
14 100 million, because you said you left it on the
15 table in 2008, correct?

16 A. Yes.

17 Q. Okay. So what is the most amount that you
18 recall having --

19 A. I don't recall. I can't recall.

20 Q. Let me finish the question.

21 A. Go ahead.

22 Q. What's the most amount you recall having,
23 at any given time, invested, directly or indirectly,
24 with Mr. Madoff?

25 A. I can't recall.

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1 A. No.

2 Q. But you do recall going up to meet with
3 Mr. Madoff?

4 A. I went there once, that I recall. But
5 that was it.

6 Q. During that time frame?

7 A. It was 2004, maybe.

8 Q. And what caused you to go up and meet
9 Mr. Madoff in 2004?

10 A. Probably estate planning.

11 Q. And why would you be meeting with
12 Mr. Madoff about estate planing?

13 A. He had all my money.

14 Q. Okay. And how about after -- how about
15 any other times you went up to New York to meet
16 Mr. Madoff?

17 A. No.

18 Q. Did you ever have working lunches with
19 Mr. Madoff in Mr. Madoff's office?

20 A. No.

21 Q. Did you ever have closed-door meetings
22 that lasted hours with Mr. Madoff?

23 A. No.

24 Q. What is the most amount of money that you,
25 directly or indirectly through your entities, had

1 Q. But it would be in excess of 100 million
2 if that's what you had at the very end, right?

3 A. Maybe.

4 Q. Maybe?

5 Did you make any efforts to -- to redeem
6 any of your money with Mr. Madoff in December of
7 2008?

8 A. The efforts with -- with the SE -- with
9 the SIPC -- SIPA.

10 Q. Before that. I mean, directly through
11 Madoff.

12 A. No.

13 Q. Did any of your family members or
14 Mr. Bienes or any of Mr. Bienes's family members --

15 A. No.

16 Q. -- try to withdraw money in 2008?

17 A. No.

18 Q. Not to your knowledge or no?

19 A. No.

20 Q. No. Okay.

21 So aside from -- so since you moved to
22 Florida, the only time you remember meeting with
23 Mr. Madoff in New York was one time for estate
24 planing in 2004.

25 A. Yes.

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1 MR. SAMUELS: What number are we up to?
 2 MR. WOODFIELD: 3, so this will be 4.
 3 MR. SAMUELS: 4.
 4 MR. WOODFIELD: I don't want to steal your
 5 thunder.
 6 Is this mine?
 7 MR. SAMUELS: Can you guys share?
 8 MR. WOODFIELD: Thank you.
 9 MR. SAMUELS: Here you go. No, I just
 10 wanted to make sure that Tom had a copy.
 11 (Plaintiffs' Exhibit 4 was marked for
 12 Identification by the reporter.)
 13 BY MR. SAMUELS:
 14 Q. Okay. I'm showing you a letter from Frank
 15 Avellino to Reverend Richard Wills. Is that
 16 Reverend Richard Wills of Christ Church who you had
 17 Bible study with?
 18 A. Yes.
 19 Q. Okay. Please take a look at that letter.
 20 A. Mm-hmm.
 21 Q. Is that your signature on the bottom?
 22 A. Yes.
 23 Q. Okay. Take a look at the letter, please.
 24 A. Okay.
 25 Q. Okay. So this is in March of 1993 after

1 work then is you would make a charitable
 2 contribution to the church --
 3 A. Yes.
 4 Q. -- and then direct the church how to
 5 invest that money?
 6 A. Send it to Christ Church account and
 7 Grosvenor Partners Limited.
 8 Q. Right. So my question is, you would make
 9 it -- just in terms of how it would work
 10 logistically, you would make a charitable
 11 contribution to the church, and then you would
 12 direct the church how to invest the money, correct?
 13 A. They had a committee. So when I say, Do
 14 it, and they did it, fine. If they didn't do it,
 15 then they didn't do it. But they did do it in this
 16 case.
 17 Q. Okay. And there's no mention of a
 18 committee here, is there?
 19 A. Well, it has nothing to do with a
 20 committee. I mean, it's -- I think Wills was the
 21 bishop. He was the boss.
 22 Q. So a committee was not involved in this.
 23 It was just you and Bishop Wills.
 24 A. Well, again, you're saying he couldn't do
 25 it. He didn't sign any checks. So he probably went

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1 the SEC prohibited you from selling securities,
 2 correct?
 3 A. Yes.
 4 Q. Okay. So going to the next -- I'm sorry,
 5 to the fourth paragraph here, it says to Mr. Wills,
 6 "I am sending you instructions with this fax to you
 7 to have the bank holding the funds for Christ Church
 8 United Methodist, Inc. Building Fund wire the sum of
 9 7 -- \$709,000 to Grosvenor Partners, Limited, which
 10 is a partnership that has been set up to continue
 11 the type of investments we had before the SEC got in
 12 the act."
 13 All right. I just want to ask you about
 14 that sentence. When you're saying "the SEC got in
 15 the act," you're referring to the SEC precluding
 16 Avellino & Bienes from selling securities, correct?
 17 A. Yes. Of course.
 18 Q. Okay. And so now, you're instructing the
 19 church to send \$709,000 to Grosvenor Partners,
 20 right?
 21 A. Right.
 22 Q. And so what is it that gave you the
 23 ability to instruct the church to do that?
 24 A. It was my money to start with, 709,000.
 25 Q. So just so I'm clear, the way that would

1 to whoever was in charge of the committee, and the
 2 committee would sign the check.
 3 Q. So does this refresh your recollection
 4 that people, other than family members, invested in
 5 Grosvenor?
 6 A. Grosvenor Partners Limited was a
 7 Regulation D account set up by Frank Brogan to
 8 protect me and -- from the SEC.
 9 Q. So my question is: Is it your -- is it
 10 your recollection that other people, other than
 11 family members, were investing money in Grosvenor?
 12 A. Grosvenor Partners Limited had two
 13 accounts: Avellino Family Foundation and Christ
 14 Church Building Funds.
 15 Q. And in terms of this \$709,000, it
 16 indicates here, "Since we want to maximize the
 17 income, we've decided to have the same broker who
 18 handled our investments before do the same for my
 19 family and friends, which, of course, includes
 20 Christ Church." Correct?
 21 A. Yes.
 22 Q. That same broker would be Madoff?
 23 A. Madoff.
 24 Q. Okay. And would Grosvenor receive a
 25 commission or a fee of any type for sending money

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1 over to Madoff?

2 A. No.

3 Q. Would it receive a commission or fee of
4 any type for investing the \$709,000 on behalf of the
5 church?

6 A. No.

7 Q. Did there ever come a point in time where
8 you became aware of an entity called S&P Associates
9 or P&S Associates?

10 A. I can't recall when.

11 Q. But you did become aware of entities known
12 as S&P Associates General Partners and P&S
13 Associates General Partnership, correct?

14 A. I would -- yes.

15 Q. Okay. And did you assist Mr. Sullivan
16 and/or Mr. Powell in the formation of that entity?

17 A. No.

18 Q. Did you assist in providing tax consulting
19 or advice to Mr. Powell or Mr. Sullivan in
20 connection with those entities?

21 A. I may have.

22 Q. And what would cause you to provide them
23 with advice for S&P and P&S?

24 A. I didn't want them to make the same
25 mistakes I did in '91 and '92.

1 A. I have no idea.

2 Q. After you got shut down -- after Avellino
3 & Bienes were precluded from selling securities, did
4 you assist Mr. Sullivan or Mr. Powell in their
5 opening up an account for S&P and/or P&S with
6 Mr. Madoff?

7 A. No. I think he called himself.

8 Q. And did you give him the number of who to
9 call?

10 A. He knew who to call.

11 Q. How would Mr. Sullivan know who to call,
12 he had no direct relationship with Mr. Madoff?

13 A. I don't know. But he knew who to call,
14 that's -- simple as that.

15 Q. How do you know he knew who to call to set
16 up an account?

17 A. I may have given him -- I don't know. I
18 may have given him a number, but that's about it.

19 Q. So you would have just given him a phone
20 number.

21 A. Yeah.

22 Q. And say, Here, call.

23 A. Yes.

24 MR. WOODFIELD: Please don't guess. I
25 mean, either you recall or you don't recall.

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1 Q. In terms of how they were selling?

2 A. How were they doing it by the book, by the
3 book.

4 Q. And since S&P and P&S -- I'm sorry, since
5 Mr. Sullivan -- let me rephrase that.

6 Given the fact that Mr. Sullivan and
7 Mr. Powell had no prior experience in investments or
8 in brokerage or in finance, what made you
9 comfortable referring clients to them?

10 A. It was the same entity they were sending
11 money to that Bernard L. Madoff didn't change
12 anything.

13 Q. And did -- and nobody can -- not just
14 anybody can set up accounts with Mr. Madoff, right?

15 A. As far as I knew.

16 Q. As far as you knew, not anybody off the
17 street can --

18 A. Not anybody, no.

19 Q. Just like with A&B, you were careful in
20 terms of who invested in Avellino & Bienes, friends,
21 family and people who were referred, right?

22 A. Basically, yes.

23 Q. Is that your understanding that
24 Mr. Madoff, he was also careful it would be friends,
25 family, clients and people who were referred in?

1 BY MR. SAMUELS:

2 Q. Did he ask you for assistance in setting
3 up an account for S&P or P&S with Mr. Madoff?

4 A. No.

5 Q. Did you provide him with assistance for
6 setting up an account with S&P or P&S with Madoff?

7 A. No.

8 Q. Okay. Other than maybe you gave him a
9 phone number.

10 A. Basically, yes.

11 Q. Did you ever, at any point in time while
12 S&P or P&S were in existence, instruct him who to
13 call for various issues that may have arisen with
14 S&P and P&S?

15 A. If he asked, I may have given him a
16 number.

17 Q. How about a name?

18 A. I don't know.

19 Q. Did you ever tell him to call Ms. Crupi
20 for anything?

21 A. Maybe.

22 Q. Okay. Why would you have done that?

23 A. If you say it was Ms. Crupi, Ms. Crupi is
24 the one that took the phone calls on information.

25 Q. Do you recall having discussion with

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1 Mr. Sullivan on possibly converting the form of S&P
2 and P&S from a general partnership to a limited
3 liability company?

4 A. No.

5 Q. You don't recall those discussions?

6 A. No, not at all.

7 MR. SAMUELS: Let's mark this as 5.
8 (Plaintiffs' Exhibit 5 was marked for
9 Identification by the reporter.)

10 BY MR. SAMUELS:

11 Q. Now I'm showing you what's been marked as
12 Exhibit 5, which is an invoice from Ahearn Jasco.

13 That's your current C.P.A., right?

14 A. Yes.

15 Q. Or it's your lawyer's current C.P.A. on
16 your behalf.

17 A. The firm, yes.

18 Q. The firm. Okay.

19 And when is the first time that you ever
20 recall doing any business with Ahearn Jasco?

21 A. When Mr. Brogan instructed I use them.

22 Q. And when was that, do you know?

23 A. Whenever he did my estate planning, I'm
24 assuming.

25 Q. Early '90s?

1 mistakes you did.

2 A. Those were papers, had nothing to do with
3 the meeting.

4 Q. Papers. So you assisted him in paperwork?

5 A. No. I told him to go to an attorney that
6 did it right. And I told Greg, File 1065 and make
7 sure that all your papers are dotted properly --

8 Q. And --

9 A. -- and that's it.

10 Q. And why is it you were talking with
11 Mr. Sullivan and Mr. Powell about setting up an
12 entity to invest in Madoff before they did so?

13 A. They were part of A&B.

14 Q. Mr. Sullivan was part of A&B?

15 A. So they went -- I don't know. I'm just
16 saying. I don't know this bill. I don't know what
17 they're talking about. And I have no idea what
18 they're saying.

19 Q. Forget about the bill for a second. My
20 question to you is: Why are you instructing
21 Mr. Sullivan to go to an attorney to make sure S&P
22 and P&S were set up properly?

23 A. Because he said he had a lot of accounts
24 in his personal accounts. And I said, If you set up
25 anything, you will make sure you do it properly. So

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1 A. No.

2 Q. After that?

3 A. Yeah. After that.

4 Q. So we have here a invoice from Ahearn
5 Jasco to S&P Associates. Do you see that?

6 A. Yes.

7 Q. And it indicates here, "Meeting at
8 client's office with Michael Sullivan, Greg Powell
9 and Frank Avellino regarding partner reports,
10 Form 1065 and other matters."

11 Do you see that?

12 A. Yes.

13 Q. Okay. So in February 1994 then, you're
14 attending meetings with S&P concerning accounting
15 advice given to S&P.

16 A. I don't know what this is.

17 Q. Do you recall ever meeting with
18 accountants and Mr. Sullivan where the issues
19 concerning S&P or P&S were addressed?

20 A. No. No, I don't recall any of it.

21 Q. So you don't recall this meeting?

22 A. No.

23 Q. But you said earlier that you may have
24 helped Mr. Sullivan in connection with setting up
25 S&P and P&S to make sure he didn't make the same

1 he went to an attorney. Who -- who the attorney
2 was, I don't know, but he did.

3 Q. He had accounts of what type of people in
4 his personal accounts? What are you referring to?

5 A. I have no idea.

6 Q. Well, you just said he had --

7 A. No. But I don't know who they were. I
8 mean, you're telling me who they were. I don't know
9 who they were.

10 Q. Are you telling me he had investment
11 accounts? What kinds of accounts did he have?

12 A. In his personal account, he might have had
13 other people. That's about it.

14 Q. So back in 1994, you're saying
15 Mr. Sullivan may have had accounts of other people?

16 A. I think so.

17 Q. And what was he doing with those accounts?

18 A. I have no idea.

19 Q. So you met with him once a week in Bible
20 study. You're going to accounting -- you're going
21 to meetings with accounts with him, you have no idea
22 what he's doing with these accounts?

23 A. I didn't go to meetings with accounts with
24 him. I'm just telling you, I don't know what
25 they're talking about.

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1 Q. So this bill is incorrect.
 2 A. Probably.
 3 Q. Okay. So the fact that you're on here is
 4 a mistake.
 5 A. Probably.
 6 Q. All right. So -- so just so I'm clear,
 7 before S&P and P&S are set up, you're instructing
 8 him to go to an attorney.
 9 A. Yes.
 10 Q. You're telling him to make sure they do
 11 things right.
 12 A. Yes.
 13 Q. And you're aware that they have accounts
 14 of other people.
 15 A. Evidently they did.
 16 Q. What are you basing that on, the fact that
 17 they had accounts of other people?
 18 A. For the same reason he's asking me what do
 19 I do? And if he goes to an attorney and the
 20 attorney sets him up properly, and I feel that he's
 21 doing the right thing -- and, remember, he's a
 22 friend, dear friend at church.
 23 Q. He asked you what do you do for what?
 24 A. Sending money to Mr. Madoff.
 25 Q. For sending -- he asked you what to do to

1 Q. So why did you give him an attorney's
 2 name?
 3 A. I didn't give him any attorney's name.
 4 Q. You never gave him the name of an
 5 attorney?
 6 A. No. I don't know who his attorney was.
 7 Q. You told him to make sure he went to an
 8 attorney.
 9 A. Yes.
 10 Q. And you told him to make sure he went to
 11 an attorney in connection with what specifically?
 12 A. That he doesn't have the same problem that
 13 Avellino & Bienes had with the SEC. Cover all of
 14 your bases and do it properly.
 15 Q. In connection with his efforts to invest
 16 in Madoff --
 17 A. Yes.
 18 Q. -- either directly or indirectly. Okay.
 19 And knowing that Madoff would only accept
 20 accounts of clients, family and friends, and
 21 referrals of clients -- let's go through that for a
 22 minute.
 23 Mr. Sullivan was not family to Mr. Madoff,
 24 right?
 25 A. Right.

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1 send money to Mr. Madoff?
 2 A. I -- I -- I don't want to guess. I don't
 3 recall.
 4 Q. Well, what exactly -- were you assisting
 5 him in figuring out a way to send money of others to
 6 Mr. Madoff?
 7 A. Not at all.
 8 Q. Okay. You were sending -- you were
 9 telling him you need to go to a lawyer, you need to
 10 get his 1065s in order, and you need to do things
 11 properly so he wouldn't get in trouble like you
 12 were.
 13 A. Exactly.
 14 Q. Okay. So in terms of all of that, was
 15 that in connection with him having accounts with
 16 Madoff?
 17 A. Evidently, yes.
 18 Q. Okay. And so did he ask you for
 19 assistance in establishing an account with Madoff?
 20 A. No.
 21 Q. Did he ask you for assistance in finding
 22 the name of a lawyer who can help him with paperwork
 23 to ensure that he would have the ability to invest
 24 with Madoff?
 25 A. No.

1 Q. He was not friends with Mr. Madoff, right?
 2 A. Right.
 3 Q. And he was not a client with Mr. Madoff,
 4 correct?
 5 A. Yes.
 6 Q. So the only way he can get to Mr. Madoff
 7 is if he was referred by a client, that now would be
 8 the only one left.
 9 A. You'd have to ask him. I don't know. I
 10 don't recall.
 11 Q. But in terms of business dealings with
 12 Mr. Madoff, just like Avellino & Bienes. I just --
 13 you testified earlier, I just want to go through it
 14 again.
 15 MR. WOODFIELD: Objection. He didn't
 16 testify earlier. You misstated what his
 17 testimony was.
 18 BY MR. SAMUELS:
 19 Q. In -- in order to get an account with
 20 Mr. Madoff, isn't it true that you had to be a
 21 friend, family, a client or referred by one of
 22 those?
 23 A. That was a letter that Lola Kurland sent.
 24 MR. WOODFIELD: Frank, listen to the
 25 question, please.

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1 THE WITNESS: I am.

2 BY MR. SAMUELS:

3 Q. Okay. The letter from Lola Kurland had to
4 do with getting into Avellino & Bienes, which you
5 agreed with.

6 A. Yes.

7 Q. Because you were now getting business. It
8 had to be someone referred.

9 A (Witness nods.)

10 Q. Okay. I believe you testified earlier
11 that Mr. Madoff was the same way --

12 MR. WOODFIELD: Objection. Misstatement
13 of facts.

14 BY MR. SAMUELS:

15 Q. -- in order to get --

16 MR. SAMUELS: Okay. You can object after
17 the question. Let me just state my question.

18 Okay?

19 BY MR. SAMUELS:

20 Q. I believe you testified the same as to
21 Mr. Madoff that you had to either be a friend,
22 family, client or referred by one of those.

23 Is that your understanding?

24 MR. WOODFIELD: Object to the form of the
25 question. Misstates --

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1 BY MR. SAMUELS:

2 Q. Is it -- is it your understanding in order
3 to open up an account with Mr. Madoff in the 1990s,
4 you either had to be friend, family, client or
5 referred by one of those?

6 A. From A&B?

7 Q. No, no.

8 A. I'm still confused with what you're
9 asking.

10 Q. Okay. Forget about A&B for a moment.
11 Okay. Let's just focus on Mr. Madoff and one's
12 ability to open an account with Mr. Madoff.

13 You, Avellino & Bienes, had an account
14 with Mr. Madoff, correct?

15 A. Yes.

16 Q. And you knew Mr. Madoff. You were --

17 A. Yes.

18 Q. -- you were friendly with him at the time
19 you did. Okay.

20 So I want to talk about getting an account
21 open with Mr. Madoff in 1990s. It was not like
22 Merrill Lynch where you could walk in the door and
23 sit down and open an account, right? It was not
24 like that, correct?

25 A. I think you're confused. I think you're

1 confused. You're talking about 1992/'93 when Madoff
2 took all of the old accounts of Avellino & Bienes.
3 He didn't know who they were. So when somebody
4 would call him up to open an account, they would
5 call him directly. I wouldn't get involved in that.

6 MR. WOODFIELD: But you're not
7 answering --

8 THE WITNESS: But I just want to make
9 sure.

10 MR. WOODFIELD: Please listen to the
11 question and answer the question.

12 THE WITNESS: Okay.

13 MR. WOODFIELD: You're stuck in not -- you
14 guys aren't on the same page.

15 THE WITNESS: I know we're not.

16 MR. SAMUELS: Well, we're -- we're going
17 to get there.

18 BY MR. SAMUELS:

19 Q. Okay. So Avellino & Bienes's accounts --
20 Avellino & Bienes can no longer trade securities and
21 do the deals that they were doing on the notes, and
22 they paid everybody their principal and interest
23 back, right?

24 A. Right.

25 Q. So those people who had previously

1 invested through Avellino & Bienes and Madoff,
2 right, there's a group of people, correct?

3 A. Yes.

4 Q. Okay. So those -- that group of people,
5 many of them wanted to continue to invest with
6 Mr. Madoff, correct?

7 A. Yes.

8 Q. And how do you know that?

9 A. Because they asked me to.

10 Q. Okay. And when they asked you to do that,
11 did you send them, any of them, to Mr. Sullivan or
12 Mr. Powell and tell them to go through Mr. Sullivan
13 or Mr. Powell?

14 A. I don't recall that.

15 Q. Did you ever -- when they asked you, did
16 they ever tell them, Give them Mr. Madoff's phone
17 number and tell them call up Mr. Madoff or someone
18 at his office?

19 A. Yes.

20 Q. And do you know if any of those people who
21 previously invested at Avellino & Bienes, aside from
22 Mr. Sullivan, were able to open up accounts on their
23 own behalf through an entity that they formed with
24 Mr. Madoff?

25 A. Yes, they did.

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1 Q. Okay. And who?
 2 A. There were thousands of them. I don't
 3 know.
 4 Q. Thousands of Avellino & Bienes former
 5 customers who opened up their own individual
 6 accounts?
 7 A. Yes.
 8 Q. Can you name me a handful of them?
 9 A. No.
 10 Q. Can you name me any?
 11 A. I don't remember any, and I don't want to.
 12 Q. Not one out of thousands.
 13 A. Nope.
 14 Q. You can't name any of them.
 15 A. Nope.
 16 Q. Okay. So Mr. Sullivan now forms --
 17 Mr. Sullivan and Mr. Powell form S&P and P&S,
 18 correct?
 19 A. Yes.
 20 Q. And did you know that they were forming it
 21 at the time that they were forming it?
 22 A. I can't recall.
 23 Q. And did you consult -- you indicated
 24 earlier that you told them they need a lawyer, they
 25 needed their Form 1065. We have a document here

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1 indicating you were meeting with them, with their
 2 accountants.
 3 Aside from those things, did you do
 4 anything in any way to advise them at all in terms
 5 of how to invest with Madoff?
 6 A. No.
 7 Q. Okay. Did you discuss with them, ever,
 8 the type of entity that they should form; a
 9 partnership, a trust, a limited liability company or
 10 anything like that?
 11 A. No.
 12 Q. And how well did you know Mr. Powell at
 13 the time Avellino & Bienes was closed?
 14 A. I didn't know him at all.
 15 Q. You met him through Mr. Sullivan?
 16 A. Yes.
 17 Q. And did you meet him with -- how did you
 18 meet Mr. Powell?
 19 A. I met Mr. Powell at Sullivan's office,
 20 when he said this is my partner.
 21 Q. Do you remember when that would have been?
 22 A. No.
 23 MR. SAMUELS: Let's mark this as
 24 Exhibit 6.
 25

1 (Plaintiffs' Exhibit 6 was marked for
 2 Identification by the reporter.)
 3 BY MR. SAMUELS:
 4 Q. So I show you --
 5 MR. WOODFIELD: Is this the same?
 6 MR. SAMUELS: Exhibit 5 is for S&P and
 7 this is for P&S. Other than that, it looks the
 8 same.
 9 BY MR. SAMUELS:
 10 Q. So -- and this also has your name on it.
 11 It's the same date; one for P&S, one for S&P.
 12 Do you recall being at a meeting in
 13 connection with P&S, as opposed to S&P?
 14 A. Not at all.
 15 Q. Okay. So as far as you're concerned,
 16 there's an error on this bill.
 17 A. Evidently.
 18 Q. Okay.
 19 MR. SAMUELS: 7.
 20 (Plaintiffs' Exhibit 7 was marked for
 21 Identification by the reporter.)
 22 BY MR. SAMUELS:
 23 Q. I'm showing you now what's been marked as
 24 Exhibit 7, which is entitled "Amended and Restated
 25 Partnership Agreement."

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1 A. Mm-hmm.
 2 Q. And this partnership agreement is dated
 3 December 21, 1994.
 4 And if you look at 1.01, on the first
 5 page, Section 1.01 under "Organization. Name, the
 6 activities and business of the partnership shall be
 7 conducted under the name S&P Associates General
 8 Partnership."
 9 Okay. There's -- the record does reflect
 10 that there's an identical agreement in all material
 11 form -- terms for P&S Associates.
 12 A. Okay.
 13 Q. But I'm just going to ask you about this
 14 one, even though the terms are the same.
 15 So Exhibits 5 and 6 show that there was a
 16 meeting which you say you were not at with the
 17 accountants on February 19, 1994, in conjunction
 18 with these entities. Now there's an amended
 19 partnership dated December 21st of 1994.
 20 Have you ever seen this document?
 21 A. No.
 22 Q. Okay. Do you recall having discussions
 23 with Mr. Powell or Mr. Sullivan concerning any of
 24 the terms or conditions of this agreement?
 25 A. No.

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1 Q. Okay. If we go to -- did you at any time
2 become aware of the fact that S&P and P&S invested
3 in Mr. Madoff -- with Madoff? I'm sorry.

4 A. Yes.

5 Q. Okay. And I think you testified earlier
6 you were unsure whether it was exclusively with him
7 or not.

8 A. Yes.

9 Q. Okay. In terms of -- and you indicated
10 also that you did refer people to S&P or P&S as a
11 vehicle they could use to invest with Madoff,
12 correct?

13 A. Qualify it with the names of the people
14 you're talking about.

15 Q. What do you mean?

16 A. Well, you said I sent people to S&P, P&S,
17 whatever. In general, you're talking about in
18 general again, which makes no sense to me.

19 Q. Okay. I'm not -- I am talking about as a
20 general item without getting into specific names,
21 which we'll do later.

22 A. Okay.

23 Q. Do you -- it's true, is it not, that you
24 did refer people to S&P and P&S, Mr. Sullivan or
25 Mr. Powell --

1 partners on an actual daily basis commencing on the
2 date of each partner's admission into the
3 partnership" -- "as follows: 20 percent to managing
4 general partners and 80 percent to the partners."

5 Did you ever have discussion with
6 Mr. Sullivan or Mr. Powell about the fact that they
7 would be taking a 20 percent of the partnership
8 profits as a fee?

9 A. No.

10 Q. Did you at any point in time ever come to
11 learn that?

12 A. No.

13 Q. Did you ever discuss with Mr. Sullivan how
14 he was paid for managing the partnerships?

15 A. No.

16 Q. Did you ever give him any advice on how he
17 should be paid?

18 A. No.

19 Q. In terms of making sure it was done
20 correctly, what did you tell him he needed to do?
21 You mentioned one thing he needed to do was get the
22 Form 1065. Do you recall anything else that you
23 told him to do?

24 A. That's a partnership return. That's it.

25 Q. It's open for all the partners. So you

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1 A. Yes.

2 Q. -- to enable them to invest in Madoff?

3 A. Yes.

4 Q. Okay. Were you or Mr. Bienes or any
5 entities in which you controlled invest in S&P or
6 P&S?

7 A. No.

8 Q. Okay. Did you ever discuss with
9 Mr. Sullivan how he ought to get paid as a -- strike
10 that.

11 Were you aware of the fact that
12 Mr. Sullivan and Mr. Powell were the managers of
13 this entity, that they were running it?

14 A. Yes.

15 Q. Okay. And did you have occasion -- strike
16 that.

17 So -- so if we look at Paragraph 5.01 on
18 Page 3. Are you with me?

19 A. Go ahead.

20 Q. Okay. "The capital gains, capital losses,
21 dividend, interest, margin interest expense, and all
22 other profits and losses attributable to the
23 partnership shall be allocated among the partners in
24 the ratio each partner's capital account bears to
25 the aggregate total capital contribution of all the

1 knew it was a partnership then if you told him to
2 file a 1065.

3 A. A partnership return, sure.

4 Q. Okay. And back in February of 1994, are
5 you aware that the entities in which Mr. Powell and
6 Mr. Sullivan were involved in setting up to invest
7 in Madoff were partnerships, as opposed to another
8 form of an entity?

9 A. I can't recall.

10 Q. Well, you told him to file a 1065, so you
11 knew it was a partnership.

12 A. At that point, yes.

13 Q. Okay. And at any point in time were you
14 aware that as -- the managerial partners would get
15 paid 20 percent?

16 A. No.

17 Q. Were you, at that point in time, aware
18 that in general terms, partnerships that were doing
19 investments like this, the 20 percent would be a --
20 considered an ordinary standard and customary fee to
21 charge by general partners?

22 A. I had no idea.

23 MR. SAMUELS: Actually, now might be a
24 good time to take a break.

25 MR. WOODFIELD: Okay.

ERRATA SHEET
RE : P&S Associates General Partnership, et al.
v. Michael D. Sullivan, et al.
DEPO OF: FRANK AVELLINO
TAKEN : September 9, 2015
DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE

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21 State of Florida)
22 County of Palm Beach)
23 Under penalties of perjury, I declare that I have
24 read my deposition transcript, and it is true and
25 correct subject to any changes in form or
substance entered here.

1 CERTIFICATE OF OATH OF WITNESS
2
3 STATE OF FLORIDA)
4) SS:
5 COUNTY OF PALM BEACH)
6
7 I, SUSAN MATOS, Court Reporter, Notary
8 Public in and for the State of Florida at Large,
9 certify that the witness, FRANK AVELLINO, personally
10 appeared before me on September 9, 2015 and was duly
sworn by me.

11 WITNESS my hand and official seal this
12 23rd day of September, 2015.

SUSAN MATOS, Court Reporter

SUSAN MATOS, Court Reporter
Notary Public, State of Florida
at Large

18 Notary #: FF187803
19 My commission expires: February 5, 2019

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REPORTER'S DEPOSITION CERTIFICATE

I, SUSAN MATOS, Court Reporter, certify that I was authorized to and did stenographically report the deposition of FRANK AVELLINO, the witness herein on September 9, 2015; that a review of the transcript was requested; that the foregoing pages numbered from 1 to 143 inclusive is a true and complete record of my stenographic notes of the deposition by said witness; and that this computer-assisted transcript was prepared under my supervision.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action.

DATED this 23rd day of September, 2015.

SUSAN MATOS, Court Reporter

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EMPIRE LEGAL SUPPORT, INC.
110 Southeast 6th Street, Suite 1700
Fort Lauderdale, Florida 33301
(800)917-2520

September 23, 2015
LEONARD K. SAMUELS, ESQUIRE
BERGER SINGERMAN LLP
350 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301

RE : P&S Associates General Partnership, et al.
v. Michael D. Sullivan, et. al.
DEPO OF: FRANK AVELLINO
TAKEN : September 9, 2015
READ & SIGN BY: December 24, 2015

Dear Counsel:

The original transcript of the deposition listed above is enclosed for your file. The witness did not waive reading and signing and has been sent a letter notifying them to come in and read and sign their deposition transcript. The witness will be provided a copy of their deposition transcript for reading in our office should they come in to review the transcript, and we will forward to you any corrections made by the witness at that time, along with an original signature page which should be attached to the original transcript which is in your possession.

Sincerely,

SUSAN MATOS, Court Reporter

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EMPIRE LEGAL SUPPORT, INC.
110 Southeast 6th Street, Suite 1700
Fort Lauderdale, Florida 33301
(800)917-2520

September 23, 2015

FRANK AVELLINO
c/o GARY A. WOODFIELD, ESQUIRE
HAILE SHAW & PFAFFENBERGER P.A.
660 U.S. Highway 1
Third Floor
North Palm Beach, Florida 33408

RE : P&S Associates General Partnership, et al.
v. Michael D. Sullivan, et. al.
DEPO OF: FRANK AVELLINO
TAKEN : September 9, 2015
READ & SIGN BY: December 24, 2015

Dear Mr. Avellino:

This letter is to advise you that the transcript of the deposition listed above is completed and is awaiting reading and signing.

Please arrange to stop by our office in Suite 1700, 110 Southeast 6th Street, Fort Lauderdale, Florida to read and sign the transcript. Our office hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday. Depending on the length of the transcript, you should allow yourself sufficient time. If the reading and signing has not been completed prior to the referenced date, we shall conclude that you have waived the reading and signing of the deposition transcript.

Your prompt attention to this matter is appreciated.

Sincerely,

SUSAN MATOS, Court Reporter
cc: All counsel on appearance page

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA
COMPLEX LITIGATION UNIT
CASE NO.: 12-034123(07)

P&S ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

One Town Center Road
Suite 301
Boca Raton, Florida 33486
Wednesday, 1:36 - 4:46 p.m.
September 9, 2015

VIDEOTAPED DEPOSITION OF FRANK AVELLINO

VOLUME 2 of 2
(Pages 144 through 268)

Taken on behalf of the Plaintiffs before
SUSAN MATOS, Court Reporter and Notary Public in and
for the State of Florida at Large, pursuant to
Plaintiffs' Third Re-Notice of Taking Videotaped
Deposition in the above cause.

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<p>1 PLAINTIFFS' EXHIBITS CONTINUED</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 23 April 4, 2011 Letter from Helen224 Davis Chaitman; Bates-Stamped SULLIVAN EMAILS_FRANKAVELLINO_00013 - 14</p> <p>4</p> <p>5 Exhibit 24 Declaration of Frank Avellino229</p> <p>6</p> <p>7 Exhibit 25 April 5, 2011 E-mail from Helen234 Davis Chaitman to Chad Pugatch; Bates-Stamped SULLIVAN EMAILS_FRANKAVELLINO_00012</p> <p>8</p> <p>9 Exhibit 26 February 24, 2009 E-mail from235 Michael Sullivan to Frank Avellino Bates-Stamped SULLIVAN EMAILS_FRANKAVELLINO_00023</p> <p>10 Exhibit 27 Various Documents; December 12,237 2008 Letter from Thomas Avellino to Frank DiPascali</p> <p>11 Exhibit 28 Excerpt of Jury Trial before257 Honorable John C. Cratsley from John Daley, III and Nancie B. Taylor v. Frank Avellino, et. al.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 with Madoff?</p> <p>2 A. No.</p> <p>3 Q. No.</p> <p>4 Okay. So how is it that former Avellino &</p> <p>5 Bienes accounts ended up investing with S&P and P&S?</p> <p>6 A. Each one was different. Each one was</p> <p>7 asking something that had nothing to do with my</p> <p>8 sending them to Sullivan and Powell.</p> <p>9 Q. What kind of things were they asking?</p> <p>10 A. Could I go to Sullivan & Powell?</p> <p>11 Q. They would ask you.</p> <p>12 A. Yes.</p> <p>13 Q. And what would your response be?</p> <p>14 A. Call him up. Speak to him.</p> <p>15 Q. Did you say, yes, they are investing with</p> <p>16 Madoff?</p> <p>17 A. I guess so. I -- I don't know.</p> <p>18 MR. WOODFIELD: Don't guess.</p> <p>19 THE WITNESS: I can't recall. I mean,</p> <p>20 supposedly, yes, and that's what it was.</p> <p>21 MR. SAMUELS: Okay. Let's mark these as</p> <p>22 Exhibit 8.</p> <p>23 (Plaintiffs' Exhibit 8 was marked for</p> <p>24 Identification by the reporter.)</p> <p>25 MR. SAMUELS: These are not clipped</p>

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1 together.

2 BY MR. SAMUELS:

3 Q. So attached -- I'm sorry. Exhibit 8 now
4 is a list of payments on behalf of Avellino & Bienes
5 is what this says.

6 These were parts of the books and records
7 of S&P and P&S when the receiver came in. And so
8 here is some payments that were indicated in the
9 total of amount of \$481,162.96.

10 In terms of these payments, it indicates
11 as to Avellino, a 40,000 payment to Christ Church; a
12 \$15,000 payment to Christ Church; 51,983.62 to
13 Cliff -- 27 Cliff, LLC; 69,616.87 to 27 Cliff, LLC;
14 and 50,804.49 to 27 Cliff, LLC.

15 All those I've indicated have Avellino
16 next to it. Do you see that?

17 A. Yes.

18 Q. Do you know why a \$40,000 payment was made
19 to Christ Church purportedly on behalf of Avellino?

20 A. No.

21 Q. Did you direct Mr. Sullivan or Mr. Powell
22 to make a payment to Christ Church of monies that
23 were otherwise due to you?

24 A. No.

25 Q. Did you ever become aware that Sullivan or

1 Q. Okay. Did you give it to Ms. Susan Moss?

2 A. I don't know.

3 Q. And these payments would come with
4 statements?

5 A. I think so.

6 Q. And the statements would indicate how the
7 money was calculated, correct?

8 A. Yes.

9 Q. And it was calculated based upon accounts
10 that you were to receive monies from.

11 A. Yes.

12 Q. Okay. And these accounts were designated
13 as accounts you received money from as a result of
14 your connection to the accounts, either through --
15 previously through A&B or otherwise referring these
16 accounts to Sullivan and Powell?

17 A. I don't know.

18 Q. When you looked at these statements, did
19 you recognize the names of the accounts?

20 A. Some.

21 Q. And did you and Mr. Bienes get the exact
22 same amounts?

23 A. Yes.

24 Q. So let's go to the next page of this
25 document.

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1 S&P or P&S or Powell were making payments to Christ
2 Church?

3 A. I can't recall.

4 Q. Okay. And so we have payments that went
5 to 27 Cliff, LLC on here too. Did you direct
6 Mr. Sullivan or Mr. Powell or anyone on their behalf
7 to make payments to 27 Cliff, LLC?

8 A. I gave them 27 Cliff, LLC, but did I
9 direct payments? They made it to 27 Cliff.

10 Q. And you gave them 27 Cliff, LLC for the
11 purpose of having payments made to you or on your
12 behalf?

13 A. On behalf of Avellino, yes.

14 Q. Okay. And who did you give 27 Cliff, LLC
15 to?

16 A. It was put in an account, period. That's
17 it.

18 Q. But you're saying you gave them 27 Cliff,
19 LLC. Did you give it to Mr. Sullivan, the name of
20 that entity?

21 A. I can't recall.

22 Q. Or someone at their office?

23 A. I can't recall.

24 Q. Do you know who Susan Moss is?

25 A. I believe she worked in Sullivan's office.

1 Next page of the document at the bottom
2 shows the payment to Christ Church of 40,000 and
3 15,000. Those appear to be the same payments
4 indicated on Page 1.

5 The next page has a payment of 51,983.62
6 to Cliff, LLC. And on that it says -- on that it
7 says commission Frank Avellino?

8 A. Yes.

9 Q. And isn't it true you were receiving
10 commissions for referring patient -- referring
11 customers over to S&P or P&S?

12 A. If Sullivan and Powell called them
13 commissions, that's what they were.

14 Q. And the Christ Church payment, if you go
15 to the first page, would be called -- is called a
16 contribution?

17 A. Yes.

18 Q. And did you direct the contributions to go
19 to Christ Church?

20 A. No.

21 Q. And the next page...

22 MR. WOODFIELD: Which page now, 2 or 3?

23 MR. SAMUELS: There's no number. It's got
24 a -- a page number -- the Bates Label 4 on it.

25 MR. WOODFIELD: Okay.

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1 BY MR. SAMUELS:

2 Q. There's again a payment to 27 Cliff, LLC,
3 commission Frank Avellino.

4 You would agree that was a commission
5 payment?

6 A. It was a payment.

7 Q. And they called it commission, you --

8 A. They called it commission.

9 Q. And you don't dispute that, do you?

10 A. It's their books.

11 Q. I'm saying you don't dispute this being a
12 commission.

13 A. No, I don't dispute that. No.

14 Q. Okay. And following that are the checks.

15 Do you recall directing Mr. Sullivan or
16 someone at S&P or P&S to make payments that you were
17 owed as commissions, directly to Richard J. Wills?

18 A. Yes.

19 Q. Okay. And why did you do that?

20 A. Because I wanted to.

21 Q. To have him paid directly?

22 A. Yes.

23 Q. And why did you want -- why didn't you
24 just take the commission payments and pay him
25 separately, instead of directing Mr. Sullivan to pay

1 A. Yes.

2 Q. I'm sorry, Bishop Wills.

3 A. Okay.

4 Q. And given the fact they were in \$3,000
5 increments, does that refresh your recollection as
6 to whether or not it was to pay Bishop Wills's
7 mortgage?

8 A. No.

9 Q. It does not refresh your recollection
10 of --

11 A. No.

12 Q. Why was it that these payments were made
13 in \$3,000 increments with the exception of one or
14 two?

15 A. I have no idea.

16 Q. Did you direct the amount?

17 A. No.

18 Q. So in terms of --

19 MR. SAMUELS: Let's mark this Exhibit 10.
20 (Plaintiffs' Exhibit 10 was marked for
21 Identification by the reporter.)

22 BY MR. SAMUELS:

23 Q. I'd like to show you what's been marked as
24 Exhibit 10.

25 You mentioned earlier that you would get

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1 Mr. -- I'm sorry, Pastor Wills?

2 A. It was easy.

3 Q. Bishop Wills. I'm sorry.

4 A. Bishop Wills. Yeah, it was easy. I mean,
5 that's...

6 Q. It was easier just to do it that way and
7 use S&P and P&S.

8 A. Exactly.

9 Q. Okay. And do you know if these payments
10 were made to pay -- to assist Bishop Wills in paying
11 his mortgage?

12 A. I don't know.

13 MR. SAMUELS: 9.

14 (Plaintiffs' Exhibit 9 was marked for
15 Identification by the reporter.)

16 BY MR. SAMUELS:

17 Q. So I'd like to show you the first page of
18 this document. Paid to Richard J. Wills on behalf
19 of Frank Avellino, and a number of \$3,000 payments
20 totaling \$50,000.

21 Do you see that?

22 A. Yes.

23 Q. Okay. And that is your recollection that
24 you directed Michael Sullivan to make \$50,000 worth
25 of payments to Mr. Wills?

1 statements in connection with the payments that
2 remained at 27 Cliff, correct?

3 A. Similar to this one?

4 Q. Well, forget about the exhibit for a
5 moment. And I'll get to that in a second.

6 But you mentioned earlier that you
7 received statements that would come with the
8 payments 27 Cliff. Were they similar or identical
9 in form to the statements that -- to what I'm
10 showing you is Exhibit 10?

11 A. Yes.

12 Q. Okay. And would that indicate to you
13 the -- a percent of fees that were going to get paid
14 to you and Mr. Bienes to get a split?

15 A. Yes.

16 Q. Okay. So here at the bottom, there's
17 Alves; do you see the name Alves?

18 A. Yes.

19 Q. Did you refer Alves to S&P or P&S?

20 A. No.

21 Q. Was Alves a former client of A&B?

22 A. Not that I know of.

23 Q. How about the Hooker Trust, did you refer
24 them to Sullivan or S&P or P&S?

25 A. Not that I know of.

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1 Q. Are you familiar with the Hooker Trust?

2 A. I believe it was a person's name that had
3 money with Sullivan and Powell.

4 Q. So why were you getting -- and here it
5 says "year-to-date management fees." Is that the
6 equivalent of what we were calling commissions
7 earlier?

8 A. That's what they called it.

9 Q. Okay. And in terms of these year-to-date
10 management fees, what services did you provide to
11 receive management fees?

12 A. None.

13 Q. Okay. It indicates here there's an
14 April 11, 2002 meeting. "Give year-to-date
15 management fee to Frank verbally in January after
16 year end, and he will decide split (50 percent
17 hopefully) and how much to pay to whom."

18 Do you see that?

19 A. Yes.

20 Q. Okay. Were you sharing these -- what's
21 being called here as year-to-date management fees
22 with anybody else?

23 A. Other than Michael Sullivan and me, no.

24 Q. And was your arrangement with Mr. Bienes
25 that the two of you would split these management

1 Q. -- or Sullivan?

2 A. Yes.

3 Q. Okay. Did you refer Carone Pension into
4 S&P or P&S?

5 A. No.

6 Q. Was Carone previously a -- Carone or
7 Carone Pension or anyone involved -- or anyone by
8 the name of Carone, previously a -- an account of
9 Avellino & Bienes?

10 A. No.

11 Q. So on the bottom here it says, "Give year
12 to date management fee to Frank verbally in January
13 after year end and he will decide the split."

14 So did you discuss with Mr. Sullivan or
15 anyone at P&S and S&P that it would be you who would
16 decide how to split up the management fees?

17 A. No.

18 Q. So do you know what is meant by this
19 document where it says Frank will -- "Give year to
20 date management fee to Frank verbally in January
21 after year end and he will decide to split it"?

22 A. No.

23 Q. You know what that -- where that came
24 from?

25 A. No.

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1 fees 50/50?

2 A. Yes.

3 Q. Okay. And was your arrangement with
4 Mr. Sullivan that you would -- that you would
5 receive a certain percentage of the -- either the
6 investment or the profits obtained as a management
7 fee?

8 A. Yes.

9 Q. And what was that arrangement, more
10 specifically?

11 A. Arrangement was created by Mr. Sullivan.

12 Q. And what were the terms of it in terms of
13 how your commission was to be calculated?

14 A. I don't know.

15 Q. Did you ever ask him?

16 A. No.

17 MR. SAMUELS: Number 11.

18 (Plaintiffs' Exhibit 11 was marked for
19 Identification by the reporter.)

20 BY MR. SAMUELS:

21 Q. Okay. Number 11.

22 Is Number 11 also similar to the type of
23 statements you would receive, along with your checks
24 from S&P or P&S --

25 A. Yes.

1 MR. SAMUELS: 12.

2 (Plaintiffs' Exhibit 12 was marked for
3 Identification by the reporter.)

4 BY MR. SAMUELS:

5 Q. This is another document from the books
6 and records of P&S, and it talks about a management
7 fee calculation.

8 So in the right-hand corner it talks about
9 Kelco clients. Are you familiar with an entity
10 known as Kelco?

11 A. No.

12 Q. Are you familiar with Father Vincent
13 Kelly?

14 A. Yes.

15 Q. Are you aware of a charity that he was
16 involved with called Kelco?

17 A. No.

18 Q. Have you ever seen this document or
19 documents like this before?

20 A. No.

21 Q. Have you ever seen documents -- so let's
22 go to the right-hand corner where it says, "Accrued
23 to A&B from 2000 & 2001." Then below that it says,
24 "Due from current year," For a total of 59,957.72.

25 Do you see that?

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1 A. Yes.
 2 Q. Okay. It doesn't indicate specifically
 3 which clients or accounts that's based on in this
 4 document, right?
 5 A. Right.
 6 Q. And have you ever seen any -- any
 7 documents about management fee calculations, other
 8 than the types that we went over previously marked
 9 as 9 and 10?
 10 A. No.
 11 Q. Or 10 and 11.
 12 MR. WOODFIELD: 10 and 11.
 13 MR. SAMUELS: Thank you.
 14 BY MR. SAMUELS:
 15 Q. In terms of the summaries that you said
 16 you got, have you looked at any -- earlier, before
 17 lunch you indicated you got summaries of your
 18 statements. Have you seen any documents that are
 19 similar or identical to the types of summaries that
 20 you received? Would those be the ones that are
 21 marked as Exhibits 10 and 11 or something other than
 22 that?
 23 A. Yes.
 24 Q. 10 and 11. Okay.
 25 Do you have any of those statements?

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1 A. No.
 2 Q. What happened to them?
 3 A. They're gone.
 4 Q. But when did they become gone?
 5 A. When -- 2008, 2009, 2010.
 6 Q. What happened in those years that caused
 7 you to get rid of your statements?
 8 A. Didn't need 'em.
 9 Q. What's the last year that you received --
 10 what's the last year that you received it?
 11 A. I don't remember.
 12 Q. Okay. Have you ever seen a document from
 13 any law firm, be it your own lawyers or lawyers who
 14 you litigated against, instructing you not to
 15 destroy documents or delete e-mails?
 16 A. Not that I recall.
 17 Q. So I want to ask you about certain people
 18 who you received management fees with. Okay?
 19 Do you know Scott Holloway, you spoke
 20 about him earlier, someone involved in your church?
 21 A. Yes.
 22 Q. And who was a property manager or somehow
 23 involved in your office space, right?
 24 A. Right.
 25 Q. Okay. Do you recall receiving management

1 fees or commissions in connection with Scott
 2 Holloway's investment with S&P or P&S?
 3 A. Not that I recall.
 4 Q. Did you tell Scott Holloway something to
 5 the effect that if he wanted to invest in Madoff, he
 6 should go see Mr. Sullivan or invest in S&P or P&S?
 7 A. He knew Mr. Sullivan before I did.
 8 Q. And was he involved in Avellino & Bienes?
 9 A. Not that I recall.
 10 Q. But, again, my question is: Did you ever
 11 advise him that he should go talk to Mr. Sullivan or
 12 P&S or S&P if he wanted to invest in Madoff?
 13 A. No.
 14 Q. Ralph C. Fox, do you know who that is?
 15 A. Never heard of him.
 16 Q. Never heard of him?
 17 A. No.
 18 Q. Steve Jacob, we mentioned him earlier,
 19 correct?
 20 A. Yes.
 21 Q. Okay. So -- and you knew Steve Jacob was
 22 the accountant, correct?
 23 A. He was an accountant.
 24 Q. Right. He was the accountant for S&P and
 25 P&S, right?

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1 A. I think so.
 2 Q. Okay. So here's the question in terms of
 3 Scott Holloway. Were you aware that Scott Holloway
 4 was also receiving management fees and commissions
 5 from Sullivan or one of his entities?
 6 A. No.
 7 Q. You never discussed that with him?
 8 A. No.
 9 Q. How about Steve Jacob, were you aware that
 10 he was receiving management fees or commissions?
 11 A. Not at all.
 12 Q. Did you ever discuss it with him or his
 13 counsel?
 14 A. No.
 15 Q. So you and Bienes were receiving
 16 management fees or commissions. We know that,
 17 right?
 18 A. Right.
 19 Q. Okay. Father Vincent Kelly was also
 20 receiving management fees and commissions.
 21 Did there ever come a time that you
 22 learned that?
 23 A. No.
 24 Q. Did Mr. Sullivan ever mention to you that
 25 he was paying this -- commissions or management fees

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1 or referral fees to anybody else other than you and
 2 Mr. Bienes?
 3 A. Not at all.
 4 Q. Did you ever see any of the books and
 5 records or account documents of S&P or P&S that
 6 would indicate that management fees or commissions
 7 were paid to anyone other than you and Mr. Bienes?
 8 A. No.
 9 Q. And -- Mr. Sullivan ever discuss that with
 10 you?
 11 A. No.
 12 Q. Did Mr. Sullivan ever discuss with you
 13 that in order to grow the business, it was going to
 14 be a policy of his or S&P or P&S that he would pay
 15 commissions or referral fees or management fees to
 16 anybody who brought business in to S&P or P&S?
 17 A. No.
 18 Q. How about Mr. Powell, did you have any of
 19 those discussions with Mr. Powell?
 20 A. No, not at all.
 21 Q. Okay. Are you aware of Mr. Powell ever
 22 authorizing commissions or management fees being
 23 paid to others?
 24 A. No.
 25 Q. Okay.

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1 MR. SAMUELS: Let's mark this.
 2 (Plaintiffs' Exhibit 13 was marked for
 3 Identification by the reporter.)
 4 BY MR. SAMUELS:
 5 Q. Sir, I'd like to show you what's been
 6 marked as 13, which is a -- it's on your letterhead?
 7 A. Yes.
 8 Q. And it's to Mr. Powell.
 9 A. Mm-hmm.
 10 Q. "Thank you for responding with the list.
 11 The two names I recognize on the P&S Associate list
 12 is John Crowley (Michael and Dianne's friend), and
 13 of course Carone Pension Trust."
 14 How were you aware of Carone Pension Trust
 15 back in 2000?
 16 A. I knew Matt Carone.
 17 Q. You knew Matt Carone.
 18 A. Mm-hmm.
 19 Q. And so is Matt Carone someone who you
 20 discussed at all with the possibility of investing
 21 in Madoff through S&P or P&S?
 22 A. Maybe.
 23 Q. So when you're indicating those are two
 24 accounts, you recognize John Crowley and Carone
 25 Pension Trust, and you're telling Greg that -- are

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1 you telling him because it's your expectation that
 2 you would receive commissions or management fees
 3 associated with your investments with S&P or P&S?
 4 A. No. I said I knew John Crowley and I knew
 5 Carone.
 6 Q. But is the purpose of your pointing that
 7 out to him -- and read the whole letter first.
 8 Okay?
 9 A. Mm-hmm.
 10 Q. And I want to ask you, is the purpose of
 11 your advising Mr. Powell of your knowing those
 12 people, to make sure that you would receive
 13 commissions or management fees in connection with
 14 their investments in P&S or S&P?
 15 A. Yes.
 16 Q. Okay. Now, next we have as -- for the S&P
 17 list, accounts attributable to our old accounts.
 18 Let's talk about this [sic] names.
 19 Vania Alves?
 20 A. Mm-hmm.
 21 Q. Is Vania Alves someone who previously
 22 invested with S&P or P&S?
 23 A. Evidently, yes.
 24 Q. Okay. And is that someone you're
 25 expecting to get commissions and management fees on?

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1 A. Maybe, yes. Maybe, yes.
 2 Q. Okay. Patricia Hidalgo, was that someone
 3 who invested in A&B previously?
 4 A. Yes.
 5 Q. And is that someone who you were expecting
 6 to get commissions or management fees on in
 7 connection with their investment with S&P or P&S?
 8 A. Maybe.
 9 Q. And that's why you're pointing them out in
 10 this letter, right?
 11 A. Yes.
 12 Q. Because you're expecting to get
 13 commissions or management fees --
 14 A. I expect nothing, but it came.
 15 Q. You believe that you should get them.
 16 A. Maybe.
 17 Q. Okay. And now I have Stanley & Emilie
 18 Leonardi (Dianne's uncle). Are you pointing them
 19 out also to ensure that those would be people you
 20 would get commissions or management fees on?
 21 A. Yes.
 22 Q. Now, in terms of Alves, Vania Alves, who
 23 were accounts of Avellino & Bienes, did you have
 24 discussions with Alves at any point in which you
 25 discussed the possibility of their continuing to

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1 invest their funds in Madoff through S&P or P&S?

2 A. No.

3 Q. How do you know that?

4 A. Because I didn't.

5 Q. That's something you would definitely
6 remember?

7 A. Yeah. Vania, I don't know who she is. I
8 know the name.

9 Q. Okay. Same question as Patricia Hidalgo.

10 A. Same answer.

11 Q. You would not have had that discussion?

12 A. No.

13 Q. How about Carone Pension Trust, would you
14 have had that discussion?

15 A. No.

16 Q. How do you know?

17 A. Because I know.

18 Q. But why is that if -- how do you know you
19 would not have had discussion with them about going
20 to S&P or P&S to invest --

21 A. It had nothing to do with P&S and S&P.

22 Q. Huh?

23 A. It had nothing to do with P&S and S&P at
24 the time.

25 Q. It, what, had nothing to do with them?

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1 A. Carone.

2 Q. Right. But they at some point came into
3 invest in S&P and P&S --

4 A. Yes.

5 Q. -- and you were getting commissions on
6 them, right?

7 A. Yes.

8 Q. So why were you claiming that you should
9 get commissions on them if you did not in any way
10 discuss with them the possibility of investing in
11 S&P or P&S?

12 A. I don't recall. I don't recall.

13 Q. Well, what were the parameters under which
14 you were to get paid a commission or management fee?

15 A. If an account was earmarked by Sullivan
16 and Powell as people that they thought I would get
17 something from, they would earmark it. Simple as
18 that.

19 Q. And what was the criteria they were using
20 to earmark an account that they thought you would
21 get something from?

22 A. People -- people they recognized that I
23 might have known.

24 Q. That you might have known.

25 A. Yes.

1 Q. That simple.

2 A. Yes, it is.

3 Q. As someone you might have known.

4 A. Yes, it is.

5 Q. Okay. Why are you pointing out that Scott
6 Holloway and Dick Wills were not part of your old
7 accounts, do you know?

8 A. No, I don't.

9 Q. Did you expect to get commissions on
10 investments made by Scott Holloway and Dick Wills?

11 A. No.

12 Q. Now, you're talking about "P&S accounts
13 with Monsignor Kelly" -- is that right?

14 A. Monsignor Kelly.

15 Q. Monsignor Kelly.

16 -- "may be the only accounts we may have
17 some claims on."

18 Do you see that?

19 A. Yes.

20 Q. So when you're talking about "we may have
21 some claims on," you're talking about you may have
22 claims on for commissions or management fees.

23 A. Yes.

24 Q. And why would claims on commissions or
25 management fees to P&S with Monsignor --

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1 A. Monsignor Kelly.

2 Q. -- Monsignor Kelly?

3 A. Because I knew Monsignor Kelly.

4 Q. Okay. So did you mention that to either
5 Sullivan or Powell that you believed that you were
6 entitled to commissions and management fees on
7 Monsignor Kelly's account or accounts of his?

8 A. No.

9 Q. Did you ever get paid management fees or
10 commissions on Monsignor Kelly's accounts?

11 A. Not that I recall.

12 Q. And is that because Monsignor Kelly was
13 receiving commissions or management fees himself?

14 A. No. Because he was a charity.

15 Q. So was your arrangement not to receive
16 management or commission fees on charities invested
17 with S&P or P&S?

18 A. I don't know.

19 Q. Well, you just mentioned because --

20 A. Well, I said -- well, I just said it now,
21 he's a charity.

22 Q. And so because he's a charity, means that
23 you would not be entitled to a commission --
24 commission or management fee?

25 A. It goes to charity, let it stay there.

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1 Q. So why did you say you may have claims on
2 those accounts?

3 A. I don't know. The year is 2000.

4 Q. Do you know what you meant when you
5 said -- or what you meant what you said, "Since you
6 only take half the management income and give the
7 other half to charity, I do not see how this can be
8 negotiated."

9 What were you referring to?

10 A. I don't know. I can't remember.

11 Q. Okay. I'm going back to Pages 2, 3, 4 and
12 5 of this exhibit; do you know who prepared that?

13 A. No.

14 Q. Okay. If you go to the next page, which
15 is Bates-labeled Number 006, where it says P&S
16 accounts?

17 MR. WOODFIELD: I'm not sure he knows how
18 to read the Bates numbers.

19 THE WITNESS: What am I looking at?

20 MR. SAMUELS: I'm sorry. At the bottom
21 there's certain pages, Page 6.

22 MR. WOODFIELD: It would be after the --
23 it says Avellino then an under slash and --

24 MR. SAMUELS: There you go. That's it.

25 THE WITNESS: This one.

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1 MR. SAMUELS: Yep.

2 BY MR. SAMUELS:

3 Q. So it says "P&S Accounts" and "Account
4 Balance." And so it looks like "MB" would be
5 Michael Bienes and "FA" Frank Avellino, correct?

6 A. Mm-hmm.

7 Q. And it would talk about a management fee;
8 is that right?

9 A. Yes.

10 Q. See that?

11 A. Yes.

12 Q. Okay. Let me ask you about Carone
13 Pension, James Jordan Trust, Carone -- Carone
14 Marital Trust, Carone Revocable Trust, Paragon
15 Ventures, Elaine Ziffer and Carone Family Trust.

16 As to any of those entities or the
17 principals of those entities, do you recall having
18 any discussions with any of them about their
19 investments with S&P or P&S?

20 A. Matt Carone, the person.

21 Q. And what do you recall discussing with
22 Matt?

23 A. It's a whole story, but I'll tell you in a
24 very simple way.

25 Matt Carone had lost his wife. She

1 managed all his work. He had no clue what
2 investments were. He called me one day and said,
3 Could you come down to my studio? It was down in
4 the Las Olas area. As a friend, I went down there.

5 He showed me these statements. And the
6 first thing I looked at, I said, Matt, your
7 statements from whatever broker he had, shows you
8 had \$10 at the beginning of the year. At the end of
9 the year, you had \$2. Don't you think you lost some
10 money? What do you think you did? And that's where
11 it left.

12 He said, Oh, my God. What do I do now?
13 And I said, There's a guy if you want -- and he knew
14 the way I lived. He was with -- around for a while.
15 And he said, What is it you do? I said, I have been
16 very successful in some businesses I had. And if
17 you want anything to talk to, you could go to
18 Michael Sullivan, who's a very dear friend. I trust
19 him totally. You could call him up and go to him.
20 And that's what he did.

21 Q. When you're saying he knew the way you
22 lived, what do you mean by that?

23 A. Well, he knew that I gave to a lot of
24 charity. He knew I traveled all over the world. He
25 knew that my life was in good shape with Nancy.

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1 That's what he knew. Nothing else. He didn't know
2 where I invested. What I did. He had no clue
3 because he never even knew what he invested in.

4 Q. He knew you were a -- he could tell you
5 were successful as a result of your lifestyle.

6 A. Yes.

7 Q. Okay. All right.

8 Okay. Let's go to the second --

9 A. Okay.

10 Q. -- part of this.

11 As to Vania Alves, James Judd, Hooker
12 Trust (Donald Kahn), James Jordan, Fernando --

13 A. -- Esteban.

14 Q. -- Esteban, Margaret Esteban.

15 Do you recall having any discussions with
16 them about using Michael Sullivan or S&P or P&S to
17 invest?

18 A. Vania Alves, I don't have any idea.

19 James Judd, I never instructed him to do
20 anything.

21 Donald Kahn was a friend that old, old
22 times through somebody else. I had just met him
23 maybe once or twice. He was a very, very wealthy
24 man. And, again, I think he said what do you guys
25 do? But I have to -- I'm just surmising that.

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1 Q. And if he did, you would have told him to
2 go to Michael Sullivan?

3 A. If he did -- no, he never went to Michael
4 Sullivan. I don't think he ever went to Michael
5 Sullivan. He just probably said, I have someone who
6 can send money to Michael Sullivan, is it okay? And
7 that was it. He had a -- he was a -- he's a very,
8 wealthy man. Yeah, I think he's dead now, but --

9 Q. So you would have said it would be okay to
10 send it to Michael Sullivan?

11 A. Yes, of course.

12 James Jordan is -- he went on his own. He
13 was part of my church. He knew Mike Sullivan before
14 I did.

15 And the Estebans, definitely. They're my
16 dearest friends. They still are.

17 Those are the ones I could honestly say
18 that I helped them with Michael Sullivan's pension
19 plan accounts, because there was no other to put it
20 in. I mean, we had none, so...

21 Q. And do you recall assisting the Estebans
22 in the management of their account in terms of funds
23 and things like that?

24 A. They -- no. They had -- they had their
25 own accountant.

1 was getting?

2 Q. Not the \$3,000. A different set of money.

3 A. No.

4 Q. How about Dr. Edward Michaelson, do you
5 know him?

6 A. No.

7 Q. Gary Chapman, do you know him?

8 A. He sold me my life insurance.

9 Q. Do you know that he put money into S&P or
10 P&S?

11 A. No. He knew Michael more than I -- longer
12 than I did, by a long time.

13 And by the way, he was a part of that
14 Bible study.

15 Q. Edith Rosen and Sam Rosen, do you know
16 them?

17 A. No.

18 THE VIDEOGRAPHER: Excuse me, sir. Your
19 microphone fell off.

20 THE WITNESS: Fell down again? I'm sorry.
21 Excuse me.

22 BY MR. SAMUELS:

23 Q. Are you good?

24 A. Yes.

25 Q. Okay. Marketing Services, Inc., have you

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1 All I did is I told them where to send the
2 money to, Michael Sullivan. And he basically did
3 the same thing everybody else would have done,
4 probably sending money to Michael Sullivan. Those I
5 did assist. Those are the ones I could say, yes, I
6 did.

7 Q. Okay. All right. So I want to ask you
8 questions about some other folks.

9 A. Mm-hmm.

10 Q. Jack Kleinman?

11 A. I don't know who it is.

12 Q. So Bishop Wills, do you know that --
13 whether or not he invested money in S&P or P&S,
14 personally?

15 A. Yes, he knew Michael and he sent some
16 money to Michael.

17 Q. Personally?

18 A. Personally. So, yes.

19 Q. And do you know if Bishop Wills referred
20 others into S&P or P&S?

21 A. Not that I know of.

22 Q. Do you know if -- did Bishop Wills ever
23 mention that he was receiving commissions or
24 management fees in connection with S&P or P&S?

25 A. Are you referring to the \$3,000 that he

1 ever heard of that entity or know who the principals
2 are?

3 A. No.

4 Q. Vincent Barone?

5 A. Yes, I know Vincent.

6 Q. And are you aware that Vincent Barone
7 invested in S&P or P&S?

8 A. No.

9 Q. You never learned that at all?

10 A. No.

11 Q. Okay. How about Abraham Newman?

12 A. Never heard of him.

13 Q. James Yonge?

14 A. Never heard of him.

15 Q. Wayne Horovitz?

16 A. Never heard of him.

17 Q. Direct Response Group, Inc.

18 A. Never heard of him.

19 Q. Susan Moss, we mentioned earlier, is
20 someone who worked with Michael Sullivan, correct?

21 A. Yes.

22 Q. Are you aware of Susan Moss investing any
23 money in S&P or P&S?

24 A. No.

25 Q. Or any of her entities?

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1 A. No.
 2 MR. SAMUELS: 14.
 3 (Plaintiffs' Exhibit 14 was marked for
 4 Identification by the reporter.)
 5 BY MR. SAMUELS:
 6 Q. Out of all those people we just mentioned,
 7 do you know if any of them ever received management
 8 fees or commissions --
 9 A. No.
 10 Q. -- from S&P or P&S?
 11 A. No.
 12 Q. Okay.
 13 MR. WOODFIELD: Is there no date on this?
 14 MR. SAMUELS: There's a date in the
 15 right-hand corner, 1/7/95.
 16 MR. WOODFIELD: Oh, yeah. Okay.
 17 BY MR. SAMUELS:
 18 Q. And this is on your letterhead. It's a
 19 letter to Susan, and it talks about Margaret
 20 Esteban's retirement account.
 21 That is your friend Margaret Esteban?
 22 A. Yes.
 23 Q. Okay. And why -- and Susan would be Susan
 24 Moss?
 25 A. Yes.

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1 Q. And why is it that you, Mr. Avellino, are
 2 sending checks directly to Susan Moss on behalf of
 3 Margaret E. K. Esteban's R.A. account?
 4 A. I was up in Nantucket, as you can see on
 5 the letterhead, and they live in Nantucket. And
 6 they are my dearest friends.
 7 Q. And so you took it -- undertook it
 8 yourself to handle the financial transaction between
 9 them and S&P or P&S?
 10 A. Yes.
 11 Q. And did you continue to have discussions
 12 throughout the years with the Estebans about their
 13 investment with S&P or P&S?
 14 A. No.
 15 Q. Did you have -- did you receive
 16 commissions on their -- commissions or management
 17 fees in connection with their investment?
 18 A. I can't recall.
 19 Q. During the course of S&P and P&S, which
 20 was roughly from 1994 and until the time that a
 21 receiver was appointed, let's talk about that time
 22 frame for a moment. Okay --
 23 A. Yes.
 24 Q. -- in this case.
 25 What was your role in S&P or P&S?

1 A. None.
 2 Q. So when the documents indicated you
 3 received management fees, were you involved in any
 4 way whatsoever with the management of S&P or P&S?
 5 A. No.
 6 Q. Now, you've been in Bible study with
 7 Michael Sullivan for a number of years, correct?
 8 A. Yes.
 9 Q. And you know him pretty well?
 10 A. Yes.
 11 Q. Okay. And do you believe him to be
 12 truthful?
 13 A. Totally.
 14 Q. And -- and honest?
 15 A. Yes.
 16 Q. Do you know who Bette Anne Powell is?
 17 A. I think it was Greg's wife.
 18 Q. Did you know her at all?
 19 A. No.
 20 MR. SAMUELS: Okay. Let's mark as
 21 Exhibit 15...
 22 (Plaintiffs' Exhibit 15 was marked for
 23 Identification by the reporter.)
 24 BY MR. SAMUELS:
 25 Q. Have you ever seen this document before?

1 A. No.
 2 Q. Okay. So I'd like to show you, this is a
 3 document from Michael Sullivan to Bette Anne.
 4 A. Mm-hmm.
 5 Q. And I just want to go through some of this
 6 with you. You can take a moment and read it, and
 7 I'm going to ask you some questions.
 8 MR. WOODFIELD: What are we doing with the
 9 date for this thing?
 10 MR. SAMUELS: Well, we're not doing
 11 anything with the date at the moment. It
 12 appears this was printed out on June 18, 2013.
 13 I don't know that we know the exact date.
 14 THE WITNESS: Okay.
 15 MR. SAMUELS: I want to make sure your
 16 mike is okay.
 17 THE WITNESS: I don't know if it is or it
 18 isn't. Looks like it's backwards again.
 19 Come on. It's the mike, it breaks.
 20 MR. WEBER: You want to go off the record?
 21 MR. SAMUELS: Yeah, let's go off the
 22 record.
 23 THE VIDEOGRAPHER: This the end of Disk
 24 Number 2. We're off the record at 2:24 p.m.
 25 (A brief break was taken.)

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1 THE VIDEOGRAPHER: This begins Disk
2 Number 3. We're back on the record at
3 2:34 p.m.

4 BY MR. SAMUELS:

5 Q. So I've just put in front of you a letter
6 from Michael Sullivan to Bette Anne. That being
7 Bette Anne Powell, Mr. Powell's surviving wife,
8 correct?

9 A. Yes.

10 Q. And you had a chance to look at this
11 letter?

12 A. Yes.

13 Q. Have you ever discussed this letter with
14 Michael Sullivan?

15 A. No.

16 Q. Okay. So I want to talk to you about --
17 starting with the fourth paragraph on the first
18 page. Where it says, "Right off the bat, you should
19 be completely aware that the gift of this business
20 was only given to me, not Greg. It came from a
21 close friend in my church, Frank Avellino."

22 Do you see that?

23 A. Yes.

24 Q. Do you know why Mr. Sullivan is telling
25 Ms. Bette Anne Powell that the gift of the business

1 came into our partnership were friends of our
2 church."

3 Were you aware that most of the people at
4 S&P and P&S were friends from the church?

5 A. No.

6 Q. Did you ever receive any lists or
7 documents with names of partners on them, other than
8 the sheets that you had, the summary sheets that you
9 received?

10 A. No.

11 Q. Then it says, "I'm reminded constantly by
12 Frank that this way my gift alone."

13 Do you see that?

14 A. Yes. I don't know what he's talking
15 about.

16 Q. So he's not talking about one reminder,
17 he's talking about constant reminders. Do you know
18 what he -- you were constantly reminding him of?

19 A. I wasn't constantly reminding him of
20 anything.

21 Q. So you were not constantly reminding him
22 that you gave him the gift of the business.

23 A. Yes.

24 Q. So after Avellino & Bienes were no longer
25 allowed to trade securities and you had people who

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1 was given to him by you?

2 A. I don't know what he's talking about.

3 Q. You don't know what he's talking about.

4 A. No.

5 Q. So do you deny giving him the business in
6 which we would be able to invest --

7 A. I have --

8 Q. -- in Madoff?

9 MR. WOODFIELD: Let him finish the
10 question.

11 THE WITNESS: I have no idea what he's
12 talking about.

13 BY MR. SAMUELS:

14 Q. Then it says, "He came to me alone as an
15 individual."

16 Do you recall going to Mr. Sullivan
17 individually and letting him know that you can --
18 you would be able to assist him or provide to him
19 the ability to have access to Madoff?

20 A. No.

21 Q. So when he says "He" -- being Frank
22 Avellino -- came to him alone as an individual.

23 Do you know what he's referring to?

24 A. No.

25 Q. Okay. Next says, "Most of the people who

1 were satisfied with their investments with Madoff,
2 what did you tell these people to do?

3 A. What people?

4 Q. Any of them. Did you send them over to
5 Mr. Sullivan?

6 A. We went over that list.

7 Q. Can you think of anyone else you sent over
8 to Mr. Sullivan, other than ones you have mentioned
9 so far?

10 A. None.

11 Q. Or to Mr. Powell?

12 A. No.

13 Q. Okay. I'd like to go now three paragraphs
14 down from there. "You stated that you thought you
15 were not going to have any financial problems. I
16 cannot unfortunately guarantee that for a number of
17 reasons. If something happens to the stock market,"
18 or our investors -- "to our investors, to Frank, our
19 contact" -- so let's stop there. Okay.

20 "Frank, our contact." And he's talking
21 about Frank Avellino, it appears. So you are --
22 Frank Avellino is Michael Sullivan's contact to,
23 what, Madoff?

24 A. That's what he says.

25 Q. And you agree that you were his contact to

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1 Madoff?

2 A. I don't agree to anything.

3 Q. So have you read the interview that

4 Mr. Bienes gave on FRONTLINE?

5 A. Never saw it.

6 Q. And so if Mr. Bienes were to say that it
7 was you and not he who directed Mr. Sullivan to
8 Madoff, would you disagree with that?

9 A. If he said that, I believe what my partner
10 said.

11 Q. So you do -- so Mr. Bienes said that you,
12 Mr. Avellino, would only --

13 MR. WOODFIELD: Object to the form of the
14 question.

15 MR. SAMUELS: Please --

16 MR. WOODFIELD: Finish the question.

17 Don't answer it until I have a chance to
18 object.

19 MR. SAMUELS: To the form. That's fine.
20 No speaking objections. I have no problem with
21 that.

22 BY MR. SAMUELS:

23 Q. So my -- my question is: If Mr. Bienes
24 were to say on FRONTLINE that it was you and not he
25 who referred Mr. Sullivan to Mr. Madoff or Madoff's

1 A. This is a letter that Mr. Sullivan sends
2 to Ms. -- Mrs. Powell. And for what it was sent
3 for, I have no idea. I think you have to ask
4 Mr. Sullivan that.

5 Q. So my question is: Despite the fact that
6 you say Mr. Sullivan is honest and truthful, you are
7 contesting the statements he's saying in this letter
8 about you?

9 A. The letter has a purpose.

10 Q. But my question is: You're contesting the
11 truthfulness of these statements he's making about
12 you?

13 A. This is a letter from Mr. Sullivan to
14 Mrs. Powell. What he says in the letter is between
15 him and Mrs. Powell. I still know he's honest and
16 truthful.

17 Q. But what he's saying in this letter about
18 you is not honest and truthful. Is that what you're
19 saying?

20 A. I'm not saying anything.

21 Q. So it's truthful then --

22 A. I --

23 Q. -- that you gave him the gift of the
24 business.

25 A. What gift? You keep saying gift. I don't

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1 organization, you would not dispute that, would you?

2 MR. WOODFIELD: Object to form of the
3 question.

4 You could answer, if you can.

5 THE WITNESS: If he said that, that's what
6 he believes that's what I did.

7 BY MR. SAMUELS:

8 Q. Okay. So that is what you did if that...

9 A. If he said I did it, then I did it.

10 Q. Okay. Because you believe whatever
11 Mr. Bienes says?

12 A. Well, no.

13 Q. But you would believe --

14 A. He didn't -- he didn't know Michael
15 Sullivan. So if he said I went to Michael Sullivan
16 for whatever reason, it has to be true.

17 Q. Okay. And you testified earlier that you
18 believe Mr. Sullivan is honest and truthful,
19 correct?

20 A. Yes, he is. As far as I'm concerned.

21 Q. And do you still believe him to be honest
22 and truthful in light of what he's saying in this
23 letter about the gift of the business and how the
24 business would suffer if something were to happen to
25 you?

1 understand what --

2 Q. I'm referring to the letter. I mean,
3 using Mr. Sullivan's terminology: "Right off the
4 bat, you should be completely aware that the gift of
5 the business was only given to me, not Greg. It
6 came from our close friend in my church, Frank
7 Avellino."

8 A. I don't know if I gave it to him. I may
9 have given it to him and Greg.

10 Q. Okay. And the gift that you gave him was
11 the gift of the access to Madoff, correct?

12 A. He went to Madoff because he went to
13 Madoff. He had an account with Madoff.

14 Q. And the gift you gave him was the access
15 to Madoff, correct?

16 A. If he says so, then he believes, then it
17 is what he says.

18 Q. And the gift that you gave him was also
19 the gift of having people and entities available who
20 you would be willing to invest with S&P and P&S,
21 correct?

22 A. I don't know.

23 Q. Do you know what percent of the business
24 S&P or P&S were considered accounts in which you
25 were entitled to commissions or -- or management

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1 fees?

2 A. None whatsoever.

3 Q. You don't know?

4 A. No.

5 Q. All right. Next paragraph, "If something
6 were to happen to me, death or grave illness, the
7 business in effect would be closed. You have no
8 idea or apparently never understand [sic] just how
9 important my relationship to this business is. I am
10 the person who deals with the main source, Frank
11 Avellino."

12 Do you see that?

13 A. Yes.

14 Q. Okay. So when he's saying you're the --
15 he says here that he's dealing with you as the main
16 source, you would agree that you were the main
17 source that provided him with access to Madoff?

18 A. No.

19 Q. Would you agree that you were the main
20 source to provide him with access to people and
21 entities that would invest in --

22 A. No.

23 Q. -- Madoff?

24 A. No.

25 Q. So what is he talking about here when he

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1 Q. Do you know what he's talking about when
2 he says that you can take -- take the business back
3 at any time and earn the commissions for yourself?

4 A. I have no idea.

5 Q. Do you believe that you had the ability to
6 earn the commissions for yourself, not just the
7 commissions and management fees that you received?

8 A. Not at all.

9 Q. Okay. Third paragraph on the next page.

10 "I felt in your heart there was a time that you felt
11 when Frank [sic] was called home that you would be a
12 partner in this business."

13 A. Greg was called home.

14 Q. -- "Greg was called home that you would be
15 a partner in the business."

16 So do you recall any discussion or
17 dialogue about Bette Anne becoming a partner at S&P
18 or P&S?

19 A. Not that I know of.

20 Q. Then Mr. Sullivan says, "I don't know
21 where you got that idea, that could and would never
22 happen. For one thing, Frank Avellino would never
23 have allowed it."

24 Do you see that?

25 A. Yes.

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1 calls you the main source?

2 A. You have to ask him.

3 Q. Do you agree that you were the main source
4 for S&P and P&S?

5 A. No.

6 Q. In the next sentence it says, "He" --
7 Mr. Avellino -- "has given and entrusted to me this
8 gift and can take it back at any time and earn the
9 entire commission for himself."

10 Do you see that?

11 A. Yes.

12 Q. Was your arrangement with Mr. Sullivan one
13 where you had the ability to take the S&P and P&S
14 business from him and -- and earn the entire
15 commission for himself [sic]?

16 A. No.

17 Q. Did you have the ability to go to
18 Mr. Madoff and direct the commission to be paid to
19 you as opposed to Mr. Sullivan?

20 A. No.

21 Q. So did you have the ability to go to
22 customers of S&P and P&S and demand that commissions
23 get paid to you as opposed to management fees to
24 Mr. Sullivan or Mr. Powell?

25 A. No.

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1 Q. So what is it that gave you the ability to
2 determine who would or would not be partners with
3 Mr. Sullivan at S&P or P&S?

4 A. I have no idea.

5 Q. Did -- did you have that ability?

6 A. No.

7 Q. Why did Mr. Sullivan think you had that
8 ability?

9 A. I have no idea.

10 Q. Why is he telling Ms. Powell that you had
11 that ability?

12 A. I have no idea.

13 Q. Going now to the last paragraph on this
14 page.

15 A. Mm-hmm.

16 Q. Towards the bottom.

17 A. Yes.

18 Q. "The business would [sic] be worth nothing
19 if I die, the market crashes or Frank or Bernie
20 dies."

21 Do you see that?

22 A. Yes.

23 Q. Why would S&P and P&S be worth nothing if
24 you died?

25 A. I have no idea.

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1 Q. You agree with that?

2 A. I don't know what he means. I have no
3 idea.

4 COURT REPORTER: Excuse me, for one
5 second. Could you straighten your chair out,
6 please?

7 THE WITNESS: Oh, I'm sorry.

8 MR. WOODFIELD: She's having trouble
9 getting your words.

10 THE WITNESS: Oh, I'm sorry.

11 (Plaintiffs' Exhibit 16 was marked for
12 Identification by the reporter.)

13 BY MR. SAMUELS:

14 Q. Let me show you what's been marked as
15 Exhibit 16. This is a letter from you to
16 Mr. Sullivan. And it's concerning a Pledge of
17 Investment Paragon Ventures, LLC, Donald Kahn.

18 A. Yes.

19 Q. And in this letter you say to Michael, "I
20 hope all is well. There's no need to fax me a copy
21 and no need to consult with the attorney. There's
22 no way that the investments in S&P or Strattham can
23 be pledged."

24 Do you see that?

25 A. Yes.

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1 Q. How did you know whether or not
2 investments in S&P could be pledged?

3 A. No assets could be pledged.

4 Q. Why?

5 A. Because you couldn't pledge any assets
6 with Bernard L. Madoff.

7 Q. But they were securities, right?

8 A. I don't know. They're not pledged.
9 Simple as that.

10 Q. Well, back in -- back in 2004, you
11 understood that Bernard Madoff was investing
12 people's money in stocks, right?

13 A. Right.

14 Q. Okay. So is there any principle that
15 you're aware of that -- that stocks and securities
16 can't be pledged?

17 A. They weren't stocks and securities.

18 Q. Well, what --

19 A. They were positions in Bernard L. Madoff.

20 Q. They were what?

21 A. Positions from Bernard L. Madoff. There
22 was no stocks and securities, you can't pledge them.
23 No way you could. I was told that from day one
24 going back to the year 101.

25 Q. So when they were positions in Bernard

1 Madoff, what do you mean by that?

2 A. Whatever positions he had with Madoff,
3 could not be pledged. It's a very simple answer.
4 And if you don't understand that, I'm sorry.

5 Q. When you say -- my understanding is that
6 someone in S&P, like Michael --

7 A. Mm-hmm.

8 Q. -- his money would be through S&P or P&S
9 invested in --

10 A. Right.

11 Q. -- stocks with Bernie Madoff securities,
12 right?

13 Yes?

14 A. Yes.

15 Q. So why is it that his investments could
16 not be pledged? What -- what is it about the
17 investments that made it -- that they couldn't be
18 pledged?

19 A. I am not an expert in it. All I know is I
20 remembered, they could not be pledged.

21 Q. And why are you involving yourself in the
22 dialogue on whether or not investment Paragon
23 Ventures Limited in S&P could be pledged?

24 A. I can't recall why it happened.

25 But I'm telling you, that's the answer

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1 that I knew and that was the end of it, as far as I
2 was concerned.

3 Q. Instead of the why it's happened, why are
4 you giving advice to Mr. Sullivan on whether or not
5 securities could be pledged?

6 A. He may have asked could I pledge
7 Sullivan -- Donald Kahn's money for whatever, I
8 don't know what he was pledging. But the answer has
9 always been no. We could never pledge. And it's as
10 simple as that.

11 Q. And it was your position to advise
12 Mr. Sullivan on issues like this, as it pertained to
13 S&P and P&S?

14 A. I wasn't advising anything. I was giving
15 him a fact.

16 Q. And Mr. Sullivan brought you in the loop
17 of this conversation why?

18 A. Because he didn't know who else to ask.

19 Q. How about asking Madoff?

20 A. I don't know. Maybe he did ask Madoff
21 too.

22 Q. Why didn't you refer him to Madoff?

23 A. Why did I not refer him to Madoff?

24 Q. Yes.

25 A. I don't know.

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1 MR. SAMUELS: 17.
 2 (Plaintiffs' Exhibit 17 was marked for
 3 Identification by the reporter.)
 4 BY MR. SAMUELS:
 5 Q. So here's a letter from Mr. Sullivan to
 6 you.
 7 A. Mm-hmm.
 8 Q. Indicating that you received a pledge
 9 agreement. And they're requesting "Tom and myself
 10 sign the agreement to pledge the investments."
 11 Tom would be who, do you know?
 12 A. No.
 13 Q. Okay. And do you know why he was sending
 14 this to you?
 15 A. No.
 16 Q. And do you know why a partnership interest
 17 in S&P or P&S cannot be pledged?
 18 A. It was policy not to pledge securities
 19 from any of these companies. It's simple as that.
 20 As I stated before, that's the policy.
 21 Q. Did Mr. Madoff tell you that?
 22 A. Maybe years ago. I don't think he told me
 23 anything. I don't think anybody ever pledged it.
 24 MR. SAMUELS: 18.
 25

1 She'd pick up the phone. She'd say it was Jodi
 2 Crupi.
 3 Q. And what would cause you to call Madoff
 4 back in 2008 time frame?
 5 A. I wouldn't.
 6 MR. WOODFIELD: Object to the form of the
 7 question.
 8 BY MR. SAMUELS:
 9 Q. Go ahead.
 10 A. I wouldn't.
 11 Q. Well, you said every once in a while you
 12 would call.
 13 A. Well, not then. Whenever it was. She's
 14 been there 100 years. So it's Jodi Crupi.
 15 Q. In 2008 you had over \$100 million with
 16 Madoff?
 17 A. So?
 18 Q. So why wouldn't you call there?
 19 A. Called for what?
 20 Q. For whatever information --
 21 A. Well, if I needed a check, I would call.
 22 And if it's Jodi Crupi, it would be Jodi Crupi. And
 23 if isn't -- it doesn't have to be her, it can be
 24 anybody who picks up the phone in the office.
 25 Q. And the next page of this document is from

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1 (Plaintiffs' Exhibit 18 was marked for
 2 Identification by the reporter.)
 3 BY MR. SAMUELS:
 4 Q. Okay. I'd like to show you what's been
 5 marked as Exhibit 18. From FrankNanc@aol.com. That
 6 would be from your e-mail, correct?
 7 A. Mm-hmm.
 8 Q. Do you recall having discussions with
 9 Michael Sullivan about whether or not he should
 10 change the account at Madoff to -- from a general
 11 partnership to an LLC?
 12 A. No.
 13 Q. Why would Mr. Sullivan ask you these
 14 questions?
 15 A. As a friend. He knew I had gone through
 16 hell once before.
 17 Q. And, apparently, he didn't know who to
 18 call at Madoff to inquire about doing this, right?
 19 A. Evidently.
 20 Q. And so you told him to be in touch with
 21 Jodi Crupi?
 22 A. Yes.
 23 Q. And how did you know that Jodi Crupi was
 24 the person who he should be contacting?
 25 A. Every once in a while, I would call.

1 Michael Sullivan to Jodi Crupi?
 2 A. Mm-hmm.
 3 Q. Indicating he wants to change from a
 4 general partnership to an LLC. Do you see that?
 5 A. Yes.
 6 Q. Have you ever seen this letter before?
 7 A. No.
 8 Q. It also indicates that he'd like to
 9 replace Greg Powell's name with his as a primary
 10 contact, correct?
 11 A. I don't know. That's what it says, but I
 12 don't know.
 13 Q. And you don't know why he's doing this?
 14 A. I think -- I think Greg was dead at the
 15 time.
 16 Q. Okay. Did you have a close personal
 17 relationship with Michael Sullivan in 2009?
 18 A. No.
 19 Q. How about 2010?
 20 A. No.
 21 Q. How about 2011?
 22 A. No.
 23 Q. 2012?
 24 A. No.
 25 Q. Did you have a professional relationship

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1 with Michael Sullivan in 2009?

2 A. No.

3 Q. 2010?

4 A. No.

5 Q. 2011?

6 A. No.

7 Q. 2012?

8 A. No.

9 Q. Do you recall having discussions with
10 Michael Sullivan after it became public that Bernard
11 L. Madoff Investments was a Ponzi scheme?

12 A. I can't recall, no.

13 Q. Do you know what a Ponzi scheme is?

14 A. Borrowing funds or getting funds to pay
15 off other people.

16 Q. It's basically when you pay off other
17 people with funds from new investors as opposed to
18 the --

19 A. That's a Ponzi scheme, yes. I know what a
20 Ponzi scheme is.

21 Q. And were you aware that Madoff was a Ponzi
22 scheme prior to it becoming public?

23 A. No.

24 MR. SAMUELS: Let's mark this as 19.

25

1 A. I can't recall.

2 Q. What did you do to try to get your money
3 back?

4 A. I had to send a -- I sent Bernard L.

5 Madoff and company -- whatever the hell it was,
6 pardon me French -- a letter stating I want my money
7 back. That was -- that was it.

8 Q. Did you get your money back?

9 A. Of course not.

10 Q. Did you make any claims through any
11 entities or organizations set up to pay claims?

12 A. I sent -- I sent claims to SIPC.

13 Q. And did you receive --

14 A. Some -- some were denied, some were
15 received. But I don't recall which ones.

16 Q. And do you have counsel working with you
17 in connection with the SIPC claims?

18 A. Yes.

19 Q. And who's that?

20 A. Gary Woodfield.

21 Q. So let's talk now about what's been marked
22 as --

23 A. That's 19.

24 Q. -- Exhibit 19.

25 So who's Marv Gutter, do you know?

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1 (Plaintiffs' Exhibit 19 was marked for
2 Identification by the reporter.)

3 MR. WOODFIELD: What -- 19?

4 MR. SAMUELS: Yeah, 19.

5 BY MR. SAMUELS:

6 Q. Do you recall having discussions with
7 Michael Sullivan following post December 2008 or in
8 December 2008, after it became public that Bernie
9 Madoff was running a Ponzi scheme?

10 A. Not that I recall.

11 Q. He didn't -- so even though he was
12 contacting you about partnership business, we see in
13 2008 and while the partnership was operating, he
14 didn't call you at all or contact you to seek your
15 advice in terms of what to do after Bernie Madoff
16 was exposed as a Ponzi scheme?

17 A. Not that I know of. I can't recall that.

18 Q. Would you have expected him to call you?

19 A. No.

20 Q. Were you getting calls from people that
21 you had put in to Madoff?

22 A. Not many.

23 Q. Who do you recall contacting you after his
24 exposed -- Bernie Madoff was exposed as a Ponzi
25 scheme?

1 A. No.

2 Q. And so the bottom of this is an e-mail
3 from Marv Gutter to Michael -- Michael Sullivan
4 concerning Madoff losses. And it says: The IRS is
5 getting calls from taxpayers on how to treat Madoff.

6 And then Michael Sullivan forwarded this
7 to you. Do you know what caused Michael Sullivan to
8 forward this to you?

9 A. I don't even recall this. No.

10 Q. Do you recall having discussions with
11 Michael Sullivan in terms of how to treat the Madoff
12 losses for tax purposes?

13 A. No.

14 Q. Do you recall having discussions with
15 Michael Sullivan at all in terms of how to treat
16 the Madoff losses?

17 A. No.

18 MR. SAMUELS: 20.

19 (Plaintiffs' Exhibit 20 was marked for
20 Identification by the reporter.)

21 BY MR. SAMUELS:

22 Q. Okay. So you know what's been marked as
23 Exhibit 20, which starts as an e-mail from your
24 e-mail address, and it's from you, Frank. And
25 apparently he wants to know whether or not you went

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1 to Fred's funeral.

2 Do you recall who Fred is?

3 A. Oh, of course.

4 Q. And who is it?

5 A. Fred Millsaps.

6 Q. And was he a business associate of yours
7 or friends or did he go to church with you?

8 A. He was a very -- again, church -- deep
9 prominent church member at the Christ Church. He
10 was the guy. And Fred was a very dear, dear friend.

11 Q. Is he in real estate?

12 A. He was in -- he was the -- something to do
13 with the Federal Reserve in Miami.

14 Q. Okay. And then you say, "Dear Michael, we
15 did not go. Not for the reason Nancy called you
16 about. Nancy has been invalid with a severe back
17 problem and has been bedridden. She thought she
18 would be better to attend the funeral, but there is
19 no way she could get out of bed or left by herself.
20 When she realized there would be no way to go, she
21 called Saturday night and left a message on the
22 telephone for Audrey, that she and her family were
23 in our prayers."

24 Do you see that?

25 A. Mm-hmm.

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1 Q. Yeah?

2 A. Yeah.

3 Q. So I'm just trying to understand here
4 whether or not, at this point in time, what your
5 relationship was with Michael Sullivan in 2009.

6 Were you -- were you still doing Bible
7 studies with him?

8 A. No, not at all. I was up in Nantucket and
9 he was in Florida. And Millsaps lived in Florida,
10 in Fort Lauderdale too.

11 Q. How often were you communicating with
12 Michael Sullivan?

13 MR. WOODFIELD: At this point in time?

14 MR. SAMUELS: At this point in time.

15 THE WITNESS: Not at all.

16 BY MR. SAMUELS:

17 Q. So after Madoff was exposed as a Ponzi
18 scheme, do you recall having communications with
19 Michael Sullivan about what to do with S&P and P&S?

20 A. I can't recall, no.

21 Q. Do you recall Michael Sullivan ever saying
22 to you that he was getting pressure from investors
23 at S&P or others to file a claim against you and/or
24 Mr. Bienes?

25 A. I have no idea, no.

1 Q. You don't recall that discussion?

2 A. Not at all.

3 MR. SAMUELS: 21.

4 (Plaintiffs' Exhibit 21 was marked for
5 Identification by the reporter.)

6 BY MR. SAMUELS:

7 Q. I'd like you to look at Exhibit 21.

8 A. Mm-hmm.

9 Q. This is a letter from Michael Sullivan.
10 It says, "Dear Partner" --

11 A. Yes.

12 Q. -- and it's dated August 10, 2012.

13 Do you recall seeing this letter?

14 A. No.

15 Q. And it says, "This letter is in response
16 to the recent undated letter from members of the
17 group represented by Berger Singerman regarding
18 changing the managing general partner of S&P
19 Associates and P&S."

20 Do you see that?

21 A. Yes.

22 Q. Do you recall, after Madoff was being
23 exposed as a Ponzi scheme, there was an effort
24 underway by certain partners at P&S and/or S&P to
25 remove Michael Sullivan as a managing general

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1 partner?

2 A. I have no idea, no.

3 Q. You don't recall that?

4 A. No.

5 Q. Have you ever seen this letter before?

6 A. No.

7 Q. Okay. And then it talks about malicious
8 and slanderous allegations made against me.

9 Here it says, "The BS group wants me to
10 sue Frank Avellino and Michael Bienes."

11 Do you see that?

12 A. Yes.

13 Q. Okay. So at around this time frame, did
14 you ever become aware of the fact that the certain
15 partners represented by Berger Singerman at that
16 time wanted to sue you and Mr. Bienes?

17 A. No.

18 Q. Mr. Sullivan never made you aware of that
19 fact?

20 A. No.

21 Q. At any point in time?

22 A. No.

23 Q. Were you aware of that fact, prior to the
24 time that you were sued in this case, that there
25 were partners who were -- who wanted to sue you or

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1 have the managing general partners sue you?

2 A. At that time?

3 Q. Prior to the time you were served with a
4 complaint in this action, which you're sitting here
5 in deposition for, P&S and S&P against Avellino &
6 Bienes and others, this particular case. Prior to
7 getting sued in this case, are you aware of anyone
8 asking Michael Sullivan to bring a claim against
9 you?

10 A. Not that I know of.

11 Q. Michael Sullivan never mentioned that to
12 you?

13 A. No.

14 Q. Did you ever mention to Michael Sullivan
15 that you didn't think you did anything wrong in
16 connection with S&P or P&S?

17 A. Not that I -- no.

18 Q. Did you ever mention that you thought that
19 you were culpable in connection with P&S or S&P?

20 A. No.

21 Q. Did you ever -- did you ever offer to
22 return all of the commissions and management fees
23 that you were paid?

24 A. No.

25 Q. Here he says, "Picard has sued Avellino &

1 Q. Okay. So are you saying you can't -- are
2 you saying that he was working with the accountants
3 to make sure that their communications would be
4 privileged?

5 A. Yes.

6 Q. Okay. Do you know of any other reason?

7 A. I can't think of any other reason.

8 Q. Did you ever have Mr. Woodfield meet with
9 Mr. Sullivan on your behalf?

10 A. I don't recall.

11 Q. Well, since Madoff became known as a Ponzi
12 scheme in 2008, do you know if Mr. Woodfield has
13 ever met with Mr. Sullivan or his representatives to
14 discuss these -- the claims brought in this case?

15 A. I can't -- I don't know. I can't
16 remember.

17 Q. Now, you were getting paid money from the
18 S&P and P&S partnerships as commissions or
19 management fees.

20 What did you do to ensure that you were
21 getting paid the proper amount?

22 A. All I know is I received checks, and I
23 didn't do anything.

24 Q. You didn't do anything.

25 A. No.

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1 Bienes. If we tried to sue them now, the bankruptcy
2 court would prevent the lawsuit from proceeding."

3 Do you see that?

4 A. Yes.

5 Q. And your testimony is he never mentioned
6 that to you, one way or the other, about any
7 possible cases against you?

8 A. Not at all.

9 Q. In the last bullet point on this page he
10 says "Avellino & Bienes never had any control over
11 the partnerships."

12 Do you know why he's telling the partners
13 that you never had any control over the
14 partnerships, after telling Bette Anne that you, in
15 fact, were the source and controlled who could be
16 his partner or not?

17 A. Not at all.

18 MR. SAMUELS: 22.

19 (Plaintiffs' Exhibit 22 was marked for
20 Identification by the reporter.)

21 BY MR. SAMUELS:

22 Q. My question to you next with this document
23 is why was Gary Woodfield acting on your behalf in
24 2009 in dealing with Ahearn Jasco?

25 A. Privileged communication positions.

1 Q. Were you paid money from the partnership,
2 to a bank account directly, from Michael Sullivan or
3 any of his entities or do you know?

4 A. I remember there were checks from Sullivan
5 and Powell or Powell and to whatever it was, and
6 that was it.

7 Q. Okay. Now we talked earlier about the
8 fact that you had been sued by Irving Picard, right?

9 A. Yes.

10 Q. And what is the status of that lawsuit
11 right now?

12 A. You would have to ask my attorneys. I
13 have no clue.

14 Q. Okay. So in the Picard lawsuit there's an
15 allegation that says that Avellino & Bienes met with
16 certain individuals and requested that they operate
17 such investment vehicles for the benefit of Avellino
18 & Bienes. When these individuals refused to act as
19 front men, Avellino & Bienes instead negotiated an
20 arrangement with Michael Sullivan and Greg Powell,
21 he created the partnerships S&P and P&S.

22 Avellino & Bienes agreed to and did refer
23 investors to S&P and P&S, which would then place
24 those investors' funds with Madoff.

25 In return, S&P and P&S agreed to and did

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1 pay Avellino & Bienes 10 percent of the annual
2 returns received by the referrals.

3 So I want to go through this paragraph
4 with you bit by bit, okay?

5 A. Mm-hmm.

6 Q. So Mr. Picard is alleging that you and
7 Mr. Bienes negotiated an arrangement with Michael
8 Sullivan and Greg Powell who created the
9 partnerships with S&P and P&S.

10 MR. WOODFIELD: I'm sorry to interrupt.
11 Could you just give me the paragraph?

12 MR. SAMUELS: Sure. 176.

13 MR. WOODFIELD: And this is the amended
14 complaint?

15 MR. SAMUELS: Yeah. It's the complaint
16 filed on November 24, 2014.

17 MR. WOODFIELD: All right. Thanks.

18 BY MR. SAMUELS:

19 Q. And do you admit that you and Bienes
20 negotiated an arrangement with Michael Sullivan and
21 Greg Powell who created the partnerships, S&P and
22 P&S?

23 A. It's an allegation.

24 Q. Do you admit it?

25 A. No.

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1 Q. And it says you and Mr. Bienes agreed to
2 and did refer investors to S&P and P&S, correct? Do
3 you admit that?

4 A. Some.

5 Q. Are there any others, other than the ones
6 we spoke of today, that come to mind that you agreed
7 to and did refer investors to S&P and P&S?

8 A. No.

9 Q. And you then understood that those funds
10 would get placed with Madoff, correct?

11 A. Yes.

12 Q. And it says, "In return, S&P and P&S
13 agreed and did pay you and Bienes 10 percent of the
14 annual returns received by the referrals."

15 Do you agree that you -- that they agreed
16 to pay you and did pay you 10 percent of the annual
17 returns received by referrals?

18 A. No.

19 Q. You deny that.

20 A. Yep.

21 Q. In terms of -- we spoke earlier of
22 Mr. Sullivan. I showed you where, under the S&P or
23 P&S partnership agreements he was to receive -- he
24 and Mr. Powell were to receive 20 percent of the
25 profits, correct?

1 A. That was his partnership agreement.

2 Q. And are you familiar with hedge funds and
3 how hedge funds often -- the managers of hedge funds
4 are often paid 20 percent on the profits?

5 A. I know of it.

6 Q. Are you familiar with that generally --

7 A. Generally.

8 Q. -- of managers being paid 20 percent of
9 the profits?

10 A. Yes.

11 Q. Okay. And when did you first come to
12 learn that S&P and P&S were operating that way?

13 A. I can't recall when.

14 Q. Okay. And did you undertake any actions
15 to ensure that Mr. Sullivan was, in fact, paying
16 himself properly and in accordance with the
17 partnership arrangement where he was to get
18 20 percent of the profits?

19 A. I had nothing to do with it, no.

20 Q. You did not ensure that he was getting
21 paid --

22 A. Not at all.

23 Q. -- properly?

24 A. Not at all.

25 Q. Okay. And when did you first become aware

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1 of the fact that he was not paying himself in
2 accordance with the partnership?

3 A. That he was?

4 Q. That they were not.

5 MR. WOODFIELD: I'm sorry. I couldn't
6 hear.

7 BY MR. SAMUELS:

8 Q. Okay. When did --

9 MR. SAMUELS: I guess no one heard me.
10 Let my start over again.

11 BY MR. SAMUELS:

12 Q. When -- when did you first become aware of
13 the fact that Mr. Sullivan was not paying himself
14 management fees as called for in the partnership
15 agreement?

16 A. I can't recall. I don't even know that he
17 wasn't.

18 Q. Okay. So your testimony is now that you
19 do not know that he was not being paid properly?

20 MR. ETRA: Objection to form.

21 THE WITNESS: Yes.

22 BY MR. SAMUELS:

23 Q. Okay. Did you do anything or take any
24 actions to ensure that he would be paid -- that he
25 was paying himself properly in accordance with the

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1 partnership funds --

2 A. No.

3 Q. -- agreement, I mean?

4 Wasn't it important to you, since you had
5 referred investors in there, that Mr. Sullivan was
6 not overpaying himself or paying himself improperly?

7 A. Not my prerogative.

8 Q. That was not important to you.

9 A. No.

10 MR. SAMUELS: 23.

11 (Plaintiffs' Exhibit 23 was marked for
12 Identification by the reporter.)

13 BY MR. SAMUELS:

14 Q. Take a look, please, at what's been marked
15 as Exhibit 23.

16 A. Okay.

17 Q. Here's a "Dear Friends" letter from Helen
18 Davis Chaitman.

19 Do you know who Helen Davis Chaitman is?

20 A. Yes.

21 Q. And who is she?

22 A. She's an attorney.

23 Q. Has she ever represented you?

24 A. Not that I -- not directly, I don't think.

25 Q. Has she ever represented you indirectly?

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1 A. Maybe.

2 Q. And what do you know of her representation
3 of you indirectly?

4 A. That she was trying to -- I think she was
5 trying to get Picard to look at certain deals and
6 not act upon them, is all I remember. Nothing else.

7 Q. So in this document, Helen Chaitman sends
8 a letter, "Dear Friends" and Michael Sullivan
9 apparently sent it to your e-mail address in
10 April 4, 2011.

11 Do you see that?

12 A. Where was that?

13 Q. If you look at the top --

14 A. Yes.

15 Q. -- it says Michael Sullivan to Frank
16 Avellino.

17 A. Oh, yes. Okay. Yes, I do.

18 Q. And the date is April 4, 2011, right?

19 A. Yes.

20 Q. So is Michael Sullivan still counting on
21 you to give him advise in connection with S&P and
22 P&S in the year 2011?

23 A. I don't think so.

24 Q. Well, for what other reason is he sending
25 this to you?

1 A. I have no idea.

2 Q. Did you respond back and say why are you
3 sending this to me?

4 A. Not that I recall.

5 Q. Do you recall having any discussions with
6 Michael Sullivan about this?

7 A. I don't even remember this e-mail.

8 Q. Do you remember having any discussions
9 with Michael Sullivan at all concerning the -- the
10 proceedings in New York in front of Judge Lifland or
11 otherwise?

12 A. No.

13 Q. No, you recall no discussions --

14 A. No.

15 Q. -- with him.

16 A. Nope.

17 Q. Do you recall having any discussions with
18 him concerning his efforts to receive SIPC money?

19 A. No.

20 Q. Do you recall having any discussions with
21 him about efforts he was undertaking to recover
22 money on behalf of any investors of S&P or P&S in
23 New York or otherwise?

24 A. Not at all.

25 Q. Did you have discussion with any of

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1 Mr. Sullivan's agents or representatives in that
2 regard?

3 A. No.

4 Q. Going back to the Picard lawsuit that I
5 just asked you a question --

6 A. Mm-hmm.

7 Q. -- about, do you know, in general terms,
8 what the basis of the Picard lawsuit against you is?

9 A. The basis is that I knew about a Ponzi
10 scheme.

11 Q. And the Ponzi scheme being the Madoff?

12 A. Madoff.

13 Q. And have you discussed the Picard lawsuit
14 with Mr. Sullivan at any time?

15 A. No.

16 Q. And do you know if one of your legal
17 defense is that Mr. Picard lacks standing to sue
18 you?

19 A. I have no idea.

20 Q. Do you know if Michael Sullivan is aware
21 of the Picard lawsuit at any time since its filing?

22 A. I don't know.

23 Q. Did you ever tell Mr. Sullivan that he
24 could not sue you because he lacked standing as a
25 managing general partner of S&P or P&S?

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1 A. No.
 2 Q. Did you ever tell Mr. Sullivan he could
 3 not sue you because Mr. Picard had already sued you?
 4 A. No.
 5 Q. Going back to the payments you received --
 6 A. Yes.
 7 Q. -- was it your understanding you would get
 8 commissions on an annual basis, not just a one-time
 9 payment?
 10 A. I have no idea.
 11 Q. But you did, in fact, receive commissions
 12 on an ongoing annual basis with respect to certain
 13 accounts, correct?
 14 A. I don't recall.
 15 Q. I want to ask you about the following
 16 individuals. I may have asked this -- forgive me if
 17 I did -- but as to Scott Holloway, Ralph Fox, Steve
 18 Jacob, Richard Wills, Edward Michaelson, Gary
 19 Chapman, Sam Rosen, Direct Response Group or Susan
 20 Moss, are you aware of any of those individuals, or
 21 principals of those individuals, receiving any
 22 commission payments or management fees from S&P or
 23 P&S?
 24 A. Not at all.
 25 Q. Did Mr. Sullivan ever indicate to you that

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1 he was paying commissions or management fees to
 2 people other than you and Mr. Bienes?
 3 A. No.
 4 Q. Never mentioned it.
 5 A. No.
 6 Q. Did -- were you aware that Kelco received
 7 commissions or management fees from Sullivan or S&P
 8 or P&S?
 9 A. No.
 10 Q. How about Monsignor Kelly?
 11 A. No.
 12 MR. SAMUELS: Okay. Let's take a break.
 13 THE VIDEOGRAPHER: Off the record at
 14 3:27 p.m.
 15 (A brief break was taken.)
 16 THE VIDEOGRAPHER: Back on the record at
 17 3:50 p.m.
 18 MR. SAMUELS: Let's mark this as 24.
 19 (Plaintiffs' Exhibit 24 was marked for
 20 Identification by the reporter.)
 21 BY MR. SAMUELS:
 22 Q. I've marked as Exhibit 24 a Declaration of
 23 Frank Avellino filed in this case.
 24 And is that your signature on Page 2 dated
 25 March 30, 2015?

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1 A. Yes.
 2 Q. Okay. In this declaration you indicate
 3 that you're the sole manager of 27 Cliff, LLC, in
 4 Paragraph 2; is that right?
 5 A. Yes.
 6 Q. And you mention in Paragraph 4 that
 7 27 Cliff was merely a bank account to which Sullivan
 8 caused the transfer to you of \$260,159.16.
 9 Do you see that?
 10 A. Yes.
 11 Q. Okay. Then you say: Other than the
 12 QuickBooks printout previously produced that shows
 13 the deposit of 260-, Michael Sullivan & Associates
 14 transferred into Cliff 27 -- 27 Cliff's bank
 15 account, I am not aware of any other document
 16 evidencing any payments to me or any entity within
 17 my control.
 18 So this document attached as Exhibit A,
 19 did that come from your books and records or the
 20 books and records of 27 Cliff, LLC?
 21 A. 27 Cliff.
 22 Q. Okay. And are the books and records of
 23 27 Cliff still in existence?
 24 A. I'm trying to remember. I don't think so,
 25 no.

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1 Q. So how is it in March 30, 2015 you're able
 2 to locate transactions going back to 2004?
 3 A. Those companies were dissolved, I believe.
 4 Q. What companies?
 5 A. 27 Cliff.
 6 Q. And when was it dissolved?
 7 A. I can't remember.
 8 Q. But my question is: This document was
 9 signed by -- the declaration was dated March 30,
 10 2015. Apparently in March 30, 2015 you still were
 11 able to track down payments made going as far back
 12 as 2004; do you see that?
 13 A. Yes. I didn't track it down, I had
 14 QuickBooks that had the certain ledgers in it.
 15 Q. And you still have that QuickBooks?
 16 A. Yes.
 17 Q. Okay. And you weren't able to locate any
 18 of the payments made by Michael D. Sullivan &
 19 Associates to 27 Cliff?
 20 A. No. That was it.
 21 Q. And are these commission payments or
 22 management fees that we discussed earlier?
 23 A. They were checks.
 24 Q. But do you know if these were checks sent
 25 to you as either commission or management fees along

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1 the lines that we discussed earlier in this
2 deposition?

3 A. How they were sent, I don't recall. I
4 know they were checks. I --

5 Q. And do you know why these checks were sent
6 to you?

7 A. No.

8 Q. Is there any other reason why Michael
9 Sullivan would have been sending 27 Cliff, LLC
10 checks, other than as commissions or management fees
11 in relation to S&P or P&S?

12 A. I have no idea.

13 Q. You can't think of any other reason?

14 A. No.

15 Q. Okay. Were any of the other partners in
16 S&P or P&S aware of the fact that you were receiving
17 commissions or management fees?

18 A. Not that I know of.

19 Q. In connection with -- we saw a document
20 earlier where you were questioning about certain
21 commissions or management fees paid to you, whether
22 they were proper or not.

23 Do you recall that?

24 A. No.

25 Q. All right. Let's -- can you hand me the

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1 original exhibits, please --

2 A. Sure.

3 Q. -- and I'll locate the document for you.

4 A. (Witness complies.)

5 Q. Thank you.

6 MR. WOODFIELD: 13.

7 MR. SAMUELS: 13?

8 MR. WOODFIELD: I think that's what you're
9 referring to.

10 MR. SAMUELS: Okay.

11 BY MR. SAMUELS:

12 Q. Yeah. So let's look at Number 13, if we
13 can.

14 A. Mm-hmm.

15 Q. Now, on 13 you're sending a letter to
16 Mr. Powell talking about payments that you believe
17 should be allocated to you and Mr. Bienes, correct?

18 A. Yes.

19 Q. Okay. And in connection with the payments
20 to be allocated to you and Mr. Bienes, and you were
21 sending a letter, you were sending a letter both on
22 your behalf and on behalf of Mr. Bienes, as he was
23 entitled to half of the payments that you were
24 getting, correct?

25 A. Yes.

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1 Q. Did you receive quarterly reports from S&P
2 or P&S?

3 A. No.

4 Q. How often did you receive reports
5 indicating what commissions or management fees you
6 were entitled to?

7 A. Only when a check was submitted.

8 Q. And how often would that be?

9 A. There were numbers of maybe five or six
10 checks.

11 Q. Did you ever receive quarterly reports
12 regarding the rates of return for S&P and P&S?

13 A. I can't recall.

14 Q. Were any of their partners including
15 partners that you may have referred into the
16 partnership?

17 A. No.

18 MR. SAMUELS: Exhibit 25.

19 (Plaintiffs' Exhibit 25 was marked for
20 Identification by the reporter.)

21 BY MR. SAMUELS:

22 Q. Exhibit 25 is a letter from Helen Chaitman
23 to Chad Pugatch, Beth Pugatch, Michael Sullivan;
24 subject: Bernard L. Madoff Investment Securities.

25 Do you see that?

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1 A. Mm-hmm. Yes.

2 Q. So why is Michael Sullivan forwarding this
3 letter to you?

4 A. I have no idea.

5 Q. Did you respond back?

6 A. I can't recall.

7 Q. So in 2011, you're having communications
8 with Michael Sullivan concerning Bernard L. Madoff
9 Investment Securities issues, correct?

10 A. That's what it says here.

11 Q. Do you recall receiving other similar type
12 documents forwarded to you or provided to you by
13 Michael Sullivan concerning Bernard L. Madoff
14 Investment Securities?

15 A. I can't recall.

16 Q. Did you ever ask him and say why -- quit
17 sending me this stuff? Why are you sending it to
18 me?

19 A. No, I didn't care.

20 MR. SAMUELS: 26.

21 (Plaintiffs' Exhibit 26 was marked for
22 Identification by the reporter.)

23 BY MR. SAMUELS:

24 Q. This is an e-mail from Michael Sullivan to
25 you. And it says, "We will check for 1099 for back

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1 years."

2 Do you know why he is sending you an
3 e-mail telling you that he's going to check for 1099
4 for back years?

5 A. I'm looking at -- if I'm looking at it
6 correctly, is the date on top here February 24,
7 2009?

8 Q. Correct.

9 A. I have no idea.

10 Q. Do you recall seeking information from
11 Mr. Sullivan?

12 A. No.

13 Q. Were you asking him information to assist
14 you in filing taxes?

15 A. Maybe.

16 Q. When you were with Avellino & Bienes, did
17 you carefully track the amount of money that was
18 owed from Madoff to Avellino & Bienes?

19 A. I may have.

20 Q. Were you responsible for doing that?

21 A. Yes.

22 Q. And do you recall having meetings up in
23 New York with Mr. Madoff or his people about that?

24 A. No.

25 Q. Who is Frank DiPascali?

1 that be to Frank --

2 MR. ETRA: I'm sorry, what page are you
3 on?

4 MR. WOODFIELD: This page.

5 BY MR. SAMUELS:

6 Q. The fourth page, would that be to Frank
7 DiPascali?

8 A. I think so.

9 Q. Okay. And so it says here: I checked the
10 information you sent me. The only correction I have
11 is the adjustment for the distribution of the
12 million two sixteen for 1993, and a million sixteen
13 for '94 and thereafter for others. The net effect
14 on my computation shows a difference of \$434,000 in
15 my favor.

16 Do you see that?

17 A. Yes.

18 Q. So why are you making these adjustments
19 with DiPascali?

20 A. 1993?

21 MR. WOODFIELD: '96.

22 THE WITNESS: No, no. Look at the letter,
23 '93, '94.

24 BY MR. SAMUELS:

25 Q. Do you know why you were making these

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1 A. He worked for Bernie Madoff.

2 Q. And did you have interactions with him
3 while you were at Avellino & Bienes?

4 A. Personally?

5 Q. Personally.

6 A. No.

7 Q. Do you recall ever having meetings with
8 him?

9 A. No.

10 Q. Do you recall ever discussing calculations
11 with him?

12 A. No.

13 MR. SAMUELS: Let's mark this as 27.
14 (Plaintiffs' Exhibit 27 was marked for
15 Identification by the reporter.)

16 BY MR. SAMUELS:

17 Q. I'd like to turn to the fourth page of
18 this document, Frank Avellino.

19 A. Okay.

20 Q. And it says, "Dear Frank."

21 A. Yes.

22 MR. SAMUELS: Hold on for one second.

23 BY MR. SAMUELS:

24 Q. So go to that page.

25 You sent a letter on May 15, 1996. Would

1 adjustments?

2 A. I think that's when the accounts were --
3 personal accounts were closed and then reopened.

4 Q. Personal accounts were closed --

5 A. I would assume -- I don't want to assume.
6 Yes, it's the only reason, I would think.

7 Q. Let's go to the last page of this
8 document.

9 A. Mm-hmm.

10 Q. And when you say personal accounts were
11 closed and then reopened, is that as a result of the
12 SEC action against you?

13 A. Yes.

14 Q. So how did -- personal accounts got closed
15 because they were with Avellino & Bienes, how did
16 they get reopened?

17 A. They were probably there all the time,
18 just frozen.

19 Q. Frozen?

20 A. Yes.

21 Q. Why were they frozen?

22 A. SEC.

23 Q. So did this have to do with you getting
24 money paid back on behalf of your investors?

25 A. No.

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1 Q. Okay. Let's go now to the last page of
2 this document.
3 A. Mm-hmm. Yes.
4 Q. It's a handwritten note from you to Frank
5 DiPascali, correct?
6 A. Yes.
7 Q. "Please make necessary trades in all of
8 the accounts." And you're talking about Grosvenor,
9 Mayfair and Mayfair.
10 Do you see that?
11 A. Yes.
12 Q. "I believe the total base of the three
13 accounts will be enough to even up the balance due.
14 My calculations show that Bernie L. Madoff was short
15 approximately two and a half million dollars."
16 Do you see that?
17 A. Yes.
18 Q. What sort of calculations did you do to
19 determine that Bernie Madoff was short approximately
20 \$2.5 million?
21 A. I have no idea.
22 Q. And how is it that they were short two and
23 a half million dollars?
24 A. I have no idea.
25 Q. Would that have been based upon actual

1 sequential numbers.
2 MR. SAMUELS: They're not all part of one
3 document, apparently.
4 MR. WOODFIELD: I'm sorry?
5 MR. SAMUELS: They're not one document. I
6 was just looking at this exhibit.
7 BY MR. SAMUELS:
8 Q. Prior to 2006, did you know that Bernie
9 Madoff Investment Services was not registered as an
10 investment advisor with the FCC?
11 A. Not at all.
12 Q. You didn't know?
13 A. No.
14 Q. Did you know that prior to 2006, Bernie
15 Madoff was not registered as an investment company
16 in the -- with the FCC?
17 A. No.
18 Q. Isn't it true that Avellino & Bienes, or
19 its predecessor companies, operated one of the first
20 feeder funds for Bernie Madoff dating back to least
21 1962?
22 A. 1962?
23 Q. Mm-hmm.
24 A. I don't know.
25 Q. Would you agree that Avellino & Bienes and

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1 trades?
2 A. I don't know.
3 Q. Now, I want to go to the first page of
4 this document from Thomas Avellino. Your son?
5 A. Thomas, yes.
6 Q. Okay. Do you know why on December 12,
7 2008 he's seeking a withdrawal from Madoff?
8 A. That's when Madoff was declared
9 fraudulent.
10 Q. Do you know if this request was done
11 before or after he was declared fraudulent?
12 A. December 12th, it has to be after.
13 Q. Okay. Let's go to the next page.
14 A. (Witness complies.)
15 Q. Do you know why St. James Associates is
16 making a request for withdrawal on December 11th?
17 A. I don't know.
18 Q. Do you know if that was before or after
19 the fraud became publicly known?
20 A. Same time.
21 Q. Same as to the next document, do you know
22 why he's doing it on December 12th?
23 A. No.
24 MR. WOODFIELD: Are these just stabled
25 together for convenience? I mean, they're not

1 its predecessors operated as one of the first feeder
2 funds for Madoff?
3 A. I don't know the question.
4 Q. Do you know what a feeder fund is?
5 A. Yeah.
6 What's the question?
7 Q. My question is: Isn't it true that
8 Avellino & Bienes, your former company, and its
9 predecessors, we went through them today --
10 A. Yes.
11 Q. -- operated as one of the first feeder
12 funds for Bernie Madoff dating back to at least
13 1962?
14 A. I don't know that.
15 Q. Do you know that it operated as one of its
16 first feeder funds?
17 A. I don't know that.
18 Q. Going back to Avellino & Bienes, did you
19 and Michael Bienes earn a profit by promising
20 guaranteed rates of return to Avellino & Bienes's
21 investors that were slightly lower than what you
22 were expecting from Madoff?
23 A. I don't recall that.
24 Q. Well, you know that there's a guaranteed
25 rate of return in those notes, right?

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1 A. Of all the notes, we paid the notes.

2 Q. Right. And so you expected to make
3 something higher than that from Bernie Madoff,
4 right?

5 A. Prudently, yes.

6 Q. Okay. And did, in fact, you earn more
7 than at Bernie -- from Bernie Madoff than called for
8 in the notes?

9 A. I don't know.

10 Q. In terms of Michael Sullivan, do you know
11 if Michael Sullivan exercised any independent
12 judgment or investment skills to warrant his receipt
13 of management fees?

14 A. Not that I know of.

15 Q. You're not aware of any investment skills
16 that he had?

17 A. No.

18 Q. And you're not aware of any investment
19 skills that he used?

20 A. No.

21 Q. And as we went over today, he had no prior
22 investment experience.

23 A. As far as I know.

24 Q. So why were you comfortable referring
25 people to him?

1 had a lack of investment experience or expertise and
2 not knowing whether or not all the money was going
3 to Bernie Madoff.

4 A. Yes.

5 Q. And what would make you comfortable doing
6 that?

7 A. Michael Sullivan.

8 Q. What is it about Michael Sullivan's
9 background and experience that caused you to be
10 comfortable --

11 A. He was honest -- he was honest. He was a
12 church member. And I trusted him. To me, it's as
13 simple as that.

14 Q. And after reading a letter he sent to
15 Bette Anne --

16 A. Yes.

17 Q. -- that we went over today, do you still
18 believe him to be honest and trustworthy?

19 A. Yes.

20 Q. And there's nothing in that letter that
21 changes your mind, that causes you to think he might
22 be deceitful or dishonest?

23 A. Not at all.

24 Q. So you agree with what he said in that
25 letter?

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1 A. He was my friend.

2 Q. So a friend is good enough, you didn't
3 need the expertise to get you comfortable?

4 A. Doesn't need expertise.

5 Q. And why would he not need expertise if
6 he's given money to invest?

7 A. He's giving all his money to Bernard L.
8 Madoff. He's not the investor, Bernard L. Madoff
9 was.

10 Q. I thought you just said you weren't sure
11 whether he was giving it all to Madoff?

12 A. Well, I'm just saying the -- what do I
13 know what he's doing with the other money. I don't
14 know what he's doing with it.

15 Q. So --

16 MR. WOODFIELD: Frank, if you could just
17 turn --

18 THE WITNESS: Oh, I'm sorry.

19 MR. WOODFIELD: No. Turn your chair
20 straight so she can get you.

21 THE WITNESS: Oh, I didn't know I did that
22 again.

23 BY MR. SAMUELS:

24 Q. So -- so, in essence, you were comfortable
25 referring people to Michael Sullivan, even though he

1 A. No.

2 Q. So if he sent a letter like that that was
3 untruthful, why would you not change your mind about
4 thinking he was a truthful person?

5 A. I have -- I have no clue why he sent the
6 letter. I think you'd have to ask Mr. Bienes did he
7 know about it. I didn't know about it. And you've
8 got to ask Michael Sullivan why he sent the letter.

9 Q. When account statements came into
10 Avellino -- from Madoff to Avellino & Bienes, was it
11 Michael Bienes's customary practice to diligently
12 review the statements?

13 A. No.

14 Q. Did he review them to make sure there were
15 no errors?

16 A. Michael Bienes?

17 Q. Mm-hmm.

18 A. No.

19 Q. You did.

20 A. I did.

21 Q. Do you know how much money Avellino &
22 Bienes owed to investors at the time that the SEC
23 came in?

24 A. Over \$300,000 [sic]. I recall that.

25 Q. Million?

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1 A. Over 300 million.
 2 Q. You said thousand.
 3 A. I'm sorry.
 4 Q. Okay. Did you and someone at Bernie
 5 Madoff come up with a plan to create a phony
 6 account -- phony backdated transactions to conceal
 7 the fact that there was more owed to Avellino &
 8 Bienes note holders than was reflected in the
 9 balance of accounts for Avellino & Bienes at Bernie
 10 Madoff?
 11 A. No.
 12 Q. Do you know if the investments made by S&P
 13 or P&S were backed by securities -- by treasuries?
 14 A. I have no idea.
 15 Q. Did Nancy Bienes [sic] create any entities
 16 or assist --
 17 MR. WOODFIELD: Who?
 18 MR. SAMUELS: I'm sorry. Nancy Avellino.
 19 Thank you.
 20 BY MR. SAMUELS:
 21 Q. -- create any entities or assist in the
 22 creation of any entities that had investors make
 23 investments in Bernie Madoff?
 24 A. No.
 25 Q. How about Thomas Avellino?

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1 A. He had accounts of his own.
 2 Q. Did you refer former customers and
 3 accounts of Avellino & Bienes to invest their funds
 4 directly with Bernie Madoff?
 5 MR. ETRA: Objection to form.
 6 THE WITNESS: Repeat the question. What
 7 was that?
 8 BY MR. SAMUELS:
 9 Q. Did you refer former customers of Avellino
 10 & Bienes to invest their funds directly with Bernie
 11 Madoff?
 12 A. I was told to have them call Bernie
 13 Madoff, that was it. Just call him up.
 14 Q. That's what you told people?
 15 A. Yeah.
 16 Q. And do you know of any former customers of
 17 Avellino & Bienes that set up their own accounts
 18 with Bernie Madoff after Avellino & Bienes was out
 19 of business?
 20 A. They did, but I don't know.
 21 Q. You don't know who?
 22 A. I can't remember. No.
 23 Q. Can you think of anybody?
 24 A. No.
 25 Q. Not one person?

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1 A. No.
 2 Q. In terms of testimony given by
 3 Mr. DiPascali, I'm just going to read you some
 4 questions and answers.
 5 "Question: How did you" --
 6 MR. WOODFIELD: I'm sorry. What is this
 7 from?
 8 MR. SAMUELS: It's from testimony given by
 9 Mr. DiPascali.
 10 MR. WOODFIELD: Testimony?
 11 MR. SAMUELS: In the --
 12 MR. WOODFIELD: Criminal case?
 13 MR. SAMUELS: Yeah.
 14 BY MR. SAMUELS:
 15 Q. It says, "Direct Examination.
 16 "How did you come to learn if certain of
 17 these accounts had a rate of return that was
 18 targeted?
 19 "Answer: As it pertained to me?
 20 "In the basket split-strike strategy.
 21 "Answer: Yes. I was called into a
 22 meeting that was about to break up between Bernie
 23 and Frank Avellino.
 24 "Can we step back? Frank Avellino was out
 25 of the Avellino -- was that the Avellino of Avellino

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1 & Bienes?
 2 "Yes.
 3 "And when approximately did this occur?
 4 "Winter of '93.
 5 "What happened in the meeting?
 6 "Bernie introduced me to Frank Avellino,
 7 who I don't think I had met up to that point. They
 8 basically gave me a quick synopsis of what their
 9 meeting was about, and handed me a document that had
 10 a figure on it that illustrated the meat and
 11 potatoes of their meeting."
 12 So do you recall having a meeting up in
 13 2003?
 14 A. No.
 15 Q. 1993 with Mr. Madoff?
 16 A. No.
 17 Q. So -- so far, you know, you've got
 18 hundreds of millions of dollars up with Mr. Madoff
 19 and you only remember having one meeting with him in
 20 New York?
 21 A. Yes.
 22 MR. ETRA: Can I ask the proceeding that
 23 this came as a result of?
 24 MR. WOODFIELD: The criminal trial.
 25 Is that right?

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1 MR. SAMUELS: Yes. It says direct
2 examination.

3 MR. WOODFIELD: But does it have a date
4 or...

5 MR. SAMUELS: It's filed somewhere on
6 April 3, 2014, but I'm not sure that that would
7 be the date.

8 MR. ETRA: Could you guys just get us that
9 at some --

10 MR. SAMUELS: Yeah, yeah. We'll get --
11 yeah. The case number is 1-10CR00228-LTS. And
12 it's DiPascali's testimony.

13 MR. WEBER: Document 858.

14 MR. ETRA: I'm sorry?

15 MR. WEBER: 858.

16 MR. ETRA: Thank you.

17 MR. WOODFIELD: That's the document
18 recorded in -- in the record in that matter?

19 BY MR. SAMUELS:

20 Q. So how often did you talk to Mr. Madoff,
21 let's say, in the years 2006, '7 and '8 up until the
22 time that Madoff was exposed as a Ponzi scheme?

23 A. I can't recall. I mean...

24 Q. Was it frequent?

25 A. No, not at all.

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1 Q. How about Mr. DiPascali, did you
2 frequently talk to him?

3 A. I didn't even know who he was until you
4 just read that I met him once.

5 Q. So who was your point of contact up there
6 in the years 2005, '6, '7 and '8?

7 A. Bernie Madoff.

8 Q. Okay. And so he -- you would pick up the
9 phone and call him, as opposed to other people --

10 MR. WOODFIELD: Object to the form of
11 the --

12 BY MR. SAMUELS:

13 Q. -- if you had questions?

14 MR. WOODFIELD: Object to the form of the
15 question.

16 You could answer.

17 BY MR. SAMUELS:

18 Q. Would you generally call him?

19 A. Yes. I would call him if I had a
20 question.

21 Q. Okay. And how often would you call him
22 during the time frame of 2005, up until the time
23 that the Ponzi scheme was exposed?

24 A. Once a year, maybe.

25 Q. That's it?

1 A. Yeah. If even then, I don't -- you know.

2 MR. SAMUELS: All right. Let's take a
3 break. I think I'm wrapping up. So let's get
4 organized here.

5 THE VIDEOGRAPHER: Off the record at
6 4:21 p.m.

7 (A brief break was taken.)

8 THE VIDEOGRAPHER: Back on the record at
9 4:36 p.m.

10 BY MR. SAMUELS:

11 Q. Now, you and Mr. Bienes first became
12 business partners when?

13 A. 1960s.

14 Q. Okay. And you have a -- still maintain a
15 personal relationship with Mr. Bienes?

16 A. Until seven years ago.

17 Q. You were -- a professional relationship
18 until seven years ago?

19 A. Oh, yes. Definitely.

20 Q. Okay. And you're still friends
21 personally?

22 A. Yes.

23 Q. Okay. And so you were -- you had a
24 business relationship with him during the time in
25 which S&P and P&S were operating?

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1 A. Yes.

2 Q. So when you were dealing with Mr. Sullivan
3 or Mr. Powell or in connection with S&P or P&S, you
4 were acting on your own behalf as well as on behalf
5 of Mr. Bienes?

6 A. Yes.

7 Q. You never maintained a license to act as
8 an investment advisor, correct?

9 A. Correct.

10 Q. And were you aware that Bernie Madoff was
11 not registered as an investment advisor with the
12 FCC?

13 A. Not at all.

14 Q. You didn't know one way or the other?

15 A. No.

16 Q. In terms of the commissions and management
17 fees that you -- that you received, some of those
18 commissions and management fees that you received
19 were in connection with your talking to people and
20 telling them that they could invest with S&P or P&S,
21 correct?

22 A. I received checks because of those people.

23 Q. Right. And some of those people you
24 actually told them if they want to stay with Madoff,
25 they can call Mr. Sullivan.

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1 A. I'm confused.

2 Q. Yeah. So some of the people who ended up
3 with S&P or P&S.

4 A. Yes.

5 Q. Some of those people who you were
6 receiving commissions or management fees on, you had
7 mentioned to them that they should contact
8 Mr. Sullivan as a way of continuing to invest with
9 Madoff, correct?

10 A. Yes.

11 Q. Okay. Now, you talked about litigation up
12 in Massachusetts concerning -- was that concerning
13 Kenn Jordan Associates?

14 A. No. In Massachusetts?

15 Q. Yes. A lawsuit in the Commonwealth of
16 Massachusetts, John J. Daley, III, Nancie B. Taylor
17 versus Frank Avellino, et cetera?

18 A. Yes.

19 Q. Did that pertain to investments made by
20 them in Kenn Jordan Associates?

21 A. Yes.

22 Q. And do you recall giving testimony in that
23 case?

24 A. Yes.

25 Q. And do you remember testifying that you

1 MR. SAMUELS: Of the exhibits that I've
2 used today.

3 MR. ETRA: Yeah. Today. Yeah.

4 MR. SAMUELS: Because I may use some --

5 MR. ETRA: No, no, no. That's fine. The
6 ones that you do today, sure.

7 MR. SAMUELS: We're tired of making
8 copies.

9 MR. ETRA: No, no, no. I understand.

10 BY MR. SAMUELS:

11 Q. Okay. So let's turn to Page 121 --

12 A. Okay.

13 Q. -- and 122 to see what we've got here.

14 A. Very good.

15 Q. So if you start on Page 121, Line 17.

16 "Question: So the November 4, 2005
17 transaction of \$100,000 is you authorizing payment
18 of \$100,000 from Kenn Jordan Associates to a private
19 account at Northern Trust Bank owned by yourself,
20 Frank Avellino?

21 "Yes.

22 "Question: What was the purpose of this
23 \$100,000 transfer?

24 "Answer: Probably a loan I gave them. I
25 don't know. I'm just saying. This is probably

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1 would loan money to Kenn Jordan Associates when
2 people needed funds, rather than call in the money
3 from Mr. Madoff?

4 A. Yes.

5 Q. And why would you loan money to Kenn
6 Jordan Associates rather than call in the money from
7 Mr. Madoff?

8 A. I never lent them money. I advance their
9 money, their own money.

10 Q. You said you would put money in when
11 people needed funds, rather than call in the money
12 from Mr. Madoff. Do you recall that testimony?

13 A. That's a vague -- that's vague.

14 Q. Well, let's go through some of your
15 testimony.

16 A. Please.

17 MR. SAMUELS: What number are we up to?

18 MR. WOODFIELD: This will be 28.
19 Correct?

20 COURT REPORTER: Yes.

21 (Plaintiffs' Exhibit 28 was marked for
22 Identification by the reporter.)

23 MR. SAMUELS: And I'd ask like for
24 tomorrow's deposition, bring your own sets.

25 MR. ETRA: Of these.

1 money I put in and I took it back.

2 "Question: So you, Frank Avellino, loaned
3 money to Kenn Jordan Associates, sir?

4 "Answer: I would put money in when people
5 needed funds rather than call in the money from
6 Mr. Madoff."

7 Do you recall testifying to that under
8 oath?

9 A. Right.

10 Q. So explain to me why if people wanted
11 money -- to get their money back out of Jordan
12 Associates, you would loan the money rather than
13 call the money from Mr. Madoff?

14 A. Mr. Madoff had a protocol of I wouldn't
15 call money until a certain amount was reached. So I
16 would give them my money, my personal money. And it
17 was not a loan, it was just money that I gave, in
18 this case, to Daley -- John Daley and whatever,
19 Nancie Taylor.

20 That was the procedure. I wouldn't -- I
21 would have to accumulate requests. So this was my
22 money that I would put into an account. And then I
23 would pay, in this case, you say John Daley, until a
24 certain amount was received by -- by me.

25 Q. And what was the threshold amount before

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1 you could --

2 A. 500,000.

3 Q. How much?

4 A. 500,000?

5 Q. Okay. And do you know if S&P and P&S
6 operated on those same -- same threshold?

7 A. I have no idea what they did.

8 Q. Let's go now to Page 125, Line 21.

9 "Question: Okay. The first one, it says,
10 check, December 1, 2006 transfer, Frank Avellino.
11 The amount is \$50,000."

12 You say, "Yes."

13 "Question: Do you recall any details
14 regarding that transaction, sir?"

15 "Answer: Not at all.

16 "Question: At any point in November or
17 December of 2006 did you advise John Daley or Nancie
18 Taylor you had transferred \$50,000 from Kenn Jordan
19 Associates to yourself?"

20 "Answer: No."

21 Why would you have transferred the \$50,000
22 from Kenn Jordan Associates to yourself; do you
23 know?

24 A. It's probably returning my money that I
25 had put in the account to pay off John Daley.

1 MR. ETRA: (Nods head.)

2 MR. SAMUELS: Okay. Thank you.

3 THE VIDEOGRAPHER: Concluding today's
4 deposition. We are off the record at 4:46 p.m.

5 MR. WOODFIELD: If it's ordered, we would
6 like a copy.

7 (The videotaped deposition adjourned at
8 4:46 p.m.)

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1 Q. So, generally, if people wanted money out,
2 up to the amount of \$500,000, you would loan the
3 money to Kenn Jordan Associates to allow them to get
4 their money back out, rather than call Madoff and
5 get the money directly from Madoff?

6 A. Rather than wait for a period, a quarterly
7 period. In other words, a period that ended on the
8 last day of any quarter.

9 MR. SAMUELS: At this time we have no
10 further questions. You know, we've got --
11 we're not going to close the deposition for the
12 reason that we've got some spoliation issues
13 that we need to think about and address. And
14 so with that caveat, we're going to keep the
15 deposition open.

16 MR. WOODFIELD: I deem it closed. You
17 deem it open. Determine that at some later
18 time.

19 MR. SAMUELS: Yep. Understood.
20 Do you want to explain reading or -- and
21 waiving?

22 MR. WOODFIELD: We'll read.

23 MR. SAMUELS: You'll read.

24 And I take it you have no questions? I
25 didn't ask.

1 RE : P&S Associates General Partnership, et al.
v. Michael D. Sullivan, et. al.
2 DEPO OF: FRANK AVELLINO
TAKEN : September 9, 2015

3
4 EXCEPT FOR ANY CORRECTIONS
MADE ON THE ERRATA SHEET BY
5 ME, I CERTIFY THIS IS A TRUE
AND ACCURATE TRANSCRIPT.
6 FURTHER DEPONENT SAYETH NOT.

7
8 FRANK AVELLINO

9 STATE OF FLORIDA)
10) SS:
COUNTY OF PALM BEACH)

11 Sworn and subscribed to before me this
12 _____ day of _____, 2015.
13 PERSONALLY KNOWN _____ OR I.D. _____

14
15 Notary Public in and for
the State of Florida at
Large.

16
17 My commission expires:
18
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22
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24
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Page 266

1 ERRATA SHEET
 2 RE : P&S Associates General Partnership, et al.
 3 v. Michael D. Sullivan, et. al.
 4 DEPO OF: FRANK AVELLINO
 5 TAKEN : September 9, 2015
 6 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
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 22 State of Florida)
 23 County of Palm Beach)
 24 Under penalties of perjury, I declare that I have
 25 read my deposition transcript, and it is true and
 correct subject to any changes in form or
 substance entered here.

1 REPORTER'S DEPOSITION CERTIFICATE
 2
 3 I, SUSAN MATOS, Court Reporter, certify
 4 that I was authorized to and did stenographically
 5 report the deposition of FRANK AVELLINO, the witness
 6 herein on September 9, 2015; that a review of the
 7 transcript was requested; that the foregoing pages
 8 numbered from 144 to 268 inclusive is a true and
 9 complete record of my stenographic notes of the
 10 deposition by said witness; and that this
 11 computer-assisted transcript was prepared under my
 12 supervision.
 13 I further certify that I am not a
 14 relative, employee, attorney or counsel of any of
 15 the parties, nor am I a relative or employee of any
 16 of the parties' attorney or counsel connected with
 17 the action.
 18 DATED this 23rd day of September, 2015.
 19
 20
 21
 22 SUSAN MATOS, Court Reporter
 23
 24
 25

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1 CERTIFICATE OF OATH OF WITNESS
 2
 3 STATE OF FLORIDA)
 4) SS:
 5 COUNTY OF PALM BEACH)
 6
 7 I, SUSAN MATOS, Court Reporter, Notary
 8 Public in and for the State of Florida at Large,
 9 certify that the witness, FRANK AVELLINO, personally
 10 appeared before me on September 9, 2015 and was duly
 11 sworn by me.
 12 WITNESS my hand and official seal this
 13 23rd day of September, 2015.
 14
 15 SUSAN MATOS, Court Reporter
 16 Notary Public, State of Florida
 17 at Large
 18 Notary #: FF187803
 19 My commission expires: February 5, 2019
 20
 21
 22
 23
 24
 25

1 EMPIRE LEGAL SUPPORT, INC.
 2 110 Southeast 6th Street, Suite 1700
 3 Fort Lauderdale, Florida 33301
 4 (800)917-2520
 5 September 23, 2015
 6 FRANK AVELLINO
 7 c/o GARY A. WOODFIELD, ESQUIRE
 8 HAILE SHAW & PFAFFENBERGER P.A.
 9 660 U.S. Highway 1
 10 Third Floor
 11 North Palm Beach, Florida 33408
 12 RE : P&S Associates General Partnership, et al.
 13 v. Michael D. Sullivan, et al.
 14 DEPO OF: FRANK AVELLINO
 15 TAKEN : September 9, 2015
 16 READ & SIGN BY: December 24, 2015
 17 Dear Mr. Avellino:
 18 This letter is to advise you that the transcript
 19 of the deposition listed above is completed and
 20 is awaiting reading and signing.
 21 Please arrange to stop by our office in Suite 1700,
 22 110 Southeast 6th Street, Fort Lauderdale, Florida
 23 to read and sign the transcript. Our office hours
 24 are from 8:00 a.m. to 4:00 p.m. Monday through
 25 Friday. Depending on the length of the transcript,
 you should allow yourself sufficient time.
 If the reading and signing has not been completed
 prior to the referenced date, we shall conclude
 that you have waived the reading and signing of the
 deposition transcript.
 Your prompt attention to this matter is appreciated.
 Sincerely,
 SUSAN MATOS, Court Reporter
 cc: All counsel on appearance page

1 EMPIRE LEGAL SUPPORT, INC.
2 110 Southeast 6th Street, Suite 1700
3 Fort Lauderdale, Florida 33301
4 (800)917-2520

5 September 23, 2015

6 LEONARD K. SAMUELS, ESQUIRE

7 BERGER SINGERMAN LLP

8 350 East Las Olas Boulevard

9 Suite 1000

10 Fort Lauderdale, Florida 33301

11 RE : P&S Associates General Partnership, et al.

12 v. Michael D. Sullivan, et. al.

13 DEPO OF: FRANK AVELLINO

14 TAKEN : September 9, 2015

15 READ & SIGN BY: December 24, 2015

16 Dear Counsel:

17 The original transcript of the deposition listed
18 above is enclosed for your file. The witness
19 did not waive reading and signing and has been
20 sent a letter notifying them to come in and read
21 and sign their deposition transcript.

22 The witness will be provided a copy of their
23 deposition transcript for reading in our office
24 should they come in to review the transcript, and
25 we will forward to you any corrections made by
the witness at that time, along with an original
signature page which should be attached to the
original transcript which is in your possession.

Sincerely,

SUSAN MATOS, Court Reporter

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EXHIBIT C

IN THE SEVENTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

CASE NO: 12-034123(07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership; PHILIP
VON KAHLE as Conservator of P&S
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHP, a
Florida limited partnership,

Plaintiffs,

v

MICHAEL D. SULLIVAN, an individual,
STEVEN JACOB, an individual, MICHAEL D.
SULLIVAN & ASSOCIATES, INC., a Florida
corporation, STEVEN F. JACOB, CPA &
ASSOCIATES, INC., a Florida
corporation, FRANK AVELLINO, an
individual, MICHAEL BIENES, an
individual, KELKO FOUNDATION, INC., a
Florida non profit corporation, and
VINCENT T. KELLY, an individual,

Defendants.

/

Deposition of MICHAEL D. SULLIVAN
(Volume I)

Tuesday, December 1, 2015
One Financial Plaza, Suite 2700
Fort Lauderdale, Florida 33394
10:16 a.m. - 1:25 p.m.

Reported by:
Lisa Mudrick, RPR, FPR
Notary Public, State of Florida

Michael D. Sullivan - - Vol. 1 - 12/01/2015
P&S Associates -v- Michael D. Sullivan

Page 2		Page 4	
1	APPEARANCES:	1	7 Documents, 0019215, AVE00001RTP, 102
2	On behalf of the Plaintiffs:	2	AVE00008RTP
3	BERGER SINGERMAN, LLP	3	8 Documents, 0011805 - 0011794 110
4	350 East Las Olas Boulevard, Suite 1000	4	9 Document, AVE05553RTP 120
5	Fort Lauderdale, Florida 33301	5	10 Schedule K-1 year 2000, 0015044 - 122
6	BY: LEONARD K. SAMUELS, ESQUIRE	6	15045
7	On behalf of Defendant Avellino:	7	11 Invoices, Feb. 4, 1994 128
8	HAILE SHAW & PFAFFENBERGER, P.A.	8	12 E-mail, July 6, 2004, AVE00246RTP 133
9	660 U.S. Highway One, Third Floor	9	13 E-mail chain, Oct. 27, 2008, 136
10	North Palm Beach, Florida 33408	10	AVE00252RTP
11	BY: GARY A. WOODFIELD, ESQUIRE	11	14 Letter, Aug. 10, 2012, 0014734 - 142
12	On behalf of Defendant Michael Bienes:	12	14737
13	BROAD AND CASSEL	13	
14	2 South Biscayne Boulevard	14	
15	One Biscayne Tower, 21st Floor	15	
16	Miami, Florida 33131	16	
17	BY: JONATHAN ETRA, ESQUIRE	17	
18	On behalf of Michael D. Sullivan & Michael D.	18	
19	Sullivan & Associates, Inc.:	19	
20	HARRY WINDERMAN, ESQUIRE	20	
21	2255 Glades Road, Suite 218A	21	
22	Boca Raton, Florida 33431	22	
23		23	
24		24	
25		25	

Page 3		Page 5	
1	- - -	10:16:00-10:16:07	
2	I N D E X	1	PROCEEDINGS
3	- - -	2	- - -
4	EXAMINATIONS	3	Deposition of MICHAEL D. SULLIVAN, a
5	Witness:	4	witness, taken by the Defendants Avellino and
6	MICHAEL D. SULLIVAN	5	Bienes for the purpose of discovery and for use as
7	BY MR. WOODFIELD	6	evidence in the above-entitled cause, pursuant to
8		7	notice heretofore filed, before LISA MUDRICK, RPR,
9		8	FPR, and Notary Public in and for the State of
10	EXHIBITS MARKED	9	Florida at large, at One Financial Plaza, Fort
11	No. Defendant's	10	Lauderdale, Florida, on December 1, 2015,
12	1 Re-Notice of Taking Deposition 6	11	commencing at 10:16 a.m.
13	Duces Tecum	12	- - -
14	2 Amended and Restated Partnership 44	13	Thereupon,
15	Agreement	14	MICHAEL D. SULLIVAN,
16	3 Letter, Jan. 3, 1996, 65	15	being by the undersigned Notary Public first duly
17	w/attachments, 0017720, 17714,	16	sworn, was examined and testified as follows:
18	17713, 17712, 17557	17	THE WITNESS: I do.
19	4 Letter, June 5, 2000, 76	18	DIRECT (MICHAEL D. SULLIVAN)
20	w/attachments, 0019210 - 119214	19	BY MR. WOODFIELD:
21	5 E-mail 19 Feb. 2008 mkuzy to 83	20	Q. State your name, please.
22	mdsassoc w/attachments, 0013189 -	21	A. Michael D. Sullivan.
23	13198	22	Q. And, Mr. Sullivan, where do you reside?
24	6 Report, July 13, 2005, 0014452 93	23	A. Fort Lauderdale.
25		24	Q. And just for purposes of going forward, my
		25	name is Gary Woodfield. I represent Frank

<p>10:16:20-10:17:25 Page 6</p> <p>1 Avellino. To my left is Jonathan Etra; he 2 represents Michael Bienes. And I believe you know 3 the other individuals here? 4 A. I met them before. 5 MR. WOODFIELD: Let me mark this notice of 6 deposition as Defendant's Exhibit 1, please. 7 (Defendant's Exb. No. 1, Re-Notice of 8 Taking Deposition Duces Tecum.) 9 BY MR. WOODFIELD: 10 Q. Mr. Sullivan, I will show you what we have 11 marked as Defendant's Exhibit 1, which is a 12 re-notice of taking of your deposition here today. 13 And with it it's called a deposition duces tecum 14 which seeks -- 15 A. Is that a law firm? 16 Q. No. That's a term -- 17 A. Okay. 18 Q. -- that it's utilized to identify in a 19 notice a request to actually have documents 20 produced at the deposition. If you would, take a 21 look at page five of this exhibit. And on page 22 five where under this heading Documents it lists 23 various types of documents that it seeks to have 24 you produce here today. 25 Do you have any documents regarding</p>	<p>10:18:49-10:19:37 Page 8</p> <p>1 A. No. I am sure Harry or Berger Singerman 2 would know that. 3 Q. Did it happen on more than one occasion? 4 A. On one occasion. They came in my office 5 about -- I am bad at time -- six months ago, and 6 asked me to give them some other information. 7 There was another gentleman there, an attorney from 8 Berger Singerman. He asked me to give him some 9 information. Stayed about 15 minutes and just got 10 up and left when he didn't like the truthful 11 answers I was giving him. 12 Q. With regard to what I have referred to as 13 the sworn statement, do you recall actually being 14 sworn in? 15 A. No, I do not. 16 Q. Okay. 17 A. To the best of my knowledge that did not 18 take place, sworn in. 19 Q. Right. Not with regard to this. 20 From what I understand, there were two 21 occasions where you have given statements to Berger 22 Singerman attorneys? 23 A. Right. 24 Q. Correct? 25 A. Correct.</p>
<p>10:17:40-10:18:34 Page 7</p> <p>1 companies P&S and S&P? 2 A. I do not. 3 Q. As an example, let's look at number one 4 under the documents where it states, "All 5 documents, including but not limited to written or 6 sworn statements you provided to plaintiffs' 7 counsel or that plaintiffs' counsel provided you or 8 your counsel, including, but not limited to in 9 connection with the settlement agreement dated 10 June 26, 2014, that you entered into in this 11 action." 12 Did you provide a sworn statement or 13 statements to the plaintiffs in this case? 14 A. I have no idea. 15 Q. Did there come a time in the last couple 16 years where you appeared at the offices of Berger 17 Singerman and were sworn in and gave a statement or 18 statements? 19 A. Yes, I did. 20 Q. Was that -- 21 A. Yes. 22 Q. I am sorry. 23 A. I don't think it was -- I don't remember 24 where -- was that -- yeah, it was at their office. 25 Q. And do you recall when that was?</p>	<p>10:19:44-10:20:24 Page 9</p> <p>1 Q. The first one was approximately six months 2 ago, you believe? 3 A. Yeah. It could have been longer. 4 Q. All right. 5 A. I don't know. 6 Q. The second one, at the second one, that 7 took place in a law office? 8 A. Yes, in the law office of Berger 9 Singerman. 10 Q. Okay. At that time was there a court 11 reporter or anyone recording the questions and 12 answers? 13 A. There was. 14 Q. What was it, was it a court reporter 15 similar to the one here today? 16 A. Uh-huh. Didn't look like her, but she was 17 doing the same thing. 18 Q. Okay. And how long did that take place? 19 A. Oh, man. It's at least three hours. 20 Q. Do you recall the questions they asked you 21 and the answers you gave them? 22 A. I am sure there would be a record of that 23 deposition. It was three hours long. There were 24 like a lot of questions. It would be hard to 25 recall all the questions.</p>

<p>10:20:40-10:21:51 Page 10</p> <p>1 Q. Do you have a copy of that? 2 A. No, I was never asked, never provided, or 3 never given a copy of that deposition. Which I 4 would like one, by the way. 5 Q. Now, you testified you have no documents 6 for the entities P&S and S&P, correct? 7 A. Yes, sir. 8 Q. If you would, take a look of these list of 9 documents starting on page five. 10 A. Uh-huh. 11 Q. Going over to page six, the very last one 12 is number 16. Would you just take a look at that, 13 please? 14 A. I would have those e-mails on my computer. 15 My computer was cloned. My e-mail was -- my 16 computer, my home computer, my cell phone, and my 17 office computer were all cloned. They took copies 18 of everything, either the conservator or Berger 19 Singerman. I don't know who in fact have those. 20 So somebody has a copy of all this information. 21 Q. When you say cloned, what do you mean by 22 that? 23 A. They went in and made a copy of my 24 computer, as I understood it. There were certain 25 words that were going to be highlighted on the</p>	<p>10:23:23-10:23:49 Page 12</p> <p>1 Q. In connection with the settlement that you 2 entered into with Berger Singerman, were there 3 e-mails exchanged between you and the plaintiffs' 4 counsel concerning the negotiations of that 5 settlement? 6 MR. SAMUELS: Object to the form of the 7 question. 8 BY MR. WOODFIELD: 9 Q. You can answer. 10 MR. SAMUELS: Mr. Woodfield, just because 11 -- so you understand, you said settlement 12 agreement between him and Berger Singerman. 13 MR. WOODFIELD: Oh, I am sorry. 14 THE WITNESS: I thought it was with the 15 conservator. 16 MR. WOODFIELD: Fine. Thank you for that 17 correction. 18 BY MR. WOODFIELD: 19 Q. The settlement agreement you entered into 20 in this action? 21 A. I believe that was with the conservator. 22 I believe it was. 23 Q. Okay. With regard to that settlement -- 24 A. Yes. 25 Q. -- were there e-mails exchanged between</p>
<p>10:22:11-10:23:09 Page 11</p> <p>1 search. I was told at a later time or sometime in 2 the middle of these conversations that were going 3 that I would be able to receive what in fact they 4 pulled up. I never received that. And but 5 somebody has copies of my cell phone, my home 6 computer, and my office computer. 7 Q. Do you recall when that was, when that 8 occurred? 9 A. I am really bad. Maybe a year ago. I 10 don't remember. It was sometime ago, though. 11 Q. Do you recall there came a point in time 12 where you entered into a settlement agreement in 13 this case? Do you recall that? 14 A. Yes, I do. 15 Q. Do you recall when that was? 16 A. I am really bad on gapping that time. 17 Maybe I am thinking around December, November of 18 last year. 19 Q. Okay. 20 A. I am guessing. 21 Q. Was this term you use cloning of your 22 various hard drives and computers and other e-mail 23 devices, did that occur after the settlement was 24 entered into? 25 A. Before.</p>	<p>10:24:00-10:24:51 Page 13</p> <p>1 you and the conservator or anyone on his behalf 2 concerning the negotiations of that settlement? 3 A. That would have been through my attorney 4 Harry Winderman. 5 Q. Okay. Do you know whether or not those 6 kinds of exchanges took place? 7 A. He copied me on some. You would have to 8 ask Mr. Winderman. 9 Q. Okay. In connection with appearing today 10 did you ask him at all to provide you with those 11 e-mails? 12 A. No, not that I remember. 13 Q. With regard to e-mails, let me just go 14 over a couple e-mail addresses. 15 A. Uh-huh. 16 Q. There's an e-mail address of 17 Mike@Sullivan4IRSmatters.com. Is that an e-mail 18 address of yours? 19 A. Correct. 20 Q. And is that still an active e-mail 21 address? 22 A. It is. 23 Q. When did you first get that e-mail 24 address; do you know? 25 A. I am going to imagine it was back in 2008</p>

<p>10:25:01-10:25:42 Page 14</p> <p>1 or 2009.</p> <p>2 Q. Okay. And is that an e-mail address you</p> <p>3 utilize in connection with your work?</p> <p>4 A. Yes.</p> <p>5 Q. And is that an e-mail address that's tied</p> <p>6 into your computer in your office?</p> <p>7 A. Yes.</p> <p>8 Q. And is that an e-mail address in which the</p> <p>9 Berger Singerman attorneys cloned e-mails from that</p> <p>10 address?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, there's an e-mail address</p> <p>13 md --</p> <p>14 A. S.</p> <p>15 Q. -- sassoc@bellsouth.net?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that an e-mail address of yours?</p> <p>18 A. Yes.</p> <p>19 Q. And how long have you had that e-mail</p> <p>20 address?</p> <p>21 A. Boy, I couldn't tell you. It was probably</p> <p>22 well before 2008. I don't know.</p> <p>23 Q. Do you still have that e-mail address?</p> <p>24 A. Yes, I do.</p> <p>25 Q. And what's the purpose of that e-mail</p>	<p>10:26:58-10:27:45 Page 16</p> <p>1 A. Yes.</p> <p>2 Q. And again, were e-mails from that e-mail</p> <p>3 address captured by plaintiffs' lawyers when they</p> <p>4 cloned your hard drive, as you testified to?</p> <p>5 A. Yes, along with other vital information</p> <p>6 pertaining to client sensitive information.</p> <p>7 Q. Now, is Sully@freshstarttax.com is that an</p> <p>8 e-mail address you use for some other business</p> <p>9 other than the two other e-mail addresses we</p> <p>10 discussed?</p> <p>11 A. Yes.</p> <p>12 Q. What's that?</p> <p>13 A. It's a tax resolution nationwide website</p> <p>14 that I use for our practice.</p> <p>15 Q. And is that a current and active e-mail</p> <p>16 address?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Do you use that for any personal use at</p> <p>19 all?</p> <p>20 A. Yeah, people will -- yes, it's mixed.</p> <p>21 Mostly business.</p> <p>22 Q. And again, let's say with regard to these</p> <p>23 three e-mail addresses we just discussed, are they</p> <p>24 all available to you on your computer and other</p> <p>25 devices?</p>
<p>10:25:52-10:26:49 Page 15</p> <p>1 address?</p> <p>2 A. I started with that e-mail address. I</p> <p>3 couldn't tell you why or how, but I just did. And</p> <p>4 I still have it.</p> <p>5 Q. Now, do you somehow distinguish between</p> <p>6 the earlier e-mail address, the Mike@Sullivan4IRS,</p> <p>7 and this e-mail address, this MDS Associates? Do</p> <p>8 you somehow divide the e-mail address and the type</p> <p>9 of work you do, or is there some allocation?</p> <p>10 A. I try to divide them. The MDS is kind of</p> <p>11 getting phased out and has been phased out for some</p> <p>12 time. I try to keep it all work related. But</p> <p>13 sometimes I will send e-mails out at Mike@ that are</p> <p>14 personal, and sometimes they get mixed up.</p> <p>15 Q. But what about between the two, are they</p> <p>16 both used for work purposes?</p> <p>17 A. Yes.</p> <p>18 Q. What about Sully@freshstarttax.com?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Is that an e-mail address of yours?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Approximately how long have you had that</p> <p>23 e-mail address?</p> <p>24 A. I am guessing around 2009.</p> <p>25 Q. And do you still have it?</p>	<p>10:27:53-10:28:49 Page 17</p> <p>1 A. Yes.</p> <p>2 Q. And were they all provided to plaintiffs'</p> <p>3 counsel in this case?</p> <p>4 A. To the best of my knowledge, yes.</p> <p>5 Q. Aside from the cloning you mentioned</p> <p>6 before, did you also provide a consent to enable</p> <p>7 Berger Singerman attorneys to access your e-mail</p> <p>8 providers?</p> <p>9 A. Yes.</p> <p>10 Q. And who were they; do you know, the</p> <p>11 providers?</p> <p>12 A. I have no idea.</p> <p>13 Q. Are these entities like AOL?</p> <p>14 A. Yes.</p> <p>15 Q. Was AOL one of them to your knowledge?</p> <p>16 A. I could not tell you.</p> <p>17 Q. But did you provide Berger Singerman</p> <p>18 attorneys with a consent to enable them to access</p> <p>19 all of your e-mails from all of your e-mail</p> <p>20 accounts to that provider?</p> <p>21 A. I am not sure. There was something</p> <p>22 provided. I believe Mr. Winderman has that</p> <p>23 information.</p> <p>24 Q. What about the e-mail address</p> <p>25 Gop9401@aol.com, is that an e-mail address of</p>

<p>10:28:57-10:29:46 Page 18</p> <p>1 yours?</p> <p>2 A. No, it isn't.</p> <p>3 Q. Do you know whose e-mail address that is?</p> <p>4 A. Uh-huh, that was my deceased partner,</p> <p>5 Mr. Powell.</p> <p>6 Q. And is that still an active e-mail address</p> <p>7 to your knowledge?</p> <p>8 A. I would have absolutely no idea.</p> <p>9 Q. Okay. Do you know when that e-mail</p> <p>10 address was first used by Mr. Powell?</p> <p>11 A. I have no idea.</p> <p>12 Q. Do you know whether or not he used it for</p> <p>13 business or personal or both?</p> <p>14 A. No idea.</p> <p>15 Q. Did you ever use that e-mail address --</p> <p>16 A. Never.</p> <p>17 Q. -- to your knowledge?</p> <p>18 A. Never.</p> <p>19 Q. Other than these e-mail addresses that I</p> <p>20 just identified, are there any other e-mail</p> <p>21 addresses that you have utilized?</p> <p>22 A. There was another one investit,</p> <p>23 i-n-v-e-s-t-i-t, that was a derivative or an</p> <p>24 alternative of MDS Associates. It was a secondary</p> <p>25 account.</p>	<p>10:31:06-10:31:57 Page 20</p> <p>1 was educated after that from IRS. I have took</p> <p>2 their training, and I was an instructor with</p> <p>3 Internal Revenue Service as well. And I have been</p> <p>4 to seminary as an aud student.</p> <p>5 Q. When did you graduate from college?</p> <p>6 A. '73.</p> <p>7 Q. And what college was that?</p> <p>8 A. Biscayne. It's now St. Thomas University.</p> <p>9 Q. And what was your degree?</p> <p>10 A. Prelaw poli-sci.</p> <p>11 Q. And did you go to work after that?</p> <p>12 A. Sixty days after.</p> <p>13 Q. And where did you go to work?</p> <p>14 A. IRS.</p> <p>15 Q. And where did you work in the IRS?</p> <p>16 A. Fort Lauderdale North Dade office,</p> <p>17 narcotic trafficking with IRS. And taught up in</p> <p>18 the Atlanta regional training center.</p> <p>19 Q. How long did you work for the IRS?</p> <p>20 A. Ten years, around ten years.</p> <p>21 Q. And did you have any additional training</p> <p>22 while you were with the IRS?</p> <p>23 A. Yeah, you take the different classes that</p> <p>24 they have to offer.</p> <p>25 Q. Are you a CPA?</p>
<p>10:29:56-10:30:50 Page 19</p> <p>1 Q. Is that still active?</p> <p>2 A. No.</p> <p>3 Q. Do you know when was the last time you</p> <p>4 utilized that?</p> <p>5 A. No, man. Could be 2008, once again, just</p> <p>6 ballpark guesses.</p> <p>7 Q. Was that e-mail address also utilized by</p> <p>8 your computer and other devices?</p> <p>9 A. Yes.</p> <p>10 Q. And was it also provided to plaintiffs'</p> <p>11 counsel in this case?</p> <p>12 A. I am not sure.</p> <p>13 Q. Okay. And do you recall whether or not</p> <p>14 you provided a consent to enable plaintiffs'</p> <p>15 counsel to access the server of that e-mail</p> <p>16 account?</p> <p>17 A. I believe, once again, I believe there was</p> <p>18 language in there to go ahead and do that.</p> <p>19 Q. Have you ever been provided any of the</p> <p>20 information that plaintiffs' counsel obtained from</p> <p>21 those consents?</p> <p>22 A. Never.</p> <p>23 Q. Let me go back for a moment and discuss.</p> <p>24 Could you just briefly relate to us your education?</p> <p>25 A. Yes. I have a college degree, and then</p>	<p>10:32:10-10:32:50 Page 21</p> <p>1 A. No.</p> <p>2 Q. Aside from the St. Thomas degree and the</p> <p>3 courses you took while you were with the IRS, do</p> <p>4 you have any other education?</p> <p>5 A. No.</p> <p>6 Q. After you got out of the IRS, shall we</p> <p>7 say approximately 1983, would that be a fair</p> <p>8 timeframe?</p> <p>9 A. It was 1982. I left after the day my wife</p> <p>10 was murdered. It was July 23rd, 1982.</p> <p>11 Q. Did you work thereafter?</p> <p>12 A. No.</p> <p>13 Q. Did there come a time thereafter where you</p> <p>14 did work?</p> <p>15 A. No. Oh, you mean?</p> <p>16 Q. At any time thereafter what was your next</p> <p>17 employment?</p> <p>18 A. Went out on my own.</p> <p>19 Q. And when was that?</p> <p>20 A. Sometime in '82 after the death of my</p> <p>21 wife.</p> <p>22 Q. And when you say you went out on your own,</p> <p>23 what was the business?</p> <p>24 A. IRS representation.</p> <p>25 Q. Represented individuals with their issues</p>

<p>10:33:03-10:34:05 Page 22</p> <p>1 with the IRS?</p> <p>2 A. Or businesses, correct.</p> <p>3 Q. And where were your offices?</p> <p>4 A. They were all in Fort Lauderdale.</p> <p>5 Q. And do you recall the address of your</p> <p>6 initial office?</p> <p>7 A. I think it was 5950 West Oakland Park</p> <p>8 Boulevard across from Inverary, and the Union Bank</p> <p>9 building on 441 on 16th Street in Lauderhill. That</p> <p>10 was a long, long time ago. And then Bank of</p> <p>11 America building in Pompano Beach.</p> <p>12 Q. How long did you work by yourself?</p> <p>13 A. Oh, a couple years, year and a half, a</p> <p>14 couple years.</p> <p>15 Q. Okay. What was the name of that business;</p> <p>16 do you recall?</p> <p>17 A. I don't.</p> <p>18 Q. Okay. After a couple years did you work</p> <p>19 with anyone else?</p> <p>20 A. Greg Powell.</p> <p>21 Q. Okay. Do you recall when that was?</p> <p>22 A. Maybe, I don't know, maybe a year later.</p> <p>23 I can't remember.</p> <p>24 Q. All right. When did you meet Mr. Powell?</p> <p>25 A. 1974.</p>	<p>10:35:16-10:36:09 Page 24</p> <p>1 him. God, I did in fact work with him when he left</p> <p>2 audit to come to collections. Yes, I did work with</p> <p>3 him.</p> <p>4 Q. And that's with the IRS?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When the two of you started working</p> <p>7 together were you doing the same type of work?</p> <p>8 A. He was doing more tax returns.</p> <p>9 Q. Okay. And you were representing</p> <p>10 individuals --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- with their issues with the IRS?</p> <p>13 A. Correct.</p> <p>14 Q. Did the business have a name?</p> <p>15 A. Sullivan & Powell.</p> <p>16 Q. Okay. Did you formalize that relationship</p> <p>17 by any agreement or?</p> <p>18 A. Handshake.</p> <p>19 Q. Okay. And how long did Sullivan & Powell</p> <p>20 operate?</p> <p>21 A. Had to be well over 20 years. I am</p> <p>22 guessing. A long time.</p> <p>23 Q. Did it continue to operate as Sullivan &</p> <p>24 Powell up until the time of Mr. Powell's death?</p> <p>25 A. Best of my recollection, yes.</p>
<p>10:34:20-10:35:05 Page 23</p> <p>1 Q. And how did that come about?</p> <p>2 A. We were in break room at the IRS office</p> <p>3 eating Debbie's devil food cakes.</p> <p>4 Q. So was he an IRS employee at that time?</p> <p>5 A. Yes.</p> <p>6 Q. Where is he from? Where was he from; do</p> <p>7 you know?</p> <p>8 A. I believe he was from Jacksonville.</p> <p>9 Q. And did you work with him at all while you</p> <p>10 were with the IRS?</p> <p>11 A. No.</p> <p>12 Q. When you left and set up your own practice</p> <p>13 did you contact him to join you?</p> <p>14 A. No idea. I can't remember.</p> <p>15 Q. So do you recall at all how it came about</p> <p>16 that the two of you began to work together?</p> <p>17 A. I just knew he had left IRS and somehow we</p> <p>18 got hooked up.</p> <p>19 Q. Okay. Was he doing the same type of work</p> <p>20 that you were doing then?</p> <p>21 A. He was doing tax returns.</p> <p>22 Q. Okay. And you --</p> <p>23 A. Oh, I need to recant that. Greg did --</p> <p>24 Greg left his audit job and did go to the</p> <p>25 collection division, so I did in fact work with</p>	<p>10:36:20-10:37:01 Page 25</p> <p>1 Q. And when did he die?</p> <p>2 A. Don't know.</p> <p>3 Q. Approximately?</p> <p>4 A. I am bad at that. Maybe '99, 2000. I</p> <p>5 don't know.</p> <p>6 Q. Okay.</p> <p>7 A. He's been dead, I think, about ten years.</p> <p>8 Q. All right.</p> <p>9 A. Ten, 11 years.</p> <p>10 Q. But the two of you were working together</p> <p>11 up until the time that he died?</p> <p>12 A. Yes.</p> <p>13 Q. Was he ill for a lengthy period of time?</p> <p>14 A. No.</p> <p>15 Q. Before he died was there a period of time</p> <p>16 in which he wasn't able to come to the office?</p> <p>17 A. Greg had transitioned and moved to</p> <p>18 Blairsville, and probably was -- that's Georgia.</p> <p>19 And he was probably there a year. And he would</p> <p>20 travel back and forth the last year before he was</p> <p>21 called back home.</p> <p>22 Q. But even though he was in Georgia, the two</p> <p>23 of you still continued --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- as Sullivan & Powell?</p>

<p>10:37:19-10:38:16 Page 26</p> <p>1 A. No.</p> <p>2 Q. Okay. What changed?</p> <p>3 A. We had formed two partnerships S&P, P&S,</p> <p>4 and SPJ.</p> <p>5 Q. Okay. Obviously we'll talk about P&S and</p> <p>6 S&P. Those are the two entities that are parties</p> <p>7 of this lawsuit, and we'll get into that. Just</p> <p>8 trying to catch up on the background before that.</p> <p>9 Do you recall when they were formed?</p> <p>10 A. I don't know. Maybe 1991, two, three. I</p> <p>11 don't know.</p> <p>12 Q. All right. Prior to that --</p> <p>13 A. Yes.</p> <p>14 Q. -- did Sullivan & Powell continue to</p> <p>15 operate as a business?</p> <p>16 A. I can't remember how much business we were</p> <p>17 doing or whether it was still in business. I just</p> <p>18 have no idea.</p> <p>19 Q. Okay. After the formation of P&S and S&P</p> <p>20 did Sullivan & Powell go out of existence, or did</p> <p>21 it continue in some form?</p> <p>22 A. It just kind of phased out.</p> <p>23 Q. What about other businesses, Michael D.</p> <p>24 Sullivan and Associates, Inc., what is that entity?</p> <p>25 A. That's an entity once again I believe that</p>	<p>10:39:38-10:40:48 Page 28</p> <p>1 A. It's in Fort Lauderdale.</p> <p>2 Q. And what's the address?</p> <p>3 A. 3696.</p> <p>4 Q. 3696?</p> <p>5 A. North Federal. I am sorry.</p> <p>6 Q. And how long has it been in those offices?</p> <p>7 A. About four years.</p> <p>8 Q. Prior to that where were its offices?</p> <p>9 A. I believe we were at 6550 North Federal.</p> <p>10 I think we started there.</p> <p>11 Q. When P&S and S&P were in operation where</p> <p>12 were its offices or their offices located?</p> <p>13 A. I am going to have to think on that. I</p> <p>14 believe they were at 225 North Federal Highway in</p> <p>15 Pompano Beach, I believe, to the best of my</p> <p>16 knowledge. I think they were. I don't know.</p> <p>17 Q. You mentioned S&P and P&S and Sullivan &</p> <p>18 Powell?</p> <p>19 A. Yes.</p> <p>20 Q. Were you involved in any other businesses</p> <p>21 with Greg Powell?</p> <p>22 A. Yes. I can't -- I just can't remember the</p> <p>23 names.</p> <p>24 Q. What type of businesses?</p> <p>25 A. Always did the same thing, preparation of</p>
<p>10:38:43-10:39:26 Page 27</p> <p>1 I started after in fact Greg passed away.</p> <p>2 Q. And what was the purpose of that entity?</p> <p>3 A. It was to conduct -- it was somehow tied</p> <p>4 to P&S, S&P. It was -- it was just an entity that</p> <p>5 I formed just to operate through those partnerships</p> <p>6 or by the partnerships.</p> <p>7 Q. What about an entity Fresh Start, was that</p> <p>8 an entity of yours?</p> <p>9 A. It's a -- no, it is not.</p> <p>10 Q. Do you operate in a business at all</p> <p>11 utilizing the term or words Fresh Start?</p> <p>12 A. Yes.</p> <p>13 Q. Could you explain that?</p> <p>14 A. Yes. I worked for Fresh Start Tax.</p> <p>15 Q. Is that a formal entity?</p> <p>16 A. Yes.</p> <p>17 Q. And who owns that entity?</p> <p>18 A. My wife and Luanne Jacobs.</p> <p>19 Q. And is it currently active?</p> <p>20 A. Yes.</p> <p>21 Q. And do you currently work for it?</p> <p>22 A. Yes.</p> <p>23 Q. And what work does it do?</p> <p>24 A. IRS representation.</p> <p>25 Q. And where are its offices?</p>	<p>10:41:02-10:41:57 Page 29</p> <p>1 tax and IRS representation. We did have another</p> <p>2 name or another maybe two other names, I just don't</p> <p>3 recall what they are.</p> <p>4 Q. Okay. Now going back when we talked</p> <p>5 before about education, I thought you mentioned</p> <p>6 something about seminary or theological?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Did you go -- did you take any courses</p> <p>9 religiously connected?</p> <p>10 A. Yes, I audited seminary.</p> <p>11 Q. You what?</p> <p>12 A. Audited.</p> <p>13 Q. And when did you do that?</p> <p>14 A. About 2000 to 2004.</p> <p>15 Q. And could you describe that to us? What</p> <p>16 does that entail?</p> <p>17 A. Well, people who want to become ministers</p> <p>18 or pastors they have to have their Mdiv degrees to</p> <p>19 do that. After a four-year education, they have to</p> <p>20 have their master's of divinity. So I wanted to go</p> <p>21 ahead and take classes, because I do a lot of</p> <p>22 teaching. And for my own theological understanding</p> <p>23 and biblical knowledge I decided just to audit</p> <p>24 seminary. So it was right down the street from my</p> <p>25 office, so I just drove there and audited the</p>

<p>10:42:09-10:42:53 Page 30</p> <p>1 classes.</p> <p>2 Q. Did you ever obtain a degree?</p> <p>3 A. No. My purpose was not to do that.</p> <p>4 Q. What religious affiliation is that?</p> <p>5 A. It's Presbyterian seminary.</p> <p>6 Q. And are you currently involved in the</p> <p>7 Presbyterian church?</p> <p>8 A. No. I never was.</p> <p>9 Q. What church are you involved in?</p> <p>10 A. Methodist church.</p> <p>11 Q. And have you for a long period of time?</p> <p>12 A. Yes.</p> <p>13 Q. And what church is that?</p> <p>14 A. It's Christ Church in Fort Lauderdale.</p> <p>15 Q. Is that where you first met Frank</p> <p>16 Avellino?</p> <p>17 A. It is.</p> <p>18 Q. Do you recall when that was?</p> <p>19 A. Uh-huh, I do.</p> <p>20 Q. When was that?</p> <p>21 A. I can't remember dates or times. I just</p> <p>22 know it was at Shoney's restaurant on Federal</p> <p>23 Highway.</p> <p>24 Q. And how did that come about?</p> <p>25 A. The pastor wanted to get a men's group</p>	<p>10:44:20-10:45:22 Page 32</p> <p>1 Q. And could you describe that to us?</p> <p>2 A. We were doing a capital campaign out of</p> <p>3 church. And my first dealings with him outside</p> <p>4 that meeting was to go ahead and raise money to</p> <p>5 build our sanctuary and life enrichment center.</p> <p>6 Q. What about Michael Bienes, when did you</p> <p>7 meet Mr. Bienes?</p> <p>8 A. Probably sometime after I met Frank. Once</p> <p>9 again, I can't tell you.</p> <p>10 Q. Do you recall how that came about?</p> <p>11 A. I can't.</p> <p>12 Q. Do you have any understanding as to what</p> <p>13 was the relationship between Mr. Avellino and</p> <p>14 Mr. Bienes?</p> <p>15 A. Yes. I knew that they were partners.</p> <p>16 They had an investment firm called A&B up in New</p> <p>17 York.</p> <p>18 Q. Did there come a time where you invested</p> <p>19 in A&B?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall when that was?</p> <p>22 A. It would have had to -- I believe it was</p> <p>23 in '89, '90, '91. It's kind of a horseshoe throw.</p> <p>24 Q. How did it come about that you invested in</p> <p>25 A&B?</p>
<p>10:43:11-10:44:06 Page 31</p> <p>1 together. And there were about 20 men. And that</p> <p>2 group, I attended that group for about a year, year</p> <p>3 and a half, I guess. And he was in that,</p> <p>4 Mr. Avellino was in that small group.</p> <p>5 Q. And how often did it meet?</p> <p>6 A. It met every single Monday morning at</p> <p>7 6:30.</p> <p>8 Q. And was the pastor involved in that?</p> <p>9 A. Yes.</p> <p>10 Q. Who was that?</p> <p>11 A. Richard Wills.</p> <p>12 Q. And as a result of those Monday meetings</p> <p>13 did you become -- how would you say your</p> <p>14 relationship was with Frank Avellino? Did you</p> <p>15 become friends or acquaintances?</p> <p>16 A. Yeah, kind of friends. I mean, you kind</p> <p>17 of become friends with different people in the</p> <p>18 group. Frank and I both came from a catholic</p> <p>19 background so we had certain things in common, so</p> <p>20 we just started conversations. We were two of the</p> <p>21 more consistent people attending the group.</p> <p>22 Q. Did there come a time where you had</p> <p>23 dealings with Mr. Avellino outside of those Monday</p> <p>24 meetings?</p> <p>25 A. Yes.</p>	<p>10:45:43-10:46:28 Page 33</p> <p>1 A. I sat down and talked to Frank. He was a</p> <p>2 very generous giver, as was Michael, in</p> <p>3 philanthropy in our area. And Mr. Avellino</p> <p>4 explained to me that there was an investment that</p> <p>5 he had, and we went ahead and invested in that</p> <p>6 business.</p> <p>7 Q. Now, you say we. Who actually invested?</p> <p>8 A. It would be Greg and myself.</p> <p>9 Q. Okay. And do you recall how much money</p> <p>10 you initially put in?</p> <p>11 A. I don't.</p> <p>12 Q. Did you have any understanding as to where</p> <p>13 that money was invested?</p> <p>14 A. Not initially.</p> <p>15 Q. Okay. Did there ultimately come a time</p> <p>16 where you learned that it was invested with</p> <p>17 Mr. Madoff's firm?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Do you recall when that was?</p> <p>20 A. May have been a year after.</p> <p>21 Q. And do you recall how it came about that</p> <p>22 you learned that?</p> <p>23 A. I don't remember.</p> <p>24 Q. Before you and Mr. Powell invested in A&B</p> <p>25 did you do any independent due diligence on your</p>

10:46:46-10:47:41

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1 own about the investment?
2 A. We really pretty much trusted Frank, we
3 did. So it was just a matter of trust, and didn't
4 really have an issue with that, so.
5 **Q. Did there come a time where you set up**
6 **an entity that invested with A&B or investment**
7 **club?**
8 A. I don't remember the structure of it at
9 that time. I know I had maybe ten, I don't
10 remember how many people, maybe ten, 11 people, I
11 don't know, five, 15, I don't know. And I asked
12 them to at least to consider that investment with
13 them.
14 **Q. And do you recall whether or not you**
15 **formed an entity of those people that invested in**
16 **A&B?**
17 A. I don't remember doing that at the time.
18 **Q. Nevertheless, these individuals together**
19 **with you and Greg jointly invested in A&B?**
20 A. It wasn't joint.
21 **MR. SAMUELS:** Object to the form of the
22 question.
23 **BY MR. WOODFIELD:**
24 **Q. You can answer.**
25 A. It wasn't joint. It was everyone --

10:47:57-10:48:32

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1 everyone invested individually.
2 **Q. How about you and Mr. Powell, how did the**
3 **two of you invest; do you recall?**
4 A. Don't remember.
5 **Q. Did you get statements from A&B?**
6 A. Yes, we did.
7 **Q. Did you get statements for just your**
8 **account or other accounts?**
9 A. Just our account.
10 **Q. Okay.**
11 A. This is to the best of my recollection.
12 **Q. Right. I understand that.**
13 **MR. WINDERMAN:** You don't have to keep
14 saying that.
15 **THE WITNESS:** Okay.
16 **MR. WINDERMAN:** Everybody understands.
17 **MR. WOODFIELD:** That's a given.
18 **MR. WINDERMAN:** Yes.
19 **THE WITNESS:** '91.
20 **MR. WINDERMAN:** No problem.
21 **BY MR. WOODFIELD:**
22 **Q. Right. When you say there were others**
23 **that you discussed investing with A&B, do you**
24 **recall who some of those people were?**
25 A. Greg Wallach was one of them. I can't

10:48:54-10:49:49

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1 tell you. I don't remember.
2 **Q. Were these people you knew from church?**
3 A. Various, friends.
4 **Q. Did you introduce them to Mr. Avellino?**
5 A. Maybe a couple had seen him. I don't -- I
6 don't want to say it. I don't remember.
7 **Q. Okay. And other than a Wallach, do you**
8 **remember anyone else who was in that group?**
9 A. I don't.
10 **Q. Now, do you recall how much money you and**
11 **Mr. Powell put into A&B?**
12 A. No.
13 **Q. Was it hundreds of thousands of dollars?**
14 A. No. I don't know. It wasn't. It was a
15 minimal amount of money, but I don't remember.
16 **Q. And did there come a time where other than**
17 **the initial investment you put other monies into**
18 **that?**
19 A. Don't remember.
20 **Q. Okay. Do you recall whether or not you**
21 **took withdrawals from that account?**
22 A. Don't remember.
23 **Q. Okay. Now, did there come a time where**
24 **you learned that the A&B entity was shut down by**
25 **the SEC?**

10:50:06-10:51:16

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1 A. Yes.
2 **Q. Now, how did you learn that?**
3 A. It was my thinking one of the small groups
4 or through our pastor that said that Mr. Avellino
5 was having some financial uncertainties. And a
6 little, not much of that at that time, was
7 disclosed that they -- the SEC was looking into
8 something. I did not know more. This was not the
9 day of the internet. You got to remember, this is
10 before cell phones and e-mails were going back that
11 far. So just by word of mouth.
12 **Q. Was that Pastor Wills who told you that or**
13 **someone else?**
14 A. I believe it was. Yes, I believe it was.
15 **Q. Do you know whether or not Pastor Wills**
16 **was investing with A&B?**
17 A. Don't know.
18 **Q. Did you learn that the funds with A&B were**
19 **invested with Madoff before you learned of the SEC**
20 **shutting down the business?**
21 A. I don't remember. I don't. I believe it
22 was before.
23 **Q. Do you have any recollection of how it**
24 **came about that you learned that the A&B funds were**
25 **invested with Madoff?**

<p>10:51:29-10:52:35 Page 38</p> <p>1 A. If I knew, Mr. Avellino would have told me 2 some time prior that that was the investment 3 source. 4 Q. Had you ever heard of Madoff? 5 A. No. 6 Q. Did you do any due diligence on your own 7 to learn anything about Mr. Madoff? 8 A. Yes, I did. 9 Q. Do you recall what you did? 10 A. I know both my partner and myself started 11 asking different people who in fact who he was. 12 There was, I know, some form of due diligence 13 done, and found out he was the former chairman of 14 the board of NASDAQ. And we found enough 15 information out that we felt pretty -- it sounds 16 foolish now -- that it was a pretty -- he was a 17 pretty sure thing. 18 Q. Now, when you learned that the SEC had 19 shut down A&B -- 20 A. Uh-huh. 21 Q. -- did you have discussions thereafter 22 with Mr. Avellino about your investment? 23 A. We talked. I don't know what those talks 24 really were about. I know we got a check back. So 25 as far as that investment, I don't know what else.</p>	<p>10:53:54-10:54:49 Page 40</p> <p>1 that ultimately invest with A&B and got their money 2 back -- 3 A. Uh-huh. 4 Q. -- did you have any discussions with any 5 of them about investing in Madoff? 6 A. Yeah. After this all happened I says, 7 gee, wouldn't this be a great idea, I am thinking 8 as a business entrepreneur right now, if we could 9 get a -- my partner and myself get a business and 10 go ahead and get an SEC attorney and do the same 11 thing in fact that they were doing. 12 Q. They being? 13 A. Avellino, A&B, Avellino and Bienes. 14 Q. And did that ultimately lead to the 15 formation of P&S and S&P? 16 A. It did. 17 Q. What involvement, if any, did Mr. Avellino 18 have in your decision to set up that business? 19 A. Nothing. 20 Q. What involvement at all did Mr. Avellino 21 have in the actual setting up of that business? 22 A. None. 23 Q. Is that equally true with regard to 24 Mr. Bienes? 25 A. Correct.</p>
<p>10:52:44-10:53:46 Page 39</p> <p>1 Q. When you say you got a check back, did you 2 receive back all of the funds that you had invested 3 in A&B? 4 A. Yes. 5 Q. Do you know whether or not the other 6 individuals that you had mentioned before that 7 invested with A&B, do you recall whether or not or 8 know whether or not they received all their funds 9 back? 10 A. Best of my knowledge they got every nickel 11 back. 12 Q. Okay. Now, after you got your money back 13 did you have any discussions with anyone about 14 investing directly with Madoff? 15 A. I went ahead and I asked Mr. Frank if 16 there was any way I could go ahead and I wanted to 17 do my own investments with Madoff. I says, is that 18 a possibility. 19 Q. And do you recall what his response was? 20 A. Yeah. He pretty much wanted really 21 nothing to do with that. He told me I was -- and 22 these are all in just very generic terms, very 23 generic -- I pretty much was on my own. 24 Q. Were there of these other individuals that 25 you had mentioned before that you had discussed</p>	<p>10:55:09-10:56:06 Page 41</p> <p>1 Q. Okay. How did you come up -- how did it 2 come about that you opened an account with Madoff? 3 And I am sorry, when I say Madoff, it's his 4 business Bernard L. Madoff Investment Securities. 5 A. Correct. 6 Q. But we'll use the term Madoff. 7 A. With great trepidation I remember making 8 the call. And I explained to him that I was an 9 investor in A&B, and I wanted to go ahead and open 10 some accounts. I think we had one or two or maybe 11 three discussions. Maybe two or three different 12 phone calls were made directly to Madoff. And at 13 some point in time thereafter he sent me an 14 agreement to go ahead and open those accounts. 15 Q. Do you recall how you got the phone number 16 of Mr. Madoff's business? 17 A. No, I have no idea. 18 Q. Do you recall whether or not it was 19 provided to you by Mr. Avellino? 20 A. I have no idea. He wouldn't be hard to 21 find. 22 Q. When you made that phone call did you 23 actually end up speaking with Mr. Madoff? 24 A. Yes. 25 Q. Did you ask for him when you called?</p>

<p>10:56:19-10:57:23 Page 42</p> <p>1 A. Yes.</p> <p>2 Q. And he took your call?</p> <p>3 A. Not right away -- yeah, they -- about five</p> <p>4 or six or seven or eight minutes later, yes, he</p> <p>5 did.</p> <p>6 Q. Okay. And did you tell him at all how</p> <p>7 much you were interested in investing, how much</p> <p>8 money?</p> <p>9 A. Don't remember.</p> <p>10 Q. At that point in time was it funds of just</p> <p>11 you and Mr. Powell, or were there others that were</p> <p>12 going to invest jointly with you?</p> <p>13 A. The best of my recollection, there were</p> <p>14 several people who were with A&B that said, gee,</p> <p>15 this is -- this is doing pretty good, do you think</p> <p>16 we can keep this money and invest it. And it was</p> <p>17 with that inertia and with a business</p> <p>18 entrepreneurial spirit that I thought, you know,</p> <p>19 this could be well -- and I looked at this just as</p> <p>20 making some money, never -- just additional money.</p> <p>21 It wouldn't be like a -- it would grow.</p> <p>22 Q. Who formed the entities P&S and S&P; do</p> <p>23 you recall?</p> <p>24 A. I don't.</p> <p>25 Q. Did you retain an attorney to do that for</p>	<p>10:59:02-10:59:52 Page 44</p> <p>1 (Defendant's Exb. No. 2, Amended and</p> <p>2 Restated Partnership Agreement.)</p> <p>3 BY MR. WOODFIELD:</p> <p>4 Q. Let me show you what we have marked as</p> <p>5 Exhibit 2, the document entitled Amended and</p> <p>6 Restated Partnership Agreement.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Now, if you look at this first -- do you</p> <p>9 recognize this document?</p> <p>10 A. I think I have seen it before.</p> <p>11 Q. Okay. And this is for the entity S&P</p> <p>12 Associates, General Partnership. To your</p> <p>13 recollection is there a comparable agreement with</p> <p>14 regard to P&S?</p> <p>15 A. I believe there is.</p> <p>16 Q. And this is an amended and restated</p> <p>17 partnership agreement.</p> <p>18 A. Uh-huh.</p> <p>19 Q. If you look in the second line, it</p> <p>20 indicates that this was made and entered into on</p> <p>21 December 21st, 1994.</p> <p>22 A. Uh-huh.</p> <p>23 Q. And if you look at the second paragraph,</p> <p>24 it indicates that the initial partnership agreement</p> <p>25 was dated December 2, 19 -- I am sorry --</p>
<p>10:57:38-10:58:37 Page 43</p> <p>1 you?</p> <p>2 A. We went to a firm called Atlas Pearlman</p> <p>3 and Trop. Talked to Charlie Pearlman and Roxanne</p> <p>4 Beilly. I don't know who formed the entities</p> <p>5 corporately. We wanted to get a pretty solid</p> <p>6 agreement, so we went to the firm. And we went</p> <p>7 ahead and had a couple meetings with them, and they</p> <p>8 drew up the agreements.</p> <p>9 Q. How did it come about that you went to</p> <p>10 those lawyers?</p> <p>11 A. I was a member of the Greater South</p> <p>12 Florida Tax Council actually which meets in this</p> <p>13 building. And went ahead -- and I knew Michael</p> <p>14 Trop. He was an excellent tax attorney who is now</p> <p>15 deceased. And Michael went ahead and suggested we</p> <p>16 talk to Charlie Pearlman.</p> <p>17 Q. Did Mr. Avellino have any involvement in</p> <p>18 your decision to go to those lawyers?</p> <p>19 A. No.</p> <p>20 Q. Did Mr. Bienes have any involvement in</p> <p>21 your decision to go to those lawyers?</p> <p>22 A. Nope.</p> <p>23 MR. WOODFIELD: Mark this amended and</p> <p>24 restated partnership agreement as Defendant's</p> <p>25 Exhibit 2, please.</p>	<p>11:00:07-11:01:27 Page 45</p> <p>1 December 11, 1992. Was this amended agreement also</p> <p>2 prepared by Charlie Pearlman and/or someone in his</p> <p>3 law firm; do you know?</p> <p>4 A. Do not remember.</p> <p>5 Q. Do you recall why the decision was made to</p> <p>6 enter into this amended and restated partnership</p> <p>7 agreement?</p> <p>8 A. I don't remember.</p> <p>9 Q. Do you recall why you formed two entities</p> <p>10 P&S and S&P?</p> <p>11 A. I don't remember.</p> <p>12 Q. Okay. In connection with the formation of</p> <p>13 these entities, were you advised by Charlie</p> <p>14 Pearlman and/or others in that law firm?</p> <p>15 A. To?</p> <p>16 Q. Did they advise you with regard to the</p> <p>17 formation of these entities?</p> <p>18 A. Oh, yes, we went into them with a specific</p> <p>19 goal as having a partnership agreement. That's why</p> <p>20 we went to them.</p> <p>21 Q. If you turn to page three of this</p> <p>22 agreement, and particularly specifically Article</p> <p>23 Five, do you see in both 5.01 and 5.02 it has</p> <p>24 provisions in there with regard to percentage of</p> <p>25 profits and losses?</p>

<p>11:01:40-11:02:41 Page 46</p> <p>1 A. Yes.</p> <p>2 Q. Now, how did it come about that these</p> <p>3 provisions were entered into this agreement; do you</p> <p>4 recall?</p> <p>5 A. You mean the 20 percent?</p> <p>6 Q. Yes.</p> <p>7 A. I believe my partner went ahead and did</p> <p>8 some due diligence in the area to find out what</p> <p>9 normal rates are and charges. And I believe from</p> <p>10 what he found out that people in the industry</p> <p>11 charged two to three percent of a person's estate,</p> <p>12 and that's how they went ahead and billed.</p> <p>13 So if you take that and look at the 20</p> <p>14 percent, they probably are generally the same. We</p> <p>15 decided to base ours on profits. But I don't</p> <p>16 remember other than that.</p> <p>17 Q. Do you recall whether or not you had</p> <p>18 discussions with your attorneys regarding these</p> <p>19 provisions?</p> <p>20 A. I do not know.</p> <p>21 Q. If you would turn to page four of this</p> <p>22 exhibit.</p> <p>23 A. Uh-huh.</p> <p>24 Q. And specifically paragraph 7.03.</p> <p>25 A. Uh-huh.</p>	<p>11:04:06-11:04:56 Page 48</p> <p>1 Q. Okay. Do you recall some of the specific</p> <p>2 partners who requested to inspect the books and</p> <p>3 records?</p> <p>4 MR. SAMUELS: Objection, timeframe.</p> <p>5 BY MR. WOODFIELD:</p> <p>6 Q. You can answer.</p> <p>7 A. Yes, I do.</p> <p>8 Q. And can you identify any of the ones that</p> <p>9 you recall that requested to inspect the books and</p> <p>10 records of the partnerships?</p> <p>11 MR. SAMUELS: Same objection.</p> <p>12 THE WITNESS: I cannot, do not remember</p> <p>13 the names. But there was a group of people in</p> <p>14 Boca Raton. If I see a list I could probably</p> <p>15 tell you a couple of them, in particular, the</p> <p>16 Festus Stacy, Helen and Festus Stacy, they sent</p> <p>17 their advisor, Patrick Kelly, in with a CPA.</p> <p>18 He came and inspected the books and records. I</p> <p>19 remember him going to our CPA, Ahearn and</p> <p>20 Jasco, having conversations with them. And he</p> <p>21 may have come in one or two times to inspect</p> <p>22 the books and records.</p> <p>23 BY MR. WOODFIELD:</p> <p>24 Q. He being who, this individual?</p> <p>25 A. Patrick.</p>
<p>11:02:53-11:03:54 Page 47</p> <p>1 Q. Entitled Books and Records on page four.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, was this amended and restated</p> <p>5 partnership agreement provided to all the partners</p> <p>6 who joined the partnership?</p> <p>7 A. I believe it was.</p> <p>8 Q. Okay. And pursuant to paragraph 7.03 did</p> <p>9 all the partners have the ability to inspect and</p> <p>10 audit the books and records of the partnership?</p> <p>11 MR. SAMUELS: Object to the form of the</p> <p>12 question.</p> <p>13 BY MR. WOODFIELD:</p> <p>14 Q. You can answer.</p> <p>15 A. Any time they wanted to.</p> <p>16 Q. And ultimately, let's say, pick a year,</p> <p>17 2007, do you recall approximately how many</p> <p>18 investors or partners you had in the partnership?</p> <p>19 A. Couple hundred. I can't tell you the</p> <p>20 number.</p> <p>21 Q. Now, at any time did any of those partners</p> <p>22 request to inspect the books and records?</p> <p>23 A. Yes.</p> <p>24 Q. On how many occasions?</p> <p>25 A. Anywhere between five and ten.</p>	<p>11:05:09-11:05:56 Page 49</p> <p>1 MR. SAMUELS: Same objection as to</p> <p>2 timeframe.</p> <p>3 THE WITNESS: Patrick Kelly, who was the</p> <p>4 financial advisor for the Festus Stacy</p> <p>5 Foundation.</p> <p>6 BY MR. WOODFIELD:</p> <p>7 Q. Do you recall when that inspection took</p> <p>8 place?</p> <p>9 A. I believe it was somewhere in July or</p> <p>10 June, but I don't remember the year. It may have</p> <p>11 been eight, seven, somewhere around there.</p> <p>12 Q. Did it take place in one day or was it</p> <p>13 multiple days?</p> <p>14 A. I believe he made two or three</p> <p>15 appointments to come in our office. I know I was</p> <p>16 not in on one of those dates. And I remember him</p> <p>17 going to the CPA, Mike Kuzy. I don't remember when</p> <p>18 that was.</p> <p>19 Q. Were all of the books and records of P&S</p> <p>20 and S&P made available for that inspection?</p> <p>21 A. All of them.</p> <p>22 Q. Okay. And where were the books and</p> <p>23 records of the partnerships maintained?</p> <p>24 A. 6550 North Federal Highway, Suite 210.</p> <p>25 Q. And what documents did your accountant</p>

<p>11:06:09-11:07:03 Page 50</p> <p>1 have?</p> <p>2 A. He probably would have just had his</p> <p>3 computer records. He wouldn't have had any</p> <p>4 physical documents unless it was year end. So if</p> <p>5 this was in the middle of the year, he would have</p> <p>6 just had tax returns and things like that on his</p> <p>7 computer. But he'd have no other records.</p> <p>8 Q. Now, you have indicated you thought of the</p> <p>9 approximate months of this inspection but not the</p> <p>10 year. Would this have taken place before the</p> <p>11 public exposure of Madoff --</p> <p>12 A. Oh, yeah.</p> <p>13 Q. -- being a Ponzi scheme?</p> <p>14 A. Yes.</p> <p>15 Q. So that would have been sometime before</p> <p>16 December 2008?</p> <p>17 A. Patrick Kelly was looking to make a huge</p> <p>18 investment into this investment we had, so I think</p> <p>19 he kind of came with a dual purpose in mind.</p> <p>20 Q. Was there any report generated to your</p> <p>21 knowledge as a result of that audit or</p> <p>22 investigation or inspection, I am sorry?</p> <p>23 A. No, not that I am aware of.</p> <p>24 Q. Did you have any subsequent conversations</p> <p>25 with anyone on behalf of that foundation concerning</p>	<p>11:08:12-11:09:40 Page 52</p> <p>1 Q. What about other than the foundation, did</p> <p>2 any of the other investors/general partners request</p> <p>3 to inspect the books and records?</p> <p>4 A. They did. There was this group in Boca</p> <p>5 Raton, they would come in from year to year. God,</p> <p>6 I just can't remember the names of the people. But</p> <p>7 we did have those from time to time. Somebody was</p> <p>8 there, they wanted the records, they were right</p> <p>9 there, we just put them in the conference room and</p> <p>10 showed them what they wanted.</p> <p>11 Q. How did it come about that S&P and P&S</p> <p>12 obtained additional investors?</p> <p>13 A. Well, Greg and I went ahead and, you know,</p> <p>14 we contacted various people that we knew. And</p> <p>15 there was a point in time where either Frank or</p> <p>16 Mike would say, hey, this is somebody that called</p> <p>17 us and said they want to invest with you. They</p> <p>18 gave them my name, and we would contact those.</p> <p>19 Usually they would contact us.</p> <p>20 Q. With regard to running the business of P&S</p> <p>21 and S&P --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- who was involved in running the</p> <p>24 business?</p> <p>25 A. Greg ran most of the business. I would</p>
<p>11:07:13-11:07:58 Page 51</p> <p>1 the inspection?</p> <p>2 MR. SAMUELS: Object to the form of the</p> <p>3 question.</p> <p>4 BY MR. WOODFIELD:</p> <p>5 Q. You can answer.</p> <p>6 A. I believe we probably would have -- I</p> <p>7 can't tell you. I know I talked to Patrick at some</p> <p>8 time, and he said everything looked real good, he</p> <p>9 was happy where everything was.</p> <p>10 Q. Now, you have identified this foundation</p> <p>11 that conducted this inspection?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Do you recall any other of the partners</p> <p>14 who also conducted any inspection of the books and</p> <p>15 records?</p> <p>16 MR. SAMUELS: Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: They also, Festus Stacy also</p> <p>19 sent somebody else in about three or four or</p> <p>20 five years earlier to look at the books and</p> <p>21 records as well. I don't remember his name.</p> <p>22 BY MR. WOODFIELD:</p> <p>23 Q. Was that someone on behalf of the</p> <p>24 foundation?</p> <p>25 A. Yes.</p>	<p>11:10:02-11:10:56 Page 53</p> <p>1 sit down and talk with the people. Greg was a</p> <p>2 former IRS auditor, so he was more of the</p> <p>3 statistician, the keeper of the books.</p> <p>4 Q. Okay. And what role did you play in the</p> <p>5 operation of the business?</p> <p>6 A. Well, we would -- there wasn't a lot to</p> <p>7 really do. When people -- it was much like a bank</p> <p>8 where people would make deposits and issue checks.</p> <p>9 So this wasn't something that really required a lot</p> <p>10 of time, a lot of decision making. It was just</p> <p>11 very simple and straightforward. It was a matter</p> <p>12 of accounting.</p> <p>13 Q. In the operation of these businesses, P&S</p> <p>14 and S&P, did Frank Avellino have any involvement in</p> <p>15 the management decisions?</p> <p>16 A. None whatsoever.</p> <p>17 MR. SAMUELS: Object to the form.</p> <p>18 THE WITNESS: None whatsoever.</p> <p>19 BY MR. WOODFIELD:</p> <p>20 Q. Did Mr. Bienes have any involvement in the</p> <p>21 management decisions?</p> <p>22 A. None whatsoever.</p> <p>23 Q. Did there come a time where your investors</p> <p>24 would request to have money taken out of the</p> <p>25 account?</p>

<p>11:11:10-11:12:11 Page 54</p> <p>1 A. All the time.</p> <p>2 Q. How was that implemented?</p> <p>3 A. They would go ahead and send us a letter</p> <p>4 that I recall. Like I said, this is before e-mail.</p> <p>5 So we'd get a formal request. And we handled this</p> <p>6 a couple different ways. If it was a small amount,</p> <p>7 we would just go ahead and write them a check. Or</p> <p>8 at some point in time I think we sent the checks</p> <p>9 out at the end of a quarter. So there was a back</p> <p>10 and forth of monies going out. Some people wanted</p> <p>11 money every quarter. Some people wanted money</p> <p>12 every year. So we had a little list of that. Like</p> <p>13 I said, this wasn't a huge, huge operation, so.</p> <p>14 Q. What were the mechanics of obtaining the</p> <p>15 funds from Madoff to give out to the individual</p> <p>16 partners who requested disbursements?</p> <p>17 A. I believe a fax was sent, I believe, or a</p> <p>18 call was made, one of the two. And we'd have the</p> <p>19 check the next day.</p> <p>20 Q. Who would send out that fax?</p> <p>21 A. Greg.</p> <p>22 Q. Was there anyone else in your office that</p> <p>23 was involved at all --</p> <p>24 A. Yes.</p> <p>25 Q. -- in this process?</p>	<p>11:13:24-11:14:22 Page 56</p> <p>1 day before they went out of business.</p> <p>2 Q. And how did it come about that you</p> <p>3 requested disbursement on that date?</p> <p>4 A. A check hadn't come in, and he was steady</p> <p>5 Eddie all the time. I mean, you asked him for</p> <p>6 money, you had a check the next day. And this was</p> <p>7 about, about a week late. And I remember Susan</p> <p>8 come in to me says, you know, I think you need to</p> <p>9 call him. We needed to get some more money. So I</p> <p>10 called him and I remember asking him for what</p> <p>11 happened with the check and that we needed another</p> <p>12 \$800,000.</p> <p>13 Q. Do you recall with whom you spoke?</p> <p>14 A. Jodi Crupi.</p> <p>15 Q. Had you ever spoken with her before?</p> <p>16 A. I never asked. The Madoff business was</p> <p>17 Jerry, what do you need, dah, dah, dah, dah, dah.</p> <p>18 It wasn't like a warm feely touchy thing. People</p> <p>19 didn't care. It was like speaking to someone at</p> <p>20 the bank; we just want money.</p> <p>21 Q. Did you ask for her or did she just answer</p> <p>22 the phone?</p> <p>23 A. She -- that day I wound up speaking with</p> <p>24 her.</p> <p>25 Q. And what was her response?</p>
<p>11:12:24-11:13:07 Page 55</p> <p>1 A. Susan Moss after the time.</p> <p>2 Q. And what was Susan Moss's role?</p> <p>3 A. She was a secretary/bookkeeper who worked</p> <p>4 part-time maybe 20 hours.</p> <p>5 Q. Do recall whether or not you ever made a</p> <p>6 call to Madoff's business for requesting a</p> <p>7 disbursement?</p> <p>8 A. Yes.</p> <p>9 Q. More than one occasion?</p> <p>10 A. Probably two.</p> <p>11 Q. That's all?</p> <p>12 A. Uh-huh.</p> <p>13 Q. So the majority of these were made by</p> <p>14 Mr. Powell and/or Susan Moss?</p> <p>15 A. Correct.</p> <p>16 Q. Now, when you made those requests do you</p> <p>17 specifically recall making those requests?</p> <p>18 A. Yes.</p> <p>19 Q. And on whose behalf did you make those</p> <p>20 requests?</p> <p>21 A. Sullivan & Powell, Powell, and P&S and</p> <p>22 S&P.</p> <p>23 Q. And when was that?</p> <p>24 A. My last request was made -- I can't tell</p> <p>25 you the first one. My last request was made the</p>	<p>11:14:40-11:15:50 Page 57</p> <p>1 A. I vividly remember this, vividly. This</p> <p>2 conversation I remember. There was a lot of noise</p> <p>3 going on in the background, a lot of noise that</p> <p>4 day. And I remember asking her, I says, you know</p> <p>5 we need the money; we didn't get the check. And</p> <p>6 she says -- it sounded like she had a cold, a</p> <p>7 really, really bad cold. And at the end of the</p> <p>8 conversation, I says, you know, I want to thank you</p> <p>9 guys, this money means a lot to people, some of the</p> <p>10 people in here they were using this to pay their</p> <p>11 electric bill whenever they had -- I said, I just</p> <p>12 want to thank you guys for going ahead and sending</p> <p>13 this money out.</p> <p>14 And I could tell now that that flu or that</p> <p>15 cold or that cough, they were going ahead and --</p> <p>16 they were tears, I know that now. And Madoff went</p> <p>17 out of business the next day. It was right around</p> <p>18 maybe 48 hours, 24 hours after that, I don't know,</p> <p>19 maybe 72 hours.</p> <p>20 And then even after the announcement was</p> <p>21 made, we went ahead and somehow she wired a check</p> <p>22 to our bank of \$800,000 after Madoff went out of</p> <p>23 business. And I have a feeling in my own gut that</p> <p>24 that conversation that we had and her going to</p> <p>25 tears, it went ahead and had her send that check</p>

11:16:05-11:17:03

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1 out to us.
2 **Q. Are you aware in this litigation that the**
3 **plaintiffs have alleged that Avellino and Bienes**
4 **used you as a front man?**
5 A. Yeah.
6 **Q. Is that true?**
7 A. That's a bald-faced lie.
8 **Q. With regard to the office space, do you**
9 **recall a point in time where Mr. Avellino and**
10 **Mr. Bienes had office space in the building that**
11 **your business was located in?**
12 A. Yes, as did Festus Stacy as well, yes. We
13 all shared the same offices, office floor.
14 **Q. And was that the 6550 North Federal**
15 **building?**
16 A. Correct.
17 **Q. Okay. Do you recall when you occupied**
18 **that space first?**
19 A. I believe it was somewhere around 1992 or
20 three or one, our lease was coming up. And in that
21 small group that we were a member of that I
22 referred to early on, there was a gentleman named
23 Scott Holloway. Scott in fact was the part owner
24 and office manager of that building. And he
25 himself had office space he wanted to sublet to us.

11:17:21-11:18:21

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1 And after a lot of deliberation, we didn't do this
2 right away, we sat down with Scott, we looked at
3 the space, we says, this would be just perfect. So
4 we actually sublet from Mr. Holloway. And we were
5 still in the same study group, so it was kind of a
6 really nice fit for us.
7 **Q. When you say study group, was Scott**
8 **Holloway in this Monday meeting --**
9 A. He was in another group.
10 **Q. -- you referred to?**
11 A. He was in another group with me.
12 **Q. Religious group?**
13 A. Yes.
14 **Q. Okay. Do you still occupy that space**
15 **today?**
16 A. No.
17 **Q. When did you leave that space?**
18 A. About four years ago.
19 **Q. When do you recall that Mr. Avellino and**
20 **Mr. Bienes occupied space in that same building?**
21 A. I don't recall. They may have been there
22 before, after, during. I don't know. It wasn't an
23 issue to us. We just could get a good deal on
24 their rent, and the size fit us absolutely perfect,
25 so.

11:18:31-11:19:22

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1 **Q. Do you recall discussions with**
2 **Mr. Avellino about him taking space in that**
3 **building?**
4 A. It was academic. I don't know if I
5 ever -- there was no reason to.
6 **Q. Did they end up having space on the same**
7 **floor as you?**
8 A. Uh-huh. Festus Stacy was across the hall,
9 and we and Scott were down at the other end, I
10 believe. We were the only ones on that whole
11 floor.
12 **Q. Do you have any understanding as to what**
13 **if any business Mr. Avellino and Mr. Bienes were**
14 **operating out of that space?**
15 A. I have no idea.
16 **Q. Do you have any understanding as to how**
17 **often they were in that space physically?**
18 A. I have never actually seen them very much.
19 **Q. Were you ever in that space?**
20 A. No.
21 **Q. Were there times when either Mr. Avellino**
22 **or Mr. Bienes visited your offices?**
23 A. Uh-huh.
24 **Q. How often would that happen?**
25 A. Well, while they were living here we would

11:19:41-11:20:27

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1 just chat if we ran into each other, how are things
2 going. And then after they went ahead and -- after
3 they went ahead and I think they both -- no. I
4 think Frank moved. He would stop in to the office
5 about maybe once a year when he had moved, and we'd
6 have discussions.
7 **Q. When you say moved, was that from Fort**
8 **Lauderdale to Palm Beach?**
9 A. Yes.
10 **Q. Okay. And again, do you have any idea**
11 **when that was?**
12 A. No idea when he moved.
13 **Q. Okay. Did Mr. Bienes come to your**
14 **offices?**
15 A. He would stop up from time to time, yes.
16 **Q. And what were the purposes of the visits**
17 **of Mr., let's start with Mr. Avellino to your**
18 **offices?**
19 A. We would talk, how you doing. We'd say,
20 hey, how are you doing with Madoff, what's going
21 on, you know, Bernie's doing well. We would have
22 just regular conversations. Just sometimes he left
23 a half hour, sometimes an hour and a half. We
24 would show them sometimes the rates of returns we
25 were getting. Just had probably about 15 minutes

<p>11:20:43-11:21:40 Page 62</p> <p>1 of it was business and the rest was just chitchat. 2 Q. Were you aware at the time that 3 Mr. Avellino was also invested with Madoff 4 personally? 5 A. Yes, because we got -- I don't -- I 6 shouldn't say. When we were in that office, I knew 7 he was doing some investing because we would get 8 their statements inadvertently. The statements all 9 looked the same from Madoff. And the mailman would 10 go ahead sometimes and give us their statements 11 thinking this was for us. So I knew there was 12 investments that were made specifically because of 13 those trading slips. 14 Q. Now, with regard to -- we looked before at 15 this what we marked as Exhibit 2, the partnership 16 agreement? 17 A. Uh-huh. 18 Q. The amended partnership agreement? 19 A. Uh-huh. 20 Q. And you mentioned the 20 percent 21 management fee that you included in that agreement. 22 Was that a management fee that you and Mr. Powell 23 actually took? 24 A. Yes. 25 Q. Okay. And how was that recorded in the</p>	<p>11:23:10-11:23:54 Page 64</p> <p>1 this happened, I have been actually trying to think 2 how we sat down with them and said, hey. And I 3 don't know whether they came to us or we came to 4 them. And an agreement was reached. And I know it 5 wasn't reached by me, because I don't remember ever 6 doing this, that we would give them 50 percent of 7 any monies in fact that we would make. So we would 8 get ten percent; they would get ten percent. 9 Q. And when you say they, who's the they? 10 A. I believe Michael and Frank got separate 11 checks. 12 Q. Okay. 13 A. I believe. 14 Q. And what about payment of management fees 15 to others, other than Frank and Mike? 16 A. Yes, they were to other people as well. 17 Q. And was that a decision that was reached 18 between you and Mr. Powell -- 19 A. Yes. 20 Q. -- to do that? 21 A. Only. We were the only ones that had 22 anything to do with our decisions in that business. 23 Q. And why did you decide to begin to share 24 your management fee with others? 25 A. Well, we figured it would be a tool to go</p>
<p>11:21:56-11:22:53 Page 63</p> <p>1 books and records of the business? 2 A. Don't remember. 3 Q. Was it taken on any regular basis, that is 4 monthly, quarterly, annually; do you recall? 5 A. No, I don't. 6 Q. Was that all handled by Mr. Powell? 7 A. Yes. 8 Q. Was your outside accountant involved at 9 all; do you know? 10 A. Not in that process, no. 11 Q. Now, did there come a time where you began 12 to share the management fees with others? 13 A. Yes. 14 Q. Now, when did that come about? 15 A. Probably early on it was a handful of 16 people. There weren't a lot, maybe five, ten 17 people total. 18 Q. And was Mr. Avellino involved at all in 19 your decision to share those management fees with 20 others? 21 A. I have no idea. 22 Q. Well, who made the decision to begin to 23 share your management fee with others? 24 A. Greg and myself did. And at some point in 25 time, I don't know, we sat down, I don't know how</p>	<p>11:24:09-11:25:27 Page 65</p> <p>1 ahead and say -- have people either invest more 2 money or find somebody else to bring into the 3 partnership. 4 Q. And ultimately do you recall with how many 5 different people you shared those management fees? 6 A. Somewhere in the neighborhood of five or 7 ten. I don't know. Could be 15. Could be eight. 8 I don't know. I have no idea. 9 Q. And do you have any recollection as to 10 when that commenced? 11 A. No. It was early on in the -- when S&P 12 and P&S started. The majority of those fees would 13 have gone to Michael and Frank. 14 MR. WOODFIELD: Mark this, it's a 15 composite exhibit with a cover letter dated 16 January 3, 1996, from Greg Powell to Sam, as 17 Defendant's 3. 18 (Defendant's Exb. No. 3, Letter, Jan. 3, 19 1996, w/attachments, 0017720, 17714, 17713, 17712, 20 17557.) 21 BY MR. WOODFIELD: 22 Q. Mr. Sullivan, I show you what I have 23 marked as Exhibit 3. It's a composite exhibit of 24 various communications. 25 A. Uh-huh.</p>

11:25:37-11:26:29

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1 Q. All having to do with this individual Sam
2 Rosen.
3 A. Right.
4 Q. With regard to this initial, the page one,
5 this January 3, 1996 letter, you see it's from
6 Mr. Powell. Would you take a moment to look at
7 that, and I will ask you some questions about it?
8 A. Uh-huh.
9 Q. Now, initially I see it's on stationery of
10 Sullivan & Powell. Was that an actual, your
11 business operating at that time 1996?
12 A. I can't tell you.
13 Q. Okay. Now, take a look at this letter.
14 You will see that generally it discusses fee
15 splitting --
16 A. Uh-huh.
17 Q. -- with Mr. Rosen?
18 A. Uh-huh.
19 Q. Do you recall -- and it's 1996. Do you
20 recall whether or not this was early on when the
21 decision was made to begin to share management fees
22 with others?
23 MR. SAMUELS: Object to the form of the
24 question.
25 THE WITNESS: It appears that way.

11:26:37-11:27:40

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1 BY MR. WOODFIELD:
2 Q. Do you recall Mr. Sam Rosen?
3 A. Oh, sure.
4 Q. How did he come in to your business; do
5 you recall?
6 A. Yes, through Michael and Frank.
7 Q. And do you know what their relationship
8 was?
9 A. I guess they were friends. I have no
10 idea.
11 Q. Do you know what Mr. Rosen's business was?
12 A. Yes, he was involved -- he was kind of
13 odd. He was a dear Jewish gentleman selling books
14 to catholic churches up in New York.
15 Q. Did he have some connection with south
16 Florida?
17 A. To the best of my knowledge, he lived
18 somewhere in Boca.
19 Q. Do you know whether or not he was an
20 investor in A&B?
21 A. Yes, he was an investor in A&B.
22 Q. Okay. Was communication, such as this
23 letter we are looking at, this January 3, 1996
24 letter, maintained in the books and records of P&S
25 and S&P?

11:27:49-11:28:20

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1 A. Couldn't tell you.
2 Q. Okay.
3 A. I can tell you this, Greg was very
4 methodical, and the things he did in the books and
5 records were in excellent order.
6 Q. If you would, turn to the second page, and
7 take a moment to look at that.
8 A. Uh-huh.
9 Q. See this is entitled From the Desk of Sam
10 Rosen?
11 A. Uh-huh, correct.
12 Q. And it's addressed to Mike. I assume
13 that's you?
14 A. Uh-huh, I would imagine so.
15 Q. Now, there's no date on this.
16 A. Right.
17 Q. Do you have any recollection or does this
18 refresh your recollection at all --
19 A. No.
20 Q. -- with regard to -- let me just finish
21 the question.
22 A. I am sorry.
23 Q. -- with regard to discussions you had with
24 Sam Rosen about splitting fees?
25 A. Sam would have been one of the people I

11:28:37-11:29:23

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1 was referring to in my earlier statement that we
2 talked to certain people about bringing people in.
3 So Sam was one of those people.
4 Q. If you turn to page three of this
5 composite exhibit, you will see it's a letter to
6 you from Sam Rosen dated March 23, 1995.
7 A. Uh-huh, yes.
8 Q. And in it it mentions an individual Al
9 Newman. Do you recall Al Newman?
10 A. I do.
11 Q. And who was Al Newman?
12 A. He was a friend of Sam's.
13 Q. Was he also an investor in P&S?
14 A. Yes. I don't know whether he was an S&P
15 or P&S.
16 Q. Okay. But he was in one?
17 A. Yes.
18 Q. One of the two?
19 A. Yes.
20 Q. And was he also an individual with whom
21 you shared management fees?
22 A. I can't tell you.
23 Q. Take a moment and just look at the second
24 paragraph in these bullet points if you would.
25 A. Uh-huh, okay.

<p>11:29:40-11:30:31 Page 70</p> <p>1 Q. Do you see it references in here about 2 individuals that Al Newman brought into P&S? 3 A. Uh-huh. 4 Q. Do you recall whether or not -- does this 5 refresh your recollection at all as to whether or 6 not Mr. Newman was paid a portion of the management 7 fees for bringing these individuals in? 8 A. Can't remember. 9 Q. Now, in this second paragraph in the 10 sentence that begins "Al should get all residuals," 11 what is he referring to by the term residuals; do 12 you know? 13 A. I don't. 14 Q. Is it your belief that he was referring to 15 a portion of the management fees? 16 A. It would appear that way. 17 Q. Other than the term management fees, were 18 these fees that were paid to others characterized 19 in any other fashion; do you recall? 20 MR. SAMUELS: Object to the form of the 21 question. 22 THE WITNESS: Not that I am aware of. 23 BY MR. WOODFIELD: 24 Q. Do you know whether or not the term, let's 25 say, referral fee was ever used, or commissions?</p>	<p>11:31:49-11:32:37 Page 72</p> <p>1 remember Richard Long, though. He didn't live in 2 this state, but I remember speaking to Richard on 3 various occasions. 4 Q. But when communications like this came in, 5 was it ultimately resolved as to whether or not an 6 individual would receive a portion of the 7 management fees? 8 A. Oh, yes, yeah. 9 Q. If you would turn to the last page -- 10 A. Uh-huh. 11 Q. -- of this exhibit entitled Summary of 12 Account, P&S Associates General Partnership, 13 Account of Edith and Sam Rosen. Do you see that? 14 A. I do. 15 Q. Now, is this document, this summary of 16 account, a standard form that was utilized in the 17 records of P&S and S&P? 18 A. I have no idea. 19 Q. Have you ever seen a form like this 20 before? 21 A. Yes. 22 Q. Where have you seen that form before? 23 A. In our records. 24 Q. Okay. Were summaries like this maintained 25 for all the investors?</p>
<p>11:30:50-11:31:37 Page 71</p> <p>1 A. I am sure any derivative of that that 2 equally means the same would have been included. 3 Everyone has a different vernacular and vocabulary 4 for these things. So I am sure people can have ten 5 different names all meaning the same thing. 6 Q. Do you recall how it was maintained on the 7 books and records of -- strike that. 8 Do you recall how it was characterized on 9 the books and records of P&S and S&P? 10 A. No. But I am sure it would be crystal 11 clear if somebody looked at the books and records 12 what they were. I don't know if they would have 13 been in S&P and P&S. I have no idea. 14 Q. If you would turn to the next page, you 15 see this is again another undated? 16 A. Uh-huh. 17 Q. This one typed note from Sam to you? 18 A. Uh-huh. 19 Q. He is discussing obtaining 50 percent of 20 the management fees -- 21 A. Right. 22 Q. -- from Richard Long? 23 A. Right. 24 Q. Do you have any recollection of that? 25 A. I don't remember any of these letters. I</p>	<p>11:32:51-11:42:12 Page 73</p> <p>1 A. I haven't looked at those books and 2 records in so long I couldn't tell you. 3 Q. Okay. To your knowledge were these 4 summaries maintained in the books and records of 5 P&S? 6 A. They would have been somewhere. I don't 7 know how, in what fashion, and where any of this 8 would be. 9 Q. Would they be available for any partner to 10 inspect if they requested? 11 A. Probably to that individual -- all the 12 records were there. If someone asked for records 13 and wanted something specific, we would give them 14 any records they needed to see. 15 Q. And this document, if I understand it, on 16 the right-hand side, the second column over, 17 identifies all the management fees paid on the 18 account of Edith and Sam Rosen from 1993 to 2008? 19 A. Uh-huh, that's what it appears to be. 20 MR. SAMUELS: Whenever you get a good time 21 for a break? 22 MR. WOODFIELD: Sure. Five minutes. 23 (A recess was taken.) 24 MR. SAMUELS: I was just advised by asking 25 about lunch that counsel for Mr. Sullivan plans</p>

<p>11:42:22-11:43:06 Page 74</p> <p>1 on terminating this deposition at 1:30. 2 MR. WINDERMAN: Adjourning. 3 MR. SAMUELS: I would like to note that 4 this deposition was noticed well in advance 5 with coordination by everybody. It was 6 cross-noticed by counsel for Mr. Bienes. It 7 was cross-noticed by me as well. 8 So how on earth you thought this was going 9 to be done, after your client showed up an hour 10 late in particular, this is not a fair use of 11 our time. You never mentioned this to us 12 earlier. The deposition is noticed to continue 13 from day to day until complete. So if you 14 leave, you are doing so at your own risk, and 15 we'll be seeking costs and fees. 16 MR. WINDERMAN: Thank you. 17 MR. SAMUELS: You are welcome. 18 MR. ETRA: On behalf of Bienes, I think we 19 should all work together and deal with each 20 others' scheduling issues. 21 MR. SAMUELS: Oh, yeah, for sure. 22 MR. ETRA: For legitimate scheduling 23 reasons, and to go punitive doesn't seem 24 appropriate. We can all work together and get 25 this done.</p>	<p>11:44:03-11:44:35 Page 76</p> <p>1 possibly get. The answers have been consistent 2 with the answers given here, which is that 3 Mr. Bienes and Mr. Avellino had absolutely no 4 involvement with my client's business. 5 It is a burden on my client for 6 Mr. Samuels to even think that he needs another 7 day with my client. And we'll be moving for a 8 protective order in that regard. 9 MR. SAMUELS: Thank you. That's pretty 10 funny. Go ahead. Thank you for the 11 entertainment. 12 MR. WINDERMAN: You are welcome. 13 MR. WOODFIELD: All set? 14 MR. WINDERMAN: Yes, let's go. 15 THE WITNESS: That's why I like to come to 16 these. 17 MR. SAMUELS: Well, there's going to be 18 more days of it. 19 MR. ETRA: Let's move on. 20 MR. WOODFIELD: May I have this letter 21 from Frank Avellino to Greg Powell dated 22 June 5th, 2000, marked as Exhibit 4, please. 23 (Defendant's Exb. No. 4, Letter, June 5, 24 2000, w/attachments, 0019210 - 119214.) 25 ///</p>
<p>11:43:12-11:43:51 Page 75</p> <p>1 MR. WINDERMAN: And we will. 2 MR. SAMUELS: And I plan on doing that. 3 But, you know, I didn't need to be preparing 4 for this deposition like I did. I could have 5 scheduled things for this afternoon. I have my 6 schedule to deal with as well. 7 MR. WINDERMAN: Let me say something for 8 the record. 9 MR. SAMUELS: And we have deadlines coming 10 up in this case, and not being able to complete 11 this. So you understand, we are going to need 12 a full day with him when we reconvene, so we'll 13 understand when we reschedule. 14 MR. WINDERMAN: Mr. Samuels is 15 disingenuous. They've taken my client's 16 deposition. 17 MR. SAMUELS: That's not true. It was a 18 statement. 19 MR. WINDERMAN: Excuse me, statement. It 20 was like a deposition. He produced -- he had 21 hundreds of pages of documents that he went 22 over with my client. He took it for three or 23 four hours. His partners or associates took it 24 for another three hours. They were satisfied 25 that they got all the answers that they could</p>	<p>11:45:14-11:46:15 Page 77</p> <p>1 BY MR. WOODFIELD: 2 Q. Mr. Sullivan, I show you what we have 3 marked as Exhibit 4. And I appreciate the fact 4 that it's a letter from Frank Avellino to your 5 partner, Greg Powell. But let me ask you, do you 6 recall whether or not you have seen this letter 7 before? 8 A. Never. 9 Q. Take a moment to look at it. Let me ask 10 you some questions about it. 11 A. Okay. 12 Q. Initially attached to this letter is a 13 four-page document with a list of various 14 individuals or entities together with a dollar 15 amount. Do you recognize -- with the heading of 16 P&S Associates on the first page of this document 17 and S&P Associates on the second page of this 18 document. In looking at this document can you 19 identify what that document is, that is this 20 four-page list? 21 A. They are just names of people that 22 invested into the partnership. Which page are you 23 referring to? 24 Q. Well, in a whole do you know whether or 25 not this four-page document identifies all of the</p>

<p>11:46:31-11:47:34 Page 78</p> <p>1 individuals who were invested in the partnership as 2 of June 5th, 2000? 3 A. Yeah, I would have no way of knowing if it 4 contained all the names. 5 Q. Okay. 6 A. I certainly recognize a lot of these 7 names. 8 Q. And recognize them as being invested in 9 either P&S or S&P? 10 A. Yes. Yes. 11 Q. Going back to the cover letter from Frank 12 Avellino to Greg Powell. 13 A. Uh-huh. 14 Q. Do you have any recollection of the 15 communication between Mr. Powell and Mr. Avellino 16 concerning identification of these accounts? 17 A. I am not sure of the question, I am sorry. 18 Q. Okay. Do you have any recollection of 19 what if any discussion took place between Greg 20 Powell and Frank Avellino at or about this time 21 regarding identification of the individuals that 22 are listed on the four pages? 23 A. I have no idea. 24 Q. Okay. Do you recall when a decision was 25 made to begin to share management fees with</p>	<p>11:49:07-11:50:07 Page 80</p> <p>1 Q. -- who became S&P investors, whether or 2 not they were actually brought to P&S and S&P by 3 either Mr. Avellino or Mr. Bienes? 4 A. We would definitely have known that 5 because we would have asked. 6 Q. Okay. 7 A. If we didn't know someone, we wouldn't 8 probably take the call. So we would have done 9 enough as little as it was due diligence to find 10 out how they even came to call us. 11 Q. It refers in this letter to, as an example 12 this paragraph, this sentence that states, "The 13 other accounts like Scott Holloway" -- 14 A. Uh-huh. 15 Q. -- "Dick Wills, et cetera" -- 16 A. Yes. 17 Q. -- "were never part of my old accounts." 18 Do you know what is referred to as "my old 19 accounts"? 20 A. The only thing that I could possibly 21 imagine is these were people that we knew that we 22 brought in ourselves into the investment. 23 Q. We being whom? 24 A. Myself -- I am sorry. Greg Powell and 25 myself.</p>
<p>11:47:57-11:48:54 Page 79</p> <p>1 Mr. Avellino or Mr. Bienes? 2 A. No. 3 Q. Do you know how it came about as to the 4 identification of the various investors that would 5 be attributed to Mr. Avellino and Mr. Bienes for 6 the determination of the amount of the management 7 fees? 8 A. Well, we wouldn't let anyone into the 9 investment unless we knew them. This was not an 10 open investment. This was very closed. It was 11 just -- these were small partnerships. They 12 weren't big. So we would know about the people or 13 how they would have come in. We weren't open for 14 business per se. 15 Q. Do you know whether or not you and 16 Mr. Powell made a decision to compensate 17 Mr. Avellino and Mr. Bienes with half of the 18 management fees for any of the investors in P&S or 19 S&P that had been A&B investors? 20 A. I know what happened. I don't recall how 21 that happened. 22 Q. Okay. So in that connection do you know 23 whether or not those various individuals who were 24 A&B investors -- 25 A. Yes.</p>	<p>11:50:27-11:51:19 Page 81</p> <p>1 Q. How is it determined as to what investors 2 would be credited to Mr. Avellino and Mr. Bienes 3 for payment of half of the management fees? 4 A. If the person would have said that they 5 were referred by either Frank and/or Mike, that 6 would have been real clear. So simply by asking a 7 couple questions, we would easily determine where 8 that person came from. Just as when you guys get 9 clients you want to find out something about them, 10 we do the same thing. 11 Q. Was the decision by you and Mr. Powell to 12 pay half of the management fee -- 13 A. Uh-huh. 14 Q. -- to Mr. Avellino and Mr. Bienes -- 15 A. Uh-huh. 16 Q. -- different than your decision to pay 17 half of the management fee to any of the other 18 individuals to whom you made payments? 19 A. Same agreement, nothing special. 20 Q. And when we use the term, when you use the 21 term agreement, was there anything reduced to 22 writing to that effect? 23 A. Not that I remember. 24 Q. Was there any other obligation or 25 contribution that was required by any of the</p>

11:51:40-11:52:42

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1 individuals to whom you paid management fees to be
2 involved in the business in any fashion?
3 A. Nothing we did. It was a handshake.
4 **Q. In the next sentence down, let me just**
5 **read it, it's two sentences, this paragraph, "In**
6 **summary, the P&S accounts with Monsignor Kelly**
7 **may be the only accounts we may have some claims**
8 **on."**
9 A. Uh-huh.
10 **Q. "Since you only take half of the**
11 **management income and give the other half to**
12 **charity, I do not see how this can be negotiated."**
13 **Now, do you understand what that's being**
14 **referred to there?**
15 A. I don't have a clue.
16 **Q. Do you have any understanding or any**
17 **recollection about giving half of the management**
18 **fee or some portion of the management fee to**
19 **charity?**
20 A. Okay. Father Kelly got some part of the
21 management fee. And I believe Father Kelly's part
22 was cut to -- and I am not sure how this worked --
23 the Kelco Foundation. And I am not sure whether --
24 I am pretty sure Father Kelly's, Monsignor Kelly's
25 money for this went to a charity, the Kelco

11:52:59-11:54:43

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1 Foundation.
2 **Q. How was it determined as to how much of**
3 **the management fee to pay to Monsignor Kelly and/or**
4 **his entity?**
5 A. We did the same thing with everybody. We
6 gave them half of our management fee. It was very
7 simple.
8 **Q. But how was that amount determined with**
9 **regard to Kelly?**
10 A. It would have been half of whatever
11 referrals he made. You just look at what the
12 profit was, boom, divide it by two, there you go.
13 **Q. So to your knowledge Monsignor Kelly also**
14 **referred clients to P&S and S&P?**
15 A. Yes. Not a lot.
16 Are we finished with this?
17 **Q. Yes. Thanks.**
18 **MR. WOODFIELD:** Mark this next document,
19 which is an e-mail from, or at least the cover
20 is an e-mail from Mike Kuzy to, well,
21 mdsassoc@bellsouth.net, dated February 19,
22 2008, as Exhibit 5, please.
23 (Defendant's Exb. No. 5, E-mail
24 19 Feb. 2008 mkuzy to mdsassoc w/attachments,
25 0013189 - 13198.)

11:54:53-11:55:57

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1 **BY MR. WOODFIELD:**
2 **Q. Mr. Sullivan, I show you what's been**
3 **marked as Exhibit 5 now. You previously identified**
4 **this mdsassoc@bellsouth.net as an e-mail address of**
5 **yours, correct?**
6 A. Uh-huh.
7 **Q. And again, could you tell us who Mike Kuzy**
8 **is?**
9 A. He was our -- that was the firm that
10 handled our tax returns and did our -- they went
11 and handled the books and records for tax purposes
12 for P&S S&P.
13 **Q. How did it come about that you retained**
14 **them for those services?**
15 A. I knew his partner whose name was Bill
16 Tupin. He was, I think, one of the partners of
17 Ahearn and Jasco. I met him also at the tax
18 council. And I went ahead -- and I believe they
19 were two blocks from us. And I believe initially I
20 talked to Bill and then Mike took over from Bill.
21 **Q. Did you retain them early on in the**
22 **business of S&P; do you recall?**
23 A. It had to be early on because we did not
24 want to do the tax returns ourselves. We wanted to
25 hire an independent third party who was arms length

11:56:14-11:57:16

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1 from us to go ahead and prepare the tax returns.
2 So if any partner had questions, they could
3 directly call the CPA firm who prepared the K-1s
4 and the 1065s.
5 **Q. Did Frank Avellino or Michael Bienes have**
6 **any involvement in your decision to retain this**
7 **accounting firm?**
8 A. Not at all.
9 **Q. Looking at what we have marked as**
10 **Exhibit 5.**
11 A. Yes.
12 **Q. You see actually it's addressed to Susan?**
13 **That's Susan Moss?**
14 A. Correct.
15 **Q. Okay. It states, "I took another look at**
16 **accrued fees in P&S. Please see updated financial**
17 **and management fee due worksheets attached. Plug**
18 **is now gone. Let me know if any questions. If you**
19 **disagree, please update with correct numbers.**
20 **Thanks, Mike."**
21 **So it appears in this letter that Mr. Kuzy**
22 **was involved in providing some calculation of the**
23 **management fees; is that your recollection?**
24 A. Michael went over all our books and
25 records to make sure we were accurate with

<p>11:57:32-11:58:24 Page 86</p> <p>1 everything we did. So we literally turned our 2 books and records over to him to concur that the 3 records and the numbers were correct. So he 4 probably would have gone over this letter. And 5 that's what we paid them to do, to make sure 6 everything we did was correct. 7 Q. Including the determination of the amount 8 of the management fees? 9 A. He probably would have just got our 10 year-end records and just redid the calculations to 11 make sure they were correct. 12 Q. In this second line when it refers to 13 "plug is now gone," what does that refer to? 14 A. I have no idea. It's just crazy. I don't 15 know. Maybe it's a typo for something. It doesn't 16 make any sense. Kind of funny. 17 Q. Looking at this, would you turn to the 18 second page? 19 A. Sure will. 20 Q. This appears to be a P&S statement for the 21 period of time January 1, 2007, through 12/31/2007? 22 A. Uh-huh. 23 Q. Is this the type of document that would be 24 prepared by Mr. Kuzy? 25 A. I don't know.</p>	<p>11:59:40-12:00:13 Page 88</p> <p>1 his investment split. That's my assumption. 2 Q. And looking further down, do you see the 3 line item Management Fees with a dollar figure 4 attached to that? 5 A. Yes. 6 Q. And does that represent the total amount 7 of management fees that were paid for the year 8 2007? 9 A. I can't tell you what that means. 10 Q. Okay. Would you turn to the third page of 11 this exhibit? 12 A. Uh-huh. 13 Q. And you see this is titled 2007 P&S 14 Management Fees Calculation? 15 A. Uh-huh. 16 Q. And in parentheses Corrected? 17 A. Uh-huh. 18 Q. Are you familiar with this document? 19 MR. SAMUELS: I am going to object to the 20 form. My next page says 2006. 21 MR. WOODFIELD: What did I say? 22 MR. SAMUELS: 2007. 23 MR. WOODFIELD: I said six, didn't I? 24 Well, whatever I said. 25 ///</p>
<p>11:58:32-11:59:26 Page 87</p> <p>1 Q. Do you know whether or not this is a type 2 of document that he reviewed? 3 A. Don't know. 4 Q. Are you familiar with this document? 5 A. No. 6 Q. Have you seen this or similar documents 7 before? 8 A. Yes, in passing. 9 Q. Were these part of the records of P&S? 10 A. I don't know what's in there. I have no 11 idea. I am sure it -- they didn't pop out of 12 nowhere. 13 Q. Looking at this page two, the line item 14 Accrued Management Fees Due MDS? 15 A. Uh-huh. 16 Q. 12/31/07? 17 A. Uh-huh. 18 Q. And it has a dollar amount. What is MDS? 19 A. That would have been the company I would 20 have put my -- the 20 percent into. 21 Q. Okay. And the next line down is Accrued 22 Contribution Due Kelco 12/31/07. Do you know what 23 that is? 24 A. I am assuming that that was the money we 25 were paid to Father Kelly's charity as a result of</p>	<p>12:00:32-12:01:30 Page 89</p> <p>1 BY MR. WOODFIELD: 2 Q. At the top of this document it says 2006 3 P&S Management Fees Calculation in the parentheses 4 Corrected, right? 5 A. Uh-huh. 6 Q. Are you familiar with this type of 7 document? 8 A. I have seen something like this. 9 Q. Were these kinds of -- were documents such 10 as this generated by or on behalf of Mr. Powell? 11 A. I can't tell you. 12 Q. In looking at this document, do you see 13 where it has identification of amounts paid to 14 Kelco YTD, year to date? 15 A. I don't see that. 16 Q. Here, dollar figures. Do you understand 17 this document in looking at it? 18 A. I am looking. I am trying to find it. I 19 can't put my eyes on what you are pointing to. 20 Q. (Indicating). 21 A. Okay, I see that. 22 Q. Do you understand what this document 23 reflects? 24 A. No, I don't. 25 Q. What about further down when it has a line</p>

<p>12:01:48-12:02:36 Page 90</p> <p>1 item Management Fees 2005 Various, one, two, three, 2 five checks, and over on the right Michael D. 3 Sullivan. Do you know whether or not these are 4 management fees that were either paid or accrued to 5 you? 6 A. I can't tell you what this document is, 7 says. I have seen it. I cannot tell you. I 8 didn't come up with this document, so I can't tell 9 you. 10 Q. Who in your office, the office being P&S 11 or S&P, would have been responsible for generating 12 the documents such as this? 13 A. Mr. Powell. 14 Q. What about Susan Moss, would she have some 15 involvement in this? 16 A. After, after Greg had passed away. I 17 don't know what year. I don't know. I forgot when 18 he would have done that. 19 Q. And you don't recall, as I recall from 20 your prior testimony, the year that Mr. Powell 21 died? 22 A. Don't. There's only two people that would 23 have prepared something like this, either Greg or 24 Susan, that's it. 25 Q. Could it have been prepared by Mr. Kuzy?</p>	<p>12:03:54-12:04:55 Page 92</p> <p>1 Q. -- "accrued A&B year to date"? 2 A. Uh-huh. 3 Q. Do you know what that represents? 4 A. No, I don't. 5 Q. If you would just look through these next 6 several pages which are similar to the documents we 7 have just discussed. 8 A. Uh-huh. 9 Q. And let me ask you whether or not you had 10 any knowledge of these documents or involvement in 11 reviewing or calculating these documents? 12 A. I am looking through them as we speak. 13 They all appear to be similar type documents. And 14 I could tell you I have never prepared any of 15 these. I have seen things like these, but I am not 16 familiar with these documents. 17 Q. Do you know when management fees were 18 first paid to Frank Avellino or Michael Bienes? 19 A. I can't remember. 20 Q. Would that be in the records of P&S and 21 S&P? 22 A. It would appear in records similar to 23 that. They appear somewhere. I can't tell you 24 what records. Since I don't have the records, I 25 couldn't tell you.</p>
<p>12:02:49-12:03:40 Page 91</p> <p>1 A. Could have. Possible. 2 Q. On this page that we are looking at in the 3 lower left-hand column under the heading Kelco 4 Clients -- 5 A. Uh-huh. 6 Q. -- and it lists a dozen or so -- 7 A. Yes. 8 Q. -- entities or individuals. 9 A. Uh-huh. 10 Q. Are you familiar with those names? 11 A. I am. 12 Q. Who are these either individuals or 13 entities? 14 A. They would have been the clients that were 15 referred to me by Monsignor Kelly, and the HG 16 stands for Holy Ghost, about seven or eight of 17 them. 18 Q. And was this list utilized in determining 19 the amount of management fees to pay to Monsignor 20 Kelly and/or his entity? 21 A. It would have had to have been, something 22 this or very similar. 23 Q. Look over to the right, and under it has 24 "A&B due from current year total paid A&B" -- 25 A. Uh-huh.</p>	<p>12:05:28-12:06:28 Page 93</p> <p>1 Q. Would those be included in the records 2 that were provided to Berger Singerman? 3 A. Yes. Oh, absolutely. 4 MR. WOODFIELD: Mark this next document, 5 one-page document as Defendant's 6. 6 (Defendant's Exb. No. 6, Report, July 13, 7 2005, 0014452.) 8 BY MR. WOODFIELD: 9 Q. Mr. Sullivan, I will show you what I have 10 marked as Defendant's 6, and ask you to take a look 11 at that, and ask if you can identify this document? 12 A. Yes, I can. 13 Q. And what is it? 14 A. This would have been a typical report that 15 we would have sent on a quarterly basis to one of 16 our investors. 17 Q. And in this case the investor is? 18 A. Ersica Gianna. 19 Q. And do you recall that individual? 20 A. I know her very well. 21 Q. And how did it come about that you knew 22 her? 23 A. I represented her on an IRS matter. Her 24 husband had left her. We had become dear friends. 25 She had known my mother. And she just got to be a</p>

<p>12:06:48-12:07:34 Page 94</p> <p>1 good -- we kind of took care of her when her 2 husband left her. She was going through an 3 emotional time. She's an older lady, very sweet 4 lady. And that's about it. 5 Q. Do you know whether or not she was an 6 investor in A&B? 7 A. I don't believe she was. 8 Q. Did you handle the accounts for her at any 9 point in time? 10 A. No, never did. 11 Q. But at some point in time she became an 12 investor in P&S and S&P? 13 A. One of them, yeah. 14 Q. Do you recall how that came about? 15 A. I would have probably sat down with her 16 and talked to her and let her know. And she 17 trusted my judgment. And she would have put some 18 money in here at the time. 19 Q. Now, is this a typical statement that was 20 provided to all investors in S&P or P&S? 21 A. Correct. 22 Q. And so you are familiar with this type of 23 form? 24 A. Yes, I am. 25 Q. And this is for a six-month period of</p>	<p>12:08:53-12:09:59 Page 96</p> <p>1 figure next to it, do you have any recollection of 2 the management fee expense line item whether that 3 represented a portion of the management fees that 4 were paid out attributed to this individual's 5 account? 6 A. Could be. I am not sure. The 7 miscellaneous expenses, that lower amount, would 8 have had to be for the minimal expenses. The 9 management fee expenses would have probably been 10 for the management fee we collected, I would 11 assume. 12 Q. So is it your recollection that the 20 13 percent management fee that you took from P&S and 14 S&P was reflected in the activity status reports 15 that were provided to the investors? 16 A. Yes, we always did, to the best of my 17 knowledge. 18 Q. Do you recall how you came up with the 19 format of this statement? 20 A. No. 21 Q. Did the format of the statements that you 22 sent to investors change over the years? 23 A. I believe it did. May have changed two, 24 three times, but I know it changed. Sometimes we 25 just decided we didn't like that or people would</p>
<p>12:07:47-12:08:37 Page 95</p> <p>1 time? 2 A. I doubt it. It possibly would have been 3 for a quarter. Oh, maybe it was. For some 4 reason maybe we did -- I don't remember. This one 5 purely shows a quarter. I had thought we had done 6 quarterlies, to be honest. Maybe we did six 7 months. 8 Q. Now, on this activity status report it has 9 a line item of Management Fee Expense? 10 A. Correct. Right. 11 Q. What does that represent? 12 A. Certain years we had management expenses, 13 whether it be accounting or legal or office or 14 whatever, so it would have been an expense taken 15 out. I don't know if they were there every year, 16 but certain years there were just office expenses. 17 Q. If you look above that item management fee 18 expense, it says Miscellaneous Expenses -- 19 A. Uh-huh. 20 Q. -- with an asterisk, and you see down 21 below it says "Miscellaneous expenses include legal 22 and accounting fees, taxes and bank service 23 charges." 24 A. Uh-huh. 25 Q. So in light of that, which has a dollar</p>	<p>12:10:10-12:10:59 Page 97</p> <p>1 say, maybe you could do this or that. So if we 2 thought we needed to do that, we just changed the 3 format. 4 Q. And when you say we, who was involved in 5 the decision to change the format? 6 A. It would have been Greg Powell and myself. 7 Q. Was Mr. Avellino involved in the decision 8 with regard to the change of the format of the 9 activity status reports? 10 A. No. 11 Q. Is that equally true of Mr. Bienes? 12 A. That's correct. 13 Q. You see on this particular statement it 14 has a net annualized return of 6.87 percent? 15 A. Uh-huh. 16 Q. Do you know how that was calculated? 17 A. No, I don't. I can assume, but I am not 18 going to speculate. 19 Q. Based upon your prior testimony I believe 20 you stated that P&S and S&P had either two or three 21 accounts with Madoff; is that correct? 22 A. We only had two accounts. 23 Q. Two accounts? One for P&S and one for 24 S&P? 25 A. Correct.</p>

<p>12:11:10-12:12:22 Page 98</p> <p>1 Q. I may have asked you this before; I don't 2 recall your answer. What's the distinction between 3 the P&S and S&P? 4 A. We wanted to get as many accounts with 5 Madoff as we could. So when I talked to Madoff 6 initially, we were thinking, gee, you know, where 7 could this go. You know, this was just a real 8 small, tiny thing. And we said, you know, maybe we 9 should plan. 10 So I think we may have asked him for three 11 or four accounts. He said, you are going to have 12 two accounts and two accounts alone. I did call 13 him at various times, asked him if I could have 14 other partnership accounts. He told me no. So it 15 came up to S&P, Sullivan & Powell and Powell & 16 Sullivan, and that's how we came up to that. 17 Q. Do you have any understanding as to 18 whether or not either Mr. Avellino or Mr. Bienes 19 communicated with Mr. Madoff with regard to you 20 opening the accounts on behalf of P&S and S&P? 21 A. I have no way to know that. 22 Q. So do you recall then that from Madoff 23 with regard to each one of your two accounts -- 24 A. Yes. 25 Q. -- you would receive just a statement for</p>	<p>12:14:04-12:14:43 Page 100</p> <p>1 had any involvement in the implementation of the 2 statements that you just mentioned? 3 A. Unless Greg and him had a secret meeting, 4 I don't know how that would be possible. I am sure 5 Greg would have mentioned to me. But that's not 6 the nature of Greg. Greg just did what he wanted 7 to do. 8 Q. And would that be equally true with regard 9 to Mr. Bienes? 10 A. Same thing. Once again, the answer is I 11 truly don't know is my answer. 12 Q. Okay. What about this annual net 13 annualized return -- 14 A. Uh-huh. 15 Q. -- of 6.87 percent -- 16 A. Uh-huh. 17 Q. -- is that indicative of the kinds of 18 returns that you were getting in the accounts? 19 A. It all -- 20 MR. SAMUELS: Object to the form of the 21 question. 22 THE WITNESS: It all depends what you 23 are -- it was all over the place. It could be 24 four percent. It could be 12 percent. It 25 could be 16, eight. It went all over the</p>
<p>12:12:38-12:13:48 Page 99</p> <p>1 either a month or a quarter or whatever? Do you 2 recall when you got your statements from Madoff? 3 A. He would send us daily, weekly, whatever, 4 trading slips all the time all throughout the year. 5 We'd get a quarterly statement and a year ending 6 report. 7 Q. Okay. Now, how did it come about that the 8 quarterly statements received from Madoff were 9 converted into these individual statements for each 10 investor? 11 A. Mr. Powell probably would have set up his 12 own system that he was accustomed to and that he 13 liked, and he went ahead and shaped. And the 14 template was designed by him to go ahead and do 15 this. 16 Q. Did you have any involvement in that 17 conversion of the statements from Madoff to the 18 individual statements to the individual investors? 19 A. We talked about that. But Greg was really 20 a freak about how things looked. He was a very 21 methodical person and individual. And it was like, 22 back away, I know how to do this, I want to do it 23 my way. And so he just ran with it. He was my 24 partner; I trusted him. 25 Q. Do you know whether or not Mr. Avellino</p>	<p>12:14:57-12:15:59 Page 101</p> <p>1 place. 2 BY MR. WOODFIELD: 3 Q. When you received the statements from 4 Madoff did you do any due diligence on the 5 statement to confirm the accuracy of the trades 6 made that were reflected on the statements? 7 A. No, we did not. Once again, we pretty 8 much relied -- there was a point in time the 9 internet came to be, and you could start Googling 10 things. And we recognized that Madoff was a giant 11 within this industry. I actually had Google alerts 12 on my phone any time, I mean, on my computer any 13 time Bernie's name was mentioned. Google has an 14 application that you can. 15 So when the computer came to be I did a 16 lot of due diligence on Madoff, and there was 17 nothing but rave reviews. He was trading a good 18 part of the New York Stock Exchange. At one point, 19 I think, eight to nine percent ran through his. He 20 was clearing a lot of the money. He had an 21 immaculate reputation given the fact you would 22 think the SEC was doing their job on somebody that 23 big. I had no doubt he was the real deal. I would 24 have never have done this if I did not think that 25 was the case.</p>

<p>12:16:06-12:17:11 Page 102</p> <p>1 Q. What about with regard to the sales 2 tickets and documents received from Madoff -- 3 A. Yes. 4 Q. -- was there any due diligence or 5 investigation conducted with regard to those? 6 A. No, there weren't. We got them daily, 7 weekly, monthly. We got them regularly. 8 Q. Were those retained to your knowledge? 9 A. They were. 10 Q. What about with regard to these activity 11 status reports, were they retained and in the books 12 and records of P&S and S&P? 13 A. I am 99 percent sure those were in those 14 books and records. 15 Am I finished with this? 16 Q. Yes, thanks. 17 MR. WOODFIELD: Mark this next document as 18 Exhibit 7, please. 19 (Defendant's Exb. No. 7, Documents, 20 0019215, AVE00001RTP, AVE00008RTP.) 21 BY MR. WOODFIELD: 22 Q. Let me show you what we have marked as 23 Exhibit 7. 24 A. Uh-huh. 25 Q. And again, it's a composite of several</p>	<p>12:18:36-12:19:18 Page 104</p> <p>1 what is the guy's name? Oh, man, I forgot the 2 guy's name. Matt Carone referred this guy to me. 3 I forgot the guy's name now. Anyway, he had a 4 company called Paragon. 5 Q. And he was an investor? 6 A. Yes, or his company was. God, what's his 7 name? I forgot. 8 Q. This seems to reflect that is it 9 \$5 million dollars was returned? Do you see in the 10 statement next to -- go across the line item 11 Paragon. 12 A. Yes, it was. 13 Q. Do you have a recollection of that? 14 A. Yes, I do. It was a sad day. 15 Q. He was a \$5 million dollar investor, or 16 this entity was a \$5 million dollar investor? 17 A. Yes, it was. 18 Q. And it was a sad day what, when he 19 withdrew those funds? 20 A. Yeah. It hurts, right? If you own a bank 21 and the money is missing, you could say that. 22 Q. Did you have any dealings with whatever 23 individuals involved with this Paragon Ventures? 24 A. Not at that time, no. 25 Q. Okay. Do you have a recollection of how</p>
<p>12:17:25-12:18:19 Page 103</p> <p>1 pages. Take a look and see if you are familiar at 2 all with this document, the form of this document 3 or the contents? 4 A. I am not familiar at all with the form, 5 but I know the people that are -- I know all the 6 people on this list. 7 Q. Okay. And who are the people on this 8 list? 9 A. Well, they are listed right here, I mean. 10 Q. I mean, I am sorry, not the individual 11 names? 12 A. I am sorry. 13 Q. What do they represent? 14 A. These would have probably -- these look 15 like -- you know what, the one wasn't. Yeah, I 16 can't tell you. I don't know. I know all the 17 names. I don't know why they are in this 18 particular -- I don't know why this particular 19 order. I know that Paragon Ventures I don't know 20 why that appears there. But these look like names 21 to me that either Michael or Frank Avellino would 22 have referred to us. They were, except for the 23 Paragon Ventures. 24 Q. What is Paragon Ventures? 25 A. Paragon Ventures was a company -- God,</p>	<p>12:19:31-12:20:18 Page 105</p> <p>1 it came about that he withdrew his funds? 2 A. I think we got a letter, a call. I don't 3 remember at all how that came to be. 4 Q. So you don't know why he withdrew his 5 funds? 6 A. No. 7 Q. What about going down under the heading of 8 S&P accounts, are those also individuals or 9 entities that you are familiar with? 10 A. Oh, that's the guy's name, Donald Kahn. I 11 am sorry, Paragon Ventures was Donald Kahn. It's 12 listed right there. 13 Q. What is Hooker Trust? 14 A. I guess he had a prostitute company. I 15 don't know. No. 16 MR. WINDERMAN: That's not possible; you 17 don't trust a hooker. 18 THE WITNESS: Hooker Trust was a name of 19 another entity he had. 20 BY MR. WOODFIELD: 21 Q. Okay. And again, to your knowledge are 22 these a list of individuals that were somehow 23 associated with either Mr. Avellino or Mr. Bienes? 24 A. Yes. 25 Q. And how were you able to determine that or</p>

12:20:37-12:21:35	Page 106	12:23:04-12:24:07	Page 108
<p>1 recall that?</p> <p>2 A. I just know the people. I know the names.</p> <p>3 I just know the names. I know how they came in.</p> <p>4 Q. Turning to the second page of this</p> <p>5 document, see where it's entitled Payments on</p> <p>6 Behalf of Avellino and Bienes?</p> <p>7 A. Uh-huh, I do.</p> <p>8 Q. Do you know what this list represents?</p> <p>9 A. No idea. I know the names, but I don't</p> <p>10 know -- I know some of the names. I don't know</p> <p>11 what that recommends.</p> <p>12 Q. Do you know what the first name of</p> <p>13 initials FPOM, Inc. represents?</p> <p>14 A. I know Michael at some point in time had a</p> <p>15 charity. I don't know if that was his charity</p> <p>16 initials or not.</p> <p>17 Q. Do you know whether or not this list</p> <p>18 represents checks that were provided to either</p> <p>19 Mr. Avellino or Mr. Bienes or on their behalf with</p> <p>20 regard to management fees?</p> <p>21 A. It looks like it, but I can't tell you for</p> <p>22 sure.</p> <p>23 Q. Okay. And again, do you know who would</p> <p>24 have prepared this document?</p> <p>25 A. No idea.</p>	<p>1 Q. And is 27 Cliff, LLC possibly one of those</p> <p>2 entities involving Frank Avellino?</p> <p>3 A. Could be. I don't know for sure.</p> <p>4 Q. Did you have any discussions with either</p> <p>5 one of them about why they set up these entities to</p> <p>6 receive the checks?</p> <p>7 A. No. I remember on one of the meetings I</p> <p>8 had with Frank just a casual conversation, he came</p> <p>9 in to my office and said, listen, from now on we</p> <p>10 want to have the -- that's him and Mr. Bienes</p> <p>11 wanted to have their fees go to their charities.</p> <p>12 And I think he gave us the information. I don't</p> <p>13 know if Greg was still living at the time or not.</p> <p>14 So we just redirected the checks.</p> <p>15 Q. Is it your understanding that those</p> <p>16 entities are somehow involved in charities?</p> <p>17 A. By what Mr. Avellino told me, those were</p> <p>18 specifically for charities. Do I know it for a</p> <p>19 fact? No.</p> <p>20 Q. Next page is a document which is entitled</p> <p>21 Avellino and Bienes Management Fees. Again, you</p> <p>22 take a look at this and tell us whether or not this</p> <p>23 is a document you are familiar with?</p> <p>24 A. I am not familiar with the document.</p> <p>25 Q. In looking at the contents of the document</p>		
12:21:41-12:22:52	Page 107	12:24:23-12:25:35	Page 109
<p>1 Q. Do you know whether or not this document</p> <p>2 is contained in the books and records of P&S and</p> <p>3 S&P?</p> <p>4 A. No idea.</p> <p>5 Q. Okay. Christ Church is the church that</p> <p>6 you had mentioned before that you and Mr. Avellino</p> <p>7 were involved with?</p> <p>8 A. Correct. I still am, correct.</p> <p>9 Q. And do you recall fees being paid on</p> <p>10 behalf of Avellino to Christ Church?</p> <p>11 A. From time to time there would be projects.</p> <p>12 And Frank and Mike were very generous people, and</p> <p>13 sometimes they would say, just cut the check to the</p> <p>14 church on our behalf. That's what I am assuming.</p> <p>15 I think that \$15,000 specifically sticks out in my</p> <p>16 mind because we put in a bookstore there, and</p> <p>17 that's the cost of the bookstore. So I believe</p> <p>18 that's what that is reflected there.</p> <p>19 Q. What about 56 Arlington House, LLC, do you</p> <p>20 know what that entity is?</p> <p>21 A. At some point in time Avellino and Bienes</p> <p>22 no longer wanted the checks made to them, and they</p> <p>23 set up entities. And instead of paying them, we</p> <p>24 paid different entities. This could possibly be</p> <p>25 one of those entities.</p>	<p>1 are you able to tell us what the document</p> <p>2 represents?</p> <p>3 A. Uh-huh. Those are almost the same people</p> <p>4 that were on the other document, same thing. But I</p> <p>5 can't tell you. There's just one added name that I</p> <p>6 see that was not on the other name, and that's the</p> <p>7 name of Dydo.</p> <p>8 Q. And do you see down at the bottom it lists</p> <p>9 years 2000 to 2007; do you see that?</p> <p>10 A. Uh-huh, I do.</p> <p>11 Q. Do you know what the figures under those</p> <p>12 years represent?</p> <p>13 A. No idea.</p> <p>14 Q. Could those figures represent management</p> <p>15 fees that were paid during those years to or on</p> <p>16 behalf of Mr. Avellino and Mr. Bienes?</p> <p>17 MR. WINDERMAN: Form.</p> <p>18 BY MR. WOODFIELD:</p> <p>19 Q. You can answer.</p> <p>20 A. I don't know what they represent.</p> <p>21 Q. Do you have any idea who prepared this</p> <p>22 document?</p> <p>23 A. No idea.</p> <p>24 MR. WOODFIELD: Next exhibit is a</p> <p>25 composite exhibit.</p>		

<p>12:25:56-12:26:31 Page 110</p> <p>1 (Defendant's Exb. No. 8, Documents, 2 0011805 - 0011794.) 3 BY MR. WOODFIELD: 4 Q. Mr. Sullivan, I hand you what I 5 characterize as a composite exhibit of various 6 pages. 7 A. Uh-huh. 8 Q. Take a look at them. This is Exhibit 8. 9 A. Uh-huh. 10 Q. And again looking at the top. 11 A. Uh-huh. 12 Q. At the heading above this box is called 13 "0603 S1 Associates G/P" -- 14 A. Uh-huh. 15 Q. -- "Management Fees to J. Yonge," 16 Y-o-n-g-e. 17 A. Uh-huh. 18 Q. Do you know what this represents? 19 A. I don't. 20 Q. Do you know a J. Yonge? 21 A. I do. 22 Q. And was J. Yonge an investor in -- 23 A. He certainly was, and a member of our 24 church. 25 Q. Okay. And do you know whether or not he</p>	<p>12:28:05-12:28:43 Page 112</p> <p>1 the records. 2 Q. Looking at the very top left corner under 3 account number it's Y, looks like 135-Y. Do you 4 see that? 5 A. What page are you on? 6 Q. I am sorry, the very first page. 7 A. Yes, I do. 8 Q. Are you familiar with the account numbers 9 for the various individuals? 10 A. No. 11 Q. Okay. Looking at the next page where it 12 has a heading Management Fees to R. Wills? 13 A. Yes. 14 Q. Now, is that Pastor Wills? 15 A. It is. 16 Q. And you are familiar with him? 17 A. I am, very well. 18 Q. And do you know whether or not he was paid 19 a portion of management fees? 20 A. Yes. 21 Q. And was that for referring clients to S&P 22 or P&S? 23 A. And it was in our insistence, not on his, 24 correct. 25 Q. And when you say insistence, what do you</p>
<p>12:26:43-12:27:47 Page 111</p> <p>1 was -- is it a he? 2 A. It is. 3 Q. Okay. By looking at the title do you know 4 whether this is S&P or P&S? 5 A. I couldn't tell you. 6 Q. Do you know whether Mr. Yonge was paid a 7 portion of the management fees? 8 A. It appears on this document that he is. 9 Q. Okay. Do you know whether or not this 10 type of document -- do you know who prepared this 11 type of document? 12 A. No idea. 13 Q. Okay. Do you know whether this type of 14 document was maintained in the books or records of 15 P&S and S&P? 16 A. It looks like a type of document, but I 17 can't tell you it's a replication of anything I am 18 aware of. 19 Q. Do you have any understanding for whether 20 or not Mr. Powell did anything to avoid the 21 disclosure of these records of management fees in 22 the books and records available to anyone to 23 inspect? 24 A. There would be no reason to. The records 25 were the records. If anybody came in, those were</p>	<p>12:28:56-12:29:38 Page 113</p> <p>1 mean by that? 2 A. We just told Dick -- Dick referred a 3 couple pastors, obviously his wife and his 4 daughter. These are all actually people in his 5 family. And we just said, Dick, we are going to 6 give you half the money back, and you do whatever 7 you want with it. So we actually engaged him. He 8 did not engage us for this. 9 Q. And when you say we, is that a decision 10 that was made between you and Mr. Powell? 11 A. Pretty much by me. I knew Dick. But 12 certainly Greg would concur in that. 13 Q. And did Mr. Avellino or Mr. Bienes have 14 any involvement in that decision? 15 A. None whatsoever. 16 Q. The next page, Sam Rosen? 17 A. Uh-huh. 18 Q. Recall we talked about Sam Rosen before? 19 A. We did. 20 Q. He is another individual -- 21 A. Right. 22 Q. -- that was paid a portion of fees? 23 A. Uh-huh. 24 MR. SAMUELS: Just for the court reporter, 25 you guys are talking at the same time, so.</p>

<p>12:29:49-12:30:37 Page 114</p> <p>1 BY MR. WOODFIELD: 2 Q. So it's common for in conversations that 3 you would answer my question before I finish. But 4 she can only get one of us at a time, so try to 5 wait until I finish. 6 A. Maybe we need a second court reporter. 7 Q. There you go, one for questions and one 8 for answers. 9 MR. SAMUELS: You are welcome, by the way. 10 BY MR. WOODFIELD: 11 Q. Now, is it possible that Susan Rosen would 12 have prepared documents like this, I am sorry, 13 Susan Moss would have prepared documents like 14 this? 15 A. Could be. 16 Q. And would she have any reason to hide 17 these documents from anyone? 18 MR. SAMUELS: Object to the form of the 19 question. 20 THE WITNESS: No. Just for the record, my 21 people are only interested in their own 22 accounts. They didn't give a rat's ass what 23 was going on with anybody else. They wanted to 24 know, was my money there. When you go in the 25 bank, you want to know what's in your account.</p>	<p>12:31:37-12:32:22 Page 116</p> <p>1 Q. And again, he was paid management fees for 2 various individuals who he referred to S&P or P&S? 3 A. Correct. 4 Q. And is that equally true with regard to 5 the entity Guardian Angel? 6 A. Correct. 7 Q. What is the entity Guardian Angel? 8 A. It's an entity owned by Steven Jacobs. 9 Q. Okay. And the next page, R. Fox? 10 A. Uh-huh. 11 Q. Do you know who R. Fox is? 12 A. I do. He was a member of our church in 13 that same small group with Mr. Avellino, and his 14 first name is Ralph. 15 Q. And he also was paid management fees for 16 individuals whom he brought in? 17 A. Correct. 18 Q. And looking at these names on the left, 19 obviously the Fox Family Partnership and B. Fox, 20 not obviously, but they appear to be related to 21 Mr. Fox, correct? 22 A. That's correct. 23 Q. What about these other individuals, are 24 you familiar with them at all? 25 A. I know the names.</p>
<p>12:30:45-12:31:24 Page 115</p> <p>1 It's the same. 2 BY MR. WOODFIELD: 3 Q. The next page Abraham Newman -- 4 A. Yes. 5 Q. -- we talked about him before, correct? 6 A. Yes, we did. 7 Q. Another individual -- 8 A. Uh-huh. 9 Q. -- to whom you paid management fees? 10 A. Correct. 11 Q. The next page is J. Kleinmann. Do you 12 recall a J. Kleinmann? 13 A. That name escapes me. 14 Q. No recollection? 15 A. It escapes me. 16 Q. Okay. Next page, Steve Jacobs, you know 17 Steve Jacobs? 18 A. Let me see. Yeah, I do recall Steve. 19 Q. Okay. And again, he was paid management 20 fees -- 21 A. Yes. 22 Q. -- as these others? 23 A. Yes. 24 Q. Next page, Scott Holloway? 25 A. I do.</p>	<p>12:32:36-12:33:13 Page 117</p> <p>1 Q. Do you associate the names with being 2 investors in S&P or P&S? 3 A. Yes, I do. 4 Q. The next page is Gary Chapman? 5 A. Correct. 6 Q. Who is Gary Chapman? 7 A. Another member of our small group in our 8 church, same thing. 9 Q. Another individual who is paid management 10 fees? 11 A. Correct. 12 Q. And the last page, Vincent Barone? 13 A. Correct. 14 Q. Do you know Vincent Barone? 15 A. Yes. 16 Q. Who is he? 17 A. He is a person in Orlando who I believe 18 was at A&B. I know we met him, and we set the same 19 situation up with him as we did with the other 20 people. This looks like a list of the people we 21 had agreements with. 22 Q. Now, looking at this lower left-hand 23 column -- 24 A. Uh-huh. 25 Q. -- portion of this statement on Vincent</p>

<p>12:33:20-12:34:25 Page 118</p> <p>1 Barone. 2 A. Uh-huh. 3 Q. Do you see under the agreement it has 4 various percentages? 5 A. Right. 6 Q. Do you recall having some different 7 arrangement with Mr. Barone with regard to the 8 amount of management fees you would pay him for 9 referrals? 10 A. Yes, I do. 11 Q. And how did that come about? 12 A. I remember Greg and I had a meeting 13 specifically on this. We talked about it. And we 14 came up with what we wanted to do with Mr. Barone. 15 And these were the terms that I recall of what his 16 investment partnership would be. 17 Q. And why was a decision made to handle his 18 payment of management fees different from others? 19 A. We didn't know Vinnie very well, and we 20 just thought it would be better just to put some 21 kickers in there. That's why we did that. He's 22 the only person I believe we did that with. 23 Q. What about the Festus Stacy Foundation -- 24 A. Uh-huh, right. 25 Q. -- were they paid any portion of the</p>	<p>12:35:46-12:39:50 Page 120</p> <p>1 management fee to ten percent. 2 Q. So their individual account would reflect 3 that ten percent, half of the management fee that 4 they were entitled to was put as capital back into 5 their account? 6 A. Correct. I don't know how the transaction 7 went. I just know our management fee was ten 8 percent. I don't know the mechanics of that. 9 Q. Was anyone else other than this foundation 10 handled in that manner? 11 A. No, not that I am aware of. 12 MR. WOODFIELD: Mark this one-page 13 document as Exhibit 9, please. 14 (Defendant's Exb. No. 9, Document, 15 AVE05553RTP.) 16 (A recess was taken.) 17 BY MR. WOODFIELD: 18 Q. Mr. Sullivan, I have shown you Exhibit 19 Number 9. Again, it's one of those documents 20 similar to the others. The reason I want to show 21 you this is this statement down at the bottom of 22 this document that has a date 4/11/02 meeting. Do 23 you see that? 24 A. Uh-huh. 25 Q. Take a moment look at that.</p>
<p>12:34:44-12:35:31 Page 119</p> <p>1 management fees? 2 A. We did the same to both charities. In the 3 case of Father Kelly, we sat down and negotiated 4 that his ten percent, his money would go to the 5 Kelco Foundation. With Festus Stacy they decided 6 they didn't want to give that ten percent to 7 anyone; they wanted to have their ten percent back 8 in the foundation. So it's form over substance. 9 They both got the identical deal. Festus Stacy 10 wanted a -- they just agreed to ten percent versus 11 20 percent. 12 Q. When you say ten percent, do you mean half 13 of the 20 -- 14 A. Uh-huh. 15 Q. -- percent management fee? 16 A. That's correct. 17 Q. So is it correct that with regard to some 18 of these individuals we just looked at, including 19 Father Kelly, Monsignor Kelly -- 20 A. Uh-huh. 21 Q. -- actual payments were made to them, and 22 that wasn't the case with the Festus Stacy 23 Foundation? 24 A. They wanted to keep their money 25 specifically, and they asked that we reduce our</p>	<p>12:40:01-12:40:48 Page 121</p> <p>1 A. Uh-huh. 2 Q. Tell us whether or not you have any 3 knowledge or recollection of what caused that to be 4 included on this statement? 5 A. I don't know. 6 Q. Okay. So you have no understanding as to 7 what that means? I don't want you to guess. I 8 mean, if you know, you know. 9 A. I don't. Man, it's 13 years ago. I have 10 no clue. 11 Q. Okay. And do you have any idea of who put 12 that statement -- no, strike that. Do you have any 13 knowledge of who put that on this statement? 14 A. No idea. 15 Q. And do you recall any discussion with Greg 16 Powell with regard to the contents of that 17 statement? 18 A. No. Just for the record, I did not put 19 any financial records together at all, just to be 20 real clear. 21 Q. I understand that. 22 A. So you can keep asking me all the 23 questions you've got regarding these financial 24 records and documentations. I did not put any of 25 these financial records together ever.</p>

12:41:48-12:42:41	Page 122	12:44:24-12:45:21	Page 124
<p>1 Q. Do you have any contact with Susan Moss</p> <p>2 today?</p> <p>3 A. I certainly do.</p> <p>4 Q. And does she still work for you at all?</p> <p>5 A. Yes.</p> <p>6 Q. Part-time?</p> <p>7 A. Yes.</p> <p>8 Q. And what does she do in your offices now?</p> <p>9 A. Just do IRS work together.</p> <p>10 Q. And do you know where she resides?</p> <p>11 A. I do.</p> <p>12 Q. Where is that?</p> <p>13 A. Pompano Beach.</p> <p>14 MR. WOODFIELD: Mark this K-1 as</p> <p>15 Exhibit 10.</p> <p>16 (Defendant's Exb. No. 10, Schedule K-1</p> <p>17 year 2000, 0015044 - 15045.)</p> <p>18 BY MR. WOODFIELD:</p> <p>19 Q. Mr. Sullivan, I will show you what we have</p> <p>20 marked as Exhibit 10, a K-1 --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- on behalf of James and Valeria Judd.</p> <p>23 A. Right.</p> <p>24 Q. And this is S&P Associates, General</p> <p>25 Partnership. Who prepared these K-1s for S&P?</p>	<p>1 A. Tom had absolutely no involvement in S&P</p> <p>2 and P&S. At one point in time in one of our</p> <p>3 meetings Tom and I were talking about our</p> <p>4 investment, and he says, oh, hey, how do you do</p> <p>5 your statements, how do you do the statements. I</p> <p>6 believe this was after Greg passed away.</p> <p>7 And I remember Tom looked at how we</p> <p>8 presented our statements, because we were just</p> <p>9 comparing notes. It's just something you do if you</p> <p>10 have a like, you know, kind of business. And we</p> <p>11 told him we always struggled about how to go ahead</p> <p>12 and come up with what the realized profit was. So</p> <p>13 Tom says, let me take a look at it.</p> <p>14 So Tom went ahead and said, I have a much</p> <p>15 simpler way to do that. Greg had these long</p> <p>16 calculations like A plus B minus F, G, you know,</p> <p>17 times Z times two. And Tom says, there's a</p> <p>18 template that I can make this much easier and you</p> <p>19 are going to save half of your time.</p> <p>20 So Tom -- other than Tom introducing a</p> <p>21 template for us, Tom had nothing -- he still had</p> <p>22 nothing to do with the business whatsoever.</p> <p>23 Q. Was he compensated in any fashion --</p> <p>24 A. No.</p> <p>25 Q. -- for doing this?</p>		
12:43:01-12:44:08	Page 123	12:45:33-12:46:35	Page 125
<p>1 A. Well, usually if you actually find the</p> <p>2 1065 tax return, the name of the preparer will be</p> <p>3 on the document. I don't know. I am assuming it's</p> <p>4 Michael Kuzy. If you pick up the 1065 you will</p> <p>5 find out who prepared it.</p> <p>6 Q. But your recollection is that tax returns</p> <p>7 and documents associated with the tax returns were</p> <p>8 prepared by your outside accountant?</p> <p>9 A. That's correct.</p> <p>10 Q. And that was Mr. Kuzy?</p> <p>11 A. Bill Tupin or Michael Kuzy.</p> <p>12 Q. And do you know when Mr. Kuzy began to</p> <p>13 prepare the returns?</p> <p>14 A. I don't.</p> <p>15 Q. Okay. Do you know Tom Avellino?</p> <p>16 A. Yes.</p> <p>17 Q. How do you know him?</p> <p>18 A. Through -- it's Frank's son. Frank has</p> <p>19 been -- Tom has been to our office maybe two or</p> <p>20 three times, had lunch with him. Frank was in</p> <p>21 town. Tom would come up. We'd all go out. We</p> <p>22 certainly had similar interests in everything, so,</p> <p>23 yeah.</p> <p>24 Q. What was his involvement, if any, in P&S</p> <p>25 and S&P?</p>	<p>1 A. Pardon me. Sorry. No, he was not.</p> <p>2 Q. Okay. And did you understand that Mr. Tom</p> <p>3 Avellino had a similar investment fund with Madoff?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Now, and was this -- this obviously</p> <p>6 occurred before, this meeting you just related to</p> <p>7 occurred before Madoff's exposure as a Ponzi</p> <p>8 scheme, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, after that, that is after</p> <p>11 Madoff was revealed as a Ponzi scheme, did you have</p> <p>12 any subsequent dealings with Tom Avellino?</p> <p>13 A. I did. His daughter had passed away. I</p> <p>14 think she died at the age of five years old. And</p> <p>15 Tom was going through a very, very difficult time,</p> <p>16 possibly suicidal. And I recall him, sending him</p> <p>17 e-mails, find out how he is going on. And we</p> <p>18 talked about what happened with Madoff, what was</p> <p>19 going on, how could this happen. We asked the</p> <p>20 normal questions when you have a financial crisis</p> <p>21 that happens in your life.</p> <p>22 Q. Did there also come a time where you</p> <p>23 recall having any discussions with him about a</p> <p>24 commodities business that he was starting up?</p> <p>25 A. Yes, I did.</p>		

<p>12:46:48-12:47:35 Page 126</p> <p>1 Q. What do you recall about that? 2 A. Tom was saying, I think we could get a 3 commodities business going; I am getting my 4 license. And I really didn't want to have anything 5 to do with anything anymore like this. This was 6 just a nightmare in our life, and it still is. So 7 nothing really ever came of it. 8 Q. Do you know whether or not he started such 9 a business? 10 A. I can't tell you whether he did. I 11 believe he did, but I never followed up on it. 12 Q. Do you recall whether or not you may have 13 referred to anyone to him as a potential investor 14 in that business? 15 A. I don't remember. 16 Q. Did you have any financial arrangement 17 with regard to him involving that business? 18 A. I never gave him any money that I recall, 19 so I wouldn't have. 20 Q. Do you know whether or not Frank Avellino 21 had any involvement in that? 22 A. I wouldn't know. 23 Q. Did you ever have any discussions with 24 Frank Avellino with regard to Thomas Avellino's 25 commodity business?</p>	<p>12:49:06-12:50:22 Page 128</p> <p>1 A. She may have called Mike Kuzy. You'd have 2 to ask her who assisted her with it. It's safe to 3 say that I believe before that Susan was aware. 4 She was a heavy investor in this, so she had a -- 5 she certainly had her own stakes in this. I think 6 they invested three, three and a half million 7 dollars. She was not just a -- she just was not a 8 secretary. She's a pretty -- so, I mean, she had a 9 stake in this as well. I think her daughter was in 10 it and a couple other people that she knew. 11 So she was aware because I believe that 12 Greg, since he moved to Blairsville, I believe 13 Susan would have been familiar what was going on. 14 And the format and all the templates were there, so 15 it wasn't a huge learning curve. Everything was in 16 fact in place. 17 MR. WOODFIELD: Mark this two-page 18 document as Exhibit 11. 19 (Defendant's Exb. No. 11, Invoices, 20 Feb. 4, 1994.) 21 BY MR. WOODFIELD: 22 Q. Mr. Sullivan, I will show you this 23 two-page document, ask you to take a look at this. 24 I am going to ask you some questions about it. 25 A. Uh-huh.</p>
<p>12:47:53-12:48:44 Page 127</p> <p>1 A. Not that I remember. 2 Q. When you had your discussions with Thomas 3 Avellino about the template for the statements -- 4 A. Uh-huh. 5 Q. -- do you know whether or not Tom Avellino 6 was acting on behalf of his father in doing that? 7 A. Oh, no. Frank could care less. Just Tom 8 was just simply trying to help us minimize, 9 minimize our time. 10 Q. Now, I know we can't recall the date when 11 Mr. Powell died. But he obviously died sometime 12 before 2008, correct? 13 A. Oh, yes. 14 Q. Okay. So upon his death, up until the 15 time Madoff failed, who prepared and maintained 16 these books and records like these records I have 17 shown you that you aren't familiar with? 18 A. Uh-huh. 19 Q. I assume they continued to be prepared 20 after Mr. Powell's death? 21 A. Uh-huh. 22 Q. Who prepared them? 23 A. Susan Moss. 24 Q. Okay. Do you know whether or not anyone 25 assisted her in doing that?</p>	<p>12:50:31-12:51:07 Page 129</p> <p>1 Q. Do you recall this format of invoices from 2 Ahearn Jasco? 3 A. No. 4 Q. Do you recall ever seeing any invoices 5 from Ahearn Jasco to P&S or S&P? 6 A. No, I don't. 7 Q. With regard to this particular document 8 dated February 4 -- 9 A. Yes. 10 Q. -- 1994 -- 11 A. Yes. 12 Q. -- an invoice in the amount of \$350, if 13 you take a look, you will see the first one is 14 directed to S&P Associates? 15 A. Uh-huh. 16 Q. And the second one is addressed -- 17 A. Right. 18 Q. -- to P&S Associates? 19 A. Correct. 20 Q. Both for \$350? 21 A. Correct. 22 Q. With regard to the two bullet points, the 23 first item -- 24 A. Uh-huh. 25 Q. -- reflects preparation of federal tax</p>

12:51:13-12:51:49	Page 130	12:53:04-12:54:28	Page 132
<p>1 returns --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- is that correct?</p> <p>4 A. Uh-huh.</p> <p>5 MR. ETRA: I think the court reporter is</p> <p>6 indicating if you could pause a second.</p> <p>7 BY MR. WOODFIELD:</p> <p>8 Q. I am sorry.</p> <p>9 A. I am sorry.</p> <p>10 Q. We are rushing and we shouldn't.</p> <p>11 The first bullet point refers to</p> <p>12 preparation of federal tax forms?</p> <p>13 A. Correct.</p> <p>14 Q. And is that the type of work that Ahearn</p> <p>15 Jasco was doing on your behalf or on behalf of P&S</p> <p>16 and S&P?</p> <p>17 A. At that time I would imagine so.</p> <p>18 Q. That's 1994?</p> <p>19 A. Uh-huh.</p> <p>20 Q. What about the second bullet point item.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Let me just read that. "Meeting at</p> <p>23 client's office with Mike Sullivan, Greg Powell and</p> <p>24 Frank Avellino" --</p> <p>25 A. Uh-huh.</p>		<p>1 fashion for attending this meeting?</p> <p>2 A. No.</p> <p>3 Q. Do you recall how long this meeting took</p> <p>4 place?</p> <p>5 A. Wasn't a real long meeting. It seemed</p> <p>6 like it was about an hour, right around there. It</p> <p>7 wasn't long, about an hour and a half.</p> <p>8 Q. Do you recall whether or not Mr. Avellino</p> <p>9 attended any other meetings that you had with your</p> <p>10 accountants?</p> <p>11 A. I remember this was the only meeting. I</p> <p>12 actually thought this was, though, at Ahearn's</p> <p>13 office. I don't actually remember him coming into</p> <p>14 my office. I don't know where the meeting -- I</p> <p>15 know there was one meeting.</p> <p>16 Q. Do you know whether or not the accounting</p> <p>17 statements from your accounting firm Ahearn Jasco</p> <p>18 are contained in the P&S and S&P books and records</p> <p>19 that were provided to Berger Singerman?</p> <p>20 A. They would be somewhere. All I know is I</p> <p>21 don't have the books and records. So all those</p> <p>22 boxes were delivered in their entirety in full.</p> <p>23 Q. Referring to this meeting, do you recall</p> <p>24 who on behalf of Ahearn Jasco attended the meeting?</p> <p>25 A. It would either have been Mike Kuzy or</p>	
12:51:54-12:52:55	Page 131	12:55:04-12:56:02	Page 133
<p>1 Q. -- "regarding partnership reports" --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- "form 1065" --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- "and other matters."</p> <p>6 A. Uh-huh.</p> <p>7 Q. Do you have any recollection of this</p> <p>8 meeting that took place that's reflected on this</p> <p>9 February '94 invoice?</p> <p>10 A. Yes.</p> <p>11 Q. Could you tell us what you recall about</p> <p>12 that meeting?</p> <p>13 A. I remember sometimes prior to that that</p> <p>14 Mr. Avellino had informed me that the treatment of</p> <p>15 puts and calls when you bill clients that is</p> <p>16 something of a caution. I says, well, we didn't</p> <p>17 know about that. I says -- I asked him if he would</p> <p>18 sit down and go over the puts and calls situation</p> <p>19 with I don't know if it was Michael Kuzy or Bill</p> <p>20 Tupin. And Frank also indicated that he would do</p> <p>21 that. It was on my insistence. And also he said</p> <p>22 it may be a good idea, because I may want to give</p> <p>23 some of my accounting and CPA work to them, so it</p> <p>24 would serve as a dual purpose.</p> <p>25 Q. Was Mr. Avellino compensated in any</p>		<p>1 Bill Tupin; nobody else.</p> <p>2 Q. But sitting here today you can't recall</p> <p>3 which one of the two attended?</p> <p>4 A. No.</p> <p>5 MR. WOODFIELD: Mark this one-page</p> <p>6 document as Exhibit 12, please.</p> <p>7 (Defendant's Exb. No. 12, E-mail, July 6,</p> <p>8 2004, AVE00246RTP.)</p> <p>9 BY MR. WOODFIELD:</p> <p>10 Q. Mr. Sullivan, let me show you what we have</p> <p>11 marked as Exhibit 12. Take a moment to look at</p> <p>12 that, if you would.</p> <p>13 A. Uh-huh.</p> <p>14 Q. First of all, do you know -- do you see</p> <p>15 where this is to Gop9401?</p> <p>16 A. Yes.</p> <p>17 Q. And what is that again?</p> <p>18 A. That's Greg's e-mail address.</p> <p>19 Q. Okay. And this is July 2004?</p> <p>20 A. Yes.</p> <p>21 Q. And --</p> <p>22 A. That means Greg had to still be living, so</p> <p>23 we've established a date.</p> <p>24 Q. Okay. Do you see down at the bottom of</p> <p>25 this exhibit where it says 7/7/04 America Online,</p>	

<p>12:56:14-12:57:25 Page 134</p> <p>1 do you know what that refers to?</p> <p>2 A. I don't see that. Oh, on the bottom?</p> <p>3 Q. Yes.</p> <p>4 A. I don't know what that is.</p> <p>5 Q. Does this appear to your knowledge to be a</p> <p>6 printout of an e-mail?</p> <p>7 A. I can't tell you what it is.</p> <p>8 Q. And you see above where it's to Gop9401</p> <p>9 from FrankNanc. Do you know Frank Avellino's</p> <p>10 e-mail address?</p> <p>11 A. I think it's FrankNanc at something.</p> <p>12 Q. Okay. When you provided documents and</p> <p>13 consents to Berger Singerman for access to various</p> <p>14 e-mail accounts, was this e-mail account included?</p> <p>15 A. To the best of my recollection it was.</p> <p>16 There was at least six or seven e-mails that were</p> <p>17 on there. I don't know if they were all ours. But</p> <p>18 there were e-mails that belonged to Mr. Avellino on</p> <p>19 that list.</p> <p>20 Q. Now, referring to the substance of this</p> <p>21 e-mail --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- do you recall this issue with regard to</p> <p>24 Paragon Ventures seeking to pledge certain assets?</p> <p>25 A. Vaguely, but not enough to speak on it.</p>	<p>12:59:59-13:00:43 Page 136</p> <p>1 at some bank in England at the time or somewhere.</p> <p>2 MR. WOODFIELD: Next exhibit, please, this</p> <p>3 one-page document, Exhibit 13.</p> <p>4 (Defendant's Exb. No. 13, E-mail chain,</p> <p>5 Oct. 27, 2008, AVE00252RTP.)</p> <p>6 BY MR. WOODFIELD:</p> <p>7 Q. Mr. Sullivan, I show you what has been</p> <p>8 marked as Exhibit 13, which appears to be an e-mail</p> <p>9 from FrankNanc@aol.com --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- to an e-mail address that you</p> <p>12 previously identified as one of yours --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- dated October 27, 2008. Do you recall</p> <p>15 this e-mail at all?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you recall -- looking at the</p> <p>18 contents of it, do you recall any recollection with</p> <p>19 regard to the potential to change P&S and S&P from</p> <p>20 general partnerships to LLCs?</p> <p>21 A. I do. I remember we did have some</p> <p>22 conversation about doing that. I don't know why we</p> <p>23 were given, counsel. I don't know. But I do</p> <p>24 remember there was some talk about doing that.</p> <p>25 Q. Do you recall with whom you discussed</p>
<p>12:57:42-12:58:58 Page 135</p> <p>1 Q. So taking a look at this, does it refresh</p> <p>2 your recollection at all with regard to that issue?</p> <p>3 A. Not with enough clarity or confidence to</p> <p>4 speak to the issue. I know there was something</p> <p>5 that came up, but I can't tell you with any clarity</p> <p>6 that I want to say this is it. I don't know.</p> <p>7 Q. And do you have any recollection of</p> <p>8 discussing this issue with Frank Avellino?</p> <p>9 A. I can't remember. I know there was</p> <p>10 something weird going on here when this came up. I</p> <p>11 just don't have the memory to remember. I just</p> <p>12 don't remember it.</p> <p>13 Q. And this is this Mr. Kahn who you referred</p> <p>14 to before with regard to Paragon who ultimately</p> <p>15 withdrew funds from your business?</p> <p>16 A. And Hooker Trust.</p> <p>17 Q. Right. Do you know whether or not he</p> <p>18 withdrew his funds with regard to this issue of</p> <p>19 visibility or inability to pledge his securities?</p> <p>20 A. I don't remember.</p> <p>21 Q. Okay. Do you know who Jane Dee is?</p> <p>22 A. I certainly do. She's not a Jane Doe.</p> <p>23 She's a Jane Dee. I do. That was the lead person</p> <p>24 or the contact person in which Donald Kahn would</p> <p>25 have handled the investments. I think she worked</p>	<p>13:00:58-13:01:57 Page 137</p> <p>1 that?</p> <p>2 A. Well, obviously with my partner. I may</p> <p>3 have called Mr. Avellino as well. I would ask him,</p> <p>4 hey, is this a possibility, from both an accounting</p> <p>5 standpoint and the fact he knew Madoff. I just</p> <p>6 would ask him a question, questions from time to</p> <p>7 time. This would have been maybe that question</p> <p>8 that I have asked him. It was on a limited basis,</p> <p>9 but I remember doing something regard to that with</p> <p>10 that.</p> <p>11 Q. How often would it come about that you</p> <p>12 would have discussions or communications with Frank</p> <p>13 Avellino concerning questions or issues involving</p> <p>14 the investments?</p> <p>15 A. I would say like anywhere from five to ten</p> <p>16 times I'd make a call. Because, you know, he was</p> <p>17 the one who knew Madoff. Was just curious, you</p> <p>18 know. And sometimes I would ask, how are your</p> <p>19 investments doing, when they were only paying us</p> <p>20 four or five percent. So I would have</p> <p>21 conversations like that with him, you know, so.</p> <p>22 Q. You say four or five times. Four or five</p> <p>23 times over what period of time?</p> <p>24 A. Oh, the whole length. Maybe ten. I can't</p> <p>25 remember; I don't.</p>

<p>13:02:13-13:03:22 Page 138</p> <p>1 Q. Was there any arrangement with regard to 2 compensating him for any of his responses or 3 questions to your -- answers to your questions? 4 A. No, no, there was never compensation. 5 Q. Was there any understanding that he would 6 be available to answer your questions? 7 A. He is my friend. We were friends. So he 8 would answer and take my call, period. 9 Q. Now, in this e-mail you are asking him who 10 you should contact at Madoff to discuss this issue? 11 A. Uh-huh, right. 12 Q. Prior to that had you had any discussions 13 with Jodi Crupi at Madoff? 14 A. I don't remember speaking to her directly 15 until that very last day. Sometimes they would 16 answer the phone; they would just give a name. I 17 believe on this day regarding this I did make a 18 call, but it was to a gentleman. And I think it 19 was Pasquale was the name of the person I spoke 20 with. 21 Q. You spoke to him with regard to this LLC 22 issue? 23 A. Yeah. I believe I called him regarding 24 something. I don't know whether it was this 25 particular issue. But it was around that time, a</p>	<p>13:04:48-13:05:38 Page 140</p> <p>1 Q. So were you running the business by 2 yourself -- 3 A. Yes. 4 Q. -- at that point in time? 5 A. Yes. 6 Q. Did you have any other partners involved 7 in the management of the businesses? 8 A. No. 9 Q. Was it just you and Susan Moss in the 10 office? 11 A. Yes. 12 Q. Did Mr. Jacobs have any involvement in the 13 business? I am sorry. Did Mr. Jacobs have any 14 involvement in the management of the business? 15 A. None. 16 Q. What if anything was Mr. Jacobs involved 17 in? 18 A. Steve had an office within our office. He 19 was a CPA. He had his clients in here. So at any 20 point in time he would be looking at the books and 21 records himself. He was not involved in any 22 management, any -- he wasn't really involved. He 23 had his own company, and he had a large share of 24 money in this. So he had his own clients' stake in 25 this as well.</p>
<p>13:03:38-13:04:43 Page 139</p> <p>1 period of time I had a conversation. 2 Q. Other than the conversation with him and 3 this conversation with Jodi Crupi, do you recall 4 speaking with anyone else at Madoff? And you spoke 5 to Mr. Madoff you told us originally? 6 A. Yes, a number of times. Yeah, I would 7 call different people. I wouldn't recall who they 8 were. I probably made, like I said, one, two, 9 three calls at different times to there. 10 Q. What came about with this decision to 11 attempt to convert from a partnership to an LLC? 12 A. I can't tell you. Obviously nothing did. 13 Q. Did you obtain any legal advice with 14 regard to the decision to change from a partnership 15 to an LLC? 16 A. One of the problems is when you work with 17 attorneys all day with their clients' tax matters, 18 you just pick up the phone and you say, hey, what 19 do you think, what do you think, what do you think. 20 So, no, I didn't really have a lot of -- I didn't 21 need those formal agreements. 22 Q. And at this point in time, this is October 23 of 2008, I assume Mr. Powell had died prior to 24 that? 25 A. Pretty much.</p>	<p>13:05:52-13:06:43 Page 141</p> <p>1 Q. Did he assist at all in the preparation of 2 the books and records? 3 A. He did not. However, sometimes Susan 4 would have an accounting question or an entry 5 question, and he was there. He was kind of active 6 with his own business and issuing his reports. And 7 we were all in the office together the three of us. 8 So certainly we did go ahead and talk. He was not 9 a decision-maker of any kind. 10 Q. Was he individually an investor; do you 11 recall? 12 A. You'd have to look on the reports. 13 Q. Okay. But in any event through an entity 14 he was an investor? 15 A. Through something, yes. 16 Q. Okay. 17 A. You'd have to ask him. 18 Q. And he introduced others to invest? 19 A. He had his own business. You would have 20 to ask him. I shouldn't -- I don't -- I can't 21 speak to that. 22 Q. Okay. Do you know whether or not he 23 inspected the books and records -- 24 A. Oh, absolutely. 25 Q. -- of P&S and S&P?</p>

<p>13:06:58-13:08:57 Page 142</p> <p>1 A. Oops, sorry. Absolutely. 2 Q. And on more than one occasion? 3 A. Yes. He was in our -- pardon me. He was 4 in our office. I mean, he had an office there. 5 When the slips would come in, he would want to see 6 what they were doing. Remember, he had this very 7 similar business, so he was every much invested in 8 this as I was. 9 Q. Was he a subtenant of yours? 10 A. He is a friend that just said Greg was 11 missing, do you want to move in, move in. We 12 didn't have a formal agreement. 13 Q. Did he pay rent or cover expenses at all? 14 A. No. 15 MR. WOODFIELD: Mark this document as 16 Exhibit 14, please. 17 (Defendant's Exb. No. 14, Letter, Aug. 10, 18 2012, 0014734 - 14737.) 19 BY MR. WOODFIELD: 20 Q. I show you what's been identified as 21 Defendant's Exhibit 14, a letter dated August 10, 22 2012. 23 A. Uh-huh. 24 Q. Are you familiar with this? 25 A. Yes.</p>	<p>13:10:18-13:11:23 Page 144</p> <p>1 Q. Do you recall whether or not you had an 2 attorney that assisted you? 3 A. Don't remember. I was really pissed off. 4 I was really pissed off at this time. They had 5 accused me of stealing \$10 million dollars. That's 6 how they got this case, by telling people that I 7 stole money from this business. What a bunch of 8 crap that was. 9 Q. Did Mr. Avellino have any involvement in 10 your decision to write this letter? 11 A. Absolutely not. 12 Q. Did Mr. Avellino have any involvement in 13 the substance of what went into this letter? 14 A. He didn't have nothing to do with this 15 letter. 16 Q. Is that equally true with regard to 17 Mr. Bienes? 18 A. That's correct. 19 Q. On page one let me ask you some questions 20 about these various bullet points at the bottom of 21 this page. 22 A. Sure. 23 Q. The first one is with regard to the Berger 24 Singerman group wanted to sue Avellino and Bienes. 25 A. Uh-huh.</p>
<p>13:09:05-13:10:05 Page 143</p> <p>1 Q. Did you write this letter? 2 A. Yes. 3 Q. And was this sent to all of the partners 4 in P&S and S&P? 5 A. I can't remember. I would imagine that it 6 was. I am not sure. I think it was. 7 Q. What was the purpose of this letter? 8 A. I looked at the allegations that were 9 filed against me by Berger Singerman, and most of 10 those were bald-faced lies. I don't know if they 11 have storyteller writers apparently back there. 12 The crap that comes out of their pen and the crap 13 that comes from their computers are really 14 ridiculous. 15 And I want to take this opportunity while 16 I am on the record to tell you I don't appreciate 17 very much the lies you tell about me. They caused 18 a lot of pain, caused a lot of hurt. And even 19 though you want to recover your money, you should 20 do it in a stand-up fashion. 21 Q. Did anyone assist you in writing this 22 letter? 23 A. Probably. 24 Q. Do you recall who? 25 A. No.</p>	<p>13:11:32-13:12:32 Page 145</p> <p>1 Q. And you stated here, "If we tried to sue 2 them now, the bankruptcy court would prevent the 3 lawsuit from proceeding." 4 A. Uh-huh. 5 Q. Now, what was your thought with regard to 6 that? How did you come to that conclusion? 7 A. I probably talked to various people. At 8 this time Helen Chaitman was representing us in 9 some fashion. And I probably got that information 10 from Helen that -- she's on her own now -- that 11 that action would be null and void because of the 12 hands -- this case was in the hands of the 13 bankruptcy court, and nothing could be touched at 14 the time I wrote the letter. That information 15 probably would have been garnered from her. 16 Q. Okay. Do you recall whether or not she 17 reviewed any drafts of this letter? 18 A. I don't remember. 19 Q. Do you recall now as we sit here whether 20 or not you discussed other provisions of this 21 agreement with her? 22 A. I don't remember. 23 Q. Okay. But at this point in time, that is 24 August of 2012, Helen Chaitman and/or her firm were 25 representing you?</p>

<p>13:12:44-13:13:41 Page 146</p> <p>1 A. I think the -- I can't remember the dates. 2 I don't remember who was doing what. This is one 3 big muddle at some point in time. 4 Q. I see. 5 A. And it's hard to draw time accurately, the 6 time period. 7 Q. With regard to the second bullet point 8 concerning claims of withholding records -- 9 A. Uh-huh. 10 Q. -- did you withhold records of P&S and S&P 11 from anyone? 12 A. That's just more of their storytelling. 13 Q. Didn't there come a point in time where 14 motions were made in court seeking the production 15 of additional documents from you? Do you recall 16 that? 17 A. I don't know. You'd have to check the 18 record. 19 Q. Okay. As a result of some hearings in 20 court were additional records produced? 21 A. Not that I remember, except for my 22 computer records. When they asked for the records, 23 I turned over the records. There's no reason to 24 hide anything. 25 Q. You say in here, "They have had those</p>	<p>13:15:14-13:16:01 Page 148</p> <p>1 they would like to do the forensic accounting on 2 the books and records. 3 Q. And did he do that? 4 A. I have no idea. I don't know what he did. 5 Q. Was he provided books and records? 6 A. Yeah, he was provided with the documents. 7 Q. When was this? 8 A. I don't know, 2012. 9 Q. When we discussed earlier about the 10 inspection of the books and records by the Festus 11 Stacy Foundation -- 12 A. Uh-huh. 13 Q. -- it was my understanding that that was 14 before Madoff failure. Am I incorrect in that 15 regard? 16 A. You are absolutely correct. They did 17 their due diligence twice. 18 Q. Okay. 19 A. Maybe three times while I had the records. 20 This is post Madoff going under. 21 Q. And how did it come about that you 22 actually turned records over to this individual? 23 A. Well, I had no reason. Festus Stacy 24 wanted an appointment. We had no records. 25 Everything was open records. I had no problem with</p>
<p>13:13:54-13:15:03 Page 147</p> <p>1 records for almost a year." 2 A. Correct. 3 Q. Now, what records are you referring to? 4 A. There were some records that Festus Stacy 5 wanted to look at. And they asked for an 6 independent reviewer named Ali Ansari to go ahead 7 and to produce. He went ahead and he looked at the 8 records. And he must have had them a year. He 9 never gave them back. And then he produced a bill. 10 And I think at that time Berger Singerman wanted to 11 get the records, and he would not produce the 12 records, he told me. And Lenny Samuels called and 13 said he was going to sue him. At that time he 14 didn't appreciate that very much the way Lenny 15 handled himself. 16 So at some point in time I gave -- the 17 records were not in my possession for, I am 18 guessing, a year. A third party that they agreed 19 to to give the records to a forensic accountant, I 20 gave the records. Maybe it was six months period 21 of time. So the records were turned over from 22 there. They were turned over to a Margaret Smith. 23 And I don't know who the hell has the records now. 24 Q. Back up for a second. Who is Ali Ansari? 25 A. He was the person that Festus Stacy said</p>	<p>13:16:16-13:17:10 Page 149</p> <p>1 turning records over because the records were 2 accurate. I knew the -- they go to our church, so 3 I had no problem. I says, if you want to -- matter 4 of fact, Festus Stacy said, this is too big for you 5 to handle; maybe you should go ahead and have other 6 people help you. I said, well, that's fine, what 7 do you want to go ahead and do? 8 And at some point in time Chad Pugatch 9 actually called whatever company that is, who's the 10 conservator on this, I forgot, whatever the 11 conservator's name is. Anyway, we actually had 12 called them. We didn't like the pricing. And I 13 figured we'd just get the money back and just 14 distribute the money, so. 15 Q. I am sorry, my lack of understanding. But 16 who retained this Ali Ansari? 17 A. It would have been Festus Stacy, not me. 18 Q. And did you actually physically provide 19 records to him? 20 A. Yes, we did. 21 Q. Why did you let records go out of your 22 office? 23 A. I had no problem at that time with the 24 people in our church reviewing the records, no 25 problem whatsoever, because the records were</p>

<p>13:17:26-13:18:14 Page 150</p> <p>1 accurate. I had no problem in doing that. So if 2 it would give them peace to understand that these 3 records were accurate, I just did not have a 4 problem. I was not aware that they were going to 5 go ahead and turn this into lawsuit after lawsuit. 6 Q. When the records were provided to him -- 7 A. Yes. 8 Q. -- did he follow back up with any 9 questions with you; do you recall? 10 A. Never. Never. 11 Q. I am sorry. 12 A. I did find a couple extra books when we 13 moved or transitioned our office, and I think I 14 gave those to Margaret Smith. So he said, were all 15 the records turned over? There may have been a 16 couple books that we found, but it was nothing, 17 nothing like earth shaking. 18 Q. Do you know whether this Ali Ansari 19 communicated with Mr. Kuzy at all? 20 A. Not to my knowledge. I don't think he did 21 any work. I never think he got paid. I think it 22 was a ploy just to get the records from me so they 23 can give to an attorney to sue. I think they got 24 them under false pretense. 25 Q. When you said before about some invoice</p>	<p>13:19:35-13:20:22 Page 152</p> <p>1 page one -- 2 A. Right. 3 Q. -- let me just read it, the first sentence 4 of it. "Partnership funds were never paid to 5 Avellino and Bienes or anyone else." 6 A. Uh-huh. 7 Q. "Avellino and Bienes have never had any 8 control over the partnerships." 9 A. Uh-huh. 10 Q. Now, the "partnership funds were never 11 paid to Avellino and Bienes or anyone else." 12 A. Correct. 13 MR. SAMUELS: Object to the form of the 14 question. 15 BY MR. WOODFIELD: 16 Q. What did you mean by that? 17 A. We never took money from S&P and P&S and 18 gave it to any partner, entity or anything else. 19 That money, in fact any money paid to third parties 20 came through my profit MDS Associates, never 21 through S&P and P&S. 22 I believe this letter was written after a 23 bunch of slanderous allegations that were made to 24 me, in this mockery of me in this lawsuit. 25 Q. And your statement, "Avellino and Bienes</p>
<p>13:18:30-13:19:23 Page 151</p> <p>1 from Mr. Ansari, did he provide that to you? 2 A. I don't remember getting one. We met at 3 the warehouse, and I gave him the records. 4 Q. So P&S and S&P records were in a warehouse 5 at that point in time? 6 A. Yes. And just for the record, we had 7 scanned all the records, asked for on numerous 8 subpoenas by the SEC, so they have copies of all 9 our records as well. 10 Q. And the records were also provided to 11 Picard, were they not? 12 A. Absolutely. 13 Q. Was that -- I'm sorry. 14 A. Go ahead. 15 Q. Was that in connection with your efforts 16 to recover funds from Picard? 17 A. I don't remember. 18 Q. Who assisted -- in fact, wasn't an effort 19 made to recover from SIPC funds on behalf of P&S 20 and S&P? 21 A. Through two attorneys, locally through 22 Chad Pugatch, Pugatch Rice and Schiller, and Helen 23 Chaitman. In what order or how that was done, what 24 legal maneuvers, I can't tell you. 25 Q. The bottom bullet point, Mr. Sullivan, on</p>	<p>13:20:35-13:21:59 Page 153</p> <p>1 have never had any control over the partnerships," 2 is a true and accurate statement? 3 A. It's true and accurate, has been from the 4 first day. It will be accurate every time you ask 5 me thereafter. 6 Q. With regard to the second bullet point on 7 page two -- 8 A. Yes. 9 Q. -- just take a moment to look at that, and 10 let me ask you some questions about that. 11 A. Sure. 12 Q. Now, what did you mean when you say that 13 "charitable contributions made were a reduction of 14 management fees and not paid out"? 15 A. People were complaining because they seen 16 or someone indicated to them or something alleged 17 in some lawsuit that I made charitable 18 contributions out of P&S and S&P. They show on the 19 return, but it was really me not taking my full 20 20 percent that I gave back that ten percent to Kelco. 21 So those partners in fact got a charitable 22 deduction by reducing my fees. 23 Q. And that was similarly the case with the 24 Stacy Foundation? 25 A. No, it was not the same. Festus Stacy got</p>

13:22:29-13:23:31 Page 154

1 their ten percent, their fee back. It's only the
2 case of the Kelco Foundation.
3 **Q. Okay. So further on down when this**
4 **sentence, the first sentence of a bullet point that**
5 **states "No commissions were paid from partnership**
6 **assets" --**
7 A. Uh-huh.
8 **Q. -- is that again referring to your prior**
9 **testimony that any commissions, or whatever term**
10 **was utilized, was paid from your management fee?**
11 A. Correct.
12 **Q. And do the books and records of the**
13 **company support that to your knowledge?**
14 A. Yes, they do.
15 **Q. You notice down on at the bottom of**
16 **page -- no, they are unnumbered pages, but it's**
17 **page two.**
18 A. Uh-huh.
19 **Q. If you would look at that last paragraph?**
20 A. Uh-huh.
21 **Q. You see where it states in there that**
22 **they, which is referring to the individuals who**
23 **reviewed the books and records for the Stacy**
24 **Foundation --**
25 A. Uh-huh.

13:23:44-13:24:49 Page 155

1 **Q. -- met with your accountant Mike Kuzy?**
2 **Does that refresh your recollection at all as to**
3 **whether or not such a meeting took place?**
4 A. I don't remember. All I know is the
5 records -- well, that would have been the meeting I
6 was probably referring to that he came in their
7 office, had a meeting with me, then came back and
8 expected the records, and then went to talk to Kuzy
9 on a separate meeting. I am guessing that's what
10 that refers to.
11 **Q. I didn't follow you on that, I am sorry.**
12 **What meeting was that?**
13 A. Patrick Kelly had come into our office
14 somewhere, I think, in '07 or '08, I think it
15 was '08. And he was doing due diligence for Festus
16 Stacy. All the books and records were made
17 available to him at that time. He asked us various
18 questions. I think there was a second meeting. I
19 don't know if it was one, two, three. I wasn't
20 there for one of the meetings when he brought the
21 CPA in. I believe Sheila did the records and they
22 went and talked to Michael Kuzy. So this is
23 probably the meeting I am referring to.
24 **Q. Okay.**
25 **MR. WOODFIELD:** If we are going to stop,



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1 this is a good place to stop.
2 **MR. WINDERMAN:** How much longer do you
3 have to go?
4 **MR. WOODFIELD:** A lot, a couple hours.
5 (Off-the-record discussion.)
6
7 (The deposition adjourned at 1:25 p.m.)
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1 CERTIFICATE OF OATH
2
3 STATE OF FLORIDA
4 COUNTY OF BROWARD
5
6 In my capacity as a Notary Public of the State of
7 Florida, I certify that on December 1, 2015, at
8 10:16 a.m., MICHAEL D. SULLIVAN, personally
9 appeared before me and took an oath (or
affirmation) for the purpose of giving testimony in
the matter: P&S Associates v Michael Sullivan, et
al.
10
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SWORN TO and SUBSCRIBED before me
this December 23, 2015, in
the City of West Palm Beach, County
of Palm Beach, State of Florida.



Lisa Mudrick, Notary Public
State of Florida at Large.

1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA

4 COUNTY OF PALM BEACH

5

6 I, LISA MUDRICK, RPR, FPR, do hereby
7 certify that I was authorized to and did
8 stenographically report the deposition of MICHAEL
9 D. SULLIVAN; and that the foregoing transcript,
10 pages from 1 through 156, inclusive, are a true and
11 correct record of my stenographic notes.

12 I further certify that the said deposition
13 was taken at the time and place hereinabove set
14 forth and that the taking of said deposition was
15 commenced and adjourned as hereinabove set out.

16 I further certify that I am not an
17 attorney or counsel of any of the parties, nor am I
18 a relative or employee of any attorney or counsel
19 or party connected with the action, nor am I
20 financially interested in the action.

21 The foregoing certification of this
22 transcript does not apply to any reproduction of
23 the same by any means unless under the direct
24 control and/or direction of the certifying
25 reporter.

18 DATED December 23, 2015.

19

20

21



22

LISA MUDRICK, RPR, FPR
Mudrick Court Reporting, Inc.
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West Palm Beach, Florida 33401
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23

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EXHIBIT D

IN THE SEVENTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

CASE NO: 12-034123(07)

P&S ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership; PHILIP
VON KAHLE as Conservator of P&S
ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership; and S&P
ASSOCIATES, GENERAL PARTNERSHP, a
Florida limited partnership,

Plaintiffs,

v

MICHAEL D. SULLIVAN, an individual,
STEVEN JACOB, an individual, MICHAEL D.
SULLIVAN & ASSOCIATES, INC., a Florida
corporation, STEVEN F. JACOB, CPA &
ASSOCIATES, INC., a Florida
corporation, FRANK AVELLINO, an
individual, MICHAEL BIENES, an
individual, KELKO FOUNDATION, INC., a
Florida non profit corporation, and
VINCENT T. KELLY, an individual,

Defendants.

/

Deposition of MICHAEL D. SULLIVAN
(Volume II)

Thursday, December 17, 2015
One Financial Plaza, Suite 2700
Fort Lauderdale, Florida 33394
9:55 a.m. - 12:45 p.m.

Reported by:
Lisa Mudrick, RPR, FPR
Notary Public, State of Florida

Michael Sullivan - - Vol. 2 - 12/17/2015
P & S v Sullivan

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1	APPEARANCES:	1	21 Letter, Mar. 9, 2004, Sullivan to 252
2	On behalf of the Plaintiffs:	2	Bienes, MB000001
3	BERGER SINGERMAN, LLP	3	22 Plaintiffs' Notice of Serving 269
4	350 East Las Olas Boulevard, Suite 1000	4	Revised Responses to Defendant
5	Fort Lauderdale, Florida 33301	5	Michael Bienes' First Set of
6	BY: LEONARD K. SAMUELS, ESQUIRE	6	Interrogatories to Plaintiff
7	-- and --	7	23 Michael D. Sullivan Motion for 270
8	MESSANA, P.A.	8	Protective Order and to Compel
9	401 East Las Olas Boulevard, Suite 1400	9	Production of his Sworn Statement
10	Fort Lauderdale, Florida 33301	10	
11	BY: THOMAS ZEICHMAN, ESQUIRE	11	
12		12	
13	On behalf of Defendant Avellino:	13	
14	HAILE SHAW & PFAFFENBERGER, P.A.	14	
15	660 U.S. Highway One, Third Floor	15	
16	North Palm Beach, Florida 33408	16	
17	BY: GARY A. WOODFIELD, ESQUIRE	17	
18		18	
19	On behalf of Defendant Michael Bienes:	19	
20	BROAD AND CASSEL	20	
21	2 South Biscayne Boulevard	21	
22	One Biscayne Tower, 21st Floor	22	
23	Miami, Florida 33131	23	
24	BY: JONATHAN ETRA, ESQUIRE	24	
25		25	
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1	- - -	1	PROCEEDINGS
2	I N D E X	2	- - -
3	- - -	3	Continued deposition of MICHAEL D.
4	EXAMINATIONS	4	SULLIVAN, a witness, taken by the Defendants
5	Witness:	5	Avellino and Bienes for the purpose of discovery
6	MICHAEL D. SULLIVAN	6	and for use as evidence in the above-entitled
7	BY MR. WOODFIELD	7	cause, pursuant to notice heretofore filed, before
8	BY MR. ETRA	8	LISA MUDRICK, RPR, FPR, and Notary Public in and
9		9	for the State of Florida at large, at One Financial
10		10	Plaza, Fort Lauderdale, Florida, on December 17,
11	EXHIBITS MARKED	11	2015, commencing at 9:55 a.m.
12	No. Defendant's	12	- - -
13	15 Letter, AVE00253RTP - 255	13	Thereupon,
14	16 Plaintiffs' Amended Answers &	14	MICHAEL D. SULLIVAN,
15	Objections to Defendant Frank	15	being by the undersigned Notary Public duly
16	Avellino's Fourth Set of	16	re-sworn, testified further as follows:
17	Interrogatories to Plaintiff	17	THE WITNESS: Yes.
18	17 Confidential Settlement	18	MR. WOODFIELD: Have this letter marked as
19	Agreement, AVE03498RTP - 3502	19	Exhibit 15, please.
20	18 Letters w/attachments, 08-13-15 -	20	(Defendant's Exb. No. 15, Letter,
21	Plaintiffs - 0014392 -395, 14470,	21	AVE00253RTP - 255.)
22	14477, 17438	22	DIRECT (MICHAEL D. SULLIVAN)
23	19 Letter, Zittel to S&P,	23	BY MR. WOODFIELD:
24	AVE02913RTP	24	Q. Mr. Sullivan, I show you what we have
25	20 Documents, MB00001RTP - 98	25	marked as Exhibit 15.

09:56:12-09:56:56	Page 164	09:58:10-09:59:10	Page 166
<p>1 A. Uh-huh.</p> <p>2 Q. It's a three-page letter unsigned. But</p> <p>3 apparently based on its heading it looks like it's</p> <p>4 from you to Bette Anne. Do you recall this letter?</p> <p>5 A. No, I don't remember writing the letter.</p> <p>6 I reviewed this letter in another deposition. And</p> <p>7 it would be things I would have said for sure. I</p> <p>8 don't actually remember writing it. But that would</p> <p>9 have been my thought pattern.</p> <p>10 Q. When you say other deposition, when did</p> <p>11 you -- what was that? What deposition are you</p> <p>12 referring to?</p> <p>13 A. It was at another office, at Berger</p> <p>14 Singerman's office.</p> <p>15 Q. Was that when they were questioning you?</p> <p>16 A. Yes.</p> <p>17 Q. Under oath?</p> <p>18 A. Yes.</p> <p>19 Q. And was anyone else -- were there lawyers</p> <p>20 other than Berger Singerman present?</p> <p>21 A. Harry was there, and I think Messana was</p> <p>22 there, the usual suspects.</p> <p>23 Q. I think you referred to last time that you</p> <p>24 gave them a sworn statement for several hours. Is</p> <p>25 that the occasion you are speaking of?</p>	<p>1 A. Yes and no. I know I was going to write</p> <p>2 something. I don't remember that it was this</p> <p>3 letter. I can't definitively tell you. It</p> <p>4 happened a long time ago.</p> <p>5 Q. And when we say Bette Anne, we are</p> <p>6 referring to?</p> <p>7 A. Greg, partner, the wife of my deceased</p> <p>8 partner, Greg Powell.</p> <p>9 Q. Okay. Now, what caused you to believe it</p> <p>10 was necessary or appropriate to write this letter</p> <p>11 to her? What led up to it to cause that to happen?</p> <p>12 MR. WINDERMAN: Form.</p> <p>13 BY MR. WOODFIELD:</p> <p>14 Q. You can answer.</p> <p>15 A. There was some rumblings going around when</p> <p>16 Greg had passed away that the kids wanted a, well,</p> <p>17 maybe we should take, these are his kids, in</p> <p>18 family, they were maybe 25, 26, 27, that maybe the</p> <p>19 partnership should be split or something should</p> <p>20 happen or how are we going to do this. And they</p> <p>21 weren't prepared in any way. They are still going</p> <p>22 through a grieving. They are still going through a</p> <p>23 grieving process at this time. There's no way that</p> <p>24 anyone else could have really been involved in</p> <p>25 this.</p>		
09:57:02-09:57:57	Page 165	09:59:23-10:00:16	Page 167
<p>1 A. I think it was a couple days, two days,</p> <p>2 yes, it is.</p> <p>3 Q. And do you recall when that took place</p> <p>4 approximately?</p> <p>5 A. Three, four months ago. I don't know.</p> <p>6 Q. Okay. Now, with regard to this letter --</p> <p>7 A. Yes.</p> <p>8 Q. -- the date on this letter is June 18,</p> <p>9 2013. I assume that's a result of the way this was</p> <p>10 printed out of a computer. Do you have any</p> <p>11 recollection as to when this letter was written?</p> <p>12 A. No, it couldn't have been. It was</p> <p>13 impossible to write this June 18, 2013.</p> <p>14 Q. Right. But as you look at this do you</p> <p>15 have any recollection as to the time period in</p> <p>16 which it was written?</p> <p>17 A. Maybe a year after the death of Greg. I</p> <p>18 can't tell you for sure.</p> <p>19 Q. And I think from our testimony before you</p> <p>20 weren't certain on the date of Greg's death; is</p> <p>21 that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. As we sit here today do you recall</p> <p>24 sending this letter or a letter such as this to</p> <p>25 Bette Anne?</p>	<p>1 So the letter was kind of written just to</p> <p>2 make sure I had a boundary there so Bette Anne or</p> <p>3 the children wouldn't -- they said, well, maybe we</p> <p>4 can get another partnership, something to that</p> <p>5 effect. There was no way I could have let that</p> <p>6 happen.</p> <p>7 Q. After Greg Powell's death did his widow</p> <p>8 have any involvement in the business?</p> <p>9 A. No, she didn't.</p> <p>10 Q. Did her children have any involvement in</p> <p>11 the business?</p> <p>12 A. There were rumblings on that, but, no,</p> <p>13 they didn't.</p> <p>14 Q. And after Greg Powell died did you</p> <p>15 continue to provide any, or did you provide any</p> <p>16 finances or funds to Bette Anne?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And how did that come about?</p> <p>19 A. Just didn't think that she should not --</p> <p>20 you know, she should benefit something. So I think</p> <p>21 we sent her four or \$5,000, paid her some of her</p> <p>22 medical bills for her, her medical insurance, and</p> <p>23 made a monthly payment to her.</p> <p>24 Q. Was there any writing to any effect that</p> <p>25 set forth what funding would be provided her?</p>		

<p>10:00:24-10:01:10 Page 168</p> <p>1 A. No.</p> <p>2 Q. Did you reach any agreement or</p> <p>3 understanding with her as to what you would provide</p> <p>4 her?</p> <p>5 A. I pretty much told her what I wanted to do</p> <p>6 for her, and I just fulfilled what I thought was</p> <p>7 necessary.</p> <p>8 Q. I believe there's reference in this</p> <p>9 letter, we'll get to it, of responding to a letter</p> <p>10 from her. Do you recall receiving a letter from</p> <p>11 her?</p> <p>12 A. No.</p> <p>13 Q. Looking at this letter in the very first</p> <p>14 sentence --</p> <p>15 A. Uh-huh.</p> <p>16 Q. -- which is, "Over the holiday I will let</p> <p>17 you know what I will do over the next five years."</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you recall what you were referring to</p> <p>20 with regard to the next five years?</p> <p>21 A. Only thing --</p> <p>22 MR. WINDERMAN: Form.</p> <p>23 BY MR. WOODFIELD:</p> <p>24 Q. You can answer.</p> <p>25 A. Okay. Probably make payments to her. I</p>	<p>10:02:06-10:03:03 Page 170</p> <p>1 you can.</p> <p>2 A. I can only assume what I meant by that.</p> <p>3 Q. Well, what do you assume you meant by</p> <p>4 that?</p> <p>5 MR. WINDERMAN: Form, speculation.</p> <p>6 There's no reason for him to speculate. He</p> <p>7 doesn't recall writing the letter. And I don't</p> <p>8 want to give a speaking objection, but you</p> <p>9 can't keep asking him questions about a letter</p> <p>10 he doesn't remember writing.</p> <p>11 BY MR. WOODFIELD:</p> <p>12 Q. You have no recollection of writing any</p> <p>13 letter to her?</p> <p>14 A. I know I did something; I just wasn't sure</p> <p>15 what it was. This contains a thought process</p> <p>16 definitively that I would have had in my head at</p> <p>17 the time without any question, no question about</p> <p>18 that.</p> <p>19 Q. Do you know where this letter came from?</p> <p>20 A. I don't remember writing the letter, but,</p> <p>21 like I said, it would have contained every -- yeah,</p> <p>22 I have had a lot of stuff go wrong in my life. You</p> <p>23 know, my wife was murdered, Greg passed away; I</p> <p>24 closed his eyes. There's a lot of trauma and stuff</p> <p>25 going on. During these periods of time they are</p>
<p>10:01:21-10:01:57 Page 169</p> <p>1 am assuming that.</p> <p>2 Q. Okay. Looking at the second paragraph.</p> <p>3 A. Yes.</p> <p>4 Q. And the second sentence, the one that</p> <p>5 begins "I will base my gift."</p> <p>6 A. Correct.</p> <p>7 Q. Do you see that?</p> <p>8 A. "I will base my gift"? I am sorry, I say,</p> <p>9 "As I continue." Where is it at?</p> <p>10 Q. Yes, second paragraph, second sentence.</p> <p>11 A. Oh, okay.</p> <p>12 Q. "I will base my gift to you" --</p> <p>13 A. Yeah.</p> <p>14 Q. -- "over a five-year period" --</p> <p>15 A. Yes.</p> <p>16 Q. -- "as long as certain life and market</p> <p>17 conditions continue as they have."</p> <p>18 A. Right.</p> <p>19 Q. Do you recall what you were referring to</p> <p>20 by that sentence?</p> <p>21 MR. WINDERMAN: Form.</p> <p>22 THE WITNESS: I could assume.</p> <p>23 BY MR. WOODFIELD:</p> <p>24 Q. Well, I don't want you to assume. I want</p> <p>25 you to recall what your best recollection was, if</p>	<p>10:03:07-10:03:47 Page 171</p> <p>1 very tough.</p> <p>2 Q. No, I understand that. But my question</p> <p>3 was, I mean, we are looking now --</p> <p>4 A. Yes.</p> <p>5 Q. -- at a physical three-page document?</p> <p>6 A. Yes.</p> <p>7 Q. My question was do you know how it came</p> <p>8 about that we have this three-page document?</p> <p>9 A. Well, somebody showed it to me. It was</p> <p>10 showed to me at the last deposition or something,</p> <p>11 whatever that was we took.</p> <p>12 Q. And again, you are referring to the</p> <p>13 session you had with the Berger Singerman</p> <p>14 attorneys?</p> <p>15 A. Yeah. Was that not a deposition?</p> <p>16 MR. SAMUELS: Mr. Sullivan, that statement</p> <p>17 is confidential, so I just want to make sure</p> <p>18 you don't get into the details.</p> <p>19 MR. WINDERMAN: The statement is</p> <p>20 confidential. The fact that this letter, which</p> <p>21 you attached to your response to my motion for</p> <p>22 protective order, obviously isn't confidential</p> <p>23 anymore and may have opened the door to the</p> <p>24 entire sworn statement.</p> <p>25 Go ahead.</p>

<p>10:03:59-10:04:27 Page 172</p> <p>1 MR. SAMUELS: Hold on. So this document 2 was discussed. So all I am saying about that 3 is not to get into the details of what was 4 discussed in the statement. Obviously this 5 letter is part of the case. 6 MR. WINDERMAN: Right. 7 MR. SAMUELS: It's been discussed at 8 various depositions. 9 MR. WOODFIELD: And I don't begin to agree 10 with your statement. 11 BY MR. WOODFIELD: 12 Q. And I am going to ask you questions about 13 what was asked by the Berger Singerman attorneys 14 when you had this session about this letter. 15 A. Right. 16 MR. WOODFIELD: You can preclude him from 17 answering those questions? 18 MR. SAMUELS: No, if he wants to breach 19 the agreement. 20 MR. WINDERMAN: No. No. No. And so am 21 I. It's part of a confidential settlement 22 agreement, and he is not going to testify as to 23 what he said during those things. 24 MR. WOODFIELD: All right. 25 MR. WINDERMAN: If you want to ask him</p>	<p>10:05:24-10:06:02 Page 174</p> <p>1 written statement? He has testified to that. 2 MR. WOODFIELD: No, I didn't say written 3 statement. Sworn statement. 4 MR. WINDERMAN: Sworn statement, okay. He 5 has testified that he has given one. 6 MR. WOODFIELD: Right. But my question 7 was was he asked questions about this letter 8 and did he give responses with regard to this 9 letter at that session. Not asking for the 10 content of those questions or answers, but just 11 the fact of whether or not they were asked and 12 answered. 13 MR. SAMUELS: Our position is that that 14 violates the agreement, but -- 15 MR. WINDERMAN: I disagree with his 16 position, but out of an abundance of caution I 17 am going to direct the witness not to answer. 18 MR. WOODFIELD: Okay. 19 MR. WINDERMAN: Based on the 20 confidentiality of the settlement agreement and 21 the so-called sworn statement. 22 MR. ETRA: Do we agree that Gary doesn't 23 need to make a record -- 24 MR. WINDERMAN: Sure. 25 MR. ETRA: -- by asking repetitive</p>
<p>10:04:36-10:05:16 Page 173</p> <p>1 questions that he has an independent 2 recollection about what you are asking him, he 3 is free to answer those questions. 4 MR. WOODFIELD: Just so we have -- 5 MR. WINDERMAN: I am not sure he would -- 6 to tell you the truth, it was a year ago. It 7 wasn't a couple months ago. 8 MR. WOODFIELD: Right. 9 MR. WINDERMAN: It was a year ago. And I 10 would be shocked if he could recall what he 11 said at that. I can't recall what he said at 12 the meeting. 13 MR. WOODFIELD: Just so we can sort of 14 wrap this up. 15 BY MR. WOODFIELD: 16 Q. Without telling me, since your attorney 17 has precluded you from answering what was asked and 18 what your response was with regard to this letter 19 when you met with Berger Singerman, do you recall 20 the fact that you were asked questions about this 21 letter and that you did provide responses? 22 MR. WINDERMAN: Again, I am going to 23 object. I think that goes to the fact that a 24 written statement -- contents of a written 25 statement. I mean, does he recall giving a</p>	<p>10:06:10-10:06:42 Page 175</p> <p>1 questions? And that if it turns out that the 2 court finds we can get into the subject, we are 3 not going to go question by question; it's the 4 whole subject? 5 MR. WINDERMAN: Right, it's the whole 6 subject. 7 MR. ETRA: Great. 8 MR. WINDERMAN: No problem. 9 MR. WOODFIELD: So let's move on. 10 BY MR. WOODFIELD: 11 Q. When looking at this letter, the one, two, 12 three, the fourth paragraph that begins with "right 13 off the bat," do you see that? 14 MR. WINDERMAN: Don't write on that. 15 BY MR. WOODFIELD: 16 Q. I am sorry, I didn't know you were going 17 to do that. 18 A. Never mind. I am sorry. 19 Q. Use your finger. 20 MR. WINDERMAN: Use your finger. 21 BY MR. WOODFIELD: 22 Q. See "right off the bat"? Do you see that? 23 A. Yes. Yes, I do. 24 Q. Okay. Let me just read this sentence. 25 "Right off the bat" --</p>

<p>10:06:46-10:07:34 Page 176</p> <p>1 A. Uh-huh.</p> <p>2 Q. -- "you should be completely aware about</p> <p>3 the gift of this business" --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- "was only given to me, not Greg."</p> <p>6 A. Uh-huh.</p> <p>7 Q. Do you recall what you meant when you used</p> <p>8 the term "gift"?</p> <p>9 MR. WINDERMAN: Form.</p> <p>10 THE WITNESS: Am I supposed to assume or</p> <p>11 tell you what this -- what I think this letter</p> <p>12 meant at that time?</p> <p>13 MR. WINDERMAN: Pure speculation.</p> <p>14 BY MR. WOODFIELD:</p> <p>15 Q. Do you have any recollection of what was</p> <p>16 meant by utilization of the term "gift" in this</p> <p>17 letter is what I am asking?</p> <p>18 MR. WINDERMAN: Again, speculation. He</p> <p>19 doesn't recall writing the letter. He doesn't</p> <p>20 recall the letter itself. You might want to</p> <p>21 ask him if he has ever referred to anything</p> <p>22 with regard to this as a gift.</p> <p>23 THE WITNESS: I am trying to be helpful to</p> <p>24 everybody here. Just so you know, when I seen</p> <p>25 this letter I just did not -- I know when I</p>	<p>10:08:31-10:09:32 Page 178</p> <p>1 BY MR. WOODFIELD:</p> <p>2 Q. Mr. Sullivan, do you recall at any time</p> <p>3 referring to the business of S&P and P&S as being a</p> <p>4 gift?</p> <p>5 A. Yes.</p> <p>6 Q. And what's your recollection of that?</p> <p>7 A. I always thought this whole process and</p> <p>8 being involved with Madoff actually was a gift.</p> <p>9 You know, at that time who Madoff was and what was</p> <p>10 going on, it was just an ultimate blessing to go</p> <p>11 ahead and have.</p> <p>12 So, yeah, to me this was a gift just for</p> <p>13 me having the opportunity to have an account with</p> <p>14 Madoff. It's not something I ever thought would</p> <p>15 happen. It just happened to work out. So, yes,</p> <p>16 this is in the general term, not breaking out into</p> <p>17 every mind process and thought, this certainly</p> <p>18 isn't a dissertation or a thesis or an exegesis on</p> <p>19 the statement. It was just something that came off</p> <p>20 from the -- you know, these aren't letters that you</p> <p>21 write you are thinking you are going to be at some</p> <p>22 deposition at some point in time going over</p> <p>23 everything. I mean, that's ridiculous. So, yeah,</p> <p>24 everything, all the money was a gift.</p> <p>25 Q. In that same paragraph you've got a</p>
<p>10:07:46-10:08:22 Page 177</p> <p>1 told, whoever I told at this deposition, that I</p> <p>2 was called a liar after I told him, the</p> <p>3 gentleman sitting to the right of Harry called</p> <p>4 me a liar --</p> <p>5 MR. SAMUELS: Mr. Sullivan?</p> <p>6 THE WITNESS: -- when I went ahead and</p> <p>7 explained to that.</p> <p>8 MR. SAMUELS: Mr. Sullivan? Okay. I just</p> <p>9 want to state again, Mr. Sullivan, and your</p> <p>10 lawyer has told you this, you are not supposed</p> <p>11 to talk about anything that was said at the</p> <p>12 statement. You have just done that in</p> <p>13 violation of the agreement. So I don't want to</p> <p>14 keep saying that. Your lawyer has told you not</p> <p>15 to talk about it. I have said it three times</p> <p>16 now. If you want to continue to talk about it,</p> <p>17 go right ahead.</p> <p>18 MR. WINDERMAN: Calling you a liar at the</p> <p>19 sworn statement doesn't go to the confidential</p> <p>20 nature or work product. It's just his opinion</p> <p>21 of you. So you can take that to the court too.</p> <p>22 Go ahead.</p> <p>23 MR. SAMUELS: His opinion of me? I don't</p> <p>24 think he expressed an opinion of me.</p> <p>25 MR. WINDERMAN: I think he just did.</p>	<p>10:09:43-10:10:36 Page 179</p> <p>1 sentence that says, "I was reminded constantly by</p> <p>2 Frank that this was my gift alone."</p> <p>3 A. Uh-huh.</p> <p>4 Q. Do you recall making any statement such as</p> <p>5 that at any point in time?</p> <p>6 A. Yeah. Greg and I had had really</p> <p>7 discussions. And one of the things I had to be</p> <p>8 careful were the kids coming along at their young</p> <p>9 age and trying to call Madoff or do anything.</p> <p>10 I think it's important to understand as we</p> <p>11 are going through this, we are living in a</p> <p>12 pre-Madoff crash, and how sensitive businesses are.</p> <p>13 And unless you look at this in the terms of, you</p> <p>14 know, being involved in a, what you think is a real</p> <p>15 business at that time, yeah, I mean, I had to do</p> <p>16 what I needed to do to make sure this business kept</p> <p>17 running. And to me, that served as a threat.</p> <p>18 Q. In the third paragraph from the bottom of</p> <p>19 this letter --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- the one that begins "you stated that,"</p> <p>22 do you see that paragraph?</p> <p>23 A. Yes.</p> <p>24 Q. And if you would look at the second</p> <p>25 line --</p>

<p>10:10:42-10:11:32 Page 180</p> <p>1 A. Yes.</p> <p>2 Q. -- the sentence that begins "if something</p> <p>3 happens." Would you just read that to yourself for</p> <p>4 a moment?</p> <p>5 A. Oh, "you stated that you thought," is that</p> <p>6 which one?</p> <p>7 Q. Right. And then the next line down --</p> <p>8 A. Yes.</p> <p>9 Q. -- the sentence that begins "if something</p> <p>10 happens."</p> <p>11 A. "Happens to the stock market."</p> <p>12 Q. Just read that to yourself.</p> <p>13 A. Okay.</p> <p>14 Q. Now, having read that, does it refresh</p> <p>15 your recollection at all if at any point in time</p> <p>16 you recall having any discussions with anyone about</p> <p>17 how this investment could drastically change if</p> <p>18 something happened to the stock market, to your</p> <p>19 investors, to Frank?</p> <p>20 A. You know, when you are in this you think,</p> <p>21 gee, what happens, is something going to happen to</p> <p>22 Bernie, is something going to happen to the stock</p> <p>23 market, is something going to happen to me, I mean,</p> <p>24 all sorts. Can I definitively tell you what I</p> <p>25 meant by that? I can't.</p>	<p>10:12:39-10:13:17 Page 182</p> <p>1 were to happen to me."</p> <p>2 A. Yes.</p> <p>3 Q. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. If you would, go down to the second line.</p> <p>6 A. Yes.</p> <p>7 Q. At the end of that line --</p> <p>8 A. Yes.</p> <p>9 Q. -- if you could just read that sentence to</p> <p>10 yourself that begins "I am the person who." Do you</p> <p>11 see that?</p> <p>12 A. Uh-huh. Uh-huh, I do.</p> <p>13 Q. Do you have any recollection at any time</p> <p>14 having any discussion with anyone about that Frank</p> <p>15 Avellino was referring to him as the main source?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And that he entrusted this gift to you?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And could take it back?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you have any recollection of ever</p> <p>22 saying anything like that?</p> <p>23 A. No, I don't.</p> <p>24 Q. Do you have any understanding as you sit</p> <p>25 here today what was meant by that in this letter?</p>
<p>10:11:51-10:12:34 Page 181</p> <p>1 Q. Okay. Do you have any recollection as you</p> <p>2 sit here today as to at any point in time you</p> <p>3 providing -- stating to anyone that Frank, what</p> <p>4 Frank's role was in the business at the time it was</p> <p>5 operating?</p> <p>6 A. I probably made various statements to all</p> <p>7 different people. But I cannot -- if someone asked</p> <p>8 me a question, I honestly answered the question. I</p> <p>9 couldn't tell you. I mean, I could have been asked</p> <p>10 ten, 20, 30 times. I have no idea.</p> <p>11 Q. Do you recall at any time telling anyone</p> <p>12 that Frank Avellino was the main source of this</p> <p>13 business?</p> <p>14 MR. SAMUELS: Object to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: Well, he wasn't, so I don't</p> <p>17 know. Maybe someone asked the question a</p> <p>18 certain way or they, you know, posed the</p> <p>19 question a certain way. I can't -- I don't</p> <p>20 know. I can't tell you.</p> <p>21 BY MR. WOODFIELD:</p> <p>22 Q. Looking at the second paragraph up from</p> <p>23 the bottom --</p> <p>24 A. Yes.</p> <p>25 Q. -- Mr. Sullivan, that begins "if something</p>	<p>10:13:34-10:14:56 Page 183</p> <p>1 A. I had told -- I know somebody asked me</p> <p>2 what happens if I were to go ahead and pass away or</p> <p>3 to die or something, what in fact would happen to</p> <p>4 this or who they would call. And Frank was a dear</p> <p>5 friend of mine. I mean, I have known him for a</p> <p>6 long time. And I think if questions come up, since</p> <p>7 he knew Madoff and had his own accounts with</p> <p>8 Madoff, they knew that I knew him, they knew I knew</p> <p>9 him from church, I would have wanted people to go</p> <p>10 ahead and ask Frank if they had any questions.</p> <p>11 Because Greg had already passed away, and there was</p> <p>12 nobody else to call but Frank. So it was kind of</p> <p>13 more for protection thing for people, you know, not</p> <p>14 to worry, in other words, where is the money going</p> <p>15 to end up, is someone just going to run away and</p> <p>16 take it. So it was just there for that reason.</p> <p>17 Q. Do you ever recall having any discussions</p> <p>18 with Frank Avellino that in which he said he could</p> <p>19 take this business away from you?</p> <p>20 A. There was a statement that was made one</p> <p>21 time definitively that if there was any</p> <p>22 indications -- both Michael and Frank had people</p> <p>23 and friends that were investors in here. I think</p> <p>24 if they felt and there was any suspicious activity</p> <p>25 or monies weren't being paid or things not</p>

<p>10:15:16-10:16:05 Page 184</p> <p>1 happening, I wouldn't put it past them to go ahead 2 and tell Madoff something is wrong, without any 3 question. That's probably what I meant by that 4 statement. 5 Q. So having talked about some of the 6 sentences in this letter, again, as we sit here 7 today, is your recollection refreshed at all as to 8 your writing this letter to Bette Anne? 9 A. The thought processes and the things that 10 I was thinking at that time align with some of the 11 thoughts on there. Whether I explained them one 12 hundred percent or not, I can't tell you. I didn't 13 sit down and write a 15-page letter of everything 14 that I meant. They were no more than summary 15 statements. 16 I do not write long things. I am not a 17 writer by nature. This was just something I busted 18 out at the time, once again, definitively to keep 19 the children and anybody else away from coming in 20 and calling Madoff and stopping the business. 21 That's why this letter specifically was written, 22 that letter alone. 23 Q. And when you say children, you are 24 referring to -- 25 A. Yes.</p>	<p>10:17:40-10:18:58 Page 186</p> <p>1 THE WITNESS: Okay. 2 BY MR. WOODFIELD: 3 Q. If you would, turn to page nine of 4 Exhibit 16. And again, for your purposes these are 5 answers that the plaintiffs in this case provided 6 to defendant Frank Avellino's interrogatories that 7 were sent to the plaintiffs. 8 A. Okay. 9 Q. And with regard to page nine, this is a 10 portion, and I am referring to the fourth sub item 11 down, beginning with the name Thomas Avellino. And 12 just for your point of reference, that is part of a 13 response to an interrogatory that asked to identify 14 people who have knowledge of the allegations 15 contained in the complaint in this action. And in 16 response to that, there are a number of people 17 identified, one of whom being Thomas Avellino. 18 Now, in here it states, "Avellino has 19 knowledge of the allegations that the partnerships 20 tracked the investments and the capital they held 21 based exclusively on defendant Avellino's advice." 22 Let me stop there for a second. Did 23 Avellino track the investments and the capital in 24 P&S and S&P? 25 A. I have no idea.</p>
<p>10:16:28-10:17:27 Page 185</p> <p>1 Q. -- Greg Powell's children? 2 A. Yes. 3 Q. Do you recall for what period of time you 4 made payments to Greg's widow? 5 A. I believe I made them until the business 6 collapsed. 7 Q. At any point in time up until the time the 8 business collapsed -- 9 A. Uh-huh. 10 Q. -- did she have any involvement in the 11 business? 12 A. Never. 13 MR. WOODFIELD: Mark these plaintiffs' 14 amended answers and objections to defendant 15 Frank Avellino's fourth set of interrogatories 16 to plaintiff as Exhibit 16, please. 17 (Defendant's Exb. No. 16, Plaintiffs' 18 Amended Answers & Objections to Defendant Frank 19 Avellino's Fourth Set of Interrogatories to 20 Plaintiff.) 21 THE WITNESS: What is this I am receiving, 22 I am sorry? 23 MR. WINDERMAN: Take a look at it. It's 24 the next exhibit. He is going to ask you 25 questions about it.</p>	<p>10:19:20-10:20:27 Page 187</p> <p>1 Q. Did Frank Avellino, did he track that 2 based upon advice that he provided to the 3 partnerships? 4 A. I have no idea. I don't know why he would 5 have given the partnership advice. It doesn't make 6 sense to me. 7 Q. Do you have any recollection of him doing 8 so? 9 A. Never. 10 Q. In the next portion of this sentence it 11 states providing that "by using the software that 12 Thomas Avellino, defendant Avellino's son, 13 provided." 14 A. Uh-huh. 15 Q. Do you recall Thomas Avellino providing 16 software to you or the partnerships? 17 A. I remember him giving us a template of how 18 to track the net profit. I don't remember being 19 software such. I don't know if it was a program, 20 was it as a formula. I can't tell you how that was 21 integrated into our system. 22 Q. Was that done, if you recall, before or 23 after Mr. Powell died? 24 A. Pretty sure it was after. 25 Q. Okay. And do you recall your dealings</p>

<p>10:20:41-10:21:36 Page 188</p> <p>1 with Tom Avellino with regard to this software, I 2 am sorry, with regard to this tracking? 3 A. I remember -- I don't know anything about 4 tracking. I can't tell you. I don't even know 5 what that means. No one that I worked was tracking 6 anything. We only had hard books and records at 7 our computer. Everything was stored in our office. 8 So there wasn't cloud nothing based. I mean, we 9 are going back quite a time. Everything was on our 10 computer, so how could anybody track anything? 11 Q. So as you sit here today what's your best 12 recollection of what Thomas Avellino provided you 13 or the partnerships? 14 A. A template to go ahead and figure the net 15 profits. There was a formula that you had to -- I 16 think you had to -- I think I answered this the 17 last time. You had to put in A, subtract B, came 18 up with C and D. Greg would micromanage stuff to 19 the point of insanity to make sure everything was 20 correct. 21 Asked Tom if he thought there was a better 22 way or an easier way. Tom wanted to look at it. 23 He was in our office. I probably met Tom three 24 different times total in our office, just to have 25 lunch when he was in town. And he said, hey,</p>	<p>10:22:54-10:23:53 Page 190</p> <p>1 A. I am not going to break line -- I don't 2 know what's true and what's not true anymore when I 3 sit down and talk to attorneys. I don't know 4 what's true. If you have a specific question, I am 5 happy to answer the question for you. 6 Q. Are you aware that anyone attempted to 7 prevent the partners of the partnership from 8 accessing the partnership books and records? 9 A. That's a lie. 10 Q. Okay. Was there any effort to conceal 11 Mr. Avellino's or Mr. Bienes' involvement in the 12 partnerships? 13 A. Another lie. 14 Q. And was there any effort to conceal the 15 fact that they received funds through you from the 16 -- with regard to the partnerships? 17 A. Issue never came up. I am sorry, the 18 issue did come up with one person. It came up with 19 Patrick Kelly. Patrick Kelly with the Festus Stacy 20 Foundation asked about that. He wanted to make a 21 huge investment into P&S and S&P. And he asked me. 22 I think we had one, two, or three meetings. And I 23 definitively told him we had an agreement. He is 24 the -- no one else, no one else really cared. I 25 mean, no one else cared. They just wanted their</p>
<p>10:21:48-10:22:42 Page 189</p> <p>1 there's an easier system, and then that system got 2 integrated. How it got integrated I can't tell 3 you, but it did. 4 Q. Other than you, was anyone else involved 5 in this process? 6 A. Probably Susan. 7 Q. Susan Moss? 8 A. Moss, yes, correct. 9 Q. Okay. What about outside accountants? 10 A. No. Not that I can recall, no. 11 Q. Okay. 12 A. This is a little in-house thing that we 13 had. 14 Q. Was there any compensation given to Thomas 15 Avellino for providing this? 16 A. None. 17 Q. Turn to page 14, if you would. 18 A. Yes. 19 Q. And again, the bullet point that begins 20 "All partners of S&P, General Partnership." 21 A. Uh-huh. 22 Q. Read that, if you would, just to yourself. 23 Then I will ask you some questions about it. 24 A. Okay. 25 Q. Okay. Is this a truthful statement?</p>	<p>10:24:06-10:25:09 Page 191</p> <p>1 investment. They wanted to be happy. No one gave 2 a crap what I did with my money. Nobody cared. It 3 wasn't coming out of their money; what would they 4 care? They made nine percent, they made nine 5 percent. So who cared? Nobody did. 6 Q. When you say Patrick Kelly asked 7 questions, was that -- I believe you testified last 8 time we were here that sometime in 2008 you believe 9 that Patrick Kelly, on behalf of the foundation, 10 reviewed the books and records of the partnership? 11 A. There's no belief. Definitely he did. He 12 came in the office two or three times. He visited 13 Michael Kuzy, our CPA. And he went and talked to 14 them independently. I wasn't at the meeting. He 15 brought a CPA with him. I wasn't in town. He came 16 back to our office with the CPA and met with Susan 17 Moss that day. And, yes, so he did. 18 In a prior meeting that I met with him in 19 my office, I explained to him. He was a friend of 20 Michael Bienes at the time. He knew Michael, it 21 seemed, pretty well. 22 Q. Who is this now you are referring to? 23 A. Patrick Kelly. I am sorry. Patrick Kelly 24 knew Michael pretty well, and I think he wanted to 25 hobnob. So -- and he definitively told us,</p>

<p>10:25:20-10:26:12 Page 192</p> <p>1 definitively told myself and Steve Jacobs in a 2 prior meeting that he was going to -- he was 3 probably going to put into this account \$25 million 4 dollars. 5 Q. You referred to before, I believe, that 6 Mr. Kelly brought an accountant with him? 7 A. CPA he said, yes. 8 Q. Do you recall who that was? 9 A. No, never met him. Michael Kuzy would 10 probably know. Or just ask Patrick. 11 Q. When this inspection or review of the 12 books and records took place, were all of the books 13 and records made available to them? 14 A. Anything they -- the records were very 15 voluminous. All the records were kept in very neat 16 binders by individual. Every trade and slip was in 17 those binders. If you put the binders together, 18 they would probably occupy about half of this 19 table, maybe go all the way to the end. So if 20 anyone wanted a year, a month, whatever, we would 21 go ahead and show that to them. 22 Q. Do you recall what they reviewed when they 23 came to inspect the books and records? 24 A. No idea. 25 Q. Do you recall how long that inspection</p>	<p>10:27:36-10:28:43 Page 194</p> <p>1 and Mr. Powell? 2 A. They would have been on every single 3 report that was ever issued out of our office. It 4 was put on the statement how much our management 5 fee was. If somebody got a statement, it had our 6 management fee on there. 7 Q. And was the management fee calculated 8 pursuant to the terms of the partnership agreement? 9 A. Correct. 10 MR. SAMUELS: Object to the form of the 11 question. 12 BY MR. WOODFIELD: 13 Q. If you would turn to page 37. 14 A. Uh-huh. 15 Q. Let me just quote a portion of this 16 response on page 37. "Defendants Avellino and 17 Bienes were active in the management of the 18 partnerships." 19 Is that an accurate statement? 20 A. That's a lie. 21 Q. In the next line down a portion of the 22 statement, a portion of that response states, 23 "Sullivan prevented general partners from assessing 24 all of the books and records of the partnerships to 25 conceal defendants' involvements in the</p>
<p>10:26:27-10:27:20 Page 193</p> <p>1 took place? 2 A. About an hour. 3 Q. Do you know whether or not in the books 4 and records that they inspected that it reflected 5 payments made to Avellino, Bienes, Father Kelly and 6 others? 7 A. I have no idea. 8 Q. Did the books and records that were -- 9 that existed as of 2008 reflect those payments made 10 to others? 11 A. They wouldn't have in the S&P P&S records. 12 They would have been involved in the MD -- I forgot 13 the name of my company -- MDS Associates. Those 14 would have been made out of MDS, not in the S&P and 15 P&S records. 16 Q. Do you know whether or not those records, 17 records of this other entity, were made available 18 for inspection? 19 A. I don't know. I have no idea. I don't 20 think they would have. I don't know why I would 21 have put my personal stuff, because I had my 22 personal business and my personal stuff all was 23 intertwined in MDS. 24 Q. But would the books and records of S&P and 25 P&S reflect the management fee that was paid to you</p>	<p>10:29:03-10:30:39 Page 195</p> <p>1 partnerships." 2 Is that an accurate statement? 3 A. It's a lie. I think it's important to 4 remember so we all have clarity on this, once 5 again, because everyone needs to understand. The 6 P&S and S&P books were here. My personal records 7 on MDS are not a part of the S&P P&S records. If 8 somebody asked me anything, I wouldn't lie to them; 9 I would tell them the truth. There's no reason to 10 do this. So it was right on there. I mean, I 11 don't know if anyone asked, but I doubt they would 12 have. I don't know why they would have wanted to. 13 Q. With regard to the books and records of 14 the partnerships, so as we sit here today up until 15 the time let's say when these lawsuits were 16 started -- 17 A. Uh-huh. 18 Q. -- other than the foundation which you 19 have testified to, do you recall at any point in 20 time any other time where a general partner 21 requested to review the books and records? 22 A. Yeah. I said that the last time we were 23 here. Other people would come in if they want. 24 There was that group out of Boca. They would have 25 nothing to do. They would bring their bagels and</p>

<p>10:30:51-10:31:52 Page 196</p> <p>1 coffees in. We would have a friendly talk with 2 them. We'd go in the conference. And whatever 3 they wanted to see, they would go ahead and be able 4 to see. The books and records were there for 5 inspection. Any single day any time anybody wanted 6 to look at them, the records were available for 7 everybody.</p> <p>8 Q. Do you recall who the general partner was 9 of this Boca group?</p> <p>10 A. I do remember one. After I left last time 11 I couldn't, I was trying to think. I know Ed Ames 12 had a group of people in Boca. Ed has passed away. 13 So if you are trying to interview him, he is dead; 14 you won't be able to do that. But there was a 15 group up there that would go ahead and they would 16 sometimes come in. But various people would come 17 in to look; I just can't remember who. It wasn't a 18 lot, very, very -- we are talking a handful of 19 people.</p> <p>20 Q. Do you recall when you were replaced as 21 the general partner of the partnerships a dispute 22 arising with regard to your turning over the books 23 and records?</p> <p>24 A. I am not sure about the question.</p> <p>25 Q. Okay.</p>	<p>10:32:54-10:33:55 Page 198</p> <p>1 A. I recall that the Festus Stacy Foundation, 2 they were members of our church, credible at that 3 time, and they wanted to go ahead and look at the 4 books and records. So they went ahead -- and we 5 had engaged Helen Chaitman at the time. And they 6 had told me that Helen wanted a forensic audit of 7 the records. And I called Helen and I says, Helen, 8 I says, did you want a forensic. She was 9 representing us along with Chad. And she says, no, 10 I never told that. So that was the series of first 11 lies that were told to me about the books and 12 records.</p> <p>13 So they said, we'd like to make sure that 14 the records are accurate; there appears to be 15 discrepancies. So they said, how about letting Ali 16 Ansari go ahead and look at the records.</p> <p>17 So at that time I met Ali at our warehouse 18 where we kept the records. And he went ahead and 19 took the records. Or I believe he kept the records 20 for in fact five months.</p> <p>21 Q. Okay. So let's break that down a little 22 bit. So you just mentioned that the records were 23 in a warehouse. Do you recall a point in time 24 where the records were relocated from your offices 25 to a warehouse?</p>
<p>10:32:00-10:32:37 Page 197</p> <p>1 A. Could you?</p> <p>2 Q. After you were replaced as the general 3 partner of the partnerships, do you recall that 4 taking place?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What happened to the books and 7 records after that of the partnerships?</p> <p>8 A. I have no idea.</p> <p>9 Q. Where were they at that point in time?</p> <p>10 A. No idea. I believe they changed hands 11 three times.</p> <p>12 Q. Okay. Well, let's take that in stages 13 then. Up until let's say 2008 --</p> <p>14 A. Yes.</p> <p>15 Q. -- while the business was operating --</p> <p>16 A. Yeah.</p> <p>17 Q. -- where were the partnership books and 18 records maintained?</p> <p>19 A. Always in our office, always.</p> <p>20 Q. Okay. Then after 2008 --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- do you recall the location of the books 23 and records changing?</p> <p>24 A. Yes.</p> <p>25 Q. What do you recall about that?</p>	<p>10:34:10-10:35:10 Page 199</p> <p>1 A. Uh-huh, in our corporate warehouse. We 2 didn't -- we just put them there for protection.</p> <p>3 Q. Now, other than this individual you just 4 mentioned who had access to the books and records, 5 do you recall providing the books and records to 6 any other governmental agencies or entities?</p> <p>7 A. We had -- we had a large subpoena from the 8 SEC. And it probably took us, it's a lot of work, 9 a lot of time, answering. We almost copied 10 everything all over again and sent everything to 11 the SEC. And then I think Baker Hostetler some, I 12 don't know, Tinker, Evers, Jan, somebody went ahead 13 and then gave them to the trustee; I don't know. I 14 am sorry, not the books and records. I was asked 15 questions about the books and records. I am sorry. 16 Strike that. Re-ask that, so.</p> <p>17 Q. Okay. So you recall now that at least 18 portions of the books and records --</p> <p>19 A. Yes.</p> <p>20 Q. -- were provided to the SEC?</p> <p>21 A. Yes. You would have to get their subpoena 22 to find out what we sent.</p> <p>23 Q. And who compiled the records that went to 24 the SEC?</p> <p>25 A. On my oversight we did at my office.</p>

<p>10:35:28-10:36:26 Page 200</p> <p>1 Q. And who helped you with that? 2 A. A bunch of people. I had just had my knee 3 replaced and I wasn't very mobile. I had to keep 4 my knee raised for that period of time. Steve 5 Jacobs, Susan. I don't know if Susan did. We had 6 about five or six or seven people. I mean, it was 7 a voluminous amount of stuff. 8 Q. Now, after the Madoff collapse were you 9 involved at all in attempts to obtain refunds from 10 the trustee? 11 A. Absolutely. 12 Q. And what do you recall about that effort? 13 A. Well, I pretty much turned that over to 14 Chad and Helen. They apprised me on that stuff, so 15 they were involved I know in getting \$800,000 back. 16 That was their -- that came in after all this 17 happened. But I mean, our whole intent was to try 18 to recover any money and make a distribution to the 19 partners. 20 Q. Did you participate in compiling a claim 21 that was submitted to the trustee? 22 A. It would have been probably done through 23 the attorney, Chad or Helen. 24 Q. Okay. Do you know what books and records 25 were provided in connection with the efforts to</p>	<p>10:37:40-10:38:28 Page 202</p> <p>1 flew in that day. I remember it was a bad stormy 2 night and they had to go back out. So they flew 3 back to New York that night. 4 Q. Were they attorneys from Baker Hostetler; 5 do you recall? 6 A. I believe they were with the third one on 7 the speaker line. 8 Q. Okay. And what was the purpose of that 9 interview? 10 A. Just sitting here like this, questions 11 upon questions upon questions upon questions. 12 Q. Was it at all involved in connection with 13 your efforts to obtain refund from the trustee? 14 A. I didn't think they gave a care about the 15 refund. I think they just wanted to know more 16 about the case. They had hundreds of questions. I 17 can't even remember all the questions. 18 Q. At any time in connection with your 19 efforts to recover funds for the partnership from 20 the trustee and this dealing with the Hostetler, 21 Baker Hostetler attorneys -- 22 A. Uh-huh. 23 Q. -- was Mr. Avellino involved in that 24 process at all? 25 A. No, never.</p>
<p>10:36:39-10:37:26 Page 201</p> <p>1 obtain funds from the trustee? 2 A. I don't know. 3 Q. Okay. Did there ever come a point in time 4 where you were ever questioned by anyone on behalf 5 of the trustee? 6 A. That trustee up in New York? 7 Q. Yes. 8 A. Ask the question again, was I what? 9 Q. Do you recall at any point in time being 10 questioned by Picard, the trustee, in Madoff? 11 A. Oh, yes. 12 Q. And when was that? 13 A. They came down to Chad's office, Chad 14 Pugatch's office. And this was one of these other 15 so-called confidential meetings. I have never seen 16 so many confidential meetings. He -- they came 17 down. You would have to ask Chad for the date and 18 the records. I just know it was a four-hour 19 meeting. There were three people on the phone. 20 Two came down in person and one person was on phone 21 by speaker. 22 Q. Do you recall who those people were? 23 A. You'd have to ask Chad. 24 Q. Do you recall where they were from? 25 A. From the New York office, because they</p>	<p>10:38:40-10:39:31 Page 203</p> <p>1 Q. Was there any point in time after the 2 collapse of Madoff that you recall having any 3 discussions with him about the efforts and attempts 4 to recover funds? 5 A. We probably had a very general 6 conversation about, oh, did you get any money or 7 this. There was nothing specific. It was just 8 general talk. Frank at that time or Michael they 9 weren't -- no one was really talking. Everything 10 was just -- it was just very generic. It wasn't 11 anything specifically driven to us. That I recall. 12 Q. What about with regard to filing amended 13 tax returns for the partnership under the IRS 14 provision which enables you to record those as 15 theft losses -- 16 A. Uh-huh. 17 Q. -- did in fact the partnerships file 18 amended returns? 19 A. You'd have to ask Michael Kuzy. I have no 20 recollection of that. 21 Q. Okay. If they were, he would have been 22 the one who would have been involved in that? 23 A. Uh-huh, the only one. 24 Q. Okay. Do you recall whether or not at any 25 point in time you had any discussions with</p>

<p>10:40:03-10:45:40 Page 204</p> <p>1 Mr. Avellino about that process? 2 A. I don't know how he could have possibly. 3 There's no reason to. But I can't tell you 4 definitively no. 5 MR. WOODFIELD: Let me take a two-minute 6 break. 7 (A recess was taken.) 8 BY MR. WOODFIELD: 9 Q. Mr. Sullivan, were the partnerships front 10 men for Frank Avellino and Michael Bienes? 11 A. That's another lie. 12 Q. Did Avellino introduce you to Madoff with 13 regard to the investments that the partnerships 14 made? 15 MR. WINDERMAN: Form. Go ahead. 16 BY MR. WOODFIELD: 17 Q. You can answer. 18 A. Definitively not. 19 Q. Did the partnerships open up the accounts 20 with BLMIS, with BLMIS, with Madoff, BLMIS, at 21 Avellino's and Bienes' request? 22 A. I want to make this really clear to 23 everyone. This question is asked to me every 24 single way, to the left, to the right, to north, to 25 south, every single way. I am not going to move on</p>	<p>10:48:16-10:49:14 Page 206</p> <p>1 BY MR. WOODFIELD: 2 Q. I show you, Mr. Sullivan, what has been 3 marked Confidential Settlement Agreement as 4 Exhibit 17 in this case. If you look at the last 5 page of it, it appears to be signed by you both 6 individually and on behalf of Michael D. Sullivan & 7 Associates, Inc. Do you recall that? 8 A. That's my signature. I don't know what -- 9 I didn't -- you want me to look at the document, 10 okay. 11 Q. Is this the confidential settlement 12 agreement that you and Michael D. Sullivan & 13 Associates, Inc. entered into with the conservator 14 in this case? 15 MR. WINDERMAN: Objection, document speaks 16 for itself, and there's nothing else for us to 17 say about it. I think it's irrelevant for your 18 case. Certainly beyond the scope of discovery. 19 BY MR. WOODFIELD: 20 Q. Can you answer? 21 A. I know I -- 22 MR. WINDERMAN: We have nothing else to 23 say about it. 24 BY MR. WOODFIELD: 25 Q. Do you recall entering into this</p>
<p>10:45:54-10:47:45 Page 205</p> <p>1 this. I made the call myself specifically. 2 So no matter how you ask me, Frank and 3 Mike had nothing to do whatsoever with me 4 independently picking up the phone and starting 5 this business this time. So if you ask me again, I 6 am going to ask you from now on to refer to my 7 early testimony. Because I have answered this 8 thing really to the point ad nauseam. The answer 9 is no. 10 Q. Did Avellino and Bienes walk down the hall 11 and regularly visit you to discuss the status of 12 certain accounts with the partnerships? 13 A. No. 14 Q. Did you cause millions of dollars of 15 partnership funds to be transferred to your benefit 16 or to entities controlled by you? 17 A. Just another lie. This case against, 18 these allegations against me specifically is based 19 on a foundation of fraud and deceit. 20 MR. WOODFIELD: Let me mark as Exhibit 17 21 a document entitled Confidential Settlement 22 Agreement. 23 (Defendant's Exb. No. 17, Confidential 24 Settlement Agreement, AVE03498RTP - 3502.) 25 ///</p>	<p>10:49:23-10:50:05 Page 207</p> <p>1 agreement? 2 MR. WINDERMAN: We have nothing else to 3 say about it. He has acknowledged that he 4 signed the agreement. 5 BY MR. WOODFIELD: 6 Q. Do you recall when you signed the 7 agreement? 8 A. I am really bad on dates and timing. I am 9 going to have to believe my signature. I have so 10 many papers that come my way; I just -- 11 MR. WINDERMAN: The document speaks for 12 itself. 13 BY MR. WOODFIELD: 14 Q. Do you recall after, shortly after 15 entering into the settlement agreement, meeting 16 with attorneys from Berger Singerman? 17 A. Yes. 18 Q. And was that within a couple days? 19 A. I don't -- it was sometime. I just don't 20 remember when. 21 Q. Where did that meeting take place? 22 A. I think it was at their office. 23 Q. Did there come a time where anyone from 24 Berger Singerman came and visited you in your 25 office?</p>

<p>10:50:21-10:51:03 Page 208</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall when that was?</p> <p>3 A. It was probably two or three years ago. I</p> <p>4 don't know if -- I think there were a couple</p> <p>5 meetings. I know there was one individual meeting</p> <p>6 I had with one person from their firm who came in,</p> <p>7 and we were talking and he was taking notes that</p> <p>8 lasted an hour. And I remember when I told him</p> <p>9 that I started these businesses on my own, he</p> <p>10 slammed his computer and left.</p> <p>11 MR. SAMUELS: This is all confidential.</p> <p>12 MR. WINDERMAN: No. No. This is before</p> <p>13 the written statements. This is statements</p> <p>14 that were made at meeting two or three -- I</p> <p>15 have told -- you and I can talk. But he is not</p> <p>16 talking about what's in the written statement.</p> <p>17 He is talking about what transpired maybe three</p> <p>18 years or two years before.</p> <p>19 MR. SAMUELS: Oh, okay.</p> <p>20 MR. WINDERMAN: He is not talking about</p> <p>21 what he said during that statement.</p> <p>22 BY MR. WOODFIELD:</p> <p>23 Q. And you recall this was a meeting that</p> <p>24 took place in your office?</p> <p>25 A. Yeah, it was in our conference room; I</p>	<p>10:52:23-10:53:19 Page 210</p> <p>1 Q. How did that meeting end?</p> <p>2 A. He was all pissed off. When he found out</p> <p>3 I started this business by myself, he picked up his</p> <p>4 toys and left.</p> <p>5 Q. At any time since you entered into this</p> <p>6 agreement has anyone made threats to you with</p> <p>7 regard to honoring, continuing to honor this</p> <p>8 agreement?</p> <p>9 A. Has anyone threatened me? Like pipe bombs</p> <p>10 and stuff?</p> <p>11 Q. No, not quite. Verbal threats?</p> <p>12 MR. WINDERMAN: We have our disputes with</p> <p>13 Lenny, but, no, he is not a jihadist.</p> <p>14 THE WITNESS: Yeah, I had him checked for</p> <p>15 bomb samples, but, no, I have not. Harry would</p> <p>16 be the one to ask. I mean, I don't know. I</p> <p>17 have not been physically threatened. That</p> <p>18 wouldn't sit well with me anyway, so, no.</p> <p>19 BY MR. WOODFIELD:</p> <p>20 Q. Other than physical threats have there</p> <p>21 been threats made to you by anyone that you failed</p> <p>22 to comply with the terms of this settlement</p> <p>23 agreement?</p> <p>24 A. No. No.</p> <p>25 Q. Has the conservator complied with the</p>
<p>10:51:14-10:52:05 Page 209</p> <p>1 remember specifically.</p> <p>2 Q. And do you recall whether or not Steven</p> <p>3 Weber was one of the attorneys that was there?</p> <p>4 A. If he is kind of a slender built guy that</p> <p>5 would have been him.</p> <p>6 Q. And was there someone else also present?</p> <p>7 A. I believe Anthony Verni was in that</p> <p>8 meeting who was an attorney in our office who was</p> <p>9 apprised of some of this stuff. He was going to go</p> <p>10 ahead and represent me. And he was going to file a</p> <p>11 pro hac vice, but he never went ahead and pulled</p> <p>12 the trigger on that. So I believe he was there for</p> <p>13 the statement or the questions he asked.</p> <p>14 Q. Was that recorded; do you recall?</p> <p>15 A. No, it wasn't.</p> <p>16 Q. It was just notes taken by the attorneys?</p> <p>17 A. He was typing like this gentleman was here</p> <p>18 typing away.</p> <p>19 Q. On a computer?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall him asking you questions</p> <p>22 about whether or not Avellino or Bienes</p> <p>23 participated in you obtaining the accounts at</p> <p>24 Madoff at that meeting?</p> <p>25 A. I remember very few questions he asked.</p>	<p>10:53:32-10:54:22 Page 211</p> <p>1 terms of this settlement?</p> <p>2 A. No.</p> <p>3 Q. How so?</p> <p>4 A. There was a lien filed against me. The</p> <p>5 lien should not have been filed. This case was</p> <p>6 supposed to be settled and wrapped up in June.</p> <p>7 They went ahead and filed the judgment. They were</p> <p>8 precluded from the settlement agreement to filing</p> <p>9 the judgment, but they did.</p> <p>10 We asked them to go ahead and remove the</p> <p>11 lien. They haven't removed the lien. And they</p> <p>12 told me they can collect money from me that doesn't</p> <p>13 exist. Basically they are harassing me. I don't</p> <p>14 know whether they are doing it for billing purposes</p> <p>15 or whatever. This has just been one continual</p> <p>16 harassment. Just because they have the ability to</p> <p>17 do it, they go ahead and do this.</p> <p>18 MR. WOODFIELD: I don't have anything</p> <p>19 further at this point in time.</p> <p>20 Let me because, number one, the judge has</p> <p>21 never ruled with regard to the documents that</p> <p>22 we requested concerning the communications with</p> <p>23 regard to the negotiations and entering into</p> <p>24 this settlement and the partnership records</p> <p>25 that we have been seeking the last couple weeks</p>

<p>10:54:31-10:55:08 Page 212</p> <p>1 and haven't gotten, I will just continue the 2 deposition at this point in time. 3 MR. SAMUELS: Excuse me? 4 MR. WINDERMAN: He is continuing it. 5 MR. SAMUELS: So you are done asking 6 questions? 7 MR. WOODFIELD: I am. 8 MR. SAMUELS: And you are leaving it open? 9 MR. WOODFIELD: Yes. 10 MR. ETRA: My turn. 11 MR. SAMUELS: I am not going to agree with 12 you leaving it open, but. 13 CROSS (MICHAEL D. SULLIVAN) 14 BY MR. ETRA: 15 Q. Good morning again, sir. 16 A. How wonderful it is to see you again. 17 Q. Mr. Sullivan, as you know, my name is 18 Jonathan Etra, and I represent Michael Bienes. 19 I have some of my own questions. If 20 there's going to be some overlap, I will do the 21 best I can. 22 A. I figured you weren't here just to listen. 23 Q. Correct. 24 I think you testified that you started 25 investing in Avellino and Bienes, I think my notes</p>	<p>10:55:59-10:56:49 Page 214</p> <p>1 A. Correct. 2 Q. You knew him from the community, correct? 3 A. Church. 4 Q. Church. Fair enough. Okay. 5 Did anyone ever suggest to you that 6 there's something wrong with having a relationship 7 with someone through church? 8 A. I hope not. 9 Q. Okay. Did plaintiffs ever suggest that to 10 you? 11 A. No. That's the only thing they haven't 12 suggested. But, no, they didn't. 13 Q. Did they suggest that you used your 14 involvement in your religion to further your 15 business? 16 A. I don't believe they suggested that. 17 Q. And you also testified, I think, that at 18 some point after you -- now, when you first 19 invested in Avellino and Bienes it was originally 20 with a company account or originally with a 21 personal account? 22 A. I don't remember. 23 Q. Okay. And then I think you said, you may 24 not have used the terms family and friends, but you 25 brought in other people to invest through you to</p>
<p>10:55:21-10:55:53 Page 213</p> <p>1 say, between, sometime between '89 and '91. Is 2 that about right? 3 A. It's about right. 4 Q. Okay. And prior to that time you had a 5 personal relationship with Mr. Avellino, correct? 6 A. Correct. 7 Q. Was he a friend? 8 A. Yes. 9 Q. A fellow member of the community? 10 MR. WINDERMAN: Form. If we are going to 11 go back through the entire history of 12 everything that's been asked, we are going to 13 have a problem. 14 MR. ETRA: I have got -- 15 MR. WINDERMAN: All these questions have 16 been asked and answered. 17 MR. ETRA: I have to make my record. I am 18 going to make my record. 19 MR. WINDERMAN: We'll see. 20 BY MR. ETRA: 21 Q. You had a relationship with Mr. Avellino, 22 correct? 23 MR. WINDERMAN: Form. 24 BY MR. ETRA: 25 Q. You knew him from church, correct?</p>	<p>10:57:00-10:58:02 Page 215</p> <p>1 invest in Avellino and Bienes, correct? 2 A. I don't remember if that was the form or 3 they had direct accounts. I can't tell you. I 4 just don't remember. 5 Q. But you facilitated that process? 6 A. Yes, I did. 7 Q. Okay. And how did you find those people 8 to invest through you in Avellino and Bienes? 9 A. There were just very, a handful of people, 10 just people that I knew. 11 Q. Okay. 12 (Defendant's Exb. No. 18, Letters 13 w/attachments, 08-13-15 - Plaintiffs - 0014392 14 -395, 14470, 14477, 17438.) 15 BY MR. ETRA: 16 Q. Exhibit 18 is a series of pages that have 17 been produced in this case. And the cover sheet -- 18 feel free to take a look at the whole thing if you 19 want first, skim it. 20 A. Uh-huh. 21 Q. Okay. The first page is written on a 22 letterhead of S&P Investment Group, Inc.? 23 A. Uh-huh. 24 Q. And then it's got your name and 25 Mr. Powell's name?</p>

<p>10:58:09-10:58:45 Page 216</p> <p>1 A. Uh-huh. 2 Q. And it's dated March 9, 1992? 3 A. Uh-huh. 4 Q. And it's a letter to I assume it's Erica 5 P. Gianna, and there's a typo in her name. Do you 6 see that? 7 A. Uh-huh. 8 Q. Okay. Was this a letter you wrote or was 9 written for your firm in connection with Erica 10 Gianna coming in through your firm, Mr. Sullivan, 11 to invest in Avellino and Bienes? 12 MR. WINDERMAN: Form. 13 MR. SAMUELS: It's not a big deal, but she 14 does spell her name E-r-s-i-c-a. 15 MR. ETRA: I didn't know that. 16 BY MR. ETRA: 17 Q. Sorry, you were in the middle of 18 answering. 19 A. I have no idea. 20 Q. This is an entity called S&P Investment 21 Group, Inc. in 1992. 22 A. Uh-huh. 23 Q. Is that separate from the partnerships? 24 A. I have no idea. 25 Q. Do you ever recall creating a company</p>	<p>10:59:33-11:00:16 Page 218</p> <p>1 the middle of the page, and you can look as much as 2 you want -- 3 A. Uh-huh. 4 Q. -- that 15 percent would go to Ms. Gianna 5 and one percent to S&P Investment Group, Inc.? 6 A. Uh-huh. 7 Q. Do you see that? 8 A. Uh-huh. 9 Q. Is that consistent with your recollection 10 that that was the arrangement you had when you 11 brought in people to invest in Avellino and Bienes 12 through your companies? 13 A. I don't remember this at all. 14 Q. Okay. Did Michael Bienes have anything to 15 do with you finding investors to invest in Avellino 16 and Bienes through your firm? 17 A. Not that I recall. 18 Q. Okay. Had you even met Mr. Bienes in 19 1992? 20 A. I don't believe so, but I don't remember 21 when I met him. 22 Q. What is your best recollection of the 23 first time you met Mr. Bienes? Could you put it in 24 any kind of a timeframe for us? 25 A. I can't. It was just -- I don't. I think</p>
<p>10:58:54-10:59:24 Page 217</p> <p>1 called S&P Investment Group, Inc.? 2 A. No, I don't. 3 Q. Could you turn to the second page, please? 4 A. Uh-huh. 5 Q. This is a letter also on letterhead of S&P 6 Investment Group, Inc.? 7 A. Uh-huh. 8 Q. And by the way, that was your business 9 address listed here, correct? 10 A. Yes. 11 Q. Okay. You don't deny that that was your 12 company? 13 A. Oh, no. 14 Q. You just don't remember it? 15 A. No. Right. I don't, no, absolutely not. 16 Q. Okay. In the letter you can see -- and 17 Lisa Glatt who writes for the firm, is that someone 18 who worked for you? 19 A. Yes. 20 Q. Okay. And she was authorized to 21 communicate with people on behalf of your firm, 22 your businesses, correct? 23 A. I am assuming, yes. 24 Q. Okay. Fair enough. 25 In it it indicates that, if you look at</p>	<p>11:00:34-11:01:23 Page 219</p> <p>1 I met him in their office. I can't -- I have no 2 idea when that was. 3 Q. Okay. And it may have been after you 4 started the partnerships, correct? 5 A. I don't remember. 6 Q. Did you do any accounting work for 7 Avellino and Bienes? 8 A. Yes, I did. 9 Q. What accounting work did you do for 10 Avellino and Bienes? 11 A. We represented them during an IRS tax 12 audit. There were certain issues that existed on 13 their tax returns. It may have even been when I 14 met him. And I know I had known Frank. Frank 15 asked us to go ahead and do their IRS 16 representation for their audit. 17 Q. Was that something that was sort of 18 appeared to be a result of the SEC's investigation? 19 A. No, nothing at all to do with it. 20 Q. Okay. 21 A. It was something on their tax return or 22 something that the DIF score, the DIF score, the 23 DIF score kicked something out on their return. 24 Q. And how is it that you got retained for 25 that particular assignment?</p>

<p>11:01:35-11:02:38 Page 220</p> <p>1 A. Frank just went ahead and asked me, go 2 ahead if we'd represent him. 3 Q. Did you have any dealings with Mr. Bienes 4 in connection with that work that you did? 5 A. Yes. 6 Q. What kind of dealings? 7 A. Michael wanted to go ahead and represent 8 himself -- them. And Frank told him that he would 9 be a fool, because anyone who represents themselves 10 is the notorious fool. And we wound up doing the 11 audit representation. I even forgot that. Wow. 12 Q. When you started the P&S and S&P 13 partnerships -- 14 A. Yes. 15 Q. -- at some point did you attract investors 16 who previously had invested in Avellino and Bienes? 17 A. Yes. 18 MR. WINDERMAN: Form. 19 BY MR. ETRA: 20 Q. And over what time period did that take 21 place? 22 MR. WINDERMAN: Form, asked and answered. 23 We are not going to go back over everything 24 that Mr. Woodfield asked. Even showed him 25 records.</p>	<p>11:03:37-11:04:26 Page 222</p> <p>1 A. I couldn't tell you. 2 Q. Do you know if it was more than one? 3 A. Yes. 4 Q. Could you put an approximate number on 5 that? 6 A. Five. 7 Q. And to your knowledge did you ever confirm 8 whether in fact Michael Bienes had referred them? 9 A. Don't remember. 10 Q. Is it possible that people came to you and 11 said -- and used Michael Bienes' name without 12 Michael Bienes' knowledge? 13 MR. WINDERMAN: Form, speculative. All 14 things are possible. 15 BY MR. ETRA: 16 Q. In the context of your dealings with these 17 people? 18 A. Anything is possible. But I would have 19 had to have knowledge. I just wouldn't have 20 accepted that. Maybe I called him. Maybe I 21 didn't. It's a long time ago. I couldn't tell 22 you. 23 Q. So it is possible that -- in other words, 24 you didn't always necessarily confirm with 25 Mr. Bienes that he had referred the people over?</p>
<p>11:02:45-11:03:28 Page 221</p> <p>1 MR. ETRA: And I have more records to show 2 him, but there's a lot there. 3 THE WITNESS: What was the question again? 4 BY MR. ETRA: 5 Q. Over what timeframe did those investors 6 come in? 7 A. The whole time. 8 Q. Let me get to it. Was it immediately, or 9 some people immediately and some people years 10 later? 11 A. Yeah, just all different times. There 12 wasn't -- yeah. It was during the life of the 13 thing. 14 Q. And logistically to your knowledge how did 15 that take place that they got in touch with you or 16 you got in touch with them? 17 MR. WINDERMAN: Form. 18 THE WITNESS: Typically they would go 19 ahead and give me a call, and they would say 20 either Mr. Avellino or Mr. Bienes said to call 21 me specifically to talk to me. 22 BY MR. ETRA: 23 Q. To the best of your recollection which 24 investors told you that Michael Bienes had sent 25 them?</p>	<p>11:04:39-11:05:19 Page 223</p> <p>1 A. No. I mean, I had to use some certain 2 discernment when people called and find out who 3 they were. It wasn't a lot. It's not like this is 4 happening like a lot. It could have been one a 5 year. So it's not like wow. So anything is 6 possible. 7 Q. Michael Bienes' testimony is that the only 8 two people that he suggested to them to meet with 9 you were Sandra Dydo. 10 A. Uh-huh. 11 Q. Do you remember her? 12 A. Yes. 13 Q. And Marvin Saperson. Do you remember him? 14 A. Yes. 15 Q. And he testified with the exception of 16 those he didn't refer anyone to you. 17 A. Uh-huh. 18 Q. Is it possible he is testifying correctly? 19 MR. SAMUELS: Object to the form. 20 THE WITNESS: I believe -- 21 MR. WINDERMAN: Me too. 22 THE WITNESS: There probably were two or 23 three other people involved. 24 BY MR. ETRA: 25 Q. And is it possible that if those two other</p>

<p>11:05:26-11:06:17 Page 224</p> <p>1 people came over it was without Mr. Bienes' 2 knowledge? 3 A. No. 4 MR. SAMUELS: Object to the form. 5 BY MR. ETRA: 6 Q. Why do you say that? 7 A. Because I would make sure I felt 8 comfortable that they were from them specifically. 9 And, no, there was one specifically that I 10 remember, I think his maid was somebody or his 11 housekeeper was another one. I think there were 12 five or six, just somewhere in that number. 13 Q. When you say you would do some discernment 14 or follow-up, was it to determine whether they had 15 some connection to Mr. Bienes, say as a maid or a 16 housekeeper, and/or to determine that they had 17 previously been investors in Avellino and Bienes? 18 Might that have been your follow-up? 19 A. I wouldn't have cared whether they were 20 previous investors. It didn't make a difference to 21 me. If I just felt that it was the right fit and 22 they knew Michael or they knew Frank, we would 23 pretty much give them the nod. 24 Q. Again, so it sounds like -- and if I am 25 misstating it, obviously you know how to speak up</p>	<p>11:07:01-11:07:33 Page 226</p> <p>1 Q. -- no matter how I ask it. 2 A. I have been. 3 Q. I am not challenging you. 4 A. Right. 5 Q. I am just trying to get to where I am 6 going. 7 A. Right. 8 Q. Which is what I want to know is you 9 discerned that they had a connection to Michael 10 Bienes -- 11 A. Yes. 12 Q. -- however you did that? 13 A. Right. 14 Q. Did you necessarily discern that Michael 15 Bienes intentionally consciously referred them to 16 you? 17 A. He would have had to. 18 Q. Why do you say that? 19 A. Well, the maid, how is his maid going to 20 show up in my -- talk to me? I mean, how would 21 that have happened? She just wouldn't have pulled 22 that name out of the air. 23 Q. Okay. So you are inferring when you had 24 someone with a clear connection to Michael and they 25 showed up, you were inferring, and they said that</p>
<p>11:06:24-11:06:51 Page 225</p> <p>1 for yourself. It's obvious. 2 A. I will. 3 Q. Please speak up if I am misstating it. 4 A. I will. 5 Q. But if someone used Michael's name -- if 6 someone had -- you said there were some people who 7 used Michael's name when they came to you, correct? 8 A. Uh-huh. 9 Q. You would do some discernment to determine 10 that they had some connection to Michael, correct? 11 A. Yeah. Like his housekeeper, it's pretty 12 certain it's his housekeeper. 13 Q. Right. 14 A. I mean, if it's his neighbor, which 15 another one was, no one else lived in Bay Colony at 16 the time, it's pretty clear. 17 Q. Right. 18 A. So it didn't take a rocket scientist to 19 really figure out where the people came from. 20 Q. Well, just so I am clear, I just want to 21 clarify one point. 22 A. Right. 23 Q. And you are going to give me your honest 24 answer -- 25 A. Right.</p>	<p>11:07:43-11:08:12 Page 227</p> <p>1 Michael referred them? 2 A. Yes. 3 Q. You were inferring from those facts that 4 Michael had in fact referred them, correct? 5 A. Correct. 6 Q. Is it possible that even though they had a 7 connection to Michael Bienes, they learned of the 8 investment through other ways? 9 MR. SAMUELS: Object to the form. 10 MR. WINDERMAN: Counsel, if those are the 11 kinds of questions that you intend to ask, this 12 is going to be a very short deposition. I 13 think it's time you moved on. This is 14 something that happened in -- 15 MR. ETRA: They are basing their case on 16 it. 17 MR. WINDERMAN: Not as to whether five 18 investors or two investors. 19 MR. ETRA: Oh, I disagree. I disagree. 20 And it also goes to the -- 21 MR. WINDERMAN: And he has testified 22 that -- 23 MR. ETRA: I can talk to you off the 24 record on why it's relevant. I don't want to 25 do it in front of the witness.</p>

<p>11:08:15-11:09:25 Page 228</p> <p>1 MR. WINDERMAN: This is last question in 2 this area. 3 BY MR. ETRA: 4 Q. I just need an answer. 5 A. I am confused. Could you give me the 6 question again? 7 Q. Sure. I am going to have to have it read 8 back because I don't remember. 9 A. Okay. 10 (The following portion of the record was 11 read back.) 12 "Q. Is it possible that even though they 13 had a connection to Michael Bienes, they 14 learned of the investment through other ways?" 15 THE WITNESS: Anything is possible. 16 Are we done with this exhibit? 17 BY MR. ETRA: 18 Q. Let me check. I think so. 19 Under your partnership agreement -- I will 20 try to do this without showing you all the 21 documents. 22 A. Thank you. 23 Q. Under the partnership agreements the 24 investors had a right to review the books and 25 records, correct?</p>	<p>11:10:39-11:11:14 Page 230</p> <p>1 Q. How often did Mr. Bienes come to your 2 offices? 3 A. Around eight in the course of forever. 4 Q. Do you know whether the office that was -- 5 the Avellino and Bienes office that was in the same 6 building -- 7 A. Yes. 8 Q. -- do you know if that was a functioning 9 office, or the business had sort of been stillborn 10 by the time they moved down? 11 MR. SAMUELS: Object to form. 12 MR. WINDERMAN: Me too. 13 THE WITNESS: They were never in that 14 office. 15 BY MR. ETRA: 16 Q. Michael Bienes likes to schmooze? 17 A. He is the -- he is, he is the king of 18 schmoozing. 19 Q. Okay. And he liked to hang out with Susan 20 Moss, say hello and talk to her? 21 A. Yes. Yes. He thought she was eye candy, 22 yes. 23 Q. And they were both former -- 24 A. IRS agents. 25 Q. You finished my question for me. They</p>
<p>11:09:33-11:10:15 Page 229</p> <p>1 A. Correct. 2 Q. And Mr. Bienes did not have a right to 3 review your books and records, correct? 4 A. Well, he had a right if he wanted to come 5 in. I wouldn't have had a problem showing him the 6 books and records. 7 Q. Did he ever come in to ask to see your 8 books and records? 9 A. Yes. 10 Q. He did? 11 A. Yes. 12 Q. When did he do that? 13 A. Couple times in the course of the -- 14 couple times -- sorry, sorry, sorry. Two or three 15 times. If he was in the office or he came back 16 from vacation, he would come in. And I think 17 because Sandra Dydo was in there or somebody, he 18 would ask to see them. 19 Q. What would he ask to see? 20 A. He asked to see, hey, how are the rates of 21 return, how are things going. And just like 22 anybody else, I didn't have a, you know, a problem. 23 He had his housekeeper in there and his friends in 24 there. So I did not have a problem showing him 25 anything that he wanted to see.</p>	<p>11:11:26-11:12:47 Page 231</p> <p>1 were both former IRS agents, correct? 2 A. Correct. 3 Q. And Mr. Bienes would come by and chat 4 about whatever was going on with Ms. Moss, correct? 5 A. Very, very few times. If he was in there 6 eight times, I'd be shocked. 7 Q. Okay. 8 A. Could have been seven. I am being on the 9 high side of eight. They weren't in town. They 10 moved out of that space. So maybe they just came, 11 you know, just -- this is not a frequent thing at 12 all. 13 Q. Is it Fred Zittel, is that how you 14 pronounce that, Zittel? 15 A. Show me the name. 16 Q. I am looking at it. Fred Zittel, 17 Z-i-t-t-e-l, do you recall that name? 18 A. Never heard that name in my life. 19 Q. All right. This might be short 20 questioning. 21 MR. ETRA: Exhibit 19. 22 (Defendant's Exb. No. 19, Letter, Zittel 23 to S&P, AVE02913RTP.) 24 BY MR. ETRA: 25 Q. Why don't you take a moment and look at</p>

<p>11:13:04-11:13:49 Page 232</p> <p>1 the letter, and then I will ask you some questions. 2 Does review of Exhibit 19 refresh your 3 recollection -- 4 A. No. 5 Q. You got to let me finish. 6 A. Sorry. 7 Q. -- of Fred Zittel? 8 A. I have never seen this letter. I don't 9 know the name. I don't know anything about this at 10 all. I have zero memory. There is not even a 11 recollection of anything about this letter. 12 Q. Okay. Fair enough. And your testimony is 13 clear. Let me just show you what's in here -- 14 A. Sure. 15 Q. -- which I found interesting which is why 16 I was asking you all those other questions. 17 A. Sure. Sure. 18 Q. He writes, "In a talk with a good friend 19 who is a relative of Michael and Diane Bienes, 20 concerning the effect of inflation on our present 21 finances, she mentioned that probably your 22 organization could be helpful in investing some of 23 our CDs." 24 I recognize you have not seen this letter 25 before. But I am wondering if it's consistent with</p>	<p>11:15:29-11:16:20 Page 234</p> <p>1 A. Yes. 2 Q. Okay. This is dated 1996. 3 A. Uh-huh. 4 Q. Is that around the time that you started 5 that practice of giving back some of your own 6 commissions to investors who may have brought in 7 investments? 8 A. I'd have to check the actual records of 9 MDS, which I am sure they are around here 10 somewhere. They've traveled hands so many times. 11 I couldn't tell you. 12 Q. Okay. Does it sound, to the best of your 13 recollection, just generally speaking -- 14 A. Uh-huh. 15 Q. -- whenever you started these 16 partnerships -- 17 A. Uh-huh. 18 Q. -- how long did it take before you started 19 this idea of sharing some of your commissions with 20 some investors, just generally speaking? 21 A. Probably a couple years into this. 22 Q. And when did you start giving some of your 23 commissions to Avellino and/or Bienes? 24 A. You'd have to check the record of fact. I 25 don't want to give you any inaccurate information.</p>
<p>11:14:00-11:15:23 Page 233</p> <p>1 the fact that maybe some of the people who 2 mentioned the Bieneses to you were referred to 3 people other than Michael and Diane Bienes? 4 MR. SAMUELS: Object to the form. 5 MR. WINDERMAN: Counsel, we need to move 6 on. This is highly speculative that anybody 7 could have done anything. And Michael said 8 that he doesn't have any knowledge of this guy. 9 I am going to direct him not to answer. Let's 10 go see the judge on this one. This is 11 ridiculous. We are not going to spend all day 12 speculating about what's possible. 13 MR. ETRA: We are forced to litigate facts 14 from 1996. 15 MR. WINDERMAN: That's your problem. 16 That's not my client's problem. 17 BY MR. ETRA: 18 Q. Could we go over previous Exhibit 3, 19 please? Exhibit 3 was a letter written by Greg 20 Powell to Sam Rosen and talking about fee 21 splitting. 22 A. Uh-huh. 23 Q. Was that part of -- was he one of the 24 people who got some of the money back that came 25 from your 20 percent?</p>	<p>11:16:34-11:17:14 Page 235</p> <p>1 But there's definitive facts that I know are in the 2 records that can help you. 3 Q. Sure. The records that I see show the 4 first payment being reflected in, I think, 2000 is 5 what I see and we'll go over that. 6 Could you explain why it wasn't until 2000 7 or so or after that? And the dates will be in the 8 records. We don't need to argue about the dates. 9 A. Right. 10 Q. Why it started then with Avellino and 11 Bienes? 12 A. It wouldn't have made sense until after we 13 formed the partnerships. So I don't know why we 14 would have split anything until after we started 15 S&P and P&S. That doesn't sound -- 16 Q. I think we are talking around each other. 17 You had already started S&P and P&S in '93 or '94. 18 A. Right. So why would I have shared money 19 with them in 1990? 20 Q. No. No. 21 A. I thought you just said -- 22 Q. I am sorry, 2000? 23 A. Oh, I am sorry. 24 Q. I am asking about why it took until 2000 25 for that process to start with Avellino and/or</p>

<p>11:17:26-11:18:03 Page 236</p> <p>1 Bienes when it appears you were doing with it with 2 other investors at least as of '96? That's my 3 question. 4 A. Oh, I don't know. Whatever the records 5 are that I have turned over, those records, 6 anything I put on paper and turned over are dead 7 accurate. 8 Q. And I am not -- 9 A. But I can't answer -- 10 MR. WINDERMAN: He wants to know why you 11 wanted to pay Avellino and Bienes. 12 THE WITNESS: I didn't. Do you mean to 13 2000? 14 MR. WINDERMAN: Yes. Did you pay them 15 before that? 16 THE WITNESS: I think I did, but you got 17 to check the records. 18 BY MR. ETRA: 19 Q. We'll just go through the records and then 20 I will ask it that way. 21 Could you estimate how many different 22 investors altogether you have had in S&P and P&S, 23 if you combine the two? 24 A. Couple hundred. 25 Q. Couple hundred. And is there like a, if</p>	<p>11:19:17-11:20:05 Page 238</p> <p>1 Q. Okay. And that was an example of fees 2 paid to an investor for helping bring in other 3 investors? 4 A. I don't believe he brought in any 5 investor. He was from our church, and I brought 6 him in. 7 Q. You brought him in, okay. 8 A. Yes. 9 Q. Why did he get some of your money? 10 A. Because I knew him, he was a nice guy, and 11 I had no problem with giving half his money back. 12 Q. It says management fee, Mgt? 13 A. Uh-huh. 14 Q. Do you know who came up with what term to 15 put in these documents, how to characterize these 16 fees? 17 A. It would have been Mr. Powell. 18 Q. Okay. Was Mr. Yonge -- I am sorry. 19 A. Yes, it's Yonge. 20 Q. Was Mr. Yonge one of the managers of S&P 21 and P&S? 22 A. No. 23 Q. Okay. So the fact that your documents may 24 refer to certain fees as management fees doesn't 25 necessarily mean that the people who got the fees</p>
<p>11:18:16-11:19:06 Page 237</p> <p>1 we had to figure out the sources of those people -- 2 A. Uh-huh. 3 Q. -- generally is there one source that's 4 the biggest source? And could you give me an idea 5 of where these came from? Like, for example, could 6 it be, well, gee, you know, Mr. Sullivan, you 7 speaking, I probably knew the most people, after 8 that it was Mr. Powell, and then it was some other 9 people? Could you give me an idea of how to break 10 that down? 11 MR. SAMUELS: Object to the form of the 12 question. 13 THE WITNESS: I would have to look at the 14 list to go through the names. Some of them I 15 know. Some of them I don't know. Some of them 16 were brought in by Mr. Powell. So it's a 17 garden source. 18 BY MR. ETRA: 19 Q. Could we look at Exhibit 8, please. The 20 first sheet of Exhibit 8 -- 21 A. Uh-huh. 22 Q. -- reflects fees paid to J. Y-o-n-g-e? 23 A. Uh-huh. 24 Q. How do you pronounce that? 25 A. Yonge.</p>	<p>11:20:20-11:21:03 Page 239</p> <p>1 were managers of S&P and P&S, correct? 2 A. That's absolutely correct. 3 Q. And did you ever explain that to Berger 4 Singerman and/or Mr. Von Kahle? 5 MR. SAMUELS: Object to form. 6 THE WITNESS: I don't know. There were so 7 many questions asked, I don't know who's on 8 first anymore. I can't tell you. 9 BY MR. ETRA: 10 Q. So the next item is Reverend Willis, the 11 next page? 12 A. Wills, correct. 13 Q. Sorry. I apologize. Reverend Wills, he 14 got what's referred to as a management fee? 15 A. Uh-huh. 16 Q. He was not a manager, correct? 17 A. None of these people were managers. 18 Q. So we have the people who got fees were 19 Mr. Yonge, Reverend Wills, Mr. Rosen? 20 A. Uh-huh. 21 Q. Mr. Newman? 22 A. Uh-huh. 23 Q. Mr. Kleinmann? 24 A. Uh-huh. 25 Q. Mr. Jacobs?</p>

11:21:08-11:21:55	Page 240	11:23:01-11:23:44	Page 242
<p>1 A. Uh-huh.</p> <p>2 Q. Mr. Holloway?</p> <p>3 A. Yes.</p> <p>4 Q. Guardian Angels?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Mr. Fox?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Mr. Chapman?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Mr. Barone, at least in this document?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Which one of these brought in</p> <p>13 investors and which one of them got them for other</p> <p>14 reasons?</p> <p>15 A. Vincent Barone got other investors. I</p> <p>16 believe we just gave Gary his money back because he</p> <p>17 was a friend.</p> <p>18 Q. Gary being Mr. Chapman?</p> <p>19 A. Yes, I am sorry.</p> <p>20 Ralph Fox he was a friend, a member of our</p> <p>21 church.</p> <p>22 Carol Fox, who did some of the due</p> <p>23 diligence for Berger Singerman, that was her</p> <p>24 father-in-law. That money is there, so that was</p> <p>25 where that came from.</p>		<p>1 to Mr. Jacobs personally and some was given to his</p> <p>2 company Guardian Angel?</p> <p>3 A. Can't tell you. I don't know.</p> <p>4 Q. That was his request?</p> <p>5 A. I don't know. I don't remember.</p> <p>6 Q. Did Berger Singerman or Mr. Von Kahle ever</p> <p>7 suggest to you that any of these people that we</p> <p>8 have mentioned here who got what's termed as</p> <p>9 management fees, that they were managers of your</p> <p>10 partnerships?</p> <p>11 A. I don't --</p> <p>12 MR. WINDERMAN: As long as -- just so we</p> <p>13 are clear. As long as we are not talking about</p> <p>14 what he may or may not have said during the</p> <p>15 sworn statement, he is free to answer that</p> <p>16 question.</p> <p>17 MR. ETRA: And so we save time, I won't</p> <p>18 keep asking it. But I have the same thing as</p> <p>19 Gary; I think I should be allowed to ask. But</p> <p>20 I don't have to make my record and take time on</p> <p>21 record. We are keeping that open.</p> <p>22 MR. WINDERMAN: Correct.</p> <p>23 BY MR. ETRA:</p> <p>24 Q. Sorry, should I repeat the question?</p> <p>25 A. No, you don't. To the best of my</p>	
11:22:09-11:22:52	Page 241	11:24:02-11:24:42	Page 243
<p>1 Guardian Angel was Steve Jacobs.</p> <p>2 Scott Holloway is the person I rented our</p> <p>3 offices from. That's why I moved there because of</p> <p>4 Scott. And this is his family. Most of the people</p> <p>5 there are the people that work for him.</p> <p>6 Steve Jacobs I think everybody knows that;</p> <p>7 there's a lot of lawsuits going on there.</p> <p>8 I forget J. Kleinmann.</p> <p>9 Abraham Newman was another person that I</p> <p>10 think Sam Rosen knew him. That's where he came</p> <p>11 from.</p> <p>12 And Richard Wills was our pastor. We just</p> <p>13 wanted to give him the money back.</p> <p>14 Every one, those are all family members</p> <p>15 and one pastor in there. So that's how it got all</p> <p>16 these people.</p> <p>17 Q. What was Mr. Jacobs' role, if any, in your</p> <p>18 partnerships?</p> <p>19 A. He had no role whatsoever.</p> <p>20 Q. And Guardian Angel, did you say that was</p> <p>21 Mr. Jacobs?</p> <p>22 A. Correct.</p> <p>23 Q. Did that have a role in --</p> <p>24 A. No.</p> <p>25 Q. Is there a reason why some money was given</p>		<p>1 recollection they never asked me about that and</p> <p>2 questioned me on that issue. And once again, my</p> <p>3 testimony was they were not managers.</p> <p>4 Q. And Father Kelly and/or his company</p> <p>5 Kelco --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- received a fee as well?</p> <p>8 A. Yes.</p> <p>9 Q. And I am going to represent to you that it</p> <p>10 says management fee on the documents. He was not a</p> <p>11 manager, correct?</p> <p>12 A. In the future, just so you know, in</p> <p>13 respect to you, sir, any time management fee was</p> <p>14 there, it's just a coin, a term that Greg Powell</p> <p>15 would have been there for his own records. So any</p> <p>16 time you see that, if I can cover that, it would</p> <p>17 be.</p> <p>18 Q. Are there any tax consequences to the</p> <p>19 term? We've been sitting here for years trying to</p> <p>20 figure out why these terms are there.</p> <p>21 A. Yeah.</p> <p>22 Q. Can you help? Can you give us any insight</p> <p>23 as to why those terms were picked? I know it was</p> <p>24 Mr. Powell's idea. But do you have any idea? Is</p> <p>25 there any way you could share any thoughts on that?</p>	

<p>11:24:52-11:25:50 Page 244</p> <p>1 A. Unless you can bring him back from the 2 dead like Elysia and put him in that chair -- 3 Q. Okay. 4 A. -- we are not going to have an answer to 5 that question. I appreciate the question, though. 6 Q. My client is a tax guy. 7 A. I understand. 8 Q. We are scratching our heads. 9 A. I understand. 10 Q. And I am just going to look at some other 11 names that we may not have covered. 12 Direct Resource Group, Inc., care of 13 William Roundtree? 14 A. Correct. 15 Q. Do those names sound familiar to you? 16 A. Certainly does. 17 Q. Who is that person or that company? 18 A. He rented space from us at our 6550 19 building, and he was an investor. Direct Resources 20 was his company. 21 Q. And did he receive what's referred to as 22 management fees? 23 A. I don't remember. 24 Q. How about Wayne Horowitz, is that someone 25 who was an investor?</p>	<p>11:26:59-11:27:58 Page 246</p> <p>1 A. More than likely. 2 Q. And I have a record -- 3 A. She would have gotten a fee back -- pardon 4 me. I think fees came to her. I think she had 5 some kids in there. There were a couple people. 6 So she probably had a -- I think they testified 7 maybe there were five or ten. There may have been, 8 I guess, ten or 15. I am looking at the names for 9 the first time. Seems there would be about 12 to 10 15 people. 11 Q. Okay. Total? 12 A. Total. 13 Q. Okay. 14 A. Correct. 15 Q. So Susan Moss, in addition to getting -- 16 being compensated for her services to your 17 companies or to your partnerships, she may have 18 also received some form of commission or management 19 fee? 20 A. To the best of my recollection. 21 Q. And Mr. Newman, did we cover Abraham 22 Newman? 23 A. Yes, we did. 24 Q. Okay. 25 MR. ETRA: Next Exhibit 20.</p>
<p>11:26:02-11:26:46 Page 245</p> <p>1 A. It was either him or his dad. 2 Q. And did he get commissions or management 3 fees? 4 A. I don't remember if he did or not. I just 5 have no memory. I know Wayne, but I don't know 6 whether he did or didn't. 7 Q. Did we cover Mr. Kleinmann? I don't 8 remember. 9 A. Yes, we did, R. Kleinmann. 10 Q. Dr. Edward D. Michaelson, was he an 11 investor at S&P and P&S? 12 A. Yes. I think Susan was, his wife. 13 Q. Okay. Do you know whether one or the 14 other Michaelsons received fees? 15 A. You would have to check the written 16 record. I don't know. 17 Q. If that's what the record reflected, you 18 wouldn't dispute it? 19 A. I wouldn't dispute it at all. 20 Q. Okay. I can show it to you if you'd like. 21 There's a reference to management fees to Susan 22 Moss, bookkeeping, tax services? 23 A. Right. 24 Q. Is that just the way of paying her as an 25 independent contractor?</p>	<p>11:28:24-11:29:02 Page 247</p> <p>1 (Defendant's Exb. No. 20, Documents, 2 MB00001RTP - 98.) 3 BY MR. ETRA: 4 Q. Exhibit 20 is a collection of documents 5 evidently from your company. You have seen 6 versions of this before from Mr. Woodfield's 7 questions. The first time -- if you look only at 8 the cover sheet -- 9 A. Uh-huh. 10 Q. -- the first payment reflected is in 2003? 11 A. Uh-huh. 12 Q. I am just pointing that out. 13 A. Uh-huh. 14 Q. I think we'll find some evidence of 15 earlier payments. 16 A. Uh-huh. 17 Q. And the first payment here these reflected 18 is one to F.P.O.M., Inc. (Michael Bienes)? 19 A. Uh-huh. 20 Q. And one to American Friends of Covent 21 Garden, Inc. (Bienes)? 22 A. Uh-huh. 23 Q. And then Christ Church, and it says 24 Avellino and Christ Church Avellino? 25 A. Uh-huh.</p>

<p>11:29:12-11:30:06 Page 248</p> <p>1 Q. Let me take a step back here. Do you know 2 what F.P.O.M. is? 3 A. Ugh-ugh, no. 4 Q. Have you ever heard of the entity Florida 5 Philharmonic Orchestra Musicians, something along 6 those lines? 7 A. I have heard the term. I don't know what 8 it relates to. 9 Q. Okay. 10 A. But I am sure I would have heard of that. 11 Q. Let me ask you something. Are you aware 12 of Mr. Bienes' reputation for doing charitable 13 work? 14 A. Very definitively. 15 Q. Definitively? 16 A. Yes. 17 Q. Okay. What were you aware of? 18 A. Well, you don't go in Holy Cross without 19 seeing his name. I work out at that gym every 20 night. So he had a -- when I had an imaging done 21 there, his name was on that sign at the time. And 22 I know he was very involved, a very generous donor 23 to St. Thomas Aquinas connected with Monsignor 24 Kelly. Other than that, I am not aware of any 25 philanthropy he has done.</p>	<p>11:30:54-11:31:26 Page 250</p> <p>1 or not Michael Bienes -- 2 (Interruption due to overspeaking.) 3 MR. ETRA: They are accusing Mr. Bienes of 4 doing charity to commit fraud, okay? That's 5 the accusation. 6 MR. WINDERMAN: Good. At least they admit 7 that he did charity. Move on. 8 MR. ETRA: No. 9 MR. SAMUELS: With other people's money 10 it's easy to do. 11 MR. WINDERMAN: Who cares? Did charity. 12 Nobody is disputing that he did charity. 13 BY MR. ETRA: 14 Q. Did you think Michael Bienes, was that a 15 good thing or a bad thing for Michael Bienes to 16 give to charity? 17 MR. SAMUELS: Object to the form of the 18 question. 19 THE WITNESS: Yes, I thought it was very 20 good. 21 BY MR. ETRA: 22 Q. Do you know how it came about that these 23 checks were written to charities that Mike Bienes 24 supported? 25 A. Yes.</p>
<p>11:30:15-11:30:43 Page 249</p> <p>1 Q. Are you aware of his philanthropy in the 2 medical community? 3 A. No. Oh, at Holy Cross, wherever his name 4 is -- 5 Q. Oh, okay. 6 A. -- at Holy Cross, so, yes. 7 MR. WINDERMAN: Holy Cross is a hospital. 8 THE WITNESS: Sorry. 9 MR. ETRA: Thank you. 10 BY MR. ETRA: 11 Q. I should have followed up and gotten an 12 explanation. 13 Are you aware of his philanthropy in the 14 local arts scene? 15 A. I believe I have seen his name. I don't 16 frequent the Downtown Art District. I think I seen 17 him name when I was there five years ago once, but 18 I don't -- you know, I just seen the name on the 19 wall. 20 Q. Do you think it's a good thing or a bad 21 thing for the Bieneses to have given money to these 22 causes? 23 MR. SAMUELS: Object to the form of the 24 question. 25 MR. WINDERMAN: Counsel, move on. Whether</p>	<p>11:31:38-11:32:23 Page 251</p> <p>1 Q. Could you tell me how that came about? 2 A. There was a point in time where Avellino, 3 I believe, I don't know if Bienes was there or not, 4 came to me and said they don't want to receive 5 funds any more, that they want to go ahead and give 6 the money directly, for us to give money to the 7 charities. So there was a point in time, it looks 8 like it's in 2003, and I am assuming this, that 9 instead of cutting them checks, the monies were 10 just given to their charities instead. 11 Q. To the best of your recollection was that 12 a communication you had with Mr. Avellino alone or 13 with Mr. Avellino and Mr. Bienes? 14 A. I do not know. 15 Q. If Mr. Bienes were to testify that he had 16 no such conversation, would you dispute that? 17 A. No, I wouldn't. 18 MR. SAMUELS: Object to the form of the 19 question. 20 BY MR. ETRA: 21 Q. Do you see the charity checks are in 2003, 22 the ones that are written directly to charities? 23 A. Uh-huh. 24 MR. SAMUELS: Object to the form of the 25 question.</p>

<p>11:32:45-11:33:20 Page 252</p> <p>1 MR. ETRA: Exhibit 21. 2 (Defendant's Exb. No. 21, Letter, Mar. 9, 3 2004, Sullivan to Bienes, MB000001.) 4 BY MR. ETRA: 5 Q. This is a letter produced by Mr. Bienes -- 6 A. Uh-huh. 7 Q. -- dated March 9, 2004 -- 8 A. Uh-huh. 9 Q. -- written from Michael D. Sullivan & 10 Associates -- 11 A. Uh-huh. 12 Q. -- dated March 9, 2004 -- 13 A. Uh-huh. 14 Q. -- stating, "Dear Michael and Diane," 15 meaning the Bieneses, "Please find enclosed a check 16 made payable to 56 Arlington House, LLC. 17 "I want to take this time to thank both 18 you and Diane for your kindness and generosity 19 throughout the years. What makes both of you so 20 special is your generosity in sharing your 21 blessings with all of God's people." 22 A. Uh-huh. 23 Q. "May the Lord continue to richly bless 24 your lives." 25 A. Uh-huh.</p>	<p>11:34:02-11:34:33 Page 254</p> <p>1 BY MR. ETRA: 2 Q. Is that yes or no? 3 A. Yes. 4 Q. "What makes both of you so special is your 5 generosity in sharing your blessings with all of 6 God's people." 7 A. Uh-huh. 8 Q. Again, you are thanking them for their 9 charities in the community? 10 MR. SAMUELS: Object to the form. 11 THE WITNESS: Correct. 12 BY MR. ETRA: 13 Q. And here, as you see, you are sending a 14 check, purport to be sending a check to 56 15 Arlington House? 16 A. I don't see the check. 17 Q. Okay. 18 A. I know. 19 Q. May not have been there. 20 A. I am sorry. 21 Q. In fact, if you look at the previous 22 exhibit, which you still should have in front you 23 of you -- 24 MR. WOODFIELD: He doesn't. 25 THE WITNESS: Uh-huh.</p>
<p>11:33:31-11:33:58 Page 253</p> <p>1 Q. "Best regards, Michael." 2 A. Is this for effect? No, go ahead. 3 MR. WINDERMAN: You didn't hear the music 4 in the background? 5 BY MR. ETRA: 6 Q. Did you send this letter around this time 7 to the Bieneses? 8 A. I don't remember. 9 Q. Does that appear to be your signature? 10 A. It does appear. 11 Q. Do these appear to be the sentiments you 12 had in mind at that time? 13 A. Yes. 14 Q. Okay. And when you say "I want to take 15 this time to thank both you and Diane for your 16 kindness and generosity throughout the years" -- 17 A. Uh-huh. 18 Q. -- are you referring to their charitable 19 deeds? 20 A. Yes. 21 Q. Because you were also a member of the 22 community, and everyone benefits from the 23 charities? 24 A. Right. 25 MR. SAMUELS: Object to the form.</p>	<p>11:34:46-11:35:10 Page 255</p> <p>1 BY MR. ETRA: 2 Q. The next year's payments from Mr. Bienes 3 is written out not to, not in the name of the 4 charity, but to 56 Arlington House, LLC for 5 Mr. Bienes? 6 A. Uh-huh. 7 Q. Do you see that? 8 A. I do. 9 Q. And the date of the entry there -- 10 A. Uh-huh. 11 Q. -- is March 4th, 2004. 12 A. Uh-huh. 13 Q. Do you see that? 14 A. Uh-huh, I do. 15 Q. And the date of this letter is March 9th, 16 2004? 17 A. Uh-huh. 18 Q. So I am inferring that you were attaching 19 the check. Do you know whether that's the case or 20 not? 21 A. I have no idea. 22 MR. SAMUELS: Object to the form. 23 BY MR. ETRA: 24 Q. You don't deny that you sent this letter, 25 do you?</p>

<p>11:35:16-11:35:58 Page 256</p> <p>1 A. I don't -- once again, you guys show me 2 these things. I don't remember sending this 3 letter. 4 Q. Okay. 5 A. But it has my signature, just like these 6 other documents, it has my signature, would have 7 been my sentiments. I don't remember sending this 8 letter out. 9 Q. Do you know why the payments went from in 10 2003 going directly to the charitable institution 11 and then going to, in the case of Mr. Bienes, 56 12 Arlington House? 13 A. I don't remember how that got arranged. 14 Q. And isn't it a fact that even though the 15 checks were going to Mr. Bienes' entity, no dispute 16 that that's his company -- 17 A. Uh-huh. 18 Q. -- that the concept that had been conveyed 19 to you -- 20 A. Uh-huh. 21 Q. -- was that the money was ultimately going 22 to go to charity? 23 A. Correct. 24 MR. SAMUELS: Object to the form. 25 MR. WINDERMAN: Oh, God. No offense, it's</p>	<p>11:37:19-11:38:10 Page 258</p> <p>1 little numbers at the bottom? 2 A. Where's that? I don't see them. 3 Q. Right there. 4 A. Oh, yes. 5 Q. Using that can you go to page it ends at 6 page 10 RTP? 7 A. I got it. 8 Q. Okay. And that's records that reflect 9 somehow the calculations for these fees, 10 apparently, right? 11 A. I guess. 12 Q. Do you know where this particular page, 13 for example, where it would be in the books and 14 records of your companies before the conservator 15 was appointed? 16 A. I couldn't tell you. 17 Q. Could it be in the computer system that's 18 accessible to S&P and P&S? 19 A. I have no idea. 20 Q. And the same with the previous page, which 21 is page 9 RTP, which again appears to be part of 22 the calculations -- 23 A. Uh-huh. 24 Q. -- for the management fees -- 25 A. Uh-huh.</p>
<p>11:36:33-11:37:14 Page 257</p> <p>1 time to move on. It's time to move on. How 2 the hell does he know what was going on in 3 Mr. Bienes' mind at the date that he doesn't 4 remember sending a letter? 5 BY MR. ETRA: 6 Q. Speaking of memory or lack thereof, you 7 are not in a position to testify what monies were 8 or were not given to Mr. Bienes, correct? 9 A. I have no idea. There's a written record 10 of them in the file somewhere that I turned over, 11 so those records are accurate. 12 Q. And the calculations, you can't speak to 13 those calculations? They were either done by 14 Mr. Powell when he was there or by Ms. Moss or 15 someone else after he passed? 16 A. Under my direction, correct. 17 MR. SAMUELS: When is a good time for a 18 break? 19 MR. ETRA: Could we go a few more minutes? 20 MR. SAMUELS: Yeah, that's fine. 21 BY MR. ETRA: 22 Q. Could we go to -- do you want to take a 23 break? 24 A. No, I am good. 25 Q. Do you see the production number, these</p>	<p>11:38:26-11:39:28 Page 259</p> <p>1 Q. -- to Avellino and Bienes? 2 A. Uh-huh. 3 Q. Do you know if that would be accessible in 4 the books and records of S&P and P&S? 5 A. Either on computer or hard copy. 6 Evidently they are hard copied now, so there must 7 be a hard copy somewhere. 8 Q. And on the computer they may have been 9 available? 10 A. Oh, sure. 11 MR. SAMUELS: Object to the form of the 12 question. 13 BY MR. ETRA: 14 Q. Could you turn to 30 using that page 15 numbering system? Would you look at that with me? 16 A. Okay. 17 Q. This appears to be some documentation 18 about -- relating to the payments made for Avellino 19 and Bienes; is that fair to say? 20 MR. WINDERMAN: Form. 21 THE WITNESS: Want to just make sure we're 22 on the same page. Mine says the first name is 23 Alves, is that the one you are looking at? 24 BY MR. ETRA: 25 Q. Yes.</p>

<p>11:39:42-11:40:16 Page 260</p> <p>1 A. Yes.</p> <p>2 Q. Why don't I bring you to the bottom of</p> <p>3 the -- you are agreeing with me?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. Wait. Wait. I am not -- I didn't know</p> <p>7 what the question is.</p> <p>8 Q. I am going to withdraw the last question.</p> <p>9 A. I am on the page.</p> <p>10 Q. I am going to withdraw the last question.</p> <p>11 We are on page 30. Look at the typed, the</p> <p>12 words typewritten at the bottom of the page. It</p> <p>13 says 4/11/02, meaning April 11th, 2002. Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. "Give year-to-date management fee</p> <p>17 to Frank verbally in January after year end and he</p> <p>18 will decide split (50& hopefully) and how much to</p> <p>19 pay to whom."</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you see that?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Does that reflect a meeting that you had</p> <p>24 with Mr. Avellino?</p> <p>25 A. I don't remember.</p>	<p>11:41:16-11:41:54 Page 262</p> <p>1 you help us to understand --</p> <p>2 A. Uh-huh.</p> <p>3 Q. -- why it wasn't until that period of</p> <p>4 time, whether it was 2000, 2001, 2002, whatever --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- why that was when money started going</p> <p>7 for these two, Avellino and/or Bienes?</p> <p>8 MR. SAMUELS: Objection, asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I guess that's the time the</p> <p>11 fee sharing would have started. I am only</p> <p>12 assuming that.</p> <p>13 MR. WINDERMAN: He is asking you why fee</p> <p>14 splitting started then and not when you</p> <p>15 originally started P&S and S&P.</p> <p>16 THE WITNESS: No, I can't tell you. I</p> <p>17 don't remember.</p> <p>18 BY MR. ETRA:</p> <p>19 Q. Whenever the fee splitting started, would</p> <p>20 that be the first time that a customer -- would</p> <p>21 that be the first time that a client -- client,</p> <p>22 what's the right word?</p> <p>23 A. Yeah, they are clients.</p> <p>24 Q. A client, okay. Start again.</p> <p>25 Would you have started paying fees to</p>
<p>11:40:24-11:41:05 Page 261</p> <p>1 Q. Okay. Did you ever meet with Mr. Avellino</p> <p>2 and verbally give him the amount of the management</p> <p>3 fees?</p> <p>4 A. I don't remember.</p> <p>5 Q. Do you know whether some of the fees were</p> <p>6 paid instead of what we have seen in the cover</p> <p>7 sheet separate checks to Bienes and Avellino in</p> <p>8 '03, before that were some paid only to Avellino</p> <p>9 with the intention that it be split?</p> <p>10 A. I do not remember. The records that I</p> <p>11 have provided are really accurate.</p> <p>12 Q. Okay.</p> <p>13 A. And if you look at those records, you will</p> <p>14 find everything there.</p> <p>15 Q. Okay. You just don't know?</p> <p>16 A. I don't know.</p> <p>17 Q. I think I said earlier that the earliest</p> <p>18 payment was in 2002, and I haven't reviewed every</p> <p>19 piece of paper. But the earliest thing that -- I</p> <p>20 will correct my previous comment. The earliest</p> <p>21 record I see of a payment is 2002.</p> <p>22 A. Uh-huh.</p> <p>23 Q. I may have said 2000 earlier.</p> <p>24 A. Uh-huh.</p> <p>25 Q. If that's correct do you have any -- can</p>	<p>11:42:06-11:42:33 Page 263</p> <p>1 Avellino and/or Bienes the year or the year after</p> <p>2 you got your first client in your mind from</p> <p>3 Avellino and Bienes?</p> <p>4 A. Once again, I got to keep answering the</p> <p>5 same way. Whatever my records reflect when checks</p> <p>6 were cut put on those spreadsheets were when the</p> <p>7 payments would have began.</p> <p>8 Q. Well, I am not --</p> <p>9 A. I mean, maybe I am not following you.</p> <p>10 Q. Yeah, I think we are talking around each</p> <p>11 other. They are what they are. The dates are what</p> <p>12 they are.</p> <p>13 MR. WINDERMAN: I think he answered the</p> <p>14 question.</p> <p>15 BY MR. ETRA:</p> <p>16 Q. But does that date help us, whatever that</p> <p>17 date is, which is in the records --</p> <p>18 A. Right.</p> <p>19 Q. -- does that help us to understand when</p> <p>20 you got your first client that you attributed to</p> <p>21 Avellino and Bienes?</p> <p>22 MR. SAMUELS: Object to the form of the</p> <p>23 question.</p> <p>24 BY MR. ETRA:</p> <p>25 Q. Based on your understanding of the</p>

11:42:41-11:52:47	Page 264	11:54:11-11:56:31	Page 266
<p>1 procedure and your practice?</p> <p>2 MR. WINDERMAN: Form, calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: I don't know the answer. I</p> <p>5 don't know.</p> <p>6 BY MR. ETRA:</p> <p>7 Q. I didn't know if you were done or not.</p> <p>8 A. Oh, yeah. I am just thinking how many</p> <p>9 years thing this has gone back, I think 25 years</p> <p>10 ago.</p> <p>11 MR. ETRA: We'll take a break.</p> <p>12 (A recess was taken.)</p> <p>13 THE WITNESS: Are we finished with this</p> <p>14 document?</p> <p>15 MR. ETRA: Yes.</p> <p>16 BY MR. ETRA:</p> <p>17 Q. Mr. Sullivan, did anyone from did the</p> <p>18 conservator or any of his lawyers ever accuse you</p> <p>19 of misplacing funds?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know if they had any basis for</p> <p>22 that?</p> <p>23 A. Yes, fraud.</p> <p>24 Q. I am not sure I understand your answer.</p> <p>25 MR. WINDERMAN: He is asking you if they</p>		<p>1 night of December 10th, 2008, whatever money was on</p> <p>2 the form that we sent to you, that that was the</p> <p>3 money that was in your account.</p> <p>4 So the fact that these clawback provisions</p> <p>5 existed, even though they are legal, I think they</p> <p>6 are so grossly unfair. And I was not going to</p> <p>7 engage in the practice of suing people that I knew.</p> <p>8 And I believe that the Festus Stacy</p> <p>9 Foundation, which is the dragon head for most of</p> <p>10 this, presented that opportunity to a law firm who</p> <p>11 went ahead and seeing this as a golden opportunity</p> <p>12 to make a nice sizeable fee on results</p> <p>13 accomplished.</p> <p>14 Q. Were you running a Ponzi scheme?</p> <p>15 A. No.</p> <p>16 Q. Did anyone accuse you of running a Ponzi</p> <p>17 scheme?</p> <p>18 A. Yes.</p> <p>19 Q. Who did?</p> <p>20 A. Thomas Messana.</p> <p>21 Q. And did he ultimately agree that you</p> <p>22 weren't running a Ponzi scheme?</p> <p>23 A. Yes.</p> <p>24 Q. This is the confidential settlement</p> <p>25 agreement, Exhibit 17.</p>	
11:52:59-11:53:54	Page 265	11:56:51-11:57:25	Page 267
<p>1 had any facts to base their conclusions.</p> <p>2 THE WITNESS: None.</p> <p>3 BY MR. ETRA:</p> <p>4 Q. Were you ever presented with any evidence</p> <p>5 to suggest, however inaccurate it was, that you had</p> <p>6 misplaced funds?</p> <p>7 A. Other than allegations in a lawsuit, no.</p> <p>8 Q. Do you know why, a legal basis upon which</p> <p>9 you were removed from your position as the managing</p> <p>10 general partner of the partnerships?</p> <p>11 MR. WINDERMAN: You are asking him for a</p> <p>12 legal conclusion? I don't think so.</p> <p>13 MR. ETRA: Fair enough.</p> <p>14 MR. WINDERMAN: And the record speaks for</p> <p>15 itself.</p> <p>16 MR. ETRA: I am asking a business person</p> <p>17 about how it is from his knowledge he went from</p> <p>18 being the managing general partner to not being</p> <p>19 the managing general partner.</p> <p>20 BY MR. ETRA:</p> <p>21 Q. In lay terms what was it?</p> <p>22 A. Persons wanted to go ahead and collect and</p> <p>23 sue people who are in our partnership, and I didn't</p> <p>24 believe that it was right to go ahead and do that.</p> <p>25 I firmly believed that when you went to bed on the</p>		<p>1 A. Uh-huh.</p> <p>2 Q. Go to paragraph nine.</p> <p>3 A. Uh-huh. If it's confidential why are we</p> <p>4 looking at it now?</p> <p>5 MR. WINDERMAN: Are we looking at the</p> <p>6 settlement agreement again?</p> <p>7 MR. ETRA: Yes.</p> <p>8 MR. WINDERMAN: There's no basis to look</p> <p>9 at the settlement agreement. It has no</p> <p>10 probative value at all with regard to your</p> <p>11 lawsuit.</p> <p>12 MR. ETRA: I disagree. Are you going to</p> <p>13 direct him not to answer?</p> <p>14 MR. WINDERMAN: I will hear the question</p> <p>15 first and then we'll go from there.</p> <p>16 BY MR. ETRA:</p> <p>17 Q. Paragraph nine states, "Plaintiffs agree</p> <p>18 that they do not believe that Sullivan was aware</p> <p>19 that Madoff was operating a Ponzi scheme prior to</p> <p>20 Madoff's arrest on December 11, 2008. Plaintiffs</p> <p>21 agree not to represent that Sullivan knew that</p> <p>22 Madoff was a Ponzi scheme prior to Madoff's arrest</p> <p>23 on December 11, 2008."</p> <p>24 Is that correct, you didn't believe that</p> <p>25 Madoff was a Ponzi scheme before that date?</p>	

<p>11:57:41-11:58:13 Page 268</p> <p>1 A. No, I did not.</p> <p>2 Q. Did anyone in your organization have any</p> <p>3 idea?</p> <p>4 A. Nobody.</p> <p>5 Q. With this settlement agreement you were</p> <p>6 released from liability, correct?</p> <p>7 MR. WINDERMAN: The document speaks for</p> <p>8 itself. Why ask him any questions about it?</p> <p>9 Forget it. We are not going to answer any</p> <p>10 questions. The document speaks for itself.</p> <p>11 BY MR. ETRA:</p> <p>12 Q. Did Mr. Von Kahle live up to all of his</p> <p>13 obligations under the settlement agreement?</p> <p>14 MR. WINDERMAN: Asked and answered. Let's</p> <p>15 move on.</p> <p>16 BY MR. ETRA:</p> <p>17 Q. Didn't he in fact violate the settlement</p> <p>18 agreement by suing you after you signed the</p> <p>19 settlement agreement?</p> <p>20 MR. WINDERMAN: No.</p> <p>21 MR. ETRA: I am not asking you. I am</p> <p>22 asking him.</p> <p>23 MR. WINDERMAN: It doesn't matter. I am</p> <p>24 the attorney of record. The lawsuit that was</p> <p>25 filed was filed before the settlement</p>	<p>12:00:06-12:00:56 Page 270</p> <p>1 MR. ETRA: Actually I am going to show you</p> <p>2 23 first.</p> <p>3 (Defendant's Exb. No. 23, Michael D.</p> <p>4 Sullivan Motion for Protective Order and to Compel</p> <p>5 Production of his Sworn Statement.)</p> <p>6 BY MR. ETRA:</p> <p>7 Q. Mr. Sullivan, this is a motion filed by</p> <p>8 your lawyer in connection with this litigation. I</p> <p>9 am just going to refer you to the very bottom of</p> <p>10 the first page, the first sentence, where it says,</p> <p>11 "Finally, movant has given over seven hours of</p> <p>12 sworn testimony on September 14, 2014, and in</p> <p>13 December 2014."</p> <p>14 They are not going to let me ask you those</p> <p>15 questions, and we'll save that for another day.</p> <p>16 But is that in fact correct, that you gave</p> <p>17 testimony under the settlement agreement on</p> <p>18 September 14, 2014? Does that sound right?</p> <p>19 A. I actually hate to say this. I don't</p> <p>20 remember. I would actually have to ask</p> <p>21 Mr. Winderman to confirm that.</p> <p>22 Q. And was there more than one day that you</p> <p>23 gave testimony under your settlement agreement?</p> <p>24 A. I believe --</p> <p>25 MR. WINDERMAN: Wait. Wait. Wait. Who</p>
<p>11:58:45-11:59:26 Page 269</p> <p>1 agreement. And there is no present litigation</p> <p>2 going on between the parties at the present</p> <p>3 time. That's all a matter of public record.</p> <p>4 BY MR. ETRA:</p> <p>5 Q. Were you aware -- were you ever aware that</p> <p>6 even after you signed the settlement agreement the</p> <p>7 conservator filed an amended complaint suing you?</p> <p>8 MR. WINDERMAN: The record is clear.</p> <p>9 Do you know?</p> <p>10 THE WITNESS: I don't.</p> <p>11 MR. WINDERMAN: Good.</p> <p>12 THE WITNESS: I really don't know what's</p> <p>13 going on any more.</p> <p>14 MR. ETRA: Okay.</p> <p>15 THE WITNESS: Really.</p> <p>16 MR. WINDERMAN: The question is did you</p> <p>17 ever know what was going on.</p> <p>18 THE WITNESS: No, I never did.</p> <p>19 Are we finished with this document just</p> <p>20 for the record?</p> <p>21 MR. ETRA: Yes. Exhibit 22.</p> <p>22 (Defendant's Exb. No. 22, Plaintiffs'</p> <p>23 Notice of Serving Revised Responses to Defendant</p> <p>24 Michael Bienes' First Set of Interrogatories to</p> <p>25 Plaintiff.)</p>	<p>12:01:04-12:01:44 Page 271</p> <p>1 cares? How does that have any probative value</p> <p>2 to this lawsuit?</p> <p>3 BY MR. ETRA:</p> <p>4 Q. What's the answer?</p> <p>5 MR. WINDERMAN: No. Move on. First of</p> <p>6 all, I don't lie. If I stated that in a</p> <p>7 pleading, it's the truth. Okay?</p> <p>8 MR. ETRA: I am trying to make a record</p> <p>9 for future motion practice. That's what</p> <p>10 lawyers do.</p> <p>11 MR. WINDERMAN: It's not a record. I</p> <p>12 stated that to the court. That's as good as</p> <p>13 gold.</p> <p>14 BY MR. ETRA:</p> <p>15 Q. Let's go back to 22, yes, the answers to</p> <p>16 interrogatories. If you look, these are dated, if</p> <p>17 you look at the very last page, signed by Philip</p> <p>18 Von Kahle under oath?</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- on September 15, 2014?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Which is the day after, according to your</p> <p>23 counsel --</p> <p>24 A. Uh-huh.</p> <p>25 MR. WINDERMAN: Don't use uh-huh.</p>

<p>12:01:48-12:02:34 Page 272</p> <p>1 THE WITNESS: Yes.</p> <p>2 MR. WINDERMAN: Don't say yes until he</p> <p>3 asks you a question.</p> <p>4 THE WITNESS: Oh, okay.</p> <p>5 MR. WINDERMAN: And then just say no. No,</p> <p>6 no, answer it correctly.</p> <p>7 BY MR. ETRA:</p> <p>8 Q. Let's start again. This is because of the</p> <p>9 court reporter.</p> <p>10 A. I understand.</p> <p>11 Q. Do you see that Exhibit 22, is that 22, is</p> <p>12 signed under oath by Mr. Von Kahle; do you see</p> <p>13 that?</p> <p>14 A. There is a signature there. I don't know</p> <p>15 if that's his signature.</p> <p>16 Q. And the purported date of his signing it</p> <p>17 is September 15, 2014; do you see that?</p> <p>18 A. That's what it appears to be.</p> <p>19 Q. And that's the date after your counsel had</p> <p>20 indicated and feels strongly that's in the record</p> <p>21 that you had a meeting, a confidential settlement</p> <p>22 meeting with Berger Singerman? Do you recall that?</p> <p>23 A. I don't know how that could be because the</p> <p>24 conservator is represented by Messana, and Berger</p> <p>25 Singerman -- I don't know how all this ties.</p>	<p>12:03:53-12:04:58 Page 274</p> <p>1 about even that meeting, but I know it happened.</p> <p>2 Q. What is the connection between SPJ</p> <p>3 Investments and these partnerships?</p> <p>4 A. To the best of my knowledge, I think SPJ</p> <p>5 held the IRA pension money.</p> <p>6 Q. Did you ever refer to the payments that</p> <p>7 were given to Avellino and/or Bienes as kickbacks?</p> <p>8 A. No.</p> <p>9 Q. They appear in the papers. Do you know</p> <p>10 where that term came from?</p> <p>11 A. More storytelling. I don't know how they</p> <p>12 came up with any terminology.</p> <p>13 Q. Did you ever tell the conservator or any</p> <p>14 of his lawyers that money that was given to</p> <p>15 investors -- excuse me -- that money was given to</p> <p>16 Avellino and Bienes, or perhaps others, that it</p> <p>17 came from the capital contributions of your</p> <p>18 investors as opposed to from your own management</p> <p>19 fees?</p> <p>20 A. Except for any --</p> <p>21 MR. SAMUELS: Object to the form of the</p> <p>22 question.</p> <p>23 MR. WINDERMAN: Except for any statements</p> <p>24 that were made during the sworn statement, if</p> <p>25 he has made those statements or has independent</p>
<p>12:02:45-12:03:33 Page 273</p> <p>1 Q. All right. Then let me understand. When</p> <p>2 you had your meetings with the conservator --</p> <p>3 A. Yes.</p> <p>4 Q. -- under the settlement agreement --</p> <p>5 A. Yes.</p> <p>6 Q. -- who was there? I thought you said</p> <p>7 Berger Singerman and Messana firm was there.</p> <p>8 A. They were all there. It was one big</p> <p>9 party.</p> <p>10 Q. Okay. That's what I thought.</p> <p>11 A. Right.</p> <p>12 Q. Do you know how Father Kelly came to your</p> <p>13 firm?</p> <p>14 MR. WINDERMAN: How he ended up being an</p> <p>15 investor in P&S and S&P?</p> <p>16 MR. ETRA: Yes.</p> <p>17 THE WITNESS: I believe, I don't know</p> <p>18 whether it was Michael or Frank, one of them</p> <p>19 just said the two of us should get together,</p> <p>20 and we got together. But it was on their</p> <p>21 recommendation.</p> <p>22 BY MR. ETRA:</p> <p>23 Q. Do you have a specific recollection of</p> <p>24 speaking to Michael about that?</p> <p>25 A. No. I don't have a specific recollection</p>	<p>12:05:12-12:05:47 Page 275</p> <p>1 recollection, then he is free to testify.</p> <p>2 Although I can tell you, I don't understand the</p> <p>3 question. And he has been real clear about</p> <p>4 what he said and where the money came from, so</p> <p>5 I don't know why there's any dispute at this</p> <p>6 point.</p> <p>7 Do you understand his question?</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. ETRA:</p> <p>10 Q. Okay. Let me go to page 16.</p> <p>11 A. Uh-huh.</p> <p>12 MR. WINDERMAN: Stop saying uh-huh.</p> <p>13 THE WITNESS: Sorry. If you hit me once</p> <p>14 maybe I will say it. Page 16?</p> <p>15 MR. ETRA: Right.</p> <p>16 MR. WINDERMAN: I have a 2 X 4 down in the</p> <p>17 car.</p> <p>18 THE WITNESS: Sixteen, I just see 1111 on</p> <p>19 all these, that they all end in one. What page</p> <p>20 are we referring to?</p> <p>21 BY MR. ETRA:</p> <p>22 Q. The page numbers follow.</p> <p>23 A. Where is the page?</p> <p>24 Q. (Indicating).</p> <p>25 A. Oh, okay. You tricked me on this one.</p>

<p>12:05:52-12:06:33 Page 276</p> <p>1 What page are we looking at, 16?</p> <p>2 MR. WINDERMAN: Sixteen.</p> <p>3 THE WITNESS: Okay, go for it.</p> <p>4 BY MR. ETRA:</p> <p>5 Q. I am just going to direct you to a bullet</p> <p>6 point.</p> <p>7 A. Okay.</p> <p>8 Q. If you need more, let me know.</p> <p>9 A. Sure. No problem.</p> <p>10 Q. The bullet point, second from the bottom.</p> <p>11 A. Yes.</p> <p>12 Q. This is in response to interrogatory ten.</p> <p>13 Says, "Michael D. Sullivan, who is believed" --</p> <p>14 well, let me read the line in front of it. "It is</p> <p>15 believed that individuals who possess knowledge</p> <p>16 related to this allegation are:" And the first</p> <p>17 bullet point is "Michael D. Sullivan who is</p> <p>18 believed to have knowledge related to the</p> <p>19 distribution of millions of dollars of partnership</p> <p>20 funds to assorted general partners from the capital</p> <p>21 contributions of other general partners, instead of</p> <p>22 from the partnerships' profits."</p> <p>23 Did you give plaintiffs any reason to</p> <p>24 believe that that would be your testimony?</p> <p>25 A. Absolutely not.</p>	<p>12:08:40-12:09:42 Page 278</p> <p>1 MR. WINDERMAN: Form.</p> <p>2 THE WITNESS: Form? I don't know.</p> <p>3 BY MR. ETRA:</p> <p>4 Q. In other words, as you sit here now, you</p> <p>5 can't testify one way or the other whether that was</p> <p>6 some draft that you were still in the process of</p> <p>7 working through versus a letter that actually got</p> <p>8 sent?</p> <p>9 A. I am surprised I didn't sign the letter.</p> <p>10 That's what surprised me about the letter. So once</p> <p>11 again, I can't answer. I am having a hard time</p> <p>12 remembering the letter, so I can't tell you.</p> <p>13 Q. And one of the purposes of the letter was</p> <p>14 essentially build a wall and say to Ms. Powell and</p> <p>15 the family, don't go there, you are not going to be</p> <p>16 part of the business, and don't go to Mr. Madoff,</p> <p>17 correct?</p> <p>18 MR. WINDERMAN: Form.</p> <p>19 MR. SAMUELS: Object to form.</p> <p>20 THE WITNESS: That was specifically the</p> <p>21 reason, yes, the reason.</p> <p>22 BY MR. ETRA:</p> <p>23 Q. Am I correct that you don't recall any</p> <p>24 discussion with Mr. Bienes about the payments that</p> <p>25 went to Avellino and/or Bienes from the profits?</p>
<p>12:06:42-12:08:31 Page 277</p> <p>1 Q. So contrary, I am clarifying, that any</p> <p>2 money that you distributed was from your</p> <p>3 partnership funds, correct?</p> <p>4 MR. SAMUELS: Object to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: That's absolutely correct.</p> <p>7 BY MR. ETRA:</p> <p>8 Q. Okay. Some of the back and forth on the</p> <p>9 letter to Ms. Powell --</p> <p>10 A. Yes.</p> <p>11 Q. -- is it -- we see there's no signature on</p> <p>12 that copy, correct?</p> <p>13 A. It appeared that way.</p> <p>14 Q. And you did turn over all the computers of</p> <p>15 your partnerships went to the conservator, correct?</p> <p>16 A. Not only those. My home computer, my cell</p> <p>17 phone. And they even came in and took all our</p> <p>18 business records of Fresh Start Tax that were</p> <p>19 completely unrelated.</p> <p>20 Q. So is it, I hate to say is it possible,</p> <p>21 but I am trying to be a detective here. Is it</p> <p>22 possible that that letter was never actually sent</p> <p>23 to Ms. Powell?</p> <p>24 MR. SAMUELS: Object to the form.</p> <p>25 THE WITNESS: Yeah, I --</p>	<p>12:10:06-12:11:04 Page 279</p> <p>1 A. I do not know the answer. I do not</p> <p>2 remember.</p> <p>3 Q. The investors that were also recipients of</p> <p>4 fees that we have gone over some of them before?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. They certainly got some kind of a</p> <p>7 statement from your companies indicating that they</p> <p>8 were getting fees, correct?</p> <p>9 A. Absolutely.</p> <p>10 Q. So those investors were aware that there</p> <p>11 was a practice at your partnerships of giving back</p> <p>12 fees to some of the investors?</p> <p>13 MR. SAMUELS: Object to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Absolutely.</p> <p>16 BY MR. ETRA:</p> <p>17 Q. Did you ever tell any of the investors who</p> <p>18 received fees, you are only one who is getting</p> <p>19 this, no one else is getting this?</p> <p>20 A. I would never say that.</p> <p>21 Q. Because it wouldn't be true?</p> <p>22 A. That's correct.</p> <p>23 MR. ETRA: I think I will have the benefit</p> <p>24 from a short lunch break to put it all</p> <p>25 together. I am spending too much time looking</p>

<p>12:37:40-12:38:44 Page 280</p> <p>1 at stuff, and I don't like to do that to 2 people. 3 (A lunch recess was taken.) 4 BY MR. ETRA: 5 Q. What exactly -- 6 A. Pardon me. Are we finished with this 7 document? 8 Q. You can put it away. 9 A. Twenty-two, thank you. 10 Q. In your own words, can you explain what 11 relationship you have had with Mr. Bienes? 12 A. More of a distance -- ah. Sorry about the 13 ah. Just I haven't had a lot a lot of contact with 14 Michael. I don't know how to classify the 15 relationship. I don't have -- he is just somebody 16 that I know. 17 Q. An acquaintance? 18 A. An acquaintance. 19 MR. SAMUELS: Objection to the form. 20 BY MR. ETRA: 21 Q. I can show you your partnership agreement, 22 but I don't think I need to for this. 23 A. Thank you. Spare me. 24 Q. Am I correct that in the partnership 25 agreement, in addition to the fact that the</p>	<p>12:39:49-12:40:38 Page 282</p> <p>1 accounts of S&P or P&S, or however you termed it, 2 you actually took it out of your own 20 percent? 3 A. I tried to keep everything as straight as 4 I can. The expenses that were legitimate S&P 5 expenses for the most that I remember were taken 6 out of there, and some of them were paid out of 7 MDS. I can't tell you which. 8 Q. That was just why not do it and help out 9 the investors? 10 MR. SAMUELS: Objection. 11 BY MR. ETRA: 12 Q. It wasn't a big deal to pay those out of 13 your own 20 percent? 14 A. No. 15 MR. SAMUELS: Object to form. 16 THE WITNESS: No. 17 MR. WINDERMAN: Move to strike. 18 BY MR. ETRA: 19 Q. I also -- if I don't have to show you your 20 letter to investors in 2012, I won't. There's a 21 reference here, and I am going to read portions of 22 it if that's okay. "But think about this. If any 23 of this were true, do you really think Irving 24 Picard, the Madoff trustee, with his army of 25 forensic accountants and attorneys, would have just</p>
<p>12:38:56-12:39:29 Page 281</p> <p>1 managing general partner or partners gets 20 2 percent of profits, the direct expenses otherwise 3 get taken out of the capital, correct? 4 MR. SAMUELS: Object to the form. 5 THE WITNESS: Correct. 6 BY MR. ETRA: 7 Q. Okay. So in other words, you could take 8 your 20 percent, and then if FP&L or lawyers have 9 to be paid, that's separate from your 20 percent, 10 correct? 11 A. That's correct. 12 MR. SAMUELS: Object to the form. 13 BY MR. ETRA: 14 Q. Is it your testimony that you sometimes 15 paid some of the expenses that you could have taken 16 out of the capital, that you sometimes paid that 17 out of your 20 percent? I thought you said that 18 earlier. 19 A. You got to please revisit the way you ask 20 that again. I am not sure. 21 Q. Sure. I thought your testimony, and I 22 want to make sure I understand it -- 23 A. Uh-huh. 24 Q. -- was that some of the expenses that you 25 could have taken it out of the regular operating</p>	<p>12:40:54-12:41:37 Page 283</p> <p>1 given me a complete release of all liability?" 2 And then you say later on, "After a 3 thorough investigation of the records, the 4 identical records that had been turned over to the 5 BS group almost a year ago," the Berger Singerman 6 group, "the trustee approved our claim." 7 Do you recall those subjects? 8 A. Yes, I do. 9 Q. So am I correct that Sullivan and Powell, 10 S&P and P&S partnership claims were approved by 11 Picard, the Madoff trustee? 12 A. Yes. 13 Q. And you got a complete release of all 14 liability? 15 A. Yes. 16 Q. And to your knowledge Picard had never 17 accused you of doing anything wrong? 18 A. Never. Well, we didn't, so he couldn't 19 have. 20 Q. You testified to this early this morning, 21 and I wasn't sure I heard it properly. 22 A. Right. 23 Q. When you met with the people from Picard's 24 team, I think the Baker Hostetler firm -- 25 A. Yes.</p>

<p>12:41:46-12:42:40 Page 284</p> <p>1 Q. -- did the subject of Bienes come up?</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall what you told them?</p> <p>4 A. I don't. All I know is this was four or</p> <p>5 five hours in the afternoon. There were just a</p> <p>6 plethora of questions. I just gave them answers.</p> <p>7 I don't remember.</p> <p>8 Q. But the accurate answers would have -- you</p> <p>9 would have given the same kind of accurate answers</p> <p>10 like you have given today?</p> <p>11 A. That's correct.</p> <p>12 Q. Or the other day in the deposition?</p> <p>13 A. Just for the record, our record matched</p> <p>14 that of Picard's too. When they put our</p> <p>15 analyzation together and theirs, actually through</p> <p>16 14 years we were \$100 off. There's a document in</p> <p>17 that file that shows that.</p> <p>18 Q. Did anyone ever allege to you that in view</p> <p>19 of the consistent returns or the always good</p> <p>20 returns of the Madoff fund, that it was too good to</p> <p>21 be true, that you must have suspected something</p> <p>22 wrong? Has that ever been alleged to you by Picard</p> <p>23 or by the conservator here?</p> <p>24 A. Picard never brought that up. It wasn't</p> <p>25 ever an issue. I believe that question was asked</p>	<p>12:43:54-12:44:54 Page 286</p> <p>1 Q. Which parts are true?</p> <p>2 A. They would come in if they were in town,</p> <p>3 we'd come by, talk. They'd say -- we'd show them</p> <p>4 the rate of return. I don't know if they've come</p> <p>5 in every year. Whenever they came in, they wanted</p> <p>6 to see the records, we would definitively show them</p> <p>7 the records. Was it every year? I can't tell you.</p> <p>8 We hid nothing from anybody.</p> <p>9 Q. I think you said the amount of times that</p> <p>10 you met Mr. Bienes was, I think you said, eight,</p> <p>11 and then you said that might have been on the high</p> <p>12 side; is that right?</p> <p>13 A. Around just say eight to keep it safe.</p> <p>14 It's a grenade's throw within eight.</p> <p>15 Q. And is there anything else you remember</p> <p>16 about your discussions with Mr. Bienes that you</p> <p>17 haven't already testified to?</p> <p>18 A. Just talked a lot about giving money to</p> <p>19 St. Thomas Aquinas to help build the theater, and</p> <p>20 just general stuff like that. Very little bit was</p> <p>21 business related.</p> <p>22 Q. Most of it was part of just schmoozing</p> <p>23 with Mr. Bienes?</p> <p>24 A. He is the king of the schmoozers.</p> <p>25 Q. Hopefully the jury knows what the word</p>
<p>12:42:55-12:43:44 Page 285</p> <p>1 in, I don't know, am I allowed to say confidential</p> <p>2 meeting or thing that we had? I don't know.</p> <p>3 Q. So you don't want to talk about it under</p> <p>4 your lawyer's instruction?</p> <p>5 MR. WINDERMAN: If it was part of the</p> <p>6 sworn statement, it didn't.</p> <p>7 THE WITNESS: I don't know. You'd have to</p> <p>8 look at that to tell.</p> <p>9 BY MR. ETRA:</p> <p>10 Q. One of the things that it said under oath</p> <p>11 by Mr. Von Kahle -- and I can show you the</p> <p>12 document.</p> <p>13 A. I believe you.</p> <p>14 Q. But if you don't need to, I won't do it.</p> <p>15 Your September 15th, 2014 plaintiffs' responses to</p> <p>16 Mike Bienes' second set of interrogatories.</p> <p>17 A. Uh-huh.</p> <p>18 Q. "Mr. Von Kahle swears under oath that</p> <p>19 Avellino and Bienes met with Sullivan on a yearly</p> <p>20 basis from 1993 through 2008 to discuss the status</p> <p>21 of the accounts of the partners invested in S&P</p> <p>22 and/or P&S, and they tracked the payment of</p> <p>23 distributions from S&P and/or P&S to their family</p> <p>24 members and associates." Is that true?</p> <p>25 A. Parts of it are true.</p>	<p>12:45:03-12:45:18 Page 287</p> <p>1 schmooze means, and I will stop. Thank you.</p> <p>2 MR. WINDERMAN: Okay.</p> <p>3 MR. SAMUELS: You are done?</p> <p>4 MR. ETRA: Yes.</p> <p>5 MR. SAMUELS: Okay. Let's go.</p> <p>6 MR. WINDERMAN: We are done. Lenny is not</p> <p>7 asking questions.</p> <p>8 MR. SAMUELS: He is not going to allow me.</p> <p>9 We have agreed that until the court rules on my</p> <p>10 motion, that things will be held in abeyance.</p> <p>11 MR. ETRA: And I am sorry, I have got the</p> <p>12 same thing as Gary, keeping it open on the</p> <p>13 various issues.</p> <p>14 MR. WINDERMAN: It's on the record.</p> <p>15 MR. ETRA: I know plaintiff doesn't agree,</p> <p>16 but.</p> <p>17 MR. SAMUELS: I just said I won't agree.</p> <p>18 MR. WINDERMAN: Thank you.</p> <p>19</p> <p>20 (The deposition adjourned at 12:45 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

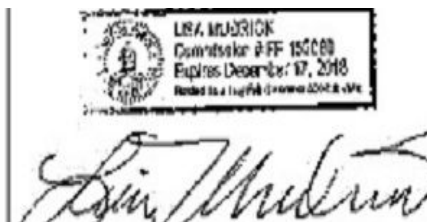
CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF BROWARD

In my capacity as a Notary Public of the State of Florida, I certify that on December 17, 2015, at 9:55 a.m., MICHAEL D. SULLIVAN, personally appeared before me and took an oath (or affirmation) for the purpose of giving testimony in the matter: P&S Associates v Michael Sullivan, et al.

SWORN TO and SUBSCRIBED before me
this January 6, 2016, in
the City of West Palm Beach, County
of Palm Beach, State of Florida.



Lisa Mudrick, Notary Public
State of Florida at Large.

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, LISA MUDRICK, RPR, FPR, do hereby certify that I was authorized to and did stenographically report the deposition of MICHAEL D. SULLIVAN; and that the foregoing transcript, pages from 159 through 287, inclusive, are a true and correct record of my stenographic notes.

I further certify that the said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was recommenced and adjourned as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel or party connected with the action, nor am I financially interested in the action.

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DATED January 6, 2016.



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EXHIBIT E

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-34123(07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership, et al.,

Plaintiffs,

vs.

STEVEN JACOB, et al.,

Defendants.

DEPOSITION OF

MICHAEL SULLIVAN

VOLUME 1 of 1
Pages 1 through 166

Tuesday, March 8th, 2016
9:30 a.m. - 2:28 p.m.

BERGER SINGERMANN, LLP
350 East Las Olas Boulevard
Fort Lauderdale, Florida

Stenographically Reported By:
Ashley C. Nehme, FPR
Florida Professional Reporter

Page 2	Page 4
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<p style="text-align: right;">Page 6</p> <p>1 The following proceedings began at 10:00 a.m.:</p> <p>2 THE COURT REPORTER: Please, raise your</p> <p>3 right hand.</p> <p>4 Do you solemnly swear or affirm that the</p> <p>5 testimony you are about to give in this case</p> <p>6 will be the truth, the whole truth, and nothing</p> <p>7 but the truth so help you God?</p> <p>8 THE WITNESS: I do.</p> <p>9 MICHAEL SULLIVAN</p> <p>10 having been first duly sworn, was examined and</p> <p>11 testified as follows:</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. SAMUELS:</p> <p>14 Q. Good morning, Mr. Sullivan. As you know,</p> <p>15 my name is Leonard Samuels. I represent the</p> <p>16 conservator, Phil Von Kahle, and the partnerships in</p> <p>17 this matter.</p> <p>18 Can you please state your name for the</p> <p>19 record.</p> <p>20 A. Michael Sullivan.</p> <p>21 Q. So this would be the continuation of your</p> <p>22 deposition started by Mr. Woodfield. You were asked</p> <p>23 some questions and now it's my turn. And you've</p> <p>24 been sworn in once again. Just want to remind you</p> <p>25 you're under oath and you're required to testify</p>	<p style="text-align: right;">Page 8</p> <p>1 email string and it says, "Legal invoices." Do you</p> <p>2 see that?</p> <p>3 A. No.</p> <p>4 MR. WINDERMAN: Just read across.</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. Yeah, if you go straight across on 9/1/15.</p> <p>7 A. Oh, yes.</p> <p>8 Q. Okay. And apparently, there was logged a</p> <p>9 communication from you to Frank and Nancy Avellino,</p> <p>10 an email string, and the subject is "Legal</p> <p>11 Invoices." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Why were you sending Michael and Nancy -</p> <p>14 I'm sorry, Frank and Nancy Avellino your legal</p> <p>15 invoices?</p> <p>16 A. I don't ever remember doing that.</p> <p>17 Q. Okay. Have you ever made any request of</p> <p>18 Frank or Nancy Avellino or their counsel to pay</p> <p>19 legal fees that you have incurred?</p> <p>20 A. No.</p> <p>21 Q. Okay. So you don't recall sending that</p> <p>22 email?</p> <p>23 A. No, I don't.</p> <p>24 Q. And you don't know anything about it?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 7</p> <p>1 truthfully subject to penalties of perjury. Okay.</p> <p>2 A. Uh-huh. Correct.</p> <p>3 Q. I'm not going to go through all the ground</p> <p>4 rules, because we already did that.</p> <p>5 MR. SAMUELS: Let's mark --</p> <p>6 Q. I'm going to ask you a few questions</p> <p>7 first.</p> <p>8 Do you have any understanding of what a</p> <p>9 common interest or joint defense privilege is?</p> <p>10 A. No.</p> <p>11 (The referred-to document was marked by</p> <p>12 the court reporter for identification as</p> <p>13 Plaintiff's Exhibit 1.)</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q. Okay. Let's go through this, Exhibit 1.</p> <p>16 Okay. So I'm showing you what's an Amended</p> <p>17 Privilege Log, and I want to ask you a couple of</p> <p>18 questions. If you can turn to the second page of</p> <p>19 this.</p> <p>20 On September 1st, 2015, if you can go to</p> <p>21 that on the second page. One, two, three, the</p> <p>22 fourth entry down. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. It indicates that there's a communication</p> <p>25 from you to Frank and Nancy Avellino and there's an</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. Let's go to the one above that. So</p> <p>2 right above that we have dated April 4th, 2011.</p> <p>3 This is an email from you to Frank and Nancy</p> <p>4 Avellino. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Or a communication of some sort that's</p> <p>7 been logged.</p> <p>8 A. Uh-huh.</p> <p>9 Q. It says, "Peshkin v. Levy-Church, et al."</p> <p>10 Do you know what Peshkin v. Levy-Church, et al. is?</p> <p>11 A. No.</p> <p>12 Q. So you don't recall sending an email or a</p> <p>13 communication to Frank and Nancy Avellino concerning</p> <p>14 Peshkin v. Levy-Church, et al.?</p> <p>15 A. No.</p> <p>16 Q. Okay. Let's go down one now, August 25th,</p> <p>17 2015. And this is a communication -- Strike that.</p> <p>18 I don't need to ask you about that.</p> <p>19 If we go down on - to November 8th, 2011,</p> <p>20 Michael Sullivan to Frank and Nancy Avellino. Email</p> <p>21 string P&S and S&P settlements, do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know why you were sending</p> <p>24 communications to Frank and Nancy Avellino</p> <p>25 concerning P&S and S&P settlements?</p>

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<p>1 A. No idea.</p> <p>2 Q. Do you know what the content of that is?</p> <p>3 A. No idea.</p> <p>4 Q. And you understand that you and Frank</p> <p>5 Avellino are not represented by the same attorneys,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 MR. WOODFIELD: Object to the form of the</p> <p>9 question.</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. And you understand that when you send</p> <p>12 emails to Frank and Nancy Avellino, it would not be</p> <p>13 a privileged communication; that is, one between you</p> <p>14 and counsel?</p> <p>15 A. I am not aware of that.</p> <p>16 Q. Okay. Let's go to the first page of this.</p> <p>17 On November 8th, 2011, there's a communication from</p> <p>18 you to Frank and Nancy Avellino concerning, "Second</p> <p>19 Circuit in litigation of customer status for</p> <p>20 retirement account investors." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know why you were sending an</p> <p>23 email concerning that subject to Frank and Nancy</p> <p>24 Avellino in 2011?</p> <p>25 A. No.</p>	<p>1 A. I don't have --</p> <p>2 MR. WOODFIELD: Object to the form of the</p> <p>3 question.</p> <p>4 A. I don't have any expectation.</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. Now, let's go to June 21st, 2011, email</p> <p>7 from you to Tom Avellino. Do you see that? Second</p> <p>8 to last on the first page.</p> <p>9 A. Yes, I do.</p> <p>10 Q. And Thomas Avellino is Frank's son?</p> <p>11 A. Is that a question?</p> <p>12 Q. I'm asking, yes.</p> <p>13 A. Oh, yes.</p> <p>14 Q. Again, about the same Peshkin versus</p> <p>15 Levy-Church, et cetera, appellant's brief. And my</p> <p>16 question to you is, when you send email to Tom</p> <p>17 Avellino, Frank's son, you didn't have any</p> <p>18 expectation that that would be privileged, did you?</p> <p>19 A. I don't have any expectation about any of</p> <p>20 this.</p> <p>21 Q. Okay. And here on --</p> <p>22 A. Where are we now, sir?</p> <p>23 Q. Back to the second page again.</p> <p>24 A. Okay.</p> <p>25 Q. Thank you.</p>
Page 11	Page 13
<p>1 Q. And when you sent that email to Frank and</p> <p>2 Nancy Avellino, you didn't have any expectation that</p> <p>3 that would be covered by any sort of privileged</p> <p>4 communication, did you?</p> <p>5 MR. WOODFIELD: Object to the form of the</p> <p>6 question.</p> <p>7 A. I don't know what you're talking about.</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q. Well, you understand I can't ask you</p> <p>10 questions in terms of what you discussed with you</p> <p>11 and your counsel here today, because that would be a</p> <p>12 privileged communication that I'm not entitled to</p> <p>13 know about, right?</p> <p>14 You need to answer verbally.</p> <p>15 A. Yes.</p> <p>16 Q. So you understand there is an</p> <p>17 attorney-client communication there, right?</p> <p>18 A. Yes.</p> <p>19 Q. Are you aware also of an accountant-client</p> <p>20 privilege that exists, as well?</p> <p>21 A. Yes.</p> <p>22 Q. So my question to you is when you send</p> <p>23 emails to Frank and Nancy Avellino, you don't have</p> <p>24 any expectation that that communication would be</p> <p>25 somehow privileged, do you?</p>	<p>1 April 5th, 2011 we have a communication</p> <p>2 from you to Frank and Nancy Avellino regarding</p> <p>3 S&P/P&S claims, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And if you send a communication to Frank</p> <p>6 and Nancy Avellino concerning S&P and P&S claims,</p> <p>7 you didn't have any expectation of that being</p> <p>8 privileged at all, did you?</p> <p>9 A. I have no expectations of anything.</p> <p>10 Q. Okay. Now, you understand that -- Well,</p> <p>11 let me ask you something else here.</p> <p>12 A. Are we done this?</p> <p>13 Q. Yes, you can put that aside. I'm going to</p> <p>14 show you what's been marked as Exhibit 2. This</p> <p>15 document is deemed confidential.</p> <p>16 MR. SAMUELS: You have that? Okay. This</p> <p>17 is exhibit B and it's Confidential Settlement</p> <p>18 Agreement. I ask Mr. Jacob not be given a copy</p> <p>19 of this document, because it's unredacted and</p> <p>20 it's supposed to be redacted. This document.</p> <p>21 MR. WOODFIELD: The one I marked at the</p> <p>22 earlier depositions --</p> <p>23 MR. SAMUELS: Yeah.</p> <p>24 MR. WOODFIELD: -- you're referring to?</p> <p>25 MR. SAMUELS: Correct.</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. ZEICHMAN: No, this is attached --</p> <p>2 MR. SAMUELS: No, this was attached to the</p> <p>3 summary judgment filings you just made, and</p> <p>4 it's called Confidential Settlement Agreement.</p> <p>5 It's Exhibit B to your filings.</p> <p>6 MR. WOODFIELD: Then you're not talking</p> <p>7 the exhibits I previously introduced at</p> <p>8 Mr. Sullivan's deposition.</p> <p>9 MR. SAMUELS: No, not at this time.</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. Let me show this to you, and I'm going to</p> <p>12 ask that this document be placed under seal because</p> <p>13 it's a Confidential Settlement Agreement. I don't</p> <p>14 mind --</p> <p>15 MR. WINDERMAN: Do you want to mark it</p> <p>16 before?</p> <p>17 MR. SAMUELS: Yes, mark it as Exhibit 2.</p> <p>18 (The referred-to document was marked by</p> <p>19 the court reporter for identification as</p> <p>20 Plaintiff's Exhibit 2.)</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q. I'm not going to ask you about the</p> <p>23 settlement amount, but if you look at Paragraph 3</p> <p>24 under judgment, do you see that?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. I don't understand what everything is. I</p> <p>2 heard that, but whatever it is, you know, I just</p> <p>3 haven't followed it.</p> <p>4 Q. Well, going through documents at your</p> <p>5 earlier deposition pertaining to payments that were</p> <p>6 made to Mr. Avellino and Mr. Bienes or on their</p> <p>7 behalf --</p> <p>8 A. Right.</p> <p>9 Q. -- by Michael D. Sullivan & Associates.</p> <p>10 A. Right.</p> <p>11 Q. I want to talk about those payments.</p> <p>12 A. Yes, sir.</p> <p>13 Q. Also, I want to ask you generally in terms</p> <p>14 of S&P and P&S whether or not, we'll call them</p> <p>15 commissions for now, whether or not commissions were</p> <p>16 paid to other individuals or entities in connection</p> <p>17 with them referring clients into S&P or P&S?</p> <p>18 A. Okay.</p> <p>19 Q. They were, right?</p> <p>20 A. Oh, yes.</p> <p>21 Q. People did receive commissions?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Were any of those done under</p> <p>24 written agreement or were they all oral</p> <p>25 understandings?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. It has a dollar amount in there, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And do you know how it is that</p> <p>4 Mr. Avellino or his counsel were able to obtain a</p> <p>5 Settlement Agreement in an unredacted form?</p> <p>6 A. I have no idea.</p> <p>7 MR. SAMUELS: Mr. Woodfield, perhaps you</p> <p>8 can explain, because this was filed by you.</p> <p>9 MR. WOODFIELD: I can't at the moment.</p> <p>10 I'm not being deposed.</p> <p>11 MR. SAMUELS: I understand you're not</p> <p>12 being deposed, but understand I'm making</p> <p>13 inquiry and I'll have to take it up with the</p> <p>14 court, which we intend to.</p> <p>15 Okay. So that's going to be Exhibit No. 2</p> <p>16 under seal.</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. Mr. Sullivan, I know you've been asked</p> <p>19 about -- Strike that.</p> <p>20 You understand that this case, in part, is</p> <p>21 premised upon the conservatory's efforts to obtain</p> <p>22 from Mr. Avellino and Mr. Bienes payments that were</p> <p>23 made to them or on their behalf in connection with</p> <p>24 individuals or entities who they referred into S&P</p> <p>25 and P&S? You understand that, right?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Oral. I do not remember a written</p> <p>2 document.</p> <p>3 Q. Okay. So let's focus now on the payments</p> <p>4 made to Mr. Avellino and Mr. Bienes or on their</p> <p>5 behalf. Okay?</p> <p>6 A. Okay.</p> <p>7 Q. As to those payments that were made, are</p> <p>8 you aware of anyone else, or did you disclose to</p> <p>9 anyone else, the existence of those oral - of your</p> <p>10 oral agreement to pay Mr. Avellino and Mr. Bienes</p> <p>11 commissions for bringing people into the</p> <p>12 partnership?</p> <p>13 A. There's only one --</p> <p>14 MR. WOODFIELD: Form. Timeframe.</p> <p>15 MR. SAMUELS: At all.</p> <p>16 MR. WINDERMAN: After the litigation?</p> <p>17 MR. SAMUELS: Unlimited in time.</p> <p>18 MR. WINDERMAN: Okay.</p> <p>19 A. The only person I remember directly was</p> <p>20 Patrick Kelly.</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q. Okay. And what do you recall the</p> <p>23 conversations with Patrick Kelly?</p> <p>24 A. Patrick Kelly, at some point, wanted to</p> <p>25 know more about the investment. We had an in length</p>

<p style="text-align: right;">Page 18</p> <p>1 discussion about the commission structure that we</p> <p>2 had. I talked to him about it. I don't know if I</p> <p>3 shared the commission structure with anybody else.</p> <p>4 Probably Mr. Jacob would have known, and I'm -</p> <p>5 Festus Stacy Group would have known. Doug Stepleton</p> <p>6 would have known. Red Stepleton would have known.</p> <p>7 Anyone in that group could have known.</p> <p>8 Q. Okay. So let me ask you in terms of</p> <p>9 Patrick Kelly, what was the timing of that?</p> <p>10 A. Couldn't tell you.</p> <p>11 Q. Okay. And how about Festus and Brett</p> <p>12 Stepleton, timing?</p> <p>13 A. I can't tell you.</p> <p>14 Q. All right. So I'm going to start by</p> <p>15 giving you the names of some people and ask you</p> <p>16 whether or not they received commissions for</p> <p>17 referring people into S&P or P&S. Okay?</p> <p>18 A. Sure.</p> <p>19 Q. Michael Bienes and Frank Avellino we</p> <p>20 discussed, right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Now, I'm going to ask you about</p> <p>23 some other people. Did Scott Holloway receive</p> <p>24 commissions?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay. And do you know if Mr. Bienes or</p> <p>2 Mr. Avellino were aware of Mr. Jacob or any entity</p> <p>3 with which he is affiliated with receiving</p> <p>4 commissions?</p> <p>5 A. Unknown.</p> <p>6 Q. Unknown?</p> <p>7 A. Correct.</p> <p>8 Q. How about Jack Kleinman, did he receive</p> <p>9 commissions?</p> <p>10 A. Correct.</p> <p>11 Q. Do you know if Michael Bienes or Frank</p> <p>12 Avellino were aware of Mr. Kleinman receiving</p> <p>13 commissions?</p> <p>14 A. Unknown.</p> <p>15 Q. Now, Richard Wills, can you tell me who</p> <p>16 that is?</p> <p>17 A. He's a friend of mine.</p> <p>18 Q. And he's a pastor, as well?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. At the church which you attended?</p> <p>21 A. Was.</p> <p>22 Q. Former pastor?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And you participated in Bible study</p> <p>25 and other meetings and groups with him?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And do you know if either Michael Bienes</p> <p>2 or Frank Avellino were aware of Scott Holloway</p> <p>3 receiving commissions?</p> <p>4 A. Unknown.</p> <p>5 Q. You do not know?</p> <p>6 A. No.</p> <p>7 Q. Okay. Ralph C. Fox received commissions?</p> <p>8 A. Correct.</p> <p>9 Q. And do you know if Michael Bienes or Frank</p> <p>10 Avellino were aware of Ralph Fox receiving</p> <p>11 commissions?</p> <p>12 A. Unknown.</p> <p>13 Q. And Steve Jacob received commissions?</p> <p>14 A. His company.</p> <p>15 Q. His company? Would it be Guardian Angle</p> <p>16 Trust, LLC?</p> <p>17 A. I'm not sure in what form we paid him.</p> <p>18 Q. Or F. Jacob & Associates possibly?</p> <p>19 A. You have to ask him.</p> <p>20 Q. And was your understanding with that</p> <p>21 individual or entity concerning Mr. Jacob in</p> <p>22 writing?</p> <p>23 A. I'm sorry.</p> <p>24 Q. Was it in writing or was it oral?</p> <p>25 A. I believe it was oral, I'm not sure.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Correct.</p> <p>2 Q. And he was a spiritual adviser to you?</p> <p>3 A. Yes.</p> <p>4 Q. And Mr. Avellino, as well?</p> <p>5 A. I have no idea.</p> <p>6 Q. Well, did Mr. Avellino also participate in</p> <p>7 those Bible studies with --</p> <p>8 A. I have no idea whether he was a spiritual</p> <p>9 adviser to Mr. Avellino.</p> <p>10 Q. That's fair, but did Mr. Avellino</p> <p>11 participate in Bible study groups led by Wills, in</p> <p>12 which you also participated?</p> <p>13 A. Never in a Bible study group.</p> <p>14 Q. Okay. What do you call the group meetings</p> <p>15 that you had?</p> <p>16 A. Small Group meetings.</p> <p>17 Q. Did they have a name for them at all?</p> <p>18 A. Small Groups.</p> <p>19 Q. Small groups of men, right?</p> <p>20 A. Small Groups is the title.</p> <p>21 Q. Oh, okay.</p> <p>22 A. No, that's just the name.</p> <p>23 Q. So the Small Groups meetings, right?</p> <p>24 A. Yes.</p> <p>25 Q. What was the agenda or purpose of those</p>

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<p>1 Small Groups meetings?</p> <p>2 A. Just to share what was going on in your</p> <p>3 life, that's it.</p> <p>4 Q. Okay. And it was at the church?</p> <p>5 A. No.</p> <p>6 Q. Outside the church?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And who was in the Small Groups on</p> <p>9 a more than just periodic basis?</p> <p>10 A. It varied. Anywhere from 12 to 20 people.</p> <p>11 Q. And Mr. Avellino would be a fairly</p> <p>12 frequent attendee?</p> <p>13 A. Off and on.</p> <p>14 Q. Okay. Did anyone else who received</p> <p>15 commissions from you participate in the Small Groups</p> <p>16 meetings?</p> <p>17 A. Yes.</p> <p>18 Q. And who would that be?</p> <p>19 A. Ralph Fox, Scott Holloway.</p> <p>20 Q. Anyone else?</p> <p>21 A. I don't remember. Could be another one, I</p> <p>22 just don't recall.</p> <p>23 Q. Well, I'm going to read you some names and</p> <p>24 you tell me if they participated, how's that?</p> <p>25 A. Sure.</p>	<p>1 Frank Avellino?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what is the name of the entity</p> <p>4 that made those payments?</p> <p>5 A. I believe it was Michael D. Sullivan &</p> <p>6 Associates.</p> <p>7 Q. Okay. And did Michael D. Sullivan &</p> <p>8 Associates make those payments from management fees</p> <p>9 it received from the management of S&P and P&S?</p> <p>10 A. Yes.</p> <p>11 Q. And why did Frank Avellino request that</p> <p>12 you assist Richard Wills in making mortgage</p> <p>13 payments?</p> <p>14 A. He wanted to help him out.</p> <p>15 Q. Okay. And so if he wanted to help him</p> <p>16 out, why didn't he make the payments directly? Why</p> <p>17 did he have you do it through --</p> <p>18 MR. WOODFIELD: Form.</p> <p>19 MR. SAMUELS: I'll rephrase the question.</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q. If he wanted to help him out, why did he</p> <p>22 enlist you to assist in helping him out?</p> <p>23 A. I have no idea. You have to ask him.</p> <p>24 Q. Okay. And when he asked you to make these</p> <p>25 payments, were these payments that otherwise would</p>
Page 23	Page 25
<p>1 Q. Jack Kleinman? Edward Michaelson? Gary</p> <p>2 Chaitman?</p> <p>3 A. Gary Chaitman, yes.</p> <p>4 Q. Okay. Edith Rosen, Sam Rosen? Vincent</p> <p>5 Barone? Abraham Newman? James Yonge? Wayne</p> <p>6 Horowitz? Representative Direct Response Group?</p> <p>7 Susan Moss? Frank Avellino, we discussed. Michael</p> <p>8 Bienes. Scott Holloway, you mentioned. Steve</p> <p>9 Jacob?</p> <p>10 A. No.</p> <p>11 Q. Okay. And in the Small Groups, did you</p> <p>12 discuss or let people know of your involvement with</p> <p>13 S&P and P&S?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Okay.</p> <p>16 Do you know if Frank Avellino was aware of</p> <p>17 Gary Chaitman receiving commissions?</p> <p>18 A. Unknown.</p> <p>19 Q. Now, I have -- I can go through these</p> <p>20 documents later, but are you aware of S&P or P&S or</p> <p>21 Michael D. Sullivan & Associates at any point in</p> <p>22 time making payments to Richard Wills to assist him</p> <p>23 in paying his mortgage?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And was that done at the request of</p>	<p>1 have gone to Frank Avellino as commission payments?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So he asked that commission</p> <p>4 payments that would have gone to him be redirected</p> <p>5 to Richard Wills to assist him in making his</p> <p>6 mortgage payments?</p> <p>7 A. That's correct.</p> <p>8 Q. And you don't know why Mr. Avellino wanted</p> <p>9 to do that?</p> <p>10 A. Wanted to help him out.</p> <p>11 Q. Do you know why? Was it any particular --</p> <p>12 A. Got to ask him. I do not know.</p> <p>13 Q. Let me finish the question before you</p> <p>14 answer, so that she can take it down correctly.</p> <p>15 So my question was, did he ever disclose</p> <p>16 to you why he wanted to do that?</p> <p>17 A. I think I answered that question before.</p> <p>18 My answer is the same. I do not know. You have to</p> <p>19 ask him.</p> <p>20 Q. Okay. Let's continue going through the</p> <p>21 list here of people received commissions. Do you</p> <p>22 know if Frank Avellino or Michael Bienes were aware</p> <p>23 of Dr. Edward Michaelson receiving commission</p> <p>24 payments?</p> <p>25 A. Unknown.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. Do you know if either of them was aware of</p> <p>2 Edith Rosen or Sam Rosen or Premier receiving</p> <p>3 commission payments?</p> <p>4 A. Unknown.</p> <p>5 Q. Do you know if Michael Bienes or Frank</p> <p>6 Avellino were aware of Vincent Barone receiving</p> <p>7 commission payments?</p> <p>8 A. Unknown.</p> <p>9 Q. How about Abraham Newman?</p> <p>10 A. Unknown.</p> <p>11 Q. Do you know if they were aware of James</p> <p>12 Yonge receiving commission payments?</p> <p>13 A. Unknown.</p> <p>14 Q. Wayne Horowitz?</p> <p>15 A. Unknown.</p> <p>16 Q. Direct Response Group, Inc.?</p> <p>17 A. Unknown.</p> <p>18 Q. And whose entity is Direct Response Group,</p> <p>19 Inc., do you know?</p> <p>20 A. It's the first time I heard that name.</p> <p>21 Q. Okay. Susan Moss or Susan Moss</p> <p>22 Bookkeeping & Tax Services?</p> <p>23 A. Unknown.</p> <p>24 Q. How about the Kelco Foundation, do you</p> <p>25 know if Michael Bienes or Frank Avellino were aware</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And the commission payments made to them,</p> <p>2 were they paid by S&P or P&S, or were they made</p> <p>3 through Sullivan & Powell, Solution & Tax, or</p> <p>4 Michael D. Sullivan & Associates?</p> <p>5 A. I believe Michael D. Sullivan &</p> <p>6 Associates.</p> <p>7 Q. Were -- Did you ever discuss with Michael</p> <p>8 Bienes or Frank Avellino how you calculated the</p> <p>9 management fees you were receiving?</p> <p>10 A. Not that I remember.</p> <p>11 Q. Did they ever ask to see how you</p> <p>12 calculated the management fees?</p> <p>13 A. Not that I remember.</p> <p>14 Q. Okay. And did you ever disclose to them</p> <p>15 how you were calculating the management fees?</p> <p>16 A. Not that I remember.</p> <p>17 MR. SAMUELS: Just bear with me for a</p> <p>18 minute.</p> <p>19 Let's mark this as the next exhibit.</p> <p>20 (The referred-to document was marked by</p> <p>21 the court reporter for identification as</p> <p>22 Plaintiff's Exhibit 3.)</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q. Can you identify what's been marked as</p> <p>25 Exhibit 3?</p>
<p style="text-align: right;">Page 27</p> <p>1 of the Kelco Foundation making - receiving</p> <p>2 commission payments?</p> <p>3 A. Unknown. I don't.</p> <p>4 Q. Do you know the relationship between</p> <p>5 Michael Bienes and the Kelco Foundation?</p> <p>6 A. I do.</p> <p>7 Q. What do you know of that?</p> <p>8 A. I just know they knew each other.</p> <p>9 Q. And who is the representative of the Kelco</p> <p>10 Foundation?</p> <p>11 A. Monsignor Kelly.</p> <p>12 Q. And was Monsignor Kelly brought into the</p> <p>13 S&P or P&S partnerships through Michael Bienes?</p> <p>14 A. I don't remember.</p> <p>15 Q. Now, in terms of the fact that you were</p> <p>16 receiving management fees, you being Sullivan &</p> <p>17 Powell or Solution & Tax or Michael D. Sullivan &</p> <p>18 Associates, are those all entities that at one point</p> <p>19 in time received management fees from S&P or P&S?</p> <p>20 A. A combination of one, yeah. In that</p> <p>21 group, yes.</p> <p>22 Q. And Michael Bienes and Frank Avellino were</p> <p>23 aware that you individually or through one of your</p> <p>24 entities were receiving management fees, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Pardon me?</p> <p>2 Q. Mr. Sullivan, can you identify what I just</p> <p>3 marked as Exhibit 3?</p> <p>4 A. Yeah, it's a document that looks -- I can</p> <p>5 identify it. It's a P&S Management Fee Calculation.</p> <p>6 That's what the top of it says.</p> <p>7 Q. And these P&S Management Fee Calculations,</p> <p>8 were these - were these documents belonging to</p> <p>9 Michael D. Sullivan & Associates or Michael</p> <p>10 Sullivan?</p> <p>11 A. I do not know.</p> <p>12 Q. Okay. So you don't know whether these</p> <p>13 were gathered from Michael D. Sullivan or your</p> <p>14 personal computers?</p> <p>15 A. It looks like something I would have</p> <p>16 produced, but whether this particular document is</p> <p>17 among those I do not know. I don't have my records</p> <p>18 to tell you.</p> <p>19 Q. In terms of the management fee calculation</p> <p>20 that were made.</p> <p>21 A. Yes.</p> <p>22 Q. Were those calculations done on the books</p> <p>23 and records of Michael D. Sullivan & Associates or</p> <p>24 Sullivan & Powell or Solution & Tax on the one hand,</p> <p>25 or were they in the books and records of P&S or S&P</p>

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<p>1 on the other hand?</p> <p>2 A. I'm not sure.</p> <p>3 Q. Okay. Now, let's just -- I just want to</p> <p>4 go over a couple of these sheets with you, if I can.</p> <p>5 A. Sure.</p> <p>6 Q. This is for 2002.</p> <p>7 A. Uh-huh.</p> <p>8 Q. So at the bottom here it says Kelco</p> <p>9 clients and year-to-date management fees. Do you</p> <p>10 see that?</p> <p>11 A. Can you point to that.</p> <p>12 Q. I'm sorry, in the lower column.</p> <p>13 A. Oh, yes. Yes, yes, yes.</p> <p>14 Q. It has year-to-date management fees for</p> <p>15 Kelco and that totals \$90,473.25, correct?</p> <p>16 A. That's what it says.</p> <p>17 Q. And that would be one half of your</p> <p>18 management fee would be, therefore, payable to Kelco</p> <p>19 for the clients that Kelco brought into the</p> <p>20 partnership; is that true?</p> <p>21 A. That's what it appears, yes.</p> <p>22 Q. Okay. So there's a total of 90,473.25 of</p> <p>23 which 45,236.62 would go to Kelco, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And then in the upper right-hand corner.</p>	<p>1 A. Uh-huh.</p> <p>2 Q. It says less A and B year to date. That</p> <p>3 would be Avellino and Bienes?</p> <p>4 A. Yes.</p> <p>5 Q. And then commissions paid, and it would</p> <p>6 show a net fees due of \$20,001.11, correct?</p> <p>7 A. That's what it says on the paper.</p> <p>8 Q. Okay. And so how would this be handled</p> <p>9 then? Would a check be made payable to Sullivan &</p> <p>10 Powell for the 20,000?</p> <p>11 A. I'm not sure. I couldn't tell you. You'd</p> <p>12 have to -- The records I'm sure would indicate how</p> <p>13 that was handled.</p> <p>14 Q. All right.</p> <p>15 A. Are we finished this?</p> <p>16 Q. Yes. Let's go to Exhibit 4 now.</p> <p>17 (The referred-to document was marked by</p> <p>18 the court reporter for identification as</p> <p>19 Plaintiff's Exhibit 4.)</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q. Okay. This appears to be S&P Management</p> <p>22 Fee Calculation for the year 2007, correct?</p> <p>23 A. That's what it appears.</p> <p>24 Q. I asked this question earlier, but I just</p> <p>25 want to make sure timeframe-wise, because I may have</p>
Page 31	Page 33
<p>1 A. Just point if you could.</p> <p>2 Q. Sure. Right there.</p> <p>3 A. Yes.</p> <p>4 Q. It looks like the payments were actually</p> <p>5 made pursuant to these four checks showing 45,236.63</p> <p>6 paid and no balance due to them, correct?</p> <p>7 A. That's what it shows.</p> <p>8 Q. And here in the next column it shows gross</p> <p>9 fees year to date per Sullivan & Powell in 2002 of</p> <p>10 193,946.75, correct?</p> <p>11 A. That's what it says on this paper.</p> <p>12 Q. And who did these calculations?</p> <p>13 A. All depends on the year.</p> <p>14 Q. In 2002 who would have been doing them?</p> <p>15 A. I can't remember when my partner passed</p> <p>16 away.</p> <p>17 Q. But prior to Mr. Powell's death, did</p> <p>18 Mr. Powell handle this part of the business?</p> <p>19 A. Yes.</p> <p>20 Q. After he passed away who handled it?</p> <p>21 A. Susan Moss.</p> <p>22 Q. Under your supervision?</p> <p>23 A. Absolutely.</p> <p>24 Q. So now we have under the Sullivan & Powell</p> <p>25 calculation.</p>	<p>1 just asked about the other document, I'm not sure.</p> <p>2 But timeframe-wise in terms of these S&P Management</p> <p>3 Fee Calculation from inception through the end, is</p> <p>4 it a fair statement you're not sure whether or not</p> <p>5 these were documents of Sullivan & Powell, Solution</p> <p>6 & Tax, Michael D. Sullivan on the one hand or S&P,</p> <p>7 P&S on the other hand, you're just not sure?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. So in this document -- Let's see,</p> <p>10 it shows management fees 2007. If you look, I'm</p> <p>11 sorry, in the bottom, first column.</p> <p>12 A. Just point.</p> <p>13 Q. Right here.</p> <p>14 A. Yes.</p> <p>15 Q. It shows a number of checks drawn and</p> <p>16 split checks. Do you know who those checks were</p> <p>17 drawn to?</p> <p>18 A. Can't tell you.</p> <p>19 Q. And then it shows -- That indicates that</p> <p>20 those are management fees in 2007, correct?</p> <p>21 A. I don't know. Just what's on here. I</p> <p>22 can't tell you.</p> <p>23 Q. Who -- Would Susan Moss know?</p> <p>24 A. If she prepared this she would.</p> <p>25 Q. Who would have been preparing these in</p>

<p style="text-align: right;">Page 34</p> <p>1 2007, do you know?</p> <p>2 A. If Greg passed away, it would have been</p> <p>3 Susan.</p> <p>4 Q. Do you know when Greg passed away?</p> <p>5 A. About ten years ago, I'm guessing.</p> <p>6 Q. Okay. Now, here's -- So here's a question</p> <p>7 I have for you. In terms of the net income</p> <p>8 available, it's negative \$45,000, do you see that?</p> <p>9 At the bottom right.</p> <p>10 A. Yes, yes.</p> <p>11 Q. So there's a negative net income, correct?</p> <p>12 A. That's what the paper says.</p> <p>13 Q. Can you tell me why in 2007 there ever</p> <p>14 would have been a negative net income?</p> <p>15 A. Can't tell you.</p> <p>16 Q. You don't know?</p> <p>17 A. No.</p> <p>18 Q. So you would agree if there's a negative</p> <p>19 net income, there would not be any profits from</p> <p>20 which to distribute management fees, correct?</p> <p>21 A. I can't answer that, I don't know.</p> <p>22 Q. Let me just ask you generally, in terms of</p> <p>23 being the general managing partner of S&P and P&S,</p> <p>24 the management fees were to be paid out of the</p> <p>25 profits, correct?</p>	<p style="text-align: right;">Page 36</p> <p>1 A. No, I'd have to go over all the records,</p> <p>2 analyze them, look at them. I haven't looked at</p> <p>3 these records in years, ten years.</p> <p>4 Q. Okay. Going back to the prior exhibit,</p> <p>5 can you tell if that document reflects a printout</p> <p>6 from your computer, as opposed to S&P books and</p> <p>7 records?</p> <p>8 A. I can't tell you.</p> <p>9 Q. And in terms of your personal computer or</p> <p>10 the computer of S&P -- I'm sorry. In terms of your</p> <p>11 computer, computer that you worked on at Michael D.</p> <p>12 Sullivan & Associates, you would not provide access</p> <p>13 to your computer to the partners of S&P or P&S,</p> <p>14 would you?</p> <p>15 A. No. Do you do that to your clients?</p> <p>16 Okay. The answer is no, thank you.</p> <p>17 Q. Just asking the questions.</p> <p>18 A. I'm just answering the questions.</p> <p>19 Q. Well, that's fine.</p> <p>20 (The referred-to document was marked by</p> <p>21 the court reporter for identification as</p> <p>22 Plaintiff's Exhibit 5.)</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q. All right. So let's continue now with the</p> <p>25 Partnership Agreement. Do you recognize this</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So if you look at this sheet here,</p> <p>3 and there's a negative net income?</p> <p>4 A. Right.</p> <p>5 Q. Would you agree when there's a negative</p> <p>6 net income, that management fees to Michael Sullivan</p> <p>7 or Michael D. Sullivan & Associates should not be</p> <p>8 appropriately paid while there's a negative net</p> <p>9 income?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Do you know if Michael D. Sullivan</p> <p>12 or Michael D. Sullivan & Associates received</p> <p>13 management fees during any timeframe in which there</p> <p>14 was a negative net income?</p> <p>15 A. I can't tell you.</p> <p>16 Q. Do you know why it appears on this sheet</p> <p>17 that management fees were paid despite the fact that</p> <p>18 there's a negative net income?</p> <p>19 MR. WOODFIELD: Form.</p> <p>20 A. I can't tell you.</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q. And who could tell me?</p> <p>23 A. I have no idea.</p> <p>24 Q. Who would you ask if you wanted to know?</p> <p>25 Would you ask Ms. Moss?</p>	<p style="text-align: right;">Page 37</p> <p>1 document?</p> <p>2 A. I do.</p> <p>3 Q. And what is it?</p> <p>4 A. It says on top, the Amended and Restated</p> <p>5 Partnership Agreement.</p> <p>6 Q. Okay. Now, I want to go to 5.02,</p> <p>7 Distributions. Actually, before we get to that let</p> <p>8 me ask you something.</p> <p>9 In terms of the distributions made -- I'm</p> <p>10 sorry, in terms of the management fees that were</p> <p>11 paid to you, it's my understanding it was 20 percent</p> <p>12 of the profits?</p> <p>13 A. Correct.</p> <p>14 Q. And how was that calculated?</p> <p>15 A. Twenty percent of the profit.</p> <p>16 Q. But who is determining what the profits</p> <p>17 were and during what timeframe was it determined</p> <p>18 whether or not to pay management fees?</p> <p>19 A. On a quarterly basis.</p> <p>20 Q. Quarterly, okay.</p> <p>21 And who would determine what the profits</p> <p>22 were for a particular order?</p> <p>23 A. Madoff.</p> <p>24 Q. Madoff would? So you would base it on the</p> <p>25 statements from Madoff?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. Correct.</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. Tell me how that would work. You'd get</p> <p>5 statements from Madoff, and what would that show</p> <p>6 that would enable you to calculate your management</p> <p>7 fees?</p> <p>8 A. Shows what the profit was. You have to</p> <p>9 look at the statement and figure 20 percent of that.</p> <p>10 Q. Okay. So you get a quarterly statement?</p> <p>11 A. Correct.</p> <p>12 Q. It would say what the profit was?</p> <p>13 A. Correct.</p> <p>14 Q. And you would then take 20 percent of</p> <p>15 that?</p> <p>16 A. Correct.</p> <p>17 Q. And what would happen with the other</p> <p>18 80 percent?</p> <p>19 A. All depends what the partner wanted to</p> <p>20 have done with their money.</p> <p>21 Q. A particular partner?</p> <p>22 A. Correct.</p> <p>23 Q. So some partners would want distributions</p> <p>24 and other partners would want you to keep the money?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. So the management fee -- Was the</p> <p>2 management fees in anyway paid based upon cash flow,</p> <p>3 or was it just based upon those quarterly</p> <p>4 statements?</p> <p>5 A. Quarterly statements.</p> <p>6 Q. Okay. Regardless of cash flow?</p> <p>7 A. Correct.</p> <p>8 Q. Now, when Mr. Powell was alive, the two of</p> <p>9 you used to each get 10 percent management fees,</p> <p>10 correct? Or how did it work when Mr. Powell was</p> <p>11 alive? How were management fees paid?</p> <p>12 A. It just went into our general account.</p> <p>13 Q. To S&P?</p> <p>14 A. No, whatever entity was existing at the</p> <p>15 time.</p> <p>16 Q. Right. Okay. Sullivan and Powell?</p> <p>17 A. Whatever entity was existing at the time.</p> <p>18 Q. Okay. All right. So after he passed</p> <p>19 away, the management fees remained to 20 percent,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. But did you split that in anyway with</p> <p>23 Powell's estate or wife or anybody on that end?</p> <p>24 A. The money came into M.D. Sullivan and I</p> <p>25 made decisions what to do with the money.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Okay. And so when you were keeping the</p> <p>2 money, where was that money kept?</p> <p>3 A. Madoff.</p> <p>4 Q. In Madoff. Okay.</p> <p>5 So it wasn't kept in S&P or P&S?</p> <p>6 A. We kept some money there, but the majority</p> <p>7 of the money stayed with Madoff.</p> <p>8 Q. On what basis would you determine how much</p> <p>9 money to keep in S&P or P&S?</p> <p>10 A. If we knew some people needed money, we'd</p> <p>11 keep some money there.</p> <p>12 Q. So then you could make distributions to</p> <p>13 them if asked?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And would you make that decision in</p> <p>16 consultation with particular partners, or would you</p> <p>17 just manage it and figure out what needed to be</p> <p>18 done?</p> <p>19 A. Went with the ebb and flow with what we</p> <p>20 thought was reasonable.</p> <p>21 Q. To keep in partnerships?</p> <p>22 A. Yes, but we did not keep a lot of money in</p> <p>23 those partnerships.</p> <p>24 Q. Okay.</p> <p>25 A. It wasn't making money.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. So M.D. Sullivan now would get 20 percent</p> <p>2 instead of the 10 percent, right?</p> <p>3 A. Correct.</p> <p>4 Q. And when you said you made decisions in</p> <p>5 terms of what to do with the money, did you make any</p> <p>6 decisions concerning paying Bette Anne Powell or any</p> <p>7 of their partner's kids?</p> <p>8 A. Correct.</p> <p>9 Q. And what was that decision?</p> <p>10 A. I don't remember. I think I gave her</p> <p>11 around 5,000 a month and paid other bills, like</p> <p>12 health insurance and other things.</p> <p>13 Q. And the records of Michael D. Sullivan &</p> <p>14 Associates, I mean, I asked about the computers,</p> <p>15 right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And of course, you wouldn't let the</p> <p>18 partners in. But the actual records of Michael D</p> <p>19 Sullivan & Associates, those were not made available</p> <p>20 to partners either, right?</p> <p>21 A. I have no idea who had seen it. All the</p> <p>22 books and records were together, if someone wanted</p> <p>23 to come in and inspect the books, all my records</p> <p>24 were there.</p> <p>25 Q. For Michael D, Sullivan & Associates?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. The book was right next it if they wanted</p> <p>2 to see it.</p> <p>3 Q. My question is that if someone wanted to</p> <p>4 come in and see the books of Michael D. Sullivan &</p> <p>5 Associates, they could have come in and see those,</p> <p>6 okay? I'm not talking about S&P and P&S, I'm</p> <p>7 talking about the Michael D. Sullivan & Associates.</p> <p>8 A. My book was right next to all the books.</p> <p>9 Q. Okay. You're not aware of anyone actually</p> <p>10 looking at the Michael D. Sullivan & Associates</p> <p>11 records, are you?</p> <p>12 A. I wouldn't have any idea.</p> <p>13 Q. And there was one point in time when</p> <p>14 certain books and records got copied and sent over</p> <p>15 to an accountant, correct? Are you familiar at a</p> <p>16 point in time when one or more of the partners</p> <p>17 obtained certain copies of the S&P or P&S records?</p> <p>18 A. I don't know what you're referring to.</p> <p>19 Could you --</p> <p>20 Q. Yeah, okay. Was there ever a point in</p> <p>21 time where the Festus Foundation and perhaps others</p> <p>22 obtained certain copies of the books and records of</p> <p>23 S&P and P&S?</p> <p>24 A. Well, they wanted the records brought over</p> <p>25 with a third party to look at.</p>	<p style="text-align: right;">Page 44</p> <p>1 the months of January, April, July, and</p> <p>2 October 1:00 o'clock p.m. That did not occur,</p> <p>3 right?</p> <p>4 A. We were there. Nobody would show up to</p> <p>5 the meetings.</p> <p>6 Q. Okay.</p> <p>7 A. Until -- Okay.</p> <p>8 Q. Until after Madoff exploded?</p> <p>9 A. No, no.</p> <p>10 Q. Did you hold meetings at all or you didn't</p> <p>11 bother?</p> <p>12 A. No, nobody would show up. So we, one</p> <p>13 time, forced a meeting. We asked every one to come</p> <p>14 in the office. We had bagels and cream cheese that</p> <p>15 day, that was our mistake. We went over everything.</p> <p>16 We told them to come back to the next meeting. OI</p> <p>17 think three people showed up to get the bagels and</p> <p>18 cream cheese and they left. Nobody seemed to care</p> <p>19 about these. We were in the office on these days,</p> <p>20 and our records were always open to anybody.</p> <p>21 Q. Okay. I understand a lot of companies</p> <p>22 have this and don't always have the meetings.</p> <p>23 A. That's correct.</p> <p>24 Q. That's not uncommon. I'm trying to find</p> <p>25 out what was happening, yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. That's what I'm referring to.</p> <p>2 A. Oh, well, just tell me then. It's a lot</p> <p>3 easier if you just tell me. I didn't know where you</p> <p>4 were coming from.</p> <p>5 Q. I get it. We'll get there. I'm trying,</p> <p>6 I'm trying.</p> <p>7 Okay. So there's a point in time, now,</p> <p>8 those books and records went to not include the</p> <p>9 records of Michael D. Sullivan & Associates, your</p> <p>10 own company records, correct?</p> <p>11 A. I do not remember what records went over</p> <p>12 to him.</p> <p>13 Q. Okay.</p> <p>14 A. There were a lot of boxes.</p> <p>15 Q. Wouldn't you agree that what you do with</p> <p>16 Michael D. Sullivan & Associates money is nobody</p> <p>17 else's business but your own?</p> <p>18 A. I would agree to that.</p> <p>19 Q. Were the books of the partnership kept on</p> <p>20 a cash basis or on an accrual basis, do you know?</p> <p>21 A. I believe they were on a cash basis.</p> <p>22 Q. Let's go to Paragraph A .4 of the</p> <p>23 Partnership Agreement, please. Page 6.</p> <p>24 This calls for the partners to hold a</p> <p>25 regular quarterly meetings on the third Tuesday of</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes, that's correct.</p> <p>2 Q. Did you ever disclose to anybody the fact</p> <p>3 that you were paying people -- Strike that.</p> <p>4 Did you ever disclose to anyone whether or</p> <p>5 not any brokers were involved in your business, in</p> <p>6 terms of getting paid for bringing people -- Strike</p> <p>7 that.</p> <p>8 Did you ever have any written agreement</p> <p>9 with anyone concerning the payment of commissions?</p> <p>10 MR. WINDERMAN: Form. Asked and answered.</p> <p>11 BY MR. SAMUELS:</p> <p>12 Q. You can go ahead and answer.</p> <p>13 A. Not that I remember.</p> <p>14 Q. Okay. And you didn't make a point of</p> <p>15 telling people who were receiving commissions that</p> <p>16 other people were also receiving commissions?</p> <p>17 A. I see no reason to.</p> <p>18 Q. Do you know if Mr. Powell ever made that</p> <p>19 disclosure?</p> <p>20 A. We'll never know. I don't know the answer</p> <p>21 to that question.</p> <p>22 Q. Okay. All right. So let's go to A.4</p> <p>23 towards the bottom where it says, "At the meeting</p> <p>24 partners will review the engagement with the</p> <p>25 partnership of any broker or brokers." Do you see</p>

<p style="text-align: right;">Page 46</p> <p>1 that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Okay. And would you agree that the use of</p> <p>4 the term "broker and brokers" in this business would</p> <p>5 be people who would receive a commission in</p> <p>6 connection with bringing business into the</p> <p>7 partnership?</p> <p>8 MR. WOODFIELD: Object to the form of the</p> <p>9 question.</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. You can answer.</p> <p>12 A. No.</p> <p>13 Q. What is your understanding of what being a</p> <p>14 broker or broker is meant to mean in this section?</p> <p>15 A. I can tell you that I understand almost</p> <p>16 everything. That I'm unaware of.</p> <p>17 Q. This you're not aware of?</p> <p>18 A. The broker I do not know.</p> <p>19 Q. So you have no explanation in terms of</p> <p>20 this?</p> <p>21 A. You're absolutely correct.</p> <p>22 (The referred-to document was marked by</p> <p>23 the court reporter for identification as</p> <p>24 Plaintiff's Exhibit 6.)</p> <p>25</p>	<p style="text-align: right;">Page 48</p> <p>1 A. At some point in time, I don't know how,</p> <p>2 but they wanted their - Mr. Bienes, Mr. Avellino</p> <p>3 wanted the money made out to their charities.</p> <p>4 Q. Okay. Is your understanding that is a</p> <p>5 charity?</p> <p>6 A. That's my understanding.</p> <p>7 Q. American Friends of Covent Garden, Inc.</p> <p>8 Do you know why payments were made to that entity?</p> <p>9 Same reason?</p> <p>10 A. I don't remember that name.</p> <p>11 Q. Do you know why Mr. Avellino directed</p> <p>12 payments to Christ Church?</p> <p>13 MR. WOODFIELD: Form.</p> <p>14 A. I guess he wanted money to go there. I</p> <p>15 can't tell you. You'd have to ask him.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q. He would have direct you to do that?</p> <p>18 A. Yes.</p> <p>19 Q. How about 27 Cliff, LLC, do you know why</p> <p>20 payments were made there?</p> <p>21 A. Same reason.</p> <p>22 Q. He would have directed you?</p> <p>23 A. Yes.</p> <p>24 Q. And this document and the back up behind</p> <p>25 it.</p>
<p style="text-align: right;">Page 47</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. Okay. You have in front of you what has</p> <p>3 been marked as Exhibit 6, and this document</p> <p>4 indicates payments on behalf of Avellino and Bienes.</p> <p>5 Did you prepare this document?</p> <p>6 A. I do not know.</p> <p>7 Q. Okay. Have you ever seen this before?</p> <p>8 A. May have.</p> <p>9 Q. Okay. Now, you'd agree this document</p> <p>10 shows payments on behalf of Avellino and Bienes in</p> <p>11 the amount of \$481,162.96, correct?</p> <p>12 A. That's what it says here, correct.</p> <p>13 Q. Okay. And do you recall making payments</p> <p>14 to an entity known as FPOM on behalf of Michael</p> <p>15 Bienes?</p> <p>16 A. No, I don't remember that name.</p> <p>17 Q. And do you recall making payments to 56</p> <p>18 Arlington House, LLC on behalf of Michael Bienes?</p> <p>19 A. Yes.</p> <p>20 Q. And what is 56 Arlington House, LLC?</p> <p>21 A. I have no idea.</p> <p>22 Q. And do you know why payments were made on</p> <p>23 behalf of Michael Bienes to 56 Arlington House, LLC?</p> <p>24 A. Yes.</p> <p>25 Q. Why is that?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Uh-huh.</p> <p>2 Q. It says Solution & Tax?</p> <p>3 A. Uh-huh.</p> <p>4 Q. General entries. What is Solution & Tax?</p> <p>5 A. It's a company we used to - Greg Powell</p> <p>6 and myself used to own ages ago.</p> <p>7 Q. And the books and records of Solution &</p> <p>8 Tax would not be available to the partners of S&P or</p> <p>9 P&S, correct?</p> <p>10 A. I don't remember.</p> <p>11 Q. Well, I mean, what was the business of</p> <p>12 Solution & Tax?</p> <p>13 A. We did accounting work, tax work, and I</p> <p>14 believe some of this. I don't even remember how we</p> <p>15 did this. I think this happened, what, 20 years</p> <p>16 ago.</p> <p>17 Q. This indicates 12/31/04. You certainly</p> <p>18 wouldn't have opened the books and records of your</p> <p>19 separate tax business to the partners of S&P and</p> <p>20 P&S, would you?</p> <p>21 A. Once again, Mr. Powell was taking care of</p> <p>22 this, so I don't know the answer to the question.</p> <p>23 Q. Did Mr. Avellino and Mr. Bienes direct you</p> <p>24 or did they direct Mr. Powell to make payments to</p> <p>25 the entities listed here?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Which entities are you talking about?</p> <p>2 Q. Take a look at the first page.</p> <p>3 A. Well, what years were these payments made?</p> <p>4 Q. 2003 through 2008.</p> <p>5 A. I can't tell you. I believe early on they</p> <p>6 were going to Avellino and to Bienes, and then later</p> <p>7 on they went to the charities.</p> <p>8 Q. Would they have instructed you or</p> <p>9 Mr. Powell to make the payments to the charities?</p> <p>10 A. It would have been all depending on the</p> <p>11 period of time, pre or post death.</p> <p>12 Q. And you cannot pinpoint the death time?</p> <p>13 A. Ten years ago, I guess. I don't know.</p> <p>14 Are we finished this?</p> <p>15 Q. Yes.</p> <p>16 (The referred-to document was marked by</p> <p>17 the court reporter for identification as</p> <p>18 Plaintiff's Exhibit 7.)</p> <p>19 BY MR. SAMUELS:</p> <p>20 Q. Okay. I'd like to show you what's been</p> <p>21 marked as Exhibit 7. This says -- The first page</p> <p>22 says, and the other pages after this, indicate S&P</p> <p>23 Associates Management Fees to A & B.</p> <p>24 A. Correct.</p> <p>25 Q. Some of them say P&S Associates Management</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Michael Bienes.</p> <p>2 Q. And who brought in Hooker Trust?</p> <p>3 A. Matt Carone.</p> <p>4 Q. Did Matt Carone receive any commissions?</p> <p>5 A. No.</p> <p>6 Q. Did he ever ask for any but not receive</p> <p>7 them?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Did you ever offer him?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Okay. So how is it that people came -</p> <p>12 some people came to get commissions for bringing</p> <p>13 people to the business and others did not? How did</p> <p>14 that happen?</p> <p>15 A. Just did. Whoever came in and I knew,</p> <p>16 that's just how it worked. Whatever I felt at the</p> <p>17 time.</p> <p>18 Q. Whatever you felt at the time?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. Now, if you look at this.</p> <p>21 A. Uh-huh.</p> <p>22 Q. It says, "4/11/02 meeting. Give</p> <p>23 year-to-date management fees to Frank verbally in</p> <p>24 January after year end and he will decide split</p> <p>25 50 percent hopefully on how much to pay him." Do</p>
<p style="text-align: right;">Page 51</p> <p>1 Fees to A & B.</p> <p>2 So are these documents from the books and</p> <p>3 records of Sullivan and Powell or Solution & Tax or</p> <p>4 Michael D. Sullivan & Associates on the one hand, or</p> <p>5 S&P and P&S on the other hand?</p> <p>6 A. I cannot tell you.</p> <p>7 Q. Okay. Who would know?</p> <p>8 A. Well, I'd have to take a look at all the</p> <p>9 books and records I have in our office and I'd be</p> <p>10 able to tell you.</p> <p>11 Q. Okay. Now, I just want to go through some</p> <p>12 of these names.</p> <p>13 A. Sure.</p> <p>14 Q. Do you know who is receiving a management</p> <p>15 fee for Judd? I'm sorry, do you know who brought</p> <p>16 Judd into the partnership?</p> <p>17 A. Yes.</p> <p>18 Q. Who is that?</p> <p>19 A. Michael Bienes.</p> <p>20 Q. Let's go to the next page, Alves?</p> <p>21 A. The next page is Judd again.</p> <p>22 Q. Yeah, keep going until you see Alves and</p> <p>23 Judd, 6,674. You got that?</p> <p>24 A. Yes.</p> <p>25 Q. Who brought Alves in?</p>	<p style="text-align: right;">Page 53</p> <p>1 you see that?</p> <p>2 A. I do.</p> <p>3 Q. Do you recall having a specific meeting</p> <p>4 with Frank Avellino to determine how and when the</p> <p>5 fees were going to get paid or anything of that</p> <p>6 nature?</p> <p>7 A. I don't.</p> <p>8 Q. Do you recall the initial discussion you</p> <p>9 had with Mr. Avellino about his wanting to receive</p> <p>10 management fees or your willingness to pay him</p> <p>11 management fees?</p> <p>12 A. I don't recall that.</p> <p>13 Q. Do you recall at all how it came about?</p> <p>14 A. No. I know it did, I just don't recall</p> <p>15 how it happened.</p> <p>16 Q. So you don't know whether you offered it</p> <p>17 or whether he insisted on it?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, it looks like they're getting</p> <p>20 paid a management fee on Hooker Trust. Do you know</p> <p>21 why Avellino and/or Bienes were splitting a</p> <p>22 management fee or obtaining a management fee for</p> <p>23 Hooker Trust that was brought in by Matt Carone?</p> <p>24 A. Matt Carone.</p> <p>25 Q. Matt Carone, I'm sorry?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. I cannot tell you.</p> <p>2 Q. Let's keep going until we see a new name.</p> <p>3 Who did you deal with at the Hooker Trust?</p> <p>4 A. God, I always draw a blank at that guy's</p> <p>5 name. He had somebody in England, I believe, some</p> <p>6 country that I talked to - oh, Donald Kahn, Donald</p> <p>7 Kahn.</p> <p>8 Q. Okay.</p> <p>9 A. And somebody he appointed at a bank.</p> <p>10 Maybe a couple people.</p> <p>11 Q. Okay. Now, if we keep going to the next</p> <p>12 page. It says 10 - 2/10/03, four checks from</p> <p>13 Sullivan and Powell. Was it Sullivan and Powell at</p> <p>14 this point?</p> <p>15 A. Would you tell me where you're at.</p> <p>16 Q. Sure. The documents all have Bates labels</p> <p>17 on them. This would be 0034 on the bottom. Got it?</p> <p>18 A. Yes.</p> <p>19 Q. Was it -- This indicates four checks from</p> <p>20 Sullivan and Powell, so is it accurate to say at</p> <p>21 this point in time Sullivan and Powell were the ones</p> <p>22 paying the management fees?</p> <p>23 A. That's what it appears on this document.</p> <p>24 Q. Let's keep going. On Document 38 we now</p> <p>25 have Jordan showing up. Do you see that?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Who brought Seperson?</p> <p>2 A. Bienes.</p> <p>3 Q. Okay. Why was there a 50/50 split between</p> <p>4 Avellino and Bienes if they brought different people</p> <p>5 in?</p> <p>6 A. I don't remember.</p> <p>7 Q. And were people paid a management fee on</p> <p>8 an annual basis or throughout the year?</p> <p>9 A. I don't remember whether it was quarterly</p> <p>10 or annual. You have the records, so you can just</p> <p>11 find them in the records.</p> <p>12 Q. You don't recall?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 A. I believe this one was yearly, I think.</p> <p>16 I'm not sure.</p> <p>17 Q. When you say this one, what do you mean?</p> <p>18 A. I think, I don't know. I shouldn't -- I</p> <p>19 don't remember.</p> <p>20 Q. Okay. Next page, it's Page 58. It's hard</p> <p>21 to see and it says Carone Pension?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Who brought Carone Pension in?</p> <p>24 A. I'm not sure.</p> <p>25 Q. What is account 028-AB signify?</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes.</p> <p>2 Q. And it says SPJ and Jordan. Who brought</p> <p>3 Jordan into the partnership?</p> <p>4 A. Avellino, I believe.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not saying it with 100 percent</p> <p>7 clarity.</p> <p>8 Q. And what is SPJ?</p> <p>9 A. It's a company that Greg and I started to</p> <p>10 put IRA money in or pension money in.</p> <p>11 Q. And who managed SPJ?</p> <p>12 A. Greg Powell and I.</p> <p>13 Q. Let's keep going. Okay. Now, we have on</p> <p>14 Page 40, R.J. Willis, \$5,000. Do you know, was that</p> <p>15 a management fee paid to R.J. Willis?</p> <p>16 A. That Wills.</p> <p>17 Q. Wills, I'm sorry.</p> <p>18 A. I'm not sure.</p> <p>19 Q. Next page we have Esteban, who brought</p> <p>20 them in?</p> <p>21 A. Avellino.</p> <p>22 Q. Next we have Seperson?</p> <p>23 A. What page are you on, sir?</p> <p>24 Q. Page 50?</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. I have no idea.</p> <p>2 Q. Do you know who brought Matt Carone in?</p> <p>3 A. I'm not sure. It would have been Bienes</p> <p>4 or Avellino.</p> <p>5 Q. Okay. Next on Page 62 we have Paragon</p> <p>6 Ventures?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Do you know who brought them in?</p> <p>9 A. Carone.</p> <p>10 Q. Carone?</p> <p>11 A. Only because it's through Donald Kahn.</p> <p>12 Q. Okay. And again, he was not paid any</p> <p>13 commission, right?</p> <p>14 A. Correct.</p> <p>15 Q. Page -- Oh, we already went through that.</p> <p>16 Now, on Page 71 we have Ziffer?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Do you know who brought Ziffer in?</p> <p>19 A. Avellino.</p> <p>20 Q. On Page 87 we have Aker, A-K-E-R. Do you</p> <p>21 know who brought them in?</p> <p>22 A. Bienes.</p> <p>23 Q. How about Dydo, D-Y-D-O?</p> <p>24 A. Bienes.</p> <p>25 Q. Your arrangement for paying people</p>

<p style="text-align: right;">Page 58</p> <p>1 commissions was at once someone was in, they'd get</p> <p>2 paid commission. Let's say, hypothetically,</p> <p>3 Mr. Avellino brought Ms. Smith in in 2003. Was your</p> <p>4 arrangement that he get paid commissions on</p> <p>5 Ms. Smith every year Ms. Smith had money in S&P or</p> <p>6 P&S that generated management fees for you?</p> <p>7 A. If I understand it, yes. When they were</p> <p>8 in, they'd get paid a management fee.</p> <p>9 Q. Okay. This is Composite 8.</p> <p>10 (The referred-to document was marked by</p> <p>11 the court reporter for identification as</p> <p>12 Plaintiff's Exhibit 8.)</p> <p>13 BY MR. SAMUELS:</p> <p>14 Q. In terms of paying Avellino and Bienes</p> <p>15 commissions, you would get your management fee,</p> <p>16 right? How long after you paid yourself a</p> <p>17 management fee would you pay Avellino and Bienes?</p> <p>18 A. Can't remember the timeframe. I don't</p> <p>19 know whether it was quarterly or yearly. The</p> <p>20 records will reflect that. You have the books and</p> <p>21 records, so you can check.</p> <p>22 Q. They either got paid quarterly or</p> <p>23 annually; is that your understanding or</p> <p>24 recollection?</p> <p>25 A. Yes, you have the records. If I had the</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay.</p> <p>2 A. If I had that money, I would have been</p> <p>3 paying out fees to go ahead. That we had</p> <p>4 information that we had to give third parties and</p> <p>5 attorneys, so I'd have to look at the checks and</p> <p>6 find out what checks I wrote. I did not take any</p> <p>7 money, zero, for myself after this.</p> <p>8 Q. So what you're saying then is that \$7500,</p> <p>9 to the extent it was paid to Michael D. Sullivan &</p> <p>10 Associates, would have been paid out to others for</p> <p>11 fees or something?</p> <p>12 A. I took no money after the Ponzi scheme was</p> <p>13 exposed.</p> <p>14 Q. So I'm just looking at this document and</p> <p>15 it shows a payment to you on 12/15/08.</p> <p>16 A. Correct.</p> <p>17 Q. So my question to you is, do you know what</p> <p>18 that payment was for or what it represented?</p> <p>19 A. No.</p> <p>20 Q. Now, let's go now to the next page of this</p> <p>21 document.</p> <p>22 And by the way, this first page shows a</p> <p>23 total of \$322,658.26 of account transactions</p> <p>24 entitled Accrued Expenses/Management Fees, correct?</p> <p>25 A. I don't know.</p>
<p style="text-align: right;">Page 59</p> <p>1 records I'd be able to tell you.</p> <p>2 Q. I'd like to go through first page of</p> <p>3 Composite Exhibit 8. Can you identify this Account</p> <p>4 Transactions 1/1/08 through 12/31/08 document?</p> <p>5 A. No, I can't.</p> <p>6 Q. It does look like a series of accrued</p> <p>7 expenses management fees that were paid during that</p> <p>8 timeframe, correct?</p> <p>9 A. I can't tell you what that - if that's</p> <p>10 what the document looks like. I wished I could tell</p> <p>11 you, I can't.</p> <p>12 Q. Do you know if this is a document of</p> <p>13 Michael D. Sullivan & Associates or P&S or S&P?</p> <p>14 A. I have no idea.</p> <p>15 Q. On 12/15/08 after Bernie Madoff was</p> <p>16 publicly disclosed as a Ponzi scheme, there appears</p> <p>17 to be a \$7500 payment made to you, do you see that?</p> <p>18 The last payment 12/15/08?</p> <p>19 A. Yes.</p> <p>20 Q. Why were you paying yourself \$7500 after</p> <p>21 the Ponzi scheme was made public?</p> <p>22 A. To my recollection I paid myself no money</p> <p>23 that I recall after the Ponzi scheme.</p> <p>24 Q. Do you know who prepared this document?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. The first page.</p> <p>2 A. Whatever it says.</p> <p>3 Q. Well, you can look at it.</p> <p>4 MR. WINDERMAN: Form.</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. That's what it looks like to me.</p> <p>7 A. Well, then that's what it says.</p> <p>8 MR. WINDERMAN: Form.</p> <p>9 BY MR. SAMUELS:</p> <p>10 Q. Now, this next page, if we look at it, do</p> <p>11 you see the \$300,000 debit?</p> <p>12 A. Yes.</p> <p>13 Q. And that \$3,000 --</p> <p>14 MR. WOODFIELD: 300,000.</p> <p>15 BY MR. SAMUELS:</p> <p>16 Q. -- \$300,000 debit is a debit to your</p> <p>17 capital account?</p> <p>18 A. That's what it appears.</p> <p>19 Q. And why after the Ponzi scheme is exposed</p> <p>20 you're making \$300,000 debit to your capital</p> <p>21 account?</p> <p>22 A. I'd have to look over the records to tell</p> <p>23 you.</p> <p>24 Q. Was this money taken out of the capital</p> <p>25 accounts reflect actual money that you took out?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. I can't tell you. I'd have to look over</p> <p>2 the previous transactions to tell you.</p> <p>3 Q. Would you agree that in - after the Ponzi</p> <p>4 scheme was exposed, there was not \$300,000 in the</p> <p>5 bank account of S&P or P&S?</p> <p>6 A. Yes, there was.</p> <p>7 Q. There was?</p> <p>8 A. Yes.</p> <p>9 Q. And did you pay yourself the \$300,000 as</p> <p>10 reflected in your deduction in your capital account?</p> <p>11 A. No, I didn't.</p> <p>12 Q. Did you withdraw \$300,000 of management</p> <p>13 fees?</p> <p>14 A. No, not after.</p> <p>15 Q. So why is your capital account debited</p> <p>16 \$300,000?</p> <p>17 A. I can't tell you unless I look at the</p> <p>18 books and records.</p> <p>19 Q. Did you make a withdraw of your capital</p> <p>20 account rather than disclosing it as management</p> <p>21 fees?</p> <p>22 A. I can't tell you unless I look at the</p> <p>23 record.</p> <p>24 Q. Okay. Let's go to the next page. This</p> <p>25 is - looks like a schedule to the returns, and it</p>	<p style="text-align: right;">Page 64</p> <p>1 you made the deduction to your capital account, if</p> <p>2 you look at the first page?</p> <p>3 A. I cannot tell you without looking at the</p> <p>4 books and records.</p> <p>5 Q. Because it seems to reflect an average</p> <p>6 balance of \$290,000.</p> <p>7 A. I can't tell you.</p> <p>8 Q. See it?</p> <p>9 A. Yeah, I see it right here.</p> <p>10 Q. What else would you need to look at in</p> <p>11 particular?</p> <p>12 A. I want to look at the checks. I want to</p> <p>13 look at the years. I couldn't begin to tell you.</p> <p>14 MR. SAMUELS: All right. I need five</p> <p>15 minutes.</p> <p>16 (A recess was taken, after which the</p> <p>17 following proceedings were held:)</p> <p>18 (Steve Jacob did not return to the</p> <p>19 deposition after this recess.)</p> <p>20 MR. SAMUELS: We are back on.</p> <p>21 BY MR. SAMUELS:</p> <p>22 Q. Okay. So you recall having your statement</p> <p>23 taken in this case, right?</p> <p>24 A. Which statement? I've given my statement</p> <p>25 a lot.</p>
<p style="text-align: right;">Page 63</p> <p>1 reflects management fee adjustments. Do you see</p> <p>2 that?</p> <p>3 A. Point to it.</p> <p>4 Q. If you look on the Schedule K, Schedule K</p> <p>5 part right here?</p> <p>6 MR. WOODFIELD: Is this one page from a</p> <p>7 tax return?</p> <p>8 MR. SAMUELS: It's an attachment to a tax</p> <p>9 return, yes.</p> <p>10 MR. WOODFIELD: Whose? S&P, I guess?</p> <p>11 MR. SAMUELS: S&P Associates, general</p> <p>12 partnership.</p> <p>13 BY MR. SAMUELS:</p> <p>14 Q. Can you identify this document?</p> <p>15 A. I wouldn't have any idea what this</p> <p>16 document is. Looks like a K-1. There no tax year,</p> <p>17 no information on it.</p> <p>18 Q. Do you know why there's a management fee</p> <p>19 adjustment reflected here?</p> <p>20 A. I can't tell you.</p> <p>21 Q. Do you know if it's because you overpaid</p> <p>22 yourself management fees during the year?</p> <p>23 A. I can't tell you.</p> <p>24 Q. Was there \$300,000 in your capital account</p> <p>25 if you look back at the first page at the time that</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Do you remember me taking your statement?</p> <p>2 A. Yes, a couple times I think.</p> <p>3 Q. And in talking about this \$300,000, you</p> <p>4 indicate, "Well, if it showed up negative, it was</p> <p>5 never did in that given year. I would have taken</p> <p>6 money out of my capital account, which I had with my</p> <p>7 parents and my investment of about 750 in there. So</p> <p>8 whatever came out of that number, we would have</p> <p>9 reconciled it --</p> <p>10 MR. WOODFIELD: Is this a statement that</p> <p>11 you took of him that you're not giving me and I</p> <p>12 haven't even seen the question yet?</p> <p>13 MR. SAMUELS: I'll provide you with a copy</p> <p>14 of this part of it.</p> <p>15 MR. WOODFIELD: Please.</p> <p>16 MR. SAMUELS: No problem.</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. Where it said, "If it showed up negative,</p> <p>19 which it never did in a given year, I would have</p> <p>20 taken money out of my capital account, which I had</p> <p>21 with my parents and my investment of about \$750,000</p> <p>22 in there." Does that refresh your recollection in</p> <p>23 terms of what happened with the capital account?</p> <p>24 A. It does.</p> <p>25 Q. Okay. So do you want to now explain what</p>

<p style="text-align: right;">Page 66</p> <p>1 happened?</p> <p>2 A. I can't tell you what happened without</p> <p>3 looking. I made this statement. I don't think this</p> <p>4 statement says how it happened. If there was a</p> <p>5 shortage, I would have adjusted my capital account</p> <p>6 as I had three quarter of a million dollars in the</p> <p>7 capital account.</p> <p>8 Q. So you would have adjusted your capital</p> <p>9 account after Madoff was exposed as a Ponzi scheme?</p> <p>10 A. I don't understand the question.</p> <p>11 Q. Did you make the adjustment to the capital</p> <p>12 account that we just went over after Madoff was</p> <p>13 disclosed as a Ponzi scheme?</p> <p>14 A. I don't remember.</p> <p>15 Q. Okay. Well, let me read further.</p> <p>16 Question: "Also indicated here withdrawal where it</p> <p>17 says Activity Status Report 1/1/08. Yes. Why was</p> <p>18 there a withdrawal made of \$300,465.51? Probably to</p> <p>19 cover after Madoff had been exposed as a Ponzi</p> <p>20 scheme." Answer: "It would have been putting the</p> <p>21 money back in the capital account that we had in</p> <p>22 that account at that given time." Do you recall</p> <p>23 that?</p> <p>24 A. No. If it's there, it's there.</p> <p>25 Q. So you don't dispute that, do you?</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. WINDERMAN: J. Wills.</p> <p>2 BY MR. SAMUELS:</p> <p>3 Q. Yes, from Michael D. Sullivan &</p> <p>4 Associates. Just take a moment to look at this</p> <p>5 exhibit, and I want to ask you why these payments</p> <p>6 were being made to Richard Wills.</p> <p>7 Do you know why these payments were being</p> <p>8 made to Richard Wills?</p> <p>9 A. I can't tell you.</p> <p>10 MR. WOODFIELD: Zach, this Exhibit 9,</p> <p>11 which was just marked, doesn't have any Bates</p> <p>12 stamps on it. Do you know if they've been</p> <p>13 produced?</p> <p>14 MR. ZEICHMAN: They've either been</p> <p>15 produced or they're in the -- Can I take a</p> <p>16 look.</p> <p>17 MR. SAMUELS: It's the Wills documents.</p> <p>18 MR. ZEICHMAN: These have definitely been</p> <p>19 produced, but the Wills documents were produced</p> <p>20 to you guys at least three times.</p> <p>21 MR. WOODFIELD: I don't recall ever</p> <p>22 getting documents without Bates stamped.</p> <p>23 MR. SAMUELS: These could have been pulled</p> <p>24 out a long time ago before they were produced,</p> <p>25 but I don't know.</p>
<p style="text-align: right;">Page 67</p> <p>1 A. No.</p> <p>2 (The referred-to document was marked by</p> <p>3 the court reporter for identification as</p> <p>4 Plaintiff's Exhibit 9.)</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. Exhibit 9. Okay. So I'm showing now</p> <p>7 certain payments made to Richard Wills. First one</p> <p>8 is from S&P Associates Partnership dated 7/26/95.</p> <p>9 A. I don't think he was alive here.</p> <p>10 MR. WOODFIELD: Have these been produced?</p> <p>11 MR. SAMUELS: They should have been.</p> <p>12 MR. WOODFIELD: I don't believe so. I've</p> <p>13 never seen them. They don't have any Bates</p> <p>14 stamped numbers on them.</p> <p>15 MR. SAMUELS: I have to check with Zach.</p> <p>16 I don't know.</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. The last payment --</p> <p>19 A. What are you referring to, I'm sorry.</p> <p>20 Q. The last page number. Check 3101 in the</p> <p>21 amount of \$1,475.75.</p> <p>22 MR. WINDERMAN: God bless you if you can</p> <p>23 read that.</p> <p>24 BY MR. SAMUELS:</p> <p>25 Q. To Richard --</p>	<p style="text-align: right;">Page 69</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. All right. So let me just go over some</p> <p>3 background stuff before we get to more documents.</p> <p>4 In terms of Frank Avellino, how did you</p> <p>5 meet him?</p> <p>6 A. In a church group.</p> <p>7 Q. And what church group was that?</p> <p>8 A. Christ Church.</p> <p>9 Q. Okay. And when was that?</p> <p>10 A. Don't know.</p> <p>11 Q. Approximately?</p> <p>12 A. Don't know. Longtime ago.</p> <p>13 Q. Okay. 1990s?</p> <p>14 A. Yeah, within a couple years either way.</p> <p>15 Q. And what church is that?</p> <p>16 A. Christ Church United Methodist.</p> <p>17 Q. And are you still a congregante?</p> <p>18 A. I'm a member.</p> <p>19 Q. Member.</p> <p>20 And is Mr. Avellino?</p> <p>21 A. I have no idea.</p> <p>22 Q. Haven't seen him around church?</p> <p>23 A. I haven't.</p> <p>24 Q. And have you ever heard of an entity</p> <p>25 called Avellino & Bienes? You need to answer</p>

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<p>1 verbally.</p> <p>2 A. I'm thinking.</p> <p>3 Q. Okay.</p> <p>4 A. Not that entity.</p> <p>5 Q. Okay. Did you either individually or</p> <p>6 through your family ever invest funds with Frank</p> <p>7 Avellino or any entity of which he was affiliated?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall what entity that was</p> <p>10 called?</p> <p>11 A. A & B.</p> <p>12 Q. A & B, okay.</p> <p>13 And what was the nature of your investment</p> <p>14 in A & B?</p> <p>15 A. The nature, could you explain that. I'm</p> <p>16 not sure --</p> <p>17 Q. Yeah, what did you invest in? Did you</p> <p>18 invest in stocks? Did you invest in real estate,</p> <p>19 what was it? What did you give him money to invest?</p> <p>20 A. He just said he had a broker and he</p> <p>21 shortly explained something to him. I trusted him</p> <p>22 and I gave him money.</p> <p>23 Q. Can you give me a little more detail. He</p> <p>24 had a broker. I mean, what is it you were investing</p> <p>25 in, in particular, with A & B?</p>	<p>1 Q. Just you?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And how did the investment perform?</p> <p>4 A. Well.</p> <p>5 Q. You were satisfied?</p> <p>6 A. Very.</p> <p>7 Q. And did there come a point in time where</p> <p>8 you learned that A & B was no longer allowed to</p> <p>9 invest money with this broker?</p> <p>10 A. Yes.</p> <p>11 Q. And how did you learn of that?</p> <p>12 A. Mr. Avellino had shared that, that there</p> <p>13 was a business problem he was having at a Small</p> <p>14 Group meeting, and I didn't know what the problem</p> <p>15 was. And then I wound up finding out the</p> <p>16 information in the Wall Street Journal in 19- - I</p> <p>17 think maybe '92, somewhere around there.</p> <p>18 Q. And what information was that?</p> <p>19 A. Whatever information was in the Wall</p> <p>20 Street Journal, at the time.</p> <p>21 Q. What do you recall of that?</p> <p>22 A. That Avellino and Bienes were asked to</p> <p>23 suspend business because they guaranteed a rate of</p> <p>24 return. They had lost, I think, or they had</p> <p>25 441 million with Madoff.</p>
Page 71	Page 73
<p>1 A. A broker he had known.</p> <p>2 Q. A broker? You were investing in a broker?</p> <p>3 A. A particular person he had known. Yes. I</p> <p>4 don't recall a lot of that. We just talked about</p> <p>5 it. I trusted Frank and I gave him the money.</p> <p>6 Q. And was the broker Bernie Madoff?</p> <p>7 A. I didn't know that at the time.</p> <p>8 Q. Did you ever come to learn that the</p> <p>9 money - the broker you were investing in was Bernie</p> <p>10 Madoff?</p> <p>11 A. In a big way, yes.</p> <p>12 Q. And when did you learn that?</p> <p>13 A. Couldn't tell you, maybe three, four</p> <p>14 years, three years later, two years later. I don't</p> <p>15 know.</p> <p>16 Q. And how much money did you or your family</p> <p>17 invest with A & B, approximately?</p> <p>18 A. I can't remember the number.</p> <p>19 Q. Was it more than \$100,000?</p> <p>20 A. Less.</p> <p>21 Q. Less than \$100,000?</p> <p>22 A. Yes.</p> <p>23 Q. And who else in your family, if anyone,</p> <p>24 invested in A & B?</p> <p>25 A. Not that I can recall, nobody.</p>	<p>1 Q. And did you receive a return on your</p> <p>2 investment? In other words, did you get your money</p> <p>3 back?</p> <p>4 A. Yes, all of it.</p> <p>5 Q. Did you get all of it back plus a return</p> <p>6 on investment?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And did you have trust and</p> <p>9 confidence in Frank as a result of him participating</p> <p>10 with you in the Small Groups?</p> <p>11 A. Yes.</p> <p>12 Q. So what did you do next, if anything,</p> <p>13 after you - in terms of investing after you learned</p> <p>14 that A & B can no longer invest on your behalf?</p> <p>15 A. I had talked to Frank Avellino and I said,</p> <p>16 is there anyway as a business person I could do</p> <p>17 something specific to get my money back with Madoff,</p> <p>18 because the return was well.</p> <p>19 Q. What did he say?</p> <p>20 A. He says, I don't know. He says, I'm out</p> <p>21 of the picture. If you want to do anything, you're</p> <p>22 going to have to call Bernard Madoff yourself.</p> <p>23 Q. Okay. And what did you next do?</p> <p>24 A. Probably talked it over with my partner.</p> <p>25 And at some point in time not far after that I</p>

<p style="text-align: right;">Page 74</p> <p>1 called Madoff myself. Had a couple conversations 2 with him, and he offered us entry into Barnard 3 Madoff. 4 Q. Did Mr. Avellino provide you with 5 Mr. Madoff's contact information? 6 A. No. 7 Q. How were you able to get through to 8 Mr. Madoff? 9 A. Picked up the phone, called, waited a 10 longtime on the phone, and I finally talked to him. 11 Q. Did Mr. Madoff ever indicate to you that 12 he did not want people investing in his company 13 through general partnerships? 14 A. No, not that I remember. 15 Q. What was Mr. Powell's involvement? 16 A. He was my partner. We just chit chatted 17 about stuff, just like any other. We just had a 18 conversation and he said go for it, so I did. 19 Q. Okay. Prior to this time, had you had any 20 personal experience in the investment business? 21 A. No. 22 Q. Did you ever, at any point in time, obtain 23 any licenses? 24 A. No. 25 Q. Up through the present?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Was that Charlie Pearlman you were 2 consulting with? 3 A. And there was another person. There was a 4 lady, I think her last name was Bailey, and there 5 may have been a third person but I don't recall. 6 Q. At the same firm? 7 A. Yes. It was Trop Atlas Pearlman, at the 8 time. 9 Q. We went over the General Partnership 10 Agreement earlier in your deposition. 11 A. Uh-huh. 12 Q. Did a lawyer draft that document? 13 A. Yes. 14 Q. And what lawyer drafted that? 15 A. It was some, I don't know, Charlie or that 16 lady at the firm, or maybe a third party. I have no 17 idea. 18 Q. Did Avellino or Bienes recommend to you 19 that the investment vehicle used be a general 20 partnership? 21 A. No. 22 Q. How did it come about that a general 23 partnership vehicle was used for the investment? 24 A. We have no idea which vehicle was 25 necessary until we went into that law firm that day.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. No. 2 (The referred-to document was marked by 3 the court reporter for identification as 4 Plaintiff's Exhibit 10.) 5 BY MR. SAMUELS: 6 Q. Okay. Can you identify what's just been 7 marked as Exhibit 10? Can you identify that? 8 MR. WINDERMAN: Have you ever seen that 9 before? 10 A. I think I've seen it. I don't remember 11 what it was, but I know I've seen this. It looks 12 like this is not my handwriting. It looks like 13 agreement with Madoff, I guess. 14 BY MR. SAMUELS: 15 Q. Did Mr. Avellino help you in anyway at all 16 get setup with Barnard L. Madoff Investment 17 Securities or Bernard Madoff? 18 A. No. 19 Q. And after -- Why were two accounts open 20 there; one for S&P and one for P&S? 21 A. Wanted to have two managing partners 22 agreements. It was our understanding with the 23 attorneys who set this up that you can have 100 in 24 each, so we figured - we didn't know where this was 25 going to go, and we set two general partnerships up.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. So without getting into discussions with 2 the law firms, between you and the law firm, that 3 ended up becoming a general partnership vehicle? 4 A. Correct. 5 Q. Did Avellino and Bienes -- So S&P and P&S 6 were then in the business of seeking investors to 7 invest through S&P and P&S to have their funds 8 placed with Madoff? 9 A. Correct. 10 Q. And what did you do to -- What did you do 11 to obtain customers and clients? 12 A. Just contacted some of the people we knew, 13 talked about it, and one at a time very slowly 14 people came into the investment. 15 MR. WEISZ: Just for the record, I need to 16 sign off now. 17 MR. SAMUELS: Okay. 18 (Attorney Michel Weisz telephonically 19 exited the deposition.) 20 (The referred-to document was marked by 21 the court reporter for identification as 22 Plaintiff's Exhibit 11.) 23 BY MR. SAMUELS: 24 Q. Okay. I'm now showing you some documents 25 concerning Ms. Gianna. Do you know who that is?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I do.</p> <p>2 Q. And who is that?</p> <p>3 A. A friend of mine.</p> <p>4 Q. Excuse me?</p> <p>5 A. A friend of mine.</p> <p>6 Q. And were you aware she was invested in</p> <p>7 Avellino and Bienes, A & B?</p> <p>8 A. I forgot whether she was or she wasn't. I</p> <p>9 don't remember.</p> <p>10 Q. Okay. So let's go now to Page 0014470.</p> <p>11 And it looks like A & B --</p> <p>12 A. Forty-four -- I'm sorry.</p> <p>13 Yes.</p> <p>14 Q. So it appears here that Avellino and</p> <p>15 Bienes are acknowledging receipt of \$100,000 from</p> <p>16 her?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And then if you turn to the next</p> <p>19 page.</p> <p>20 A. Uh-huh.</p> <p>21 Q. It looks like the Sullivan and Powell are</p> <p>22 receiving \$100,000 from Ms. Gianna, do you see that?</p> <p>23 A. Which page is that, I'm sorry?</p> <p>24 Q. Page immediately before that.</p> <p>25 A. Seventy-seven or before?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. A check from us to A & B.</p> <p>2 Q. And why are you sending \$100,000 check?</p> <p>3 A. To invest into A & B.</p> <p>4 Q. So you are sending \$100,000 on behalf of</p> <p>5 Ersica Gianna to invest in A & B?</p> <p>6 A. Correct.</p> <p>7 Q. And why would you be doing that as opposed</p> <p>8 to investing \$100,000 herself?</p> <p>9 A. We would receive commissions for this.</p> <p>10 Q. Oh, so you would get commissions from A &</p> <p>11 B for people who you would send to A & B?</p> <p>12 A. Correct.</p> <p>13 Q. Just like A & B received commissions from</p> <p>14 you to people they sent to S&P?</p> <p>15 A. Correct.</p> <p>16 Q. Did Ms. Gianna know that you were</p> <p>17 receiving commissions?</p> <p>18 A. I have no idea.</p> <p>19 Q. How many people did you refer up to A & B?</p> <p>20 A. Not many. Taking a guess, maybe ten. I</p> <p>21 couldn't tell you.</p> <p>22 Q. And what was your arrangement? What kind</p> <p>23 of commission did you get?</p> <p>24 A. I do not remember.</p> <p>25 Q. And then the front page would be showing a</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. This one, Sullivan and Powell.</p> <p>2 A. Yes.</p> <p>3 Q. Correct?</p> <p>4 A. Uh-huh, correct.</p> <p>5 Q. And do you recall her becoming an investor</p> <p>6 in S&P?</p> <p>7 A. I do now.</p> <p>8 Q. Okay. Let's look at the next page. It's</p> <p>9 \$100,000 check from her to S&P, correct?</p> <p>10 A. Right.</p> <p>11 Q. Yes?</p> <p>12 A. Yes.</p> <p>13 Q. And then if we go to the page before that,</p> <p>14 there's a letter from Lisa Glatt to Avellino and</p> <p>15 Bienes.</p> <p>16 There you go.</p> <p>17 A. Yes.</p> <p>18 Q. Who is Lisa Glatt?</p> <p>19 A. She used to work for us as a secretary.</p> <p>20 Q. And why would she be sending money -- Why</p> <p>21 would she be sending this letter to Avellino and</p> <p>22 Bienes?</p> <p>23 A. Well, it says here, here's \$100,000 we're</p> <p>24 sending to her through us.</p> <p>25 Q. Sending what? Sending from who to who?</p>	<p style="text-align: right;">Page 81</p> <p>1 letter from S&P Investment Group to Ms. Gianna</p> <p>2 acknowledging the \$100,000, correct?</p> <p>3 A. That's what it says.</p> <p>4 Q. And -- Okay. Do you know how much S&P or</p> <p>5 you received in commissions from Avellino and Bienes</p> <p>6 while A & B were operating?</p> <p>7 A. I can't tell you.</p> <p>8 (The referred-to document was marked by</p> <p>9 the court reporter for identification as</p> <p>10 Plaintiff's Exhibit 12.)</p> <p>11 BY MR. SAMUELS:</p> <p>12 Q. Can you identify what's been marked as</p> <p>13 Exhibit 12?</p> <p>14 A. I can't. I can only read it for you.</p> <p>15 Q. Okay. And so Gary Powell would be a</p> <p>16 managing partner at P&S Associates?</p> <p>17 A. It would be Greg, yes.</p> <p>18 Q. Greg, yes.</p> <p>19 And this would then be a trading</p> <p>20 authorization allowing you to trade with Barnard</p> <p>21 Madoff Investment Securities, correct?</p> <p>22 MR. WINDERMAN: Form.</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q. You can answer.</p> <p>25 MR. WINDERMAN: He said he couldn't</p>

<p style="text-align: right;">Page 82</p> <p>1 identify the document.</p> <p>2 BY MR. SAMUELS:</p> <p>3 Q. You can answer.</p> <p>4 MR. WINDERMAN: Form. Speculation.</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. Can you identify this as a document of</p> <p>7 P&S?</p> <p>8 A. I cannot. All I know, my partner's name</p> <p>9 is on the bottom.</p> <p>10 Q. Here's my question since you're the afore</p> <p>11 managing general partner and this document came from</p> <p>12 you.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Can you identify this as a document</p> <p>15 allowing P&S to have - to trade through Barnard L.</p> <p>16 Madoff Investment Securities?</p> <p>17 MR. WINDERMAN: Form. Document speaks for</p> <p>18 itself.</p> <p>19 A. You're giving me a document that's 15</p> <p>20 years old and you're asking me to identify something</p> <p>21 that somebody else signed 15 years ago. I cannot</p> <p>22 answer the question. I do not know.</p> <p>23 Q. Okay.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 84</p> <p>1 friend if he would just come to the meeting.</p> <p>2 Q. So he was providing advice and assisting</p> <p>3 you in determining what forms to use?</p> <p>4 A. No.</p> <p>5 Q. Well, what did he say at the meeting?</p> <p>6 A. He explained how Madoff did trading about</p> <p>7 puts and calls. That's all I can remember is that</p> <p>8 just odd things about the Madoff statements that he</p> <p>9 explained. He came as a friend.</p> <p>10 Q. Okay. And so he assisted you in</p> <p>11 understanding the statements you were receiving?</p> <p>12 MR. WINDERMAN: Form.</p> <p>13 A. We talked about it. I don't know if he</p> <p>14 assisted. I don't know the word I would use. He</p> <p>15 was for familiar with the forms.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q. Did he help you better understand the</p> <p>18 forms you were receiving?</p> <p>19 A. Yes.</p> <p>20 Q. Did he help you better understand the</p> <p>21 types of trades that were being made by Madoff?</p> <p>22 A. No.</p> <p>23 Q. Did you understand what puts and calls</p> <p>24 were prior to getting into this business?</p> <p>25 A. Frank went more -- Mike Kuzy went into</p>
<p style="text-align: right;">Page 83</p> <p>1 (The referred-to document was marked by</p> <p>2 the court reporter for identification as</p> <p>3 Plaintiff's Exhibit 13.)</p> <p>4 BY MR. SAMUELS:</p> <p>5 Q. Okay. These are invoices from Ahearn</p> <p>6 Jasco & Company. Is that the accounting firm for</p> <p>7 S&P and P&S?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If you look at the first page of</p> <p>10 this. It's a meeting at client's office with</p> <p>11 Michael Sullivan, Greg Powell, and Frank Avellino.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. So is Frank Avellino at this meeting with</p> <p>15 Ahearn Jasco as an agent or representative of S&P</p> <p>16 and P&S?</p> <p>17 A. No.</p> <p>18 Q. So what else would cause him to be at an</p> <p>19 accounting meeting with you?</p> <p>20 A. Are you finished?</p> <p>21 Q. Yes.</p> <p>22 A. We asked him to come. The way the Madoff</p> <p>23 slips were coming out, we wanted to make sure how to</p> <p>24 prepare documents since he had an account with them</p> <p>25 or had previous information. I just asked him as a</p>	<p style="text-align: right;">Page 85</p> <p>1 detail more.</p> <p>2 Q. Prior to getting into this business did</p> <p>3 you understand what a put or a call was?</p> <p>4 A. No.</p> <p>5 Q. Do you know what a put or a call is now?</p> <p>6 A. Yes.</p> <p>7 Q. And what is a put or a call?</p> <p>8 A. Put and call is a stock option that you</p> <p>9 make on a particular stock, whether it's going to go</p> <p>10 up or go down, and you cover the spread on it.</p> <p>11 Q. What else do you recall Mr. Avellino doing</p> <p>12 or saying at this meeting?</p> <p>13 A. I can't recall anything else. It wasn't</p> <p>14 that long of a meeting that I remember.</p> <p>15 Q. And did he provide you with any other</p> <p>16 assistance or advice in the setting up of or the</p> <p>17 understanding of - the setting up of your business</p> <p>18 or the understanding of how Madoff operated?</p> <p>19 A. No.</p> <p>20 Q. At this time. Okay.</p> <p>21 (The referred-to document was marked by</p> <p>22 the court reporter for identification as</p> <p>23 Plaintiff's Exhibit 14.)</p> <p>24 BY MR. SAMUELS:</p> <p>25 Q. Okay. This appears to be a letter from</p>

<p style="text-align: right;">Page 86</p> <p>1 Frank Avellino to Greg Powell at Sullivan & 2 Associates dated June 5th, 2003. 3 A. Yeah. 4 MR. WINDERMAN: Looks like 2000 to me. 5 MR. SAMUELS: 2000, correct. 6 BY MR. SAMUELS: 7 Q. How is it -- Strike that. 8 If there were accounts that were 9 previously accounts of Avellino and Bienes that 10 became accounts of S&P and P&S. 11 A. Uh-huh. 12 Q. Did Avellino or Bienes receive commissions 13 on those accounts? 14 A. I'm not sure. They received commissions 15 for whatever work they referred us. 16 Q. Well, would they automatically receive 17 commissions on anyone who was previously invested in 18 A & B? 19 A. Yes. 20 Q. Okay. And do you know how many former A & 21 B clients ended up investing through S&P or P&S? 22 A. A handful. There weren't a lot. 23 Q. Now, let's go to the bottom of this 24 letter. Let's go through the whole letter. Frank 25 Avellino is indicating it looks like accounts</p>	<p style="text-align: right;">Page 88</p> <p>1 Michael Bienes? 2 A. Through Frank Avellino. 3 Q. Do you recall when? 4 A. No. A long time ago. 5 Q. So you would -- Did you know him during 6 the timeframe you were investing in A & B? 7 A. Don't remember, but it would have been 8 about that time. 9 Q. Okay. And did Mr. Bienes assist you in 10 growing the business for S&P and P&S through 11 referring customers and accounts? 12 MR. WINDERMAN: Form. 13 BY MR. SAMUELS: 14 Q. You can answer. 15 A. He -- They referred business to us. 16 Q. Here it indicates that you are making a 17 check payable to 56 Arlington House, LLC, correct? 18 A. That's what it appears. 19 Q. And that would have been at their request? 20 A. Yes. 21 Q. For a commission on referring business to 22 S&P or P&S? 23 A. That's what it appears. 24 Q. And in 2004 you're taking time to thank 25 Michael and Diane for their kindness and generosity</p>
<p style="text-align: right;">Page 87</p> <p>1 through which he would receive commissions, and then 2 at the end says, "In summary, the P&S accounts with 3 Monsignor Kelly may be the only accounts we have 4 some claims on." Did Avellino and Bienes eventually 5 get paid on accounts involving the Monsignor Kelly? 6 A. I don't remember whether they got money on 7 that or not. I just don't. 8 Q. It says, "Since you only take half of the 9 management income and give the other half to 10 charity, I do not see how this can be negotiated." 11 Do you see that? 12 A. Yes. 13 Q. Do you know what Mr. Avellino is referring 14 to here? 15 A. I don't have a clue. You have to ask him. 16 (The referred-to document was marked by 17 the court reporter for identification as 18 Plaintiff's Exhibit 15.) 19 BY MR. SAMUELS: 20 Q. Exhibit 15, this appears to be a letter 21 from you to Michael and Diane Bienes, do you see 22 that? 23 A. I see that. 24 Q. How did you meet Michael and Diane Bienes? 25 No, let's just start with Michael. How did you meet</p>	<p style="text-align: right;">Page 89</p> <p>1 throughout the years. 2 A. Uh-huh. 3 Q. What generosity are you referring to? 4 A. Just the philanthropic stuff that they do 5 and the charities that they contribute to. I know 6 they contributed to Saint Thomas and a lot of the 7 charities. They were very kind and giving and 8 generous people. So it was a statement to let them 9 know, a general thank you. 10 Q. Did Michael or Diane Bienes ever mention 11 to you the payments you were making to 56th -- 12 Strike that. 13 (The referred-to document was marked by 14 the court reporter for identification as 15 Plaintiff's Exhibit 16.) 16 BY MR. SAMUELS: 17 Q. Let's go now to Exhibit 16. Take a look 18 at what's been marked as Exhibit 16, please. This 19 is a letter from you to Frank Avellino, correct? 20 A. That's what it appears. 21 Q. Okay. And why are you sending a letter to 22 Frank Avellino concerning the Pledge and Guarantee 23 Agreement from J & D at European Financial Services 24 for Paragon Ventures, Limited? 25 A. I can't tell you. I just know they took</p>

<p style="text-align: right;">Page 90</p> <p>1 the money out of our partnership at some point.</p> <p>2 Q. What is it about Paragon that would cause</p> <p>3 you to communicate with Frank Avellino?</p> <p>4 A. I can't tell you. I know he -- I believe</p> <p>5 he received fees from this somehow, some way. I</p> <p>6 don't remember how.</p> <p>7 Q. Were you seeking Frank Avellino's advice</p> <p>8 in connection with what to do about the Pledge and</p> <p>9 Guarantee Agreement?</p> <p>10 A. I don't remember.</p> <p>11 Q. Do you recall having any discussing with</p> <p>12 Frank about the Pledge and Guarantee Agreement?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did you contact anyone at Bernie Madoff to</p> <p>15 see if a Pledge and Guarantee Agreement could be</p> <p>16 done?</p> <p>17 A. No, I did not, that I remember.</p> <p>18 MR. SAMUELS: Next.</p> <p>19 (The referred-to document was marked by</p> <p>20 the court reporter for identification as</p> <p>21 Plaintiff's Exhibit 17.)</p> <p>22 BY MR. SAMUELS:</p> <p>23 Q. Okay. So here is a - appears to be a</p> <p>24 response from Frank Avellino to you. Do you see</p> <p>25 that?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. Do you know why there is a restriction for</p> <p>2 investments in S&P and that there was no allowance</p> <p>3 for any possible pledge of the investment?</p> <p>4 A. This goes back 14 years. I have no idea.</p> <p>5 Q. Well, forgetting about this in particular.</p> <p>6 Do you have an opinion on whether or not investments</p> <p>7 that were made in P&S and S&P and ultimately in</p> <p>8 Bernie Madoff could be pledged?</p> <p>9 A. I don't have an opinion on it.</p> <p>10 Q. Did you ever consult with counsel about</p> <p>11 it?</p> <p>12 A. I don't remember.</p> <p>13 Q. And you sent this to -- You communicated</p> <p>14 with Frank Avellino about this why exactly?</p> <p>15 A. I just -- I did. I can't tell you why,</p> <p>16 but I did.</p> <p>17 Q. Do you recall sending quarterly or annual</p> <p>18 reports for S&P or P&S to Frank Avellino throughout</p> <p>19 the years?</p> <p>20 A. Yes.</p> <p>21 Q. And why would you do that?</p> <p>22 A. There were people who knew him and he</p> <p>23 probably wanted to understand - he wanted to know</p> <p>24 what our rate of return was.</p> <p>25 Q. But what is it about the fact that people</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Yes, I do.</p> <p>2 Q. And he indicates, "There's no way that the</p> <p>3 investments for S&P or Strattham can be pledged.</p> <p>4 The underlying securities for both partnerships are</p> <p>5 traded on a daily basis and cannot be subrogated in</p> <p>6 any form." Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Did you discuss with Frank Avellino at any</p> <p>9 point in time why he believed the investments for</p> <p>10 S&P could not be pledged?</p> <p>11 A. I believe I did.</p> <p>12 Q. What do you recall of that discussion?</p> <p>13 A. I don't. I just remember having a</p> <p>14 conversation with him.</p> <p>15 Q. And did you take his advice or did you</p> <p>16 seek counsel?</p> <p>17 A. I don't know what we did. I don't know</p> <p>18 what I did. I don't know.</p> <p>19 Q. Do you recall if you consulted with an</p> <p>20 attorney?</p> <p>21 A. I can't tell you.</p> <p>22 Q. Do you recall if you listened to</p> <p>23 Mr. Avellino's advice and decided not to consult</p> <p>24 with an attorney?</p> <p>25 A. I can't tell you.</p>	<p style="text-align: right;">Page 93</p> <p>1 knew him that would cause you to want to send this</p> <p>2 to him?</p> <p>3 A. Well, he brought some of the people were</p> <p>4 his friends.</p> <p>5 Q. Okay. But he was not a partner, correct?</p> <p>6 A. Correct.</p> <p>7 Q. In S&P or P&S, so he wasn't entitled to</p> <p>8 this information, was he?</p> <p>9 A. He was receiving commission from people,</p> <p>10 so I felt it was okay to do that.</p> <p>11 Q. Did you send similar information to</p> <p>12 Michael Bienes?</p> <p>13 A. I don't recall doing that.</p> <p>14 (The referred-to document was marked by</p> <p>15 the court reporter for identification as</p> <p>16 Plaintiff's Exhibit 18.)</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. I'm going to show you one of these. I</p> <p>19 just want to ask if you can identify Exhibit 18 as</p> <p>20 an example of you sending financial information</p> <p>21 concerning P&S and S&P to Frank Avellino?</p> <p>22 A. I can't tell you whether this is an</p> <p>23 example or not. I don't remember this document.</p> <p>24 Q. Well, I'm asking you to take a look at it.</p> <p>25 A. I did.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. And it's from you, correct?</p> <p>2 A. I don't think so.</p> <p>3 Q. Who's mdassociates@bellsouth.net?</p> <p>4 A. That was my email address.</p> <p>5 Q. Okay. And franknanc@aol.com would be</p> <p>6 Frank's email address, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And it says, "Dear Frank, attached are the</p> <p>9 reports for the first quarter from P&S and S&P</p> <p>10 Partners."</p> <p>11 A. Correct.</p> <p>12 Q. "Gross for P&S was 3.33 percent, and S&P</p> <p>13 was 6.80 percent."</p> <p>14 A. Right.</p> <p>15 Q. So my question to you, is this an example</p> <p>16 of you sending financial information concerning P&S</p> <p>17 and S&P to Frank Avellino?</p> <p>18 A. I can't tell you. I didn't sign the</p> <p>19 document. It wasn't from me.</p> <p>20 Q. It wasn't from you?</p> <p>21 A. There's a name under travel grace. It</p> <p>22 looks like Susan.</p> <p>23 Q. Okay. But you did testify that you would</p> <p>24 provide financial information of S&P and P&S to</p> <p>25 Frank Avellino?</p>	<p style="text-align: right;">Page 96</p> <p>1 remember, but I know for some reason we wanted to</p> <p>2 change the structure. And I'm not sure, I'm not</p> <p>3 sure why we did.</p> <p>4 Q. And why is it that you would - you're</p> <p>5 asking for Frank Avellino to assist you in this?</p> <p>6 A. From time to time since Frank had</p> <p>7 partnerships - or not partnerships, he had accounts</p> <p>8 with him, I would just seek every now and then to</p> <p>9 ask him a question. So this is one of those. I</p> <p>10 think maybe eight or ten times I did that. This was</p> <p>11 one of those times.</p> <p>12 Q. Because he had accounts with Madoff?</p> <p>13 A. Yeah.</p> <p>14 Q. And he's advising you to call Jodi Crupi,</p> <p>15 do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. How often did you have telephonic</p> <p>18 communications with Bernie Madoff during the S&P and</p> <p>19 P&S years? Bernie Madoff's company, not just Bernie</p> <p>20 Madoff?</p> <p>21 A. It's hard to say. Ten more, fifteen.</p> <p>22 Q. Total?</p> <p>23 A. Yes.</p> <p>24 Q. And did you call Jodi Crupi, as advised by</p> <p>25 Mr. Avellino?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Correct, but I can't tell you if this is</p> <p>2 it or not.</p> <p>3 Q. Other than -- And did you send any</p> <p>4 financial information to Michael Bienes?</p> <p>5 A. Don't remember.</p> <p>6 Q. Other than Frank Avellino, do you recall</p> <p>7 sending financial information concerning S&P and P&S</p> <p>8 to any other non partners of S&P or P&S, aside from</p> <p>9 perhaps lawyers and accountants?</p> <p>10 A. I can't remember. I don't think so.</p> <p>11 (The referred-to document was marked by</p> <p>12 the court reporter for identification as</p> <p>13 Plaintiff's Exhibit 19.)</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q. So here's an email from you to Frank</p> <p>16 Avellino, Re: Answer question for me. Dated</p> <p>17 October 27th, 2008, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And you indicate here, "I was</p> <p>20 hoping to change our account from a general</p> <p>21 partnership to an LLC."</p> <p>22 A. Uh-huh.</p> <p>23 Q. Why were you considering doing that in</p> <p>24 2008?</p> <p>25 A. I don't remember. There was -- I can't</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Don't remember.</p> <p>2 Q. Okay. Do you know Frank Avellino</p> <p>3 communicated with partners of S&P and P&S concerning</p> <p>4 S&P and P&S?</p> <p>5 A. Oh, I have no idea.</p> <p>6 Q. So when you sent him financial information</p> <p>7 concerning S&P and P&S, do you know if he - do you</p> <p>8 know if he provided that information to other</p> <p>9 investors of S&P and P&S?</p> <p>10 A. I have no idea.</p> <p>11 Q. Did you encourage him to communicate with</p> <p>12 other partners of S&P and P&S?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you discourage him from doing it?</p> <p>15 A. It was a non issue.</p> <p>16 (The referred-to document was marked by</p> <p>17 the court reporter for identification as</p> <p>18 Plaintiff's Exhibit 20.)</p> <p>19 BY MR. SAMUELS:</p> <p>20 Q. Okay. Exhibit 20 appears to be a email</p> <p>21 from Michael Kuzy to you. Is Michael Kuzy the</p> <p>22 C.P.A.?</p> <p>23 A. Yeah, I wish you could blow these up next</p> <p>24 time just so my failing eyes could see this.</p> <p>25 Which one are you referring to?</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. The top page, Michael Kuzy.</p> <p>2 A. Yes, that's what it appears.</p> <p>3 Q. Now, during this timeframe in 2008, did</p> <p>4 you have an email address for - a different email</p> <p>5 address other than mdassociates@bellsouth.net?</p> <p>6 A. I don't remember.</p> <p>7 Q. Well, let me ask you something. Did you</p> <p>8 have an email address for S&P and P&S aside from the</p> <p>9 MD Associates one?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did Frank Avellino or Michael</p> <p>12 Bienes point you to Ahearn Jasco?</p> <p>13 A. I've answered that before many times. The</p> <p>14 answer is no.</p> <p>15 Q. If you look at this 200- -- We've got</p> <p>16 management fees here looks like from 2006 corrected,</p> <p>17 2005 corrected. Do you see that as attachments?</p> <p>18 2004 corrected, 2002. Do you see that?</p> <p>19 A. No.</p> <p>20 Q. Well, if you --</p> <p>21 A. I don't know where are you at. There's a</p> <p>22 lot of pages. Which one -- Are you at the end, the</p> <p>23 middle, where are you?</p> <p>24 Q. On the third page it's 2006 P&S Management</p> <p>25 Fee Calculation.</p>	<p style="text-align: right;">Page 100</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. This is a letter you wrote to Bette Anne,</p> <p>3 correct?</p> <p>4 A. Don't know.</p> <p>5 Q. It's on your letterhead, right?</p> <p>6 A. It's on my letterhead.</p> <p>7 (The referred-to document was marked by</p> <p>8 the court reporter for identification as</p> <p>9 Plaintiff's Exhibit 22.)</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. So let's mark this as Exhibit No. 22, and</p> <p>12 we can look at 21 and 22 together.</p> <p>13 A. Sure.</p> <p>14 Q. So Exhibit 22 is a letter from Bette Anne</p> <p>15 Powell to you, correct?</p> <p>16 A. Right.</p> <p>17 Q. Dear Michael would be you?</p> <p>18 A. Right.</p> <p>19 Q. Okay. And on the bottom it's got Sullivan</p> <p>20 and Powell fax notations, correct?</p> <p>21 A. Yes.</p> <p>22 Q. If you look at the bottom of the letter.</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall receiving this letter</p> <p>25 from Bette Anne?</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Yes, I do.</p> <p>2 Q. The next page is P&S 2005 corrected.</p> <p>3 A. Correct.</p> <p>4 Q. Next page is P&S Management Fees 2006</p> <p>5 corrected.</p> <p>6 A. Uh-huh.</p> <p>7 Q. P&S Management Fees corrected 2005.</p> <p>8 A. Uh-huh.</p> <p>9 Q. P&S Management Fees corrected 2004.</p> <p>10 A. Uh-huh.</p> <p>11 Q. P&S Management Fees corrected 2005.</p> <p>12 A. Right.</p> <p>13 Q. P&S Management Fees corrected 2005.</p> <p>14 A. Uh-huh.</p> <p>15 Q. P&S Management Fees for 2002. Do you see</p> <p>16 that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. So where would this information come from</p> <p>19 to put on these spreadsheets?</p> <p>20 A. I have no idea. Either through our office</p> <p>21 or Michael Kuzy, I can't tell you.</p> <p>22 (The referred-to document was marked by</p> <p>23 the court reporter for identification as</p> <p>24 Plaintiff's Exhibit 21.)</p> <p>25</p>	<p style="text-align: right;">Page 101</p> <p>1 A. No, I don't.</p> <p>2 Q. Why don't you take a look at it.</p> <p>3 A. Okay.</p> <p>4 Okay.</p> <p>5 Q. Let me know when you're done.</p> <p>6 A. Okay.</p> <p>7 Q. You had a chance to read it?</p> <p>8 A. I scanned it. If you have a question, let</p> <p>9 me know.</p> <p>10 Q. Okay. This appears to be a letter from</p> <p>11 Bette Anne Powell requesting funds from you or S&P,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you recall that happening?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And so now, let's go to Exhibit 21.</p> <p>17 So 21, you read this before, right?</p> <p>18 A. Yes.</p> <p>19 Q. That's appears to be a response to Exhibit</p> <p>20 22, correct?</p> <p>21 A. I don't know.</p> <p>22 Q. Well --</p> <p>23 A. This is dated 2/13.</p> <p>24 Q. Well, that date was computer generated.</p> <p>25 That's not the correct date. This was computer</p>

<p style="text-align: right;">Page 102</p> <p>1 generated from the conservator.</p> <p>2 But if you look at the letter it seems</p> <p>3 obvious that Exhibit 21 is in response to Exhibit</p> <p>4 22, so if you need to read them both again let me</p> <p>5 know.</p> <p>6 A. According to what you want.</p> <p>7 MR. WINDERMAN: Ask questions.</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q. Here's the question. Forget about the</p> <p>10 6/18, 2013 is not correct. That was computer</p> <p>11 generated. So having that aside and having read the</p> <p>12 two letters, would you agree that Exhibit 21 is your</p> <p>13 response to Exhibit 22?</p> <p>14 A. I can't tell you that.</p> <p>15 Q. Well, you want to read them both then and</p> <p>16 let me know?</p> <p>17 MR. WINDERMAN: No, he read them both.</p> <p>18 You asked him twice. We're going to move on.</p> <p>19 If he can't -- You can ask him a third time if</p> <p>20 you want.</p> <p>21 MR. SAMUELS: I don't want to ask him. He</p> <p>22 said he scanned the documents. Now I'm asking</p> <p>23 him to read the documents to see if it</p> <p>24 refreshes his recollection at all. Take your</p> <p>25 time and read both documents and I'll ask you a</p>	<p style="text-align: right;">Page 104</p> <p>1 have responded to that, definitively.</p> <p>2 Q. What was the net result? Did you agree or</p> <p>3 not agree to provide any financial support?</p> <p>4 A. I provided some financial support to her.</p> <p>5 Q. Okay. So now let's go through the letter.</p> <p>6 A. Sure.</p> <p>7 Q. That's Exhibit 21. In the fourth</p> <p>8 paragraph you state right off the bat, "You should</p> <p>9 be completely aware the gift of this business was</p> <p>10 only given to me, not Greg."</p> <p>11 A. Uh-huh.</p> <p>12 Q. "It came from a close friend of my church,</p> <p>13 Frank Avellino."</p> <p>14 A. Uh-huh.</p> <p>15 Q. You would agree then the gift of the</p> <p>16 business, S&P and P&S, was given to you and it came</p> <p>17 from your close friend at your church, Frank</p> <p>18 Avellino?</p> <p>19 A. Not necessarily.</p> <p>20 Q. But you nevertheless represented that to</p> <p>21 Bette Anne?</p> <p>22 MR. WOODFIELD: Objection.</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q. Correct?</p> <p>25 MR. WOODFIELD: No indication this letter</p>
<p style="text-align: right;">Page 103</p> <p>1 question.</p> <p>2 A. Okay.</p> <p>3 BY MR. SAMUELS:</p> <p>4 Q. Okay. So now you had a chance to read</p> <p>5 both letters?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. So was Exhibit 21 in response to --</p> <p>8 Was Exhibit 21 -- Now that you had a chance to read</p> <p>9 both letters, was Exhibit 21 in response to Exhibit</p> <p>10 22?</p> <p>11 A. I can't tell you the order in which they</p> <p>12 were written. I cannot do that. I'd be happy to if</p> <p>13 I knew the answer to that.</p> <p>14 Q. Okay. One is in conjunction with the</p> <p>15 other though?</p> <p>16 A. It appears that way.</p> <p>17 Q. Okay. So you receive -- You recall</p> <p>18 receiving correspondence from Bette Anne where she</p> <p>19 was asking for financial support?</p> <p>20 A. I just seen this letter, so that letter</p> <p>21 appears to be that, yes.</p> <p>22 Q. You recall responding in some format,</p> <p>23 letter or verbal, to this request for financial</p> <p>24 support?</p> <p>25 A. If I received that, I definitively would</p>	<p style="text-align: right;">Page 105</p> <p>1 was ever seen.</p> <p>2 MR. SAMUELS: You can object. No speaking</p> <p>3 objections, please. Go ahead.</p> <p>4 A. I did not write a complete history of my</p> <p>5 thought process in here. When I'm speaking of the</p> <p>6 gift, I believe that the gift is given to people</p> <p>7 through God. Anything that's good, generally, for</p> <p>8 the most part, comes that way. So I believe that</p> <p>9 Avellino was a conduit, a complete conduit of what</p> <p>10 was supposed to happen. So Frank was acting as a</p> <p>11 conduit from the blessing that I received from this</p> <p>12 through God.</p> <p>13 BY MR. SAMUELS:</p> <p>14 Q. Okay. As a conduit, did he work to</p> <p>15 provide this gift to you that, and I won't put words</p> <p>16 in your mouth, so correct me if I'm wrong.</p> <p>17 A. That's fair.</p> <p>18 Q. I'm really not intending to do that, okay?</p> <p>19 A. That's fair.</p> <p>20 Q. Did Frank, in your mind, act as a conduit</p> <p>21 to provide you this gift that was intended for you,</p> <p>22 in your view, from God?</p> <p>23 MR. WINDERMAN: Form. Asked and answered.</p> <p>24 A. Let me restate this over and over to you.</p> <p>25</p>

<p style="text-align: right;">Page 106</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. Yeah.</p> <p>3 A. Because you have a hard time grasping</p> <p>4 this --</p> <p>5 MR. WINDERMAN: This isn't personal. He</p> <p>6 needs to ask these questions.</p> <p>7 A. I understand. I want him to.</p> <p>8 He had nothing to do with me getting</p> <p>9 involved with Madoff. We've gone over this. I will</p> <p>10 go over this over and over with you. I picked up</p> <p>11 the phone myself and made this happen.</p> <p>12 MR. WINDERMAN: It's all right. You made</p> <p>13 your point. I'm going to object to the</p> <p>14 question as being repetitive, and I have to</p> <p>15 stop you as your testimony being repetitive.</p> <p>16 A. Okay. That's fine.</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. You then say, "I was reminded constantly</p> <p>19 by Frank that this was my gift alone."</p> <p>20 A. Uh-huh.</p> <p>21 Q. What -- How did Frank Avellino remind you</p> <p>22 constantly that the business was your gift alone?</p> <p>23 A. I can't tell you. There was never, what I</p> <p>24 would call, a constant reminder. I don't know why I</p> <p>25 put the word constant in. It's not consistent with</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Two paragraphs down from there. "If</p> <p>2 something as to the stock market --"</p> <p>3 A. That's three down. Okay. Yes.</p> <p>4 Q. If something as to the stock market,</p> <p>5 obviously that could have a negative impact on your</p> <p>6 business, right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Something would happen to your</p> <p>9 investors, obviously that would have a negative</p> <p>10 impact on your business, right?</p> <p>11 A. Right.</p> <p>12 Q. And then it says to Frank. If something</p> <p>13 happened to Frank Avellino, would that have a</p> <p>14 negative impact on your business?</p> <p>15 A. I don't know. I don't know what I meant</p> <p>16 by that.</p> <p>17 Q. Where you say to Frank, our contact. Do</p> <p>18 you mean a contact with whom? Contact as a conduit</p> <p>19 to the Lord, or a conduit --</p> <p>20 A. I'm not sure. Where are you talking</p> <p>21 about?</p> <p>22 Q. Right here, "To Frank our contact." "If</p> <p>23 something happens in the stock market, to our</p> <p>24 investors --</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 107</p> <p>1 the facts. I can't tell you. Don't know.</p> <p>2 Q. So let's remove the word constant for a</p> <p>3 moment.</p> <p>4 A. Uh-huh.</p> <p>5 Q. So I was reminded by Frank that this was</p> <p>6 my gift alone. What do you recall Frank telling you</p> <p>7 in connection with the business being your gift</p> <p>8 alone?</p> <p>9 A. He made some comment to me like, this is</p> <p>10 probably a blessing from God. So maybe that's what</p> <p>11 this is. It was done in a spiritual context.</p> <p>12 Q. Okay. Now, we'll go to the one, two,</p> <p>13 three, the third paragraph. And then you say,</p> <p>14 "Because Greg was my closest friend and partner I</p> <p>15 wanted to share this gift."</p> <p>16 A. Where is that?</p> <p>17 Q. The next paragraph.</p> <p>18 A. Oh, five.</p> <p>19 Q. "Because Greg was my closest friend and</p> <p>20 partner, I wanted to share the gift I had been given</p> <p>21 with him.</p> <p>22 A. Correct.</p> <p>23 Q. And this was the gift you were given by</p> <p>24 Frank as a conduit?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. -- to Frank our contact."</p> <p>2 A. Right. I don't know.</p> <p>3 Q. Contact with Madoff, contact with who?</p> <p>4 A. I can't tell you what I meant by that. I</p> <p>5 wish I could.</p> <p>6 Q. All right. And the next paragraph.</p> <p>7 A. Is that basically? You said the next</p> <p>8 paragraph.</p> <p>9 Q. No. "If something were to happen to me,</p> <p>10 death or grave illness, the business, in fact, would</p> <p>11 be closed."</p> <p>12 A. Yes.</p> <p>13 Q. Because at that point in time there is no</p> <p>14 other managing general partner. Is that what you</p> <p>15 are referring to?</p> <p>16 A. Correct.</p> <p>17 Q. "You have no idea or never understood just</p> <p>18 how important my relationship to the business is."</p> <p>19 A. Right.</p> <p>20 Q. And as managing general partner, you</p> <p>21 obviously felt you were a critical person to the</p> <p>22 business?</p> <p>23 A. Very.</p> <p>24 Q. "I am the person who deals with the main</p> <p>25 source, Frank Avellino."</p>

<p style="text-align: right;">Page 110</p> <p>1 A. Uh-huh.</p> <p>2 Q. So is Frank Avellino the main source</p> <p>3 because he provided you with the most business, or</p> <p>4 why is he the main source?</p> <p>5 A. Well, he did provide us business. Other</p> <p>6 than that, I just think that the gift came from him.</p> <p>7 It was a gift that was given. I can't explain what</p> <p>8 my thought process was at that time.</p> <p>9 Q. Okay. "And he has given and entrusted to</p> <p>10 me this gift --"</p> <p>11 A. Uh-huh.</p> <p>12 Q. "-- and can take it back at anytime --"</p> <p>13 A. Right.</p> <p>14 Q. "-- earning the entire commission for</p> <p>15 himself." So did Frank Avellino have the ability to</p> <p>16 take back S&P or P&S?</p> <p>17 MR. WINDERMAN: Form.</p> <p>18 A. There was a point in time where both</p> <p>19 Michael and Frank specifically said if there's</p> <p>20 anything that goes on immoral business wise that</p> <p>21 they felt something was wrong, they would make a</p> <p>22 call if they thought something was wrong.</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q. A call to Madoff?</p> <p>25 A. I don't know. That's what they said.</p>	<p style="text-align: right;">Page 112</p> <p>1 with being partners with Bette Anne Powell, I take</p> <p>2 it?</p> <p>3 A. That's correct. Or her children, correct.</p> <p>4 Q. Then it says, "For one thing, Frank</p> <p>5 Avellino would never have allowed it."</p> <p>6 A. Correct.</p> <p>7 Q. Did Frank Avellino have the ability to</p> <p>8 determine who you would be partners with or who</p> <p>9 another general managing partner would be?</p> <p>10 A. Anyone can make a call to Madoff say</p> <p>11 something's wrong here.</p> <p>12 Q. Okay.</p> <p>13 A. Anybody.</p> <p>14 Q. And so you were concerned that Frank</p> <p>15 Avellino could do that if he didn't like the way</p> <p>16 things were going?</p> <p>17 A. Correct.</p> <p>18 Q. Did anyone else ever threaten to call</p> <p>19 Madoff or indicate that they could call Madoff or</p> <p>20 cause problems with you?</p> <p>21 A. Bernie was very specific that he didn't</p> <p>22 want calls from anybody. When 9/11 happened a</p> <p>23 couple people made calls there. And during various</p> <p>24 times a partner would call and ask Madoff if they</p> <p>25 can open up their account. Things just happened in</p>
<p style="text-align: right;">Page 111</p> <p>1 Don't know.</p> <p>2 Q. You are not sure to whom?</p> <p>3 A. No.</p> <p>4 Q. So while you were running S&P and P&S, did</p> <p>5 you believe that Frank Avellino had the ability to</p> <p>6 take back or harm your business?</p> <p>7 A. I believe anybody could have that would</p> <p>8 have called Madoff, not just him. It could have</p> <p>9 been anybody. He was one of the people.</p> <p>10 Q. Who else could they call other than</p> <p>11 Madoff, do you know?</p> <p>12 A. I have no idea.</p> <p>13 Q. So it would have been Madoff?</p> <p>14 A. Maybe somebody else at the firm, I don't</p> <p>15 know.</p> <p>16 Q. But somebody at Madoff; Madoff or Madoff's</p> <p>17 firm?</p> <p>18 A. Yes, correct.</p> <p>19 Q. All right. Let's go to the next page.</p> <p>20 Third paragraph, "I felt in your heart there was a</p> <p>21 time that you felt when Greg was called home that</p> <p>22 you would be a partner in this business."</p> <p>23 A. Right.</p> <p>24 Q. "I don't know where you got this idea.</p> <p>25 That would never happen." So you had no interest</p>	<p style="text-align: right;">Page 113</p> <p>1 the course of that business where they want to cut</p> <p>2 management fees out. And I would get a call from</p> <p>3 either Bernie, which I received on a couple of</p> <p>4 occasions, or other people and I was told by Madoff</p> <p>5 firm don't have anybody call us. I always lived</p> <p>6 with that in the back of my mind and that was part</p> <p>7 of the reason. I know the 9/11 call that somebody</p> <p>8 made, Bernie did not want any calls. Nothing. So</p> <p>9 that's my heart in this.</p> <p>10 Q. Okay. Going down to the last paragraph on</p> <p>11 this page.</p> <p>12 A. Yes.</p> <p>13 Q. "The business would be worth nothing if I</p> <p>14 die --"</p> <p>15 A. Yes.</p> <p>16 Q. "-- the market crashes --"</p> <p>17 A. Yes.</p> <p>18 Q. "-- or Frank or Bernie dies."</p> <p>19 A. Yes.</p> <p>20 Q. Why is it the business would be worth</p> <p>21 nothing if Frank Avellino died?</p> <p>22 A. I don't know. I do not know why I wrote</p> <p>23 that in there. I cannot tell you. I have no idea.</p> <p>24 I wrote that seven years ago. I couldn't tell you.</p> <p>25 It doesn't even make sense.</p>

<p style="text-align: right;">Page 114</p> <p>1 MR. SAMUELS: Okay. Lunch is here. Let's</p> <p>2 take a little break.</p> <p>3 Hold on.</p> <p>4 Couple more questions.</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. Why did you state that the business - that</p> <p>7 the gift was yours alone if Powell was your partner?</p> <p>8 A. Frank did not know Greg very well. He</p> <p>9 only new Greg through me, and Frank and I knew each</p> <p>10 other from church so we had more of a connection.</p> <p>11 MR. SAMUELS: All right. Let's take a</p> <p>12 break.</p> <p>13 (A luncheon recess was taken, after which</p> <p>14 the following proceedings were held:)</p> <p>15 BY MR. SAMUELS:</p> <p>16 Q. Okay. So we've been discussing</p> <p>17 commissions that were paid to Mr. Avellino and</p> <p>18 Bienes.</p> <p>19 A. Correct.</p> <p>20 Q. Why weren't those commissions paid right</p> <p>21 out of S&P or P&S as opposed to Michael D.</p> <p>22 Sullivan & Associates?</p> <p>23 A. I can't remember the reason. I wanted the</p> <p>24 money, I guess, to come to me and then pay them. I</p> <p>25 can't remember why. Once again, we set that up 20</p>	<p style="text-align: right;">Page 116</p> <p>1 that and all the stuff going on. There's mountains</p> <p>2 of paperwork, mountains of accusations. At the end</p> <p>3 of the day, I simply cannot answer that question. I</p> <p>4 do not have all the facts.</p> <p>5 Q. Do you know what type of claims they were</p> <p>6 interested in bringing against Avellino and Bienes?</p> <p>7 A. Only through some of the lawsuits. I've</p> <p>8 never been on the site. I only look at stuff. I</p> <p>9 try to -- This stuff's been so difficult. I've been</p> <p>10 trying to forget most of it. I try hard to forget</p> <p>11 this because of all the problems, so I don't know.</p> <p>12 Q. Anybody else other than Doug Stepleton and</p> <p>13 Patrick Kelly?</p> <p>14 A. There may have been more, but I don't have</p> <p>15 any memory. That was kind of the main head to that.</p> <p>16 Q. So aside from all the laws and legalities</p> <p>17 and such in terms of your dealings with Avellino and</p> <p>18 Bienes, do you believe they have any culpability or</p> <p>19 engaged in any wrongdoing in connection with losses</p> <p>20 suffered by S&P and P&S?</p> <p>21 MR. WOODFIELD: Objection. You can</p> <p>22 answer.</p> <p>23 A. Once again, I do not have all the facts.</p> <p>24 I don't know what they did, what they didn't do. I</p> <p>25 cannot affirm or deny or anything.</p>
<p style="text-align: right;">Page 115</p> <p>1 years ago. I don't remember the reason.</p> <p>2 Q. Do you recall at any point in time after</p> <p>3 the Madoff Ponzi scheme became public in 2008 any</p> <p>4 partners suggesting to you, as in general partner,</p> <p>5 that you assert claims against either Avellino or</p> <p>6 Bienes?</p> <p>7 A. Yes.</p> <p>8 Q. And who did that?</p> <p>9 A. The Festus Stacy and Doug Stepleton.</p> <p>10 Q. Who?</p> <p>11 A. The Festus Stacy organization. It was</p> <p>12 Doug Stepleton and Patrick Kelly.</p> <p>13 Q. Okay. And in connection with that, did</p> <p>14 you express a belief to them in your capacity as</p> <p>15 managing general partner that you didn't believe</p> <p>16 either Avellino or Bienes were engaged in any</p> <p>17 wrongdoing or had any culpability?</p> <p>18 A. I don't know what I told them. We</p> <p>19 discussed stuff about an hour. I just remember some</p> <p>20 skeletal stuff. I don't remember. I can't affirm</p> <p>21 or deny that statement.</p> <p>22 Q. Well, do you believe that Avellino or</p> <p>23 Bienes are culpable in anyway for any losses</p> <p>24 suffered by S&P and P&S?</p> <p>25 A. I do not know what the law is regarding to</p>	<p style="text-align: right;">Page 117</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. Did you, in your capacity as managing</p> <p>3 general partner, ever undertake any investigation on</p> <p>4 behalf of the partnership to determine whether or</p> <p>5 not Michael Bienes or Frank Avellino engaged in any</p> <p>6 wrongdoing or had any culpability?</p> <p>7 A. I talked to Chad Pugatch and we had</p> <p>8 discussions. I don't remember anything in</p> <p>9 particular. I let the attorneys handle that.</p> <p>10 Q. And Chad Pugatch was counsel for who at</p> <p>11 the time?</p> <p>12 A. P&S/S&P.</p> <p>13 MR. SAMUELS: All right. So let's now go</p> <p>14 to exhibit 23.</p> <p>15 (The referred-to document was marked by</p> <p>16 the court reporter for identification as</p> <p>17 Plaintiff's Exhibit 23.)</p> <p>18 A. Pardon me, Helen Chaitman, as well, but I</p> <p>19 don't remember when.</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q. This indicates that the letter's "in</p> <p>22 response to the recent, undated letter from members</p> <p>23 of the group represented by Berger Singerman."</p> <p>24 A. Uh-huh.</p> <p>25 Q. Do you recall writing this?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. I do.</p> <p>2 Q. And in the first bullet point it says,</p> <p>3 "The BS group wants to see Frank Avellino and</p> <p>4 Michael Bienes." Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And here you're sending a letter to -- It</p> <p>7 says "Dear Partner." Did this go to all the</p> <p>8 partners at P&S and S&P?</p> <p>9 A. I believe it did.</p> <p>10 Q. And you're still a managing general</p> <p>11 partner, at this point?</p> <p>12 A. I guess.</p> <p>13 Q. And here you're saying, "It would be an</p> <p>14 incredible waste of your money," correct?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And you believed it would be a big waste</p> <p>17 of money for S&P or P&S to bring a claim against</p> <p>18 Avellino or Bienes?</p> <p>19 A. Correct.</p> <p>20 Q. And you let all the partners know that?</p> <p>21 A. That's what it says.</p> <p>22 Q. Okay. In the fourth bullet point.</p> <p>23 A. Yes.</p> <p>24 Q. At the bottom, "Partnership funds were</p> <p>25 never paid to Avellino or Bienes or anyone else."</p>	<p style="text-align: right;">Page 120</p> <p>1 either Avellino or Bienes at the time of that</p> <p>2 conversation?</p> <p>3 A. Not to my knowledge. I doubt she was.</p> <p>4 Q. And the next to last bullet point.</p> <p>5 A. Uh-huh.</p> <p>6 Q. "No commissions were paid from partnership</p> <p>7 assets."</p> <p>8 A. Correct.</p> <p>9 Q. And then later on you indicate, "Yet, the</p> <p>10 managing general partner only charged legal,</p> <p>11 accounting, bank fees, and at times direct</p> <p>12 supplies." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. No indication anywhere in this letter that</p> <p>16 Avellino and Bienes were receiving commissions from</p> <p>17 bringing money in, correct?</p> <p>18 MR. WINDERMAN: Objection.</p> <p>19 BY MR. SAMUELS:</p> <p>20 Q. From bringing people in, correct?</p> <p>21 MR. WINDERMAN: Objection. Form.</p> <p>22 BY MR. SAMUELS:</p> <p>23 Q. Is that right?</p> <p>24 A. I guess. If it's not in the letter, that</p> <p>25 means no.</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Uh-huh.</p> <p>2 Q. Okay. Did you at any point disclose that</p> <p>3 Avellino and Bienes were, in fact, receiving</p> <p>4 commissions for the people they brought into the</p> <p>5 partnership?</p> <p>6 A. This says partnership funds, I can't tell</p> <p>7 you.</p> <p>8 Q. I understand.</p> <p>9 A. I can't tell you. I don't know what I</p> <p>10 told to who.</p> <p>11 MR. WINDERMAN: Asked and answered.</p> <p>12 BY MR. SAMUELS:</p> <p>13 Q. Then it says, "Avellino and Bienes never</p> <p>14 had any control over the partnerships."</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. Getting to the next page. Why did</p> <p>17 you believe it would be a waste of time to sue</p> <p>18 Avellino and Bienes?</p> <p>19 A. I remember talking to Helen Chaitman</p> <p>20 specifically and she said that a card with all the</p> <p>21 litigation filed, that the card had everything</p> <p>22 wrapped and was going to want to have their way with</p> <p>23 that. So that information kind of I ascertained</p> <p>24 from Mrs. Chaitman.</p> <p>25 Q. Do you know if Chaitman was counsel for</p>	<p style="text-align: right;">Page 121</p> <p>1 (The referred-to document was marked by</p> <p>2 the court reporter for identification as</p> <p>3 Plaintiff's Exhibit 24.)</p> <p>4 BY MR. SAMUELS:</p> <p>5 Q. Twenty-four appears to be an email from</p> <p>6 you to Frank Avellino.</p> <p>7 A. Uh-huh.</p> <p>8 Q. June 3, 2008 concerning a meeting with Pat</p> <p>9 Kelly.</p> <p>10 A. Correct.</p> <p>11 Q. You indicate that he expressed an interest</p> <p>12 in putting some of his clients in the partnership,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. How did Pat Kelly know Michael Bienes, do</p> <p>16 you recall?</p> <p>17 A. You have to ask Patrick.</p> <p>18 Q. Okay. Because you indicate in here, "In</p> <p>19 our discussion I found out he knows Michael Bienes</p> <p>20 very well." You don't recall how?</p> <p>21 A. I don't know if he went into detail. He</p> <p>22 went to a Christmas party at his house, I know that.</p> <p>23 I don't remember any conversation after that.</p> <p>24 Q. Okay. And why did you advise Mr. Avellino</p> <p>25 about your meeting with Pat Kelly?</p>

<p style="text-align: right;">Page 122</p> <p>1 A. Well, if Michael had known him and there 2 was a commission splitting at that time, I just 3 wanted him to be aware of that. 4 Q. Was there any commission -- Did, in fact, 5 Festus Stacy Christian Foundation invest in S&P and 6 P&S? 7 A. Yes. 8 Q. Okay. 9 A. I mean, they sued me so I imagine so. 10 Q. I understand. I'm just asking for the 11 record. 12 A. I'm sorry. 13 Q. That's okay. I just got to get things 14 down. 15 A. I understand. 16 Q. I can't testify, so I have to have you 17 testify. 18 A. That's fair. 19 Q. All right. So -- And in terms of their 20 investment, did either Michael Bienes or Frank 21 Avellino receive any commissions? 22 A. The best of my knowledge, zero. 23 Q. And do you know why in connection with 24 your meeting with Pat Kelly Michael Bienes' name 25 came up?</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Is he? 2 BY MR. SAMUELS: 3 Q. All right. So if the first email is from 4 you to Gary Woodfield, you understand him to be 5 counsel for Frank Avellino, correct? 6 A. Uh-huh. 7 Q. Who is mike@mltaxcpa.com? 8 A. Don't know. 9 Q. Okay. And you ask him -- You're asking 10 Gary Woodfield to call you, because you signed an 11 agreement with the conservator. Do you see that? 12 A. Yes. 13 Q. Why did you want Gary Woodfield to call 14 you in connection with you're signing agreement with 15 the conservator? 16 A. I don't actually remember writing this. 17 Q. Do you recall speaking with Mr. Woodfield 18 in connection with your agreement with the 19 conservator? 20 A. No. 21 Q. You don't recall having any discussions 22 with him? 23 A. None. 24 Q. Any meetings with him? 25 A. No, not regarding that.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Patrick brought it up. 2 Q. Patrick brought it up? 3 A. Yeah, you have to ask him why. 4 (The referred-to document was marked by 5 the court reporter for identification as 6 Plaintiff's Exhibit 25.) 7 BY MR. SAMUELS: 8 Q. Okay. If you go to the email on the 9 second page of this it appears to be from Gary 10 Woodfield to you. 11 A. Uh-huh. 12 Q. Indicating he'd like to speak to Charlie 13 Pearlman. 14 A. Uh-huh. 15 Q. Did you help arrange that? 16 A. No. 17 Q. Why not? 18 A. Why would I? 19 Q. I'm just asking. 20 A. I answered it. I didn't. 21 Q. Okay. 22 A. I don't even know if Charlie is living 23 anymore. I haven't talked or heard from Charlie 24 in... 25 MR. WINDERMAN: Charlie is still alive.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Well, what did you have meetings with him 2 regarding? 3 A. I talked to Gary, I believe, one time. 4 I'm not sure. He just wanted to know some facts 5 specifically about how I got to know Avellino and 6 Bienes and that. It was very -- It was the basic 7 information regarding what every one wants; how did 8 our engagement start. It was pretty much limited to 9 most of that. 10 Q. By the way, you shared - you were in the 11 share building as Avellino and Bienes? 12 A. Yes. 13 Q. Same floor? 14 A. Yes. 15 Q. And you learned of that through 16 Mr. Holloway? 17 A. No. I don't know how I learned to it. 18 Q. No, did you find the office space at 19 Federal Highway through someone in your church? 20 A. Yes. 21 Q. And who is that? 22 A. Scott Holloway. 23 Q. And Avellino and Bienes had an office on 24 the same floor? 25 A. I don't know when they did, but at a</p>

<p style="text-align: right;">Page 126</p> <p>1 period of time, yes, they did.</p> <p>2 Q. And what was the address?</p> <p>3 A. 6550 North Federal Highway.</p> <p>4 Q. And you're located there today?</p> <p>5 A. No.</p> <p>6 Q. How many -- During what period of time did</p> <p>7 Avellino and Bienes have an office at the same time</p> <p>8 as you?</p> <p>9 A. You have to ask them.</p> <p>10 Q. You don't know?</p> <p>11 A. No.</p> <p>12 Q. And how often did you meet with</p> <p>13 Mr. Avellino or Mr. Bienes?</p> <p>14 A. I'd say less than ten, maybe even less</p> <p>15 than eight.</p> <p>16 Q. Okay.</p> <p>17 A. Maybe five, but not much. They were never</p> <p>18 in town.</p> <p>19 Q. And did Mr. Bienes ever ask you to come by</p> <p>20 and make sure you were sending statements out on</p> <p>21 time to family members or others?</p> <p>22 A. Yes.</p> <p>23 Q. What else do you recall -- What else do</p> <p>24 you recall meeting with Mr. Avellino in your office</p> <p>25 or in his office on the same floor?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Do you recall having any discussion at all</p> <p>2 with Gary Woodfield about the statement he gave to</p> <p>3 anyone at my firm or at Tom Messana's firm?</p> <p>4 A. No.</p> <p>5 (The referred-to document was marked by</p> <p>6 the court reporter for identification as</p> <p>7 Plaintiff's Exhibit 26.)</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q. It looks like there's some overlap between</p> <p>10 this and the other exhibit. If you go to Page 5</p> <p>11 that's where you say, "Call me now. Signing the</p> <p>12 agreement with conservator today."</p> <p>13 A. Page what, I'm sorry?</p> <p>14 Q. Go to Page - Page 5.</p> <p>15 A. Yes.</p> <p>16 Q. "Great relationship with C.P.A. firm."</p> <p>17 A. Uh-huh.</p> <p>18 Q. And then to Gary you say, "Roanne Bailey</p> <p>19 actually did the work." Page 4.</p> <p>20 A. Okay. Uh-huh.</p> <p>21 Q. Why are you telling this to Mr. Woodfield?</p> <p>22 A. Part of the discussion we had at the</p> <p>23 beginning about how I met - or the agreement I had</p> <p>24 with Madoff, one of the questions he simply asked is</p> <p>25 about the General Partner Agreement, and that was my</p>
<p style="text-align: right;">Page 127</p> <p>1 A. Just friends. I had to return some</p> <p>2 statements to him, his statements because P&S and</p> <p>3 S&P and Madoff all look the same. So I'd go and we</p> <p>4 had mail from them. I'd bring the mail over. Just</p> <p>5 chit chat. We were members of the same church. We</p> <p>6 knew each other. So like I said, they weren't there</p> <p>7 a lot, so...</p> <p>8 (Attorney Michel Weisz enters the</p> <p>9 deposition telephonically.)</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. Getting back to the last email in front of</p> <p>12 you. "Call me now. Signing agreement with</p> <p>13 conservator later today." Do you recall</p> <p>14 Mr. Woodfield calling you?</p> <p>15 A. No.</p> <p>16 Q. Do you recall discussing the agreement</p> <p>17 with the conservator with Mr. Woodfield?</p> <p>18 A. I didn't discuss the agreement with</p> <p>19 anybody but Harry.</p> <p>20 Q. Why did you ask him to call you?</p> <p>21 A. Can't remember.</p> <p>22 I did have conversations with him to find</p> <p>23 out how Frank's health was, because I know his</p> <p>24 health was deteriorating. I know that's another</p> <p>25 thing we talked about.</p>	<p style="text-align: right;">Page 129</p> <p>1 response to who the person was.</p> <p>2 Q. Okay. If you go to Page 3, "I cannot find</p> <p>3 contact information for the Bailey in the Florida</p> <p>4 Bar. Do you have contact information for her.</p> <p>5 Thanks. How did things go yesterday?" Do you see</p> <p>6 that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And then if we go forward.</p> <p>9 A. Uh-huh.</p> <p>10 Q. You say, "Call Charley Pearlman and ask</p> <p>11 what happened to Roxanne Bailey."</p> <p>12 A. Uh-huh.</p> <p>13 Q. And you say, "Signed agreement."</p> <p>14 A. Right.</p> <p>15 Q. "They started asking me questions</p> <p>16 yesterday. They got really pissed when they did not</p> <p>17 get the answers they wanted."</p> <p>18 A. Right.</p> <p>19 Q. "They closed their computers and left."</p> <p>20 See that?</p> <p>21 A. I do.</p> <p>22 Q. My question is, why are you communicating</p> <p>23 with Mr. Woodfield about the statement that you</p> <p>24 gave?</p> <p>25 A. I cannot tell you.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q. And the agreement you had?</p> <p>2 A. I don't know.</p> <p>3 Q. You don't recall?</p> <p>4 A. I can't recall.</p> <p>5 MR. WINDERMAN: Object to form.</p> <p>6 Mischaracterization of his testimony.</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q. Do you recall Michael Bienes becoming</p> <p>9 active in the Archdiocese of Miami.</p> <p>10 A. I have no actual knowledge of it, but I</p> <p>11 heard he was being Knighted. I don't know how I</p> <p>12 heard it.</p> <p>13 Q. And you indicated earlier that you knew</p> <p>14 that he was very charitable?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know if he used his connections and</p> <p>17 charitable endeavors to bring people into S&P and</p> <p>18 P&S?</p> <p>19 A. You'd have to ask him.</p> <p>20 Q. Did you have any prior experience in</p> <p>21 managing investments prior to S&P and P&S?</p> <p>22 A. No.</p> <p>23 Q. Do you remember Michael Bienes visiting</p> <p>24 your offices and yelling at you, because one of his</p> <p>25 family members received a distribution check from</p>	<p style="text-align: right;">Page 132</p> <p>1 would have A + B - C - G + F, Tom had a very simple</p> <p>2 formula for figuring that out. So we started using</p> <p>3 that system that, in fact, he had.</p> <p>4 Q. Okay. And do you know if that system was</p> <p>5 the same system that Frank Avellino was using</p> <p>6 through the various entities that he himself or his</p> <p>7 family members invested in Madoff?</p> <p>8 A. You have to ask him.</p> <p>9 Q. You don't know?</p> <p>10 A. I have no idea.</p> <p>11 Q. That wasn't discussed between you and</p> <p>12 Thomas?</p> <p>13 A. No.</p> <p>14 Q. When's the last time you spoke to Frank</p> <p>15 Avellino?</p> <p>16 A. Maybe a couple years ago.</p> <p>17 Q. Couple years ago?</p> <p>18 A. I'm guessing, yeah. I don't recall. It's</p> <p>19 been a while.</p> <p>20 Q. And have the two of you discussed this</p> <p>21 case at all?</p> <p>22 A. No, not allowed to.</p> <p>23 Q. Have you discussed your statement or</p> <p>24 deposition at all with him?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 131</p> <p>1 the partnerships later than he or she was entitled?</p> <p>2 A. He didn't yell, but he was firm.</p> <p>3 Q. You recall that discussion?</p> <p>4 A. Don't remember the discussion, but I</p> <p>5 remember speaking something like that; yes, I do.</p> <p>6 Q. And Thomas Avellino is Frank's son?</p> <p>7 A. Correct.</p> <p>8 Q. And do you recall using software, S&P or</p> <p>9 P&S using software that Thomas Avellino provided?</p> <p>10 A. I do not know whether he provided the</p> <p>11 software. I don't know how we got the formulas,</p> <p>12 whether it was on a software or not, but we did use</p> <p>13 his intellectual property of some sort in fashion or</p> <p>14 the software to get our statements.</p> <p>15 Q. Well, tell me how that came into being,</p> <p>16 your working with Thomas Avellino.</p> <p>17 A. Went out to lunch with Frank and he</p> <p>18 brought his son Tom from Miami. Tom and I were chit</p> <p>19 chatting about things. And I says, you know, it</p> <p>20 takes us a long time to figure out the rate of</p> <p>21 return, what's going. He said, let me take a look</p> <p>22 at this. So he seen what we were doing. He said,</p> <p>23 there's a much easier way to do that. Greg, my</p> <p>24 partner, had a very complicated formula to figuring</p> <p>25 out so we give accurate statements. Where Greg</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Okay.</p> <p>2 MR. WINDERMAN: When you say statement,</p> <p>3 you mean his written statement? Sworn written</p> <p>4 statement?</p> <p>5 MR. SAMUELS: Yeah.</p> <p>6 A. I haven't talked to him about this.</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q. How about Michael Bienes, when's the last</p> <p>9 time you spoke to him?</p> <p>10 A. I see him at Gianni's restaurant, I don't</p> <p>11 know, maybe a year ago. He happened to be sitting</p> <p>12 at another table. I didn't even recognize him. He</p> <p>13 apparently recognized me, came and sat down. We</p> <p>14 talked about 30 seconds. That's about it. I</p> <p>15 haven't seen him since. I don't know even the last</p> <p>16 time before that I had even seen him.</p> <p>17 (The referred-to document was marked by</p> <p>18 the court reporter for identification as</p> <p>19 Plaintiff's Exhibit 27.)</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q. Why are you sending this to Frank and</p> <p>22 Nancy Avellino?</p> <p>23 A. Don't know.</p> <p>24 MR. WINDERMAN: Could you share?</p> <p>25 MR. SAMUELS: I thought I passed them</p>

<p style="text-align: right;">Page 134</p> <p>1 around. Sorry.</p> <p>2 BY MR. SAMUELS:</p> <p>3 Q. Why are you sending this to Frank and</p> <p>4 Nancy Avellino?</p> <p>5 A. I have no idea.</p> <p>6 Q. How often were you communicating with</p> <p>7 Frank and Nancy Avellino during 2012 timeframe?</p> <p>8 A. I don't remember communicating to them. I</p> <p>9 don't remember this at all.</p> <p>10 Q. So after Madoff was exposed as a Ponzi</p> <p>11 scheme in 2008.</p> <p>12 A. Yes.</p> <p>13 Q. Did you call Frank Avellino?</p> <p>14 A. Yes.</p> <p>15 Q. What do you recall of that discussion?</p> <p>16 A. I asked him what was going on. I was --</p> <p>17 No, let me even back that up. On the day it</p> <p>18 happened I called Nancy and Frank. Nancy picked up</p> <p>19 the phone. I says, did you hear about Bernie. And</p> <p>20 she says -- This is on the day it happened. She</p> <p>21 said, what are you talking about. I said, you</p> <p>22 better turn on the television. It's all over the</p> <p>23 news. She said, I don't understand what you're</p> <p>24 talking about. I said that Madoff said it's all a</p> <p>25 lie and everything's gone. And she was stunned and</p>	<p style="text-align: right;">Page 136</p> <p>1 Mr. Avellino about how to deal with disgruntled</p> <p>2 investors?</p> <p>3 A. I don't remember.</p> <p>4 Q. Do you recall having any discussions with</p> <p>5 him in terms of how to deal with Bernie Madoff and</p> <p>6 Bernie Madoff's firm?</p> <p>7 A. I'm not -- Could you...</p> <p>8 Q. Yeah. When Bernie Madoff was exposed as a</p> <p>9 Ponzi scheme --</p> <p>10 A. Oh, okay.</p> <p>11 Q. -- did you seek out Mr. Avellino's advice</p> <p>12 in terms with how to deal with the issues S&P and</p> <p>13 P&S were facing in conjunction with the losses</p> <p>14 incurred as a result of Bernie Madoff being a Ponzi</p> <p>15 scheme?</p> <p>16 A. He never gave me advise. I don't remember</p> <p>17 speaking to him about that issue. I think pretty</p> <p>18 much when the ship is sunk, every one finds their</p> <p>19 own raft.</p> <p>20 Q. Okay. How about Mr. Bienes, did you have</p> <p>21 any discussions with him?</p> <p>22 A. No.</p> <p>23 (The referred-to document was marked by</p> <p>24 the court reporter for identification as</p> <p>25 Plaintiff's Exhibit 28.)</p>
<p style="text-align: right;">Page 135</p> <p>1 shocked and she didn't believe me. She said, I know</p> <p>2 you're kidding. Tell me why you're doing this to</p> <p>3 me. And she thought I was kidding. I said, you</p> <p>4 better get Frank.</p> <p>5 So I didn't hear anything for about three,</p> <p>6 four days. Then I finally -- I don't know whether I</p> <p>7 talked to him or not. I remember getting an email</p> <p>8 or something and he says, I'm not sure what's going</p> <p>9 on. I'm very confused by the events. I don't know</p> <p>10 whether I talked to him, I can't remember. That was</p> <p>11 a real rough period of time, so...</p> <p>12 Q. And did he get back to you?</p> <p>13 A. He said specifically one way or the other,</p> <p>14 this is a very confusing period of time. I don't</p> <p>15 know how I got that, but that sticks out in my mind</p> <p>16 as a response somehow.</p> <p>17 Q. And did you hire a lawyer?</p> <p>18 A. Yes, I hired a lawyer.</p> <p>19 Q. Chad Pugatch?</p> <p>20 A. Correct.</p> <p>21 Q. And did you tell Frank Avellino that you</p> <p>22 hired a lawyer?</p> <p>23 A. I have no idea. That period of time was a</p> <p>24 blur.</p> <p>25 Q. Do you recall having discussions with</p>	<p style="text-align: right;">Page 137</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. Have you ever seen this document, Exhibit</p> <p>3 28?</p> <p>4 A. I haven't seen most of these documents</p> <p>5 you're showing me. No, I haven't.</p> <p>6 Q. Okay.</p> <p>7 A. I don't even know what it is.</p> <p>8 Q. Mr. Carone apparently -- I'm sorry. Frank</p> <p>9 Avellino appears to be telling Matt, "I've been</p> <p>10 informed by P&S that legal counsel has been</p> <p>11 retained. All I can do at this time is wait for</p> <p>12 information from the authorities as this goes on."</p> <p>13 Did you, as of Christmas in 2008, advise the</p> <p>14 investors that P&S had retained counsel?</p> <p>15 A. I don't know. Chad can tell you.</p> <p>16 Q. So how did Frank Avellino know that P&S</p> <p>17 had retained legal counsel?</p> <p>18 A. I have no idea. You need to ask him.</p> <p>19 Q. Well, do you recall telling him?</p> <p>20 A. No, I don't.</p> <p>21 Q. Do you know if Chad Pugatch told Frank</p> <p>22 Avellino?</p> <p>23 A. You have to ask Chad.</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 138</p> <p>1 (The referred-to document was marked by</p> <p>2 the court reporter for identification as</p> <p>3 Plaintiff's Exhibit 29.)</p> <p>4 A. God, can these be smaller or like what.</p> <p>5 Can you read that, because I can't read it?</p> <p>6 BY MR. SAMUELS:</p> <p>7 Q. I'll read it. It appears to be from Frank</p> <p>8 Avellino to Matt Carone. "Hi, Matt. I received</p> <p>9 your phone message. Sorry I could not get back to</p> <p>10 you by phone. We have been on the telephone</p> <p>11 constantly from 7:00 a.m. this morning. We know, as</p> <p>12 you may already from Michael Sullivan, that the SEC</p> <p>13 is involved and the court has appointed a Receiver</p> <p>14 to seize all assets and that a big number of</p> <p>15 auditors has been going through the records as of</p> <p>16 last night Thursday. They've been working</p> <p>17 throughout the night and will continue to do so to</p> <p>18 determine how much is in assets. If I hear anything</p> <p>19 I will let you know. Frank."</p> <p>20 So it mentions that Mr. Carone may have</p> <p>21 already heard from you. Were you -- During this</p> <p>22 timeframe, were you communicating with your</p> <p>23 investors in December 2008 about what was happening</p> <p>24 in New York and what you were doing to help</p> <p>25 alleviate the situation?</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Or Michael Sullivan?</p> <p>2 A. Nope. We shared business back and forth.</p> <p>3 Q. Oh, okay.</p> <p>4 (The referred-to document was marked by</p> <p>5 the court reporter for identification as</p> <p>6 Plaintiff's Exhibit 30.)</p> <p>7 BY MR. SAMUELS:</p> <p>8 Q. My question is, why are you communicating</p> <p>9 with Frank and Nancy Avellino about Madoff during</p> <p>10 this timeframe?</p> <p>11 A. Is it against the law?</p> <p>12 MR. WINDERMAN: Just do you have a reason?</p> <p>13 A. No.</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q. You can't answer a question with a</p> <p>16 question.</p> <p>17 MR. WINDERMAN: He answered it with the</p> <p>18 word no.</p> <p>19 A. I don't know.</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q. And then there's one email here from you</p> <p>22 to Francis Sheehy.</p> <p>23 A. Uh-huh.</p> <p>24 Q. "You're the best. Frank is going through</p> <p>25 hell right now with Madoff."</p>
<p style="text-align: right;">Page 139</p> <p>1 A. I was in my -- I had knee replacement</p> <p>2 surgery, but my office was open the entire time. I</p> <p>3 stayed there late every night to take every call,</p> <p>4 and when people called I told them everything that I</p> <p>5 knew and everything that I could. At some point in</p> <p>6 time, I went ahead and called Chad thinking this</p> <p>7 could be something in bankruptcy at some point in</p> <p>8 time. So that's what I did. I answered every</p> <p>9 question that came in. People came in to talk to</p> <p>10 me. I did every possible thing I could do to help</p> <p>11 them.</p> <p>12 Q. And did Frank Avellino assist you or P&S</p> <p>13 and S&P in talking to, working with some of the</p> <p>14 investors who were concerned?</p> <p>15 A. He did nothing.</p> <p>16 Q. And do you know if he was talking to the</p> <p>17 investors that he referred into the partnership?</p> <p>18 A. You have to ask him that question.</p> <p>19 Q. You don't know?</p> <p>20 A. I have no idea.</p> <p>21 Q. Who is Francis Sheehy?</p> <p>22 A. Tax attorney.</p> <p>23 Q. Is she a tax attorney on behalf of S&P or</p> <p>24 P&S?</p> <p>25 A. Nope.</p>	<p style="text-align: right;">Page 141</p> <p>1 A. Uh-huh.</p> <p>2 Q. Have you been in somewhat frequent</p> <p>3 communication with Frank Avellino to understand what</p> <p>4 he was going through concerning Madoff?</p> <p>5 A. I knew what he was going through, because</p> <p>6 I went through what he was going through with</p> <p>7 Madoff. I knew exactly what he was going through.</p> <p>8 Q. And have you been commiserating and</p> <p>9 discussing it with him during that timeframe?</p> <p>10 A. At different points in time very few times</p> <p>11 I spoke with him, yes. This is a hell to go</p> <p>12 through.</p> <p>13 (The referred-to document was marked by</p> <p>14 the court reporter for identification as</p> <p>15 Plaintiff's Exhibit 31.)</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q. Okay. Here's email July of 2008. It</p> <p>18 looks like you're sending report - second quarter</p> <p>19 reports to Frank Avellino, or Susan is on your</p> <p>20 behalf; is that correct?</p> <p>21 MR. WINDERMAN: Form. Document speaks for</p> <p>22 itself.</p> <p>23 BY MR. SAMUELS:</p> <p>24 Q. Can you answer the question?</p> <p>25 A. The document speaks for itself.</p>

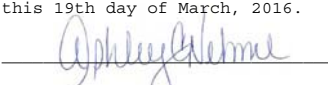

<p style="text-align: right;">Page 142</p> <p>1 Q. Well, I understand. Every document speaks 2 for itself. I get that. I'm asking questions about 3 it.</p> <p>4 Who's Susan?</p> <p>5 A. That would be Susan Moss.</p> <p>6 Q. Okay. And did you or Susan send quarterly 7 reports to Frank Avellino for P&S and S&P?</p> <p>8 MR. WINDERMAN: Objection. Asked and 9 answered.</p> <p>10 A. I did answer the question before.</p> <p>11 BY MR. SAMUELS:</p> <p>12 Q. You can answer it?</p> <p>13 A. Am I allowed to answer the question?</p> <p>14 MR. WINDERMAN: Yeah, answer the question 15 for the 15th time.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q. Did you or Susan send quarterly reports to 18 Frank Avellino during the time S&P and P&S were in 19 existence?</p> <p>20 A. At different times, yes.</p> <p>21 (The referred-to document was marked by 22 the court reporter for identification as 23 Plaintiff's Exhibit 32.)</p> <p>24 BY MR. SAMUELS:</p> <p>25 Q. Okay. The bottom of the first page is an</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. This is an email from you to Frank and 3 Nancy Avellino about 1099s from back years. Do you 4 know why you are checking for 1099s from back years?</p> <p>5 A. I have no idea.</p> <p>6 (The referred-to document was marked by 7 the court reporter for identification as 8 Plaintiff's Exhibit 34.)</p> <p>9 BY MR. SAMUELS:</p> <p>10 Q. Okay. So this appears to be an email from 11 Erin Arvedlund to Chad Pugatch, your counsel, 12 correct?</p> <p>13 MR. WINDERMAN: It's the other way around.</p> <p>14 MR. SAMUELS: The one on the bottom.</p> <p>15 MR. WINDERMAN: Oh, the one on the bottom.</p> <p>16 MR. SAMUELS: Yes.</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. And Erin appears to be someone writing a 19 book about Barnard Madoff and was hoping to speak to 20 some attorneys representing investors. Were you 21 made aware of this at all?</p> <p>22 A. I don't remember any of this.</p> <p>23 Q. So Mr. Pugatch did not share with you his 24 response back about your firm representing the 25 partnerships of which you were a managing partner</p>
<p style="text-align: right;">Page 143</p> <p>1 email from Marv Gutter to you. Who is Mr. Gutter?</p> <p>2 A. Marvin used to be a brilliant tax 3 attorney.</p> <p>4 Q. And where is he now?</p> <p>5 A. Heaven or hell.</p> <p>6 Q. Okay. He passed away.</p> <p>7 MR. WINDERMAN: No purgatory?</p> <p>8 A. No.</p> <p>9 BY MR. SAMUELS:</p> <p>10 Q. And he appears to be sending you an email 11 concerning the IRS getting a lot of calls from 12 taxpayers and how to treat the Madoff losses. What 13 compelled you to forward this to Frank and Nancy 14 Avellino in 2009?</p> <p>15 A. Can't tell you. Don't know.</p> <p>16 Q. You don't know why you did that?</p> <p>17 A. No.</p> <p>18 Q. Did you discuss with Nancy or Frank 19 Avellino the tax treatment of losses in Madoff?</p> <p>20 A. No. If I found a compelling answer or 21 reason, I found something, I'd shoot them an email. 22 I think every one was looking for information.</p> <p>23 (The referred-to document was marked by 24 the court reporter for identification as 25 Plaintiff's Exhibit 33.)</p>	<p style="text-align: right;">Page 145</p> <p>1 and you've done nothing wrong?</p> <p>2 A. I don't know whether he shared it or 3 whether he did not share this. I don't remember 4 seeing this. I can't affirm or deny that statement.</p> <p>5 (The referred-to document was marked by 6 the court reporter for identification as 7 Plaintiff's Exhibit 35.)</p> <p>8 BY MR. SAMUELS:</p> <p>9 Q. Okay. So 35 is email from you to Frank 10 and Nancy Avellino. We've seen lots of these. I 11 just want to ask you generally, why were you 12 compelled during that 2009 timeframe to send so many 13 emails to Frank and Nancy Avellino?</p> <p>14 MR. WINDERMAN: Object to form. There's 15 lack of predicate.</p> <p>16 BY MR. SAMUELS:</p> <p>17 Q. Did you send this to Frank and Nancy 18 Avellino?</p> <p>19 A. I have no idea.</p> <p>20 Q. Is that your email address?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So can you tell me why it is that 23 you were sending emails to Frank and Nancy Avellino 24 with some frequency in 2009?</p> <p>25 MR. WINDERMAN: Same objection as to the</p>

<p style="text-align: right;">Page 146</p> <p>1 term frequency.</p> <p>2 BY MR. SAMUELS:</p> <p>3 Q. After Madoff collapsed?</p> <p>4 A. I can't tell you the reason.</p> <p>5 Q. You don't know why?</p> <p>6 A. I have no idea. This happened what, how</p> <p>7 many years ago. I don't know.</p> <p>8 Q. 2009 would be about six years ago.</p> <p>9 A. Yeah, I don't know.</p> <p>10 Q. You don't know why?</p> <p>11 A. No.</p> <p>12 MR. WINDERMAN: Seven. I just want to get</p> <p>13 my contribution in to the world of mathematics.</p> <p>14 (The referred-to document was marked by</p> <p>15 the court reporter for identification as</p> <p>16 Plaintiff's Exhibit 36.)</p> <p>17 BY MR. SAMUELS:</p> <p>18 Q. Here's on email from you to Fernando</p> <p>19 Esteban. Is that an investor?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And was he an investor brought in</p> <p>22 through Frank Avellino?</p> <p>23 A. Correct.</p> <p>24 Q. And at the bottom email, Dear Michael D.</p> <p>25 Sullivan. This is in 2009?</p>	<p style="text-align: right;">Page 148</p> <p>1 BY MR. SAMUELS:</p> <p>2 Q. You don't know who Fred is?</p> <p>3 A. I know one Fred. I have no idea who this</p> <p>4 Fred is.</p> <p>5 Q. Okay. Who's Steve Millsaps?</p> <p>6 A. He's a person I know through church.</p> <p>7 (The referred-to document was marked by</p> <p>8 the court reporter for identification as</p> <p>9 Plaintiff's Exhibit 38.)</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. Who's Cindy Wallick?</p> <p>12 A. She's a partner in the partnerships.</p> <p>13 Q. How was she brought in?</p> <p>14 A. Through me.</p> <p>15 Q. And she states, "I remember when my son</p> <p>16 was in first grade at Christ Church, and you and</p> <p>17 Greg and I came and met Avellino in your - at your</p> <p>18 office." Do you recall that meeting?</p> <p>19 A. Yes.</p> <p>20 Q. And that would have been at your office on</p> <p>21 Federal Highway?</p> <p>22 A. No.</p> <p>23 Q. Which office would that have been?</p> <p>24 A. I don't know, but it wasn't - I don't</p> <p>25 believe it was then.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Uh-huh.</p> <p>2 Q. It says normally it's something that he'd</p> <p>3 be in touch with Frank Avellino about?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Did people who Frank Avellino brought into</p> <p>6 the partnership, do you know, frequently communicate</p> <p>7 with Frank Avellino about partnership matters?</p> <p>8 A. You'd have to ask him. I do not know.</p> <p>9 Q. Do not know.</p> <p>10 A. I wouldn't know.</p> <p>11 (The referred-to document was marked by</p> <p>12 the court reporter for identification as</p> <p>13 Plaintiff's Exhibit 37.)</p> <p>14 BY MR. SAMUELS:</p> <p>15 Q. Okay. Here's some more emails between you</p> <p>16 and Frank Avellino?</p> <p>17 A. Right.</p> <p>18 Q. Who is Fred?</p> <p>19 A. Fred? Who -- Where is Fred at?</p> <p>20 Q. It says, "Did you go to Fred's funeral?"</p> <p>21 In the middle. Do you know who Fred refers to?</p> <p>22 MR. WINDERMAN: Is that really relevant to</p> <p>23 this case, or even remotely irrelevant who's</p> <p>24 funeral he went to?</p> <p>25 A. I don't know who I'm referring to.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. "My heart told me he was a scumbag from</p> <p>2 the beginning, but we followed the church leader."</p> <p>3 A. Uh-huh.</p> <p>4 Q. Do you know which church leader she's</p> <p>5 referring to?</p> <p>6 A. You have to ask her, I don't know.</p> <p>7 Q. "An expensive lesson in life. You have no</p> <p>8 idea how much you have hurt me and my family." Do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you ever discuss with her any</p> <p>12 possibility of bringing a claim against Avellino?</p> <p>13 A. I don't remember.</p> <p>14 Q. Do you recall discussing with Brett</p> <p>15 Stepleton the possibility - or anyone from the Stacy</p> <p>16 Festus Group, about possibly bringing a claim</p> <p>17 against Avellino and Bienes?</p> <p>18 A. Yes.</p> <p>19 MR. WINDERMAN: Form. Asked and answered.</p> <p>20 BY MR. SAMUELS:</p> <p>21 Q. Did you advise them you didn't believe</p> <p>22 there was any grounds to do so?</p> <p>23 MR. WINDERMAN: Form. Asked and answered.</p> <p>24 A. I don't remember what my discussion</p> <p>25 specifically was with them. We had that meeting</p>

<p style="text-align: right;">Page 150</p> <p>1 that I told you with Doug Stepleton. I wasn't</p> <p>2 planning on suing anybody.</p> <p>3 Q. And you let them know that?</p> <p>4 A. At that meeting, yes, I did.</p> <p>5 Q. And did you let anyone else in the</p> <p>6 partnership know that you were not planning on suing</p> <p>7 anybody?</p> <p>8 A. I don't remember. A lot of people called</p> <p>9 me. There were a lot of discussions. I don't</p> <p>10 remember what I called specific people.</p> <p>11 Q. Do you recall anybody else amongst the</p> <p>12 partners interested in possibly bringing a claim</p> <p>13 against Avellino and Bienes?</p> <p>14 A. There was a Festus Stacy group of people.</p> <p>15 Q. Right.</p> <p>16 A. There were different people in that group.</p> <p>17 What they shared I do not know. You'll have to ask</p> <p>18 them.</p> <p>19 Q. But do you recall telling anyone other</p> <p>20 than - other than --</p> <p>21 A. Festus Stacy.</p> <p>22 Q. -- other than Festus Stacy that you would</p> <p>23 not be bringing a lawsuit against Avellino, Bienes,</p> <p>24 or anyone else?</p> <p>25 MR. WINDERMAN: Form. Asked and answered.</p>	<p style="text-align: right;">Page 152</p> <p>1 A. That's hard to say. So very few. Maybe a</p> <p>2 couple.</p> <p>3 Q. Do you remember who?</p> <p>4 A. No, I don't. Cindy, but that wasn't -</p> <p>5 that was a long time ago. It may not even be with</p> <p>6 S&P, P&S. It's hard to say, maybe two. I can't</p> <p>7 even remember. Like I said, that's 18 years ago.</p> <p>8 Three, I don't know.</p> <p>9 Q. Do you know -- Did you pay -- When you</p> <p>10 were paying yourself management fees, do you know if</p> <p>11 you paid it from realized gains, unrealized gains?</p> <p>12 A. I don't remember.</p> <p>13 Q. It was just however it showed up on the</p> <p>14 Madoff statements?</p> <p>15 A. Yeah.</p> <p>16 MR. SAMUELS: We are going to take a</p> <p>17 little bit of break. Let me get organized for</p> <p>18 a moment.</p> <p>19 MR. WINDERMAN: How much longer?</p> <p>20 MR. SAMUELS: I don't see it going past</p> <p>21 3:00.</p> <p>22 MR. WINDERMAN: I need to be in my office</p> <p>23 at 3:00 o'clock. I'm leaving at 2:30.</p> <p>24 MR. SAMUELS: You can do whatever you</p> <p>25 want. Your motion for protective order was</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I do not remember.</p> <p>2 (The referred-to document was marked by</p> <p>3 the court reporter for identification as</p> <p>4 Plaintiff's Exhibit 39.)</p> <p>5 BY MR. SAMUELS:</p> <p>6 Q. Here's an email from you to Frank and</p> <p>7 Nancy Avellino concerning S&P Associate Settlement</p> <p>8 Agreements. Do you see that?</p> <p>9 A. No.</p> <p>10 Q. Look at -- Okay. If you look at the first</p> <p>11 page from Michael Sullivan to Frank and Nancy</p> <p>12 Avellino?</p> <p>13 A. Yes.</p> <p>14 Q. S&P settlements. If Frank Avellino was</p> <p>15 not a partner in S&P or P&S, why were you sending</p> <p>16 him this news?</p> <p>17 A. He was a friend and he had similar</p> <p>18 situation that I did. That's from Becker Poliakoff.</p> <p>19 Q. Was it fair to say when you had</p> <p>20 information about what was going on you thought he</p> <p>21 might be interested and you would forward it to him?</p> <p>22 A. At times it's fair to say, yes.</p> <p>23 Q. How many investors did you meet with</p> <p>24 before they invested where either Avellino or Bienes</p> <p>25 were at the meeting?</p>	<p style="text-align: right;">Page 153</p> <p>1 denied, meaning you can leave without facing</p> <p>2 the wrath of the Court.</p> <p>3 MR. WINDERMAN: That's not true. Anytime</p> <p>4 during the deposition we can bring a protective</p> <p>5 order. You know that. You know what the rule</p> <p>6 is. I don't need to explain that to you. It's</p> <p>7 become harassment, at this point.</p> <p>8 (A recess was taken, after which the</p> <p>9 following proceedings were held:)</p> <p>10 BY MR. SAMUELS:</p> <p>11 Q. Okay. Mr. Sullivan, where did S&P get the</p> <p>12 money from to use for it's own purposes? In other</p> <p>13 words, did the money come from Madoff, did it come</p> <p>14 from investors, you know, to pay it's bills and</p> <p>15 conducted business?</p> <p>16 A. From the partnerships.</p> <p>17 Q. From the partnerships. Where did the</p> <p>18 partnerships get that money from?</p> <p>19 A. From the investors.</p> <p>20 Q. From the investors. Okay.</p> <p>21 Have you spoken to Thomas Avellino since</p> <p>22 Madoff Ponzi scheme became public in December of</p> <p>23 2008?</p> <p>24 A. I did.</p> <p>25 Q. And what have you discussed with him?</p>

<p style="text-align: right;">Page 154</p> <p>1 A. He has similar business. I asked him how 2 he was going. He had some mental depressions, and I 3 think he lost his son or daughter during that time. 4 So I was helping him through some emotional issues 5 he was having. 6 Q. Are you still in touch with him? 7 A. I haven't spoken to him in ages. 8 Q. Have you heard of a company called Sun Cap 9 Advisers? 10 A. I believe that was his company, 11 Mr. Avellino. Thomas Avellino. 12 Q. Had you done any business with Sun Cap 13 Advisers? 14 A. No. 15 Q. Okay. Did you introduce Thomas Avellino 16 to Helen Chaitman? 17 A. Her name came up. I don't know how the 18 introduction was made. Helen was on CNN, so I have 19 no idea. 20 Q. Her name came up between you and Thomas 21 Avellino? 22 A. Yeah, I don't know how. That could have 23 come up, may have. 24 25</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And that's your email address? 2 A. Yes. 3 Q. Okay. So that would have been received by 4 you on or about that date? 5 A. That's what it appears. 6 Q. Next we have email from you at 7 mdassociates@bellsouth.net. That's your email 8 address? 9 A. Yes, that's what it appears. 10 Q. Would you have sent this to Frank and 11 Nancy Avellino on or about February 24th, 2009? 12 A. That's what it appears. 13 Q. Now, when you say that's what it appears, 14 you have no reason to dispute that's what happened 15 on these documents? 16 A. I can't tell you. I don't remember 17 sending any of this information. 18 Q. But this is your email address? 19 A. Absolutely. 20 Q. Okay. And so you have no reason to 21 dispute these were actually sent, right, or 22 received? 23 A. I can't tell you. That's what it appears. 24 Q. How about the next one, Michael Sullivan 25 to Frank and Nancy Avellino. Third Madoff outline.</p>
<p style="text-align: right;">Page 155</p> <p>1 (The referred-to document was marked by 2 the court reporter for identification as 3 Plaintiff's Exhibit 40.) 4 BY MR. SAMUELS: 5 Q. So I'm going to ask you to identify these 6 documents. So the first document on top would be 7 Bates -- First document on top would be - can you 8 identify that as an email from you and Frank and 9 Nancy Avellino? 10 A. That's what it appears to be. 11 Q. And that's your email address? 12 A. Yes. 13 Q. And that's Frank and Nancy Avellino's 14 email address? 15 A. Correct. 16 Q. That would have been sent on or about 17 Tuesday, April 5th, 2011? 18 A. That's what it appears on the document. 19 Q. The next document is Document 202. It 20 appears to be an email from Frank, Nancy Avellino to 21 you, correct? 22 A. That's what it appears. 23 Q. And that would have been on or about 24 Monday March 30, 2009? 25 A. That's what it appears.</p>	<p style="text-align: right;">Page 157</p> <p>1 Do you see that? 2 A. Yes, I do. 3 Q. Is that from your email address to Frank 4 and Nancy Avellino? 5 A. It is. That's what it appears. 6 Q. And was that sent on or about 7 February 24th, 2009? 8 A. That's what it appears. 9 Q. Next email from Michael Sullivan to Frank 10 and Nancy Avellino. Do you see that? 11 A. I do. 12 Q. And was that sent on or about March 26th, 13 2012? 14 A. That's what it appears. 15 Q. Next email is from Michael Sullivan dated 16 April 4th, 2011 Frank and Nancy Avellino. Do you 17 see that? 18 A. I do. 19 Q. And this email from you was sent on or 20 about Monday, April 4th, 2011? 21 A. That's what it appears. 22 Q. Next is email dated - numbered 7591. 23 Email from you to Frank and Nancy Avellino, Monday, 24 March 9th, 2009? 25 A. Uh-huh.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. And this indicates it was sent by you to</p> <p>2 Frank and Nancy Avellino on or about March 9th,</p> <p>3 2009, correct?</p> <p>4 A. That's what it appears.</p> <p>5 Q. The next document is from Michael</p> <p>6 Sullivan. It's numbered 7627 and it's - would you</p> <p>7 agree this is an email sent from you to Frank</p> <p>8 Avellino on or about Wednesday, February 24th, 2010?</p> <p>9 A. That's what it appears.</p> <p>10 Q. Next email numbered 7710. Would you agree</p> <p>11 that's an email sent from you to Frank and Nancy</p> <p>12 Avellino on or about Tuesday, February 24th, 2009?</p> <p>13 A. That's what it appears.</p> <p>14 Q. Next email number 7627 from Michael</p> <p>15 Sullivan to Frank Avellino. Would you agree that</p> <p>16 was sent on or about February 24th, 2010?</p> <p>17 A. Same answer as before.</p> <p>18 Q. Okay. And next is an email from Michael</p> <p>19 Sullivan to Frank and Nancy Avellino. Would you</p> <p>20 agree that was sent on or about May 11th, 2011?</p> <p>21 A. Same answer as before.</p> <p>22 Q. Well, this says it's from Michael D.</p> <p>23 Sullivan Fresh Start Tax, LLC. That would be you,</p> <p>24 right?</p> <p>25 A. That's what it appears.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Pursuant to settlement agreement in this</p> <p>2 case, did you turnover all of your email documents?</p> <p>3 A. You'd have to ask the company. They</p> <p>4 cloned my computer. You should know that.</p> <p>5 Q. Well, I know what I know and I'm just</p> <p>6 asking you.</p> <p>7 A. My computer was cloned, so you have to ask</p> <p>8 the company.</p> <p>9 MR. SAMUELS: Okay. I have no further</p> <p>10 questions.</p> <p>11 MR. WOODFIELD: Just a couple questions.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. WOODFIELD:</p> <p>14 Q. All of the emails that you were shown</p> <p>15 today were from your email address. They would have</p> <p>16 all been on the computer or computers or other</p> <p>17 electronic devices of yours that were cloned by</p> <p>18 Plaintiff's counsel?</p> <p>19 A. That's correct.</p> <p>20 Q. And that is true even with regard to the</p> <p>21 emails that were identified on Exhibit 1. And just</p> <p>22 for your recollection, Exhibit 1 is a privilege log</p> <p>23 we filed in this case. Email communications some of</p> <p>24 this you were asked questions before between you and</p> <p>25 Frank Avellino and we withheld those. But in any</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. All of these documents have a Bates label</p> <p>2 on the bottom starting with DIDSullivan. Do you see</p> <p>3 that?</p> <p>4 A. Has a what?</p> <p>5 MR. WINDERMAN: Bates.</p> <p>6 BY MR. SAMUELS:</p> <p>7 Q. If you look at the bottom, Bates label</p> <p>8 DIDSullivan?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And so if the DIDSullivan documents</p> <p>11 were obtained from your computer using the various</p> <p>12 email addresses here, you would agree that these</p> <p>13 emails were emails sent or received by you as</p> <p>14 indicated?</p> <p>15 A. I have no idea. I don't know what a Bates</p> <p>16 label is. I don't know how you obtained them.</p> <p>17 They're here. This is what it appears. I can't</p> <p>18 tell you. I have no idea how you got these.</p> <p>19 Q. Okay. Sully@freshstarttax.com is your</p> <p>20 email address?</p> <p>21 A. We already said that, yes.</p> <p>22 Q. Sullivan4I --</p> <p>23 A. -- rsmatters, correct.</p> <p>24 Q. MDassociates@bellsouth.net?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 161</p> <p>1 event, those would have been on your computer,</p> <p>2 correct?</p> <p>3 A. Everything was on my computer.</p> <p>4 Q. So they were all available to Plaintiff's</p> <p>5 counsel?</p> <p>6 A. And my telephone, correct.</p> <p>7 Q. In preparation for the deposition today,</p> <p>8 did you review any documents?</p> <p>9 A. None.</p> <p>10 Q. Did you --</p> <p>11 A. Oh, I'm sorry. I did.</p> <p>12 Q. Did you ever have occasion to obtain the</p> <p>13 statement that you gave to Plaintiff's counsel on</p> <p>14 September 10, 2014?</p> <p>15 A. I'm not sure. Once again, my memory.</p> <p>16 What happened on that date?</p> <p>17 Q. Aside from the date, you gave a statement</p> <p>18 under oath to Plaintiff's counsel, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And did there come a time you were</p> <p>21 provided a copy of that?</p> <p>22 A. Yes, Friday.</p> <p>23 Q. Just this past Friday?</p> <p>24 A. Just this Friday.</p> <p>25 Q. In connection with your deposition today,</p>

<p style="text-align: right;">Page 162</p> <p>1 did you have occasion to review that?</p> <p>2 A. Yes. I reviewed some of it, yes.</p> <p>3 MR. WOODFIELD: I, again, reiterate my</p> <p>4 demand for production of that statement, and</p> <p>5 continue the deposition until the Court has a</p> <p>6 chance to rule on it. I don't have any further</p> <p>7 questions.</p> <p>8 MR. WINDERMAN: And I'll reserve my</p> <p>9 questions to when he's finished.</p> <p>10 MR. SAMUELS: Is he going to read or</p> <p>11 waive?</p> <p>12 MR. WINDERMAN: It's not finished yet. If</p> <p>13 you order it and want it partially done, we'll</p> <p>14 make our decision then.</p> <p>15 MR. SAMUELS: Why is it not finished?</p> <p>16 MR. WOODFIELD: I continued it.</p> <p>17 MR. WINDERMAN: I'm going to wait until</p> <p>18 he's done to ask my questions.</p> <p>19 (Thereupon, the proceedings adjourned at</p> <p>20 2:28 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 164</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>STATE OF FLORIDA</p> <p>COUNTY OF BROWARD</p> <p>I, ASHLEY C. NEHME, Florida Professional</p> <p>Reporter, do hereby certify that I was authorized</p> <p>to and did stenographically report the foregoing</p> <p>deposition of MICHAEL SULLIVAN; that a review of</p> <p>the transcript was requested; and that the</p> <p>transcript is a true record of my stenographic</p> <p>notes.</p> <p>I FURTHER CERTIFY that I am not a</p> <p>relative, employee, attorney, or counsel of any</p> <p>of the parties, nor am I a relative or employee</p> <p>of any of the parties' attorneys or counsel</p> <p>connected with the action, nor am I financially</p> <p>interested in the action.</p> <p>Dated this 19th day of March, 2016.</p> <p style="text-align: center;"></p> <p style="text-align: center;">ASHLEY C. NEHME, FPR</p>
<p style="text-align: right;">Page 163</p> <p style="text-align: center;">CERTIFICATE OF OATH</p> <p>STATE OF FLORIDA</p> <p>COUNTY OF BROWARD</p> <p>I, the undersigned authority, certify</p> <p>that MICHAEL SULLIVAN personally appeared before</p> <p>me and was duly sworn.</p> <p>WITNESS my hand and official seal this</p> <p>8th day of March, 2016.</p> <p style="text-align: center;"></p> <p style="text-align: center;">ASHLEY C. NEHME, FPR</p> <p style="text-align: center;">Notary Public, State of Florida</p> <p style="text-align: center;">My Commission No. FF899454</p> <p style="text-align: center;">Expires: 11/12/19</p>	<p style="text-align: right;">Page 165</p> <p style="text-align: center;">WITNESS NOTIFICATION LETTER</p> <p>March 19th, 2016</p> <p>HARRY WINDERMAN, P.A.</p> <p>ONE BOCA PLACE</p> <p>2255 Glades Rd., Ste. 218A</p> <p>Boca Raton, FL 33431</p> <p>ATTN: HARRY WINDERMAN, ESQ.</p> <p>Re: P&S ASSOCIATES V. JACOB</p> <p>Case No.: 12-34123(07)</p> <p>U.S. LEGAL SUPPORT JOB NO. 1383893</p> <p>The transcript of the above proceeding is now</p> <p>available for your review.</p> <p>Please call to schedule an appointment between the</p> <p>hours of 9:00 a.m. and 4:00 p.m., Monday through</p> <p>Friday, at a U.S. Legal Support office located</p> <p>nearest you.</p> <p>Please complete your review within a reasonable</p> <p>amount of time.</p> <p>Sincerely,</p> <p>ASHLEY C. NEHME, FPR</p> <p>U.S. Legal Support, Inc.</p> <p>100 N.E. 3rd Ave., Ste. 1050</p> <p>Fort Lauderdale, Florida 33301</p> <p>(954) 463-2933</p> <p>CC via transcript:</p> <p>LEONARD SAMUELS, ESQ.</p> <p>GARY WOODFIELD, ESQ.</p>

