

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR BROWARD COUNTY

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

---

**DEFENDANT MICHAEL BIENES' MOTION FOR FOR A PROTECTIVE  
ORDER AND FOR CONTINUANCE**

Defendant, Michael Bienes ("Bienes"), by and through his undersigned counsel, files this motion, pursuant to Rules 1.280(c) and 1.460, Florida Rules of Civil Procedure for a protective order precluding his deposition from being conducted at this time, which is presently scheduled for March 15, 2017, and to continue the trial which is presently scheduled for the April - June, 2017 time period, upon the grounds that Bienes is too ill to sit for a deposition or to prepare for or attend the trial and in support thereof, states as follows:

1. This action is set for trial on the trial docket commencing April 10, 2017.
2. After six complaints and numerous court rulings, all that remains to be tried is one count of fraudulent transfer against Defendants, Frank Avellino, Bienes and Steven Jacob and an additional claim of negligence against Steven Jacob and Steven F. Jacob, CPA & Associates, Inc.
3. On January 11, 2017, Bienes filed a motion to continue the trial due to his medical condition. Bienes suffers from cancer and it was the opinion of his treating physician,

Dr. Leonard Seigel, that Bienes was not able to assist in or attend the trial of this action which was then scheduled for March 13, 2017.

4. At the hearing on the motion for continuance on January 18, 2017, the Court granted the motion and rolled the trial to the next docket. At the hearing, the Court suggested that Bienes' deposition be conducted to preserve his testimony.

5. On February 21, 2017, Plaintiffs noticed the video deposition of Bienes, scheduling the deposition for March 15, 2017. A copy of the notice is attached as Exhibit "A".

6. Immediately following the hearing on January 18, 2017, undersigned counsel met with Bienes for more than an hour. From my observations and communication with Bienes, it was evident that his memory had seriously eroded and his physical condition was weak. I did not believe he had the ability to sit for a deposition.

7. Accordingly, I requested that Bienes' treating physician, Dr. Leonard Seigel, meet with Bienes and provide an affidavit as to his opinion of Bienes' ability to sit for a deposition or attend a trial in the April – June 2017 time period. A copy of Dr. Seigel's affidavit, sworn to March 3, 2017, is attached hereto as Exhibit "B".

8. Dr. Seigel's opinion is that Bienes is not capable of sitting for his deposition or attending trial as presently scheduled.

9. Due to Bienes' present medical condition he is unable to sign this motion. Undersigned counsel certifies that he has discussed this motion with Bienes who agrees with the request to continue the trial as to him.

10. Co-defendants, Frank Avellino and Steven Jacob, have no objection to continuing the trial.

WHEREFORE, Defendant, Michael Bienes, requests that this Court enter an order granting his motion precluding Plaintiffs from conducting his deposition at this time and continuing the trial.

**HAILE, SHAW & PFAFFENBERGER, P.A.**

*Attorneys for Defendant Bienes*

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

[gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com)

[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)

[syoffee@haileshaw.com](mailto:syoffee@haileshaw.com)

[yvolcy@haileshaw.com](mailto:yvolcy@haileshaw.com)

By: /s/ Gary A. Woodfield  
Gary A. Woodfield, Esq.  
Florida Bar No. 563102

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of March, 2017, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

/s/ Gary A. Woodfield  
Gary A. Woodfield

SERVICE LIST

THOMAS M. MESSANA, ESQ.  
THOMAS ZEICHMAN, ESQ.  
MESSANA, P.A.  
SUITE 1400, 401 EAST LAS OLAS BOULEVARD  
FORT LAUDERDALE, FL 33301  
[tmessana@messana-law.com](mailto:tmessana@messana-law.com)  
[tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)  
*Attorneys for Plaintiffs*

LEONARD K. SAMUELS, ESQ.  
ETHAN MARK, ESQ.  
MICHAEL O. WEISZ, ESQ.  
ZACHARY P. HYMAN, ESQ.  
BERGER SINGERMAN  
350 EAST LAS OLAS BOULEVARD, STE 1000  
FORT LAUDERDALE, FL 33301  
[emark@bergersingerman.com](mailto:emark@bergersingerman.com)  
[lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com)  
[mweisz@bergersingerman.com](mailto:mweisz@bergersingerman.com)  
[zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com)  
[mvega@bergersingerman.com](mailto:mvega@bergersingerman.com)  
[DRT@bergersingerman.com](mailto:DRT@bergersingerman.com)  
*Attorneys for Plaintiff*

PETER G. HERMAN, ESQ.  
PETER G. HERMAN, ESQ.  
THE HERMAN LAW GROUP, P. A.  
1401 E. BROWARD BLVD., STE 206  
FORT LAUDERDALE, FL 33301  
[pgh@thglaw.com](mailto:pgh@thglaw.com)  
*Attorneys for Defendants Steven F. Jacob  
and Steven F. Jacob CPA & Associates, Inc.*

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

CASE NO: 12-034123 (07)

Complex Litigation Unit

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, *et al.*,

Defendants.

**PLAINTIFFS' NOTICE OF TAKING VIDEOTAPED DEPOSITION OF DEFENDANT  
MICHAEL BIENES**

**TO: ALL COUNSEL LISTED ON CERTIFICATE OF SERVICE**

**PLEASE TAKE NOTICE** that the undersigned attorneys will take the videotaped deposition of:

Deponent	Date	Time	Location
MICHAEL BIENES	Wednesday, March 15, 2017	9:30 a.m.	Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000 Fort Lauderdale, Florida 33301

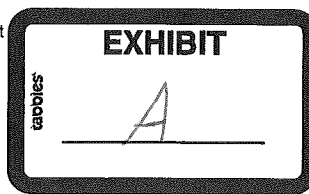
under oral examination, before U.S. Legal Support, Inc., Court Reporter and Videographer, or any other officer authorized by law to take depositions in the State of Florida. This deposition will be recorded stenographically and by video. The oral examination will continue from day to

7675120-1

 **BERGER SINGERMAN**

350 East Las Olas Boulevard, Suite 1000 Fort

phone 954-525-9900 Facsimile 954-523-2872



day until completed. The videotaped deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under the Rules of Court.

Respectfully submitted,

BERGER SINGERMAN LLP  
*Attorneys for Plaintiffs*  
350 East Las Olas Blvd, Suite 1000  
Fort Lauderdale, FL 33301  
Telephone: (954) 525-9900  
Facsimile: (954) 523-2872

By: s/Leonard K. Samuels  
Leonard K. Samuels  
Florida Bar No. 501610  
[lsamuels@bergersingerman.com](mailto:lsamuels@bergersingerman.com)  
Zachary P. Hyman  
Florida Bar No. 98581  
[zhyman@bergersingerman.com](mailto:zhyman@bergersingerman.com)

and

MESSANA, P.A.  
Attorneys for Conservator  
401 East Las Olas Boulevard, Suite 1400  
Ft. Lauderdale, FL 33301  
Telephone: (954) 712-7400  
Facsimile: (954) 712-7401

By: s/Thomas M. Messana  
Thomas M. Messana  
Florida Bar No. 991422  
Thomas G. Zeichman  
Florida Bar No. 99239

cc: U.S. Legal Support, Inc., Court Reporters

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on February 21, 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:

Peter G. Herman, Esq.  
1401 E. Broward Blvd. Suite 206  
Fort Lauderdale, FL 33301  
Tel: 954-315-4874  
Fax: 954-762-2554  
PGH@thlglaw.com  
ServicePGH@thlglaw.com  
*Attorneys for Steven Jacob; Steven F. Jacob  
CPA & Associates, Inc.*

Gary A. Woodfield, Esq.  
Haile, Shaw & Pfaffenberger, P.A.  
660 U.S. Highway One, Third Floor  
North Palm Beach, FL 33408  
Tel.: 561-627-8100  
Fax. 561-622-7603  
gwoodfield@haileshaw.com  
bpetroni@haileshaw.com  
eservices@haileshaw.com  
*Attorneys for Defendant, Frank Avellino*

Thomas M. Messana, Esq.  
Messana, P.A.  
401 East Las Olas Boulevard, Suite 1400  
Fort Lauderdale, FL 33301  
Tel.: 954-712-7400  
Fax: 954-712-7401  
tmessana@messana-law.com  
*Attorneys for Plaintiff*

Jonathan Etra, Esq.  
Christopher Cavallo, Esq.  
Mark F. Raymond, Esq.  
Broad and Cassel  
One Biscayne Tower, 21<sup>st</sup> Floor  
2 South Biscayne Boulevard  
Miami, FL 33131  
Tel.: 305-373-9400  
Fax.: 305-373-9443  
mraymond@broadandcassel.com  
jetra@braodandcassel.com  
ccavallo@broadandcassel.com  
*Attorneys for Defendant, Michael Bienes*

By: s/Leonard K. Samuels  
Leonard K. Samuels





4. I last saw Michael on March 1, 2017. Michael is experiencing the side effects of the chemotherapy, including fatigue, memory loss, lower blood count and pain. Michael has increasing fatigue and general weakness. He is extremely restless and agitated. He cannot sit or concentrate for any length of time. Additionally, Michael suffers from other ailments that cause him pain and for which he receives treatment including narcotics to relieve his pain which also affects his thought process. According to Michael's wife, Michael has periods of confusion and he has lost weight. It is unlikely that Michael's condition will significantly improve until he completes the chemotherapy treatment which is scheduled to conclude in May, 2017. At that time an evaluation can be made to determine whether he has the mental and physical capacity to sit for a deposition and/or attend a trial.

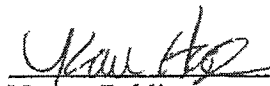
5. Based upon the foregoing, it is my medical opinion that Michael is not presently able to sit for a deposition or assist in the preparation for or attend a trial and will not be able to do so until the conclusion of his chemotherapy treatment.



Dr. Leonard Seigel

STATE OF FLORIDA  
COUNTY OF BROWARD

Subscribed and sworn to before me this 3<sup>rd</sup> day of March, 2017 by Leonard Seigel, who is personally known to me or who produced N/A as identification.



Notary Public

Print Name: Kara Hoag

My Commission Expires: 5/7/2017

