

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

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

Plaintiffs,

vs.

CASE NO.: CACE 12-034123 (07)

MICHAEL D. SULLIVAN, et al.,

Defendants.

**NON-PARTY DIANNE BIENES'S MOTION FOR
PROTECTIVE ORDER REGARDING HER DEPOSITION**

Non-Party Dianne Bienes, wife of Defendant Michael Bienes ("Mrs. Bienes"), pursuant to Rule 1.280 of the Florida Rules of Civil Procedure, hereby moves the Court to enter a protective order regarding her unilaterally scheduled deposition. In support of this motion, Mrs. Bienes states:

1. The undersigned regrets that this motion is being filed so close to the August 18, 2015 deposition at issue, but as the facts and the contents of this motion will demonstrate, Mrs. Bienes and her counsel had every confidence that they would be able to resolve this dispute with Plaintiffs' counsel without involving the Court. Unfortunately, the positions Plaintiffs' attorneys have adopted and their actions with respect to Mrs. Bienes have made that impossible.

2. The parties have agreed that Mrs. Bienes's deposition can be rescheduled to September 25, 2015. The only issue is whether Mrs. Bienes, as Plaintiffs' counsel argue, should be required to appear by Court order and subject to automatic sanctions if some, or any, contingency arises that would necessitate her to reschedule the deposition for another date or

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

time. There is no basis for either requirement, and the Court should enter a protective order to that effect.

3. Despite having been put on notice that the undersigned would accept service of a subpoena for deposition directed to Mrs. Bienes, and despite having been repeatedly advised by the undersigned that Mrs. Bienes and her husband would be out of the country from July 19, 2015 through September 2, 2015, for reasons the undersigned cannot explain, Plaintiffs' counsel had Mrs. Bienes personally served with a subpoena scheduling her deposition for August 18, 2015—a date which falls right in the middle of her absence from this jurisdiction and the country at large.

4. Unfortunately, Plaintiffs' history with respect to Mrs. Bienes' deposition is a long and sordid one. As far back as May 1, 2015, the undersigned advised Plaintiffs' counsel that he would accept service of any subpoena for deposition on Mrs. Bienes' behalf. A copy of the May 1, 2015 email from Jonathan Etra to Steven D. Weber, and others, in which Mr. Etra indicated he would in fact accept service on Mrs. Bienes's behalf, is attached as **Exhibit A**.

5. Despite this, Plaintiffs' counsel had Mrs. Bienes personally served with a subpoena setting her deposition for August 18, 2015.

6. On June 18, 2015, the undersigned again wrote to Plaintiffs' counsel, reminding them that he had advised that he would accept service on Mrs. Bienes's behalf and again pointing out that she would not be available for deposition on August 18, 2015, but offered to have her deposed within the next 30 days (i.e., prior to her July 19 departure from the country). After various correspondence between the parties regarding a meet and confer on this and other discovery issues, on June 23, 2015 the undersigned again wrote to Plaintiffs' counsel reiterating Mrs. Bienes's unavailability for August 18, but also sharing with Plaintiffs' counsel a complete

picture of the date for which Mrs. Bienes would *not be available* for deposition; namely, any time between July 19 and September 2, or between September 15 through September 22. A copy of the email chain containing the foregoing emails is attached as **Exhibit B**.

7. On the very next day, June 24, 2015, the undersigned provided specific dates that Mrs. Bienes *would be available* for her deposition; namely, September 8, 9, 10, 11 and 25. The June 24 email also invited Plaintiffs' counsel to advise which, if any, of those dates they preferred, as well as to request additional dates if none of those were suitable. A copy of the June 24 email from the undersigned to Steven D. Weber and others is attached as **Exhibit C**. Importantly, Plaintiffs' counsel **never responded** to the June 14 email. At this point, it seemed like the parties were at least in agreement about one thing: Mrs. Bienes would not be available for deposition on August 18.

8. Apparently, that assumption was not a safe one, because for the first time since the undersigned's June 24 email to Plaintiffs' counsel, on Tuesday, August 11, 2015, Plaintiffs' counsel, Steven D. Weber, indicated in an email that he "intended to proceed" with Mrs. Bienes's deposition on August 18, despite his knowing full well that Mrs. Bienes was not and would not be available on that date.

9. In an effort to avoid further confusion, the undersigned attorney Shane P. Martin sent Mr. Weber an email on August 11 reminding him, yet again, that Mrs. Bienes was not available for deposition on August 18 and attaching his prior June 23, 2015 email to Mr. Weber in which Mr. Martin had previously reminded Mr. Weber that Mrs. Bienes was not available for deposition on August 18. A copy of Mr. Martin's August 11 email to Mr. Weber attaching a chain including his June 23 email to Mr. Weber is attached as **Exhibit D**.

10. Finally, in one last effort to resolve this matter without involving the Court, the undersigned sent Mr. Weber an email on August 13, which not only outlined the history of the parties' correspondence on this matter, but requested a final meet and confer for the following day. Mr. Weber's reply to that email indicated that the only this matter could be resolved was by Mrs. Bienes and her attorneys' agreeing to an automatic fee award if she missed or requested the rescheduling of a future deposition date, regardless of the reason. As indicated in Mr. Etra's response, this Draconian request had no basis in the law, and certainly was not justified given that, at every turn, Mrs. Bienes and her attorneys have tried to act reasonably and with respect in relation to Plaintiffs' efforts to set her deposition.¹ It is Plaintiffs who have acted unreasonably and so disagreeably, and ultimately it is Plaintiffs whose conduct has necessitated this motion. A copy the emails between the undersigned and Plaintiffs' counsel dated August 13 are attached as **Exhibit E**.

11. Unfortunately, neither Mr. Etra's August 13 email or his subsequent meet and confer with Mr. Weber at 3:00 p.m. on August 14, 2015 was effective to resolve this dispute without involving the Court.

WHEREFORE, Non-Party Mrs. Dianne Bienes respectfully requests that this Court enter a Protective Order prohibiting her deposition, which was unilaterally scheduled for August 18, 2015, from going forward, and granting to Bienes any such other and further relief the Court deems just and proper, including her fees and costs incurred in connection with this motion as provided under Rule 1.380, Florida Rules of Civil Procedure.

Dated this 14th day of August, 2015.

¹ The undersigned's only regret is that a single May 22, 2015 email from Plaintiffs' attorneys went unanswered, which Plaintiffs have seized on as the cause of this entire situation, albeit incorrectly. A copy of that email is attached as **Exhibit F**.

Respectfully submitted,

/s/ Jonathan Etra

Mark F. Raymond (373397)

mraymond@broadandcassel.com

ssmith@broadandcassel.com

Jonathan Etra (686905)

jetra@broadandcassel.com

msoza@broadandcassel.com

Shane P. Martin (056306)

smartin@broadandcassel.com

bfradera@broadandcassel.com

BROAD AND CASSEL

One Biscayne Tower, 21st Floor

2 South Biscayne Boulevard

Miami, Florida 33131

Telephone: 305.373.9400

Facsimile: 305.373.9443

Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 14, 2015, this notice and the aforementioned interrogatories were served via E-mail to: (i) Thomas E. Messana, Esq., Thomas Zeichman, Esq., Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com, tzeichman@messana-law.com) (Counsel for Plaintiffs); (ii) Leonard K. Samuels, Esq., Etan Mark, Esq., Steven D. Weber, Esq., Zachary P. Hyman, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 (lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com, zhyman@bergersingerman.com) (Counsel for Plaintiff Margaret Smith); (iii) Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com) (Counsel for Steven Jacob and Steven F. Jacob CPA and Associates); (iv) Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); (v) Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservice@haileshaw.com) (Counsel for Defendant Frank Avellino); (vi) Harry Winderman, Esq., One Boca Place, 2255 Glades Road, Boca Raton, FL 33431 (harry4334@hotmail.com); (vii) Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 (mtriggs@proskauer.com, athomson@proskauer.com, florida.litigation@proskauer.com); and (viii) Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 (bobhunt@huntgross.com, dklingsberger@huntgross.com, eService@huntgross.com, Sharon@huntgross.com).

/s/ Jonathan Etra

Jonathan Etra

Shane Martin

From: Jonathan Etra
Sent: Friday, May 01, 2015 4:09 PM
To: 'Steven D. Weber'
Cc: 'Leonard K. Samuels'; 'Thomas Zeichman (tzeichman@messana-law.com)'; 'Michelle L. Albrecht'; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; 'Zachary P. Hyman'; 'Thomas M. Messana (tmessana@messana-law.com)'
Subject: RE: S&P, et al. v. Jacob, et al.

Yes.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]
Sent: Friday, May 01, 2015 3:58 PM
To: Jonathan Etra
Cc: Leonard K. Samuels; 'Thomas Zeichman (tzeichman@messana-law.com)'; Michelle L. Albrecht; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'
Subject: RE: S&P, et al. v. Jacob, et al.

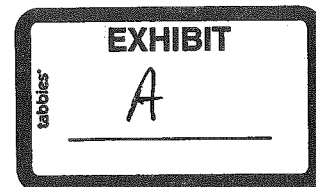
Jonathan,
Will you agree to accept service of the order and subpoena mentioned therein on behalf of Dianne Bienes?
Thank you in advance

From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]
Sent: Friday, May 01, 2015 9:44 AM
To: Steven D. Weber
Cc: Leonard K. Samuels; 'Thomas Zeichman (tzeichman@messana-law.com)'; Michelle L. Albrecht; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'
Subject: RE: S&P, et al. v. Jacob, et al.

I was focused on your Monday deadline to respond to your proposed order.

I am not currently authorized to represent Ms. Bienes regarding this.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com



From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]
Sent: Friday, May 01, 2015 9:41 AM
To: Jonathan Etra
Cc: Leonard K. Samuels; 'Thomas Zeichman (tzeichman@messana-law.com)'; Michelle L. Albrecht; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; Zachary P. Hyman; 'Thomas M. Messana

(tmessana@messana-law.com)'

Subject: RE: S&P, et al. v. Jacob, et al.

Jonathan,

Please give me the courtesy of a response to my question as to whether your firm is representing Dianne Bienes for purposes of the subpoena mentioned in the proposed order and whether your firm is representing Dianne Bienes for purposes of the Subpoena for Deposition of Dianne Bienes.

I am available after 1:45 p.m. today. Please tell me what time you are available today for a call.

Thank you

From: Jonathan Etra [mailto:jetra@broadandcassel.com]

Sent: Friday, May 01, 2015 9:38 AM

To: Steven D. Weber

Cc: Leonard K. Samuels; 'Thomas Zeichman (tzeichman@messana-law.com)'; Michelle L. Albrecht; 'Gary Woodfield (gwoodfield@haileshaw.com)'; Mark Raymond; Shane Martin; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'

Subject: RE: S&P, et al. v. Jacob, et al.

Steve,

1. On the notice of production, you left out that you withdrew one of the requests.
2. On the notice of intent to issue subpoena, this goes way beyond what the Judge said. If you think I am wrong, please call me this afternoon to discuss.

Thanks.

Jonathan Etra

Tel: 305.373.9447

Fax: 305.995.6403

Cell: 305.318.3396

jetra@broadandcassel.com

From: Steven D. Weber [mailto:SWeber@bergersingerman.com]

Sent: Friday, May 01, 2015 9:34 AM

To: Jonathan Etra

Cc: Leonard K. Samuels; Thomas Zeichman (tzeichman@messana-law.com); Michelle L. Albrecht; Gary Woodfield (gwoodfield@haileshaw.com); Mark Raymond; Shane Martin; Zachary P. Hyman; Thomas M. Messana (tmessana@messana-law.com)

Subject: RE: S&P, et al. v. Jacob, et al.

Jonathan,

We have not received any response to the attached proposed order. If we do not hear from you by noon on Monday then we will submit it to the Court.

Additionally, please tell us if your firm is representing Dianne Bienes for purposes of the subpoena mentioned in the proposed order and whether your firm is representing Dianne Bienes for purposes of the attached Subpoena for Deposition of Dianne Bienes.

Thank you

From: Steven D. Weber

Sent: Wednesday, April 29, 2015 6:16 PM

To: Jonathan Etra (jetra@broadandcassel.com)

Cc: Leonard K. Samuels; Thomas Zeichman (tzeichman@messana-law.com); Michelle L. Albrecht; Gary Woodfield (gwoodfield@haileshaw.com)
Subject: S&P, et al. v. Jacob, et al.

Please advise if the attached proposed order is acceptable.



Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131

office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340

email: SWeber@bergersingerman.com

website: www.bergersingerman.com

doing business in Florida resource: www.flabusinesslaw.com



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Jonathan Etra

From: Jonathan Etra
Sent: Tuesday, June 23, 2015 4:59 PM
To: 'Steven D. Weber'; 'Leonard K. Samuels'; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin; 'Thomas Zeichman (tzeichman@messana-law.com)'; 'Zachary P. Hyman'; 'Thomas M. Messana (tmessana@messana-law.com)'; 'ele@trippscott.com'; 'PGH@trippscott.com'
Subject: RE: Dianne Bienes

Steve,

Dianne is not available that on August 18

I don't remember an email in which you proposed August 18. If you have an e-mail in which your suggested August 18, please send it to me.

As I suggested, please give me some proposed dates based on what I have told you. This way is better for you, as I am not trying to box you in one any one or two dates. Give me some dates you want, and I will try to make sure we can do at least one of them.

Re the documents, did you speak with Lenny before you responded? This came up in the calls on the scheduling of Michael Bienes.

Jonathan

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Steven D. Weber [mailto:SWeber@bergersingerman.com]
Sent: Tuesday, June 23, 2015 4:53 PM
To: Jonathan Etra; Leonard K. Samuels; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'; 'ele@trippscott.com'; 'PGH@trippscott.com'
Subject: RE: Dianne Bienes

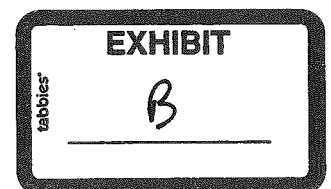
Jonathan,

You can call me at 5pm.

We are maintaining Ms. Bienes' August 18 deposition date until all parties agree on a new a date. Please confirm that Ms. Bienes is available on the dates you are offering (July 19 - September 2 and September 15-22) before we check our own availability. We may not be able to get back to you today with our availability.

Gary was included with you on the e-mail where we proposed the August 18 date for Ms. Bienes' deposition.

Lenny has not been involved in the meet and confers with you regarding document production. We don't know what you are referring to when you say he agreed to produce documents.



Thank you

From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]

Sent: Tuesday, June 23, 2015 3:16 PM

To: Steven D. Weber; Leonard K. Samuels; 'Gary Woodfield'

Cc: Mark Raymond; Shane Martin; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'; 'ele@trippscott.com'; 'PGH@trippscott.com'

Subject: RE: Dianne Bienes

Steve,

Thank you for making yourself available today.

I already have a call scheduled for 4 pm. Can we speak at 5 pm instead?

Generally, the times she is NOT available are July 19 - September 2 and September 15-22. By coincidence that last period seems to cover high holidays.

There may be other days that are problematic ,but this should give you some guidance for our call.

So my suggestions is that when we speak today, let's pick some dates you like based on the above, and we will confirm and nail it down at least one of them after I check with Ms. Bienes and you can check with your client and colleagues as well.

Obviously, Gary will have to concur as well. I know you guys spent a lot of time negotiating dates with Gary re Avellino's deposition. Do you know his availability? That would help. I would ask Gary myself but as you know he is in Europe, so hopefully you have good notes of your previous calls.

By the way, I know you didn't check with me about your proposed August date for Ms. Bienes. Did you check with Gary?

As to our motion to compel, Lenny indicated in of our recent calls that there are some materials you would agree to produce. Please produce them.

Thanks.

Jonathan Etra

Tel: 305.373.9447

Fax: 305.995.6403

Cell: 305.318.3396

jetra@broadandcassel.com

From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]

Sent: Tuesday, June 23, 2015 2:48 PM

To: Jonathan Etra; Leonard K. Samuels; 'Gary Woodfield'

Cc: Mark Raymond; Shane Martin; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman; Thomas M. Messana (tmessana@messana-law.com); ele@trippscott.com; PGH@trippscott.com

Subject: RE: Dianne Bienes

Jonathan,

We are available for a call at 4pm today.

Please propose new dates for Ms. Bienes' deposition. We are maintaining her August 18 deposition date until all parties agree on a new a date.

We are waiting to hear the Conservator's availability for deposition during the week of September 7 and week of September 14. We tentatively propose that Sullivan's deposition occur during that time frame as well, depending on if all parties are available.

Regarding your motion to compel, any hearing on it will need to occur after we serve our response. Your motion took us by surprise because our understanding from our meet and confer was that you were going to further meet and confer with us. We are happy to continue the meet and confer regarding your requests.

From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]
Sent: Friday, June 19, 2015 1:44 PM
To: Leonard K. Samuels; Steven D. Weber; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Also, we need to discuss setting a hearing on our motion to compel, as well as getting dates for the deposition of the conservator.

Thanks.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Jonathan Etra
Sent: Friday, June 19, 2015 10:58 AM
To: 'Leonard K. Samuels'; 'Steven D. Weber'; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Ok, thanks.

Steve, please call me on Monday.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Leonard K. Samuels [<mailto:LSamuels@bergersingerman.com>]
Sent: Friday, June 19, 2015 10:52 AM
To: Jonathan Etra; Steven D. Weber; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Steve Weber will contact you upon his return to the office next week.

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Shane Martin

From: Jonathan Etra
Sent: Wednesday, June 24, 2015 11:18 AM
To: 'Steven D. Weber'; 'Thomas Zeichman (tzeichman@messana-law.com)'
Cc: 'Gary Woodfield'
Subject: FW: P&S

Steve,

We propose Ms. Bienes's deposition take place on any of the following dates: September 8, 9, 10, 11 and 25.

Please let me know which dates you prefer, or if you need more dates.

Thank you

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Jonathan Etra
Sent: Tuesday, June 23, 2015 5:34 PM
To: 'Steven D. Weber'
Cc: 'Thomas Zeichman (tzeichman@messana-law.com)'; Shane Martin; Mark Raymond; 'Leonard K. Samuels'; 'Zachary P. Hyman'; 'Thomas M. Messana (tmessana@messana-law.com)'
Subject: RE: P&S

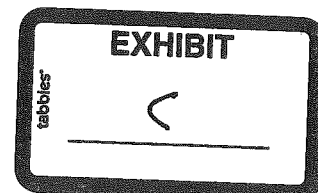
Steve,

As I explained, because Ms. Bienes is not available on the date you chose and because no one agreed to that date, your position is unreasonable and improper. She is not available then. At your insistence, we are coming up with some specific proposed dates of our choosing, although I still think you should give me some direction on what time frame you want within her general area of availability.

I just wrote to you about the motion to compel.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]
Sent: Tuesday, June 23, 2015 5:23 PM
To: Jonathan Etra
Cc: Thomas Zeichman (tzeichman@messana-law.com); Shane Martin; Mark Raymond; Leonard K. Samuels; Zachary P. Hyman; Thomas M. Messana (tmessana@messana-law.com)
Subject: P&S



Jonathan,

Per our call just now, we are maintaining Ms. Bienes' August 18 deposition date until all parties agree on a new a date. You are providing us proposed dates for Dianne Bienes' deposition.

As part of a further meet and confer regarding your document requests, and for our consideration, you will send us an email identifying documents you are requesting by your document requests.

Thank you



BERGER SINGERMAN

Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131

office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340

email: SWeber@bergersingerman.com

website: www.bergersingerman.com

doing business in Florida resource: www.flabusinesslaw.com



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Shane Martin

From: Steven D. Weber <SWeber@bergersingerman.com>
Sent: Tuesday, August 11, 2015 2:43 PM
To: Jonathan Etra
Cc: Thomas Zeichman (tzeichman@messana-law.com); Gary Woodfield (gwoodfield@haileshaw.com); Shane Martin
Subject: Dianne Bienes - Deposition
Attachments: Notice Of Taking Deposition Duces Tecum.pdf

Jonathan,

Per the attached notice, we intend on proceeding with Dianne Bienes' deposition on August 18th. Can you please confirm that she will appear for her deposition then?

Thank you



Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131

office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340

email: SWeber@bergersingerman.com

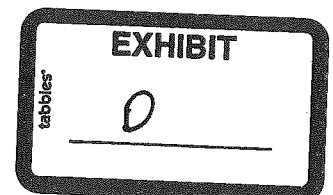
website: www.bergersingerman.com

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Shane Martin

From: Shane Martin
Sent: Tuesday, August 11, 2015 3:03 PM
To: 'Steven D. Weber'; Jonathan Etra
Cc: Thomas Zeichman (tzeichman@messana-law.com); Gary Woodfield (gwoodfield@haileshaw.com); Mark Raymond
Subject: RE: Dianne Bienes - Deposition
Attachments: RE: Dianne Bienes

Steve,

Jonathan is out. However, to save everyone the trouble, I have attached my June 23 email, wherein I clarified that Ms. Bienes would be and is in fact **not** available on 8/18. As far as I know, nothing has changed. So if you have not heard otherwise from Mark or Jonathan (I am in our Ft. Lauderdale office this afternoon), that is still the case.

From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]
Sent: Tuesday, August 11, 2015 2:43 PM
To: Jonathan Etra
Cc: Thomas Zeichman (tzeichman@messana-law.com); Gary Woodfield (gwoodfield@haileshaw.com); Shane Martin
Subject: Dianne Bienes - Deposition

Jonathan,

Per the attached notice, we intend on proceeding with Dianne Bienes' deposition on August 18th. Can you please confirm that she will appear for her deposition then?

Thank you



BERGER SINGERMAN

Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131

office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340

email: SWeber@bergersingerman.com

website: www.bergersingerman.com

doing business in Florida resource: www.flabusinesslaw.com



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Shane Martin

From: Shane Martin
Sent: Tuesday, June 23, 2015 4:55 PM
To: 'Steven D. Weber'; Jonathan Etra; Leonard K. Samuels; 'Gary Woodfield'
Cc: Mark Raymond; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'; 'ele@trippscott.com'; 'PGH@trippscott.com'
Subject: RE: Dianne Bienes

Steve,

Ms. Bienes is NOT available on those date ranges. Please re-read the email. I want to avoid any further confusion on that issue. Thanks.

From: Steven D. Weber [mailto:SWeber@bergersingerman.com]
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Subject: RE: Dianne Bienes

Jonathan,

You can call me at 5pm.

We are maintaining Ms. Bienes' August 18 deposition date until all parties agree on a new a date. Please confirm that Ms. Bienes is available on the dates you are offering (July 19 - September 2 and September 15-22) before we check our own availability. We may not be able to get back to you today with our availability.

Gary was included with you on the e-mail where we proposed the August 18 date for Ms. Bienes' deposition.

Lenny has not been involved in the meet and confers with you regarding document production. We don't know what you are referring to when you say he agreed to produce documents.

Thank you

From: Jonathan Etra [mailto:jetra@broadandcassel.com]
Sent: Tuesday, June 23, 2015 3:16 PM
To: Steven D. Weber; Leonard K. Samuels; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman; 'Thomas M. Messana (tmessana@messana-law.com)'; 'ele@trippscott.com'; 'PGH@trippscott.com'
Subject: RE: Dianne Bienes

Steve,

Thank you for making yourself available today.

I already have a call scheduled for 4 pm. Can we speak at 5 pm instead?

Generally, the times she is NOT available are July 19 - September 2 and September 15-22. By coincidence that last period seems to cover high holidays.

There may be other days that are problematic ,but this should give you some guidance for our call.

So my suggestions is that when we speak today, let's pick some dates you like based on the above, and we will confirm and nail it down at least one of them after I check with Ms. Bienes and you can check with your client and colleagues as well.

Obviously, Gary will have to concur as well. I know you guys spent a lot of time negotiating dates with Gary re Avellino's deposition. Do you know his availability? That would help. I would ask Gary myself but as you know he is in Europe, so hopefully you have good notes of your previous calls.

By the way, I know you didn't check with me about your proposed August date for Ms. Bienes. Did you check with Gary?

As to our motion to compel, Lenny indicated in of our recent calls that there are some materials you would agree to produce. Please produce them.

Thanks.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]
Sent: Tuesday, June 23, 2015 2:48 PM
To: Jonathan Etra; Leonard K. Samuels; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman; Thomas M. Messana (tmessana@messana-law.com); ele@trippscott.com; PGH@trippscott.com
Subject: RE: Dianne Bienes

Jonathan,
We are available for a call at 4pm today.

Please propose new dates for Ms. Bienes' deposition. We are maintaining her August 18 deposition date until all parties agree on a new a date.

We are waiting to hear the Conservator's availability for deposition during the week of September 7 and week of September 14. We tentatively propose that Sullivan's deposition occur during that time frame as well, depending on if all parties are available.

Regarding your motion to compel, any hearing on it will need to occur after we serve our response. Your motion took us by surprise because our understanding from our meet and confer was that you were going to further meet and confer with us. We are happy to continue the meet and confer regarding your requests.

From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]
Sent: Friday, June 19, 2015 1:44 PM
To: Leonard K. Samuels; Steven D. Weber; 'Gary Woodfield'

Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Also, we need to discuss setting a hearing on our motion to compel, as well as getting dates for the deposition of the conservator.

Thanks.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Jonathan Etra
Sent: Friday, June 19, 2015 10:58 AM
To: 'Leonard K. Samuels'; 'Steven D. Weber'; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Ok, thanks.

Steve, please call me on Monday.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Leonard K. Samuels [<mailto:LSamuels@bergersingerman.com>]
Sent: Friday, June 19, 2015 10:52 AM
To: Jonathan Etra; Steven D. Weber; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Steve Weber will contact you upon his return to the office next week.

From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]
Sent: Friday, June 19, 2015 9:57 AM
To: Leonard K. Samuels; Steven D. Weber; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

Please let me know your availability for a call to discuss.

Thank you.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Jonathan Etra
Sent: Thursday, June 18, 2015 3:43 PM
To: 'Leonard K. Samuels'; 'Steven D. Weber'; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
Subject: Dianne Bienes

Guys,

I have written several times that I would accept service on her behalf. Why do you serve her – repeatedly?

Please confirm you will no longer do so.

Dianne is not available on August 18.

You did not ask me for proposed dates. We do have availability within the next 30 days.

Please call me to discuss/meet and confer.

Thanks.

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As to our motion to compel, Lenny indicated in of our recent calls that there are some materials you would agree to produce. Please produce them.

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Cc: Mark Raymond; Shane Martin
Subject: RE: Dianne Bienes

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Cell: 305.318.3396
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To: 'Leonard K. Samuels'; 'Steven D. Weber'; 'Gary Woodfield'
Cc: Mark Raymond; Shane Martin
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From: Jonathan Etra
Sent: Thursday, August 13, 2015 5:19 PM
To: 'Steven D. Weber'; 'Leonard K. Samuels'; 'tzeichman@messana-law.com';
'tmessana@messana-law.com'; 'Zachary P. Hyman'
Cc: Shane Martin; Mark Raymond; 'Gary Woodfield'
Subject: RE: Dianne Bienes Deposition

If you can provide legal support for your position, please send it to me.

We have acted properly, and you have not.

There is no basis for the draconian conditions you seek to insert.

If you don't adjourn the deposition to Sept. 25, we will file our motion and seek costs.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

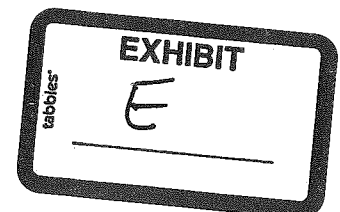
From: Steven D. Weber [<mailto:SWeber@bergersingerman.com>]
Sent: Thursday, August 13, 2015 5:16 PM
To: Jonathan Etra; Leonard K. Samuels; 'tzeichman@messana-law.com'; 'tmessana@messana-law.com'; Zachary P. Hyman
Cc: Shane Martin; Mark Raymond; 'Gary Woodfield'
Subject: RE: Dianne Bienes Deposition

Jonathan,
We will agree to reschedule Ms. Bienes' deposition for 9/25/15 on the condition that you agree to entry of an order setting Ms. Bienes' deposition for 9/25/15 and awarding plaintiffs their costs related to the deposition if Ms. Bienes does not appear. Given the apparent ability to produce Ms. Bienes for deposition on 9/25/15 (and, as of yesterday, all parties' apparent availability for a deposition on that date), we do not see that entry of such an order should be an issue. 9/25/15 does not work for Michael Sullivan's deposition because our client is not available on that date and he has a right to attend that deposition.
Please tell us if you will agree to entry of an order setting Ms. Bienes' deposition for 9/25/15 along the lines referenced above.
Thank you

From: Jonathan Etra [<mailto:jetra@broadandcassel.com>]
Sent: Thursday, August 13, 2015 2:55 PM
To: Steven D. Weber; Leonard K. Samuels; 'tzeichman@messana-law.com'; 'tmessana@messana-law.com'; Zachary P. Hyman
Cc: Shane Martin; Mark Raymond; 'Gary Woodfield'
Subject: Dianne Bienes Deposition

Steve,

I am writing in response to your e-mails from yesterday.



As indicated in the attached e-mails, (1) contrary to your claim that we did not agree to accept service of Ms. Bienes's subpoena, although not required to do so, we did in fact agree to accept service of the subpoena on May 1st; (2) contrary to your claim that we never provided proposed dates for Ms. Bienes deposition when asked to do so, we did in fact provide proposed dates when asked to do so and we offered to provide additional date if those didn't work, back on June 24th – which you have ignored.

Of the five September dates that we proposed back on June 24th, the first four no longer work because you made the decision to proceed with the depositions of Avellino and Bienes that week over proceeding with Ms. Bienes that week. That was your choice, not Ms. Bienes's. We are still available on September 25th for Ms. Bienes's deposition.

Given the obstacles you have raised when Gary tried to schedule Mr. Sullivan's deposition, in which you kept claiming to be unavailable on the dates he offered, if you do not want to depose Ms. Bienes on September 25th, then you need to give me dates that are you available. I assure you we will work in good faith in getting her deposition scheduled as soon as possible once you give me dates.

As you know from numerous e-mails Ms. Bienes is not available on August 18, but has availability in September (before it was early and late September, but now as noted I am not available for this in early September because you chose to proceed with the party depositions then) and October.

Please adjourn the August 18 date over this non-party witness, which we never agreed to in the first place.

If not, given the amount of time that has passed since we offered the dates and your emails yesterday and the day before that you have "decided" to hold the August 18 date that we never agreed to and for which you know Ms. Bienes is not available, -- and let's be honest, you have done nothing to assure that the other parties are available that day -- you have put us in the position where we have no choice now to but file a motion for protective order and seek fees for your having acted so unprofessionally.

If you want to discuss, please give me call.

Jonathan

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Jonathan Etra

From: Steven D. Weber <SWeber@bergersingerman.com>
Sent: Friday, May 22, 2015 5:00 PM
To: Jonathan Etra
Cc: Thomas Zeichman (tzeichman@messana-law.com); Gary Woodfield (gwoodfield@haileshaw.com); PGH@trippscott.com; ele@trippscott.com
Subject: S&P et al. v. Jacob et al.
Attachments: C:\Users\sweber\AppData\Local\Temp\iScrub\Email\1432328391\0.pdf

Jonathan,

Will you accept service on behalf of Dianne Bienes of the attached subpoena? We are happy to work with you and the other parties on a different date for the deposition if there is any objection to it.

Thank you



BERGER SINGERMAN

Steven D. Weber

1450 Brickell Avenue | Suite 1900 | Miami FL 33131

office: (305) 755-9500 | direct: (305) 982-4025 | fax: (305) 714-4340

email: SWeber@bergersingerman.com

website: www.bergersingerman.com

doing business in Florida resource: www.flabusinesslaw.com



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