

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

CASE NO.: 12-034123 (07)

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFFS' MOTION TO REOPEN AND EXTEND DISCOVERY FOR THE
LIMITED PURPOSE TO DEPOSE INCARCERATED, NON-PARTY, ANNETTE
BONGIORNO**

AND

**MOTION FOR LEAVE TO
DEPOSE INCARCERATED, NON-PARTY, ANNETTE BONGIORNO**

P&S Associates, General Partnership (“P&S”), S&P Associates, General Partnership (“S&P”) (S&P and P&S are collectively the “Partnerships”), and Philip J. Von Kahle, as Conservator for P&S and S&P (the “Conservator”, and together with the “Partnerships”, the “Plaintiffs”), pursuant to Fla. R. Civ. P. 1.310, hereby file this motion to reopen and extend discovery for the limited purpose of deposing incarcerated, non-party Annette Bongiorno and motion for leave to depose incarcerated, non-party Annette Bongiorno, and in support state:

1. Discovery in this matter closed on August 12, 2016. The deadline to preserve trial testimony is September 16, 2016.
2. After the close of discovery, Annette Bongiorno, became available for interviews/depositions and agreed to assist the BLMIS Trustee.

3. By this motion, Plaintiffs seek leave to take the deposition of Annette Bongiorno (“Bongiorno”), who is confined in federal prison at FCI Coleman Medium I located at 846 NE 54th Terrace, Sumterville, FL 33521.

4. Pursuant to Fla. R. Civ. P. 1.310(a), “[t]he deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.”

5. The Court should grant leave to take Bongiorno’s deposition because recent events give rise to a need to testify Bongiorno. Specifically, Bongiorno lost an appeal of her criminal sentence in connection with her involvement with Bernard L. Madoff Investment Securities, LLC (“BLMIS”) and has indicated a willingness to cooperate with third parties seeking to recover losses which arose as a result of the BLMIS fraud.

6. Additionally, Plaintiffs believe the deposition of Bongiorno will lead to the production of admissible evidence that is not otherwise available.

7. Plaintiffs’ claims against Defendants Avellino and Bienes (collectively, “Defendants”) stem from Defendants’ relationship with Madoff and Plaintiffs’ investment in BLMIS as a result of that relationship. Correspondence between Plaintiffs and BLMIS was directed to Bongiorno. Therefore, Bongiorno has knowledge that is directly relevant to Plaintiffs’ claims that Defendants’ had a fiduciary relationship with the Partnerships, that Defendants’ took control of the Partnerships, and that Defendants’ caused the transfer of improper kickbacks to themselves and others.

8. The deposition of Bongiorno is also necessary to establish that the former Managing General Partner of the Partnerships invested in BLMIS because of Avellino and Bienes, and that Avellino and Bienes exercised control over the Partnerships. Further, due to Bongiorno’s incarceration status it is necessary to preserve her testimony.

9. Accordingly, Plaintiffs respectfully request this Court grant them leave take the deposition of Bongiorno.

WHEREFORE Plaintiffs respectfully request the entry of an Order: (i) reopening discovery for the limited purpose of allowing the deposition of Annette Bongiorno; (ii) granting Plaintiffs leave to take the deposition of Annette Bongiorno; (iii) for such other and further relief as this Court deems just and proper.

Dated: September 16, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2016, the foregoing was filed using the Florida Courts E-Filing Portal, which sent notification to the following parties:

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