

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

CASE NO.: CACE 12-034123 (07)

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

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**NON-PARTY DEPONENT DIANNE BIENES'S
RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION
TO COMPEL AND CROSS-MOTION FOR PROTECTIVE ORDER**

Non-party deponent, Dianne Bienes, spouse of Defendant, Michael Bienes (referred to as "Mrs. Bienes"), hereby files this Response in Opposition to Plaintiffs' Motion to Compel (the "Motion") and Cross-Motion for Protective Order ("Cross-Motion"), stating as follows:

1. More base litigation tactic than good-faith attempt to resolve a *bona fide* discovery dispute, the Motion asks the Court to *compel* Mrs. Bienes to (a) appear to continue her deposition, (b) answer questions, and (c) award Plaintiffs' fees and costs as sanctions. Plaintiffs' Motion should be denied because Mrs. Bienes and her counsel *have already agreed*, both on the record and in e-mail correspondence, that she will appear for a continued deposition and answer Plaintiffs' counsel's questions.¹ Plaintiffs' request for sanctions should likewise be denied

¹ A copy of Mr. Jonathan Etra's September 25, 2015 e-mail (sent the very evening of the day Mrs. Bienes's deposition concluded) in which he requests a date for a hearing on what would become this Cross-Motion and dates for Mrs. Bienes's continued deposition is attached as **Exhibit A**.

because it was *Plaintiffs' counsel's* conduct, both before and during her deposition, which necessitated her September 25, 2015 deposition being terminated in the first place.

2. Mrs. Bienes does make this accusation lightly. At her deposition, Plaintiffs' counsel repeatedly attempted to elicit deposition testimony from her relating to her own personal financial affairs. This despite the matters of attempted examination having nothing whatever to do with any issue relevant to this litigation. This is highly improper, even given the broad latitude given in the area of discovery in the State of Florida.

3. True, the permissible scope of discovery is indeed broad, but it is not unlimited. *See East Colonial Refuse Serv., Inc. v. Velocci*, 416 So. 2d 1276, 1277 (Fla. 5th DCA 1982); *see also* Fla. R. Civ. P. 1.280(b). To be discoverable, the information sought must be relevant to the proceeding and admissible or reasonably calculated to lead to the discovery of admissible evidence. *Allstate Ins. Corp. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). *See also Velocci*, 416 So. 2d at 1277; *see also McCarty v. Estate of Schultz*, 372 So. 2d 210, 212 (Fla. 3d DCA 1979) (party may not utilize the discovery process for a "mere fishing expedition or general inquisitorial examination of papers with a view to ascertaining whether something of value may or may not show up"). Even if the relevance standard is met, "the particular items or information sought to be discovered may be **privileged and therefore beyond permissible discovery.**" *See Velocci*, 416 So. 2d at 1278-78, n.2 (emphasis supplied) (citing *Central Florida Skates, Inc. v. Thomas*, 393 So. 2d 1200 (Fla. 5th DCA), *rev. denied*, 402 So. 2d 608 (Fla. 1981)). Thus, the trial court has broad discretion to refuse discovery of irrelevant information and, more importantly as it relates to the issue before the Court, to protect privileged information from discovery.

4. And an invasion into protected information is precisely what happened here. As has been their penchant throughout this litigation, Plaintiffs' attorneys tried to depose Mrs. Bienes about her purely private financial information without any relevant or compelling reason for doing so. A copy of relevant portions of Mrs. Bienes's deposition transcript is attached as **Exhibit B** to this Cross-Motion. *See* D. Bienes Dep. Tr. 19:14-20:16; 33:9-36-18, 63:21-65:8.²

5. Protection of financial information is so fundamental a right it is afforded by the State Constitution. "Article I, section 23, of the Florida Constitution protects the financial information of persons if there is no relevant or compelling reason to compel disclosure." *Rowe v. Rodriguez-Schmidt*, 89 So. 3d 1101, 1103 (Fla. 1st DCA 2012) (citing *Borck v. Borck*, 906 So. 2d 1209, 1211 (Fla. 4th DCA 2005)). "This is because 'personal finances are among those private matters kept secret by most people.'" *Id.* (citing *Woodward v. Berkery*, 714 So.2d 1027, 1035 (Fla. 4th DCA 1998)).³ Indeed, a party may be irreparably harmed if forced to reveal financial information where no judgment has yet been entered. *See Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So.2d 189, 194 (Fla.2003) (general rule is that financial information is ordinarily discoverable only in aid of execution after judgment).

² It is also on this portion of the transcript where Mr. Etra's and Mr. Messana's (Plaintiffs' counsel) agreement that Mrs. Bienes would indeed appear at a continued deposition is made on the record.

³ Moreover, "the burden to prove the information is relevant or reasonably calculated to lead to the discovery of admissible evidence is on the party seeking the information." *Id.* (citing *Spry v. Prof'l Emp'r Plans*, 985 So.2d 1187, 1188-89 (Fla. 1st DCA 2008)). This determination can and should be made only after an evidentiary hearing. *Id.* In fact, it is a departure from the essential requirements of law for a court to order production of personal financial information without first conducting an evidentiary inquiry into its relevance. *Rowe*, 89 So. 2d at 1103. The assertions or arguments of a party's attorney are not sufficient evidence of relevance. *See DiSarrio v. Mills*, 711 So. 2d 1355, 1357 (Fla. 2d DCA 1998).

6. Were a trial court to prematurely allow discovery in aid of a non-existent judgment, it would be not just revisable error, but would amount to a departure from the essential requirements of law. *See Delmonico v. Crespo*, 59 So. 3d 337 (Fla. Dist. Ct. App. 2011) (citing *In re Estate of Posner*, 492 So.2d 1093, 1093 (Fla. 3d DCA 1986) (finding “the probate court departed from the essential requirements of law when it permitted contingent creditors to take pre-judgment discovery in aid of execution”)).

7. Plain and simply put, Mrs. Bienes’s private financial information bearing no or only a highly attenuated connection to the matters at issue in this lawsuit is not relevant, not discoverable, and Plaintiffs have not and can offer a compelling reason for its disclosure, in a deposition or otherwise (i.e. through written discovery).

8. To make matters worse, as the deposition progressed it became clear that Plaintiffs, yet again and despite prior admonitions from the Court not to do so, were unfairly surprising and in the process unduly prejudicing Mrs. Bienes by referring to, introducing as exhibits, and asking her questions concerning documents—primarily 7 and 9 year-old e-mails—which had not previously been produced to her attorneys until after business hours quite literally the *eve* of her September 25 deposition. This Court’s strong admonition against this type of deposition practice and discovery abuse apparently went ignored by Plaintiffs’ attorneys, but it is nonetheless set forth in the attached transcript of a hearing on various matters held August 19, 2015:

You guys [Plaintiffs] cannot blindside with documents at a depo. If you are going to use depo documents and if you are going to use this material at some point later in the trial or with a witness, you [have] got to give them the same thing that you got.... [W]hen you use documents that you haven’t given them, it’s an unfair advantage to one side because you know what’s in there; they don’t.... I won’t tolerate you guys [Plaintiffs] just showing them documents that you have the exclusive control over and then confront a witness with it when they haven’t had

any kind of fair chance to know what's in that document.... Otherwise, I'll just set the rules, and they won't be pleasant....

See August 19 Hearing Tr. 34:17-23, a copy of which is attached as **Exhibit C** to this Cross-Motion. For a full description of this precise issue from that hearing, which exactly mirrors the situation now before the Court, refer to August 19 Hearing Tr. at 32:13-35:23.

9. Rather than heed the Court's warning, at 6:36 p.m. on September 24, 2015, without any warning or notice to her attorneys in the subject line, body of the e-mail, or even by courtesy phone call that Plaintiffs' were "dumping" 225 MBs and 802 pages of encrypted electronic documents on Mrs. Bienes's attorneys, documents which Plaintiffs undoubtedly have had for months or longer were "produced" to Mrs. Bienes's counsel. As evidenced by the Declaration of Alexa Murguido, a paralegal assisting Mrs. Bienes's attorneys on electronic discovery, these 802 pages of encrypted documents were produced after regular business hours on the evening before Mrs. Bienes's deposition at a time when she was not in the office.⁴ Ms. Murguido's Declaration is attached as composite **Exhibit D** to this Cross-Motion.

10. But to say the documents were "produced" candidly gives too much credit to Plaintiffs' attorneys, as they seemed intent to make it as difficult as possible for Mrs. Bienes's counsel to access the documents and get them to her in time for any meaningful review. As the Declaration indicates, it took Ms. Murguido over 5 hours to access the zip file in which the thirty-eight (38) individual PDFs were contained, un-encrypt each PDF, and compress the 225 MB file into a 48.8 MG file, then divide that into 7 parts in order for Mrs. Bienes's counsel Shane P. Martin to ultimately send her the documents days after her deposition took place.

⁴ Also out of the office were Ms. Bienes's attorneys Jonathan Etra, Esq. and Shane P. Martin, both of whom were out of the State of Florida on other matters.

Unfortunately, Plaintiffs' plan to prejudice Mrs. Bienes in her preparations for her deposition worked all too well.

11. As a result, in the quintessence of a "deposition by ambush," Mrs. Bienes was repeatedly "trapped" by line after line of veiled questions about 7 and 9 year-old documents she had no reason to recall existed and 7 and 9 year-old e-mail communications she had no basis to remember she had. Of course, all due to Plaintiffs' last minute document dump, Mrs. Bienes was afforded zero opportunity to review or discuss any of these "dumped" documents with her attorneys before she was interrogated about them. Both Mr. Etra and Mr. Gary Woodfield, counsel for Defendant Frank Avellino, made their objections to these "gotcha" litigation tactics known on the record. *See* D. Bienes Dep. Tr. 118:4-119:2; 126:3-132:1, 139:22-144:3.

12. As Mr. Etra further noted on the record, Mrs. Bienes, who is not a party to this lawsuit but is named in a separate civil suit stemming from the Madoff affair, has rights and she deserves to have them honored by Plaintiffs' attorneys and protected by this Court. *See* D. Bienes Dep. Tr. 142:23-143:24.

13. In the face of Plaintiffs' and their attorneys' abusive conduct, Mrs. Bienes's counsel terminated the deposition until the Court could have the opportunity to rule on this Cross-Motion, but, as discussed above, agreed that Mrs. Bienes would return for a continued deposition and answer additional questions. Of course, this agreement was not without some reasonable limitations to protect Mrs. Bienes from Plaintiffs' repeated abuse and continued harassment. Mrs. Bienes and her counsel understandably could only agree to continue her deposition *after* they are afforded sufficient time to review the documents Plaintiffs dumped on them at the eleventh hour and are adequately able to prepare her for questioning. Preposterously, Plaintiffs' attorney was agreeable to allowing Mrs. Bienes and her attorney to review the

documents during a break in the deposition, but forbade Mr. Etra from discussing the documents they had received not much more than 12 hours earlier with his client, *see* D. Bienes Dep. Tr. 129:3-19, a position that was reiterated in later correspondence to Mr. Etra. *See* Exhibit A. Moreover, Mrs. Bienes has not, cannot, and will not agree to respond to Plaintiffs' abusive, unjustified and irrelevant questioning regarding her personal and protected financial affairs.

14. In accordance with CLP 5.3, counsel for Mrs. Bienes conferred regarding the issues raised in this Cross-Motion with counsel for Plaintiffs on September 25, 2015, but the parties were unable to reach an agreement on the relief requested herein.

WHEREFORE, Non-Party Dianne Bienes, spouse of Defendant Michael Bienes, respectfully requests the Court deny Plaintiffs' Motion and enter a protective order which: (a) continues Mrs. Bienes's deposition to a mutually agreeable date; (b) affords her and her counsel sufficient time to review the documents Plaintiffs' attorneys produced after hours on the eve of her September 25 deposition and prepare for questioning about those documents; (c) protects her from Plaintiffs' continued harassment and improper questioning into areas concerning her personal, protected financial information; and (d) awards Mrs. Bienes her reasonable attorneys' fees and costs incurred in connection with obtaining this necessary relief from the Court.

Dated this 5th day of October, 2015.

Respectfully submitted,

/s/ Shane P. Martin

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Counsel for Defendant, Michael Bienes and
Non-Party Deponent, Dianne Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 5, 2015, this notice and the aforementioned interrogatories were served via E-mail to: (i) Thomas E. Messina, Esq., Thomas Zeichman, Esq., Messina, 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/ Shane P. Martin

Shane P. Martin

Jonathan Etra

From: Jonathan Etra
Sent: Friday, September 25, 2015 6:05 PM
To: Thomas M. Messana
Cc: Leonard K. Samuels (LSamuels@bergersingerman.com); Steven D. Weber (SWeber@bergersingerman.com); ZHyman@bergersingerman.com; Thomas Zeichman; Mark Raymond; Shane Martin
Subject: Re: Dianne Bienes Deposition
Attachments: image001.jpg

When do u want to set for hearing ?
When do you want to continue the deposition?

Sent from my iPhone

On Sep 25, 2015, at 3:58 PM, Thomas M. Messana <tmessana@messana-law.com> wrote:

Jonathan,

The deposition of Dianne Bienes remains open. Please do not consult with Mrs. Bienes regarding the deposition until the Court rules on your objection to the Plaintiffs' questions. Plaintiffs intend to inquire into any discussions which occur while the deposition remains open.

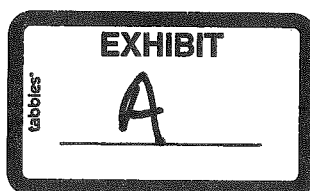
Regards,

Tom

MESSANA P.A.

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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA
COMPLEX LITIGATION UNIT

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

Plaintiffs,

vs.

No. 12-034123 (07)

MICHAEL D. SULLIVAN, et al.,

Defendants.

_____ /

401 East Las Olas Boulevard,
Fort Lauderdale, Florida
Friday, September 25, 2015
10:00 a.m. - 3:21 p.m.

D E P O S I T I O N

Of

DIANNE BIENES

Taken on behalf of the Plaintiffs
pursuant to a notice of taking deposition

- - -

FRIEDMAN, LOMBARDI & OLSON
305-371-6677



1 APPEARANCES:
2 MESSANA, P.A.,
3 401 East Las Olas Boulevard, Suite 1400
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24 Gary A. Woodfield, Esq.
25 Attorney for Frank Avellino.

1 A. I would say -- well, it had to either be the
2 22nd or the 23rd of December because I know we were
3 here for Christmas.

4 Q. Have you been back to England since?

5 A. Yes.

6 Q. On how many occasions?

7 A. Oh, I would say once a year. We have many
8 friends there.

9 Q. Do you still have the flat at --

10 A. No, that's why we had to leave, we had no
11 money to pay for a flat.

12 Q. So you didn't own 56 Arlington House?

13 A. No. We never owned anything there.

14 Q. Did you have bank accounts in England?

15 A. Only --

16 MR. ETRA: Excuse me. What's the
17 relevance? It's not a deposition for -- you don't
18 have a judgment. It's not a financial deposition,
19 and it's inappropriate to ask for that. So if you
20 make it more specific as to 56 Arlington House it's
21 fine, but beyond that I don't think it's appropriate.
22 I would instruct her not to answer based on an oral
23 motion to compel, unless you can tell me why it's
24 appropriate.

25

1 MR. MESSANA: Well, I mean, you know the
2 reason that Mrs. Bienes is here --

3 MR. ETRA: But you asked a broad question.
4 If you ask it -- if 56 Arlington had an account,
5 that's fine because that's part of the case. I get
6 that's part of the case, just like 27 Cliff is part
7 of the case for Mr. Avellino. But whether they have
8 other accounts in other locations is not part of the
9 case and it's not relevant. It's inappropriate to
10 ask financial discovery at this stage. So it's a
11 broad question, so that's the problem.

12 MR. MESSANA: Well, usually you start with
13 a broad question and you go narrow. If you want me
14 to start at narrow and go broader --

15 MR. ETRA: Let's take it in steps and see
16 if you -- if we can get what we need to get.

17 BY MR. MESSANA:

18 Q. Are you familiar with 56 Arlington House,
19 LLC?

20 A. I know it existed, yes.

21 Q. Okay. Are you associated with it in any
22 way?

23 A. I assume I was, I don't know, the director
24 or partner, whatever it would be.

25 Q. So you played some role with respect to 56

1 bank right around the time that we -- I want to say
2 something like Rosemary Falano (phonetic) or something
3 like that. I don't remember, but I remember she was
4 the direct officer at the time that we defaulted on
5 the loan.

6 Q. Other than the loan, did you have other
7 accounts with City National Bank?

8 A. I'm not sure what your --

9 Q. Did you have a deposit account?

10 A. We had --

11 MR. ETRA: Objection. What's the relevance
12 of whether she had a deposit account at City National
13 Bank given her financial privacy? I think it's
14 outside the bounds of the case and because it deals
15 with her personal finances, which are protected, I
16 don't think it's an appropriate question unless
17 there's some relevance --

18 MR. MESSANA: Actually, I'm not asking now,
19 I'm asking then. It's a historical question.

20 MR. ETRA: Yes. I understand. She can
21 still have it. What does that have to do with the
22 case? I mean, you can ask someone if they have an
23 account in Zurich, and you can ask if they had it 20
24 years ago; it's still irrelevant to a case unless the
25 case involves Zurich and Zurich bank accounts.

1 This has nothing -- you have a case about
2 an alleged relationship with an accounting firm,
3 investment firm, you have a case that also involves
4 an alleged relationship, I suppose, with Madoff, you
5 have a case that involves -- which you have wide
6 latitude on, but financially it's got one bank
7 account. And now you are asking what account she
8 had, which she may still have and just -- I don't
9 think it's appropriate to ask about the financial --
10 her finances.

11 MR. MESSANA: Okay. I need to speak with
12 you outside the presence of your client.

13 MR. ETRA: Should we step out?

14 MR. MESSANA: Yes, I think that's the
15 easiest thing.

16 MR. ETRA: Okay.

17 [Discussion off the record.]

18 MR. MESSANA: In an off-the-record
19 discussion between counsel we have identified a
20 disagreement with this line of questioning and for
21 the purposes of bringing it to the judge at some
22 point we are going to memorialize the parties'
23 positions here today and then we'll continue on with
24 the deposition so as not to belabor time.

25 So I would ask Tom Zeichman, my colleague,

1 to put our position on the record.

2 MR. ZEICHMAN: Our position is that the
3 Bieneses' financial condition is relevant to our
4 inquiry because the defendants have raised the issue
5 of a statute of limitations and there are certain
6 documents that would extend the statute of
7 limitations based upon the partners' reliance on
8 statements made by the Bieneses. Those statements
9 would include that the Bieneses lost all their money,
10 they were also victims of Madoff, and they made these
11 statements to the partners to prevent the partners or
12 otherwise dissuade them from suing the partnerships.
13 So that's why -- and if we can show that the Bieneses
14 actually continue to have wealth or did not lose as
15 much money in the Madoff Ponzi as they claim, then
16 those statements would be false and would extend the
17 statute of limitations doctrine.

18 MR. ETRA: Yes. And I've explained that
19 given the rules and for financial privacy of the
20 witnesses that finances about the Bieneses are
21 improper. There's no judgment unless it's directly
22 relevant to the case. There's case law on that. And
23 I've explained that 56 Arlington is in the case, and
24 they are allowed to get into that issue.

25 I'm objecting, directing the witness not to

1 answer and have an oral motion to compel to stop the
2 questioning regarding other background finances. I
3 think the argument is a little too tangential and
4 strained and would essentially -- those kind of
5 arguments would eviscerate the right witnesses have
6 to not get into their finances in a deposition that
7 otherwise has nothing to do with their finances.

8 We have agreed, though, we've discussed it,
9 we have a disagreement. I think we believe we need
10 to go to Judge Tuter who may side with plaintiff, may
11 side with me, or may come up with some other solution
12 in the middle. So we've agreed collegially to
13 continue the deposition, hold off on that subject for
14 another time, go before the judge and if it turns out
15 that some or all of the questions are allowed then
16 Mrs. Bienes will show up and we'll ask the questions.

17 MR. MESSANA: Okay. Let's ask Mrs. Bienes
18 to return and we'll continue.

19 BY MR. MESSANA:

20 Q. So continuing, you had referenced a computer
21 that you used for some period of time. Do you recall
22 when we were talking about that?

23 A. You mean the one I -- my laptop?

24 Q. Yes.

25 A. What about it?

1 Q. Did you personally sign your tax returns?

2 A. Yes, where I was told to sign it.

3 Q. Who told you where to sign it?

4 A. Well, my husband would file the tax return,
5 and I would have to sign it when he signed it to mail
6 it in.

7 Q. So was there some outsider who was there
8 advising you where to sign?

9 A. No. If it was done by a company there was
10 no -- they just returned it to you.

11 Q. Do you know where that company was located?

12 A. No.

13 Q. Who kept the checkbook?

14 A. I did.

15 Q. You kept the checkbook?

16 A. Uh-huh.

17 Q. So your checks would be something where you
18 would keep them and file them and your bank statements
19 for that check?

20 A. Yes.

21 Q. Were there other accounts that you and
22 Mr. Bienes had together that you kept as opposed to
23 him keeping? You mentioned that there were certain
24 accounts earlier that he kept, like Bernard L. Madoff,
25 those statements that came in, and you mentioned that

1 there were checks for a checking account that you
2 kept. Were there other accounts that you maintained
3 with your husband that you kept?

4 MR. ETRA: Are we talking about Madoff or
5 not Madoff?

6 MR. MESSANA: I'm talking about accounts --

7 MR. ETRA: Well, I'm giving the same
8 introduction on bank accounts that I gave before,
9 that it's part of the oral motion.

10 MR. MESSANA: I think this is a little
11 different than that, and if you --

12 MR. ETRA: Then you need to educate me
13 because -- I wish -- I could step outside, and you
14 can educate me if you want. I don't -- to me I'm
15 holding on my privilege. I think it's right, but if
16 it's different, then you are going to have to educate
17 me.

18 MR. MESSANA: I'm just trying to find out at
19 this point whether there were other accounts. I'm not
20 asking what accounts they were.

21 MR. ETRA: I don't think -- most
22 respectfully, I mean, it's none of your business
23 whether she has one account with her husband, two
24 accounts with her husband, 100 accounts with her
25 husband, or no accounts with her husband. To me it's

1 not -- I don't see this as part of this case. If you
2 see it as part of this case, make a proffer to me and
3 maybe I'll tell you, okay, you get a yes-or-no answer
4 on that. I don't know, but at first instance you are
5 probing into her personal finances.

6 MR. MESSANA: I don't think that's right.

7 MR. ETRA: Tell me why I'm wrong.

8 MR. MESSANA: Okay, let's go outside.

9 [Discussion off the record.]

10 BY MR. MESSANA:

11 Q. Do you have bank records?

12 A. Who?

13 Q. Bank records.

14 A. Bank records for the last few years.

15 Q. Okay. So you have bank records?

16 A. Yes, for the last few years.

17 Q. Other than bank records, what other records
18 do you keep?

19 A. My husband keeps tax returns and whatever
20 goes with that. I keep filing of our renewal of our
21 license plates. I keep records of -- I'm trying to
22 think what do I keep. Property tax. As I was saying,
23 I do not keep my electric bill; it's always around the
24 same amount of money. It's not tax deductible. I
25 don't see any reason to keep it. I don't keep my AOL

1 Q. Do you recognize the setting?

2 A. No, I really don't.

3 MR. MESSANA: 42.

4 [The December 4, 2006 E-mail was marked for
5 identification as Plaintiffs' Exhibit 42.]

6 BY MR. MESSANA:

7 Q. I'll show you what's been marked as
8 Exhibit 42 for identification purposes and ask you to
9 review it. Let me know when you have.

10 MR. ETRA: I have to ask: This just looks
11 funny to me the way it's laid out. Are you going to
12 represent -- can you make some kind of representation
13 about what this is? Because I'm not -- it just --
14 it's got highlight -- maybe it's highlighting, it
15 doesn't read -- at least the printout that aren't --
16 doesn't look like the format of when I print out
17 e-mails. I'm not saying it's not. Is this, in fact,
18 an e-mail that was produced to you -- I mean, it says
19 Matt Carone. I just -- you need to make some
20 representation of what this is because I just have an
21 objection. I don't know what this is; it looks
22 funny. I guess that's my objection.

23 MR. MESSANA: Okay.

24 MR. ETRA: Are you representing you
25 produced it also is my question?

1 MR. MESSANA: Oh, yes.

2 THE WITNESS: Yes.

3 BY MR. MESSANA:

4 Q. Have you reviewed it?

5 A. Yes, I read it.

6 Q. Have you ever seen it before?

7 A. I mean, no, I haven't seen it before.

8 Q. Okay.

9 A. I mean, I understand what it's saying but --

10 Q. Did you write the e-mail at the bottom
11 from -- to Matt Carone? See where it says,
12 "dmbienes@aol.com wrote: Hi, Matt." Is that
13 something you wrote?

14 A. I assume it is. I don't recall it, but I
15 mean -- this is something he sent to the Judds.

16 Q. I think the way you read it and the way I'm
17 reading it is there is a communication from
18 Dmbienes@aol.com --

19 A. Right.

20 Q. -- to Matt Carone and then Matt Carone
21 forwards that to James and Valerie Judd.

22 A. That's what it looks like, but I don't
23 recall it.

24 Q. Yes, I'm just focusing on the bottom part of
25 it right now. The part that says "Love, one half of

1 Q. Okay. Let's go to the next.

2 MR. MESSANA: 44.

3 [The November 11, 2008 E-mail was marked for
4 identification as Plaintiffs' Exhibit 44.]

5 BY MR. MESSANA:

6 Q. I show you what's been marked as Exhibit 44
7 for identification purposes, and I ask you to review
8 it and please let me know when you've completed that?

9 MR. WOODFIELD: Do you know offhand when
10 these documents were provided to us?

11 MR. MESSANA: It says 9/24/15 plaintiffs
12 32608, so that would be my guess.

13 MR. WOODFIELD: Yesterday. What's today?

14 MR. MESSANA: That's what, yesterday?

15 MR. WOODFIELD: So these were provided to
16 us with the ones we came in the cloud last night? Do
17 you know?

18 MR. WEBER: Yesterday.

19 MR. WOODFIELD: What time?

20 MR. WEBER: I don't know the time.

21 MR. ETRA: Yes, you do. You know what it
22 was?

23 MR. WEBER: I'm not being deposed here.

24 MR. WOODFIELD: Do not incur --

25 MR. MESSANA: Stop, stop.

1 MR. WOODFIELD: No, I'm not going to stop.
2 To not incur the further wrath of the judge, he told
3 you don't show documents to witnesses unless they've
4 given them to us. You dump them on us last night,
5 and then produce them today. All right. That's
6 fine.

7 MR. MESSANA: Well, it's a little bit
8 better than what you've been doing, which is
9 destroying documents.

10 MR. WOODFIELD: I haven't destroyed
11 anything.

12 MR. MESSANA: No, your clients do.

13 MR. WOODFIELD: I'm talking about your
14 conduct, not your client's conduct.

15 MR. MESSANA: You have -- so what's your
16 beef?

17 MR. WOODFIELD: My beef is, the judge
18 specifically told you in court don't show witnesses
19 any documents that you haven't produced to us. So
20 you give us these documents -- I can look at my
21 e-mail and tell you what time, but I think it was
22 late in the day yesterday. And I don't know how many
23 documents were given to us at that time, but
24 obviously I think I was out of the office. I haven't
25 opened them, haven't seen them. I doubt if John did

1 either.

2 MR. MESSANA: So your point is unfair
3 prejudice?

4 MR. WOODFIELD: Yes.

5 MR. MESSANA: You are prejudiced?

6 MR. WOODFIELD: Your conduct is
7 inconsistent with the clear direction from the Court.

8 MR. ETRA: My prejudice that's he's
9 vocalizing and maybe it's his, too, but same issue.

10 MR. MESSANA: So do you want to take a
11 break?

12 MR. ETRA: Why should I take a break?

13 MR. MESSANA: To review the documents.

14 MR. WOODFIELD: Do you know how many
15 documents were produced --

16 MR. ETRA: It was not a bad idea to give us
17 all, so we don't do this one by one. I mean, I'm
18 happy to do that to address it. I mean, I think
19 that's -- you mean take a break for each document? I
20 don't know how many more you have.

21 MR. WOODFIELD: It would be interesting to
22 know when you got these documents. I assume you got
23 them sometime prior to yesterday.

24 MR. ETRA: I'm happy to take a break to
25 review them.

1 MR. MESSANA: Tell me when you are ready.

2 MR. ETRA: Okay, take a break.

3 MR. MESSANA: You can't consult with her.

4 MR. ETRA: Then what's the point? I can't
5 talk to my client about it.

6 MR. MESSANA: You can't talk your client,
7 right.

8 MR. ETRA: You can or cannot?

9 MR. MESSANA: You cannot talk to your
10 client, right; you are in the middle of a deposition.
11 If you want to familiarize yourself with it, I have
12 no objection.

13 MR. ETRA: What does that do for me in a
14 deposition when I can't do anything? What does that
15 do for me?

16 MR. MESSANA: I don't know what you
17 possibly could do.

18 MR. ETRA: So then I don't want to waste
19 time, so go ahead.

20 MR. WEBER: Gary produced documents the day
21 before Frank Avellino's deposition, so just carry on.
22 They are just making an issue.

23 MR. MESSANA: When we find the documents
24 they still haven't produced, then we can start
25 talking about it because I'm confident --

1 MR. ETRA: I don't have a problem with the
2 back and forth, but the witness has been hearing it,
3 and I don't want you to feel like anyone -- I do not
4 accept that we've done anything wrong with respect to
5 documents; don't be defensive. I'm saying that
6 because of all the argument that happened because we
7 didn't bother excusing Mrs. Bienes during the
8 colloquy. Go ahead.

9 BY MR. MESSANA:

10 Q. Mrs. Bienes, have you had an opportunity to
11 review this?

12 A. No, I haven't because you people are
13 bickering, and it's absolutely ridiculous.

14 Q. All right.

15 A. I have not committed any crime. You are
16 supposed to supply my legal counsel with these
17 documents so he can review them. Maybe he has
18 objections to them and you are forcing me to read
19 them. I don't know where you got them. I don't know
20 who produced them. This is all new to me. I didn't
21 even know what the hell this thing is about. You
22 expect me to remember something that happened before
23 my life ended in December of 2008. You put that on
24 the record; I don't mind.

25 Q. Let's talk about how your life ended in

1 2008. How much is your home worth today?

2 A. I have no home.

3 Q. You live in a two-bedroom apartment.

4 A. Yes, a couple hundred thousand dollars.

5 Q. A couple hundred thousand. Most people --
6 do you realize most people in the world --

7 MR. ETRA: Stop. Take a break. Take a
8 break. I'm taking a break. This is harassment.
9 Mr. Messina, who is a gentleman and one of the nicest
10 lawyers I've dealt with, I believe is not acting
11 appropriately now, is out of character; it's okay.
12 For everyone's benefit I'm taking a break. I'm
13 asking the witness to step outside. We'll resume in
14 five minutes.

15 MR. MESSANA: Do not consult with the
16 client during a deposition that's begun.

17 MR. ETRA: I'm taking a break so we can all
18 cool down.

19 MR. WOODFIELD: For the record, the door
20 slammed.

21 [Short recess taken.]

22 MR. ETRA: She is going to continue the
23 deposition. She's going to answer all your
24 questions. We are going to keep going. Everyone
25 made their position on the record; I'd like you to be

1 able to continue the deposition.

2 MR. MESSANA: So take your time and please
3 let me know when you are ready.

4 MR. ETRA: Thank you.

5 THE WITNESS: Yes.

6 BY MR. MESSANA:

7 Q. Okay. Do you recall exchanging these
8 e-mails with Matt Carone?

9 A. No.

10 Q. Okay. Are you familiar with the subject
11 matter of those e-mails the "Conductor quits birthday
12 concert for Charles after Queen's 'interference.'?"

13 A. Vaguely. This is 2008?

14 Q. November 11, 2008.

15 A. This was Charles' 60th birthday party, yes,
16 but I don't remember this whole hullabaloo with the
17 conductor.

18 Q. Do you see where it says at the top, "Hi,
19 Matt. Yes, we will be there"?

20 A. Yes, we were.

21 Q. You were where?

22 A. Buckingham Palace.

23 Q. So you attended Prince Charles' 60th
24 birthday party?

25 A. Yes.

1 A. I don't know.

2 Q. So you don't know whether Michael socialized
3 with Matt and Marvin, correct?

4 A. Together you are --

5 Q. Yes, the three of them.

6 A. I don't know.

7 Q. And you never socialized with Matt and
8 Marvin together?

9 A. No, I never recall socializing with them
10 together, no.

11 Q. Did you ever discuss investments with Matt
12 Carone?

13 A. I didn't discuss investments with anyone.

14 Q. So that's a no, you never discussed
15 investments with Matt Carone?

16 A. I don't recall ever discussing investments
17 with Matt Carone. As I mentioned, he said a couple of
18 times that he had money invested in his pension plan;
19 I don't know about anything else.

20 MR. MESSANA: Can you mark this? I think
21 it's 46.

22 [The March 19, 2008 E-mail was marked for
23 identification as Plaintiffs' Exhibit 46.]

24 BY MR. MESSANA:

25 Q. I'll show you what's been marked as

1 Exhibit 46 for identification purposes and ask you to
2 review it. Take your time. After you've reviewed it
3 I'll ask you some questions.

4 MR. ETRA: I object for the reasons that we
5 previously discussed and the way this document is
6 being used with Mrs. Bienes.

7 BY MR. MESSANA:

8 Q. You are ready. Do you recall having this
9 e-mail exchange with Matt Carone?

10 A. No, I do not.

11 Q. Okay. Do you see that Mr. Carone is
12 recuperating from back surgery? See where it says
13 that?

14 A. I know he said he had surgery, yes.

15 Q. "Hi, Dianne/Michael. I hope you are both
16 well. I'm in Lenox still recuperating from back
17 surgery."

18 A. Uh-huh.

19 Q. You mentioned that you had some back surgery
20 in the past; is that correct?

21 A. Back problems.

22 Q. Back problems, okay.

23 A. My husband had back surgery.

24 Q. Okay. Do you see where he's telling Michael
25 and you that he wrote to Frank Avellino concerning his

1 views with P&S?

2 MR. ETRA: Objection.

3 BY MR. MESSANA:

4 Q. Do you see where it says that?

5 A. Where do you see P&S?

6 Q. May I? Thank you.

7 Maybe he gave me the wrong one.

8 MR. ETRA: Excuse me. Can we go off the
9 record?

10 MR. MESSANA: Sure.

11 [Discussion off the record.]

12 MR. ETRA: I'm not going to let her answer
13 questions about this because I got them for the first
14 time last night.

15 MR. MESSANA: Oh, you are going to let her
16 answer questions about it; we are going forward.

17 MR. ETRA: Call him now. Call him now.
18 Call him now. I got the document first time last
19 night; it's not an insignificant document. This is
20 exactly what the judge said not to happen.

21 MR. MESSANA: Let's call the judge.

22 MR. WEBER: I'll get the number. Here it
23 is.

24 MR. MESSANA: My e-mail evidences that we
25 got documents to you at 6:37 last night.

1 MR. ETRA: Which, by the way, it said in
2 accordance with -- it didn't say, by the way, these
3 are going to be used tomorrow. So I had no notice
4 that I should drop what I'm doing to review that
5 production.

6 MR. MESSANA: We don't have to identify --
7 this is on the record or off the record?

8 MR. ETRA: You know what, let's call the
9 judge.

10 MR. MESSANA: Let's just call the judge,
11 please.

12 MR. WOODFIELD: Steve, that's a slippery
13 slope.

14 MR. MESSANA: Let's just call the judge.

15 [Discussion off the record.]

16 MR. MESSANA: In an off-the-record
17 discussion it became clear that counsel for
18 Mrs. Bienes is going to direct her not to answer any
19 questions concerning the documents that were recently
20 produced, and it seems prudent to stop for the day
21 and to reconvene within the next month and continue
22 the deposition.

23 MR. ETRA: And I'm not sure what we've
24 presumably put on the record versus not, so let me
25 make sure the record is clear. Counsel has been

1 showing documents to Mrs. Bienes that were evidently
2 produced last night. Most of them were of a social
3 nature and I did not object. But then he asked a
4 specific question, which was a setup to another
5 document, which was far more significant in my mind.
6 And in lieu of the Court's direction that there be --
7 all documents -- that no witness be questioned about
8 documents that have not been produced, and in view of
9 the fact that these were produced last night in an
10 e-mail that didn't indicate -- gave no indication
11 that, hey, stop what you are doing, this is for
12 tomorrow. And if you have -- the significance of
13 these documents -- I think what's happening is
14 inconsistent with the Court's directions and unfair
15 and prejudicial to my client. And while she is only
16 a witness here, she is a defendant in another matter
17 and she has rights, too.

18 And we discussed the possibility of
19 continuing the deposition on other areas but agreed
20 that it just wasn't practical. And I've indicated
21 that we would make ourselves available and, you know,
22 you say within a month, I mean, we'll just find time
23 and I assure you I will be reasonable in rescheduling
24 and in concluding the deposition.

25 MR. MESSANA: Obviously we disagree with

1 the characterizations. With that said, the import of
2 it is we are concluding for today to be continued on
3 another day.

4 (Thereupon, the deposition was adjourned at 3:21
5 p.m.)
6
7
8
9
10

DIANNE BIENES

11 Sworn to and subscribed
before me this day
12 of , 2015.
Notary Public, State
13 of Florida at Large.
14
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25

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

3 COMPLEX LITIGATION UNIT

4 CASE NO: 12-034123(07)

5 P&S ASSOCIATES, GENERAL PARTNERSHIP, a
6 Florida limited partnership; and S&P
7 ASSOCIATES, GENERAL PARTNERSHIP, a
8 Florida limited partnership; PHILIP
9 VON KAHLE as Conservator of P&S
10 ASSOCIATES, GENERAL PARTNERSHIP, a
11 Florida limited partnership; and S&P
12 ASSOCIATES, GENERAL PARTNERSHIP, a
13 Florida limited partnership,

14 Plaintiffs,

15 v

16 MICHAEL D. SULLIVAN, an individual,
17 STEVEN JACOB, an individual, MICHAEL D.
18 SULLIVAN & ASSOCIATES, INC., a Florida
19 corporation, STEVEN F. JACOB, CPA &
20 ASSOCIATES, INC., a Florida
21 corporation, FRANK AVELLINO, an
22 individual, MICHAEL BIENES, an
23 individual, KELKO FOUNDATION, INC., a
24 Florida non profit corporation, and
25 VINCENT T. KELLY, an individual,

Defendants.

Proceedings before the HONORABLE

JACK TUTER

21 Wednesday, August 19, 2015
22 Broward County Courthouse
23 201 Southeast Sixth Street
24 Fort Lauderdale, Florida 33301
25 8:57 - 10:09 a.m.

Reported by: Lisa Mudrick, RPR, FPR

MUDRICK COURT REPORTING, INC.

561-615-8181

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COPY

EXHIBIT

C

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 BERGER SINGERMANN, LLP

4 350 East Las Olas Boulevard, Suite 1000

5 Fort Lauderdale, Florida 33301

6 BY: STEVEN D. WEBER, ESQUIRE

7 -- and --

8 MESSANA, P.A.

9 401 East Las Olas Boulevard, Suite 1400

10 Fort Lauderdale, Florida 33301

11 BY: THOMAS ZEICHMAN, ESQUIRE

12

13 On behalf of Defendant Avellino:

14 HAILE SHAW & PFAFFENBERGER, P.A.

15 660 U.S. Highway One, Third Floor

16 North Palm Beach, Florida 33408

17 BY: GARY A. WOODFIELD, ESQUIRE

18

19 On behalf of Defendant Michael Bienes:

20 BROAD AND CASSEL

21 2 South Biscayne Boulevard

22 One Biscayne Tower, 21st Floor

23 Miami, Florida 33131

24 BY: JONATHAN EZRA, ESQUIRE

25

1 requests essentially seeking all documents.
2 Now, we essentially reached the same type of
3 agreement with Mr. Bienes, is that we will
4 produce all documents produced in response to
09:57:02 5 requests for production, interrogatories, and
6 subpoenas in those four cases previously
7 mentioned. I don't know if they are seeking
8 anything beyond that. But if they are, they
9 need to tell us. Because right now as the
09:57:13 10 requests are worded they are seeking all
11 documents of the partnerships, and that's
12 overly broad.

13 MR. ETRA: Your Honor, Jonathan Etra for
14 Bienes. I have the unenviable position of
09:57:21 15 arguing to you after you have already ruled.
16 And I am going uphill, and I am going to
17 explain to you why I am going uphill and why I
18 filed -- served this document request.

19 We have had one deposition in this case,
09:57:30 20 two, of the Judds. They went back to back,
21 Mr. and Mrs. And in the deposition Mr. Weber
22 took out documents I have never seen before.
23 And I thought to myself, how did I let this
24 happen? What did I do wrong? And what I did
09:57:41 25 wrong was I made document requests, as my

1 colleague did, saying all documents related to
2 the allegations in the complaint, which at the
3 beginning were about these transfers of money,
4 right? All allegations about Bienes money, all
09:57:55 5 allegations about Avellino money. And I am
6 sitting there thinking, what an idiot I am. I
7 didn't realize this conservator has been acting
8 for two years gathering documents about every
9 investor, calling them up, writing letters,
09:58:08 10 threatening, I am not saying illegally, getting
11 documents. And here I am caught blindsided at
12 a deposition. I said I am not going to let
13 that happen, so I made this document request.
14 And I also looked at the allegations in the
09:58:20 15 fifth amended complaint because they keep
16 changing.

17 Paragraph 53, it's the first -- and I have
18 a copy if Your Honor wants it.

19 THE COURT: Read it to me.

09:58:28 20 MR. ETRA: The first count against the
21 defendants is breach of fiduciary duty.
22 Paragraph 53: Defendants Avellino and Bienes
23 owe fiduciary duties to the partnerships as a
24 result of Avellino and Bienes control over the
09:58:41 25 partnerships. I didn't read the whole

1 sentence. They are basically saying we
2 controlled the whole thing.

3 So what they are going to do is they've
4 got this repository of documents that they
09:58:51 5 received formally, informally, because they are
6 doing their job as receiver, as conservator. I
7 am used to receivers. I represented receivers.
8 And they are going to pick out a document, oh,
9 look, Mr. Bienes controlled this. And I am
09:59:03 10 going to sit there with this witness. I don't
11 have those documents. I am at a disadvantage.
12 I don't know anything about how these were run.

13 THE COURT: Okay. You are right in
14 everything you have said.

09:59:12 15 And you are Berger Singerman, right?

16 MR. WEBER: Correct, Your Honor.

17 THE COURT: Okay. You guys can't
18 blindsides with documents at a depo. If you are
19 going to use depo documents and if you are
09:59:19 20 going to use this material at some point later
21 in the trial or with a witness, you got to give
22 them the same thing that you got. You can't
23 have it one way on this kind of stuff. I am a
24 freewheeling discovery judge as far as that.
09:59:30 25 But when you use documents that you haven't

1 given them, it's an unfair advantage to one
2 side because you know what's in there; they
3 don't. And the witnesses will say whatever
4 they want to say with response to the document.
09:59:40 5 But the lawyers are all entitled to see the
6 same thing you have. So you guys need to
7 figure out a way to do that.

8 I won't tolerate you guys just showing
9 them documents that you have the exclusive
09:59:49 10 control over and then confront a witness with
11 it when they haven't had any kind of fair
12 chance to know what's in that document. So you
13 guys have got to sort that out through your
14 meet and confer. Otherwise, I will just set
09:59:59 15 the rules, and they won't be pleasant. You
16 need to meet with them in a meet and confer,
17 just like Mr. Woodfield. And you need to get
18 your issues sorted out with the same thing.
19 You need to file a formal response to their
10:00:10 20 request. And you need to make sure that
21 whatever you are asking for is narrowed such
22 that I don't have to come back here and unravel
23 all of this.

24 MR. ETRA: Your Honor, I hate to sound
10:00:20 25 difficult, and I realize I sound completely

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,

vs.

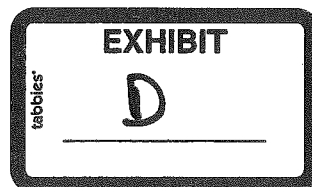
MICHAEL D. SULLIVAN, et al.

Defendants.

DECLARATION OF ALEXANDRA A. MURGUIDO

I, Alexandra A. Murguido, am over twenty-one (21) years of age, and am competent to give this Declaration.

1. The information contained in this Declaration is based on my personal knowledge.
2. I am a Paralegal at Broad and Cassel (the "Firm") and provide support for all the Firm's attorneys.
3. One of my various focuses at the Firm is electronic discovery.
4. I understand that Plaintiffs' counsel sent an e-mail to Jonathan Etra, as counsel for Defendant Michael Bienes and his wife Dianne, who I also understand is a non-party witness in this action (collectively the "Client"), and other attorneys at the Firm on September 25, 2015, at approximately 6:36 p.m. A copy of the September 25 e-mail is attached as **Exhibit 1** to my Declaration. I was not in the office at that time, as the email was sent after my normal business hours.



5. I was thereafter instructed to access the documents from the Share file contained in the September 25 email.

6. I accessed the Share file link and proceeded to download the zip file onto my computer. The zip file contained thirty-eight (38) individual bates stamped PDF file of varying page length and size.

7. Upon attempting to access the first PDF file, I was prompted to enter a password which was provided by Plaintiffs' counsel. A copy of the password prompt is attached as **Exhibit 2** to my Declaration.

8. I commenced to print the first PDF accessed and was presented with an illegible blacked-out document. A copy of the first printed PDF is attached as **Exhibit 3** to my Declaration.

9. I then proceeded to access the following PDF, and again I was prompted to enter the same password. I noted that the password had to be entered in order to open each one of the individual thirty-eight (38) PDFs.

10. I also noted that each printed PDF was illegible. I therefore began to save each individual PDF files onto my computer. Once all individual PDF files were saved onto my computer, I was able to print them virtually into our Firm program pdfDocs.

11. I then combined all documents, downloading and saving them as one composite PDF.

12. The final composite document was approximately 225 MB in size and 802 pages. A document showing the total file size is attached as **Exhibit 4** to my Declaration.

13. In order to send the documents via e-mail to Firm attorneys and the Client for review, I attempted to reduce or compress the file size, as it was too large to send electronically in a

single email. I only was able to reduce the file to 48.6 MB, *see* Exhibit 4, which was still too large to send attached in a single e-mail.

14. My final step was to split the document so that each part was no larger than 10 MB. Once split, I emailed attorney Shane P. Martin 7 individual e-mails comprising all documents.

15. For all steps listed, including communications to attorneys Etra and Martin regarding the issues presented, I expended approximately 5.2 hours of billable time.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 2nd day of October 2015.

A handwritten signature in dark ink, appearing to read 'A. Murguido', is written over a horizontal line.

ALEXANDRA A. MURGUIDO

Shane Martin

From: Steven D. Weber <SWeber@bergersingerman.com>
Sent: Thursday, September 24, 2015 6:36 PM
To: Jonathan Etra; Mark Raymond; Gary Woodfield (gwoodfield@haileshaw.com);
PGH@trippscott.com; Shane Martin; Leonard K. Samuels; Thomas Zeichman
(tzeichman@messana-law.com); Thomas M. Messana (tmessana@messana-law.com);
Michelle L. Albrecht; Susan Yoffee; ele@trippscott.com
Subject: S&P et al. v. Jacob et al.

All,

In response to our meet and confers regarding Requests 2 and 3 of Defendant Avellino's Fifth Request for Production of Documents and Requests A and B of Defendant Bienes' Third Request for Production of Documents, please see the below sharefile link containing documents that the Conservator received from Matthew Carone. Additionally, included within this production are documents that Plaintiffs received in response to a subpoena in aid of execution in the *S&P et al. v. Hooker et al.* action.

Sharefile link is good for 6 months.

Sharefile: <https://bergersingerman.sharefile.com/d-sae84388b6ad40f5a>
Password: "P5-P@55Word!@#\$\$%" (minus quotes)



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

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doing business in Florida resource: www.flabusinesslaw.com



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Transmittal Report (TR)
Date: 12/15/2011
Page: 1

- 1. General Report: Summary of the TR, dated 12/15/2011.
- 2. General Report: Detail of the TR, dated 12/15/2011.
- 3. General Report: Detail of the TR, dated 12/15/2011.
- 4. General Report: Detail of the TR, dated 12/15/2011.
- 5. General Report: Detail of the TR, dated 12/15/2011.
- 6. General Report: Detail of the TR, dated 12/15/2011.
- 7. General Report: Detail of the TR, dated 12/15/2011.
- 8. General Report: Detail of the TR, dated 12/15/2011.
- 9. General Report: Detail of the TR, dated 12/15/2011.
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- 12. General Report: Detail of the TR, dated 12/15/2011.
- 13. General Report: Detail of the TR, dated 12/15/2011.
- 14. General Report: Detail of the TR, dated 12/15/2011.
- 15. General Report: Detail of the TR, dated 12/15/2011.
- 16. General Report: Detail of the TR, dated 12/15/2011.
- 17. General Report: Detail of the TR, dated 12/15/2011.
- 18. General Report: Detail of the TR, dated 12/15/2011.
- 19. General Report: Detail of the TR, dated 12/15/2011.
- 20. General Report: Detail of the TR, dated 12/15/2011.

Please do not distribute this report to any other personnel.

Signature: [Signature]
Date: 12/15/2011

TR/JP
12/15/2011

