

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' REPLY IN SUPPORT OF:

**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 reply in support of its 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 (the "Motion"), and in support state:

1. On September 16, 2016, Plaintiffs filed their Motion to depose Annette Bongiorno ("Bongiorno"), an incarcerated person located in Sumterville, FL.

2. As set forth in the Motion, Bongiorno's deposition is necessary because it is believed

she has knowledge directly related to Plaintiffs' investment in BLMIS and Plaintiffs' claims against Avellino and Bienes (the "Defendants").

3. On October 18, 2016, the Defendants filed a response to the Motion which contends, essentially, that Bongiorno does not have any knowledge of the Plaintiffs or the Defendants involvement with the Partnerships' investment. Response at p. 2-3. Defendants attach an unsworn email from Bongiorno's lawyer as support, which only reveals that Bongiorno may not be able to recall issues relating to the Partnerships. However, there is documentary evidence establishing that the Partnerships communicated with Madoff through Bongiorno and her recollection can be refreshed.

4. The unverified contentions in the Response conflict with, among other things, documentary evidence and sworn testimony which reflect the need to depose Ms. Bongiorno

5. For example, attached hereto as **Exhibit "A"** is correspondence from the Partnerships directed to Bongiorno. This document reflects that Bongiorno was involved in the transactions between the Plaintiffs and Madoff. These transactions were encouraged by the Defendants as addressed in the Fifth Amended Complaint ("FAC").

6. Further, Frank Dipascali ("Dipascali") testified a during Bongiorno's criminal trial that following the S.E.C. injunction against the Defendants, Bongiorno was involved in the process of bringing back the Defendants' clients, such as the Partnerships' former manager Michael D. Sullivan ("Sullivan"), to Madoff.¹ Specifically, the Dipascali testified as follows:

Q. Again, who were the people that were speaking to these A&B clients that were coming back in?

A. Bernie, myself, Jodi, Annette [Bongiorno], members of Annette's staff.

Q. These people were asking you questions about the trading that was going to occur at Madoff Securities?

A. Yes.

Q. Did you lie to these folks?

A. Yes.

¹ Attached hereto as **Exhibit "B"** is an excerpt from the Dipascali Testimony.

Dipascali Testimony at 34:3-10.

7. Additionally, Dipascali testified that certain clients, such as the Defendants, received special benefits, in the form of commissions, for bringing clients. Dipascali Testimony at p. 34. Further, Dipascali testified that Frank Avellino coordinated with Madoff to set up a system to reward Defendants' middlemen:

Q. As part of these people coming back in, did folks like we see here bring in additional customers to Madoff Securities.

A. These entities were clients of A&B. A&B, being closed down by the SEC, had no vehicle to pay them any longer. The purpose of this was illustrated to me and explained to me that since Frank can't pay these guys anymore for the money they originally brought in to A&B and now those very same clients are going to be transferred, if you will, to Madoff, if you will, and have direct accounts, **the only vehicle that Frank and therefore now Bernie would have to pay these managers of other people's money would be to shtup their personal accounts with extra P&L.**

Q. Just so the record is clear, when you say Frank, were you referring to Frank Avellino?

A. I was.

Dipascali Testimony at 34:11-25.

8. The Dipascali Testimony regarding Avellino's use of front men is consistent with the allegations in the Plaintiffs' FAC that "Avellino and Bienes facilitated the creation of a network of 'front men' feeder fund partnerships and charitable foundations throughout the United States to invest in BLMIS." FAC at p. 4 ¶20.

9. Therefore, the Dipascali Testimony reflects that: (i) Avellino, as an agent for Defendants, utilized Madoff, Dipascali, and Bongiorno to bring in Defendants customers after the S.E.C. injunction, such as Sullivan; and (ii) Avellino used front men to bring in customers for Madoff. The Dipascali Testimony, together with other evidence, was used to convict Madoff employees during their criminal trial.

10. Accordingly, the documents and Dipascali Testimony establishes that the deposition of Bongiorno is reasonably calculated to lead to the discovery of admissible evidence because

Bongiorno was part of the team which recruited Defendants former customers, such as Sullivan, back into Madoff. Further, Bongiorno's testimony will advance prosecution of the case because it relates to allegations raised in the FAC and whether Avellino and Bienes were entitled to receive the kickbacks at issue.

11. Further, Defendants will not be prejudiced by having to take a single deposition, from a prison in north Florida, and they have not presented any evidence to support any claims that it would be unduly burdensome to do so. Moreover, trial is not scheduled to occur until March, 2017.

12. 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: October 24, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 24, 2016, the foregoing was filed using the Florida Courts E-Filing Portal, which sent notification to the following parties:

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Exhibit “A”

SULLIVAN & POWELL
and
SOLUTIONS IN TAX, INC.

225 North Federal Highway
Suite 600
Pompano Beach, Florida 33062
PHONE (305) 782-3500
FAX (305) 782-3602

FACSIMILE TRANSMISSION

COVER LETTER

Sent To: Medoff Investment Securities Date: 12/20/93
Attn: Annette Time: 3:15 p.
Fax #: _____ From: G. Powell
Number of Pages including this page: 3

Message: Please forward funds per attached
request letters.

This facsimile contains PRIVILEGED AND CONFIDENTIAL information intended only for the use of the addressee named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the originating party above by telephone and return the original facsimile to us at the above address via U.S. mail. Thank you.

SULLIVAN & POWELL
and
SOLUTIONS IN TAX, INC.

225 North Federal Highway
Suite 600
Pompano Beach, Florida 33062
PHONE (305) 782-3500
FAX# (305) 782-3602

FACSIMILE TRANSMISSION

COVER LETTER

Sent To: Madoff Investment Securities Date: 11/10/93
Attn: Annette Time: 1:15 pm
Fax #: _____ From: Gwen Powell
Number of Pages including this page: 2

Message: Please forward funds to me
per the attached letter.
Thank you.

This facsimile contains PRIVILEGED AND CONFIDENTIAL information intended only for the use of the addressee named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the originating party above by telephone and return the original facsimile to us at the above address via U.S. mail. Thank you.

Exhibit “B”

1 A. Typically, the fake trading occurred in codes like 10-30,
2 40, 50, 70. The 60 and the 20 were earmarked for a specific
3 purpose.

4 Q. That specific purpose was to store real securities?

5 A. That's correct.

6 Q. Let's take that down. Now I want to step back for a moment
7 and talk about the IA account trading that was going on with
8 respect to the split strike strategy. OK?

9 A. Sure.

10 Q. As part of that component of the business, were certain
11 accounts promised a rate of return?

12 A. Yes.

13 Q. How was that rate of return determined?

14 A. By Bernie.

15 Q. What is that rate of return conveyed to you?

16 A. Yes.

17 Q. Did you convey that to other people that you worked with?

18 A. Yes.

19 Q. Who were some of the people that you conveyed that to?

20 A. Jodi.

21 Q. How did you come to learn that certain of these accounts
22 had a rate of return that was targeted?

23 A. As it pertained to me in the basket split strike strategy?

24 Q. Yes.

25 A. I was called into a meeting that was about to break up

1 between Bernie and Frank Avellino.

2 Q. Can we step back. Frank Avellino, was that the Avellino of
3 Avellino & Bienes?

4 A. Yes.

5 Q. When, approximately, did this occur?

6 A. The winter of '93.

7 Q. What happened in that meeting?

8 A. Bernie introduced me to Frank Avellino, who I don't think I
9 had met him up to that point. They basically gave me a quick
10 synopsis of what their meeting was about and handed me a
11 document that had figures on it that illustrated the meat and
12 potatoes of their meeting.

13 Q. What was your understanding of the figures that were on
14 there?

15 A. It was funds that needed to be put into various client
16 accounts that had split strike strategy as a method of paying
17 these individuals for bringing in money.

18 Q. Who were some of the individuals that were going to get
19 this credit?

20 A. Stephen Mendelow, Ed Glantz, Richard Glantz, a trust for
21 Aaron Levy controlled by his son Joel. That's all I can
22 remember off the top of my head.

23 Q. These accounts were of individuals that were bringing
24 additional customers in to Madoff Securities?

25 A. Yes.

1 Q. As part of bringing in new customers, what was given to
2 them?

3 A. In essence, a commission.

4 Q. The commission for bringing in those customers?

5 A. Correct.

6 Q. Now I would like to show you what's in evidence as
7 government 105-C51. Looking at this cover page, do you
8 recognize the handwriting?

9 A. It's mine.

10 Q. What does it say?

11 A. It says, "I need to shtup."

12 Q. What did you mean by "shtup"?

13 A. To put funds into clients' accounts.

14 Q. Can we turn to page 3 of this document. Do you recognize
15 that document?

16 A. I do.

17 Q. What is it?

18 A. The typewritten information on the document is what was
19 given to me at the tail end of the Bernie Madoff-Frank Avellino
20 meeting explaining who and in what quantities we were going to
21 quote-unquote shtup these accounts, put funds into these
22 accounts.

23 Q. Is that the credit for bringing in the clients that you
24 just discussed?

25 A. It is.

1 Q. Can we blow up the top half of it. First of all, Mr.
2 DiPascali, when is this dated?

3 A. February 3, 1994.

4 Q. Do you see there is a row that says "1993 only"?

5 A. Correct.

6 Q. Do you recall what that meant, "1993 only"?

7 A. Yes.

8 Q. What did it mean?

9 A. It meant that there was an arrangement in place between
10 Frank and these clients and then subsequently between Bernie
11 and Frank that because A&B had unwound in late '92 and these
12 individuals were due a payment for '93 that had not yet
13 occurred, and here it is in early '94 that they were addressing
14 this payment, they were instructing me that for '93 only these
15 people would get these amounts, then going forward after '93
16 they would get a different amount.

17 Q. On the left side you see a list of four underlined names.
18 Are those the folks that were going to get schtupped?

19 A. Yes.

20 Q. Did this process continue going forward?

21 A. Yes.

22 Q. Stepping back for a moment, A&B had been, we talked about
23 it earlier, shut down by the SEC, right?

24 A. That is correct.

25 Q. You and others were involved in the process of bringing

1 those A&B clients back to Madoff Securities, right?

2 A. That is correct.

3 Q. Again, who were the people that were speaking to these A&B
4 clients that were coming back in?

5 A. Bernie, myself, Jodi, Annette, members of Annette's staff.

6 Q. These people were asking you questions about the trading
7 that was going to occur at Madoff Securities?

8 A. Yes.

9 Q. Did you lie to those folks?

10 A. Yes.

11 Q. As part of these people coming back in, did folks like we
12 see here bring in additional customers to Madoff Securities?

13 A. These entities were clients of A&B. A&B, being closed down
14 by the SEC, had no vehicle to pay them any longer. The purpose
15 of this was illustrated to me and explained to me that since
16 Frank can't pay these guys anymore for the money they
17 originally brought in to A&B and now those very same clients
18 are going to be transferred, if you will, to Madoff, if you
19 will, and have direct accounts, the only vehicle that Frank and
20 therefore now Bernie would have to pay these managers of other
21 people's money would be to shtup their personal accounts with
22 extra P&L.

23 Q. Just so the record is clear, when you say Frank, were you
24 referring to Frank Avellino?

25 A. I was.

1 Q. This was the process by which to pay these folks money,
2 right?

3 A. Exactly that.

4 Q. What were they getting that extra money for?

5 A. For originally bringing in the clients to A&B and then
6 subsequently those clients became clients of Madoff.

7 Q. Did those payments continue after this and into the '90s
8 and beyond?

9 A. Yes.

10 Q. How were those payments made to these folks?

11 A. We would design an option transaction, typically an index
12 option, and we would calculate what the payment should be.
13 These numbers over the years changed somewhat. But once we
14 identified what the number was, then we would write a
15 fictitious buy ticket and a subsequent fictitious sell ticket
16 that would create P&L in their accounts, and the value of their
17 account would therefore increase equal to the amount of
18 theoretical commission Bernie owed them.

19 Q. These trades that were being put into their accounts to get
20 back credit, were those trades real?

21 A. No.

22 Q. Over time did the number of folks that were getting
23 schtupped increase?

24 A. Yes.

25 Q. How would folks get added to the shuffling?

1 A. A number of ways.

2 Q. What are some of the ways, Mr. DiPascali?

3 A. Since this mechanism was in place, we would typically put
4 these transactions through as the last or one of the last
5 orders of business before closing out a year. We also had a
6 situation from time to time where some of the very small
7 accounts that did not have enough money to justify purchasing a
8 full-blown basket of securities, those accounts would typically
9 sit in a treasury instrument pretty much all year or in some
10 money market fund pretty much all year. Their rate of return
11 was in the 2 or 3 or 4 percent range when other similar clients
12 that simply had more money were in the 10 and 14 range.

13 In an effort to be equitable, we would put extra P&L
14 into some of these smaller accounts. I ran a quick Excel
15 program to identify who these people were and how much money
16 would bring them up to some midpoint of a bell curve of all our
17 clients, identified the dollar amount, and then ran a quick
18 program to process a series of tickets that would put that P&L
19 into those accounts using the same format that I used for these
20 accounts.

21 Q. Did you keep track of these various accounts in a file?

22 A. Yes.

23 Q. When in the year did you do most of this activity?

24 A. Late in the year.

25 Q. Can you describe the process that you would engage in in

1 doing it late in the year.

2 A. I typically worked on this between Christmas and New
3 Year's. By Christmas more than likely the trading for the
4 entire year, the amount of tickets that were going to be posted
5 to all of my accounts were pretty much done, so I could take a
6 preliminary view of where all of these accounts sat in terms of
7 their P&L.

8 I used that information and created a fictitious trade
9 buy side and a fictitious trade sell side, and I set it up into
10 the system as a basket trade. I ran some rudimentary Excel
11 programs that would take the information and run the tickets
12 against this file. So we were able to accomplish a couple of
13 tasks with the same process.

14 Q. Why would you do this at the end of the year?

15 A. Some of these accounts had almost like a double mandate.
16 For instance, these accounts in particular, it was promised to
17 these guys by Bernie that they would earn 17 percent on their
18 account, pretty much dead-on 17 percent, and on top of that
19 they would receive this exact dollar amount.

20 In order to see where they were vis-a-vis 17 percent
21 at the end of the year, you needed to wait until the end of the
22 year. You couldn't do that in June. By Christmas, all the
23 chips had pretty much settled, I had a very close handle on
24 where these accounts were going to wind up. And then on some
25 of these accounts I looked at them and I first adjusted them to

1 17 and then I added extra P&L on top of that. That's why it
2 was done at the end of the year.

3 Q. Who would help you with this process?

4 A. I pretty much did it on my own, with keypunch help.

5 Q. You would do this right before New Year's?

6 A. Usually between Christmas and New Year's, yes.

7 Q. For how many years did you do that?

8 A. 14 or 15 years.

9 Q. Were most of the clients that got this extra setup clients
10 that had brought in at some point new clients to Madoff
11 Securities?

12 A. A good part of the list was that, yes.

13 Q. As part of this process, did you engage in activity that
14 helped certain clients with their taxes?

15 A. Yes.

16 Q. What sorts of activity did you engage in to help certain
17 clients with their taxes?

18 A. The concept in general helps all of these clients with
19 their taxes. If this is in essence a commission payment for
20 bringing in money, you would typically account for that as
21 ordinary income; you would bill and you would receive a payment
22 and you would book it as ordinary income on your income tax
23 return. By doing in it this format, and using index options in
24 particular as the transaction vehicle, it became treated
25 differently by the IRS because index option profits are

1 favorably treated by the IRS and it is not ordinary income. It
2 is calculated at a different rate.

3 Everyone who got P&L or received P&L because they were
4 owed a commission took advantage of the fact that the vehicle
5 we chose to use to pay that commission was very tax
6 advantageous. There was also situations where occasionally a
7 loss would be put through that would offset other ordinary
8 income.

9 Q. To be clear, these index options that had favorable tax
10 treatment, those trades that were put into the accounts were
11 fake?

12 A. Absolutely.

13 Q. The losses that were put in the accounts, those were fake
14 as well?

15 A. Yes, they were.

16 Q. They just had the effect of helping people pay less taxes?

17 A. That's correct.

18 Q. When you did that, did you know what you were doing was
19 wrong?

20 A. Sure.

21 Q. Now let me ask you this. Did Ms. Crupi have an accounts in
22 the IA business?

23 A. Yes.

24 Q. Were those accounts were for her, her friends, and her
25 family?

1 A. I believe so.

2 Q. Did you have conversations with Ms. Crupi about shtupping
3 her accounts?

4 A. Yes.

5 Q. Could you describe what types of conversations you had with
6 Ms. Crupi about shtupping her accounts.

7 A. Going back, one of the purposes of shtupping was to get
8 some of the little people to have a rate of return that was
9 pretty much the average of all people. I noticed one year that
10 the employees, some of which had small accounts, were on the
11 low side of the bell curve. I started to do a little study of
12 some of the employee accounts and where they stood because I
13 felt that certainly the employees should attain a rate of
14 return that was the average of all our customers.

15 I started to request from people that I knew had
16 accounts for themselves and their family a list of the account
17 numbers because I wasn't familiar with all of them and I didn't
18 want to miss one. It was during those discussions with her and
19 other members of my staff that had family accounts that we had
20 these conversations.

21 Q. Did you have an account or did someone in your family have
22 an account?

23 A. My mother.

24 Q. Were other people at the firm that had these type of
25 accounts?

1 A. Yes.

2 Q. We can take down that down, Ms. Baskin, and put up 105-C51.
3 Can we go to page 42. I want to direct your attention to the
4 bottom Post-it. Do you see that?

5 A. I do.

6 Q. Whose handwriting is that?

7 A. Jodi's and mine.

8 Q. What is yours and what is Jodi's?

9 A. The part that says "J. Crupi 5,000" crossed out, "option
10 loss see 12/10/40" is Jodi's. The number 15,000 is mine.

11 Q. Do you recall what this related to?

12 A. I do.

13 Q. Did you have a discussion with Ms. Crupi about what this
14 relates to?

15 A. We did.

16 Q. Tell the jury what discussion you had with Ms. Crupi about
17 this Post-it.

18 A. We discussed the fact that it would have been advantageous
19 for her to take a loss at the end of that particular year. I
20 asked her to make sure she left a note with her account number
21 and the amount of loss she wanted to take. Sometime after that
22 there was this sticky on my desk. Subsequent to seeing the
23 sticky, I just put it in a folder, because we were going to get
24 to that sometime after Christmas.

25 Then, when I was about to do this transaction based on

1 custody account, and they were simultaneously taken into the IA
2 business and posted to the customer statement.

3 Q. When you say posted to the customer statement, does that
4 mean that they were reflected as an asset on the customer
5 statement?

6 A. Yes.

7 Q. After they were reflected as an asset on the customer
8 statement, how were they used elsewhere?

9 A. They were delivered in via DTC. They were received into
10 the business. The net effect was there was a position stated
11 in our trading inventory, so they would be used as an asset of
12 the firm.

13 Q. When you say they were used as an asset of the firm, what
14 were some of the different ways that these customer real
15 securities were used?

16 A. They were often used as collateral to draw down on a bank
17 loan.

18 Q. When you draw on a bank loan, does that give cash to Madoff
19 Securities?

20 A. It does.

21 Q. Where you aware of times when Madoff Securities was running
22 low on money?

23 A. Yes.

24 Q. How, if at all, were these loans that were obtained using
25 customer real securities used at those times?

1 A. The cash from those loans replenished the account that was
2 running low on money.

3 Q. Were there specific times that you remember that happening?

4 A. Yes.

5 Q. What are some of those specific times that you recall that
6 happening?

7 A. December of '08, during the period that Bernie needed to
8 refund back to the trustee the Avellino & Bienes funds, and
9 other times.

10 Q. Was Mr. Bonventre involved in any of these loans?

11 A. Yes.

12 Q. How do you know Mr. Bonventre was involved?

13 A. That was his job function.

14 Q. What was his role?

15 A. He was the firm's liaison to our banks, the seniormost
16 person that dealt with our banks.

17 Q. Did you have discussions with Mr. Madoff about how these
18 loans were obtained using customer securities?

19 A. Yes.

20 Q. In any of those discussions did Mr. Madoff mention Mr.
21 Bonventre?

22 A. Yes.

23 Q. What did Mr. Madoff say about Mr. Bonventre's role in using
24 real customer securities to get loans from banks?

25 A. Typically, he would just mention to me, I'm getting in

1 stock or I'm getting in bonds from so-and-so, do me a favor and
2 stay on the cage's backs, I want to know when they come in. So
3 I would occasionally walk in the cage and ask them if the bonds
4 came in.

5 In that conversation he would say that he -- he
6 obviously told Danny the same thing. He just was playing
7 double safe, double sure, having two guys do the same thing.
8 It was kind of like just a conversation as to what the process
9 Bernie expected was going to be.

10 Q. In those discussions did Mr. Madoff mention how these loans
11 were going to be utilized on the books and records of the firm?

12 A. I'm not so sure the loans were reflected on the books and
13 records of the firm.

14 Q. Did he discuss how these were going to be accounted for in
15 the firm?

16 A. Not specifically, but I know how they were accounted for.

17 (Continued on next page)
18
19
20
21
22
23
24
25

1 Q. Well, how do you know they were accounted for?

2 A. Because at one time, I was a trader on that desk and I saw
3 those very same securities that came in from customers,
4 specifically Norman Levy. And I saw where they put them, which
5 was in a trading account up in that room, and I know that that
6 trading account appears on our books and records as an asset.
7 So I just -- it's logic.

8 Q. And what is a trading account?

9 A. It's a subsidiary account of the firm's inventory broken up
10 by each trader responsible for a group of securities; so each
11 group has its own account, but the collective account is the
12 collective firm inventory.

13 Q. Now, going back to those customers that Ms. Bongiorno
14 managed, were they part of the so-called split-strike strategy?

15 A. No.

16 Q. How were their accounts typically traded?

17 A. In what's known as a long position account.

18 Q. And what is a long position account?

19 A. Typically an array of securities of various portfolios,
20 sometimes hedged, sometimes not, but it could be a portfolio of
21 one stock, it could be a portfolio of 40 stocks, depending on
22 the account.

23 Q. And who was it that was in charge of putting in the trades
24 for Ms. Bongiorno's accounts?

25 A. She was.

1 Q. Were any of those trades real?

2 A. No.

3 Q. Now, are you, sir, familiar with a entity called ACF?

4 A. I am.

5 Q. What was ACF?

6 A. It was a pension-type account controlled by Jeffrey
7 Picower.

8 Q. And who was Mr. Picower?

9 A. A wealthy investor.

10 Q. Where did he live?

11 A. I have no idea.

12 Q. And what was -- or what is a pension plan?

13 A. It's a pool of money that has been earmarked to pay the
14 retirement funds of typically employees or something like that.

15 Q. Now, in the course of working down on the 17th floor, do
16 you recall that there were problems with the ACF account?

17 A. I do.

18 Q. How did you learn that there were problems with the ACF
19 account?

20 A. I observed people talking about it.

21 Q. Who are some of the folks you observed talking about it?

22 A. Jodi, Annette and Bernie.

23 Q. And what did you hear them say about the problems that were
24 being had with the ACF account?

25 A. ACF was, I believe, a typical long position account that