

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

Case No. 12-034123 (07)

COMPLEX LITIGATION UNIT

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

Plaintiffs,

v.

STEVEN JACOB, et al.,

Defendants.

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**PLAINTIFFS' MOTION FOR SANCTIONS AND RESPONSE TO DEFENDANT  
MICHAEL D. SULLIVAN'S MOTION FOR A PROTECTIVE ORDER**

Plaintiffs, by and through the undersigned counsel, hereby file this Motion for Sanctions, and Response to Defendant Michael D. Sullivan's Motion for Protective Order and in support thereof state:

1. On November 17, 2014, Avellino filed a Re-Notice of Taking Deposition Duces Tecum, seeking to take Sullivan's deposition on December 1, 2015. Plaintiffs filed a Cross-Notice of Taking Deposition as to Michael Sullivan. Defendant Michael Bienes also cross-noticed Sullivan's deposition. The deposition of Sullivan, a key witness, noticed by three parties was obviously going to last at least an entire day.

2. Sullivan did not file an objection to the notice or the cross notices. Sullivan also did not file a Motion for a Protective Order prior to December 1, 2015.

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 **BERGER SINGERMAN**

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3. On December 1, 2015, Sullivan appeared for his 9:30 a.m. scheduled deposition approximately an hour late. At approximately 11:30 a.m. Sullivan's counsel notified the parties that he would be terminating Sullivan's at 1:30 p.m. Sullivan's counsel gave no reason for his unilateral termination of the deposition and terminated the deposition early in violation of Fla. R. Civ. P. 1.380. Counsel for Avellino had not yet concluded his questioning of the witness. Plaintiffs' counsel spent substantial time and effort to prepare for Sullivan's deposition, and all of that time was wasted by Sullivan's early termination of the deposition. Counsel for Plaintiff will now have to spend a considerable amount of time preparing once again when the deposition is reconvened.

4. At the end of the improperly terminated deposition, all counsel, including counsel for Sullivan, checked their calendars and agreed that Mr. Sullivan's deposition would resume on December 17, 2015. Undersigned counsel noted that he will have to leave early because of a partners meeting in Miami, and requested that everyone also reserve December 18, 2015 just in case more time was needed.

5. Counsel for Sullivan has now taken the position that Plaintiffs cannot ask Sullivan any questions, because they previously took his sworn statement. As this Court surely knows, the two are unrelated.

6. On the evening after Sullivan's deposition, counsel for Sullivan requested copies of Sullivan's confidential sworn statement for the first time. The confidential sworn statement was provided by Sullivan pursuant to a settlement agreement. Undersigned counsel agreed to provide it to counsel for Sullivan, provided that he and his client agree to keep it confidential. This is a simple request and should have ended the matter. After all, this Court previously ruled

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that the sworn statement is work-product, and the settlement agreement requires the statement to remain confidential. The confidentiality of this statement has become a big issue, as counsel for Sullivan has repeatedly expressed what he believed was stated in the sworn statement to counsel for Avellino and Bienes. Counsel for Sullivan refused to agree to this very simple condition, and chose to file a motion instead. Copies of relevant emails demanding a copy of the sworn statement, yet refusing to agree to keep it confidential, are attached hereto as Exhibit A.

7. As to Sullivan's assertion that Plaintiffs have no credible evidence that Sullivan was a straw man for Avellino and Bienes, at that time, Plaintiffs would simply direct the Court's attention to Exhibit B attached hereto.

8. Accordingly, Plaintiffs respectfully request that the Court award them fees and costs pursuant to Fla. R. Civ. P. 1.380(a), which is justified as a result of Sullivan's decision to terminate his deposition early, and filing a motion to demand a copy of the sworn statement, which he would already have had he simply agreed to keep it confidential.

WHEREFORE, for all of the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order: (i) Awarding them fees and costs associated with the preparation of Sullivan's deposition, the filing of the instant motion, and responding to Sullivan's motion; (ii) Directing Sullivan to appear for his deposition on December 17 and December 18, 2015, if necessary; (iii) Denying Sullivan's Motion; and (iv) such further relief as the Court deems just and proper.

Dated: December 3, 2015

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Florida Bar No. 991422  
Brett D. Lieberman, Esq.  
Florida Bar No. 69583  
Thomas G. Zeichman, Esq.  
Florida Bar No. 99239



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of December, 2015, a true and correct copy of the foregoing document was served on the following parties:

Peter G. Herman, Esq.  
Tripp Scott  
110 SE 6<sup>th</sup> Street  
15<sup>th</sup> Floor  
Fort Lauderdale, FL 33301  
Tel.: 954-525-7500  
Fax.: 954-761-8475  
[pgh@trippscott.com](mailto:pgh@trippscott.com)  
*Attorneys for Steven Jacob; Steven F. Jacob  
CPA & Associates, Inc.*

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[gwoodfield@haileshaw.com](mailto:gwoodfield@haileshaw.com)  
[bpetroni@haileshaw.com](mailto:bpetroni@haileshaw.com)  
[eservices@haileshaw.com](mailto:eservices@haileshaw.com)  
*Attorneys for Frank Avellino*

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Miami, FL 33131  
Tel.: 305-373-9400  
Fax.: 305-373-9443  
*Attorneys for Michael Bienes*

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

## Veronica Barthelemy

---

**From:** Leonard K. Samuels  
**Sent:** Tuesday, December 01, 2015 6:11 PM  
**To:** harry winderman  
**Subject:** Re: S&P et al. v. Sullivan et al.

You are creating a fight over nothing. The judge expects us to work together. You simply need to agree to keep it confidential.

Sent from my iPhone

On Dec 1, 2015, at 6:07 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

Please provide the statement.

Sent via the Samsung GALAXY S® 5, an AT&T 4G LTE smartphone

----- Original message -----

From: "Leonard K. Samuels" <[LSamuels@bergersingerman.com](mailto:LSamuels@bergersingerman.com)>  
Date: 12/01/2015 5:58 PM (GMT-05:00)  
To: harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)>  
Subject: Re: S&P et al. v. Sullivan et al.

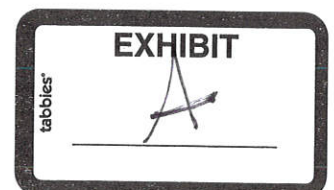
Bey simple. I just need you and your client to agree to keep it confidential. Ok?

Sent from my iPhone

On Dec 1, 2015, at 5:47 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

Sorry and but I am in the car and it's difficult for me to type so this verbal translation may not be totally accurate. Your client breached the settlement agreement by filing the judgment in the court in violation of that agreement. It has breach the agreement by not satisfying that judgement based on the focus representation that my client is collectible. It was always the understanding that the judgment was meant solely as leverage to make sure that my client gave you a full complete and accurate statement. You may not believe this but he has given you a full complete and accurate statement of the transactions between he and mr. Avelino and be honest. You will get my motion for protective order tomorrow. The only question is will you voluntarily turn over my clients written statement to him as is required by the rules. Please let me know so I can include the motion to compel if you decide not to turn over that written statement

Sent via the Samsung GALAXY S® 5, an AT&T 4G LTE smartphone



----- Original message -----

From: "Leonard K. Samuels" <[LSamuels@bergersingerman.com](mailto:LSamuels@bergersingerman.com)>  
Date: 12/01/2015 5:39 PM (GMT-05:00)  
To: harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)>  
Cc: "Steven D. Weber" <[SWeber@bergersingerman.com](mailto:SWeber@bergersingerman.com)>, "Thomas M. Messana" <[tmessana@messana-law.com](mailto:tmessana@messana-law.com)>, "Thomas Zeichman" <[tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)>, "Zachary P. Hyman" <[ZHyman@bergersingerman.com](mailto:ZHyman@bergersingerman.com)>  
Subject: Re: S&P et al. v. Sullivan et al.

The statement is confidential. We are concerned about your agreeing to keep it confidential as you already spoke of its contents today. Do you and your client agree to keep it confidential?

Sent from my iPhone

On Dec 1, 2015, at 5:34 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

Gentlemen

My client requests a copy of his written statement before the continuation of his deposition. I as know you are familiar with the rules:

Upon request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion.

Please govern yourself accordingly.

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## Veronica Barthelemy

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**From:** Leonard K. Samuels  
**Sent:** Tuesday, December 01, 2015 6:50 PM  
**To:** harry winderman  
**Subject:** Re: S&P et al. v. Sullivan et al.

The statement cannot be used at trial. It served a different purpose than a deposition. It was in consideration for settlement. If I cannot cross no one can use it.

Sent from my iPhone

On Dec 1, 2015, at 6:43 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

What is at issue is your statement today that you expect to spend another six or seven hours questioning my client on information that you already have, that you have already taken statement, that he has been fully cooperative and delivering every single document or giving your firm access to any single document. If you continue to make this an issue in my motion for protective order then I will submit the written statement for an in camera inspection so that the court can determine whether or not your statement of a seven hour continue deposition is burdensome.

Sent via the Samsung GALAXY S® 5, an AT&T 4G LTE smartphone

----- Original message -----

From: "Leonard K. Samuels" <[LSamuels@bergersingerman.com](mailto:LSamuels@bergersingerman.com)>  
Date: 12/01/2015 6:14 PM (GMT-05:00)  
To: harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)>  
Subject: Re: S&P et al. v. Sullivan et al.

You should know that the court has ordered that the statement is non discoverable work product.

Sent from my iPhone

On Dec 1, 2015, at 6:07 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

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Sent via the Samsung GALAXY S® 5, an AT&T 4G LTE smartphone

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To: harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)>  
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Date: 12/01/2015 5:39 PM (GMT-05:00)  
To: harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)>  
Cc: "Steven D. Weber" <[SWeber@bergersingerman.com](mailto:SWeber@bergersingerman.com)>, "Thomas M. Messana" <[tmessana@messana-law.com](mailto:tmessana@messana-law.com)>, <[tmessana@messana-law.com](mailto:tmessana@messana-law.com)>, "Thomas Zeichman" <[tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)>, <[tzeichman@messana-law.com](mailto:tzeichman@messana-law.com)>, "Zachary P. Hyman" <[ZHyman@bergersingerman.com](mailto:ZHyman@bergersingerman.com)>  
Subject: Re: S&P et al. v. Sullivan et al.

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Please govern yourself accordingly.

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## Veronica Barthelemy

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**From:** Leonard K. Samuels  
**Sent:** Tuesday, December 01, 2015 10:26 PM  
**To:** harry winderman  
**Subject:** Re: S&P et al. v. Sullivan et al.

My client is out of the country dealing with a death in his family. You made the request for the first time late today and want to file a motion at 9. The statement was taken months ago. I have not asked your client a single question at a deposition. Tom will contact you tomorrow.

Sent from my iPhone

On Dec 1, 2015, at 6:53 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

This is your last. Your very last warning please produce my clients written statement by 9 a.m. tomorrow morning or I will have no choice but to include it in my motion. The question is not whether you can use the statement at trial although I believe you can it is a statement of a party and any statement of any party can be used at trial. Please don't email me anymore tonight it is a waste of your time and mine I will expect the statement email to me tomorrow by 9 a.m. if it is not I will include it in my motion to the court

Sent via the Samsung GALAXY S® 5, an AT&T 4G LTE smartphone

----- Original message -----

From: "Leonard K. Samuels" <[LSamuels@bergersingerman.com](mailto:LSamuels@bergersingerman.com)>  
Date: 12/01/2015 6:49 PM (GMT-05:00)  
To: harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)>  
Subject: Re: S&P et al. v. Sullivan et al.

The statement cannot be used at trial. It served a different purpose than a deposition. It was in consideration for settlement. If I cannot cross no one can use it.

Sent from my iPhone

On Dec 1, 2015, at 6:43 PM, harry winderman <[harry4334@hotmail.com](mailto:harry4334@hotmail.com)> wrote:

What is at issue is your statement today that you expect to spend another six or seven hours questioning my client on information that you already have, that you have already taken statement, that he has been fully cooperative and delivering every single document or giving your firm access to any single document. If you continue to make this an issue in my motion for protective order then I will submit the written statement for an in camera inspection so that the court can determine whether or not your statement of a seven hour continue deposition is burdensome.

**Veronica Barthelemy**

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**Subject:** FW: sullivan

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**From:** Leonard K. Samuels  
**Sent:** Wednesday, December 02, 2015 2:34 PM  
**To:** 'harry winderman'; [tmessana@messana-law.com](mailto:tmessana@messana-law.com)  
**Subject:** RE: sullivan

Harry:

No reason to get personal or inflammatory. We have our positions, and that is what courts are for if we can't otherwise agree. I quit predicting what courts will do, or whose house of cards is going to fall, many years ago.

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**From:** harry winderman [<mailto:harry4334@hotmail.com>]  
**Sent:** Wednesday, December 02, 2015 2:24 PM  
**To:** [tmessana@messana-law.com](mailto:tmessana@messana-law.com)  
**Cc:** Leonard K. Samuels  
**Subject:** sullivan

your house of cards is about to tumble. Here is the proposed Motion. Is this a fight you want displayed in front of the court.

You have until 3



Confidential Document  
**Michael D. Sullivan & Associates, Inc.**

Port Royale Financial Center, Suite 210  
6550 North Federal Highway  
Fort Lauderdale, FL 33308

Michael D. Sullivan  
0088

Telephone 954-492-

Fax 954-938-

0069

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Susan H. Moss, E.A.  
mail: Gop9401@aol.com

e-

June 18, 2013

Dear Bette Anne:

Over the Holiday I will let you know what I will do over the next 5 years. Please forgive me if I sound angry but everything seems to point to me being the bad guy. Somehow all the money I have brought into the business to pay for the life style you have enjoyed does not even enter into this equation! It seems I get to do all the hard work, minus my best friend and partner while everyone else just goes on with life as usual.

As I continue to pray, I will be able to finalize this with you within the next 30 days. I will base my gift to you over a 5 year period as long as certain life and market conditions continue as the have.

BA, know this, I will never leave you without. I should not have to justify this but I feel I cannot do enough to satisfy you.

Right off the bat you should be completely aware that the gift of this business was only given to me not Greg. It came from a close friend in my church, Frank Avellino. He came to me alone as an individual. Most of the people who came into our partnership were friends of our church. I was reminded constantly by Frank that this was my gift alone.

Because Greg was my closest friend and partner I wanted to share the gift I had been given with him. And I did for 11 years. We have all been blessed.

Greg has been called home to be as we know, is in a glorious fife, one we all long for. My goal with this letter is to clear up some of the apparent confusion you have regarding compensation as evidenced in your letter to me.

You stated that you thought you were not going to have any financial problem. I cannot unfortunately guarantee that for a number of reasons. If something happens to the stock market, to our investors, to Frank our contact or myself this investment partnership could change drastically. this is a very fragile business with no certain guarantees. You must deal with the real possibility of this taking place.

If something were to happen to me, death or grave illness, the business in effect would be closed. You have no idea or apparently never understood just how important my relationship to this business is. I am the person who deals with the main source, Frank Avellino. He has given and entrusted to me this gift and can take it back at any time and earn the entire commissions for himself. BA, 955 of all the business ever generated through this company came in through my efforts alone. I am not boasting but this is what the Lord dealt to me.

Basically all the investors are from my contacts or personal relationships that I have nurtured thought the years.



## Confidential Document

In most business firms the partner who brings in the money makes significantly more money. The income producers are the key to any business.

In no way shape or form is any of this to take anything away from Greg. He was my best friend and together we make each other complete. I am simply pointing out facts you need to be aware of.

I felt in your heart there was a time that you felt when Greg was called home that you would be a partner in this business. I don't know where you got that idea but that could and would never happen. For one thing Frank Avellino would never have allowed it. Greg was my only partner and it would be inconceivable to have anyone else fill his roll. Both of us knew that and that is one of the reasons in the partnership agreement all decisions would be left to the surviving partner in the event of a death.

As I look at your expenses you sent me it appears you want me to keep up two homes and operate everything as if Greg was still here and working. I would like nothing more than to have Greg still here.

This is a working business not a monthly ATM. This business requires constant work and care.

Bette Anne at some point you will have to make some changes in your lifestyle. I told you that I would help support you and I want to make sure we both know just what is reasonable and what God would bless. There must be boundaries of with a beginning and ending to help you move on with your life. This is only healthy for you. You must rely on yourself for your own self esteem. But still know I will always be there to help you along the way.

I want you to know that I have talked to five strong Christian brother both in business and pastors. Each one of them not knowing what the others have advised have all given me basically the same advice. Each one of them knew my special relationship with Greg.

You stated in your letter that all the hard work Greg had done should count for something. Greg was a hard worker and enjoyed the fruits of our business as have you and your children over these last few years. However this last year as you know Greg worked no more that 20 days - making a total of 150 hours and took a large compensation for this. He was able to complete his work in 150 in a year that we had the most clients we have ever had. If he did this last year what do you think the work load was for him in prior years with less clients?

Greg worked on so many other things ministry, church retreats not just business. Greg loved to be in the office all day. He loved to "piddle around". The bulk of his daily effort were not spent on S&P.

Greg was the very best friend and worker and was a true witness to his disciple, methodicalness, but all his time was not spent on business related work.

You also said, I do not know where your peace come from. For the last 20 years (through toe Lord) I have made enough contacts, nurtured clients that have helped pay for four of your houses, boats, cabins, multiple wedding reception, vacation tickets and good times for the children. You have not missed a pay check since Greg passed away. I sleep well knowing these thins I have done honoring God. You may not like how things are happening and may never like them but Greg knew why it was to happen. That is one of the reasons out of all the many people in your families he appointed me as the executor of his will. I know all the facts.

You made the comment that you have to crawl to me for money. Please do not try and make me feel that I have not helped you. The truth is tat there was no estate planning done nor was there sufficient life insurance left to you. Why Greg did not do better planning is beyond me. I have made sure over the years that my family is provided for if anything were to happen to me as they can not count on proceed form this business. This discussion about your needing money, crawling to me and what I am going to to support you should have taken place with Greg and a financial advisor not me. But I will honor Greg and God with helping you.

I legally owe you no money. We both know that. If I died first this business would have been dissolved within a year and the accounts given to other parties. I want to give you enough money for a few years but this again will be restricted to what the future holds. The business could be worth nothing if I die, the market crashes or Frank or Bernie dies. All of our financial lives cud change overnight. Everything is only for a season of time.

## Confidential Document

If I wanted to keep all the money BA I just would after all I am the only one doing the work. The monies I send you are not part of an agreement as Greg and I had none. These are gifts to you.

If I did not have a written agreement with Greg who was my partner for 20 years, I will not have one with someone who is not my partner. The money I send to you are not of "all the hard work" that you feel is owed to Greg but are sent to you out of Christian friendship and love. Both Greg and I lived by faith.

Finally, you said Greg told one of his children if he died you would have no financial concerns. If you sold one of your homes and put the proceed in the investment you would have one house free and clear and have over 400K earning a nice yearly income. I am sure Greg was thinking in those terms.

You also stated it was hard to believe that Greg and I had no business agreement. I find it hard to believe that you would think there was an agreement when you and he had never discussed your own financial plans in the event of his death. May I remind you that you are still receiving his pay check.