

COPY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

SECURITY AND EXCHANGE COMMISSION,  
Plaintiff,

-against-

AVELLINO & BIENES,  
FRANK J. AVELLINO, and  
MICHAEL S. BIENES,

Defendants.

-----x

November 20, 1992  
3:45 p.m.

Deposition of FRANK J. AVELLINO, taken by  
Trustee, pursuant to Order of Judge Conboy dated  
November 17, 1992, at the offices of Avellino &  
Bienes, 70 East 55th Street, New York, New York,  
before Harold Brown, a Certified Shorthand  
Reporter and Notary Public within and for the  
State of New York.



**MANHATTAN  
REPORTING CORP**

132 NASSAU STREET • NEW YORK, N.Y. 10038 • (212) 267-2228

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S:

RICHARDS SPEARS KIBBE & ORBE, ESQS.  
Attorneys for the Trustee  
140 Broadway  
New York, New York 10005

BY: LINDA IMES, ESQ.,  
of Counsel.

SQUADRON ELLENOFF PLESENT & LEHRER, ESQS.  
Attorneys for Defendants  
551 Fifth Avenue  
New York, New York 10176

BY: DORI ANN HANSWIRTH, ESQ.,  
of Counsel.

ALSO PRESENT:

FREDERICK M. WERBLOW,  
Price Waterhouse

1  
2 F R A N K J. A V E L L I N O,

3 residing at Personal Privacy

4 [REDACTED], having been first duly  
5 sworn by the Notary Public (Harold Brown), was  
6 examined and testified as follows:

7 EXAMINATION BY MS. IMES:

8 Q. Mr. Avellino, as you know, my name is  
9 Linda Imes and I am working with the trustee in  
10 this matter whose name is Lee Richards. I'm  
11 going to be asking you questions today under oath  
12 pursuant to an order of United States District  
13 Judge Conboy which was entered on November 17,  
14 1992 and with the consent of your attorney. Do  
15 you understand that?

16 A. Yes, I do.

17 Q. Are you familiar with the order to  
18 which I'm referring?

19 A. Yes.

20 Q. Have you reviewed that order?

21 A. I've read it once.

22 Q. What is your occupation,  
23 Mr. Avellino, currently?

24 A. Currently, I am a private investor.

25 Q. Are you familiar with Avellino &

Avellino

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Bienes?

A. Yes, I am.

Q. Where is that business located currently?

A. It's located in Fort Lauderdale, Florida.

Q. It also has an office in New York?

A. Yes, it does.

Q. And that's where we're talking this deposition?

A. Right.

Q. What is the address there?

A. 70 East 55th Street, New York City, New York 10022.

Q. What is the business of Avellino & Bienes currently?

A. It borrows money from individuals.

Q. And what does it do with that money?

A. It invests it in securities.

Q. By what route does it invest them?

A. It invests them in marketable securities through a brokerage house in New York.

Q. What is the name of that brokerage house?

1 Avellino

2 A. Bernard L. Madoff.

3 Q. Who is the principal there with whom  
4 you've dealt?

5 A. Bernard L. Madoff.

6 Q. During what periods of time has  
7 Avellino & Bienes been in this business that  
8 you've just described?

9 A. Since its inception. The names have  
10 been changed, so I would probably say 1977.

11 Q. To present?

12 A. To present.

13 Q. Sir, part of the purpose of my  
14 examination today is to determine whether or not  
15 the trustee has been provided with accurate  
16 records by you on behalf of Avellino & Bienes.  
17 Do you understand that that's my purpose?

18 A. Yes, I do.

19 Q. Sir, prior to the order being  
20 entered, did a distribution of funds occur?

21 A. Yes.

22 Q. Could you just explain for the record  
23 how you went about making that distribution?

24 A. Distribution was from proceeds that  
25 were received from Bernard L. Madoff upon

1 Avellino

2 liquidation of certain securities and earmarked  
3 for distribution and we picked certain large  
4 accounts because it was easy to wire and because  
5 of the size of them, I thought it would curtail  
6 anybody from complaining about any interest  
7 calculation up to the point of distribution if  
8 any.

9 Q. What was the total amount of that  
10 distribution approximately?

11 A. \$113 million.

12 Q. Now, did you provide the trustee or  
13 his representatives with certain documents  
14 documenting that distribution?

15 A. Yes.

16 MS. IMES: I would like to have  
17 marked as Exhibit 1 eight pages of letters.

18 EXB (Trustee Exhibit 1 for  
19 identification, eight pages of letters.)

20 Q. I'm putting in front of you Trustee's  
21 Exhibit 1, sir. Do you have that in front of  
22 you?

23 A. Yes, I do.

24 Q. Would you identify that for us,  
25 please?

1 Avellino

2 A. They are wire instructions from  
3 Joseph Avellino who has the power to make wire  
4 transfers for the Avellino & Bienes account and  
5 I'm looking a letter one that goes to Fairfield  
6 Pagma Associates for the amount of 7,406,754.  
7 I'm looking at another wire transfer instruction  
8 sheet that goes to Atlantic Capital Service for  
9 1,414,957.

10 Q. Okay, you don't need to go through  
11 all of them, Mr. Avellino.

12 A. Okay.

13 Q. Because they are part of the record.

14 A. Sure, okay.

15 Q. But is it fair to state that these  
16 letters are all such letters that are in the  
17 custody or control of Avellino & Bienes?

18 A. Yes.

19 Q. Does Exhibit 1 before you accurately  
20 summarize the wire transfers in the approximate  
21 amount of \$113 million that were made prior to  
22 the court order being entered?

23 A. Yes, it does.

24 MS. HANSWIRTH: They all do?

25 A. They all do.

1 Avellino

2 Q. There are no other such letters?

3 A. No.

4 Q. You've provided them all to the  
5 trustee, then?

6 A. Yes.

7 Q. Do you know these letters to be a  
8 true and accurate reflection of the actions that  
9 you took?

10 A. Yes, they are.

11 Q. Mr. Avellino, could you please tell  
12 us who are the current employees of Avellino &  
13 Bienes by name?

14 A. Sure. There's Lola K-u-r-l-a-n-d,  
15 there is S-a-v-i-n-a Navas N-a-v-a-s, Elizabeth  
16 D-o-n-o, and Personal Privacy  
17 [REDACTED] Sonia Duque-Mendez.

18 Q. And the first three that you named --  
19 Ms. Kurland, Ms. Navas and Ms. Dono -- are they  
20 all located in the New York office?

21 A. Yes.

22 Q. What are the duties and  
23 responsibilities of Lola Kurland?

24 A. Lola is the manager of the office.

25 Q. And Ms. Navas?

1 Avellino

2 A. Navas is now the computer operator.

3 Q. And Ms. Dono?

4 A. She is the receptionist.

5 Q. When was the last time that Sonia  
6 Duque was working here?

7 A. Personal Privacy in October if  
8 I remember right.

9 Q. Are there any employees in the  
10 Florida office?

11 A. No.

12 Q. Mr. Bienes, is it correct to say, is  
13 your partner?

14 A. Yes.

15 Q. He works in the New York office; is  
16 that correct?

17 A. Yes, yes.

18 Q. Who is the person in the New York  
19 office who has primary responsibility for taking  
20 care of the accounts in question?

21 A. Lola Kurland.

22 Q. Just so we understand what the  
23 so-called paper trail of documents are, let's say  
24 that in the past if a customer sends in a check  
25 for say, \$10,000 that they would like to have

1 Avellino

2 invested by Mr. Madoff, could you tell us what  
3 papers would be created in order for that to take  
4 place?

5 A. Sure, the first thing you do is you  
6 take the \$10,000 check, make a deposit which is  
7 made by -- looked at, opened up, meaning the mail  
8 is opened up by Lola, then it is handled by  
9 Savina to make sure that the information on it  
10 corresponds to a computer info. Then it's  
11 brought back to Lola who makes up the deposit,  
12 brought back to Savina again who makes up a typed  
13 computer deposit list, then the deposit is made  
14 by Elizabeth Dono physically at the bank. Then  
15 weekly or periodically, Savina makes up a weekly  
16 report of the deposit in addition to some other  
17 documents we will probably get into later and  
18 sends it to Optus Information Services which is  
19 the computer service that records all of this  
20 documentation on a central computer file.

21 Q. Located in New Jersey?

22 A. In New Jersey, Somerset, New Jersey.

23 Q. You referred to a deposit being made  
24 at the bank. At which bank?

25 A. Chemical Bank.

1 Avellino

2 Q. How many accounts at Chemical Bank  
3 does Avellino & Bienes maintain?

4 A. It has one loan account called  
5 Avellino & Bienes and it has what we call an  
6 expense account for all operational expenses  
7 which is a special account called Avellino &  
8 Bienes Special.

9 MS. IMES: I would like to mark as  
10 Trustee's 2 two pages of Chemical Bank account  
11 statements.

12 EXB (Trustee Exhibit 2 for  
13 identification, two pages of Chemical Bank  
14 account statements.)

15 Q. The first page of Exhibit 2  
16 references an account at Chemical Bank number  
17 Personal Privacy. I'm putting the first page of  
18 Trustee's 2 in front of you. Do you have that,  
19 sir?

20 A. Yes, I do.

21 Q. Can you identify that account, the  
22 account number that I just read?

23 A. Yes, that is the special account.

24 Q. Meaning you said one was a loan  
25 account.

1 Avellino

2 A. An expense account.

3 Q. Expense account, thank you. The  
4 second page is a Chemical Bank account statement  
5 listed Personal Privacy. I'm placing the second page  
6 of Trustee's 2 in front of you, do you have that?

7 A. Yes, I do.

8 Q. Would you identify that account for  
9 us?

10 A. That is considered the main loan  
11 account.

12 Q. When you say the main loan account,  
13 what funds are typically or typically have been  
14 deposited into --

15 A. Only monies that are received from  
16 lenders and monies that we request from Bernard  
17 L. Madoff on the quarterly interest  
18 distributions.

19 Q. What funds are typically deposited  
20 into the expense account you identified?

21 A. The expense account is basically a  
22 transfer from the loan account into the expense  
23 account.

24 Q. Are there any other accounts at  
25 Chemical Bank that Avellino & Bienes maintains

1 Avellino

2 other than the two we have talked about?

3 A. No.

4 Q. Does Avellino & Bienes maintain any  
5 accounts at any other bank?

6 A. No.

7 Q. Besides Chemical?

8 A. No.

9 Q. Now, sir, I would like to address the  
10 types of files that Avellino & Bienes maintains  
11 on its premises concerning the various clients.

12 A. Yes.

13 Q. Or if you prefer to call them  
14 customers.

15 A. I call them lenders.

16 Q. You call them lenders, the lenders,  
17 then. Approximately how many total lenders were  
18 there in the relevant period?

19 A. We have 1,300 primary lenders which  
20 means that it stems to about 3,200 different  
21 accounts, but primary lenders which means  
22 families and groups broken down, it's about 1,300  
23 and when you get down to the bottom line you have  
24 about 3,200 approximately accounts.

25 Q. What kind of file or files does

## 1 Avellino

2 Avellino & Bienes maintain on its premises for  
3 each account or for each primary lender depending  
4 upon how you've broken it up?

5 A. Each account has a folder with the  
6 name and address and different correspondence  
7 over the period of time from beginning to current  
8 times.

9 Q. Who maintains those folders?

10 A. All of the -- the entire staff in New  
11 York.

12 All three people.

13 Q. Lola and the other individuals?

14 A. Everybody, yes.

15 Q. Have you made those files available  
16 to representatives of Price Waterhouse and the  
17 trustee?

18 A. Yes.

19 Q. Do you have any idea how many such  
20 files there are?

21 A. There should be 3,200.

22 Q. As far as you know, sir, are those  
23 files in the condition that they have been kept  
24 over the course of time in the regular course of  
25 business?

1 Avellino

2 A. Yes.

3 Q. Do you know whether anyone has  
4 tampered with those files or changed any entries  
5 in them at any time?

6 A. No.

7 Q. You don't know or they have not?

8 A. No, they have not.

9 Q. Has anyone tampered with those files  
10 or altered any of the records in those files  
11 since the court entered its order?

12 A. No, not at all.

13 MS. IMES: Let me mark as Exhibit 3 a  
14 sample file of the account of Jacqueline Cotsen.

15 EXB (Trustee Exhibit 3 for  
16 identification, sample file of the account of  
17 Jacqueline Cotsen.)

18 Q. Now, sir, I'm placing in front of you  
19 Trustee's Exhibit 3.

20 Q. Do you have that, sir?

21 A. Yes, I do.

22 Q. Is this a representative sample of  
23 the kind of file that you maintained on each  
24 customer account or I should say lender account?

25 A. It's a typical -- it's what I would

1 Avellino

2 expect in a file is a correspondence and the  
3 documentation that represents the loan.

4 Q. Now, when you say documentation that  
5 represents the loan, what is typically in each  
6 file that constitutes the documentation showing  
7 the loan?

8 A. Basically, you would probably have  
9 the date it was -- the inception of the loan,  
10 some documentation as to that which would be a  
11 receipt of a check somehow somewhere and each --  
12 there's no standard procedure, you may have some  
13 people send checks with a scribbled letter, some  
14 people send checks with a formal letter, some  
15 people send just the check and if you look at any  
16 one file, there is no pattern as to what you  
17 would find in any file, it's just whatever we  
18 get, we put in a file, whatever it may be. Some  
19 may be just -- some files may just have one or  
20 two pages.

21 Q. And when you make interest payments  
22 on the loan, sir, is it typical to make a xerox  
23 copy of the check that goes out in payment of  
24 interest?

25 A. No, never make -- never make a copy.

1 Avellino

2 If it happens to be in a file, it's because  
3 somebody might have questioned the fact that the  
4 mail wasn't received and we would instruct the  
5 computer or some other form of documentation to  
6 make sure that we could send back to the client a  
7 copy of data that shows the appearance of the  
8 interest paid, but that's rather infrequent if at  
9 all.

10 Q. To your knowledge, sir, are the files  
11 complete that you've provided to Price Waterhouse  
12 and the trustee?

13 A. Everything we have is complete, I  
14 mean everything, whatever it may be.

15 Q. So there were no documents that were  
16 for example taken out of the client files on a  
17 regular basis and kept elsewhere?

18 A. No.

19 Q. Everything pertaining to that  
20 particular lender would be in the client file?

21 A. Yes, oh, definitely.

22 Q. Let's talk a minute, sir, about any  
23 documents that may be maintained in the Florida  
24 office of Avellino & Bienes.

25 A. Yes.

1 Avellino

2 Q. Where is that office located?

3 A. Right now it's -- there are some  
4 records which are ledger sheets that are  
5 maintained at my home which is at 4750 N.E. 23rd  
6 Avenue, Fort Lauderdale, Florida.

7 Q. What are those ledger sheets?

8 A. Cash receipts, cash disbursements and  
9 general ledger sheets.

10 Q. For the 3200 accounts that you've  
11 mentioned?

12 A. No, it has nothing to do with the  
13 3200 accounts, it has to do with the general  
14 ledger of Avellino & Bienes.

15 Q. I see.

16 A. Of course, the total summary of  
17 Avellino & Bienes is in the general ledger.

18 Q. Who maintained that ledger?

19 A. I do personally.

20 Q. During what period of time did you  
21 maintain it?

22 A. Since inception.

23 Q. Do you know for which dates the  
24 general ledger is in the Florida office?

25 A. I could currently say that since my

1 Avellino

2 ledgers are kept on a tax basis as I have  
3 probably explained before, I could tell you that  
4 they are probably '89, '90, '91 and '92.

5 Q. Do you know what happened to the  
6 general ledger for the years prior to '89?

7 A. Oh, yes, when I moved, I probably got  
8 rid of it.

9 Q. So were we to go at this moment to  
10 the Florida office, we would find general ledgers  
11 for the years '89 to '92?

12 A. Right.

13 Q. So far as you know, sir, have those  
14 records been tampered with in any way?

15 A. No.

16 Q. Have any entries upon them been  
17 changed since the entry of this court's order?

18 A. No.

19 Q. Have you issued any directives that  
20 anything at all be done with those documents?

21 A. Nothing.

22 Q. And you've agreed, have you not, to  
23 make those available to Price Waterhouse?

24 A. Yes.

25 Q. And the trustee?

1 Avellino

2 A. Yes.

3 (Discussion off the record.)

4 Q. Let me turn to the accounts at  
5 Bernard L. Madoff M-a-d-o-f-f. First of all,  
6 where are the Madoff offices located?

7 A. At 885 Third Avenue, New York, New  
8 York 10022.

9 Q. How many accounts does Avellino &  
10 Bienes maintain there?

11 A. It has an account called Avellino &  
12 Bienes, Avellino & Bienes Special, Avellino &  
13 Bienes Number 2, Avellino & Bienes Number 3,  
14 Avellino & Bienes Number 4 and Avellino & Bienes  
15 Number 5 and it also has an account that's  
16 Avellino & Bienes profit sharing blank which is  
17 the total accounts for Avellino & Bienes.

18 Q. Sir, I have obtained some documents  
19 from Mr. Madoff's office which purport to be  
20 current statements for the various accounts held  
21 there. What I'm going to do is mark them as  
22 Trustee's Exhibit 4 as a group. You'll observe  
23 that each group has paper clips around it and  
24 what I would like you to do is examine these  
25 documents once they've been marked and tell me

1 Avellino

2 whether or not the accounts reflected on here  
3 consist of the entire universe of accounts held  
4 at Bernard L. Madoff. Do you understand?

5 A. Okay.

6 MS. HANSWIRTH: In the name of  
7 Avellino & Bienes.

8 MS. IMES: Correct.

9 EXB (Trustee Exhibit 4 for  
10 identification, current statements for the  
11 various accounts held at Bernard L. Madoff.)

12 Q. Do you have Trustee's 4 in front of  
13 you, sir?

14 A. Yes, I do.

15 Q. Have you had a chance to review  
16 those?

17 A. What I'm looking at is the names of  
18 Avellino & Bienes on each one of these statements  
19 from Bernard L. Madoff and I recognize that each  
20 one has the names I had enumerated just awhile  
21 ago.

22 Q. Maybe for the ease of reading the  
23 record, if you could just read off the name of  
24 the account and the account number.

25 A. Okay.

1 Avellino

2 listed?

3 A. Yes.

4 Q. There are no other accounts that you  
5 know of into which those funds went?

6 A. Yes, no other accounts.

7 Q. Mr. Madoff also provided us with  
8 copies of records for an account of Frank J.  
9 Avellino trustee bearing account number [REDACTED]

10 [REDACTED] and an account of [REDACTED] Bienes

11 account number [REDACTED]. I'll mark those  
12 together as Trustee 5.

13 EXB (Trustee Exhibit 5 for  
14 identification, copies of records for account  
15 number [REDACTED] and account number [REDACTED]

16 [REDACTED].)

17 Q. Do you have Trustee's 5 in front of  
18 you, sir?

19 A. Yes, I do.

20 Q. Could you just identify it for us.

21 A. Yes. There are statements from  
22 Bernard L. Madoff bearing the name Frank J.  
23 Avellino trustee accounts number [REDACTED] and  
24 an account bearing the name Diane K. Bienes  
25 account number [REDACTED].

1 Avellino

2 Q. Are those the so-called personal  
3 accounts maintained at the broker dealer?

4 A. Yes, they are.

5 Q. Are those the accounts in which  
6 funds, certain funds have been frozen?

7 A. Yes.

8 Q. Are there any other accounts at  
9 Bernard L. Madoff that could be characterized as  
10 personal accounts?

11 A. No.

12 Q. And so far as you know, sir, the  
13 funds in that account have been frozen and  
14 there's been no attempt by you to transfer them;  
15 is that correct?

16 A. Correct.

17 Q. Mr. Avellino, I would like to move to  
18 certain other documents that you have provided to  
19 the trustee and Price Waterhouse. I would first  
20 like to mark as Exhibit 6 a one-page statement  
21 from Optus Financial Services that says "Re  
22 totals."

23 EXB (Trustee Exhibit 6 for  
24 identification, one-page statement from Optus  
25 Financial Services that says "Re totals.")

1 Avellino

2 Q. Do you have Trustee's 6 in front of  
3 you?

4 A. Yes, I do.

5 Q. Would you identify that for us?

6 A. It is a summarization of the totals  
7 of the loans payable as of November 18, 1992.

8 Q. I see in the left-hand column certain  
9 notations such as ABJT and then a total, ABS and  
10 then a total.

11 Would you please identify for us each  
12 of those five categories listed in the left-hand  
13 column?

14 A. Yes. ABJT, ABS, AC, FM and RAI are  
15 internal computer directories which are earmarked  
16 for certain different accounts which may have a  
17 unique basis and could be the same interest  
18 rates, it could be the same group of people, it  
19 could be retirement accounts incorporated which  
20 is basically pension plans and IRA accounts and  
21 the indication of the directory just tells us for  
22 easy access when we are inputting or working with  
23 the accounts, it makes it easier for us to get  
24 into and out of so we could direct what it is.

25 Q. Is the RAI indication retirement.

1 Avellino

2 accounts?

3 A. That's all of it. All of it is  
4 retirement accounts.

5 Q. Mr. Avellino, did you also in  
6 addition to providing Exhibit 6 to Price  
7 Waterhouse and to the trustee, did you also  
8 provide a list of all of the lenders with a  
9 balance due?

10 A. Yes, I did.

11 Q. Did you do that for -- I'm sorry, for  
12 what date did you do that?

13 A. That was as of November 16, 1992, the  
14 date the final loan was recorded.

15 Q. What I want to do is mark this  
16 approximately three inch thick document as  
17 Exhibit 7. Trustee's 7.

18 EXB (Trustee Exhibit 7 for  
19 identification, document.)

20 Q. Do you have 7 in front of you,  
21 Mr. Avellino?

22 A. Yes, I do.

23 Q. Would you look through that and  
24 identify it for us?

25 A. It's a summarization by the

*W. A. Neat*

1 Avellino

2 directories I mentioned a minute ago with the  
3 names, ID, tax ID numbers and a total balance,  
4 final balance if you will, of the loan accounts  
5 for each individual.

6 Q. Is that list exclusive of interest?

7 A. That's exclusive of interest.

8 Q. Can you tell me, sir, whether you  
9 know the listing of lenders that has been marked  
10 as Exhibit 7 to be a true and accurate list of  
11 lenders who are owed funds by Avellino & Bienes?

12 A. According to the books, ledgers,  
13 computational sheets and every available data we  
14 have, this is a true loan payable balance for  
15 Avellino & Bienes as of November 16, 1992.

16 Q. Do you have any reason to believe  
17 whatsoever that it is inaccurate in any way?

18 A. No, I have no reason to believe that  
19 it's inaccurate.

20 Q. Do you have any reason to believe  
21 that there are lenders who have been omitted from  
22 that list for one reason or another?

23 A. As far as I am concerned, and from my  
24 knowledge, there are no lenders omitted from  
25 these lists.

1 Avellino

2 Q. Are there any other documents to  
3 which you could refer us that would shed light on  
4 whether there are any lenders missing from the  
5 list?

6 A. The only other documents are cash  
7 receipts, cash disbursements and general ledgers  
8 that might indicate cash received and cash  
9 disbursed that might not have been recorded into  
10 the loan payable account.

11 Q. Would those be listed in the  
12 documents in Florida?

13 A. Yes, or in deposit slips or in the  
14 cash disbursements, checks from the check  
15 register that is probably available at the  
16 computer service.

17 Q. But to your knowledge, sitting here  
18 today, there are no lenders who have been omitted  
19 from the list?

20 A. None whatsoever.

21 Q. And you believe the amounts that are  
22 due and owing are accurate?

23 A. Accurate.

24 Q. I would also ask you the same  
25 questions about Trustee's Exhibit 6. Do you

1 Avellino

2 believe the figures that are reflected on  
3 Trustee's Exhibit 6 are true and accurate?

4 A. Trustee's Exhibit 6 and Trustee's  
5 Exhibit 7 have the same exact loan payable  
6 balance dollar amounts. They should be exactly  
7 the same.

8 Q. And do you believe Trustee's Exhibit  
9 6 to be true and accurate as well?

10 A. Yes, it is, yes.

11 Q. Sir, your staff has apprised us of  
12 certain accounts, the account of Mr. Simon, the  
13 account of Mr. Sands that appears to perhaps be  
14 controlled by Mr. Simon and the account of  
15 Mr. Exton.

16 A. Exton.

17 Q. Exton. About which there are either  
18 pending court orders or assignments or other  
19 potential claims. Are you aware of that, sir?

20 A. Yes.

21 Q. You believe the advice that Lola  
22 Kurland gave the trustee concerning that  
23 information to be true and accurate?

24 A. Yes.

25 Q. Do you have any reason to believe

1 Avellino

2 that there are any other lenders about whom a  
3 court order has been issued or an assignment made  
4 such that the trustee should not disburse the  
5 loan funds?

6 A. To my knowledge, there are none  
7 others than the ones that we mentioned.

8 Q. We've described the records that have  
9 been made available to the trustee and to Price  
10 Waterhouse and we've marked some of them here  
11 today. We've talked about the client files and  
12 then we marked a number of exhibits today.

13 Were there any other records that  
14 you've made available to Price Waterhouse or the  
15 trustee since the trustee has been appointed  
16 pursuant to the court order?

17 A. Not that I could recall because I  
18 have been in and out of the office in the last  
19 few days, so if anything has been made available,  
20 it would have been made available without my  
21 knowledge.

22 Q. Do you know of any records that would  
23 assist the trustee or Price Waterhouse in  
24 disbursing of funds that have not been made  
25 available to them?

1 Avellino

2 A. None whatsoever.

3 Q. Now, we at this time are not  
4 questioning Mr. Bienes, however I would like to  
5 put the question to you.

6 Do you know whether or not Mr. Bienes  
7 has any information to the contrary of what  
8 you've testified to under oath today?

9 A. He has no information contrary to  
10 anything I've said today.

11 Q. Mr. Avellino, as you know, part of  
12 the task of the trustee and Price Waterhouse is  
13 to disburse funds and we are intending to do that  
14 on the next business day which is this coming up  
15 Monday. You understand that; is that correct?

16 A. Yes.

17 Q. And that is millions of dollars, you  
18 understand that as well?

19 A. Yes.

20 Q. Do you have any reason to believe  
21 that we should not disburse the funds in  
22 accordance with the list that has been marked as  
23 Trustee's Exhibit 7?

24 A. None whatsoever.

25 Could I qualify that.

1 Avellino

2 Q. Please do.

3 A. It was just brought up to my  
4 attention we're talking about funds that are  
5 being disbursed on this coming Monday and the  
6 list I am looking at or have looked at, Exhibit 6  
7 and 7 is it?

8 MS. HANSWIRTH: Yes.

9 A. That is the principal balance, but I  
10 believe we are also disbursing interest up to  
11 November 16, 1992.

12 Q. That's correct. And information  
13 concerning interest is to be provided to Price  
14 Waterhouse and to the trustee; is that correct?

15 A. Yes.

16 Q. Who has authorization, sir, to  
17 transfer funds out of the Bernard L. Madoff  
18 accounts that were marked as Trustee's Exhibit  
19 4? Those are the nonpersonal accounts.

20 A. Authorization as of today?.

21 Q. As of today, right.

22 A. As far as I know, it's a directive  
23 from the court.

24 Q. And who prior to the court order had  
25 authorization to transfer funds out of those

1 Avellino

2 accounts?

3 A. Only Frank Avellino and Michael  
4 Bienes.

5 Q. Who has authorization to sign checks  
6 drawn on -- I'm sorry, who has authorizations to  
7 make deposits or withdrawals from the Chemical  
8 accounts, the two Chemical accounts that you  
9 identified earlier in the deposition?

10 A. Deposits are made by anybody in the  
11 office. Withdrawals are made by Frank Avellino  
12 and Michael Bienes with authority given to Joseph  
13 Avellino only if we give him permission to sign a  
14 particular check or direct a wire.

15 (A recess was taken.)

16 Q. Who are the current partners of  
17 Avellino & Bienes?

18 A. Frank J. Avellino, Michael S. Bienes  
19 and Diane K. Bienes.

20 Q. Are those general partners?

21 A. Yes.

22 Q. Are there any limited partners?

23 A. No.

24 Q. So there are no other partners other  
25 than the two that you have mentioned?

1 Avellino

2 MS. HANSWIRTH: Three.

3 Q. I'm sorry, three that you've  
4 mentioned?

5 A. Three.

6 Q. Has that been the case since the  
7 beginning?

8 A. The beginning of Avellino & Bienes?

9 Q. Correct.

10 A. Yes.

11 Q. Do you know whether Avellino & Bienes  
12 have any other liabilities other than the  
13 liabilities that are set forth in Trustee's  
14 Exhibit 7 plus interest?

15 A. As a partnership?

16 Q. Right.

17 A. No, none whatsoever.

18 Q. They have none?

19 A. We are talking about leases and  
20 things like that, accounting wise?

21 Q. Just other liabilities.

22 A. Commitments and contingencies as far  
23 as lease, light and power, expenses, employee's  
24 weekly salary.

25 Q. Payroll?

1 Avellino

2 A. Yes, Social Security, withholding  
3 taxes.

4 Q. Does Avellino & Bienes have an  
5 account through which it makes payroll?

6 A. Yes.

7 Q. What account is that?

8 A. Avellino & Bienes Special Account.

9 Q. At Mr. Madoff's?

10 A. No, Avellino & Bienes Special Account  
11 at Chemical Bank account number two.

12 Q. Are you aware of any claims that  
13 anyone in the world has on the assets that are  
14 set forth in Trustee's Exhibit 7?

15 A. No, I'm not.

16 Q. We talked a little bit about the  
17 personal accounts, sir, that were identified in  
18 Trustee's Exhibit 5. Do you recall that?

19 A. Yes.

20 Q. Could you tell us where the funds  
21 that are in those accounts came from?

22 A. They came from contributions by the  
23 Bienes family and the Avellino family.

24 Q. Well, more particularly, did any of  
25 the funds come from the investments or the loan

1 Avellino

2 investments that were made with Bernard Madoff?

3 A. I don't understand the question.

4 Q. Well, we talked about how the  
5 customers or the lenders contributed money,  
6 contributed loan money and that that money was  
7 then invested through Bernard L. Madoff.

8 A. Right.

9 Q. Correct?

10 A. Right.

11 Q. Did Avellino & Bienes receive any  
12 funds through a commission or otherwise as a  
13 result?

14 A. Any of the monies that were put in  
15 personal accounts were as a result of any profits  
16 we might have had over the years. That's the  
17 only place.

18 Q. How were those profits realized?

19 A. They were realized by retaining a  
20 percentage of whatever capital gains and  
21 investments, dividends and interest income minus  
22 the capital losses and minus whatever other  
23 expenses were charged against that securities  
24 account.

25 Q. Do you know whether there was ever a

1 Avellino

2 situation where someone sought to change their  
3 address who was a lender?

4 A. Sought to change their address?

5 Q. Right, for example, wrote a letter  
6 saying I'd like to have the checks sent somewhere  
7 else?

8 MS. HANSWIRTH: Do you personally  
9 know?

10 A. I just don't understand the  
11 question. May I rephrase that and see if I  
12 understand.

13 Q. Right, sure.

14 A. Has any lender ever told us to change  
15 address?

16 Q. To which any of the proceeds of their  
17 account would be sent?

18 A. That's done constantly.

19 That's done every day, probably.

20 Q. Is there a particular procedure that  
21 you follow to respond to that inquiry?

22 A. Yes, yes. They send us a letter and  
23 they tell us change the address from New York to  
24 Florida, Florida to New York, we moved to  
25 California, it's usually somebody moving.

1 Avellino

2 Q. And what steps are taken to insure  
3 that that change of address is actually made and  
4 that that person receives their account  
5 statements or correspondence from Avellino &  
6 Bienes?

7 A. Any address change request is made  
8 from that particular lender. That person would  
9 send us a letter and tell us to change it.

10 Q. Right, but what steps at Avellino &  
11 Bienes were taken to insure that someone followed  
12 through on that request?

13 A. Basically what you do is you get a  
14 letter from someone that we are totally familiar  
15 with and that's usually all of them instructing  
16 us to change the address. That's all basically  
17 you do, I mean, you don't do anything else. If  
18 Mary Jones tells you to change my address from  
19 New York to Florida, you do it because you know  
20 Mary Jones. You have authorization from her.

21 Q. Well, but then for example just to  
22 give you an idea where I'm heading here, did you  
23 notify the people at the Optus Financial Services  
24 of the change of address?

25 A. I'm sorry, yes. You're looking for

1 Avellino

2 the procedure.

3 Q. Correct, I'm sorry, my question was  
4 poor.

5 A. We have a major portion of the  
6 documentation that we haven't even addressed and  
7 that's what we call a weekly report. I don't see  
8 it in your exhibits but that's probably because  
9 it gets disbursed as we enter it.

10 A weekly report is generated by the  
11 New York office of Avellino & Bienes whereby we  
12 make modifications as to address, as to whether  
13 or not they want to roll over the interest for  
14 the quarter, we make modifications when somebody  
15 says please enclosed find a letter to transfer my  
16 funds to the trust that I've just created for my  
17 child.

18 So we transfer funds from one account  
19 internally to another, we make modifications from  
20 alternate address which means that the computer  
21 has the ability to send a check for any  
22 particular quarter to an alternate address  
23 because people do move around from summer months  
24 to winter months and that weekly report includes  
25 the input of the deposits for that week which is

## 1 Avellino

2 the new money that has been added on to the loan  
3 or new accounts at the time and it reduces the  
4 accounts by the distributions that were made  
5 because they returned the money to that  
6 individual lender for that particular week.

7 That internal report is what we  
8 generate here, is checked on here because it's a  
9 voluminous check that wastes more time than  
10 anything else we do in this office. Then it's  
11 checked by two people on our staff literally  
12 looking at the computer making sure the input on  
13 that data sheet that goes to the computer in New  
14 Jersey is accurate and then it's literally sent  
15 over to the computer in New Jersey and inputted  
16 by a separate group of people that have nothing  
17 to do with us, independent of us, called Optus  
18 Information Systems, so we have a checks and  
19 balances.

20 Then when they input their figures  
21 and we look at figures, we don't care about the  
22 address because that'll be academic. If it's  
23 sent to the wrong place, you're going to know  
24 about it by the person that's supposed to have  
25 received a particular check or statement.

1 Avellino

2 We get a weekly report as to what the  
3 balances are which is really our control sheet  
4 and the control sheet is that Exhibit 6 which is  
5 literally sent back to New York, it's faxed at  
6 the same time to Frank Avellino and at the same  
7 time to Michael Bienes at our homes, so that we  
8 at all times know what the balances are and what  
9 the controls are and it's checked by New York and  
10 New Jersey that no errors have been made. In the  
11 event an error has been made it's immediately  
12 found. It's like a bank, it's a clearing house.  
13 When the reports do not correspond, they search  
14 the files and make sure that the input which  
15 could happen, is wrong at the New Jersey level.

16 Q. So you've made references to two  
17 different weekly reports. One that's generated  
18 by your office and transmitted over to New Jersey  
19 and then a weekly report that essentially gives  
20 you back the same information in a distilled form  
21 by Optus?

22 A. Exactly.

23 Q. Is that correct?

24 A. Exactly. It's a control sheet, I  
25 call this the control sheet.

1 Avellino

2 Q. The control sheet?

3 A. Right.

4 Q. The weekly report that is generated  
5 by Avellino & Bienes, do you maintain copies of  
6 that?

7 A. We should have them in-house. I  
8 think -- I think Savina may have them and if they  
9 are not here, Optus would have them, but we  
10 should have them here but they are so voluminous  
11 here that once the control sheet works after a  
12 week or two or maybe even the quarter, I'm not  
13 sure, because I don't look at that, it might be  
14 destroyed or -- it should be in-house. I'm sure  
15 you'd find some here if you ask for it.

16 Q. If we do find those records here, I  
17 take it you have not done anything to alter those  
18 records since the court entered its order?

19 A. Correct.

20 Q. And you know them to be true and  
21 correct?

22 A. Yes.

23 Q. Are there any other categories of  
24 documents that would assist us?

25 A. Not that I know of.

## 1 Avellino

2 Q. Could you explain to us the extent of  
3 the partnership interest among the three  
4 partners?

5 A. Avellino & Bienes is owned by three  
6 partners as I've explained. Frank Avellino owns  
7 50 percent, Diane Bienes owns 25 percent, Michael  
8 Bienes owns 25 percent.

9 Q. What percentage of the partnership  
10 profit and loss do each of the partners receive  
11 on an annual basis?

12 A. The same proportionate percentage.

13 Q. Is there a partnership agreement?

14 A. As I explained when it was asked of  
15 me once before, I think there is and that's --  
16 could be found out and found by my attorney in  
17 Florida.

18 Q. There is no copy of that agreement in  
19 this office?

20 A. No, we don't keep any of that around  
21 anywhere. I don't even know if I have one  
22 personally to be honest with you.

23 Q. And your lawyers name in Florida who  
24 would have the agreements?

25 A. Francis B. Brogan and it's Greenberg

1 Avellino

2 Traurig and it's I think it's 515 East Las Solas  
3 Boulevard, Fort Lauderdale.

4 Q. What entity employs the individuals  
5 who have been working here on the eighth floor at  
6 Avellino & Bienes?

7 A. What entities?

8 Q. What entity employs them?

9 A. Avellino & Bienes.

10 Q. In other words, when they get their  
11 paycheck, it's a paycheck from Avellino & Bienes?

12 A. Yes.

13 Q. Drawn on the Chemical Bank account?

14 A. Yes.

15 Q. Could you tell us about the existence  
16 of any financial statements for Avellino & Bienes  
17 for the period 1984 to the present?

18 A. The only financial statements that  
19 exist were probably for Chemical Bank only when  
20 we owed them money and that should be the sole  
21 purpose if any did exist and I'm sure some have  
22 existed, but other than that, there hasn't been  
23 any since whenever we paid back the \$2,250,000  
24 loan to Chemical Bank which could have been in  
25 '87 or '88.

1 Avellino

2 Q. When did you apply for that loan?

3 A. We didn't apply for the loan at all.

4 It was one of those revolving things that  
5 probably started out with a hundred thousand  
6 dollars. Without asking for it, we got up to  
7 2.25 uncollateralized and we voluntarily gave it  
8 up in 1987 or '88 when it was -- when we had a  
9 renewal period which was the eleven month renewal  
10 period by law.

11 Q. So did you submit a financial  
12 statement to Chemical Bank?

13 A. We may have.

14 Q. In order to get the line of credit?

15 A. They probably asked for one.

16 Q. So I'm not clear on what your  
17 testimony is. Are you saying that you believe  
18 that the only period for which a financial  
19 statement was generated was when you were seeking  
20 this line of credit from Chemical Bank?

21 A. Right, that was probably 1987 if I  
22 recall correctly. I may have explained to many  
23 other people before. Avellino & Bienes never  
24 issued a financial statement to anyone, period.  
25 There was never a need to.

1 Avellino

2 Q. With the exception of this  
3 presentation to Chemical?

4 A. Of that particular loan, yes. If  
5 they have records, I'm sure they still have it.

6 Q. Is there a copy of whatever was given  
7 to Chemical Bank, the financial statement given  
8 to Chemical Bank?

9 A. If it's 1988, maybe not. I wouldn't  
10 say that there isn't, but you think maybe not.

11 Q. It may have been discarded?

12 A. Yes, we're on a tax basis and I'm  
13 very emphatic about that over and over again.

14 Q. Do you know who prepared that  
15 financial statement?

16 A. I do, I do.

17 Q. Do you maintain a copy of it?

18 A. I don't think so. If I have it, I  
19 will get it for you. I don't even know, but I  
20 think you could get one. If Chemical has  
21 records, you'll get it from them.

22 Q. Would your counsel in Florida have a  
23 copy of it?

24 A. No, he had nothing to do with this.

25 Q. So as I understand it, then, there

1 Avellino

2 are no other financial statements for Avellino &  
3 Bienes other than the one that you've described?

4 A. As far as I know. I mean, if memory  
5 serves me right, that's what it is.

6 Q. You have talked a little bit about  
7 this line of credit that eventually worked its  
8 way up to \$2.25 million?

9 A. Yes.

10 Q. Other than that loan or line of  
11 credit or whatever you want to call it, did the  
12 partnership ever borrow any money?

13 A. Yes it borrows \$442 million from  
14 individual lenders.

15 Q. These are the lenders that are listed  
16 in Trustee's Exhibit 7?

17 A. Yes.

18 Q. Other than those and the revolving  
19 line of credit at Chemical Bank, are there any  
20 other borrowings that Avellino & Bienes has made?

21 A. Not that I recall, no.

22 Q. Could you tell us what has been the  
23 results of the partnership's profits and losses  
24 for each year as reported on its federal income  
25 tax returns from 1984 to 1991?

1 Avellino

2 A. I can't tell you 1984, but I could  
3 tell you recently.

4 When the tax returns are examined  
5 which I'm sure they will be because that's the  
6 only source of examination you can do in my case,  
7 there have been profits and there have been  
8 losses over the years. And it's a unique  
9 business because I won't explain it in this  
10 testimony. We are not broker dealers, we do not  
11 mark to market, so therefore we took advantage of  
12 all of the laws available to us which means that  
13 we had unrealized profits year after year after  
14 year which we did not have to take. As a result,  
15 you might have capital losses or net losses, all  
16 legitimate, all exacting and all to the penny.

17 Q. Okay, understanding that, can we go  
18 back to my question. Can you tell us the results  
19 of the partnership profits and losses for each  
20 year?

21 A. No, I would have to look at each one.

22 Q. You would have to look at the returns  
23 to figure that out?

24 A. Sure, sure.

25 Q. But you could vouch for the accuracy

1 Avellino

2 of the federal income tax returns?

3 A. I should hope so.

4 Q. Did you sign them?

5 A. Yes, of course.

6 Q. And Mr. Bienes as well?

7 A. No, I signed them at partner and we  
8 sign our own individual tax returns of course,  
9 with our wives.

10 Q. And you'll make those available to  
11 Price Waterhouse upon request?

12 A. By all means, yes, yes.

13 (A recess was taken.)

14 Q. I want to go back to Trustee's  
15 Exhibit 5 which are the Bernard L. Madoff  
16 statements that pertain to the personal  
17 accounts.

18 A. Yes.

19 Q. Could you tell us, sir, I know the  
20 funds in there have been frozen. Do you know  
21 whether they are in the form of securities or  
22 cash at this point?

23 A. They should be in the form of  
24 liquid -- liquidated securities is all I know. I  
25 haven't even bothered to look at it. Should be

1 Avellino

2 liquidated securities which I've been told will  
3 be cash Monday morning. That's what I have been  
4 told by the broker, of course.

5 Q. By Mr. Madoff?

6 A. Yes.

7 Q. Himself.

8 And I just want to go back to another  
9 area that was unclear to me. In connection with  
10 the loan arrangement that you had with the  
11 various lenders, could you tell us what  
12 percentage of the money that was made on their  
13 funds was taken by Avellino & Bienes on an annual  
14 basis, a monthly basis or whatever basis you did  
15 it?

16 A. There was no set percentage. It was  
17 just a matter of what we -- we paid people a  
18 certain amount of interest and whatever was made,  
19 over and above the interest and expenses,  
20 belonged to Avellino & Bienes as a profit. What  
21 percentage it was is very difficult to -- it  
22 could vary from year to year. There were years  
23 that if you look at the tax returns, you may have  
24 a \$100 million loss because I've spent \$80  
25 million in interest expense, \$20 million in

1 Avellino

2 margin interest expense and I may have had no  
3 trading.

4 Q. So is it fair to say then that the  
5 amount that would be taken varied from lender to  
6 lender?

7 A. Taken? No, there was nothing taken.  
8 Let's understand this.

9 Q. Well, the amount that would be  
10 credited to Avellino & Bienes if you want to put  
11 it that way, would it vary?

12 A. Could I describe the whole  
13 function? I think it might clarify it for all of  
14 us.

15 Q. Please do.

16 A. Avellino & Bienes borrowed money,  
17 forget about the fact that they are individual  
18 lenders at the moment, borrowed money, from  
19 whomever we didn't care. It invested money on  
20 its own behalf with a brokerage house namely  
21 Bernard L. Madoff primarily if not only Bernard  
22 L. Madoff, okay.

23 Bernard L. Madoff bought and sold  
24 securities for the accounts of Avellino &  
25 Bienes. We in turn at Avellino & Bienes owed

1 Avellino

2 interest to the lenders. Every quarter we would  
3 pay interest to the lenders. It had nothing to  
4 do with whether we made profits that quarter or  
5 didn't make profits that quarter. All we did was  
6 monitor the accounts with Bernard L. Madoff to  
7 make sure that the accounts with Madoff  
8 equaled the lending amount plus a cushion  
9 to make it safe, to make it secure. That's all  
10 we did.

11 So there is not we made a profit and  
12 we distributed to our lender, we made a profit or  
13 we didn't make a profit, we still paid our  
14 interest expense.

15 Am I clear on that? Your question  
16 is like we're taking a percentage of the  
17 profits. We're not taking percentages of  
18 anything.

19 Q. Well, you've mentioned that Avellino  
20 & Bienes profited from investing the lender's  
21 money?

22 A. No.

23 Q. In some way?

24 A. Profited from investing its money  
25 that it borrowed. Big difference, major

1 Avellino

2 difference.

3 Q. If you could just take for example  
4 the last quarter as an example and tell us how  
5 the profit of Avellino & Bienes would have been  
6 calculated on a regular basis?

7 A. The profit Avellino & Bienes is  
8 calculated only once a year, it takes its  
9 security positions, it takes its buys, executed  
10 sales, you have a P&L which is a capital gain or  
11 loss, you have dividend income, you have interest  
12 income on the long positions. If you look at the  
13 portfolios which you have in front of you, you  
14 will see that if you look at September or August  
15 or July, we had long positions in all of those  
16 funds meaning that we had -- we owned the stock  
17 and the stock is worth X amount of dollars. The  
18 Securities and Exchange Commission monitored it  
19 if you will, since probably June, July and  
20 August, September, October and up to November 16  
21 and they knew that the security position was  
22 always greater than the loans payable. That was  
23 their only monitoring device. How we calculate  
24 the profits has nothing to do with what we paid  
25 our lenders. Nothing. If I was short and there

1 Avellino

2 was a shortfall, I would be in trouble. It's  
3 very simple, it's very simple in the sense that  
4 if my security position is worth \$300 million,  
5 and I owe \$400 million, somewhere I've got to get  
6 a hundred million dollars I put them in jeopardy  
7 so you think, but my attitude was I'm borrowing  
8 money. Whether I borrowed it from Chemical for  
9 \$2 million and gave it to Bernard L. Madoff to  
10 invest on behalf of Avellino & Bienes has nothing  
11 to do with what I took as profits. It has  
12 nothing at all to do with that. I think we have  
13 to understand that because if we don't understand  
14 that, we're going to fall into the trap that the  
15 SEC keeps making us try to fall into and that's  
16 not so.

17 Q. Well, why didn't we do this for  
18 purposes of today. I think that we have asked  
19 Mr. Avellino enough questions to proceed with our  
20 function for Monday and as I understand the order  
21 you can correct me if I'm wrong Ms. Hanswirth, we  
22 could continue the deposition of Mr. Avellino at  
23 another point on other topics, or this topic so  
24 what I would propose for today is that we simply  
25 adjourn, leave the deposition open and we'll

1 Avellino

2 continue it if necessary. We won't continue it  
3 if we don't deem it to be necessary. Is that  
4 agreeable?

5 MS. HANSWIRTH: That's fine.

6 Q. To Mr. Avellino as well?

7 A. That's fine.

8 EXAMINATION BY MS. HANSWIRTH:

9 Q. Mr. Avellino, I'm showing you what  
10 has been marked as Trustee Exhibit 5. It is a  
11 statement from Bernard L. Madoff Inc. Investment  
12 Securities and the account name is Frank J.  
13 Avellino Trustee. Are you the settler of the  
14 trust of which you are represented as the trustee  
15 on that account?

16 A. Yes, I am.

17 Q. Who are the beneficiaries of that  
18 trust?

19 A. I am, Frank J. Avellino.

20 Q. Are there any other beneficiaries?

21 A. No, there are not.

22 Q. Can you tell me why the account is in  
23 the name of yourself as trustee?

24 A. Yes. I'm a Florida resident and have  
25 been since 1980. Under Florida law, its citizens

## 1 Avellino

2 are permitted to have living trusts which  
3 protects them from probate in the event of  
4 death. It is organized, it is a document that is  
5 filed with the state of Florida, it is created  
6 for Frank J. Avellino in this case and the reason  
7 it is a trustee is because I am the trustee of  
8 Frank J. Avellino living trust and it has a date  
9 on it, I believe it's June 10, 1988 or '89 and it  
10 follows that the Florida law permits it and any  
11 account that reads Frank J. Avellino trustee is  
12 pertaining to the living trust that's created by  
13 state law.

14 Q. Is there any person other than  
15 yourself who has a beneficial ownership interest  
16 in that account?

17 A. No.

18 Q. Is there anybody other than yourself  
19 who has a legal interest in that account?

20 A. No.

21 Q. Other than any person involved in  
22 this proceeding?

23 A. No, yes. In this case, whoever is  
24 involved in this proceeding.

25 MS. HANSWIRTH: Thank you.

1 Avellino

2 EXAMINATION BY MS. IMES:

3 Q. Actually, there was one other thing  
4 that you said that I need to follow up on, I'm  
5 sorry.

6 A. Go right ahead.

7 Q. At some point, you were talking about  
8 the money that came from the lenders and I think  
9 you said that it was primarily if only invested  
10 with Bernard L. Madoff? And the word "primarily"  
11 was the one I'm focusing on.

12 A. Okay.

13 Q. Was there any other --

14 A. No.

15 Q. -- place it was invested besides  
16 Bernard Madoff?

17 A. No, I could have. That's what I  
18 meant by primarily. I could have invested it  
19 anywhere I wanted because many of the people just  
20 lent me money.

21 Q. Right, but in point of fact, you did  
22 not?

23 A. No, not at all, it's all with Bernard  
24 L. Madoff.

25 MS. IMES: That's all of my

Avellino

1  
2 questions. That's it for today and I thank you,  
3 sir, for your time. We'll continue later if  
4 necessary.

5 A. Thank you.

6 (Time noted: 5:05 p.m.)

7  
8 \_\_\_\_\_  
9 FRANK J. AVELLINO

10  
11 Subscribed and sworn to before me  
12 this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

1 Avellino

2 C E R T I F I C A T E

3 STATE OF NEW YORK )

4 : ss.

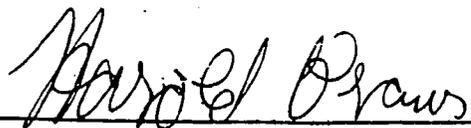
5 COUNTY OF NEW YORK )

6  
7 I, HAROLD BROWN, a Certified  
8 Shorthand Reporter and Notary Public within and  
9 for the State of New York, do hereby certify:

10 That FRANK J. AVELLINO, the witness  
11 whose deposition is hereinbefore set forth, was  
12 duly sworn by me and that such deposition is a  
13 true record of the testimony given by the  
14 witness.

15 I further certify that I am not  
16 related to any of the parties to this action by  
17 blood or marriage, and that I am in no way  
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto  
20 set my hand this 23rd day of November, 1992.

21  
22 

23 HAROLD BROWN, C.S.R.  
24  
25

I N D E X T O E X H I B I T S

60

[Ng1]sec-AVELLINO-avellino 11-20 EXB  
PAGE 6 LINE 18

1 MATCH

6 18 EXB (Trustee Exhibit 1 for  
19 identification, eight pages of letters.)

PAGE 11 LINE 12

1 MATCH

11 12 EXB (Trustee Exhibit 2 for  
13 identification, two pages of Chemical Bank  
14 account statements.)

PAGE 15 LINE 15

1 MATCH

15 15 EXB (Trustee Exhibit 3 for  
16 identification, sample file of the account of  
17 Jacqueline Cotsen.)

PAGE 21 LINE 9

1 MATCH

21 9 EXB (Trustee Exhibit 4 for  
10 identification, current statements for the  
11 various accounts held at Bernard L. Madoff.)

PAGE 23 LINE 13

1 MATCH

23 13 EXB (Trustee Exhibit 5 for  
14 identification, copies of records for account  
15 number Personal Privacy and account number [REDACTED]  
16 Personal Privacy .)

PAGE 24 LINE 23

1 MATCH

24 23 EXB (Trustee Exhibit 6 for  
24 identification, one-page statement from Optus  
25 Financial Services that says "Re totals.")

[Ngl]sec-AVELLINO-avellino 11-20    **EXB**

PAGE 26 LINE 18

1 MATCH

26 18

**EXB**

(Trustee Exhibit 7 for

19

identification, document.)