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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 BEACON ASSOCIATES LLC I, et al.,

4 Plaintiffs,

5 v.

14 Civ. 2294 (AJP)

6 BEACON ASSOCIATES MANAGEMENT,  
7 et al.,

8 Defendants.

9  
10 February 25, 2015  
10:00 a.m.

11 Before:

12 HON. ANDREW J. PECK

13 Magistrate Judge

14 APPEARANCES

15 HERRICK FEINSTEIN LLP  
Attorneys for Plaintiffs  
16 BY: ARTHUR JAKOBY

17 AKIN GUMP  
Attorneys for Defendants  
18 BY: MITCHELL HURLEY  
RACHEL PRESA

19 FOLKENFLIK & MCGERITY  
Attorneys for David Fastenberg, Trustee  
20 BY: MAX FOLKENFLIK  
21

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1 (Case called)

2 (In open court)

3 THE COURT: Be seated. All right. So, I have read  
4 all the various letters, but what exactly is it that AIJED is  
5 looking for?

6 MR. HURLEY: Good morning, your Honor. Mitch Hurley,  
7 Akin Gump, on behalf of AIJED International.

8 AIJED is seeking documents that were previously  
9 produced by Beacon to the clients of Mr. Folkenflik, who is at  
10 counsel table here, and Mr. Whiteley. The documents relate to  
11 the investment activity of investors in Beacon, the  
12 contribution and withdrawal activity of those investors,  
13 including AIJED, including Mr. Folkenflik's clients, and  
14 calculation of net equity for those people, and communications  
15 about that between Beacon.

16 THE COURT: You have been given the information about  
17 AIJED, correct?

18 MR. HURLEY: We have been given -- we understand we  
19 have been given what Mr. Folkenflik was given about AIJED,  
20 correct, yes, but not anyone else, not about Mr. Folkenflik's  
21 clients or any of the other investors.

22 THE COURT: Why do you need anyone else's?

23 MR. HURLEY: So, as your Honor knows from reading the  
24 letter, we believe the recalculation that Beacon did of our net  
25 equity on November 17 -- which was a change from their original

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1 November 6 calculation -- is wrong. So, what they have done is  
2 taken two investment funds with different investor bases and  
3 net all the contributions and withdrawals against each other,  
4 even though, as I said, different investor bases, large inflows  
5 of money after the initial creation from the offshore fund from  
6 investors that never had anything to do with the onshore fund.  
7 So, we believe --

8 THE COURT: Let me ask a question. The investments  
9 went to Beacon as AIJED money, yes? In other words, did it  
10 show that it was investor Sherlock Holmes who put in money one  
11 day and investor John Watson who put in money another? Or  
12 that's on your books, and what Beacon has is that AIJED made an  
13 investment or a withdrawal on those days?

14 MR. HURLEY: On AIJED's books there is a redemption  
15 withdrawal from Associates, and an investment for the offshore.

16 THE COURT: On Beacon's books.

17 MR. HURLEY: The way Beacon handled it was through a  
18 book entry, because there aren't two separate onshore and  
19 offshore funds at Beacon. Now, AIJED is a fund-to-funds, both  
20 of them are. With respect to numerous of the other  
21 funds-to-funds that were affected by the redemption withdrawel,  
22 those fund-to-funds did treat it as a redemption and  
23 withdrawal. But in any case, as of June 2005, when the  
24 offshore fund was created, there was substantial net equity  
25 in -- I'm sorry. OK.

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1           THE COURT: You're not being clear. And while some of  
2 this goes to the merits, I just want to understand -- and maybe  
3 I'll direct it to Mr. Jakoby -- on Beacon's books, is there  
4 anything that shows who the members of AIJED onshore and  
5 offshore are and how much they have invested, or does it just  
6 show the money that went in and out to AIJED I and AIJED II?

7           MR. HURLEY: I believe it's the latter.

8           THE COURT: OK.

9           MR. HURLEY: So, the reason that we believe this is  
10 relevant information is because we have gone back and said we  
11 don't think this is consistent with Judge Peck's order; we need  
12 to understand why you're doing it this way. And one of the  
13 responses we got is: This is just the way we handle related  
14 fundings; this is the way all the other similarly situated  
15 entities were treated. Mr. Folkenflik has made a similar  
16 statement about his own clients to the extent they were  
17 similarly situated. We believe we are entitled to examine that  
18 assertion. Your Honor's order also says --

19           THE COURT: Well, does it matter? It may be that at  
20 least as to Mr. Folkenflik's clients, who are in the same boat  
21 allegedly as AIJED, that that will all come out, and so we  
22 might as well deal with it now. But as for anyone else --

23           So, let's be clear. Other than funds that Beacon  
24 allegedly has treated the same as you, are you seeking it for  
25 funds that they have not treated the same?

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1           MR. HURLEY: We're seeking all the information so we  
2 can make our own evaluation about who is similarly situated and  
3 who is not.

4           THE COURT: OK, in that case it's denied, the request  
5 is denied.

6           MR. HURLEY: But, your Honor, can I just -- a piece of  
7 information I think is really crucial here is that we have  
8 signed off on the same confidentiality order that  
9 Mr. Folkenflik signed off on to get these documents. There is  
10 no burden associated with producing it at all. It's been  
11 produced before.

12          THE COURT: Here is the burden, which is, one, the  
13 expense to the fund, which is coming out of other people's  
14 share. Second, it sounds like --

15           Well, let me put it to you this way. All I'm  
16 interested in is the legal concept. If they treated you  
17 incorrectly as a matter of -- there probably is no law here --  
18 as a matter of equity, that will be dealt with. It will be  
19 dealt with as to any other fund who claims they were similarly  
20 mistreated. That will be done by the court on a high-level  
21 analysis, shall we say.

22           Now, whether there is somebody else out there that  
23 they've distributed money to, who they did not net out who  
24 should have been, that distribution went out. I have already  
25 told you we're not doing any claw-backs, so it is what it is.

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1           MR. HURLEY: Two things, your Honor. No one has ever  
2 raised the objection that this would be costly or unduly  
3 costly. I think it's just pressing a button to send it, first  
4 of all.

5           Second, with respect to claw-backs, we heard you loud  
6 and clear, your Honor. What we want to be able to do is to the  
7 extent they are going to continue to argue that what they are  
8 doing to AIJED is OK because all the other similarly situated  
9 funds were treated the same way, we would just like to be able  
10 to review the documents and say either we think that's right or  
11 it's wrong.

12           THE COURT: Let me ask Mr. Jakoby: First, is that  
13 your argument? Or is your argument that this is the  
14 appropriate way to do it? In other words, if you are going to  
15 rely upon some argument of, you know, we treat all similarly  
16 situated people the same, then maybe they're entitled to see  
17 who is similarly situated, maybe not.

18           If, on the other hand, the argument is related funds  
19 should be treated this way, that's what makes logical sense,  
20 etc., etc., that's a different argument.

21           MR. JACOBY: Your Honor, to answer that question I  
22 need to back up for a moment, because I don't think that --

23           Well, first, before I even start, let me emphasize  
24 that the fund takes a neutral position on whether or not the  
25 two AIJED accounts should be combined and whether or not the

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1 other what I will call related accounts that we have identified  
2 that have nothing to do with AIJED should be combined. We take  
3 a neutral position.

4 But let me back up. Because when this issue came up  
5 on December 21 and December 22 of 2014, at that time I asked  
6 Mr. Hurley in writing -- and I can hand up the e-mail to your  
7 Honor -- and I have extra copies with me -- why is it that you  
8 want all the historical data for all the investors. And he  
9 answered: Respectfully, the reason we want your information is  
10 pretty obvious, so that AIJED can evaluate whether there is any  
11 additional basis for challenging proposed distributions to  
12 those investors.

13 And, your Honor, although he abandoned that reason  
14 once he heard what your Honor said during the phone  
15 conference -- and now there is a totally different reason why  
16 he wants it -- there is, as he said initially -- and I quote --  
17 "The reason we want your information is pretty obvious." And  
18 it remains obvious today.

19 Second of all, let me say that if we gave him all the  
20 information, there is nothing in that data -- unless he is  
21 looking for similar names -- that will help him link accounts.

22 Beacon has provided him with all information  
23 concerning the related accounts that we have identified, some  
24 of them with similar names, some of them not with similar  
25 names. He can't find the ones without similar names by just

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1 looking through data.

2 And we're not favoring one investor over another. In  
3 fact, we have identified clients of Mr. Folkenflik that we  
4 contend have related accounts. In fact, the majority of the  
5 ones we have identified are clients of Mr. Folkenflik. So,  
6 we're not favoring them.

7 When Mr. Hurley initially asked for this information,  
8 he made it clear to me that the reason he sought it is because  
9 he believed that driving the AIJED boat was Mr. Folkenflik, and  
10 he wanted to go after Mr. Folkenflik. And in fact he says that  
11 when he says "so that AIJED can evaluate whether there is any  
12 additional basis to challenge a proposed distribution to those  
13 investors." So, who are those investors? It's  
14 Mr. Folkenflik's investors. He figured -- and we had  
15 conversations -- if I can attack Folkenflik, I can get him to  
16 compromise. And he told me that, although that's not in the  
17 e-mail. But I can hand up the e-mail. You can see how this  
18 issue progresses.

19 THE COURT: I assume you can read accurately; I don't  
20 need the e-mail yet.

21 MR. JACOBY: So fast forward to today. He totally  
22 changed his reason for requesting the information.

23 We have identified all related accounts. We have  
24 given him all the calculations behind every single investor and  
25 what the difference would be if the accounts are merged or not



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1 merged, so that he could see how we are treating all such  
2 investors.

3 And we have also advised -- pursuant to your Honor's  
4 order, and as we initially suggested -- we have advised all  
5 such investors of the issue. We have told them about all the  
6 dates. Some investors have told me that they're electing to  
7 brief the issue, and they're going to be providing me with  
8 briefs, which I will then file with the court.

9 So, in answer to your Honor's question, providing him  
10 with all the ins and outs of every single investor is not going  
11 to help him; it's not the issue before this court.

12 THE COURT: So, let me be clear. You have given him  
13 the information for all the accounts that you believe and have  
14 identified as possibly related accounts?

15 MR. JACOBY: Yes. And since we are neutral on this  
16 issue, we have painstakingly gone through every account. We  
17 have also searched through institutional memories, because it  
18 could be that if it's not a similarly situated name, you are  
19 not going to figure it out unless you have the institutional  
20 memory.

21 We went through every single account, and we have  
22 identified, we have gone overboard in terms of identifying any  
23 possible situation where one could argue that somebody had  
24 money in one account and that that same money was either  
25 transferred totally out of the account -- which is a little bit

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1 different situation than AIJED, because there was a paper  
2 transfer -- but we also have investors who withdrew money, were  
3 no longer investors, and then opened up accounts either in  
4 their own name again, same name as before, or a different name.  
5 And we have identified all such investors. And there are  
6 holdbacks with respect to those investors.

7           Also you should know, your Honor, that before the  
8 distribution we had auditors review our work, because we wanted  
9 to be so careful that we were getting it right. They are aware  
10 of the situation. They too have pored through all the numbers.  
11 So, this isn't just the Beacon fund, but also an auditor  
12 looking through and confirming that everything is right.

13           And while we are an open book, we are not an open book  
14 when it comes to challenging your Honor's October 31, 2014  
15 order. And in fact we will aggressively try to block any  
16 investor who is trying to claw back money or seek information  
17 for the purpose of clawing back money and, you know, for lack  
18 of a legal term, trying to muck things up, and therefore force  
19 a compromise or anything else.

20           We are neutral on the issue, and we encourage all  
21 parties to put the issues before the court and address them so  
22 that your Honor can render a decision. Thank you very much.

23           MR. HURLEY: Can I just respond briefly, your Honor?

24           THE COURT: Let's let Mr. Folkenflik, who may have  
25 more of a dog in the fight than Mr. Jakoby, go first, and then

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1 we will get back to you, Mr. Hurley.

2 MR. FOLKENFLIK: No, my argument is not addressed to  
3 the similarity of treatment of other accounts with respect to  
4 AIJED. All we're trying to do -- or going to try to do with  
5 respect to my individual clients who have been identified as  
6 hold-back clients -- all I'm trying to do with respect to AIJED  
7 is correctly apply the terms of your Honor's order.

8 And here is the situation we are faced with. As I  
9 said to Mr. Hurley, when we were looking at these accounts, one  
10 of the questions we raised is: Are there accounts where there  
11 should be some adjustment to the distribution numbers because  
12 there are historical profits figured into somebody's cash-in  
13 balance? As your Honor's order can basically be read as  
14 requiring that everybody get back their cash basis before  
15 anybody gets profits.

16 And we looked at these two AIJED accounts, the  
17 offshore and the onshore -- although there are actually four.  
18 There is an account for Salt, which is a liquidating trust;  
19 there is an account that referred to as QP, which is some other  
20 AIJED account, and we don't have all the details on that, that  
21 might have been merged in Beacon's books -- but we looked at  
22 the AIJED accounts, and we saw that one account was started  
23 with money from the other account in a book transfer, and one  
24 account is a cash winner to the tune of four plus million  
25 dollars, and the other is a cash in/cash out loser. So we

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1 looked at that disparity, and it seemed that there was a  
2 problem there.

3 We're not sure just yet what the problem is. There  
4 might be a question of whether you allocate a basis among the  
5 surviving entity and the new entity.

6 It might be that you allocate all of the basis to the  
7 new entity, and then they received a certain amount of cash  
8 profits, not a large number -- I believe it's \$385,000 -- that  
9 should be deducted.

10 It might be that there is some other analysis that  
11 needs to be done. There are some people in both of the  
12 accounts, including in particular the manager, Mr. Gordon,  
13 whose management company were members of his family. We need  
14 to look at those numbers.

15 But I said to Mr. Hurley, after I reviewed their  
16 document production, that it's a little hard to figure out  
17 exactly what's going on. They withdrew from AIJED LLC, the  
18 onshore account, approximately \$32 million to be invested in  
19 the offshore account but only 6.9 million came from Beacon, and  
20 the another 25 million came from other fund or funds.

21 So, we are looking at that, and we're saying what's  
22 the proper accounting, and what's the proper way to apply the  
23 court's order, and that's it. That's the only thing we're  
24 looking at.

25 With respect to my clients, they've gotten the

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1 numbers. There is a question as to whether they invested in  
2 Beacon through a fund called First Frontier, and then it was  
3 transferred to the individual names, so that minor amount of  
4 profit -- and it's really fairly trivial -- whether it should  
5 be deducted from their cost basis. And the answer is most  
6 likely yes.

7           There is one person who withdrew money and then a few  
8 months later opened up an account again, and the question is  
9 how do you allocate the basis from what you withdrew and what  
10 you put back. Do you put all of it in what she put back, and  
11 then she would be a winner with respect to what she put back?  
12 Only include some of it? That client may have a separate  
13 attorney representing her, or pro se, before your Honor, so I  
14 don't want to go too far into the merits of that.

15           But in all events we're trying to be as low-impact as  
16 we can, trying to discover what the facts are, and not trying  
17 to overlitigate or take extreme positions, because frankly it's  
18 not that great an idea and particularly not with your Honor.

19           So, I think Mr. Hurley and I talked about having a  
20 sit-down with Arthur Gordon preferably in person but possibly  
21 by telephone, who was the manager of the AIJED accounts, and  
22 say can you give us some institutional understanding. And then  
23 we may be consulting with accountants or experts with regard to  
24 the allocation issue, the accounting basis issue.

25           And I think other than that, and trying to identify

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1 individuals for whom a benefit from Madoff profit is still  
2 being enjoyed, for want of a better word, I think we're done,  
3 and then we will present it to your Honor, and your Honor will  
4 choose what your Honor believes is the best interpretation of  
5 your Honor's order.

6 THE COURT: All right. Mr. Hurley, you wanted to  
7 desperately say something. Then the question you should think  
8 about as you start is I hear Jakoby saying you got everything  
9 about all the hold-back entities, and that's all that's at  
10 issue.

11 MR. HURLEY: I think that kind of begs the question  
12 though. We have everything about what he has identified as the  
13 appropriate holdback entities. With all due respect, this is a  
14 very complicated process; mistakes have been made. I do want  
15 to make one thing still clear.

16 THE COURT: Your request is denied in that case.

17 MR. HURLEY: Judge, can I make something crystal  
18 clear?

19 THE COURT: Yes.

20 MR. HURLEY: We're not challenging the October 31  
21 order. We accept that. We will stipulate we're not going to  
22 seek a claw-back.

23 You asked Jakoby whether he is going to make an  
24 argument that part of the reason that his treatment of AIJED is  
25 acceptable is because he thinks everybody else was treated that

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1 way. I'm not sure he ever really responded to that question.

2 THE COURT: He basically said he is taking no  
3 position; the fund is taking no position on whether these  
4 people like AIJED should or shouldn't be treated as single or  
5 separate entities. So, he's got no position. You have heard  
6 Mr. Folkenflik say he is not going to argue that you should be  
7 treated one way because everybody is similar to you. So that  
8 argument is gone. If it changes because somebody says  
9 something in their papers -- which are due very shortly -- I  
10 will either give you discovery or, frankly, reject the  
11 argument. So, that's off the table.

12 MR. HURLEY: Would it not be relevant if in fact we  
13 were to discover that there were a bunch of people that were  
14 treated differently than AIJED that were similarly situated,  
15 regardless? I mean it seems to me like --

16 THE COURT: There the answer is somebody who has  
17 standing perhaps should argue that there should be a claw-back  
18 from those entities.

19 MR. HURLEY: OK.

20 THE COURT: But, you know, there is no claw-back.

21 MR. HURLEY: OK. And I just want to make one other  
22 thing crystal clear. The e-mail that Jakoby read to you on  
23 December 22 -- as you might imagine, your Honor, this has been  
24 a developing situation for me. I just got involved at the end  
25 of November. So, trying to understand exactly what arguments

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1 might be made and what might be relevant has developed. The  
2 conversation that I had was actually after December 22, where I  
3 was really focused on this netting, and I said I don't  
4 understand how this netting could make any sense. And that is  
5 when I heard from Jakoby, well, we did this for everybody. So,  
6 I started to focus more on that as an issue. I just wanted to  
7 be clear I wasn't trying to mislead anyone.

8 THE COURT: OK. I assume you are acting in good faith  
9 on behalf of your clients, just like everyone else here, who I  
10 have had the unfortunate knowledge of over too many years. So,  
11 that's fine.

12 The other thing, you know, I think it was clear from  
13 my earlier question, but it seems to me -- and this is not a  
14 definitive decision; this is just my thinking -- that just like  
15 in terms of the -- well, let me not do it that way.

16 The fact that AIJED -- what I'm now calling AIJED I  
17 and AIJED II what you are calling onshore and offshore -- the  
18 fact that they have different members behind the scene, shall  
19 we say, but not on Beacon's books, may be something that as  
20 money comes in, AIJED has to distribute differently to its  
21 participants. But in terms of vis-a-vis Beacon, it's just as  
22 if, you know, we were dealing with a corporation that has  
23 different shareholders over time. It is the corporate entity  
24 that was the investor.

25 So, my initial thinking -- subject to spending a lot



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1 more time thinking about it and being educated by all of you,  
2 or at least those of you who are taking a position -- is that  
3 it doesn't matter to me that there was some overlap but some  
4 difference in the members of AIJED I and AIJED II.

5 If they really are related entities -- and with the  
6 way the book entry went, it certainly sounds like Madoff  
7 profits that were in the account of AIJED I were transferred  
8 directly into AIJED II -- it would seem to me that there is a  
9 reason in fairness to other investors in Beacon that before  
10 those profits get reimbursed to AIJED II, that everyone else be  
11 made whole. And if we get to profit distribution time, that's  
12 a different story.

13 MR. HURLEY: Two things to be clear on.  
14 Mr. Folkenflik referenced this. At the time of what Beacon  
15 calls a transfer and we call a withdrawal, there was net equity  
16 available except for like \$300,000 or something like that at  
17 the time of that transfer. A hundred percent of that was  
18 debited against the onshore fund and credited to the offshore  
19 fund.

20 Now, while Beacon did that as an accounting transfer,  
21 there are two different accounts, and there is no dispute these  
22 are two different entities, two different investors within the  
23 meaning of your Honor's order, and that there was sufficient  
24 net equity for virtually all of the transfer. None of those  
25 things are in dispute.

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1           Going forward for three years, you have a bunch of  
2 people that had nothing to do with the onshore account that  
3 were putting money in on a net basis of \$3.1 million just from  
4 2005 to 2008. So, I think -- and we won't get into all the  
5 merits -- but I think there may be more to it than --

6           THE COURT: It may be more complicated --

7           MR. HURLEY: Yeah.

8           THE COURT: -- than initially thought.

9           MR. HURLEY: I would suggest just give us a chance.

10          THE COURT: On the other hand, you know, if you start  
11 looking at it that way, then, you know, does Beacon and this  
12 court -- as opposed to AIJED -- have to look at who put money  
13 in to AIJED II and who took it out, or does one just look at  
14 AIJED's account on the books of either?

15          MR. HURLEY: Our answer is you absolutely don't; all  
16 you have to do is look at the net equity that was available.  
17 And the way that Beacon actually did the transfer, where they  
18 debit the full amount against onshore and credit it to  
19 offshore, and cap it at the net that was available at the time,  
20 you don't have to dig down into who the investors in AIJED were  
21 at that point. But obviously we will have an opportunity to  
22 present all the evidence, but I think there is a lot to look  
23 at.

24          MR. FOLKENFLIK: Well, your Honor, just quickly,  
25 Beacon was not transferring net equity from AIJED I to AIJED

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1 II; they were transferring net asset value, which included  
2 whatever was on the books and included the Madoff profits.

3 So, the question of net equity is you have to draw a  
4 little further deeper to decide whether you should allocate  
5 that a hundred percent to AIJED II or divide it between the two  
6 on some sort of pro rata basis. And that's really what we're  
7 talking about from an accounting point of view.

8 And we will talk. Maybe the parties can reach some  
9 resolution which would save the court the effort of trying to  
10 do that. Because we do believe -- we all believe -- that there  
11 will be substantial distributions beyond net equity break-even  
12 point, so that there will be ways of getting back whatever  
13 might be lost as a timing matter in the first round. So, we  
14 will address that as well.

15 THE COURT: All right. Well, I certainly look forward  
16 to you resolving this issue on your own, if that's possible, or  
17 at least as much as possible.

18 All right. Your opening briefs are due March 6, so  
19 that's not too far in the future. I assume, Mr. Hurley, that  
20 you haven't intervened; you have just appeared or whatever.

21 I've got this as a consent case under 28 U.S. Code  
22 Section 636(c). I'm perfectly happy to do this informally and  
23 not force you to make a motion to intervene and all of that,  
24 but I assume -- and I'm not sure I can say it this way -- I  
25 assume that you are not challenging the consent basis of the

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1 case in front of me before I make any rulings, because if you  
2 are, then maybe we do need to deal with this in a more formal  
3 way and send the case back to Judge McMahon I guess on this  
4 one, who I'm sure would be overjoyed.

5 MR. HURLEY: That's fine. You're relying on I think  
6 it was the final paragraph of your October 31 order which said  
7 you retained jurisdiction surrounding the distributions, and  
8 that's what we assumed we were all proceeding under.

9 THE COURT: OK.

10 MR. FOLKENFLIK: If your Honor would enter an order on  
11 consent of the parties to allow Mr. Hurley's client to  
12 intervene, and consent to proceeding before your Honor pursuant  
13 for all purposes.

14 THE COURT: Well, since he has filed a notice of  
15 appearance, and we have now got a transcript record, unless  
16 somebody wants to push it, I'm content leaving it the way it  
17 is.

18 MR. FOLKENFLIK: That's fine.

19 THE COURT: All right, good.

20 All right. I look forward to the briefs. I look even  
21 more forward to you resolving it before I have to rule on the  
22 briefs.

23 Usual drill: The transcript is the transcript, and  
24 you all figure out how you are doing the purchase of it in the  
25 most cost effective way for the group.

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1 MR. FOLKENFLIK: I just wanted to alert the court, I  
2 think March 6 will be fine, although it turns out I'm moving my  
3 offices on that date and going to San Francisco.

4 THE COURT: File it early.

5 MR. FOLKENFLIK: It may be that I ask for a short  
6 adjournment, but as of yet --

7 THE COURT: I could have sworn I have adjourned this  
8 two or three times.

9 MR. FOLKENFLIK: Not this motion, but --

10 THE COURT: No, I thought even this briefing schedule  
11 got pushed off at somebody's request. I could be wrong. I'm  
12 wrong?

13 MR. FOLKENFLIK: No, your Honor.

14 THE COURT: All right. In any event, if you need a  
15 day or two, it's probably not the end of the world. On the  
16 other hand, when the court says it's due by a date, that  
17 doesn't mean if that date doesn't work for you that you can't  
18 file it a day or two early. I think you know what your  
19 arguments are. You get another shot at it in the opposition  
20 brief in case, you know, whatever.

21 MR. FOLKENFLIK: Well, the difficulty is we're going  
22 to have to be quick about uncovering the facts that will enable  
23 us to make the arguments in the brief as well.

24 THE COURT: Well, that was implicit in the court  
25 giving you this schedule. So, I would say do what you've got

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1 to do to get the facts, but while I might in deference to how  
2 long you have been in front of me give you a day or two for  
3 office movement, I'm not going to be inclined to give people an  
4 extension because the person from AIJED couldn't make himself  
5 available or whatever. So do what you all got to do.

6 All right. Thank you all.

7 MR. FOLKENFLIK: Thank you.

8 THE COURT: Make your arrangements with the reporter.

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