

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**BEACON ASSOCIATES LLC I, BEACON
ASSOCIATES LLC II, ANDOVER
ASSOCIATES, L.P., ANDOVER ASSOCIATES
LLC I, ANDOVER ASSOCIATES (QP) LLC,**

Plaintiffs,

-vs-

**BEACON ASSOCIATES MANAGEMENT
CORP.; ANDOVER ASSOCIATES
MANAGEMENT CORP.; INCOME PLUS
INVESTMENT FUND; DAVID FASTENBERG,
TRUSTEE, LONG ISLAND VITREO-
RETINAL CONSULTANTS 401K FBO DAVID
FASTENBERG, ET AL.,**

Civil Action No.
1:14-cv-02294 (AJP)

Defendants.

DECLARATION OF JOHN P. JEANNERET, Ph.D.

I, John P. Jeanneret, Ph.D., hereby declare on oath and state as follows:

1. I am the President, Chief Executive Officer, and Chief Compliance Officer of J.P. Jeanneret Associates, Inc. (“JPJA”).
2. I make this declaration based on my personal knowledge in support of the Memorandum of Income-Plus Investment Fund in Response to Plaintiffs’ Request for a Declaratory Judgment.
3. JPJA is the investment manager of the Income-Plus Investment Fund (“Income-Plus”). Most of the investors in Income-Plus are Taft-Hartley plans located in Upstate New York and are governed by ERISA.
4. Beginning in January 2000, Income-Plus invested in Beacon Associates LLC I (“Beacon I”) and became a party to Beacon’s Operating Agreement. Income-Plus was also an investor in Beacon Associates LLC II for a short period of time but that investment was transferred to

Beacon I in 2003. From the date of that transfer forward, Income-Plus was invested solely with Beacon I.

5. It is my understanding that the operating agreements relating to Beacon I and Beacon II are substantially the same. I will therefore refer to the two investment funds collectively as “Beacon.”

6. Beacon’s affairs have at all times been governed by the terms of the Operating Agreement.

7. As detailed in the Complaint in this matter, from its inception in 1995, Beacon invested a significant portion of its assets with Bernard L. Madoff Investment Securities LLC (“Madoff” or “BLMIS”). The percentage of Beacon’s assets invested with BLMIS over the years varied – ranging from a high of approximately 100% to a low of approximately 70%.

8. On December 11, 2008, Beacon learned that Madoff had been operating a massive Ponzi scheme.

9. After disclosure of Madoff’s fraud, Beacon’s management informed the Fund’s investors that management had written the Fund’s BLMIS investment down to zero and that the Fund would be liquidated.

10. According to Beacon’s 2011 audited financial statements, Beacon submitted a proof of claim to the trustee overseeing the liquidation of BLMIS (the “Madoff Trustee”) on August 3, 2009. A copy of Beacon’s 2011 financial statement is attached hereto as Exhibit 1.

11. Income-Plus invested a total of \$18,900,000 in Beacon from January 2000 to December 2005 and withdrew \$9,000,000 through December 11, 2008, representing a cash in/cash out investment of \$9,900,000 through that date. Income-Plus received an additional \$4,260,949 in

distributions from Beacon in 2010 after the Court ordered the distribution identified in the Complaint in this matter.

12. Beacon has provided Income-Plus with data comparing the amounts Income-Plus would expect to receive if certain of the assets currently available for distribution are returned to investors under the two distribution methods identified in the Complaint and referred to as the Valuation Method and the Net Equity Method. That illustration indicates that, if Beacon distributes the \$51,524,872 previously identified as available for distribution pursuant to the Net Equity Method, Income-Plus would receive approximately \$700,000 less than it would expect to receive under the Valuation Method set forth in the Operating Agreement.

13. In addition, JPJA has calculated the differences in the amounts Income-Plus would receive under the two different methodologies based on additional monies Beacon is expected to receive with respect to the proof of claim the Madoff Trustee has approved. In particular, we analyzed the differences in the amounts Income-Plus would receive under the two different scenarios if the Trustee pays the entire claim – \$159,867,925 – and other amounts in between the entire claim and amount identified as currently available for distribution.

14. Our calculations – attached as Exhibit 2 – reveal that Income-Plus would receive approximately \$2.2 million less under the Net Equity Method than it would under the Valuation Method if the full amount of the claim were paid, and between \$1 million and \$1.7 million less under the Net Equity Method if the total amount paid were between \$75 million and \$125 million.

15. Significant discrepancies of this nature would be experienced by all Beacon investors who, like Income-Plus, would benefit from the application of the Valuation Method over the New Equity Method. Many of these investors are Taft-Hartley plans governed by ERISA.

16. Based on the information provided to us by Beacon, we have identified 51 entities categorized by Beacon as ERISA funds. Assuming that \$75 million were available to distribute, and using the percentages the Fund has provided to us for the Valuation Method versus the Net Equity Method, we have calculated that 20 separate ERISA funds would lose approximately \$5.6 million if the New Equity Method were adopted, while the remaining 31 funds would gain approximately \$3.9 million.

17. I will not identify any of the investors by name in this Declaration because I understand that investor information is subject to a Stipulated Protective Order, but I have the information available. For illustration purposes, I will cite one relatively extreme example for an unnamed investor. I have assumed a distribution by Beacon of \$75 million, which equates roughly to what JPJA believes Beacon will have available for distribution by the time the Court renders its decision. Under that scenario, one investor would be entitled to \$2,059,809 under the Valuation Method but would be entitled to zero under the Net Equity Method.

18. We have also done an analysis of the data provided to us by Beacon to determine whether the majority of investors in Beacon would benefit from the Valuation Method or the Net Equity Analysis. To do that analysis, we reviewed two spreadsheets provided by Beacon. The first was titled *Beacon I & II Net Eq Vs. Val* and the second was titled *Beacon Year-End Investor Allocation Balances*. One spreadsheet identified the investors that benefited from each methodology, while the other spreadsheet provided investor balances.

19. Our analysis reveals that, on a dollar-weighted basis, approximately 54% of the investors in Beacon would benefit from the application of the Valuation Method.

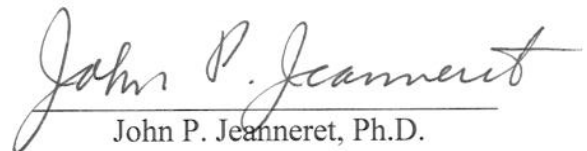
20. We have also done an analysis of the total amounts that would be reallocated in the event of a \$75 million distribution if Beacon used the Net Equity Method rather than the Valuation

Method. Our calculations reveal that there would be a reallocation of \$16.38 million, or almost 22% of the assets available for distribution, if the Net Equity Method were followed.

21. Finally, from reviewing the Complaint filed in this matter, I understand that the advocates of the Net Equity Method believe that Beacon's cash in/cash out with respect to its Madoff investment is the same as the investors' cash in/cash out in Beacon. This is incorrect to the extent it includes the amounts distributed to investors after the discovery of Madoff's fraud and also because it ignores the legitimate gains experienced by Beacon over the years on its non-Madoff investments. The only way to align a Beacon investor's exposure to Madoff within the Fund at any given time would be to calculate the percentage of Beacon's assets invested with Madoff at the time of the investor's cash in/cash out to Beacon. That has not been done here.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2014


John P. Jeanneret, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2014, I electronically filed the foregoing Declaration using the CM/ECF system, which sent electronic or other notification of such filing to all counsel of record in this case, and a copy was also sent by first class mail to all counsel.

/s/ Brian E. Whiteley

Brian E. Whiteley