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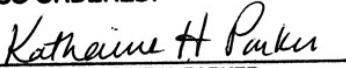
January 12, 2023

VIA ECF

Hon. Katharine H. Parker
United States Magistrate Judge
United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The parties' proposed revisions to the transcript
from the December 13, 2022 Conference are
APPROVED.

SO ORDERED:


HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE

01/17/2023

Re: Averbach et al. v. Cairo Amman Bank, 19-cv-00004-GHW-KHP
Letter Motion Requesting Approval of December 13, 2022, Transcript
Errata

Dear Magistrate Judge Parker:

At the request of the transcription service that prepared the transcript for the December 13, 2022, case management conference, we write jointly on behalf of the parties to request that the Court approve the proposed changes to the transcript attached hereto as a clean document in Exhibit A and a redline in Exhibit B.

Respectfully submitted,

/s/ Dina Gielchinsky

cc: All Counsel

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
AVERBACH, et al., : Docket #19cv0004
Plaintiffs, : 19-cv-0004-GHW-KHP
- against - :
CAIRO AMMAN BANK, : New York, New York
December 13, 2022
Defendant. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

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None

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2 THE CLERK: Calling case 19cv004, Averbach
3 versus Cairo Amman Bank. Beginning with the counsel
4 for the plaintiffs, please make your appearance for
5 the record.

6 MR. GARY OSEN: Good morning, Your Honor, this
7 is Gary Osen from Osen LLC, together with my
8 colleague, Dina Gielchinsky, on behalf of the
9 plaintiffs.

10 THE COURT: Okay, nice to see you.

11 THE CLERK: And counsel for the defendants,
12 please make your appearance for the record.

13 MR. JONATHAN SIEGFRIED: Good morning, Your
14 Honor, Jonathan Siegfried for DLA, along with my
15 colleague, Andrew Peck.

16 THE COURT: Hello.

17 THE CLERK: And counsel for the third party
18 defendants, please make your appearance.

19 MR. RICHARD LAWLER: Good morning, Your Honor,
20 Richard Lawler, Whitman Breed Abbott & Morgan, for
21 Arab Bank New York, and Michael Thomason, good
22 morning, Your Honor.

23 THE COURT: Good morning. Okay, welcome,
24 everyone. The principal purpose of today's proceeding
25 I think is to address the subpoena and the motion to

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2 compel that plaintiffs have filed seeking certain
3 information from Arab Bank. And what I wanted to do
4 was talk about that motion, hear from plaintiffs on
5 that and then I'll hear from Arab Bank's counsel who
6 are here today. I did read the *Spetner* case which was
7 cited in the, in the briefs, but the principal thing
8 that I want plaintiffs to address is why what you are
9 seeking is proportional to the needs of the case and,
10 of course, any other points that you want to raise.
11 So I'll hear first from plaintiffs' counsel.

12 MR. OSEN: Thank you, Your Honor. As I read
13 the defendant's brief I think there are really only
14 two open issues of dispute. The first is whether Arab
15 Bank's, I'll call it Arab Bank-New York for simplicity
16 purposes, has to search for, in addition to the
17 individuals and entities listed in the complaint, an
18 additional 11 individuals and entities that were not
19 listed in the complaint by name, 9 individuals and 2
20 entities. And the second issue still in dispute is
21 whether they should have the burden of searching for
22 variations and transliterations of the names of the
23 individuals and entities listed.

24 THE COURT: Well, aren't they also saying that
25 they don't have any, that CAB didn't have an account

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2 and that they just don't have any documents?

3 MR. OSEN: I don't think that's correct, Your
4 Honor.

5 THE COURT: Okay.

6 MR. OSEN: Arab Bank clearly does have
7 responsive records because we already have records
8 from Arab Bank-New York that involve Cairo Amman
9 Bank's New York transactions. The question is, as they
10 frame it, is that they are not a correspondent bank
11 for CAB, which is true, but the transactions that we
12 have seen already are ones in which Arab Bank is the
13 correspondent bank for the other side of the
14 transaction. So, in any correspondent account
15 transactions there are at least four parts to it,
16 there's the originator bank and its correspondent
17 bank, and the recipient bank's correspondent bank, and
18 then the recipient bank, itself. So in a transaction,
19 and I can give you an example and present one to you
20 if that's helpful, Arab Bank, for the sake of
21 argument, Arab Bank in Beirut or in Jordan has a
22 customer, sends a US dollar-denominated transaction to
23 a Cairo Amman Bank customer in the Palestinian
24 Territories; that transaction flows from Arab Bank in
25 Jordan, credited to Arab Bank's correspondent account

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2 in New York, and then to, for example, Citibank as the
3 correspondent for CAB and then on to CAB in the
4 Palestinian Territories. That's a typical sort of
5 wire transfer.

6 So, we already have examples of Arab Bank
7 transactions for relevant entities and parties that,
8 where Arab Bank is the originating bank and,
9 therefore, the customer's correspondent is Arab Bank-
10 New York and then the recipient is Cairo Amman Bank
11 with, in most of the cases we've seen Citibank as the
12 correspondent for Cairo Amman --

13 THE COURT: So, the only examples, you're
14 conceding then that the only examples that you're
15 expecting to find are examples where a customer of
16 Arab Bank is originating the transaction?

17 MR. OSEN: Technically, it doesn't have to be
18 a customer of Arab Bank, Arab Bank could be the,
19 simply the correspondent for another bank but, yes,
20 there are going to be cases where the originator is
21 not Cairo Amman, but only the recipient is.

22 THE COURT: So, you're looking for
23 transactions where CAB is a recipient?

24 MR. OSEN: Right, but where they are using, of
25 course, New York as the basis to receive the dollars.

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2 So, there are many examples of CAB receiving
3 transactions from say entities in Europe where it
4 doesn't flow or at least we can't see visibly that it
5 went through New York. Here, we're talking about
6 transactions - definitionally because it's Arab Bank-
7 New York - that flowed through Arab Bank-New York to
8 CAB in the territories.

9 THE COURT: Okay.

10 MR. OSEN: If it will help Your Honor, I can
11 give you an example that's already in the public
12 record.

13 THE COURT: Sure.

14 MR. OSEN: Your Honor, with permission I'll
15 approach.

16 THE COURT: Yes.

17 THE CLERK: Thank you.

18 MR. OSEN: So, for the record, this is Bates
19 stamped AV-PL000016 and, again, also for the record,
20 Your Honor, the highlighting is done by counsel and
21 not in the original document.

22 THE COURT: Um-hmm.

23 MR. OSEN: So, this is a year 2000 transaction
24 for over \$8,000 that was initiated by an individual
25 named Mr. Youssef El-Hayek (phonetic), he's identified

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2 below as the originating party and --

3 THE COURT: And he has an account at Arab
4 Bank.

5 MR. OSEN: Presumably. It's not entirely
6 clear from this document whether he simply used Arab
7 Bank or had an account there but, in any event, he
8 used Arab Bank Amman as the originating bank to send
9 this transfer. And the beneficiary is Ghazi Hamad, G-
10 H-A-Z-I, Hamad, who is a, the complaint alleges, a
11 prominent Hamas leader in the Gaza Strip and he had an
12 account at the credit bank, Cairo Amman Bank, with the
13 address listed there in Amman, Jordan. And the
14 transfer was credited, you can see four lines down,
15 through Citibank, that's for their routing. So, the
16 transfer would have gone essentially from the books of
17 Arab Bank Jordan, which had an account with Arab Bank
18 New York, then the correspondent banking credit goes
19 to Citibank and then Citibank's correspondent account
20 which Cairo Amman then credits the account holder
21 listed.

22 So, it's this kind of transaction and others
23 like it that are of interest in --

24 THE COURT: Right, so this goes from this guy
25 in Amman, Jordan, he walks into Arab Bank, he says I

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2 want to send this money to Hamad, also in Jordan, and
3 the bank sends the money to its Arab Bank-New York,
4 which then sends it to Citibank New York, which then
5 sends it to the CAB account in Jordan of this guy,
6 Hamad, is that what you're saying?

7 MR. OSEN: More or less, it's really a --

8 THE COURT: Are there any other steps in that,
9 four steps?

10 MR. OSEN: Yeah, there are no additional
11 steps, I would just say that these are all sort of
12 book entries, correspondent banking is basically a
13 series of IOUs between the banks so there is really
14 never any money physically changing hands and a
15 correspondent banking example is just credits and
16 debits by the banks.

17 THE COURT: Okay.

18 MR. OSEN: And that's standard --

19 THE COURT: And you're saying this is relevant
20 to jurisdiction?

21 MR. OSEN: Sure.

22 THE COURT: Okay, why don't we talk about
23 that?

24 MR. OSEN: Well, because this is a
25 paradigmatic example of a funds transfer that

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2 purposely avails the use of the US and New York
3 correspondent banking system to effectuate the
4 transfer. And just to frame it again --

5 THE COURT: And how is CAB, the recipient,
6 fourth step along the line, how is the recipient
7 purposely availing itself of jurisdiction in New York
8 under your theory?

9 MR. OSEN: It's not, it's not my theory, Your
10 Honor, it's the Second Circuit and the New York Court
11 of Appeals in *Licci*. To just take this same
12 transaction and frame it in *Licci* terms, in that case
13 the bank was Lebanese Canadian Bank in Beirut, it was
14 receiving transfers to an organization called The
15 Martyrs Foundation in Lebanon and, again, the
16 transfers were going through Amex, in that case the
17 New York correspondent bank for LCB, for Lebanese
18 Canadian Bank, and were being credited to the account
19 of LCB in Beirut.

20 THE COURT: But in *Licci*, LCB was on both ends
21 of the transaction, isn't that correct?

22 MR. OSEN: No, Your Honor.

23 THE COURT: All right, so tell me why that's
24 not the case.

25 MR. OSEN: In *Licci* the only allegation was

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2 that LCB held accounts for The Martyrs Foundation and
3 received funds transfers through its New York
4 correspondent account. I believe the term was dozens
5 of transfers.

6 THE COURT: So, are you saying that in that
7 case there was another bank, could have been Arab Bank
8 that was an originating party, that all, that the
9 jurisdiction in *Licci* was based on receipt as part of
10 -- in the same way that you're saying CAB received
11 donations or transfers?

12 MR. OSEN: Exactly the same, Your Honor.

13 THE COURT: Okay. And that's purposeful
14 availment by CAB under your theory because they open
15 themselves up to receiving US dollar transfers which
16 are predominantly only going through New York or is
17 that, is there a choice to get it from somewhere other
18 than through New York?

19 MR. OSEN: Actually, that was discussed in
20 *Licci* and because in that case LCB, the bank in
21 question, chose to have correspondent banking accounts
22 in New York, in that case through American Express at
23 the time, it purposefully availed itself of the use of
24 the New York banking system. Actually, it was Mr.
25 Siegfried, I believe, who argued in *Licci* that LCB was

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2 merely the passive recipient of funds through its
3 correspondent account, wasn't initiating the transfers
4 in question. And the Court and the Court of Appeals,
5 both the Second Circuit and the Court of Appeals,
6 rejected that distinction. Once you maintain a
7 correspondent banking account or accounts in New York

8 --

9 THE COURT: It means you're open for business
10 for receiving US dollars wherever you are elsewhere in
11 the world.

12 MR. OSEN: Well, it's also, there's an
13 additional component, you're absolutely right, Your
14 Honor, but they're also choosing to provide US dollar
15 denominated accounts to their customers. So, it's not
16 a happenstance, the whole purpose of maintaining US
17 dollar denominated accounts overseas is to provide
18 that service to your clients and customers and if you
19 do that through US correspondent banking and US
20 correspondent bank accounts, you are purposefully
21 availing yourself of the New York and US banking
22 system.

23 THE COURT: And presumably that helps the bank
24 get more customers who they want, who want US dollar
25 --

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2 MR. OSEN: It's certainly important to most
3 international banks, there are some - as Your Honor
4 noted, the *Spetner* case - where they don't maintain a
5 direct correspondent accounting relationship but,
6 instead, use another foreign bank that does, that's
7 the so-called nested account strategy. But for the
8 most part, most international banks try to maintain a
9 US correspondent account if they can.

10 THE COURT: So, the example that you gave me
11 here involving Arab Bank and CAB, is not concerning
12 any nested accounts, this is just a straight out,
13 straight out transfer?

14 MR. OSEN: Correct, Your Honor.

15 THE COURT: Okay. Okay, so you've already
16 subpoenaed or obtained documents from Arab Bank, in
17 other litigations they've conducted many, many, many
18 searches and now this is another litigation involving
19 some of the same plaintiffs seeking more information.
20 Why do you think you're likely to find anything more
21 given the intense discovery that you've already
22 received and used in your pleading?

23 MR. OSEN: It's a good question, Your Honor,
24 let me walk through that for a moment. So, the list
25 that we have that we've moved to compel on are persons

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2 or entities that were not sought in Arab Bank
3 discovery in either the *Linde* or *Miller* cases. And so
4 the question is whether, first of all, whether those
5 specific requests which have not been the subject of
6 prior requests, may yield additional information.

7 The Arab Bank litigation obviously has gone on
8 for, well now almost 20 years --

9 THE COURT: Right.

10 MR. OSEN: So it's very complicated and
11 there's a lot of backstory to that, but most of the
12 requests in that case were not formulated in the way
13 they are here for a variety of reasons, one being that
14 they focused on primarily transfers to the Saudi
15 Committee for the Support of the Intifada Al-Quds,
16 they were not focused as this complaint is on the Arab
17 Liberation Front and payments by Saddam Hussein which
18 are featured here but not in that case. And also,
19 there's a different history going back to how
20 documents were produced in that case. Your Honor may
21 recall that in 2005 the Office of the Comptroller of
22 the Currency entered into a consent decree with Arab
23 Bank-New York which converted it from a branch to an
24 agency and so forth.

25 THE COURT: Um-hmm.

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2 MR. OSEN: And so a lot of the dispute about
3 discovery of the New York branch in that case focused
4 on asking the defendant in that case to produce the
5 records it had produced to the OCC.

6 THE COURT: I see.

7 MR. OSEN: And so those requests were largely,
8 not exclusively, but largely framed around what
9 documents were given to the OCC and many records such
10 as the one I handed up to Your Honor were then
11 produced in response to that discovery dispute. And
12 as a result of the way this process played out, the
13 names that appear in the motion to compel were not
14 specifically requested in that form back in 2006 when
15 this, when this dispute was resolved.

16 THE COURT: But yet they still yielded
17 documents.

18 MR. OSEN: Oh, it yielded documents because
19 these documents --

20 THE COURT: Involving CAB.

21 MR. OSEN: Right, because they happened to
22 have been included in the documents that were produced
23 to the OCC.

24 THE COURT: But you believe that the documents
25 you already have are sufficient to state jurisdiction,

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2 do you not?

3 MR. OSEN: I do --

4 THE COURT: So why is there more, why is it
5 proportional to have even more, look for more, what
6 Arab Bank calls needle in a haystack, why is that
7 proportional?

8 MR. OSEN: It's proportional because sitting
9 here today we do not know what the basis for the
10 defendant's motion on jurisdiction is. As far as we
11 can tell, Your Honor, it appears to be a motion for
12 reconsideration because, you know, just to give you
13 some of the statistics, the complaint that Your Honor
14 ruled on, there were 23 transactions alleged through
15 New York, sitting here today, setting aside the ones
16 that are disputed about whether they cleared through
17 New York, the ones that are undisputed, 114
18 transactions for over \$6 million, and there are
19 actually more than that but that's generally the
20 range, over 100 --

21 THE COURT: One-hundred-and-fourteen don't
22 involve nested accounts?

23 MR. OSEN: Correct, or anything else, they're
24 standard correspondent banking transactions --

25 THE COURT: The kind that the Second Circuit

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2 said in *Licci* were sufficient.

3 MR. OSEN: Correct. And as I read, and this
4 is more addressed to Mr. Siegfried, obviously, than
5 Arab Bank's counsel, but as I read their proposed
6 motion, it's a challenge to due process, not to
7 purposeful availment, but because we're at a loss as
8 to what evidentiary issues are implicated by that
9 distinction in this case, we don't know whether
10 there's something we're missing in this process.

11 THE COURT: Well but that lack of knowledge, I
12 mean all you're seeking are more of the same so if 114
13 -- 114 is more than 23, why is more of the same of
14 maybe, you know, a small handful of transactions that
15 you might find, why is that even, why is that going to
16 materially impact your opposition to a challenge,
17 whether it's due process or purposeful availment?

18 MR. OSEN: Well, there are two points to that,
19 Your Honor.

20 THE COURT: Um-hmm.

21 MR. OSEN: The first is that depending on
22 which person or entity there's responsive records for,
23 it is at least theoretically possible that and, again,
24 I can't speak for the defendant and what they intend
25 to do, but at least possible that their position is

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2 that there's a qualitative distinction between
3 transfers made, for example, to or from the Holy Land
4 Foundation or other Hamas controlled entities, versus
5 transactions to Hamas leaders or those who are
6 implicated directly in violent activities.

7 Now Your Honor certainly didn't hold that in
8 your report and recommendation, it's nowhere in *Licci*,
9 but I think, I think that may be the argument, in
10 which case obviously having the additional records
11 could moot that point. Secondly, to be clear, these
12 records which we're seeking are relevant both
13 jurisdictionally and ultimately to merits discovery.
14 So even if Your Honor concluded today and said we're
15 good on jurisdiction, there's no need for more motion
16 practice on that, we would still at some point be
17 subpoenaing the same records because any evidence that
18 CAB provided material support, held accounts for,
19 processed funds transfers for Hamas leaders, for Hamas
20 controlled entities obviously goes straight to
21 liability.

22 THE COURT: Okay. Are there other points you
23 want to make before I hear from Arab Bank?

24 MR. OSEN: I think that's it, Your Honor.

25 THE COURT: Okay, I'll hear next from Arab

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2 Bank.

3 MR. LAWLER: Good morning, Your Honor. In the
4 discussion that I just heard there were, I think most
5 of those, the transfers we're talking about, have
6 nothing to do with Arab Bank-New York. They, I'm not
7 sure where the 114 number comes from but I don't think
8 it has anything to do with Arab Bank-New York, I don't
9 think Arab Bank-New York was involved in that.

10 The plaintiffs have identified 32 transactions
11 which they think, of the 15,600 transactions that were
12 produced in *Linde* and in *Miller* they've identified 32
13 that arguably involved in some way Arab Bank-New York.
14 And in our papers, and we can go into it further now,
15 we've said that 19 of those, I believe were, involved
16 so-called nesting which we believe the Court has said
17 are not relevant to the issue of jurisdiction. So now
18 we're down to approximately 13 transactions out of,
19 again, 15,600.

20 So our, even if those 13 transactions turn out
21 in some way to have some relevance, we're talking
22 about a minuscule .0083, I don't even know, I'm not
23 sure how you say that percentage --

24 THE COURT: Right.

25 MR. LAWLER: But it's minuscule.

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2 THE COURT: Well, how do you address
3 counsel's, plaintiffs' counsel's point that it was
4 only that minuscule, as relevant to this case, because
5 the documents produced were another matter and these
6 names that they've requested in their subpoena aren't
7 the names that you were looking for?

8 MR. LAWLER: I have a couple of responses to
9 that.

10 THE COURT: Okay.

11 MR. LAWLER: One, we're talking about the very
12 same incidents that make up, in *Linde* and in *Miller*
13 the same events that took place. We are talking about
14 the vast majority, and I have to say I haven't checked
15 to see if the individuals identified in *Linde* and
16 *Miller* are the same as people identified in the
17 current case in *Averbach*, but it's all, it's all the
18 same events and basically the same people. I don't
19 know, I cannot say, tell the Court that I know that
20 they're exactly the same but they have said that,
21 agreed in their request of the 40, and it's not really
22 40, it's really 160 -- 190 names --

23 THE COURT: Because of all the variations?

24 MR. LAWLER: Because of all the variations,
25 and it's not just the 190 names, because if you, if

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2 you look at the variations of the individual names,
3 we're talking about literally thousands of possible
4 permutations for all of these entities. It is not
5 just 40 and it's --

6 THE COURT: Well, why couldn't it just be cut
7 down by having a search for Cairo Amman Bank, isn't
8 that, I mean why do you have to have all of these
9 names at all, why couldn't you just search for Cairo
10 Amman Bank, that's really, that's the key --

11 MR. LAWLER: I don't --

12 THE COURT: Why would we get, why would there
13 be nothing?

14 MR. LAWLER: Well, first of all, it's
15 important, and we make a point and I'm sure, we had no
16 correspondent relationship with Cairo Amman Bank. And
17 where the program that we're searching and using to
18 search, is one that is 20, it's almost 20 years old
19 and it has not been updated, it's not been maintained.
20 And it's hard to understand today what something, what
21 things were like 22 years ago as far as computers go
22 but it's, we, I'm told we cannot just put in Cairo
23 Amman Bank and press a button and have any
24 transactions in which Cairo Amman Bank might have been
25 in a chain, whether it's a nest, so-called nested

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2 chain or otherwise, I'm told that we can't do that.

3 So it --

4 THE COURT: So, CAB just comes up by virtue of
5 putting in different customers' names, is that what
6 you're saying?

7 MR. LAWLER: Well I'm assuming what happened
8 is of the tens, probably hundreds of thousands of
9 documents that were produced in the other, in *Linde*
10 and *Miller*, they can because they're probably --

11 THE COURT: Like a Relativity database, yes.

12 MR. LAWLER: A real database.

13 THE COURT: Yep.

14 MR. LAWLER: They can put in a name --

15 THE COURT: Right.

16 MR. LAWLER: And they can put in Arab Bank
17 New-York and they know they can come up with any
18 transactions that involve Arab Bank-New York, I'm
19 assuming that, but I'm told that we don't have the
20 ability to do that. And I should also just point out
21 our ability to do anything, now we can always get,
22 presumably we can get the third party or outside
23 vendor here, but currently Arab Bank-New York takes
24 about as much space as in the jury box. And there are
25 three employees, there will be two employees as of

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2 January 1st, the person who did, because one is
3 retiring, and the person who did the original work in
4 Linde passed away some time ago.

5 THE COURT: And what about, what about, I
6 understand your arguments that this isn't proportional
7 in part because of the costs and burdens --

8 MR. LAWLER: Yes.

9 THE COURT: On your client, which has got
10 three employees working with this rickety old system,
11 what if the, what if the costs were shifted and
12 plaintiffs bore the cost of this search, is that
13 something that would be acceptable to your client?

14 MR. LAWLER: I don't know the answer to that,
15 Your Honor.

16 THE COURT: Do you know what the costs are, I
17 mean just the dollar costs?

18 MR. LAWLER: I do not know. I do not know the
19 answer to that. The -- what else, I think, unless the
20 Court has additional questions I think that I've made
21 the points. I mean we have tried, we have tried to put
22 forth what we believe are reasonable accommodations
23 and solutions here --

24 THE COURT: Right, so you're thinking doing
25 fewer, you would be willing to do something by doing

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2 fewer variations in the names.

3 MR. LAWLER: Fewer variations and any
4 transfers that were made outside of Palestine or
5 Jordan or Israel would not, would not be included.
6 What we have already produced has, we would not have
7 to reproduce it.

8 THE COURT: Okay.

9 MR. LAWLER: I think actually, I think that
10 plaintiffs agree to that. But the, so variations that
11 -- oh, if they're not named, and if entities are not
12 named in the complaint then we would also not be
13 required to search for those.

14 THE COURT: Okay, thank you. Mr. Osen, why
15 aren't the suggestions that Arab Bank has suggested
16 reasonable and what about this issue of cost shifting,
17 what's your position on that

18 MR. OSEN: Taking the first issue, we agreed
19 with the bank that they could limit their search to
20 CAB Palestine, Jordan. I think at one point they had a
21 branch in Lebanon, but certainly to those
22 jurisdictions.

23 THE COURT: Palestine, Jordan and Lebanon?

24 MR. OSEN: Right, so we had no issue with that
25 and we also agreed in principle to try and reduce the

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2 number of transliteration variables although even with
3 the ones that were produced there sometimes the same
4 party is spelled differently --

5 THE COURT: In the same document.

6 MR. OSEN: By the same bank because each time
7 they're entering the data they're transliterating it
8 from Arabic so it depends on who is typing in the word
9 Mohammad for example, it could be spelled with a U or
10 an O an E at the end or an A. So, there is no perfect
11 solution to that, but we've offered to work with them
12 on that. The one thing that is at the crux of this
13 dispute is that we didn't want to be limited to
14 individuals or entities listed in the complaint --

15 THE COURT: Well why shouldn't you be?

16 MR. OSEN: Because that's not the limits of
17 Rule 26 discovery and, for example, just to give you a
18 concrete one, the, let me get this in front of me --

19 THE COURT: Well, if you were limited to the
20 people and entities named in the second amended
21 complaint, how many would that be?

22 MR. OSEN: Twenty-nine.

23 THE COURT: Twenty-nine and plus the alternate
24 spellings which would --

25 MR. OSEN: Right.

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2 THE COURT: Increase that at least three-fold.

3 MR. OSEN: Correct.

4 THE COURT: Right? Okay, and why isn't, why
5 wouldn't that be sufficient and proportional?

6 MR. OSEN: Well, let me give you an example.

7 One of the names here, three of them, of those who are
8 not listed by name in the complaint, are individuals
9 who are part of leadership of the Arab Liberation
10 Front which was Saddam Hussein's --

11 THE COURT: Yes, but why does that matter if
12 those people don't have accounts with CAB? I mean
13 there's not, there's -- you don't have any knowledge
14 as to whether or not these other people or entities
15 have any relationship with CAB, isn't that correct?
16 Isn't it just a fishing expedition as to whether or
17 not, maybe possibly some of these people who are
18 named, you're going to discover some terrorists that
19 you know maybe got a transfer of money from CAB, you
20 don't know it, but maybe Arab Bank if they produce
21 thousands and thousands and thousands and thousands of
22 transactions you'll find one, isn't that really what
23 you're trying to do?

24 MR. OSEN: No, Your Honor, the Arab Liberation
25 Front distributed checks and payments to the families

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2 of suicide bombers through Cairo Amman Bank, that's in
3 the complaint, and we have evidence to support that.
4 The Arab Liberation Front operated both formally as an
5 entity to the extent it was one, and through its
6 leadership, which is how most, if not all, terrorist
7 organizations do. And so, therefore, it is completely
8 plausible and reasonable to assume that when Cairo
9 Amman Bank provided services to Saddam Hussein's Arab
10 Liberation Front, they did so through and with the
11 instructions of the senior leaders of ALF. I don't
12 know whether it was those three individuals or it was
13 Mr. Rakad Salem, the head of the ALF, but it's not a
14 fishing expedition, it's ordinary routine discovery.

15 One more point, Your Honor, about cost
16 shifting. To be clear, with the exception of the ALF
17 individuals, everybody on that list is someone we
18 could serve a document request in *Miller* tomorrow and
19 the bank would be obligated to do the same searches
20 and for all I know, as Your Honor mentioned
21 Relativity, for all I know, all of the materials
22 belonging to Arab Bank-New York that are relevant are
23 sitting in a Relativity database by Arab Bank's
24 counsel. So it may very well be that the individual
25 left in their office does not have the capability to

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2 search their systems anymore, but Arab Bank, which is
3 actively litigating a case in the Eastern District of
4 New York and which has to respond to these very same
5 kinds of requests as a non-third party, as a party to
6 the proceeding, would and will have to produce the
7 same records in that case.

8 THE COURT: Well, what is the status of
9 discovery in those cases?

10 MR. OSEN: The status of discovery is it's
11 ongoing, there's a pending motion to compel on bank
12 secrecy but otherwise discovery proceeds in that case.
13 So we could serve a document request tomorrow on Arab
14 Bank New York, actually we'd serve it obviously on Mr.
15 Siegfried and counsel, they would then have to make an
16 argument to the Court that unlike the thousands of
17 other records they've produced, somehow these are less
18 relevant than the others they have produced records
19 and just to take a name at random, these are senior
20 Hamas leaders, that request is going to be responded
21 to and they are going to search records for it.

22 So, what we could do is serve that request and
23 then when the documents are produced under the
24 protective order, introduce them here under seal in
25 this case. It's just a different way of coming to the

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2 same result, we think it's appropriate to do so
3 because of the discovery deadline in this case. We
4 served discovery when Your Honor directed it to third
5 parties back in the summer and that's why we're here
6 today. But we would get these same records. We won't
7 get them obviously --

8 THE COURT: Well shouldn't there be some
9 limiting principle on these 190 names and all of the
10 variations, I mean that has thousands of possible
11 permutations, wouldn't you accept some limitation on
12 that?

13 MR. OSEN: Of course --

14 THE COURT: Well, what do you think is a
15 reasonable limitation?

16 MR. OSEN: We went through the list and tried
17 to cull variations --

18 THE COURT: Resulting in how many?

19 MR. OSEN: I think we were able to cut off
20 about 50 or 60, I don't recall.

21 THE COURT: Leaving how many permutations?

22 MR. OSEN: We didn't do a count on it, Your
23 Honor.

24 THE COURT: Still thousands?

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2 MR. OSEN: It's not thousands, Your Honor,
3 that's not correct, it's probably, if you count it all
4 up it's probably close to 300. But look, I don't know
5 how to search their systems. It may very well be, Your
6 Honor, that if you type in, for example, a last name
7 like the one we have here for Mohammad Taha, that if
8 you search Taha there aren't many spellings of Taha,
9 it's a fairly straightforward one. Sorry, the one you
10 have --

11

THE COURT: I have Hayek.

12

MR. OSEN: Is Ghazi Hamad. So, on this name,
13 the variations are pretty limited, the only possible
14 variation I could think of off the top are Ghazi with
15 an R or Hamed with an E, but that's just the nature of
16 this process and it's a process that Arab Bank has
17 undertaken hundreds of times, maybe thousands of times
18 in the course of the *Linde* and *Miller* litigation.

19

So, there's no doubt that there's a burden,
20 it's a burden we encounter with every bank when we're
21 dealing with Arabic transliteration, but that's
22 intrinsic, that's not the plaintiffs' fault, that's
23 just the way --

24

THE COURT: But plaintiffs have to deal with
25 Rule 26 and Rule 45 which does cabin discovery to

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2 things that are relevant to the claims and defenses
3 and proportional to the needs of the case.

4 MR. OSEN: Absolutely.

5 THE COURT: And so in terms of the cost
6 shifting I don't think that you finished your answer
7 on why shouldn't costs be shifted or at least shared?

8 MR. OSEN: Because Arab Bank through its
9 counsel can and will do these searches regardless.

10 THE COURT: How do you know that? In the other
11 case you have, first of all, here the Court is bound
12 by the Rule 45 constraint which is somewhat more
13 protective of a nonparty. I understand that in *Linde*
14 and *Miller*, Arab Bank is a direct party but still why
15 would these names be relevant in that case if you
16 didn't search for those names before in that case?

17 MR. OSEN: Because, Your Honor, they weren't
18 searched due to the fact that the requests were formed
19 and formulated in the context of the dispute over OCC
20 production. So we're perfectly content if Your Honor
21 says to us why don't you serve, I'm not going to, I'm
22 not going to compel them in this case, serve your
23 document request in *Miller* if you so choose, any
24 documents you get in response to that you can then do
25 what you've done previously with other documents

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2 previously produced by Arab Bank which is to say
3 they'll be subject to the protective order, you'll
4 produce them to CAB in this case. That's fine with us.
5 The result is the same, it's just procedurally a
6 question of timing. This all came about because we
7 were in jurisdictional discovery and we served third
8 party requests. You know, if I had to do it all over
9 again, I would have just served a document request for
10 the relevant records, I might lose a couple for the
11 ALF, but otherwise I'm going to get those records, and
12 then I'd just transfer them over.

13 THE COURT: Okay, so let me ask Arab Bank if
14 you have any responses to or additional things that
15 you'd like to add based on the conversation I've just
16 had with plaintiffs' counsel?

17 MR. LAWLER: What I heard Mr. Osen say in
18 response to your question was really confirmation that
19 this is a fishing expedition. This is, he's thrown out
20 the names of a lot of bad people in the hopes that
21 perhaps they will, they will come up in the search.

22 With respect to the, what's going on in
23 *Miller*, I'm going to defer to, because I'm not up to
24 date as to what's going on in *Miller* and the
25 discovery, it's, as I understand it there is some

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2 restriction on what they, what they can do, but I'm
3 going to ask Mr. Siegfried to respond to that because
4 I'm really not up to date.

5 THE COURT: All right, so although CAB doesn't
6 necessarily have standing to contest this subpoena, I
7 would like to hear an update on and a response, to the
8 extent you have better knowledge of what's going on in
9 *Miller and Linde* and plaintiffs' position that these
10 same requests can be served in that, in those cases
11 and obtained that way.

12 MR. SIEGFRIED: Thank you, Your Honor, I will
13 answer that question --

14 THE COURT: Yep.

15 MR. SIEGFRIED: But lest my memory forget, I'd
16 just like to make a couple of comments.

17 THE COURT: All right, and keep it, I do have
18 to leave by ten so, I mean by eleven, so, yes, keep it
19 short, thanks.

20 MR. SIEGFRIED: Very short. I understand that
21 Your Honor now has inherited the *Kaplan* case

22 THE COURT: Yes.

23 MR. SIEGFRIED: And the Court is familiar with
24 it, and I'm not surprised by your comment about what
25 were the transactions in *Kaplan* because you are

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2 absolutely correct, one of the main arguments made by
3 the plaintiffs' counsel in the jurisdictional argument
4 was that LCB actually took dollars, Lebanese dollars
5 and routed them through New York to come back to LCB
6 and, therefore, they were originating transfers. And I
7 think in both *Spetner* and in *Vasquez*, if I recall
8 correctly, there is a more extensive discussion about
9 passive receipt, I just wanted to say that.

10

11 It is also the case, having lived through
12 *Linde and Miller* discovery, that it is an
13 extraordinary task to try to produce documents off of
14 this software. I think it was very wise for counsel to
15 say he couldn't estimate the cost because I will tell
16 you it is a very expensive proposition because of the
17 limitations on the ability to search which ends up
18 driving everything to be a hand viewed situation.

19

20 The proposition that, oh, well, plaintiffs
21 could have just simply served another document
22 request, well I believe that might technically be true
23 but the magistrate judge there required the parties to
24 complete their document discovery and the motion is
25 tied up on issues in that case of bank secrecy and
issue, frankly, that you have more indirectly, or
maybe you have directly raised here, namely the

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2 relevancy of a number of these names. So it's true, I
3 guess, if the Court would even entertain a document
4 demand at this point, that they can add 10 names, 20
5 names, 30 names which will then end up in the same
6 question as to the relevancy of those names. And the
7 discovery in that case was not limited to some OCC
8 related documents, the discovery in that case was
9 actually broader than the discovery in this case
10 because there were claims involving funding not just
11 of the Hamas attacks that are the same attacks as
12 here, there were claims about funding other attacks.
13 And it wasn't limited to a particular bank, it was any
14 transfer that touched upon Arab Bank and actually Mr.
15 Osen started with an example of that. So you actually
16 - the fact that, I think, it's actually telling that
17 when you do a broader request that isn't limited to a
18 specific bank, and basically would require Arab Bank
19 to produce everything in terms of the universe of
20 banks that could possibly have been involved and
21 touched a transfer somewhere along the lines, you have
22 all of these 13 or 19 transactions. So --

23 THE COURT: And is that, I'm just speculating,
24 and I don't know whether you would agree that if that
25 search was so broad that it would cover many, the

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2 reason why so few transactions came up involving CAB
3 was that CAB had its own correspondent bank at the
4 time?

5 MR. SIEGFRIED: Well they have now, plaintiffs
6 have now conceded that Arab Bank-New York was not a
7 correspondent bank of CAB.

8 THE COURT: Right.

9 MR. SIEGFRIED: So, therefore, to the extent
10 Arab Bank-New York had to produce documents in *Linde*
11 and *Miller*, it wasn't that it looked at any particular
12 bank, it looked at all names and wherever those,
13 wherever those transactions might have originated from
14 or the recipients have been receiving them or the
15 beneficiaries, it had to do that.

16 So I think the needle in a haystack point is
17 exactly, is exactly -- is exactly right and I think
18 there's a very good reason that Mr. Osen has not
19 served a document request to try to reopen at this
20 point discovery in Arab Bank, *Miller*. Although
21 listening to him I think it raises some concern, if I
22 put a different hat on for a second, that this idea of
23 using one Court to obtain discovery that may then be
24 used in another case is concerning. But I come back to
25 your point which is the proportionality of the

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2 request, your point that if they don't think, and they
3 may perhaps are realizing it, that they don't have a
4 good jurisdictional argument based upon what they've
5 already produced, then the fact that they can get 5
6 more, or 10 more, or 15 more of the same transactions
7 doesn't really advance the ball. Our concern, putting
8 my CAB hat back on, is that we are at the end of
9 discovery and we would like to get, start moving
10 forward with this motion and, therefore, we'd hope
11 that Your Honor would grant the request --

12

THE COURT: Okay.

13

MR. SIEGFRIED: Requested by ABNY.

14

THE COURT: All right, because I have
15 something that I have to do at eleven I'm going to end
16 the conference now, I want to thank everybody for
17 their arguments, I'm going to take it under
18 advisement. And depending on the outcome, to the
19 extent a schedule needs to be slightly adjusted I can,
20 I can do that.

21

All right, thank you, everyone --

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MR. LAWLER: Thank you very much, Your Honor.

23

MR. SIEGFRIED: Your Honor, can I ask one
24 question?

25

THE COURT: Sure.

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2 MR. SIEGFRIED: I thought one of the things
3 that you wanted, and I realize we're not going to do
4 it today, but one of the issues I think that we had
5 here was setting up, that you wanted a conference to
6 discuss the motion or the form of the motion --

7 THE COURT: Right.

8 MR. SIEGFRIED: And I don't know we have
9 another date --

10 THE COURT: Right, so after this, because I
11 have, I'm just mindful of the time, I will set up
12 another conference. I am going to ask though that you
13 all meet and confer about, since plaintiffs have said
14 they don't really understand the basis for your
15 motion, that you, that they think it's a motion for
16 reconsideration, I don't understand that to be the
17 basis of your motion. But you're here now together,
18 you can use my jury room, if you would just have a
19 communication about that and just be better informed
20 about what that is going to involve, I think that can
21 only inure to everybody's benefit, so I'd ask that you
22 have that conversation, okay? Thank you, everyone.

23 (Whereupon the matter was adjourned.)

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C E R T I F I C A T E

3

4 I, Carole Ludwig, certify that the foregoing
5 transcript of proceedings in the United States
6 District Court, Southern District of New York,
7 Averbach, et al. versus Cairo Amman Bank, Docket No.
8 19cv0004, was prepared using digital electronic
9 transcription equipment and is a true and accurate
10 record of the proceedings.

11

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13

14

15 Signature

16 CAROLE LUDWIG

17

Date: December 27, 2022

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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
AVERBACH, et al., : Docket #19cv0004
Plaintiffs, : 19-cv-00004-GHW-KHP
- against - :
CAIRO AMMAN BANK, : New York, New York
Defendant. : December 13, 2022

----- :
PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

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None

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None

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2 THE CLERK: Calling case 19cv004, Averbach
3 versus Cairo Amman Bank. Beginning with the counsel
4 for the plaintiffs, please make your appearance for
5 the record.

6 MR. GARY OSEN: Good morning, Your Honor, this
7 is Gary Osen from Osen LLC, together with my
8 colleague, Dina Gielchinsky, on behalf of the
9 plaintiffs.

10 THE COURT: Okay, nice to see you.

11 THE CLERK: And counsel for the defendants,
12 please make your appearance for the record.

13 MR. JONATHAN SIEGFRIED: Good morning, Your
14 Honor, Jonathan Siegfried for DLA, along with my
15 colleague, Andrew Peck.

16 THE COURT: Hello.

17 THE CLERK: And counsel for the third party
18 defendants, please make your appearance.

19 MR. RICHARD LAWLER: Good morning, Your Honor,
20 Richard Lawler, Whitman Breed Abbott & Morgan, for
21 Arab Bank New York, and Michael Thomason, good
22 morning, Your Honor.

23 THE COURT: Good morning. Okay, welcome,
24 everyone. The principal purpose of today's proceeding
25 I think is to address the subpoena and the motion to

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2 compel that plaintiffs have filed seeking certain
3 information from Arab Bank. And what I wanted to do
4 was talk about that motion, hear from plaintiffs on
5 that and then I'll hear from Arab Bank's counsel who
6 are here today. I did read the *Spetner* case which was
7 cited in the, in the briefs, but the principal thing
8 that I want plaintiffs to address is why what you are
9 seeking is proportional to the needs of the case and,
10 of course, any other points that you want to raise.

11 So I'll hear first from plaintiffs' counsel.

12 MR. OSEN: Thank you, Your Honor. As I read
13 the defendant's brief I think there are really only
14 two open issues of dispute. The first is whether Arab
15 Bank's, I'll call it Arab Bank ~~—~~ New York for
16 simplicity purposes, has to search for, in addition to
17 the individuals and entities listed in the complaint,
18 an additional 11 individuals and entities that were
19 not listed in the complaint by name, 9 individuals and
20 2 entities. And the second issue still in dispute is
21 whether they should have the burden of searching for
22 variations and transliterations of the names of the
23 individuals and entities listed.

24 THE COURT: Well, aren't they also saying that
25 they don't have any, that CAB didn't have an account

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2 and that they just don't have any documents?

3 MR. OSEN: I don't think that's correct, Your
4 Honor.

5 THE COURT: Okay.

6 MR. OSEN: Arab Bank clearly does have
7 responsive records because we already have records
8 from Arab Bank ~~—~~ New York that involve Cairo Amman
9 Bank's New York transactions. The question is, as they
10 frame it, is that they are not a correspondent bank
11 for CAB, which is true, but the transactions that we
12 have seen already are ones in which Arab Bank is the
13 correspondent bank for the other side of the
14 transaction~~r~~. So, in any correspondent account
15 transactions there are at least four parts to it,
16 there's the originator bank and its correspondent
17 bank, and the recipient bank's correspondent bank, and
18 then the recipient bank, itself. So in a transaction~~s~~,
19 and I can give you an example and present one to you
20 if that's helpful~~r~~, Arab Bank, for the sake of
21 argument, Arab Bank in Beirut or in Jordan has a
22 customer, sends a US dollar ~~—~~ denominated transaction
23 to a Cairo Amman Bank customer in the Palestinian
24 Territories~~i~~^r that transaction flows from Arab Bank
25 in Jordan, credited to Arab Bank's correspondent

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2 account in New York, and then to, for example,
3 Citibank as the correspondent for CAB and then on to
4 CAB in the Palestinian T~~e~~rritories. That's a typical
5 sort of wire transfer.

6 So L we already have examples of Arab Bank
7 transactions for relevant entities and parties that,
8 where Arab Bank is the originating bank and,
9 therefore, the customer's correspondent is Arab Bank —
10 New York and then the recipient is Cairo Amman Bank
11 with, in most of the cases we've seen Citibank as the
12 correspondent for Cairo Amman --

13 THE COURT: So L the only examples, you're
14 conceding then that the only examples that you're
15 expecting to find are examples where a customer of
16 Arab Bank is originating the transaction?

17 MR. OSEN: Technically, it doesn't have to be
18 a customer of Arab Bank, Arab Bank could be the,
19 simply the correspondent for another b~~B~~ank but, yes,
20 there are going to be cases where the originator is
21 not Cairo Amman, but only the recipient is.

22 THE COURT: So L you're looking for
23 transactions where CAB is a recipient?

24 MR. OSEN: Right, but where they are using, of
25 course, New York as the basis to receive the dollars.

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2 So, there are many examples of CAB receiving
3 transactions from say entities in Europe where it
4 doesn't flow or at least we can't see visibly that it
5 went through New York. Here, we're talking about
6 transactions — definitionally because it's Arab Bank —
7 New York — that flowed through Arab Bank — New York to
8 CAB in the territories.

9 THE COURT: Okay.

10 MR. OSEN: If it will help Your Honor, I can
11 give you an example that's already in the public
12 record.

13 THE COURT: Sure.

14 MR. OSEN: Your Honor, with permission I'll
15 approach.

16 THE COURT: Yes.

17 THE CLERK: Thank you.

18 MR. OSEN: So, for the record, this is Bates
19 stamped AV-PL000016 and, again, also for the record,
20 Your Honor, the highlighting is done by counsel and
21 not in the original document.

22 THE COURT: Um-hmm.

23 MR. OSEN: So, this is a year 2000 transaction
24 for over \$8,000 that was initiated by an individual
25 named Mr. Youssef El-Hayek (phonetic), he's identified

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2 below as the originating party and --

3 THE COURT: And he has an account at Arab
4 Bank.

5 MR. OSEN: Presumably. It's not entirely
6 clear from this document whether he simply used Arab
7 Bank or had an account there but, in any event, he
8 used Arab Bank Amman as the originating bank to send
9 this transfer. And the beneficiary is Ghazi Hamad, G-
10 H-A-Z-I, Hamad, who is a, the complaint alleges, a
11 prominent Hamas leader in the Gaza Strip and he had an
12 account at the credit bank, Cairo Amman Bank, with the
13 address listed there in Amman, Jordan. And the
14 transfer was credited, you can see four lines down,
15 through Citibank, that's for their routing. So the the
16 transfer would have gone essentially from the books of
17 Arab Bank Jordan, which had an account with Arab Bank
18 New York, then the correspondent banking credit goes
19 to Citibank and then Citibank's correspondent account
20 with which Cairo Amman then credits the account holder
21 listed.

22 So the it's this kind of transaction and others
23 like it that are of interest in --

24 THE COURT: Right, so this goes from this guy
25 in Amman, Jordan, he walks into Arab Bank, he says I

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2 want to send this money to Hamad, also in Jordan, and
3 the bank sends the money to its Arab Bank—New York,
4 which then sends it to Citibank New York, which then
5 sends it to the CAB account in Jordan of this guy,
6 Hamad, is that what you're saying?

7 MR. OSEN: More or less, it's really a --

8 THE COURT: Are there any other steps in that,
9 four steps?

10 MR. OSEN: Yeah, there are no additional
11 steps, I would just say that these are all sort of
12 book entries, correspondent banking is basically a
13 series of IOUs between the banks so there is really
14 never any money physically changing hands and a
15 correspondent banking example is just credits and
16 debits by the banks.

17 THE COURT: Okay.

18 MR. OSEN: And that's standard --

19 THE COURT: And you're saying this is relevant
20 to jurisdiction?

21 MR. OSEN: Sure.

22 THE COURT: Okay, why don't we talk about
23 that?

24 MR. OSEN: Well, because this is a ~~power~~
25 dynamic paradigmatic example of a funds transfer that

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2 purposely avails the use of the US and New York
3 correspondent banking system to effectuate the
4 transfer. And just to frame it again --

5 THE COURT: And how is CAB, the recipient,
6 fourth step along the line, how is the recipient
7 purposely availing itself of jurisdiction in New York
8 under your theory?

9 MR. OSEN: It's not, it's not my theory, Your
10 Honor, it's the Second Circuit and the New York Court
11 of Appeals in *Licci* just take this same
12 transaction and frame it in *Licci* terms, in that case
13 the bank was Lebanese Canadian Bank in Beirut, it was
14 receiving transfers to an organization called The
15 Martyrs Foundation in Lebanon and, again, the
16 transfers were going through Amex, in that case the
17 New York correspondent bank for LCB, for Lebanese
18 Canadian Bank, and were being credited to the account
19 of LCB in Beirut.

20 THE COURT: But in *Licci*, LCB was on both ends
21 of the transaction, isn't that correct?

22 MR. OSEN: No, Your Honor.

23 THE COURT: All right, so tell me why that's
24 not the case.

25 MR. OSEN: In *Licci* the only allegation was

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2 that LCB held accounts for The Martyrs Foundation and
3 received funds transfers through its New York
4 correspondent account. I believe the term was dozens
5 of transfers.

6 THE COURT: So, are you saying that in that
7 case there was another bank, could have been Arab Bank
8 that was an originating party, that all, that the
9 jurisdiction in *Licci* was based on receipt as part of
10 -- in the same way that you're saying CAB received
11 donations or transfers?

12 MR. OSEN: Exactly the same, Your Honor.

13 THE COURT: Okay. And that's purposeful
14 availment by CAB under your theory because they open
15 themselves up to receiving US dollar transfers which
16 are predominantly only going through New York or is
17 that, is there a choice to get it from somewhere other
18 than through New York?

19 MR. OSEN: Actually, that was discussed in
20 *Licci* and because in that case LCB, the bank in
21 question, chose to have correspondent banking accounts
22 in New York, in that case through American Express at
23 the time, it purposefully availed itself of the use of
24 the New York banking system. Actually, it was Mr.
25 Siegfried, I believe, who argued in *Licci* that LCB was

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2 merely the passive recipient of funds through its
3 correspondent account, wasn't initiating the transfers
4 in question. And the Court and the Court of Appeals,
5 both the Second Circuit and the Court of Appeals,
6 rejected that distinction. Once you maintain a
7 correspondent banking account or accounts in New York
8 --

9 THE COURT: It means you're open for business
10 for receiving US dollars wherever you are elsewhere in
11 the world.

12 MR. OSEN: Well, it's also, there's an
13 additional component, you're absolutely right, Your
14 Honor, but they're also choosing to provide US dollar
15 denominated accounts to their customers. So, it's not
16 a happenstance, the whole purpose of maintaining US
17 dollar denominated accounts overseas is to provide
18 that service to your clients and customers and if you
19 do that through US correspondent banking and US
20 correspondent bank accounts, you are purposefully
21 availing yourself of the New York and US banking
22 system.

23 THE COURT: And presumably that helps the bank
24 get more customers who they want, who want US dollar
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2 MR. OSEN: It's certainly important to most
3 international banks, there are some - as Your Honor
4 noted, the *Spetner* case — where they don't maintain a
5 direct correspondent accounting relationship but,
6 instead, use another foreign bank that does, that's
7 the so-called nested account strategy. But for the
8 most part, most international banks try to maintain a
9 US correspondent account if they can.

10 THE COURT: So, the example that you gave me
11 here involving Arab Bank and CAB, is not concerning
12 any nested accounts, this is just a straight out,
13 straight out transfer?

14 MR. OSEN: Correct, Your Honor.

15 THE COURT: Okay. Okay, so you've already
16 subpoenaed or obtained documents from Arab Bank, in
17 other litigations they've conducted many, many, many
18 searches and now this is another litigation involving
19 some of the same plaintiffs seeking more information.
20 Why do you think you're likely to find anything more
21 given the intense discovery that you've already
22 received and used in your pleading?

23 MR. OSEN: It's a good question, Your Honor,
24 let me walk through that for a moment. So, the list
25 that we have that we've moved to compel on are persons

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2 or entities that were not sought in Arab Bank
3 discovery in either the *Linde*~~y~~ or *Miller* cases. And
4 so the question is whether, first of all, whether
5 those specific requests which have not been the
6 subject of prior requests, may yield additional
7 information.

8 The Arab Bank litigation obviously has gone on
9 for, well now almost 20 years --

10 THE COURT: Right.

11 MR. OSEN: So it's very complicated and
12 there's a lot of backstory to that, but most of the
13 requests in that case were not formulated in the way
14 they are here for a variety of reasons, one being that
15 they focused on primarily transfers to the Saudi
16 Committee for the Support of the Intifada Al-Quds,
17 they were not focused as this complaint is on the Arab
18 Liberation Front and payments by Saddam Hussein which
19 are featured here but not in that case. And also,
20 there's a different history going back to how
21 documents were produced in that case. Your Honor may
22 recall that in 2005 the Office of the Comptroller of
23 the Currency entered into a consent decree with Arab
24 Bank--New York which converted it from a branch to an
25 agency and so forth.

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2 THE COURT: Um-hmm.

3 MR. OSEN: And so a lot of the dispute about
4 discovery of the New York branch in that case focused
5 on asking the defendant in that case to produce the
6 records it had produced to the OCC.

7 THE COURT: I see.

8 MR. OSEN: And so those requests were largely,
9 not exclusively, but largely framed around what
10 documents were given to the OCC and many records such
11 as the one I handed up to Your Honor were then
12 produced in response to that discovery dispute. And
13 as a result of the way this process played out, the
14 names that appear in the motion to compel were not
15 specifically requested in that form back in 2006 when
16 this, when this dispute was resolved.

17 THE COURT: But yet they still yielded
18 documents.

19 MR. OSEN: Oh, it yielded documents because
20 these documents --

21 THE COURT: Involving CAB.

22 MR. OSEN: Right, because they happened to
23 have been included in the documents that were produced
24 to the OCC.

25 THE COURT: But you believe that the documents

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2 you already have are sufficient to state jurisdiction,
3 do you not?

4 MR. OSEN: I do --

5 THE COURT: So why is there more, why is it
6 proportional to have even more, look for more, what
7 Arab Bank calls needle in a haystack, why is that
8 proportional?

9 MR. OSEN: It's proportional because sitting
10 here today we do not know what the basis for the
11 defendant's motion on jurisdiction is. As far as we
12 can tell, Your Honor, it appears to be a motion for
13 reconsideration because, you know, just to give you
14 some of the statistics, the complaint that Your Honor
15 ruled on, there were 23 transactions alleged through
16 New York, sitting here today, setting aside the ones
17 that are disputed about whether they cleared through
18 New York, the ones that are undisputed, 114
19 transactions for over \$6 million, and there are
20 actually more than that but that's generally the
21 range, over 100 --

22 THE COURT: One-hundred-and-fourteen don't
23 involve nested accounts?

24 MR. OSEN: Correct, or anything else,
25 the y're standard correspondent banking transactions

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3 THE COURT: The kind that the Second Circuit
4 said in *Licci* were sufficient.

5 MR. OSEN: Correct. And as I read, and this
6 is more addressed to Mr. Siegfried, obviously, than
7 Arab Bank's counsel, but as I read their proposed
8 motion, it's a challenge to due process, not to
9 purposeful availment, but because we're at a loss as
10 to what evidentiary issues are implicated by that
11 distinction in this case, we don't know whether
12 there's something we're missing in this process.

13 THE COURT: Well but that lack of knowledge, I
14 mean all you're seeking are more of the same so if 114
15 -- 114 is more than 23, why is more of the same of
16 maybe, you know, a small handful of transactions that
17 you might find, why is that even, why is that going to
18 materially impact your opposition to a challenge,
19 whether it's due process or purposeful availment?

20 MR. OSEN: Well l there are two points to that,
21 Your Honor.

22 THE COURT: Um-hmm.

23 MR. OSEN: The first is that depending on
24 which person or entity there's responsive records for,
25 it is at least theoretically possible that and, again,

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2 I can't speak for the defendant and what they intend
3 to do, but at least possible that their position is
4 that there's a qualitative distinction between
5 transfers made, for example, to or from the Holy Land
6 Foundation or other Hamas controlled entities, versus
7 transactions to Hamas leaders or those who are
8 implicated directly in violent activities.

9 Now Your Honor certainly didn't hold that in
10 your report and recommendation, it's nowhere in *Licci*,
11 but I think, I think that may be the argument, in
12 which case obviously having the additional records
13 could moot that point. Secondly, to be clear, these
14 records which we're seeking are relevant both
15 jurisdictionally and ultimately to merits discovery.
16 So even if Your Honor concluded today and said we're
17 good on jurisdiction, there's no need for more motion
18 practice on that, we would still at some point be
19 subpoenaing the same records because any evidence that
20 CAB provided material support, held accounts for,
21 processed funds transfers for Hamas leaders, for Hamas
22 controlled entities obviously goes straight to
23 liability.

24 THE COURT: Okay. Are there other points you
25 want to make before I hear from Arab Bank?

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2 MR. OSEN: I think that's it, Your Honor.

3 THE COURT: Okay, I'll hear next from Arab
4 Bank.

5 MR. LAWLER: Good morning, Your Honor. In the
6 discussion that I just heard there were, I think most
7 of those, the transfers we're talking about, have
8 nothing to do with Arab Bank—New York. They, I'm
9 not sure where the 114 number comes from but I don't
10 think it has anything to do with Arab Bank—New York,
11 I don't think Arab Bank—New York was involved in
12 that.

13 The plaintiffs have identified 32 transactions
14 which they think, of the 15,600 transactions that were
15 produced in *Lindsey* and in *Miller* they've identified 32
16 that arguably involved in some way Arab Bank—New
17 York. And in our papers, and we can go into it further
18 now, we've said that 19 of those, I believe were,
19 involved so-called nesting which we believe the Court
20 has said are not relevant to the issue of
21 jurisdiction. So now we're down to approximately 13
22 transactions out of, again, 15,600.

23 So our, even if those 13 transactions turn out
24 in some way to have some relevance, we're talking
25 about a minuscule .0083, I don't even know, I'm not

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2 sure how you say that percentage --

3 THE COURT: Right.

4 MR. LAWLER: But it's minuscule.

5 THE COURT: Well, how do you address
6 counsel's, plaintiffs' counsel's point that it was
7 only that minuscule, as relevant to this case, because
8 the documents produced were another matter and these
9 names that they've requested in their subpoena aren't
10 the names that you were looking for?

11 MR. LAWLER: I have a couple of responses to
12 that.

13 THE COURT: Okay.

14 MR. LAWLER: One, we're talking about the very
15 same incidents that make up, in *Linde*⁺ and in *Miller*
16 the same events that took place. We are talking about
17 the vast majority, and I have to say I haven't checked
18 to see if the individuals identified in *Linde*⁺ and
19 *Miller* are the same as people identified in the
20 current case in *Averbach*, but it's all, it's all the
21 same events and basically the same people. I don't
22 know, I cannot say, tell the Court that I know that
23 they're exactly the same but they have said that,
24 agreed in their request of the 40, and it's not really
25 40, it's really 160 -- 190 names --

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2 THE COURT: Because of all the variations?

3 MR. LAWLER: Because of all the variations,
4 and it's not just the 190 names, because if you, if
5 you look at the variations of the individual names,
6 we're talking about literally thousands of possible
7 permutations for all of these entities. It is not
8 just 40 and it's --

9 THE COURT: Well, why couldn't it just be cut
10 down by having a search for Cairo Amman Bank, isn't
11 that, I mean why do you have to have all of these
12 names at all, why couldn't you just search for Cairo
13 Amman Bank, that's really, that's the key --

14 MR. LAWLER: I don't --

15 THE COURT: Why would we get, why would there
16 be nothing?

17 MR. LAWLER: Well, first of all, it's
18 important, and we make a point and I'm sure, we had no
19 correspondent relationship with Cairo Amman Bank. And
20 where the program that we're searching and using to
21 search, is one that is 20, it's almost 20 years old
22 and it has not been updated, it's not been maintained.
23 And it's hard to understand today what something, what
24 things were like 22 years ago as far as computers go
25 but it's, we, I'm told we cannot just put in Cairo

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2 Amman Bank and press a button and have any
3 transactions in which Cairo Amman Bank might have been
4 in a chain, whether it's a nest, so-called nested
5 chain or otherwise, I'm told that we can't do that.

6 So it --

7 THE COURT: So LCAB just comes up by virtue of
8 putting in different customers' names, is that what
9 you're saying?

10 MR. LAWLER: Well I'm assuming what happened
11 is of the tens, probably hundreds of thousands of
12 documents that were produced in the other, in Linde~~er~~
13 and Miller, they can because they're probably --

14 THE COURT: Like a ~~relativity~~ Relativity
15 database, yes.

16 MR. LAWLER: A real database.

17 THE COURT: Yep.

18 MR. LAWLER: They can put in a name --

19 THE COURT: Right.

20 MR. LAWLER: And they can put in Arab Bank
21 New~~—~~York and they know they can come up with any
22 transactions that involve Arab Bank~~—~~New York, I'm
23 assuming that, but I'm told that we don't have the
24 ability to do that. And I should also just point out
25 our ability to do anything, now we can always get,

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2 presumably we can get the third party or outside
3 vendor here, but currently Arab Bank—New York takes
4 about as much space as in the jury box. And there are
5 three employees, there will be two employees as of
6 January 1st, the person who did, because one is
7 retiring, and the person who did the original work in
8 *Linde*^{er} passed away some time ago.

9 THE COURT: And what about, what about, I
10 understand your arguments that this isn't proportional
11 in part because of the costs and burdens --

12 MR. LAWLER: Yes.

13 THE COURT: On your client, which has got
14 three employees working with this rickety old system,
15 what if the, what if the costs were shifted and
16 plaintiffs bore the cost of this search, is that
17 something that would be acceptable to your client?

18 MR. LAWLER: I don't know the answer to that,
19 Your Honor.

20 THE COURT: Do you know what the costs are, I
21 mean just the dollar costs?

22 MR. LAWLER: I do not know. I do not know the
23 answer to that. The -- what else, I think, unless the
24 Court has additional questions I think that I've made
25 the points. I mean we have tried, we have tried to put

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2 forth what we believe are reasonable accommodations
3 and solutions here --

4 THE COURT: Right, so you're thinking doing
5 fewer, you would be willing to do something by doing
6 fewer variations in the names.

7 MR. LAWLER: Fewer variations and any
8 transfers that were made outside of Palestine or
9 Jordan or Israel would not, would not be included.
10 What we have already produced has, we would not have
11 to reproduce it.

12 THE COURT: Okay.

13 MR. LAWLER: I think actually, I think that
14 plaintiffs agree to that. But the, so variations that
15 -- oh, if they're not named, and if entities are not
16 named in the complaint then we would also not be
17 required to search for those.

18 THE COURT: Okay, thank you. Mr. Osen, why
19 aren't the suggestions that Arab Bank has suggested
20 reasonable and what about this issue of cost shifting,
21 what's your position on that

22 MR. OSEN: Taking the first issue, we agreed
23 with the bank that they could limit their search to
24 CAB Palestine, Jordan. ~~I~~ I think at one point they had
25 a branch in Lebanon, but certainly to those

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2 jurisdictions.

3 THE COURT: Palestine, Jordan and Lebanon?

4 MR. OSEN: Right, so we had no issue with that
5 and we also agreed in principle to try and reduce the
6 number of transliteration variables although even with
7 the ones that were produced there sometimes the same
8 party is spelled differently --

9 THE COURT: In the same document.

10 MR. OSEN: By the same bank because each time
11 they're entering the data they're transliterating it
12 from Arabic so it depends on who is typing in the word
13 Mohammad for example, it could be spelled with a U or
14 an O an E at the end or an A. So, there is no perfect
15 solution to that, but we've offered to work with them
16 on that. The one thing that is at the crux of this
17 dispute is that we didn't want to be limited to
18 individuals or entities listed in the complaint --

19 THE COURT: Well why shouldn't you be?

20 MR. OSEN: Because that's not the limits of
21 Rule 26 discovery and, for example, just to give you a
22 concrete one, the, let me get this in front of me --

23 THE COURT: Well, if you were limited to the
24 people and entities named in the second amended
25 complaint, how many would that be?

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2 MR. OSEN: Twenty-nine.

3 THE COURT: Twenty-nine and plus the alternate
4 spellings which would --

5 MR. OSEN: Right.

6 THE COURT: Increase that at least three-fold.

7 MR. OSEN: Correct.

8 THE COURT: Right? Okay, and why isn't, why
9 wouldn't that be sufficient and proportional?

10 MR. OSEN: Well, let me give you an example.

11 One of the names here, three of them, of those who are
12 not listed by name in the complaint, are individuals
13 who are part of leadership of the Arab Liberation
14 Front which was Saddam Hussein's --

15 THE COURT: Yes, but why does that matter if
16 those people don't have accounts with CAB? I mean
17 there's not, there's -- you don't have any knowledge
18 as to whether or not these other people or entities
19 have any relationship with CAB, isn't that correct?

20 Isn't it just a fishing expedition as to whether or
21 not, maybe possibly some of these people who are
22 named, you're going to discover some terrorists that
23 you know may-be got a transfer of money from CAB, you
24 don't know it, but maybe Arab Bank if they produce
25 thousands and thousands and thousands and thousands of

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2 transactions you'll find one, isn't that really what
3 you're trying to do?

4 MR. OSEN: No, Your Honor, the Arab Liberation
5 Front distributed checks and payments to the families
6 of suicide bombers through Cairo Amman Bank, that's in
7 the complaint, and we have evidence to support that.

8 The Arab Liberation Front operated both ~~formerly~~
9 formally as an entity to the extent it was one, and
10 through its leadership, which is how most, if not all,
11 terrorist organizations do. And so, therefore, it is
12 completely plausible and reasonable to assume that
13 when Cairo Amman Bank provided services to Saddam
14 Hussein's Arab Liberation Front, they did so through
15 and with the instructions of the senior leaders of
16 ALF. I don't know whether it was those three
17 individuals or it was Mr. Rakad Salem, the head of the
18 ALF, but it's not a fishing expedition, it's ordinary
19 routine discovery.

20 One more point, Your Honor, about cost
21 shifting. To be clear, with the exception of the ALF
22 individuals, everybody on that list is someone we
23 could serve a document request in Miller tomorrow and
24 the bank would be obligated to do the same searches
25 and for all I know, as Your Honor mentioned

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2 Relativity, for all I know, all of the materials
3 belonging to Arab Bank—New York that are relevant are
4 sitting in a Relativity database by Arab Bank's
5 counsel. So it may very well be that the individual
6 left in their office does not have the capability to
7 search their systems anymore, but Arab Bank, which is
8 actively litigating a case in the Eastern District of
9 New York and which has to respond to these very same
10 kinds of requests as a non-third party, as a party to
11 the proceeding, would and will have to produce the
12 same records in that case.

13 THE COURT: Well, what is the status of
14 discovery in those cases?

15 MR. OSEN: The status of discovery is it's
16 ongoing, there's a pending motion to compel on bank
17 secrecy but otherwise discovery proceeds in that case.
18 So we could serve a document request tomorrow on Arab
19 Bank New York, actually we'd serve it obviously on Mr.
20 Siegfried and counsel, they would then have to make an
21 argument to the Court that unlike the thousands of
22 other records they've produced, somehow these are less
23 relevant than the others⁷ they have produced records
24 and just to take a name at random, these are senior
25 Hamas leaders, that request is going to be responded

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2 to and they are going to search records for it.

3 So, what we could do is serve that request and
4 then when the documents are produced under the
5 protective order, introduce them here under seal in
6 this case. It's just a different way of coming to the
7 same result, we think it's appropriate to do so
8 because of the discovery deadline in this case. We
9 served discovery when Your Honor directed it to third
10 parties back in the summer and that's why we're here
11 today. But we would get these same records. We won't
12 get them obviously --

13 THE COURT: Well shouldn't there be some
14 limiting principle on these 190 names and all of the
15 variations, I mean that has thousands of possible
16 permutations, wouldn't you accept some limitation on
17 that?

18 MR. OSEN: Of course --

19 THE COURT: Well, what do you think is a
20 reasonable limitation?

21 MR. OSEN: We went through the list and tried
22 to cull variations --

23 THE COURT: Resulting in how many?

24 MR. OSEN: I think we were able to cut off
25 about 50 or 60, I don't recall.

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2 THE COURT: Leaving how many permutations?

3 MR. OSEN: We didn't do a count on it, Your
4 Honor.

5 THE COURT: Still thousands?

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7 MR. OSEN: It's not thousands, Your Honor,
8 that's not correct, it's probably, if you count it all
9 up it's probably close to 300. But ~~T~~ look, I don't know
10 how to search their systems. It may very well be, Your
11 Honor, that if you type in, for example, a last name
12 like the one we have here for Mohammad Taha, that if
13 you search Taha there aren't many spellings of Taha,
14 it's a fairly straightforward one. Sorry, the one you
15 have --

16 THE COURT: I have Hayek.

17 MR. OSEN: Is Ghazi Hamad. So L on this name,
18 the variations are pretty limited, the only possible
19 variation I could think of off the top are Ghazi with
20 an R or ~~Akhmed~~ Hamed with an E, but that's just the
21 nature of this process and it's a process that Arab
22 Bank has undertaken hundreds of times, maybe thousands
23 of times in the course of the Linde~~T~~ and Miller
24 litigation.

25 So L there's no doubt that there's a burden,

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2 it's a burden we encounter with every bank when we're
3 dealing with Arabic transliteration, but that's
4 intrinsic, that's not the plaintiffs' fault, that's
5 just the way --

6 THE COURT: But plaintiffs have to deal with
7 Rule 26 and Rule 45 which does cabin discovery to
8 things that are relevant to the claims and defenses
9 and proportional to the needs of the case.

10 MR. OSEN: Absolutely.

11 THE COURT: And so in terms of the cost
12 shifting I don't think that you finished your answer
13 on why shouldn't costs be shifted or at least shared?

14 MR. OSEN: Because Arab Bank through its
15 counsel can and will do these searches regardless.

16 THE COURT: How do you know that? In the other
17 case you have, first of all, here the Court is bound
18 by the Rule 45 constraint which is somewhat more
19 protective of a nonparty. I understand that in *Linde*
20 and *Miller*, Arab Bank is a direct party but still why
21 would these names be relevant in that case if you
22 didn't search for those names before in that case?

23 MR. OSEN: Because, Your Honor, they weren't
24 searched due to the fact that the requests were formed
25 and formulated in the context of the dispute over OCC

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2 production. So we're perfectly content if Your Honor
3 says to us why don't you serve, I'm not going to, I'm
4 not going to compel them in this case, serve your
5 document request in *Miller* if you so choose, any
6 documents you get in response to that you can then do
7 what you've done previously with other documents
8 previously produced by Arab Bank which is to say
9 they'll be subject to the protective order, you'll
10 produce them to CAB in this case. ~~T~~^hat's fine with
11 us. The result is the same, it's just procedurally a
12 question of timing. This all came about because we
13 were in jurisdictional discovery and we served third
14 party requests. You know, if I had to do it all over
15 again, I would have just served a document request for
16 the relevant records, I might lose a couple for the
17 ALF, but otherwise I'm going to get those records, and
18 then I'd just transfer them over.

19 THE COURT: Okay, so let me ask Arab Bank if
20 you have any responses to or additional things that
21 you'd like to add based on the conversation I've just
22 had with plaintiffs' counsel?

23 MR. LAWLER: What I heard Mr. Osen say in
24 response to your question was really confirmation that
25 this is a fishing expedition. This is, he's thrown out

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2 the names of a lot of bad people in the hopes that
3 perhaps they will, they will come up in the search.

4 With respect to the, what's going on in
5 Miller, I'm going to defer to, because I'm not up to
6 date as to what's going on in Miller and the
7 discovery, it's, as I understand it there is some
8 restriction on what they, what they can do, but I'm
9 going to ask Mr. Siegfried to respond to that because
10 I'm really not up to date.

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11 THE COURT: All right, so although CAB doesn't
12 necessarily have standing to contest this subpoena, I
13 would like to hear an update on and a response, to the
14 extent you have better knowledge of what's going on in
15 Miller and Lindsey and plaintiffs' position that these
16 same requests can be served in that, in those cases
17 and obtained that way.

18 MR. SIEGFRIED: Thank you, Your Honor, I will
19 answer that question --

20 THE COURT: Yep.

21 MR. SIEGFRIED: But lest my memory forget, I'd
22 just like to make a couple of comments.

23 THE COURT: All right, and keep it, I do have
24 to leave by ten so, I mean by eleven, so, yes, keep it
25 short, thanks.

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2 MR. SIEGFRIED: Very short. I understand that

3 Your Honor now has inherited the Kaplan case

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4 THE COURT: Yes.

5 MR. SIEGFRIED: And the Court is familiar with

6 it, and I'm not surprised by your comment about what

7 were the transactions in Kaplan because you are

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8 absolutely correct, one of the main arguments made by

9 the plaintiffs' ~~s'~~ counsel in the jurisdictional

10 argument was that LCB actually took dollars, Lebanese

11 dollars and routed them through New York to come back

12 to LCB and, therefore, they were originating

13 transfers. And I think in both *Spetner* and in *Vasquez*,

14 if I recall correctly, there is a more extensive

15 discussion about passive receipt, I just wanted to say

16 that.

17 It is also the case, having lived through

18 Linde ~~+~~ and *Miller* discovery, that it is an

19 extraordinary task to try to produce documents off of

20 this software. I think it was very wise for counsel to

21 say he couldn't estimate the cost because I will tell

22 you it is a very expensive proposition because of the

23 limitations on the ability to search which ends up

24 driving everything to be a hand viewed situation.

25 The proposition that, oh, well, plaintiffs

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2 could have just simply served another document
3 request, well I believe that might technically be true
4 but the magistrate judge there required~~moved~~ the
5 parties to complete their document discovery and the
6 motion ~~that is one of the motions which~~ is tied up on
7 issues in that case of bank secrecy, involves and
8 issue, frankly, that you have more indirectly, or
9 maybe you have directly raised here, namely the
10 relevancy of a number of these names. So it's true, I
11 guess, if the Court would even entertain a document
12 demand at this point, that they can add 10 names, 20
13 names, 30 names which will then end up in the same
14 question as to the relevancy of those names. ~~And~~ And the
15 discovery in that case was not limited to some OCC
16 related documents, the discovery in that case was
17 actually broader than the discovery in this case
18 because there were claims involving funding not just
19 of the Hamas attacks that are the same attacks as
20 here, there were claims about funding other attacks.
21 ~~A~~nd it wasn't limited to a particular bank, it was
22 any transfer that touched upon Arab Bank and actually
23 Mr. Osen started with an example of that. So you
24 actually ~~the~~ t~~he~~ fact that, I think it's actually
25 telling that when you do a broader request that isn't

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2 limited to a specific bank, and basically would
3 require Arab Bank to produce everything in terms of
4 the universe of banks that could possibly have been
5 involved and touched a transfer somewhere along the
6 lines, you have all of these 13 or 19 transactions. So
7 --

8 THE COURT: And is that, I'm just speculating,
9 and I don't know whether you would agree that if that
10 search was so broad that it would cover many, the
11 reason why so few transactions came up involving CAB
12 was that CAB had its own correspondent bank at the
13 time?

14 MR. SIEGFRIED: Well they have now, plaintiffs
15 have now conceded that Arab Bank—New York was not a
16 correspondent bank of CAB.

17 THE COURT: Right.

18 MR. SIEGFRIED: So, therefore, to the extent
19 Arab Bank—New York had to produce documents in *Linde* ~~e~~
20 and *Miller*, it wasn't that it looked at any particular
21 bank, it looked at all names and wherever those,
22 wherever those transactions might have originated from
23 or the recipients have been receiving them or the
24 beneficiaries, it had to do that.

25 So I think the needle in a haystack point is

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2 exactly, is exactly -- is exactly right and I think
3 there's a very good reason that Mr. Osen has not
4 served a document request to try to reopen at this
5 point discovery in Arab Bank. ~~Miller~~ ~~et al.~~ Although
6 listening to him I think it raises some concern, if I
7 put a different hat on for a second, that this idea of
8 using one Court to obtain discovery that may then be
9 used in another case is concerning. ~~but~~ But I come
10 back to your point which is the proportionality of the
11 request, your point that if they don't think, and they
12 may perhaps are realizing it, that they don't have a
13 good jurisdictional argument based upon what they've
14 already produced, then the fact that they can get 5
15 more, or 10 more, or 15 more of the same transactions
16 doesn't really advance the ball. Our concern, putting
17 my CAB hat back on, is that we are at the end of
18 discovery and we would like to get, start moving
19 forward with this motion and, therefore, we'd hope
20 that Your Honor would grant the request --

21 THE COURT: Okay.

22 MR. SIEGFRIED: Requested by ABNY.

23 THE COURT: All right, because I have
24 something that I have to do at eleven I'm going to end
25 the conference now, I want to thank everybody for

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2 their arguments, I'm going to take it under
3 advisement. And depending on the outcome, to the
4 extent a schedule needs to be slightly adjusted I can,
5 I can do that.

6 All right, thank you, everyone --

7 MR. LAWLER: Thank you very much, Your Honor.

8 MR. SIEGFRIED: Your Honor, can I ask one
9 question?

10 THE COURT: Sure.

11 MR. SIEGFRIED: I thought one of the things
12 that you wanted, and I realize we're not going to do
13 it today, but one of the issues I think that we had
14 here was setting up, that you wanted a conference to
15 discuss the motion or the form of the motion --

16 THE COURT: Right.

17 MR. SIEGFRIED: And I don't know we have
18 another date --

19 THE COURT: Right, so after this, because I
20 have, I'm just mindful of the time, I will set up
21 another conference. I am going to ask though that you
22 all meet and confer about, since plaintiffs have said
23 they don't really understand the basis for your
24 motion, that you, that they think it's a motion for
25 reconsideration, I don't understand that to be the

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2 basis of your motion. But you're here now together,
3 you can use my jury room, if you would just have a
4 communication about that and just be better informed
5 about what that is going to involve, I think that can
6 only inure to everybody's benefit, so I'd ask that you
7 have that conversation, okay? Thank you, everyone.

8 (Whereupon the matter was adjourned.)

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C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing
5 transcript of proceedings in the United States
6 District Court, Southern District of New York,
7 Averbach, et al. versus Cairo Amman Bank, Docket No.
8 19cv0004, was prepared using digital electronic
9 transcription equipment and is a true and accurate
10 record of the proceedings.

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15 Signature

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CAROLE LUDWIG

17 Date: December 27, 2022

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