

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL ACTION NUMBER: 2:17-CV-07316-ES-MAH

4 DR. NING XI, TRANSCRIPT OF PROCEEDINGS
5 Plaintiff, MOTION HEARING FOR TRO
6 -vs-
7 INSTITUTE OF ELECTRICAL &
8 ELECTRONICS ENGINEERS, INC.,
9 Defendant. Pages 1 - 74

10 U.S. District Court of New Jersey
11 50 Walnut Street, Newark, New Jersey 07101
12 Tuesday, September 26, 2017

13 **B E F O R E:** **THE HONORABLE ESTHER SALAS**
14 **UNITED STATES DISTRICT JUDGE**

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

16 BUCHANAN, INGERSOLL & ROONEY, PC
17 BY: DAVID A. SCHUMACHER, ESQUIRE
18 AND: JOSEPH VERNON, ESQUIRE
19 Attorneys for Plaintiff

20 DORSEY & WHITNEY, LLP
21 BY: MICHAEL A. LINDSAY, ESQUIRE
22 AND: BRUCE R. EWING, ESQUIRE
23 Attorneys for Defendant

24 ALSO PRESENT: JONATHAN WIGGINS

25 Pursuant to Section 753 Title 28 United States Code, the
following transcript is certified to be an accurate record as
taken stenographically in the above-entitled proceedings.

/S/ Mary-Jo Monteleone

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1 THE COURT: Good afternoon, counsel. We're on the
2 record in the matter of Dr. Ning Xi v. The Institute of
3 Electrical & Electronics Engineers, et al., selection number
4 17-7316.

5 Let me have appearances by counsel.

6 MR. VERNON: Good afternoon, your Honor. Joel Vernon
7 for Dr. Ning Xi.

8 MR. SCHUMACHER: David Schumacher for the plaintiffs
9 as well, your Honor.

10 MR. LINDSAY: Good afternoon, your Honor. Michael
11 Lindsay, of Dorsey & Whitney, for IEEE.

12 MR. EWING: Bruce Ewing, also of Dorsey & Whitney,
13 for IEEE.

14 MR. WIGGINS: Jonathan Wiggins, your Honor.

15 MR. SCHUMACHER: I should mention, your Honor,
16 Mr. Lindsay has a pro hac vice motion pending before the
17 Court, so he would appear subject for and subject to your
18 Honor's approval of that motion.

19 THE COURT: I think there's no objection to that.

20 MR. SCHUMACHER: No, your Honor. And the same for
21 Mr. Vernon; he has one pending as well.

22 THE COURT: Very well.

23 MR. SCHUMACHER: Thank you, your Honor.

24 THE COURT: Let's start with the first matter I want
25 to dispense with.

1 Obviously, the request for temporary restraints came
2 into the Court on September 21st. Having taken a look at
3 that, had some concerns with respect to jurisdiction, and I
4 asked counsel to provide the Court with the supplemental
5 support, and we did indeed receive that supplemental support
6 by way of a letter, and the Court has reviewed that and is
7 prepared to rule at this point in time.

8 As is well-settled, it must appear to be, to a legal
9 certainty, that plaintiff's claims are really for less than
10 the jurisdictional amount to justify dismissal. And whether
11 plaintiff's claims pass the legal certainty standard is a
12 threshold matter that should involve only minimal scrutiny of
13 plaintiff's claims.

14 Further, the Court cannot consider the legal
15 sufficiency of his claims -- or whether the legal theory he
16 advances is likely unsound. Indeed, the threshold to
17 withstand a Rule 12(b)(1) motion is lower than that required
18 to withstand a Rule 12(b)(6) motion.

19 However, having reviewed plaintiff's letter-brief
20 concerning this issue and, in particular, Dr. Xi's
21 declaration, the Court finds that plaintiff has met its burden
22 that the jurisdictional amount in controversy exceeds \$75,000.
23 In his declaration, Dr. Xi affirms, among other things, that
24 his status as an IEEE fellow -- which is allegedly at risk of
25 being removed -- is incredibly important. That designation

1 has resulted in a salary increase, as well as speaking and
2 publishing opportunities. Dr. Xi makes around \$200,000 a year
3 as a professor and receives an annual raise between 3 and 10
4 percent. Dr. Xi affirms that -- if he is expelled from the
5 IEEE without a fair hearing and procedures pursuant to IEEE's
6 bylaws and policies, he will lose his professorship.

7 Furthermore, Dr. Xi makes about \$20,000 per year in
8 connection with consulting and speaking opportunities. These
9 opportunities would also be lost because of the reputational
10 damage from being expelled. Indeed, under the IEEE bylaws, it
11 appears that the IEEE can publicly announce the circumstances
12 surrounding any such expulsion. The Court finds this relevant
13 especially because of the IEEE's alleged basis for potential
14 expulsion -- in particular, theft or fraud.

15 In light of the materials submitted by plaintiff, the
16 Court cannot say it appears to a legal certainty that
17 plaintiff's claims are less than \$75,000. Accordingly, the
18 Court will not dismiss this action for lack of subject matter
19 jurisdiction, and we will continue with today's proceeding,
20 and we're going to really start with defense counsel.

21 I have a number of questions for defense counsel. So
22 first, obviously, the parties have fully briefed the matter.
23 I did receive a reply brief last night, and I have reviewed
24 the exhibits. I also advised counsel -- I believe in a text
25 order -- that if you're going to be citing to any documents --

1 the exhibits were voluminous -- and, therefore, I expect
2 you're going to have a copy for whatever you're going to be
3 citing to for me as well as my law clerk. Okay?

4 Let's start with defense counsel. I've got a number of
5 questions for defense counsel. I'll obviously allow
6 plaintiff's counsel to weigh in, when appropriate, but let's
7 start with defense counsel here.

8 So I want to understand something because I'm having
9 trouble understanding the positions here. Does the current
10 constitution, bylaws, policies or operations manual of the
11 IEEE require a formal complaint under the current
12 circumstances?

13 MR. LINDSAY: Would your Honor prefer --

14 THE COURT: Wherever Miss Monteleone can hear you.
15 That's all that matters to me.

16 MR. LINDSAY: Note, your Honor, the IEEE has created
17 a policy in which one member can complain about the conduct of
18 another member, but that is not the only method by which a
19 member can --

20 THE COURT: Where does it say that?

21 MR. LINDSAY: That is in the constitution bylaws,
22 paragraph I-110, section 1 provides the statement, but a
23 member can be expelled for cause. Section 3 provides the
24 process by which a member can provide a complaint against
25 another member.

1 THE COURT: All right. When we sent -- when you sent
2 a letter, exhibit A -- and the letter I'm referring to is
3 exhibit A and this was accompanied to document 1 -- document
4 which was the complaint filed on September 21st.

5 When your client sent a letter, your client referenced
6 August 2nd letter, under bylaws section I-110.1: IEEE may
7 expel, suspend or censure a member for cause as defined by the
8 bylaws. The power may be exercised through a member complaint
9 -- let me just move my Post-It here -- and member complaint to
10 a hearing process of the IEEE Ethics and Member Conduct
11 Committee, which would make a recommendation to the board of
12 directors, or directly to the board of directors.

13 No complaint has been filed in this instance and,
14 therefore, the procedures for a hearing by the IEEE Ethics and
15 Member Conduct Committee do not apply. Nevertheless, the
16 board has determined to ensure that it provides you with due
17 process, that is an opportunity to be heard both for your sake
18 and for the integrity of the board's decision-making process.
19 Okay.

20 So I understand what 110 says. What I'd like to know
21 is where -- because I don't see a citation in this letter --
22 either in this paragraph or the subsequent paragraph -- that
23 references where you can proceed in the fashion that you are
24 proceeding via ad hoc committee.

25 MR. LINDSAY: Okay. 110.1 is a statement and that

1 provides exhibit A.

2 THE COURT: Right. It's a cause. 110 is "Member,
3 Discipline and Support."

4 MR. LINDSAY: Right.

5 THE COURT: But then 110.1 defines what "cause" is.

6 MR. LINDSAY: Correct.

7 THE COURT: If cause exists and the member of IEEE
8 may be expelled, suspended or censured for cause and then
9 right there, 110.3 talks about our Ethics and Member Conduct
10 Committee. But you said, we don't get to point 3 because you
11 somehow are not viewing it as a member-to-member complaint,
12 but as you say in your brief, on page -- on page 21, complaint
13 from one member of another -- against another is when these
14 bylaws would kick in and these procedures would kick in. But
15 the bylaws do not -- and policies -- do not contemplate an
16 instance in which the member's conduct is questioned by the
17 IEEE management and board of directors.

18 I'd like to know where that -- that sounds like an
19 escape clause to me or safety clause or some kind of loophole,
20 and I just don't see where -- unless I'm missing it -- where
21 that seems to say that.

22 MR. LINDSAY: So, if I may, I want to answer your
23 Honor's question, but the way we get there is that a
24 corporation in its -- specifically to its board of directors,
25 has the inherent authority to supervise its operations. One

1 of the things it knows it's going to face in an organization
2 that has 423,000 members in 160 countries is the possibility
3 of complaints between members. One member may say, of another
4 member, that there is cause for this member to be disciplined
5 in some fashion. IEEE simply provides a process that allows
6 for that, and that's for a couple of reasons.

7 Number one, if you don't have a process, how are you
8 going to handle complaints that come in; and number two, the
9 ability of those members to resolve complaints between
10 themselves at that lower level is enhanced if both sides know
11 that there is a formal process that they will both have to go
12 through if they want to proceed.

13 I believe it's also in 110.3, about the fourth
14 paragraph, that says that a complaining member -- excuse me --
15 that the Ethics and Member Conduct Committee isn't required to
16 proceed unless the complaining member agrees to appear at the
17 hearing. In other words, if there is something built into
18 that process where one member has a complaint against another,
19 that there is a process through which both are going to be
20 brought together.

21 THE COURT: Let's talk about that process. I think
22 it's worth exploring it a little bit. So, again, you would
23 say this is only applicable when one member complains of
24 conduct of another member, right?

25 MR. LINDSAY: Correct.

1 THE COURT: Yet the president, all its board of
2 directors, Miss Lack -- L -- is it L-A-C-K?

3 MR. LINDSAY: L-A-C-H.

4 THE COURT: Or Lack -- L-A-C-H -- Miss Lach -- are
5 they not members, in good standing, of the IEEE?

6 MR. LINDSAY: I do not believe Miss Lach is a member.
7 The presidents, yes, are all members.

8 THE COURT: They are all members?

9 MR. LINDSAY: Yes, they are.

10 THE COURT: So if indeed -- and only in those
11 circumstances where one member in good standing complains of
12 another member -- by the way, section 110, which let's be
13 clear again, is "Member Discipline and Support" -- entitled
14 "Member, Discipline and Support" -- the complaints against the
15 members must be reviewed by the ethics member conduct
16 committee to determine whether cause is present. Agreed?

17 MR. LINDSAY: Yes.

18 THE COURT: So there's got to be a formal complaint
19 that's written, and the formal complaint that I understand has
20 to be served with an accompanying affidavit and executed by
21 the IEEE member in good standing, right?

22 MR. LINDSAY: Yes.

23 THE COURT: Agreed. And it also must be -- much like
24 our own process -- the complaint must be specific and attach
25 all relevant documents, correct?

~~Temporary Restraining Order~~

1 MR. LINDSAY: Yes.

2 THE COURT: You agree with that?

3 MR. LINDSAY: Yes.

4 THE COURT: Great. So then the Ethics and Member
5 Conduct Committee must investigate and determine whether there
6 is a reasonable basis for believing facts in the complaint and
7 whether the facts constitute cause. So they do their
8 preliminary review. By the way, Ethics and Members Conduct
9 Committee, the president is not on there, correct?

10 MR. LINDSAY: Correct.

11 THE COURT: Can't be on there, correct?

12 MR. LINDSAY: Correct.

13 THE COURT: Right? And the board members can't be on
14 the EMCC -- I'm going to refer to it as the EMCC. Agreed?

15 MR. LINDSAY: Right.

16 THE COURT: Okay. Great. And it's no more than five
17 people on the EMCC?

18 MR. LINDSAY: I think that's correct, hearing panel I
19 think is five.

20 THE COURT: Hearing panel is five to nine.

21 MR. LINDSAY: Right.

22 THE COURT: So once the EMCC makes the determination
23 that perhaps there is cause, they then institute a formal
24 proceeding, correct?

25 MR. LINDSAY: Yes.

1 THE COURT: So when EMCC are not made of any board
2 members -- that, I think, is important because they're
3 insulating the board who has the ultimate decision, right?
4 They're insulating the board from hearing facts that may not
5 be facts and insulating the board from perhaps hearing other
6 information that may not be relevant to the other information
7 at hand, correct? There's a purpose of insulation, I would
8 imagine, right?

9 MR. LINDSAY: That is part of it, yes.

10 THE COURT: Okay. So the EMCC must memorialize its
11 preliminary finding in writing, and it then transmits that
12 memorialized finding to the IEEE president and its board of
13 directors. So what the president and the board of directors
14 then has to do is determine whether they're going to appoint
15 this hearing board and, if so, they only have to vote by
16 majority. The president and the board of directors decides,
17 you know, we better get a hearing board empaneled. They only
18 need to vote by majority, correct?

19 MR. LINDSAY: Right.

20 THE COURT: Okay. So then the hearing board, which,
21 again, as I understand it, it can't be the president or any
22 BOD members -- and it has to be five to nine people that are
23 obviously EEE -- IEEE voting members, and the hearing board
24 then is entrusted with the responsibility -- obviously,
25 appointing a date and time, the accused member has a right to

1 appear before the hearing board and submit evidence. The
2 hearing is held in confidence, and the accused can appear with
3 or without a lawyer, but the hearing proceeds much like a
4 trial does, correct?

5 MR. LINDSAY: Very similar.

6 THE COURT: All right. Then the hearing board
7 convenes in executive session and the hearing board needs to
8 vote, this time, by two-thirds of a vote?

9 MR. LINDSAY: Right.

10 THE COURT: To find cause, right? Are you with me so
11 far? No -- you don't disagree with any of the process that
12 I'm laying out? And if you do, please let me know, counsel.
13 Okay?

14 MR. LINDSAY: Very good.

15 THE COURT: So the hearing board then places its
16 determination in writing and that's a written report, it's
17 forwarded to the board of directors. The board of directors
18 then sets a time -- date and time to consider and the hearing
19 board's recommendation and that -- they have to communicate to
20 the charged member -- the member accused of some conduct or
21 the member facing some form of discipline -- their date and
22 time, and the charged member is given, yet again, another
23 opportunity to submit, in writing, his comments or her
24 comments and recommendations to the board.

25 The board of directors then -- who have been insulated

1 from the process and only read the written report as it's been
2 given to the hearing board, is free to make a final
3 determination -- again, a two-thirds majority required -- and
4 the sanctions cannot be more severe than the hearing board
5 recommended. Right?

6 MR. LINDSAY: Right.

7 THE COURT: So we're all in agreement.

8 MR. LINDSAY: Yes.

9 THE COURT: So what you're saying to me, that these
10 extremely detailed policies and mechanism of insulation and
11 protection and a notice and due process, this only applies
12 when one board member -- strike that -- when one IEEE member
13 is accusing another IEEE of conduct unbecoming its membership
14 or fellowship, and this process doesn't have to be followed if
15 the board of directors thinks you committed some infraction,
16 whether it be egregious or not?

17 MR. LINDSAY: No, that is not our claim, your Honor.

18 Our claim is that if the source of complaint is a
19 member dispute -- that is member accusing other member -- then
20 clearly all of those procedures that we've just been through
21 must be followed. If the source of the complaint is not from
22 a member, then you don't have the same kinds of institutional
23 concerns that -- members basically trying to misuse the
24 organization to gain an advantage for themselves.

25 In this case, the source -- the original source of the

1 information that there was something potentially amiss was the
2 receipt of a grand jury subpoena, complaint with the
3 information of the U.S. Attorney's Office --

4 THE COURT: And by the way, when did you get that
5 subpoena?

6 MR. LINDSAY: I'm sorry?

7 THE COURT: When did your client receive the
8 subpoena?

9 MR. LINDSAY: It was in mid-2015.

10 THE COURT: It was as a result, according to your
11 brief, your client then instituted an investigation, hired a
12 forensic accounting firm?

13 MR. LINDSAY: Not immediately.

14 THE COURT: Well, when did they do that? I don't see
15 a date.

16 MR. LINDSAY: No -- initially -- the initial attempt
17 was to simply comply with the subpoena.

18 THE COURT: Okay.

19 MR. LINDSAY: So that was one part. Simultaneous
20 with that, though -- obviously, IEEE needed to figure out what
21 is going on here, do we have an issue?

22 THE COURT: Right.

23 MR. LINDSAY: That initially was followed -- the
24 initial follow-up was through IEEE's internal accounting
25 department, and during that investigation it became clear that

1 the volume and complexity -- that the matter was going to be
2 too taxing for that department, and IEEE made the decision to
3 engage a forensic accountant.

4 THE COURT: When was that done? When was that done?

5 MR. LINDSAY: That was in November of 2016.

6 THE COURT: And according to your papers, at some
7 point in time it became aware of abnormalities, right?

8 MR. LINDSAY: Yes.

9 THE COURT: Sixty percent of the money that was
10 sought, that \$1,078,593.67 referenced on page 3, you found and
11 ultimately discovered that 60.9 percent of Dr. Xi's
12 reimbursements were inappropriate -- page 5 of your papers.
13 When did you become aware of that fact?

14 MR. LINDSAY: To be precise, your Honor, that 60
15 percent applies only to the one conference for which Dr. Xi
16 has submitted complete records.

17 THE COURT: 2014?

18 MR. LINDSAY: I'm sorry.

19 THE COURT: The 2014 conference?

20 MR. LINDSAY: That's 450-ish thousand dollars.

21 THE COURT: When did you become aware of the alleged
22 mis -- inappropriateness of the reimbursements?

23 MR. LINDSAY: The initial findings reported by Grant
24 Thornton were reported in January -- January of '17.

25 THE COURT: When did you notice him you were going to

1 proceed with this format?

2 MR. LINDSAY: The board meets periodically during the
3 course of the year, and at the January and February meetings
4 the initial reports were prepared. Again, what Grant Thornton
5 reported in January was the initial findings, not the
6 completion of an investigation.

7 The decision to proceed in this fashion was debated as
8 one of several options at the board meeting at the very end of
9 June of this year.

10 THE COURT: And now you say time is of the essence?

11 MR. LINDSAY: Yes, your Honor.

12 THE COURT: Okay. Let's get back to my original
13 question.

14 So because you argue specifically that the bylaws do
15 not contemplate an instance such as the one we're confronted
16 with now, they're free to create this ad hoc committee to
17 address a specific issue or activity that is not appropriate
18 to be addressed by an ongoing committee, correct?

19 MR. LINDSAY: Correct.

20 THE COURT: How is it that the EMCC is not
21 appropriate to address this issue? Is this not an issue of
22 conduct unbecoming a fellow or a member?

23 MR. LINDSAY: No, your Honor.

24 The primary issue -- you asked about the essence --
25 time being of the essence. The primary driver at this point

1 that an individual that has been accused of stealing hundreds
2 of thousands of dollars --

3 THE COURT: No charges yet, correct?

4 MR. LINDSAY: Well, no --

5 THE COURT: There's a grand jury investigation.

6 MR. LINDSAY: I'm sorry, no.

7 THE COURT: There are no charges yet?

8 MR. LINDSAY: There are no charges.

9 THE COURT: No indictment?

10 MR. LINDSAY: I have no knowledge of that, your
11 Honor.

12 THE COURT: So what are you -- obviously, it's not
13 that he's been charged?

14 MR. LINDSAY: Correct.

15 THE COURT: It's not that he's been found guilty?

16 MR. LINDSAY: Correct.

17 THE COURT: It's not that he's been pled guilty or
18 sentenced.

19 We now have what you received, which was a subpoena
20 and, arguably, a grand jury investigation, but what are the
21 charges that you are now seeking to expel this member? What
22 are you charging him with?

23 MR. LINDSAY: Stealing at least \$269,000 from IEEE.

24 THE COURT: Is that conduct -- what is the basis of
25 it? It's disciplinary conduct, right?

1 MR. LINDSAY: Yes.

2 THE COURT: It's disciplinary conduct. It's perhaps
3 illegal --

4 MR. LINDSAY: But it's not sourced from a member.

5 THE COURT: So you say the fact is that you do not
6 believe that the current EMCC that is entrusted in dealing
7 with this investigation in determining whether other charges
8 by other IEEE members -- whether there's sufficient cause --
9 you do not think that this situation would be appropriately
10 handled by the very committee in existence that deals with
11 disciplinary matters?

12 MR. LINDSAY: The committee that is in existence
13 deals with complaints that were made by one member of another.
14 Those complaints result in discipline. That does not mean
15 that the only way that the board can impose discipline is when
16 one member complains about another.

17 THE COURT: So why can't the president, Miss Lach --
18 anybody -- why can't they file a complaint against Dr. Xi,
19 under the current circumstances? You have a forensic
20 analysis. You have evidence. You have, quite frankly, quite
21 a bit of information to support the allegations. Why would it
22 not be appropriate to pursue a complaint in this instance?

23 MR. LINDSAY: The question is not whether it would be
24 possible. The question is whether it is necessary in these
25 circumstances.

1 THE COURT: So, in other words -- and I think that,
2 quite frankly, what concerns me, is, I think in his reply
3 brief Dr. Xi makes a very good point, which is you all say
4 that this isn't required, but you know what -- and it's on
5 page 4 of the brief -- it says that IEEE's position seems to
6 be that it can make up the rules as it goes along without
7 regard for what the bylaws say. It does not allow fellows and
8 members, such as Dr. Xi, any fair notice regarding what the
9 rules are, and it clearly is not in the process outlined by
10 the detailed bylaws and policies, to which Dr. Xi as well as
11 every other member is -- receives and has to uphold at all
12 times.

13 So, basically, you're saying that because now this is
14 coming from a different avenue -- that being information that
15 was derived by a subpoena request which led the president and
16 the board of directors to investigate -- that you all are free
17 to decide how you're going to proceed. How does that give
18 adequate notice to members and fellows?

19 MR. LINDSAY: Your Honor, if I may, it was not a
20 direction by IEEE to proceed. The decision to conduct the
21 investigation was made by the legal department, legal and
22 compliance department of IEEE. So I respond just because I
23 want to emphasize that the source of this complaint is not one
24 member complaining about something that another member has
25 done, where that complaining member either had suffered a

1 direct injury or believes that there is something that should
2 be happening.

3 THE COURT: So it's different because it came from
4 the legal department?

5 MR. LINDSAY: Yes. And because the same concerns
6 that you would have about potentials, for example, for
7 professional jealousies between two members do not arise in
8 that circumstance. I'm sorry --

9 THE COURT: Okay. So is there anything in your
10 constitution, bylaws or policies -- anywhere -- that says to
11 me when it comes from the legal department you don't have to
12 follow the standards and procedures?

13 MR. LINDSAY: Well, the challenge in answering that
14 question, your Honor, which I want to do, is that it assumes
15 that the standard procedures apply regardless of the source of
16 the complaint. I cannot point to you some provision --

17 THE COURT: Anything then.

18 MR. LINDSAY: -- for something that is not a
19 member-sourced complaint that these rules do not apply. I
20 cannot point to specific language for that. I can only go
21 back to 110.1, which does say a member can be expelled. 110.3
22 says what happens if there's a member-sourced complaint.

23 THE COURT: So these are only member-sourced
24 complaints?

25 MR. LINDSAY: Yes.

1 THE COURT: So we guarantee our members and fellows
2 all these protections, including insulating the body that will
3 make determination. So you have adequate policies when
4 there's a member complaining against another member, but when
5 there's an issue involving the most serious sanction, that
6 being expulsion, there are no safeguards in place for their
7 members and fellows. In other words, when it comes from the
8 legal department.

9 MR. LINDSAY: No, your Honor, that is not what I'm
10 saying.

11 THE COURT: Well, what protections are there? What
12 policies are we following?

13 Here we have a whole section that defines, in great
14 detail, what you get. You get not only -- you get the
15 opportunity to have the EMCC look at it to make a preliminary
16 review, you get the opportunity to have -- to go to the board
17 of directors to decide whether they're going to vote by
18 majority to empanel a hearing board. You've got a hearing
19 board that's insulated, that can't be the president or board
20 of directors, that has to conduct a mini trial in which there
21 are no 30-minute limits for opening statement or no 5,000-word
22 limits on what you can present. Then you have, by the way,
23 the ability for the hearing board to forward, after executive
24 session, a recommendation. And guess what the member gets as
25 well? The member gets another opportunity before the board to

1 plead his or her case. All these protections when one member
2 is going after another.

3 But the board, in this instance, and the president, in
4 this instance, can pretty much send him partial information
5 about what the accusations are. I'm going to have to accept
6 the complaint as it appears, right? I'm not picking one side
7 or the other.

8 MR. LINDSAY: Right.

9 THE COURT: The Court is bound to accept the
10 complaint as it appears, correct?

11 MR. LINDSAY: For purposes of a Rule 12 motion, that
12 would be correct, your Honor. Not for purposes of a
13 request of fact. That does have to be supported by
14 affidavits.

15 THE COURT: Well, they have, if they've given me the
16 affidavits I need, right?

17 MR. LINDSAY: Well, no. If the Court looks at both
18 sides of the affidavits, the Court will find that there are
19 some significant differences in facts. But on this specific
20 point, no, the procedures -- which I think was your Honor's
21 original question -- the board is providing the opportunity
22 for Dr. Xi to be heard. They've provided the opportunity for
23 him to submit information in defense, recognizing that even
24 though he is a U.S. resident and has taught in an
25 English-speaking university for decades, they've offered the

1 opportunity for a translator, if that was needed. They
2 offered -- in essence, this is his chance to come forward.

3 At no point has IEEE said, and when you come forward
4 you are absolutely forbidden from arguing that this procedure
5 is improper and that your complaint -- that the complaint
6 should be directed through the alternative procedure as if it
7 were a member-sourced complaint. He's entirely free to make
8 that argument within the IEEE system. So far he has not
9 chosen to make that argument within the IEEE system.

10 THE COURT: Well, counsel, quite frankly, he's taking
11 issue with your power and your client's ability to
12 unilaterally now select an ad hoc committee that's made up of
13 a president, who we know -- like it or not -- I think the
14 information is before the Court -- that there have been
15 presentations made, there has been slide shows made, there has
16 been arguments made to the very people that are now ultimately
17 supposed to hear him, keep their mind open. It sounds like
18 they're not insulated from this process, as they would have
19 been insulated had they followed the bylaws in a formal
20 complaint.

21 MR. LINDSAY: Yes, your Honor, the implications of
22 what you have just said is that a board of directors, which is
23 charged of protecting the treasury of this nonprofit
24 organization, should be completely shielded from information
25 that one of its trusted volunteers has, over a decade-long

1 period, has been stealing money from IEEE. That would be
2 thoroughly irresponsible and a violation of the duties of the
3 directors, their fiduciary duties under New York State law, to
4 take care of the treasury of the organization.

5 So it cannot be the case that the board should not have
6 received information about a significant problem -- and it's
7 not the just the dollars of this one individual -- they have
8 controls --

9 THE COURT: They could have received --

10 MR. LINDSAY: -- What do they need to do?

11 THE COURT: Okay. They could have, and again, I
12 don't know, I'm dealing with -- I don't know the merits.

13 We're not getting into the merits of whether this money was
14 taken or not. I'm not interested in the merits right now.
15 And I understand that you have a \$6.4 million budget you're
16 concerned that this man will be able to control come January
17 1st, 2018.

18 But what obviously is perplexing to me is the manner in
19 which this information has come about. Because this
20 information was well within the board of directors' and the
21 president's knowledge when they received the subpoena over two
22 years ago. And I think they had good, I think, reason and
23 cause to pursue an investigation and pursue a forensic
24 analysis of the information.

25 Where you lose me is that all of a sudden there doesn't

1 seem to be the following of the very principles that are laid
2 out in a constitution, its bylaws and policies, of which your
3 client sent to him in the first place in the very first letter
4 that prompted all of this.

5 So I understand fiduciary duties, counsel, but it's not
6 like you were hit with this six days ago.

7 So let's continue.

8 Anything else you want to place on the record before I
9 give the plaintiff an opportunity to supplement via oral
10 argument? Anything you've raised?

11 Counsel, you're looking at me like somehow you're
12 confused as to what I'm asking you to do. Why don't we go
13 over your -- since I read it in great detail -- your
14 positions, and if you want to supplement, you supplement.

15 So we basically start with the first proposition that
16 this Court lacks standing because there's a failure somehow to
17 exhaust the administrative remedies.

18 I can tell you, counsel, having reviewed the law in
19 this case, I'm not really moved by this. The authority cited
20 deals with federal agencies and, quite frankly, this has
21 nothing to do with the APA. I'm not too concerned about the
22 exhaustion. I also think it's a nonsensical proposition to
23 argue that the very procedure you're implementing of which he
24 takes issue with because it's contrary, in his opinion, to the
25 very policies and procedures, he has to follow those

1 procedures in order to then exhaust those administrative
2 remedies. That doesn't make sense to me. And I, quite
3 frankly, don't need further argument on that.

4 Let's talk about irreparable harm being established.
5 I've read that, and I've read the exhibits. This was not the
6 first step. This is your last chance. Come this day, if you
7 don't come, we're making a decision, that decision is final
8 and you can't appeal. It sounds kind of final to me.

9 Also, I'd like to hear you on the idea, and, quite
10 frankly, the notion by plaintiff that you have certain rights
11 under -- now, I assume that you say you wouldn't be doing
12 this, but they seem to have an opportunity, if indeed there is
13 cause found and decisions made by this ad hoc committee, that
14 they could advise the membership immediately that he's being
15 expelled.

16 MR. LINDSAY: I'm sorry, I missed the first part of
17 that.

18 THE COURT: That indeed, after this final hearing --

19 MR. LINDSAY: Yes.

20 THE COURT: -- and there was a determination made by
21 the president, the president-elect and indeed the
22 past-president, that they would have the ability, if they
23 ruled accordingly, to advise membership of this expulsion,
24 would they not?

25 MR. LINDSAY: They have the authority under the

1 bylaws to do that, yes.

2 THE COURT: All right. So basic --

3 MR. LINDSAY: If there's a decision they will, in
4 fact, do that.

5 THE COURT: Well, they pretty much indicated you show
6 up and present the evidence or, if you don't, we're moving
7 forward.

8 MR. LINDSAY: Yes. But moving forward does not mean
9 -- well -- there needs to be some explanation of why Dr. Xi
10 would not be assuming the presidency of the robotics society,
11 which would be the context of his expulsion, but that
12 statement doesn't have to be a -- you know -- a very long,
13 detailed statement of the reasons.

14 So if your Honor is saying that there is some risk that
15 Dr. Xi might suffer from public statements, that's a different
16 issue from what happens with the decision making. And yes, it
17 is true that if Dr. Xi -- what the letter says -- that if
18 Dr. Xi does not show up, then the decision -- then the three
19 presidents would make the decision at that time, and yes, that
20 decision would be final. It doesn't tell you what the
21 decision would be, but it does tell that you decision would be
22 final.

23 THE COURT: So he's got to wait until you decide
24 whether you're going to advise -- how do we unring that bell?
25 How does one unring that bell once you send notice to the bar

1 -- to its members, rather?

2 MR. LINDSAY: If it's done.

3 THE COURT: If it's done, how do you unring that
4 bell?

5 MR. LINDSAY: Presumably, he files the same lawsuit.

6 THE COURT: Reputation's done, though, no? We have
7 to wait until you send a letter for there to be irreparable
8 harm?

9 MR. LINDSAY: For him to have suffered harm there has
10 to have been an adverse decision, which there hasn't been yet.
11 And your Honor is asking how big will that harm be, and the
12 answer is that's still within control.

13 THE COURT: Okay.

14 MR. LINDSAY: And frankly, that's something where --
15 IEEE has no desire to unnecessarily damage the reputation of
16 Dr. Xi. And, frankly, if this could have been done, you know,
17 privately, that would have been fine by IEEE, but that is not
18 the option that has been chosen by either side.

19 THE COURT: I think there was -- I think the letters
20 speak for themselves in that respect. I'll leave it at that.

21 Okay. If I'm not with you -- and I'm going to want
22 counsel for the plaintiff to address irreparable harm as to
23 the points raised in pages 14 and 15 of defense counsel's
24 opposition brief.

25 With respect to the current procedures being offered

1 that are adequate, you say the process would be conducted in
2 private, and you say that the defendant has received all the
3 relevant documents as it relates to the charges, correct?

4 MR. LINDSAY: He has received those portions of the
5 presentation that relate to him, as opposed to any more
6 general issues about IEEE accounting, internal controls.

7 THE COURT: All right. I don't think he agrees with
8 you, but we'll hear him on that.

9 You then go on to say that -- obviously, plaintiff has
10 not pointed -- on page 17 of your brief -- to any statutory or
11 constitutional violations. You say that IEEE is a private
12 actor. No violations of 5th or 14th amendment -- on page 18
13 of your brief, and no conflict of interest.

14 Finally, you say -- on page 19 of your brief -- that
15 the bylaws and constitution provide for -- provide IEEE with
16 the authority to provide its ad hoc disciplinary committee,
17 which it already has, and you already indicate who the members
18 of that committee are.

19 Anything else that you want to address with respect to
20 your opposition, your points, or address any other points
21 raised during our dialogue this afternoon?

22 MR. LINDSAY: No, I think that's it, your Honor.

23 THE COURT: All right. Great.

24 MR. LINDSAY: Thank you.

25 THE COURT: Counsel.

1 MR. VERNON: Thank you, your Honor.

2 THE COURT: I may interrupt you as well. I apologize
3 to both sides, but I'm the kind of person that likes to cut to
4 the chase and get to the issue at hand here.

5 The problem we have here, they seem to say this is a
6 member-to-member issue, this policy, this bylaw, which I agree
7 with you is rather detailed and affords members and fellows
8 great protection when it's one member complaining about
9 another member. And I agree with you that -- you know -- I
10 was even surprised to hear that the accused member gets
11 another bite at the apple even after a full trial and after a
12 decision to, again, argue his or her position and what would
13 be the appropriate sanction.

14 It is a rather detailed process and I'm hearing, as
15 wonderful as it sounds, your client is not afforded those
16 protections because this did not come to them via a complaint
17 of a member in good standing but, instead, came out of the
18 legal department and deals with an issue with respect to
19 siphoning of funds and other conduct that is unbecoming,
20 obviously, a member and future president of this association.

21 MR. VERNON: Okay.

22 THE COURT: So is that the case? Does all this go
23 out the window because it came through the legal department,
24 because they believe that time is of the essence, exigent
25 circumstances warranted, and they have the ability, based on

1 their position, to appoint this ad hoc committee and they're
2 not doing anything wrong? What say you?

3 MR. VERNON: No, your Honor, they don't have the
4 power to do this because there's nothing in the constitution
5 or bylaws that permits them to do this, and there are things
6 in the constitution and bylaws that specifically speak to the
7 process that has to be followed, and I think that's one of the
8 issues that the Court identified.

9 The process that you detailed is important, and it's
10 specifically important here because the EMCC -- I'm sort of
11 borrowing your use of the acronym -- is tasked with
12 determining whether there is cause to dismiss someone. They
13 claim in their letter that they believe there may be cause.
14 The EMCC is the body or committee that the bylaws say has to
15 make that determination.

16 And I know they cited to a portion of the constitution,
17 for example, that gives them the power to establish
18 committees, but in section 8 of the constitution, it
19 specifically says you can designate committees as set forth in
20 the bylaws and constitution, which is what the bylaws do; they
21 designate this Ethics and Member Conduct Committee.

22 The other argument they've made is they have this
23 general power to create an ad hoc committee, but the language
24 that they left out, it says, only to the extent not
25 appropriate -- appropriate -- I'm sorry -- to be addressed by

1 an ongoing committee. And this is bylaw I-304.

2 So, again, we submit, that this is a matter that would
3 be appropriately addressed by the Ethics and Member Conduct
4 Committee.

5 The reason that this process is so important,
6 especially to Dr. Xi in this situation, is that it protects
7 somebody from loose statements and innuendoes forming the
8 statement for discipline. This discipline -- and we detail
9 this in the affidavit and our brief -- would completely
10 destroy Dr. Xi's life work.

11 Now, Miss Lach made the comment that he stole a million
12 dollars from the organization. Counsel and one of the
13 defendants, who, as we mentioned in our brief, is also on this
14 supposed presidential committee, has said he's stolen hundreds
15 of thousands of dollars. And Dr. Xi said, What are you
16 referring to? What specifics are you referring to? They
17 refused to give him any information. And I think --

18 THE COURT: I just heard counsel a minute ago that
19 you've gotten all the information, and you're on notice.

20 So here is where I was reading the briefs and saying,
21 are these two ships passing in the night? Has your client
22 received the accusations as well as the supporting
23 documentation to best put him, one, on notice, and help him
24 defend against this should this Court put you on notice?

25 MR. VERNON: Absolutely not.

1 THE COURT: What did you receive?

2 MR. VERNON: All we received was the letter, the
3 August 2nd letter that informed us of the charges, generally
4 speaking, and the exhibits that they attached to their brief,
5 which are portions of the Power Point presentation and a very
6 small portion of the Grant Thornton report. And as we point
7 out in our letter in response to them, one, the exhibits don't
8 give any specifics, the Grant Thornton part -- the Grant
9 Thornton report -- I'm sorry -- is particularly concerning
10 because they've redacted things like employee interviews,
11 there's a section -- you can tell this from the cover of the
12 report, it has the table of contents, things like culture,
13 IEEE culture, which, as we've submitted and others have said,
14 Dr. Xi's practice of submitting receipts -- and this is what
15 he's told them all along -- is consistent with what others
16 have done. And this is where we run into this issue here.
17 The only information we received is attached to their
18 response.

19 As we sit here today, even though we filed the
20 complaint in our motion, you have -- there were allegations
21 there were three flights to Hong Kong in a week, one
22 duplicative reimbursement and his post conference expenses,
23 which were to be expected, but they were too high. That's the
24 information they've given us.

25 What did the receipts actually say on them? What did

1 the explanatory notes that Dr. Xi's office submitted with the
2 receipts say? Did he change his changed travel plans? Were
3 these for student volunteers? Was this where we had to block
4 book a hotel for the entire stay of the conference? So in
5 this --

6 THE COURT: Where was the information regarding the
7 allegations? How was that presented to your client? In what
8 form?

9 MR. VERNON: Just in the form of this letter. So it
10 was not sworn, it didn't have any of the information stating
11 what bylaw was allegedly violated. It was just what they've
12 attached to the response to their brief, which is the August
13 2nd letter, the two portions of a Power Point presentation
14 which we discovered --

15 THE COURT: You didn't get the total Power Point
16 presentation?

17 MR. VERNON: No.

18 THE COURT: You got a letter and some conduct
19 referenced in the August 2nd letter?

20 MR. VERNON: Yes.

21 THE COURT: And you've got the allegations contained
22 in the opposition brief?

23 MR. VERNON: Yes, that's it. And as I said --

24 THE COURT: You got portions of the Grant Thornton
25 report?

1 MR. VERNON: Yes.

2 THE COURT: You say they're redacted.

3 MR. VERNON: There are significant portions missing.

4 THE COURT: This isn't enough notice for your client?

5 MR. VERNON: Our client still doesn't know what he's
6 been accused of doing and his office -- when I say "his
7 office" -- it was his secretary -- submitted probably
8 thousands of receipts over a few-year span with explanatory
9 notes, which they -- IEEE acknowledges in their response --
10 and then a conference treasurer received all of that
11 information and approved it at the time.

12 So we've -- Dr. Xi -- I say "we" -- Dr. Xi provided the
13 receipts and notes saying this is what the receipt was for.
14 And somebody from IEEE read it and approved it.

15 What they're saying now is there seems to be some
16 anomalies -- they haven't even told us what receipts are
17 involved. Dr. Xi doesn't know how to respond.

18 THE COURT: They say you have a right to briefing.

19 MR. SCHUMACHER: We don't even know what to put in a
20 brief. They haven't given us briefs, the sworn statement --
21 right now what they've identified in a brief, I don't think
22 that's theft. It's certainly not theft of a million dollars,
23 and it's certainly not theft of \$200,000. We haven't been
24 given information which can even support such a base claim
25 about somebody. So we can't respond.

1 THE COURT: What about responding -- we would note
2 that you've been given 5,000 words, approximately 10 pages
3 single-spaced. You've also got -- isn't that enough to
4 respond to what you have? What are you responding to?

5 MR. VERNON: The best we can do is provide the
6 response -- there's nothing to respond to substantively. The
7 best we can do is provide the response to the procedure
8 they've proposed, and I think the Court has picked up on the
9 many problems we have with that. And we provided that
10 response by way of letter which is attached to our brief as
11 exhibit E, and that is our August 29th letter where we raised
12 a number of these concerns.

13 So -- first of all, we don't have a sworn complaint.
14 We don't have the documentary support that would go with the
15 complaint. We don't have any explanation of what procedure
16 we've allegedly violated. The only information we have is
17 that they think there was one duplicative reimbursement --
18 things that the IEEE approved many years ago and that we gave
19 them all the information at the time. And they haven't even
20 given us the specifics about the actual receipts, so we don't
21 have the information to respond to.

22 THE COURT: So let me ask you a question that I find
23 curious. So one thing counsel keeps talking about, the
24 member-to-member protection, the need so that one member might
25 try to disparage another member for an economic benefit, you

1 know, that idea. Do you accept that the bylaws as written and
2 the protections as included in the constitution bylaws and
3 policies? Do you say that that is only exclusively protection
4 afforded to a member-to-member accusation?

5 MR. VERNON: No, not at all. There's a specific
6 section in the bylaws that deals with member discipline. They
7 said in the letter they want to discipline this member and
8 determine if there's cause to discipline him. So they're
9 referring to the bylaws -- I want to say when it suits them
10 but it sounds too ad hominem. They're referring to the bylaws
11 when it suits what they want to do, but they disregard what we
12 say are the most important part of them.

13 THE COURT: Well, they're saying that they're
14 authorized -- assuming that I buy that they're authorized and
15 there's something specifically, at the moment, they've been
16 able to cite to me -- which I haven't seen -- I somewhat see
17 it's silent, that this wasn't contemplated when the bylaws
18 were written.

19 Let's talk about the adequacy. That's what we've been
20 doing. So you say you don't really have specific notice as to
21 what the accusations and allegations are?

22 MR. VERNON: Yes.

23 THE COURT: You say that in order for you to reply in
24 this 5,000-word, approximately 10 pages, response to them --
25 and that's your right to briefing in total -- that you don't

1 even know what to respond to because you're not on notice
2 exactly to what specific allegations there are. You've also
3 been -- counsel says, on page 7 of their opposition -- you
4 have a right to submit documentary evidence. And again, you
5 would say that you don't know what document -- you provided
6 evidence to them. You've cooperated, you say, in the process
7 of this forensic analysis, and I do believe there was some
8 notation that your client may have even been interviewed in
9 this process. But you say, again, in order for you to know
10 what to submit and how to combat and how to confront the
11 allegations, you got to know what they all are, of which you
12 say you don't, right?

13 MR. VERNON: Yes.

14 THE COURT: You have a right to an oral statement of
15 30 minutes and you have a right to a translator. That's not
16 adequate?

17 MR. VERNON: No.

18 THE COURT: Why?

19 MR. VERNON: Because we still don't know what the
20 allegations are. We still don't have -- they gave us an
21 ultimatum, which is either submit to their process or don't
22 show up and you're going to be expelled. If you submit to
23 their process you're waiving all the rights that are available
24 under the bylaws, which is a sworn complaint, an unbiased
25 body looking at the facts that is familiar with looking at the

1 facts because --

2 THE COURT: What about what counsel said the
3 fiduciary duty that the president has to its membership, that
4 they had to have been privy to some of these allegations and
5 that there's nothing wrong with them, obviously, you know,
6 abiding by and following through with their fiduciary duties?

7 MR. VERNON: They also have a fiduciary duty to
8 follow their bylaws because that's the contract with the
9 memberships, that's the constitution, and that forms one of
10 the allegations in our complaint. Because they briefed that
11 as it relates to Dr. Xi, and, frankly, that's something all
12 members are interested in protecting because that is their
13 pact with the organization.

14 THE COURT: Let's talk about irreparable harm.
15 Counsel says it's not right.

16 MR. VERNON: They've given us an ultimatum, it's you
17 waive what you think are your rights, not appealable. You
18 show up, this is your one and only chance, 5,000 words. --
19 you may get to say a few things but, by the way, it's not
20 adversarial, so you don't need to bring a lawyer.

21 THE COURT: You have a right to a lawyer, apparently.

22 MR. VERNON: They also said you can't file a lawsuit
23 because these bylaws are not enforceable by law. I take
24 offense to the way they tried to railroad Dr. Xi. That's a
25 false statement, that the bylaws are not enforceable.

1 Then they said, If you file a complaint we're going to
2 file a counterclaim and make a lot of these accusations
3 public, which we submit are unfounded. But -- and, I'm sorry,
4 I just veered off the answer to your question, which is
5 irreparable harm.

6 They gave us the ultimatum, either you do one, you
7 waive rights and submit to our procedure with this
8 presidential committee that has already heard all these bad
9 facts, or you don't show up and you're expelled.

10 In the first instance, this by definition, that's
11 irreparable harm because we've given up rights, we've given up
12 our ability to appeal, to object. We actually have objected
13 by letter, and we asked them not to hold the hearing, and they
14 refused. They said they're going forward. And then, on the
15 other hand, we have irreparable harm because the argument they
16 seem to be making is, let us make the decision, let us expel
17 you from the organization.

18 They've actually already convened a meeting for August
19 29th, a special meeting, and my guess is that that was to make
20 an announcement about this issue, which has my client fearful.

21 THE COURT: I think it's probably best that we not
22 speculate as to what they were going to do on August 29th.

23 MR. VERNON: But he --

24 THE COURT: Do we have to wait for them to decide?
25 Do we have to wait for them to decide what they're going to

1 do? Is your client -- does he have an obligation to wait
2 until injury occurs in this case?

3 MR. VERNON: No, because you can't -- and the
4 expression you used is apt because you can't "unring that
5 bell." Once you come out and expel somebody and say they're
6 not a member and they lose their distinguished status and
7 they're not going to be president because they stole X amount
8 of dollars -- and he didn't have an opportunity to object and
9 he didn't have the opportunity to appear before all the
10 unbiassed committees and the procedures, the damage is already
11 done. Please forgive me, I don't remember my client's age,
12 but he can't go back and rebuild the last so many years.

13 THE COURT: He's been a member since 1989, did he
14 not?

15 MR. VERNON: Yes.

16 THE COURT: He became a fellow in 2007, did he not?

17 MR. VERNON: Yes.

18 THE COURT: He became a fellow, and wasn't easy to
19 become a fellow, was it?

20 MR. VERNON: Not at all.

21 THE COURT: Your letter to them on August 29th --
22 they make a point in saying, you know, we've done this once
23 before. This is a process we have done before and it's been
24 unchallenged. Does that move the ball for them in any way?

25 MR. VERNON: Not at all. And after seeing the way

1 that they approached -- the way they wanted to force this
2 proceeding on Dr. Xi, I do feel sorry for a member that's
3 submitted to this procedure before because they certainly
4 didn't have to.

5 THE COURT: But your client put in writing that he's
6 not submitting to this proceeding, correct?

7 MR. VERNON: Correct.

8 THE COURT: August 29th he says, this letter serves
9 as Dr. Xi's notice to the IEEE that he intends to assert his
10 rights under the IEEE constitution bylaws and policies, that
11 he is prepared to seek judicial intervention if you refuse to
12 recognize those rights.

13 This was your client's notice that he, indeed, was
14 invoking the protection of the constitution as well as the
15 bylaws and policies, correct?

16 MR. VERNON: Yes, your Honor.

17 THE COURT: So it's of no moment that we don't know
18 whether that individual that obviously was required -- adhered
19 to these -- to this ad hoc committee, potentially, whether
20 that person, he or she, asserted their rights?

21 MR. VERNON: No.

22 THE COURT: But your client is?

23 MR. VERNON: It wasn't right then, and it isn't right
24 now.

25 THE COURT: Anything else that you want to address in

1 terms of either the issues raised either in oral argument or
2 in the briefing?

3 Let me just say, counsel -- let's talk about one thing,
4 though.

5 MR. VERNON: Sure.

6 THE COURT: There's a great concern that there's
7 potentially criminal charges that may soon come down against
8 your client. There is a concern that he has the ability to
9 manage \$6.4 million. What are we doing with that?

10 MR. VERNON: Well, your Honor -- and again, this is
11 why speculation and innuendo should not be allowed to
12 influence the process.

13 My understanding, on a careful reading of the brief,
14 that a grand jury -- they were served with a grand jury
15 subpoena, a portion of which asks for certain documents which
16 may be relating to Dr. Xi. I can submit to the Court that we
17 have no information that's the case.

18 It's -- it is strictly -- there was apparently -- we
19 haven't seen it, obviously -- some request made for some
20 information relating to something about Dr. Xi. That is not
21 enough to say, grand jury subpoenas are served all the time
22 requesting a lot of information about a lot of people and
23 companies. They haven't said he's the target, which I think
24 is telling, and there's been no evidence of anything coming
25 from that.

1 We do know that it appears that the feds will monitor,
2 at times, relationships between entities and Chinese entities
3 as well. So whether it relates to somebody in China or Hong
4 Kong, I'm not sure. We have no information that there's
5 anything pending or coming for Dr. Xi, anything that submits
6 that he's done something wrong.

7 THE COURT: There is no -- I was looking -- and
8 again, you all have had the benefit of reading all these
9 documents and I've done my best to catch up. There doesn't
10 seem to be a time frame in which, if indeed they were required
11 to follow the bylaws and the procedures set forth in those
12 bylaws and policies, there doesn't seem to be a time frame
13 that all of this has to occur, right? I mean, in fairness --
14 in fairness -- they could institute the very procedures laid
15 out in 110.2, .3, .4 and .5, and if they did that, arguably,
16 it can be done in the next few month, could it not?

17 MR. VERNON: If they were to prepare the complaint
18 then the Ethics and Member Conduct Committee could determine
19 whether there's any issue with the timeliness, and I think
20 there are provisions in there to protect the members that say
21 after a certain period of time -- I think it's maybe two years
22 -- the ethics committee may decide you're not going to proceed
23 on a time basis.

24 THE COURT: In other words, this doesn't seem to --
25 for example, there isn't a requirement that the charged member

1 be given 60 days to respond or 30 -- I mean this all can
2 happen rather expeditiously?

3 MR. VERNON: It can if they want to.

4 THE COURT: Which can be problematic. One thing they
5 say, obviously, there are members -- it's international, so in
6 order to get these members together and convene special
7 meetings, that it is not simply done -- there are a number of
8 schedules and time -- obviously, time zones, et cetera, to be
9 concerned about.

10 MR. VERNON: They made a presentation to the board in
11 January, and as the Court pointed out, they were not in any
12 great rush to act. And to send us a letter on August 2nd, and
13 say that his one and final shot is September 28th, I think
14 that's completely unreasonable, given the amount of time they
15 had to look at these allegations.

16 THE COURT: Counsel, you seem to be asking for two
17 different remedies, and I'm trying to understand what you're
18 seeking.

19 In your order -- well, you seem to seek an order
20 compelling IEEE to follow bylaws but, actually, in its
21 proposed -- in your proposed order you basically are asking to
22 hold off on the 9/28 hearing. What are you looking for here
23 from me?

24 MR. VERNON: The immediate relief is to certainly
25 hold off on the 9/28 hearing because it's something that we

1 think -- I mean there's irreparable harm that can happen.
2 It's not going to be a fair proceeding, given what's required
3 in the bylaws. So, yes, there's a request that this 28th
4 hearing not happen, and there's also a request that they be
5 ordered to follow their bylaws.

6 THE COURT: Do I have the authority to order them to
7 follow their bylaws?

8 MR. VERNON: One of the things we asked for in the
9 complaint is the declaration that the bylaws apply to this
10 situation. Whether that's something you would address at the
11 TRO stage or at a later stage --

12 THE COURT: Probably a later stage.

13 MR. VERNON: I don't have the authority to tell a
14 judge something --

15 THE COURT: No, no, I want you all to tell me when
16 you think I don't have the authority to do something, and,
17 obviously, I want you to use this time to tell me what it is
18 you're relying on.

19 The problem I have, right now I am faced with what
20 feels like a moving target from the defense. It's silent. It
21 doesn't say, we can't do it, this is only member-to-member
22 charging. There's just an uneasiness that I feel in allowing,
23 quite frankly, the hearing to go on the 28th, I'll be very
24 honest, and I'll lay out my ruling in a moment. But I am not
25 sure that I have the authority to order them to follow the

1 bylaws, but that's something we'll have to address at a later
2 point in time. But for the time being, I'm prepared to issue
3 a ruling, if either side wants to place anything else on the
4 record.

5 MR. VERNON: Thank you, your Honor.

6 MR. LINDSAY: Yes, your Honor. I do want to put a
7 few more things on the record.

8 THE COURT: Sure.

9 MR. LINDSAY: First, the suggestion that Dr. Xi does
10 not know the nature of the allegations against him is simply
11 incorrect. We offer two reasons.

12 Number one, they continually cite to an alleged
13 statement by IEEE general counsel Eileen Lach that he was
14 accused of stealing a million dollars. They don't identify
15 their source for that. They simply say, we know this. We
16 assume it's an unauthorized disclosure that was present during
17 a executive session of the board. But, in any event, that
18 statement is demonstrably false because the documents from the
19 meeting -- the meeting that they claim she made that statement
20 at -- said that the amount he was reimbursed for, total, was
21 \$1 million. And nobody ever suggested that every single penny
22 that Dr. Xi was reimbursed for was a misappropriation. That's
23 clearly not true.

24 THE COURT: But tell me where the notice -- the
25 notice, where this man, that was a member of your organization

1 since 1989, and a fellow since 2007, tell me the notice you're
2 giving this man so he can adequately prepare a defense to the
3 charges? What are you citing to?

4 MR. LINDSAY: I invite your attention to exhibit A to
5 our motion in opposition.

6 THE COURT: You're supposed to have a copy for me.

7 MR. LINDSAY: I do, your Honor.

8 (Document handed to the Court.)

9 THE COURT: Okay. This is a chart.

10 MR. LINDSAY: And that chart, your Honor, shows --
11 it's a graphical representation that shows different kinds of
12 problems in the --

13 THE COURT: Where does it say -- what's the problem
14 --

15 MR. LINDSAY: It shows -- if you look at the key in
16 the upper left-hand corner, it shows conflicting dates and
17 locations. So, for example, on the bottom of page 8, center
18 right, you will see that Dr. Xi obtained reimbursement for a
19 flight on October 27, from Beijing to Taipei, and on October
20 28th, from Beijing to Detroit, indicating that, you know,
21 there's is a problem, he couldn't have been going to two
22 places in approximately that same time.

23 You will also see, I believe we gave another example in
24 our brief --

25 THE COURT: No, no, no. I want to know what he was

1 given to prepare for this hearing.

2 MR. LINDSAY: He was given this, your Honor.

3 THE COURT: Okay. So this outlines very clearly for
4 him what the problems are?

5 MR. LINDSAY: It illustrates the problems, yes, your
6 Honor. Then, if I may invite your attention to exhibit C, in
7 that same notebook --

8 THE COURT: Mr. Vernon, I'm going to want you to
9 address this, okay?

10 MR. VERNON: Yes.

11 MR. LINDSAY: Exhibit C identifies -- it totals up --
12 and, again, this is for the one conference -- this is all that
13 IEEE had the papers to complete an analysis for because Dr. Xi
14 continues not to have submitted the documentation.

15 But in any event --

16 THE COURT: Let's stop you there. So are you
17 alleging that he is uncooperative?

18 MR. LINDSAY: Yes.

19 THE COURT: So is that another allegation that will
20 be lodged against him?

21 MR. LINDSAY: It's not an allegation that will be
22 lodged against him, no, your Honor. It's the absence of paper
23 --

24 THE COURT: So tell me -- counsel, you are a very
25 skilled lawyer. I would like you to tell me -- please list

1 for me all of the allegations that Mr. Xi is going to have to
2 respond to.

3 MR. LINDSAY: The allegations are that he has
4 improperly obtained reimbursement for expenses during the
5 period 2008 to 2015. The summary of how those reimbursed
6 expenses were categorized appears in exhibit C to the
7 complaint, which, again, was provided to the plaintiff.

8 THE COURT: So all of the expenses submitted here
9 were improperly submitted and reimbursed?

10 MR. LINDSAY: No, your Honor. In exhibit C, it
11 distinguishes between those are inappropriate receipts and
12 those that are the remaining receipts.

13 THE COURT: Tell me where. All of them?

14 MR. LINDSAY: Exhibit C.

15 THE COURT: I'm on there.

16 MR. LINDSAY: Does your Honor have chart 4?

17 THE COURT: I'm here. All of these are the
18 inappropriate ones?

19 MR. LINDSAY: Yes.

20 THE COURT: So it's 1.9 million?

21 MR. LINDSAY: No, your Honor. That's not the correct

22 -- page number --

23 MR. EWING: Page 18, very small --

24 MR. LINDSAY: It's the fine print at the right-hand
25 part of the chart.

1 THE COURT: Eighteen, okay. So it's the \$183,147?

2 MR. LINDSAY: No, those -- those are the receipts to
3 which there is no question. If you look above that --

4 THE COURT: This is what he was given to decipher,
5 with nothing in writing? This is what he was given to figure
6 it out?

7 MR. LINDSAY: Yes.

8 THE COURT: These are the read --

9 MR. LINDSAY: This is what he was given, as well as
10 the letter; yes, your Honor.

11 THE COURT: I'm having trouble following you. Okay.
12 Continue making your record.

13 MR. LINDSAY: If you look at that page, you'll see
14 the total for this one conference of 474,000 and change for
15 reimbursement, and then it details the categories of problems
16 within his receipts. So, for example, the conflicting dates
17 and locations that I just provided, that accounts for 4.1
18 percent of his receipts, duplicative reimbursed accounts for
19 3.2 percent. Before ICRA, so in other words, excluding
20 meetings that it's clear that he shouldn't been attending
21 accounts for 29 percent, and meetings that, or expenses that
22 were incurred after the conference accounted for 24 percent of
23 the total receipts. And that's where we get to the issue of
24 the volume of receipts, for which there's clearly an issue.

25 Second point that I want to make clear -- I do want to

1 be clear on one point, there's been some argument as to the
2 finality or appealability of the decision of the IEEE board of
3 directors. Regardless of whether the process is the process
4 that IEEE has set forth for this matter or the
5 member-originating complaint, member conduct committee
6 process, the decision of the board of directors is final.

7 Now, if someone wants to say that despite the finality
8 of that decision I am going to bring a lawsuit, they're free
9 to say that, but the difference in finality -- there's no
10 difference in finality as between those.

11 THE COURT: Yeah, well, the finality as laid out in
12 the bylaws allow for there to be a process in which the
13 member -- or the accused member to, obviously, hear all the
14 evidence, have the evidence presented in a trial, be able to
15 present it to an insulated body, not the board of directors or
16 the president. It allows for safeguards, and it allows the
17 process to play out.

18 If, in the end, the board of directors decides that
19 based on what the hearing board had written in a formal report
20 after again hearing from the accused member, they decide that
21 expulsion is the appropriate remedy and stripping him of his
22 title of becoming president and everything else, you're right,
23 but that's after the process has played out.

24 MR. LINDSAY: Yes, there is a difference in process.
25 But either way, it gets to a final decision by the board of

1 directors because that's the top-most decision maker within
2 the organization.

3 Mr. Vernon has also raised questions about the grand
4 jury subpoena. We had been attempting to cooperate and
5 maintain the confidentiality of grand jury proceedings, but
6 given a choice between protecting that confidentiality and
7 exercising our rights to protect IEEE, I have to choose IEEE,
8 and I will disclose that, yes, the subpoena concerned Dr. Xi
9 and only Dr. Xi. There was nothing else. It's all about
10 Dr. Xi.

11 We inquired whether, frankly, whether IEEE was a
12 target. No, IEEE was not a target. The only target of that
13 grand jury subpoena was Dr. Xi. And so I need to offer that
14 to put this into context for your Honor as to why IEEE has
15 chosen to proceed the way it has.

16 Now, yes, I do not know what the conclusion of the
17 FBI's investigation is going to be. I do not know what
18 decisions the grand jury will make. That's not our province,
19 and that is not what is driving IEEE's decision-making.
20 Whatever the grand jury does, it will do, and on whatever
21 schedule it determines, but what is driving us is the
22 importance of the role that Dr. Xi proposes to play within our
23 organization.

24 Your Honor also indicated some inclination to issue a
25 temporary restraining order. We want to hear exactly what

1 language it is and exactly what IEEE would be restrained from
2 doing, but we also wanted to raise the question of the bond,
3 and the amount of the bond, of course, will depend upon
4 exactly what it is IEEE is being restrained from doing.

5 THE COURT: Well, let's hear you on it. What would
6 be the appropriate bond? I'll tell you what I'm
7 contemplating, counsel --

8 MR. LINDSAY: Yes.

9 THE COURT: -- I'm contemplating, obviously,
10 enjoining IEEE from having this hearing on the 28th, and I,
11 quite frankly, was going to ask the next question, which would
12 be what, if any, discovery would be necessary to move this
13 matter toward the preliminary injunction? And, ultimately,
14 you may decide that, one, in light of the temporary
15 restraints, that you're going to go back and follow the bylaws
16 that need to be followed. I don't know if I can compel you to
17 do that at this time, but it probably would make a whole heck
18 of a lot of sense to do that, but that's up to you and,
19 obviously, IEEE. But if a formal complaint -- which could be
20 easily, in my opinion, based on what I read, be provided, that
21 provides notice, proper notice, not color-coded charts that
22 tell him to figure it out, but that tells him what exactly
23 he's done, one, that warrants complete expulsion from the
24 organization, of which, again, is your right to do. But I
25 think that we have to see what the allegations are and whether

1 the sanctions merit the allegations, whether you intend on
2 stripping him of his title, et cetera. But it would be nice
3 to know exactly what you're claiming he did, whether it be
4 conduct unbecoming a member or fellow, whether it is indeed
5 theft, whether you are accusing him of misappropriation of
6 IEEE funds. Let's lay it out. Let him know what those
7 charges are, and then let the process play out.

8 If that were to happen before I ever had the ultimate
9 preliminary injunction, that's fine. That's up to you. But
10 based on what you're telling me in terms of fiduciary
11 responsibilities, there are things that we can do to protect
12 IEEE, and that would be something that you would work out with
13 my magistrate judge at a later point in time. These things
14 take a lot longer than, again, all parties would like, that
15 being before the January 1st, 2018 date that he assumes the
16 presidency of the subcommittee, for lack of a better way of
17 saying it.

18 So I'm willing to work with you. For now, we're not
19 going to have the hearings. We're going to give the parties
20 the time to get the necessary discovery. Give them the
21 unredacted forensic analysis. Let him see what people are
22 saying he did, and we'll take it from there. I, again,
23 question -- I question what authority I do have, and that will
24 be for briefing at another time.

25 Do we want safeguards? Do we want bond? Let's talk

1 about it. What would be the appropriate bond, based on what
2 you're saying?

3 MR. LINDSAY: Again, it depends on what your Honor is
4 going to restrain IEEE from doing. If we separate this into
5 three categories, there is the membership in IEEE, there is
6 the IEEE fellowship, there's the presidency of Robotics and
7 Automation Society. For those first two, I'm not going to
8 tell you that there's some threat of irreparable harm to IEEE,
9 other than damage to its own reputation should the allegations
10 indeed be true.

11 THE COURT: I can't put a number on that.

12 MR. LINDSAY: We're concerned about that third
13 category.

14 THE COURT: Huh?

15 MR. LINDSAY: We're concerned about that third
16 category.

17 THE COURT: So what are you saying?

18 MR. LINDSAY: So if your Honor's order is that IEEE
19 is restrained from proceeding as to those first two items,
20 then we don't believe any bond would be necessary.

21 If your Honor's order is that IEEE is restrained from
22 taking actions that would either suspend or remove him from
23 the presidency position, that's a different matter because
24 that's the role that has the financial responsibility in it.

25 THE COURT: What's the bond.

1 MR. LINDSAY: \$1 million.

2 THE COURT: How do you justify it?

3 MR. LINDSAY: Because the budget is -- the annual
4 expenditures are \$6 million and that's, you know, a number we
5 believe would be a reasonable number given the risks.

6 THE COURT: Why can't there be mechanisms put in
7 place for an independent financial audit, an independent
8 financial representative that would be working with Dr. Xi
9 if -- in the event you don't get what you need to get done in
10 time to take appropriate action?

11 MR. LINDSAY: That's why I was asking about exactly
12 what your Honor is restraining IEEE from doing; because if
13 your Honor restrains IEEE from taking any action whatsoever
14 with respect to that, then that's where the damage arises.

15 THE COURT: No, no --

16 MR. LINDSAY: If your Honor's order doesn't --

17 THE COURT: I, quite frankly, think if you follow the
18 bylaws -- that's what I asked counsel, Mr. Vernon, a moment
19 ago.

20 There doesn't seem to be a timetable. I don't know.
21 He may come back and say they're trying to do this in a week.
22 But, obviously, if you follow the bylaws and at that point in
23 time that we have a problem that there's been some evidence
24 that's been shared with the board of directors as well as the
25 president -- and I'm not sure, quite frankly, that you're

1 going to be able to follow the bylaws if indeed there's been
2 evidence -- and that discovery will bear out, I assume -- that
3 they've insulated themselves from this process as it was
4 contemplated by the bylaws. That's a separate issue that
5 we'll have to discuss at a later point in time.

6 But I certainly -- I'm not inclined at this point in
7 time -- maybe this is a point for preliminary injunction
8 hearing to enjoin you all from seeking appropriate action --
9 what you all think is appropriate action against Dr. Xi, but I
10 certainly won't be allowing you to do it on Thursday.

11 MR. LINDSAY: All right. I understand, your Honor.

12 THE COURT: Counsel, I'm hearing \$1 million is the
13 appropriate bond. What do you say?

14 MR. VERNON: Your Honor, I don't think a bond is
15 appropriate in these circumstances. And I think I heard
16 counsel say that he agrees, except to the extent they're
17 restrained from -- from having Dr. Xi take over the
18 presidency.

19 Conceptually, they're making assumption he is going to
20 do something wrong, which I have some difficulty with, but I
21 agree with the Court that we could put some sort of measure in
22 place to monitor the accountability of what he's doing with
23 his budget. That would be far more appropriate than a
24 million-dollar bond, which is almost punitive and
25 inappropriate under the circumstances near. But I think the

1 organization is well-equipped to put some process or person in
2 place to keep an eye on the budget, and I know Dr. Xi would
3 not have an issue with that, if it means they're not going to
4 say, We doing this because he stole a million dollar. It's
5 something we'll deal with later.

6 THE COURT: I'm going to want to recess on the issue
7 of a bond. It wasn't raised in the papers, was it?

8 MR. LINDSAY: No, your Honor.

9 MR. VERNON: No.

10 THE COURT: And I don't like surprises. In the
11 future, if we're going to raise issues, raise them in the
12 papers. Supplement them, if you need to, but I would prefer
13 not to be surprised at oral argument.

14 Let me break a second, consider what I heard, and then
15 I'll come out.

16 THE CLERK: All rise.

17 (Recess.)

18 THE COURT: Counsel, I do have a question for you,
19 Mr. Vernon.

20 Mr. Vernon, what's the next step, in your mind?

21 MR. VERNON: Can I approach?

22 THE COURT: Please.

23 MR. VERNON: So the request is for the order
24 preventing them from holding a hearing. I know the Court
25 mentioned discovery relating to an injunction hearing, but

1 there aren't any fact -- the discovery we would ask for would
2 really be what they would include in the complaint, which I
3 assume would be coming pursuant to the bylaws and procedures;
4 and it wouldn't even be appropriate for the injunction because
5 the Court isn't deciding, in the injunction, whether Dr. Xi
6 has committed these acts or improper receipts.

7 So unless -- we're asking that the hearing not be
8 allowed to proceed -- that they're enjoined --

9 THE COURT: All right. Let's start from square --
10 let's start from -- I've already indicated to you that, at
11 least for now, the Court is going to enjoin IEEE from
12 conducting this hearing on the 28th.

13 MR. VERNON: Yes.

14 THE COURT: That's the immediate restraint you
15 sought, and that's what you're going to get, and I'll support
16 my ruling in a moment. But my question is, what's next?

17 There's an issue of a bond, which I'm going to require
18 supplemental briefing on it because it was just raised today.
19 Fine. There's also what happens next.

20 Now, assuming -- assuming that IEEE decides that
21 they're going to issue a formal complaint, and then your
22 client receives a formal complaint and they begin to follow
23 that which we outlined earlier when we started today, what's
24 next for the Court to have to decide?

25 MR. VERNON: I anticipated that question and thought

1 about it. My -- I anticipate that if they initiate that
2 proceeding the only real issue remaining here would
3 potentially be damages for the breach of fiduciary duty, but I
4 think this case would get resolved as to those issues,
5 probably without prejudice, as that other proceeding takes
6 place. Otherwise, this case -- there would be a motion, a
7 dispositive motion on the issue of whether we can get a
8 declaration that they're required to follow the bylaws.

9 So if the case is not resolved by them initiating their
10 proceedings under the bylaws, then I anticipate there would
11 be -- likely be a dispositive motion on the issue of the
12 declaration.

13 THE COURT: Because, again, the issue of whether this
14 Court could require them to follow the bylaws -- right -- I
15 mean that's an issue that obviously still has to be briefed.
16 I think that counsel has argued -- and obviously I'm
17 paraphrasing here -- but he's arguing that the source matters
18 -- right -- the source matter -- the complaint didn't
19 originate from a member in good standing to another member.
20 If that had happened -- that's the source -- that would then
21 trigger 110 and all the provisions thereafter.

22 What counsel is arguing is that the source matters in
23 this scenario -- because the source was obviously counsel --
24 counsel's office, based on receipt of a subpoena; and,
25 therefore, because the source is not a member in good

1 standing, those bylaws don't apply.

2 The problem I have with counsel's argument is where, if
3 anywhere, can I find anywhere that says the source is the
4 controlling factor, and that's the problem.

5 Now, they can certainly amend their bylaws at some
6 point because what happens is -- if we're talking about a
7 disciplinary proceeding that triggers 110, and 110 says what
8 you have to do. It's a contract between the parties.

9 Again, I'm just now looking at this sort of and trying
10 to say what's the next step for us? Because if indeed the
11 Court is not convinced that the source is the determining
12 factor, then, you know, a contract has been made at least
13 between your client and IEEE -- but what happens next if
14 indeed they follow the provisions that are laid out in 110 and
15 7.10?

16 MR. VERNON: And I think this matter then either will
17 get resolved between counsel -- unless they -- and this is why
18 I'm thinking it's a dismissal without prejudice -- unless they
19 breach what we say is the contract between the parties. And I
20 don't know if that requires the filing of a new lawsuit, if
21 and when they breach it -- I shouldn't say "when" -- if they
22 breach it.

23 THE COURT: So does my ruling today dispose of the
24 matter in its entirety?

25 MR. VERNON: If the Court is enjoining them from

1 participating in this hearing, then for the time being -- can
2 I consult?

3 THE COURT: I'm going to give you some time to think
4 about it. These are things that we're going to have to figure
5 out because I need to know what the next step is because I'm
6 actually going to require counsel to brief what's the next
7 step and brief the issue of a bond in supplemental briefing
8 because I honestly don't know -- don't know what's next.

9 If indeed they go back and counsel goes back --
10 properly referring to counsel -- I apologize -- if counsel,
11 Mr. Lindsey goes back and says we can't have the hearing on
12 the 28th, and it appears, at least placed on the oral
13 argument, that the Court is viewing this to be a contract,
14 that we are moving to discipline Dr. Xi and, therefore, it's
15 going to be a provision that if indeed we're pursuing some
16 disciplinary proceeding in order to expel Dr. Xi, that very
17 well, as cited in the August 2nd letter, we're in 110 world;
18 and if we're in 110, there are certain provisions within the
19 provisions of 110.1, 110.3, 110.4 that have to be followed.
20 And if they begin to follow those provisions, ultimately -- it
21 may happen well before January 1st, 2018 -- they may give your
22 client all of what you believe he's contracted -- he's
23 obligated, or they're obligated to provide by way of a
24 contract, and I don't necessarily -- unless there's a new
25 lawsuit that there's been some breach of one of these steps.

1 I don't know if this case remains a viable matter for the
2 Court to consider for a future date.

3 MR. VERNON: I would like to take a moment to
4 consider that for myself but my suspicion is either the matter
5 would be resolved without prejudice or the matter would be
6 stayed pending whatever process we're going through. I know
7 courts often don't like staying matters.

8 THE COURT: My docket is what it is, as it is. So
9 we'll see what we do.

10 I just -- counsel, if you want to respond to any of the
11 questions I just asked Mr. Vernon, we can, but we can think
12 about it and provide the Court further briefing at a
13 subsequent time. What would you prefer, Mr. Lindsay?

14 MR. LINDSAY: I, frankly, have been asking myself the
15 question what comes next.

16 THE COURT: The chicken or the egg? I don't know at
17 this point.

18 MR. LINDSAY: Your Honor has given a general sense of
19 what the ruling is going to be and, obviously, I need to take
20 that back to my client. My client is going to make a decision
21 of what it wants to do. I can imagine a number of
22 possibilities which deal with the what-comes-next issue.

23 THE COURT: I look forward to reading your
24 submissions. Let me rule.

25 MR. VERNON: Thank you, your Honor.

1 THE COURT: Thank you, counsel.

2 On September 21st, 2017, plaintiff filed a motion for a
3 temporary restraining order against defendants. Under Federal
4 Rule of Civil Procedure 65(b), the Court may issue a TRO if
5 the moving party shows, "(1) a likelihood of success on the
6 merits; (2) that it will suffer irreparable harm if the
7 injunction is denied; (3) that granting preliminary relief
8 will not result in even greater harm to the non-moving party;
9 and (4) that the public interest favors such relief." Kos
10 Pharmaceutical, Inc. v. Andrx Corporation, 369 F.3d, 700, 708
11 (Third Circuit 2004). The grant or denial of a TRO is within
12 the discretion of this Court.

13 First, the Court finds that plaintiff has shown a
14 likelihood of success on the merits of its breach of contract
15 claim. As plaintiff persuasively argues -- and defense do not
16 appear to contest -- the IEEE bylaws are a contract between
17 itself and its members under both New Jersey and New York law.
18 As the parties know, the bylaws provide for specific
19 procedures relating to member discipline in sections I-110.
20 Defendants argue that they need not follow these procedures
21 because the IEEE bylaws and policies are silent with respect
22 to the complaints that are not generated by other IEEE
23 members.

24 It seems, however, that IEEE management, the board of
25 directors and the president initiated the disciplinary

1 proceedings against plaintiff, and these individuals appear
2 indisputably to be IEEE members. In fact, the president's
3 August 2nd letter to plaintiffs specifically cites section
4 I-110 and even summarizes some portions of the procedures
5 required under that section. (See exhibit A to plaintiff's
6 complaint.)

7 Nor is the Court convinced that section I-304,
8 paragraph 10 of the bylaws is fatal to plaintiff's
9 breach-of-contract claim at this time. Defendant's reliance
10 on that clause to justify the disciplinary proceedings would
11 seem to swallow "the lengthy and detailed procedure that the
12 bylaws provide for," to use defendant's language.

13 (Defendant's brief at 5).

14 Although defendants emphasize the seriousness of the
15 allegations against plaintiff, plaintiff faces the harshest
16 potential sanction that may result from defendant's
17 contemplated proceedings: Expulsion of the IEEE, with the
18 attendant loss of being a fellow. The Court is not persuaded
19 at this time such a sanction can be justified by section
20 I-304, paragraph 10, which authorizes the board of directors
21 to appoint ad hoc committees "to address specific issue or
22 activity that is not appropriate to be addressed by an ongoing
23 committee of IEEE."

24 Accordingly, the Court finds that plaintiff has met his
25 burden of showing that his odds of prevailing on this claim

1 are significantly better than negligible, and he need not
2 establish that it is more likely than not that he will
3 prevail. See Reilly v. City of Harrisburg, 858 F.3d 173, 179
4 (Third Circuit 2017).

5 Second, as to irreparable harm, the Court agrees with
6 the plaintiff that he will suffer irreparable harm absent
7 temporary restraints. If plaintiff follows the contemplated
8 schedule, he will have to attend the September 28th meeting
9 without having had the benefit of the lengthy and detailed
10 procedures under the bylaws and policies. If he doesn't, the
11 IEEE has warned that he will be expelled and lose his status
12 as an IEEE fellow. The Court finds telling that the
13 defendants do not address plaintiff's contention that, under
14 section I-110.7, the board of directors: "May notify the
15 membership of any expulsion, suspension or censure" and
16 "Notification may include a statement of the circumstances
17 surrounding such action."

18 Indeed, plaintiff's declaration makes clear that his
19 reputation -- never mind career and livelihood -- faces
20 substantial risk of irreparable harm. As the Court set forth
21 in its ruling on subject matter jurisdiction: There appears
22 to be a substantial risk of the reputational damage from being
23 expelled; it appears that the IEEE can publicly announce such
24 circumstances of any expulsion, and the IEEE's alleged basis
25 for potential expulsion appears to be theft or fraud.

1 Third, the Court finds that granting temporary
2 restraints will not result in greater harm to the defendants
3 than to plaintiff. Although defendants argue that time is of
4 the essence because plaintiff will begin his term as president
5 of the Robotics and Automation Society in January 2018,
6 defendants do not explain in their submissions why the
7 procedures under section 7.10 of the policies and -- that's
8 7.10 of the policies -- and section I-110 of the bylaws cannot
9 be completed by January 2018. Further, as plaintiff aptly
10 notes, defendant's own declaration states that, "In mid-2015,
11 IEEE received a subpoena from a federal grand jury" and
12 "IEEE's receipt of the grand jury's subpoena prompted IEEE to
13 conduct an internal investigation related to Dr. Xi's"
14 complaint -- strike that -- "Dr. Xi's claimed expenses."
15 (Declaration of James Prendergast, P-R-E-N-D-E-R-G-A-S-T,
16 paragraphs 10 and 11.) At this stage, the Court finds that
17 time is of the essence for Dr. Xi, more so than it is for the
18 defendants.

19 Fourth, the Court finds that the public interest would
20 be served in issuing temporary restraints. There are bylaws
21 and policies in place for IEEE members, just like any
22 corporation -- for profit or nonprofit -- members have rights
23 pursuant to such governing documents. The Court is not
24 convinced that plaintiff requested an injunction to simply
25 delay internal proceedings. Rather, this proceeding is in the

1 public interest because it's about safeguarding rights and
2 privileges pursuant to the bylaws and policies.

3 Finally, the Court is not convinced by defendant's
4 exhaustion-of-remedies argument. All the defendant's cited
5 authority appears to involve federal agencies. Moreover, it
6 defies logic that the plaintiff must follow the very
7 procedures he's challenged -- irrespective of whatever outcome
8 may follow -- and then seek judicial review. It just doesn't
9 make sense to me. Indeed, as the Court noted, there is the
10 substantial risk of irreparable harm resulting from an adverse
11 outcome.

12 I am going to grant the remedy sought, that is,
13 enjoining IEEE from conducting a hearing on September 28th,
14 but I am not, at this juncture, doing anything more than that.
15 Okay?

16 What I now need counsel to do is provide the Court with
17 supplemental briefing on the next step. Do we need discovery?
18 Is there going to be permanent injunction sought? I don't
19 know. And it's up to counsel for both sides to argue their
20 points. I did also have the issue of a bond, that may or may
21 not be necessary under the circumstances, and I would like
22 counsel to address the bond as well as the appropriate amount
23 to require the plaintiff to obviously tender to the Court,
24 should -- now that there has been a favorable reading --
25 ruling, rather -- as to their immediate -- as to the immediate

1 restraints.

2 How long do we need? What I ideally would like to see,
3 perhaps, are simultaneous submissions with simultaneous
4 responses that everybody is responding to everything and
5 there's just set briefs and no one certifies or anything like
6 that.

7 How long do you need, counsel? Both of you, in
8 fairness.

9 MR. LINDSAY: Your Honor, a week to 10 days.

10 MR. VERNON: We were going to suggest the same.

11 THE COURT: Okay. Let's select some dates. How
12 about we do a text order, and we'll go ahead and select 10
13 days for the initial moving submissions. And how long for
14 responsive submissions?

15 MR. LINDSAY: I have to check my calendar.

16 THE COURT: Sure. Counsel, I want to work with you
17 all. If there's conflicts or you have trial or something
18 going on -- I certainly don't want to make life hard for
19 anybody --

20 MR. SCHUMACHER: I do have one request, your Honor.
21 I'm supposed to leave, I believe the 10th day to be the 6th of
22 October. I'm out of town for a wedding that I'm in.

23 THE COURT: A wedding that you're in?

24 MR. SCHUMACHER: Yes, your Honor.

25 THE COURT: We can't mess with that.

1 MR. LINDSAY: Can we move it one day?

2 MR. VERNON: Can we say the 5th, your Honor?

3 THE COURT: Any problem with the 5th?

4 MR. LINDSAY: I don't have any problem with that.

5 THE COURT: The 5th?

6 MR. LINDSAY: Okay.

7 THE COURT: How long do you need for submissions?

8 MR. LINDSAY: One week, your Honor.

9 THE COURT: Do you want more, counsel? I see you
10 shaking your head.

11 MR. SCHUMACHER: We would ask for the 13th.

12 THE COURT: Huh?

13 MR. SCHUMACHER: We would ask for the 13th.

14 MR. LINDSAY: I'm traveling on the 12th or the 13th,
15 so I would prefer the 11th.

16 THE COURT: Let's go to that following date.

17 MR. LINDSAY: I'm traveling through the 19th, so
18 that's why I prefer to get it done before I leave.

19 MR. SCHUMACHER: The 11th is fine.

20 THE COURT: All right, the 11th. I don't think I'll
21 need oral argument, but I might. And if I do need oral
22 argument, maybe we do it telephonically. All right?

23 Anything else?

24 MR. WIGGINS: One housekeeping matter, your Honor.
25 We had moved to seal exhibits A, B and C to the Prendergast

1 declaration. I spoke to counsel, they have no objection to
2 that request. Whether your Honor chooses to address it now or
3 later is obviously up to you.

4 THE COURT: There's no objection to sealing those
5 documents. I don't see why we can't go ahead and grant that
6 relief sought.

7 MR. WIGGINS: Thank you, your Honor.

8 THE COURT: Anything else?

9 MR. SCHUMACHER: No, your Honor. Just the pro hac
10 application, which I'm sure --

11 THE COURT: That's actually going to be before Judge
12 Hammer, but we'll go ahead and touch base with his honor. I
13 don't know -- and I always address this at all times -- I
14 don't know if this is one that could be settled, but we should
15 think about it. And I was actually going to ask counsel to
16 think about it, and if you want to come before Judge Hammer,
17 who is, in my opinion, a phenomenal magistrate judge. I know
18 he would welcome an opportunity to see if there's a resolution
19 that could be reached some way, somehow.

20 So why don't you all contemplate the idea of coming in
21 for an in-person settlement, and I will ask Judge Hammer to
22 set a telephone conference with you to inquire whether there's
23 any interest in trying to resolve the case. Makes sense?

24 MR. SCHUMACHER: Yes, your Honor.

25 MR. LINDSAY: Yes, your Honor.

1 THE COURT: Great. I appreciate counsel's arguments
2 here today. The briefs were exceptional and I always,
3 obviously, want to compliment counsel when there are some
4 great briefs. They were great, and provided me some
5 information as well. Thank you, counsel.

6 (Whereupon the proceedings are concluded.)

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REPORTER'S CERTIFICATE

I, **Mary-Jo Monteleone, CCR, CRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I further certify that I am neither related to any of the parties by blood or marriage, nor do I have any interest in the outcome of the above matter.

/S/ Mary-Jo Monteleone, CCR, CRR

09/27/2017

Official Court Reporter

Date