

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 29, 2006

In the Matter of :
: **ORDER ON UNTIMELY REQUEST TO**
ANTHONY C. SNELL and : **DESIGNATE AN EXPERT WITNESS**
CHARLES E. LECROY :
:
:

The hearing in this matter is scheduled to begin on December 4, 2006. The Scheduling Order, dated October 31, 2006, and the Order Denying Respondents' Motion for Partial Summary Disposition, dated October 26, 2006, both required Respondents to designate any proposed expert witnesses by November 15, 2006, and to file and serve the direct testimony of any proposed expert witnesses by November 29, 2006. Respondents did not designate any proposed experts by the November 15 deadline.

By letter received at 3:22 p.m., E.S.T., on November 28, 2006, Respondents belatedly seek permission to designate an expert witness to testify on their behalf. They acknowledge that their designation is thirteen days late. They represent that the proposed expert initially declined their request to become involved in the case, and then changed his mind. Respondents represent that the proposed expert's testimony will be "relatively narrow." They further state that they will have the expert's direct testimony prepared by today.

This morning, the Division of Enforcement (Division) submitted a letter "vigorously opposing" Respondents' untimely request to designate an expert witness. The Division observes that there are only three business days remaining before the hearing is scheduled to start. It asserts that it would be extremely prejudiced in its preparation to cross-examine the proposed expert.

The Division's concern is plainly justified, but I believe the preferable course is to minimize or eliminate the prejudice, rather than to bar the Respondents from presenting a full defense. Accordingly, Respondents' request will be granted, subject to the following conditions:

First, Respondents must deliver the direct written testimony of their proposed expert witness to the Division and to this Office today, as promised in their letter of November 28. At the same time, Respondents must also provide all the information required by Rule 222(b) of the Rules of Practice of the Securities and Exchange Commission.

Second, if Respondents' proposed expert has previously given expert testimony and/or authored any publications, Respondents must furnish the Division with the transcripts of such testimony and copies of such articles. Copying expenses and delivery by the fastest available means shall be paid by Respondents, not the Division.

Third, Respondents' proposed expert will not be permitted to testify until the Division has had sufficient time to prepare its cross-examination. If this requires the hearing to be continued, a reasonable continuation will be granted at the Division's request.

Fourth, if the Division wishes to cross-examine Respondents' proposed expert about the circumstances surrounding his initial declination and subsequent change of heart, the Division will be given latitude to do so.

Fifth, if, after reviewing the direct written testimony of Respondents' proposed expert, the Division believes it necessary to add an additional witness to its witness list, or to add additional exhibits to its exhibit list, it may do so. Likewise, if the Division wishes to use its redirect examination of its witness from the Municipal Securities Rulemaking Board to rebut the direct written testimony of Respondents' proposed expert, it may do so.

A telephonic prehearing conference is already scheduled for Friday, December 1, 2006, at 9:30 a.m., E.S.T. At that conference, we will consider whether additional relief should be granted to the Division. Respondents will also be expected to address the Division's claim that the proposed expert's testimony will be wholly irrelevant, based on previous admissions.

SO ORDERED.



James T. Kelly
Administrative Law Judge