

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Administrative Proceedings Rulings  
Release No. 6524 / March 27, 2019

Administrative Proceeding  
File No. 3-15124

In the Matter of  
  
**David F. Bandimere and  
John O. Young**

**Order Correcting  
Prehearing Conference  
Transcript**

I held a telephonic prehearing conference in this matter on March 13, 2019. I ORDER that the following corrections be made to the transcript of the conference:

Page/Line	Original Text	Corrected Text
4:6	Appeals and Supreme Court denied the Government cert.	Appeals and Supreme Court denied the Government's cert.
4:12	remand, the case was reassigned to Judge Folak who asked the	remand, the case was reassigned to Judge Foelak who asked the
4:18	when this case was reassigned to me and I then asked the	when this case was reassigned to me. And I then asked the
4:21	So, I asked the parties if any—if they have any	So, I'll ask the parties if any—if they have any
5:10–11	looks like the parties are serving each other by email, but I just like to confirm that the parties have agreed to serve	looks like the parties are serving each other by email, but I would just like to confirm that the parties have agreed to serve
5:20–23	appreciate receiving courtesy copies of all filings in my office's email address and it looks like everyone knows what that address is, but to	appreciate receiving courtesy copies of all filings at my office's email address. And it looks like everyone knows what that address is, but to

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	the extent you don't, it's a-l-j@sec.gov, and I have to remind you that the rules of	the extent you don't, it's alj@sec.gov. And I have to remind you that the rules of
9:13	have with the person, I'll—I'll adjudicate whatever motion	have with the disclosure, I'll—I'll adjudicate whatever motion
10:5	alluded to earlier that the party submitted a joint proposal	alluded to earlier that the parties submitted a joint proposal
10:11	did file an answer by that date, but it's—what's also	did file an answer by that date, but it's—what was also
10:17–18	back up. Have you—has the party discussed in advance of this year, of this pre-hearing conference, what to do about	back up. Have you—have the parties discussed in advance of this hearing—of this pre-hearing conference—what to do about
11:5–6	now. We employ a crack team of attorney advisors that are in the office who are currently in the process of editing it.	now. We employ a crack team of attorney advisers in this office who are currently in the process of editing it.
14:6	interesting. The parties that usually want one and I usually	interesting. It's the parties that usually want one and I usually
14:13–19	please include me in your exchange with expert reports because I will definitely read those and study them before the hearing and usually, I consider the experts report to be the—the expert's direct, but I will entertain and request first-hand experts for brief direct if there's a particular reason that is necessary, but again, I would prefer to just move on across because I said—because, as I said, I will	please include me in your exchange of expert reports because I will definitely read those and study them before the hearing. And usually, I consider the expert's report to be the—the expert's direct. But I will entertain a request to present experts for brief direct if there's a particular reason that it's necessary. But again, I would prefer to just move on to cross because I said—because, as I said, I will
14:23–24	the hearing and—and of course, I need to see them during the hearing, then on physical possession of them.	the hearing. And—and of course, I'll need to see them during the hearing, but don't need physical possession of

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		them.
16:23–25	Whatever the parties agree to, I usually like—them about a week out, in case things change or the parties want to—want to make them due two weeks	Whatever the parties agree to. I usually like them about a week out, in case things change. If the parties want to—want to make them due two weeks
17:1	beforehand. That’s also fine with me. So, the—again,	Beforehand, that’s also fine with me. So, the—again,
17:10	this is actually an impending proceeding. So, let me just	this is actually a pending proceeding. So, let me just
17:12–15	parties to comment if—if—if I’m—if I’ve miss something about the context, but for record purposes, the Commission issued an order on August 22, 2018 in which it order that respondents in pending cases be given the	parties to comment if—if—if I’m—if I’ve missed something about the context. But for record purposes, the Commission issued an order on August 22, 2018, in which it ordered that respondents in pending cases be given the
17:24–25	point—so, in the motion for a ruling on pleads, Mr. Bandimere has argued that this is not a pending proceeding,	point—so, in the motion for a ruling on the pleadings, Mr. Bandimere has argued that this is not a pending proceeding.
18:1	so Mr. Zisser, do I have that right? And do you want to	So Mr. Zisser, do I have that right and do you want to
19:12–14	bifurcate this and starting with the mandate issue, but I’ll call it the mandate issue. You’re talking about the—the 10th Circuit’s decision in granting a petition and—and—	bifurcate this and start with the mandate issue—what I’ll call the mandate issue. You’re talking about the—the 10th Circuit’s decision in granting the petition and—and—
19:17–21	The—the—the court appeal doesn’t say this case is remanded for further proceeding consistent with the subpoena, which is what you might often see in—in agency cases and having lost a few 10th Circuit cases myself, I can tell you that that is often what the court	The—the—the court of appeals doesn’t say “this case is remanded for further proceedings consistent with this opinion,” which is what you might often see in—in agency cases. And having lost a few 10th Circuit cases myself, I can tell you that that is often what the court

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	says, but it	says. But it
20:13–16	proceeding and ordered a new hearing and so, it looks to me as though the Commission has—has spoken and—and the Commission hasn’t given me the power to reconsider its decision, so I think my hands are tied.	proceeding and ordered a new hearing. And so, it looks to me as though the Commission has—has spoken. And—and the Commission hasn’t given me the power to reconsider its decisions. So I think my hands are tied.
27:9–10	the orders issued on August 22, 2018 and the order is titled, “Pending Administrative Proceedings.” And if you go to the	the order issued on August 22, 2018. And the order is titled, “Pending Administrative Proceedings.” And if you go to the
27:13	secretary is necessary. That’s how Commission orders are	Secretary is necessary. That’s how Commission orders are
27:19	I don’t think there’s any weight that I would actually accord	I don’t think there’s any weight that I should actually accord
27:21	office the secretary and it doesn’t purport to actually be	Office of the Secretary. And it doesn’t purport to actually be
27:25	don’t think that it’s comprehensive and it—it sort of	don’t think that it’s comprehensive. And it—it sort of
28:1–2	reminds me of—it made you go back to the days before PACER into the court where not everything was—was available to	reminds me of—if you go back to the days before PACER where not everything was—was available to
28:5–6	issue corrected orders on—on a docket for injuries that added an error, but then, you’ve got—I think this is a	issue corrected orders on—on a docket for entries entered in error. But then, you’ve got—I think this is a
28:9–10	was filed and I don’t see any basis to conclude the Commission did actually vote for nothing.	was filed. And I don’t see any basis to conclude the Commission did not actually vote four to nothing.
28:12	Bandimere’s argument, and I would like to move on to the	Bandimere’s argument. And I would like to move on to the

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28:14–16	question of whether or not, the sharing achievement that the timing of the hearing, in this case, would comply with the statutory requirement of the Commission 6, “A—a date for	question of whether or not, the statutory requirement that the timing of the hearing, in this case, would comply with the statutory requirement that the Commission fix a—a date for
28:22	JUDGE GRIMES: Yeah, the—well, the—the	MR. ZISSER: Yeah, the—well, the—the
30:6	hearing before succinct general counsel or perhaps a director	hearing before an assistant general counsel or perhaps a director
32:3	conference and so, I’m wondering, did—was that addressed	conference. And so, I’m wondering, did—was that addressed
32:5	—I don’t know, if if it’s for a delay, or finality, or	—I don’t know, if it’s void or a nullity, or
37:5–6	think in the absence of a—a case law that’s actually directly on point outline more general principles that are	think in the absence of a—case law that’s actually directly on point, I’ll rely on more general principles that are
37:10	Good Real Property, and finally, I’ll expel this United	Good Real Property, and finally, I’ll spell this, United
37:14	So, let’s move on to the ATA/18-A (12:47) claim. I	So, let’s move on to the APA claim. I
37:17–18	time relying on Section 555b of the Administrative Procedure Act and Mr. Zisser, I wonder if you could elaborate on that,	time relying on Section 555(b) of the Administrative Procedure Act. And Mr. Zisser, I wonder if you could elaborate on that,
39:10–11	You’re saying delayed since then, or are you saying delayed since the Lucia decision was issued, or since Circ was denied	You’re saying delay since then, or are you saying delay since the Lucia decision was issued, or since cert. was denied
40:12–13	going to cut you off right there. There actually is client case law on—on how to interpret that and I will refer the	going to cut you off right there. There actually is case law on—on how to interpret that. And I will refer the

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40:15	Datentire v. Secretary of Labor and it's 671 F.3d 1249 and	Dayton Tire v. Secretary of Labor and it's 671 F.3d 1249 and
40:23–25	is, “To compel agency action according to statutory language,” which is Section 706, Subsection 1. “The remedy is to compel agency action unlawfully withheld or	is to “compel agency action”—according to the statutory language, which is Section 706, Subsection 1—the remedy is to “compel agency action unlawfully withheld or
41:6	to take account of the factors that are listed in the case	taking account of the factors that are listed in the cases
41:10	of the Administrative Procedure Act and since the parties	of the Administrative Procedure Act. And since the parties
41:14	let's put aside the Advisor's Act for now and I'll ask the	let's put aside the Advisers Act for now, and I'll ask the
41:17	has authority to Section 8-A of the Securities Act after the	added authority to Section 8A of the Securities Act after the
41:24–25	Advisor's Act just for purposes of this discussion, I think the question then is whether several penalties are available	Advisers Act just for purposes of this discussion, I think the question then is whether civil penalties are available
44:19	Wantsover, do you have any other cases either from the	Wonsover, do you have any other cases either from the
45:8–9	So, any—so, I wouldn't hold it against him on that point. So, let's move on to alternative pleadings. Mr.	So, any—so, I would hold against him on that point. So, let's move on to alternative pleadings. Mr.
47:5–7	which I would normally splee (phonetic) in—let me try that in English—in that sort of order, I would normally say for the read and state it during the hearing, “The motion is	which I would normally explain—let me try that in English—in that sort of order, I would normally say “for the reasons stated during the hearing, the motion is
47:16	JUDGE GRIMES: All right. I can certainly approve	JUDGE GRIMES: All right. I can certainly include
48:12–13	JUDGE GRIMES: So, let's just—that—it's really the	JUDGE GRIMES: So, let's just—that—it's really a yes-

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	eternal question. Is this a separate argument or	or-no question. Is this a separate argument or
48:15	not saying it is yes or no. So, let me just—let me just	not saying it as a yes or no. So, let me just—let me just
50:5	by that, I mean you—the party needs to give me case law	by that, I mean you—the parties need to give me case law
51:7	reflect, and I—I stand corrected on that point.	reflect that I—I stand corrected on that point.
51:18	saying that you're raising for institutional prejudgment or	saying that you're raising institutional prejudgment or
52:13	you've stated an argument and I think that I now understand	you've stated your argument and I think that I now understand
52:15	Withrow v. Larkin and the D.C. Circuit's decision and Blender	Withrow v. Larkin and the D.C. Circuit's decision in Blinder,
56:16	argument take a very narrow view of what sort of statements	argument takes a very narrow view of what sort of statements
56:21	were rendered mislead?	were rendered misleading?
58:24	rates of return, or I guess guaranteed returns is referred to	rates of return, or I guess guaranteed returns referred to
66:5	JUDGE GRIMES: And to the merits, but I mean, I	JUDGE GRIMES: As to the merits, but I mean, I
67:12	that Mr. Bandimere told investors that would get a guaranteed	that Mr. Bandimere told investors they would get a guaranteed
67:21–22	course, I have to take the allegations as truth for purposes of—of this motion, so do you—is it your position that	course, I have to take the allegations as true for purposes of—of this motion. So do you—is it your position that
68:11	that you're—you're—you're—you're disputing that, but	that you're—you're—you're—you're disputing that. But
68:14–19	flesh out whether or not that—that something is material and it's not like you're—you're—you're saying that not—it's not	flesh out whether or not that—that's something that is material. And it's not like you're—you're—you're saying that's not. It's not

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	necessarily material to your objective. A reasonable investor would, I guess—I guess likely, would that significantly alter the total mix of information available to that investor and—and you’re disputing that.	necessarily material to your objective, reasonable investor who would, I guess—I guess likely, would think that significantly alters the total mix of information available to that investor. And—and you’re disputing that.
70:11	to disclose that he repaid large commissions, and that’s	to disclose that he was paid large commissions, and that’s
71:21–22	forward to a—an order addressing the other pending motions hopefully in the next day or two and in that order, I will	forward to a—an order addressing the other pending motion, hopefully in the next day or two. And in that order, I will

I direct the court reporter to implement the above changes and issue a complete, amended transcript for the conference held on March 13, 2019. The amended transcript should also be provided in electronic format to my office.

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James E. Grimes  
Administrative Law Judge