

Judge Elliot Subpoena

Judge Elliot had presided over the proceeding prior to *Lucia v. SEC* and the August 22 Order. The subpoena directed to him asks for a number of documents, including drafts of published orders and communications with various persons. In light of the Commission's explicit direction in the August 22 Order that the undersigned ALJ "*shall not give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in the matter,*" production of these materials would be "unreasonable and oppressive," as having no relevance to any issues to be decided by the undersigned. *See* 17 C.F.R. § 201.232(b). The subpoena will not be issued.

Division Subpoenas

This request notes the receipt in 2015 of a hard drive containing the Division's disclosure pursuant to 17 C.F.R. § 201.230 of documents obtained by the Division prior to the institution of proceedings in connection with the investigation leading to the Division's recommendation to institute proceedings. The request describes the hard drive as containing approximately 350,000 pages of files, of which approximately 100,000 were unsearchable images. The request appears to ask for the delivery of the 100,000 pages in a searchable format. However, the Division represents that it produced the files in the same format in which it had received and stored them, and to the extent that they are unsearchable by Respondent, they are equally unsearchable by the Division.

The Division represents that it has produced all documents requested up to the September 8, 2015, date of the OIP. The Division has searched its files and located a number of documents received from and communications with external parties as requested since the date of the OIP and stands ready to produce these materials promptly. It should do so.

Respondent also requests all internal communications related in any way to himself or to SoVestTech, Inc. (f/k/a Ditto Holdings, Inc.), including documents related to potential settlements and documents related to the draft OIP. Such materials are protected by the attorney work-product doctrine and deliberative process privilege and may also be limited from disclosure by Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5).¹ He also requests "all documents (no matter the sender, receiver, or subject matter) that references the case Abraham and Sons Capital, Inc. between March 15, 2016 through March 26, 2019." This request, limited only as to date, is excessive in scope and lacks relevance. *See* 17 C.F.R. § 201.232(b).

In light of the Division's undertaking to produce the post-OIP documents received from and communications with external parties described above, the Division subpoenas will not be issued.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

¹ The Division also represents that it did not have any *ex parte* communications with the previously assigned ALJ and offers to produce the communications that it had with staff of the Office of Administrative Law Judges, such as forwarding courtesy copies. It should do so.