

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4102/August 30, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17104

In the Matter of

BIOELECTRONICS CORP.,
IBEX, LLC,
ST. JOHN'S, LLC,
ANDREW J. WHELAN,
KELLY A. WHELAN, CPA, and
ROBERT P. BEDWELL, CPA

ORDER REGARDING RESPONDENTS'
MOTION IN LIMINE

On February 5, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondents pursuant to Section 8A of the Securities Act of 1933, Sections 4C, 15(b), and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice. The hearing is scheduled to begin on September 12, 2016, in Washington, D.C., as to Respondents BioElectronics Corp., IBEX, LLC, St. John's, LLC, Andrew J. Whelan, and Kelly A. Whelan, CPA.¹

On August 26, 2016, the Division of Enforcement filed its objections to Respondents' exhibit list, which I will address in court at the start of the hearing. Also on August 26, 2016, Respondents filed a motion in limine and objections to Division's witnesses and exhibits (Motion). Inasmuch as the Motion lists objections to the Division's proposed exhibits, I will address it, too, at the start of the hearing.

I note, however, that Division exhibits (DX) 14, 15, and 16, to which Respondents object, do not appear on the filed version of the Division's exhibit list. I also note that some of the exhibits the Division allegedly has not furnished to Respondents were either not due until August 26, 2016, because they are expert reports, or were already in Respondents' possession – including, for example, DX 114 (various Commission filings by Respondent BioElectronics Corp.) and DX 123-28 (declarations apparently filed in support of motions for summary disposition). *See* Motion at 1-2. I expect the parties to complete their exchange of pre-marked exhibits by the time of the final prehearing conference, scheduled for September 7, 2016, at 2:00

¹ The proceeding is stayed as to Robert P. Bedwell, CPA. *BioElectronics Corp.*, Admin. Proc. Rulings Release No. 4091, 2016 SEC LEXIS 2983 (ALJ Aug. 24, 2016).

pm EDT. If the parties have not completed their exhibit exchange at that time, the offering party should be prepared to explain why, and the objecting party should be prepared to identify the prejudice they have thereby suffered.

As for the rest of the Motion, the admissibility of prior sworn statements depends on the circumstances. Those expert reports filed on August 26, 2016, substitute as direct testimony. Prior sworn statements by lay witnesses are properly listed on exhibit lists for ease of identification, but they are presumptively inadmissible and I generally reject them as exhibits (although they may be used for impeachment). *See* 17 C.F.R. § 201.235(a). Attachments to expert reports are generally admissible as part of the expert's report, but attachments to lay witness declarations should be broken out and listed as separate hearing exhibits.

Because the prehearing schedule made expert reports due at the same time as motions in limine, the parties should renew any objections to expert testimony at the hearing. As it pertains to the Division's expert evidence, therefore, the Motion is denied without prejudice. *See* Motion at 9-12. Objections to testimony, on any ground, including hearsay and duplicativeness, should be made on a question-by-question basis. *See id.* at 8. I will address the admissibility of DX 54 at the start of the hearing. *See id.* at 8-9. To that end, the parties are reminded that they should furnish me with electronic copies of their exhibits at that time.

I have carefully considered the other arguments presented in the Motion, and find them meritless. The Division need not respond to the Motion in writing.

SO ORDERED.

Cameron Elliot
Administrative Law Judge