

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16386

IN THE MATTER OF  
  
TIMOTHY W. CARNAHAN,  
  
AND CYIOS CORPORATION  
  
RESPONDENTS

**NOTICE OF MOTION  
FOR CERTIFICATION OF ORDER FOR  
APPEAL PURSUANT TO 28 U.S.C.  
§1292(b); MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF  
NOTICE OF MOTION**

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:  
PLEASE TAKE NOTICE that on **October, 5<sup>th</sup>, 2018** or as soon  
thereafter as the matter may be heard, before the administrative proceeding **THE RESPONDENTS**  
shall move and hereby moves the ALJ for **certification of an interlocutory appeal**, pursuant to 28  
U.S.C. § 1292(b), of the ALJ's **Release No. 6126/October 1, 2018 order ("Order")**.  
This motion is based on this notice of motion, the accompanying memorandum of points and  
authorities, the Order, and all the pleadings, papers, and files in this case.

An interlocutory appeal of the ALJ's Order would give the opportunity to address several  
important questions about the law in question. **Specifically, what proceeding was dismissed  
and to whom or what parties, and specifically what proceeding(s), and violations were  
vacated. Finally, the tolling period has expired based upon the 5 year Statue of limitation  
Section 2462 of Title 28 of the United States Code.**

AN INTERLOCUTORY APPEAL IS APPROPRIATE UNDER 28 U.S.C.  
§ 1292(b).e

An interlocutory order is appealable under 28 U.S.C. § 1292(b) if: (1) the order has been  
certified for appeal by the Court, and (2) the Court, in its discretion, accepts the appeal. This  
Court should complete the first step by certifying that the Order is appropriate for immediate  
appeal under section 1292(b).e

Under section 1292(b), there are three requirements for certification:e

- ✓e The order involves a controlling question of law;e
- ✓e There is a substantial ground for difference of opinion as to that question;e  
Ande
- ✓e An immediate appeal from the order may materially advance the ultimate termination of e  
the litigation. 28 U.S.C. § 1292(b).e

## Discussion and background to appeal:

The below email thread between the parties in question clearly demonstrates substantial ground for difference of opinion.

From: Davis, Christopher A. <DavisCa@SEC.GOV>  
Sent: Wednesday, October 3, 2018 3:34 PM  
To: Timothy Carnahan  
Subject: RE: CORRECTION: order : Release No. 6126/October 1, 2018

I cannot file a motion for you.

From: Timothy Carnahan [mailto:carnahan@cyfos.com]  
Sent: Wednesday, October 03, 2018 2:33 PM  
To: Davis, Christopher A.; ALJ; McCole, Timothy S.; Stewart, Angella L.  
Cc: Thomas, Charvelle; Bruno, Anthony; Lindell, Joseph; Ristau, Benjamin; Abel, Bradley; Woodworth, Charles; Rigg, Zachary  
Subject: Re: CORRECTION: order Release No. 6126/October 1, 2018  
Importance: High

Chris,

Here is the issue - the order is wrong so any conversation thereafter is baseless.

Is my request to change the order incorrect in proceedings - as I've read the rules of practice and can't find anything on this issue other than a formal motion.

If it is a motion, then can the SEC file the motion for me - as you can see the order is incorrect?

Please advise as so if you don't wish to have good faith, then I'll have to figure out quickly how to file this motion.

Vr, Tim:

Timothy Carnahan | CEO

From: Davis, Christopher A. <DavisCa@SEC.GOV>  
Sent: Wednesday, October 3, 2018 3:22 PM  
To: Timothy Carnahan; ALJ; McCole, Timothy S.; Stewart, Angella L.  
Cc: Thomas, Charvelle; Bruno, Anthony; Lindell, Joseph; Ristau, Benjamin; Abel, Bradley; Woodworth, Charles; Rigg, Zachary  
Subject: RE: CORRECTION: order : Release No. 6126/October 1, 2018

Tim -

I am happy to confer with you on this issue—along with the other issues that we are required to confer on pursuant to Judge Foleak's most recent order. Please reach out to me individually to set up a time to do that. Thanks.

Chris

From: Timothy Carnahan [mailto:carnahan@cyfos.com]  
Sent: Wednesday, October 03, 2018 2:10 PM  
To: ALJ; Davis, Christopher A.; McCole, Timothy S.; Stewart, Angella L.  
Cc: Thomas, Charvelle; Bruno, Anthony; Lindell, Joseph; Ristau, Benjamin; Abel, Bradley; Woodworth, Charles; Rigg, Zachary  
Subject: Re: CORRECTION: order : Release No. 6126/October 1, 2018  
Importance: High

Chris,

I consider this another "Chapter of Story telling" that the SEC has played. The SEC staff attorneys constantly "create stories" and "twist the truth" as to what really has happened - submit the paperwork to the judge and then it becomes an order. This is wrong!!!

Please see the attached which CLEARLY includes Carnahan and CYIOS in the ID from December which "Dismissed" the charge on the Section 105 alleged charge associated with Trad Anderson; a quote from the ID. "I therefore dismiss this proceeding as to Anderson and find no Section 105(c)(7)(B) violations by Carnahan or CYIOS."

As I claim and show proof, the Order is misleading and incorrect; I simply and respectfully ask for the record to be corrected.

I just don't know any other way to ask for this to be corrected, but again, it now appears crystal clear that the SEC just "creates a story" and then thinks it comes true; please read the record and help me correct it.

Vr, Tim:

Timothy Carnahan | CEO

From: Davis, Christopher A. <DavisCa@SEC.GOV>

Sent: Wednesday, October 3, 2018 2:26 PM

To: Timothy Carnahan

Subject: RE: CORRECTION: order : Release No. 6126/October 1, 2018

Tim --

I know you have conferred on the status of this proceeding with my colleague David Fraser in recent weeks. But to be clear, the 12/21/15 Initial Decision issued by Judge Elliot did not dismiss the proceeding as to you or CYIOS. Now, as a result of the Supreme Court's Luda v. SEC decision, the proceeding has been transferred to Judge Foleak. That is why she issued the order which was attached to your email below—so we can confer and submit a joint proposal for the conduct of further proceedings. We need to submit that proposal by November 16. Consequently, please let me know when you are able to confer on this. Thanks.

Chris

Chris Davis

Senior Trial Counsel

U.S. Securities and Exchange Commission

From: Timothy Carnahan

Sent: Tuesday, October 2, 2018 5:47:30 PM

To: All; Davis, Christopher A.; McCole, Timothy S.; Stewart, Angella L.

Cc: Thomas, Charvelle; Bruno, Anthony; Lindell, Joseph; Ristau, Benjamin; Abel, Bradley; Woodworth, Charles; Rigg, Zachary

Subject: CORRECTION: order : Release No. 6126/October 1, 2018

The attached order is incorrect, misleading and should be corrected.

1st paragraph 3rd sentence:

On December 21, 2015, an Initial Decision (ID) dismissed the proceeding as to Traci J. Anderson, CPA, and imposed various sanctions on Respondents;

Correction:

The Initial Decision (ID) dismissed the proceedings as to Traci J. Anderson, CPA, Timothy W. Carnahan and CYIOS Corporation; no "Sanctions" were imposed - if so, they have been vacated.

This is extremely important for the court to recognize and transmit to the public and for the record the true position of this matter.

Can we please get this record corrected before we move forward with any proceeding in this matter?

Vr, Tim

Timothy Carnahan | CEO

**Here, all three requirements for the interlocutory appeal are met.**

**1. The Order Involves Controlling Questions of Law.**

The Order involves several controlling questions of law. “[A]ll that must be shown in order for a question to be ‘controlling’ is that resolution of the issue on appeal could materially affect the outcome of litigation in the district court.” *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1982).

**2. There is Substantial Ground for Difference of Opinion on the Controlling Questions of Law.**

In *Gabelli*, the SEC alleged that individual defendants aided and abetted an illicit quid pro quo between a mutual fund and one of its corporate investors. The SEC filed its action more than five years from the date of the alleged wrongdoing but argued that because the claim was based on fraud, the time within which it was required to bring the action did not begin to run until the agency could reasonably have discovered the alleged fraudulent conduct. The Supreme Court rejected the application of the so-called “discovery rule” on the grounds that its rationale is inconsistent with a regulatory action for civil penalties. According to the court, the discovery rule is “an exception to the standard rule ... where a plaintiff has been injured by fraud and remains [ignorant] without any fault or want of diligence.” By contrast, “the SEC’s very purpose is to root [fraud out].” As a result, the court held that the limitations period for the SEC’s claims for civil penalties should be calculated from the date of the defendants’ wrongdoing, not from the date of the SEC’s discovery of that wrongdoing.

In this case, 2010 is the year in question – the case has been vacated and there is a difference of opinion of the controlling law; more so, there is substantial ground for difference on what the SEC has dismissed and vacated. Finally, tolling for the SEC to bring any violation has expired.

**3. An Immediate Appeal May Materially Advance the Ultimate Termination of the Litigation.**

An immediate appeal may materially advance the ultimate termination of the litigation. “[N]either § 1292(b)’s literal text nor controlling precedent requires that the interlocutory appeal have a final, dispositive effect on the litigation.

It is sufficient that a reversal may take claims out of the case “[t]hat is sufficient to advance materially the litigation” and make certification of an interlocutory appeal permissible.

It’s obvious this case should be dismissed which would materially advance the termination of litigation.

**Timeliness:**

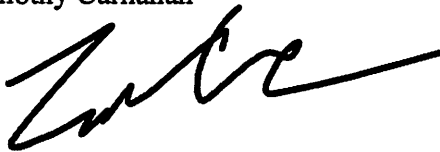
This Order was received October 2<sup>nd</sup>, 2018 – not directly but by checking the <https://www.sec.gov/litigation/apdocuments/ap-3-16386.xml>; this motion is file timely.

Date: October 5<sup>th</sup>, 2018  
Respondents submitted,  
Respectfully,



---

Timothy Carnahan



---

Timothy Carnahan, CEO and President of CYIOS

Service List

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing Reply to the Division of Enforcement's Summary Disposition was served on the persons listed below October 4<sup>th</sup>, 2018 via United States Postal Service or email where indicated:

Honorable Brenda P. Murray Chief  
Administrative Law Judge SEC  
100 F Street, N.E.  
Washington, DC 20549-2557  
via USPS

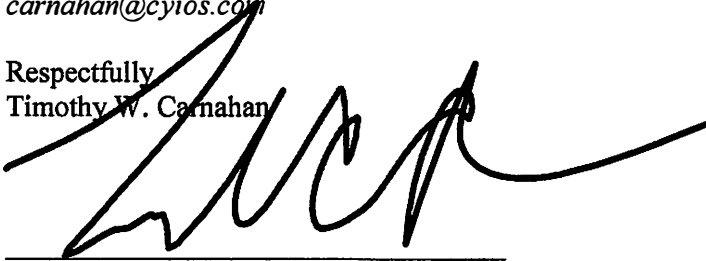
Carol Fox Foela  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557  
ALJ@sec.gov

Chris Davis  
Timothy McCole  
801 Fort Worth Regional Office  
Securities and Exchange Commission  
801 Cherry Street, Suite 1900  
Fort Worth, TX 76102  
DavisCa@SEC.GOV

Timothy W. Carnahan  
President and CEO and Chairman CYIOS  
Corporation  
*carnahan@cyios.com*

CYIOS Corporation  
c/o Timothy W. Carnahan, President, CEO  
and Chairman  
2637 E. Atlantic Blvd #28464  
Pompano Beach, FL 33062  
*carnahan@cyios.com*

Respectfully  
Timothy W. Carnahan



---

ADMINISTRATIVE PROCEEDING  
File No. 3-16386