

ADMINISTRATIVE PROCEEDING
FILE NO. 3-12064

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 9, 2005

In the Matter of :
: ORDER FOLLOWING PREHEARING
GREGORY M. DEARLOVE, CPA : CONFERENCE
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on September 30, 2005. The hearing is scheduled to begin on January 23, 2006.

The Scheduling Order of November 1, 2005 (Scheduling Order), required the Division of Enforcement (Division) to file and serve a list of its proposed witnesses and to provide the details required by Rules 222(a)(4) and 222(b) of the Commission's Rules of Practice by November 29, 2005. The Scheduling Order also required the Division to file and serve a list of its proposed exhibits by December 6, 2005.

At our first prehearing conference, the Division stated that it expected to offer testimony from eight fact witnesses and one expert witness (Prehearing Conference of Oct. 28, 2005, at 16). However, the Division's witness list, dated November 29, 2005, named thirty proposed fact witnesses and two proposed expert witnesses. In describing the subject matter of the testimony, the Division stated that at least fifteen of its proposed fact witnesses will testify about "matters relating to Deloitte's 2000 audit of the financial statements of Adelphia Communications Corporation and related entities." Additional specificity was not provided.

At our first prehearing conference, the Division also said that it expected to offer dozens of exhibits, but not hundreds of exhibits (Prehearing Conference of Oct. 28, 2005, at 16). However, the Division's exhibit list, dated December 6, 2005, identified 501 entries. Some of these proposed exhibits were hydra-headed: for example, proposed exhibit # 37, "Exhibits from U.S. v. Rigas," included hundreds of sub-exhibits, and proposed exhibit # 372, transcripts of depositions taken in Adelphia Comm. Corp. v. Deloitte & Touche, LLP, included twenty-one separate depositions. As a result, the actual number of proposed exhibits far exceeds 501.

The Division's exhibit list contained several puzzling entries. As illustrations, proposed exhibits ## 6-7, 32-33, and 372 included transcripts of deposition or investigative testimony given by eleven persons who are not even named on the Division's witness list; twenty-five proposed exhibits consisted of nothing more than subpoenas issued during the Division's

investigation (## 39-41, 45-50, 55, 57-58, 60, 67, 86, 113, 145, 184, 188, 200, 205, 210-11, 214, and 217); and forty-six proposed exhibits were newspaper articles and press releases that the Division apparently intends to offer for the truth of the matters asserted therein (## 436-75, 482, 484-89). Thirteen proposed exhibits either do not yet exist (## 490-501) or involve missing documents that the Division is still attempting to replace (# 366). Proposed exhibits ## 257-302 were listed as "produced on disc" and were identified by unintelligible names that conveyed no information about their content or size.

I held a second telephonic prehearing conference with the parties on December 7, 2005, to discuss these matters. As a result of this conference, the Division has agreed to take the following corrective action.

First, the Division will file and serve an amended (shortened) witness list by December 16, 2005. The amended witness list will identify only those fact witnesses whom the Division expects to call during its case-in-chief.¹ The Division has again estimated that there will be eight to ten such witnesses, not thirty. The Division will also provide a more detailed, one-paragraph summary of each witness's anticipated testimony, in an effort to distinguish the testimony of each witness from that of the other witnesses.²

Second, the Division will file and serve an amended (shortened) exhibit list by December 20, 2005. Exhibits that now exist only on discs (## 257-302, 381-431) must be described in plain English.

Third, the Division must turn over to Dearlove its summary and demonstrative exhibits (## 490-501) by January 10, 2006. It must also make available the related source materials at that time.

¹ The information the Division provided about its proposed expert witnesses complied with Rule 222(b) of the Commission's Rules of Practice. Accordingly, this Order does not require the Division to repeat that information or to re-designate its experts on December 16.

² This will have collateral consequences for the Scheduling Order, which requires Dearlove to identify his proposed witnesses on December 13, 2005, and his proposed exhibits on December 20, 2005. It was never my intention that Dearlove should identify his proposed fact witnesses and his proposed exhibits before the Division has properly identified its proposed fact witnesses and its proposed exhibits. Accordingly, the Scheduling Order is modified to permit Dearlove to identify his proposed fact witnesses and his proposed exhibits by January 11, 2005. Because the Division has already identified its proposed experts, Dearlove must still identify his proposed expert(s) on December 13, as the Scheduling Order requires. The Division will not be heard to argue that it is prejudiced by this modification of the Scheduling Order, because the predicament is entirely of the Division's making.

On December 5, 2005, I issued an Order requiring the Division to provide Dearlove with certain Jencks Act-related information by December 19, 2005. If the Division narrows its witness list as anticipated on December 16, it need only provide Jencks Act-related information by December 19 regarding the eight to ten individuals on its revised witness list.

I also established certain ground rules for the hearing. Exhibits that now exist only on discs shall be offered at the hearing only in hard copy format. Depositions and investigative transcripts are unlikely to be accepted into the record in their entirety. Rather, only the relevant portions of such transcripts are likely to be accepted. Del Mar Fin. Svcs., Inc., 81 SEC Docket 1691, 1705 & n.22 (Oct. 24, 2003); Oxford Cap. Mgmt., Inc., 79 SEC Docket 1377, 1377 (Jan. 14, 2003).

Another telephonic prehearing conference is scheduled for December 21, 2005, at 10 a.m. EST. At that conference, the agenda will include a review of the Division's amended witness list (due December 16), the report(s) of the Division's expert witnesses (due December 16), the Division's amended privilege log (due December 19), certain Jencks Act-related information (due December 19), and the Division's amended exhibit list (due December 20).

SO ORDERED.



James T. Kelly
Administrative Law Judge