

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-12359

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
January 16, 2007

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In the Matter of	:	
	:	ORDER ADDRESSING RESPONDENT
ANTHONY C. SNELL and	:	LECROY'S REQUEST FOR THE
CHARLES E. LECROY	:	PREPARATION OF A REVISED
	:	HEARING TRANSCRIPT

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I held a public hearing in this matter from December 4 through December 8, 2006. The hearing was transcribed by stenographers from Diversified Reporting Services, Inc. (Diversified). Three different stenographers covered the hearing: one on December 4; another on December 5, 7, and 8; and a third on December 6. Each day's transcript includes both a reporter's certificate and a proofreader's certificate, attesting to its completeness and accuracy. The entire transcript is 806 pages in length.

By letter dated December 28, 2006, Respondent Charles E. LeCroy (LeCroy) expressed concern about several possible substantive errors and omissions in the hearing transcript.<sup>1</sup> He characterized these possible errors and omissions as "substantial" and "complex." To illustrate his concerns, LeCroy identified three purported errors and omissions from the December 8 transcript. Each involves an extensive exchange that, in LeCroy's judgment, appears too abbreviated in the transcript. LeCroy offered no examples of suspected substantive errors or omissions from the transcripts of the first four days of the hearing. As relief, LeCroy asked me to require the stenographers to proofread the transcripts against any audio backup tapes, and to determine if the transcripts contain substantive errors and omissions. If such substantive errors and omissions are found, LeCroy sought to require the stenographers to correct the transcripts.

The Division of Enforcement (Division) responded to LeCroy's letter on January 4, 2007. The Division agreed that the hearing transcript contains errors, but expressed the view that the errors are not more numerous than in any other transcript. The Division took no position on LeCroy's request for the preparation of a revised transcript.

This Office provided Diversified with a copy of LeCroy's December 28 letter. I received Diversified's preliminary response on January 5, 2007, and its follow-up response on January 10,

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<sup>1</sup> The parties have stipulated to non-substantive corrections to the hearing transcript. See Rules 302(c) and 324 of the Rules of Practice of the Securities and Exchange Commission (Commission). I address those non-substantive corrections in a separate Order issued today.

2007. Copies of these letters have been forwarded to the parties and filed in the official docket. I also discussed the matter with the parties at a post-hearing telephone conference on January 8, 2007.<sup>2</sup>

In its January 5, 2007, letter, Diversified advised that backup audio cassettes exist for December 4, the first day of the hearing. The transcript for that day's proceedings is 179 pages in length. An attorney-adviser in this Office has listened to the backup audio cassettes and compared the backup audio cassettes to the December 4 transcript. I have done the same. We found no substantive errors or omissions on pages 1 through 152 of the transcript.<sup>3</sup> We were unable to conduct a similar comparison for pages 153 through 179 of the December 4 transcript because the relevant parts of the backup audio cassettes are all static.<sup>4</sup>

Notwithstanding the absence of backup audio records for December 5-8, the stenographers for those days have independently reviewed their notes and compared their notes to the transcripts. Neither court reporter believes that there are substantive errors or omissions. For example, a letter from Ronald Bennett, the stenographer who transcribed three days of hearings, states in relevant part: "I have done a pretty thorough review of the SEC hearing . . . . My notes reflect what the transcript reflects. . . . I believe the transcript is a true and accurate record of the proceedings, and there are no substantive missing words."

Of course, due process demands a reasonably accurate and reasonably complete transcript. Cf. Kheireddine v. Gonzales, 427 F.3d 80, 84-86 (1st Cir. 2005) (collecting cases). However, in the criminal law context, even a missing transcript, without more, does not require reversal or remand. Id. Rather, a claimant must show specific prejudice to his ability to perfect an appeal, sufficient to rise to the level of a due process violation. Id. Prejudice must be material to the issues presented for review, and it can be overcome if the missing material can be reasonably recreated or derived from other sources. Id. These other sources can include a party's recollections. Cf. Fed. R. App. Pro. 10(c), 10(e).

If, after reviewing the Division's proposed findings of fact, proposed conclusions of law, and brief, Respondents believe that the Division has relied on an inaccurate or incomplete aspect of the transcript, they may file a motion to make a substantive correction to the relevant portion

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<sup>2</sup> At page 8 of the January 8, 2007, post-hearing conference transcript, LeCroy's counsel stated: "I certainly cannot point the Court to particular areas where I think that there are problems on the earlier days."

<sup>3</sup> At the January 8 post-hearing conference, LeCroy's counsel expressed concern that argument of counsel about opinion testimony from lay witnesses may have been abbreviated in the transcript. After listening to the backup audio cassettes for pages 1-152, I am satisfied that the transcript is accurate and complete on this issue. No argument of counsel has been omitted from those pages.

<sup>4</sup> Diversified provided five backup audio cassettes for the December 4 hearing. The quality of the audio recording is satisfactory on tapes 1, 2, 3, and on most of tape 4, side A. The end of side A of tape 4, all of tape 4, side B, and tape 5, side A, are nothing but static.

of the hearing transcript. See Rule 302(c) of the Commission's Rules of Practice; cf. Fed. R. App. Pro. 10(c), 10(e). Any such motion will be due when Respondents file their proposed findings of fact, proposed conclusions of law, and brief.

If, after reviewing Respondents' proposed findings of fact, proposed conclusions of law, and brief, the Division believes that Respondents have relied on an inaccurate or incomplete aspect of the transcript, it may file a motion to make a substantive correction to the relevant portion of the hearing transcript. Any such motion will be due when the Division files its optional reply to Respondents' post-hearing pleadings.

In these circumstances, LeCroy's request for Diversified Reporting Services, Inc., to prepare a revised hearing transcript is DENIED. This ruling is without prejudice to the parties' having an opportunity to file a motion to make substantive corrections to the hearing transcript, in the manner and at the time described above.

  
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James T. Kelly  
Administrative Law Judge

Received

JAN 10 2007

Office of Administrative  
Law Judges

Diversified Reporting Services, Inc.  
1101 Sixteenth Street, NW  
2<sup>nd</sup> Floor  
Washington, D.C. 20036

January 10, 2007

Honorable James T. Kelly  
Administrative Law Judge  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-2557

Re: In the Matter of Anthony C. Snell and Charles E. LeCroy  
Administrative Proceeding File No. 3-12359

Dear Judge Kelly:

This letter serves as a further update on the above referenced matter. I understand Mr. Teague Gibson, the reporter for the 6<sup>th</sup>, has been in contact with you. I am attaching his letter to this fax for your review. I also just received a letter from Mr. Ron Bennett, the reporter for the 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>, and am sending that to you as well.

In addition, the deposition of Mr. Snell was sent to his attorney on Monday as well as another copy to Veronica Gillette at the Securities and Exchange Commission Headquarters. I also sent another copy of the tapes from the 4<sup>th</sup>.

Please let me know if I can be of further assistance in resolving this matter.

Thank you,



Michelle Yenchochic  
General Manager

Received

January 8, 2006

JAN 10 2007

Office of Administrative  
Law Judges

Teague Gibson  
9615 Ironsides Road  
Nanjemoy, MD 20662  
301.246.9905

Michelle Yenchochic,  
Diversified Court Reporting

Dear Ms. Yenchochic,

This letter is in response to your firm's inquiry regarding possible transcription errors in the SEC hearing taken stenographically by me on December 6, 2006.

After re-reviewing the transcript of the proceedings as requested, I have found the two areas of dispute you asked me to look at are typographical in nature. Although what I have in my stenographic notes matches what is in the transcript, I misunderstood the testimony of the parties in the above-mentioned instances.

With respect to any audio recordings of the testimony, as a rule, I do not keep, and we as reporters are not required to keep, copies of the audio files after producing the transcript; although I am required to keep the steno note file.

If you have any questions regarding this issue, please call me at 301.246.9905. I would be happy to answer any questions you may have.

Thank you.

Sincerely,

  
Teague Gibson

01/10/2007 09:00 2022383400  
Hi Michelle. I have done a pretty thorough review of the SEC hearing and the specific portions cited.

My notes reflect what the transcript reflects. I do recall several times a request of the attorneys to wait until the other side finished before objecting, and simultaneously stating their objection while the attorney is talking.

While this did occur numerous times, and it is not possible to take several people talking at the same time, I believe the transcript is a true and accurate record of the proceedings, and there are no substantive missing words.

If I can be of further assistance, please don't hesitate to call.

Yours truly, Ron.

Received

JAN 10 2007

Office of Administrative  
Law Judges