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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2987/July 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16649

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| In the Matter of<br><br>IRONRIDGE GLOBAL PARTNERS, LLC,<br>IRONRIDGE GLOBAL IV, LTD. | SCHEDULING ORDER |

The Commission instituted this proceeding under Sections 15(b) and 21C of the Securities Exchange Act of 1934. I subsequently issued an Order scheduling a prehearing conference, directing the parties to discuss where to hold the hearing in this matter, and informing the parties that the hearing would commence October 26, November 2, or November 16, 2015. *Ironridge Global Partners, LLC,* Admin. Proc. Rulings Release No. 2876, 2015 SEC LEXIS 2669 (June 29, 2015). In this order, I set a prehearing schedule and resolve the disagreement about when and where to hold the hearing in this matter.

*A. Hearing date and location*

I held a telephonic prehearing conference on Monday, July 27, 2015. The conference was attended by counsel for all parties. By letters, the parties informed me before the conference that they could not agree on a hearing date or location.[1] The Division of Enforcement has no objection to the proposed dates and, owing to the varied locations of witnesses, suggested that the hearing should be held in Washington, D.C. Respondents asked that the hearing begin December 7, 2015, and that it take place in Atlanta, Georgia. Respondents believe Atlanta is an appropriate location because all the counsel in this case are located there. Respondents' counsel agreed that none of Respondents' principals are located in Atlanta. He was somewhat unclear regarding the location of Respondents and their principals, but offered that it was possible one witness might be located in Atlanta.

Respondents' lead counsel is not available November 16, 2015, and one of the principals of one of the Respondents is not available November 2, 2015. Given the apparent date service was completed, October 26, 2015, would be slightly too early under the hearing schedule

[1] In their letters, the parties informed me that they agreed to serve each other and my office electronically and that Respondents have waived their rights under 15 U.S.C. § 78u-3 to a hearing within sixty days of service of the order instituting proceedings.

contemplated in Rule 360.[2] *See* 17 C.F.R. § 201.360(a)(2). When asked, neither Respondents nor the Division objected to beginning the hearing on Monday, November 30, 2015. Considering the foregoing, I ORDER that the hearing in this matter will commence at 1:00 p.m. EST on November 30, 2015.

With respect to determining where to hold the hearing, the Administrative Procedure Act provides that "due regard shall be had for the convenience and necessity of the parties or their representatives." 5 U.S.C. § 554(b). Consistent with this statute, the Commission has provided that "[t]he time and place for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties, other participants, or their representatives." 17 C.F.R. § 201.200(c). The term "parties," as used in the statute and the rule "refers to both" the Respondents and the Commission. *Maremont Corp. v. FTC*, 431 F.2d 124, 129 (7th Cir. 1970); *John Thomas Capital Mgmt. Grp. LLC*, Securities Act of 1933 Release No. 9492, 2013 SEC LEXIS 3860, at *28 (Dec. 6, 2013) (denying interlocutory review).

In determining where to hold the hearing in this matter, I have weighed the following factors, in descending order of importance:

> (1) the convenience of the parties; (2) the convenience of all of the witnesses; (3) the relative ease of access to sources or proof such as records, documents and exhibits, and the difficulty and expense in transporting such sources of proof; (4) the reduction of the expenses of the parties; (5) the location of the permanent residence of the parties; (6) the convenience or availability of counsel; (7) the lack of inconvenience to a party or parties; and (8) the nature of the interests of the public in the proceedings.

*See Pope v. Dep't of Transp*., 10 M.S.P.B. 645, 648-649 (June 10, 1982).

The first factor weighs in favor of holding the hearing in Washington, D.C. Based on the discussion held during the prehearing conference, neither Respondents nor their principals have any connection to Atlanta. They are instead located in various other places. The Division, on the other hand represents that it would be more convenient for it if the hearing were held in Washington.

The second and fifth factors do not cut in either direction. The witnesses, including the Respondents' principals, are dispersed about the country and some are located in the Virgin Islands.

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[2] In Respondents' letter, their counsel suggested that service on Respondent Ironridge Global IV, Ltd., had not been effected in compliance with Commission Rule of Practice 141(a)(2). During the prehearing conference, I said that evidence submitted by the Division showed that service had apparently been effected on June 30, 2015. I offered Respondents the opportunity to brief the issue. The schedule for briefing the service issue is addressed below.

The third factor likewise adds little to the analysis. The evidence will be available in paper and electronic formats and will be easily accessible anywhere.

The fourth factor weighs in favor of Atlanta. The cost of paying for the travel of witnesses will apply no matter where the hearing is held. But because all counsel are located in Atlanta, costs will be lower for the parties if the hearing is held in Atlanta. The Division, however, which presumably factored costs into its request, asked that the hearing be held in Washington. And Respondents voiced no concern about costs after the possibility of having the hearing in Washington was raised. Because both sides are represented by experienced counsel, who are well-equipped to look out for their clients' interests, I give this factor less weight than would otherwise be the case.

The sixth factor, convenience or availability of counsel, likewise initially weighs in favor of holding the hearing in Atlanta. It will obviously be more convenient for Respondents' counsel, who are located in Atlanta, if the hearing is held in Atlanta. Again, however, the Division has represented that its interests lie in holding the hearing in Washington. As a result, although this factor favors holding the hearing in Atlanta, I give it less weight than might otherwise be the case.

The seventh factor, lack of inconvenience to a party or parties, weighs in favor of holding the hearing in Washington. Although Respondents' counsel asked that the hearing be held in Atlanta, he voiced no specific objection to holding the hearing in Washington. The Division affirmatively represents that Washington would be the most convenient location for the hearing. According to the Division's letter, Respondents' counsel's firm has an office located in Washington. The Division believes this will "minimize any inconvenience" to counsel. During the telephonic conference, Respondents' counsel did not dispute this latter assertion.

The final factor, nature of the interests of the public in the proceedings, weighs in favor of holding the hearing in Washington. Because Respondents have no connection to Atlanta, there is no reason to believe that the general public or local media would have interest in the proceeding greater than what one might expect in Washington. Given the subject matter of this proceeding, it is more likely than an interested member of the public or the media would be located in Washington.

Weighing these factors in the manner described above leads me to conclude that the hearing should be held in Washington, D.C. The exact location of the hearing will be set by subsequent order.

*B. Prehearing schedule*

Consistent with the parties' proposed schedule, I set the following schedule in this matter:

Aug. 3: Respondent Ironridge Global IV, Ltd., may file a pleading challenging the Division's showing that service has been effected in compliance with Rule 141.

Aug. 10: Opposition to motion challenging service due.

Aug. 17: Reply to opposition due.

Sept. 28: Parties may file motions for summary disposition.

Oct. 13: Oppositions to motions for summary disposition due.

Oct. 20: Replies to oppositions to motions for summary disposition due.

Oct. 26: Parties may file expert reports.

Nov. 2: Parties file witness lists and exchange, and exchange (but do not file) pre-marked copies of exhibits and exhibit list.

Nov. 9: Motions in limine and objections to exhibits and witnesses due.

Nov. 16: Parties may file rebuttal reports to expert reports.

Nov. 20: Prehearing briefs due.

Nov. 23: Requests for official notice, stipulations, and admissions of fact.

Nov. 23: Parties shall participate in a telephonic prehearing conference, at a time to be determined.

Nov. 30: Hearing begins at 1:00 p.m. EST, in Washington, D.C.

The parties are reminded that in addition to serving each other and this Office electronically, they must file hard copies of all filings with the Office of the Secretary. *See* 17 C.F.R. § 201.151.

*C. Hearing guidelines*

I will follow the general guidelines described below during these proceedings. The parties should review what follows and promptly raise any objections they may have to the application of these guidelines in this matter.

1. Settlement. The parties are encouraged to consider whether this matter may be resolved through settlement. If the Division and Respondents jointly notify my Office that they require assistance in facilitating settlement negotiations and are willing to participate in good faith in confidential settlement negotiations, I will issue an appropriate order referring the matter to another Administrative Law Judge solely for purposes of settlement. *See Airtouch Commc'ns, Inc*., Admin. Proc. Rulings Release No. 2253, 2015 SEC LEXIS 271 (Jan. 23, 2015). Participation in any settlement negotiation is entirely voluntary. Absent extraordinary circumstances, requests of this nature must be made no later than three weeks before the scheduled hearing date.

2. Subpoenas. My general practice is to sign subpoenas the afternoon after the day they are received, absent notice of an objection. Parties should therefore review requests for subpoenas as soon as they are received. A party's motion to quash will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter.

3. Exhibit lists. A comprehensive exhibit list prevents other parties from being surprised in the middle of the hearing. Given this fact, exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. The parties should serve their opponents with any amendments to their individual exhibit lists. Because I rely on the parties' exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. There is no need in the interim to submit exhibit lists or amendments to my office. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.

4. Expert reports and testimony. Expert witness disclosures must, at minimum, comply with Rule 222(b), including the provision of a "brief summary" of an expert's expected testimony. 17 C.F.R. § 201.222(a)(4), (b). Expert reports should be as specific and detailed as those presented under Federal Rule of Civil Procedure 26(a)(2). Failure to comply with these requirements may result in the striking of an expert's report. The filing of the expert's report according to the prehearing schedule essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. As needed, I will entertain requests for brief direct examination of a party's expert.

5. Hearing schedule. The first day of the proceeding will begin at 1:00 p.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about 15 minutes, and at least one break in the afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour and ten minutes.

6. Hearsay. Evidence that is irrelevant, immaterial, or unduly repetitious is inadmissible; all other evidence is presumptively admissible. 17 C.F.R. § 201.320. As a result, the fact that evidence constitutes hearsay goes to weight, not admissibility, and is thus a proper subject for cross-examination or post-hearing briefing.

7. Hearing issues.

a. Examination.

1) In general, the Division of Enforcement presents its case first, because it has the burden of proof. The Respondents then present their case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.

2) If the Division calls a non-party witness that Respondents also wish to call as a witness, the Respondents should cross-examine the witness as if they were calling the witness in their own case. This means that cross-examination may exceed the scope of direct examination. This will avoid the need to recall a witness just so the witness can testify for the Respondents' case.

3) I am flexible regarding the manner of presenting the testimony of Respondents' principals, so long as the parties agree on it. By way of example, if the Division calls one of the principals as its last witness, the parties may agree that Respondents' counsel will conduct the direct examination, followed by the Division's cross-examination, which may exceed the scope of direct. In the absence of any agreement, the principals' testimony will proceed in the usual manner, *i.e.*, the principals will be called as a witness and examined potentially multiple times. If the Division calls one of the Respondents' principals as a witness and the principals later testify as part of the Respondents' own case, the Division's cross-examination during the Respondents' case will be limited to the scope of the direct examination.

4) In general, cross-examination may be conducted by leading questions, even as to Division witnesses that the Respondents wish to call in their own case. Counsel may not lead his or her client, however. Thus, if the Respondents' principals are called as a witness in the Division's case, Respondents' counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for the Respondents, the Division may not ask leading questions on cross-examination.

b. Other hearing issues.

1) Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.

2) Hit the high points on cross-examination. It is a waste of time to wade into every bit of minutiae that is related to your case. Cross-examination is more effective and less stultifying if you emphasize the strong points and address tangential points quickly, if at all.

8. Pleadings. Prehearing and post-hearing briefs are limited to 14,000 words. *Cf.* 17 C.F.R. § 201.450(c) (imposing a word-limit for briefs filed before the Commission). Parties may seek leave to exceed this limit through a motion filed seven days in advance of the relevant briefing deadline. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to those that are widely known. *See* Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges 120-22 (2008); *Nat'l Ass'n of Regulatory Util. Comm'rs v. U.S. Dep't*

*of Energy*, 680 F.3d 819, 820 n.1 (D.C. Cir. 2012). For the same reason, counsel should use the same font size in footnotes as that used in the body of a pleading.

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James E. Grimes
Administrative Law Judge