

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

APPEAL NO.: 09-2356

UNITED STATES OF AMERICA

v.

**ATLANTIC STATES CAST IRON PIPE COMPANY,
a division of McWane, Inc.,
JOHN PRISQUE
SCOTT FAUBERT,
JEFFREY MAURY,
CRAIG DAVIDSON**

Atlantic States Cast Iron Pipe Company, Appellant in No. 09-2356
John Prisque, Appellant No. 09-2345
Scott Faubert, Appellant No. 09-2346
Jeffrey Maury, Appellant No. 09-2305
Craig Davidson, Appellant No. 09-2306

On Appeal from a Judgment of Conviction
In the United States District Court for
the District of New Jersey

District Court Criminal Action No. 03-852 (MLC)

SAT BELOW: HONORABLE MARY L. COOPER, U.S.D.J.

MOTION TO CORRECT THE RECORD PURSUANT TO
FEDERAL RULE OF APPELLANT PROCEDURE 10(e).

Appellants Atlantic States Cast Iron Pipe Company, John Prisque, Scott Faubert, Jeffrey Maury and Craig Davidson ("Appellants") hereby move pursuant to Fed. R. App. P. 10(e) to correct the trial record. Appellants rely on the Certification of John J. O'Reilly ("O'Reilly Cert."), attached hereto, in support of the within motion.

The trial record in this matter is incomplete due to an inordinate number of indiscernible and/or inaccurate portions of the trial and sidebar transcripts. (O'Reilly Cert. ¶¶ 2, 3). Counsel for Appellants have reviewed all the available audio recordings from the trial as well as notes from Appellants' attorneys and notes provided by the District Court in an effort to correct the transcripts. (O'Reilly Cert. ¶ 2). In three letters to the District Court, Appellants have identified approximately ten-thousand (10,000) indiscernible and/or inaccurate portions of trial and sidebar transcripts. (O'Reilly Cert. ¶ 3). In two letters, Appellants proposed thousands of corrections to the trial and sidebar transcripts, all of which concerned substantive corrections. (O'Reilly Cert. ¶ 3). Appellants did not propose any corrections regarding spelling, grammar or punctuation. (O'Reilly Cert. ¶ 3).

There was no court reporter present during trial; rather, the record was recorded onto audio discs and later transcribed by a transcription service. (O'Reilly Cert. ¶ 4).

Unfortunately, the transcription service was unable to completely and accurately transcribe the proceedings. (O'Reilly Cert. ¶ 4).

Upon request by Appellants, the District Court agreed to review the indiscernible portions of the trial transcripts to complete the record for appeal. (O'Reilly Cert. ¶ 5). The District Court reviewed Appellants' proposals and made corrections to the record based on its own review of the audio recordings. (O'Reilly Cert. ¶ 5). This was an enormous undertaking by the District Court, which required the District Court to review trial and sidebar transcripts from virtually every day of the eight-month trial.

After months of careful review by both the District Court and Appellants, the District Court has advised the parties that it has completed its review and correction of the trial transcripts for all but six (6) days of trial. (O'Reilly Cert. ¶ 6). The District Court advised all counsel that four original audio discs containing the trial testimony of key government witnesses, including George Shepard, have not been able to be reviewed by the District Court on its equipment and must be examined by an expert computer service. (O'Reilly Cert. ¶ 7). The copies of those audio discs provided to the Parties were similarly defective and could not be reviewed. (O'Reilly Cert. ¶ 7). The District Court has been unable to locate two other

original audio discs containing testimony from two days of trial. (O'Reilly Cert. ¶ 7). As a result, the Parties have never been provided with copies of these discs to review. (O'Reilly Cert. ¶ 7). The inability of the Parties and the Court to review the audio recordings from those days of trial has further complicated the efforts to produce a complete and accurate record for appeal. (O'Reilly Cert. ¶ 7).

The District Court also requires additional time to complete its review and correction of the sidebar transcripts. (O'Reilly Cert. ¶ 6).

Upon the District Court's completion of its review and correction of the trial and sidebar transcripts, the Parties must review the District Court's corrections before the transcripts can be sent to the transcription service. O'Reilly Cert. ¶ 8).

Currently pending before the District Court is Appellants' motion seeking access to the data stored on the four corrupted audio discs. (O' Reilly Cert. ¶ 9). Appellants requested that the District Court permit Appellants to submit the data contained on the corrupted discs to an independent expert to attempt to produce working audio recordings, thereby enabling the Parties to provide the Third Circuit with a complete and accurate record of the Trial. (O' Reilly Cert. ¶ 9).

Despite the District Court's best efforts, the record is not certifiable at this point. (O' Reilly Cert. ¶ 10). The Appellants expect that the review process can be completed within sixty (60) days. (O'Reilly Cert. ¶ 10). Appellants submit that it is more efficient to correct the trial record now, rather than during the appeal. Accordingly, Appellants request a sixty (60) day extension from the Third Circuit for the District Court to certify the record so that these tasks may be completed in advance of the deadlines to file appellate briefs.

Respectfully submitted,

s/John J. O'Reilly
John J. O'Reilly
Attorney for Appellant
Atlantic States Cast Iron
Pipe Company

s/Vincent J. Nuzzi
Vincent J. Nuzzi
Attorney for Appellant
Craig Davidson

s/Michael Critchley
Michael Critchley
Attorney for Appellant
John Prisque

s/Michael N. Pedicini
Michael N. Pedicini
Attorney for Appellant
Jeffrey Maury

s/Michael Sullivan
Michael Sullivan
Attorney for Appellant
Scott Faubert

Dated: March 19, 2010

CERTIFICATION OF SERVICE

I hereby certify that on this date a true copy of the within Motion and all supporting papers have been served via ECF filing upon the following Filing Users:

George S. Leone, Esq.
Chief, Appeals Division
Assistant U.S. Attorney
970 Broad Street
Newark, NJ 07102

Glenn J. Moramarco, Esq.
United States Attorney's Office
401 Market Street
U.S. Courthouse & Fed. Building
Camden, NJ 08101

on this 19th day of March, 2010.



MARK A. DI GESU

Dated: March 19, 2010

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SAT BELOW: HONORABLE MARY L. COOPER, U.S.D.J.

CERTIFICATION OF JOHN J. O' REILLY IN
SUPPORT OF APPELLANTS' MOTION TO CORRECT THE
RECORD PURSUANT TO FEDERAL RULE OF APPELLANT
PROCEDURE 10(e).

JOHN J. O'REILLY, of full age, hereby certifies as follows:

1. I am a member of the firm of Day Pitney LLP, counsel of record for Appellant Atlantic States Cast Iron Pipe Company ("Atlantic States").

2. Counsel for Appellants Atlantic States, John Prisque, Scott Faubert, Jeffrey Maury and Craig Davidson ("Appellants") have engaged in a lengthy process of reviewing the trial and sidebar transcripts. In connection with this process, Appellants have reviewed the audio recordings from trial as well as the notes of Appellants' attorneys and notes provided by the Honorable Mary L. Cooper, U.S.D.J. During this process, Appellants have identified thousands of inaudible and/or inaccurate portions of the transcript.

3. Appellants have identified for the District Court approximately ten-thousand (10,000) indiscernible and/or inaccurate portions of trial and sidebar transcripts by letters dated June 10, 2009, July 17, 2009 and March 10, 2010. Attached to the June 10, 2009 and July 17, 2009 were thousands of proposed corrections to the trial and sidebar transcripts. Appellants only proposed substantive corrections and did not propose any corrections regarding spelling, grammar or punctuation.

4. No court reporter was present during the trial. Instead, the record was recorded onto audio discs and later transcribed by a transcription service selected by the District Court. Appellants' review of the trial and sidebar transcripts revealed that the transcription service failed to produce complete and accurate transcripts

5. The District Court agreed to review the proposed corrections submitted by Appellants and conduct its own review of the audio recordings in an effort to produce a complete and accurate record for the Appeal. Based on its review of Appellants' submissions and its review of the audio recordings, the District Court has made corrections to the trial and sidebar transcripts.

6. During a conference call with the District Court on March 18, 2010, Appellants and Appellee (collectively, the "Parties") were advised that the District Court has completed its review and correction of the trial transcripts for all but six (6) days of trial which will require additional examination of the audio discs for those trial days (an explanation regarding the need for additional examination is provided in paragraph eight (8) of the within Certification). The District Court also requires additional time to complete its review and correction of the sidebar transcripts.

7. The District Court advised all counsel that four original audio discs containing the trial testimony of key government witnesses, including George Shepard, have not been able to be reviewed by the Court on its equipment and would need to be examined by an expert computer service. The copies of those audio discs provided to the Parties were similarly defective and could not be reviewed. The District Court has been unable to locate two other original audio discs containing testimony from two days of trial. As a result, the Parties have never been provided with copies of these discs to review. The inability of the Parties and the Court to review the audio recordings from those days of trial has further complicated the efforts to produce a complete and accurate record for appeal.

8. Upon the District Court's completion of its review and correction of the trial and sidebar transcripts, the Parties must review and approve the District Court's corrections before the transcripts can be sent to the transcription service.

9. On March 19, 2010, Appellants filed a motion with the District Court seeking access to the data stored on the four corrupted audio discs. Appellants requested that the District Court permit Appellants to submit the data contained on the corrupted discs to an independent expert to attempt to produce working audio recordings, thereby enabling the Parties to

provide the Third Circuit with a complete and accurate record of the Trial.

10. Despite the best efforts of the Parties and the District Court, the trial record is not capable of being certified at the present time. The Appellants expect that the review process can be completed within sixty (60) days.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By: s/ John J. O'Reilly
JOHN J. O'REILLY
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Attorneys for Appellant
Atlantic States Cast Iron Pipe Company

DATED: March 19, 2010