

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,
Petitioner and Complainant,
v.
SPEEDI SHUTTLE WASHINGTON, LLC
Respondent.

DOCKET NOS.
TC-143691
TC-160516

DECLARATION OF BROOKS
HARLOW IN SUPPORT OF
ANSWER OF SHUTTLE
EXPRESS TO STAY REQUEST

- 1 I, Brooks Harlow, am Counsel for Shuttle Express, Inc. (“Shuttle Express” or “Petitioner”). I
make this declaration in support of the Shuttle Express answer filed herewith pursuant to the
Notice Of Opportunity To Respond To Request For Suspension Of Procedural Schedule. Except
as noted, this declaration is based on personal knowledge.
- 2 At the discovery conference on September 27th, the Administrative Law Judge ordered
substantial discovery responses over the objections of Respondent and asked when they could be
provided. Respondent suggested October 11th. I said that October 17th would be acceptable, as
I would be out of the office until that day. Respondent stated its appreciation for the extra days
and committed to “go forward right away.” However, not a single response was provided on
October 17th or since then.
- 3 The emails among counsel regarding Speedishuttle’s failure to respond and its rationale are
attached to this declaration as Exhibits A and B.

I declare under penalty of perjury under the laws of the State of Washington that the statements in this declaration are true and correct to the best of my knowledge, information, and belief.

Executed at McLean, Virginia this 21st day of October, 2016.

LUKAS, NACE, GUTIERREZ & SACHS, LLP



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Exhibit A

Elisheva Simon

From: Brooks Harlow
Sent: Thursday, October 20, 2016 4:32 PM
To: Wiley, Dave
Cc: jbeattie@utc.wa.gov; Elisheva Simon
Subject: Shuttle Express/Speedishuttle

Importance: High

Dave, I was expecting the bulk of your discovery responses by this Monday, the 17th. I have no record of receiving anything from you this week or for several weeks. Your client does not have a stay or suspension yet. When can I expect to receive your pending answers?

Thank you in advance for your update.

Best,

Brooks E. Harlow
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Exhibit B

Elisheva Simon

From: Brooks Harlow
Sent: Thursday, October 20, 2016 4:55 PM
To: Wiley, Dave
Cc: Elisheva Simon; Beattie, Julian (UTC)
Subject: RE: Update

Importance: High

If you interpreted my lack of response (when I told you repeatedly I had zero time) to your question as a stipulation that is a stretch, at best. I read your cryptic 10/7/16 email on the fly, but certainly never interpreted your “stand down” suggestion to even address the written discovery responses of Speedishuttle that the ALJ had ordered. The whole context of the email string below was limited to the notice of deposition we had contemplated and your letter regarding the Shuttle Express responses to Speedishuttle’s written discovery. Each of us was free to unilaterally “stand down” on those matters, which we have done. But if you are now saying that we had a stipulation or understanding that Speedishuttle would (again) not timely provide the its discovery responses as directed, then we are far from the same page. That was not addressed in your emails and I certainly did not agree to it—nor would I have done so.

Again, please advise when we can expect that the overdue responses will be forthcoming.

From: Wiley, Dave [mailto:dwiley@williamskastner.com]
Sent: Thursday, October 20, 2016 4:40 PM
To: Brooks Harlow <bharlow@fcclaw.com>
Cc: Elisheva Simon <esimon@fcclaw.com>; Beattie, Julian (UTC) <jbeattie@utc.wa.gov>
Subject: FW: Update

Brooks: This was my last communication with you on this and by the lack of response since that time I fully assumed we were on the same page, particularly after your return from vacation. Dave.

From: Wiley, Dave
Sent: Friday, October 07, 2016 10:44 AM
To: 'Brooks Harlow'
Subject: RE: Update

OK: Why don't we then just have both sides “stand down” until after your return, your Response is submitted and the Commission’s Order is issued which I would expect will be the week of October 24 which coincides pretty closely with your two week interval?

Best, Dave.

From: Brooks Harlow [mailto:bharlow@fcclaw.com]
Sent: Friday, October 07, 2016 10:30 AM
To: Wiley, Dave
Subject: RE: Update

Do what you want with your letter, but I can't spend much time on it for almost 2 weeks. After my vacation, I have 2 days in Lincoln, NE for a workshop. Then I have that answer to do. Won't be long before I am as busy as you!

Best,
Brooks

From: Wiley, Dave [<mailto:dwiley@williamskastner.com>]
Sent: Friday, October 07, 2016 1:22 PM
To: Brooks Harlow <bharlow@fcclaw.com>
Subject: Update

Hi Brooks: Thanks for this. I'm interpreting this then as a "hold" on my letter in response to our "meet and confer" Wednesday which I had planned to get out today in followup, highlighting what we are still insisting be produced by your client and summarizing what we had agreed to forego, and our current gathering of discovery, since if the Commission should suspend the proceeding and then there is a future restart, the majority of the responses would have to be updated to the current time period.

I am available the first part of the week of October 17 for another "meet and confer" and possibly to get on a call with Judge Pearson and Julian as well when we could discuss the deposition subpoena as I have done further research on this and am reaffirming opposition to any deposition of Cecil Morton who is not intended as a witness by us and who is a Hawaii state resident. Jack Roemer, whom we have offered to be deposed in Seattle and who also lives outside Washington, is our management witness as you know, is much more involved in the day-to-day operations, and has all the background and was directly involved in the "walk up issue" if any testimony in any prospective proceeding is even to be allowed on that topic which is my understanding of why you want to call Cecil.

Enjoy your time off and if you come up for air in the next ten days and need to contact me about this, I'm around.

Dave.

From: Brooks Harlow [<mailto:bharlow@fcclaw.com>]
Sent: Friday, October 07, 2016 7:28 AM
To: Wiley, Dave
Cc: Elisheva Simon

Dave, last night's notice took away what little spare time I had today. I don't think I will be getting the dep notice out after all. We'll deal with it when I get back. Same with your discovery.

Best,
Brooks

From: Wiley, Dave [<mailto:dwiley@williamskastner.com>]
Sent: Thursday, October 06, 2016 4:10 PM
To: Brooks Harlow <bharlow@fcclaw.com>
Subject: RE: Broadening of Employment Relationship Standards

I appreciate the head's up and we will be objecting and we can tee this up on your return. I will try to get that letter out on our "meet and confer" yesterday and what you agreed to (which was few and far between) and what you were going to talk with your client about by tomorrow, although it sounds like today is your last day until the 17th but I still want to get it out by week's end. Dave.

From: Brooks Harlow [<mailto:bharlow@fcclaw.com>]
Sent: Thursday, October 06, 2016 12:35 PM
To: Wiley, Dave
Cc: Elisheva Simon
Subject: RE: Broadening of Employment Relationship Standards

Thanks.

FYI, the client wants to try to depose Morton. I'm probably going to send you a notice of deposition before I go, just to properly tee up the issue for when I get back. It will have an arbitrary date and location. I'm just expecting you to object—hopefully nothing formal or very time consuming for you. I don't expect Mr. Morton to show up given our discussion yesterday. When I get back we'll do our "meet and confer" on it at a mutually agreeable time. If we can agree on something, great. If not, we'll take it from there as may seem appropriate.

Best,
Brooks

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2016, I served a copy the foregoing document via email, with a copy via first class mail, postage prepaid, to:

<p>Julian Beattie Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 (360) 664-1192 Email: jbeattie@utc.wa.gov</p>	<p>David W. Wiley Williams Kastner Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101 206-233-2895 Email: dwiley@williamskastner.com</p>
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Dated at McLean, Virginia this 21st day of October, 2016.



Elisheva Simon
Legal Assistant