From: Brooks Harlow
Sent: Thursday, December 08, 2016 11:14 AM
To: Velloth, Daniel <dvelloth@williamskastner.com>; Wiley, Dave <dwiley@williamskastner.com>; Gruber, Maggi <MGruber@williamskastner.com>
Cc: Elisheva Simon <esimon@fcclaw.com>
Subject: RE: TC-143691, discovery

Dan, I'm not ignoring you, but I've got a slew of comments due in the next week and now I have to go to a hearing in Trenton on Sunday and Monday. That's on top of the testimony due in our case. I will look at this when I can, but it may not be until the weekend. If you can hold off on your motion, maybe we can resolve or narrow some issues. I'm going to need a continuance till after Christmas to respond to your motion anyway.

It's not just your issues I'm behind on. We also have a problem with your clients financial statement that I have been meaning to touch back on. The issue is the time periods. GAAP (generally accepted accounting principles) would have year-end 2015 and then year to date 2016. Or GAAP could be quarterly. If you wanted to depart from GAAP to show a full year, then you could show five months from 5/1/15 ending 9/30/15 plus twelve months from 10/1/15 ending 9/30/16. We could accept that, something consistent with GAAP, or a monthly spreadsheet. Because your business and ours is so seasonal, the presentation you provided on Monday is very misleading and not truly representative.

We will need a supplementation or correction to the financial before we file our testimony. The sooner, the better, of course. We'll be in touch on yours just as soon as I catch up.

Best regards,

Brooks E. Harlow
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From: Velloth, Daniel [mailto:dvelloth@williamskastner.com]
Sent: Tuesday, December 06, 2016 5:50 PM
To: Brooks Harlow <bharlow@fcclaw.com>; Wiley, Dave <dwiley@williamskastner.com>; Gruber, Maggi <MGruber@williamskastner.com>
Cc: Elisheva Simon <esimon@fcclaw.com>
Subject: RE: TC-143691, discovery

Brooks: I have a typo below. The last sentence should read "as we have already indicated to the ALJ that a motion would be filed this week"

I look forward to hearing from you.

Dan

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WASHINGTON OREGON ALASKA

From: Velloth, Daniel
Sent: Tuesday, December 06, 2016 1:55 PM
To: 'Brooks Harlow'; Wiley, Dave; Gruber, Maggi
Cc: Elisheva Simon
Subject: RE: TC-143691, discovery

Brooks: We appreciate the effort to work this out amicably. We always prefer to come to agreements and work out discovery disputes rather than put them before the ALJ. That said, currently SE's responses are significantly deficient and your letter does not come close to responding to the concerns raised in Dave's November 8 letter recapping the deficiencies noted in the October "meet and confer." Please see our response to your positions below, hopefully we can resolve some of these short of further motion practice but we cannot wait past Thursday to come to agreement, as we have already indicated it would to the ALJ that a motion would be filed this week.

Best,

Dan

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WASHINGTON OREGON ALASKA

From: Brooks Harlow [mailto:bharlow@fcclaw.com]
Sent: Monday, December 05, 2016 7:29 AM
To: Wiley, Dave; Velloth, Daniel; Gruber, Maggi
Cc: Elisheva Simon
Subject: TC-143691, discovery

Dave, please do call me today or before you file your motion to compel. There may be some areas we can come to agreement.

First, there is a loose end as to Speedi's responses, which is DR 9. You have effectively supplemented that informally in an email. We would appreciate a formal supplement in DR response format consistent with the discovery rules. We did not make it part of our motion to compel because I assume it's just an oversight or log-jams in our respective very busy schedules. This was supplemented 11/22.

Regarding Shuttle Express' responses, here are some updates/clarifications:

DR 1 – We never intended the response to be limited. The information about the "rescue" service was in fact the last time independent contractors were used for auto transportation service. The response was complete. Recently, Shuttle Express has begun to use contractors under the waiver it received from the UTC in September in TC-160819. We don't see any relevance, but if you want a supplemental response, we will.

Thank you for that confirmation, please do formally supplement and confirm your position.

DR 4 – Most or all of the "efforts" would have been attorney-client privileged communications and preparation for the litigation that we identified in the response. The latter would also be protected by the work product doctrine. They would also be internal communications, which the ALJ just ruled that Speedishuttle did not have to produce in response to our DR 12. We can't see anything that justifies the burden of supplementing our response at this point.

Your response here is ambiguous and we are not able to determine from it whether non-privileged responsive information exists. Please clarify whether SE is withholding all responsive information on the basis of privilege. Additionally, because you have identified the work-product doctrine as the basis for withholding responsive information, please identify the date on which you contend SE anticipated litigation. With respect to internal communications, we do not understand how efforts and communications other than those consulting with counsel which post-dated the anticipation of litigation could be part of the work-product doctrine or protected by attorney-client privilege. It is also difficult to understand how SE assumes it gets the benefit of the ALJ's ruling regarding SS's internal communications related to implementing SS's business model, which are proprietary and confidential strategy communications. Notwithstanding that at the December 2, 2016 hearing, the ALJ specifically did not rule on the issue of SS's discovery issued to SE, and SE does not have an analogous data request to this data request by SS, SS has articulated that it believes this litigation is just one front of a multiple-front attack on SS continuing to exist in the marketplace with its current certificate and seeks communications related to SE's efforts which are in addition to and outside formal litigation. Does your response above indicate that there are such communications/documents which you are declining to produce based on your objections?

DR 6 – We may be willing to supplement this response, but even reviewing your submission last week, we still cannot see how the data would be relevant.

The documents sought are relevant to the SS belief that SE has been lobbying and attempting to hinder SS's ability to implement its business model, and to remove SS from the marketplace through unfair anticompetitive methods not only with the Commission but with third parties such as the Port of Seattle. SE's complaint is that SS is not conforming to its business model or never intended to, but if SE is deliberately interfering with SS's ability to implement its business model that is directly relevant to SS's defenses. We believes this makes such records plainly relevant and if SE is not willing to fully respond, please let us know so that we may ask the ALJ to rule.

DR 14 – This is the analog to our DR 6, which the ALJ flatly denied. We think she erred and that at least some high-level trip data of Speedishuttle is relevant to our case. Perhaps we could reach a compromise that would give you what you need and give us what we need. If we can't, we'll stand on her prior ruling. We are happy to discuss.

We disagree that this is an analog to SE's request that then requires horse trading to get the requested information. SS is investigating its suspicion that SE is not providing door-to-door service, but rather only route service to many points within King County which has direct bearing on whether the parties are even competing as SE alleges. SE was seeking information on each and every trip that SS served globally for the entire time SS has been operating. By contrast, SS is seeking targeted information to specific points. There likely can be some compromise regarding the level of detail requested. We can discuss if you like. However, to be clear we do not agree that the ALJ has ruled on this issue, it has not been briefed or ruled upon in the context SS is raising it, namely, whether SE can even state a claim as to many of the points in King County.

We note that you did not address DRs 5, 7, 12 and 13. We have attempted to confer with you on these in the past. Should SS understand that SE stands on its objections to those requests and does not want to seek compromise? If so, please confirm whether or not SE is withholding documents based on its objections.

Best,

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