

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of

S-15-001 and S-15-002

FOSS MARITIME and PORT OF SEATTLE


From an interpretation by the Director,
Department of Planning and Development

Director's Interpretation:
15-001

**ORDER ON MOTION TO CHANGE
DEPOSITION DATE**

1. On June 17, 2015, DPD moved for an order to change the date of a deposition for Benjamin Perkowski, which was scheduled by Appellant Foss Maritime (Foss) for July 1. DPD seeks to move the deposition to July 6, pending the Examiner's issuance of an order on DPD's Motion to Dismiss certain issues as a matter of law from the appeals. DPD also moved for an order quashing the deposition, on the grounds the deposition was not reasonably calculated to lead to the discovery of admissible evidence. Also on June 17, 2015, DPD moved for a protective order concerning Andrew McKim's deposition, which was scheduled by Foss for July 6. Foss filed a response on June 24, 2015 opposing all of DPD's June 17 motions. Although Appellant Port of Seattle (Port) did not seek the depositions, it filed responses opposing the motions, and indicated that it intends to participate in the deposition of Mr. McKim. DPD filed replies to the responses on June 25, 2015.
2. Under HER 3.11, appropriate prehearing discovery is permitted; but the Examiner may prohibit or limit discovery where it is determined to be "unduly burdensome, harassing, or unnecessary under the circumstances of the appeal."
3. Until the Examiner rules on DPD's motion to dismiss, it would be premature to rule on DPD's discovery motions. Under the prehearing schedule set forth in the Examiner's Order of June 3, 2015, the Appellants' responses to the motion to dismiss are due June 25. DPD's reply to the responses is due on July 2, 2015. The Examiner expects to issue an order on the motion to dismiss during the week of July 6. After that order is issued, the orders on DPD's motions concerning discovery will be issued.
4. The motion to delay Mr. Perkowski's deposition is therefore granted. The deposition of Mr. McKim is also stayed pending issuance of an order on DPD's motion for a protective order. Foss indicates that delaying the depositions will delay its ability to prepare for hearing, and the Port also indicates that it wishes to avoid delay. However, as noted at the prehearing conference, the hearing may be continued on a motion showing good cause related to the need to obtain appropriate discovery, to avoid prejudice to the parties on account of changes to the discovery schedule.

Entered this 25th day of June, 2015.



Anne Watanabe, Deputy Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
(206) 684-0521 FAX: (206) 684-0536

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

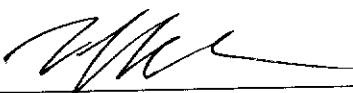
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion to Change Deposition Date** to each person listed below, or on the attached mailing list, in the matter of **Foss Maritime Company and Port of Seattle**, Hearing Examiner Files: **S-15-001 & S-15-002**, in the manner indicated.

Party	Method of Service
<p>Foss Maritime Company c/o John C. McCullough McCullough Hill Leary, P.S. 701 Fifth Avenue, Suite 6600 Seattle, WA 98104 jack@mhseattle.com</p> <p>David R. West Garvey Shubert Barer drwest@gsblaw.com</p> <p>Laura Counley lcounley@mhseattle.com</p> <p>Dominique Barrientes dbarrientes@gsblaw.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>
<p>Port of Seattle c/o Traci Goodwin Senior Port Counsel PO Box 1209 Seattle, WA 98111 goodwin.t@portseattle.org</p> <p>Patrick Schneider Foster Pepper schnp@foster.com</p> <p>Adrian Winder winda@foster.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

<p>Brenda Bole boleb@foster.com</p>	
<p>Andy McKim DPD SMT-18-00 Andy.McKim@seattle.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
<p>Eleanore Baxendale City Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104 Eleanore.Baxendale@seattle.gov</p> <p>Rose Hailey Rose.Hailey@seattle.gov</p> <p>Trudy Jaynes Trudy.Jaynes@seattle.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
<p>Molly Barker Veris Law Group molly@verislawgroup.com</p> <p>Joshua Brower josh@verislawgroup.com</p> <p>Patti Goldman Earthjustice pgoldman@earthjustice.org</p> <p>Matthew Baca mbaca@earthjustice.org</p> <p>Eudora Powell epowell@earthjustice.org</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>

Dated: June 25, 2015


Tiffany Ku
Legal Assistant