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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of
FOSS MARITIME COMPANY
From an Interpretation by the Director,
Department of Planning & Development.

Hearing Examiner Files: S-15-001 & S-15-002
Department Reference: 3020324

DECLARATION OF DAVID R. WEST IN
SUPPORT OF FOSS MARITIME'S MOTION
FOR PROTECTIVE ORDER

In the Matter of the Appeal of
PORT OF SEATTLE
From an Interpretation by the Director,
Department of Planning & Development.

David R. West hereby declares as follows:

1. I am counsel for appellant Foss Maritime Company ("Foss") in this matter. I am over the age of 18 years, have personal knowledge of the information contained in this declaration and am competent to testify thereto if called as a witness.

2. On June 2, 2015, at 5:30 p.m., my office served (via email) written discovery on the City of Seattle Department of Planning and Development ("DPD") consisting of five interrogatories and five requests for production of documents.

1 3. On June 12, 2015, after discussions with the City's counsel about the propriety of
2 depositions of DPD witnesses, Foss served DPD with notices of deposition for DPD employees
3 Benjamin Perkowski and Andrew McKim. Foss conducted the depositions of Mr. McKim on
4 July 22, 2015 and Mr. Perkowski on July 23, 2015.

5 4. On July 9, 2015, DPD served interrogatories and requests for production on Foss
6 and the Port of Seattle.

7 5. On July 15, 2015, I received an email from Eleanor Baxendale, counsel for the
8 City. A true and correct copy of this email is attached hereto as Exhibit A. After I received this
9 email, I did not receive any oral or written follow up from Ms. Baxendale on the subject of any
10 deposition of a Foss witness until the afternoon of July 23, 2015.

11 6. On July 23, 2015, after the deposition of Mr. Perkowski, counsel for the parties
12 had an oral discussion about preparations for the hearing in this matter. Patti Goldman, counsel
13 for the Environmental Intervenors, asked me when Foss's CR 30(b)(6) deposition would be held.
14 I turned to Ms. Baxendale, counsel for DPD, who stated that she had never sent any deposition
15 topics to Foss, so the issue had not moved forward. Ms. Baxendale then stated that she was
16 unsure whether she would conduct any deposition, but that if she intended to do so, she would
17 send topics to Foss no later than the following Monday, July 27, 2015. I expressed my concern
18 that any depositions would distract the parties from their hearing preparation; stated that there
19 was no reason for delay of the hearing in response to Ms. Goldman's statement of concern that
20 there was not enough time before the hearing; and indicated that a deposition would require
21 Foss's counsel to spend time not only in the deposition itself, but preparing a corporate witness
22 on (at that point unknown) subjects.

23 7. DPD did not provide a list of topics, or any other indication that it wished to
24 proceed with the deposition, on July 27, 2015 as it had represented. I assumed that no deposition
25 would take place.
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1 8. On the afternoon of July 29, 2015, DPD sent me a list of nine topics to Foss for a
2 proposed CR 30(b)(6) deposition of Foss. The nine topics were largely duplicative of DPD's
3 written discovery requests. The author of the document was Matt Baca, one of lawyers for the
4 Environmental Intervenors.

5 9. The parties conducted a telephone conference on July 29, 2015, a few hours after
6 the topics had been sent, and discussed (among other things) the proposed deposition. Foss
7 again expressed its concerns about the late timing of the deposition, as well as the potentially
8 confidential nature of certain of the information sought and the inability to protect information
9 by means of a protective order as one would in a court proceeding.

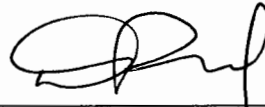
10 10. I stated in the telephone conference that the memorandum identifying the topics
11 had been authored not by the City, but counsel for the Environmental Intervenors. Counsel for
12 the City acknowledged that the Environmental Intervenors had drafted the topics; counsel for the
13 City stated that she had edited the topics. When asked how long the deposition would take, the
14 City's counsel stated that a half day would be sufficient, but Ms. Goldman, counsel for the
15 Environmental Intervenors, interjected to state that she intended to examine Foss's witness(es)
16 and that a full day would be required.

17 11. On the afternoon of August 3, 2015, I spoke with Ms. Baxendale about the issues
18 raised in our motion. She agreed to narrow and limit the scope of the deposition topics, and
19 accordingly Foss has not moved to narrow them by motion. We were unable to reach agreement
20 on the topic of striking the deposition. When I asked Ms. Baxendale why the City had waited so
21 long to advise Foss of the deposition in the first place, and why she waited another two weeks to
22 provide topics, she said she did not have time to get to the matter until then.

23 12. To date, DPD has not noted a Foss deposition of any kind.
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1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 EXECUTED this 3rd day of August, 2015 in Seattle, Washington.

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7 David R. West
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CERTIFICATE OF SERVICE

I, Dominique Barrientes, certify under penalty of perjury under the laws of the State of Washington that on August 3, 2015, I caused to be served the foregoing document, DECLARATION OF DAVID R. WEST IN SUPPORT OF FOSS MARITIME'S MOTION TO QUASH AND/OR FOR PROTECTIVE ORDER, on the person(s) identified below in the manner shown:

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Amanda Goodin
Matthew Baca
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20
21 Dated at Seattle, Washington, this 3rd day of August, 2015.

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24 _____
Dominique Barrientes, Legal Assistant

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26 GSB:7228018.1

EXHIBIT A

Dominique Barrientes

From: Baxendale, Eleanore <Eleanore.Baxendale@seattle.gov>
Sent: Wednesday, July 15, 2015 5:03 PM
To: 'Pat Schneider'; David West
Cc: McCullough, Jack; Courtney Kaylor; Patti Goldman (pgoldman@earthjustice.org)
Subject: RE: T-5 deposition dates

David – Mr. McKim can be available on Wednesday July 22, and Mr. Perkowski can be available on Thursday July 23 in the afternoon – we request that the deposition not go past 4:45. If you think that will not work, let me know; perhaps we could start late morning.

I would also like to set CR 30(b)(6) depositions – one for the Port and one for Foss. I will try to get you and the Port the scopes tomorrow.

Also, I'd like to discuss judicial notice for some documents that are part of the Writ record; is that something you all would be agreeable to in principle?

Eleanore.

From: Pat Schneider [mailto:SchnP@foster.com]
Sent: Friday, July 10, 2015 2:41 PM
To: 'David West'; Baxendale, Eleanore
Cc: McCullough, Jack; Courtney Kaylor
Subject: RE: T-5 deposition dates

Tuesday through Friday are open for me that week, with the exception of noon meetings on Tuesday and Wednesday.

From: David West [mailto:DrWest@gsblaw.com]
Sent: Friday, July 10, 2015 2:36 PM
To: Baxendale, Eleanore
Cc: Pat Schneider; McCullough, Jack; Courtney Kaylor
Subject: RE: T-5 deposition dates

Eleanore –

Thanks for the information. With the materials you provided this week and the little bit of leeway we have on schedule, I'd like to look at the week of the 20th for the two depositions. I am pretty flexible that week, and I am copying in counsel for the Port so we can make sure they can weigh in on their schedules. Thanks.

David

From: Baxendale, Eleanore [mailto:Eleanore.Baxendale@seattle.gov]
Sent: Tuesday, July 7, 2015 12:34 PM
To: David West
Subject: RE: T-5 deposition dates

Dave – I got Ben's schedule wrong. The only times that work for him and me next week is Wednesday 7/16. I don't know how long you are planning – another time is Tuesday 7/14 after 2:30. Or we can look the following week.

From: David West [mailto:DrWest@gsblaw.com]
Sent: Monday, July 06, 2015 4:47 PM

To: Baxendale, Eleanore
Subject: RE: T-5 deposition dates

Thanks, let me look at my schedule and get back with you. David

From: Baxendale, Eleanore [<mailto:Eleanore.Baxendale@seattle.gov>]
Sent: Monday, July 6, 2015 4:45 PM
To: David West
Subject: T-5 deposition dates

Hi – Next week Ben is available the afternoon 7/15, 7/16. Andy is available anytime 7/15, 7/16, and the morning of 7/17. Probably there are dates the following week that work as well.
Eleanore