

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING**

CSX TRANSPORTATION, INC.,

Plaintiff,

v.

Civil Action No. 5:05-CV-202

ROBERT V. GILKISON, *et al.*,

Defendants.

**PLAINTIFF CSX TRANSPORTATION, INC.'S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR EXTENSION OF TIME TO COMPLETE SERVICE
OF THE AMENDED COMPLAINT ON
DEFENDANT RAY HARRON**

Comes now Plaintiff, CSX Transportation, Inc. hereinafter "CSXT," by and through counsel, and submits this supplemental memorandum to update the Court on developments occurring since the filing of its motion for an extension of time to complete personal service on defendant Dr. Ray Harron.

Specifically, Dr. Harron has now been constructively served through Court approved publication of notice in the newspaper. Following that publication, plaintiff's counsel was contacted by defense counsel for Dr. Harron in this matter, attorney Jerald Jones. Based on discussions between the attorneys, CSXT is presently awaiting word from Mr. Jones as to whether Dr. Harron will cooperate on personal service. If he declines, discovery in aid of service may be warranted.

In any event, these developments seem to confirm CSXT's belief that, despite the obstacles, it will be able to effectuate personal service if given additional time. Based upon these developments as well as the circumstances outlined in its motion for an extension of time, CSXT

suggests an extension of at least sixty (60) days to complete service on Dr. Harron, until no earlier than January 2, 2008, is reasonable and appropriate.

DISCUSSION

As set forth in CSXT's motion for an extension of its service deadline, CSXT had by rule until November 2, 2007, to effect service on Dr. Harron. On October 24, 2007, before expiration of that deadline, CSXT timely filed a motion for additional time to serve Dr. Harron outlining its extensive yet unsuccessful efforts to locate him. *See Motion for Extension of Time to Serve Defendant Dr. Ray Harron*, Docket No. 247, previously filed with the Court on October 24, 2007 and incorporated herein by reference.

In addition, CSXT secured from the Clerk of the Northern District of West Virginia an Order of Publication authorizing constructive service by publication pursuant to Fed. Civ. R. 4(e) and W.Va. Civ. R. 4(e). *See Order of Publication*, Docket No. 246, entered by the Court on October 24, 2007, and incorporated herein by reference. The required notice was first published in the Clarksburg Exponent-Telegram on October 26, 2007, and then again on October 29, 2007. *See Affidavit of Publication*, Docket No. 247, previously filed with the Court on or about November 2, 2007 and incorporated herein by reference. Based on this constructive service, Dr. Harron's due date for responding to CSXT's Amended Complaint is November 26, 2007. *Id.* *See also*, W.Va.R.Civ.P. 4(e). Notwithstanding that constructive service has been accomplished, CSXT continues its efforts to perfect *personal* service so as to undeniably secure personal jurisdiction over Dr. Harron in this matter, as authorized by and pursuant to Fed. Civ. R. 4(e) and West Virginia Rule of Civil Procedure 4(g)¹.

¹ W.Va.R.Civ.P. 4(g) provides, "[t]he plaintiff may at any time before judgment, have a copy of the summons and complaint served on a defendant in the manner provided by subdivision (d) or (f) of this rule, although constructive service under subdivision (e) has already been made. After such service under subdivision (d) of this rule, the action shall proceed as in other cases of personal or substituted service within the State;....."

On November 2, 2007, following the publication in the Clarksburg Exponent-Telegram paper, CSXT attorney Marc Williams received a facsimile letter from attorney Jerald Jones indicating he had “been contacted by Ray A Harron regarding” this lawsuit. See Letter to Marc E. Williams, Esquire of November 2, 2007, attached hereto as *Exhibit A*.

On November 5, 2007, Mr. Williams confirmed with Mr. Jones that he does represent Dr. Harron in this matter, and requested that Mr. Jones accept service on behalf of Dr. Harron. Mr. Jones agreed to take the request under advisement and get back to Mr. Williams with an answer. See Letter to Jerald Jones, Esquire of November 8, 2007, attached hereto as *Exhibit B*.

On November 6, 2007, CSXT had copies of the Summons, Amended Complaint, Order of Publication, Notice of Publication, and Request for Waiver of Service form hand-delivered to Mr. Jones. See Letter to Jerald Jones, Esquire of November 6, 2007, attached hereto as *Exhibit C*. In addition to providing these materials, CSXT specifically requested that Dr. Harron reveal his current whereabouts so personal service can be perfected. See *Exhibit B*.²

As outlined above and in its original motion, CSXT has met the good cause requirement set forth by the Fourth Circuit for an extension of time in which to perfect personal service on Dr. Ray Harron. CSXT has been diligent in its attempts to locate and effect proper service on Dr. Harron, and is committed to completing the task. If Dr. Harron is not attempting to avoid service of legal process, then CSXT reasonably expects he will authorize his attorney to accept service on his behalf or waive it, as encouraged by the Federal Rules of Civil Procedure. The same would be true concerning CSXT’s request that Dr. Harron reveal his current whereabouts so that the necessary papers can be re-delivered directly to him should he insist. If, on the other hand, Dr. Harron is attempting to avoid service, then CSXT may need to petition this Court for

² As of the filing of this Supplemental Memorandum Mr. Jones has not yet responded to CSXT’s requests.

discovery in aid of service. Under either scenario, it is anticipated that the service issue should be resolved with the next 60 days.

CONCLUSION

WHEREFORE in the interests of justice under the circumstances outlined in CSXT's motion for extension and the developments since its filing, CSXT should be granted additional time. It is respectfully requested that CSXT's motion for extension be granted and CSXT be given at least 60 additional days, until no earlier than January 2, 2008, in which to perfect personal service on Dr. Harron.

CSX TRANSPORTATION, INC.

By: /s/ Marc E. Williams
Of Counsel

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Robert L. Massie, Esquire
J. David Bolen, Esquire
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COUNSEL FOR THE PLAINTIFF
CSX TRANSPORTATION, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

CSX TRANSPORTATION, INC.,

Plaintiff,

v.

Civil Action No. 5:05-CV-202

ROBERT V. GILKISON;
PEIRCE, RAIMOND & COULTER,
P.C., a Pennsylvania Professional Corporation a/k/a
ROBERT PEIRCE & ASSOCIATES, P.C., a Pennsylvania
Professional Corporation; and JOHN DOES

Defendant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served the foregoing "*Plaintiff CSX Transportation, Inc.'s Supplemental Memorandum in Support of its Motion For Extension Of Time To Complete Service Of The Amended Complaint On Defendant Ray Harron*" upon the following via electronic filing with the Court's CM/ECF system on the 8th day of November, 2007:

Honorable Frederick P. Stamp, Jr., District Judge
USDC for the Northern District of WV
P. O. Box 791
Wheeling, WV 26003

Daniel R. Schuda, Esquire
SCHUDA & ASSOCIATES, PLLC
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Charleston, WV 25335-3425

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Walter P. DeForest, Esquire
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3000 Koppers Building
Pittsburgh, PA 15219

John E. Gompers, Esquire
GOMPERS, McCARTHY & McCLURE
60 Fourteenth Street
Wheeling, WV 26003

/s/ Marc E. Williams

EXHIBIT A

{EXHIBIT.1}

Law Offices

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Clarksburg, West Virginia 26302-2348

JAMES C. WEST, JR
JERALD E. JONES
DEAN C. RAMSEY, PLLC
NORMAN T. FARLEY
KATHRYN K. ALLEN
PERRY B. JONES

November 2, 2007

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VIA FACSIMILE 304-522-4312

Marc E. Williams, Esq.
Huddleston Bolen
P.O. Box 2185
Huntington, WV 25722-2185

Re: CSX Transportation, Inc.
v.
Robert E. Gilkinson, et al.
Civil Action No. 5:05-CV-202

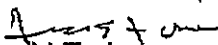
Dear Mr. Williams:

I have been contacted by Ray A. Harron regarding the above captioned civil action pending in the U.S. District Court. It is my understanding from the Pittsburgh lawyers representing the other defendants that there are dispositive motions pending before Judge Stamp, which if Judge Stamp grants, would end the case.

The purpose of my call yesterday was to see if you would agree to delay responses to the Amended Complaint on behalf of Dr. Harron until after Judge Stamp rules on the pending motions.

Please let me know your thoughts about this as soon as possible.

Yours very truly,


Jerald E. Jones

JEJ:kh

Pc: Ron Barroso, Esq. (via facsimile 361-994-0069)
Lawrence S. Goldman, Esq. (via facsimile 212-997-7707)

EXHIBIT B

{EXHIBIT.1 }

Huntington, WV | Ashland, KY
Charleston, WV | Louisville, KY

Marc E. Williams, Esq.
Direct Dial Number: (304) 691-8306
Email: mwilliams@huddlestonbolen.com

November 8, 2007

VIA FACSIMILE AND U.S. MAIL

Jerald E. Jones
West & Jones
360 Washington Avenue
P.O. Box 2348
Clarksburg, WV 26302-2348

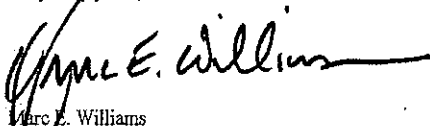
Re: *CSX Transportation, Inc. v. Robert V. Gilkison, et al.*
USDC for the Northern District of West Virginia at Wheeling
Civil Action No.: 5:05-CV-202

Dear Mr. Jones:

This is to confirm our conversation of Monday morning wherein you stated that you are counsel for Dr. Ray Harron in this matter. You stated that you would be willing to accept service on Dr. Harron's behalf in exchange for an extension of time to respond to the Amended Complaint until the Motions to Dismiss filed by the Peirce firm are ruled upon by Judge Stamp. I explained that our position is that the pending motions are not dispositive of the claims against the Peirce firm or Dr. Harron. Additionally, the pending motions raise defenses that are not available to Dr. Harron. In light of these issues, I advised that CSXT requests that you accept service on Dr. Harron's behalf so that our efforts to locate him can cease. After you have accepted service on his behalf, we will be willing to entertain any request that you might make for an extension to respond to the Amended Complaint.

I understand that you need to confer with your co-counsel regarding these issues. Please let me know your response as soon as possible. In the meantime, we will continue our efforts to serve Dr. Harron personally and ask that you advise immediately his current whereabouts. If Dr. Harron would prefer to schedule a time certain for delivery of process so as to minimize any inconvenience or surprise, please let us know and we would be happy to discuss arrangements. Thank you in advance for your anticipated cooperation in these regards.

Very truly yours,



Marc E. Williams

EXHIBIT C

{EXHIBIT.1 }

Huntington, WV | Ashland, KY
Charleston, WV | Louisville, KY

MARC E. WILLIAMS, ESQ.

Direct Dial: (304) 691-8306

E-mail: mwilliams@huddlestonbolen.com

November 6, 2007

VIA HAND DELIVERY

Jerald E. Jones, Esquire

WEST & JONES

360 Washington Avenue

P.O. Box 2348

Clarksburg, West Virginia 26302-2348

Re: *CSX Transportation, Inc. v. Robert V. Gilkison, et al.*
USDC for the Northern District of West Virginia at Wheeling
Civil Action No.: 5:05-CV-202

Dear Mr. Jones:

Enclosed please find copies of the following documents in the above-caption civil action:

1. Summons and Amended Complaint;
2. Order of Publication relative to service on Dr. Ray Harron; and
3. Affidavit of Publication evidencing that the Order of Publication was first published on October 26, 2007

I have also enclosed pursuant to Federal Rule of Civil Procedure 4(d) two copies of a ***“Notice of Lawsuit and Request for Waiver of Service of Summons”*** along with a self-addressed stamped envelope for your use in returning the ***“Waiver of Service of Summons”*** form. Pursuant to Rule 4(d)(2) I am requesting that Dr. Harron waive formal service of the summons in the above-referenced civil action in the event you decline to accept service on his behalf.

If you have any questions or comments, please do not hesitate to call me.

Very truly yours,



Marc E. Williams

Enclosures

Huddleston Bolen LLP 611 Third Ave., P.O. Box 2185, Huntington, WV 25722-2185

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