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May 11, 2018

Office of the Clerk
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W., Room 5205
Washington, DC 20001-2866

Re: *Cellco Partnership D/B/A Verizon Wireless v. National Labor Relations Board, Communications Workers of America, AFL-CIO, Case Nos. 17-1158 and 17-1165 (Consolidated)*

Dear Sir/Madam:

Pursuant to Federal Rule of Appellate Procedure 28(j), I write regarding supplemental authority in support of Cellco Partnership's petition for review of the decision and order of the National Labor Relations Board ("NLRB" or "the Board") in the above-referenced case.

On May 4, 2018, a panel of this Court issued its decision in *David Saxe Productions, LLC v. NLRB*, Case No. 16-1315, 2018 WL 2070569 (D.C. Cir. May 4, 2018), granting in relevant part the employer's petition for review. In that case, the Board, applying the standard set forth in *Wright Line*, 251 NLRB 1083 (1980), had concluded that the employer terminated a dancer because of her protected, concerted activities. The Court held that the NLRB failed to reconcile its conclusion of pretext with its implicit rejection of a credibility finding by the administrative law judge ("ALJ"). The Court explained that while the NLRB "referred to its 'established policy' not to overrule [credibility] findings . . . the Board functionally overruled the ALJ's credibility finding on [the employer's] reasons for not reviewing [the dancer's] contract." *Id.* at *5. The Court thus granted the employer's petition for review in part, because the NLRB's rationale was "unclear." *Id.* at *1. Similarly, here, the Board in one footnote declined to disturb the ALJ's credibility determinations, yet in another footnote rejected the ALJ's reliance on a privileged document, despite that the document was the basis for the ALJ's credibility determinations. *See* Brief for Petitioner/Cross-Respondent Cellco Partnership d/b/a Verizon Wireless, pp. 21-22, 29-30.

Very truly yours,

SEYFARTH SHAW LLP

/s/ Robert A. Fisher

Robert A. Fisher

cc: all counsel (via CM/ECF).

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Robert A. Fisher

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Dated: May 11, 2017