

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 17**

M&T ENGINEERING AND CONSTRUCTION, LLC

and

DONNIE SCRUGGS,

Case No. 14-CA-240972

and

CONRAD MONACO

Case No. 14-CA-241119

and

BRYAN SCRUGGS

Case No. 14-CA-241121

and

SCOTT CHANEY

Case No. 14-CA-241333

MOTION FOR ALLOWANCE OF FILING *NUNC PRO TUNC*

COMES NOW, Respondent M&T Engineering and Construction, LLC by and through its attorney states as follows:

1. That on November 8, 2019 Respondent's counsel had prepared the Findings of Facts and Conclusions of Law ordered filed by ALJ Rosas in the above referenced case. Counsel had prepared this pleading in sections and attempted to forward the same to his secretary, assistant Lisa Mclellan, so that she might proof, finalize and assemble the separate portions into one document for filing, a process they refer to as applying "Lipstick".

2. Just before leaving for lunch at noon on Friday November 8, 2019 Counsel forwarded the document sections to his assistant for the Lipstick process and ultimate filing with the NLRB.

3. Despite having forwarded the pleading portions near the noon hour, the email with attachments failed to appear in the assistant's email mailbox until 3:18 p.m. In addition, she

became aware that despite having filed other documents with government agencies that day, she had not received her customary proof of filing for these other documents and as a result contacted the law firms IT service because the over three hour delay in the receipt of an internal email made her aware that a problem existed with the emailing function on the computer system.

4. As the attached affidavit indicates, she contacted Mr. Tim Schulte of Accent Logic, the service provider who services the computers, network, server and other electronic and internet based devices for the firm for in excess of ten (10) years. Mr. Schulte responded that he did not have any ability to view the server because it was now operated by JURIS, an entity formed the previous month that now operates and controls the server and internet access that counsel had previously used and that Mr. Schulte had serviced. Nevertheless, he would see what he could do.

5. Counsel was then notified of the computer issues and after speaking with Mr. Schulte and granting him remote access to his computer allowed him to run several tests and perform various tasks. Counsel also called Julie Covell, of the General Counsel's office and reached her voice mail. Counsel left Ms. Covell a message advising of the computer and email issues that had recently been discovered and told her that Respondent's pleading would be filed on Monday after the technical problems would be corrected. By that time Ms. McLellan had left for the day returning back to her home, some 40 miles away in Drexel, Missouri.

6. Counsel had no means of proofing, editing and assembling the work product that he had prepared and anticipated that Ms. McLellan would do that when she returned to the office on Monday, November 11, 2019.

7. In support of this motion the attached affidavit of Lisa McLellan is submitted.

WHEREFORE, Respondent moves the Court to enter an order directing the clerk of this Board to file Respondent's Findings of Fact and Conclusions of Law, *nunc pro tunc* as of the day of November 8, 2019.

Respectfully submitted

/s/ Benny J. Harding
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail, on this the 11th day of November 2019, to:

Julie M. Covell
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/s/ Benny J. Harding
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