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SUPREME COURT OF THE UNITED STATES
NO. 134, ORIGINAL

STATE OF NEW JERSEY,)
Plaintiff)
V.)
STATE OF DELAWARE,)
Defendant)

COPY

TELEPHONE CONFERENCE before SPECIAL MASTER
RALPH I. LANCASTER, JR., ESQ., held at the law offices
of Pierce Atwood at One Monument Square, Portland, Maine,
on August 8, 2006, commencing at 10:00 a.m., before
Claudette G. Mason, RMR, CRR, a Notary Public in and for
the State of Maine.

APPEARANCES:

For the State of New Jersey: RACHEL J. HOROWITZ, ESQ.
BARBARA CONKLIN, ESQ.
JOHN R. RENELLA, ESQ.
DEAN JABLONSKI, ESQ.
AMY C. DONLON, ESQ.

For the State of Delaware: DAVID C. FREDERICK, ESQ.
SCOTT H. ANGSTREICH, ESQ.
SCOTT R. ATTAWAY, ESQ.
COLLINS J. SEITZ, JR., ESQ.
MAX B. WALTON, ESQ.
RYAN P. NEWELL, ESQ.

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1 in the northern part of the state -- more
2 northerly part of the state, the city in which I
3 was born and with which I'm very familiar.

4 So I envy you, Mr. Seitz, your fishing
5 expedition in the northern part of Maine.

6 MR. SEITZ: Well, thank you. It was lovely
7 weather. I hope to get back up there again in the
8 fall.

9 SPECIAL MASTER: Counsel, thank you for your
10 progress reports. It is perhaps not surprising
11 that at this stage of our proceedings, the middle
12 of the discovery phase, there are some speed bumps
13 that have been encountered. But as I read your
14 progress reports, it seems that while frustrating,
15 I'm sure, they are mostly ministerial; and I'm
16 very pleased to note from both reports that
17 counsel continue to confer and to work
18 cooperatively to resolve the problems that they
19 have had. I urge counsel to react promptly to
20 requests for supplementation or for clarification
21 so that we can stay on schedule.

22 As I read the progress reports, I did note
23 some differences in turnaround or reply time. And
24 I would urge counsel to devote sufficient human
25 resources to this project at this stage so that

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PROCEEDINGS

1 SPECIAL MASTER: Well, we're all on board.
2 Claudette Mason, our reporter, is here. Mark
3 is on vacation this week; so if I fumble or
4 stumble, it's because he's not with us.

5 But let's start, as we always do, with the
6 appearances, including those who will have no
7 speaking role.

8 New Jersey?

9 MS. HOROWITZ: Yes. This is Deputy Attorney
10 General Rachel Horowitz. And with me is Deputy
11 Attorney General John Renella, Deputy Attorney
12 General Barbara Conklin, Deputy Attorney General
13 Dean Jablonski and Deputy Attorney General Amy
14 Donlon.

15 SPECIAL MASTER: Thank you, Ms. Horowitz.
16 Mr. Frederick?

17 MR. FREDERICK: David Frederick with Scott
18 Angstreich and Scott Attaway for Delaware.

19 MR. SEITZ: And this is C. J. Seitz in
20 Delaware with Max Walton and Ryan Newell of my
21 firm.

22 SPECIAL MASTER: And before you got on,
23 Mr. Seitz reported that he had just come back from
24 Bangor, which for those of you who don't know, is

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1 there won't be any extended delay in addressing
2 legitimate concerns expressed by opposing counsel.
3 I'm confident that with that endeavor, we can stay
4 on schedule.

5 And with that little prefatory paragraph, let
6 me inquire whether either state wishes to
7 supplement its latest progress report. We'll
8 start with New Jersey.

9 MS. HOROWITZ: I think I would like to just
10 expand a little bit on our report. As we
11 indicated, we have encountered some differences
12 with Delaware with respect to their responses; and
13 I think that they are of a substantive nature in
14 the sense that the substance of the response in
15 our view in many cases has not -- not been
16 responsive and not answered the questions that
17 were asked. We are attempting to work through
18 that with Delaware; but we are concerned that
19 their -- what we view as their failure not to
20 respond substantively to the questions we have
21 asked will cause us some difficulty in using the
22 request for admissions process in a meaningful
23 way. Although we're certainly prepared to move
24 forward with the schedule as indicated, we do have
25 concerns that the request for admissions process

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1 will not be as fruitful or as meaningful as it
 2 could be in light of the problems we have
 3 experienced with the substance of some of
 4 Delaware's answers or responses.
 5 SPECIAL MASTER: Mr. Frederick, do you wish
 6 to comment on that?
 7 MR. FREDERICK: I do. We served our
 8 responses on June 30. On July the 25th, a letter
 9 from counsel for New Jersey said that our
 10 interrogatory answers were not detailed enough.
 11 We responded the next day. They also said on July
 12 25 that there were some documents that had some
 13 difficulties of reading and technical issues.
 14 Well, we corrected all of the document problems
 15 the very next day.
 16 And as to the interrogatory answers, we said
 17 we think that our answers are sufficient under the
 18 federal rules. They haven't given us anything
 19 specific that you are complaining about. And in
 20 light of that, we stand by our answers; and we
 21 think that they're perfectly sufficient.
 22 We didn't hear back from New Jersey until
 23 August 2. They thought -- you know, they sent us
 24 a very long, detailed letter that basically took
 25 the position that though they had asked us for

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1 facts and we had given them the facts upon which
 2 our answers rested, they wanted additional legal
 3 argument. And I think that there's a
 4 philosophical difference between the two states as
 5 to the role that interrogatories play.
 6 And having conferred with New Jersey
 7 yesterday, we infer from the examples --
 8 SPECIAL MASTER: Excuse me.
 9 MR. FREDERICK: -- that they have given in
 10 their own interrogatories that what they want us
 11 to do is to provide little mini briefs on various
 12 questions that they posed in their
 13 interrogatories. We don't really understand that
 14 to be the purpose of the interrogatory process.
 15 So we have rested on the facts that we have been
 16 able to glean in discovery rather than to write
 17 briefs with case citations and legal authorities
 18 on the various questions that New Jersey has
 19 posed.
 20 The second thing I would like to say is we
 21 think we have a philosophical difference with New
 22 Jersey as to a document production question. In
 23 October of 2005 prior to your appointment, Special
 24 Master, documents from New Jersey concerning the
 25 BP project -- and there were about 400 pages --

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1 there were a number of pages that had been
 2 numbered, 400 pages of which are at issue here.
 3 And when we received New Jersey's document
 4 production in this matter, which was awhile ago,
 5 the first 400 pages were of a different set of
 6 documents. So we now have two sets of documents
 7 that are numbered New Jersey 01 through about 400.
 8 And New Jersey is taking the position that the
 9 first set of documents that they produced to us
 10 are no longer relevant under your decision of June
 11 13. And leaving aside the parties' positions as
 12 to what you ruled upon on June 13, it seems to us
 13 that for creating a record it's not a feasible
 14 alternative to have two sets of documents with the
 15 same Bates numbers on them. And, you know, the
 16 issues that you opined on on June 30 are part of
 17 the record and, you know, would be the subject of
 18 further proceedings. And it seems like it would
 19 be highly complicated to us to have these two sets
 20 of documents with the same Bates numbers on them.
 21 And so we have asked New Jersey to do
 22 something to correct this. And there seems to be
 23 a philosophical disagreement about how the
 24 document numbering should be done in accordance
 25 with the Case Management Plan.

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1 SPECIAL MASTER: Ms. Horowitz?
 2 MS. HOROWITZ: Going to the first point that
 3 Mr. Frederick made, I think I disagree that we
 4 were looking for legal argument in our discovery
 5 request. We were looking to get more details on
 6 the -- exactly what Delaware's contentions are and
 7 what is the factual basis for those contentions.
 8 That was the information we were seeking. And
 9 without going into detail on any of this, the
 10 general response we got was look at the pleadings
 11 and look at the Compact. And in many cases there
 12 was not much more than that. And if we had wanted
 13 to look at the pleadings and the Compact, we could
 14 have done that months ago and had no need for
 15 discovery.
 16 So I think -- I think, unfortunately, in our
 17 view this is -- we just have not to this point
 18 received the sort of factual basis for contentions
 19 or the clarification on what their position is
 20 that we do think that we are entitled to as part
 21 of the discovery process.
 22 On the second point of the Bates stamped
 23 numbers, I would characterize that as more of a
 24 ministerial type of issue. We had set in the fall
 25 documents that were Bates stamped NJ-1 through

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1 NJ-436. When we went back and did our production
 2 more recently, we started at 1, which I agree was
 3 unfortunate. And when Delaware called to our
 4 attention that we had previously started the Bates
 5 stamps at 1, we did explain the situation to them.
 6 Essentially we could either -- there's -- since
 7 this has happened, we had the -- you know, the
 8 choice of either go -- there is no way to go back
 9 and de-Bates stamp things that have already been
 10 Bates stamped. And we have now sent them a new
 11 set of CD's with the documents. They start at 1;
 12 they go through 4,000-something. And at this
 13 point I think we're talking about, I believe, one
 14 document that in our view is responsive to
 15 discovery that has this Bates stamp issue. That's
 16 it.

17 We did talk to them about it yesterday. I do
 18 think that it is something of a ministerial nature
 19 because I think we do understand what documents
 20 are in and what are not in. And I don't see this
 21 really as an issue of great substance, at least in
 22 our view.

23 SPECIAL MASTER: Well, I am obviously -- I
 24 hear both sides; and I'm not in a position to make
 25 a comment or comments that would be meaningful at

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1 that because that will obviously, as we all know,
 2 anybody who tries cases knows, be more
 3 satisfactory in the end than having me rule one
 4 way or the other in favor of one side or the
 5 other.

6 Anything else on the current discovery
 7 matters?

8 New Jersey?

9 MS. HOROWITZ: No. No, not from New Jersey.

10 SPECIAL MASTER: Delaware?

11 MR. FREDERICK: No.

12 I would just like to note for the record we
 13 have tried to be as responsive expeditiously to
 14 Delaware's -- to New Jersey's requests as
 15 possible. And in the case of the one substantive
 16 request that they made on July 25 we responded the
 17 next day with a fresh set of documents. And New
 18 Jersey has had our documents and our
 19 interrogatories for over a month before they
 20 lodged a substantive and detailed critique. And
 21 then we only learned yesterday that they were
 22 demanding a response prior to the request for
 23 admissions being done on Friday.

24 So I just want the record to reflect we have
 25 tried very hard to be as responsive as possible

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1 this juncture. I, again, urge counsel to continue
 2 to confer because I don't think these are
 3 insurmountable problems.

4 Now, the substantive questions that you have
 5 mentioned, without further definition, may be more
 6 difficult. If it turns out -- as you know, if it
 7 turns out that you are unable to resolve your
 8 differences, which I hope won't be the case,
 9 but -- I will be available. And you have in the
 10 Case Management Plan in, I think it's paragraph
 11 10, the procedure for addressing those concerns
 12 with me.

13 My schedule calls for me to be out of the
 14 office off and on over the next two or three
 15 weeks. But my office can always reach me if you
 16 need me. And I can set up a conference call from
 17 wherever I am. I'm not inviting that. I am
 18 simply saying that as a last resort, I obviously
 19 will be available whenever it is mutually
 20 convenient for the two of you if you need me.
 21 But -- and I'm beginning to sound like a broken
 22 record here -- I have confidence in competent
 23 counsel and that you can at least winnow down
 24 these problems to a manageable level and perhaps
 25 resolve them all. And I do urge you to try to do

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1 within very short time periods.

2 SPECIAL MASTER: That's duly noted,
 3 Mr. Frederick. It was noted when I read your
 4 progress report last night.

5 Anything further, New Jersey or Delaware, on
 6 the discovery questions themselves?

7 MS. HOROWITZ: No, nothing further.

8 SPECIAL MASTER: Mr. Frederick?

9 MR. FREDERICK: No.

10 SPECIAL MASTER: Let me just note,
 11 Mr. Frederick, I think when you see the
 12 transcript, you will note that there may be places
 13 where there are little blanks because while you
 14 were discussing the discovery problems, I didn't
 15 interrupt you; but for some reason occasionally
 16 the speaker phone or something would fade. So
 17 there may be places where you may have to fill in
 18 a word or two.

19 Let me turn now to the schedule for the next
 20 progress report and conference calls. They're
 21 scheduled for September 5 and September 6
 22 respectively. And I had scheduled the following
 23 round for October 2 and October 3. Let me inquire
 24 as to whether October 3 and October 4 would work
 25 just as well or better for counsel?

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1 New Jersey?
 2 MS. HOROWITZ: I do have a court on October
 3 4. So October 3 is better for me.
 4 SPECIAL MASTER: Okay. We will -- Delaware,
 5 then we'll -- unless I hear otherwise from one
 6 side or the other, we'll leave it on October 2 and
 7 October 3.
 8 MR. FREDERICK: That's fine for us.
 9 SPECIAL MASTER: Now, turning to November,
 10 how is November 6 for the progress report and
 11 November 7 for the conference call?
 12 New Jersey?
 13 MS. HOROWITZ: What days are those? A
 14 Monday-Tuesday?
 15 SPECIAL MASTER: Yes.
 16 MS. HOROWITZ: I think the 7th is --
 17 SPECIAL MASTER: I'm sorry. November 6 is
 18 the Monday and November 7 is the Tuesday.
 19 MS. HOROWITZ: Tuesday is election day, and
 20 normally we would have election duty and be
 21 assigned out of the office. So another date is
 22 probably better.
 23 SPECIAL MASTER: All right. Let me just look
 24 at my calendar. November 8 and 9?
 25 New Jersey?

1 admonition. But you should address any comments
 2 concerning the bill to the Court -- to the
 3 Court -- and not to me because it's important that
 4 I not know who, if anyone, has concerns about the
 5 bill.
 6 I'm anticipating that that bill will be --
 7 that first bill will come out sometime in
 8 September.
 9 Is there anything else, New Jersey?
 10 MS. HOROWITZ: No, nothing else.
 11 Thank you.
 12 SPECIAL MASTER: Delaware?
 13 MR. FREDERICK: Mr. Lancaster, because you
 14 have been so wonderfully efficient with these
 15 calls, I hesitate to bring this up; but on the
 16 September the 6th call, I will be in San Francisco
 17 for the Ninth Circuit proceedings that would begin
 18 at 8 o'clock on the West Coast. And I believe
 19 that there would be no problem with our having our
 20 call that day; but if you would -- if you would
 21 think that it would be extending beyond an hour, I
 22 would just ask if it would be possible to be
 23 mindful that I would need to leave my hotel room
 24 to get to court in time for that proceeding. If
 25 you anticipate that that one will be conducted as

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1 MS. HOROWITZ: Those are fine.
 2 SPECIAL MASTER: Delaware?
 3 MR. FREDERICK: Those are fine.
 4 SPECIAL MASTER: All right. That's -- those
 5 will be the dates.
 6 Let me give counsel a heads-up. I anticipate
 7 that I will send my first bill sometime in early
 8 September. And I simply wanted to refresh your
 9 recollection about the procedure. As I told you
 10 in the first conference that we had, my current
 11 hourly rate is \$450; but for this matter only it
 12 will be charged at \$350 for reasons that I stated
 13 in that first initial conference call. Mark's
 14 rate remains at \$225. And in addition I have, as
 15 you will see, conferred from time to time with my
 16 partner, Vincent McKusick. Vincent, for those of
 17 you who don't know him, is a former Chief Justice
 18 of our State Supreme Court. And, more
 19 importantly, he, himself, is a three times Special
 20 Master. So I utilize him and he utilizes me as
 21 sounding boards when we're doing these matters.
 22 You will also recall from that initial
 23 discussion that the bill will be sent directly to
 24 the Court with an accompanying motion and a copy
 25 to you. And my letter will repeat this

1 efficiently as all the others heretofore, I don't
 2 imagine that there would be a problem. But I did
 3 want to alert you and counsel at this time of that
 4 potential conflict.
 5 SPECIAL MASTER: Well, thank you for that
 6 heads-up. If, as I suggested before, competent
 7 counsel confer and resolve all of these little
 8 discovery disputes, we should be able to handle
 9 that conference just as efficiently as we have
 10 every other one. But we won't know that, will we,
 11 until we get a little closer. And if it appears
 12 that it will be longer, we can work that out. But
 13 I'm hopeful that it won't.
 14 I'm beginning to sound like a cheerleader
 15 here, but I'm hopeful that counsel will be able to
 16 resolve these little disputes.
 17 Thank you, all. Have a pleasant week and a
 18 pleasant weekend, and we will talk to you in
 19 September.
 20 MR. FREDERICK: Thank you.
 21 MS. HOROWITZ: Thank you.
 22 (The conference was concluded at 10:20 a.m.)
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CERTIFICATE

I, Claudette G. Mason, a Notary Public in and for the State of Maine, hereby certify that the foregoing pages are a correct transcript of my stenographic notes of the above-captioned Proceedings that were reduced to print through Computer-aided Transcription.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF I subscribe my hand this ____ day of _____, 2006.

Notary Public

My Commission Expires
June 9, 2012.

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