

SUPREME COURT OF THE UNITED STATES

NO. 134, ORIGINAL

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

ORIGINAL

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
July 11, 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.
 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 K. ATTAWAY, ESQ.
 COLLINS J. SEITZ, JR., ESQ.

Also Present: MARK E. PORADA, ESQ.

PROCEEDINGS

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SPECIAL MASTER: Good morning, counsel.
We'll start, again, as we have each time before.
At this end, we have the court reporter, Claudette
Mason, and Mark Porada. And I'm Ralph Lancaster,
the Special Master.

I would ask counsel to enter appearances,
including all of the people who are with you, even
if they're not going to participate orally,
starting with New Jersey.

MS. HOROWITZ: Yes, thank you. This is
Rachel Horowitz, Deputy Attorney General. And
also here are John Renella, Deputy Attorney
General, Dean Jablonski, Deputy Attorney General,
and Amy Donlon, Deputy Attorney General.

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

MR. FREDERICK: David Frederick for Delaware
in Washington, D.C. with Scott Angstreich and
Scott Attaway.

MR. SEITZ: And this is C. J. Seitz along
with Matt Boyer for Delaware in Delaware.

SPECIAL MASTER: Thank you, counsel.

I appreciate that earlier counsel had
suggested that this conference call -- that this

1 conference call be continued because of, first,
2 the flood and then the furlough. But it seemed to
3 me that with the flood having abated and the
4 furlough having disappeared, that it made sense
5 for us to conference this morning. I have
6 received, as I assume counsel for New Jersey has,
7 Delaware's progress report submitted on July 7.

8 And perhaps we could start with New Jersey.
9 And, Ms. Horowitz, could you tell us where we
10 stand with regard to New Jersey's responses to
11 Delaware's request for production of documents and
12 Delaware's interrogatories.

13 MS. HOROWITZ: Yes, thank you.

14 We talked to Delaware counsel yesterday
15 afternoon about the situation. And we are on
16 track to get everything out by the end of this
17 week. And there were certain things we could get
18 out sooner, but we were hoping to do it in a
19 comprehensive and more thorough way. And
20 realistically it looks like that can happen by
21 Friday. And Delaware has been very cooperative
22 and understanding, and we appreciate that very
23 much.

24 SPECIAL MASTER: Thank you, Ms. Horowitz. I
25 want to be cooperative and understanding, too, but

1 perhaps I can probe this just a little bit. The
2 responses -- the answers to interrogatories and
3 the document production were due on June 30. The
4 office buildings in Trenton were closed on June 29
5 because of the flood. Then that was extended by
6 the Governor's executive order on July 1. But
7 it seems to me that you would have had your
8 responses to your document requests and your
9 answers to interrogatories ready to go on July 1
10 because they were due on June 30. So I'm a little
11 puzzled by why New Jersey needs the rest of the
12 week. And I'm not pressing that; I'm just curious
13 about it.

14 MS. HOROWITZ: Well, going back to the week
15 of the flood, Mr. Lancaster, on Wednesday right
16 after lunch we were told to leave the building
17 because of the flooding situation. So we lost
18 half of Wednesday as well as Thursday and Friday
19 because of the flood. And what that meant is that
20 the people that were -- the copying people on the
21 support staff were gone. And they have been out.
22 And then there was the furlough situation, which
23 also meant that they were out. So just with
24 respect to the logistics of getting things copied
25 and Bates, that has been, I would say, the major

1 reason why we're looking at Friday as a realistic
2 time in order to just get all of the paperwork
3 out. Obviously in terms of verbal responses, that
4 is not so much the issue. It's just the logistics
5 of copying and mailing and so forth which does
6 need support staff which were furloughed and also
7 evacuated from the building shortly after noon on
8 Wednesday, June 28.

9 SPECIAL MASTER: Mr. Frederick, are you
10 comfortable -- Ms. Horowitz has said that you have
11 talked and that you're being cooperative again
12 with regard to the production and the answers to
13 interrogatories. Does this pose a problem to you,
14 waiting until the end of the week?

15 MR. FREDERICK: No, I don't think so,
16 Mr. Lancaster.

17 We have also spoken to New Jersey counsel
18 about adjusting other deadlines that are triggered
19 off of receipt of documents and responses. And we
20 have agreed with New Jersey to adjust the schedule
21 going forward. I think that the practical effect
22 is that we will have lost probably two weeks in
23 this process; but our view is that that's not a
24 material amount of time given what we're
25 addressing here in this case.

1 SPECIAL MASTER: Right. Let me just ask for
2 clarification on that. When you say that that's
3 not material, are you talking about material in
4 the sense that it will compromise -- will not
5 compromise your ability to keep to the schedule
6 that we have established in the Case Management
7 Plan; or are you anticipating any possible
8 problems with the rest of the schedule?

9 MR. FREDERICK: No. My -- when I say
10 material, I'm thinking of it in the larger sense
11 of resolving this case within, you know, a
12 several-year period from beginning to end. I
13 think it will affect the schedules in the Case
14 Management Plan, and we have spoken to New Jersey
15 about those deadlines. And our suggestion is --
16 and New Jersey has, I think, accepted this and
17 proposed this back to us -- that we would go
18 through the other dates anticipated in the Case
19 Management Plan and just move them by two weeks
20 essentially. I mean, we have got specific dates
21 that we can jointly propose to you, Mr. Lancaster;
22 but I think that that -- that's a reasonable
23 accommodation to the situation that New Jersey has
24 had to deal with.

25 SPECIAL MASTER: Well, what may not -- what

1 may not be material to counsel may be material to
2 the Special Master. I am concerned about delaying
3 this. And you talk in terms of multiple years.
4 I'm concerned about -- and I established the
5 schedule originally in order to try to get this
6 done in as short a time period as possible and as
7 reasonable a time period as possible. And none of
8 us, of course, could have anticipated the flood.
9 And I appreciate that -- what Ms. Horowitz just
10 told me that the Trenton statehouse was cleaned
11 out on Wednesday. I hadn't understood that.

12 MR. FREDERICK: Mr. Lancaster, if I could
13 just interpose, when I said multiple years, I mean
14 the case, of course, started last summer of -- you
15 know, a number of months before you were appointed
16 Special Master. And even with the schedule that
17 you have outlined, I presume that there will be
18 some time for you to make your decision and to
19 write your report. There would be some time for
20 the parties to file exceptions with the court
21 itself. There would be some time for the briefing
22 of that and argument of that and the decision by
23 the justices. And my comment about looking at it
24 in the global sense, that that whole process is
25 going to take several years, not that the Special

1 Master phase of the case would take several years.
2 So I wanted the record to be clear about that.

3 SPECIAL MASTER: Thank you for that
4 clarification. The Special Master has a narrower
5 universe, I think, than you had in mind because
6 the Special Master is concerned not with how long
7 the court takes, but with how long the Special
8 Master takes. And I intend to try to keep your
9 feet to the fire and intend to try to keep to the
10 schedule that we have established as much as
11 possible.

12 Well, with that said, when will I anticipate
13 hearing from counsel with a suggested revision?

14 MS. HOROWITZ: We can do that later today
15 since we're in agreement with Delaware on the
16 suggestion. Essentially, as Mr. Frederick
17 indicated, all it would involve is moving the
18 various dates that are in the Case Management
19 Order now out two weeks. In some cases it's out
20 less. It's out ten days in certain instances.
21 But that's the essence of it.

22 So the end date would be moved to December 11
23 as opposed to November 30. The end date for
24 filing of motions for summary judgment or to
25 dismiss, that is.

1 SPECIAL MASTER: Let me suggest, counsel --
2 and that's fine. I will hear some -- hear from
3 you this afternoon.

4 Let me suggest to counsel that you confer
5 again and take a look -- a hard look at trying to
6 keep the end date as we now have it and still work
7 within that time frame to accommodate your needs
8 perhaps by shortening a few days here or a few
9 days there on specific items. If that's
10 impossible, I will try to be understanding. But I
11 would like to keep the end date, if it's possible.

12 So I would appreciate it if you would talk,
13 counsel, again and see if there's some way to
14 accommodate me in that regard.

15 Now, as I said earlier, we have Delaware's
16 progress report. Let me ask you, Mr. Frederick,
17 is there anything you wish to add to or supplement
18 that progress report in any way?

19 MR. FREDERICK: No.

20 SPECIAL MASTER: Ms. Horowitz, obviously you
21 haven't had time to prepare a progress report.
22 And with Mr. Frederick's agreement, I will suggest
23 that we don't burden you further with an
24 additional progress report at this time looking
25 forward to the next report in August.

1 Mr. Frederick, is that acceptable to you?

2 MR. FREDERICK: Certainly.

3 SPECIAL MASTER: Yes, all right. Well, then
4 let's turn -- unless there's something else that
5 counsel want to raise, let's turn to the schedule
6 for the next progress report and the next
7 conference call. The next -- by my calendar, the
8 next progress reports are due on August 7 and
9 September 5; and the next conference calls are due
10 to be held on August 8 and September 6. I
11 suggest, looking at my calendar, that we set
12 October 2 for the next progress report after that
13 and October 3 for the next conference call. New
14 Jersey, is that -- is that doable with you?

15 MS. HOROWITZ: Yes, that's fine. Thank you.

16 SPECIAL MASTER: Mr. Frederick?

17 MR. FREDERICK: I have no objection to that,
18 although I would just note that October 2 is Yom
19 Kippur.

20 SPECIAL MASTER: Is that a problem for anyone
21 because if it is, we can accommodate it.

22 MR. FREDERICK: We have people that will be
23 affected by that holiday.

24 SPECIAL MASTER: Yes, I understand that. If
25 there's anybody on this conference call who

1 would --

2 MS. HOROWITZ: Yes. I won't be here, so I'll
3 make arrangements for someone else to handle that.

4 SPECIAL MASTER: Okay. That's fine. Then
5 we'll set them for October 2 and October 3.

6 Is there anything else that counsel want to
7 discuss today?

8 Ms. Horowitz?

9 MS. HOROWITZ: Nothing at this end other
10 than, again, we do appreciate your forbearance
11 with our situation.

12 SPECIAL MASTER: Well, I'm sorry that you
13 found yourself in that situation. And I have to
14 tell you I'm still puzzled by what a furlough
15 means. I have looked at Executive Order 17, and I
16 have looked at the statutory provision that
17 Governor Corzine cited as authority for what he
18 did; and I probably will never understand it. And
19 I'm not going to push the question at all; but I
20 am puzzled by it, anyway.

21 Delaware, anything further?

22 MR. FREDERICK: No.

23 SPECIAL MASTER: Well, counsel, thank you.
24 We have had this small glitch with the flood and
25 then the furlough. I think it was Herodotus who

1 said neither snow, nor hail, nor something else --
2 floods, I guess, we could add to that now. I
3 continue to be pleased with and grateful for the
4 cooperative and collaborative efforts of counsel.
5 And with your help, we will continue to try to
6 stay as close to the schedule as possible.

7 I look forward to hearing from you later this
8 afternoon.

9 Thank you very much.

10 MS. HOROWITZ: Thank you.

11 MR. FREDERICK: Thank you.

12 (The conference was concluded at 10:16 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 10th day of July, 2006.

Claudette G Mason

Notary Public

My Commission Expires
June 9, 2012.