

Ralph I. Lancaster, Jr.

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February 8, 2006

Re: New Jersey v. Delaware
No. 134, Original

Dear Counsel:

Enclosed please find Case Management Order No. 1, with the Case Management Plan attached.

Sincerely,

A handwritten signature in cursive script that reads "Ralph I. Lancaster, Jr.".

Ralph I. Lancaster, Jr.

RIL/eu
Enclosures

No. 134, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF NEW JERSEY,

Plaintiff

v.

STATE OF DELAWARE,

Defendant

OFFICE OF THE SPECIAL MASTER

CASE MANAGEMENT ORDER NO. 1

February 8, 2006

CASE MANAGEMENT ORDER NO. 1

For purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED THAT:

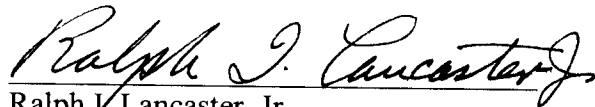
1. The Case Management Plan (“CMP”) attached hereto as Appendix 1, is hereby adopted to govern these proceedings.
2. On or before February 13, 2006, the State of New Jersey shall file a list of the issues to be decided by the Special Master. The State of Delaware shall file its list of issues to be decided by the Special Master within seven (7) days after receipt of the list of issues filed by the State of New Jersey and, in any event, no later than February 20, 2006.
3. On or before March 8, 2006, the State of New Jersey shall file any motion it chooses to make addressed to the relevance and/or admissibility of “the scope and status of British Petroleum’s project” together with its supporting brief. The State of Delaware shall file its response to any such motion within thirty (30) days from the filing of said motion by the State of New Jersey and, in any event, no later than April 7, 2006. The State of New Jersey shall file any response to the aforesaid reply brief filed by the State of Delaware on or before April 14, 2006. Unless otherwise ordered by the Special Master for good cause shown, briefs shall not exceed twenty-five (25) pages in length.
4. Counsel for both States have informed the Special Master that they do not anticipate a need for an evidentiary trial. The State of Delaware has indicated that it may wish to present historical evidence in a format that would demonstrably supplement a paper record. Within five (5) days after completion of discovery, the State of Delaware shall file with the Special Master any application it wishes to make for such a demonstration, indicating the means by which the demonstration would be made and the

length of time such demonstration would take. The State of New Jersey shall have five (5) days thereafter within which to file a similar application or to object to the application by the State of Delaware.

5. Mark E. Porada, Esq. of Portland, Maine, an associate at Pierce Atwood LLP, the Special Master's law firm, is designated as the Special Master's Case Management Assistant and Law Clerk.

6. Any requests for modification or supplementation of this Case Management Order should be received by the Special Master on or before February 15, 2006.

Dated: February 8, 2006



Ralph J. Lancaster, Jr.
Special Master

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No. 134, Original

**In the
SUPREME COURT OF THE UNITED STATES**

**STATE OF NEW JERSEY,
Plaintiff**

v.

**STATE OF DELAWARE,
Defendant**

OFFICE OF THE SPECIAL MASTER

CASE MANAGEMENT PLAN

February 8, 2006

CASE MANAGEMENT PLAN

1. Case Management Orders And Application Of Case Management Plan

The Special Master will issue Case Management Orders (“CMOs”) following conferences with counsel and at such other times as he deems appropriate. This Case Management Plan (“CMP”), together with all CMOs, will apply to and bind both parties, will control the course of the proceedings and may be modified only by order of the Special Master.

2. Filing Of Papers With The Special Master And Service

All documents shall be filed pursuant to the United States Supreme Court rules, except that all pleadings, papers and documents should be filed with the Special Master on 8 ½ x 11 inch paper, and except as otherwise modified by the Special Master. The parties shall make filings with the Special Master and service upon the other party by email (PDF), with duplicate copies of any materials transmitted by email also sent by first-class mail. In the event filings are too bulky, or otherwise unsuitable, for transmission by electronic means, they shall be sent by some means of overnight delivery. Four copies of each document sent in hard copy shall be filed with the Special Master. All pleadings, papers, and documents submitted to the Special Master shall be served on counsel for the other party in time for receipt on the same day that the Special Master receives them. Distribution need be made only to counsel and only in the quantities shown on the Distribution List attached hereto as Appendix A. All pleadings, papers and documents submitted to the Special Master must indicate, in the certificate of service or elsewhere, the means by which service or transmittal has been accomplished.

3. Filing Of Discovery Materials

3.1. General

In order to keep the record free of discovery material that has not become evidence, all interrogatories, requests for production of documents, requests for admissions, responses and replies shall not be filed with the Special Master unless a party offers a particular sworn discovery response into evidence, uses such response to support or oppose a dispositive motion or requires a ruling on a discovery dispute that the parties have been unable to resolve. In such event, only those portions pertinent to the purpose shall be filed. The parties shall file with the Special Master certificates of service for all discovery requests and discovery responses.

3.2. Depositions

Depositions shall not be filed with the Special Master until offered and admitted into evidence or used to support or oppose a dispositive motion or to resolve a discovery dispute that the parties have been unable to resolve.

4. Status Conferences

Unless otherwise directed by the Special Master, there will be monthly status conferences by telephone preceded in each instance by an emailed progress report according to the schedule set forth in Appendix B. During the discovery phase, the progress report shall update the status of each party's discovery efforts since the last update and describe any then unresolved disputes and list any further discovery anticipated during the current month. In addition, every progress report shall set forth the general status of the matter as it has evolved since the last progress report. The Special Master will schedule and hold additional status conferences as he deems necessary.

5. Discovery

5.1. General

Discovery will proceed on all issues pursuant to Fed.R.Civ. P. 26-37 and 45, except as otherwise modified herein or by other order of the Special Master. Discovery will commence and be completed in accordance with the schedule stated herein and in Appendix C. Further discovery will be allowed beyond the schedule stated herein and in Appendix C only upon motion to the Special Master. Both parties should understand that the Special Master does not intend to deviate from the established schedule except upon clear and convincing proof of good cause.

5.2. Federal Rules Of Civil Procedure 26-37, And 45

The Federal Rules of Civil Procedure applicable to discovery, Rules 26-37 and 45, shall govern the proceedings before the Special Master with the following exceptions:

5.2.1. Rule 26(a)(1)

The disclosures required in Rule 26(a)(1) will not apply. Instead, for each claim or defense, the parties will submit information as required by and in the form provided in the mandatory disclosures attached hereto as Appendices D-1 and D-2.

5.2.2. Rule 26(a)(2) - 26(a)(5)

These portions of Rule 26 will apply, except insofar as they are trial-specific and except that: (i) all time schedules and deadlines will be determined by the Special Master; and (ii) because the provisions of Rule 26(a)(4) requiring the filing of documents with

the court are inconsistent with this CMP, the filing of all documents with the Special Master shall be governed by this CMP.

5.2.3. Rule 26(b)(5)

Rule 26(b)(5) will not apply because the substance and timing of privilege logs is covered by section 8 of this CMP.

5.2.4. Rule 26(c)

Rule 26(c) will apply, except to the extent modified by section 10 of this CMP.

5.2.5. Rule 26(d)

Rule 26(d) will not apply. Rather, the timing and sequence of discovery will be determined by the Special Master. Unless the Special Master, for the convenience of the parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, will not operate to delay any other party's discovery. The parties are urged to apply adequate resources to initiate and complete discovery in an efficient and expeditious manner.

5.2.6. Rule 26(e)

Rule 26(e) will apply except to the extent modified by section 14 of this CMP.

5.2.7. Rule 26(f)

Rule 26(f) will not apply.

5.2.8. Rule 27

Rule 27 will not apply.

5.2.9. Rules 30(a)(2), 30(d)(2), Rule 31(a)(2), Rule 33 (a)

The limitations in Rules 30(a)(2), 30(d)(2), 31(a)(2) and 33(a) on the number and length of depositions and number of interrogatories will not apply. The number and length of depositions and interrogatories will be determined by the Special Master.

5.2.10. Rule 32(a)(3)(B)

The 100-mile rule contained in Rule 32(a)(3)(B) will not apply.

See Rule 45, infra.

5.2.11. Rule 45

Rule 45 will apply with the exception that the subpoena power of the Special Master will not be limited geographically by the 100-mile rule. The parties shall cooperate with each other in securing the attendance of witnesses for depositions and shall each give reasonable notice to the other party if a witness is recalcitrant and will require a subpoena.

6. Substantive Discovery

This discovery plan provides that substantive discovery will proceed promptly and shall be concluded as expeditiously as reasonably practicable. Except as otherwise provided herein, to the extent possible, written discovery and the exchange of documents should be completed before deposition discovery begins. While there inevitably will be

some overlap, the goal of this discovery plan is to proceed in an organized fashion that will avoid unnecessary or repetitive discovery efforts on the part of the parties.

Appendix C is a summary of the discovery dates and deadlines set forth herein.

6.1. Written Discovery

Written discovery shall consist of the following and, to the extent reasonably possible, follow the schedule set forth herein.

6.1.1. Initial Disclosures

The parties will complete the initial disclosures in the form applicable to them as set forth in Appendices D-1 and D-2. The deadline for response to the initial disclosures will be as follows:

6.1.1.a. New Jersey shall serve its initial disclosures no later than March 31, 2006;

6.1.1.b. Within one (1) month from the date of New Jersey's service of its initial disclosures and, in no event later than April 28, 2006, Delaware shall respond, to the extent necessary, to New Jersey's initial disclosures regarding defenses to the claims it is defending and shall serve its own initial disclosures.

6.2. Interrogatories

Upon completion of Delaware's responses to New Jersey's initial disclosures, and within one (1) month from the date of Delaware's response, in no event later than May 29, 2006, each party may serve one set of not more than fifty (50) interrogatories, including discrete subparts, on the other party. Without prior

written approval of the Special Master, no additional interrogatories may be served. Each party served with interrogatories shall have one (1) month from the date of service to respond, in no event later than June 30, 2006.

6.3. Requests for Production of Documents/Inspections to Parties

Within one (1) month from the date of service of Delaware's initial disclosures, in no event later than May 29, 2006, each party may serve requests for production of documents/inspections on the other party. A party upon which requests for production of documents/ inspections are served shall have one (1) month from the date of service within which to respond, in no event later than June 30, 2006.

6.4. Requests For Documents/Inspections To Non-Parties

Starting immediately after the date of this CMP, each party may serve on non-parties requests for production of documents/requests for inspection as provided in Fed. R. Civ. P. Rules 34(c) and 45. Any such requests shall be made not later than one (1) month after Delaware's initial disclosures, in no event later than May 29, 2006.

6.5. Requests to Admit

Within three (3) months of the date of service of Delaware's initial disclosures, in no event later than July 31, 2006, a party may serve requests for admission on the other party. Each party served with requests for admission shall have one (1) month from the date of service to respond, in no event later than August 30, 2006.

6.6. Deposition Discovery

Deposition discovery will take place in two phases according to the schedule set forth herein. Phase one will be fact/lay witness discovery. Phase two will be expert witness discovery. Phase one may begin immediately upon receipt of this CMP and shall

be completed not later than two (2) months after the conclusion of written discovery, in no event later than September 29, 2006. Phase two may also begin immediately and shall begin no later than upon completion of fact/lay witness depositions. Phase two shall be completed not later than one (1) month after the conclusion of fact/lay witness depositions, in no event later than October 30, 2006. Depositions will be conducted in accordance with the guidelines attached hereto as Appendix E.

6.6.1. Fact/Lay Witness Depositions

Phase one will consist of all fact/lay witness depositions, including the depositions of non-expert witnesses employed by the parties. The term fact/lay witnesses does not include those employees of either party whose training and experience provides them the expertise to testify as to experts.

6.6.2 Expert Witness Depositions

Phase two will consist of all expert witness depositions. Expert witnesses include all witnesses whose identity is required to be disclosed under Fed. R. Civ. P. Rule 26(a)(2). Expert witness depositions will be divided into fact experts and consultive experts:

6.6.2.a. Fact Experts

Fact experts are those who have personal knowledge of information and/or events and whose training and experience provide them the expertise to testify as experts.

To the extent that fact experts will offer testimony as expert witnesses, an expert report must be filed containing the information required by Fed. R. Civ. P. 26(a)(2)(B).

6.6.2.b. Consultive Experts

Consultive experts are those experts who have been retained by the parties to testify as to matters and issues in this case. All expert reports required under Fed. R. Civ. P. 26(a)(2)(B) shall be provided as soon as available, and no later than twenty (20) days prior to the date of the expert's deposition.

7. Bates Numbering System

All documents produced by the parties shall bear a distinctive Bates number. Each party shall begin each Bates number with the two-letter abbreviation for the state as designated by the United States Postal Service. For example, a New Jersey Bates-numbered document will begin NJ 00001. All documents produced by non-parties shall state the identity of the non-party by proper name or recognized abbreviation before the Bates number. No party shall use any document that has not been Bates-numbered and produced, except for impeachment or for other good cause shown.

8. Privilege Logs

If a party withholds on the ground of privilege any written information (in hard copy or electronic form) it shall provide a privilege log to opposing counsel. These privilege logs shall set forth the following information: (a) author's name, place of employment and job title; (b) addressee's name, place of employment and job title; (c) recipient's name, place of employment and job title, if different than that of addressee; (d) general subject matter of document; (e) site of document; and (f) nature of privilege

claimed. Thereafter, any privilege log shall be supplemented to include any documents that are subsequently designated privileged by counsel.

9. Confidentiality

All documents, models or other tangible things containing a trade secret or other confidential information may be designated “Confidential,” so long as such documents have not been disclosed by the producing party to anyone other than those persons employed or retained by it. Such documents or portions of documents shall be designated, after review by counsel for the producing party, by stamping “Confidential - S. Ct. 134” on each page. Any party may contest the designation of a document as “Confidential,” or request that a document not otherwise covered by this CMP be considered confidential, by applying to the Special Master for a ruling. In either event, counsel shall first make a good faith effort to resolve the issue. The party requesting confidentiality shall have the burden of showing that such designation is appropriate. At a deposition, or within ten (10) business days after receipt of the transcript, a party may designate as confidential any appropriate information and such designation shall be served on all counsel. Confidentiality objections need not be made at a deposition and they shall not be a ground for a direction or refusal to answer, but counsel may indicate such designation at the time and the parties shall govern themselves accordingly. Depositions and transcripts will be considered to be confidential until expiration of the ten (10)-day period and thereafter as to any part or all so designated. Any individual not authorized by this CMP to be a recipient of confidential information may be excluded from a deposition while such information is being elicited.

Confidential documents or information subject to this CMP may not be disclosed to or used by anyone except those hereby authorized and by them only in the context of this case. Such individuals shall include counsel, the parties' specifically authorized employees, experts, and fact witnesses, together with such others as are approved by the Special Master. Each individual who is permitted to see such confidential documents, or given access to such confidential information, shall be bound to observe the provisions of this CMP with respect to all documents and information produced through these proceedings by signing a Non-Disclosure Agreement in a form agreed upon by the parties or approved by the Special Master if the parties cannot agree. The Non-Disclosure Agreement shall include an agreement to submit to the Special Master's jurisdiction for enforcement of this portion of the CMP and to return all such designated documents and information promptly at the end of the litigation.

10. Resolution Of Discovery Disputes And Motions To Quash And Seek Protective Orders

Before bringing a discovery dispute to the attention of the Special Master, the parties shall confer in an attempt to resolve the dispute. It shall be the responsibility of the moving party to initiate the conference immediately following the identification of the dispute. Failure promptly to initiate the conference, failure to respond promptly to the initiation or failure to cooperate in dispute resolution may result in an adverse ruling regardless of the merits. If the conferences do not resolve the dispute, the procedure for resolving the discovery dispute shall be as follows:

10.1. Written Discovery Disputes

10.1.1. Failure to timely respond to written discovery requests

In the event that timely responses to written interrogatories or document requests are not forthcoming, the proponent of the discovery should promptly file a motion to compel, which shall set forth the date the discovery was served and the due date for the responses, together with an averment of the default. No brief or copy of the interrogatories or document requests should accompany the motion. Upon receipt of such a motion, the Special Master, without waiting for a response, may enter an order directing the discovery to be provided by a certain date and including such sanctions as he deems appropriate.

10.1.2. Disputes Regarding Discovery Objections Or Adequacy Of Responses

In the event of a discovery dispute – in contrast to a default – arising by reason of the respondent’s objections or concerning the adequacy of responses to interrogatories, document requests, requests to inspect, or requests to admit, the parties shall promptly and in good faith exert every reasonable effort to resolve their differences. Where objections are made, the objecting party shall provide all other discovery that such party does not consider to be

objectionable. As a last resort, any unresolved dispute shall be submitted to the Special Master as follows:

- 10.1.2.a.** the parties shall first submit the dispute orally by telephone
- 10.1.2.b.** if the dispute is not resolved telephonically, the parties shall make a written submission setting forth as to each individual discovery item in dispute the interrogatory, document request, request to inspect or request to admit, together with the answer or response, including any objection, as well as the parties' respective positions on a schedule set by the Special Master. These shall be set forth in sequence and, if practicable, on a single page and, in any event, separate and apart from any other discovery dispute. Case citations and other authority should be included.

11. Deposition Disputes

11.1 General Procedures

Except as is expressly provided in paragraph 11.2 below, discovery disputes that arise during a deposition shall be resolved by submission to the Special Master, according to the same procedure set forth in section 10 governing disputes in regard to the adequacy of responses to written discovery.

11.2. Disputes That Require Immediate Resolution

Where a dispute arises at a deposition and a party believes an immediate resolution is necessary to avoid the re-scheduling of the deposition or a significant disruption of the discovery schedule, the Special Master shall be telephoned.

11.2.1. If the Special Master is available and a telephone conference is held, the ruling of the Special Master shall be recorded in the deposition. The deposition shall proceed according to such ruling or direction. If the ruling or direction is that a witness must answer a question or questions despite an objection based upon claim of privilege or work product, the objecting party shall not be deemed to have withdrawn or waived its objection.

11.2.2. If the Special Master is not available by telephone during the deposition, the dispute shall be noted for the record and the deposition shall proceed with respect to all other issues. Thereafter, the dispute shall be presented to the Special Master as provided in section 10.

12. Disputes Not To End Deposition

Under no circumstances shall any party refuse to continue participating in a deposition because of the unavailability of the Special Master to resolve a dispute telephonically.

13. Motions To Quash Or For Protective Orders

The following procedures are to be employed in situations where subpoenaed persons or entities desire to move to quash a subpoena or seek a protective order from the demand of a subpoena.

13.1 Subpoenaed Parties

If the subpoenaed entity or person is a party or the employee of a party, then the entity or person must seek appropriate relief from the Special Master pursuant to the procedures for resolving written discovery disputes in section 10.

13.2. Subpoenaed Entities Or Persons Who Are Not Parties

When a party subpoenas a person or entity, the party issuing the subpoena should serve upon the subpoenaed person or entity, along with the subpoena, a copy of section 10 of this CMP. The subpoenaed person or entity may seek relief under this CMP, by submitting the dispute to the Special Master pursuant to the procedures for resolving written discovery disputes in section 10.

14. Supplementing Discovery

Recognizing that a party is under a duty seasonably to amend a prior response to an interrogatory, request for production or inspection, or request for admission if the party learns that the response is in some material respect incomplete or incorrect, the parties shall undertake a regularly scheduled supplementation of discovery responses three (3) months from the original due date of each discovery request and at each three (3) month period thereafter. It will satisfy the duty of supplementation if the party identifies only those specific responses that are supplemented. It is not necessary to restate each discovery response if there is no information to supplement, amend or

modify. Supplementation of written discovery will not be required to the extent the same information has been provided by subsequent deposition, but the fact of supplementation must be noted at the time of the deposition. Supplementation of Fed. R. Civ. P. Rule 26(a)(2), expert reports, is required to the extent that an expert has formed additional opinions or additional grounds to support previous opinions that have not been provided by way of expert report or deposition testimony. The duty to supplement expert reports includes opinions or grounds to support previous opinions formed after an expert has been deposed. Supplementation of deposition testimony of any witness other than an expert is not required. If there is no need to supplement, there is no need to file negative reports at the third month interval.

15. Dispositive Motions

Motions to dismiss or motions for summary judgment may be filed at any time up to and until one (1) month after the completion of deposition discovery, in no event later than November 30, 2006.

APPENDIX A
New Jersey v. Delaware, No. 134, Original
Distribution List for Service of Documents and Email Filed with the Special Master
February 8, 2006

For State of New Jersey

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APPENDIX B
***New Jersey v. Delaware*, No. 134, Original**
Schedule of Progress Reports and Telephone Conferences
February 8, 2006

Progress Reports	Telephone Conferences
March 6, 2006	March 8, 2006
April 7, 2006	April 11, 2006
May 5, 2006	May 10, 2006

Each Progress Report should be sent by email so that it is received no later than 5:00 p.m. on the designated date.

Each Telephone Conference will be held at 10:00 a.m. Arrangements for dial-in will be made by the Special Master and the information about the arrangements will be furnished to counsel no later than one day prior to the scheduled conference.

At each conference, new dates will be set for the Progress Report to be furnished and for the Telephone Conference to be held during the month next after the last scheduled conference.

APPENDIX C
New Jersey v. Delaware, No. 134, Original
Summary of Discovery Deadlines
February 8, 2006

Initial disclosures	New Jersey shall serve no later than March 31, 2006. Delaware shall serve no later than April 28, 2006.
Interrogatories	Interrogatories may be served commencing immediately upon Delaware's service of its initial disclosures and, in any event, no later than May 29, 2006.
Responses to interrogatories	Responses must be served within one (1) month from the date of service and, in any event, no later than June 30, 2006.
Document requests or requests for inspection to parties	Requests for production of documents/inspections may be served commencing immediately upon Delaware's service of its initial disclosures and, in any event, must be served no later than May 29, 2006.
Responses to document requests or request for inspection to parties	Responses must be served within one (1) month from the date of service and, in any event, no later than June 30, 2006.
Document requests to non-parties	Document requests to non-parties may be served commencing immediately upon receipt of this CMP and must be served no later than May 29, 2006.
Responses to document requests to non-parties	Responses must be served within one (1) month from the date of service and, in any event, no later than June 30, 2006.
Requests to admit	Requests to admit may be served commencing immediately upon Delaware's service of its initial disclosures and, in any event, must be served no later than July 31, 2006.
Responses to requests to admit	Responses must be served within one (1) month from the date of service and, in any event, no later than August 30, 2006.
Fact/lay witness depositions	Fact/lay witness depositions may begin commencing immediately upon receipt of this CMP and, in any event, must be completed no later than September 29, 2006.

Expert witness depositions	Expert witness depositions may begin commencing immediately upon receipt of this CMP and must, in any event, be completed no later than October 30, 2006.
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The dates set forth above are the outside and final dates for the completion of the listed activity. Every effort should be made to complete each activity in advance of the prescribed deadline.

APPENDIX D-1
New Jersey v. Delaware, No. 134, Original
New Jersey's Initial Disclosures
February 8, 2006

1. State precisely the nature of New Jersey's claims and a succinct statement of the legal issues in the case.

2. Describe in detail, separately as to each issue, all statutes, codes, regulations, legal principles, standards, and customs or usages and illustrative case law that New Jersey contends are applicable to this action.

3. Provide the name, address and telephone number of each individual state, local and federal government agency, organization, political subdivision or other entity likely to have discoverable information relevant to any disputed facts alleged by Delaware and currently known to you, identifying separately the subjects of the information as to each person and identity listed.

4. Provide a copy, or a description by category and location, of all documents and tangible things in New Jersey's possession, custody or control that may be relevant to New Jersey's claims and Delaware's defenses. It will be sufficient, if they have already been identified/produced, simply to list them with an indication that they have been produced. Copies shall be provided in paper and, to the extent available, electronic versions. Any documents produced that are available only in electronic form should be produced solely in that form.

APPENDIX D-2
New Jersey v. Delaware, No. 134, Original
Delaware's Initial Disclosures
February 8, 2006

1. State precisely the nature of any defense to New Jersey's claims including a brief factual outline of the defense and a succinct statement of legal issues involved in that defense.
2. Describe in detail, separately as to each, such issue, all statutes, codes, regulations, legal principles, standards and customs for usages, and illustrative case law that Delaware contends are applicable to this action.
3. Provide the name, address and telephone number of each individual state, local and federal government agency, organization, political subdivision or other entity likely to have discoverable information relevant to any disputed facts alleged by New Jersey and currently known to you, identifying separately the subjects of the information as to each person and identity listed.
4. Provide a copy of, or a description by category and location, of all documents and tangible things in Delaware's possession, custody or control that may be relevant to New Jersey's claims and Delaware's defenses. It will be sufficient, if they have already been identified/produced, simply to list them with an indication that they have been produced. Copies shall be provided in paper and, to the extent available, electronic versions. Any documents produced that are available only in electronic form should be produced solely in that form.
5. Provide a detailed factual basis for each defense asserted by Delaware and still maintained.

APPENDIX E
New Jersey v. Delaware, No. 134, Original
Deposition Guidelines
February 8, 2006

1. Cooperation

Counsel will cooperate with each other and exercise civility in all aspects of this litigation.

2. Waiver Stipulations

Unless contrary to an order of the Special Master, the parties (and when appropriate, a non-party witness) may stipulate, in a suitable writing, to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for any discovery beyond discovery cutoffs or deadlines set by the Special Master are not valid without approval of the Special Master.

3. Scheduling

Except in extraordinary circumstances, noticing counsel shall consult in advance with counsel for the deponent, if any, and with opposing counsel, so as to schedule depositions at mutually convenient times and places.

4. Attendance

4.1. Who May Be Present

Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a party, including counsel from the offices of the respective attorneys general, counsel for the deponent, and expert consultants or witnesses. During examination of a deponent about any

document stamped “Confidential – S. Ct. 134” or its confidential contents, persons to whom disclosure is not authorized under section 9 of this CMP shall be excluded.

4.2 Cross-Noticing

A party may cross-notice a deposition. The cross-notice shall be served at least ten (10) days prior to the date noticed for the deposition unless otherwise provided for by an applicable rule or Case Management Order.

5. Conduct

5.1 Examination

Ordinarily, each party should designate one attorney to conduct the principal examination of the deponent. Examination by other attorneys should be limited to situations where designated counsel must leave before the deposition is completed or is otherwise incapacitated.

5.2 Objections and Directions Not to Answer

Counsel shall comply with Fed. R. Civ. P. 30(d)(1). When a claim of privilege is made, the witness should nevertheless answer questions relevant to the existence, extent or waiver of the privilege, including the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged.

5.3 Time Limitations

Depositions must be concluded within a reasonable time limit. At the time of notification, the noticing party will estimate the reasonable amount of time needed for the deposition. In the event any other party considers the proposed amount of time to be unreasonable, the dispute, if unresolved, may be referred to the Special Master pursuant to section 10 of this CMP. Except with prior agreement of counsel or written approval of the Special Master, no deposition may last longer than three (3) eight (8) hour days, provided that no such agreement of counsel may extend any discovery deadline.

5.4 Continuation of Deposition

If a deposition is not finished by the end of the business day, it will continue on the following business day and each business day thereafter, subject to the availability of the witness and time limitations otherwise set by agreement or order of the Special Master. The parties may agree to continue or suspend a deposition until a mutually agreed upon later date, provided that the later date is within any discovery deadline set by the Special Master.

6. Documents

6.1. Production of Documents

All documents should be requested and produced pursuant to sections 6.3 and 6.4 of this CMP. If a non-party witness is believed to have documents not previously produced, a subpoena to produce documents should be

served at least thirty (30) days before the scheduled deposition.

Arrangements should be made to permit inspection of the documents by both parties before the deposition begins. Any documents produced in such a manner should be Bates numbered pursuant to section 7 of the CMP.

6.2. Copies

Extra copies of documents about which counsel expects to question the deponent shall be provided to opposing counsel and the deponent at the time of the deposition. Deponents should be shown a document before being examined about it except when counsel are attempting to impeach deponent or test deponent's recollection.

7. Videotaped Depositions

By request in its notice of a deposition, a party may record the deposition as permitted under Fed. R. Civ. P. 30(b)(2) through (4).

7.1 Video Operator

The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

7.2 Attendance

Each witness and each examining attorney shall be identified on camera at the commencement of the deposition. All others present at the deposition shall be identified off-camera. Thereafter, generally speaking, only the deponent (and demonstrative materials used during the deposition) shall be videotaped.

7.3. Standards

The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box other than when reviewing or presenting demonstrative materials for which a change in position is needed. The deposition should be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angles, lens setting, and field of view should be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibit and materials used during the deposition. Sound levels should be altered only as necessary to record satisfactorily the voices of counsel and the deponent. No eating or smoking by deponents or counsel should occur during the deposition.

7.4 Interruptions

The videotape shall run continuously throughout the active conduct of the deposition. Videotape recording shall be suspended during agreed “off the record” discussions.

7.5 Index

The videotape operator shall use a counter on the recording equipment and, after completion of the deposition shall prepare a log, cross-referenced to counter numbers. The log shall identify on the tape where: examination by different counsel begins and ends; objections are made and examination resumes; record certifications are requested; exhibits are identified; any interruption of continuous tape recording occurs; and the reason for the interruption, whether for recesses, “off the record” discussion, mechanical failure, or otherwise.

7.6 Filing

The operator shall send the original videotape in its original condition to the deposing State party in a sealed envelope. No part of a videotaped deposition shall be released or made available to any member of the public or to any unauthorized person, whether marked “Confidential” or not.

7.7 Objections

Requests for ruling on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. Each issue shall be separately submitted. If needed for

a ruling, a copy of the videotape and equipment for viewing the tape (if necessary) shall also be made available to the Special Master.

8. Telephonic Depositions

By stating in the deposition notice that it wants to conduct the deposition by telephone, a party shall be deemed to have moved for an order under Fed. R. Civ. P. 30(b)(7). Notice of a telephonic deposition shall be served at least thirty (30) days before the deposition. Unless an objection is filed and served at least twenty (20) days before the deposition, the motion shall be deemed to have been granted. Other parties may examine the deponent telephonically or in person. All persons present with the deponent shall be identified in the deposition and shall not by word, or otherwise, coach or suggest answers to the deponent.

9. Use

Under the conditions prescribed in Fed. R. Civ. P. 32(a)(1) to (4), as otherwise permitted by the Federal Rules of Evidence, or as agreed to by the parties with approval of the Special Master, depositions may be used against either party.

10. Supplemental Depositions

To the extent a deponent acquires new information, or forms new opinions, or finds new grounds to support previous opinions, any party may move for a supplemental deposition. Such motion shall be made for good cause shown within thirty (30) days of a party's learning of the new information, opinion or grounds from supplemental discovery responses provided under section 14 of this CMP or any other source. If permitted, the supplemental deposition shall be treated as the resumption of the deposition previously taken, but shall not exceed one (1) eight (8) hour day in length. Supplemental

depositions shall not be repetitive of prior examination and repetition of substantially the same examination as previously conducted may result in imposition of monetary and other sanctions.

11. Rulings

Rulings on objections made during a deposition will be resolved according to the procedure set forth in section 11 of the CMP.