

SOUTH CAROLINA,

Plaintiff,

vs.

No. 138

NORTH CAROLINA,

Defendant.

TELEPHONIC CONFERENCE

BEFORE SPECIAL MASTER KRISTIN MYLES

Friday, May 23, 2008

Reported by:
DANA M. FREED
CSR No. 10602
JOB No. 87284

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SOUTH CAROLINA,
Plaintiff,
vs. No. 138
NORTH CAROLINA,
Defendants.

Telephonic Conference before Special
Master Kristin Myles, beginning at 11:03 a.m. and
ending at 11:42 a.m. on Friday, May 23, 2008,
before DANA M. FREED, Certified Shorthand Reporter
No. 10602.

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1 Friday, May 23, 2008

2 10:03 a.m. - 10:50 a.m.

3

4 SPECIAL MASTER MYLES: Shall we run through a
5 quick roll call to see who's here?

6 MR. FREDERICK: For South Carolina, Special
7 Master Myles. This is David Frederick. I'm calling
8 in remotely. And from my office I believe should be
9 Scott Angstreich and Scott Attaway.

10 MR. BROWNING: For North Carolina, this is
11 Chris Browning.

12 MR. COOK: For South Carolina, this is
13 Bob Cook and Childs Cantey.

14 MS. DRISCOLL: For Catawba River Water Supply
15 Project, Susan Driscoll and Jim Sheedy.

16 MR. PHILIPS: For Duke Energy, this is
17 Carter Phillips and Virginia Seitz.

18 MR. BANKS: For the City of Charlotte, this
19 is Jim Banks. And I believe Mike Boyd is on with us.

20 SPECIAL MASTER MYLES: Okay. Why don't we
21 get started? It sounds like we have everybody here.
22 Why don't we start out with schedule outstanding
23 things that I had? Did you all get my disclosure?

24 MR. FREDERICK: This is David Frederick for
25 South Carolina. Yes, we did. Thank you.

1 MR. BROWNING: And this is Chris Browning for
2 North Carolina. We have received that as well. Let
3 me also add that Jim Gulick and Mark Bernstein
4 are now on the conference call.

5 MR. GULICK: Good morning.

6 SPECIAL MASTER MYLES: Good morning. Well,
7 good afternoon.

8 MR. PHILLIPS: This is Carter Phillips. We
9 also received the disclosure.

10 SPECIAL MASTER MYLES: Are there any
11 questions about that? I just thought the best level
12 of detail was just to put things out there in a
13 general matter. And then if anybody has any
14 questions, they should feel free to ask me. Not just
15 now but later in an email, whatever, however you want
16 to do that. Because I don't know what sort of
17 questions might occur to people.

18 As mentioned in the disclosure, I didn't work
19 on any of the matters that are mentioned other than
20 where I have been co-counsel or opposing counsel or
21 codefense counsel at various law firms.

22 But in terms of the matters with Duke, which
23 are past matters against Duke really, I didn't work on
24 either of those.

25 So if anyone has any questions, let me know.

1 Does anyone have any questions now that they want to
2 ask? Okay.

3 And then in terms of the intervention order,
4 that will be coming out on Tuesday of next week.
5 I did say I'd have it before this call. And I just
6 wanted to go over it a couple more times. So I'm
7 going to send it out on Tuesday morning my time. And
8 you should have the other one on the pleadings shortly
9 after that. Probably next week. But at the latest,
10 early the following week.

11 I wanted to just say briefly on the second
12 one, so people have an idea, I think that's probably
13 a part of what's holding up case management issues.
14 I think that -- and this is going to be in the order.
15 I'm not going to give you a preface for the other one,
16 the intervention.

17 But on the order relating to the pleadings, I
18 think that the pleadings are broader than
19 North Carolina has tried to say they are. And
20 although they focus on transfers, I think they fairly
21 encompass a broader request for relief in the form of
22 an equitable apportionment. I think that the
23 pleadings could be more specific. But I don't think
24 they're prohibitively lacking in specificity,
25 particularly since the Court approved the, the

1 complaint as it was filed. And within the
2 four corners of the complaint, I think South Carolina
3 has the better of the argument on what's being sought.

4 So that's going to be the gist of the
5 pleading-related order that comes out. But I also
6 wanted to make that be the beginning of a discussion
7 on how to narrow the issues, as I sort of alluded to
8 at the hearing. How we can get to narrowing by way of
9 discovery or motion practice or otherwise to narrow
10 the issues so that -- and further define the issues,
11 so that we can decide what's really at issue in the
12 case. So that's sort of a prelude to what that second
13 order is going to be.

14 And maybe what makes sense is to move on
15 quickly to the issues that have been dividing the
16 parties on the case management. Does North Carolina
17 agree with South Carolina's statement of what the
18 disagreements are? Specifically, South Carolina says
19 the parties disagree on the contents of privilege
20 logs, attendance by nonparties at depositions. And
21 the general issues to be decided in phases 1 and 2.
22 What those issues are. And the timing for discovery
23 and trial.

24 MR. BROWNING: Yes, that's a fair assessment
25 of where we're apart on the case management.

1 MR. GULICK: Special Master, this is
2 Jim Gulick. In addition to the ones you listed, it
3 may be there. I don't have their report in front of
4 me, is an issue, and this is a timing issue having to
5 do with the amount of time for the expert report
6 following fact discovery between the plaintiffs'
7 filing of their reports and the State's filing of its,
8 and North Carolina filing its responses.

9 SPECIAL MASTER MYLES: Okay. Well, that may
10 be encompassed within their Item No. 3.

11 MR. GULICK: It may be.

12 MR. FREDERICK: This is David Frederick. It
13 was intended to do that. Our expectation was that
14 once the order came out regarding the scope of the
15 complaint, that the parties would be able to meet and
16 confer and to narrow the scope of disagreement as to
17 timing. And that within that, we'd be able to address
18 the timing for various expert reports.

19 SPECIAL MASTER MYLES: Okay. That makes
20 sense. Well, it seems that what we might want to do
21 is set up, is identify which of these issues can be
22 resolved by a submission. If we submitted --
23 for example, which of them are encompassed by
24 different versions of a case management order that the
25 parties could submit their two versions of it or one

1 version identifying the points of disagreement. So
2 that I could then go through the points of
3 disagreement and try to resolve them. Or it may be
4 some of them will resolve themselves in light of the
5 pleading order. But I don't get the sense that all of
6 them would.

7 MR. FREDERICK: This is David Frederick.
8 I think that your latter observation is correct.
9 Although, the way we have gone about negotiating this
10 is to reach agreement on virtually all of the
11 provisions of the case management plan, with the
12 couple of exceptions that counsel for North Carolina
13 has identified and that are reflected in our progress
14 report. And so those provisions can be presented to
15 you in side-by-side comparative form. And either you
16 could say, you know, A or B, or if you have a
17 preferred method for dealing with those issues,
18 you know, propose, or order something that would be
19 different from those two that the states have
20 proposed.

21 SPECIAL MASTER MYLES: Okay. That makes
22 sense. I think that's sort of what I was getting at.
23 Can we set a time for submitting that, so that we can
24 kind of get the case management order in place and try
25 to move on?

1 MR. GULICK: Special Master, this is
2 Jim Gulick and North Carolina. I think we can. And
3 I agree with what Mr. Frederick was saying. I do
4 think that actually seeing your order could be helpful
5 to us.

6 SPECIAL MASTER MYLES: Yeah, I'm sure it
7 would. So I apologize for it having taken so long.
8 I should have probably disclosed I had a big case
9 going in trial. I'm not the lead trialer, but I have
10 been having to spend part of my time on that. So
11 that's why I have been so slow getting these two
12 things out. But I do have them ready, pretty close to
13 ready to go out now. So once we get those out,
14 I think it will be easier to move, move quickly.

15 MR. GULICK: Of course, part of this is that
16 not knowing how you're going to resolve some the
17 intervention issues, both parties may have some
18 comment they may want to make if someone's allowed to
19 intervene, so....

20 MR. FREDERICK: Ms. Myles, if I could propose
21 that we get through next week, evaluate your orders,
22 and then we could submit something early the week of
23 June 2nd. The issues that are outstanding regarding
24 privilege log and attendance of nonparties at
25 depositions are things that are very easy to set up

1 and you can just decide how you want the parties to
2 proceed on those. The timing issues will be a little
3 bit more difficult, and they will, I think, turn in
4 substantial part on how you rule on the motions that
5 are outstanding. And how we understand your orders to
6 be implement -- you know, to be implemented.

7 But I would think that the week of June 2nd,
8 we could submit fairly short letter briefs that would
9 outline the issues, give you the draft of the case
10 management plan as it's been negotiated. And then
11 provide in comparative form the respective positions
12 of the states.

13 SPECIAL MASTER MYLES: I think that makes
14 sense. Any issues that aren't within the four corners
15 of the dispute over the language of the case
16 management order could be set out separately in letter
17 briefs. I don't know if, for example, that attendance
18 of nonparties at depositions is something that's part
19 of a drafting dispute or if that's just a separate
20 dispute?

21 MR. FREDERICK: There is a provision in the
22 proposed case management plan that addresses
23 depositions. And so, as a subpart of that, there is a
24 provision regarding attendance of nonparties at
25 depositions. And that's been the bone of contention

1 between the parties.

2 We've negotiated dealing with out-of-state
3 depositions and the time for depositions and the like.
4 Modeling on a case management plan that Special Master
5 Ralph Lancaster had used. And this one provision has
6 been a source of disagreement between the states. But
7 we can provide alternative language for you to evaluate.

8 SPECIAL MASTER MYLES: Okay. Well, it may be
9 possible not to have such a provision in there at all
10 if it can't be. I mean, I can probably resolve it.
11 But if it's something that's better resolved on a
12 case-by-case basis, it may be that we just wouldn't
13 put it in at all.

14 MR. BROWNING: Special Master Myles, this is
15 Chris Browning. That is North Carolina's position
16 that that line is better resolved on a case-by-case
17 basis.

18 SPECIAL MASTER MYLES: Why don't we do this?
19 Why don't we, you know, put it in -- does June 2nd
20 work for North Carolina?

21 MR. BROWNING: If we could make it -- if it
22 were possible to do June 4th, I think that would work
23 with everyone's schedule better in this office.

24 SPECIAL MASTER MYLES: Yeah, I think that's
25 totally fine from my perspective. So why don't we do

1 that? Put in -- by then, you will have both of the
2 orders. You have the general gist of the second one
3 already. And I think again, even if this isn't one of
4 the issues that's encompassed by the various items.
5 It may be. But I think part of it has to be
6 addressing the -- the breadth of South Carolina's
7 pleading, so that we can contain discovery and narrow
8 the issues. I think that's going to be really
9 important. You may have to do another round of issue
10 narrowing, like we did in one of the early case
11 management orders, once we have that kind of the
12 pleading issue out of the way. That doesn't have to
13 be done on the 4th. But if anybody wants to have that
14 in mind when we're doing the submission on the 4th, I
15 think it would be helpful.

16 MR. FREDERICK: Ms. Myles, if I could just
17 interject a suggestion. One of the difficulties with
18 the approach that North Carolina proffered that we,
19 you know, we candidly had difficulty with, was that it
20 was asking us to assume certain facts that we just
21 don't know. Although I appreciate the difficulty of
22 discovery in as broad a realm as an entire river
23 system, my suggestion would be that you give the
24 parties some period of time, six months, nine months,
25 to learn some basic facts about the reach of the

1 problem of overconsumption and how that's affecting
2 South Carolina before we go to a further narrowing of
3 the issues.

4 MR. BROWNING: Special Master Myles, this is
5 Chris Browning. We would vehemently object to that
6 approach. It is possible to do the narrowing at the
7 outset, rather than having the parties flounder around
8 for six to nine months and then recognize that the
9 discovery that's been done was completely or largely
10 unnecessary. That doesn't seem to be an efficient use
11 of resources.

12 MR. FREDERICK: This is David Frederick.
13 I don't think there would be any floundering around at
14 all. Because what we would be doing would be
15 determining for one thing the length of the problem,
16 and the degree to which the problem goes all the way
17 to the Atlantic Ocean as opposed to further inland.
18 And we would also be able to get a gauge on the extent
19 of the economic harms North Carolina is causing
20 South Carolina. Things that are quite detailed in
21 their orientation but which we do not yet have a firm
22 enough actual basis to limit the scope of our claims.

23 MR. BROWNING: This is Chris Browning. And
24 certainly the position of North Carolina is to the
25 extent that there can be narrowing through contention

1 interrogatories or some other process, everyone is
2 going to be better served to the extent that that can
3 be done at the outset as opposed to down the road.

4 MR. FREDERICK: And this is David Frederick.
5 The case management plan does contemplate contention
6 interrogatories. And the two parties have met and
7 conferred on them. But our position would be that
8 contention interrogatories typically are done towards
9 the end of the discovery process rather than at the
10 very beginning or even before it's even begun.

11 MR. GULICK: Special Master Myles, this is
12 Jim Gulick. I will say that one thing this does tell
13 me is that the discovery process is going to take
14 quite a bit of time, even in the first phase. And
15 I just wanted to reiterate that point. Obviously, we
16 don't expect the assumption that there is a harm and
17 that North Carolina is causing it.

18 SPECIAL MASTER MYLES: That there is? I'm
19 sorry, I just missed the last couple words that you
20 said.

21 MR. GULICK: That we do not accept
22 Mr. Frederick's assumption, in the discussion of this,
23 that there is a harm or that North Carolina is causing
24 it.

25 SPECIAL MASTER MYLES: Yeah.

1 MR. FREDERICK: And nor do we accept
2 North Carolina's position that the discovery process
3 for Phase 1 should take four-and-a-half years.

4 SPECIAL MASTER MYLES: I think what may be
5 beneficial is that if we have the filing on June 4th,
6 I think that simultaneous filings will probably be
7 fine. Because I think we know what the issues are, so
8 it doesn't really have to be a back and forth for that
9 purpose. I think, though, separately, and part of
10 that is obviously going to be Phase 1 and Phase 2,
11 which seem to me at least -- I don't know, you guys
12 know better -- it embodies some of the disputes you
13 were just alluding to. At least it did last time we
14 talked about it. What was going to be in Phase 1 and
15 what was going to be in Phase 2. Because, as I recall
16 correct -- if this is correct that South Carolina was
17 saying that Phase 1 is primarily the harm to
18 South Carolina; is that correct? That there weren't
19 really a lot of issues involved in Phase 1.

20 MR. FREDERICK: That's how we see it, Special
21 Master Myles.

22 SPECIAL MASTER MYLES: But that
23 North Carolina -- this is where my memory is not so
24 good -- thought that, know that Phase 1 also had
25 to encompass whether there was any, had to encompass

1 some evaluation of North Carolina's conduct and/or
2 uses before you altered the issue of, that that would
3 be part of Phase 1; is that right?

4 MR. FREDERICK: That is correct.

5 SPECIAL MASTER MYLES: Okay. So that seems
6 to me to be a huge point of disagreement that needs to
7 be resolved. Whether that's done in this June 4th
8 submission, I think it needs to be teed up for a
9 serious resolution early on. Because that's going to
10 make an enormous difference in the scope of discovery
11 and in the entire, in the entire process of the case,
12 I would think.

13 MR. GULICK: I think it will. Special Master
14 Myles, this is Jim Gulick. I think that it will. And
15 as I understand your ruling, as you intimated it will
16 be, is that the complaint is broader in its scope than
17 it would appear that there are some actions by
18 North Carolina, other than the interbasin transfers,
19 that South Carolina may be complaining about.

20 But our views still would be that they have
21 to take a position about what actions of
22 North Carolina are supposedly wrongful. Than just
23 making some assumption of overuse.

24 SPECIAL MASTER MYLES: And that would be part
25 of Phase 1.

1 MR. GULICK: Yes.

2 SPECIAL MASTER MYLES: Okay. That is an
3 issue that is going to have to be the next big issue
4 that we resolve. And that is not going to be resolved
5 by the order on the pleading that I issue next week or
6 early the following week. But -- but my point was
7 just that that order is not, I think the next step is
8 going to be to try to find a mechanism for resolving
9 these more case structural issues other than the
10 pleading. I just don't think the pleading is a
11 mechanism that's going to resolve that.

12 So what I'd like to do is schedule, is
13 establish a briefing schedule for that issue. And it
14 will post-date the intervention ruling, obviously.
15 And I think it may be best to set it up -- actually,
16 I just welcome your views as to whether it ought to be
17 set up for simultaneous briefing or an opening
18 opposition reply type of structure. I don't have a
19 strong view on that.

20 MR. FREDERICK: My suggestion would be that
21 if we filed our opening letter briefs on, say,
22 Wednesday the 4th, we could take a week to do
23 simultaneous replies. And then I think we're
24 scheduled to have another call on the 20th of -- we
25 could do the 20th call as an argument on those issues

1 or we could set up a separate call if you wanted us to
2 do that separately.

3 SPECIAL MASTER MYLES: If we can get it
4 briefed by then, I think that would be fine. The
5 important thing is going to be to brief it like a real
6 legal issue, not just kind of like what's going to
7 make sense but what's the law on this issue? Because
8 both sides, last time we kind of batted this issue
9 around, seemed to be speaking with a great deal of
10 authority that this is the way it's supposed to be
11 done.

12 And if there's law that either party can cite
13 for saying that this is how it ought to be done,
14 whether one, you know, the first of the threshold
15 issue is solely one of harm to the complaining state
16 or whether the threshold issue, whatever you want to
17 call it, also must include a showing, or at least a
18 prima facie showing of wrongful conduct or wrongful
19 use or excessive use or whatever standard is
20 applicable at that phase. Then you need to cite that.

21 If there's not law on it, if there's
22 scholarly authority on it, whatever you can find, put
23 it in. Because that's what I'm going to need to
24 resolve it. If there isn't such law, then we have to
25 resolve it on the basis of pragmatics. But if there

1 is law, then I want to see it.

2 MR. FREDERICK: Well, in light of that, may I
3 make this suggestion? That on the 4th of June, the
4 parties simultaneously present their case management
5 plan-related issues. That June 9th, we present our
6 brief on the Phase 1 scope. And June 16th, we present
7 reply briefs. And then on June 20th, we use the call
8 to do the argument on the Phase 1 scope?

9 SPECIAL MASTER MYLES: That should work.

10 MR. FREDERICK: Will that give you enough
11 time to have the briefs?

12 SPECIAL MASTER MYLES: Well, that's what I'm
13 wondering.

14 MR. BROWNING: This is Chris Browning for
15 North Carolina. I am not sure that it would be
16 realistic to have briefs of that magnitude available
17 on June 9th, particularly with the fact that we have
18 a holiday scheduled between now and then. If that is
19 what the Special Master needs, we will certainly work
20 toward that. But I think everyone would be better
21 served if we took a little bit more time and laid it
22 out a little bit more clearly for the Court.

23 MR. FREDERICK: Is there a holiday in
24 North Carolina other than on Monday? That would give
25 you two weeks.

1 MR. BROWNING: No, Mr. Frederick. I'm
2 talking about the holiday on Monday.

3 MR. FREDERICK: Okay.

4 SPECIAL MASTER MYLES: Let me look at the
5 calendar here.

6 MR. BROWNING: And I apologize for making the
7 request. But it's -- June 9th is going to come up on
8 us very quickly and personally I have a brief that I
9 need to get filed in the U.S. Supreme Court.

10 SPECIAL MASTER MYLES: Yeah, why don't we
11 give it more time? And then we can use the 20th as we
12 see fit. There's numerous other issues that may need
13 to be resolved by then. And why don't we set a
14 different day for the hearing on this particular
15 issue? And then we can have a somewhat more generous
16 briefing schedule. Would the 27th of June make sense
17 for a hearing date? And then we can work back from
18 there.

19 MR. FREDERICK: I have commitments all that
20 day in Texas for a bar meeting.

21 SPECIAL MASTER MYLES: What about the 30th?
22 That's the 4th of July holiday.

23 MR. FREDERICK: This is David Frederick.
24 That's fine for South Carolina.

25 MR. BROWNING: North Carolina can do

1 June 30th.

2 SPECIAL MASTER MYLES: Okay. So what time
3 shall we say? 1:00 p.m. eastern time?

4 MR. FREDERICK: Yes, that would be fine.

5 MR. BROWNING: Same for North Carolina.

6 SPECIAL MASTER MYLES: So if we have it on
7 the 30th, we could do a brief on the 9th, the 16th,
8 and the 23rd, if you just wanted to make it a straight
9 three-week briefing schedule.

10 MR. FREDERICK: Well, this might be an issue
11 that would work with simultaneous --

12 SPECIAL MASTER MYLES: Yeah.

13 MR. FREDERICK: -- top-side briefs and
14 simultaneous bottom-side briefs.

15 SPECIAL MASTER MYLES: I kind of think it
16 would. Do you want to say the 9th and the 16th, or
17 the 16th and the 23rd?

18 MR. BROWNING: The 16th and 23rd, we think is
19 more realistic.

20 SPECIAL MASTER MYLES: All right. So why
21 don't we say the 16th for opening briefs on scope and
22 structure of the case. That's my words but you can
23 use whatever words you want. And then the 23rd for
24 replies. And then the 30th for the hearing at 10:00
25 my time and 1:00 your time. And then we still have

1 the 4th for addressing any of the other issues. And
2 if anyone wants to throw this issue in, you know, just
3 to kind of preview. That's fine, too. On how it
4 bears on the other issues.

5 MS. DRISCOLL: Special Master Myles, this is
6 Susan Driscoll. Given that we have a conference call
7 scheduled on 6/20, do we want to just postpone that
8 until 6/30 and deal with that?

9 SPECIAL MASTER MYLES: That's a very good
10 idea. I don't see why not. Why don't we just
11 postpone it rather than having two conference calls
12 that everybody has to be part of? Since we would just
13 be doing the briefing schedule around that date
14 anyway. I think that that makes sense. So is
15 everybody okay with that, or does anyone want to have
16 the -- keep the 20th conference call?

17 Sounds like everybody's okay with bouncing it
18 then. All right. That's an excellent idea. So we'll
19 stick with the 30th, we will delete the 20th.

20 All right. Is there anything else we need to
21 do today?

22 MR. FREDERICK: This is David Frederick.
23 I was going to make two suggestions. One is that we
24 see if there's a date in August where we could do a
25 call as a housekeeping matter just to kind of keep in

1 the three months ahead system that we had developed
2 last time. And the second was to see whether there
3 was any objection to our beginning to serve discovery
4 requests.

5 MR. BROWNING: We would object to initiating
6 discovery until we've gotten -- we would object to
7 initiating discovery until we have a better handle on
8 these management issues about where the case is
9 headed.

10 MR. FREDERICK: This is David Frederick.
11 There are so many discovery issues that are such plain
12 vanilla, square in the middle of what this case is
13 about that a delay for another month or two just
14 getting going on serving basic document requests seems
15 like a delay that doesn't need to occur. And to the
16 extent that North Carolina has confusion or rejection
17 about some of the discovery requests that would go to
18 issues that they think are properly in Phase 2 or
19 whatever, then we can discuss them in a different
20 context. But we'd like to get moving.

21 MR. SHEEDY: Master Myles, this is Jim Sheedy
22 on behalf of CRWSP. Mr. Frederick, do you envision
23 that that would include discovery upon any of the
24 potential intervenors?

25 MR. FREDERICK: Well, we're not certain yet.

1 There are many things that we want to request from
2 North Carolina first. And there may well be,
3 depending on what happens with the scope order and the
4 intervention orders, there might be some limited
5 things that would be sent targeted to the punitive
6 intervenors. We haven't yet targeted how we want to
7 proceed in that realm. We have been focusing on a
8 North Carolina discovery drafting.

9 MR. SHEEDY: Well, Special Master Myles, this
10 is Jim Sheedy again. On behalf of CRWSP, let me say
11 that my preference would be that there be no discovery
12 served by any parties, at least on CRWSP, until
13 we've had a chance to see your honor's order on
14 May 22nd -- 7th.

15 MR. FREDERICK: This is David Frederick.
16 I can assure counsel that we will not be serving any
17 discovery between now and Tuesday. But we would like
18 to be able to be in a position where we can begin
19 serving discovery within the next couple of weeks.

20 MR. GULICK: Special Master Myles, this is
21 Jim Gulick. It seems to me at least we should have
22 the case management order in place.

23 SPECIAL MASTER MYLES: Well, here's what I'm
24 going to say on that, because I think that -- I don't
25 think it needs to wait for the case management order.

1 I think that discovery ought to be able to start.
2 It's been a very long time already. And the delay of
3 the case management order, given the nature of the
4 dispute and the need to resolve the Phase 1 and
5 Phase 2 issues which may stretch it out another period
6 of time, I think that, that the parties ought to be
7 able to commence discovery. Without the case
8 management order being finalized.

9 But subject to objections to scope issues
10 that are outstanding. In other words, if there's
11 objections that are within the scope of disputed scope
12 issues, then those objections can and should be made
13 and preserved until the scope issues are resolved.
14 But if there is discovery within the -- that is not
15 within the scope of disputed issues, that discovery
16 should begin and should -- I don't see any reason to
17 delay that. I understand the point, but I think that
18 it will behoove Mr. Frederick, and anyone else that's
19 serving discovery, to keep the discovery within the
20 bounds of what's not disputed. But if indeed there
21 are, seems to me there would be issues that can be
22 discovered within those bounds, then -- then
23 South Carolina should be able to start.

24 So that's a ruling. You can go forward on
25 that basis, because I really don't think there's any

1 reason to delay.

2 MR. FREDERICK: Thank you, Special Master.

3 SPECIAL MASTER MYLES: I'm concerned that the
4 issues that need to be resolved will result, not in
5 a significant delay, but enough of a delay that there
6 just -- it doesn't seem to be any reason for it.

7 MR. FREDERICK: Thank you, Special
8 Master Myles. Would it be helpful to try and see if
9 there's a date in August for doing a call?

10 SPECIAL MASTER MYLES: Yes, let's do that.
11 Right now we have July 17th at 11:00 is the last one
12 we have scheduled. What about August 22nd? That's
13 a Friday.

14 MR. FREDERICK: This is David Frederick for
15 South Carolina. I think that should be fine for us.

16 MR. BROWNING: This is Chris Browning for
17 North Carolina. That's fine here.

18 SPECIAL MASTER MYLES: Okay. So shall we
19 make it 10:00 a.m. my time, 1:00 p.m. your time,
20 or -- we have been doing them at either 10:00 or
21 11:00, at either 1:00 or 2:00 your time. Does anyone
22 have a preference? Why don't we make it the earlier
23 time then? 1:00 p.m. eastern time.

24 Okay. Anything else? All right. Then I'll
25 go ahead and issue what I told you I'd give you next

1 week. And then we'll go from there.

2 MR. FREDERICK: Thank you.

3 MR. BROWNING: Thank you.

4 SPECIAL MASTER MYLES: Okay. Have a good
5 weekend all.

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand
9 which was thereafter transcribed under my direction;
10 that the foregoing transcript is a true record of the
11 testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review of
15 the transcript [] was [] was not requested.

16 I further certify that I am neither
17 financially interested in the action nor a relative or
18 employee of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21

22 Dated:

23

24

25

DANA FREED
CSR No. 10602