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SUPREME COURT OF THE UNITED STATES
No. 142, Original

STATE OF FLORIDA,)
)
Plaintiff,)
V.)
STATE OF GEORGIA,)
)
Defendants.)

TELEPHONE CONFERENCE before SPECIAL MASTER
RALPH I. LANCASTER, held at the law offices of Pierce
Atwood, LLP, at Merrill's Wharf, 254 Commercial Street,
Portland, Maine, on October 6, 2015, 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 Florida: PHILIP J. PERRY, ESQ.
 OSVALDO VAZQUEZ, ESQ.
 CHRISTOPHER M. KISE, ESQ.
 JOHN COOPER, ESQ.

For the State of Georgia: CRAIG S. PRIMIS, ESQ.
 BRITT GRANT, ESQ.
 SARAH G. WARREN, ESQ.

For the U.S.A.: MICHAEL T. GRAY, ESQ.
 JAMES DUBOIS, ESQ.

Also Present: JOSHUA DUNLAP, ESQ.
 MARY CLIFFORD

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1 U.S.A.?

2 MR. GRAY: Yes, good morning, your

3 Honor. This is Michael Gray for the United

4 States. And I believe Jim Dubois is also on

5 the line this morning.

6 MR. DUBOIS: I am on the line, your

7 Honor. Good morning.

8 SPECIAL MASTER LANCASTER: Good morning.

9 Well, counsel, thank you, again, for

10 your excellent progress reports for the

11 status conference today. We have digested

12 them, obviously.

13 Let me begin by asking if there are any

14 additional matters that you want us to

15 discuss. Florida?

16 MR. PERRY: No, your Honor. But we're

17 prepared to talk about deposition limits

18 further, if that would be helpful.

19 SPECIAL MASTER LANCASTER: Thank you. I

20 think we have -- both with briefing and with

21 the oral argument, I think we're prepared --

22 fully prepared unless there is something new

23 that has come up.

24 Georgia --

25 MR. PERRY: Well --

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1 PROCEEDINGS

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3 SPECIAL MASTER LANCASTER: Good morning,

4 counsel.

5 MR. PERRY: Good morning, your Honor.

6 MS. GRANT: Good morning, your Honor.

7 SPECIAL MASTER LANCASTER: We have Josh

8 Dunlap, the case manager; Mary Clifford, whom

9 you know; and Claudette Mason here with me.

10 Let's start by entering appearances.

11 Florida?

12 MR. PERRY: Your Honor, this is Phil

13 Perry for Florida. I have got John Cooper

14 with me, and I believe Os Vazquez and Chris

15 Kise are on the phone.

16 SPECIAL MASTER LANCASTER: Thank you,

17 Mr. Perry.

18 MR. PERRY: Good morning, your Honor.

19 SPECIAL MASTER LANCASTER: Anyone else?

20 Georgia?

21 MS. GRANT: Good morning, your Honor.

22 This is Britt Grant in Georgia. And I have

23 got Sarah Warren with me; and Craig Primis is

24 in Washington, D.C.

25 SPECIAL MASTER LANCASTER: Thank you.

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1 SPECIAL MASTER LANCASTER: I'm sorry.

2 MR. PERRY: I'm sorry, your Honor.

3 Shall I go forward?

4 This is Phil Perry from Florida.

5 SPECIAL MASTER LANCASTER: Well, yes, if

6 you have something new to add.

7 MR. PERRY: Yes. Your Honor, on the

8 last call, you suggested that we talk with

9 Georgia about our thoughts on deposition

10 limits. And you had also on that call made

11 some comments that led us to think about the

12 issue just slightly differently. And your

13 comments in particular dealt with the number

14 of deposition days rather than the deposition

15 limit. In other words, the number of days in

16 which we would be taking depositions rather

17 than the total number of people we would be

18 deposing. And I think you suggested, if I

19 recall correctly, that 20 depositions

20 translated to roughly 60 days; and the 44

21 depositions we had contemplated translated to

22 roughly 132 days.

23 We have no intention of using 132 days

24 and, in fact, told Georgia yesterday that our

25 intention would be to take depositions, you

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1 know, for essentially 70 to 75 days, much
 2 closer to the 60-day limit you had associated
 3 with their cap. And so we shared that with
 4 Georgia.
 5 We don't have an answer yet, but we did
 6 that pursuant to your suggestion on the last
 7 call that we further meet and confer on those
 8 issues.
 9 SPECIAL MASTER LANCASTER: Thank you,
 10 Mr. Perry.
 11 Georgia?
 12 MR. PRIMIS: Yes, your Honor. Craig
 13 Primis for Georgia.
 14 Mr. Perry did float that yesterday
 15 evening on a meet and confer that we had. I
 16 question Mr. Perry's math.
 17 And there's been one deposition taken so
 18 far. And by no means would we characterize
 19 that as a central deposition in the case, and
 20 there's already been a request that that one
 21 go two days. And if all the other similarly
 22 situated people to Dr. Kistenmacher, who is
 23 just a professor at Georgia Tech who has done
 24 some studies -- if all those are going to go
 25 two days, it will greatly exceed the 70 that

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1 Mr. Perry estimates.
 2 And then, second, we're still talking
 3 about travel burden and inconvenience to
 4 upwards of 70 people, putting aside however
 5 many days there are. And, plus, you have to
 6 double whatever they're estimating based on
 7 what Georgia's view under whatever limits are
 8 set.
 9 So we didn't see it as a meaningful
 10 limitation. We appreciated the suggestion;
 11 but it -- it sounded like an underestimate
 12 and somewhat of a repackaging of what we view
 13 as ending up being around 75 depositions if
 14 not limited.
 15 MR. PERRY: Your Honor, may I respond?
 16 SPECIAL MASTER LANCASTER: Certainly.
 17 MR. PERRY: Your Honor, this is Phil
 18 Perry from Florida.
 19 It's true we have taken one deposition
 20 of Dr. Martin Kistenmacher which lasted one
 21 day. The reason the deposition was extended
 22 for another day was because we were not
 23 provided with e-mails for Dr. Kistenmacher.
 24 And once we have those e-mails, which I
 25 understand Georgia is considering providing

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1 to us, a second day might be necessary.
 2 We have no intention of deposing 44
 3 people for multiple days in each instance.
 4 The 70 number that we proposed -- 70 to 75 to
 5 be precise -- is a reflection of how much
 6 deposition time we might actually need.
 7 And as I also mentioned on the call last
 8 week, we think there is an issue with
 9 30(b)(6)'s here that makes counting just the
 10 number of deposition notices a little
 11 meaningless. And here is what I mean by
 12 that.
 13 Georgia has sent us a 30(b)(6) notice
 14 with 28 categories, 28 specifications. There
 15 are several witnesses that will be necessary
 16 to satisfy those specifications. And if you
 17 count those up, just by means of head count,
 18 that already exceeds, with their other
 19 deposition notices, the 20 limit they're
 20 proposing. If you, instead, count deposition
 21 days, then we think that's a much more
 22 rational way not only to deal with the time
 23 consumed -- and multiple attorneys will be
 24 taking and defending these depositions from
 25 our firm and I'm sure from Mr. Primis's

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1 firm -- but also eliminates the 30(b)(6)
 2 problem. And in addition, I would say, on
 3 the 30(b)(6), under the current rules there
 4 are only three days to address in that one
 5 deposition notice the 28 specifications that
 6 are combined in that single notice.
 7 So we think, as you may have suggested
 8 on the last call, that counting deposition
 9 days is a more elegant way to deal with this.
 10 And we think we're actually quite close to
 11 the number you specified would be associated
 12 with the 20 depositions that Georgia
 13 proposed.
 14 SPECIAL MASTER LANCASTER: Thank you,
 15 Mr. Perry.
 16 Mr. Primis, do you want to say anything
 17 further on this?
 18 MR. PRIMIS: The only -- two points.
 19 First is I think Mr. Perry made that same
 20 point at the last argument, so it's not new.
 21 And -- but as long as he made it, I do feel
 22 compelled to respond that the 30(b)(6) device
 23 was intended to streamline, not to increase
 24 the amount of deposition discovery. We
 25 haven't received yet the names of the people

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1 who they're going to designate for 30(b)(6)
 2 testimony, even though we served it over a
 3 month ago. And that's complicating our
 4 efforts because I fully anticipate that some
 5 of the people that we want to depose as
 6 individual witnesses will also be identified
 7 as 30(b)(6)'s; and we will be able to
 8 efficiently conclude them at the same time.
 9 So 30(b)(6)'s will improve efficiency
 10 and result in more targeted, more meaningful
 11 discovery rather than trying to figure out
 12 all the people in the vast government
 13 bureaucracies that both states have to find
 14 out who actually has the information at their
 15 fingertips.
 16 SPECIAL MASTER LANCASTER: Thank you,
 17 Mr. Primis.
 18 Does the United States want to comment
 19 on this issue?
 20 MR. GRAY: No, your Honor. Thank you.
 21 SPECIAL MASTER LANCASTER: All right.
 22 Thank you. Well, we will get a decision out
 23 to you just as soon as possible, gentlemen.
 24 Anything further from Florida?
 25 MR. PERRY: No, your Honor.
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1 SPECIAL MASTER LANCASTER: Georgia?
 2 MR. PRIMIS: Do you mean in addition to
 3 what's in the status report, your Honor?
 4 SPECIAL MASTER LANCASTER: Yes.
 5 MR. PRIMIS: Yes. There is just one
 6 issue that I want to flag from the status
 7 report that is a growing concern from
 8 Georgia's perspective. We will certainly
 9 work with Florida on this, but we felt
 10 compelled to raise it given the time
 11 limitations. And it's simply that we haven't
 12 received dates or deponents from Florida yet
 13 except for two people. And the two people
 14 that we received dates for, one is Brett
 15 Cyphers -- he is the head of the Northwest
 16 Florida Management -- Water Management
 17 District and was previously the assistant
 18 director -- and Shawn Hamilton, who is the
 19 director of the Florida Department of
 20 Environmental Protection in the Northwest
 21 District for that region. And we haven't
 22 received documents produced from either of
 23 those individuals. And while they were not
 24 identified as people who would be -- who
 25 would have their e-mails swept and then
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1 searched -- each side agreed to a limited
 2 number of people that we would do that for --
 3 the agreement -- and this was -- this was
 4 demanded by Florida -- was that the e-mail
 5 searches and the e-mail custodians would
 6 supplement, not replace, both sides'
 7 obligation to go around their respective
 8 states and get documents from the people most
 9 likely to have them. And this would be --
 10 include both hard copy documents and
 11 electronically stored information, although
 12 not e-mail.
 13 And we checked the production; and there
 14 were no documents from either of those two
 15 individuals, both whom hold significant roles
 16 in connection with the issues in dispute in
 17 this case. And so we can't accept the dates
 18 that have been proposed for them because we
 19 don't have their materials.
 20 And I'm concerned that if that occurs --
 21 well, with these two people specifically, but
 22 more probably with other witnesses from
 23 Florida that we had identified for
 24 deposition, that it's going to compress and
 25 push back our ability to depose these
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1 individuals. And given the discovery cutoff,
 2 that can create a significant issue for us.
 3 SPECIAL MASTER LANCASTER: Florida?
 4 MR. PERRY: Your Honor, we spoke with
 5 Mr. Primis last night about this. And we are
 6 very happy to cooperate in making sure that
 7 we get him any relevant documents for these
 8 two individuals that were gathered in the
 9 search.
 10 I will say for Mr. Cyphers, he's only
 11 been in his position -- his current position,
 12 I believe, for a year or less. And, thus,
 13 there probably aren't that many documents. I
 14 understand that we produced a number of them
 15 earlier. For Mr. Hamilton, I don't believe
 16 he has much, if any, relevant knowledge to
 17 that case; but we're certainly happy to go
 18 through again and look for documents.
 19 And I would like to stress, if I might,
 20 two things. First, we certainly want to --
 21 to allow dates to be put in place for
 22 deponents identified by Georgia. We produced
 23 those two dates for those individuals without
 24 understanding that Georgia had a concern
 25 about documents for those two individuals.
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1 But we're certainly happy to cooperate in
 2 facilitating those or other depositions as
 3 soon as possible. It isn't -- it doesn't
 4 serve us in any way to delay those. And so
 5 we're working hard to get that nailed down.
 6 I will also say that there are some of
 7 our witnesses that may be in a similar
 8 position -- I should say some of the
 9 witnesses we wish to depose from Georgia that
 10 may be in a similar position to those that
 11 Mr. Primis just mentioned. One, for example,
 12 is Jeff Regan, who is a hydrology modeler for
 13 the State of Georgia. And we have very, very
 14 few documents for that individual.
 15 So I think this is an issue that is
 16 likely to go both ways. But I trust that in
 17 working with Mr. Primis, that we can resolve
 18 these things.
 19 SPECIAL MASTER LANCASTER: Well, I would
 20 hope so, counsel, because obviously if there
 21 is a document request, it needs to be
 22 satisfied before or at the deposition in
 23 order to make sure that there is no delay.
 24 It would be inefficient for all of you to do
 25 otherwise.

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1 And I know that you have met and
 2 conferred consistently throughout this
 3 process. I hope you will continue to do so.
 4 MR. PRIMIS: Your Honor, if I could --
 5 this is Craig Primis.
 6 If I could just add, what the upshot of
 7 the discussion yesterday, as I understood it,
 8 was that Florida understood that both sides
 9 had an agreement that individuals who weren't
 10 identified on the e-mail custodian list, you
 11 didn't have to go and get their documents
 12 separately. But that's not the way -- that's
 13 not what was agreed to. And so Georgia did
 14 go and visit with 75-some-odd people to
 15 interview them and collect their documents.
 16 I just don't think that occurred, at least
 17 not prior to us raising it last week, with
 18 Mr. Cyphers and Mr. Hamilton.
 19 And with regard to Mr. Cyphers, he's --
 20 he was the assistant director or the director
 21 for the last four years. And so we would
 22 expect him to have at least some
 23 documentation. It's not that he's just been
 24 in the job for a year. He's been assistant
 25 executive director since June of 2012.

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1 So I don't think it's quite as much a
 2 two-way street as Mr. Perry described. We
 3 will obviously continue to work with them,
 4 but I felt compelled to flag it as an issue
 5 that we're confronting.
 6 SPECIAL MASTER LANCASTER: Well, let me
 7 just say -- forgive me, Mr. Perry; but let me
 8 just say that I expect counsel to cooperate
 9 fully in this regard. And I will not look
 10 pleasantly on any lack of cooperation that
 11 results in an appeal for an extension of
 12 time. Is that --
 13 MR. PERRY: Yes, your Honor.
 14 SPECIAL MASTER LANCASTER: Is that
 15 message clear?
 16 MR. PRIMIS: Yes, your Honor.
 17 MR. PERRY: Yes, your Honor.
 18 If I might, we obviously have a
 19 different view of the situation than
 20 Mr. Primis on these issues; but we are fully
 21 committed to cooperating in the ways you just
 22 identified.
 23 SPECIAL MASTER LANCASTER: Thank you.
 24 Anything else, Florida?
 25 MR. PERRY: No, your Honor.

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1 SPECIAL MASTER LANCASTER: Georgia?
 2 MR. PRIMIS: No, your Honor.
 3 We did flag a number of issues in the
 4 report, but it sounds like your Honor has
 5 been through those and understands some of
 6 the issues that could bubble up. But we
 7 are -- what we're trying to do is work as
 8 cooperatively as we can with our colleagues
 9 from Florida, but at the same time let you
 10 know when we see some storm warnings on the
 11 horizon so that it's not a surprise if and
 12 when we need to bring it to you.
 13 SPECIAL MASTER LANCASTER: We have had
 14 enough rain here so that I don't want any
 15 more storms. And, hopefully, we'll have
 16 clear skies from here on in.
 17 Anything else from Georgia?
 18 MR. PRIMIS: No, sir.
 19 SPECIAL MASTER LANCASTER: United
 20 States?
 21 MR. GRAY: No, your Honor.
 22 SPECIAL MASTER LANCASTER: Well, let me
 23 just touch on another thing that I think I
 24 tried to suggest at the last conference. It
 25 seems to me that if you could use one of

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1 these meet and confer conferences to try to
 2 define issues -- issues -- that you both
 3 agree are ultimately going to decide this
 4 matter and are going to have to be addressed
 5 rather than broad-based discovery, it would
 6 simplify and help to move the matter along.
 7 That's just a suggestion I made last
 8 time. I'm making it again this time. There
 9 is no need to comment on it. I would suggest
 10 that you try it just once and report at the
 11 next conference.
 12 Secondly, I assume that you both have
 13 read the Corps of Engineers' draft fully.
 14 That's a joke, because by my count, there are
 15 thousands, if not more, pages of the darned
 16 thing. And I assume that Florida will tell
 17 me that it favors Florida, and Georgia will
 18 tell me that it favors Georgia. But it is
 19 something that you're going to have to deal
 20 with, particularly down the road when the
 21 federal government decides on limits at the
 22 various dams that it has. So I urge you both
 23 to take it seriously and take a good look at
 24 it.
 25 And, lastly, from a housekeeping point
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1 of view, as always, from my perspective, I
 2 assume settlement discussions are ongoing.
 3 And I urge you, again, and again, and
 4 again -- and I will continue to urge you --
 5 to discuss settlement seriously.
 6 Josh, is there anything else that we
 7 should -- oh, one minor housekeeping detail.
 8 The progress reports, which we were furnished
 9 this time, were filed both after 5 o'clock,
 10 actually after 6 o'clock, which is rare. But
 11 if it's possible, I would appreciate in the
 12 future getting them before 5 o'clock because
 13 Mary goes home at 5:00. And that means that
 14 I don't get to see them until Monday morning.
 15 Anything else from Florida?
 16 MR. PERRY: No, your Honor.
 17 SPECIAL MASTER LANCASTER: Georgia?
 18 MR. PRIMIS: No, your Honor.
 19 SPECIAL MASTER LANCASTER: United
 20 States?
 21 MR. GRAY: No, your Honor.
 22 SPECIAL MASTER LANCASTER: Thank you
 23 again, counsel. And we appreciate the way
 24 you're cooperating.
 25 MR. PRIMIS: Thank you, sir.
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1 MR. PERRY: Thank you.
 2 MS. GRANT: Thank you, sir.
 3 (The telephone conference was concluded
 4 at 10:18 a.m.)
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1 CERTIFICATE
 2 I, Claudette G. Mason, a Notary Public
 3 in and for the State of Maine, hereby certify
 4 that the foregoing 20 pages are a correct
 5 transcript of my stenographic notes of the
 6 above-captioned proceedings.
 7 I further certify that I am a
 8 disinterested person in the event or outcome
 9 of the above-named cause of action.
 10 IN WITNESS WHEREOF, I subscribe my hand
 11 this 8th day of October, 2015.
 12
 13
 14 _____
 15 Notary Public
 16
 17
 18 My Commission Expires
 19 June 9, 2019.
 20
 21
 22
 23
 24
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