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October 1, 2015

**By E-Mail and U.S. Mail**

Ralph I. Lancaster, Jr.
Pierce Atwood
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

*Re*: *Florida v. Georgia*, No. 142 Original
September 29, 2015 Telephone Conference

Dear Special Master Lancaster:

During the Telephone Conference held on September 29, 2015, counsel for Florida identified a case that it had not previously cited in discussions with Georgia concerning deposition limits. Because that case came up for the first time during the Conference, Georgia respectfully seeks leave to submit this short response to address that case.

The case in question is *United States v. Texas*, 339 U.S. 707 (1950), which Florida cited for the proposition that "[t]he Court in original actions, passing as it does on controversies among sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts." *Id.* at 715. Read in context, it is clear that the Court was discussing the development of facts in an evidentiary hearing, not the scope of discovery. Moreover, the Court ***denied*** Texas's motion for leave to take depositions in that case and the request for an evidentiary hearing. *Id.* at 715, 720. Florida also suggested that the Court in *U.S. v. Texas* had cited a number of cases in support of the "full development" proposition, but those cases had nothing to do with discovery and do not support unlimited depositions. *See id.* at 715 (citing cases). With forty fact depositions (twenty per side) and the large number of experts expected to testify in this case (plus all of their depositions), there will be an opportunity for "full development of the facts" at any evidentiary hearing in this case.

At bottom, the number of depositions needed to develop the facts sufficient to decide this case is subject to the Special Master's sound discretion. Rather than establish rules that will generate open-ended litigation with the accompanying expense and delay, the Supreme Court has

said that "[o]ur object in original cases is to have the parties, as promptly as possible, reach and argue the merits of the controversy presented. To this end, where feasible, we dispose of issues that would only serve to delay adjudication on the merits and needlessly add to the expense that the litigations must bear." *Ohio v. Kentucky*, 410 U.S. 641, 644 (1973).

With these principles in mind, Georgia again respectfully submits that reasonable limits on deposition practice will promote the prompt, efficient, and just resolution of this dispute.

Sincerely,

Craig S. Primis, P.C.

cc: via email

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