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September 5, 2006

*By E-Mail and First Class Mail*

Ralph I. Lancaster, Jr., Esq.  
Pierce Atwood  
One Monument Square  
Portland, ME 04101

**Re: *New Jersey v. Delaware*, No. 134 Original:  
Delaware's Seventh Progress Report**

Dear Mr. Lancaster,

Pursuant to the Case Management Plan as amended, we respectfully submit Delaware's seventh progress report on the status of the case.

Since the last progress report, filed August 7, 2006, Delaware has continued its search for relevant historical and legal documents. On August 11, 2006, the parties exchanged requests for admission. Pursuant to Case Management Order ("CMO") No. 10, responses to the requests for admissions are due on September 8, 2006.

The parties continue to have differences regarding discovery. A summary of the parties' discovery disputes is set forth below.

A. Delaware's Discovery Requests and New Jersey's Responses

- Following the exchange of correspondence, on August 4, 2006, New Jersey attempted to address certain deficiencies with its original document production by re-producing the same documents. Although New Jersey stated that it had not changed the content of its original July 14, 2006 production, the production was different in significant ways. New Jersey removed several documents from its July 14 earlier production, and included new documents. The Bates numbering for several documents in the August 4 "re-production" also overlapped with the Bates numbers for documents produced by New Jersey on October 19, 2005. After a complete review of New Jersey's August 4 "re-production" of its documents, Delaware wrote a letter on August 17, 2006 letter summarizing the remaining problems with New Jersey's "re-production." We raised the following concerns (1) why New Jersey's re-production was not a mirror image, and why the order of documents changed from the July 14 original production

(some documents that should have appeared in sequential order appear on different disks in between other Bates ranges); (2) New Jersey's production contains no page breaks, so one page runs into another making it difficult to determine when certain documents begin and end; (3) Bates numbers are not visible on all documents; (4) certain pages are missing and other pages have been produced twice for no apparent reason; and (5) some pages appear to have been deleted when compared to the July 14 original production.

- On August 25, 2006, New Jersey responded to Delaware's August 17, 2006 letter, resolving some of the foregoing issues, but leaving other issues subject to further investigation by New Jersey and its IT contractor. As of today, Delaware awaits New Jersey's report on its investigation of the open issues. Delaware does not seek to burden New Jersey with trivial matters. At the end of this process, we simply want New Jersey to explain its production, to fix the remaining errors, and to confirm that Delaware has a reliable set of production documents. Without this assurance, Delaware is at a serious disadvantage in determining the universe of documents responsive to Delaware's document requests. Delaware also seeks to avoid a hearing before the Special Master and further proceedings before the Court plagued by a confusing and disorganized documentary record.

- On August 8, 2006, New Jersey responded to Delaware's August 2, 2006 letter, where Delaware had identified other deficiencies in New Jersey's responses to Delaware's first set of interrogatories and document requests. On August 14, 2006, New Jersey responded to Delaware's second set of interrogatories and document requests. On August 24, 2006, Delaware wrote New Jersey about deficiencies in New Jersey's responses to Delaware's second set of document requests and interrogatories. Delaware expressed many concerns, but one of great importance is the lack of document production – New Jersey only produced a single page document in response to Delaware's requests. For several of the requests, New Jersey responded by stating, in essence, that Delaware should look at the police and fire department files for multiple New Jersey localities; yet New Jersey had asked Delaware for the same types of fire and police records, which Delaware has produced and is still gathering for additional document production. Delaware believes that this is an inappropriate response to a document request, particularly as the request pertains in part to an issue that New Jersey insisted be added to the case after the Special Master issued CMO No. 7 – whether Delaware lost any relevant rights under the 1905 Compact through the doctrine of prescription and acquiescence. *See* CMO No. 8. As of today, New Jersey has not responded to Delaware's August 24, 2006 letter, but promised to respond sometime this week.

- The Special Master has instructed the parties to continue to confer on these issues, and Delaware will do so. Delaware has offered simple solutions to some of the confusion surrounding New Jersey's document production. For instance, regarding overlapping Bates numbers, New Jersey can re-produce the limited number of documents bearing duplicative Bates numbers simply by re-numbering those documents starting with a Bates number at the end of New Jersey's August 4 re-production. Delaware has also asked that New Jersey produce more

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than the one page document in response to Delaware's second document requests. We await New Jersey's position on this issue. Discovery time has become precious, and with the impending October 11, 2006 fact discovery cut-off, Delaware may need the intervention of the Special Master to assist in resolving the foregoing matters.

B. New Jersey's Discovery Requests and Delaware's Responses

- On August 11, 2006, Delaware provided New Jersey with supplemental interrogatory responses to New Jersey's first set of interrogatories, as requested by New Jersey's August 2, 2006 letter and as clarified during the August 7, 2006 teleconference between the parties.

- Early in the discovery process, the parties agreed to continue to produce documents as they become available. On August 24, 2006, Delaware produced additional documents to New Jersey. To date, Delaware has produced to New Jersey approximately three thousand documents consisting of more than thirty-two thousand pages.

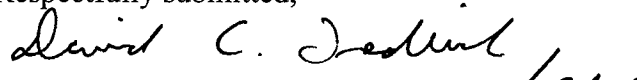
- On August 31, 2006, New Jersey sent Delaware a letter raising certain issues with Delaware's supplemental production. On September 1, 2006, Delaware responded to New Jersey's letter, answering the questions raised by New Jersey.

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Even though Delaware has not resolved all of its discovery disputes with New Jersey, Delaware will notice the depositions of certain New Jersey representatives, and possibly third parties. We will confer with New Jersey counsel and counsel for third party deponents on convenient dates as required by the Case Management Order. Delaware also anticipates limited additional document production this month as it continues its search for documents relevant to the case.

In sum, Delaware is attempting to work with New Jersey to keep the case moving forward efficiently, but Delaware has continuing concerns about New Jersey's document production.

Respectfully submitted,

  
David C. Frederick /SKA

cc: Rachel J. Horowitz, Esq.  
Barbara Conklin, Esq.  
Collins J. Seitz, Jr., Esq.