

Elizabeth Umland

From: Ralph Lancaster
Sent: Wednesday, February 07, 2007 3:58 PM
To: Elizabeth Umland
Subject: FW: New Jersey v. Delaware, No. 134, Original

From: Frederick, David C. [mailto:DFREDERICK@KHTE.com]
Sent: Friday, February 02, 2007 4:54 PM
To: Ralph Lancaster
Cc: Barbara Conklin; Seitz, Collins; Mark Porada; Rachel Horowitz; John Renella
Subject: New Jersey v. Delaware, No. 134, Original

Dear Special Master Lancaster,

As requested, we write to submit a proposal for oral argument. We have met and conferred with New Jersey, but have been unable to reach an agreement. We object to New Jersey's proposal that only a total of one hour be allotted per side. In view of the long history of this dispute, the voluminous historical record that has been created in discovery, the complexity of the issues, and the past experience of the parties in arguing relatively simple procedural motions in a time longer than what New Jersey proposes for the entire case, Delaware believes that it would be prejudiced if only one hour is allotted for each side for the argument. Particularly given that an entire day has been reserved for oral argument, we respectfully submit that the resolution of the case will be facilitated by a full ventilation of the issues, which is unlikely to occur in just one hour per side. We also recognize that you may have a number of questions and that reserving a longer time for argument would enable counsel to respond to those questions while also advancing the points they regard as the most significant. As the defendant, we believe that ordinarily we would be entitled to speak first and last on a motion for summary judgment of a plaintiff's complaint, and that the argument structure should be guided by that practice.

Option 1. Our preference would be for 2 hours per side to be allotted, so that there is ample time in which to answer questions. Delaware would speak first and reserve from its 2 hours a sufficient amount of time for rebuttal. New Jersey would then speak for its entire time, using as much of the 2 hours allotted as it wishes. Delaware would then have available whatever time is remaining from its 2 hours for rebuttal.

Option 2. We would be prepared to accept New Jersey's proposal to speak first, if additional time is allotted for both sides. We would respectfully request that at least an additional 30-45 minutes be added to the time for each State from New Jersey's proposed allocations of time, and that informally such additional time be permitted as may be necessary to address questions. Under this proposal, New Jersey would open for 60-75 minutes, Delaware would respond for 60-75 minutes, New Jersey would have 30 minutes for rebuttal, and Delaware would close for 30 minutes of rebuttal. We continue to regard that as a minimally sufficient amount of time, given the questions that might arise during the argument.

We very much appreciate your consideration of these options.

Respectfully submitted,

David C. Frederick
Special Counsel
State of Delaware