

SUPREME COURT OF THE UNITED STATES

NO. 134, ORIGINAL

STATE OF NEW JERSEY,)
)
 Plaintiff)
)
 V.)
)
 STATE OF DELAWARE,)
)
 Defendant)

ORIGINAL

TELEPHONE CONFERENCE before SPECIAL MASTER
 RALPH I. LANCASTER, JR., ESQ., held at the law offices of
 Pierce Atwood at One Monument Square, Portland, Maine, on
March 8, 2006, commencing at 10:04 a.m., before
 Claudette G. Mason, RMR, CRR, a Notary Public in and for
 the State of Maine.

APPEARANCES:

For the State of New Jersey: RACHEL J. HOROWITZ, ESQ.
 JOHN R. RENELLA, ESQ.
 DEAN JABLONSKI, ESQ.
 EILEEN P. KELLY, ESQ.
 AMY C. DONLON, ESQ.
 BARBARA CONKLIN, ESQ.
 JULIE GOLDMAN

For the State of Delaware: DAVID C. FREDERICK, ESQ.
 SCOTT K. ATTAWAY, ESQ.
 COLLINS J. SEITZ, JR., ESQ.
 MATTHEW F. BOYER, ESQ.

Also Present: MARK E. PORADA, ESQ.

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PROCEEDINGS

SPECIAL MASTER: I think we're all assembled now. At this end we have Mark Porada and Claudette Mason, the reporter; and we're ready to proceed.

I would like to ask that we start again, as we did last time, with New Jersey and have Ms. Horowitz, if you will, identify everyone who -- there who is present with you. Not just who may be speaking, but everyone who is there.

MS. HOROWITZ: Certainly. Besides myself, we have Deputy Attorney General Dean Jablonski, Deputy Attorney General John Renella, legal assistant Julie Goldman, Deputy Attorney General Eileen Kelly and Deputy Attorney General Amy Donlon.

SPECIAL MASTER: Thank you. Welcome.

Now, Delaware?

MR. FREDERICK: David Frederick and Scott Attaway in Washington.

MR. SEITZ: And this is C. J. Seitz and Matt Boyer in Wilmington, Delaware.

SPECIAL MASTER: Counsel, thank you very much.

Let me ask again, as I did last time, that

1 you identify yourself when you're speaking so that
2 Ms. Mason will be able to identify the speaker for
3 the transcript.

4 First, let me thank you for the list of
5 issues that you submitted and for your progress
6 reports. At this early stage, I didn't expect the
7 progress reports to be complex. I expect that
8 they're going to become more complex as we go
9 further along, or at least more full or complete
10 than they are at this stage.

11 I agree with Mr. Frederick's opinion that, at
12 least at this juncture, the case appears to be
13 moving forward efficiently. It appears from the
14 submissions that counsel are cooperating. And as
15 we all know from our personal experience, there is
16 no better way to make progress than to have
17 cooperative counsel.

18 Before we turn to any other matters that
19 counsel may wish to raise, there's one minor
20 housekeeping detail. Mr. Frederick thoughtfully
21 sent to Ms. Mason copies of four pages of the
22 transcript of our first conference with some very
23 minor grammatical corrections penned in. I don't
24 believe he sent that along to New Jersey. They
25 were clearly formal and not substantive. And I

1 suggest as a process -- and I'm not going to put
2 this in the next order but simply, if you agree,
3 that if any of us has such a suggestion for a
4 minor formal change, you simply forward them to
5 Ms. Mason with a copy to all of us -- all of the
6 rest of us. Ms. Mason will then wait a week and
7 send corrected pages to each of us. And the
8 hiatus I'm suggesting is to allow review and an
9 opportunity to object if anyone believes that the
10 suggested correction is substantive rather than
11 formal.

12 Is that procedure acceptable, Ms. Horowitz?

13 MS. HOROWITZ: Yes, it is.

14 SPECIAL MASTER: Mr. Frederick?

15 MR. FREDERICK: Yes.

16 SPECIAL MASTER: Okay. Fine. Then I'm not
17 going to -- as I said, I'm not going to record
18 that. We'll just operate on that principle. And
19 I have already cleared that with Ms. Mason, and
20 she's agreeable as well.

21 Now, let me begin with New Jersey.

22 Ms. Horowitz, is there anything that you wish to
23 bring up that isn't reflected in the papers that
24 have been exchanged thus far?

25 MS. HOROWITZ: No. A minor clarification as

1 to the -- our motion that we're filing. It's
2 related not just to the BP project, but to any
3 pending project and their -- what we see as
4 their -- we don't see those as being germane to
5 the case. So just with that minor clarification,
6 there's nothing else that I would like to raise at
7 this point.

8 Deputy Attorney General Barbara Conklin is
9 also with us now.

10 SPECIAL MASTER: All right. I thought that I
11 took -- in Case Management Order No. 2, I thought
12 I addressed the issues that you expressed as
13 having some concern with. Am I now understanding
14 that there are others?

15 MS. HOROWITZ: No. No. I think that your
16 Case Management Order reflects what we are
17 concerned with. And my previous comment really
18 was in response to the progress report of Delaware
19 where they talk about New Jersey intends to file a
20 motion concerning discovery related to BP. And I
21 intended to clarify it's not limited to that.
22 It's limited to the issues that you are citing in
23 your Case Management Order.

24 SPECIAL MASTER: Well, for better or for
25 worse, my Case Management Order will control and

1 not the submission of counsel. The language in my
2 Case Management Order will be controlling.

3 Anything else, Ms. Horowitz?

4 MS. HOROWITZ: No, nothing else.

5 Thank you.

6 SPECIAL MASTER: Mr. Frederick?

7 MR. FREDERICK: Well, I would just like to
8 comment on the fact that -- we will address this
9 in our opposition; but I'm confused by New
10 Jersey's position that they're advancing now. I
11 don't see how there is a case for controversy if
12 we can't litigate about what the actual projects
13 are. It seems to me fundamental to the court's
14 jurisdiction that there be some live controversy
15 between the parties. And if New Jersey is going
16 to take that off the table, I don't know what
17 we're litigating about.

18 Secondly, I do want to raise and bring to
19 your attention, Mr. Lancaster, that we have made
20 exhaustive efforts with the National Archives.
21 They do not appear to have the full record of New
22 Jersey versus Delaware, 1. We have been advised
23 that at some point along the way there was a fire
24 or some other catastrophe that may have taken out
25 those documents. I would note that the documents

1 were -- predated the current Supreme Court
2 building. And at this juncture we have a
3 handwritten set of notes and docket entries from
4 that -- from the National Archives that is very
5 difficult to read. We have the evidence that New
6 Jersey submitted from New Jersey versus Delaware,
7 1 in No. 11, Original, the case that the court
8 decided in 1934 and which the court currently
9 decided not to reopen; but we do not have
10 Delaware's evidence, No. 1, Original. And we are
11 attempting to find alternate sources for the
12 record in that case because it is fundamental to
13 understanding what the parties were trying to
14 accomplish in the 1905 Compact.

15 So I wanted to report to you about our
16 efforts there and that notwithstanding the
17 sterling reputation of the National Archives, it
18 appears to be stymied thus far with respect to our
19 efforts to get that record.

20 SPECIAL MASTER: Well, thank you for that
21 report. I'm surprised. I wasn't aware of a fire.
22 I have been in the stacks in the National
23 Archives, and I didn't think there was anything
24 that had ever been produced on the face of the
25 earth that wasn't there. But obviously, you have

1 made more recent inquiries than I; and we'll have
2 to wait and see what turns up.

3 MR. FREDERICK: And if I could just add, we
4 are attempting to find that record in alternate
5 sources through historical societies and papers of
6 participants and through other libraries. But
7 thus far, we have not been successful.

8 SPECIAL MASTER: Thank you for that report.
9 Anything further?

10 MS. HOROWITZ: This is Rachel Horowitz.

11 SPECIAL MASTER: No --

12 MS. HOROWITZ: I just want to respond
13 briefly, if I may, to Mr. Frederick's remarks on
14 the case for controversy. We do intend to deal
15 with that in our motion on the 20th. And we
16 obviously take exception to his position on it.
17 But we will deal with that in the motion.

18 SPECIAL MASTER: I expect that both counsel
19 will brief that matter fully.

20 Anything else, either counsel?

21 Ms. Horowitz?

22 Mr. Frederick?

23 MS. HOROWITZ: Nothing here.

24 This is Rachel Horowitz again.

25 MR. FREDERICK: Nothing here either.

1 SPECIAL MASTER: All right. Well, I think
2 despite the brevity of this conference, I think
3 these progress reports and conference calls are
4 very important so that we can keep on schedule --
5 hopefully, can keep on schedule.

6 If you have your calendars, I would suggest
7 that the next progress report be submitted on June
8 the 2nd and the next conference call be on June
9 the 5th.

10 Ms. Horowitz?

11 MS. HOROWITZ: That's fine.

12 SPECIAL MASTER: Mr. Frederick?

13 MR. FREDERICK: That's fine.

14 SPECIAL MASTER: All right. We'll be on
15 schedule then.

16 Let me just alert you both to the fact that I
17 will be in trial the week of March -- starting the
18 week of March 20 for a trial that, I think, will
19 finish up -- I hope, will finish up in a week.
20 And I tell you that not so that -- to cause any
21 consternation, but just because if you have to
22 reach me during that period, if you will -- and
23 Mark Porada is going to be with me on that
24 trial -- if you will call Elizabeth Umland, my
25 assistant. And if you don't have her number, it's

1 207-791-1317. And she will -- she will certainly
2 leave me a message. And I can always accommodate
3 you in the evenings because I'll be here anyway,
4 as you experienced trial lawyers know what the
5 trial day is like. But I did want to alert you to
6 that possibility. Hopefully, there will be no
7 need for a conference. But I did -- I wanted to
8 give you advance notice and warning of my general
9 unavailability at least during that week.

10 MR. SEITZ: Mr. Lancaster, this is C. J.
11 Seitz.

12 SPECIAL MASTER: Yes, sir?

13 MR. SEITZ: Did you mean by setting the next
14 conference with us in June to cancel the ones --

15 SPECIAL MASTER: No.

16 MR. SEITZ: -- that are set for April and
17 May?

18 SPECIAL MASTER: No. I'm sorry. I should
19 have made that clear. We're going to do this on a
20 rolling basis so that each conference we will add
21 another.

22 MR. SEITZ: I understand that. Thank you.

23 SPECIAL MASTER: So we will have a schedule
24 out three months and be able to calendar it. And
25 then there won't be -- hopefully, there won't be

1 any need to change it.

2 MR. SEITZ: Thank you.

3 SPECIAL MASTER: Anything else?

4 Ms. Horowitz?

5 MS. HOROWITZ: Nothing further.

6 Thank you.

7 SPECIAL MASTER: Yes.

8 Mr. Frederick?

9 Thank you. This was brief, but I think it's
10 important that we keep on track.

11 And I, again, urge you to be as cooperative
12 one with another as you possibly can because I
13 think that's the best way to resolve matters among
14 counsel before they get to me. And the more
15 cooperation we have, the smoother this will be and
16 the sooner we can get to some resolution of it.

17 Thank you very much. I appreciate it.

18 Have a nice day.

19 MS. HOROWITZ: Thank you.

20 MR. FREDERICK: Yes.

21 (The conference was concluded at 10:17 a.m.)

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CERTIFICATE

I, Claudette G. Mason, a Notary Public in and for the State of Maine, hereby certify that the foregoing pages are a correct transcript of my stenographic notes of the above-captioned Proceedings that were reduced to print through Computer-aided Transcription.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF I subscribe my hand this 10th day of March, 2006.



Claudette G. Mason
Notary Public

My Commission Expires
June 9, 2012.