



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

ZULIMA V. FARBER
Attorney General

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By Electronic and First Class Mail

Ralph I. Lancaster, Jr., Esq.
Special Master
Pierce Atwood LLC
One Monument Square
Portland, Maine 04101

Re: New Jersey v. Delaware, No. 134, Original
Response of State of New Jersey to Delaware's
Motion to Strike BP's Designation of its Privilege
Log as Confidential

Dear Mr. Lancaster:

Plaintiff State of New Jersey respectfully submits this letter brief in response to Delaware's Motion to Strike BP's Designation of its Privilege Log as Confidential.

New Jersey does not object to removing the confidential designation from the log. However, New Jersey takes strong exception to the various contentions made by Delaware, which have no bearing on the merits of this controversy or on the merits of Delaware's motion and also are wholly devoid of merit.

As explained in New Jersey's briefs in support of its Motion to Strike, Delaware has raised and appears determined to pursue issues that are completely unrelated to the matter in dispute, interpretation of the Compact of 1905. Delaware's Motion to Strike provides further examples of its apparent inclination to focus on collateral matters that are not germane to the substantive issues.

New Jersey filed this lawsuit to assert its rights under



the Compact of 1905, which in New Jersey's view plainly provides that New Jersey, not Delaware, has jurisdiction to determine which improvements on the New Jersey shoreline are in the best interests of New Jersey and its citizens. In October 2005, the Court granted New Jersey leave to file its Complaint against Delaware and ordered Delaware to answer, thereby determining to exercise original jurisdiction over the interstate Compact dispute presented by New Jersey. Delaware's continued insistence that New Jersey is seeking to assert the rights of a private entity rather than its own rights has no basis, and serves no purpose other than as a diversion and distraction from the actual issues in controversy.

Moreover, when examined in detail, the allegations contained in Delaware's Motion to Strike fall far short of the actual record. For example, Delaware alleges that New Jersey has engaged in "extensive efforts" to obtain public support for the construction of BP's proposed facility. However, to support this contention, Delaware then cites to a single New Jersey news release, which merely announced that New Jersey had filed an action against Delaware (DE Motion to Strike at 1).

As another example, Delaware asserts that New Jersey is attempting to conceal the fact that it communicated with BP before filing with the Court its Motion to Reopen, its Reply to Delaware's Opposition, or its opposition to the appointment of a Special Master. However, in its letter brief and Declarations filed on May 17, 2006, New Jersey acknowledged that it had agreed to share and exchange work product with counsel for BP, based on the common interest shared by New Jersey and BP that New Jersey prevail in this litigation.

In addition, Delaware has mischaracterized New Jersey's litigating position and previous filings. As an example, Delaware claims that by filing this lawsuit in 2005, New Jersey suddenly abandoned previous cooperation with Delaware (DE Motion to Strike at 16). Delaware fails to note, however, that before 2005, Delaware had never, to New Jersey's knowledge, asserted jurisdiction to preemptively deny a proposed project on New Jersey's shoreline. Similarly, Delaware asserts that New Jersey's moving papers exhibited little interest in the pleadings in *New Jersey v. Delaware I* that preceded the Compact of 1905 (*Id.*). This assertion ignores the fact that New Jersey's Petition contained both a discussion of that controversy and a discussion of the Compact, before focusing on the parties' course of conduct and assertions of jurisdiction before and after adoption of the Compact (NJ Petition, ¶¶ 5 - 11, 15 - 18, 21 - 25).

Delaware continues to focus on New Jersey's motion to reopen *New Jersey v. Delaware II*, and on why New Jersey opposed Delaware's motion for appointment of a Special Master, but the Supreme Court addressed those motions months ago. Since the motions are now moot, the parties should turn their attention to the primary issue in this case, interpretation of the 1905 Compact.

Respectfully,

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY

By: *Rachel Horowitz*
Rachel Horowitz
Deputy Attorney General

c: David Frederick, Esq. (by email and first-class mail)
Collins Seitz, Esq. (by email and first-class mail)
Stuart Raphael, Esq. (by email and first-class mail)