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April 23, 2008

*By E-Mail and First Class Mail*

Special Master Kristin L. Myles  
Munger, Tolles & Olson LLP  
560 Mission Street  
27th Floor  
San Francisco, California 94015

**Re: *South Carolina v. North Carolina*, No. 138, Original:  
South Carolina's Third Progress Report**

Dear Special Master Myles,

In advance of tomorrow's monthly status conference on April 24, 2008, we respectfully submit South Carolina's third progress report.

Since the argument and conference in Richmond on March 28, 2008, the parties have exchanged multiple redlined drafts of a case management plan. The parties also have met and conferred by telephone to discuss those drafts on April 21 and 22, 2008, and have diligently worked to reach agreement on as many issues as possible. South Carolina believes the parties have reached substantial agreement as to which of the Federal Rules of Civil Procedure applicable to discovery (Rules 26-37 and 45) will apply and/or be modified. In particular, for example, the parties have agreed that the initial disclosures provided in Rule 26(a)(1) will not be necessary, on the length of depositions, and on the treatment of discovery material (largely from third parties) that may be properly designated as confidential. South Carolina believes that the parties also have agreed that fact discovery should precede expert discovery and have agreed on a general sequence for serving expert reports and conducting expert depositions.

The parties are still discussing a handful of other issues, such as the content of privilege logs and the permissible number of interrogatories. South Carolina is optimistic that many if not all of those types of issues can be resolved shortly and that the parties will be able to submit a

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joint proposed case management plan covering the agreed-upon issues for the Special Master's consideration early next week.

Although the parties agree generally that this proceeding should be bifurcated in some way, they disagree on (1) the general issues to be decided in Phases I and II, (2) the precise articulation of those issues, and (3) the timing for discovery and trial (including possible summary judgment briefing) in each Phase.

South Carolina looks forward to discussing these issues on the status conference call tomorrow, including the need to brief any of these issues. Notwithstanding the possibility of such briefing, South Carolina respectfully requests a process that will permit discovery to commence in the very near future.

Respectfully submitted,

A handwritten signature in black ink that reads "David C. Frederick". The signature is written in a cursive, slightly slanted style.

David C. Frederick  
*Special Counsel to the  
State of South Carolina*

cc: Christopher Browning  
Robert Cook