

No. 142, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF FLORIDA,

Plaintiff

v.

STATE OF GEORGIA,

Defendant

OFFICE OF THE SPECIAL MASTER

CASE MANAGEMENT ORDER NO. 14

January 14, 2016

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In the parties' January 8, 2016 status reports and at the status conference held on January 12, 2016, the parties notified the Special Master of a discovery dispute regarding missing emails of three former directors of Georgia's Environmental Protection Division. As set forth in its written submissions and as stated at the status conference, Florida asserts that it is entitled to a Rule 30(b)(6) deposition of a Georgia technical expert "related to the issue of deleted data" from the three former directors. Florida maintains that the "missing emails are likely to be highly relevant" to the issues in the case, and that it is entitled to discovery regarding Georgia's efforts to find alternative sources where the emails may have been retained. According to Georgia's status report and its statements at the status conference, Georgia has declined to produce a 30(b)(6) witness, asserting that the proposed 30(b)(6) topics are "unreasonable, unnecessary, and unduly burdensome, particularly with just seven weeks left in discovery." Georgia states that it has taken "reasonable steps to produce all subject emails in its possession, custody, or control."

The parties agree that the issue of whether Georgia should be compelled to produce a 30(b)(6) technical witness to testify as to topics relating to Georgia's retention of the three directors' emails is ripe for resolution pursuant to Paragraph 11 of the Case Management Plan.

There is no allegation that Georgia has acted in bad faith relating to the retention of the disputed emails. Georgia has represented to the Special Master, and Florida does not dispute, that the emails of the directors, each of which had departed the Environmental Protection Division prior to the initiation of this proceeding, were not migrated to Georgia's new email server in 2013. Further, Georgia represents that it has taken numerous steps to find alternative sources for the emails that resided on the old server, including searching network drives and investigating the availability of backup tapes. Further, Georgia represents that it has produced

the emails of numerous other custodians who are most likely to have received emails from the three former directors. Florida has access to the emails that can be obtained from these sources. Additionally, while the parties dispute the precise timeline regarding when Florida became aware that Georgia had completed its investigation into the retention of the emails, it is undisputed that Georgia had disclosed the potential issue as early as April 2015. However, Florida did not bring the issue to the Special Master's attention until less than seven weeks remained before the close of fact discovery and well after the parties' deadline for production of documents. An e-discovery deposition regarding Georgia's email retention policies would be unduly burdensome and would cause needless delay.

IT IS HEREBY ORDERED THAT: Florida's request to compel Georgia to produce a Rule 30(b)(6) technical witness to testify as to Georgia's retention of the emails of three former directors of Georgia's Environmental Protection Division is DENIED.

Dated: January 14, 2016



Ralph I. Lancaster
Special Master

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