

## 132 ORIG ALABAMA V. NORTH CAROLINA

DECISION BELOW:

LOWER COURT CASE NUMBER:

QUESTION PRESENTED:

Plaintiffs except to the following conclusions of the Special Master:

1. Article 7(F) of the Southeast Interstate Low-Level Radioactive Waste Management Compact (the "Compact"), which states that the Commission may "sanction[ ]" "[a]ny party state which fails to comply with the provisions ... or ... fulfill the obligations" of "this compact," does not give the Commission the authority to level monetary sanctions against a party State when it fails to comply with the Compact. Preliminary Report 15-25.
2. Even if North Carolina violated the Compact, it was not subject to the sanctions authority of the Commission because it withdrew from the Compact before sanctions were imposed. Preliminary Report 25-29.
3. North Carolina did not waive its right to contest the legality of the sanctions proceedings even though it attended and refused to participate in the hearing. Preliminary Report 29-30.
4. Even though the Compact expressly provides that the Commission is "the judge of the [party States'] compliance with the conditions and requirements of this compact," Art. 7(C), the Commission's determination that North Carolina breached the Compact is neither conclusive nor entitled to any deference from the Court. Second Report 19-20.
5. While it is undisputed that North Carolina ceased taking any steps to license a facility in December 1997, more than 18 months before it withdrew from the Compact, North Carolina, as a matter of law, did not breach its duty under the Compact to "take appropriate steps to ensure that an application for a license to construct and operate a facility ... is filed." Art. 5(C). Second Report 10-24.
6. The implied duty of good faith and fair dealing does not apply to interstate compacts and North Carolina did not withdraw from the Compact in bad faith. Second Report 29-35.
7. North Carolina did not repudiate the Compact when it informed the Commission that it would take no further steps to license a facility. Second Report 24-28.

The State of North Carolina, takes exception to the following conclusions of the Special Master:

1. The recommended denial of North Carolina's motion to dismiss all claims brought by plaintiff Southeast Interstate Low-Level Radioactive Waste Management Commission. Under both the Eleventh Amendment and common-law sovereign immunity principles, only the United States or a sister State may sue a non-consenting State in federal court, absent a valid congressional abrogation of the State's sovereign immunity. Because North Carolina has not waived, and Congress has not abrogated, North Carolina's sovereign immunity from suit by the Commission, the Commission's claims cannot proceed in this Court. In this case, this Court has jurisdiction only over the claims asserted by the plaintiff States. Contrary to the Special Master's recommendation, North Carolina's motion to dismiss the Commission's claims should be granted.
2. The failure to recommend granting North Carolina's motion for summary judgment on the quasi-contract claims asserted in Counts III, IV, and V of the Bill of Complaint. It is a settled common-law rule that where the parties' relationship concerning a given subject matter is governed by the terms of an express contract, no equitable claim will lie in addition a claim for breach of contract. The Special Master declined to address North Carolina's motion at this stage in the proceedings, but the motion is legally and factually ripe for adjudication, and should be granted.

CERT. GRANTED 10/13/2009