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SUPREME COURT OF THE UNITED STATES
No. 142, Original

STATE OF FLORIDA,)
)
Plaintiff,)
)
v.)
)
STATE OF GEORGIA,)
)
Defendants.)

TELEPHONE CONFERENCE before SPECIAL MASTER

RALPH I. LANCASTER, held at the law offices of Pierce
Atwood, LLP, at Merrill's Wharf, 254 Commercial Street,
Portland, Maine, on July 13, 2015, commencing at
10:00 a.m., before Claudette G. Mason, RMR, CRR, a
Notary Public in and for the State of Maine.

APPEARANCES:

For the State of Florida: ALLEN C. WINSOR, ESQ.
OSVALDO VAZQUEZ, ESQ.
CHRISTOPHER M. KISE, ESQ.
PHILIP J. PERRY, ESQ.

For the State of Georgia: CRAIG S. PRIMIS, P.C.
SARAH HAWKINS WARREN, ESQ.
K. WINN ALLEN, ESQ.

For the U.S.A.: MICHAEL T. GRAY, ESQ.
JAMES J. DUBOIS, ESQ.

Also Present: JOSHUA D. DUNLAP, ESQ.
MARY CLIFFORD

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1 MR. DUBOIS: I am, your Honor. Good
2 morning.
3 SPECIAL MASTER LANCASTER: Is there
4 anyone else on the line?
5 All right. First of all, counsel, thank
6 you for accommodating my schedule. I
7 apologize if I have inconvenienced you in any
8 way, but I assure you it was necessary.
9 Let me start by asking whether you have
10 anything to add to your status reports.
11 Florida?
12 MR. WINSOR: No, sir.
13 SPECIAL MASTER LANCASTER: Georgia?
14 MR. PRIMIS: No, your Honor.
15 SPECIAL MASTER LANCASTER: Well, let me
16 continue to compliment you on your
17 cooperation and progress on discovery. I
18 understand from Florida's status report there
19 may be an issue with the ACF Stakeholders.
20 And I'm assuming you're continuing to work --
21 will try to work out that issue. But if you
22 can't, I would suggest you raise the matter
23 with me promptly if an impasse is reached;
24 and we'll address it.
25 MR. WINSOR: Yes, sir.

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2 PROCEEDINGS
3 SPECIAL MASTER LANCASTER: Good morning,
4 counsel.
5 MR. WINSOR: Good morning.
6 MR. PRIMIS: Good morning.
7 SPECIAL MASTER LANCASTER: Josh, Mary
8 Clifford, Claudette are all here with us.
9 Let's start by appearances. Florida?
10 MR. WINSOR: Good morning, your Honor.
11 This is Allen Winsor for Florida. I have
12 with me Osvaldo Vazquez; and on the telephone
13 we have some outside counsel including Philip
14 Perry, Christopher Kise, and others.
15 SPECIAL MASTER LANCASTER: Thank you.
16 Georgia?
17 MR. PRIMIS: This is Craig Primis from
18 Kirkland & Ellis. I have with me Winn Allen
19 and Sarah Warren, also from Kirkland & Ellis.
20 SPECIAL MASTER LANCASTER: United
21 States?
22 MR. GRAY: Yes, good morning. This is
23 Michael Gray for the United States. And I
24 believe Mr. Dubois is also going to be on the
25 line out in Denver.

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1 SPECIAL MASTER LANCASTER: Now, I also
2 understand that there are issues with timely
3 responses to the Touhy requests. I want to
4 thank Mr. Gray for sending me the sample I
5 requested.
6 And let me address this directly to you,
7 Mr. Gray. Does the United States have
8 anything to add to its statement?
9 MR. GRAY: No, your Honor, other than
10 that we -- I will add that we did meet with
11 the Corps, the USGS; and they all made
12 productions on Friday. I don't know that the
13 states have received those yet, but that's
14 the only thing I would add.
15 SPECIAL MASTER LANCASTER: Florida,
16 Georgia, does either one of you want to
17 comment on the United States' position?
18 Florida?
19 MR. WINSOR: No, sir.
20 SPECIAL MASTER LANCASTER: Georgia?
21 MR. PRIMIS: No, your Honor. I think we
22 addressed it in our status report.
23 SPECIAL MASTER LANCASTER: Well,
24 Mr. Gray, let me ask you why should I grant
25 you 45 additional days?

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1 MR. GRAY: Well, your Honor, a couple of
 2 reasons, I think. The first is that the
 3 agencies have been working diligently on the
 4 matter and simply haven't been able to
 5 complete the production. And we are
 6 attempting very much to work with the states
 7 so that we can provide all of the information
 8 that we can provide and that the states are
 9 seeking and make reasoned decisions under the
 10 regulation and after gathering and reviewing
 11 what is really an extraordinary amount of
 12 documents for each of these agencies. And
 13 the fact of the matter is despite devoting
 14 significant amounts of time to it, none of
 15 the agencies, I believe, have been able to
 16 finish at this point. And the extra time
 17 will aid us in reviewing -- gathering,
 18 reviewing these documents, deciding what can
 19 be released, applying the regulations in the
 20 way they're meant to be applied, and then
 21 serving the states.

22 SPECIAL MASTER LANCASTER: Can you
 23 guarantee or represent to me that if I should
 24 grant your request, it will be the last one?

25 MR. GRAY: I cannot make any such
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1 SPECIAL MASTER LANCASTER: Mr. Gray, if
 2 I understand your submission correctly, you
 3 don't care whether I give you the 45 days or
 4 not because you don't have to pay any
 5 attention to whatever I say. Is that
 6 correct?

7 MR. GRAY: Well, I think that may
 8 overstate it slightly. I think that if
 9 the -- if you deny the 45 days, then it will
 10 be, you know, up to the states to file a
 11 motion to compel. And I think we would have
 12 very good defenses in any proceedings on that
 13 motion because of the Touhy case itself.

14 But, you know, the consequence of that,
 15 bringing the dispute to the head in that way,
 16 may be that the states end up getting far
 17 less than they would have hoped for from us.
 18 And I think it's better to avoid the need to
 19 have that fight at this point in time,
 20 particularly since the states haven't
 21 objected to the 45 days.

22 And we -- we can, hopefully, satisfy the
 23 states during that time period and then, if
 24 it's necessary, fight about whether a motion
 25 to compel can be granted or you would have to
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1 guarantee at this point. The agencies are
 2 working. They will try to get it done. But
 3 there's -- it's a significant list,
 4 particularly for the Corps.

5 As you know reviewing the documents, the
 6 breadth of the request, it may be an
 7 exaggeration, but it's one that has asked for
 8 pretty much anything the Mobile District has
 9 done since 1975. And pulling back and
 10 gathering and reviewing and figuring that out
 11 while at the same time trying to complete the
 12 Corps' primary mission here, which is to
 13 revise the master manuals, as we said in the
 14 letter, is simply too much. And the Corps
 15 has undertaken to hire outside folks who are
 16 retired folks from the Mobile District to
 17 come in and review these.

18 But I don't want to mislead and say that
 19 we'll definitely get it done in 45 days
 20 because I don't know if that's true. I think
 21 it's going to significantly aid in our
 22 efforts to get this done. And if the states
 23 will work with us to narrow these requests,
 24 if they want to get it done by 45 days, that
 25 would -- that would help significantly.

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1 ifile an APA suit as we -- as we have
 2 maintained. I think, you know, now is really
 3 not the time to fight about that.

4 SPECIAL MASTER LANCASTER: Well, if I'm
 5 reading what you wrote, you said neither
 6 the -- this is a quote, neither the 30-day
 7 nor the 120-day deadlines contained in the
 8 subpoenas control the Agency's processing of
 9 the Touhy request under the applicable
 10 federal regulations. And the United States
 11 would oppose enforcement of either the 30-day
 12 or the 120-day deadline.

13 That's your position?

14 MR. GRAY: That is our position. And we
 15 have asked for the -- we have asked for the
 16 45 days and tried to accommodate the states
 17 in these proceedings and to avoid the need
 18 for you, and ultimately the Court, to have to
 19 decide that issue.

20 The Touhy issue is a complicated issue.
 21 I think we have good arguments there. I'm
 22 not necessarily prepared to lay them all out
 23 today; but I think if there were an
 24 enforcement proceeding, we would have very
 25 good defenses. And it's better at this point

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1 to -- to attempt to work with the states
 2 until it's absolutely necessary to reach that
 3 dispute.
 4 SPECIAL MASTER LANCASTER: So what if I
 5 do nothing?
 6 MR. GRAY: If you do nothing, we will
 7 continue our Touhy process in the way that we
 8 have done; and it will be up to the states to
 9 decide at what point they are tired of
 10 waiting and want to file a motion to compel,
 11 I suppose.
 12 SPECIAL MASTER LANCASTER: Thank you
 13 very much.
 14 Florida, do you want to add anything to
 15 Mr. Gray's comments?
 16 MR. WINSOR: No, your Honor.
 17 This is Allen Winsor. We laid out our
 18 position in the status report. And
 19 certainly, we are mindful of the issue the
 20 United States is facing; and we do not oppose
 21 the 45-day extension.
 22 SPECIAL MASTER LANCASTER: Georgia?
 23 MR. PRIMIS: This is Craig Primis, your
 24 Honor.
 25 I would just say that the Court is aware
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1 talk, encourage you to continue to try to
 2 adjust this matter. I think the discussion
 3 that we just finished emphasizes and
 4 underscores my position on the settlement
 5 matter; and I would encourage you, again, to
 6 continue to try to resolve the matter.
 7 Is there anything else for us to
 8 discuss?
 9 Florida?
 10 MR. WINSOR: Not from Florida's
 11 perspective, your Honor.
 12 SPECIAL MASTER LANCASTER: Georgia?
 13 MR. PRIMIS: No, sir.
 14 SPECIAL MASTER LANCASTER: United
 15 States?
 16 MR. GRAY: No, sir.
 17 SPECIAL MASTER LANCASTER: Let me --
 18 before we close, I have a couple of
 19 housekeeping details. First of all, I have
 20 been besieged by people who can't find the
 21 docket on the website. And I have looked at
 22 it; and I have asked my IT people to make it
 23 more visible, more available for them.
 24 Typically, as I'm sure you're all aware,
 25 you don't get your IT people to turn around
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1 of at least Georgia's view as to the
 2 centrality of the United States in this case.
 3 And we -- that's why we consented to a modest
 4 extension, not the full extension that has
 5 been requested, because we are committed to
 6 the timelines that the Special Master has set
 7 forth in the Case Management Plan. And we
 8 believe for our part -- I think Florida has
 9 said the same -- that the parties will be
 10 able to meet them. But if the U.S.
 11 production goes out much past 45 days, it
 12 will impact significantly or potentially
 13 significantly the expert schedule. So we
 14 wanted to note that in our submission.
 15 So we're trying to be cooperative, and
 16 we certainly understand it's a significant
 17 task. But much beyond what's already been
 18 asked for will complicate the rest of the
 19 schedule.
 20 SPECIAL MASTER LANCASTER: Thank you
 21 very much.
 22 I assume counsel are continuing to
 23 discuss settlement. And because this will be
 24 recorded in the transcript, I don't want any
 25 detail; but I will, as I do each time we
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1 overnight. So nothing has happened to that
 2 so far. But, hopefully, it will become more
 3 visible in the near future.
 4 And then, finally, I have been -- we
 5 have been besieged by media contacts. And
 6 they're getting more -- they're getting
 7 worse. For example, I got one that said,
 8 "We're seeing reports that you have dismissed
 9 the State of Georgia's motion to dismiss the
 10 lawsuit. Is this correct?"
 11 Now, if they could look at the site,
 12 they could find out that very easily.
 13 And here is another one, "First, I'm
 14 wondering if you can tell me when the Court
 15 will hear the case? Also, I'm wondering
 16 whether the Court's stance is to schedule
 17 hearing dates after it becomes apparent that
 18 no agreement can be reached in the hopes that
 19 agreement will actually be reached?"
 20 So for the record -- and that's all I'm
 21 doing -- for the record, we have tried in the
 22 past to be polite and to refer the media to
 23 counsel when necessary or to tell them where
 24 to look on our website to find the docket.
 25 I want the record to reflect -- and if they
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1 can read, they can find this out -- from now
 2 on, we will not answer any further media
 3 requests no matter what they ask for.

4 And you -- Claudette, if you would
 5 underscore that or italicize it or something
 6 so if they can read, they can find it.

7 Anything else, counsel?
 8 Florida?

9 MR. WINSOR: No, sir.

10 SPECIAL MASTER LANCASTER: Georgia?

11 MR. PRIMIS: No, your Honor.

12 SPECIAL MASTER LANCASTER: United
 13 States?

14 MR. GRAY: No, sir.

15 SPECIAL MASTER LANCASTER: Thank you all
 16 very much. Have a good day.

17 MR. WINSOR: Thank you.

18 (The telephone conference was concluded
 19 at 10:17 a.m.)

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1 CERTIFICATE
 2 I, Claudette G. Mason, a Notary Public
 3 in and for the State of Maine, hereby certify
 4 that the foregoing 14 pages are a correct
 5 transcript of my stenographic notes of the
 6 above-captioned proceedings.

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

10 IN WITNESS WHEREOF, I subscribe my hand
 11 this 20th day of June, 2015.

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 Claudette G. Mason
 Notary Public

My Commission Expires
 June 9, 2019.

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