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E. ROBERT SEAWER, CLERK

IN THE

Supreme Court of the United States

October Term, 1970

No. 35, Original

UNITED STATES OF AMERICA

v.

STATES OF MAINE, NEW HAMPSHIRE, MASSACHUSETTS, RHODE ISLAND, NEW YORK, NEW JERSEY, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA and FLORIDA

**REPORT OF THE SPECIAL MASTER UPON
MOTION OF THE STATE OF FLORIDA
FOR SEVERANCE**

March 29, 1971

ALBERT B. MARIS
Special Master

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To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Pursuant to the order of the Court entered November 16, 1970, 400 U.S. 914, your special master submits the following report with respect to the motion filed by the State of Florida on February 9, 1970 for a severance, which motion was referred to me by that order.

The complaint filed by the United States in this case alleges in effect that the United States is entitled, to the exclusion of the defendant states, to exercise sovereign rights over the seabed and subsoil underlying the Atlantic Ocean seaward from the three mile limit (within which

limit the United States had transferred its rights to the states by the Submerged Lands Act, 67 Stat. 29) to the limits of the continental shelf, for the purpose of exploring the area and exploiting its resources. The complaint asserts that the defendant states claim rights in the seabed and subsoil in question and that one of them, the State of Maine, has purported to grant exclusive oil and gas exploration and exploitation rights in a portion thereof. A separate cause of action is asserted against each defendant state and a declaratory decree and order for accounting are sought.

Each defendant state has filed an answer to the cause of action asserted against it. In the case of the 12 defendant states other than Florida, each answer sets up an affirmative defense to the effect that the state received from England, while it was a British colony (and, in the case of New York, also from Holland while it was a Dutch colony), certain rights in the portion of the seabed and subsoil in question adjacent to its Atlantic coast and that it did not lose these rights upon declaring its independence or give them up upon joining the federal Union, but continues to have them.

The affirmative defense set up by the State of Florida is entirely different from those of the other defendant states. That state asserts that by the Act of June 25, 1868, 15 Stat. 73, Congress approved the marine boundaries of the state, as set out in Article I of its Constitution of 1868, which boundaries, it asserts, run more than three miles seaward from its coast in part in the Atlantic Ocean, and that Congress thereby granted to Florida whatever interest the United States possessed in that maritime territory within those boundaries.

Following the order of reference of November 16, 1970, I held a hearing on the motion of the State of Florida for a severance. At the hearing counsel for that state asserted that its defense was based on its claim that the Act of 1868 had approved the marine boundaries claimed in its 1868 Constitution and that this approval constituted a

grant to the state of rights in the seabed and subsoil of the adjacent waters of the Atlantic Ocean within those boundaries or upon a construction of the Submerged Lands Act, 67 Stat. 29. Florida disclaimed any intention to claim any rights derived from England under colonial grants or charters or any purely constitutional rights of a proprietary character in its capacity as a state of the Union, except that if any such rights should hereafter be determined in this case to exist with respect to any of the other 12 defendant states, Florida would want to be entitled to the benefit of that determination to the extent relevant and applicable to its factual situation.

On the basis of the position of Florida as thus stated, it appeared to me that while there are undoubtedly questions of law and probably also of fact common to the causes of action of the United States against the 12 defendant states other than Florida which have been joined in this action, there are no questions of law or fact, except possibly with respect to the construction of the Submerged Lands Act, common to those 12 causes of action and the cause of action asserted against the State of Florida. I accordingly concluded that the cause of action against Florida was misjoined with the other 12 causes of action in this case and should be severed and proceeded with separately, as provided by Rule 21, F.R.C.P. Counsel for the United States agreed with this view. Accordingly, on January 14, 1971, I made an order as special master severing the cause of action against the State of Florida for hearing and determination. I was in doubt, however, as to my authority to order the cause to be proceeded with wholly separately, as Rule 21 contemplates. I, therefore, recommend that the Court itself order the cause of action against the State of Florida to be severed and proceeded with separately.

In the case of *United States of America v. States of Louisiana, Texas, Mississippi, Alabama and Florida*, No. 9, Original, the Court has determined that the State of Florida is entitled, as against the United States, to all the lands, minerals and other natural resources underlying

the Gulf of Mexico, within the historic boundaries described in its 1868 Constitution, extending seaward from its coast line for a distance not over three leagues, with the exceptions provided by section 5 of the Submerged Lands Act, 363 U.S. 121. In the decree entered with respect to the cause of action against Florida in that case on December 12, 1960, 364 U.S. 502, the Court reserved jurisdiction to entertain such further proceedings as may from time to time be deemed necessary or advisable to give proper force and effect to the decree. It appears that in the amended complaint filed by the United States against the State of Florida in that case an adjudication was also sought of the respective rights of the United States and the State of Florida in the seabed and subsoil underlying the ocean off the Atlantic coast of Florida, a question substantially the same as that raised in the cause of action of the United States against Florida in No. 35, Original, but it seems clear that this portion of the amended complaint was not adjudicated by the decree entered December 12, 1960.

Since the entry of the decree of December 12, 1960 in No. 9, Original, questions have arisen as to the location of the coast line of Florida, within the meaning of the decree, and especially as to where at various places on the Florida Gulf coast the line of demarcation should be drawn between the inland waters of that state and the high seas, which line of demarcation is to be regarded as the coast line for the purpose of demarcating the outer limits of the submerged lands in the Gulf of Mexico in which the State of Florida has rights under the decree of December 12, 1960. It appears, therefore, that supplementary proceedings in No. 9, Original, under the jurisdiction reserved in that decree will be required to adjudicate these questions.

It thus appears that the cause of action against Florida, in No. 35, Original, when severed should, in the interest of expedition and to avoid duplication of effort, be consolidated with the unadjudicated portion of the complaint against Florida in No. 9, Original, involving its

Atlantic coast, and any supplementary proceedings in that case with respect to the location of the shore line of the Gulf coast of Florida. For, as has been pointed out, the unadjudicated portion of the complaint in No. 9, Original, is substantially the same as the cause of action against Florida in No. 35, Original, while questions with respect to Florida's coast line and the outer limits of its inland waters on its Atlantic coast are likely to be raised in No. 35, Original, which will be similar in character and involve similar questions of law to those which will be raised in the supplementary proceedings in No. 9, Original.

Your special master is informed that counsel for both the United States and Florida have filed, or are about to file, with the Court joint motions in No. 35, Original, to consolidate for all purposes the cause of action against the State of Florida in that case with the further proceedings against Florida in No. 9, Original, and in No. 9, Original, to effect the same consolidation and to order supplemental proceedings with respect to Florida under the jurisdiction reserved by the Court in its decree of December 12, 1960. It appears to your special master that such consolidation and supplemental proceedings are appropriate and timely.

Your special master accordingly recommends that in case No. 35, Original, heretofore referred to him, an order be entered

(a) severing the cause of action asserted by the United States against the State of Florida for all purposes;

(b) consolidating that cause of action with the remaining proceedings with respect to Florida in the case of United States v. Louisiana, Texas, Mississippi, Alabama and Florida, No. 9, Original;

(c) and that such further proceedings be had in the consolidated cause with respect to the State of Florida as justice may require.

The order should be upon the condition that the State of Florida will not present any evidence or make any argument in the consolidated cause with respect to the rights

of the British colonies under colonial grants or charters, or with respect to any claim that the States of the Union have purely constitutional rights of a proprietary character in the submerged lands or the bed of the sea adjacent to their coasts; but the State of Florida should be entitled in the consolidated cause to the benefit of any determination that the Court may make in No. 35, Original, with respect to those questions to the extent that such a determination may be relevant and applicable to the factual situation of the State of Florida.

Respectfully submitted,

March 29, 1971

ALBERT B. MARIS
Special Master

