

1 SUPREME COURT OF THE UNITED STATES
2 No. 142, Original
3
4 STATE OF FLORIDA,)
5 Plaintiff,)
6 v.)
7 STATE OF GEORGIA,)
8 Defendant.)
9
10 TELEPHONE CONFERENCE before SPECIAL MASTER
11 RALPH I. LANCASTER, held at the law offices of Pierce
12 Atwood, LLP, at Merrill's Wharf, 254 Commercial
13 Street, Portland, Maine, on October 16, 2015,
14 commencing at 10:01 a.m., before Cindy Packard,
15 Registered Diplomate Reporter, a Notary Public in and
16 for the State of Maine.
17
18 APPEARANCES:
19 For the State of Florida: PHILIP J. PERRY, ESQ.
20 OSVALDO VAZQUEZ, ESQ.
21 CHRISTOPHER M. KISE, ESQ.
22 VANESSA A. SILKE, ESQ.
23 ALLEN WINSOR, ESQ.
24 For the State of Georgia: CRAIG S. PRIMIS, ESQ.
25 K. WINN ALLEN, ESQ.
26 SARAH H. WARREN, ESQ.
27 Also Present: JOSHUA D. DUNLAP, ESQ.
28 MARY CLIFFORD

1 MR. PERRY: I will, Your Honor.
2 SPECIAL MASTER LANCASTER: Georgia.
3 MR. ALLEN: Your Honor, good morning.
4 MS. WARREN: Good morning, Your Honor.
5 MR. ALLEN: I'm sorry. Winn Allen
6 from Kirkland & Ellis. And I'm here with Craig
7 Primis. And then I think you just heard Sarah
8 Warren from the State Solicitor General's Office
9 is also on the phone.
10 SPECIAL MASTER LANCASTER: And will
11 you be the principal spokesperson for Georgia?
12 MR. ALLEN: Yes, Your Honor, I will.
13 This is Mr. Allen, and I will be the principal
14 spokesperson.
15 SPECIAL MASTER LANCASTER: United
16 States?
17 (No response.)
18 SPECIAL MASTER LANCASTER: I take it
19 the United States is not interested in this
20 issue.
21 Before we begin, so that we're all on the
22 same page, Florida, will you tell me, please,
23 exactly what it is you're looking for?
24 MR. PERRY: Yes, Your Honor. We're
25 seeking very specific documents from Dr. Martin

1 PROCEEDINGS
2
3 SPECIAL MASTER LANCASTER: Good
4 morning, counsel.
5 MR. PERRY: Good morning, Your Honor.
6 MR. PRIMIS: Good morning, Your Honor.
7 MS. WARREN: Good morning.
8 SPECIAL MASTER LANCASTER: With me
9 today are Josh Dunlap, the case manager; Mary
10 Clifford, whom you know.
11 Claudette today is -- has a conflict. So
12 Cynthia Packard is with us as her substitute.
13 She's a very accomplished and experienced court
14 reporter, but she has no familiarity with your
15 names or your voices. So I would remind you,
16 please, to identify yourself when you're
17 speaking so that the record will be clear.
18 Let's start by entering appearances.
19 Florida.
20 MR. PERRY: Your Honor, Phil Perry for
21 Florida. And with me on the phone are Vanessa
22 Silke, Chris Kise, Allen Winsor and Os Vazquez.
23 SPECIAL MASTER LANCASTER: And,
24 Mr. Perry, will you be the principal
25 spokesperson for Florida?

1 Kistenmacher, who is a Ph.D. hydrologist and
2 civil engineer with Georgia Tech University. I
3 can provide significant details and why we want
4 the documents and what we think they'll show.
5 SPECIAL MASTER LANCASTER: At the
6 moment, all I want to know is exactly what
7 you're looking for. Can you give me further
8 identification, please?
9 MR. PERRY: Emails from
10 Dr. Kistenmacher regarding a specific hydrologic
11 modeling project conducted from 2012 to 2015,
12 that, among other things, identifies how
13 upstream Georgia consumption of water for
14 agriculture and other uses impacts river flows
15 on the Apalachicola.
16 SPECIAL MASTER LANCASTER: And that's
17 all you're asking for?
18 MR. PERRY: Today, Your Honor, that is
19 true. There may be some other witnesses in the
20 future for whom we have this same request or a
21 similar request. Not many; very few. But
22 today, the only issue we think is ripe under the
23 case management plan is Dr. Kistenmacher's email
24 files.
25 SPECIAL MASTER LANCASTER: And,

1 Georgia, before we begin, will you please tell
2 me why you object?

3 MR. ALLEN: Yes, Your Honor. Winn
4 Allen from Kirkland. We objected six months ago
5 to the production of emails from the
6 universities for two reasons; one, it is highly
7 burdensome to collect and produce emails from
8 university professors.

9 And, two, we think the relevance of such
10 materials are pretty low. And, particularly,
11 when compared to the burden of doing so.

12 And we think that -- you know, the last
13 thing Mr. Perry said we think is particularly
14 important because Florida has indicated to us
15 this isn't just an issue for Dr. Kistenmacher,
16 but it's going to be an issue for a number of
17 university professors from Georgia Tech and the
18 University of Georgia. And, to us, if it's six
19 or seven professors, that presents an even more
20 substantial burden problem.

21 So we think there's a burden problem here.
22 And we objected to that six months ago, Your
23 Honor. And the first we heard from Florida was
24 during Dr. Kistenmacher's deposition. That was
25 the first time we heard that they weren't

1 that was involved in the specific study that
2 Dr. Kistenmacher and other state employees were
3 also involved in. And it's hard for us to speak
4 for Dr. Pendergrast because we don't fully
5 understand what his points are.

6 SPECIAL MASTER LANCASTER: Well,
7 neither did I, frankly.

8 All right. Let's go forward with your
9 argument. Florida.

10 MR. PERRY: Thank you, Your Honor.
11 Phil Perry for Florida. Dr. Kistenmacher is the
12 assistant director of the Georgia Water
13 Resources Institute, which is also known as
14 GWRI. It's part of Georgia Tech University. It
15 advertises itself as having a close partnership
16 with the Georgia State Environmental Protection
17 Division and being integrally involved in
18 Georgia state water planning projects.

19 As I mentioned, Dr. Kistenmacher and GWRI
20 were specifically involved over the last three
21 years in a hydrologic modeling project
22 addressing issues that are central to this case;
23 namely, the flow of water into Florida and the
24 effect of Georgia consumption for agriculture
25 and other uses, agricultural irrigation

1 agreeing to the objection to produce emails
2 before that. We thought we had an agreement
3 that no emails would be produced.

4 SPECIAL MASTER LANCASTER: So if I
5 understand you correctly, the principal
6 objection is burdensomeness -- I'm not talking
7 about future witnesses. I'm talking about this
8 witness -- is burdensomeness; is that correct?

9 MR. ALLEN: Burdensomeness, Your
10 Honor, yes. But we do think that -- I know
11 we're talking about just Dr. Kistenmacher now,
12 but we do think this is just a tip of the
13 iceberg for future professors.

14 SPECIAL MASTER LANCASTER: Now, some
15 time ago, you'll recall Mr. Pendergrast sent me
16 emails and materials regarding this doctor and
17 his records. Is he no longer representing
18 Dr. Kistenmacher?

19 MR. PERRY: Your Honor, this is Phil
20 Perry for Florida. He was never representing
21 Dr. Kistenmacher. Mr. Allen is representing
22 Dr. Kistenmacher.

23 It's a little confusing what
24 Mr. Pendergrast was attempting to do. He
25 represents a group called the ACF Stakeholders

1 specifically, on that flow.

2 Your Honor, we believe that -- that the
3 hydrologic modeling here will be an important
4 part of this case. That the experts from both
5 Georgia and Florida will have competing
6 hydrologic models. And that Dr. Kistenmacher
7 and GWRI's work will support Florida's, rather
8 than Georgia's, assessment of the relevant
9 hydrologic principles.

10 And, also, that Dr. Kistenmacher and GWRI's
11 work will identify very specific serious
12 weaknesses in Georgia's case. This is why we
13 conducted the deposition of Dr. Kistenmacher
14 first.

15 To make sense of all the material -- the
16 analytical material we have from GWRI and
17 Dr. Kistenmacher, we need his emails. I'd like
18 to supply a little detail why. Florida's
19 received thousands of pages of largely
20 unindexed, unsorted analytical material from
21 GWRI, including at least 91 hydrology
22 presentations.

23 Many different versions of those
24 presentations were produced, and they appear to
25 be iterative drafts, but we're uncertain which

1 are drafts and which are final versions. There
 2 are also hundreds of Excel spreadsheets with
 3 little indication of what they are or where they
 4 came from.

5 There's a hydrologic model with several
 6 dozen model runs. Again, very difficult for
 7 our -- us to parse.

8 Your Honor, if you'll permit me an analogy,
 9 it's almost like Georgia counsel disassembled an
 10 automobile engine and tossed the parts in a box
 11 and sent it to us with no instructions of how to
 12 assemble it.

13 We could figure out some of this material,
 14 but not all of it. And we deposed, at least for
 15 the first day, Dr. Kistenmacher and asked him to
 16 help us make sense of this material. He
 17 answered roughly 200 questions with "I don't
 18 know" or "I don't recall."

19 He couldn't recall whether specific
 20 documents were drafts or final versions. He
 21 couldn't recall why specific edits were made
 22 between iterative drafts.

23 In some instances, he couldn't recall what
 24 his role was in creating certain of the
 25 documents that have his name on them. He

1 couldn't remember why changes between the
 2 multiple versions were made. He had difficulty,
 3 in some instances, recalling and explaining the
 4 datasets.

5 But he did recall that he has a specific
 6 email file in his computer that he'd identified
 7 recently. It's been preserved. It relates to
 8 this same specific modeling project.

9 And as far as we can tell, and given his
 10 statements in the deposition, we think it would
 11 be perhaps an hour or two of effort to supply
 12 that folder full of emails.

13 We think the emails will help explain what
 14 the specific documents are, put the documents in
 15 proper context, transmittal emails and other
 16 emails in particular. We think the emails have
 17 a chance to refresh the witness's recollection
 18 and distinguish between drafts and finals. The
 19 emails, in particular, should help with that.

20 And, to some extent, the emails should help
 21 us identify which data collections we have and
 22 how we might be able to use them.

23 I might say, Your Honor, that it's
 24 important for us to note the stark contrast
 25 between what we're dealing here with

1 Dr. Kistenmacher and what the University of
 2 Florida has done in response to subpoenas that
 3 were served by Georgia.

4 So far, the University of Florida has
 5 produced several thousand emails for eight
 6 university professors to Georgia. And so it's
 7 difficult for us to understand particularly why
 8 these specific relevant emails shouldn't be
 9 available to us.

10 I'd like, if I might, Your Honor, to speak
 11 briefly to what Mr. Allen said a moment ago.
 12 His argument, I believe, applies to a discussion
 13 roughly six months ago about some initial
 14 document subpoenas, two of them, in particular,
 15 to Georgia universities.

16 What we are attempting to do here today is
 17 enforce a very specific subpoena duces tecum on
 18 a particular individual. So we don't think the
 19 conversations with respect to those prior
 20 subpoenas are particularly relevant here. But
 21 more than that, we don't think that it's fair to
 22 read the statements made in those negotiations
 23 about the scope of the subpoenas as any
 24 agreement to forever forgo any university email
 25 production no matter how relevant they might be.

1 And if I might put that in context, Your
 2 Honor, the way we have approached this -- and my
 3 colleague, Vanessa Silke, is on the phone who
 4 had these conversations -- was to start with a
 5 subpoena and narrow it to identify very specific
 6 university studies, datasets and other materials
 7 that will be relevant to how we compose our
 8 hydrologic modeling, our expert work in this
 9 case.

10 And at that point in time, back in the
 11 spring, we did not insist on production of
 12 emails for 8,000 professors. But what we did do
 13 in contemporaneous documents was explain the
 14 type of materials we ultimately would want.

15 And, Your Honor, at this point, I would
 16 invite your attention to one of the email
 17 correspondence chains that Mr. Primis helpfully
 18 sent you on Monday night, one between Vanessa
 19 Silke and Kate Wasch, W-A-S-C-H, where on page
 20 3, Ms. Silke, who is one of my colleagues,
 21 explains: Examples of documents include the
 22 river basin planning tool, land use population
 23 projections, climate studies and models,
 24 reports, data collections, as well as a limited
 25 scope of emails.

1 It is certainly true that at this time, we
2 were not asking, back in the spring, Georgia or
3 Georgia universities, to produce 8,000
4 employees' emails. That is not something that
5 we sought. But we did not concede at any point
6 that when it became relevant, we would not seek
7 specific emails for particular professors
8 involved in specific studies.

9 I would submit, Your Honor, that the way we
10 approached this, starting by examining the
11 documents that are important for our expert
12 work, and then focusing thereafter specifically
13 on what we will need for trial, is the right way
14 to do this.

15 And I would further say, Your Honor, that a
16 review of these documents doesn't produce any
17 notion, I think, that we intended to waive
18 forever our right to seek specific documents.

19 I would think no counsel would agree to
20 that, and I don't think that there's any
21 indication there was any such agreement, you
22 know, to waive for all time any email discovery
23 of any professor, no matter how relevant, in any
24 of that correspondence.

25 Your Honor, if I might, there are a number

1 of documents that were sent to you both by
2 Florida and by Georgia on the specific dispute.
3 I think you'll find, if you review the
4 objections, both in the specific Kistenmacher
5 document and then in some other documents, you
6 will find that there were multiple other
7 objections raised, specifically, as to burden,
8 but there was not a written objection,
9 specifically, on the Kistenmacher objection
10 submission related to some past promise.

11 I think it's fair to say that Georgia has
12 had other objections, and they recently landed
13 on this particular objection. But in our mind,
14 there's no basis for it.

15 Finally, I would return to the note I made
16 earlier about the inequity. I would be cautious
17 in the way I phrase this. I think it probably
18 would be grossly inequitable to say that Florida
19 is entitled to no email discovery at all when,
20 in fact, Georgia has already received thousands
21 of emails from University of Florida for eight
22 professors. Thank you, Your Honor.

23 SPECIAL MASTER LANCASTER: Thank you,
24 Mr. Perry. Georgia.

25 MR. ALLEN: Thank you, Your Honor.

1 Winn Allen from Kirkland & Ellis on behalf of
2 Georgia.

3 In our view, Your Honor, this was -- I want
4 to start off by making one clarifying point to
5 what Mr. Perry said. The work that
6 Dr. Kistenmacher did and that's at issue here
7 was contracting work he did for ACFS, which is
8 not associated with the State of Georgia. It's
9 an independent organization. It's not a Georgia
10 instrumentality or agency. It's an entirely
11 separate group that, frankly, we have no control
12 over or interaction with. It's an entirely
13 separate group.

14 So I think it's wrong to say that the work
15 at issue was done, quote, unquote, for Georgia.
16 It was done for this separate group known as
17 ACFS that we don't have any relationship with.

18 In our view, Your Honor, this was an issue
19 that was raised and resolved six months ago when
20 Georgia Tech and the University of Georgia were
21 served with subpoenas. And, again,
22 Dr. Kistenmacher is a professor at Georgia Tech.

23 When Georgia Tech was served with the
24 subpoena, Georgia Tech responded to that
25 subpoena by saying, in general objection number

1 2, Georgia Tech objects to each request for
2 production to the extent it seeks emails, texts
3 or other electronic messages.

4 The key point there, Your Honor, is when
5 Georgia Tech made those objections, everyone
6 knew -- Florida, Georgia, Georgia Tech -- that
7 we were talking about a limited set of
8 custodians that had done certain specific work.

9 Everyone knew Dr. Kistenmacher was one of
10 those custodians. And that he would be one of
11 the individuals whose documents would have to be
12 collected to respond to the subpoena.

13 So when Georgia Tech objected and said --
14 again, back in April, six months ago -- said
15 very clearly that it was not producing and
16 collecting emails because of the burden
17 associated with doing so, it was very clear that
18 that pertained to Dr. Kistenmacher as well.

19 I understand that now Florida might have
20 second thoughts about that. That was an issue
21 that was raised in April -- April of 2015. And
22 if Florida had had concerns about that, Your
23 Honor, it would have been nice to have heard
24 those before the day of Dr. Kistenmacher's
25 deposition.

1 His deposition took place on
2 September 30th. That was the first time we, at
3 the State of Georgia, have heard that Florida
4 was concerned about not getting emails from
5 these professors. So -- so frankly, we think,
6 Your Honor, that the issue had been resolved a
7 long time ago.

8 I'd also say that Mr. Perry mentioned the
9 meet-and-confer conversations that Miss Silke
10 had with counsel for UGA and Georgia Tech. And
11 our understanding is that in those
12 conversations, both for Georgia Tech and UGA,
13 agreements were reached that no emails would be
14 produced from these universities.

15 And that agreement was reflected in the
16 objections that Georgia served shortly
17 thereafter or contemporaneously with it. So
18 Georgia made it very clear that it wasn't
19 intending to search or produce emails.

20 So there's two reasons, really, to find
21 Florida's waived this issue, Your Honor, by
22 waiting six months to raise it. One is that UGA
23 and Georgia Tech said clearly in the written
24 objections that it wouldn't produce emails. We
25 didn't hear anything back for six months. And,

1 as we understand it, Florida counsel agreed in
2 telephone conferences with lawyers at UGA and
3 Tech the emails would not be produced.

4 Mr. Perry mentioned the University of
5 Florida and certain document subpoenas that
6 Georgia had served on them. The University of
7 Florida never objected to producing emails, Your
8 Honor. They never raised that objection, as far
9 as I know. And Georgia and Georgia Tech did.
10 That's the difference between the two. They
11 did. And they set it forth very clearly. And
12 we were on -- had an understanding that it was
13 resolved six months ago.

14 Your Honor, in light of that six-month
15 delay in raising this issue, it does cause some
16 significant burdens, we think, to going back and
17 collecting these emails.

18 Both -- and Georgia Tech is -- Georgia Tech
19 has already collected and produced documents in
20 this case. In fact, Georgia Tech has produced
21 over 18,000 documents amounting to more than
22 over 200,000 pages of documents. That was a
23 significant effort by Georgia Tech and by
24 counsel. It took a lot of time and resources.
25 And I think even Mr. Perry acknowledged in his

1 email to Your Honor that we produced a ton of
2 material. And as he described earlier, a lot of
3 that was -- you know, all of it was responsive
4 to the subpoena and was relied upon in Florida
5 in taking the deposition.

6 So, Your Honor, we've already gone and
7 collected all those materials. At this point in
8 the case, it's inequitable and highly burdensome
9 for us to have to go back and redo these
10 collections. Had Florida raised this issue six
11 months ago, we could have made the emails part
12 of our collection process in the first instance.

13 Now we have to go back, if Florida prevails
14 in this motion, and collect them again. And
15 it's at a time in the case where there's a lot
16 going on. There's 90 depositions to be
17 scheduled. We're in the process of getting
18 ready for those depositions, preparing our
19 people for those depositions and reviewing
20 hundreds of thousands of pages of documents we
21 have received from Florida recently and expect
22 to receive, you know, up until the close of
23 discovery.

24 So at this point, to go back and do it
25 again, we think, after, you know, having waited

1 six months is deeply unfair to Georgia and to
2 the state.

3 And, again, I said this earlier, Your
4 Honor, but I do think -- I just have to
5 emphasize that this isn't just an issue with
6 respect to Dr. Kistenmacher. Florida has said
7 to us that they will likely seek emails from a
8 number of other university professors, maybe as
9 many as six or seven or eight.

10 And, to us, having objected to that six
11 months ago, having said we weren't going to do
12 that in light of the burden imposed, it just
13 wouldn't be fair to have to go back and do it
14 again for all that -- all that number of -- all
15 that number of people.

16 A couple of responses to certain issues
17 that Mr. Perry raised. First of all, if
18 authentication is an issue, or if there are
19 issues about determining what's a draft and a
20 final, that's something we can work out with
21 Florida in a much less burdensome way.

22 If Florida has documents -- a list of
23 documents that they'd like authenticated, a list
24 of documents that they'd like to know what's the
25 final and what's the draft, we can do that by

1 stipulation, Your Honor. We can -- and we can,
2 you know, do the same on the other side.

3 But a broad-based burdensome email search
4 is not a way to -- is not the best way to go
5 about authenticating documents. The best way to
6 do it is to exchange lists of documents that
7 folks want authenticated, and we can find -- we
8 can, you know, reach agreement on that.

9 The other issue I think that Mr. Perry
10 raised was some purported problems in the
11 deposition testimony that they identified with
12 Dr. Kistenmacher. Dr. Kistenmacher testified
13 for a full eight hours on the record, Your
14 Honor. He testified capably and knowledgeably
15 about a number of different topics when asked
16 about them.

17 Were there certain questions to which he
18 answered "I don't know"? Yes, there were, like
19 there are in any other deposition. I could be
20 wrong, but I'm pretty sure he didn't testify
21 that if he had had emails, he would have been
22 able to testify more fulsome about certain
23 issues.

24 The broader point, Your Honor, that I make
25 is in every deposition, there are going to be

1 tangential issues that a witness might not be
2 able to recall. And discovery is always a
3 balance of burden and relevance.

4 And I think if we're going to start the
5 process of going back on commitments that were
6 made six months ago, and going back on -- you
7 know, redoing doc collections that were done
8 many months ago just to see if we can refresh
9 recollection on a few tangential issues, that's
10 going to put us in an untenable position to
11 conduct discovery in an orderly fashion. It's
12 just not -- it's just not the kind of thing that
13 should be done. If this was going to be an
14 issue, it should have been raised a long time
15 ago, Your Honor.

16 And with that, I just emphasize, again,
17 Your Honor, that we think this was done, agreed
18 upon a while ago. There are certain -- there
19 are some significant burdens associated with
20 going back and redoing it now.

21 And, again, we're very concerned that if
22 Florida is successful in its motion with respect
23 to Dr. Kistenmacher, we'll be back before Your
24 Honor with respect to a number of other
25 university professors that Florida has indicated

1 that it would like to proceed.

2 SPECIAL MASTER LANCASTER: Thank you,
3 Mr. Allen. I can appreciate your concern about
4 other witnesses, but the issue before me today,
5 as I understand it -- and this is why I asked
6 the questions at the beginning -- is whether
7 it's unduly burdensome to ask Dr. Kistenmacher
8 to produce these emails.

9 The representation by Florida is that it
10 would take no more than an hour for him to do
11 so. Do you agree or disagree with that?

12 MR. ALLEN: Your Honor, I can -- I
13 think I could safely say it would take much more
14 than an hour for those documents to be collected
15 in a forensically responsible way and to be
16 reviewed by attorneys for the State of Georgia.
17 That would -- or for Georgia Tech. That would
18 certainly take more than an hour.

19 I think that would take some time and
20 resources, depending on how many documents
21 are -- how many emails are in the email file
22 that Florida is asking about.

23 Dr. Kistenmacher's been on vacation for the
24 past two weeks. So we haven't had the
25 opportunity to know exactly how many emails

1 we're dealing with, but it's certainly more than
2 an hour. And if it's a substantial volume of
3 email for that specific file, it will take time
4 to collect it -- collect it in a forensically
5 responsible manner and have it reviewed by
6 attorneys at the same time that we're preparing
7 for a number of depositions and reviewing
8 hundreds of thousands of pages that Florida's
9 producing to us.

10 SPECIAL MASTER LANCASTER: Thank you,
11 Mr. Allen. Florida, Mr. Perry.

12 MR. PERRY: Your Honor, if I might,
13 I'd like to read a short question and answer
14 from Dr. Kistenmacher's deposition. Page 81.

15 "Question: And did you intend to produce
16 your emails to us?"

17 Answer: If that's part of the subpoena,
18 and I'm required to do so, then I have no
19 problem producing."

20 That is one of several examples in the
21 deposition where it became clear to us that
22 producing a specific folder that was preserved
23 as a project-specific folder would not be unduly
24 burdensome. And my projection earlier that it
25 might take an hour was based on his testimony --

1 Dr. Kistenmacher's testimony during the
2 deposition.

3 If I might address one or two other things
4 that Mr. Allen identified. We may have other
5 issues with other deponents. It's not entirely
6 clear yet. And the way we read the case
7 management plan requires us to go through the
8 process of meeting and conferring and only
9 coming to the court as a last resort when we
10 have a very specific issue to address. So
11 that's why we've raised it this way.

12 We have a deposition today of a Professor
13 Roberts. We are not seeking his emails at this
14 time. So that's just one example of a professor
15 for whom we have not made the case-by-case
16 determination to seek emails.

17 There may be some others in the future. I
18 don't think it's a long list. I would suggest,
19 Your Honor, that it's far shorter than the
20 number of professors for whom Georgia already
21 has emails from the University of Florida.

22 And I might make two more points before I
23 close, Your Honor. One, just to make certain
24 that I was clear about this earlier,
25 Dr. Kistenmacher appeared for his deposition

1 we've cooperated with up to now, I think, quite
2 well, but with other third parties in Georgia.
3 That it has been like pulling teeth to get even
4 the most clearly relevant documents for them.

5 And I think what we're seeing, Your Honor,
6 is that there is some form of concerted effort
7 among third parties to resist at all costs
8 productions of documents that might be negative
9 to Georgia's theory in this case.

10 And so we are addressing each of those
11 issues in a way we think is consistent with the
12 case management plan and coming to the court
13 only as a last resort. But I want to apologize
14 in advance if we have to convene sessions like
15 this one in the future for that purpose. Thank
16 you.

17 SPECIAL MASTER LANCASTER: Mr. Allen,
18 is there anything you would like to add before
19 we close?

20 MR. ALLEN: Yes, Your Honor, and make
21 a couple of additional points, very briefly, in
22 response to what Mr. Perry said. One is, I
23 think that we very much disagree with the idea
24 that the Georgia Tech subpoena served in the
25 spring and the Martin Kistenmacher deposition

1 under an August 26, 2015, subpoena duces tecum,
2 which requested, to the extent not already
3 produced, the types of documents we're seeking
4 here.

5 Mr. Allen is arguing, I think, that there
6 were statements made -- we disagree with him.
7 We have a completely different view -- but that
8 there were statements made in a meet and confer
9 six months earlier under different subpoenas,
10 which were broader and were intended at that
11 time to give us a sense of what specific
12 information we needed to pursue.

13 So I think that we accomplished what we
14 needed to in the initial subpoenas by getting
15 the studies. And then we are now, through this
16 August subpoena, narrowing to specific issues
17 that we want to address that will be important
18 for our trial strategy.

19 And we will review witnesses case by case
20 going forward with respect to individual need
21 for -- for emails and so forth.

22 One last thought, I might add, Your Honor,
23 if I could, regards third-party discovery more
24 generally. And I would say that it's been our
25 experience, not with counsel for Georgia, whom

1 subpoena served more recently are completely
2 separate and independent.

3 The Georgia Tech subpoena, everyone
4 understood, at the time, encompassed
5 Dr. Kistenmacher because he was one of the
6 custodians that held materials called for by
7 that subpoena.

8 It was understood by everyone involved, I
9 think, at the time, that the Georgia Tech
10 subpoena included Dr. Kistenmacher and some of
11 his colleagues in a specific part of Georgia
12 Tech. And, in fact, I believe that a large
13 number of Mr. Kistenmacher's documents, you
14 know, over 10,000, were actually produced in
15 response to the Georgia Tech subpoena, not the
16 Martin Kistenmacher subpoena.

17 The point I want to make, Your Honor, is
18 when we got the specific subpoena for
19 Dr. Kistenmacher, we again repeated our
20 objection that we would object to each document
21 request, to the extent it seeks emails, texts
22 and other electronic messages. Again, we heard
23 no response from Florida on that until the day
24 of the deposition itself.

25 The other point I'd make, Your Honor, is

1 regarding Mr. Perry's last point, I'm sure he
 2 wasn't intending to suggest this, but I can -- I
 3 can tell you very clearly that there's no
 4 concerted effort on the state -- being
 5 undertaken by the State of Georgia to block any
 6 production from any third party. And I don't
 7 think Mr. Perry was intending to suggest that it
 8 was the State of Georgia who was orchestrating
 9 some quote, unquote, concerted effort, but I can
 10 assure you, it most certainly is not.
 11 We have no connection or interest in
 12 blocking legitimate discovery from third parties
 13 if Florida wants to pursue, just as, you know,
 14 we've pursued discovery from certain third
 15 parties ourselves.
 16 With that, Your Honor, I'd close my
 17 argument.
 18 SPECIAL MASTER LANCASTER: Thank you,
 19 counsel. Because of the rather strict
 20 deadlines, discovery deadlines that we've
 21 imposed, we will turn to this issue promptly and
 22 get you an order one way or another just as soon
 23 as we can. Thank you.
 24 Josh, anything else?
 25 MR. DUNLAP: No.

1 CERTIFICATE
 2 I, Cindy Packard, a Notary Public in
 3 and for the State of Maine, hereby certify that
 4 the foregoing 30 pages are a correct transcript
 5 of my stenographic notes of the above-captioned
 6 proceedings.
 7 I further certify that I am a
 8 disinterested person in the event or outcome of
 9 the above-named cause of action.
 10 IN WITNESS WHEREOF, I subscribe my hand
 11 this 20th day of October, 2015.
 12
 13
 14
 15
 16 /s/ Cindy Packard
 17 Notary Public
 18
 19 My Commission Expires
 20 November 9, 2015
 21
 22
 23
 24
 25

1 SPECIAL MASTER LANCASTER: Thank you
 2 very much. You'll hear from us shortly.
 3 MR. PERRY: Thank you, Your Honor.
 4 MR. ALLEN: Thank you, Your Honor.
 5 MS. WARREN: Thank you, Your Honor.
 6 (At 10:31 a.m., the telephone conference was
 7 concluded.)
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