

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 October 11, 2016, commencing at
10:02 a.m., before Claudette G. Mason, RMR, CRR, a
Notary Public in and for the State of Maine.

APPEARANCES:

For the State of Florida: PHILIP J. PERRY, ESQ.
JONATHAN L. WILLIAMS, ESQ.
ABID R. QURESHI, ESQ.
JAMIE L. WINE, ESQ.

For the State of Georgia: CRAIG S. PRIMIS, ESQ.
BRITT GRANT, ESQ.
RYAN TEAGUE, ESQ.
K. WINN ALLEN, ESQ.
DEVORA W. ALLON, ESQ.
BARACK S. ECHOLS, ESQ.
KAREN MCCARTAN DESANTIS, ESQ.

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

Also Present: JOSHUA D. DUNLAP, ESQ.
MARY CLIFFORD
DEVON RICHARDS
ALEC LEDDY

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1 talented Claudette are all together; is that
2 correct, Josh?
3 MR. DUNLAP: We're here this morning,
4 yes.
5 SPECIAL MASTER LANCASTER: Now, let me
6 just warn you that the reception where I am
7 is terrible. I'll try and keep this as brief
8 as possible.
9 But as you're aware, Josh last month
10 sent you a list of possible topics. As we go
11 forward here, I urge you to interrupt if you
12 have a question or a comment so that later on
13 you won't say I didn't want to interrupt, but
14 I had a question. Everyone on board with
15 that?
16 Anybody who doesn't agree with that?
17 Okay. Hearing none, we're going to
18 proceed.
19 I thank counsel for their status
20 reports. I, again, because I'm in Canada, am
21 not sure that I have them all in hand and in
22 mind; but we'll do the best we can as we go
23 forward.
24 Again -- and this includes Alec and
25 Devon -- don't hesitate to interrupt.

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PROCEEDINGS

1 SPECIAL MASTER LANCASTER: Good morning,
2 counsel.
3 MR. PERRY: Good morning, your Honor.
4 MR. PRIMIS: Good morning, your Honor.
5 SPECIAL MASTER LANCASTER: I don't know
6 whether Josh --
7 MR. PERRY: I'm sorry, your Honor. We
8 couldn't hear that.
9 SPECIAL MASTER LANCASTER: I'm sorry.
10 I'm -- I don't know whether Josh had a chance
11 to explain that I'm in Canada. And I thought
12 it best to try and make the call even though
13 it has some problems, because there is such
14 little time left between now and the 31st.
15 I have also asked Alec and Devon to be
16 on the call. Alec?
17 MR. LEDDY: Yes, this is Alec Leddy.
18 Yes, I'm here.
19 MR. RICHARDS: And I'll be here as well.
20 SPECIAL MASTER LANCASTER: Devon?
21 MR. RICHARDS: This is Devon. Yes, I'm
22 here.
23 SPECIAL MASTER LANCASTER: Okay. And I
24 assume that Mary, Josh, and the tremendously
25

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1 Appearances. Florida?
2 MR. PERRY: Your Honor, this is Phil
3 Perry for Florida. Jonathan Williams from
4 the Solicitor General's office is also on the
5 phone as are Abid Qureshi and Jamie Wine.
6 SPECIAL MASTER LANCASTER: Okay. Now,
7 who is this speaking?
8 I'm sorry. I didn't get you at the
9 beginning.
10 MR. PERRY: Your Honor, it's Phil Perry.
11 SPECIAL MASTER LANCASTER: Phil Perry,
12 okay. And you said that Jonathan --
13 MR. PERRY: Yes. Let me repeat it.
14 SPECIAL MASTER LANCASTER: I'm sorry. I
15 didn't get that.
16 MR. PERRY: That's fine, your Honor.
17 I'm happy to repeat.
18 Jonathan Williams from the Florida
19 Solicitor General's office is on the phone as
20 are --
21 SPECIAL MASTER LANCASTER: I'm sorry,
22 Phil; we broke up again. Phil, would you go
23 ahead and give me the names again.
24 MR. PERRY: Yes. I'm very happy to,
25 your Honor.

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1 Jonathan Williams from the Solicitor
 2 General's office in Florida and Abid Qureshi
 3 and Jamie Wine.
 4 SPECIAL MASTER LANCASTER: Okay. Abid
 5 Qureshi and Jamie Wine, okay.
 6 Georgia?
 7 MR. PRIMIS: Good morning, your Honor.
 8 This is Craig Primis from Kirkland & Ellis on
 9 behalf of Georgia. And I have a number of
 10 people with me I would like to introduce.
 11 First, I want to note that our two
 12 representatives from the State of Georgia are
 13 on the line. We have Britt Grant, who is the
 14 Solicitor General for Georgia; and we have
 15 Ryan Teague, who is executive counsel to the
 16 governor.
 17 SPECIAL MASTER LANCASTER: All right.
 18 MR. PRIMIS: And in addition, I would
 19 like to have the Kirkland attorneys, who I
 20 expect to be speaking in court and handling
 21 witnesses, on this call. So I have with me
 22 two attorneys whom I believe you have heard
 23 argument from before. That's Winn Allen and
 24 Devora Allon. They are not related and spell
 25 their names different.

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1 In addition, there may be other days
 2 when, because of emergency bankruptcy
 3 hearings, we will either have a delayed start
 4 or early ending. We'll address that as
 5 needed throughout the trial.
 6 So, now, let's turn to attendance. How
 7 many lawyers do you anticipate will be
 8 attending, Florida?
 9 MR. PERRY: Your Honor, I think our
 10 number is five to seven, depending on the day
 11 and the complexity of the issues on each day,
 12 with two to three other professionals.
 13 SPECIAL MASTER LANCASTER: With two to
 14 three what?
 15 MR. PERRY: Other professionals to help
 16 us with exhibits and technology, your Honor.
 17 SPECIAL MASTER LANCASTER: Okay.
 18 Georgia?
 19 MR. PRIMIS: Yes, your Honor. While I
 20 think the composition of our team each day
 21 will probably change, depending on the
 22 witnesses and the facts at issue on any given
 23 day, I would expect that Georgia would have
 24 somewhere between three to five attorneys in
 25 court at any given time. And we, likewise,

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1 SPECIAL MASTER LANCASTER: All right.
 2 MR. PRIMIS: In addition, I have Barack
 3 Echols -- that's B A R A C K, last name
 4 Echols, E C H O L S -- and Karen DeSantis
 5 with us on the line.
 6 SPECIAL MASTER LANCASTER: All right.
 7 Thank you very much, counsel.
 8 Let's start with general trial
 9 logistics. Originally, in CMO 21 I said we
 10 would have an 8:30 start time. Instead,
 11 we're going to start at 9:00 and run until
 12 4:30. And that's in order to accommodate
 13 security at the Bankruptcy Court. We now
 14 know that trial won't be able to be held on
 15 November 2, November 15, and November 28 as
 16 the bankruptcy courtroom will be unavailable.
 17 Looking ahead, if we are still,
 18 unfortunately, in trial in December, it's
 19 possible that the courtroom will also be
 20 unavailable on December 6, 7, 20, and 21.
 21 The Bankruptcy Court has been very generous
 22 in allowing us to use the courtroom, but on
 23 those days the Court will need to hold
 24 hearings. And we will, of course,
 25 accommodate the Court's needs.

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1 will have some support staff, whether
 2 paralegals or trial techs; and that will
 3 probably be two to three people.
 4 SPECIAL MASTER LANCASTER: Mr. Gray, are
 5 you representing the United States today?
 6 MR. GRAY: Yes, your Honor.
 7 I'm sorry. I should have interrupted
 8 earlier. I'm on the line. This is Michael
 9 Gray for the United States.
 10 SPECIAL MASTER LANCASTER: All right.
 11 Well, then how many lawyers do you
 12 anticipate, if any, that the United States
 13 will have in attendance?
 14 MR. GRAY: At this point I don't expect
 15 us to be in attendance for all of the trial.
 16 We plan to review the prefiled direct; and
 17 there's a possibility that we would have one
 18 attorney there for particular portions,
 19 although I don't expect to do that. And if
 20 we are there, I would expect that just a seat
 21 in the gallery will be fine.
 22 SPECIAL MASTER LANCASTER: All right.
 23 Well, I'm anticipating that we ought to get a
 24 list. Why don't you each send us a list of
 25 lawyers, paralegals, other representatives

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1 who will or might -- might -- attend, giving
 2 us the person's name, the firm, and the bar
 3 membership number, if applicable. We'll give
 4 that to Alec and the marshals in order to
 5 facilitate their getting in and out of the
 6 courthouse.
 7 Is that clear, Florida?
 8 MR. PERRY: Yes, your Honor.
 9 SPECIAL MASTER LANCASTER: Georgia?
 10 MR. PRIMIS: Yes, your Honor.
 11 SPECIAL MASTER LANCASTER: U.S.?
 12 MR. GRAY: Yes, your Honor.
 13 SPECIAL MASTER LANCASTER: Okay. All
 14 right. And then as soon as we can, we're
 15 going to issue an Order governing the use of
 16 electronic equipment in the courthouse as
 17 well.
 18 Have you visited -- have you visited the
 19 Bankruptcy Court, Florida?
 20 MR. PERRY: Your Honor, we have had one
 21 of our technology specialists visit. And we
 22 anticipate bringing a screen and other
 23 related technology to employ there.
 24 SPECIAL MASTER LANCASTER: Georgia?
 25 MR. PRIMIS: Yes, your Honor. We have
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1 visited the courthouse as well and are
 2 familiar with the court.
 3 SPECIAL MASTER LANCASTER: Who was --
 4 who came for Georgia?
 5 MR. PRIMIS: We had, I believe, a legal
 6 assistant attend.
 7 SPECIAL MASTER LANCASTER: United
 8 States?
 9 MR. GRAY: I'm sorry, your Honor. I
 10 missed that.
 11 SPECIAL MASTER LANCASTER: Have you --
 12 has any representative of the United States
 13 visited the Bankruptcy Court?
 14 MR. GRAY: No, your Honor. We have not.
 15 SPECIAL MASTER LANCASTER: All right.
 16 Well, I can't too strongly encourage the
 17 parties to coordinate with Alec and Devon so
 18 that you're fully aware of the courtroom
 19 layout and so that trial logistics can be
 20 arranged in advance. It won't work very well
 21 if you don't.
 22 And I know you're all very experienced
 23 trial lawyers; and I know that you understand
 24 that starting on October 31, you and your
 25 representatives and I and Josh are under the
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1 control of Alec and Devon. It's their court.
 2 We have to be very, very careful about the
 3 respect with which we treat them.
 4 Now, let's turn to some discussion of
 5 prefiled testimony and exhibits. You should
 6 each file something with the direct testimony
 7 letting me know in what order I should read
 8 the testimony. Any questions on that?
 9 MR. PERRY: No, your Honor.
 10 MR. PRIMIS: No, sir.
 11 SPECIAL MASTER LANCASTER: All right.
 12 Three copies should be in hard form, and the
 13 fourth should be on a CD with all of the
 14 witnesses' testimony in PDF files.
 15 Do you have a sense for the volume in
 16 pages for the exhibits, Florida?
 17 MR. PERRY: Well, for the prefiled
 18 direct, your Honor, we think in aggregate
 19 it's probably a few hundred pages. The
 20 exhibits in total, we're not yet sure what
 21 the page numbers will be. We'll probably
 22 only use a subset of the exhibits that we
 23 have disclosed to Georgia, but I don't have a
 24 page number on the exhibits.
 25 SPECIAL MASTER LANCASTER: Georgia?
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1 MR. PRIMIS: A similar response, your
 2 Honor. We're obviously still working on the
 3 written directs, but we would expect several
 4 hundred pages of testimony. And we don't
 5 have an estimate just yet on the size of the
 6 exhibits.
 7 SPECIAL MASTER LANCASTER: All right.
 8 I'm going to modify CMO 20 to require only
 9 four copies. As with the pretrial testimony,
 10 there should be three hard copies and one
 11 copy on a CD with all of the exhibits in PDF
 12 files.
 13 Now, your joint exhibit list should only
 14 contain documents that you expect to need in
 15 the record. It's not a dump for large
 16 volumes of documents. I want to repeat that;
 17 it's not a dump for large volumes of
 18 documents. It's only to contain documents
 19 that you expect to need in the record. We're
 20 going to send you an exhibit list format for
 21 you to use.
 22 Now, let's talk about the presentation
 23 of exhibits. As Alec has undoubtedly
 24 indicated, you will be able to display
 25 exhibits electronically. And I understand
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1 that the parties intend to do so. But you
 2 should also have a hard copy of the exhibits
 3 available as a backup.
 4 As I have already demonstrated by the
 5 problems with this phone call, sometimes
 6 technology works; and sometimes it doesn't.
 7 It's good when it does; it's terrible when it
 8 doesn't. So have a hard copy with you. And
 9 because you will have submitted multiple
 10 copies of all exhibits, there's no need
 11 physically to give a copy to Alec at trial.
 12 You should, however, make sure that you
 13 meet with someone from the clerk's office to
 14 make sure that your systems work in advance
 15 of the trial. The courthouse has a very
 16 helpful IT manager, Chris Dodd, D O D D. And
 17 he can be reached at (207) 274-5957.
 18 As far as transcripts are concerned, you
 19 are responsible for arranging for real-time
 20 or daily drafts; and you should have already
 21 reached out to Claudette. If you haven't
 22 done so, you should do so as soon as
 23 possible. Last minute contacts are a no-no
 24 with me, as you already know.
 25 Now, let's turn to motions in limine and
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1 other pretrial motions. I'm reviewing the
 2 motions in limine and the opposition. For
 3 your present planning purposes, you should
 4 anticipate that I will not preemptively
 5 strike any testimony before trial. And I
 6 understand from the status reports, if I'm
 7 reading them correctly, that you have agreed
 8 on the motions to submit under seal. Is that
 9 correct, Florida?
 10 MR. PERRY: Your Honor, we have, I
 11 think, reached an agreement. I think it's
 12 somewhat different than the motion that
 13 Georgia has filed. And I think granting the
 14 motion that they filed, as they urge in their
 15 status report, wouldn't fully reflect our
 16 agreement. So if I might, your Honor, I
 17 might suggest that the parties submit a
 18 proposed order that specifies all the details
 19 of the agreement.
 20 SPECIAL MASTER LANCASTER: Georgia?
 21 MR. PRIMIS: That's acceptable to
 22 Georgia, your Honor.
 23 SPECIAL MASTER LANCASTER: Thank you
 24 very much.
 25 Let me just wind down here, as far as
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1 I'm concerned, with a final suggestion that
 2 you heard every time we have talked before.
 3 And that is settle. Settle. Go to mediation
 4 and settle.
 5 I understand that that's probably not
 6 going to happen. I warned you that when it's
 7 all over, one of you at least is going to be
 8 unhappy, perhaps both of you. So I, again,
 9 bring up the question of mediation and
 10 settlement.
 11 You don't have to say anything at this
 12 point.
 13 Is there anything further?
 14 MR. PERRY: Your Honor, this is Phil
 15 Perry for Florida. And if I might, I would
 16 like to take 30 seconds to address a
 17 mediation issue that you just identified.
 18 And that is --
 19 SPECIAL MASTER LANCASTER: Please.
 20 MR. PERRY: -- the statement that was
 21 made in Georgia's status report about a
 22 missed meeting. That is something we object
 23 to. And I do not want to get into the
 24 substance of the mediation for obvious
 25 reasons. It's confidential. But in
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1 particular, as to the process, it's our
 2 position that we have been waiting for a
 3 counteroffer for multiple months and that the
 4 meeting they mentioned was supposed to be
 5 postponed until we received the counteroffer,
 6 which we still have not received.
 7 So with that said, I think I should
 8 probably leave it. The remainder of it is
 9 confidential. But, your Honor, I felt the
 10 need to address that specifically.
 11 SPECIAL MASTER LANCASTER: Again, we are
 12 reminding the parties of the need to keep it
 13 confidential.
 14 Georgia, do you wish to comment?
 15 MR. PRIMIS: Yes, I do want to keep it
 16 confidential. I will just simply state we
 17 completely disagree with that depiction of
 18 what happened both in terms of the exchange
 19 of the proposed --
 20 SPECIAL MASTER LANCASTER: Hello?
 21 MR. PRIMIS: Yes, your Honor?
 22 SPECIAL MASTER LANCASTER: Hello? Are
 23 you there?
 24 MR. PRIMIS: Yes.
 25 Okay. I just want to state clearly for
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1 the record we dispute that characterization,
 2 both in terms of the process and the
 3 substance, which I'm not going to address
 4 because it is confidential. But Georgia
 5 strongly disagrees with that
 6 characterization. And I will just simply
 7 say I was at a meeting with a mediator; and I
 8 was -- I and my colleague were the only ones
 9 there.

10 MR. PERRY: I can renew my disagreement
 11 at this stage, your Honor; but I will say
 12 nothing else.

13 SPECIAL MASTER LANCASTER: Hello?
 14 Hello?

15 MR. DUNLAP: Yes, Ralph, we can hear
 16 you.

17 SPECIAL MASTER LANCASTER: Florida,
 18 anything else?

19 MR. PERRY: No, your Honor. I think I
 20 will just say I disagree with the statement
 21 that Mr. Primis just made, but I think it's
 22 probably appropriate for me not to respond.

23 SPECIAL MASTER LANCASTER: Georgia,
 24 anything else?

25 MR. PRIMIS: No, your Honor.

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1 SPECIAL MASTER LANCASTER: United
 2 States?

3 MR. GRAY: No, your Honor.

4 SPECIAL MASTER LANCASTER: Alec, do you
 5 have anything you --

6 MR. LEDDY: No, your Honor.

7 SPECIAL MASTER LANCASTER: Devon?

8 MR. RICHARDS: No thank you.

9 SPECIAL MASTER LANCASTER: Mary?

10 MS. CLIFFORD: No.

11 SPECIAL MASTER LANCASTER: Josh?

12 MR. DUNLAP: Nothing here.

13 SPECIAL MASTER LANCASTER: Let me just
 14 wind down, if I may, with one more comment,
 15 my attitude toward the issue about the media.
 16 I won't say it again, but let me just warn
 17 you once more --

18 MR. DUNLAP: You're breaking up at this
 19 point.

20 SPECIAL MASTER LANCASTER: I'm sorry. I
 21 have said this so many times you probably
 22 don't need to hear it again, but I'll say it
 23 once more. Be very careful with any contacts
 24 with the media. I'm prompted to say this
 25 because in 2015, a man named Bruce Ritchie

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1 from POLITICO said he wanted to have the
 2 call-in number so that he could monitor our
 3 conversation. I told him he could read the
 4 transcript.

5 Last week, I got another e-mail from him
 6 asking the same thing and, in fact, giving me
 7 a deadline within which I had to answer him.
 8 I told him the same thing I told him before.
 9 I also invited him to come to Maine on the
 10 31st and sit in if he wanted to.

11 I'm just telling you this because if you
 12 hear from Mr. Ritchie, I would be doubly
 13 careful about talking to him.

14 And with that, we are adjourned.
 15 Thank you.

16 MR. PERRY: Thank you, your Honor.
 17 MR. PRIMIS: Thank you, your Honor.

18 (The telephone conference was concluded
 19 at 10:23 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 19 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 12th day of October, 2016.

12
 13
 14 _____
 15 Notary Public

16
 17
 18 My Commission Expires
 19 June 9, 2019.

20
 21
 22
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 24
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