

SUPREME COURT OF THE UNITED STATES

No. 128, Original

STATE OF ALASKA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

COMPREHENSIVE CASE MANAGEMENT PLAN

For the purposes of the proceedings before the Special Master, IT IS HEREBY ORDERED THAT:

1. Application of this Comprehensive Case Management Plan. This Comprehensive Case Management Plan ("CCMP"), together with all Case Management Orders of the Special Master, shall apply to and bind all parties and amici curiae. This CCMP and all Case Management Orders will control the course of the proceedings and may be modified only by order of the Special Master.

This CCMP refers to a number of agreements between the parties regarding discovery and other issues. The parties will follow these agreements as they are described in this CCMP, unless they obtain leave from the Special Master to modify them.

2. Filing of Papers with the Special Master and Service. When distributing documents, the parties and the Special Master will send a copy of each document to each person on the Distribution List in Appendix A. The parties will send all documents by "standard overnight" delivery whenever possible, recognizing that this service to or from Alaska may take more than one day. To prevent loss or misplacement of documents, the parties and the Special Master will not send documents by facsimile or email absent exceptional circumstances. Documents shall be deemed filed on the day that they are placed in standard overnight delivery.

Unless otherwise ordered, documents shall conform to the standards set forth in Appendix D.

3. Filing of Discovery Materials.

(a) General. In order to keep the record free of discovery material that has not become evidence, all interrogatories, requests for production of documents, requests for admissions, responses and replies will not be filed with the Special Master unless a party offers a particular sworn response into evidence, uses such response to support or oppose a dispositive motion, or requires a ruling on a discovery dispute that the parties have been unable to resolve. In such event, only those portions pertinent to the purpose shall be filed.

(b) Depositions. Notices and transcripts of depositions will not be filed with the Special Master until offered and admitted into evidence or used to support or oppose a dispositive motion or to resolve a discovery dispute requiring the Special Master's attention.

(c) Service of Discovery Materials on Parties. Distribution of discovery materials pursuant to Section 6 of this CCMP will be made only to counsel on the Distribution List attached hereto as Appendix B.

4. Parties. The parties in this case are the State of Alaska and the United States. For purposes of responding to discovery requests, all departments, agencies, and bureaus of each party, including the University of Alaska, are deemed to be parties.

5. Amicus Curiae. Any entity wishing to participate as an amicus party in proceedings before the Special Master must first seek leave to do so by filing a motion with the Special Master and distributing copies of the motion to each person on the Distribution List in Appendix A. A motion for leave to participate as an amicus party must be accompanied by a statement describing the entity's interest in the litigation and explaining how the entity's participation might assist the Special Master at the stage of the litigation for which leave to participate is sought. The parties will have an opportunity to respond to the motion.

6. Discovery.

(a) General. Discovery shall proceed on all issues pursuant to Fed.R.Civ.P. 26-37 and 45, except as otherwise modified herein or by order of the Special Master. Discovery will commence and be completed in accordance with the schedule stated herein and in Appendix C. Further discovery will be allowed beyond the schedule stated herein and in Appendix C only upon order of the Special Master. On September 4, 2001, each party will file with the Special Master a report of the status of the party's discovery efforts, describing any unresolved

discovery disputes and identifying any matters that might delay discovery beyond the dates stated in Appendix C.

(b) Applicable Federal Rules of Civil Procedure 26-37 and 45. The Federal Rules of Civil Procedure applicable to discovery shall govern the proceedings before the Special Master with the following exceptions:

(i) Rule 26(a)(1). The disclosures required in Rule 26(a)(1) will not apply. Instead, the parties agree to a mutual exchange of documents on March 16, 2001. Counsel for the parties have received or will receive documents from client agencies regarding this action or have obtained public records from the opposing party's client agencies. The parties agree that they will exchange copies of all such documents, other than documents that are privileged or protected by the work product doctrine. The parties also agree that withheld work product documents will be subject to the privilege log requirement of section 6(e). The parties will supplement their initial disclosures every two months if new documents are obtained.

In addition, the parties agree to draft, distribute and file a detailed joint list of the subsidiary issues to be decided by the Special Master by April 16, 2001, in accordance with Case Management Order 2, ¶4. The parties shall use their best efforts to identify subsidiary issues by April 16, 2001. However, the list may be updated to reflect subsequently identified or refined issues.

(ii) Rule 26(a)(2). The disclosures required in Rule 26(a)(2)(B) will not apply. Instead, the parties agree that, with respect to a witness whom a party will call to provide expert testimony in the case, a written report prepared and signed by the witness will be provided by October 31, 2001. The parties agree the report shall contain a complete statement of all opinions to be expressed and the bases and reasons therefor; identification of the data or other factual information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; and the qualifications of the witness. The parties agree that draft reports or draft advice prepared for this litigation are not subject to disclosure.

(iii) Rule 26(a)(3) - 26(a)(4). Rules 26(a)(3) - 26(a)(4) shall not apply. The parties shall exchange preliminary witness lists by June 30, 2001. Additional pretrial disclosures shall be addressed in the proposed schedule for pretrial steps described in section 9 of this CCMP.

(iv) Rule 26(b)(5). Rule 26(b)(5) will not apply because the substance and timing of privilege logs is covered by section 6(e) of this CCMP.

(v) Rule 26(c). Rule 26(c) will apply, except to the extent modified by section 6(g) of this CCMP.

(vi) Rule 26(d). Rule 26(d) will not apply. Unless the Special Master orders otherwise, for the convenience of the parties and witnesses and in the interest of justice, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(vii) Rule 26(f). Rule 26(f) will not apply.

(viii) Rule 33(a). The limitation in Rule 33(a) on the number of interrogatories is modified to permit not more than 100 interrogatories.

(ix) Rule 32(a)(3)(B). The 100-mile rule contained in Rule 32(a)(3)(B) will not apply. See Rule 45, *infra*.

(x) Rule 45. Rule 45 will apply with the exception that the Special Master will issue subpoenas for witnesses and deponents and will not be limited geographically by the 100-mile rule for hearings or trial. A party may apply to the Special Master for issuance of a subpoena, stating the name and address of the person to whom the subpoena should be addressed, briefly stating the basis upon which discovery from this person is desired, and stating the reason that a subpoena is necessary. Such applications shall be served on the opposing party. The Special Master will not entertain opposition to such a request except with special leave, which shall not be routinely granted. If the Special Master approves the application he will enter an order to that effect and return the order to the requesting party for service. The parties will cooperate in securing the attendance of witnesses for deposition, hearings and for trial.

(c) Substantive Discovery.

(i) Written Discovery. Written discovery shall consist of the following and to the extent reasonably possible will follow the schedule set forth herein.

(A) Initial disclosures. The parties will complete their agreed initial disclosures by March 16, 2001.

(B) Statement of Issues. The parties also agree to draft, distribute and file by April 16, 2001, a detailed list of the subsidiary issues to be decided by the Special Master in accordance with Case Management Order 2, ¶4.

(C) Interrogatories, Requests for Production, Requests for Production/Inspection to the Parties, Requests for Documents/Inspection to Non-parties, Requests for Production. Upon completion of all parties' responses to the initial

disclosures, and no later than November 15, 2001, each party may serve written discovery requests. Each party served with written discovery requests has two months from the date of service to respond, in no event later than January 15, 2002.

(ii) Deposition Discovery. Deposition discovery may begin immediately and shall be completed not later than January 15, 2002. All expert reports required under this Case Management Plan shall be exchanged no later than October 31, 2001.

(d) Bates Number System. All documents produced through initial disclosures by the parties or in discovery shall bear a distinctive Bates Number. Alaska shall start each Bates Number with "AK," except that those documents that have previously been Bates numbered using the abbreviations "GB" and "HW" need not be re-numbered. The United States shall start each Bates Number with "US." All documents obtained from non-parties shall state the identity of the non-party by proper name or recognized abbreviation in parentheses preceding the Bates Number. The parties may agree that certain types of documents should not be Bates numbered, and shall promptly notify the Special Master of these categories of documents. No party shall use at trial any document that has not been Bates-numbered and produced, except for impeachment or other good cause shown.

(e) Privilege logs. If a party withholds on the ground of privilege any written information (in hard copy or electronic form) it shall provide a privilege log to opposing counsel. These privilege logs shall set forth the following information: (1) the author's name, place of employment and job title at the time the document was written; (2) the site of the document; (3) the addressee's name, place of employment and job title at the time the document was written; (4) any other recipient's name, place of employment and job title at the time the document was written; (5) the general subject matter of the document; and (6) the nature of any privilege claimed. Thereafter, any privilege log shall be supplemented to include any documents that are subsequently designated privileged by counsel.

(f) Confidentiality. All documents or tangible things containing a trade secret or other confidential information may be designated "Confidential" as long as such documents or things have not been disclosed by the producing party to anyone other than those persons employed or retained by it. Any party may contest the designation of a document or thing as "Confidential," or request that a document or thing not otherwise covered by the CCMP be considered confidential, by applying to the Special Master for a ruling. In either event, counsel shall first make a good faith effort to resolve the issue. At any time within ten business days after receiving a deposition transcript, a party may designate as confidential any appropriate information and such designation shall be served on all counsel. Depositions and

transcripts will be considered confidential until expiration of the ten-day period and thereafter as to any part or all so designated.

Confidential documents or information subject to this CCMP may not be disclosed to or used by anyone except those hereby authorized and by them only in the context of this case. Such individuals shall include counsel, the parties' specifically authorized employees, experts, and fact witnesses, together with such others as are approved by the Special Master. Each individual who is permitted to see such confidential documents or given access to such confidential information shall be bound to observe the provisions of this CCMP with respect to all documents and information produced through these proceedings by signing a Non-Disclosure Agreement in a form agreed upon by the parties or approved by the Special Master. The Non-Disclosure Agreement shall include an agreement to submit to the Special Master's jurisdiction for enforcement of this portion of the CCMP and to return all such designated documents and information promptly at the end of the litigation.

(g) Resolution of Discovery Disputes and Motions to Quash and Seek Protective Orders. Before bringing a discovery dispute to the Special Master, the parties shall confer and attempt to resolve the dispute. Discovery disputes, should any arise, shall be resolved in accordance with the Federal Rules of Civil Procedure except as otherwise modified by this CCMP or by order of the Special Master.

(h) Supplementing Discovery. A party is under a duty seasonably to supplement a response to a discovery request if the party learns that the response is in some material respect incomplete or incorrect. Supplementation of expert witness reports is required to the extent that an expert has formed additional opinions or additional grounds to support previous opinions that have not been provided by way of expert report or deposition testimony. At the close of discovery, each party shall file an affirmative statement indicating that, as of January 15, 2002, it fully has complied with this duty to supplement.

7. Assessment of Settlement Potential. During January 2002, counsel for the parties shall meet and assess the potential for settlement of all or some of the issues in this action.

8. Motions for Summary Judgment or Partial Summary Judgment. The parties will file notice of their intent to file motions for summary judgment or partial summary judgment on or before February 1, 2002. Consistent with the filing of intent, the parties may file motions for summary judgment or partial summary judgment on or before June 15, 2002.

9. Status Conferences, Pretrial Conferences, Pretrial Orders, and Trial. The parties may request status conferences at any time. Status conferences will be held only at the Special Master's direction.

Trial will be scheduled for late summer 2002 if no party files a motion for summary judgment or partial summary judgment. The trial will be scheduled sufficiently early so that it may be concluded by August 16, 2002. If a party files a motion for summary judgment or partial summary judgment, trial will be scheduled for the summer of 2003.

Trial will be held in Anchorage, Alaska.

If no party files a motion for summary judgment, the parties shall submit a proposed schedule for pretrial steps on or before the February 1, 2002 deadline for filing notice of intent to file motions for summary judgment or partial summary judgment. If motions for summary judgment or partial summary judgment are filed, the parties shall submit a proposed schedule for pretrial steps on or before 45 days after the Special Master renders a final decision on the last pending motion for summary judgment or partial summary judgment. The proposed schedule of pretrial steps shall include the dates and format for final witness lists, the exchange and marking of exhibits, the designation of deposition testimony, pretrial memoranda, and motions in limine. Following the filing of the proposed schedule for pretrial steps, the Special Master shall schedule a pretrial conference and issue a final pretrial order at the final pretrial conference.

Dated: February 12, 2001

Gregory E. Maggs
Special Master

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Tel. (202) 994-6031
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APPENDIX A

Distribution List for Service of Documents
filed with the Special Master

Special Master

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APPENDIX B

Distribution List for Service of Discovery Materials

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APPENDIX C
Proposed Schedule

2001

Jan. 16	Joint statement of principle issues and such subsidiary issues as have been identified
March 16	Initial disclosures
April 16	Updated joint statement of principle and subsidiary issues
June 30	Preliminary Witness List
Sept. 4	Status report on discovery
Oct. 31	Deadline for exchange of expert witness reports
Nov. 15	Deadline for serving written discovery requests

2002

Jan. 2-31	Counsel for parties to meet and assess potential for settlement
Jan. 15	Closure of discovery
Feb. 1	Deadline for filing notice of intent to file motions for summary judgment or partial summary judgment; or schedule of pretrial steps due if no motions for summary judgment or partial summary judgment are to be filed
June 15	Deadline for filing motions for summary judgment or partial summary judgment.
Late Summer	Trial if no motions for summary judgment or partial summary judgment are filed. The trial will be scheduled sufficiently early so that it may be concluded by August 16, 2002.
TBA	If motions for summary judgment or partial summary judgment are filed, schedule of pretrial steps due 45 days after the Special Master's final decision on the last pending motion

2003

Summer	Trial if motions for summary judgment or partial summary judgment are filed
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APPENDIX D

Form of Pleadings and Other Papers -- Filing

A. Form in General. All pleadings, motions, affidavits, memoranda, instructions, and other papers and documents presented for filing or intended for the use of the special master shall be:

1. upon letter size (8 1/2" by 11") white paper of good quality;
2. two-hole punched at the center of the top of each page;
3. in original clear and legible type;
4. double-spaced typewriting, except that lengthy quotations shall be single-spaced and indented;
5. with margins all around of at least one inch, exclusive of identification printed on the stationery; and
6. if consisting of more than one page, with each consecutive page numbered at the bottom center of each page.

B. Exhibits. All exhibits to pleadings shall be numbered progressively according to the number of the page of the exhibit, followed by the number or identification of the exhibit, e.g., "Ex. A, p. 1." All exhibits shall be permanently attached to the pleadings to which they belong so as to be easily accessible and readable without detaching them from the principal document. Exceptions to progressive numbering of exhibits may be permitted where acceptable copies of original documents make it impractical to comply with the requirement.

C. Information To Be Placed On Signature Page.

1. Names shall be typed beneath signatures to pleadings and other papers.
2. An attorney shall identify each party the attorney represents. An attorney signing a pleading or other document must be a current member in good standing of either the bar of the Supreme Court, the federal district court of Alaska, or the bar of the highest court of a State.

D. Reference to Other Parts of Pleading. Where practical, reference to other portions of the same pleadings or other papers should be made to avoid repetition. Any such document referred

to in any pleading may be set forth either in the body of the pleading or in an exhibit attached thereto.

E. Replacing Papers Lost or Withheld. If an original paper or pleading is lost or withheld by any person, the Special Master may order a verified copy thereof to be filed and used in lieu of the original.

F. Special Master's Name Typed on Orders. On all orders prepared for signature, the name of the Special Master shall be typed immediately under the signature line prior to presentation for signature.

G. Length. Unless otherwise ordered by the Special Master or agreed by the parties, principal briefs or memoranda of law shall not exceed 15,000 words per count of the complaint and replies shall not exceed 7,500 words per count of the complaint, exclusive of pages containing a table of contents, table of authorities, or reproductions of statutes, rules, regulations, ordinances, etc. Any brief or memorandum of law that exceeds 10 pages shall contain a table of contents and a table of cited authorities with reference to the pages in the document where such authorities are cited.

Distributed to:

Special Master

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Copies of orders available at:

<http://www.law.gwu.edu/facweb/gmaggs/128orig/docket.htm>