

No. 137, Original

**In the
SUPREME COURT OF THE UNITED STATES**

STATE OF MONTANA, PLAINTIFF

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA, DEFENDANTS

OFFICE OF THE SPECIAL MASTER

CASE MANAGEMENT ORDER NO. 11

September 5, 2013

CASE MANAGEMENT ORDER NO. 11

IT IS HEREBY ORDERED THAT Case Management Plan No. 1 (“CMP No. 1”), as modified by Case Management Order No. 10, is amended and supplemented as follows:

1. Discovery

All discovery is now complete. No further discovery will take place except with permission of the Special Master.

2. Final Pre-Trial Proceedings

Final pre-trial proceedings will commence and be completed in accordance with the schedule stated herein (as summarized in Appendix A).

2.1 Disclosure of Potential Non-Expert Witnesses

On June 11, 2013, the States of Montana and Wyoming (hereinafter the “parties”)¹ advised each other of any fact witnesses not otherwise disclosed or made known as such during the course of discovery whom they may call at trial. The parties provided the witnesses’ contact information together with a short general summary statement of the relevant knowledge.

2.2 Motions for Summary Judgment

Both the States of Montana and Wyoming filed motions for summary judgment pursuant to paragraph XI of CMP No. 1. A hearing was held on the motions on August

¹ The State of North Dakota has indicated that it does not currently plan to actively participate in the trial on pretrial proceedings addressed in this Case Management Order.

29, 2013, the Byron White U.S. Courthouse in Denver, Colorado. The Court expects to issue a decision on both motions on or before September 16, 2013.

2.3 Witness Lists

A complete list of witnesses to be called at trial shall be filed by each party no later than September 23, 2013. The witness lists shall contain the names and addresses of the witnesses whom the parties intend to call to testify at the trial, together with a short general summary statement of the testimony intended to be elicited from each witness in the trial (no more than two paragraphs). The parties need not identify the exhibits each witness may discuss at trial.

The parties shall specify which of the listed witnesses may be called, and which of such witnesses will definitely be present at trial. A party shall not be required to subpoena witnesses who will be produced by an opponent or, in the case of witnesses who are in the employment of the opponent, may be called. The order of the witnesses will not be binding. Known witnesses not listed in accordance with this procedure will not be allowed to testify.

2.4 Exhibits

The parties shall exchange all exhibits by September 23, 2013. Montana exhibits shall be numbered with an "M" sequence, and Wyoming exhibits shall be numbered with a "W" sequence. Any joint exhibits shall be numbered with a "J" sequence. Joint exhibits are acceptable and encouraged.

The parties shall complete and file a consolidated exhibit list by Monday, September 30, 2013. The parties shall provide three copies of their proposed exhibits to

the Special Master no later than Wednesday, October 9, 2013. Two copies of the proposed exhibits (one hard copy and one electronic) shall be delivered to the federal courthouse in Billings, Montana. The remaining copy of the exhibits, which shall be electronic, shall be sent to the Special Master at his Stanford, California address.

If either party seeks the admission of documents subject to a confidentiality agreement, the offering party must propose a protocol for maintaining the confidentiality of the proposed exhibit to the opposing party. If the parties cannot agree on the appropriate protocol, they shall so advise the Special Master, and the issue will be resolved at the final pre-trial conference.

Absent good cause shown, and excluding exhibits offered solely for impeachment, no exhibit shall be received in evidence at the trial which was not marked and provided as required herein. Objections to authenticity not made at the time of the final pretrial conference are waived.

2.5 Pre-Trial Motions

All motions *in limine* or other pre-trial motions, if any, shall be filed by September 30, 2013. Responses in opposition to motions *in limine* or other pre-trial motions shall be filed by October 7, 2013. Any replies in support of motions *in limine* or other pre-trial motions shall be filed by October 10, 2013.

2.6 Use of Deposition Testimony

Any party proposing to offer all or any portion of a deposition, except for impeachment purposes, shall notify opposing counsel by September 30, 2013 of the offers to be made (unless the necessity for using the deposition develops unavoidably

thereafter). If objection is to be made, or if additional portions of a deposition are to be requested, opposing counsel will notify offering counsel by October 8, 2013 of such objections or requests. Any differences not resolved by counsel may be presented to the Special Master for resolution at the time the deposition is offered.

2.7 Pre-Trial Briefs and Memoranda

The parties will file pretrial briefs and final pretrial conference memoranda no later than September 23, 2013.

2.8 Final Pre-Trial Conference

A final pre-trial conference will be held at 9 a.m. on Tuesday October 15, 2013 in Billings, Montana.

3. Trial Procedures

3.1 Trial Schedule

Trial shall commence on Wednesday, October 16, 2013, at 9:00 a.m. in Billings, Montana. A calendar of expected trial dates is attached as Appendix B. Dates may change based on the availability of the courtroom or the Special Master's calendar. Unless otherwise specified by the Special Master, the proceedings shall be in session from 9:00 a.m. to 5:00 p.m. each day court is in session, with breaks for lunch and as otherwise necessary.

3.2 Sequestration of Witnesses

Witnesses will be sequestered if either party requests it by Monday, September 30, 2013. If witnesses are sequestered, each party can designate up to two people to assist

and advise counsel during trial; such persons need not be sequestered even if they will testify. Counsel can request that other witnesses be allowed to assist them in court on particular days for good cause shown.

3.3 Notice of and Objection to Witnesses

Two days prior to each trial day, counsel shall meet and identify any witnesses who they expect to testify on that trial day, as well as any exhibits that they plan to introduce in connection with the witnesses' testimony. Prior to the conclusion of trial proceedings on the following day, the Special Master will hold a brief conference to hear any objections to the exhibits. When possible, the Special Master will resolve any such objections prior to the start of testimony on the following day. Any objections not raised pursuant to this paragraph shall generally be deemed waived, except where a party can show that the objection could not have been reasonably anticipated prior to the testimony of the witness.

3.4 Trial Subpoenas

The parties shall bring to the attention of the Special Master any need for subpoenas for attendance at trial as soon as reasonably practicable.

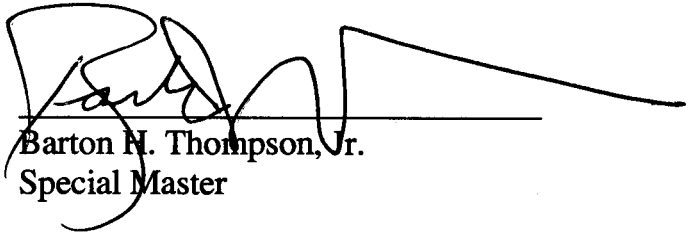
3.4 Demonstrative Exhibits

Demonstrative exhibits need not be pre-filed and will not be admitted into evidence. Demonstrative exhibits must be provided to opposing counsel prior to use at trial.

4. Other Provisions Remain in Effect

All other provisions of the Case Management Plan No.1 and preceding Case Management Orders remain in effect.

Dated this 5th day of September, 2013



Barton H. Thompson, Jr.
Special Master

Appendix A
Final Pre-Trial Deadlines

- September 16, 2013 Expected Decisions on Motions for Summary Judgment
- September 23, 2013 Witness Lists Due and Exhibits Exchanged
Final Pretrial Conference Briefs and Memoranda Due
- September 30, 2013 Motions *in Limine* Deadline
Consolidated Exhibit List Deadline
Designation of Deposition Transcripts
Last Date to Request Witness Sequestration
- October 7, 2013 Responses in Opposition to Motions *In Limine* Due
- October 8, 2013 Objections to Designation of Depositions and Designation of Additional Portions Due
- October 9, 2013 Exhibits Delivered to Special Master
- October 10, 2013 Replies in Support of Motions *In Limine* Due
- October 15, 2013 Final Pre-trial Conference
- October 16, 2013 Trial Commences

Appendix B
Expected Trial Dates

Tuesday, October 15: Pre-Trial Conference

Wednesday, October 16 – Thursday, October 17

Monday, October 21 – Friday, October 25

Monday, October 28 – Friday, November 1

* No trial during the week of November 4 because of Special Master's responsibilities

Tuesday, November 12 – Friday, November 15

Monday, November 18 – Thursday, November 21

If needed:

Monday, November 25 & Tuesday, November 26

Monday, December 2 – Wednesday, December 4

Holidays Observed by Federal Courts

October 14: Columbus Day

November 11: Veterans' Day