

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

IN RE: Case No. 7:23-CV-897

CAMP LEJEUNE WATER LITIGATION

APRIL 2, 2024
TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

On Behalf of the Plaintiffs:

J. Edward Bell III, Zina Bash, Robin Greenwald, James A. Roberts III, Matthew Quinn, Hugh Overholt, Mona Lisa Wallace, A. Charles Ellis, Eric W. Flynn, William Michael Dowling, Elizabeth Cabraser

On Behalf of the Defendant:

John Adam Bain, Sara Mirsky, Bridget Bailey Lipscomb, Elizabeth Platt, Nathan Bu

AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Tuesday, April 4, 2024, commencing at 10:00 a.m.)

2 P R O C E E D I N G S

3 THE COURT: Good morning, everyone.

4 So who have we got on the line speaking on behalf of
5 the plaintiffs?

6 MR. BELL: This is Ed Bell. Good morning.

7 THE COURT: Good morning.

8 For the Government?

9 MR. BAIN: This is Adam Bain, Your Honor. Good
10 morning.

11 THE COURT: Okay. Let's see. The agenda, we'll
12 start how I usually do. The parties are waiting for rulings
13 of the Court on the motions that have become ripe, the motion
14 for partial summary judgment as well as the Track 2 proposals.

15 Is that correct, Mr. Bell?

16 MR. BELL: Yes, Your Honor.

17 THE COURT: Is that right, Mr. Bain?

18 MR. BAIN: I believe there's also a fully briefed
19 motion for certification of the jury trial issue.

20 THE COURT: That's right.

21 Are there any outstanding discovery issues? It did
22 not sound like from the status report that there were any
23 issues that the parties were prepared to bring to the Court's
24 attention.

25 Is that correct, Mr. Bell?

1 MR. BELL: Yes, Your Honor. We had correspondence
2 from the Government subsequent to the hearing two weeks ago
3 that is outlined what they have completed and what they have
4 left to complete. So at this time we don't have anything to
5 bring to the Court's attention.

6 THE COURT: Mr. Bain; is that right?

7 MR. BAIN: That's correct, Your Honor.

8 THE COURT: And Mr. Bell, what's the status of the
9 stipulations regarding the medical records and social security
10 releases? Is that rolled into what you were saying?

11 MR. BELL: I assume you heard me chuckle, Judge. I
12 don't know. This has not been a contentious issue, but
13 somehow is rather taking a long time.

14 I have talked to Mr. Bain this week and his
15 representative is supposed to be getting with our person and
16 Matt Quinn to follow on that. We think we should have that
17 done...

18 THE COURT: Mr. Bain?

19 MR. BAIN: Yeah. I think we provided our feedback
20 to Mr. Quinn and we're waiting on word from the plaintiffs
21 whether that's acceptable.

22 THE COURT: Okay.

23 MR. QUINN: Your Honor, this is Matthew Quinn.

24 What Mr. Bain indicated is correct and we anticipate
25 having a response, which we don't think is going to be

1 controversial, this week definitely. Thank you.

2 THE COURT: Mr. Quinn, can you repeat what you said?

3 MR. QUINN: No problem.

4 Mr. Bain is correct. The Government has gotten back
5 to us on our most recent draft of the stipulation, and I
6 anticipate we're going to be able to finalize that without
7 problem and do so this week. So I was indicating that Mr.
8 Bell's comment was correct about that.

9 THE COURT: Okay. All right.

10 Well, now that the Court has selected the Track 2
11 diseases, when would the parties be in a position to provide
12 the definitive proposals for Track 3?

13 Mr. Bell?

14 MR. BELL: Your Honor, we had our first meeting --
15 not our first. We had a meeting yesterday about that.

16 There is some discussion in regards to a couple of
17 the issues, Your Honor, that we probably need to have more
18 meetings. I would think we should be able to at least come
19 close to an agreement and at least be able to let you know
20 whether there's any outstanding area that we cannot agree on.
21 We'll have a meeting this week to try and resolve that and
22 then get back to the Court about -- whatever time you tell us
23 to.

24 THE COURT: Mr. Bain?

25 MR. BAIN: Yes. We did have a discussion yesterday,

1 and I think there's at least one disease that we agree on that
2 should be in Track 3. I think we have some differences on
3 some of the other diseases. We could continue having further
4 discussions, but I think if we were to get a time to submit
5 something to the Court, that might be helpful as well if we
6 can't agree to submit the competing proposals.

7 THE COURT: Okay. I would like you to submit your
8 proposals, whether they are joint or competing, before our
9 next status conference. How about that?

10 MR. BAIN: All right. We will do that, Your Honor.

11 THE COURT: Okay. Let's discuss --

12 MR. BELL: Judge, this is Ed. Would it be helpful
13 that -- I think it might be -- that maybe we could have a
14 joint conference with you?

15 There are a couple of illnesses that are out there
16 that we think maybe some discussion with the Court about
17 whether they should be included or not, or maybe should have a
18 separate project instead of a track-disease project, we
19 wonder -- I haven't talked to Adam about this -- wonder
20 whether a joint conference with you would be helpful to us. I
21 think it would be; I don't know whether Mr. Bain would think
22 so.

23 THE COURT: I don't understand what it would be
24 about. About the diseases themselves?

25 MR. BELL: There are a couple of things out there,

1 Judge, that we believe need to have some discovery on, not
2 necessarily assigned to 100 plaintiffs or 20 plaintiffs or
3 whatever the number, and we wonder whether that might be --
4 and, Adam, I cannot remember the one I mentioned yesterday
5 about a separate project, but it may be something in my mind
6 worth discussing with the Court to have something to manage
7 that disease or look at the disease without actually assigning
8 a track -- plaintiffs to that disease.

9 MR. BAIN: Your Honor, this is Adam Bain. What we
10 discussed yesterday was that there appear to be a lot of
11 claims with no disease but seeking medical monitoring, and we
12 think it would be important to get that issue resolved because
13 it's a legal issue as to whether medical monitoring is even an
14 appropriate remedy on its own under the Camp Lejeune Justice
15 Act.

16 So we had proposed in our Track 3 proposal that we
17 previously submitted that that be one of the diseases in Track
18 3. We know that the Court has indicated it does not wish to
19 give advisory opinions so we would need cases that presented
20 that issue. So that's what we discussed yesterday with the
21 plaintiffs.

22 THE COURT: Could you flesh this out maybe a little
23 bit more in a proposal to the Court?

24 MR. BELL: Yes, Your Honor.

25 MR. BAIN: Yes, we could.

1 THE COURT: Okay. Well, I'd like to talk a little
2 bit about the disease category of -- well, what's been
3 described as neurobehavioral effects.

4 It appears from the census data that this is one of
5 the largest, if not the largest, category and I'd like to
6 get -- the Court would like to get an understanding of what
7 exactly this is.

8 You know, the whole -- the entire theme of this
9 process is the gathering of data and data points and how that
10 data, whether it's through a verdict or some other disposition
11 relative to a particular disease or other relevant factors, is
12 helpful to the parties in other cases that are in this
13 litigation. And so -- that's a little bit easier to discern
14 from -- I would assume from a particular disease, like breast
15 cancer or liver cancer or Parkinson's disease, but the
16 description category, the described category of
17 neurobehavioral effects is, I would assume, fairly large,
18 vague. Is it a category of categories I guess?

19 So I think the Court would like some information
20 from the parties as to what exactly neurobehavioral effects
21 entails.

22 MR. BAIN: Your Honor, this is Adam Bain. If I can
23 go first on this.

24 I believe that the category was based on the VA
25 regulations which provide medical benefits for people exposed

1 to Camp Lejeune water for neurobehavioral effects. It is
2 listed in the Code of Federal Regulations for disability
3 ratings for veterans. And the definition they give there is,
4 quote, "irritable, impulsivity, unpredictability, lack of
5 motivation, verbal aggression, physical aggression,
6 belligerence, empathy, lack of empathy, moodiness, lack of
7 cooperation, flexibility, and impaired awareness of
8 disability." And that's at 38 CFR Section 4.124a.

9 I will also note that in the National Research
10 Council's Camp Lejeune study, they surveyed studies under a
11 category what they call neurobehavioral effects. And there
12 they were described as neurobehavioral symptoms, such as
13 fatigue, lack of coordination, and sensory disturbances; or
14 neurobehavioral test results, such as results of a test of
15 attention, reaction time, and visual motor coordination. So
16 that's the best we can tell what is meant by that term.

17 Now, I know the plaintiffs have used it in their
18 claims, so I'm not sure what they're putting into that
19 category.

20 THE COURT: Mr. Bell?

21 MR. BELL: Your Honor, I think to the extent that
22 Mr. Bain has indicated, he's correct; that I do think that the
23 science, as well as the Government reports, indicate there are
24 other symptoms and areas that would apply to that definition.

25 We have retained an expert or two in that area and

1 because this was not on the top burner right now, we have not
2 pushed to get those responses from our expert.

3 I mentioned in my letter last night that we'll be
4 glad to get a -- maybe a scientific report for the Court to
5 give -- give the Court an overview.

6 Some of these symptoms are maybe things that
7 are independent, but some actually would go along with various
8 diseases. For example, TCE has a specific set of categories
9 that it would fall under that definition.

10 The other chemicals have similar definitions and
11 they all, except for maybe the -- hope I'm saying it right --
12 the vinyl chloride may not contribute. The other chemicals we
13 think probably would.

14 So we would suggest to the Court that maybe instead
15 of getting it from me, that we could get one of our experts to
16 put together a short explanation, like, paper, if you will,
17 and we can furnish that to the Court fairly quickly.

18 THE COURT: I think the Court would benefit on a
19 better understanding of what is in this category, because I
20 think it may -- you know, it may present some challenges going
21 forward in these very cases; and at the end of the day, the
22 information gathered may or may not be helpful to others in
23 the litigation.

24 So I think that if there's a proposal that you have
25 for submission that would be helpful to the Court in

1 understanding what exactly is in the neurobehavioral effects
2 category, the Court would like to receive that information.

3 MR. BELL: All right, sir.

4 THE COURT: Okay. I think we're next going to
5 settlement master. The Court intends to conduct interviews of
6 candidates for settlement master similar to the manner which
7 the members of the Leadership Group was selected.

8 The Court would like to understand what vision each
9 candidate has of his or her role within the context of Rule
10 53.

11 The Court currently intends to interview
12 Mr. Perrelli, Mr. Oprison, and the Court would like the
13 parties to jointly submit three additional candidates to be
14 interviewed.

15 Where would the parties be on that?

16 MR. BELL: Your Honor, this is Ed Bell. We had a
17 discussion yesterday with Mr. Bain and his team. We have one
18 additional person that we would jointly suggest. I'm not sure
19 we would have three that we would submit, Your Honor, but we
20 do have one person. Her name is listed in my note to you and
21 others last night.

22 THE COURT: Mr. Bain?

23 MR. BAIN: Yes. That's correct. Given the message
24 that we got from the Court, I guess the question that we had
25 was whether the Court wants us to provide three additional

1 names or whether the Court would be satisfied with fewer than
2 three.

3 We have initially reached out to an individual that
4 had been recommended by the U.S. Attorney's Office and
5 recommended him to the plaintiffs. The plaintiffs did not
6 think he was suited for it, although we continue to think that
7 he might be a good candidate. But if we need to come up with
8 two others in addition to Ms. Birnbaum, we would need some
9 time to do that and to have further discussions.

10 THE COURT: Well, I'll leave it to you. I think
11 that the Court would benefit by having three rather than one,
12 so I would say submit your one jointly and then I'll leave it
13 to each of the parties to submit one apiece, and if you can do
14 that before our next status conference.

15 MR. BAIN: We will do that, Your Honor. Thank you.

16 THE COURT: Okay. I think I've got in my notes our
17 next status conference is the 16th of this month; is that
18 correct? Is that amenable with everyone?

19 MR. BELL: That's what I have, Your Honor.

20 THE COURT: Mr. Bain?

21 MR. BAIN: Was there something the next week, I
22 think, Judge? The 26th maybe? It was changed according to my
23 calendar here. I think maybe Mr. Ellis -- Mr. Ellis had
24 contacted the clerk. Is that right, Charles?

25 MR. ELLIS: Yes. Your Honor, we had a meeting that

1 had been scheduled in South Carolina on the 21st -- 22nd and
2 23rd. So as you recall, at that point, we asked to move it
3 from the 23rd back to the week before.

4 THE COURT: Okay.

5 MR. BAIN: Your Honor, at our last status conference
6 you had mentioned there was an issue with the Court on the
7 16th so we looked at the following week; and after
8 discussions, I think, with Charles Ellis and the clerk, I
9 think there was a date of the 26th, I believe.

10 MR. ELLIS: That's right. I think it was the 26th.
11 I think, Adam, I think, preferred the 26th, if my recollection
12 is accurate.

13 MR. BAIN: That's what I recall too, but subject to
14 what the Court wants us to do. We can make the submissions
15 that Your Honor suggested earlier than that, whatever the
16 Court wants.

17 THE COURT: So I've got in my notes from the last
18 hearing the next status conference was set for 4/23.

19 Mr. Ellis, you're saying that was changed or a
20 request to change it was made?

21 MR. ELLIS: Yes, Your Honor.

22 THE COURT: To what date?

23 MR. ELLIS: To the 26th, after concurring with Adam.

24 THE COURT: Mr. Bain, that works for the Government?

25 MR. BAIN: Yes, that works for us, Your Honor.

1 THE COURT: Is there anything additional the Court
2 should hear from the parties?

3 MR. BELL: Not that we can think of, Your Honor,
4 from the plaintiffs.

5 MR. BAIN: Your Honor, from the United States, I
6 think there's one issue we've been bringing up in past status
7 conferences that I think we're resolved on now, which is
8 whether the common benefit holdback applies to several offers
9 that are made under the Elective Option Program that was
10 established in September of last year, and I think the parties
11 agree that the holdback does not apply to the settlement
12 offers. And we got confirmation from Mr. Bell and Ms. Bash
13 yesterday.

14 THE COURT: Is that right, Mr. Bell?

15 MR. BELL: Yes, Your Honor.

16 THE COURT: Okay. Thank you. Thank you for working
17 that out.

18 We'll set it for 4/26 at the usual time. Thank you
19 very much.

20 MR. BELL: Thank you, Your Honor.

21 MR. BAIN: Your Honor, if I can raise one more
22 thing. This is Adam Bain.

23 When would you like our status conference statement
24 for that conference? Would you like it one week before then
25 or would you like it next Tuesday?

1 THE COURT: One week before then is fine. The 19th
2 is fine.

3 MR. BAIN: Thank you, Your Honor.

4 THE COURT: Thank you very much.

5 MR. BELL: Thank you.

6 * * *

7 (The proceedings concluded at 10:30 a.m.)

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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA

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17 Dated this 4th day of April, 2024.

18 *Amy M. Condon*

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20 /s/ Amy M. Condon
21 Amy M. Condon, CRR, CSR, RPR
22 U.S. Official Court Reporter
23
24
25