

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

IN RE:

Case No. 7:23-CV-897

CAMP LEJEUNE WATER LITIGATION

JUNE 9, 2025
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, Jenna Butler

Via telephone: Jim Roberts, Robin Greenwald, Mona Lisa
Wallace, William Michael Dowling, Elizabeth Cabraser

On Behalf of the Defendant:

John Adam Bain, Joshua Carpenito, Michael Cromwell

Via telephone: Bridget Bailey Lipscomb

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

1 (Monday, June 9, 2025, commencing at 11:00 a.m.)

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

3 THE COURT: Good morning. We've got a list of items
4 and then we can open it up if you want to.

5 The first is Plaintiffs' Motion to Compel billing
6 records, Docket Entry 381.

7 What's the status of that?

8 MR. BELL: Your Honor, we've worked with the
9 Government and we withdraw -- okay. We're going to withdraw
10 that motion, Your Honor.

11 THE COURT: All right. Dr. Shields' use of a laptop
12 at the May 12th deposition. What's the status there?

13 MS. BUTLER: Your Honor, there was an additional
14 hour of deposition testimony, and there's nothing further for
15 the Court to do at this time.

16 THE COURT: Okay.

17 Dispute regarding defendant's late production of
18 damage offset data. What's the deal there?

19 MS. BUTLER: Your Honor, that dispute is still
20 being -- it is still hot. We are trying to set up another
21 meet and confer. We've exchanged a number of letters. We've
22 exchanged various proposals.

23 The last proposal that is set forth by the
24 Government in the status report is not acceptable. I'm glad
25 to get into that, or we can talk about it in chambers after,

1 depending on where you want to go.

2 We have made another proposal since that time, and I
3 e-mailed Mr. Cromwell, who is here, about trying to meet and
4 confer tomorrow, if that works for them.

5 So it is definitely still a dispute. I just don't
6 know right now if motions practice would be required or not.
7 And we can certainly get into it more if you would like.

8 THE COURT: Okay. So still talking about it.

9 I did have a notation that while the issue's ongoing
10 the parties agreed to give plaintiffs until June 11th to
11 respond to these supplements. Is that still accurate?

12 MS. BUTLER: Well, yes. And that's still a problem,
13 because that is two days from now.

14 Their new proposal that gives us until August 11 is
15 obviously much better on the rebuttals, but it doesn't
16 incorporate the fact that this information that was first
17 produced to us starting April 15 and continues to be produced
18 to us is something we need to incorporate into our damages
19 presentation.

20 So, for example, if they are now quantifying
21 2 million in disability offsets and we didn't know that until
22 right now, we want to be able to incorporate that into our
23 damages presentation because, for example, maybe we weren't
24 claiming lost income; but if they are not going to try to
25 offset \$2 million in disability, we want to incorporate that

1 because it's supposed to be an offset, something for
2 something. And having now just getting -- gotten this
3 information, we really need to go back.

4 As you may have noted, this is on page 16 of the
5 status conference report, their current proposal does include
6 producing information to us, so there's still additional
7 information for us to obtain.

8 We would like to get that information, depose those
9 individuals, then update our damages assessment forms and then
10 produce supplemental or amended expert reports on our side
11 that incorporate that information; let them supplement or
12 amend their reports, and then have rebuttals and depositions
13 follow.

14 That's the only fair and reasonable approach in our
15 view because we should have gotten this information, and we
16 should be entitled to now incorporate it into our full damages
17 presentation and not just our rebuttal reports. And that's
18 the gist of the issue. There's a lot more to it.

19 THE COURT: So I looked into the Act where all this
20 is and it looks to me that this comes into -- this is
21 804(e)(2) where it says -- where it relates to exclusive
22 remedy, subsection (2): Any award made to an individual or
23 legal representative of an individual under this section shall
24 be offset by the amount of any disability award payment or
25 benefit provided.

1 So it presumes an award has been made, right, and it
2 presumes a disability award payment or benefit has been
3 provided. So this comes in after there's been some recovery
4 under the Act, right?

5 MS. BUTLER: Yes, Your Honor, it is premised upon
6 the award.

7 THE COURT: So the showing you're talking about
8 would be before the judge after -- well, before the judge, as
9 that judge has either made an award or has contemplated an
10 award, correct?

11 MS. BUTLER: Well, here's the problem and here is
12 where it's interrelated. So, you know, the VA doesn't give
13 you a bill when you get disability benefits, so now they have
14 come forward and quantified what they contend -- for example,
15 I'm just using one example. This is exemplary of the larger
16 issue. They are coming forward now and trying to quantify
17 what they contend, say, somebody who's gotten VA disability,
18 what that was worth.

19 THE COURT: What it was worth?

20 MS. BUTLER: What those benefits -- the value.

21 THE COURT: It should be a number, right?

22 MS. BUTLER: A number.

23 But you understand they don't bill you like an
24 insurance company, so there's not -- so they quantify that.

25 But let's say that for that particular plaintiff,

1 which is true of a number of our plaintiffs, we did not in our
2 damages assessment form claim lost income from, you know, not
3 being employed because in our mind if they were getting
4 disability, then maybe, you know, it was going to be a wash,
5 right? So you have a 2 million, say, offset for disability
6 benefits, but they should be for lost income, lost earnings.

7 There are now legal issues because we have been
8 unable to get stipulations that it appears that the Government
9 may not agree with that analysis; that it should be a
10 category-for-category offset.

11 And so, for example, if they are now going to come
12 in and say that they get to offset a \$2 million disability
13 quantification against pain and suffering damages, even if
14 that plaintiff never claimed lost earnings, then we want to be
15 able to incorporate in our damages presentation the lost
16 earnings as part of our damages so that then if there's a
17 post-award offset, it's dollar-for-dollar for the same
18 category. Not -- do you see how that could really prejudice a
19 plaintiff to not be able to incorporate what they are now
20 quantifying as the disability benefits?

21 If we're not able to incorporate that into our
22 damages award, then it's not built into those damages, but
23 then the Government wants to come offset it against -- like
24 basically we presented zero, and so there -- this issue -- and
25 I'm trying to get to the nub to just give you an idea --

1 THE COURT: I guess I don't understand why it's so
2 complicated.

3 MS. BUTLER: Because the information -- so let's
4 talk about Medicare. So, you know, they just now have
5 produced all this Medicare billing, the paid expenses. And
6 let's say that's -- I'll use a different example than the
7 disability. Let's say that's 100,000, because they've gone to
8 the agencies and the agencies have pulled this data and they
9 have now produced agency-created spreadsheets by, say, Jenna
10 Butler, Medicare has prepared these spreadsheets and they now
11 want to claim 100,000 in Medicare payments. But all we had
12 access to before now what were billings, and that's not always
13 accurate or reflective of what the Medicare records might
14 show.

15 So let's say we only realized -- we only understood
16 there to be 50,000 worth of Medicare payments, but we now get
17 from them, after our damages experts have already been, you
18 know, provided, this additional billing information, we feel
19 that we need to be able to go in and depose those people and
20 say, "Where is this difference?" so that we can decide, okay?
21 Are we off or are they off, and then adjust our damages
22 assessment form. So that if we go in and say, Oh, gosh, you
23 know, these particular payments weren't reflected in the
24 billing records our clients had, we need to up our Medicare
25 payments to 100,000 to reflect what we just discovered.

1 THE COURT: Why is this expert testimony?

2 MS. BUTLER: Because that -- that's a good question,
3 because we think it's fact discovery that should have been
4 produced back in August by August 11 of 2024 when fact
5 discovery closed, but it was just provided to us starting
6 April 15 now as --

7 THE COURT: What is the nature of expert testimony
8 on this sort of evidence?

9 MS. BUTLER: So they are relying --

10 THE COURT: Is it how the agency calculates the
11 offset?

12 MS. BUTLER: No, because the experts didn't
13 calculate it; the agencies did. But they are relying on what
14 the agencies have now presented, which we never had the
15 benefit of for our experts to rely on, but their experts are
16 now relying on that to say, "Here's what's been billed," and
17 that's what the Government is going to use to come in for
18 their offsets.

19 And if we're not allowed to depose these people and
20 understand t methodology and the calculations and the
21 underlying data they used, we are greatly prejudiced.

22 And that -- you just hit the nail on the head,
23 though. This was facts. These are facts and data that should
24 have been produced long ago, and we didn't get it.

25 And, you know, they want to claim it's work product

1 now, but the work-product rule requires that if you're going
2 to withhold something on an attorney-client privilege or work
3 product, under 26(b)(5), you're supposed to identify what
4 you're withholding. And so, you know, it requires a party
5 claiming work product to describe the nature of the documents
6 or tangible things not produced or disclosed in a manner that
7 will enable other parties to assess the claim.

8 We were never told they were withholding this. We
9 were never told it would come later during experts and then
10 here, bam, it shows up.

11 THE COURT: All right. Well, I didn't want to drill
12 into it too much.

13 MS. BUTLER: I'm sorry.

14 THE COURT: No, it's all right.

15 So you're -- y'all are continuing to talk about this
16 to some extent?

17 MS. BUTLER: Yes. Because their proposal, which is
18 set forth in the status conference, only pertains to offsets,
19 but it's a broader issue for us because we need to be able to
20 incorporate their data into our damages presentation. And
21 unless we're allowed to do that, then we are so harmed and so
22 prejudiced that we're going to have to bring motions before
23 the Court. There is just no way.

24 THE COURT: So that would -- the motions would ask
25 the Court for -- at least you would need some time to depose

1 these folks. It would interfere with the briefing schedule.

2 MS. BUTLER: So what we have proposed is to get the
3 data. We need to get the data, then depose the individuals,
4 and then incorporate it into our damages presentation which
5 includes our damages assessment forms which don't currently
6 reflect this data, and then to do the expert reports and the
7 expert depositions. So that's -- that's the proposal we're
8 looking at.

9 They want to limit us so that we can only contradict
10 their offsets but not incorporate the data into our damages.
11 And so that's where we're so prejudiced.

12 And there are also legal issues, Your Honor. For
13 example, can they claim disability offsets against pain and
14 suffering? We don't think they should. It should only be
15 against lost earnings, but there's a dispute.

16 So there are legal issues and procedural issues
17 involved in this, but the most prejudicial right now is that
18 we have rebuttal reports due in two days which there is no way
19 because we don't even have the data. We haven't -- and
20 they've offered, as you see, to give us the data. This is,
21 again, in page 16 at the end of their portion of the status
22 report. I mean, their proposal is to give us the data and
23 allow depositions, but then to only allow us to incorporate it
24 into any offset arguments. And that's where the rub lies,
25 because that's not fair to us.

1 THE COURT: Okay. What's the Government say?

2 MR. CROMWELL: Your Honor, Michael Cromwell on
3 behalf of the United States.

4 So just to start with. As Your Honor read the Act,
5 obviously this is a known issue and it was from the beginning
6 going to be a known issue. You heard arguments a little bit
7 from Ms. Butler here, as well as last time. I don't feel the
8 need to dig through all that again.

9 We disagree with the nature, how it's been
10 characterized or why Plaintiffs are in the position in which
11 they are in; but that said, we do think offsets are an
12 important issue.

13 THE COURT: But it's about the Government getting
14 its money back, right? I mean, that's what this is about?

15 MR. CROMWELL: Well, it's about the benefits that
16 the Government has already paid, just like the statute as it
17 is drafted, it's -- to the extent the Government has made any
18 payments related to these Track 1 diseases, that is -- gets to
19 be offset against any award, eventual award a judge may make.
20 So the nature of that, that's kind of the nature of that.

21 They have tried to link these individual categories.
22 You heard lost wages to disability benefits.

23 THE COURT: Right.

24 MR. CROMWELL: The statute is not drafted that way
25 and, quite frankly, there is a number of individuals who

1 received disability who are retired. They are not linked to
2 each other. So we don't agree with that position.

3 That said, we do think this is an important issue.
4 We do notice and recognize that the Act mandates that offsets
5 be taken. And to the point Ms. Butler just made, we have --
6 to that end, we have been collecting the underlying data that
7 these Excel, kind of, documents that were used and relied upon
8 by our experts so that they can have --

9 THE COURT: Tell me what that is, because when you
10 talk about offset data, I'm thinking of a bill from a doctor
11 saying your x-ray was \$50, that's what I think data is. But
12 it sounds like it's something more than that.

13 MR. CROMWELL: It's agency dependent. Vast majority
14 is fairly accurate to what you're describing, which is --
15 let's say, Medicare, which essentially, you know, insurer or
16 TRICARE, or even the VHA -- VHA is a little different because
17 they don't really provide bills, right? So it's a little bit
18 of a different issue. But all in all, it's medical costs that
19 an individual has received that has been covered by those
20 various programs. So whether it's Medicare, whether it's from
21 the VHA, you walk into a VA, or whether it's here in the
22 community and you have VA coverage but you're not walking into
23 the VA hospital, you're walking into a provider that has VA
24 coverage or even TRICARE.

25 THE COURT: Is that what is included in subsection B

1 in connection with healthcare, disability relating to the
2 exposure to the water at Camp Lejeune?

3 MR. CROMWELL: You're referring to the Act?

4 THE COURT: Right.

5 MR. CROMWELL: Yes.

6 THE COURT: Because the VA is identified, Medicaid
7 is identified, Medicare is identified and then there is
8 subsection B, I guess it's a catchall, in connection with
9 healthcare, that's what that would be?

10 MR. CROMWELL: Yes.

11 Just so I understand your question. Are you
12 referring to TRICARE or are you asking just in general what
13 the healthcare costs were --

14 THE COURT: You said somebody who walks into a
15 doctor's office who has some kind of a relationship with the
16 VA, it sounds like that would fall under subsection B.

17 MR. CROMWELL: It would fall under the VA because
18 the VA has a program for Community Care Network.

19 THE COURT: Okay.

20 MR. CROMWELL: So that's where it falls under.

21 THE COURT: So subsection B would just be --

22 MR. CROMWELL: Subsection B is the second
23 requirement, right? We can only offset benefits that are
24 received --

25 THE COURT: I see.

1 MR. CROMWELL: -- related to their Track 1 disease.

2 THE COURT: There's an "and" in subsection B.

3 There's an "and."

4 MR. CROMWELL: Disability benefits are different.

5 It's just a number. It's the amount they have received on a
6 monthly basis. They already have that information in the form
7 of a spreadsheet which is neatly put together.

8 They also had and was produced during discovery the
9 underlying information that those VBA decisions were made
10 upon. Ratings decision sheets which says you're disabled for
11 70 percent due to your bladder cancer - I'm just using it as
12 an example - you get X amount per month. So that information
13 is and has been available. So VBA is a little bit different
14 because it's not dealing with healthcare provider, right?
15 You're not walking into a doctor.

16 All of that said, we have offered the 60 days. We
17 are not wedded to the 60 days.

18 THE COURT: Sixty days for what?

19 MR. CROMWELL: Sixty days for them to receive the
20 underlying raw data, which some of it will be produced today.

21 THE COURT: And what is that again?

22 MR. CROMWELL: So if you think of it this way: Our
23 experts relied upon Excel sheets that were put together by
24 agency individuals and their job was to essentially link --
25 this is all the healthcare a person X received, but they have

1 to connect it to a Camp Lejeune disease, their bladder cancer,
2 they have to connect it to their kidney cancer, so they had to
3 filter it down in such a way, and there's no
4 straight-across-the-board method for doing that, right?

5 You may walk into a doctor's office and receive
6 attention for your diabetes, but then all of a sudden 10
7 minutes of that is related to your bladder cancer. That is
8 hard to parse apart. So what we had to do is come up with a
9 method with the agency to filter that down.

10 What they have asked for and what we are --

11 THE COURT: How do you filter that down?

12 MR. CROMWELL: Based on what we did for the various
13 agencies, we used a set of ICD-9, ICD-10 codes.

14 THE COURT: This is where the experts come in?

15 MR. CROMWELL: The experts come in for the economic
16 valuation. So the agencies had to filter down this data for
17 the ICD-9 and ICD-10 codes, and then an added step was it
18 needs to be a primary or secondary diagnosis; it can't be your
19 eighth diagnosis on the record, right? So we took a very
20 conservative approach in grouping what would be included in
21 this offset for an individual.

22 The expert comes into play because you're talking
23 about past benefits and you need to know what the present
24 value was. You also have future benefits that are being
25 calculated; same issue. So there are economic calculations

1 that go into it.

2 The determination of what should and should not be
3 included was vastly made by the agency individuals in
4 conjunction with us kind of instructing them as to the status
5 of the litigation, the diseases at play, what codes would be
6 appropriate; would not be appropriate. So this gets into why
7 it's work product. So that information was produced with our
8 experts.

9 Because of the issue and the importance of the
10 issue - again putting aside why we are here - we have agreed
11 to provide the raw data, meaning the unfiltered data, right?
12 We're not going to put in our parameters it has to be related
13 to bladder cancer. We're saying what are the encounters this
14 person had with Medicare? What is this person's encounters
15 with the VBA? So that's the information we are collecting.
16 They can do whatever they'd like with it, but that's the
17 information we're doing because that's where this work product
18 would have come from. So that's what we've agreed to provide.

19 To the extent that depositions of these agency
20 individuals are needed -- I would argue they likely aren't for
21 a number of reasons, but we can talk about that amongst the
22 parties -- we would allow, and then some sort of
23 supplementation.

24 So we're not wedded to the 60 days, but their
25 proposal puts things out into February of 2026. So the

1 Government has an issue with how that's structured, and we
2 don't think that much time is needed.

3 I think there is some room for us to negotiate and
4 figure out what that looks like, and my hope is in the next
5 few weeks that we can reach some sort of resolution as to
6 what's going to be allowed and the timetable for doing so.

7 THE COURT: Obviously, water contamination is an
8 important issue to address at the front end of the case --

9 MR. CROMWELL: Sure.

10 THE COURT: -- what was where and when.

11 Obviously, causation experts are important to
12 address at the front of the case.

13 Is this something that can be -- I'm just thinking
14 aloud here, maybe it's not a good idea -- to put these folks
15 on a separate track and essentially just give more time to get
16 it done.

17 MR. CROMWELL: Well, I think that can happen without
18 moving trial dates. I think that's our concern at the moment
19 is that the Court has been -- and we agree that that schedule
20 is set and we don't want to impede on that.

21 We think there is a way to create -- essentially
22 what it would be is a separate track with limited kind of
23 information, reports, and the discovery that needs to happen
24 with the various experts and then -- without impeding on kind
25 of the Court's overall goal of having the trial set for when

1 they want to have them.

2 So as far as when that information comes in, you
3 know, our experience has been, particularly in FTCA cases, it
4 comes in with bench trials at the same time damages
5 information comes in because a judge is looking at this is the
6 amount of an award I'm going to give, but I need to offset it
7 by this amount because this is how much the Government has
8 already paid. So our experience has been that it occurs one
9 in the same.

10 Obviously it does not occur if there is no award,
11 but the timing and the logistics of that, our experience has
12 been that it occurs within the same proceeding.

13 THE COURT: Okay.

14 MS. BUTLER: So, Your Honor, I think that Mr.
15 Cromwell just helped frame the issue, which is that they're
16 going to provide us apparently, maybe today, this raw data and
17 then we need the opportunity to understand what their agency
18 people did with it, so we want to depose them and say, "Okay,
19 how did you filter this?" and then we have to decide are we
20 okay with that.

21 THE COURT: And they haven't been deposed yet?

22 MS. BUTLER: They have not been deposed; they
23 weren't identified in discovery. We didn't have any idea this
24 was going to be done. And if we agree, then, okay, we agree
25 on the number; but if not, then we're going to have to hire

1 somebody to filter it how we want to filter it and present it,
2 and then we need to incorporate it into our damages
3 presentation.

4 So hopefully that helps frame the issue a little
5 better.

6 I agree, and I think we generally have an agreement,
7 that this can go on somewhat of a separate track. And it is
8 not our intent to delay the trials. I'm not aware of any
9 trial dates being set yet, and there are substantial issues
10 that are being briefed in the water phase right now.

11 There are going to be issues in the specific cause
12 and general cause, and I think there's going to be plenty of
13 meat for the Court to digest and decide while we kind of take
14 this on its own little trajectory to get the data, depose the
15 individuals, understand what they did, decide whether we're
16 going to hire our own or, you know, maybe possibly -- I'm not
17 committing to anything -- agree with the way -- their
18 methodology, but then to also be allowed to incorporate it
19 into our damages presentation. Because if the Court is going
20 to decide an award with the offsets in mind, everything needs
21 to be presented at the same time. But that's -- again, I
22 think we can take this on a separate track, and that is what
23 we believe needs to happen rather than continuing to just push
24 off our rebuttal deadlines by a couple weeks here and there,
25 because it's just not sufficient time.

1 MR. CROMWELL: Just real quick. The reason the
2 rebuttal deadlines have been pushed is we've done this to an
3 agreement so the parties can work out something. We are not
4 trying to hamstring or anything like that.

5 THE COURT: I understand.

6 MR. CROMWELL: I would ask, because using agency
7 individuals, like, if we need to work with depositions, we can
8 try to do that to the extent they are reasonably necessary.

9 The letters that were accompanied with the expert
10 reports has a lot of this information in them identifying how
11 they filtered the data for this purpose so that they would
12 understand what happened. So I would just urge Plaintiffs to
13 look at that information once they receive the raw data so
14 they can compare and see what actually happened.

15 And I just want to -- she said they will have all
16 this data -- we have some of the raw data that is being
17 produced today because there are a number of agencies. Some
18 of it we're still continuing to gather and that will be
19 produced. It does not seem like it will take that long to get
20 though, so we should have that in short order.

21 THE COURT: Okay.

22 MR. BELL: Well, Judge, when we are sitting here
23 listening and they're saying they're giving us the raw data,
24 we are assuming that's the same data that their agency
25 employees used to come up with the spreadsheets.

1 THE COURT: Is that what it is?

2 MR. CROMWELL: It is, Your Honor. It is. That's
3 what they've asked for.

4 MR. BELL: So, for example, if you have a -- you
5 know, early on, Judge, we asked for VA bills. They said,
6 "Sorry, we don't produce bills. We're not going to do that."
7 And then all of a sudden as an offset they're saying we don't
8 have a bill but we're going to charge you for the value of the
9 services, but you're not going to be allowed to put forth a
10 bill to offset it.

11 So, in other words, they're saying you owe us a
12 bunch of money, but you can't offset it in your presentation
13 of damages. That's where the prejudice that Jenna is talking
14 about.

15 And it's real clear when you take an example and see
16 what they've done. For example, Judge, some of the diseases
17 prior to August of 2022 are not available for a disability
18 rating. In other words, if you had this disease and it wasn't
19 service connected, then you wouldn't get a disability rating;
20 but as of August of 2022, you could.

21 Some of their disability that they're charging, they
22 are charging way before 2022. And you ought to see the
23 numbers, Judge.

24 One of our clients, off the top of my head, they say
25 we owe them \$4 million. That's what they're saying. So it's

1 not a small problem to us.

2 Strategically, we're sitting there saying, "Do we
3 want to get an economist for this small amount of lost wages?
4 They got a disability." We decided not to do that because
5 of -- we don't need to hire another expert to say that because
6 they are getting their disability, they're matching it up with
7 what they'd gotten for that particular problem.

8 So -- and the way the Government dishes out its
9 disability ratings, you might get eight percent here and
10 seven percent here and 14 percent here; but if they weren't
11 given because of the water disability at the time, we think
12 they've done that, we think that they couldn't get the numbers
13 they're getting unless they have.

14 So my friends on the left over here when they say
15 "our work product," that's just like astounding to me that
16 they would say a Government agent, a Government employee who's
17 taken the raw data, comes up with a spreadsheet, gives it to
18 the expert and the expert has no clue how they did it. And
19 all of a sudden they expect the expert to testify, but they
20 aren't going to give us their "work product."

21 That's not the way we do it in the world of this
22 kind of litigation, Judge. We don't know what -- we don't
23 know what they are going to give us, Judge, but we would like
24 the ability to call you if we can't reach a resolution and get
25 something fast tracked.

1 THE COURT: Okay. All right.

2 Let's move on to other items.

3 Was there an issue regarding the disclosure of Phase
4 III experts?

5 MR. CARPENITO: Your Honor, I can handle that issue.
6 Good morning. Joshua Carpenito for the United States.

7 We just wanted to highlight to the Court that the
8 United States has identified several untimely general
9 causation opinions included and PLG specific causation reports
10 served during Phase III. These disclosures are inconsistent
11 with the Court's phased approach to expert discovery which, as
12 Your Honor knows, requires that general causation opinions be
13 disclosed in Phase II.

14 The United States is still reviewing the full extent
15 of these disclosures but have already identified several
16 examples where PLG's experts expressly offer general causation
17 opinions after the applicable deadline in their specific
18 causation reports.

19 The United States will be following up with
20 correspondence to PLG this week to raise these concerns and
21 hope to explore whether this issue can be resolved without
22 Court intervention, but we reserve our right to seek
23 appropriate relief should that not --

24 THE COURT: Right. So you might have something to
25 talk about with them and then perhaps in the future in the way

1 of a motion?

2 MR. CARPENITO: That's correct, Your Honor.

3 MS. BUTLER: Yes, Your Honor, we have not received a
4 letter on this yet so we don't know what the examples are.

5 THE COURT: Right. I understand. Right.

6 Mousser medication condition. What's the status
7 there?

8 MR. CARPENITO: Your Honor, as discussed at the last
9 status hearing, the parties agreed to an expert
10 supplementation schedule in that case, and the United States
11 supplemented specific causation and psychiatric expert reports
12 on May 23rd and this past Friday. We supplemented -- the
13 United States supplemented its damages expert reports on
14 June 6th.

15 MR. BELL: That probably shouldn't have been in the
16 joint reports, Your Honor, because it's been resolved.

17 THE COURT: Is there an updated disease census for
18 active CLJA lawsuits?

19 MS. BUTLER: Your Honor, Mr. Flynn was here at the
20 last status conference and he was working on that, and I
21 apologize, we'll need to touch base with him. We were in the
22 process of getting that information together.

23 THE COURT: Okay. And then an update on -- this may
24 depend on that. An update on amended Track 3 submissions?

25 MR. BAIN: As we said last time, Your Honor.

1 we are fine with the ones that we originally submitted. I
2 think the Plaintiffs were looking into whether they were going
3 to amend their submission.

4 MS. BUTLER: I think we are waiting to get all of
5 the -- yes.

6 THE COURT: All right. Anything else to talk about?

7 MR. BELL: Your Honor, we have an issue relating to
8 *Daubert* motions and maybe might be good to chat about that in
9 chambers.

10 But to frame the issue. Normally in a bench trial
11 the Court's going to decide whether or not a witness's
12 methodology -- they are going to be deciding the same things
13 for admissibility of that evidence that we would be doing in
14 *Daubert*. And we think that with a bench trial the other
15 motions may not be necessary.

16 We'll be glad to file the motion to dispense with
17 it. We can show the Court why it's going to be doubling up
18 work for the Court, they got to do it again anyway. So, I
19 mean, clearly methodology is subject to cross-examination, but
20 a *Daubert* motion is not. So the judges are going to have to
21 hear it again and why not do it at one time instead of
22 pretrial.

23 MR. BAIN: Your Honor, we believe that the way that
24 the case has been phased allows for the submission of *Daubert*
25 motions to narrow issues that might need to be tried.

1 So, for example, for a particular disease, if the
2 Plaintiffs cannot submit reliable scientific evidence of a
3 connection between the chemicals and the disease, then there's
4 no need for a trial. So we think that the way the Court has
5 set up the phase, the briefing makes sense, and that the
6 *Daubert* motions are appropriate through that briefing.

7 THE COURT: Okay. It may be best to file a motion
8 on that.

9 MR. BELL: Yes, Your Honor.

10 THE COURT: Next --

11 MR. BAIN: Your Honor, I have -- with respect to
12 motions, there's a couple things I want to raise to make the
13 Court aware of and maybe get some guidance --

14 THE COURT: Are these new items or are these pending
15 motions?

16 MR. BAIN: This is with respect to the motions that
17 are due under the case management order on June 28th with
18 respect to Phase II.

19 The first thing: June 28th is a Saturday, so we
20 discussed with the Plaintiffs that those could be filed on the
21 30th, which is the next Monday, if that's acceptable to the
22 Court, or whether the Court would like an amendment --

23 THE COURT: Do you got any problems with that?

24 MR. BELL: No, sir.

25 THE COURT: All right. You can do it on June 30th.

1 MR. BAIN: Another issue is that because the
2 diseases have been separated by judge and there is five cases
3 for each individual diseases, some motions will only go to
4 individual diseases. And the question is: Can those motions
5 be filed only in the Master Docket, or do they also need to be
6 filed in the individual cases to which they apply to?

7 We prefer that they be filed just in the Master
8 Docket for ease of filing, but we ask for guidance from the
9 Court about that.

10 THE COURT: Do you have an opinion on that?

11 MR. BELL: My only concern, Your Honor, is if
12 something gets filed in the Master Docket and it pertains to
13 an individual, the judge may not be alerted to it. I don't
14 know what the Court would like us to do, but whichever way,
15 we'll do it. That'll be my concern.

16 THE COURT: I'll think about that, but my initial
17 reaction is in the individual case.

18 MR. BAIN: To file it just in the individual case or
19 both in the Master Docket and the individual case?

20 THE COURT: I think it would just be in the
21 individual case.

22 MR. BAIN: Okay.

23 THE COURT: But let's leave that open. We'll get
24 back to you on that one.

25 MR. BAIN: Okay. And then another related issue is

1 do -- we might have some exhibits that pertain to multiple
2 motions, and we were wondering if an appendix of exhibits
3 could be filed and the motion can then just refer to common
4 exhibits rather than include multiple copies of the same
5 exhibit for multiple motions.

6 THE COURT: Okay. We can probably -- do you got an
7 opinion on that?

8 MR. BELL: I'm thinking through whether or not
9 there's something we could do to link all of the exhibits in
10 the motion and memorandums themselves that might be -- I'm not
11 technically advanced enough to answer that, but seems like
12 there should be a way we can do that.

13 THE COURT: What's the concern?

14 MR. BAIN: The concern is just the technical
15 procedures of having to file some of these exhibits over and
16 over again. And some of them are -- you know, the Court
17 requires -- or certain judges require the complete deposition
18 transcript be filed; for example, for a motion, and those are
19 often quite long and quite large exhibits and sometimes it
20 takes quite a while just technically to get the files reduced
21 and do the filing. So it was just raised by members of our
22 team.

23 THE COURT: Yeah. These are limine motions?

24 MR. BAIN: Yes. These would be limine motions such
25 as were done in Phase I.

1 THE COURT: Okay. All right. We'll think about
2 that and get maybe a housekeeping order out.

3 Next date would y'all like to meet? I've got the
4 23rd and the 24th I think, and the 30th and the 1st.

5 MR. BELL: The 30th of --

6 THE COURT: June.

7 MR. BELL: That's not good, Your Honor, for me.

8 The 23rd and 24th we have an in-person PLG meeting,
9 those two days actually.

10 Could we do it after the 4th, or is that
11 something -- is there need to do it before then?

12 THE COURT: Well, what do y'all think? That would
13 be -- let's see, that's one, two, three -- that would be four
14 weeks away. Two weeks out from here is the 23rd and 24th, and
15 then four weeks out is going to be the 7th and 8th.

16 MR. BELL: Could we do it on the 8th, Your Honor?

17 MR. BAIN: Your Honor, the 8th works for me. We can
18 also do the 23rd.

19 THE COURT: What should we do given the -- what's
20 going on in the case?

21 MR. BELL: What if we need to -- maybe we can have a
22 little telephone --

23 THE COURT: An update, telephone update? On the
24 23rd?

25 MR. BELL: That'll be fine, Your Honor.

1 THE COURT: What do you think, Mr. Bain?

2 MR. BAIN: That's fine, Your Honor. And then we can
3 do the next conference on the 8th. All right.

4 THE COURT: All right. So we'll tentatively set a
5 telephone conference for the 23rd, that's a Monday at
6 11:00 a.m. and then in-person -- what did we say, the 8th?

7 MR. BELL: Yes, Your Honor.

8 THE COURT: July the 8th -- July the 8th at 11:00.
9 Is there anything else?

10 MR. BELL: Not that I'm aware of, Your Honor.

11 MR. BAIN: Nothing further, Your Honor. Thank you.

12 THE COURT: Thank you very much.

13 * * *

14 (The proceedings concluded at 11:46 a.m.)
15
16
17
18
19
20
21
22
23
24
25

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA

3
4 CERTIFICATE OF OFFICIAL REPORTER

5
6 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
7 Court Reporter, in and for the United States District Court
8 for the Eastern District of North Carolina, do hereby certify
9 that pursuant to Section 753, Title 28, United States Code,
10 that the foregoing is a true and correct transcript of the
11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is
13 in conformance with the regulations of the Judicial Conference
14 of the United States.

15
16
17 Dated this 18th day of June, 2025.

18
19 *Amy M. Condon*

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