

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

In Re:

CAMP LEJEUNE WATER LITIGATION

7:23-CV-897

TUESDAY, JULY 16, 2024
STATUS CONFERENCE HEARING
BEFORE THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III; Eric Flynn, Hugh R. Overholt,
A. Charles Ellis, William Michael Dowling

Via Telephone:

Mona Lisa Wallace, James A. Roberts, Zina Bash,
Elizabeth Cabraser

On Behalf of the Defendant:

John Adam Bain, Michael Cromwell, Elizabeth Platt, David Ortiz

Via Telephone:

Sara Mirsky, 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 (Tuesday, July 16, 2024, commencing 11:03 a.m.)

2 THE COURT: Good morning. Okay. I just had a
3 couple items and then I'm happy to hear from y'all as to the
4 status of discovery and any other matters you wanted to
5 mention.

6 Mr. Bell and Mr. Bain, is there a way to include in
7 the status reports -- I guess it would be in the section where
8 you're talking about what cases are settling, and then also
9 include for track -- the Track 1 plaintiffs and subsequent
10 groups -- a way to identify either the plaintiff, or in the
11 case of an estate, perhaps the decedent, whether those
12 individuals are or were active service members, military
13 dependents, non-service members; in other words, identifying
14 for the Court what their connection to the base is or was? I
15 think that would be helpful.

16 MR. BELL: That wouldn't be hard to do, Your Honor.

17 THE COURT: Okay. Great.

18 The next item is related to the notice that was
19 filed following our last meeting. I realize that we asked for
20 this. This is the -- I'm referring to what's at Docket Entry
21 254, the joint proposed pretrial scheduling order for certain
22 Track 1 trial issues. Paragraph 13 on page 2, "At the
23 appropriate time following determination of motions on the
24 water contamination phase and the general causation phase, the
25 parties will disclose its experts regarding specific causation

1 and damages." I don't know if it is anticipated by the Court
2 that there will be an opportunity to reopen expert discovery
3 and so when I was describing that we would like you to propose
4 deadlines for expert discovery, it was thought that that
5 expert discovery period would include whatever experts that
6 you anticipate using, whether those are related to damages,
7 general causation, or specific causation.

8 Do you understand what I'm saying here? I don't
9 know that the Court really expects to reopen expert discovery.

10 MR. BELL: No, Your Honor. I don't think we
11 anticipated reopening it.

12 Our concern was the timing of the -- the way the
13 order read, it gave us some uncertainty as to whether this was
14 to be in some sequence or whether it was all to be done
15 together. We read the order as seeing that the water modeling
16 issue would be decided by the Court and then the --

17 THE COURT: Is that the exposure? Is that the
18 exposure issue?

19 MR. BELL: That was the question I had for you
20 today. Maybe we can talk about it.

21 We are a little unsure -- there's a lot to the water
22 modeling issue, as you can imagine. There's a lot of experts
23 to the water modeling. There's a lot of issues involving how
24 the methodology -- how everything happened. We are a little
25 -- we would like to have some guidance from the Court as to

1 what the Court really needs so we don't overdo something
2 that's not necessary or whether -- we just really need to know
3 what the Court needs us to present and what they are really
4 looking for.

5 MR. BAIN: Your Honor, I think the way that we
6 interrupted the order was that the exposure and general
7 causation issues were threshold issues.

8 THE COURT: Yeah, they are.

9 MR. BAIN: And obviate the need for other experts as
10 with respect to specific causation.

11 THE COURT: Specific causation is an issue, right?

12 MR. BAIN: Well, if the Court were to find that
13 there's no general causation.

14 THE COURT: Right. If there's no causation, then it
15 stops there, right?

16 MR. BAIN: Right.

17 THE COURT: So if causation -- general causation is
18 established, then I would imagine that you would need an
19 expert beyond a treating physician as to why Jim Smith, you
20 know, maybe on damages on too, how Jim Smith became injured.

21 MR. BAIN: Yes. And we are preparing for that. We
22 looked into experts on those issues, but we interpreted the
23 way the Court's order reading is that it wanted to address the
24 general causation issues first.

25 We're more than happy to put in a period for the

1 disclosures of the other experts, but it looked to us, and we
2 discussed this with plaintiffs, that the exposure and general
3 causation issues being threshold issues may, in our view,
4 eliminate the need for certain experts.

5 THE COURT: I understand. But I don't -- I
6 didn't -- my understanding of how the Court wants to proceed
7 is that they will take up the exposure issues, causation,
8 general causation, and then move toward trial.

9 MR. BAIN: Well, we could --

10 THE COURT: And just assume that -- I understand
11 that you may be taking -- you may be taking a deposition of a
12 specific -- a specific causation expert who ultimately may not
13 testify because general causation hasn't been established. I
14 understand that. But I think that's the route that the Court
15 wants to go versus reopening it, reopening expert discovery.

16 MR. BAIN: Well --

17 THE COURT: And that's -- that's how I interpreted
18 13 to be. And I understand the logic behind doing it, because
19 why would you waste time and money on an expert that you may
20 not need.

21 MR. BELL: Well --

22 MR. BAIN: If the Court would like, we could set up
23 a disclosure schedule for the other experts that's
24 simultaneous with this schedule. I think we can do that. We
25 can talk with the plaintiffs about that.

1 MR. BELL: Judge, if you read the order, it's not
2 clear as to whether or not the judge assigned to the case will
3 actually address the issue of specific causation. And the way
4 the order reads is these cases may actually be reassigned. So
5 let's say we have five bladder cancer cases assigned to Judge
6 A, and that judge the way I read it and the way we would
7 propose is that the judge trying the cases should listen to
8 the specific causation.

9 THE COURT: I think that's -- I think that's what's
10 going to happen.

11 MR. BELL: Right. So that if we're looking at a
12 hearing on water modeling and general causation, the way I
13 looked at it is there's not a reopening of discovery but
14 basically the deadline for identifying those experts would be
15 after that hearing. And we would, of course, would need to
16 take depositions. But that would then, at least the way we
17 thought it would be, is that individual judge would say here
18 is your schedule to get ready for trial.

19 THE COURT: Well, I guess you could always make the
20 argument before that individual judge as to why that discovery
21 needs to take place, but -- I mean, you're right. The way I
22 see this happening is that the exposure issues may be heard by
23 the entire Court and then causation would be broken out to the
24 individual judges per disease. So Judge A is going to have
25 all of Parkinson.

1 MR. BELL: Exactly.

2 THE COURT: Judge B is going to have all of
3 non-Hodgkin's. And then those judges -- I don't know at what
4 point they would enter a scheduling order for their five
5 cases, but one would be entered, I would assume, and that that
6 would contain some pretrial deadlines.

7 MR. BELL: That's the way we looked at it and we
8 think that's the most efficient way to do it, because general
9 causation is really more fact-specific than science oriented
10 as you can imagine. So since these are facts that would apply
11 to the cases before that judge, it would be logical for that
12 judge to start learning these facts since this is a bench
13 trial.

14 THE COURT: So in the expert discovery phase, are
15 y'all disclosing experts for specific causation and
16 discovering those experts?

17 MR. BELL: Well, we set it out in a way to do
18 general causation first.

19 THE COURT: Right.

20 MR. BELL: I mean, obviously we've got a number of
21 depositions. I don't know how many the Government will have,
22 but we have a number, and that's going to take some doing to
23 get everybody ready, plus we've got --

24 THE COURT: It'll be on damages as well, right?

25 MR. BELL: Well, respectfully I think an economist

1 is a little bit easier than a toxicologist.

2 THE COURT: Sure.

3 MR. BELL: So -- I mean, we'll disclose those but
4 whether they -- whether they'll decide needs a depo or whether
5 the report is sufficient is up to the Government, but they
6 would be easier to get taken care of than the science.

7 Science people are very specific. They -- the lawyers
8 handling them are -- have to know the science pretty well.

9 THE COURT: I just want to make sure that y'all
10 understand that there's an expert discovery phase in the case;
11 and in that expert discovery phase, I think the Court is
12 expecting the parties to disclose their experts, whether those
13 experts are on causation or damages or whatever, and that at
14 some point -- and I suspect it will be staggered -- but at
15 some point there will be a hearing on the exposure, a hearing
16 on causation, and then down the road specific causation on
17 those cases that move forward.

18 MR. BELL: Maybe, Your Honor, the alternative to
19 what was presented would be that we stagger our water modeling
20 and general causation and go ahead and schedule the specific
21 causation even if the Court hasn't heard the water modeling
22 yet. That way we get them in, but I think we're trying to --
23 it's going to be such a large thing to handle for both general
24 and specific. So that would be my idea.

25 THE COURT: Okay. I really didn't want to create a

1 mess here. The way I interpreted 13 was that I was worried
2 y'all would think there would be another discovery period for
3 experts after exposure had been -- exposure and causation had
4 been heard or ruled on.

5 MR. BAIN: I think that was what we were
6 contemplating, but if the Court were to have all the expert
7 disclosures done during one period, we can do that as well.
8 But I think to Mr. Bell's point, there's going to be a lot of
9 experts, so the parties do need sufficient time to get all
10 that work done.

11 THE COURT: Okay. Do you want to craft a modified
12 notice or?

13 MR. BELL: Yes, Your Honor. The only thing I would
14 just ask the Court to be cognizant of is if we had -- I'm just
15 using numbers -- 15 or 20 -- because we have five diseases --

16 THE COURT: Right.

17 MR. BELL: -- there are all kinds of nuances within
18 each disease; the toxicology, the oncology, the mechanistic
19 issues, there are all kinds of subsets of those experts and
20 we're getting those ready. So we would like to at least focus
21 on those first and then have the period after that to identify
22 the specific causation.

23 THE COURT: Okay.

24 MR. BELL: The work that these general causation
25 experts are doing does impact the specific causation so we're

1 trying to get it to where it is logical.

2 THE COURT: Wait. I don't think you can get the
3 specific unless you get through general first, right?

4 MR. BELL: Procedurally you're correct. But some of
5 our general causation experts are not specific causation
6 experts. Some are. And so let's say, for example, Your
7 Honor, your oncologist says the mechanism of injury is X and
8 then the specific causation expert is relying on that but
9 that's not his or her expertise, then we have to have that
10 logical sequence.

11 THE COURT: Okay. Why don't you submit another
12 proposal to the Court and we'll look at them in tandem based
13 on this information.

14 MR. BELL: Yes, sir.

15 THE COURT: Okay. And that's really what I wanted
16 to talk about.

17 I suspect that there's some discovery issues that
18 you want to discuss.

19 MR. BELL: Well, there's a couple of things, Your
20 Honor. I bring up the idea of a Rule 16, but I'm assuming
21 maybe the water modeling will give us a chance to have some
22 conversation so it's still pending, but I understand where we
23 are.

24 There is one request for production that we seem not
25 to be able to resolve. We're required to ask the Court to be

1 allowed to file a motion. It's not a difficult issue; it's
2 something fairly simple. But there is some pushback to
3 produce this information. So we would ask for that permission
4 to file a motion.

5 THE COURT: What is that?

6 MR. BELL: It's a request, I think it's number
7 seven. I hope the numbering is right, but it's having to do
8 with individual -- individuals' files that they may have that
9 are not part of the -- in other words, an individual may have
10 their computer and they have their files on Camp Lejeune, but
11 we understand they may not have been searched and we have,
12 like, seven or eight that we've asked for and there's a
13 pushback on that.

14 THE COURT: Mr. Bain, what's the status there?

15 MR. BAIN: Mr. Cromwell is going to address that,
16 Your Honor.

17 MR. CROMWELL: Thank you, Your Honor.

18 Mr. Bain is right. There is I think a disagreement
19 with the nature of plaintiffs' request. Their seventh request
20 for RFPs includes essentially an entire grab of ESI documents
21 related to 10 individuals.

22 As you may recall earlier in this litigation, the
23 parties have reached an agreement not to -- to not have to
24 search for custodial or noncustodial ESI.

25 Despite that agreement, we had recent agreement that

1 there may be exceptions for discrete categories of documents;
2 and, in fact, we've abided by that exception as well.

3 I don't know if you recall a few status conferences
4 ago there was an issue with regards to a Dr. Patricia Hastings
5 with the VA, whether her deposition would go forward or not.
6 It did go forward and during that deposition she identified
7 specific documents she had on her computer and we grabbed them
8 from her computer and produced those. So that would be a
9 discrete category.

10 That's in contrast to plaintiffs' current request
11 which seeks for us to conduct custodial interviews, you know,
12 a month before close of fact discovery and then produce all
13 relevant information on any storage device that's related to
14 Camp Lejeune water.

15 Your Honor, that presents a number of issues with --
16 including burden and relevance, but the way ESI is collected,
17 normally you would go and conduct interviews, you would grab
18 the information, agree upon search terms, and then we would
19 review and produce those documents.

20 Your Honor, they have suggested that we can just go
21 and grab these individuals' files, not knowing exactly how
22 they are defining what files are. And so we have -- and there
23 are problems with that because individuals who put files on
24 their computer, right, these people have been there for 10, 15
25 years, some of them, and some of them maybe have

1 overinclusive, including things that have nothing to do with
2 Camp Lejeune; maybe underinclusive because they saved
3 documents in numerous places. So additionally, these
4 custodians aren't the people who make those determinations.
5 So it presents a number of logistical problems for doing that.

6 On top of that, Your Honor, the suggestion that we
7 haven't done this or that we should have been looking for this
8 all along isn't quite accurate.

9 The way this has come up is that in depositions
10 prior there will be fact witnesses who will say I'm not aware
11 of my computer or my server being searched. And the truth is,
12 despite the agreements that we have reached with plaintiffs
13 prior, we do still have an obligation to conduct a reasonable
14 inquiry, that's our obligation. So we have done that by
15 actually conducting interviews and gathering responsive
16 information to their numerous requests. We worked with agency
17 counsel and have identified those.

18 Plaintiffs aren't really typically made aware of
19 that because that's really discovery on discovery. But the
20 suggestion that we haven't been doing that because of what
21 these fact witnesses are saying isn't really well-founded and
22 doesn't mean we're not meeting our obligations.

23 So we have agreed, Your Honor, that we are at the
24 point where we've exhausted the meet-and-confer process.

25 THE COURT: Okay.

1 MR. CROMWELL: We think the process, Your Honor --
2 and I think we reached some agreement with plaintiffs -- is
3 the proper way to proceed is to notice the deposition of these
4 individuals, which they did yesterday afternoon and evening,
5 that their depositions and we can see where we go from there,
6 but I don't want to speak on behalf of Mr. Bell.

7 THE COURT: So am I going to get a motion to compel,
8 or I guess -- I guess it doesn't matter. I guess a motion for
9 protective order or what?

10 MR. BELL: Yes, sir. Your Honor, I can't let this
11 go by when I personally as lead counsel withdrew our ESI
12 request because it was becoming something was going to take a
13 year to produce; it was going to be massive according to the
14 Government.

15 I did reserve the right, however, to be able to
16 target individuals and get their data, get their files, and
17 that was part of my agreement when I did that.

18 So we determined there are about 10, I thought there
19 were a little less, people who we think through other
20 discovery may have relevant testimony.

21 THE COURT: At this point these -- are these
22 plaintiffs?

23 MR. BELL: No, sir, Your Honor. They are Government
24 officials, most of them.

25 THE COURT: Is it germane to the 25 that are going

1 forward?

2 MR. BELL: We think so, Your Honor. But wouldn't be
3 specific to the 25; it would be specific to our general
4 causation, such as water modeling, things like that.

5 THE COURT: Okay.

6 MR. BELL: So this is the first we've heard that
7 they may have already done discovery inquiry of these
8 individuals. And if they would just tell us they've done that
9 and they've -- and all the relevant documents have been
10 produced, then that helps us get by this particular problem.
11 So that's the first I heard about that today.

12 THE COURT: Okay. So this is going to be a motion
13 to compel on 7?

14 MR. BELL: Yes, Your Honor.

15 THE COURT: Okay. Just go ahead and file it
16 whenever you're ready.

17 What else?

18 MR. BELL: Your Honor, just so the Court
19 remembers -- excuse me. My throat is kind of clogged up.

20 We are still waiting, and I'm not in any way trying
21 to be disparaging, but the Government has still -- is still
22 conducting or still producing materials. We've got a major
23 set of materials last week and we've been told they are pretty
24 close to completing that.

25 But in reviewing the status conference, what they

1 said in the past is that they would complete discovery by the
2 end of discovery, but now they are saying in due time. And we
3 are concerned that if the Government goes over the deadline,
4 which I kind of anticipate they may have to. I'm not -- I'm
5 not fussing about that, but we've got to have those materials
6 so that our experts can have them to review.

7 So I'm a little concerned that if they go past the
8 deadline. We tried to build in that time in our proposed
9 order so we'd have time to review the documents. And so I
10 just wanted to bring that to the Court's attention.

11 THE COURT: What is it? What's outstanding?

12 MR. BELL: Health studies mostly, Your Honor. It
13 goes directly to the illnesses that are part of Track 1.

14 THE COURT: Okay.

15 MR. BELL: Most of the ATSDR.

16 THE COURT: Is it the health effects?

17 MR. BELL: The 2017 and the 2024 both have relevant
18 documents in there.

19 THE COURT: All right. Mr. Cromwell.

20 MR. CROMWELL: Thank you, Your Honor.

21 Yes. As you may recall, we've been producing
22 documents related to ATSDR's water modeling project as well as
23 ATSDR health effect studies. The water modeling documents
24 have been entirely produced. The safer documents we had
25 originally withheld for privilege review.

1 THE COURT: What documents?

2 MR. CROMWELL: The water modeling.

3 THE COURT: Those have been produced? Then you said
4 something.

5 MR. CROMWELL: Safe or any that were withheld for
6 privilege review.

7 THE COURT: I see.

8 MR. CROMWELL: My apologies. That privilege review
9 has been performed. We are producing -- or produced the log
10 late last night, so we'll produce any of the documents that
11 weren't withheld from that review shortly, Your Honor, should
12 be this week.

13 The other project, the health effect studies, we
14 have basically completed the entire production of those as
15 well. Again, we have withheld certain documents for
16 privilege. From a legal standpoint, attorney work product, et
17 cetera, I think that number is less than 12.

18 There are a larger set of documents in those that
19 relate to statutory issues and contract issues that if you
20 want further, I can have a colleague speak to, but those are
21 the two and they have been primarily produced at this point.

22 Your Honor, the parties I think both are working
23 hard to produce all the documents that each side has
24 requested. Just last night or this morning we received 25,000
25 pages from plaintiffs as well. I don't think this is a

1 single-sided issue. So I do think both parties are making
2 effort to be done by the end of fact discovery.

3 THE COURT: We've got what, three, four weeks left?
4 I want to get as much as we can out by 8/11. I understand
5 there may be some residual issues, but I don't want to let
6 that be an excuse not to get it all in.

7 And we've got this order in D.C. that may come down
8 here so there may be some lingering issues to resolve after
9 8/11, but I want to get as much out because it just backs up
10 other deadlines and that's something we should avoid.

11 MR. CROMWELL: I understand, Your Honor. And that's
12 the Government's position as well.

13 THE COURT: All right. What's next?

14 MR. BELL: Your Honor, we got privilege logs last
15 night. We haven't had a chance to review them yet. And I'm
16 sure we'll have a meet-and-confer on those quickly. In the
17 event we can't agree, maybe we can go ahead and get your
18 permission to file a motion.

19 THE COURT: Go ahead, yeah.

20 MR. BELL: Judge, this is not an issue in dispute,
21 but you recall the Government resisted the production of state
22 registry, cancer registry databases.

23 THE COURT: Right.

24 MR. BELL: And we accepted their reason because they
25 had contractual issues with the states that they wouldn't

1 share that data. We recognize that. They've also agreed,
2 Your Honor, to take our data and search, kind of match up
3 those two databases.

4 We're trying our best, Your Honor, to get all of the
5 clients that are part of the plaintiffs' group together. It
6 is a process, as you can imagine. We're having to get over a
7 thousand law firms in the country to put their data into our
8 databases. A lot of the law firms have to be taught how to
9 transfer that data and it's a little bit of a process so...

10 THE COURT: Why is that being done when we just have
11 25 going forward right now?

12 MR. BELL: Your Honor, excuse me, again. We believe
13 that the cancer incident study did not pick up all of the
14 cancer cases. We have examples of that.

15 So once we learned that it didn't pick up all of the
16 cancers, we started wondering how many did it miss. And
17 according to our internal evaluation, that number could be
18 very significant.

19 So you can imagine if you're comparing a study with
20 people who had no exposure and people who were exposed to Camp
21 Lejeune, you had X number of cancers at Camp Lejeune, if that
22 X was 2X, then it's a huge issue and it benefits the
23 plaintiffs greatly. So we're anticipating getting our -- as
24 many of the plaintiffs cancer cases together, giving them to
25 the Government. We hope to have our group together in the

1 next 30 days, but it may be we'll have to ask them for that
2 analysis. It won't hold up anything else, but I'm informing
3 the Court we're doing the best we can to get all of these law
4 firms around the country.

5 We've asked counsel for the names and contact
6 numbers for all of the -- contact information for all of the
7 lawyers, but they indicate their database isn't set up to do
8 that yet so we're having to take each individual, the Jones
9 Law Firm, Your Honor, you can imagine how many of those are
10 around the country, so we have a team working on that, but
11 it's a slow slug, if you will.

12 MS. PLATT: Elizabeth Platt on behalf of the United
13 States, Your Honor.

14 I want to take a step back on this issue. We were
15 in discussions with plaintiffs on this, but we never agreed as
16 to what those searches would be, and I believe this is the
17 first time we're hearing this is the entirety of the claims.
18 We were under the understanding that it was 25.

19 And part of the reason why we're still in those
20 discussions is that we don't understand what plaintiffs'
21 proposal is. We have asked them numerous times to explain to
22 us exactly what databases they want us to search, what
23 information they want out of that, and they have not provided
24 us with any further information on this proposal.

25 Part of the reason why we need that proposal -- and

1 we've communicated this to plaintiffs -- is that the idea of
2 searching all of these databases is, first of all, extremely
3 burdensome on the ATSDR. There are 52-plus state registries
4 that they have to manually search and it would be a very undue
5 burden on the agency when they are already producing so much
6 other stuff in this litigation.

7 And beyond that, the ATSDR has these agreements with
8 the states that they entered into to get this cancer registry
9 information. They signed contracts with them, data use
10 agreements and those data use agreements require the ATSDR to
11 provide the states with notification in which when they are
12 going to disclose this and get the state's permission. That
13 would require a huge lift on the agency to reach out to every
14 state and every jurisdiction that provided that data.

15 MR. BELL: So, Your Honor, the single most important
16 thing in this case the Government is now telling the Court
17 today for the first time we may not let them look at our
18 databases, the same ones four times ago they said, Your Honor,
19 we have these databases we don't want to give the plaintiffs
20 because we're under contract. But yet this has critical
21 information they're now saying we're not sure if we can do
22 that. Something is amiss here, Judge. This is not right.

23 We had a clear understanding with the Government, we
24 would give them our information that had nothing to do with
25 the 25, had everything to do with our plaintiffs' database,

1 our plaintiffs' clients. And I have asked at every Friday
2 1:00 o'clock meeting that I needed to know what information
3 the databases had. What can we search? And on -- so I have a
4 big dispute on what Ms. Platt just told the Court.

5 They are now saying in essence, Judge, we're not
6 sure we can do it Judge, it's a burden. We didn't cause this
7 problem. We didn't cause the problem at Camp Lejeune. We
8 didn't delay telling people. We didn't wait 40 years for
9 people to learn this. These people out there have a right to
10 know was my name in that database and was it counted in a
11 study that the Government is going to use against me when I go
12 to court.

13 This is the fundamental question we have in this
14 case: Did you do the study right? Did you pick up everybody?
15 This study goes through 2017, Judge.

16 THE COURT: When did it start?

17 MR. BELL: Well, the first one was they picked up
18 data, cancer data through 2012 or '13. The 2024 study, which
19 came out six months ago, whatever, that went through -- cancer
20 through 2017. So anyone who was diagnosed after '17, of
21 course, is not in the study; anyone diagnosed before 1996 is
22 not in the study, or either of the studies.

23 So either they -- I mean, Judge, we've got a pretty
24 strong protective order. Give us the databases. We'll do the
25 search. It'll take us a day. Once we set those databases up,

1 we can search them in a minute, but they won't give us the
2 databases. So we said, okay. If you're not going to give us
3 the databases at least let us -- at least y'all do the search
4 for us.

5 Now for the first time, the first time, we're
6 hearing, Oh, we got to contact the states. We got to get
7 their permission. This isn't right.

8 THE COURT: I thought I heard that months ago.

9 MR. BELL: Not that they had to contact the states,
10 and this is a big burden.

11 THE COURT: So this is not limited to just the 25.
12 Why can't y'all just all limit it to the 25?

13 MR. BELL: Judge, remember, our experts -- we have
14 epidemiological experts. And let's say, for example, the
15 cancer incident study for 2024 says there are 100 bladder
16 cancers in our data, let's say, for example, that hundred is
17 barely making the grade; but if they missed another hundred,
18 all of a sudden, we have equipoise and above. We don't have
19 just plain equipoise. It's a huge issue, Judge.

20 Epidemiological results are clearly dependent on
21 what your cohorts are in your study. And we have thousands of
22 people that have bladder cancer, we have thousands of people
23 who have kidney cancer; and we need to know whether they were
24 picked up or not. They had this Government study they plan on
25 using and now they won't let us check to see if our data is in

1 that study.

2 THE COURT: All right. I guess put a motion to the
3 Court and we'll take it up.

4 MR. BELL: All right, Judge.

5 THE COURT: All right. What's next?

6 MR. BELL: Your Honor, the National Academy of
7 Science, we need to probably ask the Court to schedule a date
8 for the hearing.

9 THE COURT: What hearing?

10 MR. BELL: Well, the Court has transferred -- I
11 wrote the Court a note last week --

12 THE COURT: I know. We haven't received it yet, so
13 we'll address it whenever it comes here.

14 MR. BELL: Very well, Judge.

15 THE COURT: All right. Anything else?

16 MR. BELL: That's all, Your Honor.

17 THE COURT: Mr. Bain?

18 MR. BAIN: The only thing I want to mention, Your
19 Honor, is we're trying to get some forms from the plaintiffs
20 regarding their earnings history which involves going to the
21 Social Security Administration, the IRS and getting -- making
22 sure we have the proper forms filled out to get that
23 information for our damages' experts.

24 THE COURT: These are forms that the plaintiffs
25 complete to submit to the agencies to get that information?

1 MR. BAIN: That's right. And the agencies are very
2 particular about how the forms are filled in. And we've
3 discussed this with plaintiffs, and they have agreed, at least
4 the last time we discussed it with them, to have the 25
5 plaintiffs in Track 1 fill those forms out. So I just wanted
6 to alert the Court that we're working on --

7 THE COURT: Y'all are limiting some discovery to the
8 25, though, going forward, right?

9 MR. BAIN: For this, yes.

10 THE COURT: It just sounds like a lot of what you're
11 talking about is as if we never limited it to the 25 at all
12 which --

13 MR. BAIN: So I just wanted to alert --

14 THE COURT: -- is frustrating.

15 MR. BAIN: -- the Court we're working through
16 getting those forms and we'll get them to plaintiffs as soon
17 as we get the agencies to agree that those are the proper
18 problem forms that we need.

19 THE COURT: What's the status on stipulations
20 between the parties?

21 MR. BAIN: We have a meeting scheduled for Friday on
22 stipulations. We have a set of proposals to how we do the
23 data with the stipulations. We had a meeting last month and
24 talked about the type of things we think we can stipulate to
25 with respect to data, when wells were put in operation and

1 when wells were taken out of operation. We talked about
2 perhaps agreeing on a map. The plaintiffs disclosed to us
3 they've been working on a map and we think that will be useful
4 for the Court if we can agree to a map with certain
5 information on it.

6 THE COURT: What would that map have on it?

7 MR. BAIN: I think it would have things like well
8 locations, dates when wells were in operation, water supply
9 systems, different areas of the base that were supplied water
10 at different points in time from different systems, different
11 housing areas when they were present at the base, things like
12 that.

13 MR. BELL: Judge, we have -- I hesitate to say
14 hundreds, but we have -- may have hundreds of maps that were
15 produced by the Government in the ATSDR study. We can track,
16 Your Honor, from 1953 to 1987 the buildup of the base. We can
17 show the Court already where the wells were, where the water
18 pipes were, where the buildings were, when they were built,
19 what year they were built in, whether they had water fountains
20 in those buildings. We can show all that already, but it
21 comes from what's produced to us by the Government. We aren't
22 making anything -- we aren't doing original maps. So I don't
23 understand the idea that we need to agree to a map. This may
24 take dozens and dozens of maps. Each year has a different
25 map. Each year has different wells being drilled.

1 So our plan is to have a presentation for the Court
2 showing that historical timeline, showing the different maps
3 as we go through so the Court can understand where those wells
4 are, when were they turned on, when were they turned off, what
5 kind of contamination did they have. We have all that data.

6 THE COURT: If you have a group of 25 plaintiffs,
7 none of whom was there in 1947, why would you be arguing about
8 maps from 1947?

9 MR. BELL: Oh, I agree with that, Judge. So all of
10 our 25 will be able to have something for when they were
11 there. All I'm saying is we have the data for all 33 years.

12 THE COURT: Mr. Dowling.

13 MR. DOWLING: Judge, because I've been somewhat
14 involved, I did want to alert the Court so the Court can fully
15 understand where the parties are on this from our perspective.

16 When we had the meet-and-confer last time, we
17 understood the Government's position to be that the
18 stipulations that they would likely be willing to achieve are
19 going to be narrower unfortunately than what we had hoped for
20 and specifically that they would really be relegated to the
21 actual well readings after 1980 or '82. So a number with the
22 well reading and then potentially maps. And that as I
23 understand DOJ's concern, they are not inclined necessarily to
24 agree to any kind of foundational or narrative facts. They
25 want the opportunity, as is their right, to essentially

1 present the background and narrative in their own voice.

2 So I do want the Court to understand we are trying
3 in good faith to expand the kinds of things we stipulate to,
4 but ultimately it is appearing as though we are tracking
5 toward a very narrow scope of stipulations in this case.

6 I've told Mr. Bain and Mr. Bu, my counterpart, that
7 we're holding out hope that we can expand it beyond that; but
8 as I stand here right now, that's where we understand the
9 Government is likely going to wind up on stipulations is the
10 actual readings from 1980 essentially onward and maybe some
11 maps, any of the historical water modeling, anything before
12 that...

13 THE COURT: Why is the historical water modeling
14 relevant?

15 MR. DOWLING: Well, we may have --

16 THE COURT: If this is about what happened in 1925
17 or 1930, if no one's around, no one was around then, why does
18 the Court need to know about that?

19 MR. DOWLING: Even the 25, there are people that
20 were there before 1980 where there weren't water samplings,
21 it's all historical water modeling that is going to form the
22 foundation for their exposure analysis. And so as I
23 understand, the Government's not willing to stipulate to that.
24 I think the Court has even acknowledged that in the order.

25 I just wanted the Court to understand, we're hopeful

1 there will be a broad scope of stipulations. It seems to make
2 a lot of sense, it seems like it would save a lot of money,
3 time, and resources and court time, but I think it's going to
4 be pretty narrow.

5 MR. BAIN: I would just address -- I think it's a
6 little broader than Mr. Dowling said. We would be willing to
7 stipulate as to when certain systems were in operation and
8 when they served certain parts of the base and things like
9 that; but as far as making attempts to come to a narrative, we
10 did try that at first but the plaintiffs wouldn't agree to
11 things that we thought were, you know, apparent that were in
12 reports. And then when they sent us their stipulations which
13 tried to frame the narrative in a certain way that was, we
14 thought, taking things out of context and prejudicial or else
15 we wouldn't agree to that.

16 THE COURT: Sure. Well, have y'all agreed to any
17 stipulations?

18 MR. DOWLING: I think there are a handful. It's not
19 very many. As I said, we're trying and we're talking, but I
20 did want to give the Court a candid assessment of where things
21 stand.

22 THE COURT: Thank you. Okay. Next meeting date.
23 How about Tuesday August the 6th?

24 MR. BELL: Is that three weeks, Your Honor?

25 THE COURT: Yes, sir.

1 MR. BELL: Good with us, Your Honor.

2 THE COURT: Mr. Bain?

3 MR. BAIN: That's fine, Your Honor.

4 THE COURT: Okay. Is 11:00 a.m. good with folks?

5 MR. BELL: Yes, Your Honor.

6 THE COURT: Okay. 11:00 a.m. Tuesday, August the
7 6th. Okay.

8 So going forward after today, y'all will confer and
9 submit to the Court perhaps a modified notice fleshed out with
10 the things we discussed today.

11 MR. BELL: Yes, Your Honor.

12 MR. BAIN: Just so it's clear, Your Honor, you'd
13 like a modified proposal which includes discovery of all
14 experts?

15 THE COURT: Yeah. In the discovery period of your
16 experts, of your expert discovery of all your experts.

17 MR. BAIN: Okay. And is there a certain date you'd
18 like that by, Your Honor?

19 THE COURT: No. I mean, a week.

20 MR. FLYNN: Your Honor, if I may. Just one thing on
21 the water and the experts, it all kind of ties in with the
22 stipulations. I hear your point which is well-taken that
23 we're talking about 25, so I think that's part of the
24 confusion or perhaps confusion, I don't know how to
25 characterize it, about what the water modeling day is. Is it

1 a historical reconstruction, go back to 1953 to 1987 about
2 water --

3 THE COURT: Well, you got a story to tell about the
4 water apparently. Mr. Dowling said is that there's some dates
5 outside when these folks were exposed. There's some dates
6 outside that are relevant because the water was moving, I
7 guess. And so you've got a story to tell about where the
8 water was when, right?

9 MR. FLYNN: Yes, Your Honor.

10 THE COURT: So if Lance Corporal Smith is at Tarawa
11 Terrace and the water began further upstream, you got to tell
12 a story of when the water was when and how it got to lance
13 corporal.

14 MR. FLYNN: Yes, Your Honor. I just wanted to
15 clarify. It's sort of the ambiguity that I think both parties
16 were trying to understand is that is it that or are you trying
17 to look for specific 1963 for Lance Corporal Smith? So it
18 sounds like it's the more general water modeling structure.

19 THE COURT: Well, I think it's a little frustration
20 from the bench. I mean, I heard earlier, not today, but
21 months ago in a status conference of the desire by the
22 plaintiffs to tell a holistic story about Camp Lejeune, when
23 it started and how it started. I don't know that that's
24 directly relevant to the issues that the Court needs to hear
25 at trial in this case.

1 That being said, I can see, just from what you've
2 told me, what I've come to understand, that there seems to be
3 some relevance as to where the water was that may not be
4 around the time that folks were actually exposed. You got to
5 show how did water get from one area of the base to the other,
6 and that presumably happens over a longer period of time.

7 MR. FLYNN: Yes, Your Honor. That's right. So I
8 think that's what we're talking about.

9 And also we're approaching this through the prism of
10 not just the 25, but also the global implications of it. I
11 don't -- I suspect, I don't want to assume, that the Court
12 probably wouldn't have a water day for each track, each
13 subsequent track, right? If it's the Court's intent to have
14 one water day that establishes certain things, then that's a
15 different presentation than something that is for the 25 at
16 each track, or 20, however many it is.

17 THE COURT: Yeah.

18 MR. FLYNN: All right. And that's sort of, I think,
19 goes to the general causation issues as well, right?

20 So it's -- you know, we're kind of looking at this
21 through the prism of, yes, it's 25 people, absolutely, and
22 that's where certain discovery is very targeted to. But on
23 the other hand, it's kind of the global, more general idea of
24 resolution for the 99 percent of folks that are going to be in
25 resolution and never in trial. So I think that's the tension

1 that you're seeing.

2 THE COURT: No. These models I presume, the models
3 you're talking about would be relevant to the 25.

4 MR. FLYNN: Yes, Your Honor.

5 THE COURT: But also relevant to others who are not
6 in that 25.

7 MR. FLYNN: Exactly. And that's why, you know, I
8 think to the extent the Court can share any guidance on how it
9 would like us to, you know, take in information at the water
10 day, what it's looking for, are there specific questions; how
11 long would the hearing be, you know, all of that kind of
12 concept, it's -- it would be helpful for all -- for the
13 parties I think in structuring the process.

14 THE COURT: Well, it may be helpful. I don't
15 presume to know what a water modeling -- what a water model
16 even looks like. So it may be helpful for y'all at some point
17 to educate the Court on what exactly that is.

18 MR. FLYNN: Yes, Your Honor.

19 MR. BELL: Judge, to --

20 THE COURT: And my point of -- I'm just -- I'm
21 trying to discern, you know, we're here talking about
22 discovery disputes. I'm trying to discern how much of these
23 disputes are about the general discovery that y'all have done
24 versus the target discovery that you can't be doing on the 25
25 that are going forward to trial.

1 If there's a way, if there's a reasonable way to, in
2 those cases that have been stayed, to park the discovery
3 disputes, take those up at a later date if they need to be
4 taken up at all, and focus -- like the state registry data,
5 focus perhaps on the 25 that you need right now.

6 MR. FLYNN: Understood, Your Honor. And with the
7 cancer, I think part of it is that, yes, there's a desire for
8 the 25 that you need right now. The general causation though
9 inherently rests on a much broader scope.

10 THE COURT: Sure, that's right. It does. So that's
11 the tension there. All right.

12 MR. BELL: One point, Your Honor, so there's no
13 confusion. We initially believed that the water modeling in
14 the 2017 report was not going to be challenged. We, as
15 plaintiffs, believed that it's a very adequate, very
16 sufficient, very good model. If that particular report in the
17 modeling was affirmed, we could get this water modeling day
18 done quickly because that report says what was there every
19 day. I mean, it gives you exact dates of when things were
20 there and what was the exposure. We, in fact, have an
21 exposure model we developed using that model, using that data.
22 But then when we heard the Government doesn't like their
23 report and is going to challenge that report, that's why we're
24 where we are. Not because of something we've done. We like
25 the 2017. That's why the statute was written, it was written

1 based on that report. And now the Government is saying, Well,
2 that was our report, but we're going to challenge our own
3 science. That's what's getting ready to happen.

4 MR. BAIN: I can't let that go, Your Honor. That's
5 not necessarily accurate about how we're going to approach the
6 model.

7 We're looking at the model from the point of view
8 from the statute that was passed and the requirement or the
9 burden that's based on plaintiff to prove and what is the
10 context that that model should be used in, and there are
11 certain circumstances where the model may show what the
12 exposure was of a particular plaintiff, but there are other
13 circumstances where our expert tells us, no, that's not
14 necessarily what the exposure was for that individual, it was
15 there at another particular point in time.

16 MR. BELL: There you go.

17 THE COURT: Isn't there a disconnect between the
18 statute and the model as far as the time period? I haven't
19 looked at it in a while, but one speaks of 30 days, the other
20 speaks of -- is it three years?

21 MR. BELL: The model uses an exposure number of 30
22 days. So basically the statute says if you were there 30
23 days, our position is you're presumed to have been exposed.
24 Now the amount of exposure is where we get that from the ATSDR
25 model.

1 THE COURT: Right.

2 MR. BELL: Now, some of the wells, if not most of
3 them, were actually turned off in '85. There were some that
4 still had benzene in them until 1987. So there's a little bit
5 of a -- the dates in the statute reflect the '87, but other
6 contaminations in some wells were taken out in '85.

7 For example, if you were there after '85, you may
8 not have been exposed to the chemical that caused your
9 disease.

10 THE COURT: Okay. Anything else?

11 MR. BELL: No, Your Honor.

12 MR. BAIN: No, Your Honor.

13 THE COURT: All right. Thank you very much.

14 * * *

15 (The proceedings concluded at 11:55 a.m.)
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1 UNITED STATE 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,
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11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is
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17 Dated this 17th day of July, 2024.

18
19 *Amy M. Condon*

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