

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

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In Re:

CAMP LEJEUNE WATER LITIGATION

7:23-CV-897

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TUESDAY, AUGUST 27, 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, Matthew Quinn

Via Telephone:

William Michael Dowling

On Behalf of the Defendant:

John Adam Bain, David Ortiz, Sara Mirsky, Leah Wolfe

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

1 (Tuesday, August 27th, 2024, commencing at 11:00 a.m.)

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

3 THE COURT: Good morning, everyone.

4 Okay. Let's start as we usually do with summary of  
5 what is pending. I think I've got those here.

6 The first thing that is ripe I believe is the  
7 plaintiffs' Motion to Compel Seventh Set of Document Requests.  
8 Is that right?

9 MR. QUINN: Good morning, Your Honor. Matthew Quinn  
10 with the Plaintiffs' Leadership Group. Yes, that is correct.  
11 That motion is pending. It's been fully briefed. And I  
12 believe it's ripe.

13 THE COURT: I got that, and I expect to be issuing  
14 an order soon on that.

15 The others are, I believe, the plaintiffs -- or the  
16 Track 2 proposals from folks. The plaintiffs' motion for  
17 partial summary judgment on a legal representative procedure.  
18 I think that's right.

19 MR. BELL: Yes, Your Honor.

20 THE COURT: And then the respective proposals  
21 regarding pretrial scheduling orders for certain Track 1  
22 issues; is that right?

23 MR. BELL: Yes, Your Honor.

24 MR. BAIN: Your Honor, I think that last issue has  
25 been resolved.

1 THE COURT: Do you have -- I've got Docket Entry 261  
2 and 262. Are we talking about the same thing?

3 MR. BAIN: Yeah. I think that Your Honor issued an  
4 order on that.

5 THE COURT: Fantastic.

6 MR. BAIN: And then asked us to address the elements  
7 in a proposed proof, which we did --

8 THE COURT: And that's what you got in the --

9 MR. BAIN: Yeah.

10 THE COURT: -- in this task report.

11 All right. Let's move to stipulations. Is there an  
12 update on any stipulations?

13 MR. BAIN: So, Your Honor, we have been  
14 communicating back and forth on stipulations. We sent a  
15 proposal with some procedures for stipulations and asked for a  
16 meeting before the end of the month since we're required to  
17 meet and confer every month. We're waiting for the  
18 plaintiffs' response to that.

19 We did get an e-mail late yesterday saying another  
20 person on the plaintiffs' side has been added to their  
21 stipulation team and needs to be consulted, but we hope to set  
22 up a meeting before the end of this week.

23 THE COURT: Are there any regarding the water  
24 contamination phase, do you know?

25 MR. BAIN: Well, we're proposing some, and I think

1 we'll be able to reach an agreement on the detected  
2 contaminants from certain tests of the wells in the mid '80s.  
3 And I also think we'll likely be able to reach agreement on  
4 when certain wells were in operation at the base which will be  
5 significant for the first phase of the case.

6 THE COURT: Right. Okay.

7 Mr. Bell, if you would, I guess, sort of hit the  
8 highlights of the parties' status reports regarding the  
9 elements of a CLJA claim as well as the general framework for  
10 trial.

11 MR. BELL: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. BELL: The first part about that, the  
14 highlights, Your Honor, has to do with our assumption or some  
15 guidance from the Court that the water modeling issue would be  
16 an en banc hearing.

17 One of the questions we have, Your Honor, is water  
18 modeling is just a part of the overall exposure, if you will.  
19 In other words, people get exposed in addition to just  
20 drinking the water. They have other pathways of exposure. So  
21 we're going forward under the assumption that the Court really  
22 wants to know how people got exposed.

23 THE COURT: You're talking about what -- I guess  
24 from the vantage point of what you mean by exposure, what was  
25 in the water at a certain period of time?

1 MR. BELL: Right. But then how did the individual  
2 get exposed?

3 So there's actually a model put out by ATSDR, bath  
4 and shower model where you can model how much inhalation  
5 someone gets from the water particles in a shower.

6 THE COURT: But that part -- I think that part of  
7 it, the showering or individual exposure, that would be in the  
8 individual trial?

9 MR. BELL: Well, it -- if the Court wanted to hear  
10 it once and not have to hear it 25 times, PLG thinks it would  
11 be a better way to at least not necessarily with the numbers  
12 but the explanation of how that exposure occurs.

13 So we got in this week or maybe end of last week  
14 diagrams, if you will, of mess halls, and there's a lot of  
15 steam that comes up from the food and the way they deliver the  
16 food, well, that steam puts the same particles in the air.  
17 And the model actually says that you get about two to  
18 two-and-a-half times of the exposure from inhalation than you  
19 do from drinking the water. So it's a pretty powerful pathway  
20 for the exposure.

21 THE COURT: So the first, the first phase, the water  
22 contamination phase, or what you said is the exposure phase,  
23 of what was in the water when would be what you're talking  
24 about the steam in the mess hall; and then in the individual  
25 phase, you would talk about how this particular plaintiff was

1 in that mess hall at that particular time when that water or  
2 steam that's been established of having these contaminants in  
3 it was actually individually exposed to the water, correct?

4 MR. BELL: Correct, Your Honor.

5 But there is a large cohort of people that can't  
6 remember exactly because it's been 30 and 40 years, some have  
7 died so that testimony is lost, so we have -- we are putting  
8 together a life cycle model for the Court. And this will show  
9 how people matriculate around the campus, how the general  
10 population were exposed and how they -- restaurants and  
11 football games and things like that, just to show the Court  
12 that it's not just the drinking water from the tap and the  
13 sink at their house.

14 I didn't -- I didn't know this before, but there's  
15 an unbelievable amount of exposures we have, whether it's  
16 drinking coffee in the morning at the mess hall or out on the  
17 field or drinking water, of course, through the canteens. So  
18 there's a multiple pathway of exposure. And we'll try to  
19 explain that to the Court so when we do get to the specific  
20 causation, it won't be something we have to do over and over  
21 again. That's our plan, anyway.

22 MR. BAIN: Your Honor, that's a little different  
23 than what I understood that we were going to -- we understood  
24 that the water contamination phase was just going to determine  
25 what the levels of contaminants were in the water

1 historically. And the plaintiffs actually proposed footnote  
2 one in the status order, which we agreed with, which say, "The  
3 parties contend that the question of what chemicals were  
4 present in the water at Camp Lejeune between '53 and '87 is  
5 distinct from the question of how individuals were exposed,  
6 inhalation, ingestion, dermally, or otherwise to those  
7 chemicals over time. The parties believe that the latter  
8 issue, how individuals were exposed to the chemicals over  
9 time, is more appropriately and efficiently addressed in  
10 connection with individual plaintiff cases and therefore  
11 should be deferred to the residual expert phase."

12 MR. BELL: We don't disagree with that, Your Honor,  
13 but there's got to be some -- I mean, it's so inefficient to  
14 have to do -- we're talking about a general explanation. Not  
15 something that -- you know, like, how many molecules are over  
16 here and things. We're talking about generally trying to  
17 explain to the Court the method of how people are exposed.

18 I think that's part of what we're trying to do with  
19 the water modeling is how many chemicals were there, what time  
20 were they there, how did those chemicals then get into a  
21 person's body or however they --

22 THE COURT: And the next piece of that would be the  
23 individual trial, the actual person --

24 MR. BELL: That's correct.

25 THE COURT: -- in whose body these chemicals got

1 into?

2 MR. BELL: Now, we could do it any way the Court  
3 directs us to. All I'm saying is we would be prepared to do  
4 that if the Court would like to have that heard en banc.

5 THE COURT: All right. What's the other piece of  
6 it?

7 MR. BELL: Well, that's the first part, Your Honor.

8 But one of the questions we have -- again, these are  
9 just assumptions because we don't have direct guidance from  
10 the Court. After the water modeling day, if you will, is  
11 heard and the Court -- is the Court going to make findings or  
12 is the Court really there to understand about what happened?  
13 Because if the Court is going to make findings, we need to  
14 probably be concerned about our specific experts, specific  
15 causation experts making -- doing their reports without  
16 knowing what the findings of the Court are. So that's another  
17 tricky issue if we have a water modeling presentation and the  
18 Government does theirs. If there's a dispute over certain  
19 things, our experts need to know which way the Court is going  
20 to rule. So that's a timing issue I want to bring up to the  
21 Court. I'm not sure we can decide that today. I do want to  
22 put that in front of the Court.

23 THE COURT: I think the plan was to have that water  
24 contamination phase hearing and then for the Court to issue  
25 some findings on that and then move on to the next one.



1 MR. BELL: All right. We just wanted to let you  
2 know that --

3 THE COURT: And y'all have submitted proposals,  
4 right, for the disclosure and discovery of experts and  
5 briefing, correct?

6 MR. BAIN: That's the proposals that we put in the  
7 status report that these two phases, the water contamination  
8 phase and the general causation phase, are threshold issues  
9 that need to be decided before going to the individual cases.

10 THE COURT: Right.

11 MR. BELL: And maybe Mr. Bain said it better than I.  
12 Being a threshold issue that may be relied upon by our experts  
13 later, we may need to have that determined first.

14 THE COURT: Uhm-uhm.

15 There was a paragraph in the report where you  
16 indicate the parties have not reached any further agreement on  
17 the scope quantum, nature or means required to prove the  
18 elements of a claim under the CLJA and reserve -- parties  
19 reserve the right to offer and argue such matters in the court  
20 of these proceedings. I'm just curious what that would be.

21 MR. BELL: We have different classes or cohorts of  
22 plaintiffs, Your Honor. I mentioned one a minute ago. I  
23 don't know where grandpa was when he was at Camp Lejeune; I  
24 don't know his exposure. So that particular individual may  
25 need an expert to talk about the average or the general

1 population, how they went about getting around the base and  
2 how they were generally exposed.

3           We expect, Your Honor -- and the EPA puts out a lot  
4 of data of how much someone normally drinks in a day. We know  
5 how much water the Marines in training are required to drink,  
6 then the other people, the children, the nonmilitary  
7 dependents are there. So there is a -- we don't think we  
8 could say right now what that method would be because we have  
9 so many different exposure models. That's the concern we  
10 have.

11           THE COURT: And these are -- these are just the 25,  
12 right?

13           MR. BELL: That's correct.

14           THE COURT: Okay.

15           MR. BELL: Once we get a little deeper into it,  
16 Judge, we probably can come to a better understanding of how  
17 we need to present it.

18           I don't think it -- I mean, Judge, if we're able to  
19 get to the agreement on the numbers, the testing, and things  
20 like that, really the only thing left is whether we agree on  
21 the modeling, on the retrospect of modeling. So I think  
22 that's where the rub would be, the water modeling  
23 presentation.

24           THE COURT: All right.

25           Mr. Bain, anything?

1 MR. BAIN: Yes. I think one of the other issues  
2 that might come up is on the general causation phase. We  
3 believe that general causation also incorporates what the  
4 levels of contamination are. So that the question is are the  
5 levels sufficient to cause the disease. So not just if it's  
6 capable at any level, at a very high level, but are the levels  
7 that were present at Camp Lejeune, are those sufficient to  
8 cause disease. So that might be an issue for the general  
9 causation phase.

10 THE COURT: Do you envision the Court making  
11 findings after looking at your evidence of -- during a certain  
12 time period at a certain location, the levels were X and that  
13 at that location at this other period of time, they were X  
14 plus 10?

15 MR. BELL: Right.

16 THE COURT: Things of that nature?

17 MR. BAIN: Then at those levels either the X or the  
18 X plus 10, are those levels sufficient, say, for a two-year  
19 exposure to cause a disease in any case.

20 THE COURT: And that would demonstrate both phases,  
21 right?

22 MR. BAIN: Uhm-uhm.

23 THE COURT: What's in the water phase contamination,  
24 phase one; and then the general causation, phase two, right?

25 MR. BAIN: Right.

1 MR. BELL: Judge, that's not how I read the previous  
2 directives and guidance by the Court. The Court had said  
3 specifically that general causation would be determined by the  
4 trial judge assigned to those cases. And so --

5 THE COURT: Right. I'm just saying that Mr. Bain's  
6 description --

7 MR. BELL: Eventually, yes.

8 THE COURT: -- encapsulates both phase one and phase  
9 two whether or not they are handled before all four or  
10 individual trial judges.

11 MR. BELL: If the Court is expecting us at our water  
12 modeling presentation to go into the minimum threshold, that  
13 is not a water modeling exercise. The water modelers don't  
14 make that determination.

15 MR. BAIN: Yeah. I agree with that. I think that  
16 the general causation phase will take what we learn or what  
17 the Court decided at the water contamination phase.

18 THE COURT: Of what's in the water.

19 MR. BAIN: Yeah.

20 MR. BELL: I just wanted to make sure that I didn't  
21 misunderstand what was required.

22 THE COURT: Well, y'all know what's in these models  
23 more than I do.

24 So it's in the causation phase, the Court having  
25 determined what was in the water when, right? It's in the

1 causation phase where they would be tiered?

2 MR. BELL: That particular period of time the  
3 plaintiff was there or any time when you're showing general  
4 causation that this particular chemical can be related to the  
5 disease.

6 Specific causation takes the individual information  
7 and says this can cause it. That's the way we look at it,  
8 Your Honor.

9 THE COURT: All right. Okay.

10 Well, on to my favorite topic. Discovery disputes.  
11 What's the status?

12 MR. BELL: Well, none of us have a black eye, Your  
13 Honor. I mean, we've learned how to disagree in a nice way,  
14 and I think we're making progress.

15 As you know, there's this ongoing discussion having  
16 to do with the Government not being able to give us access to  
17 the databases involving the 2024 study because they got these  
18 from the state cancer incidence groups. We met probably for  
19 the -- some date and time yesterday again and the Government  
20 has proposed a possible solution and we're looking at it and  
21 we're close, Your Honor. We're working on it.

22 THE COURT: Let's get specific then.

23 What's the status of the discovery regarding the  
24 National Academy of Sciences?

25 MR. BELL: That's another one on my list, Your

1 Honor. We talked to counsel yesterday?

2 MR. QUINN: Yesterday.

3 MR. BELL: And they have given us, in accordance  
4 with your order, their privilege log. We -- I don't want to  
5 argue the case. We think it's not adequate. We've asked for  
6 additional information. They said they'll try to get that to  
7 us.

8 We have indicated to them that if we can't reach an  
9 agreement, we're ready to go forward and argue some areas.

10 After looking at the privilege log, there are  
11 certain areas that we probably don't care about, but there are  
12 certain areas that we think are relevant.

13 So we would ask the Court in scheduling the next  
14 status conference, which normally do two weeks, but maybe we  
15 ought to do it for the third week away from here and go ahead  
16 and schedule that particular motion so we can give notice to  
17 NAC attorneys to be present for that status conference, unless  
18 the Court wants to rule without argument.

19 MR. BAIN: I would add, Your Honor, there is one  
20 witness both parties are waiting to depose until this issue  
21 gets resolved.

22 THE COURT: Right.

23 MR. BELL: Who is that?

24 MR. BAIN: Susan Martel.

25 MR. BELL: Okay.

1           THE COURT: Well, you're still trying to work this  
2 out with them, correct?

3           MR. BELL: Yes, Your Honor. But Martel deposition  
4 is critical to other things that are in the pipeline. So I  
5 would recommend, if it's all right for the Court for me to do  
6 so, if we talk again -- I think we can talk this week again --  
7 and if we can't agree that maybe we provide the Court a  
8 supplemental, short memorandum of what our position is and  
9 maybe the Court can hear it live or without argument.

10           THE COURT: Yeah, because I do want to hear from you  
11 and from NAS about whether there's anything else I need to  
12 know, whether the motion should be supplemented, whether I  
13 need to have a hearing, whether --

14           MR. BELL: There may be some new things now that  
15 we've seen the privilege log, Your Honor.

16           THE COURT: Right. Right. There may be fewer  
17 things you actually want. So maybe if you could -- I don't  
18 want to invite -- I don't want to invite an impasse, but if  
19 you've got this deposition that you're waiting to do when you  
20 reach the point where you think you have impassed, communicate  
21 that to court and I'm likely to hold a quick status conference  
22 with you and NAS on how we should proceed next.

23           MR. BELL: Thank you, Your Honor.

24           THE COURT: How about the economic damages?

25           MR. ORTIZ: Your Honor, David Ortiz.

1 THE COURT: These were fact sheets, right?

2 MR. ORTIZ: Correct, yes. The last one rolled in  
3 yesterday, I believe, so the individual attorneys are  
4 evaluating those for any required follow up or deficiencies,  
5 and I expect they'll do that in the near future.

6 THE COURT: Okay. I've got in my notes, status of  
7 30(b)(6) notice for status ATSDR or Rule 34 request for  
8 inspection related to cancer incident study. That's not Susan  
9 Martel, is it?

10 MR. BELL: No, sir. That's the one I discussed  
11 earlier that we're trying to -- Your Honor, we reached a  
12 tentative agreement on seven or eight or so questions of the  
13 30(b)(6) we're not disputing. It's the issue of getting  
14 information out of the databases. So we expect to learn  
15 something from the methodology we're looking into, and I  
16 believe we will be able to reach an agreement on all of that.  
17 If not, we'll let the Court know.

18 THE COURT: And then documents produced without --  
19 did you have follow up on that?

20 MR. BELL: No, Your Honor.

21 MR. BAIN: Did you want to follow up, Sara?

22 MS. MIRSKY: Sara Mirsky, Your Honor.

23 Yeah, I agree with Mr. Bell. We've been speaking  
24 about this and have made a proposal for a potential resolution  
25 of this and hope to continue speaking on this later this week.



1           THE COURT: Okay. And then I've got status of  
2 plaintiff documents produced without metadata. What's that  
3 all about?

4           MS. WOLFE: Yes, Your Honor. Leah Wolfe.

5           So we've been discussing with plaintiffs their  
6 productions to date, which so far have totaled over 340,000  
7 pages. Most -- all of those were produced with how --  
8 adequate and accurate source and custodial either coding or  
9 metadata. And there's a problem with that because there's  
10 also conglomerated documents, large PDFs numbering hundreds of  
11 pages where we can't tell where they originated, and we can't  
12 tell where one document starts and one ends. So we've raised  
13 this with PLG via a letter on August 2nd and we've been  
14 discussing with them since then a resolution.

15           They've committed to creating a corrected what we  
16 call a .dat file to give us that important source and  
17 custodial coding or metadata information so that we can  
18 understand, as we're reviewing these documents, where they  
19 came from, what they relate to. We have not received that.  
20 We received a partial correction that still had some  
21 deficiencies, and we haven't gotten a date for when that will  
22 be fully corrected.

23           The other part of this is as we've had these  
24 discussions, it's also become a little unclear the  
25 relationship of the Court order document repository to the

1 plaintiffs' written responses and document productions. So  
2 we're continuing to talk about what that relationship is and  
3 how it impacts the contents of what they have produced to us  
4 to date. Because originally what was represented to us was  
5 that all of this 340-some-odd-thousand pages only contained  
6 publicly available information or information that the  
7 Government itself previously produced. And then upon our last  
8 discussion last week, that representation has shifted a little  
9 bit, and it now appears that there may be, quote, unquote,  
10 "new" information in that set of productions.

11           So we're trying to work this out, get that important  
12 information so that we can sort of undertake a meaningful  
13 review of all of that data and then better assess how the  
14 document repository fits into everything.

15           So we're working on it. I think we're making  
16 progress, but we did want to flag that for the Court.

17           THE COURT: Okay. Thank you.

18           MR. QUINN: Good morning, Your Honor.

19           THE COURT: Yes, sir.

20           MR. QUINN: Matthew Quinn.

21           I agree. Actually, the parties have had a lot of  
22 constructive discussions about the topic of the plaintiffs'  
23 document production.

24           As a matter of fact, we've had multiple  
25 meet-and-confers about it, and I've exchanged a number of

1 e-mails last week. And I think that we can address a number  
2 of the issues raised a moment ago by counsel.

3 So the first thing deals with the load files. The  
4 good news is that our IT ESI consultants were able to create  
5 those load files last night. We anticipate being able to  
6 produce those this week. I'm tempted to say today, but I  
7 don't want to overcommit.

8 THE COURT: Are you saying load, L-O-A-D?

9 MR. QUINN: Yes, sir. The load files that counsel  
10 was speaking of a moment ago, we are going to be able to  
11 address that concern and provide those load files as requested  
12 this week.

13 THE COURT: What is a load file? Should I know what  
14 a load file is?

15 MR. QUINN: Well, it's an ESI concept and it's  
16 basically all of the electronic -- I'm oversimplifying this.

17 THE COURT: I appreciate that.

18 MR. QUINN: It's all the electronic files that go in  
19 so that you can click on it and all the data populates and all  
20 the metadata fields are populated and filled out.

21 So we produced some documents to the Government that  
22 did not have all of those load files, and we now addressed  
23 that issue. I will flag that it was over 300,000 pages of  
24 documents, so it was -- it took some time obviously to get  
25 that done. But it's something that we've been diligently

1 working on, and we're going to be able to address that this  
2 week, I think, hopefully to your satisfaction, I believe.

3 Another issue dealt with the PLG supplemental  
4 discovery responses. We provided last week some supplemental  
5 responses to request -- to request for production, and I think  
6 we did a pretty good job of accurately indicating which  
7 aspects of our document production are responsive to which  
8 discovery request.

9 The Government I think later last week flagged an  
10 issue about documents in the plaintiffs' document depository  
11 that were not specifically referenced in that supplementation.

12 My initial position is it's probably not necessary  
13 for us to do another supplementation and flag documents that  
14 the Government knows exists and that are being turned over;  
15 but nonetheless, we're going to do that, we're going to get  
16 that supplementation over to the Government to address that  
17 issue as well.

18 And then I think the final issue raised a moment  
19 ago -- and I could be corrected -- but I think the final issue  
20 raised a moment ago dealt with this document depository.

21 So what this is, is it's just a number of documents  
22 that the Plaintiffs' Leadership Group collected that are  
23 relevant to the issues in the civil action, the Court will  
24 recall. So the parties are going to get together and are  
25 going to discuss that matter, but I think the bottom line is I

1 think to address some of the concerns raised by the Government  
2 and some e-mails sent last week is that we are going to be  
3 providing an index of those documents and we're working on  
4 that right now. So anyway, that --

5 THE COURT: Is that helpful?

6 MS. WOLFE: I think that will be helpful.

7 In terms of the document depository and supplements,  
8 it's all sort of -- they are all sort of interrelated in our  
9 view. And what the United States would like to understand is  
10 what is the Venn diagram of what has been produced and does  
11 that overlap and how much does that overlap with what is in  
12 the depository. So if we can get this additional information  
13 in the form of the load files with that metadata so we can see  
14 the source and then a log or rest of what has so far been  
15 placed in the depository that will be helpful to us in  
16 understanding what, if any, overlap it so that we can continue  
17 these discussions. So we'll wait to review that and continue  
18 working on it.

19 THE COURT: Okay. All right.

20 That's all I had on my list. Do you guys want to  
21 bring up anything?

22 MR. BELL: Thank you for not asking me to explain a  
23 load file. I appreciate it.

24 MR. DOWLING: Your Honor, this is Mike Dowling on  
25 the phone. I just wanted to just briefly revisit the

1 stipulation issue for a minute, if you would be so inclined.

2 THE COURT: Sure.

3 MR. DOWLING: I did want to try to end on a positive  
4 note and point out to the Court that in the status report I do  
5 believe the parties achieved a stipulation on what we think is  
6 the first element of a CLJA claim, and that is that all of the  
7 25 plaintiffs are either an individual or the legal  
8 representative of an individual that spent at least 30 days at  
9 Camp Lejeune during relevant time period. So that threshold  
10 issue I think -- that threshold element will be stipulated to  
11 for each of the 25 trial plaintiffs.

12 And similarly, the Government has I believe --  
13 willing to stipulate that they've all properly exhausted as  
14 required by the FTCA, so I just wanted the Court to at least  
15 be aware of the progress that was made as to those 25  
16 plaintiffs, trial plaintiffs.

17 And also more broadly, Your Honor, I wanted the  
18 Court to be aware, in case it was not, that the master  
19 complaint contains 214 separately numbered paragraphs of  
20 allegations. By my count, there are dozens and dozens of  
21 admissions in the answer to the master complaint. That while  
22 we have asked the Government to stipulate to those things, for  
23 various reasons they don't wish to stipulate to them, but I  
24 don't believe there will be any problem with either the  
25 plaintiffs or the Court relying on those admissions in the

1 master complaint. So we do believe there will be grounds to  
2 narrow the issues and while those admissions are not formal  
3 stipulations, they, I think, will factor into the water  
4 contamination phase, the general causation phase, and also the  
5 remaining phases. And as I said, there are dozens and dozens  
6 of those admissions in the answer to the master complaint.

7 So I am optimistic that we are making progress in  
8 narrowing and focusing these cases and getting them ready for  
9 presentation to the court.

10 Thank you, Your Honor.

11 THE COURT: Mr. Bain.

12 MR. BAIN: Yes. I agree with what Mr. Dowling said,  
13 that we have recent agreement on stipulation as to the  
14 threshold issues in the Camp Lejeune Justice Act for the 25  
15 plaintiffs. He's also correct about the admissions in our  
16 answer to the complaint. The plaintiffs have also made some  
17 admissions to us in response to request for admissions. So I  
18 think we are making progress and narrowing the issues for  
19 trial.

20 THE COURT: So, Mr. Dowling, this stipulation will  
21 be -- will find its way into a pretrial order; is that right?

22 MR. DOWLING: Which stipulation, Your Honor, the  
23 ones referenced in the status report?

24 THE COURT: Yeah. Yeah.

25 MR. DOWLING: Those are specifically 25 trial

1 plaintiffs --

2 THE COURT: Correct.

3 MR. DOWLING: -- so I believe those are more  
4 appropriately entered into a pretrial order as opposed to --

5 THE COURT: Okay. So what does that do at a trial?  
6 What are you not going to have to show the court?

7 MR. DOWLING: So if you look at Docket Entry 277,  
8 Your Honor, where we have our agreed-upon elements, obviously  
9 the Court will decide what the elements are. There are three  
10 elements and it will relieve the plaintiffs of any burden of  
11 production or persuasion as to the first element.

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

13 MR. BAIN: Yes, that's correct.

14 THE COURT: Okay. All right. Anything else from  
15 the parties?

16 MR. QUINN: Well, one more brief honor for the  
17 plaintiffs, Your Honor.

18 During the beginning of the status conference you  
19 mentioned that the Court was going to be entering an order on  
20 the Motion to Compel Response to Seventh Request for Document  
21 Production and so it's not my intent to go into a bunch of  
22 stuff the Court --

23 THE COURT: You resolved it.

24 MR. QUINN: No, sir. Not quite. Not quite.

25 We did talk to the Government yesterday and made an



1 offer to reduce that list from 10 witnesses to I think we said  
2 to three to five and it doesn't sound like unfortunately  
3 that's going to work for the Government either. But the  
4 reason I'm standing up is not to dredge up something Your  
5 Honor didn't want to talk about; but in our motion we  
6 reference a deposition transcript that was not filed with  
7 Pacer. The reason it wasn't filed with Pacer is because under  
8 the protective order all deposition transcripts are  
9 automatically considered confidential for 30 days unless a  
10 confidentiality designation is made. So we were in that  
11 30-day window for the transcript.

12 If the Court would like, I can provide a copy of the  
13 excerpts that we quoted or that we discussed in our briefs if  
14 the Court would like, so I came prepared for that.

15 And then also just letting the Court know that after  
16 that motion was filed and briefed, we've had similar instances  
17 during depositions of the same types of documents being  
18 possessed by witnesses and have not been produced.

19 So if the Court would like, if that's relevant to  
20 the Court's deliberations we'd be happy to provide some sort  
21 of supplemental memorandum, if that would be helpful --

22 THE COURT: What would that be on?

23 MR. QUINN: For instance, there was a deposition  
24 recently of a witness named Chris Rennix.

25 THE COURT: So it's depositions that were not --

1 discovery not included in the motion?

2 MR. QUINN: Correct. Because at the time the motion  
3 was filed, those depositions had not yet taken place.

4 THE COURT: Right. Right.

5 MR. QUINN: For instance, on August 22nd there was  
6 an epidemiologist with the Navy named Chris Rennix who was  
7 deposed. Mr. Rennix indicated during his deposition a number  
8 of things that we didn't know about; and that, in fairness, we  
9 believe we should have known about ahead of time.

10 So, for instance, Mr. Rennix indicated during his  
11 deposition that he had been retained by the Government as a  
12 consultant. Mr. Rennix was instructed by counsel for the  
13 Government not to answer questions I think from January 2024  
14 forward. Mr. Rennix indicated that he had a personal laptop  
15 with a folder on it that said Camp Lejeune he had turned over  
16 to the Government; that has not been produced to the  
17 Plaintiffs' Leadership Group. And furthermore, Mr. Rennix  
18 indicated that he had a Government-issued laptop with a Camp  
19 Lejeune folder that has not been turned over to the Government  
20 and also has not been produced.

21 So we just think that is illustrative of the  
22 types -- of the concern that the Plaintiffs' Leadership Group  
23 has; that's why we filed this motion, and that this further  
24 deposition that occurred after the briefing of the motion I  
25 think further illustrates why we're requesting the relief that

1 we're seeking.

2 So I recognize the Court kind of indicated it didn't  
3 want to hear about this too much, so I'm reluctant to go into  
4 more details and test my luck and your patience, Your Honor.

5 THE COURT: Well, it's endless, right? Because you  
6 can take another deposition, and you are going to follow it up  
7 with some more in discovery.

8 Two things: You've got -- what was that --

9 MR. QUINN: It's the transcript -- deposition  
10 transcript --

11 THE COURT: That you've included in the motion  
12 that's pending?

13 MR. QUINN: Correct.

14 THE COURT: Has Mr. Bain seen it?

15 MR. QUINN: I brought copies for everybody. They  
16 certainly have a copy of the transcript. I can provide a  
17 copy.

18 THE COURT: Do you have any objection of me looking  
19 at this thing?

20 MR. BAIN: No, Your Honor.

21 THE COURT: All right. You can hand that up.  
22 That'll be part of the record the Court reviews in issuing an  
23 order a Motion to Compel.

24 The second item is probably a little more  
25 controversial. What do you have to say about that?

1 MS. WOLFE: So particularly with regard to Dr.  
2 Rennix which counsel just referenced as an example, I would  
3 note that on page 5 of our response to the Motion to Compel,  
4 we did note that we previously produced almost 45,000 pages of  
5 information as to Dr. Rennix already and some of those  
6 productions are, in fact, ongoing. And I think, you know,  
7 Your Honor's point that this tends to be endless is well-taken  
8 here.

9 We agreed at the outset to take this sort of  
10 custodial data off the table because it was not proportionate  
11 to the needs of the case. And proportionality here just means  
12 that not everything that is possibly related to Camp Lejeune  
13 or says Camp Lejeune on someone's folder somewhere is, in  
14 fact, relevant and responsive to the issues really in dispute  
15 in this litigation.

16 So that's where we're coming from.

17 THE COURT: Okay.

18 MS. WOLFE: If Your Honor is going to permit  
19 additional briefing, we would just request the opportunity to  
20 respond.

21 THE COURT: All right. I'll consider it, what I  
22 have before me.

23 MR. QUINN: So, first of all --

24 THE COURT: Wait. What are we talking about now?

25 MR. QUINN: I apologize. I thought you were

1 soliciting additional --

2 THE COURT: A discovery dispute?

3 MR. QUINN: No. I know you weren't soliciting that.  
4 We would -- if the Court is so inclined, we'd be happy to do  
5 supplemental briefing.

6 THE COURT: I'll consider it. I'll consider it.  
7 Anything else?

8 MR. FLYNN: One more thing, Your Honor. Eric Flynn.  
9 I just want to revisit the point that Mr. Bain made  
10 about general causation. So that's a point that is in dispute  
11 and we don't agree as to the scope of general causation, and  
12 it links back to what Mr. Bell said about questions regarding  
13 the findings of fact coming out of water, right?

14 So I think Mr. Bain -- I'm trying not to -- I'm  
15 trying to accurately capture this -- was talking about general  
16 causation as in capturing not just at any level the capability  
17 of a chemical to cause a specific disease, but also whether  
18 the levels at Camp Lejeune are sufficient to cause a specific  
19 disease generally.

20 I think the issue with that, Your Honor, is that  
21 it's, in fact, a specific causation inquiry and we would  
22 contend that that would veer towards the specific, because the  
23 levels of Camp Lejeune, I don't think this is overly  
24 controversial, are not static. It's not a single level that  
25 runs from '53 to '87.

1 THE COURT: It's a grid. It's a grid, right?

2 MR. FLYNN: Yes. Right.

3 THE COURT: And you produce the grid after you do  
4 water contamination and general causation. That's your grid  
5 of areas and levels, right? And then the individual trial is  
6 where do I put this person on the grid, correct?

7 MR. FLYNN: So --

8 THE COURT: Isn't that really what this is about?

9 MR. BELL: Exactly.

10 MR. FLYNN: Exactly.

11 THE COURT: Would you disagree?

12 MR. BAIN: I don't disagree with that --

13 THE COURT: I don't think so.

14 MR. BAIN: -- but the question from our point of  
15 view, the highest level on the grid, is that even capable of  
16 causing the disease. And that's the issue that I think we may  
17 have a difference of opinion on with the plaintiffs. If you  
18 look at the case law talking about general causation, it talks  
19 about at the level that plaintiff could have been exposed to  
20 is the chemical capable of being -- causing the disease.

21 So the environment at Camp Lejeune is much  
22 different, for example, from a worker who's working at a TCE  
23 plant where some of these epidemiological studies are done.  
24 So their environmental exposures are a much different level of  
25 magnitude. So the question is even the highest level that

1 anybody exposed to at Camp Lejeune, even under Mr. Flynn's  
2 scenario, is that capable of causing the disease? And that's  
3 the question at the general causation stage.

4 MR. FLYNN: Your Honor, I would -- just a few points  
5 on that. So the cases in which I believe Mr. Bain is relying  
6 on that are Eastern District cases, like the case of Nix and  
7 the case of Yates, right, the critical difference there is  
8 that they're combining the general and specific causation  
9 together in the same proceeding, so it makes sense for the  
10 Court to verbalize a singular standard like that that would  
11 cover both phases.

12 But here, we've got a bifurcation of the general and  
13 specific so there is some question as to what is properly  
14 general in the context of previous decisions by the Court  
15 where both issues were created together. And as the Court has  
16 noted in one of its earlier opinions in this court -- I  
17 believe it's the order on summary judgment for specific  
18 causation position -- is both specific and general is hard to  
19 split. So that I think is one area where we disagree.

20 So the individualized exposure levels, to your  
21 point, where they were on a grid is really a question for  
22 specific causation. That's what we would contend. That's why  
23 there's disagreement. That's also why it's so, as Mr. Bell  
24 said, it's so important to see what comes out of the water  
25 exposure day, the presentation in the findings of fact because

1 that might have an impact on the specific causation numbers  
2 down the road.

3           So we would disagree that you take that highest  
4 number and then you -- that is effectively a specific  
5 causation inquiry. If the two were together in the same  
6 proceeding where you have general and specific causation, then  
7 what you would do is not just some hypothetical high number,  
8 but you'd have a general causation presentation about the  
9 capability of the chemical to cause a disease at any level and  
10 then did it cause Mr. Smith's disease, right?

11           So that's what I think is maybe part of the  
12 disagreement is a bifurcation of the two in what is  
13 traditionally held in the same hearing.

14           MR. BELL: To be sure, Your Honor, I believe by the  
15 time we get to that part, and the Court has said that the  
16 trial judge will listen to general and specific, we believe  
17 they'll actually become combined and that's what will probably  
18 happen in the trials. We don't have the same *Daubert*  
19 issues that we -- we have them, but they're not necessarily  
20 managed the same way without a jury. The judge decides am I  
21 going to believe this testimony or not basically.

22           MR. BAIN: So my response is I do agree that we  
23 disagree on this. It might be something that we want to brief  
24 down the road because we really believe what's the use of  
25 having a trial on specific causation if the chemicals at the



1 highest levels at Camp Lejeune aren't even capable of causing  
2 the disease.

3 THE COURT: But to be sure, these are not going to  
4 be in every case, right? Is that right?

5 MR. BAIN: Excuse me? So --

6 THE COURT: You're talking about at some point  
7 where, I guess, where you are on the grid, general and  
8 specific are merged, correct? Is that for every plaintiff?

9 MR. FLYNN: That's the thing. That's where the  
10 specific experts come out, right? Our experts are working on  
11 that right now, right?

12 If you look at the Yates' decision, right?  
13 So in Yates, what Judge Flanagan was talking about is this kind  
14 of this general concept of capability of toxicity, and then a  
15 use of reliance on reliable scientific methodology to  
16 extrapolate down from that if necessary to the point of  
17 individual exposure and then arriving at a causation level  
18 there. Again, combining general and specific. That's where  
19 the two experts are going to have to come into play together.  
20 That's what's a little bit uncertain when you split the two  
21 proceedings like we have because it's not really the same  
22 expert and the same presentation and they kind of meld together  
23 so well. That's I think part of the disagreement.

24 But as Mr. Bell said, if you actually look at the  
25 scheduling order, there's a potential that you could have

1 after the exposure dates, the specific and the general  
2 causation reports together, and the Court could take them up.  
3 I mean, that's sort of...

4 THE COURT: Okay.

5 MR. BELL: And to be clear, Your Honor, I'm not sure  
6 that that's an issue that we need to decide today because the  
7 previous orders indicate general and specific be determined by  
8 each individual trial judge, so -- but it's something to be  
9 thinking of.

10 MR. FLYNN: We just wanted -- I just wanted to put a  
11 little more context into our disagreement on the scope of the  
12 general causation problem and what you're reading in that  
13 status report.

14 THE COURT: All right. Thank you.

15 MR. BELL: Your Honor, one more thing, if you don't  
16 mind.

17 I don't know when the judges are determining which  
18 judge is going to have which disease, but we have five  
19 diseases and four judges. Apparently, some doctors may  
20 diagnose someone with leukemia when they might actually have  
21 an NHL. So we would -- and I've asked Mr. Bain to consider  
22 this. We think that the NHL and leukemia cases should be  
23 combined with one judge.

24 THE COURT: And NHL, the non-Hodgkin's lymphoma and  
25 leukemia?

1 MR. BELL: Yes, sir. They are both blood diseases.

2 THE COURT: Right.

3 MR. BELL: And a lot of our experts will be doing  
4 both because they treat them both.

5 THE COURT: Right.

6 MR. BELL: So the nomenclature of someone that says  
7 I have leukemia -- I'm probably messing it up, Judge -- but  
8 the medical records may say something, but the tests show they  
9 actually have one or the other, so...

10 THE COURT: Well, I thought the parties agreed when  
11 they whittled down the list to 25 trial plaintiffs that you  
12 had to pick, right, which diseases you're going with?

13 MR. BELL: My understanding is each judge would get  
14 a disease, so we have four judges but five diseases. What I'm  
15 suggesting is that NHL and leukemia become one set for that  
16 judge whoever is assigned to that case.

17 MR. BAIN: Yes. Mr. Bell just mentioned this to me  
18 this morning before the hearing. We have to take a look at  
19 it. I think there might be some differences between leukemias  
20 and NHLs so I don't know whether combining them makes sense,  
21 but we need to go back and take a look at it.

22 MR. BELL: One judge is going to have to have two  
23 diseases if we have five diseases and four judges.

24 THE COURT: Right.

25 MR. BELL: We're just recommending that whoever is

1 assigned the two blood diseases -- or one of the blood  
2 diseases, since the science is very similar, that they get  
3 both diseases.

4 THE COURT: Oh, okay.

5 MR. BELL: That's all we're asking.

6 THE COURT: All right.

7 MR. BELL: That's all we have, Your Honor.

8 THE COURT: Mr. Bain?

9 MR. BAIN: I don't think we have anything further,  
10 Your Honor.

11 THE COURT: Okay. Three weeks, is that what you  
12 asked for?

13 MR. BELL: Yes, sir.

14 THE COURT: Mr. Bain, what do you think about that?

15 MR. BAIN: That's the 17th.

16 THE COURT: Is it? What's today, the 27th? The  
17 week of the 17th?

18 MR. BELL: Your Honor, apparently, we have some  
19 depositions scheduled for the --

20 MR. BAIN: Possibly for the 19th and 20th.

21 MR. BELL: Possibly for that same week of the 17th.  
22 Everybody is getting together.

23 THE COURT: Give me a couple dates.

24 MR. BAIN: 17th through the 23rd.

25 THE COURT: Just give me a couple dates. 9/17?

1 MR. BAIN: Yeah. And then the next week, the 23rd.

2 MR. BELL: Are you looking for the same week, Your  
3 Honor?

4 THE COURT: Not necessarily, but I don't want to go  
5 too long.

6 MR. BELL: Maybe the 17th and the following Tuesday.

7 MR. BAIN: 24th.

8 THE COURT: 24th. Okay. All right. I'll look at  
9 those. Do you want to give me one more?

10 MR. BELL: Or that Wednesday after the Tuesday.

11 THE COURT: 9/25?

12 MR. BAIN: I can't do it the 18th, but I can do it  
13 the 25th.

14 THE COURT: So 9/17, 9/24, and 9/25.

15 MR. BELL: Yes, sir.

16 THE COURT: Thank you very much.

17 \* \* \*

18 (The proceedings concluded at 11:55 a.m.)  
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25

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  
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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 28th day of August, 2024.

18  
19 *Amy M. Condon*

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