

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3 SOUTHERN DIVISION

4 IN RE: )  
5 )  
6 CAMP LEJEUNE WATER LITIGATION ) Docket No.  
7 ) 7:23-cv-897  
8 )  
9 )

10 \*\*\*\*\*

11 WEDNESDAY, NOVEMBER 20, 2024  
12 STATUS CONFERENCE HEARING  
13 BEFORE THE HONORABLE:  
14 ROBERT B. JONES, JR., MAGISTRATE JUDGE  
15 In Wilmington, NC

16 APPEARANCES:

17 On behalf of the Plaintiffs:

18 Jenna Butler  
19 By Telephone: J. Edward Bell, III; Hugh R. Overholt;  
20 Mona Lisa Wallace; James A. Roberts, III; Zina Bash;  
21 Michael Dowling

22 On Behalf of the Defendant:

23 John Adam Bain, Sara Mirsky, Michael Cromwell, Joshua  
24 Carpenito

25 Counsel for Settlement Master Team:

By telephone: Ken Knight Michelle Li

Court Reporter: Tracy L. McGurk, RMR, CRR  
Official Court Reporter  
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New Bern, NC 28560  
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Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Commenced at 11:10 a.m.)

2 THE COURT: Good morning, everyone. We have  
3 Mr. Bell on the phone.

4 Mr. Bell, are you there?

5 MR. BELL: Yes, Your Honor. How are you?

6 THE COURT: Good. And Mr. Bain is here in  
7 the courtroom.

8 Let me start, as I usually do: Are the  
9 parties awaiting rulings on anything that's ripe other  
10 than your Track 2 proposals and the request for Rule 16  
11 conference? Anything else?

12 MR. BELL: Your Honor, plaintiffs filed a  
13 motion on Monday to relieve one of the bellwether  
14 plaintiffs from duty. We've asked the Court to expedite  
15 briefing on that to ask the government to give us their  
16 response by next Monday. And that's something that  
17 needs to be resolved after the government has briefed  
18 it.

19 MR. BAIN: That's correct, Your Honor. If  
20 you want to hear further about that, Mr. Cromwell can  
21 address that. But the plaintiffs just filed their  
22 motion earlier this week.

23 THE COURT: Okay. Mr. Cromwell?

24 MR. CROMWELL: Thank you, Your Honor. Mike  
25 Cromwell on behalf of the United States.

1           Mr. Bell and Mr. Bain are correct.  
2           Plaintiffs filed a motion to relieve Mr. Raymond, one of  
3           the bellwether plaintiffs, from the bellwether process  
4           on Monday afternoon. We are in the process of putting a  
5           formal response together. As we communicated with  
6           plaintiffs, we are completely sympathetic and  
7           understanding to Mr. Raymond's situation and understand  
8           that anyone in his situation would want to spend  
9           remaining time with family and not be involved in the  
10          litigation process.

11           We have communicated with plaintiffs a few  
12          concerns with the proposals, and we've gone back and  
13          forth, and they ended up filing this on Monday. I can  
14          get into some of those concerns related to, one, Your  
15          Honor, we don't believe Mr. Raymond's situation is going  
16          to be unique in this process given the nature of  
17          personal injury cases, given the nature and health and  
18          age of many of these plaintiffs. We're concerned that  
19          we need to have a process for situations where this  
20          comes up and an equitable solution in the end.

21           The second point is we're concerned about  
22          the integrity of the bellwether process itself and why  
23          it was created in the first place, which is, as you  
24          know, Your Honor, to help the parties understand the  
25          value of these cases to ultimately resolve these cases.

1 Mr. Raymond's case, for a number of reasons, allows us  
2 to test things that we think are going to be important  
3 for the Court to decide related to alternative  
4 causation, whether it be smoking or occupation or where  
5 Mr. Raymond lived.

6 So while we are absolutely willing to work  
7 and try to reach a resolution, we do have these  
8 concerns. And so we're in the midst of putting our  
9 brief together and exploring what those options are  
10 going to be.

11 THE COURT: Your brief will include some  
12 alternatives?

13 MR. CROMWELL: It is likely going to include  
14 what we think to be a right resolution to this issue.

15 THE COURT: When can you get that in?

16 MR. CROMWELL: Our concern is -- they asked  
17 for it to be done within seven days. The truth is,  
18 Your Honor, Mr. Raymond has been deposed; his family  
19 members have been deposed. The parties agree that these  
20 cases on an individual basis aren't going to go to trial  
21 until the end of 2025. And fact discovery on them is  
22 over. And so the normal time here would be 21 days,  
23 with a major holiday in between. If the Court finds it  
24 necessary, we could definitely do it within 14 days.  
25 But we didn't see a need to expedite it, given that most

1 of the issues related to Mr. Raymond don't involve him  
2 at this point.

3 THE COURT: Mr. Bell, when did you ask that  
4 a response be filed?

5 MR. BELL: Within seven days, Your Honor.

6 THE COURT: Can you get it to me a week from  
7 today?

8 MR. CROMWELL: Yes, Your Honor.

9 THE COURT: Let's have that fully briefed  
10 and filed.

11 MR. BELL: And, Your Honor, I don't know,  
12 maybe I misunderstood the government, but we've never  
13 felt that these cases would be delayed until the end of  
14 2025 for trial. I may have misunderstood him, but I  
15 think that's what I heard. We don't agree with that.

16 THE COURT: I'll take this up once the  
17 briefing is ripe.

18 Okay. As to stipulations, update regarding  
19 joint proposal for exchange of Rule 26 reliance  
20 documents. What's the status there?

21 MR. BAIN: Your Honor, we had gone back and  
22 forth with some language. I think that we have reached  
23 an agreement with some proposed language that the  
24 plaintiff sent to us earlier this week. We accepted it,  
25 sent it to Mr. Bell this morning. We're just waiting

1 for Mr. Bell to approve it so that we can put that on  
2 file.

3 THE COURT: Okay.

4 Mr. Bell, status?

5 MR. BELL: I think we've reached an  
6 approval, Your Honor. I have not seen the email. I  
7 just heard about it right now. So we will probably be  
8 able to resolve that quickly.

9 THE COURT: Okay. Update on potential  
10 compromise on Phase 2 proof language. What's the  
11 status there?

12 MR. BAIN: Your Honor, we've had some  
13 exchanges back and forth. I think we are very close to  
14 an agreement. We need to send some language back to the  
15 plaintiffs. We had discussion about it last week. I  
16 think we've resolved the issue regarding Phase 1, and  
17 that we've asked the Plaintiffs to provide us notice if  
18 they intend to raise the vapor intrusion issue. And I  
19 believe that they are amenable to that. And I think on  
20 Phase 2 I think we can work out a solution that won't  
21 require the Court to get involved.

22 THE COURT: Okay. Before I get to Mr.  
23 Bell, the parties are planning to submit something to  
24 the Court on this eventually, correct?

25 MR. BAIN: We can do that if the Court wants

1 that. We can submit the language that we've agreed to.

2 THE COURT: Mr. Bell?

3 MR. BELL: I agree with that, Your Honor.

4 THE COURT: Okay. Any update on  
5 stipulations for Phase 1 now that the plaintiffs have  
6 disclosed experts? I think there was some allusion to  
7 that in the status report.

8 MR. BAIN: Yes, we've had some discussions  
9 about that, and we've agreed that it makes the most  
10 sense to have our next conference after we've disclosed  
11 our expert reports on the water contamination phase,  
12 which is December 9. So there has been a conference  
13 with the plaintiffs scheduled for December 16. We  
14 anticipate getting to them some proposed stipulations  
15 before December 16 based on the parties' exchange of  
16 water modeling reports.

17 THE COURT: Mr. Bell?

18 MR. BELL: Yes, Your Honor, that's correct.

19 THE COURT: So you would recommend our next  
20 conference being sometime after that date?

21 MR. BAIN: Yes, that might be a good time to  
22 schedule it.

23 THE COURT: Okay. Let's come back to that.

24 Is there any fact discovery remaining that  
25 remains outstanding?

1 MS. MIRSKY: Your Honor, it's Sara Mirsky  
2 for the United States. The depositions that were  
3 scheduled for last week did take place. And all of the  
4 productions, the substantial productions have gone out  
5 the door at this point. So we believe that we are good  
6 on fact discovery right now.

7 THE COURT: What was the outcome regarding  
8 Mr. Williams?

9 MS. MIRSKY: He was deposed on Friday, and  
10 there were no related issues.

11 THE COURT: Okay. Mr. Bell?

12 MR. BELL: Yes, Your Honor, I think  
13 everything went according to someone's plans, and I  
14 think it went without any problems.

15 THE COURT: Okay. Other than -- anything  
16 else?

17 (Discussion had off the record.)

18 THE COURT: Other than the next date for our  
19 conference here, I need to advise the parties that there  
20 will be case reassignments among the judges for Track 1  
21 plaintiffs, and those should be forthcoming soon.  
22 You'll see them in the docket and through the  
23 corresponding email communication from the clerk's  
24 office when those are made.

25 Is there anything else from the parties we



1 need to talk about?

2 MR. BAIN: Your Honor, we can give you an  
3 update on the independent medical examinations that were  
4 taking place pursuant to stipulations. Mr. Carpenito  
5 can address that.

6 THE COURT: Mr. Carpenito.

7 MR. CARPENITO: Good morning, Your Honor.  
8 Joshua Carpenito on behalf of the United States.  
9 Recently PLG provided notice to the United States that  
10 their life care expert has conducted examinations in six  
11 of the Track 1 cases. Yesterday the United States  
12 provided PLG with information informing them that our  
13 experts intend to conduct examinations in the same  
14 cases, and we will be in touch with plaintiffs soon.

15 THE COURT: On those six?

16 MR. CARPENITO: Yes, sir.

17 And that's it for that update.

18 THE COURT: Anything else from the  
19 government?

20 MR. BAIN: Nothing else at this time, Your  
21 Honor.

22 THE COURT: Mr. Bell?

23 MR. BELL: Your Honor, we have nothing else  
24 on that part, but we will continue to notify the  
25 government when we have any of our individual experts

1 for the claimants do interviews or examinations. They  
2 have a reciprocal right under our agreement to do the  
3 same.

4 THE COURT: We entered an order on that,  
5 right?

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

7 THE COURT: Okay.

8 MR. BELL: Yes, Your Honor.

9 THE COURT: Anything else, Mr. Bell?

10 MR. BELL: Your Honor, I think that's it.

11 MR. DOWLING: Your Honor, this is Mike

12 Dowling. I did have one follow-up on the fact

13 discovery; I just wanted to alert the Court.

14 THE COURT: This is Mr. Dowling?

15 MR. DOWLING: Yes, this is Mr. Dowling.

16 Sorry, Your Honor.

17 There is some supplemental discovery, and I

18 believe it's fact discovery, ongoing in the Fiolek case.

19 You may recall Mr. Ortiz flagged this case with you few

20 weeks back, primarily related to the damages in the

21 case.

22 We've also learned through our investigation

23 Mr. Fiolek has developed bladder cancer, and so we're

24 working with the government to schedule some

25 supplemental treating doctor depositions and things of

1 that nature. This diagnosis arose after Mr. Fiolek was  
2 initially disclosed. So there's some supplemental  
3 discovery that's ongoing from there, and it's proceeding  
4 smoothly.

5 THE COURT: He's a Track 1 plaintiff?

6 MR. DOWLING: He is. He's a Track 1  
7 leukemia plaintiff.

8 THE COURT: Okay.

9 MR. DOWLING: And he was diagnosed with  
10 bladder cancer subsequent to his deposition.

11 THE COURT: Okay. All right. So you're  
12 just updating the Court as to what's going on regarding  
13 fact discovery; is that right?

14 MR. DOWLING: Correct. Yes, Your Honor.

15 THE COURT: Mr. Bain, anything on that?

16 MR. BAIN: That's my understanding as well,  
17 Your Honor. There may be similar issues that arise  
18 between now and the trial of these cases. Situations  
19 change with individual plaintiffs where additional  
20 discovery is needed. And we've been able to work with  
21 plaintiffs cooperatively to address those issues.

22 THE COURT: Very good. That's great to  
23 hear.

24 Okay. Next conference date. I had -- I was  
25 going to propose the 3rd or the 5th, but I understand

1 that you all want to get together, and there may be  
2 cause to have it after the 16th. In that case -- my  
3 calendar is filling up here. I've got Tuesday, the  
4 17th, I had reserved for the conference already. So  
5 how does the 17th look to the parties?

6 MR. BAIN: The 17th is good.

7 MR. BELL: That's good for the plaintiff,  
8 Your Honor.

9 MR. BAIN: That's good for the United States  
10 as well.

11 THE COURT: In that case let's write that  
12 down. And we will reconvene on Tuesday, December 17 at  
13 11:00 a.m.

14 Okay. Thank you very much.

15 (Concluded at 11:23 a.m.)

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17

18 **C E R T I F I C A T E**

19

20 I certify that the foregoing is a correct transcript  
21 from the record of proceedings in the above-entitled  
22 matter.

23

24 /s/ Tracy L. McGurk\_\_\_\_\_

\_\_\_\_\_12/17/2024\_\_\_\_\_

25 Tracy L. McGurk, RMR, CRR

Date