

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

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

CAMP LEJEUNE WATER LITIGATION

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WEDNESDAY, NOVEMBER 6, 2024  
STATUS CONFERENCE  
BEFORE THE HONORABLE ROBERT B. JONES, JR.  
UNITED STATES MAGISTRATE JUDGE

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

On Behalf of the Plaintiffs:

A. Charles Ellis, Jenna Butler, Matthew Mariani

J. Edward Bell III, Robin Greenwald, James A. Roberts III, Hugh Overholt, Mona Lisa Wallace, William Michael Dowling, Elizabeth Cabraser (via telephone)

On Behalf of the Defendant:

David Ortiz

John Adam Bain, Sara Mirsky, Bridget Bailey Lipscomb, Elizabeth Platt, Lacresha Johnson (via telephone)

On Behalf of Settlement Master Team:

Kara Edwards, Ken Knight, Michelle Li (via telephone)

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

1 (Wednesday, November 6th, 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 All COUNSEL: Good morning.

5 THE COURT: Okay. I had a couple items I just  
6 wanted to tick through, and then I'm happy to hear from the  
7 Plaintiffs' Leadership Group and then the Government about any  
8 items they would like to discuss.

9 In no particular order -- and all of this comes out  
10 of the status report that's been submitted. In no particular  
11 order, I'll start with the exchange of the Rule 26 reliance  
12 documents. I understand there's maybe a workout on a joint  
13 proposal on that.

14 I guess we'll start with Mr. Bell.

15 MR. BELL: Yes, Your Honor. This is Ed Bell.

16 We have had several meet-and-confers, and I think  
17 we're very close. We've talked last -- yesterday, and we'll  
18 be sending to the Government our final proposal which I think  
19 will probably be acceptable.

20 THE COURT: All right.

21 Mr. Bain, anything to add to that?

22 MR. BAIN: No. I agree with that, Your Honor.

23 THE COURT: Okay. And then a joint proposal  
24 regarding consolidating the blood cancer Track 1 diseases; is  
25 that coming our way?

1 MR. BELL: Well, I know we talked about it. If you  
2 need for us to send a proposed order, Your Honor, we'll be  
3 happy to do so.

4 THE COURT: I didn't know if you were -- I know we  
5 talked about it. I didn't know if you needed to beyond us  
6 having spoken about it.

7 MR. BELL: It's fine with us, Your Honor, leaving it  
8 like it is. If you would like to have a joint proposal, we'll  
9 be glad to submit one.

10 THE COURT: Okay. I just don't know what I don't  
11 know, you know what I mean?

12 MR. BELL: Okay.

13 THE COURT: I mean, I understand the issue. I don't  
14 know if we need anything further. So I'll leave that -- I'll  
15 leave that up to y'all.

16 MR. BELL: All right. I'll get with Mr. Bain and  
17 we'll talk about it and get back with you.

18 THE COURT: And then what's remaining on the -- I  
19 guess it's the fact discovery update regarding 30(b)(6)  
20 depositions of ATSDR. What's going on there?

21 MR. BELL: Your Honor, we have met and conferred and  
22 now we have resolved the issues in regards to the 30(b)(6) and  
23 have withdrawn the last parts that have not -- that were going  
24 to be covered by Mr. -- Dr. Bove. So that's been resolved.

25 THE COURT: But you've got some other depositions

1 coming down, Martel and Williams, on 11, 12, and 15  
2 respectively, right?

3 MR. BELL: Those are going forward as far as I know,  
4 Your Honor, and I think all the issues involved and those  
5 depositions have been resolved and I think they're going  
6 forward.

7 THE COURT: Were there some objections to documents  
8 regarding Mr. Williams' deposition?

9 MR. BELL: There were, and I think those were with  
10 the -- not with the Government, but those have been resolved  
11 as of last night.

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

13 MR. BAIN: That is correct, Your Honor.

14 THE COURT: Okay. Was that the clawback issue, the  
15 seven documents, the clawback issue.

16 MR. BELL: There was some documents in the lift to  
17 protect the documents that the parties found from a third  
18 party that were part of the proposed or the protected  
19 documents. Those have been discussed and exchanged and now  
20 there's a resolution to that.

21 THE COURT: All right.

22 MR. BAIN: Yes.

23 THE COURT: Go ahead.

24 MR. BAIN: That was I believe in reference to the  
25 National Academy of Science documents and those -- that has

1 been resolved with respect to Susan Martel's deposition.

2           The -- regarding the UST documents, Mr. Ortiz is  
3 there, and that issue has also been resolved; but if you would  
4 like some background on the resolution of that issue, Mr.  
5 Ortiz can provide that.

6           THE COURT: Nothing more than hearing from you that  
7 it's been resolved.

8           MR. ORTIZ: Yes, Your Honor. David Ortiz from the  
9 United States. It has been fully resolved, Your Honor.

10           THE COURT: Thank you. All right.

11           How about supplemental damage assessment forms for  
12 the Track 1 trial plaintiffs, what's the status there?

13           MR. BELL: They are being produced as we obtain new  
14 information, Your Honor. I'm not involved in that day-to-day,  
15 but I think everything is going well.

16           THE COURT: Mr. Bain, anything to add?

17           MR. BAIN: Yes. This is Adam Bain. I think  
18 conferences with the plaintiffs' counsel about this and we've  
19 agreed to address it on a case-by-case basis.

20           I believe they've agreed that we would be entitled  
21 to some additional discovery dependent on the new claim being  
22 asserted, and we'll try to resolve that. We don't want to  
23 unreasonably burden the plaintiffs, but we do want to preserve  
24 our right to get additional information that we might need in  
25 advance of any trial.

1 I think it has come up with one plaintiff so far,  
2 and I think the Plaintiffs' Leadership Group has agreed to  
3 allow a deposition of the treating disease with respect to a  
4 new disease and that we will confer with them further on  
5 whether and how long we need to take an additional deposition  
6 of the plaintiff.

7 But to the extent these issues continue to come up,  
8 I think the parties can meet and confer and hopefully work out  
9 resolution.

10 THE COURT: Okay. Okay. So the parties have  
11 submitted at Docket Entry 298/1 an amended stipulated order  
12 regarding expert examinations of the plaintiffs.

13 Is the purpose of this to provide notice to  
14 defendant's of IMEs about testifying about plaintiffs'  
15 testifying experts? Is that what this is for?

16 MR. BELL: Your Honor, I think the concern we had  
17 was in defining the term "examination." And when we were  
18 talking to our experts, some of which would like to have a  
19 conversation with the plaintiffs, if they get a history or  
20 something like that, we thought that might be considered,  
21 quote, "an examination." So we notified the Government of our  
22 concern, and I think we've reached an understanding of how to  
23 handle this since.

24 THE COURT: All right. What does -- maybe I'm  
25 overanalyzing this or reading too much into it, but in the

1 proposal -- I guess I'm just curious in paragraph 4 what  
2 "reasonably certain" means. What do you think "reasonably  
3 certain" means?

4 MR. BELL: Your Honor, we, of course -- yes, sir.  
5 This is Ed Bell again.

6 Both sides, I'm fairly certain, have consulting  
7 experts and they're doing some background work for us, and if  
8 they, of course, interview the plaintiffs, that would not be  
9 someone who's reasonably certain that's going to testify.  
10 However, if we have experts that we anticipate calling as  
11 witnesses, then that would give us an obligation to notify the  
12 Government earlier.

13 THE COURT: But that may change, one may start out,  
14 right, as a consulting expert and then you may decide that  
15 this person --

16 MR. BELL: That's correct.

17 THE COURT: So what would -- I'm just trying to get  
18 an understanding of what "reasonably certain" means.

19 MR. BELL: Well, if the consulting expert is --  
20 turned into or changes status into a testifying expert, the  
21 original concern was this was -- if it happened late in the  
22 game, then it would put the Government at a disadvantage of  
23 not knowing basically what this particular expert might say.  
24 So recognizing that potential problem, we've -- I think we've  
25 made a pretty good effort at getting it resolved.

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

2 MR. BAIN: I'm going to ask Ms. Platt to address  
3 this.

4 MS. PLATT: Your Honor, Elizabeth Platt here from  
5 the United States.

6 That portion of CMO-11 came from the previous  
7 version, and we agree with what Mr. Bell just said that when  
8 he and his team are reasonably certain that a consulting  
9 expert has changed to a testifying expert that he will give us  
10 notice, and I'm sure Mr. Bell will give us enough notice that  
11 we could then request an exam, as our reciprocal right is, and  
12 he would give us the opportunity to do so.

13 THE COURT: Okay. Ms. Platt, do you have a copy of  
14 the order there in front of you by chance?

15 MS. PLATT: I'm sorry, Your Honor. I don't have a  
16 copy in front of me.

17 THE COURT: I'll read this to you and see if you can  
18 explain it to me.

19 In paragraph 5, and I'm reading from paragraph 5.  
20 It says, "In the event that the PLG provides notice of a  
21 mental or physical examination of a plaintiff by an expert..."  
22 and then it goes on further.

23 But what that -- when it says "by an expert," what  
24 you're really talking about is by a testifying expert,  
25 correct?



1 MS. PLATT: Yes, Your Honor.

2 THE COURT: Okay. Okay.

3 Other than our future -- our meeting later on this  
4 month, perhaps, of scheduling that, I didn't have anything  
5 else to talk about.

6 I'm happy to talk to y'all about things you want to  
7 bring up, so...

8 MR. BELL: Your Honor -- go ahead. I'm sorry, Adam.

9 MR. BAIN: I was just going to give Your Honor an  
10 update on discussion we had last conference regarding the  
11 evidence presented -- to be presented at different phases.  
12 And I know Your Honor issued an order last week on that  
13 regarding, you know, whether any brief would be necessary.

14 THE COURT: Uhm-uhm.

15 MR. BAIN: The plaintiffs made their initial  
16 disclosures, expert reports on the water contamination phase,  
17 and there weren't any (inaudible) regarding vapor intrusions  
18 so I don't think --

19 THE COURT: I'm sorry. There weren't any many what  
20 regarding vapor intrusions?

21 MR. BAIN: Opinions regarding vapor intrusions. So  
22 we don't think that's an issue that needs to be addressed  
23 right now in Phase I. It may be an issue that we need to  
24 address in the future.

25 On Phase II, we had a discussion with the

1 Plaintiffs' Leadership Group yesterday, and I think we're  
2 close to reaching an agreement on the nature of proof to be  
3 presented in Phase II.

4           So at this time, I don't anticipate that the United  
5 States from what we've discussed with Plaintiffs' Leadership  
6 Group that the plaintiffs will need to submit any type of  
7 brief pursuant to the Court's order; but if the Court would  
8 like a notice as to what our agreement is, we can certainly  
9 submit that.

10           THE COURT: Your agreement as to what?

11           MR. BAIN: The nature of proof to be presented in  
12 Phase II.

13           THE COURT: I'll leave it to y'all what you think  
14 you need to submit to the Court.

15           MR. BAIN: Okay. Thank you, Your Honor.

16           THE COURT: That's why I wanted to enter that order.  
17 Mr. Bell.

18           MR. BELL: Your Honor, I have one -- well, other  
19 than scheduling, I have one other issue that has arisen.

20           We gave notice yesterday to Adam and his crew about  
21 a problem that has arisen with one of our clients, one of the  
22 bellwether clients. For the purpose -- since this is a public  
23 record, I'll leave his name off at this time, Your Honor. But  
24 he's a Track 1 bladder cancer client.

25           Very recently this gentleman who's diagnosed with

1 multiple metastasis of his cancer, he's in very bad shape,  
2 we're having trouble working with him. We sent a letter  
3 outlining the request of -- outlining his particular medical  
4 issues and have asked the Government to consider allowing him  
5 to withdraw from the bellwether plaintiffs.

6 I'll be glad to forward this to you, Your Honor,  
7 after the hearing if you'd like to see it. We're waiting on  
8 the Government to give us their response.

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

10 MR. BAIN: That is correct. We did have a  
11 discussion yesterday about it. The plaintiffs have provided,  
12 as Mr. Bell just mentioned, a written request and we are  
13 considering that, and I anticipate we'll have a response to  
14 the plaintiffs this week.

15 THE COURT: All right. Well, I'll just wait until  
16 you have it -- have it resolved, and in some way advise the  
17 Court as to where that case stands.

18 Okay. Anything else?

19 MR. BELL: That's all the plaintiffs have, Your  
20 Honor, at this time.

21 MR. BAIN: Nothing else from the United States, Your  
22 Honor.

23 THE COURT: All right. Ms. Butler? Mr. Ellis?

24 MR. ELLIS: No, Your Honor.

25 THE COURT: Mr. Ortiz?

1 MR. ORTIZ: Nothing, Your Honor.

2 THE COURT: Okay. Our next conference, I'm looking  
3 at the week of the 18th. And specifically, Wednesday through  
4 Friday, the 20th through the 22nd.

5 Mr. Bell, what are your thoughts about those days?  
6 Otherwise, the following week we get into the holidays.

7 MR. BELL: Well, Judge, I certainly enjoy having  
8 these meetings, I think it's good. But I think for us, I'm  
9 not sure we need one that quickly. Maybe we could have one  
10 the week after Thanksgiving, or if you want to do it that  
11 week, I'm free on the 20th or the 21st, Your Honor. Or maybe  
12 do another virtual, which I think works well for these short  
13 status conferences.

14 THE COURT: Perhaps do a virtual one the 20th or the  
15 21st?

16 MR. BELL: Yes, Your Honor. Friday begins the  
17 holiday and our children get out of school and we're going to  
18 try and sneak away if we can, so the 20th or 21st would be  
19 best for us.

20 THE COURT: Mr. Bain, what do you think?

21 MR. BAIN: Your Honor, those days are good for us,  
22 either in Wilmington or virtual. So whatever the Court wants  
23 to do.

24 THE COURT: Let's set it on the 20th at 11:00  
25 o'clock, and we can do the way we're doing it this morning

1 which I think is perfectly fine. We have folks here in person  
2 and on the television.

3 All right. We'll set it for then. All right.

4 Thank you very much.

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6 (The proceedings concluded at 11:24 a.m.)

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1 UNITED STATE DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA

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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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16  
17 Dated this 7th day of November, 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  
24  
25