

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 *****

12 MONDAY, FEBRUARY 10, 2025
 13 STATUS CONFERENCE HEARING
 14 BEFORE THE HONORABLE:
 15 ROBERT B. JONES, JR., MAGISTRATE JUDGE
 16 In Wilmington, NC
 17

18 APPEARANCES:

19 On behalf of the Plaintiffs:

20 J. Edward Bell, III
 21 Eric Flynn
 22 Jenna Butler
 23 By Telephone:
 24 Mona Lisa Wallace
 25 Hugh Overholt
 Charles Ellis
 Elizabeth Cabreser
 Zina Bash

On Behalf of the Defendant:

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24 Proceedings recorded by mechanical stenography,
25 transcript produced by notereading.

1 (Commenced at 11:09 a.m.)

2 THE COURT: Good morning, everyone.

00:00:00 3 Mr. Bell, if you want to lead off.

00:00:02 4 MR. BELL: Good morning, Your Honor.

00:00:11 5 Judge, I don't think I have anything more.

00:00:13 6 I've talked to Mr. Bain about a couple things he wants

00:00:17 7 to chat about. But generally our status report is a

00:00:20 8 reflection of where we stand.

00:00:21 9 THE COURT: All right.

00:00:22 10 Mr. Bain.

00:00:24 11 MR. BAIN: Yes, Your Honor. We're still

00:00:29 12 waiting for any direction from the Court about when we

00:00:33 13 should submit language on the nature of proof for

00:00:38 14 Phase 1 and Phase 2. So we'll wait to hear from the

00:00:41 15 Court on that.

00:00:42 16 After this conference we are going to

00:00:44 17 discuss proposals regarding subgroups for trial in the

00:00:50 18 different disease cases.

00:00:52 19 We also wanted to note that we will be

00:00:54 20 discussing the hearing on Phase 1. And we understand

00:00:58 21 from some prior remarks of the Court that the Court,

00:01:03 22 sitting with all four judges, might want to hear the

00:01:06 23 water contamination phase. And given that each side

00:01:11 24 has several experts, the sooner we can get notice about

00:01:15 25 when that might occur and how long that might last might

00:01:18 1 help us get our experts lined up to make sure they don't
00:01:21 2 schedule anything else for that time.

00:01:23 3 THE COURT: Okay.

00:01:24 4 MR. BAIN: So I think I will be talking with
00:01:26 5 Mr. Bell after this conference, and maybe we can come up
00:01:28 6 with a proposal to submit to the Court. Of course,
00:01:33 7 when that hearing is is totally to the Court's
00:01:37 8 discretion. But we can discuss what we foresee as
00:01:41 9 being what we would submit as proof during that hearing.

00:01:44 10 THE COURT: Okay. Perfect.

00:01:46 11 MR. BAIN: We're continuing to discuss
00:01:48 12 stipulations on a regular basis. There is an issue
00:01:51 13 regarding some additional discovery that we are trying
00:01:54 14 to do. We had an issue with respect to two gentlemen
00:01:59 15 who had submitted declarations with respect to water
00:02:04 16 buffalos and the contention in the --

00:02:08 17 THE COURT: With respect to what?

00:02:09 18 MR. BAIN: Water buffalos. These are these
00:02:11 19 things that provide water to people in training around
00:02:14 20 Camp Lejeune.

00:02:15 21 THE COURT: That's right. You've mentioned
00:02:17 22 that before.

00:02:17 23 MR. BAIN: Yes. We did resolve that. So we
00:02:20 24 are going to do two depositions, no longer than 90
00:02:24 25 minutes, of those particular individuals.

00:02:26 1 There is, however, one issue with respect to
00:02:29 2 a plaintiff who has had a new condition diagnosed, and
00:02:36 3 the Defense Pool Profile Form had not been updated to
00:02:45 4 indicate that condition. We are in continuing
00:02:47 5 discussions with the plaintiffs about that particular
00:02:50 6 individual and whether we can get discovery about that
00:02:52 7 new condition. But we're still discussing that with
00:02:55 8 them.

00:02:56 9 THE COURT: Is that a Track 1 plaintiff?

00:02:59 10 MR. BAIN: Yes, it is.

00:03:00 11 So that brings up an issue generally
00:03:02 12 regarding these Defense Pool Profile Forms. We are not
00:03:07 13 getting updates of new treaters and new conditions on
00:03:11 14 those forms. And we've had some discussion with the
00:03:13 15 plaintiffs about that. There is an order which
00:03:16 16 requires the plaintiffs to supplement or amend the
00:03:18 17 Defense Pool Profile Form in a timely manner if the
00:03:23 18 response is incomplete or incorrect. And that is the
00:03:27 19 Court's order that was issued on the 29th of November,
00:03:31 20 2023.

00:03:33 21 In particular we are not getting notice of
00:03:37 22 new providers that the plaintiffs are seeing for their
00:03:41 23 conditions. We've had some discussions with the
00:03:44 24 plaintiffs about this. They have stated that as long
00:03:48 25 as they provide us with the medical records, we can

00:03:50 1 determine who the providers are. That's fine, but
00:03:53 2 we're not sure we're getting all the medical records.
00:03:56 3 So we are still relying on this requirement that the
00:04:00 4 plaintiffs update the Discovery Pool Profile Forms so we
00:04:05 5 have all the information we need to complete discovery
00:04:09 6 as necessary. That's another issue.

00:04:19 7 One other thing I wanted to raise as well,
00:04:21 8 and it's kind of related to this, is that the plaintiffs
00:04:25 9 produced 76 expert reports on Friday with respect to
00:04:29 10 individual plaintiffs. There is a discrepancy between
00:04:35 11 the information that is disclosed on the plaintiff's
00:04:40 12 damage assessment forms and some of the reports. So, in
00:04:44 13 other words, we looked for those damage assessment forms
00:04:46 14 to see what are the damages that plaintiffs are
00:04:49 15 claiming, what categories of damages. And we have
00:04:52 16 found that in some instances categories of damages that
00:04:55 17 were not on those forms are now being claimed in the
00:04:58 18 plaintiffs' expert reports. So we're in the process of
00:05:02 19 examining that and seeing if we're prejudiced at all.
00:05:04 20 I just want to raise that to the Court as a potential
00:05:07 21 issue that might arise.

00:05:09 22 And the final issue, as I think I mentioned
00:05:14 23 to the Court before, is that we are working to replace
00:05:17 24 our Parkinson's expert because the one that we had
00:05:21 25 retained has become incapacitated. We may request a

00:05:27 1 short extension from the plaintiffs to complete the
00:05:30 2 examinations and the reports for the Parkinson's
00:05:32 3 plaintiffs.

00:05:33 4 And then I would like Mr. Carpenito to give
00:05:37 5 the Court an update on the independent medical
00:05:40 6 examinations.

00:05:41 7 MR. CARPENITO: Good morning, Your Honor.
00:05:42 8 Joshua Carpenito for the United States.

00:05:46 9 Your Honor, the United States recognizes in
00:05:48 10 the Court's February 3rd order regarding the IME
00:05:52 11 duration that that order permits attorney presence for
00:05:56 12 the PLG during the United States' examinations.
00:06:00 13 However, the United States noted that this is a change
00:06:03 14 from the parties' previous agreement with respect to
00:06:06 15 attorney presence. And the United States understands,
00:06:09 16 pursuant to that order, PLG intends to have attorneys
00:06:12 17 present during our examinations. So at this time, Your
00:06:15 18 Honor, the United States just seeks to reserve our right
00:06:18 19 to have an attorney from the DOJ present during our
00:06:21 20 conducted examinations and to promptly raise with the
00:06:25 21 Court any issues of interference during the examination,
00:06:29 22 should that occur in a way that is contrary to paragraph
00:06:32 23 10 of CMO-16.

00:06:35 24 THE COURT: Okay.

00:06:38 25 MR. CARPENITO: Your Honor, just by way of a

00:06:40 1 general update with respect to the IMEs, the United
00:06:44 2 States has confirmed dates for all of the PLG noticed
00:06:47 3 life care exams. And as Mr. Bain mentioned, we are
00:06:50 4 working with our Parkinson's experts to propose dates on
00:06:54 5 the neurology exams.

00:06:55 6 Additionally, Your Honor, on the evening of
00:06:57 7 plaintiffs' residual expert disclosures, the United
00:07:00 8 States was informed of four additional examinations.
00:07:05 9 The United States is currently assessing whether we will
00:07:08 10 confirm examinations in those cases.

00:07:11 11 And lastly, Your Honor, with respect to
00:07:13 12 IMEs, the same day that the residual expert disclosures
00:07:19 13 were due by PLG, the United States was notified that PLG
00:07:24 14 will not be disclosing an expert report of a testifying
00:07:28 15 life care planner in a case in which it had been
00:07:30 16 previously indicated. So at this time, Your Honor, the
00:07:33 17 United States will not be proceeding with an examination
00:07:36 18 in that case.

00:07:37 19 THE COURT: Okay.

00:07:39 20 MR. CARPENITO: With respect to IMEs, Your
00:07:41 21 Honor, that is all I have. Thank you.

00:07:42 22 THE COURT: All right.

00:07:46 23 Were attorneys going to the IMEs before the
00:07:50 24 order? I don't want to create any problems.

00:07:50 25 MR. BELL: Well, Judge --

00:07:55 1 THE COURT: If the parties' attorneys were
00:07:57 2 not going, let's just keep it that way.

00:08:00 3 MR. BELL: I wasn't here last time, but I
00:08:02 4 was part of the conversation in making those agreements.
00:08:07 5 What we had agreed upon, Judge, and whether it's
00:08:11 6 technically referenced in that order or not -- or that
00:08:14 7 agreement, is we agreed on mirror examinations. In
00:08:18 8 other words, if our expert would take an hour --

00:08:21 9 THE COURT: I'm not going to revisit. We
00:08:23 10 talked about this last time.

00:08:24 11 MR. BELL: I understand. But in your order
00:08:27 12 you expanded that. And that's why we believe you
00:08:29 13 allowed the plaintiff to have a representative at that
00:08:32 14 examination.

00:08:38 15 THE COURT: But until then attorneys were
00:08:40 16 not going to the IMEs; correct?

00:08:44 17 MR. BELL: No, sir.

00:08:46 18 MS. BASH: This is Zina Bash.

00:08:50 19 DOJ has not had any yet, right, Mr. Bain?

00:08:53 20 THE COURT: What was that?

00:08:58 21 MS. BASH: Attorneys had not attended
00:09:00 22 because I believe the DOJ had not yet conducted any IME
00:09:06 23 examinations. So they hadn't begun yet.

00:09:10 24 MR. CARPENITO: Your Honor, if I may.

00:09:12 25 THE COURT: Sure.

00:09:13 1 MR. CARPENITO: We had an agreement that was
00:09:15 2 reduced to writing in an email, and it was again stated
00:09:18 3 on the record during one of the status hearings.

00:09:20 4 But again, the United States just wants to
00:09:22 5 emphasize that we understand what the Court ordered in
00:09:25 6 the February 3rd order, and we just want to reserve our
00:09:28 7 right, should there be any interference by PLG during
00:09:33 8 the exams that's contrary to the CMO, just to promptly
00:09:36 9 raise that with the Court.

00:09:38 10 THE COURT: What was the status quo before
00:09:39 11 the February 3rd order?

00:09:41 12 MR. CARPENITO: With respect to the United
00:09:43 13 States' examinations, there would be no attorneys
00:09:45 14 present from either side. But a family member could
00:09:51 15 accompany the plaintiff to the United States'
00:09:52 16 examinations.

00:09:52 17 THE COURT: Is there any reason to change
00:09:54 18 that?

00:09:55 19 MR. BELL: Yes, sir, Your Honor. Because
00:09:56 20 when you're looking at -- you expanded the time to four
00:10:02 21 hours per examination. Our experts, for example, some
00:10:06 22 of them were half an hour. These are pretty
00:10:09 23 perfunctory things. And what we're concerned about
00:10:12 24 now, with four hours you're looking at expanding the
00:10:15 25 discovery. What is a life care planner going to ask in

00:10:20 1 four hours? What's an economist going to ask in four
00:10:23 2 hours? So we believe if they're not going to go along
00:10:26 3 with our agreement, mirrored -- in other words, we take
00:10:29 4 an hour; they get an hour. We take 20 minutes; they get
00:10:33 5 20 minutes. But that's what our agreement was. Now
00:10:36 6 the Court --

00:10:37 7 THE COURT: Well, that was your
00:10:38 8 interpretation of that.

00:10:39 9 MR. BELL: Judge, I think if you ask them,
00:10:42 10 we talked about mirrored agreement a bunch of times. I
00:10:45 11 don't think they would disagree with that. I'm not
00:10:47 12 just saying it.

00:10:49 13 THE COURT: So what -- you don't know of a
00:10:53 14 problem at this point; is that right?

00:10:56 15 MR. BELL: I can't imagine that any of our
00:10:59 16 attorneys would interfere at all. At all. If I hear
00:11:05 17 about it, I'll take care of it, of course. But I can't
00:11:08 18 imagine that's a problem. I'm a little surprised
00:11:11 19 counsel might even be assuming that we would want to
00:11:13 20 interfere. That's not even close to being accurate.

00:11:16 21 But the order says that. I believe the
00:11:23 22 order expanded -- and I understand your question, Judge.
00:11:26 23 But normally, normally when two lawyers say this could
00:11:31 24 be a mirrored reciprocity, we believe people ought to
00:11:35 25 keep their agreement. And that wasn't kept.

00:11:42 1 THE COURT: Okay. Thanks for the heads up,
00:11:45 2 I guess.

00:11:45 3 MR. CARPENITO: Thank you, Your Honor.

00:11:46 4 THE COURT: Anything else?

00:11:48 5 MR. CARPENITO: Not with respect to IMEs,
00:11:50 6 Your Honor. Thank you.

00:11:51 7 THE COURT: Did you want to respond to
00:11:53 8 anything else that Mr. Bain said?

00:11:55 9 MR. BELL: No, Your Honor.

00:11:57 10 THE COURT: Okay. So I think the Court is
00:12:02 11 still interested in hearing from the parties on proposed
00:12:08 12 language regarding the nature of proof required for
00:12:13 13 Phase 1 and Phase 2. At this point we'll leave it to
00:12:19 14 the parties when they want to file that information as
00:12:22 15 to Phase 2.

00:12:25 16 As relates to Phase 1, the Court will
00:12:29 17 schedule an en banc hearing on Phase 1 for Tuesday,
00:12:35 18 March 25th at 1:00 p.m. in Raleigh. And briefing is
00:12:44 19 still open for that. Your briefs are not -- I think
00:12:50 20 the reply briefs on Phase 1 aren't due until July 3rd.
00:12:57 21 But the Court wants to hear from you on Phase 1. And
00:13:01 22 so before that hearing the Court would like to receive
00:13:08 23 from the parties an idea, proposal, joint or otherwise,
00:13:15 24 as to what they want to present at that hearing.

00:13:18 25 MR. BAIN: Your Honor, does the Court

00:13:19 1 anticipate that hearing will involve live witnesses?

00:13:23 2 THE COURT: The Court wants to hear from you
00:13:25 3 on that, what you want to present. But keep in mind it
00:13:29 4 is an afternoon hearing beginning at 1:00 p.m.

00:13:38 5 All right.

00:13:40 6 MR. BELL: Judge, may I just ask for
00:13:41 7 clarification?

00:13:42 8 Is the Court asking for the lawyers to
00:13:47 9 discuss with the Court the manner in which the hearing
00:13:53 10 will be heard, or is the Court asking us to bring
00:13:56 11 witnesses?

00:13:57 12 THE COURT: I think the Court wants to hear
00:13:58 13 from you in writing on what you want to present.

00:14:01 14 MR. BELL: We can do that.

00:14:06 15 THE COURT: And then hear from you on March
00:14:12 16 25th.

00:14:13 17 MR. BELL: We can do that.

00:14:16 18 THE COURT: When do the parties think they
00:14:21 19 could submit that to the Court? I don't have a
00:14:23 20 particular date in mind, but March is going to be here
00:14:27 21 before we know it.

00:14:28 22 MR. BELL: Within 30 days, Your Honor?
00:14:36 23 Today is February 10th. Or sooner if you need it.
00:14:46 24 Let us know.

00:14:47 25 THE COURT: How about if you do it by the

00:14:49 1 end of the month, by March 1?

00:14:52 2 MR. BELL: Yes, Your Honor.

00:14:53 3 THE COURT: Mr. Bain, what do you think?

00:14:55 4 MR. BAIN: Yes, I think we can do that, Your
00:14:58 5 Honor.

00:14:58 6 THE COURT: Great.

00:15:00 7 I don't have anything else other than
00:15:01 8 picking another date to meet.

00:15:07 9 MR. BELL: Judge, after we've had a chance
00:15:09 10 to discuss this possible proposal, are you around that
00:15:13 11 we could have a chat about that proposal?

00:15:16 12 THE COURT: Yes, sir.

00:15:17 13 MR. BELL: Maybe we could talk about the
00:15:18 14 dates at that time.

00:15:20 15 THE COURT: All right. Okay. Thank you
00:15:21 16 very much.

17 (Concluded at 11:25 a.m.)

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C E R T I F I C A T E

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

/s/ Tracy L. McGurk_____

____2/11/2025____

Tracy L. McGurk, RMR, CRR

Date