

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 THURSDAY, FEBRUARY 27, 2025
 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 A. Charles Ellis
 19 Jenna Butler
 20 By Telephone:
 21 J. Edward Bell, III
 22 Hugh Overholt

23 On Behalf of the Defendant:

24 John Adam Bain
 25 Joshua Carpenito
 Nathan Bu
 By Telephone:
 Bridget Bailey Lipscomb

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31 Proceedings recorded by mechanical stenography,
 32 transcript produced by notereading.

1 (Commenced at 11:07 a.m.)

2 THE COURT: Good morning.

00:00:01 3 All right. Who wants to lead off for
00:00:04 4 Plaintiffs?

00:00:06 5 MR. BELL: Good morning, Your Honor. This
00:00:07 6 is Ed Bell on the phone.

00:00:10 7 THE COURT: Good morning.

00:00:12 8 MR. BELL: How are you?

00:00:14 9 I think the report, Your Honor, is fairly
00:00:16 10 precise. I think most of the report just talked about
00:00:22 11 what I perceive to be kind of small individual issues
00:00:25 12 which are all being talked about and discussed. I'm
00:00:29 13 not aware of anything that the Plaintiffs need to
00:00:32 14 discuss today other than what's in the report.

00:00:34 15 THE COURT: Okay. Mr. Bain?

00:00:36 16 MR. BAIN: Your Honor, I think we can give
00:00:38 17 an update on some of the things that are in the report
00:00:41 18 for the Court.

00:00:41 19 First of all, on the deposition issues, Mr.
00:00:46 20 Bu can give an update on the issues.

00:00:49 21 THE COURT: Is that Downs, Cagiano, and
00:00:55 22 Hunt? Is that right?

00:00:55 23 MR. BAIN: That's correct.

00:00:56 24 And there's also some discussion of coming
00:01:00 25 up with a compromise that will cover future depositions

00:01:03 1 of Plaintiffs, which Mr. Bu can discuss.

00:01:08 2 MR. BU: Thank you, Your Honor. So for
00:01:11 3 Cagiano and for Hunt, I think that dispute has been
00:01:14 4 resolved.

00:01:15 5 THE COURT: Are each of these -- remind me.
00:01:18 6 Are each of these trial Plaintiffs?

00:01:21 7 MR. BU: No. I think Mr. Hunt is not. Mr.
00:01:23 8 Cagiano is, and Mr. Downs is.

00:01:25 9 THE COURT: Okay. So you think Cagiano and
00:01:31 10 Hunt have been resolved?

00:01:32 11 MR. BU: Yes.

00:01:33 12 Mr. Downs has not been resolved, but I think
00:01:36 13 the Parties have agreed that that dispute can be
00:01:38 14 resolved at a later point.

00:01:41 15 So I guess to give some context here, part
00:01:44 16 of the issue with Cagiano and Hunt is that there's
00:01:49 17 information related to water buffalos that the United
00:01:51 18 States is seeking related to, I guess, the Phase 1
00:01:55 19 discovery issues.

00:01:56 20 And as I understand PLG's objection, it's
00:02:00 21 not so much the depositions themselves but more of a
00:02:03 22 timing question and concerned that their clients are not
00:02:06 23 going to be deposed multiple times.

00:02:09 24 Downs is a little bit different because
00:02:11 25 Downs is not related to Phase 1. His issue is related

00:02:15 1 to his medical condition. The United States is
00:02:17 2 agreeing to allow that deposition issue to be addressed
00:02:20 3 closer to trial so that we don't run into a situation
00:02:23 4 where he's deposed this month then would be redeposed
00:02:28 5 before his trial.

00:02:30 6 THE COURT: Is that the Plaintiffs'
00:02:32 7 understanding?

00:02:34 8 MR. ELLIS: Yes.

00:02:36 9 THE COURT: Okay. So that takes care of
00:02:41 10 Downs, Cagiano, and Hunt.

00:02:43 11 What are the other issues raised in the
00:02:46 12 report?

00:02:46 13 MR. BAIN: Your Honor, with respect to
00:02:47 14 independent medical examinations, Mr. Carpenito would
00:02:52 15 like to give an update on where we stand on those
00:02:55 16 issues.

00:02:56 17 MR. CARPENITO: Good morning, Your Honor.
00:02:58 18 Just by way of background, the United States has
00:03:00 19 conducted seven of the eight scheduled life care exams.
00:03:01 20 The eighth life care exam is being conducted this
00:03:03 21 morning.

00:03:07 22 Additionally, the United States has
00:03:08 23 confirmed our intent to conduct exams in five neurology
00:03:13 24 cases, three psychiatric exams, and one vocational rehab
00:03:18 25 exam. The scheduling discussions for one of the

00:03:21 1 psychiatric exams and the neurology exams are ongoing.

00:03:27 2 There was an issue, Your Honor, with respect

00:03:29 3 to interference during one of the life care exams.

00:03:33 4 Contrary to PLG's statements in the joint status report,

00:03:38 5 our expert confirmed that objections occurred during the

00:03:42 6 examination. After the JSR was filed, the United

00:03:46 7 States went back to our expert to seek additional

00:03:49 8 clarification. We also learned that the attorney

00:03:52 9 instructed the Plaintiff not to answer at least one

00:03:56 10 question. The Parties held a meet and confer on

00:03:59 11 February 25th, and PLG assured the United States that

00:04:03 12 this type of interference would not happen in any future

00:04:06 13 examinations.

00:04:08 14 THE COURT: Is that right, Plaintiffs?

00:04:14 15 MR. BELL: Yes, Your Honor.

00:04:15 16 MS. BUTLER: Your Honor, we do dispute the

00:04:17 17 characterization.

00:04:18 18 THE COURT: The characterization. But going

00:04:19 19 forward?

00:04:21 20 MS. BUTLER: Yes, Your Honor, because, of

00:04:22 21 course, there is also a provision that we could

00:04:25 22 terminate the exam and ask for Court involvement if

00:04:30 23 necessary. So I think that would be the procedure.

00:04:33 24 THE COURT: I think so.

00:04:34 25 Don't you think so?

00:04:36 1 MR. CARPENITO: We would agree. We
00:04:38 2 recognize that the CMO provides for that.

00:04:40 3 THE COURT: I think so. All right.
00:04:46 4 Was there an issue with Ms. Martel?

00:04:50 5 MR. BAIN: Your Honor --

00:04:51 6 THE COURT: Did we resolve the IME issue?

00:04:56 7 MR. CARPENITO: There were a couple of
00:04:57 8 others.

00:04:57 9 THE COURT: Go ahead.

00:04:58 10 MR. CARPENITO: With respect to one of the
00:05:00 11 psychiatric exams, Your Honor, PLG noticed this specific
00:05:04 12 exam for seven and a half hours.

00:05:05 13 The United States went to our expert; they
00:05:07 14 indicated that they would likely need a similar amount
00:05:09 15 of time.

00:05:12 16 However, PLG has objected to that, citing
00:05:15 17 the Court's February 3rd order with respect to IME
00:05:18 18 duration.

00:05:18 19 The United States disagrees with PLG's
00:05:20 20 interpretation of that order, as it does not extend to
00:05:23 21 the psychiatric examinations. At the time that the
00:05:26 22 order was issued, the United States had no notice of any
00:05:29 23 of the psychiatric examinations.

00:05:32 24 Our expert, however, Your Honor, has
00:05:34 25 indicated that they will aim to complete this exam

00:05:37 1 within four hours. We just reserve our right to seek
00:05:41 2 additional time if the expert determines that's
00:05:42 3 necessary.

00:05:44 4 THE COURT: Okay.

00:05:50 5 MS. BUTLER: Your Honor, our position is
00:05:54 6 that CMO 17 applies to all IMEs, including the psych
00:05:57 7 exams. They approached the Court; they didn't want
00:06:01 8 reciprocal time. They wanted four hours, and they got
00:06:03 9 four hours. So hopefully there won't be an issue.

00:06:05 10 THE COURT: If there is, just bring it to
00:06:07 11 me.

00:06:07 12 MR. CARPENITO: Thank you, Your Honor.

00:06:08 13 THE COURT: I'll take care of it.

00:06:10 14 MR. CARPENITO: Your Honor, if I may,
00:06:10 15 there's an additional point with respect to some raw
00:06:13 16 testing data from one of the psychiatric exams.

00:06:16 17 THE COURT: What is raw testing data?

00:06:18 18 MR. CARPENITO: So in the psychiatric
00:06:20 19 examinations my understanding is that some testing the
00:06:22 20 expert has conducted, the results of those tests come
00:06:25 21 back; that's the raw data we're speaking about.

00:06:29 22 The United States has requested this
00:06:31 23 information for one of these exams.

00:06:33 24 In a February 25th meet and confer, PLG
00:06:36 25 stated that they are discussing this internally but

00:06:39 1 raised potential confidentiality and ethical concerns on
00:06:43 2 behalf of the expert.

00:06:45 3 The United States maintains that it's
00:06:47 4 entitled to this material and that any confidentiality
00:06:50 5 concerns are already addressed by the protective order.

00:06:55 6 THE COURT: Are you all still talking about
00:06:58 7 that issue?

00:06:59 8 MR. CARPENITO: That's correct, Your Honor.

00:07:00 9 MS. BUTLER: Your Honor, that's correct. We
00:07:02 10 have a proposal. It's just that this has been ongoing
00:07:05 11 this week, so we haven't had a chance to discuss the
00:07:08 12 proposal.

00:07:10 13 THE COURT: Okay. If you all reach a dead
00:07:12 14 end, go ahead and file something for the Court's
00:07:14 15 attention.

00:07:15 16 MR. CARPENITO: Thank you, Your Honor.

00:07:16 17 Two quick points with respect to that raw
00:07:19 18 data. Our experts also indicated that it's necessary
00:07:22 19 that they have access to the raw data a week before the
00:07:25 20 exam takes place for the United States' expert. Given
00:07:28 21 that this psychiatric examination at issue here is
00:07:31 22 scheduled for next Thursday, if we do not receive that
00:07:35 23 raw data by today, we will be rescheduling that exam.

00:07:39 24 Lastly, Your Honor, this is somewhat related
00:07:42 25 to the duration piece that the United States just spoke

00:07:45 1 about. The United States' expert has indicated that
00:07:48 2 receiving this data may also help streamline the
00:07:50 3 examination.

00:07:51 4 So those are the points that I would make
00:07:53 5 with respect to that raw testing data.

00:07:56 6 THE COURT: Okay. Anything else on IMEs?

00:08:05 7 MR. CARPENITO: Your Honor, there are some
00:08:06 8 additional notes with respect to a particular kidney
00:08:10 9 cancer case. The Parties disagree on whether the
00:08:13 10 United States is entitled to notes taken by one of the
00:08:17 11 PLG's residual experts during examinations or interviews
00:08:21 12 of the Plaintiff's wife and the Plaintiff's former
00:08:24 13 coworker.

00:08:26 14 The United States has maintained that we are
00:08:28 15 entitled to these notes; however, we are still currently
00:08:33 16 evaluating this matter and reserve our right to seek
00:08:36 17 production of these notes.

00:08:37 18 THE COURT: Whose notes are these?

00:08:40 19 MR. CARPENITO: One of PLG's Phase 3
00:08:42 20 experts, I believe. And they relate to an examination
00:08:45 21 or an interview of the Plaintiff and an examination or
00:08:47 22 interview of the Plaintiff's wife and former coworker.

00:08:51 23 THE COURT: Okay. Anything else?

00:08:59 24 MR. CARPENITO: That's all that I have.

00:09:01 25 Thank you, Your Honor.

00:09:02 1 MS. BUTLER: Your Honor, on that last
00:09:03 2 part --

00:09:04 3 THE COURT: The notes?

00:09:04 4 MS. BUTLER: The notes. I would remind Your
00:09:06 5 Honor that CMO 17, the norm is that notes are not to be
00:09:11 6 produced.

00:09:11 7 THE COURT: Do we have that? Is that in the
00:09:13 8 CMO?

00:09:14 9 MS. BUTLER: Yes. It's specifically -- if
00:09:16 10 you look at paragraph 3(a) -- sorry, 3(b), that notes
00:09:23 11 are not to be produced, and then there are two
00:09:26 12 exceptions. And it's our position that these
00:09:29 13 exceptions do not apply.

00:09:31 14 THE COURT: What are the exceptions?

00:09:32 15 MS. BUTLER: The exceptions are: Any
00:09:34 16 retained, testifying expert's notes are excluded unless,
00:09:39 17 "(i) they are the only record of a fact or data
00:09:42 18 considered or an assumption relied upon by the expert in
00:09:46 19 formulating an opinion in this case."

00:09:48 20 So, for example, if the report summarizes
00:09:51 21 the data, then the report is --

00:09:54 22 THE COURT: Right.

00:09:55 23 MS. BUTLER: So we do not believe that the
00:09:56 24 chicken scratches of some data that is already
00:10:00 25 summarized in a report have to be produced.

00:10:03 1 And then "or (ii) interview notes of persons
00:10:07 2 on any party's witness list if the retained expert
00:10:11 3 participated in or conducted the interview and
00:10:14 4 considered the notes in forming the opinions in his or
00:10:17 5 her final report."

00:10:19 6 It is our understanding that the witness
00:10:21 7 list would be our pretrial witness list for trial.
00:10:24 8 Nobody has exchanged those witness lists. That would be
00:10:27 9 something to come later, and so we don't think that
00:10:29 10 exclusion applies at this point in the litigation.

00:10:35 11 THE COURT: Are you going to fit in one of
00:10:37 12 these exceptions?

00:10:39 13 MR. CARPENITO: That's what we are still
00:10:41 14 assessing, Your Honor.

00:10:41 15 THE COURT: All right. Anything else on
00:10:46 16 IMEs?

00:10:47 17 MR. CARPENITO: No, Your Honor. Thank you.

00:10:49 18 THE COURT: Ms. Martel.

00:10:50 19 MR. BAIN: Your Honor, there was a meet and
00:10:55 20 confer on February 18th, and the United States'
00:10:59 21 objections were then resolved on February 24th. The
00:11:04 22 NAS removed some of their confidential designations, and
00:11:08 23 we reached a compromise on that. And if the
00:11:13 24 confidential designations need to be used, they would be
00:11:17 25 filed under seal.

00:11:17 1 I think that there is still an outstanding
00:11:19 2 issue between PLG and the National Academy, which I'll
00:11:23 3 let them address.

00:11:30 4 MS. BUTLER: That is one of the few issues
00:11:32 5 that I cannot address. I think Mr. Bell would need to
00:11:37 6 address that.

00:11:38 7 THE COURT: Mr. Bell?

00:11:41 8 MR. BELL: Your Honor, I could barely hear
00:11:43 9 what he was saying. I apologize.

00:11:45 10 THE COURT: It's regarding the -- it's
00:11:49 11 regarding the NAS. It sounds like regarding the NAS
00:11:55 12 wanting information protected in some capacity and that
00:11:59 13 you may have an issue with that.

00:12:03 14 MR. BELL: No, Your Honor, I think we have
00:12:04 15 all agreed -- I thought we did -- that the current
00:12:07 16 protective order actually covers [interruption in
00:12:12 17 telephone connection - INAUDIBLE] -- and I thought the
00:12:15 18 NAS attorneys were not going to seek any further
00:12:18 19 protection. If I'm wrong about that, I stand to be
00:12:23 20 corrected. But I was on a couple of those calls.

00:12:34 21 THE COURT: Okay. I guess moving on to
00:12:36 22 Defendant's contention interrogatories. What's the
00:12:40 23 status of the supplemental responses to those?

00:12:47 24 MR. BAIN: Your Honor, I think that had to
00:12:48 25 do with the Cagiano depositions. So I think that

00:12:51 1 that's been resolved.

00:12:52 2 Another issue in the joint status report, if
00:12:56 3 you want to move to it, is the extension for the experts
00:12:59 4 related to Parkinson's disease plaintiffs.

00:12:59 5 THE COURT: Yes. Right.

00:13:02 6 MR. BAIN: So we have requested a 30-day
00:13:05 7 extension for any experts addressing the Parkinson's
00:13:08 8 disease plaintiffs. We are in continued discussions
00:13:12 9 with PLG regarding that.

00:13:15 10 PLG has indicated they would be agreeable to
00:13:18 11 that if we could make all of our experts available
00:13:20 12 between June 14 and July 14. We've responded that we
00:13:25 13 will endeavor to do that, but we can't guarantee it,
00:13:28 14 because that's a lot of experts to schedule; they have
00:13:32 15 summer plans, other trial plans. So we're still
00:13:36 16 communicating with them on that.

00:13:38 17 What it would do is it would make the
00:13:43 18 disclosure of our experts due May 8th. Then PLG would
00:13:49 19 do their rebuttal disclosures on June 13th. The expert
00:13:54 20 discovery would close on August 12th. It wouldn't
00:13:59 21 affect the schedule otherwise. So all the briefing for
00:14:03 22 all phases would be done on October 31st as originally
00:14:08 23 scheduled. So we're hoping that we can get agreement
00:14:11 24 and submit an order to the Court on that soon.

00:14:14 25 THE COURT: Okay.

00:14:22 1 Is there still a dispute on the reliance
00:14:25 2 files?

00:14:26 3 MR. BAIN: There are several ongoing
00:14:29 4 disputes about expert disclosures with respect to
00:14:32 5 deficiencies. I think both sides have raised
00:14:35 6 deficiencies with respect to expert disclosures. We're
00:14:39 7 still working through them. Some of them are fairly
00:14:41 8 significant.

00:14:42 9 For example, we're seeking underlying
00:14:45 10 calculations that were done by Plaintiffs' exposure
00:14:48 11 expert, and it's really important that we get those in
00:14:52 12 order to be able to evaluate what that expert has done.
00:14:56 13 I think there's a meet and confer scheduled for next
00:14:59 14 week on that issue.

00:15:01 15 But there are a number of issues. There's
00:15:04 16 been a lot of experts, as you know, Your Honor,
00:15:07 17 disclosed on both sides. So we're working through those
00:15:10 18 issues. Hopefully we won't have to bring issues to the
00:15:14 19 Court. But we're continuing to work through them.

00:15:17 20 THE COURT: Okay.

00:15:26 21 Do Plaintiffs have anything?

00:15:29 22 MS. BUTLER: No. I mean, I think we agree.
00:15:32 23 For example, we didn't realize that one of our expert's
00:15:34 24 reliance files hadn't uploaded, and so we've uploaded
00:15:38 25 those. It's being handled.

00:15:40 1 THE COURT: Okay. I'm more than happy for
00:15:42 2 you all to work these out. I think that's great.

00:15:45 3 But I don't want to get in a situation where
00:15:49 4 you've tried your best, and you've tried your best, and
00:15:51 5 tried your best, and can't resolve it, and we're looking
00:15:54 6 at trying to reopen or extend deadlines. I know that
00:15:58 7 it happens. I know that it's necessary. But I want to
00:16:01 8 try to stick to the deadlines as closely as we can.
00:16:06 9 This is a huge litigation; I understand that. And
00:16:08 10 there are more experts than I even know that there are.
00:16:11 11 And I commend you all on working these out.

00:16:17 12 But if you've reached a point where there's
00:16:19 13 a disagreement, then let's go ahead and put something
00:16:23 14 before the Court.

00:16:25 15 Okay. Are there any more brewing discovery
00:16:33 16 issues? Those are the ones that I thought were in the
00:16:36 17 status report.

00:16:40 18 MR. BELL: Not at this time, Your Honor.

00:16:41 19 THE COURT: Okay. Thank you.

00:16:42 20 So as a reminder, I'm sure you all have it
00:16:47 21 on your schedule, 1:00 hearing in Raleigh, March 25th,
00:16:53 22 regarding Phase 1 water contamination.

00:16:56 23 Are the Parties still on track to submit
00:16:58 24 something to the Court about what they hope to present
00:17:02 25 on March 3rd?

00:17:04 1 MR. BAIN: Yes, Your Honor. We have been
00:17:06 2 working on a joint notice to submit to the Court. We've
00:17:10 3 exchanged drafts of it. And we are on track to submit
00:17:13 4 it on the 3rd of March. Although that hasn't been
00:17:18 5 ordered, but we will endeavor to do that.

00:17:23 6 THE COURT: Okay. And then this has come
00:17:24 7 up, I think, in the last few meetings. This relates
00:17:31 8 back to the Court's request for the Parties to submit
00:17:36 9 something to the Court regarding the nature of proof
00:17:39 10 required for Phase 1 and Phase 2. Where are you all on
00:17:43 11 that?

00:17:43 12 I know there was -- I think in the past
00:17:46 13 there was an agreement to do something together, and I
00:17:49 14 think that's kind of gone by the wayside.

00:17:52 15 MR. BAIN: Well, with respect to the nature
00:17:54 16 of proof on Phase 1, that's something that has been
00:17:57 17 incorporated into the notice we're going to submit on
00:17:59 18 March 3rd. We're working on that. Hopefully we can
00:18:02 19 reach agreement on that.

00:18:03 20 With respect to Phase 2, I, again, submitted
00:18:06 21 a notice to the Plaintiffs to review. So I'm looking
00:18:11 22 for some feedback from the Plaintiffs on the language
00:18:13 23 for Phase 2. So we're continuing to work on that.

00:18:16 24 THE COURT: Okay. What do the Plaintiffs
00:18:17 25 have to say about that?

00:18:19 1 MR. BELL: We're working on that, Your
00:18:21 2 Honor. At this time we haven't basically started and
00:18:28 3 completed all of the expert depositions. So timing is
00:18:32 4 something important. I think everybody is still trying
00:18:37 5 to figure out where everybody stands. So we're working
00:18:40 6 on it; it's just not ripe, I think, for the final
00:18:44 7 discussion.

00:18:45 8 THE COURT: Okay. Anything else that we
00:18:47 9 should know about?

00:18:51 10 MR. BELL: Not that we're aware of, Your
00:18:53 11 Honor.

00:18:53 12 MR. BAIN: Nothing from our side, Your
00:18:55 13 Honor.

00:18:55 14 THE COURT: Okay. I realize that there's a
00:18:59 15 hearing scheduled on 3/25, but I'd like to meet again
00:19:04 16 sometime between now and then. There may be some
00:19:09 17 last-minute things the Court is interested in.

00:19:12 18 Unfortunately, my dance card is being filled
00:19:17 19 in quite a bit. Are the Parties able to meet two weeks
00:19:22 20 from today on the 13th at noon?

00:19:26 21 MR. BAIN: At noon?

00:19:28 22 THE COURT: Yes, sir.

00:19:29 23 MR. BAIN: That works for us, Your Honor.

00:19:30 24 THE COURT: How do the Plaintiffs feel about
00:19:32 25 that?

00:19:32 1 MR. BELL: Your Honor, we have depositions on
00:19:36 2 the 14th, and I'm -- excuse me, on the 13th, which is
00:19:43 3 one of our key experts. Maybe the next week or earlier
00:19:46 4 in that week?

00:19:47 5 THE COURT: How about -- the 10th through
00:19:49 6 the 12th is going to be real busy. And the 14th is
00:19:55 7 going to be real busy. How about either the 17th or
00:19:58 8 the 18th, that's a Monday or a Tuesday?

00:20:04 9 MR. BELL: The 17th I think would be fine,
00:20:07 10 Your Honor.

00:20:07 11 THE COURT: Mr. Bain?

00:20:08 12 MR. BAIN: Your Honor, I think we could have
00:20:10 13 someone here for that, yes.

00:20:11 14 THE COURT: Can we shoot for Monday, March
00:20:14 15 17th, at 11:00 a.m.? Is that good for you?

00:20:21 16 MR. BELL: Yes, Your Honor.

00:20:27 17 THE COURT: Thank you very much.

00:20:42 18 MR. BELL: Thank you, Your Honor.

19 (Concluded at 11:28 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_____

____2/28/2025____

Tracy L. McGurk, RMR, CRR

Date