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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

IN RE: )  
)  
CAMP LEJEUNE WATER LITIGATION ) Docket No.  
) 7:23-cv-897  
)  
)

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TUESDAY, MARCH 19, 2024  
STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE:  
ROBERT B. JONES, JR., MAGISTRATE JUDGE  
In Wilmington, NC

APPEARANCES:

On behalf of the Plaintiffs:

J. Edward Bell, III; Eric Flynn; Hugh R. Overholt

On Behalf of the Defendant:

John Adam Bain, Sara Mirsky, Bridget Bailey Lipscomb,  
Joseph Turner, Michael Cromwell

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 10:58 a.m.)

2 THE COURT: Good morning, everyone. As you  
3 can see, we're in a new courtroom this morning. This  
4 is our hearing room. It's new to the building. It  
5 historically was Courtroom 2 on the second floor. In  
6 this building we have Courtroom 3 on the first floor;  
7 Courtroom 1 on the second floor, and now we have  
8 Courtroom 2 on the third floor. But thank you for  
9 being here.

10 So I've read the status report. And as we  
11 do in each of these, let me know what -- I think I know  
12 the answer, but let me know what you guys are waiting to  
13 hear from the Court on as far as motions that have  
14 ripened as mature.

15 MR. BELL: Your Honor, the two motions  
16 that -- or the two issues that we would like to bring to  
17 your attention is there is, of course, a motion for  
18 partial summary judgment, and that's pending. There's  
19 also competing orders or competing proposed orders on  
20 the Track 2 discovery issues.

21 THE COURT: Before we get to the tracks,  
22 I've printed off a motions report, and I've got -- if  
23 anyone has their docket sheet or the docket opened, it's  
24 109, a Motion For Relief from E.D.N.C. Local Rule.  
25 That's relative to the summary judgment motion.

1                   So you've got a Partial Summary Judgment  
2 Motion on Causation, and there's a Motion For Leave to  
3 Appeal.

4                   MR. BELL: That's correct.

5                   THE COURT: And that's my understanding.  
6 Those are the three motions that have ripened that  
7 you're waiting for the Court to issue a ruling on.  
8 That's correct?

9                   MR. BELL: Yes, sir. And the Track 2  
10 issues.

11                  THE COURT: Okay.

12                  MR. BELL: I'm not sure that's actually a  
13 motion, but we were required to submit a proposed  
14 scheduling order. I use that term --

15                  THE COURT: Right.

16                  MR. BELL: And so because Track 2 has now  
17 been chosen, we're already in deadline periods. That  
18 order is pretty important.

19                  THE COURT: Okay. Tell me first, before we  
20 get to the tracks, tell me first, or just confirm:  
21 Everything but Track 1 is in place? You guys are  
22 discovering, taking depositions --

23                  MR. BELL: Every day.

24                  THE COURT: -- and heeding deadlines?

25                  I think that fact discovery was changed,

1 right?

2 MR. BAIN: The deadline is mid June, Your  
3 Honor, for fact discovery. And then the expert  
4 disclosures start after that.

5 THE COURT: So update on Track 2. I know  
6 the diseases have been selected. Right?

7 MR. BELL: Yes.

8 THE COURT: And so what's next?

9 MR. BELL: We were supposed to submit a  
10 joint scheduling order; if we couldn't agree, submit  
11 separate ones. There were a couple areas we weren't  
12 able to agree on, so we've submitted counterproposals,  
13 if you will.

14 THE COURT: Right.

15 MR. BELL: And those are kind of important,  
16 Your Honor, because we are now going into some of those  
17 deadlines, depending on which order is going to be  
18 chosen.

19 THE COURT: So kind of for those who are  
20 listening at home, can you summarize what those issues  
21 are that you want to be heard from the Court on?

22 MR. BELL: Off the top of my head, Your  
23 Honor, one has to do with the time period for when the  
24 selection of the bellwether plaintiffs will be. And  
25 that's important, of course. So that's the major thing

1 that we're concerned about.

2 The time to do the depositions and things  
3 like that, I think we're ready to go on all that.

4 THE COURT: I'm sorry; could you repeat  
5 that?

6 MR. BELL: There was a motion, I think by  
7 the government, to reduce that number from ten to  
8 eight -- or not a motion, but part of their proposal.  
9 So there's a couple of things that would be important  
10 for us to know.

11 THE COURT: You said the number of  
12 depositions in Track 2?

13 MR. BELL: I'm sorry, Your Honor. We're  
14 supposed to select ten per side for each disease.

15 THE COURT: I see.

16 MR. BELL: And so the government has said,  
17 or has asked, could you do eight per side?

18 MR. BAIN: Four per side.

19 MR. BELL: Excuse me. I'm sorry. Four per  
20 side, with a total of eight.

21 MR. BAIN: Eight for each disease.

22 MR. BELL: We thought that the ten per side  
23 was better, gave us a better way to have representative  
24 samples. Four would only give two each -- or four  
25 each?

1 MR. BAIN: Four per side.

2 MR. BELL: That's kind of --

3 Is that per judge?

4 MR. BAIN: No, it's per disease.

5 MR. BELL: So if you had four, some judge  
6 may only get one, or maybe none on that particular  
7 disease, depending on where the selections fall.

8 If there's a need to reduce that number, we  
9 should probably look at it after we make our selection.  
10 That's our position.

11 MR. BAIN: So our proposal is that we should  
12 use some of the lessons we've learned in Track 1 in how  
13 we do Track 2. It seems apparent to us that 100  
14 plaintiffs is too many and is not necessary to get the  
15 information that we need for these diseases going  
16 forward in Track 2. And because of us going forward in  
17 Track 1, it may be that we'll be able to make Track 2  
18 more efficient.

19 We propose that the discovery be bifurcated  
20 so that the plaintiffs in Track 2 establish general  
21 causation first before we get into individual causation  
22 for the individual plaintiffs. That doesn't mean we  
23 can't go forward and select the plaintiffs and start  
24 gathering the records for them. But they should come  
25 forward with some evidence showing that the diseases

1 that are in Track 2 are connected to the water at Camp  
2 Lejeune before going forward with more fact-based  
3 discovery.

4 We're doing 100 depositions right now in  
5 Track 1 for the diseases that are most likely --

6 THE COURT: You've done two-thirds of them,  
7 haven't you?

8 MR. BAIN: We've scheduled, I think, almost  
9 every one of them. And we're now going on to fact  
10 witness and treating physician depositions.

11 So we think that we'll have discovery done  
12 well on all cases by the June 15th deadline for Track 1.  
13 And we should use some of the things that we've learned  
14 from that process to go forward through Track 2.

15 MR. BELL: I don't disagree with the concept  
16 of lessons learned is a good thing, but I'm concerned  
17 that if we pick a lower number now, the spread for the  
18 judges will be uneven. So we would like to go do the  
19 ten and ten like we did do, then come back to the Court  
20 and say: All right, let's rethink that and maybe have  
21 some that are prioritized. So you could take the ten  
22 and ten and say: All right, guys, you all get ready for  
23 half of those, or something like that. And that way we  
24 think it's a better process.

25 MR. BAIN: If I could say one more thing,

1 Your Honor.

2 One thing we've learned in Track 1 is that a  
3 lot of plaintiffs who are alleging not only that the  
4 Track 1 disease is related to the contamination, but  
5 they have some other condition that's also independently  
6 related to the contamination. And so our thought with  
7 the Track 1 is we're just supposed to be focussing on  
8 those diseases that were selected for Track 1. So with  
9 these plaintiffs with multiple illnesses, it makes it  
10 difficult because we have to get experts to look at  
11 these different illnesses and say whether or not there's  
12 any relationship between these other illnesses for these  
13 other plaintiffs.

14 So we've asked the plaintiffs to let us know  
15 how many of their plaintiffs in Track 1 are alleging  
16 that additional diseases besides the Track 1 disease  
17 related to the contamination. And maybe we can come up  
18 with an agreement that we put those plaintiffs aside,  
19 because they're going to be more difficult, going to  
20 require more experts, and that's really not what Track 1  
21 is supposed to be focused on, and focus on those people  
22 who are only claiming the Track 1 disease is related to  
23 the contamination.

24 So that's another issue that we brought up  
25 in the Track 2 proposal, that the only plaintiffs



1 selected for Track 2 are those people who have just the  
2 Track 2 diseases related to the water.

3 MR. BELL: It's going to be difficult,  
4 Judge, because most of our clients have multiple  
5 illnesses. Most of them, the majority.

6 THE COURT: Illnesses that are in the  
7 lawsuit or illnesses that are not in the lawsuit?

8 MR. BELL: Either filed or to be filed.  
9 So, for example, we have a client who has Parkinson's  
10 but also has prostate cancer. So both of those, from  
11 our standpoint, we believe are related.

12 THE COURT: Are these all diseases that have  
13 been identified?

14 MR. BELL: Yes, Your Honor.

15 THE COURT: In other words, are they --  
16 you've seen the list.

17 MR. BELL: Yes, sir. Most of the ones  
18 we're talking about have --

19 THE COURT: Will at some point be on a  
20 track?

21 MR. BELL: Yes, sir.

22 So at one time there was a thought: Well,  
23 just try one at a time.

24 And you can't do that because then you're  
25 required to try your entire case.

1           But there are very few -- and we're doing  
2 the research, as Mr. Bain has asked us to do. But  
3 there are very few of ours that don't have -- when I say  
4 "ours," I'm talking Plaintiffs' Leadership -- that don't  
5 have multiple problems.

6           So we are submitting, I think tomorrow, a  
7 proposal to the judges on a Rule 16 conference. And it  
8 might be a good time to discuss that.

9           But one of the things we have coming up,  
10 Judge, is we have a March 27th deadline to opt out of  
11 the Track 2. And because those two orders haven't been  
12 signed, we're concerned about that deadline without us  
13 having identified Track 2 plaintiffs.

14           So that's kind of where we are on that.

15           THE COURT: Are there other issues that you  
16 wanted to address within Track 2? I just want to flesh  
17 this out. I understand they may be in your motion, but  
18 I just want to flesh it out at this point.

19           MR. BELL: We don't disagree that picking a  
20 cohort of cases out of the hundred to concentrate on is  
21 a good idea.

22           I think -- for example, we have a couple  
23 folks, and we're getting ready to file some motions on  
24 them, that all of a sudden they have an end-of-life  
25 diagnosis. So we're working on that. And we've

1 talked to the government about that.

2 So it may be that we should sit down soon  
3 and go through that Rule 16. We think there's some good  
4 give and take on both sides to work that out. But  
5 we're probably going to need some guidance to get it  
6 resolved.

7 THE COURT: Is that it?

8 MR. BAIN: I think that's the main thing.  
9 I mean, we believe that discovery of Track 2 should be  
10 staged after Track 1 has been finished and that it  
11 should be bifurcated. Those are our main issues. And  
12 that the plaintiff pool should be reduced.

13 THE COURT: And you laid that out in your  
14 filing?

15 MR. BAIN: Yes.

16 THE COURT: What about Track 3? Is there  
17 anything to discuss as to Track 3?

18 MR. BELL: There's a time frame in the CMO.  
19 I don't know what the date is right off the top of my  
20 head.

21 MR. BAIN: I think we both submitted  
22 diseases for Track 3.

23 MR. BELL: You're right. I'm sorry. The  
24 Court chose three of our proposals --

25 THE COURT: Yours was contingent, I think,

1 on what was selected for Track 2. I remember that.

2 MR. BELL: I don't want to be presumptuous  
3 to assume, but I'm assuming that maybe the Track 3 would  
4 be the balance of those five others. That's kind of  
5 what we're going on.

6 THE COURT: All right.

7 Well, how about our favorite topic,  
8 discovery.

9 There are two motions on my motions report:  
10 Docket Entry 81, which is Plaintiff's Motion  
11 to Compel Document Production in Response to the First  
12 Set of Request For Production, filed on 12/14.

13 And then it looks like Defendant's  
14 Cross-Motion for Protective Order at Docket Entry 93,  
15 filed 12/21.

16 Are those moot, or is there still stuff  
17 we're talking about?

18 MR. BELL: Well, here's our issue, Judge.  
19 We need to have some help. And I'm not sure if that  
20 would help the government or not. But we're getting  
21 rolling production. And we don't know when that's  
22 going to be finished. The formal response says: We'll  
23 get it to you before the end of fact discovery, which  
24 means, if you use that deadline, we could get documents  
25 or production the week before the deadline in June.

1 Up until now we haven't gotten any privilege  
2 logs of any substance. We had some from the prior  
3 cases. But I recognize it's hard to do a privilege log  
4 until you've completed the discovery. We understand the  
5 issue. But we still have got to have some finality on  
6 our request.

7 And that motion is pending, but I'm not sure  
8 it's ripe. We could argue it, but then if they're still  
9 getting documents and looking and trying, I see that as  
10 well.

11 THE COURT: I think there were parts of the  
12 motion that we've already addressed.

13 MR. BELL: That's correct.

14 THE COURT: And so I just want to know what  
15 remains in that.

16 MR. BELL: Our first request to the Court is  
17 that we get some date by which we can say this is -- in  
18 other words, your production is complete, and how long  
19 after that or at that same time will we get privilege  
20 logs?

21 Now, privilege logs are important, Your  
22 Honor. Just for an example, early on in this case we  
23 learned through the government that they are going to  
24 rely on a 2009 scientific study. And we anticipate  
25 that there will be privilege logs on that study. We

1 have already seen large redactions of information from  
2 the study, or from the materials. And so we obviously  
3 need to address that.

4 But we don't want to file a motion until  
5 we've had a chance to know: All right, this is your  
6 privilege log; let's have a meet and confer; let's try  
7 to work it out and see where we go.

8 So timing is important. We just need to  
9 know those dates.

10 THE COURT: Okay.

11 Mr. Bain?

12 MR. BAIN: I'd like Ms. Mirsky to address  
13 this.

14 MS. MIRSKY: Sarah Mirsky for the United  
15 States.

16 We can provide plaintiffs with a written  
17 update on the status of the various productions. We  
18 have largely completed those productions. But we can  
19 provide an updated timeline shortly.

20 As to the privilege logs --

21 THE COURT: So you're doing the rolling  
22 production, and they just don't know what's coming next?

23 MS. MIRSKY: Yes.

24 THE COURT: So you can give them closure on  
25 that, a status of: Hey, guys, RFP 2 is done; it's

1 complete. Expect no more. Is that right?

2 MS. MIRSKY: Yes, sir. We can do that, and  
3 we can also update --

4 THE COURT: Is that helpful?

5 MR. BELL: Yes, of course it is.

6 THE COURT: Okay.

7 MS. MIRSKY: And we can update our formal  
8 responses as well so that they reflect that information  
9 so that we're all working off of the same set of  
10 information.

11 THE COURT: Okay.

12 MS. MIRSKY: As to the privilege logs, I  
13 believe there is one outstanding from the EPA. They're  
14 reviewing 37 documents out of thousands that we've  
15 produced. And we expect to have that privilege log  
16 ready in the next few weeks.

17 There are privilege logs that are being  
18 reviewed by ATSDR currently. And we have let  
19 plaintiffs know that we will be producing those on a  
20 rolling basis as well.

21 So we can work with plaintiffs to make sure  
22 that they have the information that they need.

23 MR. BELL: That's all I can ask for.

24 But I'm a little worried that the -- well,  
25 we'll look at their final -- their notice, Judge. But

1 our concern, of course, is we've got to get some of this  
2 information to experts.

3 THE COURT: Right.

4 I mean, you see the concern, right? They've  
5 got a deadline.

6 MS. MIRSKY: I do. And the United States  
7 has been producing millions of pages of documents. And  
8 we are working with plaintiffs to try to prioritize  
9 anything that they need more expeditiously.

10 As I said, I believe that most of our  
11 productions from the agency-specific documents are  
12 complete at this point. But we will work with  
13 plaintiffs to find out if there's anything else that  
14 they need at this time.

15 THE COURT: Is that good?

16 MR. BELL: Yes, Your Honor. In fact, we  
17 have a meet and confer after the hearing today on a  
18 couple of issues.

19 THE COURT: All right. Good.

20 I wanted to ask about a settlement matrix,  
21 but I think that's probably premature. Is it? We  
22 don't have anything to put in it, right?

23 MR. BELL: We'd be glad to put some numbers  
24 in it, Your Honor. I'm not sure that's --

25 THE COURT: Is the one at the DON the one



1 the Navy is doing?

2 MR. BAIN: The Navy is working on their  
3 database, and they're ingesting all the -- they've got  
4 it online now, and they're ingesting historical material  
5 into it that they've accumulated.

6 I think what we need to do -- and we need to  
7 work with the Plaintiffs Resolution Committee -- is to  
8 try to see how far we can get on the questionnaire that  
9 we've been working on, which is going to provide  
10 information that will go into a settlement matrix. So  
11 that's where we are right now in that global settlement  
12 process. There are a few issues on the questionnaire  
13 that still need to be resolved. And that's where we  
14 were looking down the line possibly a settlement master  
15 getting involved and helping us to resolve those issues.

16 Once those issues are resolved, then what  
17 values are put into the matrix, whether that requires  
18 feedback from decisions of the Court or whether a  
19 special master can help us get those values set, that's  
20 further down the line.

21 The questionnaire is the first part of the  
22 process. And then whether we need a database to house  
23 the information from the questionnaire separate from the  
24 Navy's database -- hopefully the Navy's database  
25 information can be transferred to the other database or

1 be used, because they're accumulating a lot of  
2 information on the disease, the plaintiff, the  
3 representative, where they lived, things like that.

4 So I think we're making some progress. We  
5 kind of stopped for a while as we were seeing if a  
6 settlement master was going to be appointed. But based  
7 on the conference we had two weeks ago, we need to  
8 restart that process, I think, and keep it going. So  
9 that's where we are on that.

10 THE COURT: Would it be helpful for the  
11 Court to give some instructions on that?

12 MR. BELL: Yes. Especially if there's  
13 going to be some movement toward a master or not. If  
14 we knew that, then that would tell us what we need to  
15 do.

16 We have a little bit of a procedural -- we  
17 believe certain things need to be done first before  
18 certain, you know --

19 THE COURT: Right.

20 MR. BELL: And we're at odds on that, and  
21 I'm a not sure it can be resolved without some help.

22 MS. BASH (telephonically): Can you hear me,  
23 Your Honor? I don't know if others can hear me.

24 THE COURT: I don't know who you are, but I  
25 can hear you.

1 MS. BASH: This is Zina Bash from the  
2 Plaintiffs' Leadership Group. May I speak on this?

3 THE COURT: Sure.

4 MS. BASH: I'm sorry I wasn't able to be  
5 there today.

6 But just echoing some of what Mr. Bain said,  
7 we have been making, I think, substantial progress on  
8 the questionnaire itself.

9 And when we talk about a matrix, what we see  
10 the questionnaire doing is feeding into or becoming  
11 visually a matrix. And so when we talk about a  
12 questionnaire, it will actually become data fields in a  
13 matrix.

14 And we did pause, as Mr. Bain said, when we  
15 thought that the appointment of a settlement master was  
16 imminent, kind of to give him a chance to catch up to  
17 where we were, see where we had reached points of  
18 disagreement, and go from there.

19 But we can easily pick back up where we left  
20 off and continue to make progress until there is a  
21 settlement master in place. And that's actually on my  
22 plate. And I plan to put kind of our turn, the PLD's  
23 turn of the questionnaire back to the DOJ this week.

24 MR. BELL: We probably need to discuss that,  
25 Your Honor, within our group.

1 THE COURT: Okay.

2 What else should I know about anything?

3 MR. BELL: Well, obviously our concern early  
4 on was that the government didn't include us at all in  
5 their values they put into the EO option. They won't  
6 negotiate --

7 THE COURT: That's just an offer, right?

8 MR. BELL: It is. But we think a  
9 settlement master or someone should help us with the  
10 methodology of what we're going to do with the matrix.  
11 In other words, if the matrix is going to be taken and  
12 then they're going to make an offer, and that's it, then  
13 they can make an offer already. So it's the process  
14 we're concerned about right now.

15 THE COURT: I would expect, if you're  
16 talking about the lawsuits versus the admin claims, I  
17 would assume that the settlement discussions -- however  
18 you want to describe them -- in the lawsuit will be more  
19 of a give and take like a typical mediation versus what  
20 I'm describing as the admin claims through the EO.  
21 Right?

22 MR. BELL: Yes and no. We haven't gotten  
23 any indication that there would be anything like that.  
24 They are taking it, in essence, Judge -- and this  
25 happens in every case -- they're taking our very best

1 cases and trying to get those settled in the EO, which  
2 is interesting. But we are not able to call them back  
3 and say: Well, we'll take X. They won't let us  
4 counteroffer. So there's really nothing right now  
5 going on in that regard.

6 MR. BAIN: Yes, Your Honor. The EO was  
7 intended, as I think Judge Dever said, an off-ramp to  
8 litigation, so that people could get an offer early.  
9 The negotiated settlements are going to take time.

10 THE COURT: But it's not negotiated. It's  
11 just an offer.

12 MR. BAIN: It's just an offer, right. And  
13 it's been successful. Forty-three to date have been  
14 accepted. That's a very high percentage of the offers  
15 that have been made, both in the litigation and in the  
16 administrative process.

17 THE COURT: Of the ones -- of the cases that  
18 have come into the court, how many of those have done  
19 the off-ramp?

20 MR. BAIN: Eighteen.

21 THE COURT: Eighteen?

22 MR. BAIN: Yes.

23 And so far only 11 have been explicitly  
24 rejected; 35 have expired by the terms; and some are  
25 still pending. But we're continuing to examine cases

1 to see whether they're eligible for this, both in the  
2 administrative process and in the litigation.

3 In fact, we think we'll be finished with  
4 looking at the cases in litigation sometime this summer  
5 or fall, so we'll have gone through all those cases to  
6 see whether they're eligible for EO offers.

7 The administrative claims, of course, is  
8 much more open, and there could be a lot more in that  
9 process that would be eligible.

10 THE COURT: The administrative claims  
11 process closes in August; is that right?

12 MR. BELL: Well, as of -- there's an issue  
13 there.

14 THE COURT: Isn't there a deadline?

15 MR. BELL: The way the statute reads, there  
16 actually may not be. If you read the statute, it says  
17 the deadline is this and this. But the deadline is your  
18 illness has to accrue prior to the statute passing,  
19 which is August 2022.

20 But then there's a provision in there  
21 that -- there's no provision that says you've got to  
22 file your claim prior to August 10, 2024. It just says  
23 you can't file it if it doesn't accrue before that.

24 MR. BAIN: Our position is that there is a  
25 limitations period, and the claims do have to be filed

1 by August 10, 2024. So we hope at that time we'll have  
2 a picture of what the global number of claims is.

3 THE COURT: Have we talked about all the  
4 discovery? I thought there was some water -- ATSDR  
5 water health project files. Is that right?

6 MR. BELL: We're trying to save the best for  
7 last.

8 Eric Flynn, who is one of my law partners,  
9 Your Honor, is going to address your order that was  
10 issued on the files of ATSDR. The issue is on the  
11 water --

12 THE COURT: Which is different, right?

13 MR. BELL: Different --

14 THE COURT: Water Modeling versus --

15 MR. BELL: We are the ones that are trying  
16 to put our stuff together for them. They haven't  
17 gotten that yet because we haven't completed. We're  
18 trying to get our technical people to see how we could  
19 search their database. If you recall, the protected  
20 state registries is what we're talking about on that  
21 one. That's a separate issue. But we're working on  
22 that.

23 But the issue of the -- remember the mirror  
24 image motion we had? The order came down. We have a  
25 request to reconsider that.

1 THE COURT: Following the order?

2 MR. BELL: Following the order.

3 THE COURT: I didn't resolve it all? I  
4 created more problems?

5 MR. BELL: I think so -- well, most  
6 respectfully, Your Honor, we see some potential  
7 problems, and we're concerned about it.

8 And I'll ask Mr. Flynn if he can address it.

9 THE COURT: Okay.

10 Do you know of this, Mr. Bain?

11 MR. BAIN: I wasn't -- I thought they might  
12 seek some type of reconsideration, but they have not met  
13 with us.

14 THE COURT: You all haven't talked about it?

15 MR. BAIN: Well, Mr. Bell did make some  
16 remarks late last week about it, but we didn't have any  
17 type of meet-and-confer negotiation about it.

18 THE COURT: I just wondered how much I need  
19 to hear about it today versus --

20 MR. BELL: We're not going into the facts.  
21 We're going to talk about procedural issues.

22 THE COURT: Okay. Go ahead.

23 MR. FLYNN: Good morning, Your Honor. Eric  
24 Flynn from Bell Legal Group. It's short; I promise.

25 So I think what we would request



1 respectfully is that we have a time period within which  
2 to file a motion for reconsideration. I think it's  
3 going to take the government a little bit longer than  
4 that time period to provide us the information. We  
5 would just ask that we hold that time period in abeyance  
6 so we can just look at what's there and then make a  
7 decision as to whether or not to seek reconsideration.

8 THE COURT: What do I need to reconsider? I  
9 thought I gave you what you wanted.

10 MR. BELL: No, Your Honor.

11 THE COURT: No, I didn't?

12 MR. BELL: None of the -- the mirror image  
13 file was not allowed. And so what we'd ask -- this  
14 Friday is the deadline for reconsideration. But the  
15 government still has time to produce everything.

16 THE COURT: And they're in the process of  
17 doing that; is that right?

18 MR. BELL: Right.

19 So what we're asking is just allow us to  
20 have an extension or hold in abeyance, and let's see  
21 what they produce. If we can put it back together, we  
22 won't need to come back to see you.

23 THE COURT: What do you want, like, 14 days  
24 after they produce?

25 MR. BELL: That would be great, Your Honor.

1 THE COURT: Any objection to that?

2 MR. BAIN: No, Your Honor.

3 THE COURT: Okay.

4 MR. BELL: Thank you.

5 MR. FLYNN: Thank you.

6 THE COURT: Anything else?

7 MR. BAIN: Well, I want to bring up again  
8 the issue raised last time, which is the Common Benefit  
9 Order. And I know Mr. Bell was going to look into  
10 that, that it doesn't apply to the EO offers that were  
11 made either as part of the litigation or the Navy.  
12 Hopefully Mr. Bell has had time to talk with colleagues  
13 about it. I just wanted to make sure that that's clear  
14 on the record, that both parties agree that the holdback  
15 does not apply to those settlements.

16 MR. BELL: Well, we're working on that,  
17 because it's tricky, Judge.

18 Without getting into the facts now, we're  
19 trying to figure out when that particular group of EO  
20 offers ends. In other words, if that EO goes for the  
21 life of the case, then we have a problem with that in  
22 regards to the way the CMO may apply to that. So we're  
23 working on that. We'll get with the government on it.  
24 We're trying to wade through it ourselves.

25 THE COURT: Is there a preferred time to

1 rule on that issue or make a decision on that?

2 MR. BAIN: Well, we'd like to have it  
3 clarified. We're making payments without doing a  
4 holdback from these payments. So if that's not what  
5 was intended in the order, which we think it was  
6 intended in the order, then we need to know that sooner  
7 rather than later.

8 I think, talking to others on the  
9 plaintiffs' committee, that that's the understanding.  
10 But I want to make sure that all the plaintiffs are in  
11 agreement to that. And so it may be that we just need  
12 to talk further and make sure it's clarified. But I  
13 just -- I don't want to hang it out there too long and  
14 us not to get it set on the record what the  
15 understanding is.

16 THE COURT: Okay.

17 Anything else?

18 MR. BELL: Nothing right now, Your Honor.

19 As we discussed last time, we think the next  
20 hearing would be in a month instead of two weeks.

21 THE COURT: A month? Is that a sign that  
22 progress is being made?

23 MR. BELL: Well, I thought it was a pretty  
24 good day today. So we've also, Your Honor, pursuant to  
25 the Court's request, brought some updated data for the

1 Court.

2 THE COURT: Census?

3 MR. BELL: Yes, Your Honor.

4 THE COURT: Excellent.

5 What do you think?

6 MR. BAIN: I'm fine with skipping the next  
7 hearing and having it, what, four weeks from now?

8 MR. BELL: Yes.

9 And if it's okay, Judge, if we need you, as  
10 you indicated early on in your order, we could give you  
11 a ring.

12 THE COURT: Any time. I'm available any  
13 time.

14 I would assume that the value of these is  
15 more than what we're just talking about here in the  
16 courtroom. You guys see each other face to face;  
17 you're working things out, planning things.

18 MR. BELL: We have a meet and confer today.

19 THE COURT: That's what's going on, right?

20 MR. BAIN: Uh-huh.

21 THE COURT: I would assume that you're doing  
22 that when you're not here as well.

23 So I guess that's April, mid April, late  
24 April?

25 MR. BELL: April 19, I believe, Your Honor.

1           THE COURT: So I selected, of the days in  
2 the week when I set these dates, I surveyed the calendar  
3 for the day of the week that seems to avoid public  
4 holidays, and that was Tuesday. Are Tuesdays good?

5           MR. BELL: They're good for us, Your Honor.

6           THE COURT: So on April 16th I start a  
7 three-day stretch of criminal matters in New Bern. I  
8 don't think I'm going to have time for a status  
9 conference. I could do it maybe the 15th. That's a  
10 Monday. Or we could set it for the 23rd, which is a  
11 Tuesday.

12          MR. BELL: The 15th sounds good to us.

13          MR. BAIN: Personally the 23rd would be  
14 better for me. I'll be somewhere else that weekend  
15 before the 15th for a wedding. It will be hard to get  
16 here the morning of the 16th for me.

17          MR. BELL: We always agree to a wedding.

18          THE COURT: Mr. Bell, the 23rd?

19          MR. BELL: Yes, Your Honor.

20          THE COURT: Do you all think taking a month  
21 off, at least from coming to see me, is going to be  
22 problematic?

23          MR. BELL: Judge, if you wanted to have a  
24 telephone conference or something, if you'd like.

25          THE COURT: Why don't we consider that. If

1 we could do that, maybe --

2 MR. BELL: We could do it --

3 THE COURT: -- two weeks' time?

4 MR. BELL: Yes.

5 THE COURT: I'll look at that.

6 MR. BELL: Maybe zoom or something like  
7 that.

8 MR. BAIN: That would be fine, Your Honor.

9 MR. BELL: Your Honor, maybe I'll take a tie  
10 with me on my vacation.

11 MR. BAIN: I wanted to let you know we've  
12 hired a couple staff who will be in North Carolina at  
13 the courthouse in Raleigh. We have Michael Cromwell  
14 here today, he is an attorney; and Davalene Flowers, a  
15 paralegal. They will be -- ultimately they'll be at  
16 the courthouse in Raleigh. We'll have some people  
17 locally here.

18 THE COURT: Okay. Thank you very much.

19 MS. BASH: Your Honor -- Your Honor --

20 THE COURT: Yes, ma'am.

21 MS. BASH: Zina Bash again. I just wanted  
22 to say one more thing about the settlement master.

23 I think Mr. Bain would agree with this. But  
24 while we are making progress on the questionnaire  
25 itself, and I think we'll continue to make good

1 progress, I do think that it would be very helpful to us  
2 for the process of a settlement master to be appointed  
3 if there is going to be a new process. There are some  
4 things that it would be helpful to get clarity on early  
5 on so that we don't go too far down a path of the  
6 questionnaire without some macro -- what I call kind of,  
7 like, macro-level design questions to be adjudicated  
8 between the parties. So to the extent that the Court  
9 is considering that, we, on the plaintiffs' side, think  
10 it would be very helpful to have somebody appointed to  
11 do that. And I think DOJ would agree. I'm not in the  
12 room, so I can't see what Mr. Bain is thinking. But I  
13 just wanted to leave that with the Court.

14 THE COURT: So the Court would weigh in on  
15 the contents of the questionnaire? Is that what you're  
16 saying? Or you just want --

17 MS. BASH: No, not the content of the  
18 questionnaire. Kind of what Your Honor had talked  
19 about before with appointing somebody to help resolve  
20 disputes. Right? So kind of discrete disputes that  
21 come up along the way. So maybe it would be the  
22 questionnaire, but I don't think -- it would kind of  
23 just be designing the questionnaire and answering some  
24 of the bigger level questions.

25 DOJ, for example, has resisted some of the

1 plaintiffs' proposals. But they have also said that if  
2 we did have a neutral hear both sides and adjudicate,  
3 let's say, for example, that design dispute, then they  
4 would be willing under many circumstances to abide by  
5 the decision of the neutral to kind of break a logjam.

6 So it would be in that capacity that we had  
7 envisioned the settlement master and had discussed  
8 having a settlement master to adjudicate those things.  
9 We, on the plaintiffs' side, still believe that would be  
10 a helpful person to be involved in the discussions.

11 MR. BELL: I think you said earlier, Your  
12 Honor, that we'll be hearing from the Court on that.  
13 So I think some of this is premature until we hear.

14 THE COURT: What do you think?

15 MR. BAIN: Yes, Your Honor, I agree with Ms.  
16 Bash that we had been talking about the questionnaire,  
17 and we had kind of reached some points where we had some  
18 differences that a settlement master would help us  
19 resolve with respect to how we, for example, value  
20 economic losses. And so that's when we kind of came to  
21 the Court and said we think a settlement master would be  
22 helpful to help us talk through those and maybe reach  
23 some agreements on how we do that.

24 THE COURT: My recollection is it sounded  
25 like that was -- you all were expecting that to be baked



1 into that person's role, that they would reach a  
2 decision on what's in that questionnaire.

3 MR. BELL: Help guide us through.

4 THE COURT: All right.

5 MR. BELL: So I guess what we're saying is  
6 if there's going to be a settlement master, we don't  
7 want to proceed on another track.

8 If there's not going to be one, we need to  
9 know that as well.

10 THE COURT: Because he or she may undo what  
11 you've done. I've got it.

12 All right. Thank you very much.

13 (Concluded at 11:36 a.m.)

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I, Tracy L. McGurk, RMR, CRR, Federal Official Court Reporter, in and for the United States District Court for the Eastern District of North Carolina, do hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

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

\_\_\_\_3/21/2024\_\_\_\_

Tracy L. McGurk, RMR, CRR

Date