

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

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

10 \*\*\*\*\*

11 WEDNESDAY, MAY 21, 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 Jenna Butler  
 19 Eric Flynn  
 20 By Telephone:  
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 23 Hugh Scott Overholt  
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23 Proceedings recorded by mechanical stenography,  
24 transcript produced by notereading.  
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1 (Commenced at 11:05 a.m.)

2 THE COURT: Good morning, everybody.

00:00:06 3 Mr. Bell, what do you have for us?

00:00:08 4 MR. BELL: Good morning, Your Honor. I'm  
00:00:11 5 sorry I'm not there today. I had a conflict that I  
00:00:14 6 couldn't resolve. But Jenna Butler and Eric Flynn are  
00:00:19 7 ready to argue what needs to be argued. We have several  
00:00:24 8 things to take up with the Court. I'll turn it over to  
00:00:26 9 Jenna or Eric.

00:00:27 10 THE COURT: Number one.

00:00:29 11 MS. BUTLER: Good morning, Your Honor. I  
00:00:31 12 thought I'd just kind of track the PLG's portion of the  
00:00:35 13 status report.

00:00:36 14 On the Expert Disclosures heading, we -- the  
00:00:41 15 damages expert, I just want to flag for the Court that  
00:00:44 16 the damages expert reports and rebuttals are impacted by  
00:00:48 17 the offset issue that is addressed later in the report.  
00:00:53 18 We do have a meet and confer with DOJ scheduled for  
00:00:58 19 11:00 tomorrow on those issues. I just want to flag  
00:01:04 20 that there are some issues. It is not all of the  
00:01:06 21 residual experts; it's just the damages and offset  
00:01:10 22 experts that are kind of embroiled in that issue. And  
00:01:14 23 I can discuss that more when we get to that section.

00:01:17 24 THE COURT: And that's Track 1 trial  
00:01:18 25 plaintiffs; is that right?

00:01:20 1 MS. BUTLER: Yes.

00:01:23 2 On the Expert Depositions scheduling, I'm  
00:01:26 3 pleased to report that all but two, I think, general  
00:01:29 4 causation experts have been deposed. Those other two  
00:01:32 5 will be done by June 17th, I believe. And all specific  
00:01:37 6 cause experts except three are currently scheduled.  
00:01:42 7 And we're in constant communication. Mr. Cromwell is  
00:01:46 8 here, and we have Friday meet and confers. We're in  
00:01:50 9 communication to get those other three scheduled. So I  
00:01:53 10 think the scheduling is going well.

00:01:55 11 On the next section, which is the DOJ Expert  
00:02:01 12 Discovery Disclosures, that involves the motion that is  
00:02:05 13 pending before Your Honor. And I think Mr. Flynn is  
00:02:08 14 going to address that piece. Then we'll move to the  
00:02:13 15 next section.

00:02:14 16 THE COURT: So that is not moot?

00:02:17 17 MR. FLYNN: Thank you, Your Honor. You  
00:02:20 18 mean the SSPA motion?

00:02:22 19 THE COURT: The compensation records.

00:02:24 20 MR. FLYNN: Yes, Your Honor. I think that  
00:02:26 21 where we're at right now is the government has  
00:02:28 22 responded, has provided some records. I think if we  
00:02:31 23 might, Your Honor, suggest that Dr. Hennet has a  
00:02:34 24 deposition on June 4th. If we could just talk to Dr.  
00:02:39 25 Hennet about the records that were produced and confirm

00:02:41 1 that it clears up some questions that we had, then we  
00:02:44 2 could maybe let the Court know that a ruling may be moot  
00:02:48 3 on that. If not, then we can also let the Court know  
00:02:51 4 that we might need a ruling on that.

00:02:53 5 THE COURT: That's June 4th?

00:02:54 6 MR. FLYNN: June 4th; yes, sir.

00:02:58 7 THE COURT: If it can be resolved, it would  
00:03:00 8 be resolved June 4th?

00:03:02 9 MR. FLYNN: Yes, Your Honor.

00:03:08 10 THE COURT: Then maybe I should scratch June  
00:03:11 11 2nd and June 3rd off of possible dates for us to meet.

00:03:15 12 MR. FLYNN: I think that would be a good  
00:03:18 13 idea, Your Honor. I think what it is is there's some  
00:03:21 14 records that have been provided. We read the DOJ's  
00:03:25 15 response. We've looked over the records. We just want  
00:03:28 16 to confirm with Dr. Hennet that it meets our  
00:03:31 17 expectations based on what he said in his deposition.  
00:03:34 18 It might be that it does, in which case I think it might  
00:03:38 19 be moot. And if it isn't, and if there's still a  
00:03:40 20 conflict, then I think we'll have a better idea what  
00:03:43 21 that is after the deposition anyway. So then we can  
00:03:45 22 come back to the Court.

00:03:49 23 THE COURT: Could we set -- I'm skipping  
00:03:51 24 ahead here. Could we set our next status conference  
00:03:55 25 for Friday, June 6?

00:03:57 1 MR. BAIN: Your Honor, I have a conflict on  
00:03:58 2 that date. It is possible we could do it June 9th?

00:04:01 3 THE COURT: Monday, June 9th? Is that good  
00:04:04 4 with you all? Do you know? I'm sorry.

00:04:08 5 MS. BUTLER: Personally, I have a state  
00:04:10 6 court matter that day. But there may be others that  
00:04:13 7 could attend.

00:04:15 8 THE COURT: That way, that will give you all  
00:04:18 9 enough time to figure out if you can resolve this, and  
00:04:22 10 tell me at that conference what the deal is.

00:04:25 11 MR. FLYNN: Yes, Your Honor. I think we  
00:04:27 12 would maybe tentatively agree to June 9th, and if we  
00:04:30 13 need to request another date, we can always reach out.

00:04:33 14 THE COURT: I don't want to go much beyond  
00:04:34 15 that. I think I had June 2nd, 3rd, 6th, 9th, and 13th  
00:04:39 16 written down.

00:04:39 17 MR. FLYNN: Yes, Your Honor.

00:04:40 18 THE COURT: So back to where you are.

00:04:42 19 MR. FLYNN: I think that was all, actually.

00:04:45 20 MR. BAIN: Your Honor, I will just say that  
00:04:46 21 our position is we produced all the records that were  
00:04:49 22 reasonably available going back to 2005. I'm not sure  
00:04:52 23 what in Dr. Hennet's deposition might change that. But  
00:04:55 24 we're fine with letting it stay there until that  
00:04:58 25 deposition takes place.

00:04:59 1 THE COURT: All right.

00:05:00 2 MR. FLYNN: Thank you, Your Honor.

00:05:02 3 MS. BUTLER: So, Your Honor, the next item  
00:05:05 4 in the status report is titled Government's Late  
00:05:07 5 Production of Offset/Lien Data. This is an issue that  
00:05:12 6 we needed to flag because it has a lot of moving parts  
00:05:16 7 in it, including issues with respect to deadlines for  
00:05:22 8 damages experts' reports.

00:05:23 9 THE COURT: When is that?

00:05:27 10 MS. BUTLER: We had to produce our expert  
00:05:30 11 reports back in February.

00:05:31 12 And the problem is that we did not have a  
00:05:35 13 lot of information pertaining to the DOJ's alleged  
00:05:40 14 offsets. We did not receive that information until  
00:05:44 15 April 15th when they produced it as part of their expert  
00:05:48 16 reliance materials. For example, to the best of our  
00:05:54 17 searching everything that we have, we did not have  
00:05:57 18 Medicaid or Medicare information, the cost and payment  
00:06:01 19 data; we did not have the TriCare claim data, the  
00:06:04 20 TriWest claim data, the CCN claim data. So neither we  
00:06:09 21 as PLG nor our experts could review any of that data.  
00:06:13 22 And then we had to do our expert reports.

00:06:16 23 We had requested all of that in our  
00:06:18 24 discovery, and we've referenced Request for Production  
00:06:23 25 Number 6 in the status conference, but we also had

00:06:26 1 Request Number 2, Number 5, and Request Number 6, all of  
00:06:30 2 which this information would have been responsive to.

00:06:33 3 And, of course, fact discovery ended in  
00:06:35 4 August, 2024. So this late production of all of this  
00:06:40 5 information on the purported offsets that the DOJ is  
00:06:45 6 claiming against awards -- and again, the statute only  
00:06:49 7 applies offsets to awards. It's just -- it's fraught  
00:06:54 8 with all sorts of issues. And our experts did not have  
00:06:58 9 the data to review. Our rebuttal reports have already  
00:07:01 10 been due.

00:07:02 11 We did take the DOJ up on a two-week  
00:07:07 12 extension, which only goes until next week. But, I  
00:07:10 13 mean, we're still getting this information. In fact,  
00:07:13 14 they emailed us that they have supplemental information,  
00:07:15 15 and they're going to have to supplement their damages  
00:07:18 16 reports and their offsets. So really it -- this issue  
00:07:22 17 of offsets and liens is fraught with a lot of issues.

00:07:29 18 And we did not get the data that we asked  
00:07:31 19 for in a timely manner. We have a meet and confer  
00:07:36 20 scheduled for tomorrow. And we have a lot to work  
00:07:39 21 through. But we, as PLG, do not want to be prejudiced  
00:07:46 22 by these deadlines for damages expert and rebuttal  
00:07:49 23 reports passing when we should have had this data long  
00:07:54 24 ago.

00:07:56 25 We can get into more detail about what we're



00:07:58 1 talking about if you want to. But we do have a meet  
00:08:00 2 and confer tomorrow, and I just wanted to flag that I  
00:08:03 3 think --

00:08:05 4 THE COURT: So if a motion is to be filed,  
00:08:07 5 it should be considered on an expedited basis?

00:08:11 6 MS. BUTLER: Yes, Your Honor. Because it  
00:08:13 7 pertains to -- again, not all residual experts, but the  
00:08:17 8 residual expert phase includes damages and any other  
00:08:24 9 claims or defenses.

00:08:25 10 And so, for example, they have particular  
00:08:27 11 experts who are opining on these alleged offsets that  
00:08:34 12 apply to an award that a plaintiff might recover, for  
00:08:37 13 example, for Medicaid benefits, or for TriCare, or for  
00:08:43 14 Veterans Benefits. This is all information that was  
00:08:44 15 within their agency.

00:08:46 16 They've now created these agency-created  
00:08:49 17 spreadsheets that go through all of these alleged  
00:08:52 18 offsets. We just got this starting April 15th. So  
00:08:57 19 it's an issue.

00:08:59 20 And I'm hopeful we can have a productive  
00:09:03 21 meet and confer. But from our perspective it's going  
00:09:07 22 to have to include some extensions of these deadlines  
00:09:09 23 and a consideration of, you know: Do you wait to look  
00:09:14 24 at this until an award is rendered? Because the  
00:09:17 25 statute only applies an offset if there's an award.

00:09:20 1 And so it's just -- there's -- it's a multi-faceted  
00:09:25 2 issue.

00:09:26 3 And again, we have a meet and confer  
00:09:29 4 scheduled on it tomorrow. But it greatly prejudiced us  
00:09:33 5 to have to produce damage reports back in February  
00:09:35 6 without -- I mean, we had some raw data on some VBA  
00:09:40 7 benefits, but none of these comprehensive spreadsheets  
00:09:44 8 that they had their own agencies create and didn't  
00:09:48 9 produce to us until April 15th.

00:09:50 10 THE COURT: How is it relevant to damages?

00:09:53 11 MS. BUTLER: Your Honor, the statute  
00:09:55 12 states -- and I can pull up a copy and quote it for you.  
00:09:59 13 But it states basically -- and this is in section -- I  
00:10:05 14 think it's E -- let me find it. It's Section E(2).  
00:10:17 15 It says that any award -- and this is under the Camp  
00:10:23 16 Lejeune Justice Act.

00:10:23 17 THE COURT: Right.

00:10:24 18 MS. BUTLER: " Any award made to an  
00:10:26 19 individual or a legal representative of an individual  
00:10:29 20 under this section shall be offset by the amount of any  
00:10:32 21 disability award payment or benefit provided to the  
00:10:35 22 individual or legal representative under" -- and then  
00:10:39 23 they list some federal benefit programs.

00:10:42 24 THE COURT: And so how is that relevant?  
00:10:44 25 We're talking about expert discovery. How is that

00:10:47 1 relevant to an expert's opinion?

00:10:49 2 MS. BUTLER: Well, that's one of the issues  
00:10:51 3 is it's really -- and again, I think this is something  
00:10:57 4 we need to discuss, but the statute says it's not  
00:11:00 5 relevant until an award is made. And so it really  
00:11:05 6 seems that maybe it should be -- and again, we haven't  
00:11:10 7 discussed all this, but it seems a little premature at  
00:11:14 8 this point, quite frankly.

00:11:19 9 THE COURT: Okay. So you all are going to  
00:11:25 10 meet and confer on it, and just forecasting there may be  
00:11:29 11 a motion coming down the pike? And if so --

00:11:31 12 MS. BUTLER: To alter some of the deadlines  
00:11:34 13 under the CMO.

00:11:35 14 Again, we haven't even been able to discuss  
00:11:37 15 yet with the government, kind of, their position. But  
00:11:39 16 the statute is clear that this doesn't even come up  
00:11:42 17 until an award is made.

00:11:46 18 THE COURT: Okay.

00:11:48 19 MS. BUTLER: But again, we didn't have this  
00:11:51 20 information. And the reason it's come up now is  
00:11:55 21 because their experts -- they have provided expert  
00:11:58 22 reports that opine on these offsets. And our experts --  
00:12:02 23 neither we nor our experts had this information at the  
00:12:05 24 time our expert reports were due. And we're just  
00:12:09 25 getting it now on a rolling basis. And rebuttals were

00:12:13 1 already due.

00:12:14 2 They did offer us a two-week extension.

00:12:16 3 But anyway, you see the problem? It's an  
00:12:22 4 issue with respect to those deadlines, and an issue with  
00:12:28 5 respect to the information not having been produced in  
00:12:31 6 discovery when it was requested. There may be a way to  
00:12:37 7 work through it all, and that's what we're hopeful to  
00:12:41 8 start on this meet and confer.

00:12:43 9 But we do not want to be prejudiced by not  
00:12:46 10 rebutting their offsets. We don't concede the amounts  
00:12:50 11 that they have put in their expert reports.

00:12:53 12 THE COURT: Right.

00:12:54 13 MS. BUTLER: And we've been hamstrung in our  
00:12:56 14 ability to address it.

00:12:57 15 THE COURT: Just generally, what do these  
00:12:59 16 reports say, as far as damages goes, with respect to  
00:13:06 17 these sorts of things?

00:13:07 18 MS. BUTLER: Their experts come forward, and  
00:13:09 19 they have all these spreadsheets, and they say: Well,  
00:13:11 20 Plaintiff A got this disability benefit; TriCare paid  
00:13:15 21 for this. I mean, they have all this offset, and they  
00:13:18 22 have these spreadsheets where somebody that -- they call  
00:13:22 23 them agency-created spreadsheets. So they're not  
00:13:24 24 expert-created spreadsheets. They're agency-created  
00:13:28 25 spreadsheets. Somebody within the agency created these

00:13:31 1 spreadsheets for them to show how this data gets  
00:13:34 2 analyzed and how they allege it is applied against an  
00:13:38 3 award. And we're not going to just take that. We want  
00:13:42 4 to be able to look at it and rebut it.

00:13:45 5 And there are a lot of arguments also --

00:13:48 6 THE COURT: And that's an expert opinion as  
00:13:49 7 to how --

00:13:50 8 MS. BUTLER: Well, that's how they've  
00:13:52 9 presented it.

00:13:54 10 THE COURT: Okay.

00:13:58 11 MR. BAIN: Your Honor, Mr. Cromwell will  
00:14:00 12 address some of these issues, but we are meeting and  
00:14:03 13 conferring about it tomorrow.

00:14:03 14 THE COURT: I appreciate that.

00:14:05 15 MR. BAIN: I think it should be addressed.

00:14:07 16 MR. CROMWELL: Thank you, Your Honor.

00:14:08 17 Michael Cromwell for the United States.

00:14:10 18 Ms. Butler is right; we are meeting and  
00:14:13 19 conferring. We have not had a chance to go through some  
00:14:15 20 of the topics that she's talked about.

00:14:17 21 I do think it's important, though, that it's  
00:14:21 22 the United States' position that nothing has been  
00:14:23 23 improperly delayed or withheld.

00:14:26 24 THE COURT: Well, I would assume that they  
00:14:29 25 asked for documents of a similar nature in December. I

00:14:33 1 haven't looked at the discovery requests.

00:14:37 2 MR. CROMWELL: To put it into full context,  
00:14:41 3 the RFP they cited to you in the Joint Status Report  
00:14:44 4 specifically asks for documents in Defendant's  
00:14:50 5 possession, custody, or control pertaining to benefits,  
00:14:53 6 awards, or payments related to the alleged injury or  
00:14:55 7 injuries. And they cited to: Including but not  
00:14:58 8 limited to Veteran's Administration records pertaining  
00:15:03 9 to the Plaintiff or Plaintiff's decedent, including any  
00:15:06 10 documents connected to a service-connected disability  
00:15:08 11 rating, that kind of request.

00:15:11 12 The United States responded in two parts.  
00:15:13 13 One was we objected to producing anything that was  
00:15:16 14 attorney work product produced in this litigation or  
00:15:20 15 that was early expert discovery. Subject to that  
00:15:23 16 objection, we agreed expressly that we would produce any  
00:15:27 17 responsive documents it receives from the VA; NARA,  
00:15:31 18 which is the National Archives; and Plaintiffs' private  
00:15:34 19 healthcare providers, including military and medical  
00:15:36 20 records after Plaintiffs provide signed releases. We  
00:15:40 21 also said that the United States would produce  
00:15:43 22 responsive documents related to experts and expert  
00:15:46 23 testimony in accordance with the schedule provided in  
00:15:49 24 the Court's CMO.

00:15:50 25 So I just want to make clear, because there

00:15:52 1 are two parts to this; there are certain underlying data  
00:15:56 2 such as ratings decisions by the VBA awards that were  
00:16:01 3 made for veterans' disabilities that we have, in fact,  
00:16:04 4 produced. So we produced the things that we said we  
00:16:07 5 were going to produce. But there are certain things  
00:16:09 6 that were created and did not exist in the ordinary  
00:16:11 7 course of business that we reached out -- us, as the  
00:16:15 8 DOJ, reached out to individual agencies and said: We  
00:16:18 9 need to understand and somehow connect whatever benefits  
00:16:22 10 these Track 1 Plaintiffs have received related to their  
00:16:26 11 Track 1 diseases.

00:16:27 12 As you can imagine, that doesn't exist in  
00:16:30 13 the ordinary course. There's no actual spreadsheet  
00:16:32 14 that tracks these 25 plaintiffs. They only exist in  
00:16:36 15 the context of this litigation.

00:16:37 16 THE COURT: So these spreadsheets -- I guess  
00:16:39 17 that's what we're talking about here -- that have been  
00:16:41 18 created, were they created on data that was disclosed,  
00:16:48 19 that was provided to the Plaintiffs?

00:16:51 20 MR. CROMWELL: This is a complicated answer,  
00:16:53 21 but it depends on the agency. So, for instance, VBA's  
00:16:58 22 spreadsheet is based off data that we had produced  
00:17:01 23 because there are documents that show ratings decisions  
00:17:06 24 and rating awards that a person may receive, depending  
00:17:09 25 on the disability.

00:17:11 1 Medicare is a different kind of animal, as  
00:17:14 2 you might imagine. They don't have anything that's  
00:17:16 3 specific with the underlying data. What they have is a  
00:17:19 4 process where they -- outside the context of this  
00:17:22 5 litigation -- where they make determinations on a  
00:17:25 6 secondary payee. Essentially if somebody has Medicare,  
00:17:29 7 and the recipient is supposed to pay back some portion  
00:17:33 8 to Medicare because they inadvertently covered it, they  
00:17:36 9 have a process for how they determine what is related to  
00:17:39 10 something Medicare covers and something that they don't  
00:17:43 11 cover. So they had to go through this process for  
00:17:46 12 these 25 Track 1 Plaintiffs to determine what benefits  
00:17:49 13 Medicare paid versus what -- so that they could connect  
00:17:54 14 those to the Track 1 diseases.

00:17:56 15 So the VHA, which is the healthcare side of  
00:18:01 16 things on the VA side, doesn't have bills. What they  
00:18:06 17 have to do is look at the services that these Track 1  
00:18:08 18 Plaintiffs obtained -- or these services that they got  
00:18:11 19 for the Track 1 diseases. And then they have to  
00:18:14 20 connect it to an amount that they say is appropriate for  
00:18:18 21 these services and that they priced out for these  
00:18:20 22 services.

00:18:21 23 But when a veteran walks into the VA, it's  
00:18:24 24 not like they're handed an actual bill. Those don't  
00:18:27 25 exist. So we had to find a way to prepare a



00:18:31 1 spreadsheets that would somehow connect these particular  
00:18:33 2 benefits -- or these Track 1 diseases that these  
00:18:38 3 Plaintiffs have to the benefits they received.

00:18:40 4 Because, as Ms. Butler alluded to, and as  
00:18:43 5 you may well know, that the statute requires that any  
00:18:47 6 award that a plaintiff receives is offset by benefits  
00:18:52 7 that the plaintiff has received in a different context  
00:18:55 8 for their Track 1 disease as well. Essentially it's to  
00:18:59 9 prevent the government from paying twice for the same  
00:19:01 10 disease.

00:19:02 11 THE COURT: This is not a novel concept,  
00:19:04 12 right?

00:19:05 13 MR. CROMWELL: Correct.

00:19:06 14 THE COURT: So how has it worked out in  
00:19:08 15 other cases that aren't Camp Lejeune cases?

00:19:14 16 MR. CROMWELL: My understanding of how this  
00:19:15 17 comes in is that a lot of times an agency individual  
00:19:19 18 will prepare reports related to, kind of, offsets that  
00:19:22 19 either come in, or they come in through an expert like  
00:19:25 20 an economist, which is what we have done here, to say  
00:19:28 21 these are the amounts. Because the expert economist has  
00:19:32 22 to somehow discount the amounts in the future. So the  
00:19:36 23 economist is necessary because it's not a simple  
00:19:39 24 calculation. If somebody is receiving benefits into  
00:19:42 25 the future for their disability, we are obligated to

00:19:45 1 discount that to the present value. That's why an  
00:19:48 2 expert, just as an example, is required in this  
00:19:50 3 situation. It's not just simple math.

00:19:54 4 THE COURT: Now, your objection -- I  
00:19:57 5 probably spent more time on this than I need to at this  
00:20:02 6 point. But your objection to providing this information  
00:20:03 7 during fact discovery was that it was premature; right?  
00:20:07 8 Well, now we're --

00:20:09 9 MR. CROMWELL: Well, yes and no.  
00:20:10 10 I'm sorry. I don't want to interrupt your  
00:20:12 11 question.

00:20:12 12 THE COURT: Well, now we're no longer in  
00:20:15 13 fact discovery. We're in expert discovery. And yet  
00:20:18 14 they're complaining that they don't have this  
00:20:21 15 information.

00:20:21 16 So why didn't they have it in a timely  
00:20:23 17 manner?

00:20:23 18 MR. CROMWELL: I think that's not correct.  
00:20:24 19 They did have it at the time of expert disclosures.

00:20:27 20 THE COURT: Just in a different form?

00:20:28 21 MR. CROMWELL: Well, the things that they're  
00:20:30 22 complaining about not having, the Excel sheets and the  
00:20:32 23 Word documents, were produced as part of our damages  
00:20:34 24 experts' reports. And so that's when it was due.

00:20:37 25 THE COURT: And those numbers didn't match

00:20:40 1 up with y'all's numbers?

00:20:41 2 MS. BUTLER: No, Your Honor. For example,  
00:20:42 3 they produced a spreadsheet that they had created by  
00:20:46 4 somebody who hasn't been revealed to us that their  
00:20:50 5 expert relied on for Medicare benefits. We didn't have  
00:20:54 6 any information on alleged -- not even raw data on  
00:20:57 7 alleged Medicare benefits because, as they're  
00:20:59 8 explaining, apparently it wasn't even -- you can't get  
00:21:03 9 it in that form. So we didn't have that information at  
00:21:05 10 all.

00:21:06 11 We had some Veterans Benefit information.  
00:21:08 12 But again, we received an email on May 9th that even  
00:21:13 13 that is being changed.

00:21:14 14 THE COURT: It sounds like some of this  
00:21:15 15 information is perhaps totally new information to you.

00:21:23 16 MS. BUTLER: Yes. Yes.

00:21:24 17 THE COURT: Different, more -- perhaps more  
00:21:27 18 updated information --

00:21:27 19 MS. BUTLER: Yes.

00:21:28 20 THE COURT: -- than was provided to you?

00:21:30 21 MS. BUTLER: And it's changing. Even on  
00:21:33 22 May 9th --

00:21:34 23 THE COURT: I think from the status report  
00:21:36 24 it sounds like you all -- that you, yourselves, are  
00:21:38 25 supplementing your information. So it's evolving?

00:21:41 1 MS. BUTLER: Yes.

00:21:42 2 MR. CROMWELL: Just to flesh that out, so  
00:21:43 3 the Court has some context.

00:21:45 4 What happened is that we were producing  
00:21:47 5 Phase 3 expert damages reports in early April. We did  
00:21:51 6 that for four out of the five diseases. As you know,  
00:21:54 7 Track 1 disease Parkinson's disease was delayed by 30  
00:21:59 8 days.

00:21:59 9 THE COURT: Right.

00:21:59 10 MR. CROMWELL: So in the interim, between  
00:22:02 11 the expert reports being served in early April and the  
00:22:06 12 Parkinson's disease being served in early May, we  
00:22:10 13 received a supplemental file from the VBA and an updated  
00:22:14 14 Excel and Word document because, without going into too  
00:22:19 15 much detail, due to resources and turnover at the VA, we  
00:22:23 16 could not verify completely that we had an entire set of  
00:22:27 17 accurate VBA disability information for all the Track 1  
00:22:32 18 Plaintiffs. And so, for example, there was an  
00:22:35 19 individual --

00:22:36 20 THE COURT: So you're relying on a lot of VA  
00:22:40 21 staff --

00:22:42 22 MR. CROMWELL: Yes, Your Honor.

00:22:42 23 THE COURT: -- to get this information  
00:22:44 24 that's important to one of the largest toxic torts in  
00:22:48 25 United States history?

00:22:50 1 MR. CROMWELL: That is correct, Your Honor.

00:22:51 2 MS. BUTLER: Your Honor, if they weren't  
00:22:52 3 sure they had an entire set of accurate information, you  
00:22:54 4 can imagine what our concerns have been.

00:22:58 5 THE COURT: Is this likely to keep evolving?

00:23:01 6 MR. CROMWELL: Well, offset information will  
00:23:03 7 have to evolve by nature -- right? -- because you will  
00:23:06 8 have past benefits; you have future benefits. If  
00:23:09 9 somebody, for instance, goes to a VA hospital and  
00:23:13 10 obtains treatment for their Track 1 bladder cancer in,  
00:23:18 11 say, three months, then that will be something that  
00:23:20 12 would be offset, because we clearly don't have that  
00:23:23 13 information at the present time. So those numbers,  
00:23:26 14 just like a lot of numbers, would have to evolve up to  
00:23:29 15 the point of trial. There's no question about that.

00:23:32 16 With regards to having to supplement, this  
00:23:36 17 all came about when we received this data. We turned  
00:23:40 18 around and provided it to them and said the following,  
00:23:42 19 which is: We believe that our damages experts that were  
00:23:47 20 disclosed in April may have to supplement some of their  
00:23:50 21 VBA sections because we have this updated supplemental  
00:23:54 22 data. Knowing that your rebuttal expert reports are  
00:23:59 23 due May 14th, we would give you an extension, because we  
00:24:03 24 don't think our reports would be supplemented until  
00:24:06 25 today, which they will be supplemented today, and

00:24:08 1 there's three of them. And so it's not that we're not  
00:24:13 2 willing to work with them, understanding that there's a  
00:24:14 3 timing mechanism for them to be able to address some of  
00:24:18 4 these issues.

00:24:18 5 But that's a different question as to  
00:24:21 6 whether data was improperly delayed or withheld.

00:24:25 7 And so again, I think some of this will be  
00:24:28 8 fleshed out in the meet and confer.

00:24:30 9 THE COURT: How refined does this  
00:24:31 10 information need to be?

00:24:33 11 MS. BUTLER: Well, Your Honor, I think Mr.  
00:24:35 12 Cromwell hit on one of the problems is this is  
00:24:37 13 constantly evolving. And it doesn't apply until  
00:24:40 14 there's an award. So that's one of the ongoing  
00:24:45 15 problems is they're already -- I mean, they produced  
00:24:47 16 their reports in April, and they're already saying  
00:24:50 17 they're going to have to supplement. I mean, how many  
00:24:53 18 times are we going to have to supplement this and get  
00:24:56 19 additional information?

00:24:57 20 And again, we just got most of this. We got  
00:24:59 21 a little bit of underlying raw data -- no  
00:25:03 22 spreadsheets -- before April 15th. But this was all  
00:25:04 23 produced -- the Medicare, the TriCare, the CCN, the  
00:25:09 24 TriWest -- this all came to us as part of their expert  
00:25:13 25 reliance materials starting April 15th. So we're

00:25:17 1 already behind the 8 ball because it wasn't produced in  
00:25:21 2 discovery. So you see how it's a --

00:25:24 3 THE COURT: I do.

00:25:25 4 MR. CROMWELL: If I may respond, Your Honor,  
00:25:26 5 just briefly. Two points:

00:25:27 6 One is the nature of damages reports is that  
00:25:29 7 they're rebuttal in nature. We did not have, other than  
00:25:32 8 the damages forms which they identified past medical  
00:25:35 9 expenses, amounts for other categories of damages in  
00:25:39 10 which they were going to seek, at least the amounts,  
00:25:43 11 because we had sought this information during discovery.

00:25:48 12 It's really no different than us having to  
00:25:50 13 rebut information from a damages expert, where it's our  
00:25:53 14 burden to put on offset information, just like it's  
00:25:55 15 their burden to put on damages information. And we're  
00:25:58 16 having to rebut their damages experts just like they're  
00:26:00 17 having to rebut the offset information.

00:26:03 18 The other thing is about evolving timelines  
00:26:06 19 for information that may be supplemented. This is no  
00:26:08 20 different than what Plaintiffs have raised before, which  
00:26:11 21 is they may have Plaintiffs who have new diseases, who  
00:26:14 22 have new issues that come up before the course of trial.  
00:26:17 23 Things are going to get supplemented at some point prior  
00:26:20 24 to trial. I don't think that changes the nature of  
00:26:24 25 when this information was due and what kind of

00:26:28 1 information it is that they have to provide.

00:26:30 2 MS. BUTLER: Your Honor, with respect to  
00:26:32 3 when discovery was due, we would agree. And they  
00:26:34 4 didn't produce it in discovery, and discovery is closed.

00:26:37 5 With respect to expert reports, again, as  
00:26:40 6 they noted, offsets are their burden. It's almost like  
00:26:43 7 it should have been flipped. They should have produced  
00:26:46 8 their experts; we would have learned that they're  
00:26:48 9 relying on these materials that hadn't been produced  
00:26:51 10 previously, and then we would have responded. But it's  
00:26:54 11 because we had to produce expert reports in February;  
00:26:56 12 we're already behind the 8 ball.

00:26:58 13 And there is a difference because the  
00:27:01 14 Plaintiffs' medical conditions will be considered at the  
00:27:04 15 trial. And so they will evolve up to the point of  
00:27:08 16 trial. This is a post-award issue.

00:27:10 17 THE COURT: Exactly. So is this a  
00:27:12 18 post-trial issue we can address then?

00:27:15 19 MS. BUTLER: I can't -- I think we need to  
00:27:19 20 confer on that. But the statute is pretty clear in its  
00:27:22 21 language, that it's after an award is rendered.

00:27:25 22 THE COURT: An award under the Act?

00:27:28 23 MS. BUTLER: Camp Lejeune Justice Act.

00:27:31 24 MR. BAIN: Your Honor, in FTCA litigation  
00:27:33 25 they're all bench trials; this information is presented



00:27:36 1 by the United States as part of the trial. So it's all  
00:27:38 2 decided by the Court at the time of the findings of fact  
00:27:41 3 and conclusions of law what the appropriate offset  
00:27:44 4 should be.

00:27:45 5 MS. BUTLER: But this is not an FTCA; it's a  
00:27:48 6 Camp Lejeune Justice Act, and we have specific language.

00:27:51 7 THE COURT: More importantly, you're meeting  
00:27:52 8 and conferring about this?

00:27:54 9 MS. BUTLER: Yes, tomorrow.

00:27:55 10 THE COURT: I wish you well. Thank you for  
00:28:00 11 bringing it to my attention.

00:28:03 12 Next?

00:28:04 13 MS. BUTLER: Let me get to my next.

00:28:07 14 I think the next issue is the Shields  
00:28:12 15 deposition. You were involved, Your Honor, on this on  
00:28:16 16 a Friday meet and confer. There's a lot in the status  
00:28:21 17 report. But I think what I can say is that we are still  
00:28:24 18 considering whether we need to reopen that deposition or  
00:28:26 19 not. We did not receive working hyperlinks.

00:28:31 20 THE COURT: The hyperlinks were not working?

00:28:35 21 MS. BUTLER: Correct.

00:28:35 22 THE COURT: So you all did not get to delve  
00:28:37 23 into a number of issues?

00:28:40 24 MS. BUTLER: Correct. And we're just  
00:28:41 25 trying to ascertain whether we need to reopen the

00:28:46 1 deposition or not.

00:28:47 2 Just for context, the report that was  
00:28:50 3 hyperlinked is 500 pages long and has thousands of  
00:28:54 4 footnoted links. We received a flash drive on Friday.  
00:28:58 5 We're still going through that to ascertain whether that  
00:29:02 6 requires any additional questioning.

00:29:03 7 THE COURT: Is everything working?

00:29:06 8 MS. BUTLER: I believe so. Personally, I  
00:29:09 9 was the one who had to look at it Sunday evening at  
00:29:12 10 11:00 in the night and could not get the links to work.  
00:29:16 11 But I am not the one who is checking that right now.  
00:29:20 12 So I can't report on that personally. I know that  
00:29:23 13 there are a lot of hyperlinks.

00:29:25 14 And quite frankly, we just presumed when we  
00:29:28 15 got it over the weekend in the wee hours that it was  
00:29:31 16 working. And so now, you know, we discovered they  
00:29:37 17 weren't.

00:29:37 18 There were also some categories of  
00:29:39 19 information that were requested at the deposition with  
00:29:41 20 respect to the subpoena and some notes. I know they're  
00:29:46 21 still working through that. So I think that issue,  
00:29:48 22 we'll just have to let you know if that is resolved or  
00:29:52 23 not.

00:29:52 24 THE COURT: Okay.

00:29:53 25 MR. BAIN: Your Honor, Ms. Sprayegen will

00:29:58 1 address this issue.

00:29:59 2 MS. SPRAYREGEN: Sharon Sprayregen for the  
00:30:02 3 United States.

00:30:02 4 THE COURT: You called?

00:30:04 5 MS. SPRAYREGEN: I called.

00:30:06 6 THE COURT: You were on the phone?

00:30:08 7 MS. SPRAYREGEN: That was me.

00:30:09 8 As Ms. Butler noted, we're talking about  
00:30:11 9 hyperlinks that weren't working. But in addition to  
00:30:14 10 the report with the hyperlinks on Saturday evening, the  
00:30:17 11 United States provided over 1,700 articles. These are  
00:30:21 12 the articles that were cited in Dr. Shields' report.  
00:30:23 13 So --

00:30:24 14 THE COURT: And he's a rebuttal?

00:30:27 15 MS. SPRAYREGEN: He's a rebuttal witness,  
00:30:30 16 but he's also presented some affirmative response  
00:30:34 17 opinions as well.

00:30:35 18 But the important thing is that they had all  
00:30:37 19 of the articles that were linked in the hyperlinked  
00:30:40 20 report. So in order to find an article, rather than  
00:30:43 21 click on the hyperlink, what Plaintiffs had to do was go  
00:30:46 22 to the folder that had all these articles. The  
00:30:49 23 documents are titled by the lead author's first name and  
00:30:53 24 a few words from the title. So they could find any  
00:30:56 25 article that they wanted to find.

00:30:56 1 (Whereupon a recording stated, "This call  
00:30:56 2 will be recorded.")

00:31:03 3 MS. SPRAYREGEN: And there was no  
00:31:04 4 prejudice --

00:31:06 5 THE COURT: Wait a minute.

00:31:18 6 Is someone on the phone recording this  
00:31:21 7 hearing?

00:31:21 8 (No response given.)

00:31:34 9 THE COURT: Go ahead.

00:31:36 10 MS. SPRAYREGEN: So I was just saying,  
00:31:37 11 simply because they couldn't get the hyperlinks to work  
00:31:40 12 doesn't mean that they were prejudiced. They just had  
00:31:43 13 to go through one extra step in order to access the  
00:31:46 14 article.

00:31:46 15 I would note that providing the articles was  
00:31:48 16 not something that the parties needed to do under the  
00:31:51 17 case management order. It was what the U.S. did  
00:31:54 18 because the articles were on the laptop that Dr. Shields  
00:31:57 19 used at his deposition.

00:31:58 20 I would also note that Ms. Butler has not  
00:32:01 21 noted how PLG was prejudiced by the inability to operate  
00:32:05 22 the hyperlinks, nor did Mr. Telan, who took the  
00:32:09 23 deposition, note how he was prejudiced by the inability  
00:32:12 24 to operate the hyperlinks or what he would have done  
00:32:15 25 differently had those hyperlinks been working.

00:32:19 1           Should they have wanted to, and they did not  
00:32:20 2   at the deposition, the Plaintiffs could have gone off  
00:32:24 3   the record, searched for an article, and used that  
00:32:28 4   article.   But they never did that.

00:32:31 5           And in terms of the fact that Ms. Butler  
00:32:34 6   said she reviewed the article -- the hyperlinked report  
00:32:36 7   on Sunday night and received a flash drive on Friday, I  
00:32:40 8   just want to briefly address that.   The United States  
00:32:41 9   provided the articles and the hyperlinked report on  
00:32:44 10   Saturday in advance of the deposition, as I represented  
00:32:47 11   that we would at that May 9th hearing.   We provided an  
00:32:53 12   updated hyperlink report on Sunday evening as soon as we  
00:32:56 13   got that report from Dr. Shields.   The only difference  
00:32:59 14   between what was provided on Saturday evening and what  
00:33:02 15   was provided on Sunday evening was that several of the  
00:33:05 16   links went to the wrong articles.

00:33:08 17           So Dr. Shields gave me the report.   I  
00:33:10 18   provided it to Plaintiffs.   And after the deposition,  
00:33:17 19   we offered to provide a CD with the -- with the report  
00:33:22 20   with operable hyperlinks.   Perhaps the problem with the  
00:33:26 21   hyperlinks was that their security system disabled it.  
00:33:29 22   We had no reason to believe that there would be a  
00:33:31 23   problem with the hyperlinks.   We received the report  
00:33:34 24   with hyperlinks from our own expert.   So we mailed a CD  
00:33:37 25   to them.   They preferred a flash drive.   We then Fed

00:33:41 1 Exed a flash drive to them.

00:33:42 2 So we don't see any need to open the  
00:33:44 3 deposition or add additional time. They were not  
00:33:47 4 prejudiced in any way.

00:33:50 5 With regard to notes, they will be produced  
00:33:52 6 today, just so you know. So look for them this evening.

00:33:56 7 And we're reserving our rights. We are not  
00:33:59 8 conceding that the notes are discoverable, but we're  
00:34:02 9 providing them.

00:34:04 10 MS. BUTLER: Your Honor, just to remind you,  
00:34:06 11 the sole -- the basis for your ruling was that this was  
00:34:11 12 tantamount to Dr. Shields bringing notes to his  
00:34:13 13 deposition. Had he brought a handful of notes, we  
00:34:16 14 could have copied them, reviewed them, and asked him  
00:34:19 15 about his notes at his deposition.

00:34:21 16 Instead, it was represented that he was  
00:34:22 17 bringing a laptop. And it was clearly set forth that  
00:34:26 18 we would have a duplicate copy. We did not have the  
00:34:29 19 hyperlinks. So we have no idea what he was clicking on  
00:34:33 20 during his deposition when he had this laptop open, and  
00:34:36 21 that is the problem.

00:34:37 22 And sending it to us at 9:30 on Saturday  
00:34:41 23 evening with the next day being Mothers' Day and telling  
00:34:44 24 us that some of the hyperlinks are broken but we're not  
00:34:48 25 sure which ones, so just replace this at 10:30 on the

00:34:51 1 Sunday night before. And I did go in and try to access  
00:34:54 2 the almost 2,000 hyperlinks. I was very -- and we  
00:34:59 3 notified the next morning, because at that point it was  
00:35:02 4 so late.

00:35:03 5 And so the point being is that we should  
00:35:05 6 have had the "notes" at the time of the deposition, and  
00:35:08 7 we did not.

00:35:09 8 Now, have we been prejudiced? We're still  
00:35:12 9 trying to ascertain that because we just on Friday got  
00:35:15 10 the flash drive that we had asked for. They did send  
00:35:19 11 the CD-ROM. Personally, my laptop doesn't have a  
00:35:21 12 CD-ROM capability anymore. So we asked for a flash  
00:35:24 13 drive. We got it on Friday. We're still trying to make  
00:35:26 14 sure that the hyperlinks are what they are.

00:35:29 15 We hope to not have to reopen the  
00:35:30 16 deposition. We look forward to getting these notes  
00:35:32 17 today. But we just had to flag it because you were  
00:35:35 18 involved, and you did ask for an update.

00:35:38 19 MS. SPRAYREGEN: May I respond very briefly?

00:35:40 20 There are two issues. One are the  
00:35:42 21 hyperlinks in the 500-page report, which links to the  
00:35:45 22 almost 2,000 articles. And again, Plaintiffs had the  
00:35:48 23 articles.

00:35:49 24 The other are about one and a half pages of  
00:35:52 25 notes that Dr. Shields referenced at his deposition.

00:35:55 1 And that is what is being provided today. And the only  
00:35:59 2 obligation that the United States had was to provide the  
00:36:02 3 documents that he looked at at the deposition. And we  
00:36:06 4 did that, well in advance of the deposition, on Saturday  
00:36:09 5 night. And we were not told that there was any problem  
00:36:13 6 with the hyperlinks until Monday morning, 44 minutes in  
00:36:18 7 advance of the deposition, and 34 hours after we  
00:36:21 8 provided the information, which, again, was in advance  
00:36:23 9 of the deposition, which is all we needed to do.

00:36:27 10 THE COURT: I think she's saying that they  
00:36:29 11 couldn't tell what he was clicking on during the  
00:36:33 12 deposition.

00:36:34 13 MS. SPRAYREGEN: So they easily could have,  
00:36:36 14 because he said which articles he was referencing.  
00:36:39 15 They had all the articles in a folder. And the  
00:36:42 16 articles are organized by author's last name and by the  
00:36:44 17 title of the article. So had they wanted to look at  
00:36:48 18 any article that he clicked on at the deposition, they  
00:36:52 19 could have gone to the folder and opened that article  
00:36:56 20 very easily. They chose not to.

00:36:59 21 This was not an issue at the deposition at  
00:37:02 22 all.

00:37:03 23 MS. BUTLER: Your Honor, the point being we  
00:37:04 24 were entitled to what he had, and we didn't get it.  
00:37:08 25 And it was incumbent on them to send us what he had.



00:37:12 1 And the document they sent us on Saturday evening, and  
00:37:16 2 then they told us didn't work, so sent again on Sunday  
00:37:20 3 evening, didn't work. That's the point. We may or  
00:37:23 4 may not have to reopen the deposition. We can argue  
00:37:25 5 further.

00:37:26 6 THE COURT: But you have it now?

00:37:27 7 MS. BUTLER: We do have it now, and we're  
00:37:29 8 reviewing it.

00:37:30 9 THE COURT: Very good.

00:37:30 10 MS. BUTLER: Thank you, Your Honor.

00:37:32 11 THE COURT: Next?

00:37:34 12 MS. BUTLER: The next item in the status  
00:37:37 13 report hopefully is less controversial; that is DOJ made  
00:37:43 14 an assertion in their portion about medical records that  
00:37:46 15 they were still waiting on from us. Just to remind --

00:37:49 16 THE COURT: Do you know where this is in the  
00:37:51 17 status report?

00:37:52 18 MS. BUTLER: It's on page 11. It's in the  
00:37:54 19 DOJ section. And it's titled -- I think that addressed  
00:38:00 20 our portions of the report. So that's why I moved to --  
00:38:07 21 "Recent Developments in Track 1."

00:38:09 22 They said "As of May 14th they had not  
00:38:12 23 produced."

00:38:13 24 There were four medical records that we had  
00:38:15 25 requested but had not yet received. So, of course, we

00:38:19 1 can't produce what we don't have. We have made the  
00:38:22 2 request. One of those, we've learned that there are no  
00:38:24 3 records. And we shared that with the DOJ.

00:38:26 4 So the point being we're providing the  
00:38:28 5 records as we get them. I believe there may only be  
00:38:31 6 two now that are outstanding since the status report.  
00:38:35 7 And it's not like we're sitting on medical records and  
00:38:39 8 not producing them. We're requesting them when we  
00:38:41 9 become aware of them. We have to wait until we receive  
00:38:44 10 them, and then we're producing them to the DOJ.

00:38:47 11 So I don't think that's any sort of issue.  
00:38:49 12 And we understand that they're waiting on, I think, two  
00:38:52 13 at this point. But we don't have them.

00:38:54 14 THE COURT: Okay.

00:38:58 15 MS. BUTLER: And then I just wanted to note  
00:39:00 16 in the DOJ section, they also have a portion -- this is  
00:39:07 17 on page 13 -- about PLG's Late Supplementation of  
00:39:11 18 Materials Considered. I just felt the need to address  
00:39:15 19 this again.

00:39:16 20 THE COURT: Is this the reliance files?

00:39:19 21 MS. BUTLER: Yes.

00:39:20 22 So, Your Honor, they have repeatedly  
00:39:22 23 included in the status reports and try to make it seem  
00:39:25 24 like we're somehow trying to not produce materials  
00:39:29 25 considered in a timely manner. Your Honor, we're

00:39:31 1 dealing with experts here. Sometimes they look at  
00:39:34 2 things, and they don't think to just call their lawyer  
00:39:36 3 and say: Hey, I looked at this study today. So we may  
00:39:39 4 find out as we're doing deposition prep the day before,  
00:39:42 5 or in one instance it did come out during a deposition  
00:39:45 6 that an expert had reviewed something that we didn't  
00:39:48 7 know about.

00:39:49 8 So, yes, in that one instance where it came  
00:39:51 9 out during the deposition that he reviewed something  
00:39:53 10 that he had not let us know that he reviewed, we did  
00:39:56 11 supplement after the deposition.

00:39:58 12 And, of course, if they felt they were  
00:40:00 13 prejudiced by that, they could certainly ask for a meet  
00:40:03 14 and confer, which they have not.

00:40:05 15 So I just wanted to note, Your Honor, on  
00:40:07 16 this piece, we are not trying to bombard them with late  
00:40:14 17 supplementations. But it's the nature of experts.  
00:40:17 18 They're in academia. They're scientists. They're  
00:40:21 19 medical doctors. They may run across something. Or,  
00:40:25 20 for example, there may have been a deposition the prior  
00:40:28 21 day that they want to see the transcript of. We are  
00:40:30 22 doing our best. Some of these are inadvertent  
00:40:33 23 situations, like the one where we didn't know that a  
00:40:35 24 particular expert had reviewed something. It is not  
00:40:38 25 prejudicial. If they felt any of these were

00:40:40 1 prejudicial, they can come to us, and we'll certainly  
00:40:43 2 talk about it.

00:40:43 3 But I just wanted to address it because  
00:40:46 4 they're making it seem as if we're trying to do  
00:40:48 5 something on purpose, or as if this is a big problem,  
00:40:53 6 which they have not let us know, other than trying to  
00:40:56 7 make us out to be the bad guys in the status report on  
00:40:59 8 that issue.

00:40:59 9 So I just wanted to make note of that. And  
00:41:02 10 if you have any specific questions -- you know, we're  
00:41:05 11 working with experts here. And if they take a look at  
00:41:09 12 something -- I have some of these examples. For  
00:41:12 13 example, one of the supplementations they claim was late  
00:41:15 14 was that they wanted to see another expert's report.  
00:41:18 15 So we sent that report to them. Of course, DOJ had a  
00:41:22 16 copy of that report, and we updated their materials  
00:41:26 17 considered list before their deposition.

00:41:27 18 So I don't think it's an issue, but I wanted  
00:41:30 19 to address it in case you have further questions on it.

00:41:32 20 And that's all I had as far as this week's  
00:41:35 21 status report.

00:41:36 22 THE COURT: I maybe should ask you this  
00:41:39 23 question regarding Mr. Mousser: Are there any issues  
00:41:45 24 regarding his updated condition that required the  
00:41:48 25 Court's attention?

00:41:49 1 MS. BUTLER: I think that's all been worked  
00:41:51 2 out, as far as I know. And there were some -- there  
00:41:54 3 are some supplementations being done, and I think that's  
00:41:57 4 all been resolved.

00:41:59 5 THE COURT: Okay.

00:42:01 6 MR. CARPENITO: Your Honor, if I may?

00:42:01 7 THE COURT: Yes, sir.

00:42:02 8 MR. CARPENITO: Joshua Carpenito for the  
00:42:04 9 United States.

00:42:04 10 With respect to Mr. Mousser, the parties  
00:42:06 11 have reached an agreement with respect to the expert  
00:42:09 12 supplementation in that case. DOJ will be  
00:42:12 13 supplementing specific causation and psychiatric expert  
00:42:16 14 reports this Friday, the 23rd. Additionally, we will  
00:42:19 15 supplement the damages expert reports in that case, if  
00:42:22 16 appropriate, by June 6th. We reached an agreement with  
00:42:25 17 the PLG on those dates.

00:42:26 18 Lastly, with respect to Mr. Mousser, we  
00:42:32 19 conducted a supplemental IME on May 6th. That took  
00:42:34 20 place without issue.

00:42:35 21 THE COURT: And all of the IMEs are done,  
00:42:35 22 correct?

00:42:38 23 MR. CARPENITO: That's correct, Your Honor.

00:42:38 24 THE COURT: Very good.

00:42:38 25 What does the government have to present?

00:42:40 1 MR. BAIN: Your Honor, just to respond to  
00:42:42 2 Ms. Butler's last point. It seems like these expert  
00:42:45 3 depositions take a lot of preparation time to get ready  
00:42:47 4 for them. They're very complex, involve a lot of  
00:42:50 5 scientific issues. So on the eve of the deposition  
00:42:53 6 when we get from the Plaintiffs a supplementation that  
00:42:56 7 the expert has considered two additional reports that we  
00:42:59 8 didn't have time to read and prepare for -- most  
00:43:02 9 recently we got one that was in French on the eve of the  
00:43:06 10 expert's deposition.

00:43:08 11 THE COURT: It was in French?

00:43:09 12 MR. BAIN: It was in French, yes.

00:43:11 13 So I agree with Ms. Butler that we can  
00:43:14 14 discuss this further and that we can discuss whether  
00:43:19 15 there is a need to reopen the deposition. And often in  
00:43:22 16 these depositions we reserve our right to do so. But it  
00:43:24 17 does seem to us, and it would be more beneficial to us  
00:43:27 18 if we were to get anything that the expert considered a  
00:43:31 19 week before the deposition rather than on the eve of the  
00:43:34 20 deposition, and then this issue would be moot. But it  
00:43:37 21 seems this has happened repeatedly, so that's why we  
00:43:41 22 raised it in the status conference report.

00:43:43 23 And I think that we have an update on a  
00:43:45 24 couple of other discovery items that Mr. Carpenito will  
00:43:48 25 address.

00:43:49 1 MR. CARPENITO: Your Honor, I just have one  
00:43:51 2 remaining; it is with respect to the privileged document  
00:43:55 3 issue.

00:43:55 4 Following the Court's order at Docket Entry  
00:43:59 5 379, which confirmed that document was privileged and  
00:44:03 6 properly clawed back, the United States reached out to  
00:44:06 7 PLG via email on May 12 requesting confirmation that  
00:44:10 8 they had destroyed that document as well as the separate  
00:44:14 9 portion of Dr. Hennet's deposition transcript that  
00:44:18 10 references the document.

00:44:19 11 The United States has not yet received a  
00:44:20 12 response.

00:44:21 13 We also asked PLG to identify and disclose  
00:44:24 14 any additional documents in their possession that could  
00:44:27 15 be privileged or protected under the Court's recent  
00:44:30 16 ruling.

00:44:30 17 And again, we have not received a response.

00:44:33 18 THE COURT: What are they obligated to do?

00:44:35 19 MR. CARPENITO: They're not obligated to go  
00:44:36 20 and search, but to the extent that they know at the  
00:44:38 21 present time that they obtained documents that are  
00:44:41 22 potentially privileged under the Court's ruling and  
00:44:44 23 under a CMO-5, they are obligated to let us know.

00:44:48 24 MS. BUTLER: Your Honor, with respect to  
00:44:49 25 that issue, and as you know, Kevin Dean was the one who

00:44:52 1 was in court. His father passed away. And he has --  
00:44:57 2 he had a trial, and then his father passed away. So he  
00:45:00 3 is the one who would need to address that issue.

00:45:03 4 And I am sorry you haven't gotten a  
00:45:06 5 response, but we've been trying to give him some time to  
00:45:09 6 deal with those personal issues.

00:45:11 7 And so we will get back to them as soon as  
00:45:15 8 we're able.

00:45:15 9 THE COURT: All right.

00:45:16 10 MR. CARPENITO: Thank you, Your Honor.  
00:45:17 11 That's all I have.

00:45:18 12 THE COURT: Anything else?

00:45:19 13 MR. BAIN: Your Honor, we did produce the  
00:45:21 14 report from the Navy on a number of claims.

00:45:21 15 THE COURT: Right.

00:45:25 16 MR. BAIN: And I'm happy to answer any  
00:45:28 17 questions you have about that.

00:45:30 18 We have not received any report from the  
00:45:34 19 Plaintiffs yet on the number of cases -- injuries and  
00:45:37 20 cases yet.

00:45:38 21 THE COURT: I did have questions about  
00:45:41 22 providing the Court with an updated disease census for  
00:45:45 23 active Lejeune lawsuits.

00:45:49 24 And then also my second question had to do  
00:45:51 25 with an update on the parties' amended Track 3



00:45:56 1 submissions. If you all have any information on either  
00:45:58 2 of those.

00:45:59 3 MR. FLYNN: Yes, Your Honor. We should be  
00:46:00 4 getting the census of the diseases in active litigation  
00:46:04 5 to you; my hope would be at the end of the week. I am  
00:46:07 6 working with our provider, Rubris, which, as you know,  
00:46:11 7 per court order, is the sole method by which we can  
00:46:15 8 generate short-form complaints. So I think that's a  
00:46:18 9 good one-stop shop for us.

00:46:18 10 With respect to Track 3, I think once we see  
00:46:21 11 those -- and we might change it around, Your Honor; it  
00:46:24 12 might be that if we look at some of the DON numbers,  
00:46:29 13 too, that could help.

00:46:30 14 But we can turn to the Track 3 suggestions,  
00:46:33 15 I think, after the census. But the census should be  
00:46:37 16 coming pretty shortly.

00:46:39 17 THE COURT: Okay. That makes sense, I  
00:46:40 18 think.

00:46:40 19 MR. BAIN: I think the United States stands  
00:46:42 20 on its prior Track 3 proposal.

00:46:44 21 THE COURT: Okay. All right.

00:46:46 22 Do you guys have anything else?

00:46:50 23 Anything else from anybody?

00:46:53 24 We've picked our next date, correct?

00:46:56 25 MR. FLYNN: Yes, Your Honor.

00:46:57 1 THE COURT: June 9th?  
00:46:58 2 MS. BUTLER: Yes, Your Honor.  
00:47:00 3 THE COURT: Thank you very much.  
4 (Concluded at 11:52 a.m.)

5 - - -

6  
7 **C E R T I F I C A T E**

8  
9 I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above-entitled  
11 matter.

12  
13 /s/ Tracy L. McGurk\_\_\_\_\_

\_\_\_\_6/3/2025\_\_\_\_

14 Tracy L. McGurk, RMR, CRR

Date