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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
)
)

THURSDAY, June 27, 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; James A. Roberts, III; Mona Lisa Wallace; Hugh R. Overholt; William Michael Dowling

On Behalf of the Defendant:

John Adam Bain, Michael Cromwell, David Ortiz,
By telephone: Sara Mirsky, Bridget Bailey Lipscomb,
Elizabeth Cabraser, Zina Bash

Court Reporter: Tracy L. McGurk, RMR, CRR
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Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 11:04 a.m.)

2 THE COURT: Okay. Good morning everybody.

3 MR. BELL: Good morning.

4 MR. BAIN: Good morning.

5 THE COURT: Remind me what is pending before
6 the Court that the parties are waiting on.

7 MR. BELL: Go ahead, Adam.

8 MR. BAIN: Your Honor, I believe it's just
9 what's in the status conference statement under item 6,
10 the PLG's request for a Rule 16 conference, the proposed
11 discovery plans for Track 2, motion for reconsideration
12 of the case management order number 10 regarding opt
13 out, and the PLG's motion for partial summary judgment
14 on the CLJ legal representation issues.

15 We recently selected the Track 1 trial
16 plaintiffs, and I think that we need an order related to
17 that selection. And we sent a proposed motion and
18 order to the plaintiffs today, asked them to look at
19 that, so that there will be an entry of an order, those
20 plaintiffs will be established, the other cases will be
21 stayed, and we can move forward and finish up fact
22 discovery on those plaintiffs.

23 THE COURT: What's the status of the
24 waivers?

25 MR. BELL: None of the 25, Your Honor, fell

1 into that category. So no one -- everybody is waiving,
2 if they are in the 25. So we didn't opt out anyone.

3 THE COURT: So the ones that are selected
4 for trial are single disease?

5 MR. BELL: Well, they're either single
6 disease or they've waived the other disease. There are
7 a couple, Your Honor, that have multiple diseases. But
8 the multiple disease they would be trying would be in
9 two categories; one would be if the multiple disease was
10 a Track 1 disease; for example, we have a bladder and
11 kidney cancer with one person, that's a Track 1. So
12 that was part of the agreement to keep them in.

13 There are other diseases that are the
14 sequela of treatment, and those are allowed to stay in.
15 So the term "single disease" may not apply to them.

16 But the single disease, we've met, I think,
17 the confines of the definition.

18 THE COURT: So what is the status of the
19 waivers? And these are waivers that both of you would
20 have, correct?

21 MR. BELL: The ten claims are cases that
22 were chosen by the government. If there is a multiple
23 disease that doesn't fall under one of those categories,
24 they will waive the other diseases.

25 MR. BAIN: So we would ask that the short

1 form complaints be amended for those diseases that are
2 being waived so that we have the pleadings set for those
3 diseases that will be tried.

4 As Mr. Bell mentioned, it's either a Track 1
5 disease or a disease following from a Track 1 disease.

6 THE COURT: Right. Okay.

7 MR. BELL: That's fair, Your Honor.

8 THE COURT: Status of stipulations?

9 MR. BAIN: We had a meeting after the last
10 status conference a couple of weeks ago. And we talked
11 about kind of the contours of what might be something
12 that we could stipulate to. We agreed to exchange some
13 information and have another conference next month.

14 THE COURT: What sort of things are the
15 parties stipulating to? What have you agreed upon?

16 MR. BAIN: I think we'll be looking at data
17 that was detected at the different well locations, when
18 wells were constructed, and when they were taken out of
19 service. Which water systems were contaminated, and
20 which water systems weren't. When were certain water
21 systems in operation and what areas they served during
22 what periods of time. Those are the types of things I
23 think the parties should be able to agree to.

24 THE COURT: Mr. Bell, anything?

25 MR. BELL: Your Honor, we're working on

1 trying to find some areas of agreement on historical
2 information in addition to the data, and we've started
3 exchanging that information. That's in progress.

4 THE COURT: Okay. Status of discovery,
5 what's going on there?

6 MR. BELL: Your Honor, the discovery for
7 fact discovery was extended for 45 days. I think the
8 start of that 45 days was yesterday. So we've got that
9 length of time to complete that. That would include
10 the fact discovery for the trial plaintiffs and any
11 other general fact discovery that we have.

12 THE COURT: Okay. Are there any disputes on
13 the horizon that would be coming this way?

14 MR. BELL: Well, we have a couple of things
15 that are coming. I don't know if they'll be disputes,
16 but when you're ready, we'll go over those. But I'll
17 wait until you're ready to hear them.

18 THE COURT: Sure.

19 MR. BELL: I have four things I need to go
20 over with the Court, Your Honor.

21 As you recall, the discussion with the ATSDR
22 water modeling files, that was eventually resolved.

23 The second part of the production request is
24 something called the health modeling, or the -- the
25 other part of that. We got in I believe yesterday or

1 the day before, one of the first -- we had gotten two
2 smaller files earlier, but we got a large file in,
3 again, yesterday or the day before. But there are a
4 lot of others to come. And so we're waiting on those.

5 I know they're trying, but the fact is we
6 are worried that this is science-based information, and
7 we don't want to all of a sudden have to get our expert
8 ready until the science is -- we've gotten all of the
9 science in. And so I understand they're producing it
10 on a rolling basis. But it has been out there a while.
11 So that's one area that I'd like to at least address to
12 the Court.

13 The second area, Your Honor, is that we have
14 yet to get privilege logs from any of this discovery
15 except for old privilege logs from the first Camp
16 Lejeune 1 cases. So we keep -- we keep asking for it.
17 And I know they're working on it. But there comes a
18 time they've got to get a deadline or something so we
19 can see the privilege logs.

20 We understand there are large volumes of
21 documents that they're reviewing for privilege, which
22 means either they're going to claim privilege on a large
23 volume, and we're going to have to have that discussion;
24 or they're going through it and we'll get some more
25 information that ends up not being privileged. But we

1 are concerned we're not getting the privilege logs.

2 I can go to the other two if you want.

3 THE COURT: Go ahead.

4 MR. BELL: The recent order, Your Honor,
5 requires us to provide the Court kind of a suggestion or
6 something about expert discovery. Even if we were to
7 start trials in 2024, clearly all 25 would probably not
8 be tried in '24. So we're trying to come up with a
9 plan -- Mr. Bain and I are going to be working on it --
10 of how do we kind of schedule the expert discovery in
11 some manner that is not all at one time, so we can take
12 depositions, get reports, things like that.

13 So we really need to hear a little bit from
14 the Court: Is each judge going to try their own docket
15 in their own way? Are the judges going to give us a
16 plan? Are they going to take, let's say: Let's try
17 all the kidney cancers first; we're going to try all
18 the -- one of the other diseases second? So it's kind
19 of a -- it's something that we really need to know.
20 We're going to produce a proposal which might have a
21 couple of options in it.

22 THE COURT: Well, I don't want to forget
23 about number four. But you have provided the perfect
24 segue for what I needed to tell the parties this
25 morning.

1 MR. BELL: It sounds like a Rule 16.

2 THE COURT: It might be. But not yet.

3 The Court has met recently and has expressed
4 interest, before the Track 1 trials commence, the Court
5 anticipates resolving two threshold issues:

6 One: Toxic chemical exposure over time
7 through the water at Camp Lejeune;

8 And second: General causation.

9 To that end the parties will be asked to
10 propose an expedited expert discovery schedule and
11 briefing schedule on these issues.

12 MR. BELL: All right.

13 THE COURT: It is expected:

14 One: That a hearing on the issue of exposure
15 will be held before the entire court.

16 The court is considering reassigning the
17 cases by disease, by judge.

18 And general causation hearings will be held
19 before the individual judges.

20 That's what's being contemplated.

21 An order will be issued by the Court very
22 soon on this.

23 So that goes directly to what you're talking
24 about.

25 MR. BELL: That's excellent news, Your

1 Honor. Excellent news. That will work. We look
2 forward to getting that order.

3 So I assume, Judge, without me assuming too
4 much, that maybe our suggestion of specific discovery,
5 expert discovery should probably wait until after the
6 general causation is done.

7 THE COURT: Repeat that.

8 MR. BELL: So we have general causation and
9 specific causation. And I would assume, Your Honor,
10 that the best way to maybe go is to let's see what
11 general causation provides. And then once that's done,
12 decide how those cases are going to be tried, and
13 specific causation.

14 THE COURT: I think that's what's being
15 contemplated.

16 MR. BELL: Very well. Thank you, Your
17 Honor. That answers a lot of questions.

18 THE COURT: What was number four?

19 MR. BELL: Judge, I don't think this is a
20 problem from our standpoint, but we are getting -- there
21 are hundreds of lawyers around the country that have
22 these cases. Some have one or two cases; some have a
23 lot. And Mr. Bain has given me a list of the lawyers
24 that have so far have filed claims.

25 But we're getting calls from people that

1 they have this impression that if they file their DON
2 claim in time, that they wonder whether they are
3 required to file their legal claim in court before the
4 August 9 time frame.

5 So we think it's clear they don't have to.
6 The Administrative Procedures Act covers that. But we
7 have said that on our public website. But still, we
8 have people that are questioning: Are you'll right?
9 And I'm worried --

10 THE COURT: What is on the website?

11 MR. BELL: We have a public website, Your
12 Honor, that we publish --

13 THE COURT: Right.

14 MR. BELL: So we have said that on the
15 website. We have tried to give everybody guidance.

16 But there are some folks out there, and
17 rightly so, they're concerned that maybe Ed Bell's
18 opinion is not right.

19 And we would ask the government if there's
20 any way that they could confirm, so that -- otherwise,
21 the Court may get thousands of claims filed between now
22 and August.

23 MR. BAIN: I think I can put that to rest,
24 Your Honor. Our position is that there is no statute
25 of limitations to file a lawsuit unless and until the

1 Department of Navy denies the claim.

2 MR. BELL: Perfect.

3 THE COURT: Okay.

4 MR. BELL: We'll publish that, if that's
5 okay, Your Honor. That takes care of that. Thank you
6 very much.

7 That's it, Your Honor.

8 THE COURT: So four is resolved; right?

9 MR. BELL: Yes, Your Honor.

10 THE COURT: Number one, health modeling is
11 being produced on a rolling basis. I was going to ask
12 you about that.

13 When do you anticipate that being completed?
14 And to what extent the Court can think about when all of
15 these privilege logs and issues related thereto would be
16 coming before the Court.

17 MR. BAIN: Yes, we're producing the health
18 effects information, which is quite a large amount of
19 information, on a rolling basis. We are producing some
20 today. And we expect to continue producing it and hope
21 to get it -- we expect to get it produced by the end of
22 fact discovery, but hope to get it done before then.
23 So next month we're looking to produce most, if not all,
24 of the health effects files.

25 The privilege logs, we have produced some

1 privilege logs with respect to some of the documents
2 that have been produced. We are working very hard on
3 the privilege logs for the ATSDR water modeling and
4 health effects files, and we expect to produce the first
5 privilege logs for those within the next two weeks.

6 THE COURT: How many more beyond that? Do
7 you know?

8 MR. BAIN: I'll ask Mr. Cromwell to address
9 that, since he's doing that.

10 MR. CROMWELL: Your Honor, the only other
11 privilege logs that there might be may be related to
12 individuals that we're collecting documents for. The
13 truth is that the vast majority of the documents to be
14 produced, which is 18 million pages, we aren't
15 withholding for privilege. So it's a very small set.
16 That said, Mr. Bain's representation as kind of a timing
17 related to the health effects and the water modeling are
18 accurate. The only outstanding things would be
19 individuals who we are collecting documents for with
20 regard to outstanding discovery requests.

21 THE COURT: Okay.

22 MR. BELL: Your Honor, may I?

23 THE COURT: Yes, sir.

24 MR. BELL: My concern -- and I don't mind
25 the idea that they will have this done by the end of

1 fact discovery. But all of a sudden the document comes
2 in, we need to take that deposition; we're out of
3 discovery time. That's my concern.

4 They're saying, and they've said from the
5 beginning, all of the discovery, we will produce this by
6 the end of fact discovery.

7 THE COURT: That would not be -- that's not
8 expect discovery?

9 MR. BELL: I don't know. I just want to
10 make sure that we wouldn't be held back from taking a
11 deposition if we get discovery in at the end of fact
12 discovery.

13 MR. BAIN: If there's a deposition that's
14 been taken, and there's a document produced after that
15 deposition that the plaintiffs believe is needed for a
16 deposition that's already been taken, we would be
17 amenable to working with the plaintiffs to open that
18 deposition back up. But we do believe that all these
19 documents that will be needed for expert work and expert
20 discovery will be produced by the end of fact discovery.

21 THE COURT: Okay.

22 MR. BELL: But, Judge, he just said the
23 health effects modules are study, which is extremely
24 important. That's the basis of our expert work. And
25 if we don't get it until 45 days from now, and we see

1 Mr. Jones who says -- excuse me, Mr. Smith who says he
2 did something in the modeling that is important, we've
3 got to be able to take his deposition or her deposition.
4 So normally you get your discovery when you've asked for
5 it. The government is saying we're going to give it to
6 you not when you -- not the 30 days, but at the end of
7 discovery. So I just want to make sure that we
8 wouldn't be precluded from taking additional depositions
9 that might occur -- we might find out about in that
10 discovery.

11 THE COURT: It doesn't sound like you would
12 be.

13 MR. BAIN: If there's good cause, yes. If
14 it's just for documents that have been produced at the
15 end of fact discovery, then I think we would be willing
16 to work with the plaintiffs to take a deposition out of
17 time, if it's based on documents that were produced at
18 the end of fact discovery. I hope they would be
19 willing to do the same for us.

20 We still have to work out an issue with the
21 plaintiffs on the health effects study data that we've
22 been asking the plaintiffs to meet and confer about for
23 several weeks having to do with the information that was
24 provided by the state cancer registries. We're asking
25 the plaintiffs to meet and confer with us about that

1 regarding whether that data is available, ATSGR data,
2 whether searches are feasible for that data to get what
3 the plaintiffs want, and what information the plaintiffs
4 would need from those searches. But the plaintiffs, as
5 of yet, haven't provided us with any searches or
6 information that we need to be able to protect that
7 information and get the information to the plaintiffs
8 that they need.

9 THE COURT: What did you say this was, the
10 state cancer studies?

11 MR. BAIN: This is -- yes, this is
12 information that the state cancer registries provided to
13 the ATSDR for the purposes of the health effect studies.

14 THE COURT: At this point is that limited to
15 the number that are going to trial in Track 1?

16 MR. BELL: No, Your Honor. It's for the
17 entire plaintiff database. And so we can do it
18 electronically except, except, as late as last Friday I
19 asked the department to let us know what is in the
20 database. In other words, what information is there so
21 that we can fashion our request? And so if they give
22 people's name, the date of diagnosis, the location in
23 the country -- you know, we need to know what the data
24 has there so we can decide whether what we want
25 searched.

1 Secondly, Your Honor, there is -- we have
2 set up a database, as you're aware, under a company
3 called Rubris. And most of the plaintiffs are entering
4 their data, their client data in this database. We have
5 about 200,000 already in the database.

6 THE COURT: That's your database?

7 MR. BELL: Correct.

8 THE COURT: We're not talking about the
9 database --

10 MR. BELL: This is where we would get the
11 information from to give to the government to do the
12 search. So it's kind of like -- I thought we had asked
13 Patrick last week to let us know what -- I know we did,
14 because I was there -- what information is available so
15 that we can start fashioning our requests.

16 MR. BAIN: So we just need some further time
17 to meet and confer regarding this. This is an
18 outstanding issue.

19 THE COURT: As the clock ticks down, you're
20 going through all this discovery seeing what's
21 outstanding and seeing what needs to be supplemented or,
22 I guess, even provided. I understand. And I'm here to
23 take up any disagreements that you may have over
24 discovery.

25 MR. BELL: I just didn't want someone to

1 later say: Well, why did you your wait until the end of
2 discovery to ask for that deposition? I didn't want to
3 be in that boat, Your Honor.

4 THE COURT: I understand.

5 Anything else?

6 Was there an issue regarding -- you may have
7 addressed it by a different name -- Manpower Data Center
8 occupant housing records. Is that still being worked
9 out?

10 MR. BAIN: I believe the motion was entered
11 yesterday, or the order was entered yesterday.

12 THE COURT: That was for the protective
13 order?

14 MR. BAIN: Yes.

15 THE COURT: Okay.

16 MR. BAIN: We're still working on adding
17 potentially some other data sets to that protective
18 order. And we conferred with counsel this morning
19 about that, and we're working with the agencies to see
20 if two additional data sets can be added to that order.

21 THE COURT: Mr. Bell?

22 MR. BELL: That's correct, Your Honor.

23 THE COURT: Okay. Related to what I said
24 earlier regarding what the Court's anticipating as far
25 as the expedited expert discovery and deadlines for that

1 and *Daubert* dispositive motions, there will be an order
2 going out on that.

3 But as part of that, the parties may want to
4 think about -- and I think you are -- think about how
5 those deadlines will interact with other court deadlines
6 that are already imposed in the case. There will be
7 some direction in the order that will be going out
8 pretty soon.

9 Was there a problem -- I'm sorry. Go ahead.

10 MR. BAIN: That's fine, Your Honor. We'll
11 take a look at that and work together on that.

12 THE COURT: The Navy Claims Portal, to the
13 extent you can talk about it, what's happening there?

14 MR. BAIN: They're making progress on
15 ingesting all the claims into the portal. I understand
16 there are about 30,000 left that need some manual work
17 in order to ingest the claims into the portal. So
18 they're working hard on getting that accomplished.

19 Once that's accomplished, my understanding
20 is that the database will be available for analytics and
21 things like that; for example, providing some of the
22 information that Mr. Bell has asked for regarding
23 contact information for all the law firms that have
24 filed claims. We did provide him a list of all the law
25 firms that have filed claims, but beyond that, until the

1 Navy ingests these final claims, the database is not
2 ready to be subject to analytics.

3 THE COURT: When you speak of analytics,
4 you're talking about internal assessment by the Navy of
5 the claim itself, right?

6 MR. BAIN: That's right, Your Honor.

7 THE COURT: And when you talk about
8 ingestion, what's going on is the Navy is receiving
9 information from the purported claimant populating some
10 kind of form, database, whatever. And then the Navy
11 goes back to that purported claimant and confirms, or
12 where there may be some discrepancies or incomplete
13 data, they get more data for that?

14 MR. BAIN: I'm not sure of all the
15 specifics, but I think there's a way for the law firms
16 to validate the data that the claimants have entered.
17 But there's also a lot of paper forms and other forms
18 that the Navy needs to manually work with.

19 THE COURT: Okay. All right.

20 Anything else?

21 MR. BELL: Not unless the Court has any
22 questions. That's all we have.

23 MR. BAIN: Your Honor, we do have one issue
24 regarding some discovery we have for economic damages.

25 THE COURT: And this is going to be related

1 just to those who are going forward in the Track 1
2 trials, correct?

3 MR. BAIN: That's correct.

4 MR. CROMWELL: So, Your Honor, just for
5 context, the government previously served a set of
6 discovery requests, RFAs, RFPs, asking plaintiffs to
7 identify the specific types of economic damages that
8 each of the individual plaintiffs would be seeking in
9 the cases. Plaintiffs, through a meet and confer, I
10 think -- I don't want to speak for Mr. Bell --
11 acknowledged we would be entitled to this information,
12 but asked us to hold off at the time until the 25
13 plaintiffs were selected.

14 Obviously those plaintiffs have been
15 selected.

16 We had another meet and confer, and they had
17 proposed providing us a fact sheet in lieu of responding
18 to our particular discovery requests, which we agreed to
19 look at, which they sent us yesterday afternoon. But
20 we reserved our right to seek actual responses to our
21 discovery requests.

22 So I don't think there's a dispute yet.
23 Our team is still digesting what they proposed
24 yesterday. But I just wanted to make the Court aware
25 in case we need to raise it or file something with the

1 Court, should the parties not be able to work out the
2 issue. But that's where things stand on that topic.

3 THE COURT: Are the fact sheets, are they
4 considered akin to discovery responses?

5 MR. CROMWELL: I think that's one of the
6 issues that we are trying to address internally and have
7 some skepticism about.

8 THE COURT: Ms. Wallace, isn't that what we
9 did in the hog farm case?

10 MS. WALLACE: Yes, sir. It was. But we did
11 send supplemental interrogatories at the end for the
12 ones that were chose as bellwethers. So we did
13 supplement it. But we started out with the fact sheet,
14 and then we supplemented it.

15 THE COURT: Okay. All right. So that's
16 something that you all are currently working out that
17 may come this way or may not?

18 MR. CROMWELL: That's correct.

19 THE COURT: Mr. Bell, anything further?

20 MR. BELL: Your Honor, we agree they should
21 have the information. Now we have the 25 people. The
22 discovery requests were voluminous, to be kind. So
23 what we did is we went through the discovery requests
24 and came up with a fact sheet that, if answered, would
25 answer all of those questions without formally going

1 through and doing a 20, 30, 40-page response for each
2 one. We think the fact sheet does that. We just turned
3 that over; yesterday was our deadline for doing that.
4 And we'll certainly get this information to the
5 government by the end of fact discovery, Your Honor.

6 THE COURT: Okay. All right.

7 When should we meet next?

8 Two weeks from today would be the 11th.

9 MR. BAIN: Your Honor, I would ask that we
10 would do it after that week if possible.

11 THE COURT: The following week?

12 MR. BAIN: That would be fine.

13 THE COURT: Mr. Bell, what do you think?

14 MR. BELL: Any time suits us, Your Honor.

15 THE COURT: How about Tuesday, the 16th?

16 MR. BELL: That's fine with us.

17 THE COURT: How about with the government?

18 MR. BAIN: That's fine, Your Honor.

19 THE COURT: We'll set it for July 16,
20 Tuesday, at 11:00 a.m. Thank you very much.

21 MR. BELL: One other thing, Your Honor. I
22 just got a note from one of our attorneys. May I have
23 two seconds to ask about it?

24 THE COURT: Yes, sir.

25 (Discussion had off the record.)

1 MR. BELL: Your Honor, apparently -- I hope
2 I'm right about this; I think I am. Apparently there's
3 been some discovery sent out to Jacobs Engineering.
4 They've not responded appropriately. Under your rule I
5 need to get your permission to file a motion. We'd
6 like to have your permission to do so.

7 THE COURT: Who is Jacobs Engineering?

8 MR. BELL: I think they had something to do
9 with some of the testing early on.

10 THE COURT: All right.

11 MR. BELL: Thank you, Your Honor.

12 THE COURT: You can do that.

13 Thank you very much.

14 (Concluded at 11:32 a.m.)

15 - - -

16

17 **C E R T I F I C A T E**

18

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

22

23 /s/ Tracy L. McGurk_____

_____ 6/28/2024 _____

24 Tracy L. McGurk, RMR, CRR

Date

25