

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

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

MONDAY, OCTOBER 30, 2023
STATUS CONFERENCE HEARING
BEFORE THE HONORABLE:
RICHARD E. MYERS, II, CHIEF DISTRICT JUDGE
TERRENCE W. BOYLE, DISTRICT JUDGE
JAMES C. DEVER, III, DISTRICT JUDGE
ROBERT B. JONES, JR., MAGISTRATE JUDGE
In Greenville, N.C.

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III, Zina Bash, James A. Roberts, III,
W. Michael Dowling, Mona Lisa Wallace, Elizabeth J.
Cabreser, Robin L. Greenwald, Hugh R. Overholt, A.
Charles Ellis

On Behalf of the Defendant:

J. Adam Bain, Bridget Bailey Lipscomb, Nathan Jisu Bu

JENNIFER C. CARROLL, RMR, CRR, CRC
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Monday, October 30, 2023, at 11:03 a.m.)

2 **P R O C E E D I N G S**

11:03:51 3 JUDGE MYERS: All right. Good morning,
11:03:52 4 everyone. We're here today in -- for our first of what
11:03:58 5 I believe will become multiple status conferences in the
11:04:01 6 case of the *Camp Lejeune Water Litigation*. I'll ask
11:04:07 7 counsel who are here to just make your appearance for
11:04:10 8 the record so we know who is here, and then we will --
11:04:14 9 we'll start with the United States.

11:04:16 10 MR. BAIN: Your Honor, Adam Bain for the
11:04:18 11 United States.

11:04:19 12 MS. LIPSCOMB: Bridget Bailey Lipscomb for
11:04:21 13 the United States.

11:04:22 14 MR. BU: Nathan Bu for the United States.

11:04:26 15 MR. BELL: Good morning, Your Honor. Edward
11:04:28 16 Bell for the plaintiffs.

11:04:29 17 MS. BASH: Zina Bash for the plaintiffs.

11:04:32 18 MR. ROBERTS: Good morning, Your Honor. Jim
11:04:33 19 Roberts appearing on behalf of the plaintiffs.

11:04:35 20 MR. DOWLING: Good morning, Your Honor.
11:04:36 21 Mike Dowling on behalf of the plaintiffs as well.

11:04:38 22 MS. WALLACE: Good morning, Your Honor.
11:04:39 23 Mona Lisa Wallace for plaintiffs.

11:04:42 24 MS. CABRESER: Good morning, Your Honors.
11:04:44 25 Elizabeth Cabreser for plaintiffs.

11:04:46 1 MS. GREENWALD: Good morning, Your Honors.
11:04:47 2 Robin Greenwald for the plaintiffs.

11:04:49 3 MR. OVERHOLT: Good morning, Your Honor.
11:04:50 4 Hugh Overholt, liaison counsel.

11:04:55 5 MR. ELLIS: Good morning. Charles Ellis on
11:04:57 6 behalf of plaintiffs as liaison counsel.

11:05:03 7 JUDGE MYERS: All right. Well, this is --
11:05:06 8 the status conference is to find out where we are. We
11:05:11 9 have multiple questions that need to approach -- I'm
11:05:19 10 speaking as Chief just for a moment. And I'll hold to
11:05:22 11 my colleagues to fully participate. We are here today
11:05:25 12 with Judge Jones, who is going to become our lead
11:05:28 13 discovery magistrate for the entire litigation, and we
11:05:30 14 thought it was important that he be with us because I
11:05:34 15 suspect that a significant amount of the time that is
11:05:38 16 actually spent -- with members of the bench will be
11:05:40 17 spent between you and Judge Jones trying to figure out
11:05:43 18 how best to proceed in this matter.

11:05:47 19 We're at the point now where we have
11:05:49 20 multiple standing orders that are designed to streamline
11:05:53 21 this litigation, hopefully move us forward. And we have
11:06:01 22 begun the process, it looks like, of making some offers
11:06:04 23 and the process of settling at least the first discovery
11:06:10 24 and participating in the Track One settlements that are
11:06:13 25 appropriate in this matter.

11:06:15 1 With that in mind, I'll start with just
11:06:18 2 asking where we stand in regards to what we believe are
11:06:25 3 the claims, what claims we think are going to be moving
11:06:28 4 from the Navy back to the Court, and how we're doing
11:06:31 5 initially regarding Track One for settlement, Track One
11:06:38 6 for litigation, how much do we think is going to move
11:06:40 7 out of settlement and back into litigation. As I've
11:06:42 8 been looking at the case filings, it looks like we have
11:06:45 9 less -- that's my principal area of concern. I'll ask
11:06:49 10 Judge Dever to sort of set for you -- the stage for you
11:06:53 11 about what he's thinking about and then I'll proceed to
11:06:55 12 Judge Boyle.

11:06:59 13 JUDGE DEVER: Sure. So, I mean, I have
11:06:59 14 questions just about -- I know under Case Management
11:07:01 15 Order No. 2, there was -- I think it's later. It might
11:07:06 16 be in about a week, the status of the discovery pool
11:07:09 17 profile form. So I would like to get an update on that
11:07:11 18 to see where y'all are. I appreciate all of the work
11:07:14 19 that's gone into getting us to this point. But that
11:07:18 20 would be a helpful piece of information.

11:07:22 21 It would appear that, at least on my
11:07:26 22 count -- and I stand ready to be corrected. I think
11:07:29 23 that there have been a total of 47 short-form complaints
11:07:35 24 filed. I know there's still time for those to be filed.
11:07:39 25 And I know lawyers often work to deadlines. And so if

11:07:42 1 the deadline hasn't arisen yet, the lawyers think, *Well,*
11:07:46 2 *I've still got plenty of time.* But I think it's
11:07:48 3 important for everybody to realize for us to get a
11:07:54 4 representative sample of jury verdicts, if the only
11:08:00 5 thing that get filed -- if there are only 47 short-form
11:08:04 6 complaints and they're all the best kineses from the
11:08:05 7 plaintiff's perspective, I would completely understand
11:08:09 8 the Department of Justice saying these are not
11:08:10 9 representative verdicts, at whatever point we get
11:08:13 10 verdicts next year.

11:08:14 11 And so I just say that to y'all that I
11:08:18 12 realize there's still some time, but it's something to
11:08:24 13 consider. Because I just think that's a litigation
11:08:26 14 reality of us going through this track system, which I
11:08:30 15 think makes perfect sense to do it, assuming that we
11:08:37 16 actually get some representative cases that actually get
11:08:41 17 filed so that each side, as sort of topic of settlement
11:08:46 18 is discussed, can say we think this actually is
11:08:50 19 representative. Because if it's not, I mean, I think
11:08:54 20 the Department of Justice could, understandably, say
11:08:56 21 we'll try these cases for decades. And that -- it would
11:09:04 22 certainly be, at some level, understandable, but it
11:09:07 23 would be a shame for people who actually are old, sick
11:09:12 24 Marines. And so I would just hope that the lawyers
11:09:19 25 realize that. And I think y'all do. And again, I know

11:09:21 1 there's still time. But that was what was kind of
11:09:25 2 striking to me.

11:09:27 3 And with that, I'll yield to Judge Boyle.

11:09:32 4 JUDGE BOYLE: Well, I don't have too much to
11:09:33 5 say. I'm appreciative very much of my colleagues.
11:09:40 6 Certainly Chief Judge Myers and Judge Dever taking the
11:09:45 7 laboring oar in the structure and management of all of
11:09:49 8 these cases. It's a daunting challenge.

11:09:55 9 I'm ready to go ahead and -- of course,
11:09:57 10 remember, that we all have our separate cases. So while
11:10:01 11 we're here together collectively, we have -- including
11:10:09 12 Judge Flanagan, we have 25 percent of the filed cases
11:10:14 13 each, or just about that. And so I'm here ready and
11:10:21 14 willing and able, hopefully, to try cases when the time
11:10:25 15 comes. And that time will come sooner rather than
11:10:32 16 later. I think that from my perspective some insight
11:10:36 17 into what the cases are really worth was a valuable --
11:10:39 18 will be a valuable tool. And that's where I stand.

11:10:49 19 JUDGE MYERS: Judge Jones is going to be
11:10:50 20 our, as I said, lead magistrate for discovery matters.
11:10:54 21 Some of the things I think that are going to fairly be
11:10:56 22 on the table pretty quickly are: What's being
11:11:00 23 stipulated to? What do we agree? Do we have general
11:11:03 24 causation or specific causations as to which diseases?
11:11:07 25 Are there any diseases the United States is willing to

11:11:09 1 stipulate as meeting general causation, and we can move
11:11:13 2 to specific causation and sort those out. The
11:11:17 3 settlement proposal that we all read makes no said
11:11:25 4 promises. But there are different tracks with different
11:11:28 5 diseases.

11:11:29 6 I'll tell you in my own cases -- and I'll
11:11:31 7 forecast this -- I'm interested in the possibility of
11:11:36 8 bifurcating discovery, doing early discovery on the
11:11:39 9 non-Track One diseases. To the extent it's necessary on
11:11:41 10 the Track One diseases on causation, Daubert, getting
11:11:45 11 those set so that we can know where we are and if we're
11:11:47 12 moving forward, before we spend a lot of attorney time
11:11:52 13 and a lot of plaintiff time as well as the Government's
11:11:56 14 time on individualized cases. If we can't get through
11:11:59 15 the science first -- I think going through the science
11:12:01 16 first has been very successful in other litigation of
11:12:04 17 similar type. So in my own cases, I will be very
11:12:08 18 interested in early Daubert, particularly for those
11:12:11 19 cases where we don't have stipulation as to general
11:12:13 20 causation.

11:12:16 21 I think at this point it might be best for
11:12:18 22 us to hear from you as to where you stand, what you
11:12:23 23 think we need to know. In part, we wanted to do this
11:12:29 24 early to be sure that everybody knows that Judge Jones
11:12:32 25 has the full imprimatur of the Court. And it's unusual

11:12:35 1 that there are four different judges with a quarter of
11:12:38 2 the cases in litigation of this kind. This is crafted
11:12:43 3 from whole -- the whole thing is new for everyone.
11:12:46 4 Ordinarily, these all end up before a single judge and
11:12:49 5 you have a single district judge managing it. But Judge
11:12:52 6 Jones will speak with a uniformed voice for us on the
11:12:56 7 issues related to discovery, and we are intending to
11:12:57 8 fully empower him publicly as the magistrate judge. Of
11:13:03 9 course, there are issues that will be appealable -- I
11:13:07 10 understand that -- from the way things are being
11:13:09 11 managed. But he has our imprimatur, and we want it to
11:13:09 12 be clear.

11:13:12 13 So with that in mind, I think we will -- we
11:13:14 14 will start with the plaintiffs and let us -- you let us
11:13:18 15 know how things are going and what you think we need to
11:13:21 16 know at this stage.

11:13:22 17 MR. BELL: Good morning, Your Honor. We
11:13:25 18 totally agree with what you're saying. The streamlining
11:13:30 19 of these cases is important, but maybe you'll hear some
11:13:34 20 things this morning that might give you some doubt that
11:13:36 21 that's equally thought on both sides. We're concerned
11:13:40 22 about that.

11:13:42 23 So, Your Honor, Judge Dever, we anticipate
11:13:45 24 by Friday that most of the cases that are filed on
11:13:49 25 short-form complaints, there will be an additional

11:13:52 1 number filed that will give the Court plenty to choose
11:13:55 2 from. So I don't want to say, "Don't worry about it,"
11:13:59 3 but I do -- I do know that we've had three different
11:14:03 4 committees working, Judge, and they're working on
11:14:05 5 weekends and working at night. Obviously, there is a
11:14:10 6 case here or there that might have some problems that
11:14:13 7 were unanticipated that will be not in the pool and they
11:14:16 8 will file their short form after the deadline. But
11:14:19 9 generally we expect to have plenty. In fact, we would
11:14:22 10 like to ask the Court at another time when you're ready
11:14:24 11 to hear, we have some additional ideas of how we might
11:14:29 12 can streamline it further up to now, seeing what we
11:14:33 13 have, things like that.

11:14:34 14 So -- and just following your order, we have
11:14:38 15 had a number of stipulations. These are not necessarily
11:14:43 16 trial stipulations; mostly, process stipulations. As
11:14:47 17 you can imagine, sometimes your trial stipulations
11:14:49 18 are -- they may be premature at this stage. But to be
11:14:53 19 honest with you, Judge, we had three stipulations that
11:14:57 20 kind of surprised us that we couldn't get done. One, of
11:15:01 21 course, we asked the Government to stipulate to the
11:15:05 22 ATSDR 2017 health study. This was the study upon which
11:15:10 23 the statute was based. It's the largest epidemiological
11:15:15 24 study in U.S. history. They declined to do so.

11:15:19 25 We asked the Government to give us whether

11:15:22 1 they would stipulate to general causation for the Track
11:15:26 2 One diseases. Response was, "We're checking with our
11:15:30 3 experts. We'll let you know."

11:15:35 4 And then we have a pretty important issue,
11:15:38 5 Your Honor, having to do with what we're calling a
11:15:42 6 base-wide model versus a site-specific model of
11:15:48 7 exposure. Now, the ATSDR model was used as a base-wide
11:15:54 8 model. If you're at the base for 30 days and you got
11:15:58 9 one of the target diseases, then you've met the statute.
11:16:03 10 The Government wants to take and cherry pick where you
11:16:07 11 lived. So if someone lived at Tarawa Terrace and their
11:16:12 12 exposure was less than someone who lived at Hadnot
11:16:16 13 Point, they want to take that and run with that and not
11:16:18 14 have a base-wide model. But, of course, everybody on
11:16:20 15 the base has a lifecycle that they go through.

11:16:26 16 Someone mentioned the other day, well, why
11:16:28 17 didn't they give these folks water bottles. They didn't
11:16:31 18 have water bottles back then. And like a lot of us went
11:16:34 19 to go play baseball, we drank out of a hose. If you
11:16:37 20 played football in high school, you drank out of a hose.
11:16:39 21 You drank out of something else. The Marines in
11:16:42 22 training, they got -- they drank out of the water
11:16:46 23 containers. Back then, the -- all the bases had to be
11:16:51 24 built based on local building codes. North Carolina
11:16:54 25 codes back then required every building to have water

11:16:57 1 fountains. So where you worked, where you lived, where
11:16:59 2 you played, where you ate dinner, where you went
11:17:02 3 shopping, everybody went to the water fountain and
11:17:05 4 drank. And so to say that someone lived at Tarawa
11:17:09 5 Terrace had less of an exposure on certain chemicals
11:17:12 6 than otherwise is not what the ATSDR did.

11:17:15 7 And you can imagine if we had to do a
11:17:17 8 separate, independent epidemiological study for each
11:17:21 9 plaintiff, Your Honor, we would be in triple Roman
11:17:24 10 times, not just one Roman time.

11:17:28 11 So Congress passed the statute that said if
11:17:33 12 you were there 30 days, not if you were there 30 days at
11:17:36 13 this location or this location. If you were there 30
11:17:40 14 days and they recognize this problem. How is Mrs. Jones
11:17:44 15 who had three kids that goes to three different schools,
11:17:47 16 how are you going to say their exposure was less when
11:17:50 17 they were in schools in another location that had a
11:17:53 18 higher exposure? Which it's a good model, and it works.

11:17:57 19 And 30 days with these dangerous chemicals
11:18:00 20 is a fairly short time. But once we, hopefully, can
11:18:03 21 show you how dangerous they are, that kind of exposure
11:18:06 22 really creates bedlam. But if you were there six
11:18:09 23 months -- I know the last study we looked at, the
11:18:14 24 average stay was around 1100 days. Only 1 percent of
11:18:18 25 the cases we know of even met that five-year requirement

11:18:21 1 the Government put out on the EO.

11:18:25 2 So we would like the Court to initially
11:18:28 3 address for us this issue of whether we're looking at a
11:18:32 4 base-wide model or a site-specific model because that
11:18:38 5 affects how we hire experts, who we get to do these
11:18:41 6 things. Because of the Government's position, we've
11:18:44 7 been talking to modelers to come up with a lifecycle
11:18:47 8 model and to show the Court what does someone do on an
11:18:52 9 average day at Camp Lejeune. Well, we've got to do that
11:18:54 10 over 33 years. It's a hugely expensive proposition.
11:18:59 11 We're talking about maybe a million dollars to put this
11:19:02 12 model together, and we think that's not needed. We
11:19:05 13 think the statute doesn't say we're supposed to do that.
11:19:07 14 And Congress knew that. We need some help on that.

11:19:13 15 The ATSDR, Your Honor, we would love the
11:19:17 16 Court to have a conversation with us and maybe talk
11:19:21 17 about whether that is a legitimate model. I mean, ATSDR
11:19:28 18 has this unique causation, as you're aware, it's called
11:19:32 19 in there equipoise. Equipoise is a medical term; it's
11:19:36 20 not a legal term. But in the ATSDR, all five of the
11:19:40 21 Track One diseases are equipoise and above. It's the
11:19:44 22 highest level of proof. But, yet, the Government,
11:19:47 23 "Well, we aren't sure. We can let our scientists tell
11:19:51 24 us what to do." That's not what the law says.

11:19:54 25 So I think those are the kinds of things,

11:19:56 1 Your Honor, that we are hearing now. And then, of
11:19:58 2 course, with the recent filing on Friday, it's crazy.

11:20:02 3 But those are the things that we've got to
11:20:04 4 get past. Because if we don't get past those, we're
11:20:08 5 going to be here two years from now before we can try
11:20:11 6 the first case. And so it's that important. So we
11:20:14 7 would ask the Court to let us know when it's convenient
11:20:16 8 for us to present what we need to present preliminarily.
11:20:20 9 We would like to do that. We're ready to do it at your
11:20:22 10 convenience and ask the Court for some guidance.

11:20:28 11 Your Honor, the next thing the Court asked
11:20:30 12 was for how are we doing in discovery. We've sent out
11:20:34 13 now three discovery requests. The first request, Your
11:20:38 14 Honor -- Judge Boyle, you might get a little interest in
11:20:42 15 this. You remember in what we call Camp Lejeune One,
11:20:47 16 the earlier cases, and then there was an MDL established
11:20:51 17 way back? Well, the Government at the MDL hearing told
11:20:55 18 the MDL panel that they wanted the cases in Atlanta
11:20:58 19 because that's where all of the documents were. We
11:21:02 20 argued to keep it here in North Carolina. Well, the MDL
11:21:06 21 court bought that argument and sent it down to Atlanta.
11:21:09 22 And that's where ATSDR is located. But now we've asked
11:21:13 23 for all of those databases. We know of six databases
11:21:17 24 that ATSDR has used or put together, and we want access
11:21:23 25 to those. We want unfettered access to those. Because

11:21:27 1 they have all of the science, all of the data. And then
11:21:29 2 we have things we could add to it to actually make the
11:21:33 3 epidemiological study better. But we have to get that
11:21:37 4 access.

11:21:38 5 So we sent out a 30(b)(6) notice. We're
11:21:44 6 hopefully going to get a date some time soon. We're
11:21:47 7 working on that. At least we're waiting to get one.

11:21:50 8 And then that then began to present a
11:21:54 9 problem that we didn't anticipate with the CMO. And the
11:21:59 10 CMO, the Court ordered only one witness for the
11:22:03 11 Government -- in other words, a governmental witness can
11:22:05 12 only be deposed one time. But, Judge, I know the exact
11:22:10 13 person that can give us information on those six
11:22:12 14 databases. Could notice them today. I don't need them
11:22:17 15 telling me which expert or which witness they're going
11:22:20 16 to present and prepare. I know someone who works them
11:22:23 17 every day, and we could do that, but then that would use
11:22:26 18 up our one time to take his deposition. I think to
11:22:29 19 streamline that and give us the opportunity to maybe
11:22:33 20 rethink that. Obviously, we're not going to abuse it.
11:22:38 21 If we did, then the Government would surely tell us.

11:22:42 22 But this guy is there. He's the primary
11:22:45 23 mover at the ATSDR right now -- or the three people.
11:22:49 24 Two of them are retired. He's ready to do this, and I
11:22:53 25 think we can get this done in ten days instead of 30

11:22:55 1 days. So those are the kind of things we need some help
11:22:58 2 on.

11:22:59 3 We have sent out now two requests for
11:23:03 4 production. One is actually due today. That has to do
11:23:06 5 with all of the databases we're asking about. We don't
11:23:09 6 know what the Government's response is going to be. I'm
11:23:12 7 not really confident that we're going to get a good
11:23:15 8 response. We might, and I hope we will. But we'll see.
11:23:19 9 Supposed to get it today. So we would like to address
11:23:20 10 that if it comes up in a quick response.

11:23:23 11 Your Honor, we've put together an incredible
11:23:27 12 team that says if we get all of the information we need
11:23:31 13 that is -- that is publicly available, then about 80 to
11:23:36 14 90 percent of our clients we can prove are on the base
11:23:39 15 at a certain time and what they did and where they
11:23:42 16 lived. We could do that ourselves. Even with someone
11:23:44 17 who's dead who can't give us testimony, we can find out
11:23:47 18 what unit they were in, where they stayed, how long they
11:23:50 19 stayed. We can prove that up, and it's easy. But we
11:23:53 20 have to get access to the database.

11:23:55 21 We're getting ready to choose our
11:23:57 22 bellwethers. They have access. They can use those
11:24:00 23 right now to help them choose bellwethers. We don't
11:24:03 24 have access, so we're at a great disadvantage. So we
11:24:07 25 would ask some help from the Court on that, if needed.

11:24:15 1 We know, Your Honor -- and the second
11:24:17 2 request for production is now -- the first one had to do
11:24:20 3 with databases mostly. The second one is focusing on
11:24:24 4 health studies. We know there is a health study that's
11:24:28 5 sitting there right now. It's completed and there's a
11:24:32 6 big disagreement between the Government and the ATSDR
11:24:35 7 whether to release it. It's a follow-up cancer study,
11:24:38 8 and it could directly affect three fourths of our
11:24:42 9 clients. They haven't released it. They won't release
11:24:44 10 it. I don't know when it's going to be released. It
11:24:47 11 may get released tomorrow after I've now brought it up.

11:24:49 12 But we do know, though, there was a study
11:24:51 13 during the Trump Administration that ATSDR wanted to put
11:24:55 14 out and the Administration blocked that study from being
11:24:57 15 published. So we've asked for studies that have been
11:25:00 16 published, studies that haven't been published, and we
11:25:04 17 also understand now that when a study is done with
11:25:09 18 ATSDR, then it's -- after it's peer-reviewed, it's then
11:25:12 19 vetted. And apparently some folks who might be involved
11:25:15 20 in litigation are trying to change some -- they don't
11:25:19 21 want the language changed.

11:25:21 22 But we want all of that background
11:25:22 23 information. We want to know what the drafts looked
11:25:25 24 like. What was the -- what was the sequence. What was
11:25:27 25 the lifecycle of that study and how did it get to the

11:25:31 1 current report. We want to know what the original
11:25:34 2 scientists' opinions were. So that's the second request
11:25:37 3 for production we've got.

11:25:39 4 There's a study being done. We think it's
11:25:42 5 completed, called a vapor study. It's another one of
11:25:45 6 the things we've requested. During the workup of the
11:25:51 7 Camp Lejeune Justice Act, this was not something that
11:25:53 8 came to our attention, that was not necessarily spoke of
11:25:58 9 or even though ATSDR didn't speak about it very much.
11:26:01 10 So there is a vapor study being done. It may very well
11:26:05 11 affect some people, might not affect everybody. But it
11:26:09 12 is important and goes to the exposure.

11:26:13 13 So that's kind of where we are right now,
11:26:15 14 Your Honor, with discovery. I think it's gotten started
11:26:19 15 well. We're trying to target our discovery. We haven't
11:26:22 16 asked for a lot of things. But we were talking last
11:26:27 17 night, Judge, and, you know, it would be nice if the
11:26:34 18 Court would consider telling the Government to produce
11:26:38 19 everything they got, instead of all of this back and
11:26:42 20 forth which is going to take months and it's going to
11:26:44 21 take Judge Jones a lot of work. Why not just put --
11:26:48 22 give it -- all of it to us now without any kind of
11:26:53 23 guidelines? Some of it may be relevant, some of it
11:26:56 24 might not be. But most of it will probably be helpful.
11:27:00 25 So that might be something worth considering, we think.

11:27:03 1 It's something worth doing.

11:27:05 2 So, Judge, the next thing on your list was
11:27:07 3 resolution. Our resolution committee. So our
11:27:20 4 resolution committee is working hard on doing exactly,
11:27:24 5 Judge Dever, what you have mentioned. So maybe, if you
11:27:28 6 don't mind, I'll try to give you a little example of
11:27:31 7 what we're doing.

11:27:32 8 We think, just like most of you do, that
11:27:36 9 learning a little bit about value of different kinds of
11:27:40 10 case -- different kinds of -- what's the term I'm
11:27:45 11 looking for? Well, for example, kidney cancer. It's in
11:27:49 12 the Track One diseases. It's probably one of the most
11:27:54 13 curable cancers that we have, if you catch it early. So
11:27:59 14 if someone has kidney cancer, got treated -- and with
11:28:03 15 kidney cancer, you get treated with excise the tumor
11:28:06 16 without any radiation, without any kind of chemotherapy,
11:28:09 17 and for the most -- most times, it's curable and move
11:28:13 18 on.

11:28:13 19 Well, that, we think, is the minimum kidney
11:28:15 20 cancer case. We want to know what that's worth. We
11:28:19 21 also have people who have advanced stages and had -- had
11:28:23 22 all kinds of posttreatment problems. It might have
11:28:27 23 metastasized, they've died. So we're trying to take the
11:28:30 24 cycle of each disease and come up with some stages that
11:28:36 25 we can get the jury to give us value for those stages.

11:28:40 1 So if, for example, we had ten kidney cancer
11:28:45 2 cases, we're trying to get some that are the minimum and
11:28:48 3 some that are the worst so the jury can give us what are
11:28:51 4 the values between those. And if we have the same jury
11:28:56 5 do that, then we end up having a better idea of what it
11:29:01 6 looks like. Then if we have four judges doing the same
11:29:04 7 thing with four different groups, it would really have a
11:29:08 8 great spread of what things look like. Different
11:29:11 9 courts, different jury panels, I think it looks good.
11:29:15 10 And I think that then gives us this idea, what are the
11:29:18 11 values of these cases?

11:29:19 12 One of the diseases, Parkinson's,
11:29:22 13 unfortunately is not curable. But now we know of these
11:29:25 14 lifesaving brain surgeries that are being performed now
11:29:30 15 in some of the leading hospitals that can -- it's
11:29:33 16 amazing what is happening. But those are million,
11:29:37 17 \$2 million surgeries. So we need to -- once you get
11:29:40 18 Parkinson's, the lifecycle of that is different for
11:29:43 19 everybody. Some people it's slower than others, some
11:29:46 20 people it is bad. So we're trying to put all of that
11:29:51 21 together. And our argument one day we hope we'll have a
11:29:56 22 chance to make is that's why we believe multiple
11:29:59 23 plaintiff cases are out to give us a better value of the
11:30:03 24 whole spectrum of these diseases.

11:30:08 25 So we would like to one day, at your

11:30:11 1 convenience, talk to you about how these trials would be
11:30:13 2 heard -- or held. I know that each court, each judge
11:30:16 3 might have a different way of doing theirs, and we
11:30:19 4 respect that. We just need some guidance on that.

11:30:24 5 The Track Two and Track Three cases, we
11:30:27 6 would like to start working on how we're going to choose
11:30:30 7 those diseases so we can go ahead and get our experts up
11:30:34 8 front and get them loaded for them, get that started so
11:30:37 9 we're not behind when we're ready to go on those. We
11:30:41 10 need just to get some guidance from the Court on how you
11:30:44 11 would like those to be selected.

11:30:49 12 We do have some questions, Your Honor, that
11:30:52 13 we also need guidance on. One of the first things we
11:30:55 14 have is we need some help on the probate issues. We
11:31:02 15 believe this case is a case in federal common law and we
11:31:07 16 can't just say we're going to take North Carolina and do
11:31:11 17 it. There are a number of cases in the country that
11:31:14 18 have -- that the courts have fashioned an alternative
11:31:19 19 remedy. The case out of the -- one of the cases that
11:31:24 20 involved asbestos with government ships, they had an
11:31:30 21 appointed probated administrator for all of the cases
11:31:35 22 that were filed and didn't require people to file their
11:31:37 23 probate before trial. Those who are got settlements
11:31:41 24 obviously have to go through some process, obviously, to
11:31:43 25 distribute that. But initially, the cost of these

11:31:47 1 probate filings is expensive. Down in Florida, for
11:31:51 2 example, it might be \$7,000 just to open up an estate.
11:31:55 3 We're trying to figure out a way not to have our clients
11:31:59 4 have to pay that. And so we have some -- we have some
11:32:00 5 proposals we would like to present to the Court. If
11:32:03 6 it's okay with you, we'll put those together and file
11:32:06 7 them with the Court and ask for guidance on that.

11:32:11 8 The wrongful death statutes -- excuse me,
11:32:14 9 the wrongful death part of the statute, again, the Court
11:32:20 10 could adopt the aspects of the North Carolina. But in
11:32:26 11 the federal common law, we should at least go through
11:32:31 12 that required process so that when the Court decides
11:32:34 13 what are the appropriate wrongful death parameters, that
11:32:39 14 we have met the federal common law requirements. We
11:32:42 15 would be glad to -- if the Court would desire, be glad
11:32:45 16 to give a memorandum and ask the Court to consider it.

11:32:50 17 We would like to also, Your Honor, start
11:32:53 18 working on our jury charges so that we can have some
11:32:57 19 idea upfront what they'll look like so we know what we
11:33:01 20 need to prove. And your help on that would be -- Judge,
11:33:05 21 we're ready to present to you our proposed jury charges
11:33:09 22 at your convenience.

11:33:11 23 I think that covers what I wanted to talk
11:33:13 24 about, Your Honor. I have a couple of other things that
11:33:15 25 I may get into later depending on where we go. Thank

11:33:19 1 you.

11:33:19 2 JUDGE MYERS: Thank you, counsel.

11:33:24 3 Mr. Bain, we'll hear from you first -- or
11:33:27 4 next.

11:33:28 5 MR. BAIN: Thank you, Your Honors.

11:33:30 6 So going through the items that were on the
11:33:32 7 agenda: As of Friday, there are 1309 cases before the
11:33:38 8 Court. A little over 300 with each judge. With respect
11:33:44 9 to the status of the administrative claims with the
11:33:47 10 Department of the Navy, there are currently 117,000
11:33:50 11 administrative claims on file with the Department of the
11:33:52 12 Navy. The Navy is standing up a database which will
11:33:58 13 significantly expedite efforts and allow it to intake
11:34:02 14 batches of claims, organize claims, and analyze claims
11:34:05 15 for the purposes of evaluation for settlement. So that
11:34:07 16 should be online fairly soon.

11:34:10 17 The Navy has been coordinating with the
11:34:13 18 Veterans Administration to gain access to obtain the
11:34:17 19 Veterans Administration information which is needed to
11:34:19 20 evaluate the claims of the claimants.

11:34:23 21 The Navy has been coordinating with the
11:34:27 22 plaintiff's leadership counsel to coordinate procedures
11:34:29 23 for obtaining information that the plaintiff's
11:34:33 24 leadership counsel might have in order to evaluate the
11:34:35 25 claims for settlement offers.

11:34:39 1 With respect to the stipulations between the
11:34:41 2 parties, each side has proposed stipulations regarding
11:34:46 3 scientific studies that were done. Mr. Bell is correct
11:34:51 4 that the plaintiff proposed several stipulations related
11:34:54 5 to the ATSDR's work. The Government agreed to six of
11:34:58 6 those stipulations. The Government proposed
11:35:01 7 stipulations related to the work of the National
11:35:04 8 Research Council from the National Academies of
11:35:06 9 Sciences, which also studied the Camp Lejeune water
11:35:09 10 situation. As of yet, the plaintiffs have not provided
11:35:12 11 us with a response on those stipulations.

11:35:16 12 Based on the allegations in the plaintiff's
11:35:20 13 master complaint, the United States anticipates that it
11:35:22 14 will be able to stipulate to many factual matters that
11:35:25 15 are outlined in that complaint. We have retained
11:35:29 16 experts who are evaluating the scientific issues to
11:35:33 17 determine whether further stipulations are warranted
11:35:35 18 with respect to general causation. So we are looking at
11:35:41 19 that. We're asking them their opinions on that. And if
11:35:44 20 they do give us those opinions, we could make
11:35:46 21 stipulations on general causation.

11:35:50 22 I do want to address the base-wide versus
11:35:54 23 site-specific model that Mr. Bell alluded to. The
11:35:59 24 Government adopted a base-wide model for purposes of the
11:36:03 25 elective option for settlement purposes because those

11:36:06 1 were an early offer of settlement. However, if
11:36:11 2 plaintiffs choose to go the litigation route, the
11:36:14 3 statute clearly says that they must prove that the
11:36:17 4 exposure was as likely as not a cause of their injury.
11:36:21 5 That involves an evaluation of exposure.

11:36:24 6 I think Judge Dever's recent opinion in the
11:36:29 7 PFAS litigation made it clear that exposure is a
11:36:30 8 critical element of proving causation in a toxic court
11:36:35 9 case. In Camp Lejeune, only two of several water
11:36:38 10 systems were contaminated. The one at Tarawa Terrace
11:36:42 11 and the one at Hadnot Point. The other systems were not
11:36:45 12 contaminated. So depending on where you were on base is
11:36:48 13 critical to what type of exposure you might have had.
11:36:51 14 If you're familiar with Camp Lejeune, it's divided by a
11:36:54 15 river. There's some people who work and train and live
11:36:58 16 on one side of the river. Some people are exclusively
11:37:01 17 on the other side of the river. One side of the river
11:37:03 18 did not have contaminated water, yet those people are
11:37:06 19 eligible to file claims under the Camp Lejeune Justice
11:37:11 20 Act. So that's an important point, I believe.

11:37:15 21 With respect to the discovery that's been
11:37:18 22 conducted so far, the plaintiffs did serve 20 very broad
11:37:23 23 requests for discovery from the Government. As Mr. Bell
11:37:26 24 alluded to, they're asking for the entire ATSDR
11:37:30 25 databases which has personal information of everyone

11:37:34 1 that the ATSDR studied, including thousands of people
11:37:37 2 who are not parties to this litigation and likely
11:37:40 3 thousands of people who did not file administrative
11:37:42 4 claims. The personal identifiable information of those
11:37:46 5 people are subject to certain protections. It can't
11:37:49 6 just be turned over. So that's something that we have
11:37:52 7 to look at and have to be very careful about the
11:37:55 8 Government turning over other people's personally
11:37:57 9 identifiable information who are not even parties to the
11:38:00 10 litigation.

11:38:03 11 We will --

11:38:05 12 JUDGE DEVER: Why doesn't the protective
11:38:06 13 order cover that? I mean, I understand that concern.
11:38:09 14 But why doesn't the protective order address that issue?
11:38:14 15 I mean, everybody that's on the plaintiff's side is an
11:38:18 16 officer of the court, and we have a protective order.
11:38:20 17 And this type of information gets released in all kinds
11:38:26 18 of cases. I'm trying to understand what's different
11:38:29 19 about it.

11:38:30 20 MR. BAIN: Well, we're discussing that with
11:38:32 21 the ATSDR, and they have certain protections in place.
11:38:36 22 They make certain agreements when they get this
11:38:39 23 information from the agencies from which they receive
11:38:41 24 it. So we are talking with our lawyers. We've given
11:38:43 25 them the protective order. And so we're in continuing

11:38:46 1 discussions with that. But I just wanted to point out
11:38:48 2 that these requests are very, very broad and include a
11:38:52 3 lot of information that is of other people that is not
11:38:56 4 really relevant to the plaintiff's case.

11:39:00 5 JUDGE MYERS: You anticipate potential
11:39:02 6 future litigation on the -- from the stakeholders who
11:39:06 7 have the privacy interests? That is, are there -- we
11:39:09 8 always treat the United States as monolithic. It's not.
11:39:13 9 But in some cases, it's good to treat it as a single
11:39:16 10 party because it's in the coordination position. You
11:39:20 11 anticipate stakeholder litigation that says protective
11:39:23 12 order is insufficient?

11:39:25 13 MR. BAIN: I would hope not. But we need to
11:39:28 14 make sure that we go through all of our processes and
11:39:30 15 check with all of the agencies that have a stake in this
11:39:32 16 information. The agencies that provided to the ATSDR,
11:39:36 17 the ATSDR itself, it includes both defense information
11:39:40 18 and also some information they obtain from different
11:39:43 19 states through different agreements they had with them.
11:39:45 20 So we just need to make sure that we -- we go through
11:39:50 21 all the processes with those lawyers to make sure what
11:39:53 22 we're doing is appropriate. And we have provided the
11:39:56 23 protective order to them.

11:40:02 24 We've been in contact with the Government
11:40:04 25 agencies, including the Navy, the Marine Corps, the

11:40:07 1 Veterans Administration, the National Archives, ATSDR,
11:40:11 2 the EPA, and the GAO regarding these broad requests that
11:40:15 3 the plaintiffs have made. We are responding later
11:40:16 4 today. But there's a lot of information requested from
11:40:20 5 a lot of different agencies, so we are trying to contact
11:40:24 6 all of them and make sure that we're turning over what's
11:40:27 7 appropriate and making appropriate objections where
11:40:30 8 necessary.

11:40:32 9 We've entered an e-discovery order with
11:40:35 10 plaintiff's leadership counsel, and we intend to start
11:40:37 11 negotiating regarding electronic information, from what
11:40:41 12 custodians we need to collect it from, what shared
11:40:44 13 systems we need to collect it from, what search terms we
11:40:47 14 need to run across that information so that we can get
11:40:50 15 it produced in a timely manner. So we've begun that
11:40:53 16 process. We've negotiated an order and will begin those
11:40:56 17 discussions soon.

11:40:58 18 The plaintiffs have requested several
11:41:00 19 30(b)(6) witness examinations. We've contacted the
11:41:04 20 agencies regarding those and hope to be able to identify
11:41:07 21 witnesses next month for those depositions.

11:41:14 22 With respect to settlement efforts, as you
11:41:18 23 know, in September the Department announced the Elective
11:41:21 24 Option to settlement program. That process is just
11:41:24 25 beginning. The Department of Justice and the Department

11:41:28 1 of the Navy have been working with the plaintiff's
11:41:30 2 leadership committee to get the information that we need
11:41:33 3 to determine eligibility for settlement offers under the
11:41:36 4 program. To date -- and I emphasize we're just
11:41:41 5 starting -- 23 settlement offers have been made. Most
11:41:44 6 of the offers are still pending. The claimants have 60
11:41:49 7 days to accept or reject the offer. Three have been
11:41:53 8 accepted and two have already been paid.

11:41:56 9 JUDGE BOYLE: How much were they? How much
11:41:58 10 were the three that have been accepted and paid?

11:42:01 11 MR. BAIN: Just a minute, Your Honor. I
11:42:06 12 think we have that.

11:42:09 13 JUDGE BOYLE: You don't have it?

11:42:10 14 MR. BAIN: I don't have it right --

11:42:11 15 JUDGE BOYLE: You didn't think that would be
11:42:13 16 important today?

11:42:14 17 MR. BAIN: Well, I thought you would be
11:42:15 18 interested in the numbers that were actually settled.
11:42:17 19 But they're in the hundreds of thousands of dollars.

11:42:20 20 JUDGE BOYLE: Like 900,000? 800,000?
11:42:23 21 500,000? 400,000?

11:42:25 22 MR. BAIN: Your Honor, there's a specific
11:42:27 23 grid of criteria.

11:42:28 24 JUDGE BOYLE: Yeah, I understand. I'm just
11:42:30 25 being facetious.

11:42:32 1 So how much?

11:42:34 2 MR. BAIN: We can get that information to

11:42:35 3 you. I might have it with me.

11:42:36 4 JUDGE BOYLE: Don't worry about it.

11:42:38 5 MR. BAIN: I might have it with me.

11:42:40 6 JUDGE BOYLE: Don't worry about it.

11:42:43 7 MR. BAIN: I'm sorry, Your Honor. If I look

11:42:45 8 through my materials, I might be able to --

11:42:45 9 JUDGE BOYLE: The whole point of this

11:42:46 10 hearing is to make progress.

11:42:47 11 MR. BAIN: Yes.

11:42:48 12 JUDGE BOYLE: Yeah. Settling cases out of

11:42:50 13 court is considered progress. We would like to know

11:42:52 14 about that.

11:42:54 15 MR. BAIN: Yes, Your Honor.

11:42:56 16 JUDGE BOYLE: Go ahead.

11:42:57 17 MR. BAIN: So, yeah, we're working toward

11:42:59 18 that, trying to make as many as we can that satisfy the

11:43:02 19 criteria in the program that we put together.

11:43:06 20 JUDGE BOYLE: So far you've had three and

11:43:08 21 you said there are 120,000 claims.

11:43:09 22 MR. BAIN: Uh-huh. We're just getting

11:43:11 23 started, though, Your Honor. And we need to get -- one

11:43:13 24 thing is we need to get the information from the

11:43:16 25 plaintiffs to be able to determine whether the

11:43:18 1 plaintiffs meet the criteria under the program.

11:43:22 2 So, for example, we need to know what the
11:43:27 3 disease they had is, how long they were at Camp Lejeune,
11:43:30 4 when they got the disease.

11:43:32 5 JUDGE BOYLE: So you think the plaintiffs
11:43:33 6 haven't been forthcoming?

11:43:35 7 MR. BAIN: We've been working with them and
11:43:37 8 they've been forthcoming recently. We asked them for
11:43:39 9 getting the date of birth information, Social Security
11:43:43 10 number that we need to take to the Government agencies
11:43:46 11 to get the medical records and the service records that
11:43:49 12 we need. We've been talking with plaintiff's leadership
11:43:52 13 counsel about getting other information and then putting
11:43:57 14 packages together for us so we can determine eligibility
11:44:00 15 for EO offers.

11:44:02 16 So we have been working with them. They
11:44:03 17 recently provided us with information for approximately
11:44:07 18 400 individuals who are plaintiffs in litigation. So
11:44:10 19 those are people who have cases before this Court. So
11:44:13 20 we would be getting the information for those
11:44:15 21 individuals to see whether they qualify for an offer
11:44:18 22 under the program.

11:44:20 23 On the other hand -- or also, at the same
11:44:23 24 time, the Navy has been reaching out to plaintiff's
11:44:26 25 counsel to discuss with them coordinating getting

11:44:29 1 packages of information sent to the Navy for people who
11:44:32 2 may qualify for offers under the program. So we're
11:44:35 3 making progress, and we think a lot more offers will be
11:44:38 4 made in the coming months.

11:44:42 5 JUDGE DEVER: As the Navy is building out
11:44:43 6 this database -- I mean, have you been -- has the Navy
11:44:48 7 been in touch with -- I mean, I know the plaintiffs have
11:44:50 8 been, I gather from an earlier hearing, trying to create
11:44:54 9 a database that in terms of information that each side
11:45:00 10 thinks is relevant to value a case.

11:45:04 11 I mean, I hope that y'all are talking to
11:45:06 12 each other and that if you're -- won't make a lot of
11:45:09 13 sense if the Navy builds a database that doesn't have
11:45:13 14 information that the plaintiffs thinks are material to
11:45:16 15 evaluating a value. So, I mean, I would just hope that
11:45:19 16 y'all are talking to one another. And if the plaintiffs
11:45:24 17 think that there's some glaring deficiency in the
11:45:27 18 database that the Navy is building, that -- in terms of
11:45:30 19 just the database. I mean, nothing -- nothing requires
11:45:32 20 the Navy to make an offer anyway. But it seems like a
11:45:38 21 waste of time if the Navy builds out a big database
11:45:42 22 without getting information from the plaintiffs as to
11:45:45 23 what the plaintiff thinks is -- are material factors
11:45:48 24 that ought to be in any database to try and categorize
11:45:52 25 cases.

11:45:52 1 So I just offer that to you as a -- as a
11:45:55 2 matter of this process. Because as I talked about at
11:46:02 3 the very first hearing -- I mean, by design, a design of
11:46:06 4 the statute is that the cases are -- the vast majority
11:46:11 5 are to be resolved administratively. So I hope that
11:46:14 6 there is a real robust dialogue between the plaintiffs
11:46:18 7 and the Department of Justice as the DOJ is building out
11:46:21 8 a database. Because if the -- if the Navy or the DON,
11:46:26 9 the Navy database doesn't have things that plaintiffs
11:46:30 10 think are material, then -- then we're going to waste a
11:46:36 11 lot of time. Because eventually that's going to need to
11:46:38 12 be done. So I'm just -- if you could please let the
11:46:41 13 Navy know that that strikes me as being really
11:46:44 14 important.

11:46:44 15 MR. BAIN: I will do, Your Honor. And we've
11:46:46 16 had several calls with plaintiff's counsel and Navy
11:46:50 17 counsel and Department of Justice counsel talking about
11:46:52 18 the information needed to make settlement offers under
11:46:56 19 this program. And so that the Navy's database, which is
11:46:59 20 receiving information, should be able to do all of the
11:47:02 21 evaluation necessary under the administrative program.
11:47:05 22 At the same time we've been talking with plaintiffs
11:47:07 23 about setting up a database that eventually, hopefully
11:47:11 24 will globally resolve the entire litigation. So we're
11:47:14 25 in talks with them now and we've been following the

11:47:17 1 model by -- used by Judge Hellerstein in the first
11:47:20 2 responder litigation. We're in talks with them now
11:47:24 3 about a census of questions that will be necessary to
11:47:27 4 populate a global resolution database. We've been
11:47:30 5 exchanging the questionnaire with the plaintiffs. We
11:47:35 6 got feedback from them. We had some additional
11:47:39 7 responses to their feedback. And so we're continuing to
11:47:42 8 try to finalize a database of the information that will
11:47:47 9 be needed for a global resolution, including both
11:47:50 10 litigation and any outstanding claims. At some point we
11:47:54 11 may need a neutral to assist us with finalizing that
11:47:58 12 census if we have any disputes that we can't resolve
11:48:01 13 ourselves.

11:48:02 14 JUDGE DEVER: Well, I know one of the topics
11:48:04 15 that we have on here is whether to appoint a settlement
11:48:07 16 master. So I'm sure we'll talk about it at some point
11:48:11 17 today.

11:48:12 18 JUDGE BOYLE: I wanted to ask: Have you
11:48:13 19 ever answered the question as to whose budget this
11:48:17 20 settlement comes out of? Does it come out of the
11:48:19 21 general Treasury, or out of Marine and Navy budget?

11:48:22 22 MR. BAIN: It comes out the U.S. Treasury,
11:48:24 23 the judgment fund. The fund that pays all government
11:48:28 24 settlements or cases in litigation.

11:48:29 25 JUDGE BOYLE: So it's not competing with

11:48:30 1 military apportionment?

11:48:34 2 MR. BAIN: No, it's not coming out of the
11:48:36 3 military appropriations.

11:48:38 4 JUDGE BOYLE: Okay.

11:48:39 5 MR. BAIN: And, Your Honor, I will have that
11:48:40 6 specific information regarding settlements at future
11:48:43 7 conferences, you can be assured, if I don't have it here
11:48:46 8 today.

11:48:53 9 So one of the things that we need to do in
11:48:57 10 order to move forward on the global settlement front is
11:48:59 11 to agree on a database vendor. So a vendor that can be
11:49:03 12 a third party that the Government and the plaintiffs can
11:49:07 13 both contribute to and will house the data that will be
11:49:10 14 used to ultimately reach a global resolution. Before
11:49:14 15 the statute even passed, we consulted with the civil
11:49:19 16 division's chief information officer about the
11:49:21 17 Hellerstein model that was used to figure out if we
11:49:24 18 could do that type of a system and what requirements
11:49:26 19 there might be for it. The Government requires security
11:49:31 20 for any system it uses that has personal information in
11:49:33 21 it. It's called FedRAMP Moderate, and it's a
11:49:38 22 requirement that is set by law that certain security
11:49:41 23 systems must be in place. We informed plaintiff's
11:49:47 24 counsel of this many, many months ago, even before
11:49:49 25 plaintiff's leadership committee was selected, that this

11:49:53 1 is a requirement needed for a database vendor. We are
11:49:57 2 waiting for the plaintiffs to propose vendors to us that
11:50:00 3 meet this requirement. And we're still waiting for
11:50:03 4 that. And we know that there's a deadline in the Case
11:50:07 5 Management Order for agreeing to a database vendor. And
11:50:11 6 we're continuing our discussions with the plaintiff's
11:50:15 7 leadership committee regarding that.

11:50:21 8 And then with respect to the settlement
11:50:23 9 master, we raised this issue with the plaintiff's
11:50:28 10 leadership last week because we knew it would likely
11:50:31 11 come up at this conference. And we agree the special
11:50:34 12 master are neutral, would be useful in resolving issues
11:50:38 13 that are necessary for the progress of the litigation.
11:50:41 14 As I mentioned, I think the most immediate concerns are
11:50:45 15 this global database and vendor that need to be
11:50:48 16 selected. We have consulted with the U.S. Attorney's
11:50:51 17 Office about potential settlement masters and have some
11:50:56 18 names that we can discuss with the plaintiff's counsel
11:50:59 19 when appropriate.

11:51:01 20 I will say --

11:51:03 21 JUDGE DEVER: Go ahead and have those
11:51:04 22 discussions. It's appropriate. Go ahead and have them.
11:51:06 23 You don't have to have them right now, but...

11:51:08 24 MR. BAIN: Okay.

11:51:10 25 The one thing I do need to point out is that

11:51:15 1 U.S. can agree to a settlement administrator that makes
11:51:19 2 offers on behalf of the United States. So there's
11:51:21 3 certain authority that the Attorney General has that
11:51:23 4 cannot be delegated to a third party.

11:51:27 5 JUDGE DEVER: I mean, of course. If this is
11:51:28 6 just a separate track facilitator that helps there to be
11:51:34 7 a dialogue to -- to move cases.

11:51:39 8 MR. BAIN: Right.

11:51:40 9 JUDGE DEVER: Administratively.
11:51:42 10 Administrative cases. And then even cases that are
11:51:44 11 here. But it's -- that's the whole point of a
11:51:46 12 settlement master under Rule 53. So I would encourage
11:51:51 13 y'all to -- you know, after the hearing to talk about
11:51:54 14 that because it's -- I think it's important.

11:51:59 15 MR. BAIN: Yes. And we've used special
11:52:01 16 masters before in a Rule 53. In multidistrict
11:52:05 17 litigations, they're very helpful. So we would totally
11:52:09 18 support that.

11:52:10 19 And to address one of the things that
11:52:17 20 Mr. Bell raised with respect to the probate matter, we
11:52:20 21 also agree that this should be something that should be
11:52:22 22 resolved fairly quickly. But our position is that North
11:52:27 23 Carolina law should apply to that.

11:52:29 24 JUDGE DEVER: Well, you agree, though, it's
11:52:30 25 a matter of federal common law.

11:52:32 1 MR. BAIN: No.

11:52:33 2 THE DEFENDANT: You don't. Why?

11:52:34 3 MR. BAIN: We believe the Federal Tort
11:52:37 4 Claims Act applies to fill any gaps in the Camp Lejeune
11:52:40 5 Justice Act. That law references the substantive law of
11:52:45 6 this State where the act or omission occurred. So that
11:52:49 7 would be North Carolina law. So there's no need to
11:52:52 8 create some federal common law. The Federal Tort Claims
11:52:57 9 Act, which supplies the waiver for the Camp Lejeune
11:52:59 10 Justice Act, references state substantive law. And so
11:53:05 11 North Carolina law should apply to who is an appropriate
11:53:09 12 representative in a wrongful death case. And once we
11:53:12 13 get that resolved, that will facilitate settlements in
11:53:15 14 other matters for cases where it's a wrongful death
11:53:19 15 situation or survivorship action.

11:53:25 16 Let me just check with cocounsel. I think
11:53:27 17 those were the primary things I wanted to address first.

11:53:32 18 Oh. Your Honors did issue the three of the
11:53:36 19 four orders that we submitted. The one order which also
11:53:41 20 is necessary before we can produce a lot of information
11:53:43 21 is an order on confidentiality. And so I just wanted to
11:53:47 22 raise that in case the Court has any questions about
11:53:49 23 that.

11:53:50 24 With respect to our responses to the
11:53:53 25 plaintiff's request for production which are due today,

11:53:56 1 we have a number of materials that we're ready to
11:53:58 2 produce, along with our written responses, but until we
11:54:02 3 have that protective order in place, we can't produce
11:54:04 4 all of that material.

11:54:08 5 JUDGE DEVER: Give us the docket entry
11:54:10 6 number of that -- that draft. Do you have it?

11:54:23 7 MR. BAIN: It was submitted on the same date
11:54:24 8 as the other three, which I believe was the...

11:54:32 9 I have --

11:54:32 10 JUDGE DEVER: Oh. So that's the 32-1? Is
11:54:37 11 that right?

11:54:37 12 MR. BAIN: I believe so.

11:54:40 13 JUDGE DEVER: I mean, it's docket entry 32.

11:54:49 14 MR. BAIN: It was filed with docket 26.

11:54:54 15 JUDGE DEVER: 26.

11:54:55 16 MR. BAIN: Yeah.

11:55:33 17 Judge Boyle, I do have that information now
11:55:36 18 if you would like that.

11:55:52 19 The three claimants who have accepted
11:55:54 20 settlement offers, one was for \$250,000, one was for
11:55:59 21 \$300,000, and one was for \$300,000.

11:56:03 22 JUDGE BOYLE: Thank you.

11:56:09 23 JUDGE DEVER: Mr. Bell.

11:56:10 24 MR. BELL: Your Honor, normally, I don't get
11:56:13 25 too aggrieved at things, but if you'll allow me. Almost

11:56:21 1 12 years we've litigated Camp Lejeune, and the
11:56:24 2 Government couldn't wait to tell me every time they
11:56:26 3 could that the Federal Tort Claims Act doesn't apply,
11:56:31 4 you can't win in this act; under North Carolina, you'll
11:56:34 5 get kicked out. If there was any way we thought about
11:56:38 6 drafting this bill, it included the Federal Tort Claims
11:56:43 7 Act we have instituted. This is a standalone bill where
11:56:46 8 federal common law applies.

11:56:48 9 What makes it interesting, Judge -- and I
11:56:50 10 think it's something that, to me, is ethically
11:56:53 11 controlling -- is when you have an Elective Option, that
11:57:00 12 they're making offers which they have admitted is
11:57:02 13 drastically reduced offers -- they've admitted that.
11:57:05 14 That doesn't bother me so much. We can handle that.
11:57:07 15 But in order to accept the offer, the lawyer has to sign
11:57:11 16 an agreement that this is being made under the Federal
11:57:15 17 Tort Claims Act. Which I think is wrong. I think
11:57:19 18 that's illegal. I think it's improper, and I'm not
11:57:23 19 going to do it. Because this is what we fought this
11:57:26 20 case all about. This is why Congress said we're not
11:57:30 21 going to do it.

11:57:31 22 If you fill in the gaps like they talk
11:57:33 23 about, what they're doing is just bringing into play
11:57:36 24 what they've for 12 years told these courts was not in
11:57:40 25 play. And I would be surprised if -- if Congress knew

11:57:48 1 at the time they were drafting this bill that this would
11:57:51 2 bring it back under what the Government had already said
11:57:55 3 didn't apply. So I just bring that up to Your Honor.

11:57:59 4 However that decision -- we would appreciate
11:58:02 5 an order on that. Or at least if we need to brief it,
11:58:05 6 we'll be glad to.

11:58:06 7 JUDGE MYERS: Well, it seems to me that we
11:58:08 8 need a case or controversy that says we need a
11:58:11 9 declaratory judgment. We have a settlement offer
11:58:13 10 between these two parties. That settlement offer says
11:58:16 11 that it's pursuant to the Federal Tort Claims Act. We
11:58:18 12 disagree, we believe it should fall under federal common
11:58:20 13 law, and then brief it. Bring one that's before one of
11:58:23 14 us.

11:58:23 15 MR. BELL: Judge, we actually had one that
11:58:26 16 we were going to do. Our husband and wife both have
11:58:31 17 identical cancers. They're not related. Both were
11:58:34 18 exposed almost identically. One of them has since died.
11:58:38 19 They were there over the five years, which was part of
11:58:40 20 the option. But they didn't -- they didn't meet the
11:58:45 21 latency requirement which was artificially done. And
11:58:48 22 about 75 percent of the clients out there do not meet
11:58:52 23 that. But, yet, while we might would have wanted to
11:58:57 24 accept the offer, then they require the lawyers to say
11:59:00 25 this is under the Tort Claims Act, is something we

11:59:03 1 think -- we brought that up to the Government explaining
11:59:07 2 to them that we thought it was improper. They say
11:59:10 3 they're looking into that, and we haven't heard back
11:59:12 4 from them.

11:59:13 5 JUDGE DEVER: Well, I mean, I think on the
11:59:14 6 larger point of the Chief is that we're happy to rule on
11:59:18 7 things. That's what we do for a living. And -- but it
11:59:21 8 has to be in the context of we just can't, sort of,
11:59:24 9 write a letter back to y'all and say this is our view of
11:59:26 10 things. It has to be in the context of an actual
11:59:30 11 dispute between somebody.

11:59:31 12 But in terms of these -- to the extent
11:59:33 13 they're important preliminary issues, you know, I think
11:59:38 14 we would be ready to rule on those things, but it just
11:59:44 15 needs to be filed. And we put in the Case Management
11:59:48 16 Order very deliberately citing the Third Circuit case
11:59:52 17 that as a general matter, we anticipate following the
11:59:56 18 orders in our other cases, so that we're not reinventing
11:59:58 19 the wheel every short-form complaint.

12:00:02 20 And so again, in terms of that issue, for us
12:00:10 21 to resolve it, it just -- it needs to be in the context
12:00:13 22 of some kind of a dispute. And if we get it, we'll act
12:00:19 23 on it.

12:00:20 24 MR. BELL: I understand, Your Honor.

12:00:21 25 JUDGE DEVER: And then we would anticipate,

12:00:23 1 just so that y'all know, absent something unusual, we
12:00:26 2 have the language in Case Management Order 2, we follow
12:00:29 3 it.

12:00:30 4 And I would just say on the issue of the --
12:00:33 5 the one deposition, and, I mean, we have a good cause
12:00:36 6 out, and that doesn't mean impossible or anything like
12:00:39 7 that. And to the extent that there's some 30(b)(6)
12:00:44 8 deposition that could be taken early, I know my own view
12:00:48 9 would be, well, I mean, if you needed to take a
12:00:50 10 deposition of that person that works for the Government
12:00:52 11 or used to work for the Government again, it will be
12:00:55 12 like, okay. I mean, I would let it.

12:01:00 13 And to the protective order point, Mr. Bain,
12:01:04 14 I mean, we will -- to the extent there's some
12:01:07 15 confidentiality order we need to get entered, we'll get
12:01:10 16 it entered. But I'm just at a loss to understand how
12:01:16 17 much extensive negotiation or coordination there has to
12:01:19 18 be with other people to the extent that their
12:01:24 19 information was submitted as part of some study. If
12:01:27 20 it's being produced to officers of the court pursuant to
12:01:31 21 a confidentiality order, that would prohibit that being
12:01:38 22 produced. And, obviously, the benefit of it is it
12:01:44 23 allows the plaintiffs to get the information that they
12:01:47 24 think they need. It's not, you know, sort of arguing
12:01:50 25 about relevance or it has people that are being studied

12:01:53 1 for something else. It's like, well, I mean, there's a
12:01:56 2 lot of irrelevant stuff that gets produced in discovery
12:01:58 3 that never sees the light of day in an actual trial.
12:02:01 4 But I just -- I'm just not aware of anything that would
12:02:09 5 inhibit or should prevent y'all from producing this
12:02:14 6 information about the studies subject to the
12:02:19 7 confidentiality order, and then there can be later
12:02:22 8 fights about legal issues. But not producing the
12:02:26 9 information, we're just wasting time. And time is the
12:02:32 10 gift necessary for all other gifts.

12:02:42 11 MS. BASH: Your Honor, may I say a little
12:02:43 12 bit, just a few comments on things that have come up?
12:02:46 13 One is on -- well, first of all on this FTCA issue, we
12:02:51 14 have spoken a lot with DOJ, and they have brought it up
12:02:55 15 in several contexts, that the FTCA fills the gaps. And
12:02:57 16 the latest was this filing on Friday. So we will
12:02:59 17 respond to that, understanding that it's not a case or
12:03:01 18 controversy, but we've also been waiting for a place to
12:03:04 19 tee it up, and we will do it in one of these estate
12:03:07 20 cases. Because, again, that just -- the issue is very
12:03:10 21 broad. It affects all of the clients. It will, I
12:03:13 22 think, determine how the litigation goes. And so we're
12:03:15 23 trying to get that in front of you early, and we will.

12:03:18 24 On resolution: So we were not involved at
12:03:22 25 all in the EO. It was a secret to us. We found out it

12:03:26 1 was coming and asked if we could give some feedback
12:03:29 2 because we do think that, you know, with a few tweaks,
12:03:32 3 it could have applied much more broadly than it is going
12:03:35 4 to apply, including with respect to latency.
12:03:38 5 Nevertheless, we are helping DOJ. They asked us to give
12:03:42 6 them some information for clients who are before the
12:03:44 7 Court. And so we're giving them dates of birth, Social
12:03:47 8 Security numbers so that they can see if people, you
12:03:50 9 know, are compliant with what they want. We've had
12:03:54 10 mixed reactions, you know, as you could expect.

12:03:57 11 Judge Dever, as you said in the first
12:03:59 12 hearing, some people just want to get off the train now
12:04:01 13 and they're, you know, deeply discounted offers. I
12:04:04 14 think DOJ has said as much. But they're ripe for some
12:04:08 15 people, and so we want to get as many of those in
12:04:11 16 people's hands.

12:04:11 17 The tricky thing is this divide between the
12:04:14 18 Navy and DOJ. The Navy seems to just be moving much
12:04:18 19 more slowly. The bulk of the cases are there. And so
12:04:22 20 we actually -- my firm tried to get a bunch of people
12:04:26 21 here in court after that was announced to see if we
12:04:29 22 could move them more quickly for DOJ. But that is also
12:04:33 23 a little bit of the reason there's the delay in your
12:04:35 24 seeing the short-form complaints. Once they come over
12:04:38 25 here, they're no longer entitled to receive that offer.

12:04:40 1 And so, you know, every time before we file a short-form
12:04:43 2 complaint, we need to call the client and say, you know,
12:04:46 3 you're getting off -- you're no longer eligible to
12:04:48 4 receive that. And so this isn't a delay where we're
12:04:52 5 trying, you know, to pick our best plaintiffs or
12:04:54 6 anything like that. We're very much, as Ed said,
12:04:57 7 cognizant of wanting to resolve these quickly. We think
12:05:01 8 the only way to resolve these quickly is to get a range,
12:05:03 9 you know, in the trials so that when we're at the
12:05:06 10 resolution stage with DOJ --

12:05:08 11 JUDGE BOYLE: Do you think there's any room
12:05:09 12 for summary judgment in this process?

12:05:12 13 MS. BASH: Absolutely.

12:05:13 14 JUDGE BOYLE: That gets done quickly.

12:05:16 15 MS. BASH: Yes. Yes. We have -- we're in
12:05:17 16 the process of writing a couple of motions for summary
12:05:20 17 judgment -- partial summary judgment.

12:05:21 18 JUDGE BOYLE: I mean, the schedule for
12:05:23 19 trials is remote; summary judgment is immediate.

12:05:29 20 MS. BASH: Yes. No, absolutely. We plan to
12:05:31 21 start there.

12:05:34 22 JUDGE BOYLE: And if it doesn't play out,
12:05:36 23 people in Richmond will tell us, and it will come back
12:05:39 24 and no harm, no foul.

12:05:41 25 MS. BASH: Yes. No, absolutely. We have --

12:05:43 1 we have a great briefing committee and we have a couple
12:05:46 2 of drafts just waiting -- waiting to be filed. And we
12:05:50 3 will file them soon. Again --

12:05:52 4 JUDGE BOYLE: And it's finite. You file it,
12:05:54 5 they have to respond or else it's admitted.

12:05:56 6 MS. BASH: Right. Yes. They're coming.

12:06:01 7 But so I just wanted to say on resolution
12:06:04 8 specifically: We are working toward a database. We've
12:06:08 9 chosen a vendor for the plaintiffs in court. Unlike in
12:06:11 10 Hellerstein where the entire universe was before the
12:06:16 11 court; here, they're not. Most of them are sitting
12:06:19 12 before the Navy. And we don't want to flood the Court
12:06:21 13 unnecessarily just for the purposes of doing something
12:06:23 14 like that. And so I do think it will be a little bit
12:06:26 15 more bifurcated with, you know, they have a database and
12:06:29 16 we have -- we have, you know, our information of
12:06:30 17 clients. But we very much do want to work with them,
12:06:32 18 and we'll continue to do that.

12:06:34 19 And the FedRAMP issue is a tricky one. He
12:06:38 20 just said -- you know, Mr. Bain just said that they need
12:06:40 21 it for purposes of putting personal information in
12:06:43 22 there. But our point is if we have the information
12:06:46 23 ourselves -- right -- if you've produced it in
12:06:48 24 discovery, we can put it wherever we want. We don't
12:06:50 25 necessarily have to comply with some of those things.

12:06:52 1 The vendors that the Government uses and having worked
12:06:54 2 in Government for a very long time, sometimes the
12:06:56 3 vendors that are acceptable to the Government are kind
12:07:00 4 of the older, dinosaur, slower vendors. And so we're
12:07:04 5 trying to work with somebody that will move quickly.
12:07:08 6 Get all of the information there --

12:07:08 7 JUDGE DEVER: Perfect is the enemy of
12:07:10 8 better. Just don't -- I mean, again -- I mean, I
12:07:12 9 realize that y'all are really doing your best for your
12:07:16 10 clients. But perfect is the enemy of better. And it's
12:07:20 11 better for y'all to talk and agree on a vendor and --

12:07:24 12 MS. BASH: No. Absolutely. So that's -- so
12:07:27 13 that's part of it, though. Right? So some of the newer
12:07:30 14 vendors who do this repeatedly who are not FedRAMP
12:07:33 15 certified will be much faster, because they have the
12:07:36 16 system built. And give them the information and it's
12:07:38 17 there. And so it's actually in this case, I do think
12:07:40 18 that those match up.

12:07:42 19 JUDGE DEVER: And I have no idea. I mean,
12:07:43 20 there's -- we live in a world of acronyms and, you know,
12:07:47 21 maybe it would incentivize one of these new folks to get
12:07:52 22 the FedRAMP certification. It doesn't matter to me, but
12:07:56 23 it would seem to me that if it matters to the DOJ, y'all
12:07:59 24 need to work to figuring that out. I think it's also
12:08:02 25 one of the benefits of having a settlement master that

12:08:06 1 would have -- in my vision of what that person would do,
12:08:10 2 that person would have insight not just into the 1300 or
12:08:15 3 so cases that our court has, but in the 117,000 to try
12:08:19 4 and help facilitate resolution. Whether that involves
12:08:24 5 one or two people, you know, we would be open to your
12:08:27 6 suggestions on that. But I would ask y'all to add that
12:08:30 7 to your list of things to talk about because having
12:08:33 8 somebody facilitating a dialogue on the topic of global
12:08:39 9 resolution is in everybody's interest.

12:08:41 10 MS. BASH: So absolutely. And it is a
12:08:45 11 priority. It is not yet the bottleneck, because what
12:08:47 12 we're doing is -- I'm again analogizing to the
12:08:50 13 Hellerstein model, is negotiating the data fields. And
12:08:52 14 that is moving forward, I think, very well. We're
12:08:55 15 supposed to get a new draft from the DOJ soon. And
12:08:59 16 because unlike in Hellerstein, we don't have everybody
12:09:01 17 before us. You know, the 117,000 people, we can't order
12:09:05 18 them. You know, we're not -- we don't rule over them.
12:09:09 19 And so we want to have that data set complete to go to
12:09:13 20 them one time and say, "Fill all of this out." And the
12:09:18 21 carrot is -- unlike, you know, a court order, the carrot
12:09:21 22 is this is what DOJ had said they will settle the cases
12:09:25 23 on, this is what we think we need, and then we hopefully
12:09:27 24 can spit out a number either earlier or after the trials
12:09:30 25 get going. But that's what we're actively negotiating.

12:09:36 1 JUDGE DEVER: I mean, that's good to hear.

12:09:37 2 Because that's -- I mean, if the DOJ says we're not

12:09:38 3 going to settle unless we have this information, well --

12:09:42 4 MS. BASH: There's your carrot. That's

12:09:43 5 right.

12:09:44 6 JUDGE DEVER: -- the plaintiffs need to know

12:09:45 7 that. And then the plaintiffs can say, "Well, then I'm

12:09:46 8 going to have my trial 20 years from now," and they can

12:09:48 9 live with that. But it's really important for, like you

12:09:53 10 say, that process for if DOJ tells you if we don't have

12:09:58 11 this data -- and even if it's some issue that you see

12:10:00 12 being litigated later on an exposure issue about where

12:10:04 13 you were on the base or something, to the extent that

12:10:07 14 DOJ is -- and you have the information, just because you

12:10:11 15 agree to it in some administrative database doesn't mean

12:10:14 16 that we've ruled on it. It just means it's a potential

12:10:17 17 way to facilitate some resolution for the people that

12:10:22 18 have claims back to, potentially, 1953.

12:10:26 19 MS. BASH: Right.

12:10:27 20 JUDGE DEVER: So I'm glad that y'all are

12:10:28 21 talking, and I would encourage that to continue. And

12:10:32 22 again, you don't have to, sort of, fight the fights of,

12:10:35 23 you know, if we let this be in a database, then that

12:10:38 24 means we're agreeing to the relevance of this or that in

12:10:41 25 court. It's like, no, it doesn't. It means you're

12:10:46 1 agreeing to information in the database.

12:10:48 2 MS. BASH: Yeah. No. And I completely
12:10:50 3 agree. The hesitation with is going -- it's an older
12:10:54 4 population. It's an ill population. Pinging them many
12:10:57 5 times for incremental data will reduce responses, we
12:11:01 6 know from experience. And so we do -- we would like to
12:11:04 7 complete -- it will never be perfect. But as much as we
12:11:08 8 can, I think we're very close. And then as soon as we
12:11:11 9 get agreement on that, we can go out to people one time,
12:11:13 10 collect as much as we can, and then go from there.

12:11:16 11 But in the meantime, for purposes of giving
12:11:18 12 them a sense, we have aggregate data. You know, this --
12:11:21 13 the people here at the table represent a very large
12:11:23 14 number of clients and we're able to give -- you know,
12:11:25 15 figure out the average latency for a kidney cancer and
12:11:28 16 so that -- so relevant data points.

12:11:31 17 And then the last thing I wanted to address,
12:11:32 18 you asked about the discovery pool profile form. So
12:11:35 19 we're -- that's due, I think, next week to the Court.
12:11:37 20 And we're negotiating it with DOJ. We owe them a draft.
12:11:41 21 We just spoke last week and agree that they were going
12:11:44 22 to serve, kind of, in the place of interrogatories to
12:11:46 23 streamline that process. And so we want to add a few
12:11:48 24 more things to our proposal before sending it over. And
12:11:52 25 we'll do that, I hope, tomorrow. You know, tomorrow or

12:11:55 1 the next day. So...

12:11:57 2 JUDGE DEVER: And then, Mr. Bell, I know
12:11:58 3 y'all had submitted -- and whoever on your team can
12:12:01 4 answer this. I know you have the draft common benefit
12:12:05 5 order that you had submitted. And, obviously, DOJ filed
12:12:07 6 the response it filed Friday. Do you think we need to
12:12:14 7 resolve that -- the FTCA issue that they -- that the
12:12:19 8 Department raised in order to enter that?

12:12:22 9 MR. BELL: No, Your Honor. Please refer to
12:12:26 10 page 25 and 26. It clearly states how that holdback is
12:12:30 11 to be applied to the gross settlement. It has nothing
12:12:34 12 to do with fees. I do take issue with some of the
12:12:37 13 things in that filing. We'll --

12:12:41 14 JUDGE DEVER: Right. But in terms of just
12:12:42 15 -- and I want to ask the same thing to Mr. Bain. I
12:12:44 16 mean, I know -- I read the filing. But is there
12:12:46 17 anything in the draft that you think would prevent us
12:12:50 18 from entering that, Mr. Bain? I mean, it's not with
12:12:54 19 prejudice to your position on the FTCA issue that you
12:12:59 20 raised, right?

12:13:00 21 MR. BAIN: No, Your Honor. I think that,
12:13:02 22 you know, we just wanted to point out that in
12:13:04 23 determining the holdback rate, need to balance those
12:13:07 24 interests and know that the FTCA cap applies. Our
12:13:12 25 position, just in response briefly to what Mr. Bell

12:13:16 1 said, is that the CLJA refers to the FTCA administrative
12:13:20 2 process which provides the authority to settle
12:13:22 3 administrative claims, which in turn provides the fee
12:13:26 4 cap. So that's why that argument, we believe, is
12:13:31 5 supported by the CLJA itself. So --

12:13:34 6 JUDGE DEVER: Right. And that's a legal
12:13:35 7 issue. We'll have to resolve it. It's a little ripe,
12:13:39 8 but it's not ripe yet.

12:13:41 9 MR. BELL: Your Honor is on the gross
12:13:43 10 settlement, not on -- not on the amount of the fee. So
12:13:48 11 in our opinion, it has nothing to do with what's
12:13:52 12 presently before the Court by the Government.

12:13:55 13 MR. BAIN: Your Honor, if I can just make
12:13:57 14 one other point. I think I need to clear one thing that
12:14:00 15 was said in the record. I think a couple of times it's
12:14:02 16 been said that the Government admits the EO offers are
12:14:06 17 discounted or deeply discounted. I would just point out
12:14:08 18 that that program is a base-wide approach. It waives
12:14:13 19 all offsets -- Medicare, Medicaid, and VA offsets. So
12:14:19 20 in our view, it's not a discount -- it's a very fair
12:14:22 21 program.

12:14:37 22 JUDGE MYERS: Judge Jones, we're going to
12:14:39 23 turn it over to you to say anything you would like to
12:14:41 24 say as the person who will now become a significant
12:14:45 25 feature in the lives of everyone present.

12:14:48 1 JUDGE JONES: Thank you.

12:14:50 2 I really had two -- two questions, and they
12:14:56 3 were answered, sort of, at the outset. The first
12:14:59 4 question was the status of discovery. And I think
12:15:04 5 that's been -- that's been answered. And my second
12:15:08 6 question was, really, as the one that's handling --
12:15:15 7 well, probably will be handling -- who will probably be
12:15:18 8 handling discovery speaks, I want to get kind of an idea
12:15:21 9 of the nature of those disputes in cases such as this.
12:15:26 10 And I guess I've kind of gleaned a sense of that from
12:15:31 11 our discussions about the database and health studies.
12:15:37 12 And maybe those will be disputes to bring to the Court
12:15:42 13 in the future.

12:15:44 14 But that discussion sort of prompted a third
12:15:47 15 question. This may be a fundamental question, sort of
12:15:53 16 new to this litigation. Mr. Bain has described 12 years
12:15:58 17 of litigation in these -- with these claims. How much
12:16:01 18 of this information has been traded between the parties
12:16:05 19 such that y'all really don't need to fight about it?
12:16:08 20 The Government's got it or the plaintiffs have it, and
12:16:11 21 maybe you've -- maybe you've covered that in what you're
12:16:15 22 talking about the stipulations.

12:16:15 23 MR. BELL: No, Your Honor. We got some
12:16:17 24 information at the beginning. In the first cases, there
12:16:20 25 were actually just four depositions taken. And this was

12:16:23 1 a preliminary allowance by the Court for the purpose of
12:16:28 2 looking into the motions to dismiss. We do have some
12:16:32 3 data but we don't have a lot.

12:16:34 4 I'll give you an example, Judge. For many,
12:16:38 5 many years the Government told the public and told
12:16:41 6 everybody that the contamination came from an offsite
12:16:46 7 dry-cleaning service. It was only after we -- in fact,
12:16:50 8 in filing those original claims, we allege that. But
12:16:55 9 later learned that, in fact, a lot of the pollution
12:16:58 10 contamination comes from their own internal leaking
12:17:02 11 wells -- and not wells, but tanks. So we got some
12:17:07 12 information.

12:17:08 13 I'm under the impression or understand that
12:17:10 14 there's -- I call it "the leaking tank database," but
12:17:13 15 they call it something else. But we haven't gotten
12:17:16 16 that, we don't think. So there's some things out there
12:17:18 17 that we think might matter if we're going to have to go
12:17:21 18 through this arduous process of this epidemiological
12:17:26 19 workup that we don't think is necessary. A lot of this
12:17:29 20 might not be necessary at all.

12:17:31 21 And of course Judge Dever mentioned we're
12:17:33 22 not looking at fault, but we think that there's a lot
12:17:40 23 out there that we don't have. Especially studies. We
12:17:43 24 are aware that there were private contractors hired.
12:17:46 25 I'm not aware of whether we have all of those or have

12:17:49 1 any of them yet. So there are some things we're looking
12:17:51 2 for.

12:17:54 3 JUDGE JONES: Mr. Bain.

12:17:54 4 MR. BAIN: So, Your Honor, yes, we have
12:17:56 5 turned over a lot of information as a result of the
12:17:58 6 prior litigation, and we're offering and going to turn
12:18:01 7 over all of that information again just to make sure
12:18:03 8 that they have it. There's a lot of public information.
12:18:08 9 The EPA has published a website which has their whole
12:18:13 10 site file. The Navy has their environmental information
12:18:18 11 online. The ATSDR reports are, of course, online. This
12:18:23 12 site has been extensively studied by the Marine Corps
12:18:27 13 itself, by the general accountability office -- or
12:18:30 14 Government Accountability Office, by the EPA. So a lot
12:18:33 15 of that information has already been gathered.

12:18:35 16 With respect to other databases that the
12:18:37 17 plaintiffs claim that they don't have, we will try to
12:18:40 18 make those available to the plaintiffs. But as far as
12:18:44 19 the ongoing ATSDR studies, that's one thing that may not
12:18:49 20 have been covered by the past litigation because that's
12:18:50 21 more recent work. But the studies themselves are
12:18:52 22 available, and I think then the issue is what about all
12:18:55 23 of the work that's been done by ATSDR and how much of
12:18:58 24 that can be made available to the plaintiffs. So we'll
12:19:02 25 be looking into that.

12:19:03 1 JUDGE JONES: The next question I had is
12:19:05 2 housekeeping. We have a conference scheduled the first
12:19:08 3 and third Tuesday of every month. The first Tuesday of
12:19:15 4 November is not that far away. I don't know if it's
12:19:19 5 worthwhile to forego that meeting and meet on the third
12:19:25 6 Tuesday of November. Do the parties have any opinion
12:19:32 7 about that?

12:19:33 8 MR. BAIN: Your Honor, if I may suggest --
12:19:36 9 of course, it's totally at the Court's discretion.
12:19:38 10 Maybe the second Tuesday because the third Tuesday is in
12:19:40 11 Thanksgiving week. But --

12:19:43 12 JUDGE JONES: Well, I wanted to set a day
12:19:46 13 that we could make a permanent day so that the Tuesday
12:19:50 14 in November doesn't conflict with -- or the day we
12:19:54 15 picked in November doesn't fall in Christmas week or
12:20:00 16 July the 4th week. And Tuesdays -- if you didn't know
12:20:05 17 this, Tuesdays during the calendar are the best day to
12:20:09 18 meet because there's -- it avoids Thanksgiving and other
12:20:14 19 holidays. So Tuesdays seem to be the best time to meet.

12:20:19 20 MR. BELL: Judge, maybe it would be best if
12:20:22 21 we did have the nearer Tuesday. We'll know today
12:20:27 22 whether we need to talk with you about that important
12:20:30 23 discovery.

12:20:30 24 JUDGE JONES: Okay.

12:20:31 25 MR. BELL: Maybe by then we'll have had some

12:20:33 1 answer to our request for our 30(b)(6). So maybe a
12:20:36 2 conversation will --

12:20:36 3 JUDGE JONES: Well, let's keep it on the
12:20:38 4 calendar. And if the parties come to some agreement,
12:20:41 5 the -- maybe three days before the Tuesday that there's
12:20:44 6 no need to meet -- we don't need to meet just to meet.
12:20:47 7 I want our meets to be productive. So we'll put -- keep
12:20:51 8 it on the calendar. And if there's a consensus that we
12:20:53 9 don't need to meet, then maybe we can not do that.

12:20:57 10 MR. BELL: The order requires a status
12:20:58 11 conference -- status report for next Tuesday by
12:21:01 12 tomorrow. Can we, at least for the first one, forego
12:21:04 13 that one?

12:21:05 14 JUDGE JONES: The status report?

12:21:06 15 MR. BELL: Yes, sir.

12:21:07 16 JUDGE JONES: Yes, sir.

12:21:08 17 MR. BELL: Thank you.

12:21:12 18 JUDGE MYERS: Anything further that needs to
12:21:13 19 be brought before the Court during the status conference
12:21:15 20 by any other participant on either side?

12:21:22 21 (No response.)

12:21:24 22 JUDGE MYERS: All right. Seeing none,
12:21:26 23 seeing none, thank you everybody. We are now going to
12:21:29 24 turn this over to Judge Jones for the purposes of these
12:21:33 25 meetings. As I noted earlier, and as Judge Dever

12:21:39 1 reified, we're not -- I wish we were -- this was a
12:21:42 2 one-judge operation sometimes and that these were not
12:21:45 3 all individual cases. It would simplify things for
12:21:49 4 you-all to only be dealing with only one of us. I
12:21:52 5 understand that. But the nature of this litigation is
12:21:54 6 such that having particularized facts with a live issue
12:22:01 7 that we can then rule on will give you your best
12:22:04 8 opportunity to get answers. They're not going to be a
12:22:05 9 forecast of what one judge might think, but then be an
12:22:10 10 order of the court that the others of us are going to
12:22:12 11 look at and give great deference to. They will not be
12:22:16 12 controlling but they will receive great deference
12:22:19 13 amongst the judges of this court. We have discussed
12:22:21 14 that. It's in the standing orders that are now before
12:22:23 15 you.

12:22:24 16 So unlike the ordinary litigation where you
12:22:27 17 have a single judge and that judge can tell you where
12:22:29 18 they're leaning, this isn't that, unfortunately. So the
12:22:34 19 answers to some of these questions, I think, might be
12:22:36 20 slightly different amongst the four of us. Judge
12:22:40 21 Flanagan is not here to nod vigorously. But they might
12:22:44 22 be slightly different amongst the four of us. We will
12:22:49 23 do our best, though, to rule expeditiously and try not
12:22:53 24 to become your bottleneck. We want to keep you moving.
12:22:56 25 But to make this litigation work given its unique

12:23:00 1 nature, I think we need to have things that are before
12:23:04 2 the Court, briefed and ruled upon in ways that are going
12:23:07 3 to be helpful to you. We commit to doing that.

12:23:10 4 JUDGE DEVER: And I would add that I
12:23:12 5 would -- you should anticipate that we're -- we're not
12:23:16 6 going to have multiple 702 hearings per disease. I
12:23:20 7 mean, one judge is going to get a disease or -- and rule
12:23:27 8 on that. You're not going to get four Daubert rulings
12:23:30 9 from four judges. That ultimately when we get to that
12:23:34 10 stage, that we have talked about that. And that just
12:23:37 11 seems to me to make the most sense. And -- but I echo
12:23:42 12 everything else -- everything that the Chief said about
12:23:44 13 the process. I mean, we're ready to -- to move on these
12:23:51 14 things and grateful to Judge Jones for agreeing to have
12:23:56 15 those meetings. And part of it, why we had them all on
12:24:01 16 a certain date, is that to the extent any district judge
12:24:05 17 wants to attend, they just might attend.

12:24:11 18 JUDGE MYERS: All right. Thank you,
12:24:13 19 everybody.

12:25:04 20 (The proceedings concluded at 12:25 p.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

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/s/ Jennifer C. Carroll
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