

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

IN RE:)
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CAMP LEJEUNE WATER LITIGATION) Docket No.
) 7:23-CV-897
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TUESDAY, AUGUST 6, 2024
STATUS CONFERENCE
BEFORE THE HONORABLE ROBERT B. JONES, JR
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Government:

David Ortiz

Via telephone: Adam Bain, Bridget Bailey
Lipscomb, Sara Mirsky, Adam Inch, Danielle Bianchi

On Behalf of the Plaintiffs:

Charles Ellis

Via telephone: J. Edward Bell, III; Mona Lisa
Wallace; Zina Bash; Jim Roberts; Mike Dowling;
Elizabeth Cabreser

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

1 Tuesday, August 6, 2024, at 11:04 a.m.

11:04:33 2 **P R O C E E D I N G S**

11:04:34 3 THE COURT: Good morning, everyone.

11:04:36 4 (Attorneys respond.)

11:04:38 5 THE COURT: Given our current weather
11:04:42 6 situation, I believe that most folks -- although we have
11:04:45 7 folks here in the courtroom, I believe that most folks
11:04:48 8 are on the phone. I hope it is drier where you are.

11:04:55 9 Okay. I don't particularly care who
11:05:01 10 presents this, but would someone just remind the Court
11:05:04 11 of what is currently pending and ripe for decision.

11:05:13 12 MR. BELL: Good morning, Your Honor. Ed
11:05:15 13 Bell. I hope y'all are having less weather than we are.

11:05:20 14 So, Your Honor, my list -- and I hope I've
11:05:23 15 got it right. But it is request for Rule 16. We
11:05:29 16 understand the Court may put this off until it's closer
11:05:32 17 to trials. There's been a -- plaintiff's parties
11:05:37 18 propose discovery plan for Track 2 illnesses. There is
11:05:41 19 a pending motion for partial summary judgment in regards
11:05:45 20 to the legal representative procedure. There's a joint
11:05:51 21 motion to amend the stipulated protective order. And
11:05:55 22 then there is a superseding proposed pretrial scheduling
11:05:59 23 order for Track 1 issues. PLG, Plaintiff's Leadership
11:06:05 24 Group, has submitted theirs and the Government has
11:06:07 25 submitted an alternative.

11:06:11 1 THE COURT: Okay.

11:06:12 2 MR. BAIN: Your Honor, this is Adam Bain.

11:06:13 3 THE COURT: Yes, sir.

11:06:15 4 MR. BAIN: And I believe that the parties'
11:06:18 5 joint motion to amend the stipulated protective order,
11:06:22 6 docket entry 63, has been resolved by the Court.

11:06:26 7 THE COURT: That reflects my information.
11:06:29 8 But everything else looks to be accurate.

11:06:33 9 Okay. Update on stipulations. What's --
11:06:38 10 what do the parties have to present beyond what's in the
11:06:41 11 status report?

11:06:44 12 MR. BELL: Good morning, Your Honor. This
11:06:45 13 is Ed Bell again. Mike Dowling is on the call with us
11:06:49 14 today. He has been working with the Department of
11:06:54 15 Justice. And it appears, Judge, that we are at the
11:06:57 16 point that some of the stipulations that we need to
11:06:59 17 think about may not be able to be entered into until we
11:07:03 18 get further along and closer to trial. So we are
11:07:06 19 meeting as required by the rule -- by the order, but
11:07:10 20 there's some areas that may need some more discussions.

11:07:13 21 THE COURT: Okay. Is that right, Mr. Bain?

11:07:17 22 MR. BAIN: Yes, Your Honor. I think that we
11:07:20 23 are making some progress on stipulating to certain data
11:07:25 24 and well information. And we are talking about
11:07:31 25 different maps that the parties might be able to agree

11:07:34 1 to. So we're continuing to meet and exchange
11:07:39 2 information on that, and are meeting once a month and
11:07:45 3 making some progress.

11:07:47 4 THE COURT: Okay. Discovery. We have a
11:07:56 5 deadline of August the 11th. What is the status of
11:08:02 6 discovery and what do you think the Court can expect in
11:08:06 7 the way of discovery after August the 11th?

11:08:12 8 MR. BELL: Again, Your Honor, this is Ed
11:08:14 9 Bell. It appears as though the Government has indicated
11:08:19 10 that they are going to certify that the written
11:08:21 11 discovery, for the most part, will be completed by the
11:08:25 12 end. We anticipate that there might be some areas that
11:08:28 13 still need some work. There are some depositions, Your
11:08:32 14 Honor, that, through mutual consent, we've agreed to
11:08:36 15 take them on dates that are -- they're trying to find
11:08:40 16 that are convenient to all of the parties. So as far as
11:08:42 17 I can tell, that's what is going on with the written
11:08:47 18 discovery and the depositions.

11:08:50 19 We are getting -- we still are finding, Your
11:08:54 20 Honor, certain pockets of information that we were
11:09:00 21 checking on, and it may need -- we may need to talk with
11:09:03 22 the Court about it. But we had the team down in
11:09:08 23 Jacksonville last week. They located a lot of
11:09:11 24 information. We've not been able yet to confirm whether
11:09:14 25 it had all been previously produced. If not, I'm sure

11:09:20 1 that we can work that out, most likely. But I wanted to
11:09:24 2 let you know we are continuing to work in that area.

11:09:28 3 You'll recall, Your Honor, there was the
11:09:32 4 issue of specific discovery from about ten of the
11:09:37 5 Government employees. There was some pushback on that
11:09:44 6 issue of we were wanting the Government to go look to at
11:09:50 7 the -- talk to the witnesses and look at their
11:09:52 8 computers. We are getting some of the information. We
11:09:55 9 haven't finished that part of discovery yet. So I
11:09:59 10 really can't give you an update of where we stand. The
11:10:01 11 parties have met several times on that issue and
11:10:06 12 working, hopefully, toward some resolution.

11:10:10 13 THE COURT: Okay. Mr. Bain.

11:10:14 14 MR. BAIN: Yes. I think that that's, in
11:10:16 15 large part, correct. We are continuing to work through
11:10:21 16 some issues on written discovery. We're going to
11:10:24 17 provide an update to the plaintiffs this week. We will
11:10:28 18 be continuing to supplement our productions as we
11:10:33 19 complete the privilege review with respect to some more
11:10:36 20 recent requests and large amounts of information. And
11:10:41 21 we'll also be supplementing any discovery, any disputes
11:10:45 22 that the parties are working through are resolved.

11:10:50 23 As Mr. Bell mentioned, the parties have
11:10:53 24 noticed the witnesses to be deposed, so I think we're
11:10:57 25 done identifying witnesses. It's just a few witnesses

11:11:00 1 for scheduling issues and other issues. The parties
11:11:03 2 have agreed to take them somewhat past the discovery
11:11:08 3 deadline. So we're still finishing up a few
11:11:11 4 depositions. But we've identified all of the witnesses
11:11:13 5 who need to be deposed.

11:11:15 6 With respect to the issue that Mr. Bell
11:11:19 7 just -- and I think we'll also have a couple of issues
11:11:21 8 to raise. I would like Ms. Mirsky to address where we
11:11:25 9 stand on the plaintiff's request for electronic
11:11:31 10 discovery from -- I think there's ten custodians in the
11:11:34 11 latest request for production.

11:11:37 12 MS. MIRSKY: Yes, Your Honor. This is Sara
11:11:39 13 Mirsky. I believe that Mr. Bell is referring to
11:11:42 14 plaintiff's seventh request for production related to
11:11:47 15 the custodial ESI requests for ten individuals. We
11:11:53 16 served objection to that request on July 11th, in which
11:11:57 17 we stated that we've -- you know, we objected for
11:12:00 18 multiple reasons, including that the request would be
11:12:04 19 unlikely to uncover uniquely relevant materials,
11:12:07 20 especially in light of the volume of documents that have
11:12:10 21 been produced to date and the narrow issues that are
11:12:14 22 currently before the Court.

11:12:15 23 We also address it because we do not believe
11:12:18 24 that this is the type of discrete document request that
11:12:22 25 the plaintiffs reserved the right to serve after

11:12:25 1 withdrawing their ESI requests. We also objected, given
11:12:30 2 the vague and overbroad nature of their request.
11:12:34 3 There's a burden that would be required to undertake a
11:12:37 4 proper search and production of these documents.

11:12:41 5 And I believe at the last status conference,
11:12:44 6 the United States confirmed the bases for this set of
11:12:48 7 objections. And we are currently standing on those
11:12:51 8 objections at this time. Although, I will note that we
11:12:54 9 have produced hard-copy documents and allowed the
11:12:58 10 inspection of hard-copy documents for custodians where
11:13:01 11 available.

11:13:02 12 THE COURT: Okay. Well, as much as I would
11:13:04 13 like in any case for the parties to be able to work out
11:13:10 14 their discovery disputes without court action, if -- if
11:13:14 15 the requesting party, Mr. Bell, feels like they continue
11:13:21 16 to seek this discovery and the Government is standing on
11:13:29 17 its objections, it sounds like that you may be in a
11:13:32 18 position to now come to the Court and move the Court for
11:13:40 19 that, ask the Court to rule on a motion to compel. I
11:13:45 20 think there were several of those we had talked about
11:13:46 21 the last status conference.

11:13:49 22 MR. BELL: There were, Your Honor. And
11:13:50 23 we've -- part of this seventh request is we noticed the
11:13:57 24 depositions of these ten individuals. We're trying to
11:14:02 25 get more information for the Court --

11:14:04 1 THE COURT: Okay.

11:14:04 2 MR. BELL: -- before we file our motion. I
11:14:07 3 think we've got one prepared. But we're hoping to
11:14:10 4 find -- obviously, if somebody says, "I don't have any
11:14:13 5 information," I'd hate to put them down as a motion to
11:14:16 6 compel when we couldn't find they didn't have anything.

11:14:19 7 So we are trying to work through the most
11:14:22 8 efficient way to do that, and we are aware the Court has
11:14:24 9 given us the go-ahead to file a motion if we think it's
11:14:29 10 appropriate.

11:14:29 11 THE COURT: Okay. I did have some questions
11:14:31 12 about -- you may have covered this already. But in my
11:14:35 13 notes from the status report, there is described some
11:14:42 14 discovery related to state health data sets from ATSDR.
11:14:47 15 I think the second amended stipulated protective order
11:14:51 16 covered those, and I wanted a status of that particular
11:14:56 17 discovery.

11:14:57 18 MR. BELL: Your Honor, we are -- we are
11:14:59 19 still in discussions with -- with the Government. We
11:15:05 20 have sent out a proposed 30(b)(6) deposition. The
11:15:09 21 Government has asked us to refine some of the requests.
11:15:13 22 We're getting some information back. So we're in talks.
11:15:18 23 I hope it is fruitful, but -- we are not uncertain where
11:15:23 24 this will go, but we're trying to work through it, Your
11:15:25 25 Honor.

11:15:25 1 THE COURT: Okay. And that was your
11:15:26 2 discovery; is that right? It sounds like it.

11:15:29 3 MR. BELL: Yes, Your Honor.

11:15:29 4 THE COURT: Okay. The economic damages
11:15:35 5 discovery, what's the status of that?

11:15:39 6 MR. ORTIZ: Your Honor, David Ortiz for the
11:15:41 7 United States. On that issue, Your Honor will recall
11:15:44 8 we've raised that at the June 27th status hearing and
11:15:48 9 it's been in several joint status reports. As Your
11:15:53 10 Honor will recall, the United States served discovery
11:15:55 11 requests seeking information on the categories of
11:15:59 12 economic damages that the discovery plaintiffs
11:16:02 13 originally were seeking, as well as documents and
11:16:06 14 witnesses relied upon for those. That's narrowed down
11:16:10 15 to the 25 trial plaintiffs, obviously. And counsel have
11:16:14 16 negotiated a form of fact sheet in lieu of formal
11:16:21 17 responses to those discovery requests. We reached
11:16:24 18 agreement on the form of those fact sheets on July 5th.
11:16:27 19 The United States reserved the right to object to the
11:16:30 20 responses, if needed. Since then, plaintiffs have
11:16:33 21 served one fact sheet, which came late last Friday
11:16:38 22 afternoon, and that was a straight "no" across the board
11:16:42 23 for all categories of economic damages. So we have not
11:16:45 24 received anything else.

11:16:48 25 I think Your Honor also will recall that

11:16:51 1 Mr. Bell represented that that information would be
11:16:55 2 coming by the end of fact discovery, which is,
11:16:57 3 obviously, a few days away. So we're hopeful that those
11:17:02 4 may be forthcoming in the next few days. But depending
11:17:05 5 on when those come and what those look like, those --
11:17:10 6 that may be a situation where the United States needs to
11:17:13 7 bring that issue to the Court's attention.

11:17:16 8 THE COURT: Mr. Bell, what can you say about
11:17:18 9 production of these fact sheet responses?

11:17:21 10 MR. BELL: Your Honor, we are working
11:17:23 11 diligently to get that. I was under the impression that
11:17:27 12 more than one had been produced. I know that, for
11:17:30 13 example, our firm has, I think, eight of the 25, and I
11:17:33 14 know we're working on those. Out of the 25, Your Honor,
11:17:36 15 there's about 11 of those folks will be having an
11:17:43 16 economic expert. And I'm not quite sure -- it's either
11:17:48 17 12 or 13 that may have a life care planner. We're
11:17:52 18 having to gather that information for the experts. And
11:17:56 19 as soon as all of that is gathered, we'll send the facts
11:17:59 20 over -- the underlying factual information. But I
11:18:02 21 thought that we had sent more than just one, maybe. I
11:18:06 22 didn't -- I didn't realize only one had gone out.

11:18:09 23 THE COURT: So it sounds like you're working
11:18:11 24 on getting those out?

11:18:12 25 MR. BELL: It's in the works, Your Honor.

11:18:13 1 THE COURT: Okay.

11:18:15 2 MR. BAIN: Your Honor, this is Adam Bain. I
11:18:18 3 would also raise that, you know, getting those fact
11:18:20 4 sheets is important for us because we need to get
11:18:23 5 releases from the plaintiffs for certain Social Security
11:18:27 6 earning information and tax information where that might
11:18:30 7 be relevant to the experts. So we don't want to -- and
11:18:35 8 we've already talked about plaintiffs with this, and
11:18:37 9 they've agreed to provide those to us. But knowing
11:18:41 10 which plaintiffs are claiming the damages where those
11:18:45 11 might be relevant will help us to target those releases
11:18:48 12 just to plaintiffs where we might need that information.

11:18:51 13 THE COURT: Is that -- is that --

11:18:52 14 MR. BELL: It's a good question, Your Honor.
11:18:56 15 If Mr. Bain would send us the form, we can get that
11:19:00 16 signed for the 11 or 12 that will be utilizing experts
11:19:05 17 in that area, and we can get those done quickly and
11:19:08 18 we'll get those back to you right away.

11:19:10 19 THE COURT: Anything that can expedite it
11:19:13 20 will be appreciated, I think, by everybody.

11:19:16 21 MR. BELL: Yes, sir.

11:19:16 22 THE COURT: The next item I had was the
11:19:18 23 deposition of NAS project director Susan Martel. What's
11:19:25 24 the status of that?

11:19:26 25 MR. BELL: Your Honor, we have not heard

11:19:28 1 from the Court, I don't think, in Washington since our
11:19:31 2 last status conference.

11:19:34 3 MR. BAIN: Your Honor, I believe that case
11:19:36 4 has been transferred to the -- to your district now.
11:19:40 5 And I believe the motion is fully briefed. We have a
11:19:47 6 deposition scheduled on the 15th, which is next week.
11:19:52 7 We don't see any reason not to go forward with that
11:19:55 8 deposition regardless of whether the Court has issued an
11:19:57 9 order yet. If, for some reason, the Court allows the
11:20:04 10 disclosure of additional documents, the deposition can
11:20:07 11 be reopened -- I'm sure we would agree to that -- based
11:20:09 12 on those documents that are released. But we think it's
11:20:13 13 important to go forward with the deposition next week.

11:20:16 14 THE COURT: The deposition is not part of
11:20:19 15 the motion to quash or for the protective order, is it?
11:20:24 16 I didn't -- that wasn't --

11:20:27 17 MR. BAIN: It's not. But the -- it's not,
11:20:29 18 but I think the plaintiffs have said that, you know, we
11:20:32 19 shouldn't go forward until that issue is resolved
11:20:34 20 because there might be records that might be relevant to
11:20:37 21 that deposition. We don't think there are. We don't
11:20:40 22 know. We don't take a position on the motion. But we
11:20:45 23 think the discovery needs to go forward.

11:20:48 24 THE COURT: Okay.

11:20:49 25 MR. BELL: Judge, I would suggest that we

11:20:50 1 have the motion to compel heard before you as soon as
11:20:55 2 possible and then take the deposition. Because I hate
11:20:58 3 to go take someone's deposition without having
11:21:01 4 underlying information that we might need to help us
11:21:05 5 formulate our questions and things like that. Some of
11:21:08 6 the information, we believe, Your Honor, will be
11:21:10 7 produced or should be produced, and we would like to
11:21:14 8 have that decided before we take the deposition.

11:21:24 9 THE COURT: Okay. Well, I was expecting to
11:21:29 10 issue an order on this fairly soon. At the present
11:21:36 11 time, I don't anticipate having a hearing on these
11:21:42 12 motions. The briefing is rather extensive, so I didn't
11:21:48 13 anticipate having a hearing on it.

11:21:50 14 MR. BELL: Okay.

11:21:52 15 THE COURT: Okay. That's all I've got on my
11:21:54 16 list. What do y'all -- are there any issues that you
11:21:59 17 would like to bring up?

11:22:02 18 MR. BELL: Your Honor, I have two. We are
11:22:09 19 in need of the names of the attorneys and their contact
11:22:14 20 information who have filed claims with the Navy. Early
11:22:19 21 on, the Court recognized our need and, in fact,
11:22:27 22 mentioned we should get that. But what we ended up
11:22:30 23 getting is a list of hundreds and hundreds of lawyers.
11:22:34 24 We don't know where they're from, what state they're
11:22:37 25 from. We've got a lot of lawyers whose last names are

11:22:41 1 fairly common. And we don't know whether this lawyer
11:22:45 2 lives in Wyoming or North Carolina. And so we've asked
11:22:48 3 the Government to furnish not only the names of the
11:22:52 4 lawyers but their contact information. And, Your Honor,
11:22:56 5 we went into the portal for our firm, and we can -- we
11:23:00 6 can get our contact information for our firm. And so we
11:23:04 7 checked to see if it was available, and it looks like
11:23:07 8 the Navy should be able to give us a list of the lawyers
11:23:10 9 and their contact information. Obviously, from the
11:23:16 10 plaintiff's side, we need that. One, we need to get
11:23:18 11 those lawyers to put their claims in our database. But
11:23:23 12 we are unable to keep in touch with these attorneys that
11:23:27 13 we represent as Plaintiff's Leadership unless we know
11:23:29 14 how to contact them.

11:23:30 15 THE COURT: Mr. Bain, is that possible?

11:23:32 16 MR. BAIN: Your Honor, this is -- yes, Your
11:23:33 17 Honor. This is Adam Bain. I did send to Mr. Bell and
11:23:38 18 Ms. Bash yesterday a spreadsheet that the Navy had
11:23:41 19 provided to me, which includes the e-mails and phone
11:23:46 20 numbers for all the attorneys in the Navy system. And
11:23:50 21 in that e-mail, I did provide some further information
11:23:56 22 about that list. You know, regarding how comprehensive
11:24:02 23 it is. And, you know, there are certain qualifications
11:24:05 24 to it. But it's what the Navy has as of right now. And
11:24:11 25 I have Adam Inch call in to this conference not only to

11:24:16 1 address this, if necessary, but any other questions that
11:24:20 2 the Court might have about the Navy's claim status given
11:24:25 3 that the deadline is coming up on August 10th.

11:24:30 4 THE COURT: Mr. Bell, does that -- does the
11:24:32 5 e-mail contact information and phone numbers for all
11:24:37 6 attorneys who submitted claims -- does that suffice?

11:24:40 7 MR. BELL: I'm looking it up right now, Your
11:24:42 8 Honor. I did not see that e-mail from last night.
11:24:45 9 So...

11:24:50 10 MR. BAIN: It was yesterday afternoon. I
11:24:52 11 think around two o'clock or so.

11:24:54 12 MR. BELL: Okay. I've got it pulled up,
11:24:56 13 Your Honor. I wish we had their -- in their -- I don't
11:25:03 14 know what state they're from or anything like that. I
11:25:06 15 have an e-mail, but I have some that don't have anything
11:25:09 16 but the phone number. If there's a way to get their
11:25:12 17 mailing address so we could put together a mailing list
11:25:16 18 and the contact list would be helpful. But I don't know
11:25:19 19 if that's available. It seems like it should be, but I
11:25:23 20 don't know the capacity right now of that portal. I
11:25:26 21 know that they're having some issues with it, which I
11:25:29 22 think is my second area of concern to talk to the Court
11:25:32 23 about.

11:25:37 24 MR. INCH: Your Honor, this is Adam Inch,
11:25:39 25 Department of the Navy. We can absolutely supplement

11:25:42 1 that spreadsheet to include mailing addresses as well.
11:25:46 2 Unfortunately, we're limited to providing the
11:25:49 3 information that was entered by the filing attorney.

11:25:52 4 THE COURT: You get the information from the
11:25:54 5 filing attorney, right? I mean, the contact information
11:25:58 6 is -- the information to you is being submitted
11:26:02 7 electronically, right? So you're getting the e-mail
11:26:04 8 address, right?

11:26:07 9 MR. BAIN: Your Honor, we have the
11:26:10 10 information that the filing attorney enters themselves
11:26:14 11 into the contact record. But we can provide whatever
11:26:17 12 they've entered in that spreadsheet. I have limited it
11:26:20 13 to phone number and e-mail address, but I can supplement
11:26:22 14 that with the mailing address.

11:26:23 15 THE COURT: Well, it seems like that would
11:26:24 16 do it. I mean, the reason would stand that they want to
11:26:28 17 be contacted when they submit their claim. So whatever
11:26:33 18 that information is. It seems like it would be --

11:26:39 19 MR. BELL: That would be helpful. If we
11:26:42 20 could get that information, that would be helpful.

11:26:44 21 THE COURT: Okay. Portal status.

11:26:46 22 MR. BELL: Yes, sir, Your Honor. Zina -- I
11:26:52 23 think Zina Bash is on the call with us today, and maybe
11:26:54 24 she would have a better understanding of what it is.
11:26:57 25 But I know there's some worried attorneys out in the

11:27:02 1 area because of some problems they're having with the
11:27:06 2 portal.

11:27:07 3 THE COURT: Well, is this -- is this just --
11:27:10 4 is this largely informational? I don't really know what
11:27:14 5 authority I have over the portal. Right?

11:27:21 6 MR. BELL: Judge, right now the Government
11:27:23 7 set up its portal for the purpose of filing claims.

11:27:27 8 THE COURT: Right.

11:27:28 9 MR. BELL: And at various times the portal
11:27:32 10 has been down, you couldn't file claims at various
11:27:35 11 times, I think even including now you can't go in and
11:27:40 12 determine whether you have actually filed a claim or
11:27:42 13 not. And so there are all kinds of problems that we are
11:27:46 14 wanting the Court to know about so later, when something
11:27:49 15 comes up -- let's say we -- we filed a claim a year ago
11:27:53 16 but we can't get in there to verify it and, all of a
11:27:58 17 sudden, after the deadline is over, the Government says,
11:28:02 18 "Whoops, we don't have it." So we're concerned about
11:28:04 19 that. We can't go in to do an audit of the claims we
11:28:08 20 filed, which I think is absolutely mandatory for us to
11:28:11 21 be able to do.

11:28:12 22 THE COURT: Okay. So what's the status?

11:28:18 23 MR. INCH: Your Honor, Adam Inch here again.
11:28:21 24 So we've addressed that issue a number of times already.
11:28:25 25 We've informed law firms, you know, to the extent that

11:28:27 1 they provided a claim that's not yet visible in the
11:28:29 2 portal. Again, we're working through a number of data
11:28:33 3 quality issues to make sure that what was provided
11:28:36 4 actually populates a claim correctly. We've informed
11:28:41 5 firms as long as they have, you know, the e-mail or
11:28:44 6 proof that they have submitted the claim a year ago, we
11:28:46 7 will absolutely honor that date once we are able to get
11:28:49 8 that claim into the portal. So I don't think that will
11:28:52 9 prevent anyone from filing a claim.

11:28:57 10 We've also recently informed the Plaintiff's
11:28:59 11 Leadership Group that if they're unable to file a claim
11:29:01 12 in the portal, they absolutely reserve the ability to
11:29:05 13 e-mail that claim to us or to use U.S. mail to mail that
11:29:11 14 claim to us. So at this point in time, I don't think
11:29:15 15 anyone is prevented from filing a claim at the
11:29:16 16 Department of the Navy.

11:29:19 17 THE COURT: Okay.

11:29:19 18 MR. BELL: Our concern, Your Honor, isn't
11:29:22 19 that we know there's a way to get -- we're getting calls
11:29:25 20 from everywhere, Judge, you can imagine. And for those
11:29:29 21 folks who can't navigate or understand the portal, we're
11:29:32 22 giving them ways to file their claim. But for some
11:29:35 23 firms who have a large number of claims that may have
11:29:39 24 been filed over the last two years, it's been a problem
11:29:42 25 in verifying whether those claims are actually in the

11:29:46 1 system. That's our -- that's the first concern that I
11:29:51 2 had. And maybe Ms. Bash might have some others. But
11:29:55 3 that's the concern we have now.

11:29:56 4 So I hear the Government saying you can file
11:29:58 5 it using an alternative way or system, and I get that.
11:30:04 6 But I'm concerned about being able to audit -- batch
11:30:08 7 filing is what some firms are using, including ours.
11:30:12 8 And that say we filed an X number of claims a year ago,
11:30:17 9 we would like to be able to confirm those are in the
11:30:21 10 system. So that's the main concern, is all of a sudden
11:30:25 11 the Government, for some reason, doesn't have those
11:30:29 12 claims and then we have a dispute later as to whether
11:30:31 13 they were actually filed.

11:30:32 14 THE COURT: What sort of confirmation does
11:30:36 15 someone get after submitting a claim that the claim has
11:30:40 16 been submitted? I guess that's --

11:30:44 17 MR. INCH: Your Honor, at this point if a
11:30:46 18 filer submits a claim in the portal, they'll receive a
11:30:50 19 confirmation message in the portal that their claim
11:30:53 20 filing was received. For -- to address Mr. Bell's
11:30:57 21 point, if someone sent a clam a year ago, we didn't have
11:31:00 22 a portal a year ago, so they sent us an e-mail. There
11:31:05 23 was a point in time when the Navy was sending out
11:31:08 24 confirmation letters that they called "perfection
11:31:11 25 letters," once the claim is perfected. But that process

11:31:17 1 became overwhelmed and we were, instead, moving toward
11:31:22 2 ingesting claims into a portal because we simply ran out
11:31:26 3 of space. I mean, once we, you know, surpassed 200,000
11:31:29 4 claims, we couldn't use the technology that we were
11:31:32 5 using at that time.

11:31:34 6 So to address that issue, we've informed
11:31:37 7 Plaintiff's Leadership Group, if you sent a claim a year
11:31:40 8 ago and you have a sent e-mail showing that you sent the
11:31:44 9 claim to us, we will honor that date as your filing. So
11:31:48 10 there's, you know -- the way to audit that is to review
11:31:51 11 your sent e-mail and look at what you sent us, and
11:31:54 12 that's -- that's going to be the best, most accurate way
11:31:58 13 to audit what you've sent us, if it was, you know, prior
11:32:01 14 to the portal launching in April.

11:32:04 15 THE COURT: So over time --

11:32:07 16 MS. BASH: Right. Hi. And this is --

11:32:09 17 THE COURT: So over time you have received
11:32:11 18 claims in a variety of ways. That being through the
11:32:15 19 portal, by an e-mail, and by regular U.S. mail; correct?

11:32:23 20 MR. INCH: That is correct, Your Honor.

11:32:25 21 THE COURT: And there have been different
11:32:28 22 ways to confirm that with the claimants. In the portal,
11:32:38 23 if you do it through a portal, there is confirmation
11:32:39 24 sent through the portal; correct?

11:32:43 25 MR. INCH: Yes, Your Honor. That's a method

11:32:45 1 within the portal.

11:32:46 2 THE COURT: Right. Okay. And then if they
11:32:48 3 sent -- if they sent it -- if it was pre-portal and they
11:32:51 4 sent it by e-mail, they would get a confirmation e-mail;
11:32:54 5 is that right?

11:32:58 6 MR. INCH: So when we first started -- when
11:33:00 7 the Navy first started receiving claims via e-mail, for
11:33:02 8 the first several months, they would receive -- you
11:33:07 9 know, filers would receive what's called a perfection
11:33:09 10 letter. That was a notification saying we've received
11:33:12 11 your claim and it's perfected. There was a period of
11:33:15 12 time of several months where we were transitioning to
11:33:18 13 moving claims into the portal. Our -- frankly, the
11:33:23 14 volume of data was too significant in order for us to
11:33:26 15 respond to every claim like a perfection letter.

11:33:29 16 So for those individuals that never received
11:33:31 17 a confirmation, what we've messaged to Plaintiff's
11:33:35 18 Leadership Group is we will honor that date that that
11:33:37 19 e-mail was transmitted. So if after August 10th someone
11:33:42 20 accesses the portal, "Hey, there's a claim missing,
11:33:45 21 here's the information," all they need to provide us is
11:33:48 22 that e-mail showing they've sent us that claim. We will
11:33:51 23 make sure it's in the portal and we will align the
11:33:55 24 filing date with the e-mail date that they sent us. So
11:33:58 25 if it's a year ago, they'll be treated as having filed

11:34:01 1 their clam a year ago. We have no intention of
11:34:05 2 excluding anybody because they didn't receive a
11:34:08 3 confirmation e-mail.

11:34:09 4 THE COURT: And if they sent it by U.S.
11:34:12 5 mail, what's the -- what's the confirmation for that?

11:34:17 6 MR. INCH: So for U.S. mail, Your Honor, we
11:34:18 7 have all of those claims. And right now we're still in
11:34:21 8 the process of manually entering a vast majority of
11:34:25 9 those claims. The easiest way to confirm that is once
11:34:29 10 it's entered, the individual has access in the portal.
11:34:33 11 The problem is, is not everyone that sent us the claim
11:34:36 12 via U.S. mail has access to electronic mail. So for
11:34:42 13 those that don't have an e-mail address, they won't
11:34:44 14 receive a confirmation via e-mail. We will be sending
11:34:49 15 them hard-copy notification that your claim is received.
11:34:53 16 But we have the date that each and every one of those
11:34:53 17 claims is received, and that's the date that will be
11:34:56 18 reflected on that claim for filing purposes.

11:34:58 19 THE COURT: Okay. Ms. Bash, I think that
11:35:00 20 was you.

11:35:03 21 MS. BASH: Hi. Yes, I was just going to say
11:35:05 22 that there have been a lot of issues with the portal,
11:35:09 23 trying to put things in and not being able to confirm
11:35:12 24 dates. But I think the latest information from Mr. Inch
11:35:15 25 that a -- you know, they will honor all of those

11:35:18 1 receipts we have -- you know, the e-mail confirmations
11:35:21 2 from before. And also I think, just as of this week,
11:35:26 3 they're allowing folks to submit claims by e-mail again.
11:35:29 4 Beforehand, it was, you know, you basically had to do
11:35:32 5 the portal unless you were going to do a paper mailing.
11:35:35 6 I think that that resolves -- to the extent there are
11:35:38 7 going to continue to be glitches and times when the
11:35:40 8 portal itself is down, being able to e-mail them -- it's
11:35:44 9 not ideal, but I do think it creates a good solution.

11:35:48 10 And so to the extent people are reading this
11:35:50 11 transcript, I think it's a good -- and, you know, we've
11:35:52 12 communicated with them as well. But knowing that is
11:35:55 13 helpful to all claimants who are struggling with the
11:35:58 14 portal.

11:35:59 15 THE COURT: Well, that sounds promising,
11:36:02 16 doesn't it?

11:36:07 17 MS. BASH: Yes, I think so. I mean, the
11:36:09 18 thing is, is kind of what Mr. Bell is saying. That, you
11:36:11 19 know, when there is a portal set up and you're not able
11:36:13 20 to find your claim in there, it makes attorneys nervous.
11:36:17 21 Right?

11:36:17 22 THE COURT: Right.

11:36:18 23 MS. BASH: And it makes claimants nervous.

11:36:20 24 THE COURT: Right.

11:36:21 25 MS. BASH: And so I assume sending something

11:36:22 1 by e-mail is going to delay its accessibility in the
11:36:25 2 portal. And when it's in the portal is when you then
11:36:28 3 are prompted to substantiate and submit additional
11:36:30 4 documentation and things like that. So I think that's
11:36:32 5 the reason that the portal is the preferred way. But I
11:36:34 6 think now that we have -- we know that we're allowed to
11:36:36 7 do e-mail, you know, sending -- and the Navy has told us
11:36:40 8 there are just five points for proper presentment,
11:36:42 9 right? Five basic points, that someone is able to send
11:36:44 10 in an e-mail with those five points before August 10th,
11:36:48 11 then I do think that provides a pretty simple solution
11:36:51 12 to at least make sure claims are timely.

11:36:53 13 THE COURT: Yeah. Okay.

11:36:56 14 MR. BELL: Your Honor, Ed Bell again. Do
11:37:00 15 you think the -- do think y'all could post that kind of
11:37:05 16 notice on your portal so that some of these folks out in
11:37:09 17 the country will be able to read that? We will post
11:37:15 18 this part of our transcript on our website. But not
11:37:18 19 everybody out there uses -- utilizes the website. But I
11:37:26 20 think if there was a way for you guys to put that notice
11:37:28 21 or the information you've given us today will be greatly
11:37:32 22 helpful to everybody.

11:37:35 23 MR. INCH: Absolutely. Happy to do so. We
11:37:37 24 will have it on our website now, and we will make sure
11:37:39 25 it's on the portal as well.

11:37:42 1 MR. BELL: May I, Your Honor, ask Mr. Inch
11:37:44 2 one question?

11:37:44 3 THE COURT: Yes, sir.

11:37:45 4 MR. BELL: We have been curious, obviously,
11:37:47 5 since the beginning of when we might be able to get some
11:37:50 6 data from the filings. I understand y'all are still
11:37:55 7 trying to get them all in. But we are -- I don't want
11:37:59 8 to have not been said before the end of the discovery.
11:38:03 9 But we have been requesting the data. And understanding
11:38:06 10 y'all are still getting it in. But our epidemiologist
11:38:10 11 would like to see some of this data. And do you have an
11:38:14 12 idea when that data might be available to Plaintiff's
11:38:16 13 Leadership Group?

11:38:19 14 MR. BAIN: This is Adam Bain. I would like
11:38:21 15 to jump in here. I think that that would be subject to
11:38:23 16 a discovery request, and we'd have to treat it as such.
11:38:27 17 I'm not sure that that's a matter that the Navy would be
11:38:32 18 able to respond to directly.

11:38:36 19 MR. BELL: Judge, that makes me a little
11:38:39 20 worried. The Court has been asking about this for
11:38:41 21 months and months and months. The Government has
11:38:46 22 brought individuals to Court to explain the process.
11:38:48 23 And while the hope and expectation was it would be
11:38:53 24 completed by now, for various reasons it hasn't been.
11:38:57 25 But we as Plaintiff's Leadership need to know how many

11:39:02 1 people have filed for certain diseases, where are they
11:39:06 2 from, how old are they, what's their -- what's the time
11:39:11 3 frame from their exposure to -- and the Government is
11:39:16 4 the only one that has that information. I can't imagine
11:39:18 5 we would have to file a discovery request to get that.
11:39:21 6 But if that's what they require, then we'll do it. But
11:39:24 7 I don't know why we would have to.

11:39:27 8 MR. BAIN: Your Honor, this is Adam Bain. I
11:39:30 9 think Mr. Bell said that they would want information for
11:39:32 10 their epidemiologist. It sounds like that's part of the
11:39:35 11 litigation process. We're working separately with the
11:39:38 12 Plaintiff's Leadership Group on global resolution
11:39:42 13 issues. It may be that that data becomes part of that
11:39:45 14 global resolution process. But if the data Mr. Bell
11:39:52 15 says is somehow relevant to what his epidemiologist is
11:39:57 16 going to opine in this litigation, seems to me that's a
11:40:00 17 discovery request and is outside of this litigation,
11:40:05 18 would not be appropriate.

11:40:07 19 MR. BELL: I really think this -- that
11:40:09 20 bothers me with that answer. Because the Government is
11:40:11 21 saying, "Now we have the information. We can utilize
11:40:15 22 it. We can use it any way we want to. But by the way,
11:40:19 23 Mr. Bell, you have to file a request. We have a chance
11:40:22 24 to claim it."

11:40:23 25 All we're asking, Your Honor, for the

11:40:25 1 Court -- I know the Court's going to want to see this
11:40:27 2 information one day. And so do we. And, I mean, if the
11:40:31 3 Court requires us to file a discovery request, we'll do
11:40:34 4 so. But having said that, I would hope that this is not
11:40:39 5 something that would be the issue of a discovery fight
11:40:43 6 when the Government is collecting this data. Maybe all
11:40:48 7 but Social Security numbers or -- probably -- will be
11:40:52 8 subject the Freedom of Information request. People
11:40:56 9 filing for a claim with the Government, that's public
11:40:58 10 record, and I don't know why we can't -- why all of a
11:41:02 11 sudden now it becomes a discovery request. So I would
11:41:04 12 ask the Court to give us some guidance on that.

11:41:07 13 THE COURT: What is the nature of this data
11:41:10 14 you want?

11:41:13 15 MR. BELL: I'm sorry, Your Honor. I didn't
11:41:14 16 hear you.

11:41:14 17 THE COURT: What is the nature of this data
11:41:16 18 that you're asking for?

11:41:19 19 MR. BELL: Well, Judge, let's say, for
11:41:21 20 example, out of the 300 and something thousand claims,
11:41:24 21 we would like to know how many claims are kidney
11:41:28 22 cancers? How many are liver cancers? How old were the
11:41:32 23 people when they were diagnosed? What was the time
11:41:34 24 between exposure and diagnosis? To -- one, that's
11:41:39 25 important to us to help decide how do we structure our

11:41:42 1 resolution process. That's extremely important. If we
11:41:49 2 have, for example, a disease that very few people have
11:41:53 3 claimed, do we as Plaintiff's Leadership Group then do
11:41:58 4 we take -- take that on as Plaintiff's Leadership Group
11:42:03 5 to look into it to do our studies, to get our experts,
11:42:05 6 or not. So there's a lot of reasons for it. But
11:42:07 7 resolution is one. Our experts are going to be able to
11:42:12 8 opine without that information, but having that
11:42:14 9 information gives them an immense amount of data that
11:42:18 10 they would not otherwise have.

11:42:21 11 THE COURT: Yeah. I think that's going to
11:42:23 12 fall into a discovery request, and so I would pursue it
11:42:28 13 that way.

11:42:32 14 MR. BELL: I'm sorry. I couldn't hear that.

11:42:34 15 THE COURT: It sounds to me like that's --
11:42:37 16 that would be in the form of a discovery request to the
11:42:40 17 Government, and so I'll pursue it -- I would pursue it
11:42:42 18 that way.

11:42:43 19 MR. BELL: We'll file that, Your Honor.
11:42:44 20 Again, we are close to end of discovery.

11:42:47 21 THE COURT: Right.

11:42:47 22 MR. BELL: And I think the order requires us
11:42:51 23 to file it before the end. But we will -- the answer
11:42:54 24 would not be due until after the discovery. I assume
11:42:58 25 that the Court would require the Government to respond.

11:43:02 1 THE COURT: Are there any other items?

11:43:06 2 MR. ORTIZ: Your Honor, the United States
11:43:08 3 has one item we would like to raise.

11:43:08 4 THE COURT: Okay.

11:43:12 5 MR. ORTIZ: Your Honor, this is an issue
11:43:14 6 that is recent, was not flagged in the joint status
11:43:16 7 report, but we believe it also may be coming down the
11:43:20 8 pipeline if we're unable to reach agreement. It's a
11:43:23 9 technical issue that has to do with two productions from
11:43:26 10 plaintiffs.

11:43:28 11 As Your Honor will recall, the ESI
11:43:31 12 production protocol sets out very specific technical
11:43:34 13 requirements for productions in this litigation. And
11:43:38 14 there were at least two productions on June 19th and
11:43:42 15 July 15th that did not comply with those -- all of those
11:43:47 16 requirements. I won't go through all of that, but there
11:43:52 17 were certain metadata fields -- such as the document
11:43:55 18 date, collection source or custodian -- that were either
11:43:58 19 missing or incomplete. I think for the collection
11:44:02 20 source or custodian, for example, those were populated
11:44:06 21 as PLG without any more details as to where those
11:44:10 22 documents came from. In addition, there appear to be
11:44:13 23 several files that had thousands of pages of seemingly
11:44:17 24 random documents compressed together into a file -- or
11:44:22 25 put together into a file and they were not unitized as

11:44:25 1 required by the ESI protocol. So all of these issues
11:44:29 2 cumulatively are hampering the United States's ability
11:44:33 3 to review those productions, which, together, exceed
11:44:37 4 340,000 pages of documents.

11:44:39 5 THE COURT: In what way are they hampering
11:44:42 6 your efforts?

11:44:43 7 MR. ORTIZ: For example, we don't know the
11:44:44 8 date, we don't know the source of the document, we don't
11:44:47 9 know the custodian, we don't know within a single file
11:44:50 10 when the documents begin and end. And we sent a letter
11:44:54 11 on Friday to plaintiffs about that, requesting an
11:44:58 12 overlay file.

11:44:59 13 THE COURT: What is an overlay file?

11:45:01 14 MR. ORTIZ: As I understand it, Your
11:45:02 15 Honor -- and I could be corrected on this. But as I
11:45:05 16 understand it, it's a DAT load file.

11:45:08 17 THE COURT: It's a what?

11:45:09 18 MR. ORTIZ: DAT load file.

11:45:11 19 THE COURT: What is a DAT load file?

11:45:14 20 MR. ORTIZ: It's part of the production
11:45:16 21 requirements within the ESO protocol, Your Honor. And
11:45:19 22 that accompanies the production and provides those
11:45:22 23 metadata fields.

11:45:24 24 So we've asked for updated overlay files
11:45:27 25 that I believe would fix this issue. Again, we just

11:45:31 1 sent the letter on Friday and have not had a response
11:45:34 2 yet. So hopefully that will be an issue that can be
11:45:38 3 resolved, but we just wanted to raise it with Your Honor
11:45:40 4 and put it on Your Honor's radar.

11:45:42 5 THE COURT: So it's your position that by
11:45:47 6 including this DAT load file, it would solve the problem
11:45:50 7 that you're having?

11:45:52 8 MR. ORTIZ: Yes, if it included the fields
11:45:55 9 that were missing from -- as I understand it, were
11:45:57 10 missing from those two productions that I mentioned.
11:46:00 11 So, for example, the author, the group ID, the
11:46:04 12 production date, the dock date, the date time sent. I
11:46:09 13 won't go through the full list in our letter that we
11:46:11 14 sent to plaintiffs, but there were several.

11:46:13 15 THE COURT: And how many documents? Did you
11:46:14 16 say 300,000?

11:46:15 17 MR. ORTIZ: Over 340,000 pages of documents.

11:46:17 18 THE COURT: Pages.

11:46:18 19 MR. ORTIZ: And I apologize, I don't have
11:46:19 20 the exact number of documents. But they're sizeable
11:46:22 21 productions.

11:46:22 22 THE COURT: Do you know the nature of these
11:46:24 23 particular documents?

11:46:24 24 MR. ORTIZ: I don't yet, Your Honor.

11:46:27 25 THE COURT: Can you tell that from what

11:46:29 1 you've received, or is that --

11:46:31 2 MR. ORTIZ: We've been able to look at,
11:46:34 3 preliminarily, some of the documents. I have not
11:46:37 4 personally reviewed those documents, so I can't really
11:46:39 5 speak to it in any more specificity.

11:46:43 6 THE COURT: Okay. Mr. Bell, thoughts?

11:46:45 7 MR. BELL: Judge, this is -- I'm looking for
11:46:49 8 the e-mail. And we will certainly have a
11:46:53 9 meet-and-confer and try to resolve it.

11:46:55 10 I'm kind of like you, Judge. The technical
11:46:58 11 terms he's using I'm not sure I'm understanding to the
11:47:02 12 extent I need to. But we do have people that are
11:47:04 13 working in that area, and we'll bring them in and have a
11:47:07 14 conference and see if we can work things out.

11:47:10 15 THE COURT: Okay. All right. Any other
11:47:15 16 items?

11:47:19 17 MR. BELL: No, Your Honor. Maybe the only
11:47:21 18 other item I can think of is the scheduling of the next
11:47:24 19 hearing.

11:47:25 20 THE COURT: Okay. Let's see. These have
11:47:30 21 generally been what? Two -- every two weeks? Today is
11:47:35 22 the 6th.

11:47:35 23 MR. BELL: Yes, Your Honor. I start a
11:47:37 24 trial, Judge, on the 19th, which is about a two-week
11:47:41 25 long trial. And it's right in the middle of that

11:47:43 1 two-to-three-week time frame. I don't know how you want
11:47:50 2 to handle that.

11:47:53 3 THE COURT: Why don't you -- can you propose
11:47:55 4 some dates?

11:47:57 5 MR. BELL: Judge, I probably could get with
11:47:59 6 our trial judge and he might let me off for an hour. I
11:48:02 7 mean, we can do it while I'm in trial.

11:48:07 8 THE COURT: Okay.

11:48:08 9 MR. BELL: It may be that the 27th would be
11:48:10 10 a good time.

11:48:15 11 MR. BAIN: The 27th is fine with the
11:48:17 12 Government, Your Honor.

11:48:21 13 THE COURT: Mr. Bell, you can -- do you
11:48:23 14 know -- are you saying you can do it on the 27th?

11:48:26 15 MR. BELL: Yes, Your Honor. But it will
11:48:28 16 have to be remote, Your Honor. I couldn't do it in
11:48:31 17 person, if that's okay.

11:48:37 18 THE COURT: All right. Let's tentatively
11:48:39 19 set it for Tuesday 8/27 at 11:00 a.m., and remote
11:48:46 20 appearance is fine.

11:48:51 21 Okay. Well, if there's nothing else, thank
11:48:56 22 you very much.

11:48:57 23 MR. BELL: Thank you, Your Honor.

11:48:58 24 MR. BAIN: Thank you, Your Honor.

11:49:00 25 (The proceedings concluded at 11:49 a.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

I, Jennifer C. Carroll, RMR, CRR, CRC,
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Dated this 7th day of August, 2024.



/s/ Jennifer C. Carroll
Jennifer C. Carroll, RMR, CRR, CRC
U.S. Official Court Reporter