

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

_____)
IN RE: CAMP LEJEUNE)
 WATER LITIGATION,)
_____)

7:23-CV-897-BO

JANUARY 23, 2024
STATUS CONFERENCE
BEFORE THE HONORABLE ROBERT B. JONES
UNITED STATES MAGISTRATE JUDGE

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1 (Tuesday, January 23, 2024, proceedings begin
2 at 11:02 a.m.)

3 (Call to Order of the Court.)

4 THE COURT: Good morning, everyone. All right. As
5 seems to be the practice, I've got an agenda of items. I'd
6 like to go through that and then if counsel wants to add
7 anything I will certainly hear from you on that. But Mr. Bell,
8 Mr. Bain, I wanted to first get an update from you on what is
9 pending, what is ripe, what you are waiting on the Court for a
10 ruling on. I think I've got a list of those, if you just want
11 to confirm. I've got the parties' Motion for Partial Summary
12 Judgment at docket entry 41; that appears to be ripe. The
13 Motion to Strike the Complaint Jury Trial Demand at docket
14 entry 51; that appears to be ripe.

15 There is a Motion to Amend or Correct the Case
16 Management Order that's pending; that's at 95. There is a
17 motion at docket entry 109 that relates to a summary judgment
18 motion, and then there's a motion -- that doesn't appear to
19 be ripe. And then there's a motion at docket entry 110 for
20 partial summary judgment on the issue of causation. It
21 looks like that was filed a few days ago and that's not ripe.
22 And then we've got the two pending discovery motions before
23 me.

24 Is there anything else that y'all are waiting on the
25 Court to rule on?

1 MR. BELL: There is a proposed Track 1 order.

2 THE COURT: That's right. Is that joint?

3 MR. BAIN: It was submitted as a joint order. The
4 Court on Friday issued a ruling on the Motion to Enforce the
5 Case Management Order which has some bearing on that.

6 THE COURT: Right.

7 MR. BAIN: The Court allowed us to select additional
8 plaintiffs.

9 THE COURT: You've got until Friday to submit those;
10 right?

11 MR. BAIN: That's right.

12 THE COURT: And you expect to do that by then?

13 MR. BAIN: We do.

14 THE COURT: Okay. All right. Very good. Then
15 what's the status of our two motions related to discovery, 81
16 and 93?

17 MR. BELL: As I understand it, Your Honor,
18 discussions are still ongoing. There is progress being made
19 and we would ask the Court to continue to hold that motion in
20 abeyance.

21 THE COURT: Okay.

22 MR. BELL: I think that is where are.

23 THE COURT: Is that right, Mr. Bain?

24 MR. BAIN: That's correct, Your Honor. I think we're
25 making progress on those discovery matters.

1 THE COURT: Okay. All right. Very good. Well,
2 thank you for making progress on those. Okay. I would like
3 to know, just generally, an overview of how a proposed
4 settlement master works in this case. Is that -- the duties
5 for that individual, are the duties going to be proposed by
6 you, or is that something the court would do on its own and
7 how that person -- how that settlement master component fits
8 in this case as far as responsibilities, timing, and
9 procedure?

10 MR. BAIN: Your Honor, if I could address that. I
11 think that the settlement master, we envision, being
12 appointed pursuant to Rule 53 and given duties by the court
13 through that order authorizing the settlement master to act
14 in that capacity. We have already started discussions with
15 plaintiffs' counsel regarding a potential framework for a
16 global resolution. We have been exchanging a census for
17 information which we believe we need from all the claimants
18 in order to populate, eventually, a matrix. I think we've
19 reached some issues that would require some assistance from a
20 special master to help us resolve those issues regarding what
21 type of questions we can ask of this population.

22 THE COURT: To get that -- is that your census? Is
23 that what you're talking about?

24 MR. BAIN: Right. The census. So having a special
25 master assist with that and like a federal magistrate, if

1 necessary, make some rulings which are appealable to the
2 District Court if necessary would be, I think, helpful. We
3 also have an issue regarding what type of database this
4 information will be put into. And so once we get those
5 preliminary issues resolved then we can move into other
6 issues regarding values and what diseases should go into the
7 matrix and what shouldn't, so I think that having a
8 settlement master in place will assist us in moving that
9 process forward.

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

11 MS. BASH: So, I agree that, you know, with
12 everything Mr. Bain said. To answer your question about who
13 would be defining the role, I think it would make sense for us
14 to meet and confer and propose something to Your Honor to make
15 sure that we are aligned with what, you know, the full kind of
16 scope of what the responsibilities would be.

17 THE COURT: I mean, I would imagine that it's pretty
18 creative and fact -- case specific that's not inherent in the
19 rule of appointing someone as a special master. I guess it
20 would depend on the particular circumstances of the case;
21 right?

22 MS. BASH: Sorry, do you mean whether you should
23 appoint under the rule that Mr. Bain mentioned?

24 THE COURT: No, I mean what the master does and how
25 he or she does it.

1 MS. BASH: Oh, yes. Right. Absolutely. And so that
2 was one of, I think, our number one criteria in selecting
3 somebody is just somebody who's seen a lot and we asked, you
4 know, what kind of creative solutions have you come up with in
5 past cases.

6 THE COURT: Yeah.

7 MS. BASH: And so, you know, I think that's exactly
8 right. I think even, you know, speaking with the candidates
9 at the time it was almost like we're going to need your
10 guidance. We're going to need some creative solutions. And so
11 I think that's right. And so our talking a little bit about
12 what the, you know, guardrails will be, kind of what our end
13 goals are and inherent with the special masters, himself, or,
14 you know, whoever Your Honor appoints, and then proposing
15 maybe an outline to the court of where we agree.

16 THE COURT: What about timing, where does it fit in
17 the overall timeline of the case?

18 MS. BASH: So we thought that the special master
19 would come a little bit further down the road. We,
20 plaintiffs, had a roadmap of where we would negotiate a
21 questionnaire; right? What Mr. Bain is calling a census.
22 All of the information that the Department of Justice would
23 say, If the plaintiffs give us this information at the end we
24 can come up with a value; right? We have all the data to
25 give you a value and then, you know, decide what type of

1 documentation is necessary, things like that.

2 We've gotten to, I think, an impasse on a range of
3 questions relating to economic value. How much detail the
4 Department of Justice will require. You know, we think that
5 there should be proxies to, you know, getting receipts from
6 150,000 people over 70 years, for example, is one issue where
7 we just disagreed on what those questions and that
8 documentation will look like.

9 And I don't want to speak for the Department of
10 Justice, but my understanding is that having a settlement
11 master help them resolve that could help us move past those
12 questions. And so to my mind, that is kind of the immediate
13 goal of the settlement master to help us with this
14 questionnaire. But then also, just more broadly help us think
15 about and agree on what the end goal will be because that will
16 also help us work backwards to where we are now.

17 MR. BAIN: Yeah. I agree with that. I think
18 getting the special master in place soon will help resolve
19 those issues where we've reached an impasse and then we can
20 move forward and it will give the special master time to get
21 familiar with the case so as we continue to move forward, when
22 we have questions or issues involving settlement that we need
23 some third party to provide some advice on, that person would
24 be there and would be up to speed on it.

25 THE COURT: Okay. All right. Very good. That's

1 helpful. Thank you. Okay. Just a general update on the
2 case. I know that the Government will be proposing plaintiffs
3 for Track 1. Once that Track 1 order is entered, what do the
4 parties see happening after that?

5 MR. BELL: Your Honor, I think that is going to be
6 left up to the individual judges because they have reserved
7 that in the orders. We have a hearing tomorrow with
8 Judge Boyle and I assume we may get some guidance tomorrow on
9 how he wants to handle his docket. Obviously, there is a
10 whirlwind of discovery going on now. I think out of the first
11 hundred plaintiffs there's somewhere between 70 or so that
12 have been queued up to start scheduling depositions. So we
13 meet every Friday, Your Honor, at 11. If plaintiffs want
14 depositions we let the other side know and vice versa.

15 We struggled a little bit at first to get the process
16 down. I think it's working well now and they are being taken,
17 literally, all over the country. We've got depositions going
18 on today somewhere in this country. So in addition to that,
19 when we get the next Track 2 and Track 3, that process will
20 begin for those. We've been given notice last week, last
21 Friday, by the Government that they want to start taking
22 treating physicians' depositions. Those have their own
23 inherent issues, notwithstanding the fact that doctors don't
24 like to be deposed and they are reluctant to give out some day
25 that can give up seven hours or whatever. So we are working on

1 that. We haven't -- I assume this Friday we might get a list
2 or something. But we think that process is going to be
3 interesting to see how it works.

4 In North Carolina and in South Carolina when doctors
5 get noticed for a deposition, even if it's only a personal
6 injury case, they are required to hire -- or to notify their
7 malpractice insurance that then appoints them a lawyer. So
8 it's a little bit of a process. And we don't know what other
9 states are like. I know that North and South Carolina require
10 that, so we will see.

11 MR. BAIN: Your Honor, our view is that once the
12 Track 1 order is issued then the deadlines in the Case
13 Management Order 2 come into effect and those are certain
14 deadlines for completing fact discovery and we've already got
15 the start on the plaintiff depositions and identifying fact
16 depositions. We do think we need a little more time for fact
17 discovery which is the subject of our motion to amend that
18 order. And then there's also some dates for expert discovery
19 that come after that according to Case Management Order 2.
20 Those are all triggered by the Track 1 order. We do not
21 believe that the individual judges, as envisioned through the
22 case management order, will change the parameters of that for
23 their individual cases.

24 The plaintiffs filed a notice yesterday asking for
25 expedition on certain things for the cases before Judge Boyle.

1 We don't think that that's what's envisioned by the Case
2 Management Order. If they do want to make those changes they
3 should make a motion to amend the Case Management Order. So we
4 have a difference of opinion on that. We think that Track 1 is
5 governed by Case Management Order 2. Once we get through the
6 discovery process, then they'll be keyed up for individual
7 judges to try the cases.

8 THE COURT: Once the cases are sent out to the
9 individual judges, what is it about their case management that
10 you don't think they could tweak? Their cases? The
11 individual judges' cases?

12 MR. BAIN: They can set the procedures for the
13 trials of their individual cases, I believe, anyway they
14 want, but I think that the way the Case Management Order 2 is
15 set up is for consolidated discovery for all cases in
16 Track 1---

17 THE COURT: Right.

18 MR. BAIN: ---to do fact discovery and expert
19 discovery---

20 THE COURT: But they can tweak deadlines; right? I
21 mean, dispositive motion deadline or discovery deadline, don't
22 you think they still have that ability?

23 MR. BAIN: Well---

24 THE COURT: ---within -- again within their
25 individual cases.

1 MR. BAIN: I mean, I'm not going to opine on the
2 parameters of an individual judge's discretion, but I do
3 think Case Management Order 2 envisions a consolidated
4 discovery for all Track 1 cases and then the individual judges
5 at some point when that discovery is completed make a
6 determination as to how their individual cases will go forward
7 from that point.

8 THE COURT: Okay. All right. Diseases.

9 MR. BELL: Yes, Your Honor.

10 THE COURT: Column 1, all the diseases in the agency
11 and in the lawsuit. Column 2 is the number of diseases in
12 EDNC. Column 3 is the number of diseases in the agency. How
13 is it that we have problems getting that information?

14 MR. BELL: I have a list, Your Honor, for what we
15 could compile for you today. We would ask that this list be
16 kept confidential. Normally this is exchanged in mediation and
17 under the mediation rules it is confidential. So we would --
18 this is -- we are -- we got representative firms to give us
19 their data.

20 THE COURT: Right.

21 MR. BELL: We don't know how many of those firms may
22 have dual rep issues, things like that. So we are giving you
23 our best guess, but until we know how many people have been
24 filed, things like that, it's enough to plan but I'm not sure
25 you could take it word-for-word.

1 THE COURT: So you have the numbers in suit; correct?
2 Or best -- best numbers?

3 MR. BELL: Your Honor, I have for you today -- I wish
4 I had done it in columns like you mentioned, but I have
5 separate documents. The first one is the -- one, the cases
6 that have been filed already here in the Eastern District
7 broken down by disease. And then the next list you have -- we
8 have, Your Honor, is a list of diseases and the approximate
9 number of individuals that populate that disease. But just so
10 you'll understand, Judge, some law firms categorize their
11 cases, they might call a liver disease fatty liver instead
12 of liver.

13 So, I mean, there are all kinds of ways that lawyers
14 may have categorized their cases within their own firm.
15 We've got database data from all of them and put them together
16 and we used the lawyer's terms instead of what it actually
17 might be. So with that understanding, we have a large number
18 of cases, Your Honor, with the numbers that the court---

19 THE COURT: But there -- so there may be some
20 duplication?

21 MR. BELL: I'm sorry?

22 THE COURT: There may be some duplication?

23 MR. BELL: There may be, and the disease itself, for
24 example, brain cancer may have different kinds of brain tumors
25 and you might have some subcategories in that. We have

1 cirrhosis, people are reporting cirrhosis. We don't know
2 whether that's fatty liver or so on.

3 THE COURT: Right. Right.

4 MR. BELL: Understand, I'm trying to give you a
5 little bit of a qualification on this list and I don't think
6 it would be useful for it to be publicized at all.

7 THE COURT: Okay.

8 MR. BELL: But other than that I have it ready to
9 hand up to Your Honor.

10 THE COURT: All right. Mr. Bain, about the numbers
11 in the agency.

12 MR. BAIN: Yeah. So the Navy is working at adjusting
13 a vast amount of information. It's almost 160,000 claims at
14 this point and the information is nonstandardized in how it's
15 being presented to them. Diseases are described in a variety
16 of ways which makes it difficult to provide information on the
17 types of injuries even for those that have been added to the
18 database which is about 29,000 so far. They're standing up the
19 database as we speak and it's a work in progress. They are
20 working---

21 THE COURT: You said March? It'd be available in
22 March, do you think?

23 MR. BAIN: They are looking at March as having it
24 available and if it would be helpful to Your Honor, I can have
25 a representative of the Navy's Camp Lejeune Task Force at the

1 next conference to discuss the process in detail to you.

2 THE COURT: Fantastic. That would be great. So
3 what do you have now that you think would be helpful to the
4 court?

5 MR. BAIN: What we have now is the list provided in
6 the status report.

7 THE COURT: Okay.

8 MR. BAIN: So that's the best I can give you right
9 now.

10 THE COURT: Okay. All right. Well, that's my --
11 those were my notes of what to cover. What am I not asking
12 that would be helpful to the court to know?

13 MR. BELL: If it please the Court, Your Honor, there
14 are a couple of what I call difficult issues in discovery that
15 are part of our back-and-forth, but we are going to have to
16 come to a point with whether we're going to have to either
17 agree or file a motion.

18 THE COURT: Right.

19 MR. BELL: So I would like to go over a couple with
20 you now so that I can ask in advance to be able to file a
21 motion about that.

22 THE COURT: Are these new issues or are they part of
23 what's already been filed?

24 MR. BELL: Part of what's been filed, Your Honor.

25 THE COURT: Okay.

1 MR. BELL: So if it's okay, Your Honor, let's talk
2 about the muster rolls. To remind the Court, back then, Judge,
3 a muster roll was on old typewriters, handwritten things, and
4 it's basically a data page which is not like a computerized
5 data page. In 2015 the government contracted an outside
6 contractor to take those documents and digitize all of them,
7 OCR them, digitize them. And there was a contract to do so
8 and in fact the contract was completed. And during some of
9 the Cap Meetings that were held -- that are held every quarter
10 on Camp Lejeune through the ATSDR they reference these
11 databases where they were using these databases and they were
12 available.

13 And so there's a lot of information out there that
14 tells us, that's got this world of information out there that
15 we are trying to get. The benefit of this, Judge, is you may
16 have someone who is deceased whose children are bringing the
17 claim. They aren't quite sure when dad or mom was there.
18 They aren't sure where they lived, things like this. These
19 muster rolls would give a world of information. We have some
20 we've used as kind of examples, kind of learn what's there.
21 So when we found out they had been digitized that was
22 unbelievable information.

23 So we have asked the Government for it and they are
24 explaining that there is a server that has this information on
25 it but because of problems with, at one time it had to do with

1 licensing, that was kind of figured out, but they have been
2 unable to actually get the data. They've had a vendor come in
3 and try to upload, you know, get everything going. I don't
4 know the technical term, Your Honor, but they are trying to get
5 it working. Well, they have now kind of reached an impasse so
6 we have asked to have access to that server so we can bring our
7 technical people in and see if we might can work some magic
8 that the government couldn't do. And at first I thought we had
9 that worked out but now I think there's an objection to us
10 bringing our technical IT people into this area or even having
11 access to the server.

12 We are still talking. We're still working on it, but
13 this is incredibly valuable information and there's nothing
14 having to do with privilege in there, so it's a -- and they've
15 offered the several million documents that have the handwritten
16 things or the typewriter things on it, muster rolls, but that
17 doesn't do us any good when we're looking at Mr. Jones who was
18 there in February of '82, how we're going to find it without a
19 digitized system. And the government is currently digitizing
20 all of those and they may have them this summer. They aren't
21 sure. They're trying according to what we know.

22 We need them before these deadlines are coming and
23 we're going to be required to prove up where our clients lived
24 and how long they lived there and things like that. So we
25 think that there is a process that maybe could take place that

1 could help us. We aren't sure whether we're going to get an
2 agreement. So with that in mind, Your Honor, we will continue
3 to talk but if we feel like we've reached an impasse, we need
4 permission to go ahead and file a motion.

5 THE COURT: So the muster roll will tell you that a
6 person was there on a certain day or time range?

7 MR. BELL: Yes, Your Honor. And it will tell you
8 what battalion they were in, what unit they were in, things
9 like that that we have gotten information for example if you
10 worked at this battalion, we know where they trained, we know
11 where they got their water, we know all of that, but having to
12 be able to prove -- and a lot of our clients can tell us, I was
13 here, I was there. And then that's not a problem.

14 THE COURT: So it's information on identifying who
15 was at Lejeune, where they worked, and where they operated on
16 the base?

17 MR. BELL: What unit they belonged to and---

18 THE COURT: Yeah, what they did.

19 MR. BELL: ---and also, Judge, sometimes soldiers
20 were shipped off for a period of time. They'd maybe go off on
21 a boat or go off on an exercise or something and it also tells
22 you those -- that information, when they were there, when they
23 were off base, things like that.

24 THE COURT: This information is on a database of a
25 vendor?

1 MR. BELL: I think it's a database of the government
2 and maybe Mr. Bain can explain it better than I, but it's my
3 understanding that at one time ATSDR had access to it, they
4 utilized it, they were actually bragging about it, and that's
5 part of the public record. But now all of a sudden it's
6 unavailable and we're trying to figure out why.

7 THE COURT: Are there other ways to get the same
8 information?

9 MR. BELL: Well, the government, I think, is trying
10 to digitize not only those records but a lot of other records
11 and we've been told they are, but it's slow and it may take a
12 while to get it. We've asked that they prioritize our records
13 and we haven't gotten a response on that.

14 THE COURT: Okay.

15 MR. BAIN: So as Mr. Bell said, the records are
16 existing. They're in paper form. There was a digitization
17 effort that was done years ago. Unfortunately because it's a
18 legacy system, they're unable to get access to it.

19 THE COURT: What does that mean, a legacy system?

20 MR. BAIN: It's an old system that's not being used
21 anymore. So they're re -- they're doing a new digitization on
22 a newer system. It's in the process of undergoing right now.
23 We have scheduled or offered the plaintiffs an ability to have
24 their experts come on January 30th to Quantico to check out the
25 system themselves. I think that there might be some confusion

1 regarding the documents that were sent to ancestry.com and the
2 documents that were digitized on this legacy system. We are
3 going to allow their experts to ask and examine about the
4 legacy system that's at Quantico.

5 THE COURT: Ancestry.com, that sounds like a subpoena
6 issue; right?

7 MR. BAIN: Right. There are -- there could be
8 documents available via ancestry.com that were made available
9 to ancestry.com, is my understanding.

10 THE COURT: Is there more to do on this issue or no?

11 MR. BELL: Your Honor, the ancestry.com, we've gotten
12 most of those documents through ancestry.com.

13 THE COURT: Okay. So the---

14 MR. BELL: We scrubbed that database.

15 THE COURT: Okay. So what remains is what is still
16 on the database?

17 MR. BELL: And there's several years that
18 ancestry.com are not available for some reason. I don't have
19 the technical answer to that, but there are two things, the
20 missing years which are the '50s which, while important, that's
21 not my focus right now. The others have to do with, you know,
22 after '61 or '62 forward.

23 THE COURT: So how many years are we talking about
24 here?

25 MR. BELL: The total 33 years.

1 THE COURT: From when to when?

2 MR. BELL: From '53 to '87.

3 THE COURT: The whole time?

4 MR. BELL: Yes, sir. They all had muster rolls.

5 THE COURT: And there's a -- I'm sorry, Mr. Bain?

6 MR. BAIN: Yes, sir?

7 THE COURT: There's an invitation for them to go to
8 Quantico to look at this information?

9 MR. BAIN: To look at the system and see if their
10 experts can access the system where our experts could not.

11 THE COURT: Yeah.

12 MR. BAIN: So we've offered that availability to
13 them. As Mr. Bell mentioned, there is a current digitization
14 effort. Mr. Bell has asked, you know, can we check whether any
15 of the Track 1 plaintiffs can be -- have already been digitized
16 by this current effort and we are investigating that right now.

17 THE COURT: So what's the holdup? You're going to go
18 to Quantico to look and see---

19 MR. BELL: Well, Judge, going to Quantico and looking
20 at a server is different than having experts try to actually
21 utilize and get into the server. I think that has not been
22 agreed to.

23 THE COURT: Then I don't understand something.

24 MR. BELL: And we've also asked, Your Honor, to have
25 a conversation with the vendor and the vendor's rep has been

1 there trying to get into the server. We've not been able to
2 get that information.

3 THE COURT: What's the point of having them come to
4 Quantico and look at a server if they're not going to try to
5 get into it?

6 MR. BAIN: No, I think that we need to talk about
7 that further. That's not my understanding. I think that their
8 experts are allowed, and I don't know about this question of
9 access, so I would like to talk a little bit more about
10 Mr. Bell and the people who are handling this up in
11 Washington---

12 THE COURT: That seems to be the crux of it.

13 MR. BELL: It's sounding better every time.

14 THE COURT: All right. Is that it?

15 MR. BELL: No, sir. When the ATSDR published their
16 study of 2017, and there's another study of 2018, they utilized
17 a water modeling project.

18 THE COURT: Is this a new issue or---

19 MR. BELL: It's different, yes, sir.

20 THE COURT: Okay.

21 MR. BELL: Water modeling, I guess I'll have to learn
22 how to describe it to a jury one day, but as I understand it
23 when the chemicals got into the water, how it got dispersed and
24 all of that. Obviously, the testing of the water wasn't done
25 until the late '70s and early '80s so modeling had to

1 retrospectively tell us what it looked like 10 years ago. It's
2 a big issue in this case. Now we believe that that issue
3 should be set. I mean, the government has utilized water
4 modeling and published the documents. We think it's done, it's
5 over. And if the Government would agree that the water
6 modeling is fine, then this issue wouldn't be here. But we
7 aren't getting that kind of response from the Government.

8 So we found a file, a huge file that has everything
9 in it having to do with water modeling, everything. We want
10 that file. And, literally, judge, our experts tell us they can
11 go in there with the push of a couple of buttons and download
12 it to a hard drive and it's ours. We have to have that. If
13 our experts, our water modeling experts are going to go back
14 and look and see if this water modeling was done right they
15 need to have everything. They need to have everything the
16 government had and we are not getting a response that gives us
17 any security that -- well, we'll give you 20 files. But there
18 are hundreds. There are hundreds of them and literally pushing
19 the button can get those files.

20 THE COURT: Okay. Mr. Bain?

21 MR. BAIN: May Mr. Anwar address this?

22 THE COURT: Yes, sir.

23 MR. ANWAR: Your Honor, may it please the Court,
24 Haroon Anwar, we have been in discussions with plaintiffs'
25 counsel regarding the request for water modeling data. I think

1 at the outset it's worth noting that we have produced a
2 voluminous amount of data related to the water modeling
3 reports.

4 THE COURT: What is it?

5 MR. ANWAR: Excuse me?

6 THE COURT: What is it?

7 MR. ANWAR: There is -- the specifics of the data
8 relate to the 2008, 2009 report for Tarawa Terrace and then
9 there was another report that was published from ATSDR, roughly
10 2012, 2013. And candidly, I don't know all the files that were
11 included with the---

12 THE COURT: What -- what -- when you say file, that
13 could be a number of things. Do you know what's in the file?

14 MR. ANWAR: So my understanding is some of it is
15 actual data that was relied on in performing the water
16 modeling. Some of it is likely descriptive files related --
17 you know, explaining what the water modeling is and some of the
18 assumptions that were used, the bases for the assumptions,
19 those sorts of things. That information was available on discs
20 with the reports when the reports were published. We have
21 provided all of that to them. We have been in discussion --
22 further discussions with the plaintiffs about project working
23 files related to those water modeling reports. And we
24 certainly haven't refused to produce those files. ATSDR has
25 not refused to produce those files.

1 The issue is that it's -- my understanding is it's
2 almost 2 terabytes of data and it's not data that's necessarily
3 organized into discrete, clean little categories. So
4 interspersed throughout that data may be attorney-client
5 privileged material. It may be material subject to the
6 deliberative-process privilege as well. And so the issues
7 that we've been discussing with plaintiffs' counsel is for the
8 most efficient way to get them the information that they are
9 seeking. And certainly simply asking for all of it to be
10 produced, ATSDR would appreciate an opportunity to review,
11 potentially for privilege issues, but we are working on
12 ways---

13 THE COURT: That would take a long time, wouldn't it?

14 MR. ANWAR: It would take a long time and so that's
15 why we---

16 THE COURT: Aren't there things in place in this case
17 that would allow those -- allow for those privileges, clawback,
18 protective agreement?

19 MR. ANWAR: Correct, Your Honor. We've certainly --
20 we've been in discussions both with plaintiffs' counsel and
21 with ATSDR. ATSDR is aware of the clawback order, is aware of
22 the protective order, and my understanding -- you know, we
23 continue to have these conversations both with ATSDR and with
24 plaintiffs' counsel. So I think the issue, from our
25 perspective, is a bit premature to raise at this point because

1 the discussions are ongoing. Mr. Bell referenced 20 files or
2 something like that. My understanding is we offered to
3 provide a tree -- sort of like a file tree structure of the
4 folders, of which there are thousands and thousands of
5 subfolders, and we asked plaintiffs to consider prioritizing
6 sort of the top 20 so we can start with those, take a look at
7 them, produce -- or, you know, talk about producing those, or
8 what that would look like. And so those conversations are
9 ongoing, Your Honor.

10 THE COURT: All right. Well, I mean, at some
11 point -- at some point you've got to make the decision of, we
12 can't give you this absent a court order. I mean, it's great
13 that you're having these discussions and making progress, but
14 you know, the clock's running.

15 MR. BELL: It's kind of hard to look at 20 files
16 now versus thousands they aren't turning over and so there is
17 a protective order. There is a clawback provision. And to
18 be honest with you, Judge, I can't imagine what an attorney
19 would be saying on a water modeling -- what are you doing. I
20 can't imagine that's there. If some attorney-client privilege
21 is there and we see it, we'll set up a team, we'll make sure
22 we do it just like they do when they have their criminal
23 cases. We can do that. We have teams that can go through
24 this data quickly. We have teams that -- this has to do with
25 our experts and, obviously, we would rather not have to go

1 through this if the Government would just stipulate to the
2 water modeling which we think they should, and that's part of
3 what we're---

4 THE COURT: Well, that's part of your discussion with
5 them about how to resolve these sorts of issues.

6 MR. BELL: It is. So if we can't reach an
7 agreement---

8 THE COURT: Yeah. I will take up any dispute. It
9 sounds like you've had meet and confers about it and---

10 MR. BELL: We will talk some more.

11 THE COURT: Okay. All right.

12 MR. BELL: That's all I had.

13 THE COURT: Is that it?

14 MR. BELL: Yes, sir.

15 THE COURT: Okay. Anything from the Government.

16 MR. BAIN: The only thing I would want to raise,
17 Your Honor, is we are trying to work as quickly as possible to
18 get the information from the plaintiffs so that we can conduct
19 these depositions and get it done by the deadline set by the
20 court. We're -- like I said, we think we're going to need
21 some more time, but issues keep arising and one issue that
22 we're going to work out hopefully with the plaintiffs is a lot
23 of the releases they provided us are not sufficiently executed
24 so that we can provide the records to the plaintiffs. So I
25 hope we can work that out, but it's an issue I think that's

1 been going on. We actually made some progress as far as
2 getting the agency to allow us to do something they haven't
3 done in the past as far as not requiring a, you know, wet
4 signature from the particular individual before allowing us to
5 get the records and release the records, but the profile forms
6 that we got just recently, a lot of the releases are not
7 properly executed.

8 THE COURT: In what way?

9 MR. BELL: Your Honor, may I address that, please?
10 Three hearings ago I brought this up and the Government is
11 asking us to give them a release to give us our records. All
12 it takes is a court order, give them the records. It is
13 absolutely government gone amuck. They are saying the VA
14 won't give us their records until we have a wet signature,
15 whether we have this signature in this block -- they are our
16 records. We've sued the government. Why would they have a
17 problem with the court saying turn over the records.

18 THE COURT: Is this really a problem?

19 MR. BAIN: We had -- we had -- no, I didn't think
20 it was a problem. We had reached an agreement with the
21 plaintiffs as to what was required and they had agreed to it,
22 but now we are getting -- and this is what the agency said was
23 acceptable. But now we're getting releases which do not
24 comply with the agreement that we reached with plaintiffs'
25 counsel.

1 MR. BELL: The transcript of the hearing I was in
2 when I brought it up would show that we asked the government
3 back then, even at that hearing, that this issue of trying to
4 come up with an agreement for us having a release for this
5 agency, a release for that agency. They have these records,
6 the DOJ actually has them waiting to turn over. Please ask
7 them to turn over, Your Honor.

8 THE COURT: What's the pushback? I don't understand.

9 MR. BAIN: The pushback is a lot of these records
10 include very sensitive alcohol treatment, drug treatment,
11 those type of records. There's a federal statute that is very
12 strict regarding release of those records. We had reached an
13 agreement with plaintiffs' counsel allowing them to provide
14 electronic signature with an affidavit of counsel and we could
15 get those done. And we thought we had reached an agreement,
16 but a lot -- and a lot of the releases that we have are in
17 compliance with the agreement we reached, but there -- so far
18 in the defense profile forms, about 30 of them at least at our
19 last count did not comply with the agreement that we reached
20 with plaintiffs' counsel.

21 THE COURT: In what way?

22 MR. BAIN: Because there was no electronic, you know,
23 "s slash s" with the patient's name on it. There was just a
24 signature of the attorney on it.

25 THE COURT: Okay. That -- that---

1 MR. BAIN: That's all that's required.

2 THE COURT: Okay. But what was -- whatever was
3 provided, it may not have comported with the agreement, but is
4 it insufficient?

5 MR. BAIN: It is. The VA has told us, and this is as
6 far as they're willing to go is, if they don't have the, you
7 know, "s slash s" with the patient's name on it and the
8 attorney affidavit that we can't release them to the
9 plaintiffs.

10 THE COURT: So what's in the attorney's affidavit?

11 MR. BAIN: It's just that I have the authority to get
12 this release executed.

13 THE COURT: And then what's on the signature line of
14 the client?

15 MR. BAIN: Just, you know, "slash s slash" the
16 patient's name. That's -- and I don't think that that's
17 onerous for the -- at all for the plaintiffs to complete.

18 THE COURT: You know, what's the VA getting from
19 these 30 that's causing such a problem, even though it has an
20 affidavit from a lawyer saying that -- I assume the affidavit
21 says my client signed this.

22 MR. BAIN: As the government is, unless they have
23 each, you know, each line filled out appropriately it doesn't
24 meet the legal requirement that they need as a release from
25 that patient to allow us to give them the records. I want to

1 give the records -- I want to get this done expeditiously and
2 we worked out this agreement with the plaintiffs---

3 THE COURT: Right. I mean, I would hate to drill
4 down into these issues, but if I've got to look at 30 documents
5 and decide whether it's insufficient or sufficient I'll do
6 that, but it just seems like somebody could fix this. All
7 right. Anything else.

8 MR. BELL: Nothing from the plaintiff, Your Honor.

9 MR. BAIN: Nothing, Your Honor.

10 THE COURT: Are we to meet next on February the 6th?

11 MR. BELL: Yes, Your Honor.

12 THE COURT: All right. Thank you very much.

13 (Proceedings concluded at 12:04 p.m.)

14

15 (END OF TRANSCRIPT.)

16

NORTH CAROLINA
JOHNSTON COUNTY

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
OF SAID PROCEEDINGS.

/s/ CAROLYN E. HIGH 01/25/24
CAROLYN E. HIGH DATE
Contract Court Reporter