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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

CAMP LEJEUNE WATER)
LITIGATION,) DOCKET NO. 7:23-CV-00897-RJ
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

TRANSCRIPT OF STATUS CONFERENCE
BEFORE MAGISTRATE JUDGE ROBERT B. JONES, JR.
TUESDAY, JULY 8, 2025; 11:07 AM
WILMINGTON, NORTH CAROLINA

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1 P R O C E E D I N G S

2 THE CLERK: All rise. This Honorable U.S. District
3 Court for the Eastern District of North Carolina is now in
4 session. The Honorable Robert Jones, Jr., presiding. Please
5 be seated and come to order.

6 THE COURT: Good morning.

7 IN UNISON: Good morning.

8 THE COURT: Okay. Mr. Bell, you're on the phone?

9 MR. BELL: Yes, I am, Your Honor.

10 THE COURT: Okay. What do y'all have for the Court
11 as far as status report?

12 MR. BELL: From the plaintiffs, there are two things
13 that maybe you should be aware of. The Government filed a
14 motion this week, or maybe last week, to challenge our
15 specific expert's reports, which included general causation
16 opinions. We think that's an easy matter to resolve, but we
17 haven't yet finished our briefing. And I think our response
18 is due on the 14th.

19 THE COURT: Okay. What else?

20 MR. BELL: I think we have a proposed order on a
21 deadline still pending with the Court. I haven't seen that it
22 has been served or filed together or signed. That would be
23 the only other request to the Court to check on that.

24 THE COURT: Okay. All right.

25 MR. BELL: Other than that, Your Honor, we don't have



1 anything that we believe would be required to discuss with you
2 other than whatever you'd like to discuss.

3 THE COURT: All right. Mr. Ellis, Ms. Butler,
4 anything?

5 MR. ELLIS: No, sir.

6 THE COURT: All right. Mr. Bain?

7 MR. BAIN: Yes, Your Honor. I'm not sure what
8 proposed order Mr. Bell was referring to. I believe the order
9 was entered with the new deadlines established. Regarding the
10 motion to challenge the general causation opinions of specific
11 causation reports, I'd like Mr. Carpenito to address that
12 issue.

13 THE COURT: Okay.

14 MR. CARPENITO: Good morning, Your Honor.

15 THE COURT: Now, I'm still waiting on the briefing, I
16 think, from plaintiffs on that.

17 MR. CARPENITO: That is correct. Joshua Carpenito,
18 on behalf of the United States.

19 There is another issue that I'd like to raise and
20 bring to the Court's attention. That is to clarify how this
21 motion should be treated, specifically whether it's being
22 treated as a discovery motion governed by Your Honor's
23 discovery dispute protocol or, instead, by the local rules
24 applicable to a nondiscovery motion. And as Your Honor is
25 aware, this distinction matters for the purposes of page

1 limits and timing.

2 The United States' position is that this is a
3 discovery motion governed by docket entry 55, Your Honor's
4 discovery dispute protocol. And I'm happy to inform the Court
5 as to why the United States believes that. And I also believe
6 this understanding is consistent with how PLG has framed
7 similar motions in the past. Your Honor may recall that, in
8 April, PLG filed a motion to exclude the testimony of one of
9 the United States' experts as it related to a site visit. And
10 in doing so, the PLG moved under the same rules of civil
11 procedure that the United States is moving under here.

12 The clarification comes in here, Your Honor. In a
13 correspondence to the Court, PLG indicated that it assumed
14 that its response was due on July 14th, and that response date
15 of July 14th aligns with the twenty-one-day response period
16 under Local Rule 7.1(f)(1) for nondiscovery motions.

17 The United States just wishes to clarify this with
18 the Court and accordingly ask the Court, respectfully, that
19 PLG's response be limited to ten pages consistent with Your
20 Honor's discovery dispute protocol. However, if the Court
21 views this motion as a nondiscovery motion, the United States
22 respectfully requests leave to file a reply brief of up to
23 twenty pages due within three weeks of PLG's response, in
24 order to cure any prejudice that may result from classifying
25 this as a nondiscovery motion.

1 THE COURT: So it's a page limitation issue?

2 MR. CARPENITO: That's correct, Your Honor. And the
3 availability of a reply.

4 THE COURT: So if it's a discovery motion, the
5 response is ten pages, correct?

6 MR. CARPENITO: That is correct.

7 THE COURT: And there's no reply, right?

8 MR. CARPENITO: That's correct.

9 THE COURT: If it's not a discovery motion, the
10 response is how many pages?

11 MR. CARPENITO: Still thirty pages.

12 THE COURT: And there is a chance for reply?

13 MR. CARPENITO: That's correct.

14 THE COURT: Doesn't mean you'd use it, but there's an
15 opportunity?

16 MR. CARPENITO: Correct.

17 THE COURT: And how many pages is that reply?

18 MR. CARPENITO: Under the local rules, the reply is
19 ten pages, and the United States has requested up to twenty.
20 Because in filing and briefing the opening brief, we
21 understood this as a discovery motion, because ultimately,
22 what is reached here are Rule 26 disclosures, and we abided by
23 Your Honor's discovery dispute protocol which allows for ten
24 pages.

25 THE COURT: So your motion generally is asking what?

1 MR. CARPENITO: To exclude untimely expert
2 disclosures.

3 THE COURT: And it's a discovery motion in your view
4 because of why?

5 MR. CARPENITO: Your Honor's discovery dispute
6 protocol cites to Local Rule 7.1(c)(1), and that defines a
7 discovery motion, which is motions that seek to nullify,
8 limit, extend, or enforce any procedural compliance of Rules
9 26 through 37. And ultimately, the disclosures that we are
10 reaching in our motion here are Rule 26 disclosures.

11 THE COURT: Okay. What do the plaintiffs think about
12 that?

13 MR. BELL: Your Honor, I think Jenna is going to
14 respond to that.

15 MS. BUTLER: Yes, Your Honor. So this is a little
16 bit of an interesting dispute. It's really not over our
17 failure to designate our specific cause experts on time. It
18 is over the content of our specific cause expert reports. And
19 it has to do with the interrelation between specific causation
20 and general causation and proof issues.

21 They want to superficially exclude general causation,
22 even the mention of general causation, in our specific
23 causation expert reports. But these are building blocks and
24 interrelated concepts. And that's very clear under the case
25 law and under the orders entered by this Court, which, quote,

1 determining the possible causes for the patient's symptoms,
2 and then -- sorry, I'm reading from the wrong -- this Court
3 has said that exposure, general causation, and specific
4 causation are, quote, not separate elements of a CLJA claim,
5 but rather causation subsumes all three.

6 And so their complaint is that our specific causation
7 reports include, in some instances, a section on general
8 causation. So it's kind of like trying to argue a motion for
9 summary judgment, and I have somebody else do the legal
10 research for me or I do it myself. I have to include that
11 analysis in order to tie the facts to the case law. Here, in
12 order to tie the specific plaintiff's injury to the toxic
13 tort, general causation is subsumed within specific causation.

14 And so it's really an issue that goes to the specific
15 causation reports, not the designation of those experts.
16 Because the experts were designated as specific causation
17 experts. We've conducted sixteen of our -- the DOJ has
18 already conducted sixteen of our specific causation expert
19 depositions, and there are more ongoing today and continuing.
20 They were designated as specific causation experts. What they
21 complain about is the content of their report and to the
22 extent some of them include a general causation analysis to
23 get to their specific causation conclusions.

24 And so when we were calculating the time period, we
25 calculated it under the twenty-one days.

1 I am not sure where our brief is currently --

2 THE COURT: Yeah.

3 MS. BUTLER: -- if the ten-page limitation would be
4 okay. But we view it as a substantive dispute over the
5 content of our expert reports.

6 THE COURT: So this a real dispute as to the page
7 limitations, but there's also a time component to it. There's
8 more briefing involved if it's treated as a nondiscovery
9 motion. Does giving the parties more time, does that run up
10 against other deadlines? Is that a problem?

11 MS. BUTLER: No. I mean, the Daubert briefing on
12 general causation and specific causation has already been
13 extended per the order that was entered on the deadlines. I
14 forget, that order was entered within the past couple of
15 weeks. And so that briefing is separately scheduled already.
16 I think it's into September. And as you know, from the order
17 that was entered under seal, there are other things going on
18 in the case right now. And so I don't think that allowing us
19 until the 14th --

20 THE COURT: So it would be the 14th.

21 MS. BUTLER: -- is going to cause any problem here.

22 THE COURT: And then if -- when is your reply due if
23 a reply were permitted after the 14th? When would that be
24 due?

25 MR. CARPENITO: That would be --



1 THE COURT: Ten days?

2 MR. CARPENITO: -- fourteen days after, Your Honor.

3 And the United States has asked for twenty-one days to cure
4 any of the prejudice under Your Honor's --

5 THE COURT: Well, how do you know? You haven't seen
6 the brief yet?

7 MR. CARPENITO: Under Your Honor's discovery dispute
8 protocol, we were asked to file the opening brief within seven
9 days --

10 THE COURT: Yeah.

11 MR. CARPENITO: -- of the discovery conference, and
12 we filed the afternoon of the last status hearing.

13 THE COURT: Okay. All right. Well, I'll see what
14 the response is on the 14th, and I'll make a decision then.
15 And I'll let you know with sufficient time to file something.

16 MR. CARPENITO: Okay. Thank you, Your Honor.

17 MR. DOWLING: Your Honor, if I could just augment --
18 this is Mike Dowling -- on top of what Ms. Butler said. If
19 you review the actual memorandum that the Government filed at
20 docket entry 410, in order to fit this into the paradigm of a
21 discovery motion, there would have to be some application of
22 Rules 26 through 37. And I went back and studied it. And the
23 case law that they cite and the rules that they cite are Rule
24 16(f), and that's just not a discovery motion rule. And so
25 just sticking this Rule 37 reference in the caption of the

1 motion but not actually applying anything from Rule 26 to 37
2 in the body of the motion, we believe that's insufficient to
3 bring this within the paradigm of a discovery, the
4 limitations, you know, the abbreviated briefing, and
5 timelines, and so forth. And it certainly didn't strike us as
6 such when we read the brief and didn't see any application of
7 any of the discovery rules.

8 THE COURT: All right.

9 MR. DOWLING: But I also agree with that. I think
10 it's a labeling problem here. You can't just slap a rule in
11 the label but not apply the rule and get the benefit of that
12 rule.

13 THE COURT: All right. I'll take a look at it, and
14 I'll probably -- I may give the parties some direction on this
15 before the 14th.

16 MS. BUTLER: Thank you, Your Honor.

17 THE COURT: All right. Anything else?

18 MR. CARPENITO: Yes, Your Honor, there's an issue
19 regarding PLG's recently filed reply brief in support of their
20 motion to exclude U.S expert Dr. Remy Hennes. As you recall,
21 the Court allowed an additional deposition of Dr. Hennes based
22 on the visit he made to Camp Lejeune.

23 THE COURT: Right.

24 MR. CARPENITO: The Court also allowed PLG an
25 additional 3,000 words for its reply brief on the Daubert

1 motion based on that deposition, but the Court denied PLG's
2 request to file a supplemental Daubert motion based on the
3 deposition.

4 PLG has used its reply brief to file what is, in
5 essence, a supplemental Daubert motion. For the first time,
6 it has challenged certain opinions of Dr. Hennes that weren't
7 challenged in the opening brief. These included his opinion
8 about the percentage of time well HP-651 was pumping and his
9 opinion on the TCE concentration in the Hadnot Point system
10 when well 651 was pumping.

11 So this is in violation of the Court's order and
12 Local Rule 7.1(g)(1), which governs the content of reply
13 briefs. Because the United States has had no opportunity to
14 address these new arguments, the United States will seek to
15 strike these arguments or, in the alternative, seek a surreply
16 brief to address the arguments.

17 THE COURT: All right. Have you spoken to the
18 plaintiffs about this?

19 MR. CARPENITO: No. We just got this brief on
20 Friday.

21 THE COURT: Okay. All right. Did the parties plan
22 to discuss this before anything gets filed?

23 MR. CARPENITO: We can have a meet-and-confer on
24 this.

25 THE COURT: Please.



1 MS. BUTLER: That's what we would suggest, Your
2 Honor.

3 THE COURT: Please. Yes. Thank you. But thank you
4 for the heads-up.

5 All right. Anything further?

6 MR. CARPENITO: Your Honor, if I may, just by way of
7 an update.

8 MR. BELL: Nothing from the plaintiffs.

9 THE COURT: Go ahead.

10 MR. CARPENITO: The Court may recall with respect to
11 a privileged document issue that was discussed in chambers
12 some weeks ago and Your Honor issued a May 8th order holding
13 that that document was protected and not to be used in the
14 litigation.

15 THE COURT: Right.

16 MR. CARPENITO: That document, I can confirm and have
17 confirmed with PLG, has been destroyed in the deposition
18 transcript. The portion of that transcript referencing that
19 document, PLG also confirmed has been destroyed. I just
20 wanted to --

21 THE COURT: Okay.

22 MR. CARPENITO: -- provide that update.

23 THE COURT: All right. Thank you.

24 MR. CARPENITO: Thank you, Your Honor.

25 THE COURT: A couple questions I had were about is

1 there any update from PLG on amended track 3 submissions?

2 MR. BELL: Your Honor, I tried. This is Edward Bell.
3 I'll check on that and get back with you right away.

4 THE COURT: Okay. And then -- this has to do with
5 the future expert supplementations that are referred to in the
6 status report by the parties. I believe that it's the PLG's
7 position, as stated in the report, that these issues can be
8 addressed through normal course and in accordance with
9 applicable procedures. I just had a question as to what PLG
10 may think that those might be at this time. I understand from
11 the Government's response in the report on that issue that
12 that you all continue to discuss this. But I was just curious
13 as to what -- if you know at this time what the applicable
14 procedures for resolving that would be.

15 MS. BUTLER: Your Honor, I believe what that is
16 referring to is the issue of ongoing medical developments.

17 THE COURT: Right.

18 MS. BUTLER: And the problem is that the DOJ would
19 like to set a date by which the plaintiffs can have no further
20 medical developments that are addressed. And that's just not
21 feasible.

22 THE COURT: This can't be a novel issue. I'm sure
23 that in other medical cases --

24 MS. BUTLER: And I think it's --

25 THE COURT: -- completely unrelated to the Camp

1 Lejeune, that this happened. So how do you --

2 MS. BUTLER: I believe --

3 THE COURT: -- how do you cabin these medical
4 developments?

5 MS. BUTLER: I believe the way we would propose is
6 that we handle it on a case-by-case basis, as we have
7 currently --

8 THE COURT: Okay.

9 MS. BUTLER: -- where we have a meet-and-confer and
10 maybe we allow an extra hour of deposition or something.
11 We've handled it on a case-by-case basis to date, and I think
12 we should continue to look at that unless it becomes a
13 problem. Which, right now, it's not a problem.

14 THE COURT: I would imagine that it depends on the
15 person, right?

16 MS. BUTLER: Correct. And it depends on how
17 substantial the medical development is.

18 THE COURT: Yeah.

19 MS. BUTLER: I mean, it's very case specific.

20 THE COURT: What does the Government say about that?
21 Same?

22 MR. CARPENITO: Yes, Your Honor. We would like a
23 date certain when all the conditions and expert opinions are
24 set. We cited some case law where this had been done in other
25 cases to the plaintiffs. I think we agreed with plaintiffs



1 that maybe it's too early right now to do that. I believe
2 that they were open to considering this, but we can have
3 further discussions on it.

4 THE COURT: All right. Anything else?

5 Okay. Anything else from you guys?

6 MR. CARPENITO: Just a date for the next hearing,
7 Your Honor.

8 THE COURT: That's right.

9 Y'all good, Ms. Butler, Mr. Ellis?

10 MS. BUTLER: Yes, Your Honor.

11 MR. ELLIS: Yes.

12 MS. BUTLER: Thank you.

13 THE COURT: So how about the week of -- well, two
14 weeks from this week, the week of 7/21?

15 MR. CARPENITO: Yes, Your Honor. We're going to be
16 in Raleigh for mediation on the 21st and the 22nd. But the
17 23rd or the 24th would work for the United States.

18 THE COURT: Okay. What about y'all?

19 MR. BELL: We have a little bit of a problem on the
20 23rd and 24th. Is there something maybe the next week, Your
21 Honor?

22 THE COURT: I think I've got some availability on the
23 25th. And the week of the -- according to my Outlook
24 calendar, the week of the 28th is completely open.

25 MR. CARPENITO: Your Honor, the week of the 28th,

1 we're all going to be in mediation in D.C. all that week.

2 THE COURT: Okay.

3 MR. BELL: What if we looked at the week after the
4 28th? And that way we could maybe give you some update on
5 what the mediations have done.

6 THE COURT: Would that be helpful? Maybe thinking
7 about the mediations shaping of a conference.

8 MR. CARPENITO: Yeah, we're available that first full
9 week of August. We prefer toward the end of the week,
10 potentially August 8th, if possible. But we're open that
11 week.

12 THE COURT: What does PLG think about the week of
13 8/4?

14 MR. BELL: August 8th is good. I'm trying to think
15 of -- I don't have anything in front of me, but if there's
16 something that makes it where it doesn't work, I'll get right
17 back with you. I think that'll be fine.

18 THE COURT: All right. So set it tentatively for
19 Friday, August the 8th at 11 a.m.?

20 MR. BELL: Yes, sir.

21 THE COURT: Okay. So you've got mediations the week
22 of 7/21 and 7/28; is that right?

23 MR. CARPENITO: That's correct, Your Honor, both
24 weeks. I think we're mediating fifteen out of the thirty.
25 No, that might not be right. Maybe about twelve out of the

Colloquy

1 twenty-five cases.

2 THE COURT: Okay. All right. Thank you very much.

3 MR. BELL: Thank you, Your Honor.

4 THE COURT: We are in recess.

5 THE CLERK: All rise. This Honorable Court is in
6 recess until 1:15 p.m.

7 (Court is adjourned)

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Dated this 12th day of August, 2025.

/s/ 
PAUL T. ABRAMSON

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