UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

DAVID WILLIAM FANCHER,	)	
	)	
Plaintiff,	)	Docket No.
	)	7:23-CV-00275-BO-BM
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

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TUESDAY, NOVEMBER 10, 2026
TRANSCRIPT OF BENCH TRIAL - DAY 2
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

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Official Court Reporter
United States District Court
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INDEX

	PAGE
Closing Argument by Mr. Roberts	241
Closing Argument by Mr. Guynn	251
Rebuttal Closing Argument by Mr. Roberts	277
Court's Closing Remarks	281

Tuesday, November 10, 2026, 9:56 a.m.

P R O C E E D I N G S

09:56:46 THE COURT: Good morning.

09:56:47 MR. ROBERTS: Good morning.

09:56:48 MR. BAIN: Good morning.

09:56:48 THE COURT: I think we'll follow our protocol and
09:56:52 have the plaintiff open and close, and the Government can have
09:56:55 its argument in the middle. Okay. Thank y'all.

09:57:03 I'll hear from you.

09:57:04 MR. ROBERTS: Thank you, Your Honor. It has been a
09:57:08 long, difficult journey for David Fancher. He's been waiting
09:57:13 years for someone to hear his story about his exposure to the
09:57:19 toxic chemicals at Camp Lejeune, his kidney cancer, and how it
09:57:24 changed his life. And we'd like to begin, Your Honor, by
09:57:26 thanking you for listening to Mr. Fancher's story yesterday.

09:57:28 This has been a difficult journey for Mr. Fancher,
09:57:37 and the Government has literally thrown up every conceivable
09:57:42 roadblock and obstacle in his way to seek justice. Your Honor,
09:57:48 I would begin my remarks this morning by asking this question:
09:57:52 If not David Fancher, who? Who could ever possibly recover
09:57:59 under the Camp Lejeune Justice Act, if not David Fancher?

09:58:03 As you heard from the witness stand yesterday,
09:58:07 Mr. Fancher was diagnosed with kidney cancer at 39, which is
09:58:12 virtually unheard of. Dr. Del Pizzo, who, by the way, is the
09:58:16 only medical doctor to take the stand in this case and explain

09:58:22 the etiology of cancer, he did a differential diagnosis, and,
09:58:26 Your Honor, what he said is this gentleman got cancer at 39.
09:58:31 It was a large tumor, virtually unheard of, and the
09:58:35 Government's going to stand up and say it's idiopathic, and
09:58:39 I'll get to that a little later in my remarks. He didn't have
09:58:46 a single risk factor, Your Honor, not one. Didn't smoke, not
09:58:49 obese, nothing. He got it at 39.
09:58:52 And, Your Honor, I think it's important to put in
09:58:55 perspective what we are talking about when we talk about Camp
09:58:59 Lejeune and Hadnot Point. This is an exhibit that I know Your
09:59:08 Honor has seen, but I think it speaks volumes about why we're
09:59:12 here in the courtroom this morning.
09:59:17 This is a note that was entered in March of 1981, and
09:59:21 you'll recall that Mr. Fancher was still on base during this
09:59:24 period of time. And, again, Your Honor, this is before all the
09:59:28 lawyers showed up. There was no Camp Lejeune Justice Act. The
09:59:31 lawyers hadn't gotten involved. And this note from the
09:59:34 Government said, "Water is highly contaminated with other
09:59:39 chlorinated hydrocarbons, solvents, highly contaminated, 1981."
09:59:43 The other important point, Your Honor, that we'd like
09:59:50 to emphasize to the Court is how much the Government has paid
09:59:55 to clean Camp Lejeune up. And this is an interrogatory
10:00:02 response that they gave us. This is only through 2023.
10:00:06 They've spent $321 million cleaning these contaminants out of
10:00:11 the water at Camp Lejeune. They're still not through. They're

10:00:14 out there today continuing to try to remediate this site. So
10:00:18 for them to suggest to Your Honor that it's no big deal, we
10:00:24 would say the evidence absolutely shows otherwise, Your Honor.
10:00:27 The important thing to understand in this case is how
10:00:33 the Government has approached their defense. What they have
10:00:37 done is they have tried to set a bar so high that nobody can
10:00:41 get over it. You've heard about Dr. Julie Goodman. I started
10:00:46 keeping count with how many times her name came up, and I think
10:00:49 I quit yesterday at, like, 20.
10:00:51 Where's Dr. Goodman? She's nowhere to be found. Two
10:00:57 cases tried. She is the cornerstone of their case, Your Honor.
10:01:00 They paid her $7 million. She was the epidemiologist that Dr.
10:01:05 Bailey testified yesterday selected the one study that they
10:01:10 relied on, the Charbotel study, out of 171. Dr. Bailey did the
10:01:17 epidemiology. So she is the cornerstone of their entire case,
10:01:21 and she's never shown up to testify. I think that speaks
10:01:26 volumes, Your Honor.
10:01:26 So what does the Government say the Court should do?
10:01:34 The Government says ignore all of the water modeling that was
10:01:39 done by the Government. It was suggested yesterday by my
10:01:43 friend during his opening statement that we could have hired
10:01:46 hydrologists and done our own water model. Well, Your Honor,
10:01:51 the Government spent $7 million, 7.2 million, I believe, in an
10:01:56 interrogatory answer, preparing the water modeling. To suggest
10:02:00 that we could have gone and gotten people to do a better job, I

10:02:03 just don't -- I don't get that one, Your Honor.

10:02:04 The water model was peer reviewed. It was award-
10:02:08 winning. They had 20 scientists with the Government before the
10:02:14 lawyers showed up to prepare the water model, and yesterday it
10:02:19 was suggested that we could not use the water model to support
10:02:23 our case.

10:02:23 Now, I think it's important for Your Honor to
10:02:29 consider exactly what the ATSDR said about the water model.
10:02:34 And this is Exhibit 3014 in this case. It's a United States
10:02:43 Government exhibit. It says, "ATR's exposure estimates cannot
10:02:49 be used alone, alone to determine whether you or your family
10:02:55 suffered any health effects as a result of past exposure to
10:03:00 TCE-contaminated drinking water at Camp Lejeune."

10:03:03 Your Honor, we're not using the water model alone.
10:03:05 It is one piece of the puzzle. We've used the water model.
10:03:10 We've used testimony from these Marines as to where they were
10:03:13 on base, when they were on base, how long they were on base.
10:03:16 We've looked at the epidemiology. So we're not saying this --
10:03:20 the water model is the be-all and end-all, but it is certainly
10:03:23 an important piece of the puzzle that these plaintiffs have
10:03:27 every right to be -- to be able to use.

10:03:30 Your Honor, what the Government is telling the Court,
10:03:37 ignore the water model, point blank. When Morris Maslia
10:03:43 testified in the *Mousser* case, Your Honor will recall they
10:03:46 cross-examined him extensively about the water model. It went

10:03:50 1 nowhere, respectfully. That cross-examination went nowhere.
10:03:53 2 They have experts to talk about the water model. But, again,
10:03:57 3 not a single expert for the United States came in to rebut one
10:04:04 4 thing that Morris Maslia had to say.
10:04:06 5 Your Honor, respectfully, I'm going to submit to the
10:04:13 6 Court what has gone on here is the United States Government
10:04:19 7 paid billions of dollars for a bunch of hired gun professional
10:04:25 8 experts to come in and try to confuse the issue. Julie
10:04:29 9 Goodman, 7 million; Dr. Bailey, almost 2 million, if memory
10:04:34 10 serves.
10:04:34 11 And what they've done, Your Honor, is they've tried
10:04:39 12 to say if we don't meet the Charbotel study, we're out of
10:04:43 13 court, and the reason they do that is they set that up at 335
10:04:48 14 parts per million that no Marine ever could possibly meet. And
10:04:52 15 they say there's -- you know, there's a threshold for TCE, but
10:04:57 16 Your Honor will recall in some of the orders, or one of the
10:05:00 17 specific causation orders, I believe Your Honor signed, you can
10:05:03 18 certainly extrapolate back. From that -- from that amount, our
10:05:08 19 experts have extrapolated back and said it was enough to cause
10:05:11 20 Mr. Fancher's kidney cancer.
10:05:12 21 Now, let's look at what the EPA actually said about
10:05:18 22 TCE. And you'll recall, Dr. Bailey from the witness stand
10:05:22 23 yesterday said, oh, if you're not at 335 parts per million
10:05:26 24 under the Charbotel study, you're out; the EPA endorses that.
10:05:31 25 Well, here's what the EPA actually said in its press

release, and this is Plaintiff's Exhibit 240. They said, "TCE is an extremely toxic chemical known to cause liver cancer, kidney cancer and non-Hodgkin's lymphoma. TCE also causes damage to the central nervous system, liver, kidneys, immune system, reproductive organs, and fetal heart defects. These risks are present even at small concentrations."

So to the extent Dr. Bailey wants to talk about the EPA, let's put it in perspective. The EPA never said if you don't get to 335 parts per million, you don't have a case. That's not -- that's not what happened.

Now, Your Honor, you will recall that Dr. Hatten came in and testified about the studies that showed that TCE causes kidney cancer, study after study after study. Other positive associations, 211. Statistically significant associations, 10. Other positive associations, 69. So study after study shows TCE causes kidney cancer. And, Your Honor, it's really incredible that Dr. Bailey would get up there and suggest to Your Honor that if you don't meet 335 parts per million, you don't have a case.

Here's another chart, Your Honor. These are some of the other studies. I think Dr. Del Pizzo may have mentioned this in his testimony. You've got the Moore study, the ATSDR 2018 Camp Lejeune Marine study, the Andrew study, the Bove study, another Bove study. So Mr. Fancher certainly fits -- maps out on those studies in a way that would demonstrate that

10:07:41 this TCE was capable of causing him kidney cancer. Now, Your
10:07:51 Honor will recall this exhibit. This was Mr. Fancher's time on
10:07:58 base from '79 to '81. He's right at the height of the
10:08:04 contamination at Camp Lejeune.
10:08:05 Your Honor, one other person didn't make it to the
10:08:20 courtroom either, and that's Dr. Walter Stadler. You'll recall
10:08:24 Dr. Stadler was the -- was the M.D. that talked about
10:08:29 Mr. Mousser's smoking. He went on and on about smoking, but
10:08:35 what Dr. Stadler also did is he did a differential diagnosis,
10:08:42 and he came to the same conclusions that Dr. Del Pizzo did.
10:08:46 The Government didn't call Dr. Walter Stadler in this case
10:08:50 either.
10:08:50 And why didn't they call Dr. Stadler? I would submit
10:08:58 to Your Honor that they didn't call Dr. Stadler because
10:09:01 Dr. Stadler's testimony does not fit in with the Government's
10:09:08 story that the water at Camp Lejeune doesn't increase your risk
10:09:14 of kidney cancer.
10:09:15 He was asked in his deposition:
10:09:17 "And do you see one, two, three, four -- fifth line
10:09:20 down says 'Camp Lejeune'?"
10:09:22 "I do."
10:09:22 "Do you agree with that?"
10:09:23 "I agree that there is some increased risk of kidney
10:09:28 cancer from individuals that were stationed at Camp Lejeune."
10:09:31 That's why they couldn't call Dr. Stadler. So,

again, the only M.D. that testified in the case was Dr. Joseph Del Pizzo.

Your Honor, I would say to the Court that the issue of causation is about as straightforward as it gets. We've got the EPA saying TCE is extremely toxic, known to cause kidney cancer. We've got Benjamin Hatten, the toxicologist who looked at all the studies, reviewed the literature, and also concluded that the Camp Lejeune levels were sufficient to cause kidney cancer.

Now, as far as specific causation, you heard Dr. Reynolds explain her calculation. I don't think the Government fully understood exactly what she did. She looked at the days that Mr. Fancher was on base and was off base. She removed those days, and she calculated the days that he was exposed to this toxic water at Camp Lejeune.

They want to talk about background risk. Your Honor, you've heard Dr. Joseph Del Pizzo talk about background risk. These are the risk factors for kidney cancer that Dr. Stadler identified in his deposition. Not a single one applies to David Fancher other than his exposure to the water at Camp Lejeune. That's the only one.

Again, Dr. Del Pizzo explained to Your Honor how unusual it was for a man like Mr. Fancher to get kidney cancer at 39. This business about it being idiopathic, Your Honor, I would submit to the Court is just purely a red herring. You

know, I think Dr. Del Pizzo said idiopathic is when you don't have a -- there's no cause that you can attribute to it so -- he said a lot of people don't know what they're exposed to. But here, he did a differential diagnosis and said all -- everything pointed in one direction, and that was to Mr. Fancher's exposure to the water at Camp Lejeune.

Your Honor, if I could take a few moments and just talk about damages. I know you saw this picture yesterday. This is Mr. Fancher and his -- and the bulge that's on his right side. Your Honor, he's lived with that for 30 years. And you've heard how he wears that girdle 24 hours a day, 7 days a week, and he has for the last 30 years, and he's going to continue to do so.

But what speaks volumes, Your Honor, I think, about the human spirit and the desire to persevere, Mr. Fancher kept going. He didn't let this stop him. He went back to the Volusia County School Board, and you heard he worked for another 33 and half years struggling with that bulge, the pain from the bulge. He said he hadn't been able to sleep with his wife in years. He has night spasms. It's been a difficult, difficult road for Mr. Fancher, and I would submit to Your Honor what a -- what a tremendous man to persevere and overcome what happened to him.

Now, Your Honor, the case is, obviously, going to be placed in your hands to determine damages, and, you know, I

know this is a difficult question. There's no mathematical formula, and, Your Honor, I'm going to just suggest some numbers that we think would be appropriate for Your Honor to consider.

The scarring and disfigurement, the bulge and his flank scar, we would suggest a reasonable number would be $200,000. Loss of use of a body part, he lost his kidney and two ribs. We would suggest a reasonable number to Your Honor, is $350,000. Loss of enjoyment of life and pain and suffering, both past, present and future, Your Honor, we selected a per diem of $225 a day, again, reflecting the fact that the man wears this girdle 24 hours a day, 7 days a week, and if you look at his days since diagnosis and the days remaining in his life expectancy, it's 16,445 days of pain and suffering. You multiply that by $225, it gets you $3,700,125 for a total damage award, of $4,250,125.

Your Honor, I'll briefly discuss the offset. The first element of their offset is medical expenses, and I think you heard from the *Mousser* trial we basically agreed that's a wash. It's, like, $4,000. I'm sorry, $4,542. That would be a wash. Their past and future VBA benefits are about $103,674.

Your Honor, you heard Ms. Yount testify when I cross-examined her yesterday. I would submit, Your Honor, that it's pure speculation. She didn't consider Mrs. Fancher's life expectancy. If Mrs. Fancher predeceases Mr. Fancher, it would

10:16:31 reduce her number. Also, you know, he's got these bilateral
10:16:36 conditions that are degenerative in nature. So if the non-Camp
10:16:39 Lejeune disabilities increase, that would also affect her
10:16:47 calculations, would bring them downward.
10:16:49 Your Honor, again, I want to thank you for your time
10:16:56 and attention that you've given to this important case for
10:17:00 Mr. David Fancher. His long journey to find justice after
10:17:07 30-plus years is at an end, and we're going to place the case
10:17:12 into Your Honor's hands, and we greatly appreciate your time.
10:17:16 Thank you.
10:17:16 THE COURT: I'll hear from the Government with their
10:17:25 closing argument.
10:17:27 MR. GUYNN: Thank you. Good morning, Your Honor.
10:17:50 THE COURT: Good morning.
10:17:50 MR. GUYNN: I want to acknowledge that this case is
10:17:56 being decided in the context of a very real human story. When
10:18:01 I heard Mr. Fancher and his wife testify about how they felt
10:18:05 and what they experienced when he was diagnosed with kidney
10:18:08 cancer, that spoke to me. That resonated with me, and I bet it
10:18:13 did with everybody in this courtroom because I think that we've
10:18:16 all been through something like that. We've had someone in our
10:18:19 life who's diagnosed with a terrible illness, and we realize
10:18:22 our world is about to change.
10:18:24 And when that happens, we ask, how did this happen to
10:18:29 me? How could this happen to my family? And we have to figure

10:18:34 out what life looks like going forward. And as we do that,
10:18:37 Your Honor, we ask the question again and again, how did this
10:18:41 happen? How did this happen? Some of us turn to faith, turn
10:18:44 to our doctors, and then we listen to the messages that are out
10:18:48 in society.
10:18:49 And, Your Honor, there has been an information
10:18:56 campaign, I would say a disinformation campaign that has been
10:18:59 waged for decades to answer that question for Camp Lejeune
10:19:03 veterans and their families, that when they're asking
10:19:06 themselves, how could this happen to me, there has been a media
10:19:10 campaign for 20 years saying your government betrayed you, your
10:19:14 government poisoned you, and they hid it, and they're trying to
10:19:18 avoid it. And, Your Honor, what we have learned as we have
10:19:22 looked at the science and the evidence in this case, is that is
10:19:25 not true. That was never true.
10:19:28 The question that you're asked to decide, Your Honor,
10:19:33 is whether the evidence proves that Mr. Fancher actually
10:19:38 encountered chemicals at the levels that could cause his kidney
10:19:41 cancer. Now, Your Honor, as I predicted in my opening
10:19:48 statement, Mr. Fancher's team has not presented evidence to
10:19:57 answer each of these critical questions, but rather, they've
10:20:00 asked you to make a number of assumptions: Assume that the
10:20:04 ATSDR's water model can tell you what one individual drank at
10:20:10 Camp Lejeune, even though the agency that developed the model
10:20:13 says it cannot be used for that purpose; assume that because a

10:20:17 chemical has been associated with kidney cancer at an
10:20:21 occupational exposure level, that it can cause kidney cancer at
10:20:25 an environmental exposure level like what's been predicted at
10:20:28 Camp Lejeune; assume that because Mr. Fancher developed kidney
10:20:33 cancer, the contamination must have caused it, even though
10:20:37 there's a much more plausible explanation.
10:20:38 Those assumptions are not supported by the evidence,
10:20:42 Your Honor, but Mr. Fancher's lawyers need you to make them
10:20:46 because they haven't met their burden of proof, and I want to
10:20:49 go through each element of Mr. Fancher's case and demonstrate
10:20:52 how and why the evidence does not link any of these -- make
10:20:59 this case and why he can't prevail.
10:21:01 But before we do that, Your Honor, I want to address
10:21:03 an argument that Mr. Fancher's lawyers have now made at both
10:21:06 bellwether trials, including just now. Mr. Fancher's lawyers
10:21:11 have argued that the United States's arguments about the
10:21:14 science, they need to be wrong; you have to find them wrong,
10:21:18 Your Honor; otherwise, no one will recover under the Camp
10:21:21 Lejeune Justice Act. I think the way they put it was, "If not
10:21:25 David Fancher, then who?" That's not a legal argument. That's
10:21:30 a plea, and that's a plea to decide this case on something
10:21:35 other than the evidence that the parties have presented in this
10:21:38 case.
10:21:38 Now, as I mentioned yesterday, Your Honor, the Camp
10:21:42 Lejeune Justice Act is not a compensation scheme. If every

10:21:49 person who brought a Camp Lejeune Justice Act lawsuit failed,
10:21:52 Your Honor, and proved their elements, that would not mean that
10:21:56 we have frustrated Congress's intent. It would mean that those
10:22:00 claims have been evaluated under the law that Congress enacted
10:22:04 and that you, Your Honor, and your colleagues on this Court
10:22:06 have construed and that the parties have presented evidence.
10:22:10 That's what that would mean.
10:22:10 And it's really important. I think it's unfair what
10:22:15 the plaintiffs are trying to put on the Court's shoulders here.
10:22:18 You're not being asked to decide whether the Camp Lejeune
10:22:21 veterans deserve support. That is not your job. Congress has
10:22:25 already provided substantial benefits for these people, for
10:22:28 veterans and civilians who were present at Camp Lejeune,
10:22:32 including through the Janey Ensminger Act. Your Honor, because
10:22:35 of legislation that was passed based on, you know, reporting
10:22:38 about these folks, Congress has acted. They have -- they
10:22:42 have -- they have provided generous health care and disability
10:22:46 benefits, service-connected presumptions for some of the
10:22:49 diseases that have been mentioned in this lawsuit, which are
10:22:51 not available to other veterans. Congress has made the policy
10:22:57 judgment about how best to care for those who served at Camp
10:22:59 Lejeune and make them whole. But these benefits, Your Honor,
10:23:02 they do not reflect a scientific finding that exposure to Camp
10:23:06 Lejeune water caused anything.
10:23:08 Furthermore, after Congress passed the Camp Lejeune

10:23:13 Justice Act, Your Honor, and before the ATSDR studies about the
10:23:17 Camp Lejeune population, which we'll talk about later in the
10:23:20 general -- later in the general causation context, the United
10:23:23 States, the Department of Justice, and the Navy, we sprung into
10:23:26 action. We created an offramp to litigation so that folks --
10:23:31 certain plaintiffs and claimants who had brought causes of
10:23:36 action who wanted an offramp could get paid, and we've paid
10:23:40 people nearly a billion dollars in judgment -- in settlements
10:23:44 in this case. So the Camp Lejeune population, Your Honor, is
10:23:48 being taken care of, Your Honor, including Mr. Fancher.
10:23:51 So what is an appropriate basis, then, for you to
10:23:57 make a decision? It's what the Camp Lejeune Justice Act calls
10:24:01 for. Your Honor, this is a tort cause of action. It's a mass
10:24:05 tort cause of action, and it can be compared to the Federal
10:24:08 Tort Claims Act, which Your Honor is very familiar with.
10:24:11 How is this lawsuit different? The Camp Lejeune
10:24:15 Justice Act removes some of the United States's traditional
10:24:18 defenses like the discretionary function exception, like the
10:24:22 analogous private liability, which Your Honor mentioned at the
10:24:24 last trial. If you recall, many of these folks did bring
10:24:28 lawsuits in the early 2000s and the 2000-teens, and their
10:24:32 lawsuits failed because of the North Carolina statute of
10:24:36 repose. The Camp Lejeune Justice Act also removes the United
10:24:40 States's defenses under the *Feres* doctrine, and then it
10:24:44 modifies their burden of proof, Your Honor, and it lowers it

10:24:46 from 51 percent to 50. That's it.

10:24:50 This is not a compensation program. They have to
10:24:55 come and prove their case. We haven't -- DOJ hasn't thrown up
10:25:00 any roadblocks in this Court, Your Honor. Congress has passed
10:25:03 a law. You and your colleagues have construed it, and we are
10:25:06 now trying to litigate under that framework. There's nothing
10:25:10 improper about that. So he's required to come forward with
10:25:15 proof.

10:25:15 So, Your Honor, I'm now going to go through each of
10:25:19 the elements, and I just -- as the fact finder, Your Honor, I
10:25:22 want to make sure that I'm answering the questions that you
10:25:25 have. So I just want to invite Your Honor, if you have
10:25:27 questions about any of the elements I'm going through, I'm here
10:25:31 now. We'll have post-trial briefing and findings of fact, but
10:25:33 I'd like to answer your questions if you have them.

10:25:35 Okay. So exposure, Mr. Fancher was required to prove
10:25:42 that his level of exposure to the water contamination and what
10:25:46 that was, but the evidence he's presented fell short, Your
10:25:49 Honor. The ATSDR water model was built to estimate historical
10:25:57 conditions at Camp Lejeune, historical levels of contamination
10:26:02 in the water. And Your Honor asked a very perceptive question
10:26:05 yesterday when you were looking -- when we were -- when one of
10:26:07 the witnesses was talking about what the ATSDR did, and you
10:26:10 said, "It looks like there's some variation in what may have
10:26:13 been measured or may be projected," and that's exactly right.

10:26:15 So in the ATSDR's water model, Your Honor, you can
10:26:19 see here -- and this is a figure from their report. This pink
10:26:23 number, this reflects what their model is predicting is the --
10:26:27 is the level of concentration across the entire base over time.
10:26:33 And then you see this gray area, Your Honor, and that's a
10:26:36 massive boundary. What that reflects is if they were to just
10:26:40 use different reasonable assumptions, what would the different
10:26:44 levels of projected contamination concentration look like.
10:26:48 And, Your Honor, for the time that Mr. Fancher was present at
10:26:51 Camp Lejeune, that could be anywhere from 700 micrograms per
10:26:56 liter of TCE or 20, 700 to 20. That's massive. And that's
10:27:04 exactly why the ATSDR said, Your Honor, that its model was
10:27:09 unfit to reconstruct individual exposure, even though that's
10:27:12 all they've done in this case.

10:27:18 So I want to remind you of this quote, Your Honor,
10:27:21 and my friend mentioned it during his closing just now. The
10:27:28 ATSDR has said that its exposure estimates cannot be used alone
10:27:34 to determine whether you or your family suffered any health
10:27:36 effects as a result of past exposure to TCE-contaminated
10:27:40 drinking water at U.S. Marine Corps Base Camp Lejeune.

10:27:43 Now, they focus on this word "alone," but alone is
10:27:49 not doing the work that they say it's doing. They act as
10:27:54 though the principle of garbage in, garbage out does not apply,
10:28:00 but it does. The ATSDR specifically said, repeatedly, these
10:28:05 are just population-level estimates; they cannot be used to

10:28:10 reconstruct individual levels.

10:28:11 And, Your Honor, I gave you the example of ZIP codes
10:28:15 in the census. That's what we're dealing with here. It is --
10:28:18 it would just be nonsense to use the average income in a ZIP
10:28:23 code to try to calculate a specific individual's damages in a
10:28:27 case, but that's what they're trying to do here. The ATSDR
10:28:31 said it couldn't be used for that, but they did it -- do it
10:28:34 anyway. And it also said they couldn't be used for daily
10:28:37 levels, that the model certainly couldn't be used to calculate
10:28:40 specific daily levels of exposure, but that's also what
10:28:43 Dr. Reynolds did.

10:28:43 Let's talk a little bit more about Dr. Reynolds.
10:28:49 Dr. Reynolds testified that she used the ATSDR's monthly
10:29:04 concentration of contaminants in finished drinking water to
10:29:07 determine concentration of contaminants in drinking water at
10:29:10 Camp Lejeune. So they treated these concentrations as though
10:29:16 they're individual exposure values, and then they multiplied
10:29:19 them by the amount of water that Mr. Fancher drank and the
10:29:22 number of days he was there. Based on what the ATSDR has said
10:29:26 about its own model, that's game over. They've got no evidence
10:29:31 of exposure. But on top of that, she didn't even do her math
10:29:35 right. She incorrectly calculated his micrograms per liter
10:29:39 month by accepting unrealistic water intake rates and failing
10:29:43 to account for times when he was off base.

10:29:48 Okay. So Mr. Fancher's experts threw caution to the

10:30:04 wind, Your Honor, and they used the ATSDR water model for a
10:30:08 purpose that the ATSDR expressly said it couldn't be used.
10:30:11 We're left with only guesswork about Mr. Fancher's actual level
10:30:15 of exposure. And so while somebody like you and me, Your
10:30:19 Honor, we might think based on what we think we know about Camp
10:30:22 Lejeune, that he would have been exposed to contaminants, we
10:30:24 just don't know, and we don't know what the level was, and
10:30:27 we've got no evidence to connect the dots.
10:30:29 All right. So on general causation, Your Honor, I
10:30:33 want to address two points that they raised before I take a
10:30:37 look at the evidence itself. This question of where is Julie
10:30:40 Goodman --
10:30:41 THE COURT: Where is what?
10:30:42 MR. GUYNN: Where is Julie Goodman?
10:30:43 THE COURT: Oh.
10:30:44 MR. GUYNN: You know, we heard repeatedly -- you
10:30:45 know, it almost feels like Julie Goodman is on trial here.
10:30:48 They say that she is the cornerstone of our case. Not so. You
10:30:51 heard from Dr. Peter Shields. You've heard from several of our
10:30:51 other general causation and specific causation experts. I
10:30:59 think we've put on a pretty compelling case. We don't -- we
10:31:02 don't need to use every expert.
10:31:04 This Court admonished the parties to be efficient in
10:31:06 the way they use their time in the courtroom, and we were -- we
10:31:09 did that. We responded to that. To sit here and have them

criticize us and say that means that there's something untoward going on here, that's not appropriate. That's not fair.

And it's interesting that when they -- when they cross-examine Dr. Peter Shields or Dr. Bailey or other experts, they're frequently not even cross-examining those people about the work they did, but they're just trashing Julie Goodman and trying to tar and feather our experts with somebody who's not even here.

Also, you know, there's this constant, like, complaining about the amount of money that the United States has spent to protect the taxpayer. Your Honor, the face value of these cases is $330 trillion. This is -- this is the biggest liability on the United States's balance sheet in the history of this country. Of course, the United States is going to hire reliable experts and have them put together work so that we can defend these bellwethers, which will inform how we resolve the entire inventory of claims. That's a very unfair criticism to make of the United States.

All right, enough pearl clutching, Your Honor. Mr. Fancher has identified five contaminants in the water: TCE, PCE, DCE, benzene and vinyl chloride. And I think -- I think I just heard that they've now abandoned these first four because we didn't hear any argument about them. This case is about TCE.

But just to cover that quickly, Your Honor, there is

10:32:38 just -- there is -- the evidence just does not support
10:32:41 causation of kidney cancer by any of these -- of these four
10:32:45 chemicals at any level of exposure, let alone at Camp Lejeune.
10:32:48 And it's not surprising that, you know, Dr. Hatten couldn't
10:32:52 come in and find any statistically significant or reliable
10:32:55 evidence that they do because the agencies that have reviewed
10:32:58 this, IARC, the International Agency for Research on Cancer,
10:33:00 and others have never found an association between these
10:33:06 chemicals and kidney cancer. Dr. Hatten is the first one who
10:33:10 said that he did, and he was wrong.

10:33:12 Now, let's be candid about TCE. Some scientific
10:33:17 literature does support that there may be an association
10:33:20 between TCE and kidney cancer at a high level of exposure, but
10:33:24 as Your Honor heard, that's only -- that's not even half the
10:33:29 story.

10:33:29 Your Honor heard from Dr. Peter Shields, and he
10:33:38 explained to Your Honor the process that an epidemiologist
10:33:42 needs to use, to gather all the epidemiological evidence, weigh
10:33:49 it, understand it, and then figure out what does it tell us
10:33:53 about causation. You can't just look at one study. You got to
10:33:56 look at a bunch. Some studies are higher quality than others.
10:34:00 And then you use that to try to make a -- make a determination
10:34:05 about causality, and that's what he did.

10:34:07 He walked this Court through this slide, Your Honor.
10:34:20 Now, what this is, is it's a set -- it's a set of arrows that

represent the different levels of exposure in the high-quality studies looking at TCE. Now, you've heard a lot about Charbotel 2006, and you'll hear about it more a little bit later, but that is the highest quality occupational exposure study upon which the EPA hangs its hat, but there are others as well, like Raasch-Nielsen.

And what these cases -- what these studies show is that a -- at a 60 to 90 part per million level, or at an 885 part per million level, there is an association between TCE and kidney cancer. But here, Your Honor, at the highest estimated level of TCE exposure at Camp Lejeune, even higher than we estimate, or they estimate for Mr. Fancher, there is -- I mean, these numbers are just completely dwarfed. Remember, Your Honor, it's like a person standing next to the Washington monument stacked 28 times.

Now, we're not just saying, Your Honor, high exposure, association; low exposure, no association; you can just infer that. No, we're showing you, Your Honor, that there are studies in this midrange that break the dose response argument that they're -- that they're trying to ignore. The Morgan 1998 study, the Axelson 1994 study, they looked at occupational exposures in between these studies, and they found no association of TCE and kidney cancer. So, Your Honor, it's clear this is the dose response. I could --

THE COURT: So why did the plaintiff get kidney

10:36:03 cancer when he was 39 years old?
10:36:05 MR. GUYNN: Well, Your Honor, I think that you heard
10:36:08 Dr. Del Pizzo recognize that the SEER's data is clear that
10:36:12 people -- that cancer strikes at any time, including the young,
10:36:16 and at least 5 percent -- 5 to 6 percent of kidney cancer
10:36:21 patients are in their mid to late 30s.
10:36:23 THE COURT: So it's just fortuitous that he was in a
10:36:26 contaminated area?
10:36:29 MR. GUYNN: Fortuitous? What I would say is -- what
10:36:33 I would say, Your Honor, is if we want to figure out if that
10:36:36 contamination causes kidney cancer, let's look at the science,
10:36:39 and that's what we're doing now because there are other
10:36:42 explanations besides water contamination that could explain it,
10:36:46 and he threw those out, and I'll get to that. Thank you, Your
10:36:51 Honor.
10:36:51 Now, we heard just now about some testimony that was
10:36:59 provided by Dr. Stadler in the last trial. He's not here. And
10:37:03 actually, his evidence has not been admitted in this trial, but
10:37:05 I'll address it anyway. He did say that there -- that he
10:37:09 thought that there might be increased risk of getting kidney
10:37:12 cancer if you're exposed to TCE. Yeah, sure, you're more
10:37:17 likely to get kidney cancer as you move along the dose response
10:37:20 line. But, like, increased risk doesn't mean statistically
10:37:24 significant. That's not quantified.
10:37:27 I also heard them say that the EPA says that --

10:37:33 sorry, Your Honor -- the EPA says that, you know, TCE is very
10:37:45 dangerous; it is -- it could be dangerous even at low
10:37:49 concentrations, even at 330 parts per minute per million. I
10:37:53 don't disagree. That is way lower than this. This number is
10:38:00 much, much, much higher than that number that EPA is saying can
10:38:03 still be dangerous. I mean lower, Your Honor.
10:38:07 THE COURT: So the burden of proof is equipoise.
10:38:10 It's as likely so as not so; isn't that right?
10:38:15 MR. GUYNN: For causation, yes, Your Honor.
10:38:16 THE COURT: Yeah.
10:38:17 MR. GUYNN: Yes.
10:38:20 THE COURT: So if contaminated water was available
10:38:23 and you were exposed to it, that might be as likely so as not
10:38:28 so.
10:38:29 MR. GUYNN: Well, I think that -- I think that to --
10:38:31 to even get into the conversation that it was as likely as not,
10:38:35 you have to show that there's scientific evidence that that can
10:38:39 even happen, and we don't have that evidence. We have no
10:38:43 evidence whatsoever that contaminants at this level -- the
10:38:47 science just does not support that contamination at this level
10:38:50 can cause kidney cancer.
10:38:51 THE COURT: Okay.
10:38:51 MR. GUYNN: So it's not as likely as not.
10:39:03 Okay. So, now, looking back at this slide, Your
10:39:10 Honor, the situation changes dramatically when we turn to --

10:39:18 well, actually, Your Honor, right before we move on from this,
10:39:24 what I just said is that there's no evidence that there is any
10:39:28 association at low levels. But I do want to acknowledge that
10:39:32 there's one study, Andrew 2022, that shows a level of exposure
10:39:41 in this range, and it suggests that there might be a risk of
10:39:44 kidney cancer.
10:39:44 But the authors of that study, Your Honor, and the
10:39:47 reason that the EPA doesn't rely on that, and the release --
10:39:50 the reason that the United States's experts don't rely heavily
10:39:53 on that study is because even the authors recognize they had no
10:39:57 reliable data about the water consumption of the subjects of
10:40:01 their study. That's a low-quality study, Your Honor. That's a
10:40:05 significant problem with that study, and so that's why we don't
10:40:08 include it as something that we think has a lot of explanatory
10:40:12 value.
10:40:12 Okay. So we just heard about Dr. Hatten,
10:40:18 Dr. Benjamin Hatten. Oh, sorry, Your Honor. I just wanted to
10:40:24 remind you, so now that we're talking about Camp Lejeune
10:40:26 exposure levels, that takes us here. The evidence does not
10:40:32 support causation of kidney cancer at Camp Lejeune TCE levels.
10:40:36 It is not at least as likely as not. It's not likely at all.
10:40:41 There's no -- there's no strong proof for it. There's no
10:40:44 support for it.
10:40:45 THE COURT: What percentage of the claimants in this
10:40:49 entire litigation have kidney cancer? I'm struggling with that

item. Do you have any idea?

MR. GUYNN: Mr. Bain, can I defer to you on the percentages?

MR. BAIN: Well, I think it's about 23,000. Is that about right?

MR. ROBERTS: About, yes, sir.

MR. BAIN: 23,000 out of 400,000, so whatever that percentage is.

THE COURT: Okay. So that would be maybe 4 or 5 percent, if you do the math?

MR. GUYNN: I'm a lawyer, Your Honor, so I can't help you with the math, but I'm going to defer to you. Sure, let's say 4 or 5 percent.

Okay. So Dr. Benjamin Hatten --

THE COURT: So is kidney cancer -- of all of the kinds of ailments that came -- that are part of this litigation, where does kidney cancer stand? Is it the most prominent? Is it the least prominent?

MR. GUYNN: It's definitely not one of the most prominent. Look, it's one of the Track 1 diseases that the parties and the Court decided to focus on.

THE COURT: Yeah, but that doesn't tell me what the ratio is.

MR. BAIN: I believe it's in the top ten of the diseases claimed in the -- in the amounts. We have a -- we

have a list that we can get Your Honor, if you'd like.

THE COURT: What's the highest incident?

MR. BAIN: The highest one is called neurobehavioral effects. That's the highest incidence of claims that we've received.

THE COURT: What kind of cancer is that?

MR. BAIN: That's actually not cancer at all. It's like you have, like, problems with your neurological functioning, like, dizziness or --

THE COURT: Oh, really?

MR. BAIN: -- tremors or things like that.

THE COURT: And that's supposedly caused by the water?

MR. BAIN: That's what -- that's what the most people have claimed, yes.

THE COURT: Have you settled any of those claims?

MR. BAIN: No, we don't believe that there is any connection.

THE COURT: Okay.

MR. BAIN: It's not -- it's not part of the settlement program that Mr. Guynn discussed.

THE COURT: Okay. So as to cancers, what's the hierarchy in cancers?

MR. BAIN: Well, a lot of the Track 1 cancers that are part of the cases that are now being litigated are probably

among the top ten of claims that we've seen. And we can get you a list if you'd like, Your Honor.

THE COURT: No, that's okay.

MR. GUYNN: Thank you, Your Honor. So as you -- as you heard, when, you know, Dr. Shields was, you know, commenting about some of his concerns about Dr. Hatten's methodology, and I don't want to get into the weeds of his methodology, but one of the biggest concerns that he had was that Dr. Hatten only reviewed a small subset of the available epidemiological evidence about TCE and kidney cancer, and as a result, that caused him to not consider lots of evidence that could have informed, you know, his decision.

I think, though, that one of the things that is -- I want to point out two very important things about another thing that Dr. Hatten did, is that in his initial expert report, he jettisoned statistical significance as a tool to govern his work in this case. And that was a problem, and this Court found that that was a problem, and so he came into this Court and he did something new.

Now, this Court said that general causation requires statistical significance. "A statistically significant relationship only exists when the odds ratio is expressed with a 95 percent confidence interval, and that interval does not include an odds ratio of one or below."

So he initially failed to indicate whether a study

that he considered to be persuasive was statistically significant. So at trial, Your Honor, he put together a set of tables that he wanted you to consider, and he did that based on some studies that had been done by the ATSDR.

Now, before we look at his -- before I tell you all the problems with what he tried to do in this Court, Your Honor, I just want to remind you, we've already heard about these studies, and we've already heard about how even the ATSDR understood its studies. Just as a reminder, Your Honor, so there's -- there's no studies of these chemicals, TCE, PCE, DCE, benzene, vinyl chloride, standing alone that support causation at the Camp Lejeune level, so they had to turn to something else, and they tried to turn to this ATSDR publication about the Camp Lejeune population they were studying.

Dr. Bove, who is actually a witness in this case, and I'll describe some of his testimony shortly, but they did a study where they took a look at the Camp Lejeune population, hundreds of folks from Camp Lejeune, and they compared their incidence of cancer with the general population with Camp Pendleton, and then they actually compared the Camp Lejeune population, which was very clever, with different levels of exposure at Camp Lejeune. They were using the dose response concept, Your Honor, to see, well, do we see that folks who were at Camp Lejeune for a shorter period of time are less sick

than the middle or longer period.

THE COURT: What was the finding?

MR. GUYNN: Any statistically increase against the -- against the general population? No. Any statistically significant difference with Camp Pendleton? No. No. Any statistical difference between folks who were at Camp Lejeune? No, no, no. No, Your Honor, no statistically significant increase.

And, in fact, look at their -- look at their results. When they're looking at the probability, the longer you were at Camp Lejeune, the lower probability you had of kidney cancer. That would -- they would have to admit that that means that being at Camp Lejeune was health protective of kidney cancer, which is, of course, absurd. The dose response should have shown that these numbers were going up, but they were going down.

But that -- this is not the relevant number, Your Honor. It's this confidence interval. Because one is within that interval, you cannot reject the null hypothesis, and so these are not statistically significant. This study supports us, not them. It shows that there is no statistically significant increase of kidney cancer with any of these levels of comparison.

Well, Dr. Hatten, but what he did is he then -- he testified that there were -- he came up with three measurements

10:47:31 from one study, the -- a 2024 study that was not included in
10:47:37 Dr. Bove's actually published report, and then he included
10:47:42 seven results from a 2018 Bove study that was never published
10:47:45 at all and that Dr. Bove, the scientist who did the study, said
10:47:50 wasn't reliable.
10:47:50 Let me quote Dr. Bove's testimony, which has been
10:47:53 admitted here. About that -- about those studies, Dr. Bove
10:47:57 testified, "The participation rates in the study were so low
10:48:02 that we couldn't verify the outcomes, so we didn't send it to a
10:48:06 journal because we thought it was a very limited study." But
10:48:10 that's the study that Dr. Hatten wants you to rely on.
10:48:12 Your Honor, the scientific evidence does not connect
10:48:16 the dots of Mr. Fancher's part per billion TCE exposure level
10:48:21 and kidney cancer.
10:48:21 All right. Specific causation, Your Honor, just like
10:48:26 I said, Mr. Fancher's team has presented a specific causation
10:48:30 theory that fails for two independent reasons. Reason one,
10:48:36 Mr. Fancher's specific causation experts rely on exposure
10:48:40 estimates derived from the ATSDR water model. And, again, Your
10:48:44 Honor, right out of the gate, that's a fatal mistake. If the
10:48:49 water model cannot establish his individual exposure, they
10:48:52 shouldn't have relied on it and just assumed that it could.
10:48:55 But even if it could, Dr. Reynolds's math was wrong, and so
10:48:59 Dr. Del Pizzo was wrong twice over for relying on her.
10:49:02 And you heard, Your Honor, that the United States

10:49:12 has -- had an expert, Dr. Judy LaKind, who did her own
10:49:17 calculation, and Dr. Pailey -- Dr. Bailey, another one of the
10:49:20 United States's experts, relied on Dr. LaKind's calculation.
10:49:24 Dr. LaKind did a different type of calculation than
10:49:26 Dr. Reynolds. She did something like a health protective
10:49:31 overestimate of what Mr. Fancher may have been exposed to at
10:49:34 Camp Lejeune, and then Dr. Bailey used that number to calculate
10:49:38 whether he experienced an occupational exposure. And, Your
10:49:41 Honor, that's where we get the one person standing next to
10:49:44 two -- you know, 28 Washington monuments. This was not an
10:49:47 occupational exposure, Your Honor.
10:49:48 But there's a second problem, and that's where I want
10:49:52 to use -- well, there's a second problem, Your Honor, is that
10:49:57 kidney cancer occurs in people throughout the population,
10:50:03 including young people and people who've never been exposed to
10:50:05 chemicals at all, and it has multiple risk factors, gender,
10:50:09 obesity, smoking, hypertension, chronic kidney disease,
10:50:15 diabetes, use of painkillers and occupational exposures.
10:50:18 But it also has something called idiopathy, Your
10:50:22 Honor, and idiopathy is -- reflects, you know, unknown causes
10:50:30 that are the predominant explanation for kidney cancer. Even
10:50:34 Dr. Del Pizzo admitted that most kidney cancers are idiopathic.
10:50:40 I want to note, however, that the chart -- is this -- is this
10:50:53 Dr. Del Pizzo's analysis?
10:50:54 MR. ROBERTS: That came out of Dr. Stadler's

10:50:57 deposition.
10:50:57 MR. GUYNN: Okay.
10:50:57 MR. ROBERTS: It's each of the factors that he said
10:50:59 he considered.
10:51:06 MR. GUYNN: Okay. So I want to talk about what
10:51:08 Mr. Del Pizzo said, Your Honor. He said that he started with
10:51:16 the assumption that Camp Lejeune water is a risk factor for
10:51:20 Mr. Fancher's kidney cancer, but that's just wrong. He didn't
10:51:23 have an occupational exposure. It's not a risk factor.
10:51:26 He testified that he refused to account for idiopathy
10:51:32 because he concluded that Mr. Fancher was exposed to Camp
10:51:35 Lejeune water. I want to quote him. "Idiopathy or idiopathic
10:51:39 is not an independent risk factor that needs to be ruled in or
10:51:42 out, but if methodologically, you come to a conclusion that you
10:51:45 believe within a reasonable degree of medical and scientific
10:51:48 certainty this is the cause, then idiopathic comes off the
10:51:52 differential." That's improper, Your Honor.
10:51:54 There is also reference to the size of Mr. Fancher's
10:52:02 tumor, but then there was no testimony about what that means.
10:52:06 Your Honor, some cancers grow quickly, some grow slow. The
10:52:10 size of --
10:52:10 THE COURT: I understood it to be a baseball size.
10:52:13 MR. GUYNN: Yeah, there was -- there was no testimony
10:52:16 that, you know, the size of a tumor somehow corresponds to what
10:52:20 caused it or how long it's been going. Tumors -- every human

10:52:24 body is very different, and how people develop tumors is very
10:52:27 different, too, Your Honor. There is no evidence on that
10:52:29 point.
10:52:29 And I just want to remind Your Honor that even
10:52:33 Dr. Del Pizzo -- there's also a reference to Mr. Fancher's age
10:52:37 when he was diagnosed. Dr. Del Pizzo argued, again, kidney
10:52:41 cancer strikes at every age, and the SEER's data shows that
10:52:46 even folks in their 30s get kidney cancer.
10:52:48 All right. Finally, Your Honor, let's turn to
10:52:51 damages.
10:53:03 THE COURT: As you do that, I want you to think about
10:53:05 this: My late great friend, Clement Haynsworth, always
10:53:12 reflected on cases and would say, "In every case, there's an
10:53:17 issue. In some, there are two. In none are there any more."
10:53:22 So what's the issue in this case?
10:53:27 MR. GUYNN: The issue in this case is -- I hope that
10:53:33 your friend might admit that there's sometimes three, exposure,
10:53:36 general causation --
10:53:38 THE COURT: He had no reason to admit that. Do you
10:53:41 know who I'm talking about?
10:53:43 MR. GUYNN: I've not met this friend of yours.
10:53:47 THE COURT: He was nominated by President Nixon to
10:53:50 the Supreme Court. He was the Chief Judge for 25 years of the
10:53:55 Fourth Circuit. He was a legendary figure in Fourth Circuit
10:54:02 history. Anyway, so much -- you got a little history lesson

there.

MR. GUYNN: Thank you, Your Honor. And I'll -- I'll do this very quickly because I -- the Court heard evidence from Mr. Fancher's own experts, Your Honor, that the medical care that Mr. Fancher received was excellent, that it was medically necessary, that he's cured, and that he's expected to live a normal life expectancy. He testified that after his nephrectomy, he maintained a job, led a happy life as a husband and father.

Now, we're not denying that he experienced something and that he went through something very difficult. But the question is, is what he's -- what has he proven? And like I predicted, Your Honor, there's been no proof of any economic damages, no out-of-pocket expenses, no lost income, no decreased life expectancy, no future medical expenses.

THE COURT: So why didn't you settle this case?

MR. GUYNN: Why didn't --

THE COURT: I mean, he was eligible for the 100,000, 150,000, whatever the numbers are.

MR. GUYNN: Well, they -- Rule -- well, they waived Rule 408. I can't answer that.

THE COURT: Okay. Their decision?

MR. GUYNN: I don't -- I don't think that I can waive that for them.

THE COURT: I can't hear you.

10:55:15 MR. GUYNN: I don't think that I can answer that
10:55:17 question, Your Honor, consistent with the federal rules.
10:55:18 THE COURT: Okay.
10:55:18 MR. GUYNN: So they're asking, you know, for $4.25
10:55:29 million and a little bit more in non-economic pain and
10:55:32 suffering damages based on, you know, what he's experienced
10:55:35 with this -- with this bulge, which does look uncomfortable.
10:55:38 But, Your Honor, courts, even including in this district, in
10:55:42 this state, which have looked at damages for disfigurement,
10:55:45 have come up with much, much, much lower numbers than that,
10:55:48 including folks who had permanent scarring on their face and on
10:55:51 their arms and on parts of their body that were very visible.
10:55:54 I think that if this Court is inclined to award
10:55:57 damages, that those damages should hew close to what the
10:56:01 precedent is in this -- in this district, not the huge numbers
10:56:04 that have been requested. And then, Your Honor, we -- we
10:56:09 believe that we've proven our damages -- our offsets, Your
10:56:11 Honor, and that those need to be deducted from any award, if
10:56:16 one is given.
10:56:16 So to wrap up, Your Honor, again, this case began
10:56:20 with a simple principle: What you suspect is not what you
10:56:24 know. On exposure, he had to prove exposure, but instead of
10:56:28 doing that, he relied on a water model to calculate his
10:56:31 exposure that the ATR said couldn't establish individual
10:56:34 exposure.

10:56:34 On general causation, he had to prove that the
10:56:38 chemicals in the Camp Lejeune water could cause his kidney
10:56:41 cancer at his level of exposure. The evidence does not
10:56:44 establish that benzene, PCE, DCE, or vinyl chloride cause
10:56:48 kidney cancer at any exposure level. And the evidence
10:56:51 concerning TCE does not bridge the gap between high TCE
10:56:54 occupational exposure levels and Mr. Fancher's maximum TCE
10:56:58 exposure level at Camp Lejeune.
10:56:59 Specific causation, he had to prove that his exposure
10:57:03 actually did cause his kidney cancer, but his experts rely on
10:57:06 the unsupported assumptions from the water model and fail to
10:57:10 account for idiopathy, the most compelling explanation for his
10:57:14 kidney cancer.
10:57:14 Your Honor, you've heard the -- you've heard the
10:57:17 evidence. You've seen the documents. You've heard the
10:57:20 experts. You have a responsibility to evaluate whether he
10:57:23 actually proved his case, not what they've asked you to assume.
10:57:26 We ask you to follow the evidence, follow the science, and
10:57:30 return a verdict for the United States. Thank you.
10:57:32 THE COURT: Thank you. I'll hear from the plaintiff.
10:57:42 MR. ROBERTS: Thank you, Your Honor. Very, very
10:57:44 briefly. Your Honor asked the question, what is the single
10:57:49 issue in this case? There is one issue, did Mr. Fancher's
10:57:53 exposure to the toxic water at Camp Lejeune cause his kidney
10:57:56 cancer? That is the issue for the Court to decide.

10:57:59 Your Honor, I don't want to keep going back and forth
10:58:03 on this ATSDR water model, but they keep bringing it up.
10:58:07 They've ignored the fact that the ATSDR did not say you cannot
10:58:12 use the water model in any way, shape or form to prove
10:58:17 causation. They don't say that. They said it can't be used
10:58:19 alone. We've not used it alone. We've looked at medical
10:58:22 records, military records, epidemiology study -- studies. It's
10:58:27 one piece of the puzzle. It's interesting that their exposure
10:58:32 expert, Dr. LaKind, used the water model. I'd remind the Court
10:58:35 of that. You recall her testimony yesterday. She used the
10:58:37 water model.
10:58:38 It's interesting they bring up Dr. Shields. You'll
10:58:42 recall Dr. Shields was the gentleman that said TCE does not
10:58:47 cause kidney cancer. I mean, he disagrees with IARC, the EPA,
10:58:52 and virtually every agency that's considered the issue.
10:58:56 Julie Goodman, why do we keep bringing her up, Your
10:59:00 Honor? Because she's the whole base of their pyramid. She
10:59:03 is -- she is the whole predicate for their entire defense. She
10:59:06 selected the one -- the one study out of the 172 that
10:59:11 Dr. Bailey relied on. That's why we keep bringing her up.
10:59:15 Your Honor, I've got to correct the record on
10:59:18 something. And, you know, my friend, Mr. Guynn, he said this
10:59:21 repeatedly in court. He said it in Wilmington, that this is a
10:59:27 330-trillion-dollar deficit that we're trying to impose on the
10:59:30 Government. Your Honor, that is just flat not true. And I'm

10:59:33 constrained by what I can tell the Court because I am on the
10:59:36 Resolution Committee, but the numbers are nowhere near the
10:59:40 number that was suggested to Your Honor.
10:59:42 The other comment I'd like to make is this -- this
10:59:50 business about the -- about the large tumor. Dr. Del Pizzo, in
10:59:57 his testimony, specifically said, "I think it's more reasonable
11:00:04 to weigh that in an individual who's in his 60s or 70s."
11:00:08 This goes back to their argument on idiopathy and whether it
11:00:12 was -- you know, was considered by Dr. Del Pizzo. "It is more
11:00:17 likely a factor. I think it's reasonable not to weigh it as
11:00:20 much when you've got an abnormally large tumor in a 39-year-
11:00:26 old." So Dr. Del Pizzo did discuss the tumor, the size of the
11:00:31 tumor, and the age that Dr. -- that Mr. Fancher was diagnosed
11:00:37 with his kidney cancer.
11:00:39 Your Honor, we're not abandoning the other four
11:00:42 chemicals. In the charts that I showed you, there was a
11:00:45 statistically significant study for PCE and some of the other
11:00:48 chemicals that showed an increased risk. It's true that our
11:00:51 focus has been on TCE because it's such a known carcinogen that
11:00:56 is associated with kidney cancer.
11:00:57 As far as the Bove studies, my friend pulled out one
11:01:03 study from Bove. There's five of them, okay? Four of them
11:01:07 show an increased risk for kidney cancer. So, again, Your
11:01:11 Honor, they're saying don't -- don't pay attention to the -- to
11:01:14 the Government studies that were done by Dr. Bove before the

lawyers showed up.

Your Honor, I think we've more than demonstrated that that Mr. Fancher's kidney cancer was a result of his exposure to the -- to the toxic water at Camp Lejeune. As Your Honor stated, we're at equipoise, more likely than not. I've heard no other explanation for what could cause this man's kidney cancer other than the toxic exposure. They can't come up with one. Your Honor, we appreciate your time, and with that, I'll conclude.

THE COURT: Well, thank you very much. I have -- you have anything? Does the Government have anything?

MR. BAIN: Yes, Your Honor. No further argument, but we would like to request to be able to file post-trial findings of fact and conclusions of law on December 4th, which is the same time length that you gave after the *Mousser* trial to do so.

THE COURT: Okay.

MR. BAIN: And I also have the list of diseases that you asked about, if you'd like to hear what the diseases are.

THE COURT: Sure.

MR. BAIN: So as I mentioned, the top disease is neurobehavioral effects, which is -- 67,000 individuals have claimed. The next highest is noncancer kidney disease, which is -- 51,000 claims have that.

THE COURT: Noncancer kidney?

11:02:30 MR. BAIN: Noncancer kidney disease, so some type of
11:02:33 kidney function, kidney stones or kidney disease, but not
11:02:38 cancer.
11:02:38 THE COURT: Okay.
11:02:38 MR. BAIN: The next two are prostate cancer and lung
11:02:41 cancer, which, of course, are very common. 45,000 prostate
11:02:45 cancers, 36,000 lung cancers. The next one is liver disease.
11:02:50 28,000 liver disease claims, 27,000 bladder cancer claims.
11:02:57 Bladder cancer is one of the diseases that we're dealing with
11:03:01 with Judge Myers, and then 23,000 kidney cancer claims, as I
11:03:05 mentioned. 21,000 Parkinson's disease claims, which is -- are
11:03:10 being litigated with Judge Flanagan.
11:03:12 THE COURT: Okay.
11:03:12 MR. BAIN: And 21,000 liver cancer claims, 18,000
11:03:18 colorectal cancer claims, 14,000 breast cancer claims.
11:03:24 THE COURT: What does Judge Dever have?
11:03:26 MR. BAIN: Judge Dever has the leukemia and
11:03:29 non-Hodgkin's lymphoma claims, which were the next two that I
11:03:31 was going to mention.
11:03:32 THE COURT: Okay.
11:03:32 MR. BAIN: And there's about 12,000 leukemia claims,
11:03:37 and we think about 10,000 non-Hodgkin's lymphoma claims.
11:03:41 THE COURT: Okay. Thank you for that report. I
11:03:48 appreciate the professionalism and the efficiency that has been
11:03:56 displayed by the lawyers. The lawyers in these cases have been

11:04:00 at the top of the chain in terms of professionalism, and it's
11:04:06 done remarkable work to make these cases happen, really. I
11:04:13 mean, a couple of months ago, I don't think anybody would have
11:04:17 believed that we could try two of them in efficient time and
11:04:21 get them into the Court.
11:04:23 So my goal is -- I have five cases that were speed-up
11:04:35 cases, and one of them settled. I'd like to set the next two
11:04:42 for January 4th and January 11th, or it could be January 18th
11:04:52 if you need a two-week schedule, but that's just to give you a
11:04:57 forecast as to where we are.
11:04:59 And I'm working on orders. Because it's a bench
11:05:06 trial, there needs to be findings of fact and issues of law.
11:05:12 So as we go forward, we'll try to give you a good product here.
11:05:18 And thank you very much for your work. Really inspiring.
11:05:23 Thank you.
11:05:24 MR. BAIN: Thank you, Your Honor.
11:05:25 THE COURT: Okay. We'll be in recess.
11:05:27 (Proceeding concluded at 11:05 a.m.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

I, Tammy Johnson, CVR-CM-M, RVR, Federal Official Court Reporter, in and for the United States District Court for the Eastern District of North Carolina, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 14th day of November, 2026.

/s/ Tammy Johnson
Tammy Johnson, CVR-CM-M, RVR
U.S. Official Court Reporter