

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

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

STATUS CONFERENCE
FEBRUARY 6, 2024
THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

On Behalf of the Plaintiff

James Edward Bell III, Eric W. Flynn, Matthew D. Quinn

On Behalf of the Defendant

Adam Bain, Sara Mirsky, Leah Wolfe, Adam Inch

Risa Kramer, RMR, CRR
Official Court Reporter
United States District Court
Wilmington, North Carolina

1 TRANSCRIPT OF PROCEEDINGS

2 (Proceedings commenced at 11:02 a.m.)

3 THE COURT: Good morning.

4 All right. As has been our practice, or my
5 practice, let me run through some questions that I've
6 got, and then if -- if there's anything else you'd like
7 to talk about that we don't otherwise cover, we can do
8 that.9 Right now, what are the matters that the
10 parties are waiting for the Court to rule on other than
11 the two discovery motions that are before me?12 MR. BAIN: Your Honor, there's a motion to
13 strike the jury trial demand.

14 THE COURT: And that's ripe, right?

15 MR. BAIN: Yes, it is.

16 There's a motion regarding who's an
17 appropriate representative for an estate case.

18 THE COURT: That's right.

19 MR. BAIN: And that case -- or that motion
20 is fully briefed.

21 THE COURT: Okay.

22 MR. BAIN: There's a motion that the
23 plaintiffs recently filed on the causation standard
24 under the statute. That is not fully briefed yet. Our
25 response is due on the 19th --

1 THE COURT: Okay.

2 MR. BAIN: -- to that motion.

3 Yeah. We also have one motion regarding the
4 case management order which is fully briefed.

5 THE COURT: All right.

6 Stipulations. What are the nature of the
7 stipulations the parties have agreed upon, and what
8 remaining stipulations are the parties considering?

9 MR. BELL: Your Honor, most of the
10 stipulations that are probably needed to be done can't
11 be discussed now until we know the nature of the trials,
12 what we'll need to have. So I think there's a
13 stipulation that we're working on with the DOJ having to
14 do with medical examinations. We sent a draft over the
15 other night. We're still talking about that. I think
16 we can probably reach an agreement on something.

17 THE COURT: And is that about notice?
18 Giving the other side notice in order to...

19 MR. BELL: Yes, Your Honor.

20 THE COURT: Maybe do some discovery due to
21 the compressed timelines?

22 MR. BAIN: That's right, Your Honor. I
23 think we're very, very close to reaching agreement on
24 that stipulation.

25 THE COURT: Okay. Discovery update. Water

1 modeling and health effects.

2 MR. BELL: That's one of the issues we'd
3 like to talk with you about later, Your Honor, or
4 whenever it's ready.

5 THE COURT: Let's do it now.

6 MR. BELL: All right.

7 MR. FLYNN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. FLYNN: May it please the Court,
10 Eric Flynn from Bell Legal Group.

11 On the water modeling and health effects
12 study, Your Honor, we're still, I think, back where we
13 were last week. I think the negotiation now is, you
14 know, do we get the tree report that just shows you what
15 the files are organizationally and then we pick from the
16 tree? And then also -- or, alternatively, do we get the
17 documents that are provided after they've been reviewed?
18 I believe DOJ has advised it's a 45-day process.

19 Your Honor, just as we said before and, I
20 think, as you noted last week, we believe the protective
21 order with the clawback provision covers these documents
22 and that we should just get the whole file over --

23 THE COURT: The hard drive?

24 MR. FLYNN: Yes, sir.

25 THE COURT: You talking about the hard

1 drive?

2 MR. FLYNN: Yes, sir. And get those over,
3 and if there's something privileged, they can assert
4 privilege clawback. But this way, we can all get
5 started and kind of get going on this.

6 THE COURT: Okay. Can't you just make two
7 hard drives mirror images of each other and -- so you
8 know the universe of documents, and then aided with the
9 protective order and clawback, what's the -- what's the
10 problem?

11 MR. BAIN: Well, Your Honor, we have an
12 agreement regarding how these documents should be
13 produced in a very particular way that's very important
14 for keeping control and integrity of the materials, and
15 we've agreed to that and we've been producing materials
16 pursuant to that agreement. We have produced materials
17 regarding health effects studies already, produced some
18 data last week.

19 With respect to the water modeling, we have
20 committed to producing that within 45 days, and we are
21 actually gonna start producing it on a rolling basis
22 this week. So we are already producing that material
23 pursuant to the agreement that we have, and we're
24 producing it in an expeditious way.

25 So I think that we are producing it in the

1 way the parties agreed to. And I will ask Sara Mirsky
2 who's been very involved in this to elaborate on that a
3 little bit --

4 THE COURT: So then what's the problem?

5 MR. BELL: Your Honor, please the Court,
6 with all due respect, we don't have an agreement on
7 this, and I don't understand -- they keep saying this.

8 There is an ESI agreement, of course.
9 That's a court order. But, Your Honor, the general idea
10 of ESI is you pick custodians, you pick search terms,
11 you do all of that. And that is what we consider to be
12 ESI. Just because something's in a database, we
13 identify the file itself, that's not subject to that ESI
14 protocol.

15 MR. FLYNN: And, Your Honor, if I may, on
16 just a technical point on the ESI protocol. We've
17 spoken to our data experts, the folks that went up to
18 Quantico, which you'll hear about later, about how to
19 access data, how to use all that. And I think the
20 concern with pulling them through the ESI protocol is
21 that it hurts the effectiveness and usefulness of the
22 data with respect to relations and naming conventions.
23 And so we have no problem with them running it through
24 ESI. But in terms of producing it and making it useable
25 for us to review, we think that those can be done in

1 parallel form; again, subject to the protective order,
2 subject to the clawback. We just want something that's
3 useful and usable that they can -- that they can use
4 too.

5 THE COURT: So the documents themselves
6 produced as documents, those are --

7 MR. FLYNN: No, no, Your Honor, in the hard
8 drive, just not subject to the ESI protocols. You can
9 do both in parallel the same way that they can do the
10 privilege and all of that stuff. I mean, that's fine.
11 But we just want to get the ball going and --

12 THE COURT: So 45 days, you said there were
13 -- 45 days, it would be produced?

14 MS. MIRSKY: May it please the Court, yes,
15 Your Honor --

16 THE COURT: So what's the problem with 45
17 days?

18 MR. FLYNN: Well, Your Honor, is it 45 days
19 to produce the tree report, or is it 45 days to produce
20 everything that's been subject to the privilege review?
21 We don't know if it's subject -- you know, we don't have
22 a way to challenge privilege. We don't know what
23 they're putting in, putting out. Is it gonna be ESI
24 protocol reviewed? If that's the case, it's not as
25 useful. The relationships don't exist. There's a lot

1 there.

2 MS. MIRSKY: Your Honor --

3 MR. BELL: Excuse me a second, Sara. One
4 more thing, Your Honor.

5 The federal rules allow us to get the
6 discovery in the manner in which it is stored, the
7 manner in which the other side keeps it. We want a
8 complete copy of that -- of that database. And that's
9 all we want. We want -- they can push a button. We'll
10 pay for the hard drive. We want to get a copy of that.

11 Now, Judge, the only objection has to do
12 with privilege. Judge, this is water modeling back in
13 the 2010 and '11 time frame. I can't imagine the
14 privilege documents that might be there. No one's
15 talking to -- to ATSDR about how to do the water
16 modeling. There's no attorney/client -- we can't
17 imagine what privilege is there.

18 So the issue of privilege is, really, maybe
19 there's something in there but maybe not, but it's not
20 something that we would normally think of that would be
21 really secret and privileged.

22 All we're asking for, Judge, is for them to
23 -- and they have the ability to do it -- push a button,
24 give us a hard drive. That's all we're asking for.
25 They can keep a copy there. They can see if anything's

1 been changed. It's a mirror image. And that's why we
2 have a clawback, so we don't have to wait another 45
3 days. We can go through that -- that hard drive in days
4 versus weeks with our team. We need it. It has to do
5 with our experts, our preparation for cases. We need
6 that as soon as we can. And the fact is they can do
7 that easily.

8 MS. MIRSKY: Your Honor, just to clarify a
9 few things.

10 First, this water modeling project files
11 that we're discussing are quintessential noncustodial
12 ESI and therefore subject to the ESI protocol that the
13 parties negotiated and was entered by the Court. We do
14 not believe that privilege is an overarching concern
15 here.

16 What we are proposing is to produce the
17 entirety of the water modeling files as they were kept
18 but pursuant to the ESI protocol which the parties
19 agreed to. And we will be producing non-PDF and Word
20 documents natively. So things related to databases, GIS
21 files, things like that, will be produced natively but
22 they'll have a corresponding Bates number. They'll be
23 kept with the rest of the files as they are kept in the
24 project files. And they will be produced according to
25 the ESI protocol.

1 This will allow both parties to keep track
2 of all of the data and documents that are being used.
3 It will prevent, hopefully, disputes down the line about
4 where the data originated from. We have already given
5 plaintiffs a tree-sized report for the parent files, so
6 the 75 top level files for the water modeling data.

7 We are working with ATSDR to see if they can
8 produce a further tree-sized report, but we don't want
9 to take away resources that are now going to collecting
10 and producing the actual data for this side project to
11 produce the tree-sized reports.

12 We have, as Mr. Bain said, already produced
13 some key data sets for some of the health effects
14 studies. We will begin producing water modeling data
15 this week and will continue doing it on an ongoing basis
16 over the next 45 days.

17 As to privilege, we understand the
18 importance and the strength of the clawback provision.
19 We have a list of names that we will be running through
20 the data as it's processed. This will not add any sort
21 of significant time to the review. Any documents that
22 are pulled for these individual names, attorneys at the
23 DOJ, at the Marine Corps, that may be in these shared
24 drive folders will be pulled for separate review and
25 either produced or put on a log. But that will not hold

1 up the production of the relevant data. It won't hold
2 up the production of any nonpotentially privileged
3 documents.

4 We are interested in getting these documents
5 out the door, and that is why we have begun this process
6 already and are committed to continuing doing so
7 pursuant to the ESI protocol.

8 THE COURT: When is discovery over?

9 MS. MIRSKY: June 17th.

10 MR. BELL: Well, Judge, with respect, the
11 government continues to complain about time and how they
12 need this time and this time. We're giving them the
13 ability to push a button and turn over this data
14 immediately. We have water modeling experts that are
15 waiting today to look at this data. We can get a head
16 start on this. We can get ahead of it. We can go to
17 the court and say we're ready for trial and not have to
18 wait another year.

19 And with respect, I hear what the
20 government's doing, and they can do that if they want
21 to. But we have the right and should have the ability
22 to get the file exactly the way it's kept in the
23 ordinary course of business, not the way the government
24 wants to produce it. They want to do their -- their ESI
25 work the way they're doing it, that's fine. But that's

1 not -- it shouldn't hold us up. We have experts ready
2 to look at the data. They're ready to mine it. They're
3 ready to see what's needed in our cases. We need that
4 data as quickly as we can, Your Honor.

5 THE COURT: Is this -- is this dispute --
6 have y'all briefed this to the Court?

7 MR. BELL: I don't think this particular
8 matter has been briefed, Your Honor. We've talked about
9 it, of course, with the Court.

10 THE COURT: Yeah.

11 MR. BELL: I mean, Judge, remember early on
12 when we started on this ESI, and you normally -- through
13 the ESI you choose search terms, you choose custodians
14 and who they should go -- to the entire government --

15 THE COURT: Right.

16 MR. BELL: And it became a big deal, and it
17 became a very -- we could see that. And we said, "We'll
18 withdraw all of those requests." And we did. We
19 withdrew every one of them. But we reserve the right to
20 have targeted request of files that we could identify
21 and name, not search and see if you have anything. We
22 said we will reserve the right to identify those files,
23 and we did. We learned about this file. We've asked
24 for it. We know it's there. We got the information
25 about it in a deposition.

1 And we think, Your Honor, that we ought to
2 look at it the way it's set up, not the way they want to
3 show it to us. This has to do with how did the
4 scientists use this data. How did they look at it in
5 their files? We want it in that form. And that's what
6 -- the rules allow us to get it that way.

7 If this were paper discovery, if this were
8 paper discovery, we would have the right to go look at
9 the original file in the manner in which they keep it in
10 the ordinary course of business. We want that file in
11 the same way. That's all we're asking. If they want to
12 go through that process, they can. They can go through
13 and Bates stamp everything if they want to. But we
14 should at least be able to look at that file in its
15 entirety.

16 THE COURT: Why can't you look at the file
17 in its entirety the way it's kept?

18 MS. MIRSKY: Well, Your Honor, first I'd
19 like to note that in -- this is not the government's ESI
20 protocol. This is the ESI protocol that the parties
21 negotiated, jointly submitted, and was entered by the
22 Court. A noncustodial ESI is defined within the ESI
23 protocol to contemplate exactly this type of data. The
24 files will be produced in the way that they were kept.
25 There's metadata that will be created pursuant to the

1 ESI protocol that will show the file path information.

2 In addition, as I previously mentioned, we
3 have already sent plaintiffs the parent level,
4 tree-sized reports for the water modeling files. We
5 asked plaintiffs if they have any prioritization
6 requests --

7 THE COURT: I don't know what that is.

8 MS. MIRSKY: So it -- when you look at a
9 shared drive, there are folders that people create, and
10 you can create a printout of those folders to show what
11 the file paths for each of those folders are, how many
12 items are in each of those folders, and the size of
13 those folders.

14 THE COURT: That's what you've produced.

15 MS. MIRSKY: We have produced that and --

16 THE COURT: Just a document that shows the
17 drives and the...

18 MS. MIRSKY: That's right.

19 THE COURT: The icons of the little folders
20 and their name and stuff like that.

21 MS. MIRSKY: It's a spreadsheet --

22 MR. BELL: Computer index.

23 THE COURT: It's a -- but there's no link to
24 the actual file.

25 MR. BELL: No, sir.

1 MS. MIRSKY: No. But we asked plaintiffs,
2 to the extent that their experts want to see particular
3 folders first, we would be happy to prioritize whichever
4 folders they are most interested in.

5 THE COURT: Why do you need 45 days?

6 MS. MIRSKY: Because it is about one and a
7 half terabytes of data, and it takes a considerable
8 amount of time to retrieve, process, and produce that
9 data.

10 THE COURT: When did you start producing it?

11 MS. MIRSKY: So plaintiffs first made this
12 request on January 8th. As --

13 MR. BELL: Well, that's --

14 THE COURT: Is all you have the document
15 that shows the tree? Is that all you have right now?

16 MR. BELL: I wasn't aware until just now
17 that that's actually been produced, so I have not seen
18 it.

19 But, Judge, again, why can't we look at the
20 whole file? She hasn't answered your question yet, why
21 we can't see the whole file.

22 THE COURT: Yeah.

23 MS. MIRSKY: Your Honor, we believe that
24 handing over the entire file as it is kept is going to
25 make the matter unruly down the line. It could lead to

1 an inability to track where particular information came
2 from. It could -- it doesn't give any sort of control
3 over what the original information and data -- what its
4 origin was. It could lead to potentially inadvertent
5 moving of the information, which would make it even
6 harder to track.

7 And again, the metadata that's going to be
8 produced with these files contains the file path
9 information. The spreadsheet that I indicated before
10 was e-mailed to the plaintiffs on January 17th. And we
11 have, as I said, asked ATSDR if they can make a more
12 comprehensive field tree -- file tree report as long as
13 it is not going to impede on their current resources
14 that are being devoted to collecting and producing this
15 information.

16 MR. BELL: Judge, we don't want an altered
17 file. We want to know what it looks like today in the
18 manner in which it's kept. We want to know how the
19 water modelers looked at that file every day. What were
20 they looking at? What were they using to store? And we
21 have the right to look at the original --

22 THE COURT: Aren't there some protocols in
23 place?

24 MR. BELL: Yes, sir, but they don't apply to
25 a targeted file. That is not part of what we agreed to.

1 It's not part of the order. The order has to do with if
2 you're asking for electronically stored information,
3 ESI, how do we go about asking the government to search
4 the entire government database? You give them search
5 terms, you give them this. There's no search term,
6 Judge. There's no custodial in this. And that's what
7 ESI is all about.

8 So what we're asking for is -- they've got a
9 file. It's a computer file. No one has questioned its
10 relevance. No one's questioned our need for it.
11 Everyone knows we should get that file. Why can't we
12 have a -- push button, give it to us in a hard drive,
13 and get it? That's what we should get.

14 THE COURT: Aren't there some protocols in
15 place to alleviate these concerns that you have about
16 this information --

17 MR. BELL: There are -- there are safeguards
18 about clawback. The government just mentioned they are
19 not concerned about privilege issue, and I think we're
20 okay.

21 MS. MIRSKY: Your Honor, the ESI protocol
22 specifically defines noncustodial ESI source to mean a
23 system or container that stores ESI but over which an
24 individual custodian does not organize, manage, or
25 maintain the ESI in the --

1 THE COURT: What concerns do you have about
2 this information going elsewhere that this Court cannot
3 govern?

4 MS. MIRSKY: The ESI protocol --

5 THE COURT: Whether the ESI protocol applies
6 or not. We've got a lot of flexibility here. So what
7 concerns do you have that this Court is unable to
8 address?

9 MS. MIRSKY: That the data will be sent over
10 without any way to track it; that there will be
11 documents that are used in depositions without the
12 appropriate -- or in motion practice without the
13 appropriate way to understand where that information
14 originated; that there could be some use of a --

15 THE COURT: Where else would it have
16 originated?

17 MS. MIRSKY: Well, we won't have the
18 understanding of where exactly it came from without a
19 Bates stamp number, without an understanding of where
20 within the files these documents originated. And we are
21 going to be producing the data sets and the GIS files,
22 anything else like that, natively so that plaintiffs can
23 use them in the way that they see fit. But it will all
24 be tracked and linked within the Bates stamped set of
25 productions.

1 MR. BELL: With all due respect, Judge, it's
2 \$99 at Office Max for a five-terabyte hard drive. If
3 they're worried about whether -- they're worried about
4 how and where a document came from, they can keep the
5 original in its -- in its --

6 THE COURT: Well, that was my first
7 question.

8 MR. BELL: Why can't they --

9 THE COURT: If you have two hard drives that
10 look exactly like the other and you give one to the
11 government and you give one to the plaintiffs, what's
12 the problem?

13 MR. BAIN: Your Honor, with this ESI, it is
14 so easily changeable, and we have our ESI lawyer here to
15 discuss why we have these protocols in place and why
16 they must be produced in this way to prevent any type of
17 advertent or inadvertent changing of the electronic
18 information. It has to be controlled that way. Do you
19 want to address that --

20 THE COURT: But don't you know --

21 MR. BELL: A solution to this --

22 THE COURT: I don't understand.

23 MR. BELL: Have the government produce the
24 mirror image file. And then if they're worried about
25 having to be able to track something, do what they need

1 to do and produce that later. But go ahead and give us
2 this now. Then if they're worried about how to track
3 things in depositions, we'll wait on them to give us the
4 45 days and get the other one. But we need this file
5 now.

6 THE COURT: Ultimately you're talking about
7 documents, right? Right? All these are -- all these
8 are electronic...

9 MS. WOLFE: Your Honor --

10 THE COURT: Databases that contain
11 documents, right? What's on a sheet of paper, correct?

12 MS. WOLFE: No, Your Honor. The documents
13 contain a significant mix of data files. So that can be
14 something from as low-tech to an Excel spreadsheet up to
15 highly technical data sets that run things like a GIS
16 model or other kinds of scientific modeling studies.

17 Those are difficult -- what we call in, kind
18 of, the e-discovery world "exotic" -- file types, exotic
19 types of data that are difficult to work with. They
20 are -- as Mr. Bain said, they are changeable. They can
21 be modified. They can be tweaked easily.

22 And as Ms. Mirsky said, once they go out
23 with no marking on the file name, no way to track them
24 back to where they came from, we will have no way and
25 the experts will have no way to know which version

1 they're working with easily when it comes to using that
2 evidence in a deposition, in a hearing, in motion
3 practice, in a trial.

4 And that poses difficulties because these
5 files are the entire breadth of ATSDR's work on this
6 issue. There's nonfinal versions. There's final
7 versions. And knowing what data it is that we're
8 looking at is crucial. And the government and
9 plaintiffs entered into this protocol to ensure that
10 there was a way for us to easily track data, to make
11 sure that we don't have these disputes down the line of
12 "Oh, well, where did that graph come from? Where did
13 that data come from? Is that the version that we should
14 be talking about right now?"

15 MR. BELL: Judge, they're assuming that we
16 don't know how to handle electronic files? That our
17 experts don't know how to do the same thing the
18 government is saying that they aren't gonna allow us to
19 do? This is ridiculous. We should get the file. If
20 they want to do a mirror image, do it. And then if they
21 want to go do and give us some Bates stamp numbers
22 later, do the same thing. But if we have a document
23 that came from this part of the file, our job is to be
24 able to show the source where it came from. If we
25 can't, then we are not doing our job. But they're

1 assuming we don't know what we're doing. And they're
2 basically saying, "You do it our way. The government is
3 gonna tell you plaintiffs how to do this."

4 THE COURT: All right. Ultimately we're
5 talking about delay, right? 45 days? Is that right?

6 MR. BELL: Delay too, Judge, but we want to
7 get the file in its original form. Whether we get it
8 today or next week, we still have the right to look at
9 it the way it sits today.

10 THE COURT: All right. Muster rolls.

11 MR. BELL: All right. Your Honor, may I
12 approach?

13 THE COURT: Yes, sir.

14 MR. BELL: Judge, I put together a little
15 kind of summary of what we've learned from reviewing
16 government documents about muster rolls.

17 So the first page, Your Honor, is a document
18 from the annual report of the VA and Department of
19 Defense Joint Executive Committee, fiscal year of 2013.
20 You see in there -- for the first time we could find,
21 Your Honor -- that they're mentioning the
22 computerization of the muster rolls. And in this report
23 it says it's gonna take about 18 months. Now, this is
24 sometime in 2013. The reason for this is they're saying
25 that the VA Business Office and the Marine Corps are

1 refining the procedures to verify residence at Camp
2 Lejeune.

3 In order to understand what's happening,
4 Judge, the Janey Ensminger Act occurred, I think, back
5 in 2012 or so, in that era, and it required the VA to do
6 certain things for Camp Lejeune victims and their
7 families.

8 So this is the result of Congress saying to
9 the government, "Do something." And so they decided
10 that they would take these muster rolls -- and Judge,
11 there's indication in here that these muster rolls are
12 some 61 or 63 million pages of documents. So think
13 about somebody in 1955 or '65, and they are here at the
14 base and they got different ways to find these people
15 and where they're located, what division they work in,
16 what MOS they have, things like that. And they are
17 manually searchable. But it's a lot of documents to
18 search, 63 or 61 million.

19 So the next page, Your Honor, is the same
20 report but the next year, 2014. This is the
21 VA/Department of Defense Joint Executive Committee
22 report. And again they say in late 2013, the U.S.
23 Marine Corps started to computerize the muster rolls of
24 service members who were stationed at Camp Lejeune
25 during the '50s to 1971. There are about 59 million

1 pages of records to be computerized. This work should
2 take 18 months approximately, at which time the U.S.
3 Marine Corps will share the database with the VA.

4 The next page is the annual report of 2015,
5 kind of a similar document from the VA and the DOD. The
6 U.S. Marine Corps kept attendance lists of names, called
7 muster rolls, and it started digitizing muster rolls for
8 the period 1940 to 2005. Now, the dates are changing.
9 Almost 61 million pages of records will be digitized in
10 December 2015 and will enable the U.S. Marine Corps to
11 perform searches for individual veterans for the VA.

12 The next page, Your Honor, is the fiscal
13 year 2015, and it says the U.S. Marine Corps kept
14 attendance list of names, called muster rolls, and it
15 started digitizing them. It's similar to what I just
16 read. But it says 61 million pages, 27 entries per
17 page. There are approximately 1,647,000,000 entries.

18 Next page, Your Honor, is the same report
19 but in 2016, and it says the U.S. Marine Corps kept
20 attendance list of names called muster rolls, and it
21 started digitizing the muster rolls for the period 1940
22 to 2005. Almost 61 million pages of records would be
23 digitized in December 2015 -- and the same thing -- will
24 enable the U.S. Marine Corps to perform searches of
25 individual veterans for the VA.

1 Next page is fairly similar, Your Honor.
2 And then let's go to the two pages now. This is a
3 document we received from the VA.

4 THE COURT: Which one? I'm sorry.

5 MR. BELL: Two pages long, with the first
6 blue page, Your Honor. We'll mark these an exhibit at
7 the appropriate time.

8 THE COURT: Domestic environmental
9 exposures?

10 MR. BELL: Yes, sir. And so this is
11 authored by the Deputy Chief Consultant Post-deployment
12 Health from the VA Health Care.

13 THE COURT: Mm-hmm.

14 MR. BELL: August 2013. And in this he says
15 an -- implementation steps. And about six bullet points
16 down it says worked with DOD, Department of Defense, to
17 create system to verify administrative eligibility.

18 Now, again, the VA is trying to figure out
19 who was at Camp Lejeune. According to the new statutes
20 by Congress, we're trying to figure out who's eligible
21 for new benefits, family members, et cetera, and they're
22 trying to figure out a way to digitize all of these
23 records.

24 So the next page is kind of an example of
25 how they were going to use these digital -- these muster

1 rolls. And it has at the top verifying eligibility.
2 And the second step on the first side is the service
3 member eligibility process. And step 2 is search
4 digitized muster rolls. Under dependent eligibility,
5 step 2 is search digitized muster roll.

6 So if you're a family member, Your Honor, or
7 a dependent, you would not be listed in the muster roll
8 but you could give the dependent's name to verify that
9 your husband or wife or family member or father or
10 mother were there. They could search that muster roll
11 to then determine whether you could get benefits based
12 on eligibility and service on the base.

13 So there's something called -- the next
14 page, Your Honor -- called a Community Assistance Panel.
15 Your Honor, this is a CAP meeting, as it's commonly
16 called. And they have those periodically, and they've
17 had them for years concerning Camp Lejeune. And a lot
18 of the people that we all know -- Dr. Bove, for example,
19 you got to know a little bit about him when we were
20 talking about the health study or the cancer incidence
21 study. He was the author of that study. And Dr. Bove
22 for many of these CAP meetings was there. And he would
23 speak publicly and talk to the Marines and the families
24 and try to give them an update of what's going on.
25 We've attended some of those meetings, Your Honor. My

1 clients have attended lots of those meetings.

2 And this first community panel CAP meeting
3 was in May of 2013. And Dr. Waters in that meeting says
4 they're digitizing muster rolls for us. That's on page
5 49. On page 60 he again says they continue to update,
6 improve the search engine, they're digitizing muster
7 rolls.

8 Then on page 118, there's an effort, as
9 Dr. Waters mentioned, to use, to digitize, to scan
10 digitized muster rolls.

11 Similar thing in 2014 on the CAP meeting,
12 Your Honor. They talk about the digitizing of the
13 muster rolls.

14 So I could continue to go through this, Your
15 Honor, but we know that the muster rolls were digitized.
16 The Department of Defense had a contract to have them
17 digitized. We know the VA used those digitized muster
18 rolls. And we can't get them.

19 THE COURT: What does that mean? "It's not
20 going to be a computerized database, it's going to be
21 something we have to search each person individually"?
22 What does that mean?

23 MR. BELL: A lot of databases, Your Honor,
24 you have lots of search -- ability to search a lot of
25 things. It's our understanding that this muster roll,

1 you can search by name or by service number, but you
2 can't search by address or things like that. It's a
3 limited search engine, but it gives you what we need.

4 THE COURT: Which is the muster rolls from
5 '53 to '87?

6 MR. BELL: Yes, sir.

7 THE COURT: And you need these because this
8 shows where people lived?

9 MR. BELL: Yes, and how long they were
10 there. And so for some people, Your Honor, they have
11 that information. But a lot of people whose -- children
12 are representing the family or the father or the mother
13 that died there. They don't have the basic memory or
14 the information. So they need to know exactly when mom
15 or dad was there.

16 In addition to that, Judge, it tells us
17 where -- on those muster rolls, once you find it -- what
18 unit the person was in, what assignment they were given,
19 what MOS was given, and we can then target where --

20 THE COURT: So that gives you information
21 beyond where they lived.

22 MR. BELL: It does.

23 THE COURT: Where they lived on base doesn't
24 really answer all the --

25 MR. BELL: It helps.

1 THE COURT: It helps but it's not the entire
2 question.

3 MR. BELL: Yes, sir. But if, for example,
4 you have someone that was in a certain unit, we know
5 where that unit's work is. We know where they performed
6 their services. We know what water they drank. So it
7 gives us a lot of information for these muster rolls.

8 So once we get the searches done by the
9 person's name, we can find that document and it gives us
10 all this extra information.

11 So the government has indicated that they
12 were trying to find this muster roll digitization and
13 actually hired a vendor to come in and try to go into a
14 database or a server that sounded like it might have
15 died. And they did all of that, but we don't know where
16 it is. We had a meeting, I didn't attend it, the last
17 week or two in Washington. And still today, no
18 digitized muster rolls.

19 Now, I don't know whether the government
20 just can't find them or whether they exist and they
21 haven't asked the right question. But what we're asking
22 the Court today to do is to issue an order that the
23 government produce the digitized muster rolls.

24 THE COURT: Have you gotten any of them?

25 MR. BELL: We have some of the hard copy but

1 not the digitized. No, sir. We have --

2 THE COURT: What years do you have?

3 MR. BELL: Judge, I don't know what our team
4 has gotten but we have -- we have some.

5 THE COURT: But they're all hard copy?

6 MR. BELL: They're photocopies of hard
7 copies. Most of these muster rolls, Your Honor, were
8 on -- what's the term --

9 THE COURT: Carbon paper?

10 MR. BELL: No -- not microfiche --

11 THE COURT: Stone tablets?

12 MR. BELL: Microfilm of some kind. But it
13 was an old, old way of keeping them.

14 The government is now taking some of that
15 information which is, I understand, is degrading. It's
16 kind of getting -- and they're -- they're digitizing a
17 lot of that. But that's not just for --

18 THE COURT: Because the paper that it's on
19 is degrading. Is that what you're saying?

20 MR. BELL: The paper of the electronic film
21 or whatever it's --

22 THE COURT: Okay.

23 MR. BELL: -- on. Yes, sir.

24 So again, we don't know whether we'll ever
25 get it or not, Your Honor, but we would like to have an

1 order requiring the government to produce it. And if
2 they can't produce it, that's -- we can't ask any more.
3 But we do need an order in place.

4 THE COURT: So what's the deal? This stuff
5 sounds pretty relevant.

6 MS. MIRSKY: Your Honor, just a few
7 clarifying --

8 THE COURT: It's not relevant?

9 MS. MIRSKY: We understand that the
10 plaintiffs are asking for this and that it may be
11 relevant to some of their plaintiffs' search for
12 additional corroboration, if necessary. But I think
13 it's important to take a step back to look at why this
14 system was created in the first place, which was to
15 assist the VA with individual claimants who needed
16 additional help corroborating their claims that they
17 were at Camp Lejeune for a specific period of time.

18 These muster rolls were not digitized in
19 order to be able to search by 100 people's names at a
20 time or anything like that. As Your Honor pointed out,
21 it's not possible to run mass searches --

22 THE COURT: Well, I think you understand
23 that, right?

24 MR. BELL: Yes, sir.

25 MS. MIRSKY: Right. And it is also

1 important to know that these are not kept by an
2 individual person's name. They're organized by year and
3 then by unit.

4 THE COURT: So much the better, right? '53
5 through '87.

6 MS. MIRSKY: And so we have given the
7 plaintiffs an on-site inspection to look at these muster
8 rolls. They ran a couple of searches and then decided
9 that they were no longer useful to them, looking at the
10 system was no longer useful to them.

11 What we believe plaintiffs are looking for,
12 which is essentially some sort of database that can be
13 broadly searched, does not exist. The digitized muster
14 rolls that were scanned from 2013 to 2015, we are able
15 to access some of them. But plaintiffs have represented
16 that it's not in a form that is useful to them. As
17 plaintiffs just indicated, they are being digitized
18 currently in -- separate and apart from this litigation.
19 It's part of the Marine Corps' efforts to digitize --

20 THE COURT: Do you know if 1953 through 1987
21 has been digitized?

22 MS. MIRSKY: It was part of that
23 digitization effort. But on the server -- once the
24 server and the NAS were brought back online where these
25 muster rolls were kept, the amount of muster rolls

1 there, I don't know to what extent they're all still
2 housed in that location. I don't believe that they're
3 housed anywhere else.

4 The hard copy muster rolls are available for
5 plaintiffs' inspection and review and have been since
6 November, and we are committed to producing the results
7 of the ongoing digitization process as soon as it is
8 completed, which will be done, you know, in advance of
9 any trial should they need additional corroboration for
10 some of the plaintiffs that are at issue here.

11 I will also note that in plaintiffs' little
12 printout here on the verifying eligibility page that has
13 the blue banner, step 3 under "search digitized muster
14 rolls" states "search digitized housing card info." And
15 we have produced an actual database of housing card
16 information to plaintiffs back in November and December.
17 And that is searchable by an individual service member's
18 name --

19 THE COURT: That's residence, right?

20 MS. MIRSKY: That's residence. But I have
21 some examples here, if I may --

22 THE COURT: Sure.

23 MS. MIRSKY: -- hand one up.

24 THE COURT: But that's not gonna tell you
25 the unit assignment, right?

1 MS. MIRSKY: Well, it will tell -- it will
2 tell you the residence and the start and the end date.
3 The muster rolls...

4 THE COURT: Thanks.

5 So is this an actual muster roll?

6 MS. MIRSKY: This is a housing record.

7 THE COURT: Oh. I'm sorry.

8 MS. MIRSKY: And this is what is subject to
9 that searchable database that plaintiffs have access to.

10 THE COURT: And so it would hit off the
11 names, is that right?

12 MS. MIRSKY: That's right. And it has the
13 start and the end date. And you can see at the bottom
14 it has the specific address of all those individuals for
15 those time periods.

16 I would note that the muster rolls, if you
17 want to find the entirety of when an individual spent
18 time at Camp Lejeune, you would need to know all of the
19 dates and work backwards from that, because a muster
20 roll has the start date and then you would need to
21 search for the known end date to piece that information
22 together.

23 It's a bulk record that is meant to be
24 searched by unit. It's not meant to be searched by an
25 individual name. And I will note that the digitization

1 project that's ongoing in Alexandria will result in
2 OCR'd PDFs. The muster rolls are being saved by date
3 information. And so plaintiffs will be able to take
4 these PDFs and look at the relevant dates, just like
5 they're saying they would like to, and then locate an
6 individual on that muster roll. I have an example of
7 the muster roll if you'd like to see it as well.

8 THE COURT: Sure. Has '53 through '87 been
9 digitized?

10 MS. MIRSKY: I believe it was part of the
11 prior digitization --

12 THE COURT: Okay.

13 MS. MIRSKY: -- efforts, but it does not --
14 it's not clear what is still --

15 THE COURT: All right.

16 MS. MIRSKY: -- housed within that.

17 MR. BELL: Your Honor, what I haven't heard
18 yet is the government says they have some of the -- some
19 of the work done in 2013 and '15. We want that work.
20 We want that digitization that was done. Whether
21 there's a misunderstanding of how we use it, that's
22 different than asking for what was done.

23 THE COURT: So this is a muster roll, what
24 you just handed me?

25 MS. MIRSKY: That's right.

1 THE COURT: And what does this tell me?

2 MS. MIRSKY: It tells you the -- it has the
3 unit information a few columns over --

4 THE COURT: So let's -- Jamie Acker, or
5 maybe that's James Acker. That's the first column. And
6 then there's this seven-digit number. What's that?

7 MS. MIRSKY: I believe that's the service
8 member number. And then -- is that correct? Rank.

9 THE COURT: Is that rank? E-1? E-2?

10 MS. MIRSKY: Maybe I'll let Mr. Inch from
11 Navy explain it better than I can.

12 MR. INCH: Your Honor, Adam Inch, Department
13 of the Navy.

14 So just to clarify through the fields here,
15 you have name, service number, rank. I believe that's
16 MOS, the four-digit code is an MOS, and then a list of
17 dates.

18 THE COURT: What is MOS?

19 MR. INCH: That's the military occupational
20 code, sir.

21 THE COURT: And then his -- and then his or
22 her -- what's the date?

23 MR. INCH: Not entirely sure what the date
24 reflects, sir.

25 THE COURT: Well, they're all 1955 on this

1 document, I guess.

2 MR. INCH: Most likely presence. But
3 usually muster rolls are more accurate, so I'm not sure
4 why there's such a deviation in --

5 THE COURT: So what does this muster roll
6 tell me?

7 MR. BELL: That gives us a lot of
8 information, Your Honor, like unit number.

9 THE COURT: Okay.

10 MR. BELL: We can then go to other areas and
11 find out -- for example, in --

12 THE COURT: Well, it tells me the service
13 number and the rank and then the MOS.

14 MR. BELL: Well, the MOS gives you a lot of
15 information, Your Honor. For example, there are three
16 or four or five different units, different specialties
17 at Camp Lejeune. We know some are training over here.
18 They get water from over here. And we get a lot of
19 information from it.

20 THE COURT: So you would take the MOS number
21 and -- almost like tracking a person, right?

22 MR. BELL: Your Honor, I hate to sound
23 ignorant, and I probably am about this process --

24 THE COURT: Well, you've heard me. I mean,
25 you know that I am, so --

1 MR. BELL: No, Your Honor. What I am saying
2 is our people tell us they need this. That's the best
3 way I can say it.

4 But the government has just said something
5 that is very unique, Judge. They said, "We have this
6 information," but they won't turn it over. They have
7 the digit- -- the -- they have the work done in 2015.
8 That's exactly what we're asking for. And that's what
9 we want.

10 Now, how we use it and what capabilities it
11 has, that's not the subject of our disagreement. We
12 want the process that Dr. Bove and them say were done
13 pursuant to Congressional mandate. They had to do
14 something. They're required to do it. They spent
15 millions of dollars to put this together. And, you
16 know, the government doesn't ever throw anything away,
17 Judge.

18 MR. FLYNN: Your Honor, it might be helpful,
19 but I think there are a few things to note about all of
20 this.

21 So, one: This is just one type of muster
22 report. They may have changed the different ways they
23 were kept. But there are other muster reports that tell
24 you a little bit more information. For example, I
25 recently saw one yesterday that talked about this

1 individual named Mr. John Phillips. His --

2 THE COURT: You saw one yesterday?

3 MR. FLYNN: I did, hard copy --

4 THE COURT: So you have one.

5 MR. FLYNN: Hard copy of the -- copy of a
6 copy.

7 THE COURT: Okay.

8 MR. FLYNN: So E-3 rank; service number X;
9 station, Camp Lejeune; FMF, Fleet Marine Force,
10 2nd Marine Division, 10th Marine, 2nd Marine Battalion,
11 Battery E --

12 THE COURT: And what does that tell you?

13 MR. FLYNN: That tells you where on base he
14 was located and what they did. And you can see them --
15 because some of these muster reports are monthly. You
16 can see as the musters change, they move around. Right?
17 And then also --

18 THE COURT: So from that information -- why
19 is that information valuable to you?

20 MR. FLYNN: It puts them there on base. And
21 it tells you where on base they were and where they
22 trained, where they moved, and then you combine that
23 with the MOS. That tells you a lot. For example, if
24 the MOS was "typist," typists were housed in the
25 administrative section of Camp Lejeune. They worked at

1 Hadnot Point. If they're -- "cook," they had a
2 different area. If they were, you know, fire team,
3 whatever it was, that tells you a lot.

4 You then combine that with the information
5 that you glean from the units about where they were on
6 base. So 2nd Marine Division was the largest tenement
7 at Lejeune.

8 THE COURT: So you couple that with
9 someone's deposition testimony of her memory of where
10 her father was on base.

11 MR. FLYNN: Sure, or you just --

12 THE COURT: Old mail.

13 MR. FLYNN: Correct.

14 THE COURT: Photographs.

15 MR. FLYNN: Old mail, photographs, memory.

16 But also not just that. It is, in fact,
17 sometimes the information they have. "I don't know
18 where Grandpa lived, but Grandpa's name was so and so."
19 And then now you can see all of this stuff and then you
20 can corroborate it. It's exactly right.

21 THE COURT: Okay.

22 MR. FLYNN: You know, and part of this too
23 is this muster report shows you how important it is. It
24 is alphabetical. It's by name. So this idea that it's
25 not searchable by name or that the name is irrelevant, I

1 mean, how many Phillips do you think there are? A lot.
2 Look at Allen. There are one, two, three, four -- four
3 Allens on this one page.

4 So you need to be able to see name but also
5 ID number. Really, the search logic is in the name with
6 the service ID number as a backup to make sure that
7 you're talking about the right one. What we saw at
8 Quantico isn't that we thought -- we got there -- with
9 all due respect -- we got there and thought, "Oh, this
10 isn't useful, we're just gonna turn around."

11 What the -- I spoke to the folks that went
12 there, and admittedly, I was not there. But the
13 materials at Quantico were a large assortment of
14 digitization of Marine Corps records, some of which
15 happened to be relevant to Camp Lejeune. It was not the
16 2013 to 2015 searchable index. Apparently an individual
17 at the Marines there was asked about this digitization
18 effort for later this summer. We were told, "It's not
19 gonna be what you think it is," this 2013 to 2015
20 digitization effort. They're talking about searching by
21 service numbers.

22 Your Honor, service numbers are circular
23 logic. If you don't know where Grandpa Jones was on
24 base because you just don't know that much about him,
25 you don't know the service number. If you don't know

1 the service number, you can't find him.

2 This is a -- the name is what's relevant
3 here. And I think that that's what the VA is going
4 through here. Clearly, they need to be able to be
5 searched. They're searched individually. The housing
6 records are interesting but -- they put you on base, but
7 it's static. They don't tell you where you move on
8 base, as you've noted.

9 So all of this is part of a larger picture
10 that we're trying to assemble. And the bigger picture
11 here, Your Honor, is that one day this case will settle,
12 in bits or parts, but it will actually come -- a point
13 where we reach a settlement matrix. And I can assure
14 you that everybody's gonna want to be interested in
15 being able to systematize location on base in a way that
16 has a high degree of fidelity and trust. This is what
17 these systems are for, these databases are for, ATSDR,
18 muster. It's part of the bigger picture of this case,
19 and that's why we need them so badly.

20 THE COURT: Well, everyone we're talking
21 about that is in suit has been through an administrative
22 process, correct?

23 MR. BELL: Yes, sir.

24 THE COURT: So what of that administrative
25 process involved the either sharing or providing of the

1 sorts of information you're talking about? When you
2 fill out a claim, I would assume, with the Department of
3 the Navy, you have to provide them some information on
4 who you're talking about, where that person was or lived
5 or what they did.

6 MR. FLYNN: Yes, Your Honor. To the best of
7 their knowledge, they're putting information about what
8 they did. But sometimes they don't -- they forget.
9 They may have been at this barrack or that barrack or
10 they did that, they did that, where they were on base.
11 They can say, "I remember I was a typist. I don't
12 remember what building I was in."

13 THE COURT: We're talking about denied
14 claims, right? Claims that were denied.

15 MR. BELL: One of the things that I think
16 we're missing, Your Honor, is fundamentally the
17 plaintiffs have a difference of what the statute is
18 going to require. We believe, and it's part of our
19 summary judgment process we're going through, is that
20 the statute says you've got to be on base at least 30
21 days. And it's kind of an exposure model. The
22 government -- I think we'll see in their brief -- is
23 gonna say, "No, you got to go and look at the exposure
24 of each individual."

25 So if you're working here and you're living

1 here, the exposure for each one of those places is
2 different --

3 THE COURT: The exposure of 30 days.

4 MR. BELL: For example, the water in one
5 place may have more chemicals in it than the other one
6 does. So we are having to think through if -- if we
7 don't prevail in our motion, each individual person, all
8 hundreds of thousands of people are gonna have to have
9 an individual epidemiological study of the exposure.
10 Part of that exposure is not just where they lived.
11 They didn't drink water just out of their faucet. They
12 drank water at work. They drank water at the baseball
13 field. They drank water at the commissary, where they
14 worked. And we've got to take all of those exposure
15 models and -- what dose did you get, what information --
16 or what exposure did you have?

17 We hope that that's not the way the Court's
18 gonna require us to go. We don't think the statute
19 requires that. We think the statute is explicit about
20 that. But the fact is we need this information if it's
21 available.

22 Now, the government just said it is
23 available, and we don't -- that's the first I've heard
24 that. So if it's available, Judge, we'd like the Court
25 to issue an order for --

1 THE COURT: We're talking about these two
2 things now, the water modeling and the muster rolls,
3 we're talking about that now because you've made efforts
4 to resolve this dispute --

5 MR. BELL: Yes, sir.

6 THE COURT: -- without success.

7 MR. BELL: We've had lots of
8 meet-and-confers about --

9 THE COURT: Okay. Is there anything else I
10 need to know about these two?

11 MR. BELL: Those two, no, sir. But there's
12 one other item.

13 THE COURT: Oh.

14 MR. BELL: Sorry.

15 MR. BAIN: Can we address the muster rolls
16 first, Your Honor?

17 THE COURT: Oh, yeah. Go ahead.

18 MR. BAIN: Well, Your Honor, we're trying to
19 make these available to them. They are available to
20 them in their form that they're created in Alexandria.
21 And we've given them access to that for months. They
22 were digitized in two different efforts, the one that
23 was done historically and the one that's ongoing right
24 now.

25 For the historical effort, we've provided

1 them access at Quantico to that system and asked them if
2 they want to run searches or see how it works, you know,
3 you're welcome to do so. And they did. They ran one
4 search and it didn't return the information that they
5 thought it should and that they, to my understanding,
6 they gave up. They didn't run any more searches,
7 although that was offered to them.

8 So this historic system which the VA
9 searched not by name but by unit for corroboration under
10 the Janey Ensminger Act to see eligibility, that system
11 has been brought back up, and unfortunately it's not as
12 comprehensive or as searchable as the plaintiffs think
13 it should be. We allowed them the inspection to that
14 system to find out for themselves if it was.

15 The ongoing effort which should be completed
16 this summer will provide them with all the information
17 that they're looking for. But before that's completed,
18 they are welcome to go and look through the existing
19 files as they were originally created and look for the
20 information that they want.

21 THE COURT: Okay.

22 MR. BELL: We're only asking, Judge, is --
23 we shouldn't have to go to Washington, DC, and have a
24 team sit there with one computer and do thousands of
25 searches when we could get the database and do it in our

1 office.

2 THE COURT: Okay. All right. I'll --

3 MR. BELL: Now, the third thing, Your Honor,
4 has to do with health studies. I think we have reached
5 a fairly decent agreement, but there is one area that
6 we -- that I would like to discuss with the Court.

7 THE COURT: Okay.

8 MR. BELL: You recall, Your Honor, that this
9 recent health study was the subject of some motion
10 practice earlier, and you issued an order, and the
11 health study came out. We think, Your Honor, that our
12 little encouragement might have helped it. And that's
13 just maybe our thinking, but we think it -- we think it
14 got it produced quicker than it was gonna be produced.
15 Our information was it was gonna be produced in
16 September. We now got it produced in January. That's a
17 big help.

18 In order for this study to be done, the
19 researchers have to get databases from states all over
20 the country. It's called a cancer database or cancer
21 registry. And in order to get the information from the
22 cancer registry, let's say you're at Duke and you're
23 trying to do a cancer study, you can get information
24 from these databases but you've got to sign an
25 agreement: I'm not gonna share the data with anyone

1 else, and I understand that.

2 So we've talked with the government, and I
3 recognize the problem with sharing those databases,
4 giving us that information. But we need to be able to
5 search that information for our clients. And it's a
6 limited number of clients right now. We're looking at
7 -- well, we aren't quite sure. We believe that the
8 registries do not include a large number of our clients.
9 Think about what the benefit would be to the plaintiff
10 if that's true. The study says that there are X number
11 of bladder cancers per 100,000. But if they didn't pick
12 up all of the bladder cancers, then that increases the
13 number per 100,000. We think that they missed a lot,
14 and we think the registries, from our understanding of
15 how they work, they don't get everybody. They get a
16 lot; they don't get everybody. And so we don't think
17 they get people, for example, who have died from these
18 cancers. There are a lot of things we think that are
19 missing.

20 We would like to get that database, if we
21 could, under a court order that allows us to utilize it
22 and doesn't -- doesn't do harm to the agreements that
23 the government had to enter into with each state. And
24 so we've asked counsel for copies of those agreements so
25 we could see them. And I think that it's important that

1 we have at least access to the data, whether they give
2 it to us or whether we have the right to go down to
3 Atlanta and type in our own people or what, but we'd
4 like to be able to utilize that data.

5 THE COURT: These are studies performed by
6 third parties?

7 MR. BELL: This is just data collection,
8 Your Honor, not studies.

9 THE COURT: Okay.

10 MR. BELL: So the data -- for example, if
11 you go to --

12 THE COURT: Who has the data?

13 MR. BELL: Well, the ATSDR has it.

14 THE COURT: Okay.

15 MR. BELL: They got it from all of the
16 states. So if one of us goes to the --

17 THE COURT: And so there are 50 agreements?

18 MR. BELL: Apparently.

19 THE COURT: From government entities or...

20 MR. BAIN: It's between the state and the
21 federal government. They enter into these agreements so
22 that they can use the information that's been collected
23 by the states. And there are statutory restrictions in
24 addition to these agreements with the states on the use
25 of the data so that the person's individual information

1 is protected.

2 And so we're asking ATSDR whether they would
3 be willing to search for the plaintiffs' names, and
4 they're considering that. But they're very concerned
5 about the statutory restrictions and these agreements
6 that they enter into with states --

7 THE COURT: You just want your names run
8 through the data, right?

9 MR. BELL: Yes, Your Honor. But I think
10 it's -- I think we should not misunderstand that we have
11 the need to search a lot of names. And so we can help
12 set up a software to give to the government to do an
13 automatic search. We can -- we'll be glad to -- if they
14 can't do it, we can do it for them. But we're trying to
15 get at the data. We don't --

16 THE COURT: For your --

17 MR. BELL: For our clients.

18 THE COURT: For your clients. All right.
19 So if it's just limited to the clients -- I cut you off
20 because I wanted to make sure that's what it is.

21 MR. BAIN: Well, we're asking ATSDR now if
22 they're willing to do that as a way to get them the
23 information they need. And they're considering that.
24 They haven't given us an answer yet.

25 THE COURT: Okay.

1 MR. BELL: And the only thing we've asked
2 for, Your Honor, is copies of the agreements to see if
3 we can -- if there's a way to work around or work
4 through the agreement or maybe --

5 THE COURT: From a different angle.

6 MR. BELL: Yes, sir.

7 MR. BAIN: We've already given the
8 plaintiffs one example of an agreement.

9 THE COURT: Okay. It sounds like y'all are
10 working on that?

11 MR. BELL: Are there -- I guess -- if you
12 don't mind, Your Honor.

13 (Discussion off the record between counsel.)

14 MR. BAIN: Well, go ahead.

15 MS. MIRSKY: We've sent over two examples,
16 one from Alabama and one from Colorado. They're all
17 different. They all have different language and relate
18 to different sets of state laws.

19 THE COURT: Yeah.

20 MS. MIRSKY: We also sent over the
21 application to get information from the National Death
22 Index, which is also relevant to this study and has a
23 very strong confidentiality protection --

24 THE COURT: What is the National Death
25 Index?

1 MS. MIRSKY: It is a database that the
2 National Center for Health Statistics put in an
3 application for to find out information related to death
4 certificates and things of that nature to work into the
5 cancer incidence study.

6 So we have provided that information for
7 plaintiffs. We sent that to them last week. And I
8 believe this is an ongoing negotiation that we're
9 discussing the best way through.

10 MR. BELL: We'll continue to work through
11 that, Your Honor, if we can.

12 THE COURT: All right. Thank you.

13 All right. Administrative claims update. I
14 think you've got somebody you want to...

15 MR. BAIN: Yes --

16 THE COURT: Introduce.

17 MR. BAIN: This is Adam Inch. He's the
18 director of the Camp Lejeune Administrative Claims Unit
19 for the Navy, and he can address any questions you have
20 about how they are gathering the data.

21 THE COURT: Okay.

22 MR. INCH: Your Honor, Adam Inch, Department
23 of the Navy.

24 THE COURT: Yes, sir.

25 MR. INCH: Sir, I'll just give you a brief

1 update. So last week --

2 THE COURT: I'd like to know nuts and bolts,
3 how it's working, what the response has been like from
4 the plaintiffs who are participating. I'd like to know
5 timelines. I'd like to know your concern about
6 fraudulent claims being submitted. I've got a lot of
7 questions about how this works.

8 MR. INCH: Yes, sir. So I'll start where
9 you started.

10 So we have an automated claims processing
11 system that we've been building since about October. We
12 launched it last week, 31 January. We launched it to a
13 limited group of individuals. So it was the first eight
14 firms that filed batch filings, and I'll touch on the
15 reasoning for that in --

16 THE COURT: And that's a big number.

17 MR. INCH: It's about 30,000 claims.

18 THE COURT: Okay.

19 MR. INCH: So out of the 160,000 that are
20 currently sitting in our claims inventory, it's 30,000
21 of those claims.

22 THE COURT: Okay.

23 MR. INCH: So we use that as, essentially,
24 the test to see how we ingest the data, to make sure
25 that we're ingesting it, you know, accurately. And then

1 we've invited those eight firms into the system to
2 review their data and validate it and say, "Yes, this
3 looks correct."

4 THE COURT: What are you receiving from
5 them?

6 MR. INCH: So far, they've all created their
7 accounts, and they're in the system reviewing --

8 THE COURT: And what is that information?

9 MR. INCH: So -- the information they're
10 providing back?

11 THE COURT: Yeah.

12 MR. INCH: So it's the initial claim form,
13 essentially. So it's the data fields that are on that
14 form that are in the system. Once they validate that,
15 they can then upload substantiating records directly
16 into the system.

17 THE COURT: And then what do you do with
18 that information?

19 MR. INCH: So then that moves forward in the
20 review process from there.

21 THE COURT: Okay. And then what happens
22 after that?

23 MR. INCH: After that we make a
24 determination. So we have a team of claims attorneys.
25 We have 40 on board now. We'll have 70 by the end of

1 March. And those attorneys will make a claims
2 determination. And then once we make a recommendation,
3 we forward it to the Department of Justice for a --

4 THE COURT: So is this part of the EO
5 program?

6 MR. BAIN: That's the first --

7 THE COURT: Facilitate that process?

8 MR. BAIN: That's right, Your Honor. That's
9 the first stage of the administrative process that we're
10 going through right now.

11 THE COURT: And what's the response been
12 like from those participating?

13 MR. INCH: So far, the response --

14 THE COURT: Or that you've invited to
15 participate.

16 MR. INCH: Yeah. So, so far they're all in
17 the system validating. We received initial feedback
18 from some of the firms. So at this point in the
19 process, we're using their feedback to make sure that
20 our processes work correctly. And then the plan is once
21 that information, that first tranche of information is
22 validated, we can ingest the remainder of the 160,000
23 claims that we have sitting in our inventory.

24 One of the challenges that we've encountered
25 is data quality. So it's kind of touching on what we

1 talked about with the muster rolls. So what the firms
2 provided in the batch filings is pretty good data
3 because it was, you know, bulk files, they typed in
4 information. So we're relatively confident that what
5 we've set up as our process will work effectively to
6 ingest that data.

7 For the pro se claimants who completed a PDF
8 form, whether by hand or by typing in information, the
9 data quality varies significantly. So some of it's
10 good. Some of it is problematic. So that we'll do kind
11 of on the --

12 THE COURT: What makes it problematic?

13 MR. INCH: Well, some claimants left fields
14 blank, for example, or they typed in an injury that may
15 not -- it could be mistyped. It could be a different
16 way to describe an injury. So as an example, we did
17 some analysis on 30,000 of our claims. In that 30,000
18 claims, there were over 4,000 injury types reported.
19 But that's clearly not 4,000 different injuries. It's
20 4,000 different ways to describe probably about 20 or 30
21 different injury types.

22 So that's one of our challenges, is what we
23 call normalizing that data to ensure, one, that it's
24 spelled correctly. And then if it's spelled correctly,
25 you know, for instance, an umbrella term would be "lung

1 cancer" or "end-stage renal disease." But under that
2 umbrella, there's different ways that that could be
3 described. So we're working to associate that with the
4 correct, kind of, umbrella term so we can categorize and
5 understand what the claimants are asking.

6 THE COURT: And what sort of deadlines are
7 there in this process?

8 MR. INCH: So as far as deadlines, we're
9 targeting to ingest the remaining inventory over the
10 next six weeks. So we're -- that's a goal, and that's
11 somewhat dependent on the data quality issues. So
12 again, the vast majority of the claims are represented
13 by counsel, so law firms have entered that data. So
14 it's good quality. We should be able to get through
15 that relatively quickly.

16 Once we have that data in the system, just
17 as a reminder to the Court, that that is the basic
18 information required to present a claim. So here's my
19 name, here's when I was stationed on Camp Lejeune,
20 here's my injury, here's how much I'm asking for.
21 Right? So a sum certain.

22 But that's not the underlying substantiating
23 record. So it's not, you know, military records, health
24 care diagnosis, medical information that might be
25 required to substantiate the injury or anything like

1 that. So of the claims that have already provided that
2 level of information, we've been able to review and make
3 settlement recommendations, and we settled some of those
4 cases.

5 The vast majority of the remaining inventory
6 have not yet provided that underlying substantiation.
7 So we're working with the law firms to provide that.
8 We're currently working outside of the system to provide
9 that to us for our manual review. But once we have the
10 system up and everyone is working within that claims
11 management system, it will facilitate transfer of
12 records.

13 One of the challenges with transferring
14 health care information, for instance, is making sure
15 it's protected. So when we do this manual transfer of
16 information outside of the system, we have to use secure
17 messaging platform, right? Can't just e-mail them.

18 Once we're working within the system, all of
19 that transmission of information is secured. So they'll
20 be able to just upload documentation to the system. So
21 I think it will expedite that process. And I think that
22 process, from what we're gathering, is probably gonna be
23 the greatest source of delay, is people gathering those
24 records and providing them to us for our review.

25 THE COURT: With respect to a single claim,

1 is there a -- is there a deadline by which they need to
2 provide the documentation, or is that sort of a rolling
3 process?

4 MR. INCH: No, sir. There's not a deadline
5 for providing the documentation. There's a deadline for
6 filing a claim.

7 THE COURT: Yeah.

8 MR. INCH: That's about it at --

9 THE COURT: Right.

10 MR. INCH: -- this point. What we are doing
11 is when we go back and request documentation, we're
12 giving as much time as we possibly can.

13 THE COURT: So you don't have a deadline by
14 which they -- okay --

15 MR. INCH: We have not -- no, we have not
16 set any deadlines.

17 THE COURT: Well, what sort of
18 substantiation do you -- do folks usually provide?

19 MR. INCH: There's a couple different ways
20 we could substantiate a claim. Probably the easiest,
21 fastest way is to look at benefits determinations that
22 the VA already made. So we kind of referenced how the
23 VA was able to go through records and make benefits
24 determinations. When they do that, they say the
25 individual was on Camp Lejeune at this time. This is

1 their injury. This is their benefit. And we can -- we
2 can use some of those conclusions from the VA to support
3 our claims review process. So that's where we've seen,
4 kind of, the greatest impact on claims review and
5 settlement.

6 Probably by the end of this week, end of
7 next week at the latest -- 20 of my team members have
8 direct access to that VA database and they'll be able to
9 review all benefits determinations made for the 160,000
10 individuals that have filed a claim so far. So we're
11 hoping to make significant progress there.

12 Outside of that process, someone would have
13 to provide documentation showing when they were present
14 on Camp Lejeune. They would have to provide
15 documentation from a medical professional showing they
16 were diagnosed with a condition. Those would pretty
17 much be the basic substantiation records that would need
18 to be provided.

19 THE COURT: Okay. And is all of this
20 information -- the claim file from you guys, the claim
21 file from VA -- does all of that come into discovery in
22 this case?

23 MR. BAIN: It can, yes. It will be used.
24 And it can be turned over to the plaintiffs if we have a
25 release.

1 THE COURT: Right.

2 MR. BAIN: And we've been going through that
3 process. We've been getting releases and turning
4 material over to the plaintiffs.

5 THE COURT: Okay. What else should I know?

6 MR. INCH: I mean, I think just to ensure
7 that everyone is kind of on the same page, once we have
8 all of these claims ingested and then, you know, moving
9 forward, all new claims will come through that system,
10 you know, we'll have 160,000 presenting claims ready to
11 be substantiated.

12 THE COURT: When do you think that will
13 happen?

14 MR. INCH: So I am hopeful that that will
15 happen in that six-week time frame that I laid out, so
16 over the next six weeks. But that is a large
17 undertaking, and again, contingent on some of the data
18 quality issues that we've seen.

19 But it took, essentially, about a week and a
20 half to get 30,000 claims in, and we were learning
21 through that process, so --

22 THE COURT: And so are those 30,000 claims,
23 have those been substantiated or those have been
24 submitted?

25 MR. INCH: No, sir. Those are just in the

1 system now --

2 THE COURT: In the system.

3 MR. INCH: Pending validation. Yes, sir.

4 THE COURT: Big obstacles. What big
5 obstacles do we got?

6 MR. INCH: The big obstacle, sir, is
7 substantiation.

8 THE COURT: Yeah. All right. What else --
9 what else should I know?

10 MR. BELL: We've been -- we're part of that
11 process, Your Honor, and we appreciate what they're
12 doing. Our only wish was that we were involved or could
13 be involved in how they evaluate cases. We've not been
14 asked about it. We've not been involved in the process.
15 We think there's some real errors in what they're doing,
16 and we would like to have that conversation. That has
17 not been available to us up to now.

18 That brings up -- the last thing I think we
19 want to talk about today is the Settlement Master. We
20 were hopeful, Your Honor, that we would have a final
21 agreement today to recommend to the Court. We've agreed
22 on who the Settlement Master would be, but the
23 Department of Justice is going through their
24 administrative work to get things, I guess, approved or
25 the process --

1 THE COURT: The parties need to file a
2 proposal with the Court, is that right?

3 MR. BELL: Yes, sir.

4 MR. BAIN: We're working on that. We're
5 very close. We've been communicating with the special
6 master, and as late as last night he had some additional
7 things for us to consider as part of this order that he
8 wanted to consider. So that's why we don't have it for
9 you today.

10 THE COURT: When do you think that -- this
11 is a filing y'all are making?

12 MR. BAIN: Right, a proposed order for his
13 appointment.

14 THE COURT: When do you think that would be
15 done?

16 MR. BAIN: Well, we were hopeful it would be
17 done by today, but I think it can be done within the
18 next week or so. We need to meet with him again, and
19 we're trying to schedule that for Friday.

20 And as Mr. Bell mentioned, there are certain
21 contracting requirements that the government has to go
22 through, and so the order we propose may say "contingent
23 on the government being able to satisfy these
24 contractual agreements with the special master." He's
25 given us a list of provisions that he wants us to

1 include in his contract. So we have to go through the
2 government contracting process, the contracting lawyers,
3 to make sure that those are acceptable to the
4 government, or to negotiate with him on those particular
5 provisions. And that might take a little bit longer.
6 But we are trying to schedule our first substantive
7 meeting with him at the end of this month, on the 29th,
8 assuming we can get all those things worked out, which
9 I'm hopeful that we can.

10 THE COURT: All right. Anything else?

11 MR. BELL: No, Your Honor.

12 THE COURT: I'm anticipating entering an
13 order on the water modeling and muster rolls in the
14 short term.

15 Okay. All right. Thank you very much.

16 (Proceedings concluded at 12:14 p.m.)

17

18 **C E R T I F I C A T E**

19

20 I certify that the foregoing is a correct
21 transcript from the record of proceedings in the
22 above-entitled matter.

23

24 /s/Risa A. Kramer

2/13/2024

25 Risa A. Kramer, RMR, CRR

Date