

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

IN RE: )  
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) File No.  
CAMP LEJEUNE WATER LITIGATION ) 7:23-cv-897  
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FRIDAY, APRIL 26, 2024  
STATUS CONFERENCE  
BEFORE THE HONORABLE ROBERT B. JONES, JR.  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III; Eric Flynn; Jayne Conroy  
Charles Ellis; Hugh Overholt; Joe Rice

On Behalf of the Defendant:

Adam Bain; Michael Cromwell; Jennifer E. Adams

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

1 (Friday, April 26, 2024, at 11:14 a.m.)

11:14:18 2 **P R O C E E D I N G S**

11:14:18 3 THE COURT: Good morning. All right. So  
11:14:20 4 we've got folks here and I know we've got some folks on  
11:14:22 5 the line. We'll get started like we usually do. By my  
11:14:34 6 calculation, the parties are waiting to hear from the  
11:14:40 7 Court on an order for Track 2, a request for  
11:14:46 8 certification. The -- there's a motion for partial  
11:14:54 9 summary judgment. I believe that's on the causation  
11:14:56 10 issue. What is not ripe but has been filed are motions  
11:15:02 11 relating to the removal of the opt-out option and then  
11:15:07 12 to prioritize these single-disease plaintiffs for trial.  
11:15:16 13 There's also a motion for the creation of a document  
11:15:20 14 depository that I think is -- I don't think that's  
11:15:23 15 contested.

11:15:25 16 Is all of that correct, Mr. Bell?

11:15:27 17 MR. BELL: Yes, Your Honor. The single --  
11:15:32 18 request for single-plaintiff trials, our response is due  
11:15:38 19 on Monday. And we have a meet-and-confer today to try  
11:15:41 20 to narrow those issues. We'll see what we can do about  
11:15:45 21 that.

11:15:48 22 THE COURT: Is the issue there -- I don't  
11:15:50 23 want to get too much into it, I guess. But I'm kind of  
11:15:56 24 curious about that issue, because it was -- it was you  
11:16:02 25 who were tasked with picking the cases for trial. Is

11:16:08 1 it -- is it an issue of a plaintiff that has a Track 1  
11:16:13 2 and then multiple other medical issues? Or maybe not so  
11:16:22 3 many? Or both?

11:16:24 4 MR. BELL: Most of our Track 1, potentially  
11:16:28 5 Track 2 and Track 3 plaintiffs will have multiple  
11:16:32 6 diseases. Most of them. Now, what we're finding,  
11:16:36 7 Judge, is because of the exposure just is not selected,  
11:16:40 8 just give a plaintiff one disease, it will give them  
11:16:43 9 multiple diseases.

11:16:44 10 So the request by the Government and -- we  
11:16:48 11 have some -- we think we have some alternatives that  
11:16:51 12 might work with their request. But the request is to  
11:16:54 13 try the cases with a single plaintiff -- single-disease  
11:16:58 14 plaintiff, which there are about half of about that  
11:17:02 15 many. There are some diseases -- some single-disease  
11:17:05 16 plaintiffs that because of the treatment, sometimes your  
11:17:10 17 chemotherapy, things like this, creates other problems.  
11:17:13 18 But that's ancillary to the original disease. So we're  
11:17:16 19 counting those as the single-disease plaintiff.

11:17:19 20 The problem that the Government has brought  
11:17:21 21 up -- and I think it's -- we're thinking about, is some  
11:17:25 22 of the diseases are not part of what we're focusing our  
11:17:28 23 expert witnesses on. And that's their -- again, we have  
11:17:32 24 some ideas on that today.

11:17:33 25 THE COURT: And so I guess it's a balance of

11:17:38 1 between how much time is this case going to take that  
11:17:43 2 involves multiple diseases -- as a single disease that's  
11:17:47 3 in Track 1, but multiple other diseases, how much time  
11:17:50 4 is it going to take that and how valuable a verdict  
11:17:54 5 would be. I mean, could it be that a verdict -- and  
11:17:58 6 we're all kind of speaking hypothetically here. But  
11:18:02 7 could it be that a value -- I mean, a verdict on -- on  
11:18:06 8 bladder cancer -- a bladder cancer case, that's a single  
11:18:11 9 disease, but the plaintiff has other issues, going to be  
11:18:15 10 that a verdict is helpful in resolving cases with those  
11:18:18 11 other issues? I guess that's a decision that you make.

11:18:22 12 MR. BELL: Well, for example, Your Honor, a  
11:18:25 13 verdict based on, let's say, kidney cancer or bladder  
11:18:28 14 cancer may very well be instructive or helpful to  
11:18:31 15 determine the value of other cancers. For example,  
11:18:37 16 Parkinson's is not a cancer, so that would probably not  
11:18:40 17 be valuable. That needs a separate resolution process.  
11:18:45 18 Your blood -- your blood cancers, such as non-Hodgkin's  
11:18:50 19 and things like that, they are different than your  
11:18:53 20 bladder and kidney cancers.

11:18:54 21 So right now there are approximately three  
11:18:56 22 different kinds of diseases that are in Track 1 and  
11:19:00 23 Track 2. So sometimes it would be helpful. For  
11:19:08 24 example, we have a plaintiff in Track 1 that has  
11:19:11 25 Parkinson's that's in the advance stage, but he also has

11:19:16 1 prostate cancer, which is one of the diseases we believe  
11:19:19 2 is related. Whether that's tried at the Parkinson's  
11:19:23 3 case or not, I'm not sure that one would really matter.  
11:19:27 4 I don't want to say that for sure.

11:19:29 5 THE COURT: Right.

11:19:29 6 MR. BELL: But, obviously, you don't want to  
11:19:32 7 have prostate cancer, too.

11:19:34 8 So I think what I'm going to ask today --  
11:19:37 9 and I would certainly invite you, if you would like, to  
11:19:40 10 attend this meet-and-confer. But we really need some  
11:19:44 11 time with the Court to find out what they want to do.  
11:19:47 12 What do they want us to do. And if we had that  
11:19:50 13 information, then it would be easier for us to try to  
11:19:53 14 sit down and say, okay, this is how we think we could  
11:19:57 15 work it out and get it started. It's just difficult to  
11:20:00 16 know right now how to -- how to agree on something if we  
11:20:06 17 don't know how the Court really wants to try the cases.

11:20:09 18 MR. BAIN: Your Honor, the issue for us is  
11:20:10 19 that if we bring in cases with other diseases that are  
11:20:15 20 alleged to be independently caused by exposure to the  
11:20:18 21 chemicals, then we need to have experts --

11:20:20 22 THE COURT: In other words, you've got a  
11:20:22 23 Track 1, but he or she also has a Track 3 and maybe a  
11:20:26 24 Track 4 and a Track 5?

11:20:28 25 MR. BAIN: Right. For example, prostate

11:20:30 1 cancer.

11:20:30 2 THE COURT: Right.

11:20:31 3 MR. BAIN: And so the question is, can  
11:20:33 4 prostate cancer be caused by the chemicals in the water?  
11:20:35 5 And that's an important issue that expert testimony is  
11:20:38 6 going to be needed on.

11:20:39 7 THE COURT: So it's just a time -- is it a  
11:20:40 8 time issue?

11:20:41 9 MR. BAIN: Time and resources issue. And  
11:20:43 10 the focus of this particular track, Track 1, of having  
11:20:47 11 experts and having reliable expert testimony connecting  
11:20:51 12 certain diseases to the chemicals in the water.

11:20:53 13 THE COURT: Would it be helpful for those  
11:20:55 14 cases to go forward so you essentially get a two-for-one  
11:20:58 15 deal? You get a jury verdict on a -- on a bladder  
11:21:02 16 cancer and, you know, take your pick at Track 4 -- a  
11:21:08 17 Track 4. I guess you would make that -- you would make  
11:21:11 18 that determination as to whether you would think it  
11:21:14 19 would be helpful.

11:21:15 20 MR. BAIN: Well, ultimately, we're going to  
11:21:17 21 have to know which diseases were caused by exposure to  
11:21:19 22 chemicals in the water. But the way that the track  
11:21:21 23 system we believe was designed to work is to focus on  
11:21:24 24 those particular diseases that are in Track 1 and save  
11:21:28 25 the other diseases for later. And so that has to do

11:21:30 1 with the experts that we need to testify on particular  
11:21:35 2 diseases.

11:21:35 3 THE COURT: So you would keep it a single  
11:21:37 4 track, single disease?

11:21:39 5 MR. BAIN: Yes. That's our position.

11:21:42 6 THE COURT: Okay. All right.

11:21:43 7 MR. BELL: We think, Your Honor, there's a  
11:21:47 8 value in actually taking some with single disease and  
11:21:50 9 some with multiple disease. But we don't know which  
11:21:55 10 ones to select until we know what the Court is going to  
11:21:59 11 do. Is the Court going to take the single-disease  
11:22:02 12 plaintiffs -- let's say one of the judges might have  
11:22:04 13 four of those, or five, and -- of the single disease.  
11:22:08 14 Are they going to try all five together? Obviously, the  
11:22:12 15 diseases with multiple -- plaintiffs with multiple  
11:22:16 16 diseases may have a little bit more difficulty in having  
11:22:20 17 multiple-plaintiff cases unless each plaintiff had the  
11:22:23 18 same disease, which is kind of difficult to know.

11:22:28 19 THE COURT: But you've got a response due --

11:22:30 20 MR. BELL: Monday.

11:22:30 21 THE COURT: And a meet-and-confer today,  
11:22:32 22 right?

11:22:32 23 MR. BELL: Yes, sir.

11:22:33 24 THE COURT: Okay. All right.

11:22:36 25 Okay. Discovery. What do you want to tell

11:22:40 1 me about discovery? I know something about the project  
11:22:44 2 file. What's the latest on that?

11:22:50 3 MR. BELL: Well, Judge, I hate to keep  
11:22:52 4 kicking a dead horse. May I approach?

11:22:54 5 THE COURT: Yes, sir.

11:23:02 6 (Document handed to the Court.)

11:23:13 7 MR. BELL: Maybe the horse isn't quite dead,  
11:23:15 8 Judge. But we have received this document. It's the  
11:23:24 9 Advisory Committee on Disability Compensation. And it's  
11:23:27 10 a -- kind of looks like a PowerPoint, Your Honor. But I  
11:23:30 11 would ask you to turn to the fourth page. And at the  
11:23:35 12 top of that page, it says, "Camp Lejeune Registries."

11:23:38 13 THE COURT: Uh-huh.

11:23:39 14 MR. BELL: And there are four numbers on  
11:23:42 15 that list of items on there.

11:23:47 16 Judge, I ask you to focus on Number 3.

11:23:52 17 And --

11:23:52 18 THE COURT: Marine Corps Unit Diary  
11:23:54 19 Database.

11:23:57 20 MR. BELL: Judge, this is the first time we  
11:23:58 21 have heard that the muster rolls -- remember, you issued  
11:24:02 22 an order denying our request to compel based upon the  
11:24:08 23 Government's representation they had no muster roll  
11:24:14 24 compilation to digitize in searchable database.

11:24:19 25 Well, this is another document we just



11:24:21 1 received by the Department of Veteran Affairs. And  
11:24:26 2 they're -- they aren't calling this a muster roll  
11:24:29 3 database. They're calling it the MUDD -- M-U-D-D --  
11:24:33 4 database. Marine Corps Unit Diary Database. And it  
11:24:37 5 says from 2014 to 2015, which is a similar date we had  
11:24:41 6 before, Your Honor. Marine Corps scanned 69 million  
11:24:45 7 images of historic muster rolls, microfilm and  
11:24:49 8 microfiche, that were located at MCB Quantico and the  
11:24:53 9 National Archives. The images are in a searchable  
11:24:58 10 database by year, description, RUCRS, Social Security  
11:25:03 11 number, organizational unit location, MMSB real number,  
11:25:09 12 and/or through a full text search. A search tool was  
11:25:14 13 developed for the 1950 through 1990 facility careers.

11:25:19 14 And Judge, I just can't -- we asked  
11:25:24 15 earlier --

11:25:25 16 THE COURT: Is that exactly what you were  
11:25:26 17 looking for? It seems to cover the time period.

11:25:29 18 MR. BELL: It's -- it looks like what we're  
11:25:31 19 looking for. It's named something different than what  
11:25:34 20 we called it earlier. But the old adage "the Government  
11:25:42 21 doesn't throw anything away," I have to believe, Your  
11:25:45 22 Honor, that this exists somewhere. And while the  
11:25:48 23 Government says they can't find it, I think it exists.  
11:25:51 24 And I would ask the Court just to order the Government  
11:25:54 25 to find this database. That's all we're asking. And if

11:26:00 1 they can't find it, they can't find it. But this is --  
11:26:03 2 this is the bible of what we need to help prove our  
11:26:06 3 cases.

11:26:07 4 THE COURT: What were you telling me this  
11:26:10 5 is? This exhibit, this PowerPoint. It looks like a  
11:26:13 6 PowerPoint.

11:26:13 7 MR. BELL: I think it's a PowerPoint, the  
11:26:15 8 way it's presented, Judge.

11:26:15 9 THE COURT: It's from the VA?

11:26:17 10 MR. BELL: Yes, Your Honor. If you look at  
11:26:18 11 the cover on it, it says it's from the Advisory  
11:26:21 12 Committee on Disability Compensation. Dr. Patricia  
11:26:26 13 Hastings was deposed recently, Judge. She's the chief  
11:26:29 14 consultant.

11:26:30 15 THE COURT: What did she say about MUDD?

11:26:32 16 MR. BELL: Well, we just got the document  
11:26:34 17 then and she wasn't asked much about it because we  
11:26:37 18 didn't really get the impact of what this document said.  
11:26:40 19 But we intend on taking her deposition again  
11:26:43 20 individually.

11:26:44 21 But we have clients, Judge, that the  
11:26:50 22 Government asked in depositions how do you know you were  
11:26:53 23 there, give us proof you were there, what month you were  
11:26:56 24 there, what year you were there. And because the  
11:27:00 25 Government delayed telling anybody about Camp Lejeune,

11:27:03 1 because they have basically put these people in this  
11:27:08 2 position, we're now faced with the prospect of a lot of  
11:27:15 3 our clients -- a lot of our clients are going to have a  
11:27:18 4 difficult time proving they were there. And so when we  
11:27:23 5 hear -- and the ATSDR publicly says there's a database.  
11:27:28 6 The VA now is saying there's a database. The only  
11:27:32 7 people that's not saying there's a database is the  
11:27:35 8 Department of Justice.

11:27:37 9 And we just need some help, Judge. This  
11:27:40 10 is -- this is fundamental to this case. And I know  
11:27:46 11 you've issued an order, and I'll be glad to file a  
11:27:48 12 motion to reconsider. If you need me to do that, I'll  
11:27:52 13 be glad to do that. But you've asked us to bring these  
11:27:55 14 things up before we file the motions, and that's what  
11:27:57 15 I'm doing today.

11:27:58 16 THE COURT: Okay. Thank you.

11:27:59 17 Mr. Bain, what is this?

11:28:02 18 MR. BAIN: I would like to have Ms. Adams  
11:28:03 19 address this.

11:28:04 20 THE COURT: Was this overlooked? I know  
11:28:05 21 that y'all delved into this. Was MUDD overlooked?

11:28:12 22 MS. ADAMS: Good morning, Your Honor. Jen  
11:28:13 23 Adams.

11:28:13 24 THE COURT: Good morning.

11:28:14 25 MS. ADAMS: No, Your Honor, it was not

11:28:14 1 overlooked. We had not heard this terminology for the  
11:28:18 2 muster rolls database before plaintiff's counsel brought  
11:28:21 3 it to our attention. And as soon as we learned of it,  
11:28:24 4 we did contact the Marine Corps. And they had never  
11:28:27 5 heard of this terminology either. They confirmed that  
11:28:30 6 the only database that they had has been produced, and  
11:28:33 7 that was what was on the network attached storage device  
11:28:36 8 that we produced both pursuant to the ESI protocol and  
11:28:41 9 natively, along with the database that was included on  
11:28:44 10 that -- that device.

11:28:46 11 THE COURT: Right.

11:28:47 12 MS. ADAMS: And they are baffled as to, you  
11:28:51 13 know, why this -- these search terms were in there  
11:28:54 14 because the data that is in that NAS, network attached  
11:28:58 15 storage, is only searchable by unit and year. And as  
11:29:02 16 plaintiff's counsel noted, the timing and the number of  
11:29:06 17 images, everything about this description is very  
11:29:10 18 similar to the 2013 to '15 project that was mentioned in  
11:29:15 19 the VA DOD reports that were at the issue in our -- in  
11:29:19 20 the motion that Your Honor decided recently.

11:29:25 21 So, you know, as Mr. Bell noted, they are  
11:29:30 22 going to depose Dr. Hastings --

11:29:31 23 THE COURT: When is that going to happen?

11:29:33 24 MS. ADAMS: They're in the process of  
11:29:34 25 scheduling. We've just --

11:29:35 1 THE COURT: When do you think that will  
11:29:36 2 happen?

11:29:37 3 MS. ADAMS: I believe before mid-May.

11:29:39 4 THE COURT: I mean, this just seems like a  
11:29:41 5 simple question that can be answered pretty quickly.

11:29:43 6 MS. ADAMS: Yes. And we have given them the  
11:29:45 7 simple answer. We have contacted the U.S. Marine Corps,  
11:29:48 8 and they don't know.

11:29:48 9 THE COURT: Well, is this a document that  
11:29:50 10 Dr. Hastings put together? She probably should know of  
11:29:54 11 what -- I mean, if it's her work, right?

11:29:56 12 MS. ADAMS: Yes. I would -- I mean, I would  
11:29:58 13 think so, if she was the author. It looks like she  
11:30:01 14 probably did give the presentation, at least.

11:30:03 15 THE COURT: Who is the -- do you know who  
11:30:04 16 this presentation was made to?

11:30:06 17 MS. ADAMS: No, Your Honor. Well,  
11:30:07 18 Dr. Hastings is with the VA. So I'm assuming that she  
11:30:12 19 gave it to someone. But that's just my assumption.

11:30:18 20 THE COURT: Okay.

11:30:21 21 MR. BELL: Judge, with all due respect to  
11:30:23 22 the DOJ, it's interesting that counsel just said, "We've  
11:30:29 23 checked with the Marine Corps and they don't know  
11:30:31 24 anything about it." Well, this isn't a Marine Corps --

11:30:33 25 THE COURT: It's a VA document, right?

11:30:36 1 MR. BELL: Yes, sir.

11:30:36 2 And so at least -- at least they ought to  
11:30:39 3 put a worldwide search out for the MUDD under an ESI  
11:30:44 4 search. I mean, I can't imagine that now we've  
11:30:46 5 gotten --

11:30:46 6 THE COURT: All right. File your motion to  
11:30:47 7 reconsider next week.

11:30:49 8 And you guys, from now until five days  
11:30:54 9 following his motion, file a response or otherwise work  
11:30:58 10 this out.

11:30:59 11 It just -- I mean, it just seems like a  
11:31:01 12 pretty straightforward issue. I mean, I understand the  
11:31:06 13 Government's a large body and they love acronyms. And,  
11:31:09 14 you know, you can search for one acronym and miss  
11:31:11 15 another. But it just seems like a simple question.

11:31:16 16 Mark this as Exhibit 1 or something to this  
11:31:22 17 status conference.

11:31:22 18 Okay. Does that take care of that one?

11:31:24 19 MR. BELL: Yes, Your Honor.

11:31:24 20 THE COURT: All right. How about -- I had  
11:31:25 21 the water modeling project file.

11:31:27 22 MR. BELL: Yes, Your Honor.

11:31:30 23 THE COURT: I'm not inviting a dispute on  
11:31:31 24 it, but it was described as one in the status report.

11:31:33 25 MR. BELL: That was my next subject, if

11:31:36 1 that's okay, Your Honor.

11:31:36 2 THE COURT: Go ahead.

11:31:37 3 MR. BELL: Judge, we continue to get more  
11:31:40 4 information on the ATSDR water modeling files. We've  
11:31:45 5 gotten most of -- according to the Government, most of  
11:31:49 6 the data files. But they still have some files they're  
11:31:53 7 looking at, searching for privilege.

11:31:56 8 Judge, we are now weeks and weeks and weeks  
11:32:00 9 and even months later than when we first requested this.  
11:32:04 10 The Court asked one time why don't y'all turn everything  
11:32:09 11 over and use the clawback provision? Judge, we've got  
11:32:12 12 expert witnesses we need to use this -- our experts need  
11:32:16 13 to use this file to verify water modeling and to verify  
11:32:20 14 the ATSDR models that are used in there. This is  
11:32:25 15 critical to our expert witness work.

11:32:27 16 As you recall, Your Honor, the easy way for  
11:32:31 17 all of this to happen was to get a mirror file. Well,  
11:32:35 18 now, Judge, we've learned from some of the people we  
11:32:37 19 might need to call is they are uncomfortable using a  
11:32:42 20 reconstructed model for their testimony when they aren't  
11:32:48 21 sure it's the same. Now, we're having to spend  
11:32:52 22 literally hundreds of thousands of dollars to  
11:32:54 23 reconstruct this model. We're getting just, like,  
11:32:59 24 pieces of a puzzle, and this is a puzzle that has  
11:33:02 25 millions of pieces. And we're having to take each piece

11:33:04 1 and put it back together.

11:33:06 2 Now, we think we're putting most of it back  
11:33:08 3 together properly. Our team is pretty good. But we --  
11:33:13 4 we were worried that all of a sudden we're going to find  
11:33:16 5 breaks in the pieces. And we'll go back and tell the  
11:33:19 6 Government, well, this piece is broken, we'll continue  
11:33:21 7 to get more updates.

11:33:24 8 For example, Judge, there's a program in  
11:33:28 9 this file called a GIS program. And it's -- as it  
11:33:33 10 sounds, it's a data location. In other words, where are  
11:33:36 11 things located on the base. Well, part of that program  
11:33:40 12 are maps, photographs, things like that. And there are  
11:33:44 13 thousands of these. Well, they were produced in a  
11:33:47 14 format -- not in the native format, but in a format that  
11:33:51 15 we can't use. We're going to have to go back to the  
11:33:53 16 Government. I'm sure they'll correct it. But then  
11:33:56 17 we're looking at weeks and weeks again to get this data  
11:33:59 18 when we could get everything in ten minutes and \$119  
11:34:06 19 hard drive from Walmart.

11:34:07 20 Now, once we put this together, the question  
11:34:11 21 we have -- and if asked in a Daubert hearing, "Mr. Bell,  
11:34:17 22 how do you know this is the accurate file? Well, I'm  
11:34:19 23 going to have to say, "We think it is, Judge, but we  
11:34:21 24 don't know because they have the original and they won't  
11:34:24 25 let us have it." And the only reason, the only reason,



11:34:28 1 Judge, that they have said they won't give it to us is  
11:34:31 2 that the ESI protocol says they don't have to. There's  
11:34:34 3 no -- there's no prejudice issued.

11:34:37 4 And so I'm asking the Court, number one --  
11:34:39 5 and we'll file our motion, but we're still going to be  
11:34:43 6 in the middle of May before they finalize their  
11:34:45 7 production. And by the time the Court hears it, we can  
11:34:50 8 be at the end of discovery.

11:34:51 9 THE COURT: By the time the Court hears  
11:34:53 10 what?

11:34:53 11 MR. BELL: By the time the Court hears our  
11:34:55 12 motion to compel and then we don't have a database that  
11:34:58 13 we can use with our experts for expert reports.

11:35:01 14 MR. BAIN: Your Honor, if I could respond to  
11:35:02 15 that?

11:35:03 16 THE COURT: How can we avoid that situation?

11:35:05 17 MR. BAIN: We have produced all of the  
11:35:08 18 technical and exotic files to the plaintiffs from this  
11:35:11 19 database.

11:35:11 20 THE COURT: What does that mean?

11:35:12 21 MR. BAIN: That means all of the files that  
11:35:14 22 they need to put the project files back together. And  
11:35:16 23 we've offered, if they have any issues in putting those  
11:35:18 24 back together, to contact us and we'll try to work those  
11:35:21 25 issues out with them.

11:35:23 1 The problem with what they're asking for is  
11:35:24 2 a mirror image of each project files is they contain a  
11:35:28 3 lot of potentially privileged information in them. We  
11:35:32 4 are going through the documents that are mainly  
11:35:34 5 e-mails --

11:35:34 6 THE COURT: What sort of information?

11:35:37 7 MR. BAIN: Communications between -- in  
11:35:40 8 fact, we're all doing privilege review. Everybody on  
11:35:43 9 the team, including myself. And I've come across some  
11:35:46 10 of my own e-mails from 14 years ago when I'm talking to  
11:35:49 11 the ATSDR about matters in litigation at that time. And  
11:35:53 12 so we don't want to just turn over all of this material  
11:35:56 13 that includes privileged information. We're going  
11:35:58 14 through it as quickly as we can to pull out the  
11:36:03 15 privileged documents and produce everything else to  
11:36:04 16 them.

11:36:05 17 But they have, right now, all of the  
11:36:06 18 technical files, all the exotic files that they need to  
11:36:10 19 put the information back together. All that's being  
11:36:13 20 withheld are PDFs, e-mails, and those type of documents  
11:36:17 21 that potentially have privileged information. They have  
11:36:19 22 been hit on for attorneys names or other privilege  
11:36:23 23 identifiers that we're reviewing as quickly as we can.  
11:36:26 24 We've produced -- I believe this week we produced a  
11:36:30 25 number of those documents to the plaintiffs. We're

11:36:32 1 continuing to do so in a rolling production. We're  
11:36:34 2 going to produce the first privilege log to them next  
11:36:37 3 week. So we're going through this as quickly as we can.  
11:36:40 4 But they have everything that they need now to put the  
11:36:43 5 project back -- files back together for their experts.

11:36:45 6 THE COURT: And so what happens -- what  
11:36:53 7 happens when they've put that -- when they've put that  
11:36:57 8 model to the model? Is that what is it?

11:36:59 9 MR. BAIN: Yes, information per model, I  
11:37:01 10 believe.

11:37:01 11 THE COURT: So they put the model back  
11:37:03 12 together. They reassembled the model. But the model  
11:37:06 13 that they're using is not the same as the one that  
11:37:08 14 you're using. Isn't that a problem for them?

11:37:11 15 MR. BAIN: Well, they should identify that  
11:37:12 16 to us.

11:37:13 17 THE COURT: Can't the parties -- can't you  
11:37:15 18 put it together -- I think we've talked about this  
11:37:17 19 before. Can't you put it together and then the parties  
11:37:20 20 can stipulate that this is indeed the model absent all  
11:37:24 21 the privilege stuff you've removed?

11:37:26 22 MR. BELL: So, Judge, what happens -- and we  
11:37:29 23 have a presentation ready for the Court to see. But  
11:37:32 24 when you take this model -- and before I get there: I  
11:37:37 25 appreciate what counsel says, but he's talking about

11:37:40 1 documents that are privileged. That has nothing to do  
11:37:43 2 with a computer model. His e-mail has nothing to do  
11:37:46 3 with that model. That's a separate part of this file.

11:37:50 4 They can take this entire model and give us  
11:37:52 5 a mirror image and not have any privileged documents in  
11:37:56 6 it.

11:37:56 7 THE COURT: Is that right?

11:37:57 8 MR. BAIN: I don't think that's correct.  
11:37:58 9 Because what they're asking for are the water modeling  
11:38:02 10 project files, and these exotic and technical files are  
11:38:05 11 within those files intermixed in with PDFs, PowerPoints,  
11:38:10 12 e-mails that contain potentially privileged documents.  
11:38:11 13 And what we understood them to ask for is a mirror image  
11:38:15 14 of the water modeling project files. And that's what it  
11:38:18 15 is that we pulled from the ATSDR, produced to them  
11:38:23 16 except for those that hit on the potentially privileged  
11:38:27 17 terms such as attorney names and other terms.

11:38:30 18 THE COURT: Is that right?

11:38:32 19 MR. BELL: Judge, I can't imagine in doing a  
11:38:35 20 model for water modeling how Mr. Bain's e-mails 14 years  
11:38:41 21 ago have anything to do with the model. That's a file  
11:38:44 22 that is a PDF file.

11:38:47 23 THE COURT: You're saying they're embedded  
11:38:49 24 in this model?

11:38:49 25 MR. BELL: I don't know how it could be

11:38:51 1 embedded --

11:38:51 2 THE COURT: I don't know.

11:38:52 3 MR. BELL: -- in a model where we're saying  
11:38:53 4 on this day, the water was this -- on and on. Oh, by  
11:38:57 5 the way, it's being -- Mr. Bain's e-mail is part of  
11:39:01 6 that. That has nothing to do with it, Judge.

11:39:03 7 MR. BAIN: Well, they're changing now what  
11:39:04 8 they asked for. Which is they asked for the water  
11:39:07 9 modeling project files. That's what they asked for.  
11:39:09 10 And included -- Mr. Masalea [phonetic] was part of that.  
11:39:11 11 It was his files. I had communications with ATSDR with  
11:39:16 12 respect to Mr. Masalea who was in a deposition 10 or 14  
11:39:19 13 years ago. And so, you know, what he's saying now is we  
11:39:23 14 just want the modeling files. I'm not even sure if  
11:39:26 15 those are segregable from the water modeling project  
11:39:30 16 files, which is what the plaintiffs asked for.

11:39:33 17 MR. BELL: Judge, it -- the water modeling  
11:39:37 18 files are what ATSDR has said this entire case is about.  
11:39:45 19 At the beginning of this case, surprisingly the  
11:39:48 20 Government said we're going to challenge whether the  
11:39:52 21 ATSDR did a good job or not. That's been told to us.  
11:39:55 22 So we know that they're going to say we can't use this  
11:39:58 23 in court because it's no good. Well, of course,  
11:40:01 24 Congress used it to pass a statute. And there's a  
11:40:05 25 clawback position, Judge. I can't imagine how in the

11:40:08 1 world is anything in there --

11:40:10 2 THE COURT: We're going to talk about the  
11:40:11 3 clawback in a few minutes.

11:40:12 4 MR. BELL: Yes, sir.

11:40:13 5 But we continue to say and ask this Court --  
11:40:16 6 and Judge, I should have brought -- and I didn't think  
11:40:19 7 it was the right time -- our technical people. But if  
11:40:21 8 you saw what they're having to do --

11:40:23 9 THE COURT: I think that's what it's going  
11:40:24 10 to have -- that's what it's going to take. I need to  
11:40:27 11 see what exactly you're talking about.

11:40:28 12 MR. BELL: All right. We'll do that next --

11:40:30 13 THE COURT: I hate to do it that way because  
11:40:32 14 it just builds in -- it builds in more time.

11:40:36 15 MR. BELL: It does, Judge. But the simple  
11:40:39 16 answer is turn the -- make sure my language is right.  
11:40:44 17 Turn the model over and if there's something in there  
11:40:49 18 that's privileged, claw it back. We would have had it  
11:40:54 19 by now, Judge.

11:40:56 20 THE COURT: But I thought we had discussed  
11:41:00 21 the problem that you could have when -- unless it's  
11:41:06 22 resolved early, so if there's some stipulation or  
11:41:09 23 agreement. The problem that you may have later on in  
11:41:12 24 this case when you've got a model that admittedly you've  
11:41:16 25 had to manipulate to reassemble and it's not the

11:41:21 1 original form.

11:41:23 2 MR. BELL: Well, we thought we had expressed  
11:41:26 3 that to the Court. Maybe I didn't do a good job. But  
11:41:28 4 the fact of the matter is, if we are perfect, if our  
11:41:33 5 engineers and scientists are perfect, they put it back  
11:41:36 6 exactly like they're supposed to, we still will not know  
11:41:39 7 that it's back like it's supposed to. And these are  
11:41:43 8 hundreds of thousands of files, Judge. We aren't  
11:41:46 9 talking about just ten different pieces of puzzle. And  
11:41:49 10 so the -- I mean, the proportionality of what we're  
11:41:52 11 having to do -- when counsel just said, you know, "When  
11:41:55 12 they put it back together," well, I would say they've  
11:41:59 13 already got it put together, Judge.

11:42:01 14 THE COURT: Okay. Let's -- can you get me a  
11:42:06 15 motion next week?

11:42:06 16 MR. BELL: Your Honor, I'll have that done  
11:42:08 17 and ready for our next status conference.

11:42:09 18 THE COURT: Fantastic.

11:42:14 19 All right. There was an e-mail, I think,  
11:42:18 20 that it presumably was subject to the clawback. You  
11:42:24 21 know what I'm talking about?

11:42:25 22 MR. BAIN: Yes, Your Honor.

11:42:26 23 THE COURT: I haven't seen the e-mail. But  
11:42:28 24 what I have seen are paragraph 6, 7, and 8 of this  
11:42:34 25 Court's order of the clawback that seemed to suggest

11:42:39 1 that even at the hint of a privilege document being  
11:42:47 2 inadvertently produced, that the response is not to  
11:42:52 3 serve discovery on the document, but to get the Court's  
11:42:56 4 intention for a ruling on whether it's protected or not.  
11:42:58 5 So what's the deal?

11:42:59 6 MR. BAIN: That's kind of the problem with  
11:43:00 7 Mr. Bell saying, oh, there's a clawback order. I mean,  
11:43:03 8 the first time it comes up, we don't get the procedure,  
11:43:07 9 so the clawback order --

11:43:08 10 THE COURT: Well, there's a lot I don't  
11:43:10 11 know. Like I said, I haven't seen -- I haven't seen the  
11:43:11 12 discovery. I'm not sure it's relevant. But I haven't  
11:43:14 13 seen the e-mail. So what's -- what happened and what's  
11:43:18 14 the status?

11:43:19 15 MR. BELL: Your Honor, if it please the  
11:43:20 16 Court, this is -- and I don't want to talk about it on  
11:43:24 17 the record. But the fact is, there's an e-mail that was  
11:43:27 18 produced. It was on an old privilege log from years ago  
11:43:34 19 on what we call Camp Lejeune one.

11:43:36 20 THE COURT: Is that one of the prior  
11:43:38 21 lawsuits?

11:43:38 22 MR. BELL: Yes, Your Honor.

11:43:39 23 And since that time, the Government has  
11:43:44 24 taken a lot of those documents and actually taken them  
11:43:46 25 off the privilege log. We assume this is one of the



11:43:50 1 documents.

11:43:51 2 Now, we asked for a complete part of that  
11:43:54 3 e-mail. Because it's cut off. We ask for other things.  
11:43:58 4 In reading the e-mail, Judge -- and I would say as an  
11:44:01 5 officer of the court, I cannot tell there's anything in  
11:44:03 6 there that's privileged. So we were going to bring it  
11:44:06 7 up today, and apparently we are now. We would like your  
11:44:09 8 permission to file a motion, for the Court to review  
11:44:12 9 that and determine privilege.

11:44:13 10 THE COURT: I think I've got to do that.

11:44:15 11 MR. BELL: Yes, Your Honor.

11:44:16 12 MR. BAIN: I agree, Your Honor. But I would  
11:44:18 13 like to point out that this came up in a way that was  
11:44:20 14 not in compliance with the clawback order. It was  
11:44:23 15 served as part of discovery. It was clearly a  
11:44:25 16 privileged document, and it should have been notified to  
11:44:30 17 us pursuant to the clawback order that we came across  
11:44:33 18 this potentially inadvertently disclosed document and  
11:44:37 19 given us the chance under the clawback order to claw it  
11:44:40 20 back. Once we learned of it through the discovery, we  
11:44:43 21 did.

11:44:44 22 THE COURT: So you learned of it upon  
11:44:46 23 receiving discovery requests?

11:44:48 24 MR. BAIN: That's right. And, you know, we  
11:44:50 25 immediately said, hey --

11:44:51 1 THE COURT: When was that?

11:44:53 2 MR. BAIN: That was --

11:44:56 3 Do you have the date on that?

11:44:56 4 MR. BELL: A couple of weeks ago.

11:44:57 5 MR. BAIN: A couple of weeks ago.

11:44:58 6 THE COURT: 4/9. Okay.

11:45:00 7 MR. BELL: So Judge, I would like for you to

11:45:02 8 remember what counsel just said. It is a document that

11:45:05 9 is clearly privileged. We'll address that. It is not

11:45:08 10 clearly privileged. I can just say that right now.

11:45:11 11 Anybody looking at this document looked like it's a

11:45:15 12 regular production document that you get at hundreds of

11:45:17 13 thousands of e-mails.

11:45:18 14 MR. BAIN: I will say, Your Honor, though,

11:45:19 15 it was listed on a privilege log and it had not been --

11:45:24 16 we had not withdrawn the privilege from that particular

11:45:27 17 document. So they knew that we were claiming it was

11:45:30 18 privileged. Whether or not it is privileged or not, you

11:45:32 19 know, Your Honor will decide. Ms. Adams can give you

11:45:37 20 some of the indicia of its privileged nature today

11:45:40 21 without disclosing its contents, and we're happy for you

11:45:43 22 to look at --

11:45:43 23 THE COURT: I will look forward to reading

11:45:45 24 that in your response. So file the motion, file the --

11:45:48 25 whatever this is under seal, and we'll take it up.

11:45:52 1 MR. BELL: We'll have that done, Your Honor.

11:45:54 2 THE COURT: Quickly.

11:45:54 3 All right. What's next for discovery?

11:46:01 4 MR. BELL: Before we get to the -- one of  
11:46:03 5 the last things, Judge, we are concerned that the volume  
11:46:11 6 of depositions is not proportional to what we're -- what  
11:46:17 7 we need to prove. For example, the court order limits  
11:46:23 8 the number of fact witnesses to three fact witnesses per  
11:46:26 9 plaintiff. We don't disagree with that. But some of  
11:46:30 10 the fact witnesses being taken, the girlfriend of the  
11:46:34 11 boyfriend who was -- I mean, it is so unplanned, that we  
11:46:41 12 go to these depositions, is *Why are we taking this*  
11:46:44 13 *deposition?* It has nothing to do with what we need to  
11:46:46 14 prove.

11:46:46 15 THE COURT: I took a lot of those as a  
11:46:49 16 lawyer. *Why am I here?*

11:46:51 17 MR. BELL: I know. I get it.

11:46:52 18 But the worst part, Judge, is now we're  
11:46:54 19 getting to the physicians -- the treating physicians.  
11:46:58 20 Now, these aren't retained experts; they're treating  
11:47:01 21 physicians.

11:47:02 22 THE COURT: Right.

11:47:02 23 MR. BELL: We had a deposition the other  
11:47:04 24 day, a doctor had to come out of retirement. All he had  
11:47:08 25 was a blurb in his medical record 30 years ago. And he

11:47:12 1 gets there and says, "I don't remember anything. What's  
11:47:15 2 in the document?"

11:47:15 3 Now, proportionality is important. We  
11:47:21 4 literally are -- hundreds and hundreds of depositions  
11:47:24 5 are going to be taken. And so we would like the  
11:47:29 6 Court -- and this is why we would ask you, Judge, to ask  
11:47:33 7 the judges to maybe have some regular meetings so these  
11:47:38 8 things can be discussed so we don't get into a motion  
11:47:41 9 practice, a motion for protective order and things like  
11:47:44 10 that. We -- we had a DNA counselor that was deposed. I  
11:47:53 11 mean --

11:47:53 12 THE COURT: A what?

11:47:54 13 MR. BELL: A DNA counselor. I don't know  
11:47:58 14 why, but -- so what's happening is the lawyers who are  
11:48:02 15 managing each plaintiff for the Department of Justice:  
11:48:05 16 "All right. Well, let's take these five." Literally  
11:48:09 17 some of them are five doctors on a kidney cancer case  
11:48:13 18 where the gentleman had kidney cancer, they removed it  
11:48:16 19 and he's cured. Things like that are happening. And  
11:48:20 20 the cost to the -- well, the taxpayer money that we're  
11:48:23 21 spending is one. But the cost to the plaintiffs is  
11:48:27 22 extraordinarily high. We're talking about millions of  
11:48:29 23 dollars we're having to spend. And we think it's  
11:48:32 24 unproportional. We think it violates that.

11:48:34 25 THE COURT: The Government doesn't really

11:48:36 1 know what Dr. Smith is going to say until they take his  
11:48:41 2 deposition. I mean, I remember as a lawyer being  
11:48:45 3 involved in a lot of construction law and we represent  
11:48:47 4 the architect. For some reason, I was at the deposition  
11:48:50 5 for the fellow who paved the -- paved the parking lot  
11:48:55 6 and -- at his expert. I had to wait my turn to say,  
11:49:00 7 "Mr. Smith, you're not going to have any opinions about  
11:49:02 8 the architect, are you?" "No, sir, I'm not." "Thank  
11:49:05 9 you very much."

11:49:06 10 But, I mean, are there any reasons other  
11:49:07 11 than something like that? I mean, the Government  
11:49:10 12 doesn't really know what Dr. Smith is going to say until  
11:49:13 13 he asks them the question.

11:49:14 14 MR. BELL: Well, maybe if Dr. Smith was  
11:49:16 15 listed on our witness list, that would be important,  
11:49:18 16 wouldn't it? But if we aren't intending to call him,  
11:49:21 17 and I'm not sure that they can claim that.

11:49:25 18 THE COURT: Well, I mean, discovery is  
11:49:27 19 pretty broad, isn't it?

11:49:28 20 MR. BELL: I get it. I'm just bringing it  
11:49:31 21 up. And I think if we -- if we were able to target some  
11:49:34 22 of our trials, maybe we could start limiting who gets --  
11:49:39 23 has this intensive discovery versus those that are on  
11:49:42 24 the back end. So I just throw it out there. There's  
11:49:45 25 some things that I'm not sure that from the discovery

11:49:49 1 standpoint, these may be part of the CMO issues we  
11:49:53 2 discussed with the Court. We're just trying to get some  
11:49:55 3 guidance.

11:49:56 4 THE COURT: Mr. Bain.

11:49:56 5 MR. BAIN: Your Honor, I would just like to  
11:49:58 6 say that a lot of these individual claims are seeking 25  
11:50:01 7 or 50 million dollars, and we don't know which of these  
11:50:05 8 cases is going to be tried, which of these cases is  
11:50:07 9 going to be a bellwether trial. We have to do discovery  
11:50:11 10 as if any of these individual cases might be a trial.

11:50:14 11 THE COURT: Do you think what you do now,  
11:50:16 12 the heavy lifting, all of these depositions that you're  
11:50:19 13 doing now, you will -- they will be helpful in the  
11:50:25 14 future where you don't need to do so many, maybe? I  
11:50:28 15 guess that would depend on the particular plaintiff.  
11:50:30 16 But...

11:50:31 17 MR. BAIN: That might be the case. And  
11:50:32 18 we're learning, you know, what depositions are  
11:50:35 19 important -- or more important than others. And it  
11:50:38 20 might educate us as far as Track 2 and Track 3 go.

11:50:41 21 And also, I think one thing that maybe the  
11:50:43 22 plaintiffs would even agree on that maybe a hundred  
11:50:46 23 plaintiffs in a track is maybe too many. Maybe the  
11:50:49 24 subsequent track should have fewer plaintiffs in them.  
11:50:53 25 But we need to -- as I said --

11:50:56 1 THE COURT: But are you deposing -- I mean,  
11:50:57 2 you've deposed -- I think you've done pretty well. I  
11:50:59 3 think you've got 85 percent of the plaintiffs done.

11:51:01 4 Does -- are you doing a hundred treating physicians?

11:51:05 5 MR. BAIN: We are -- I think, on average,  
11:51:07 6 we're trying to do at least one per plaintiff. And in  
11:51:10 7 some cases more than one.

11:51:12 8 THE COURT: So it would be a hundred.

11:51:13 9 MR. BAIN: The three-deposition limit does  
11:51:14 10 not include treating physicians.

11:51:16 11 THE COURT: Right.

11:51:16 12 MR. BAIN: So that's other fact witnesses.  
11:51:18 13 So it depends on what the plaintiffs are alleging.  
11:51:21 14 Again, like with many of them have multiple diseases,  
11:51:23 15 there might be one treating doctor on the kidney cancer  
11:51:26 16 and one treating doctor on the prostate cancer. And  
11:51:29 17 since we don't know exactly what the trial is going to  
11:51:32 18 be about, we have to at least try to do the best we can.  
11:51:36 19 You know, we've been limited to, I think, four and a  
11:51:38 20 half months for a hundred plaintiffs and to do the best  
11:51:41 21 we can. We are doing -- not going to be doing nearly as  
11:51:46 22 much discovery as we would do if we had a single  
11:51:48 23 plaintiff in a regular case.

11:51:50 24 Because, Judge, we don't have the time and  
11:51:52 25 resources to do it. But we're doing the best that we

11:51:55 1 can. And we're trying to conserve expenses as much as  
11:51:59 2 we can. Most of the depositions of the treating  
11:52:01 3 physicians are being done remotely. But in some cases  
11:52:04 4 our attorneys have made the judgment they have to do  
11:52:07 5 them in person. So we're trying to save costs where we  
11:52:11 6 can, but we also need to do discovery to prepare the  
11:52:13 7 cases.

11:52:15 8 MR. BELL: Judge, it's not one per  
11:52:18 9 plaintiff. When counsel said "on average," that's not  
11:52:21 10 accurate. We have lots -- lots of people are getting  
11:52:24 11 three, four, and five treating physicians.

11:52:27 12 Now, I'll give you an example. We have a  
11:52:30 13 family doctor who found blood in someone's urine.  
11:52:34 14 That's the only thing in the record has anything to do  
11:52:36 15 with the case. That doctor referred the patient -- a  
11:52:39 16 kidney/bladder cancer case -- to a specialist. That's  
11:52:43 17 the only thing in that record.

11:52:45 18 Now, Judge, under the order, medical records  
11:52:48 19 are self-authenticating. And we now have bench trials;  
11:52:52 20 we don't have jury trials. And I can see where these  
11:52:55 21 records will come in and our experts may rely upon the  
11:52:58 22 record. They certainly can't rely upon something  
11:53:02 23 outside of the record unless there's a deposition taken.  
11:53:05 24 And if we need to rely on something outside of the  
11:53:08 25 record, we have a duty to disclose that to counsel. And



11:53:13 1 so that doctor who basically said, "Yeah, I found blood  
11:53:17 2 in the urine. I sent the plaintiff to an expert," that  
11:53:21 3 was it.

11:53:23 4 And so all I'm saying, Judge, is that for  
11:53:27 5 those of us who do medical cases on regular days, I've  
11:53:32 6 never seen this before.

11:53:34 7 THE COURT: Never seen what before?

11:53:35 8 MR. BELL: This kind of -- treating doctors  
11:53:38 9 who are not involved in the critical issue at hand are  
11:53:43 10 very seldom deposed. You use their medical record. If  
11:53:47 11 there's anything in there that might have to do with an  
11:53:49 12 opinion, you might take it. But if it's a factual  
11:53:52 13 thing -- for example, there's a doctor who was deposed  
11:53:55 14 who was a robotic surgeon.

11:53:56 15 THE COURT: I thought you were talking about  
11:53:57 16 fact witnesses, not treatings.

11:54:02 17 MR. BELL: I'm sorry. I meant treating  
11:54:02 18 doctors.

11:54:02 19 THE COURT: Okay.

11:54:03 20 MR. BELL: So there's a robotic surgeon who  
11:54:05 21 went in and scooped the tumor out. That's it. And it's  
11:54:07 22 in the record. The surgery procedure is in the record.

11:54:10 23 While I -- we have plenty of lawyers to do  
11:54:15 24 these. It's not overburdening us. It's just costing,  
11:54:19 25 we believe, an unproportional amount of time and money

11:54:23 1 for the kind of case that is being presented.

11:54:26 2 Let me just respond --

11:54:27 3 THE COURT: Is that a factor that you  
11:54:32 4 consider when you're selecting the plaintiffs to put in  
11:54:36 5 the track? I mean, at that point you're the one that  
11:54:39 6 knows the most about these folks, right?

11:54:41 7 I mean, you don't -- you don't -- Mr. Bain,  
11:54:44 8 you don't know much about their history, right?

11:54:49 9 MR. BAIN: Not at first. I mean, we're  
11:54:51 10 getting records and we're learning more. But when  
11:54:53 11 they're selected, we don't.

11:54:54 12 THE COURT: Right. At the outset. So  
11:54:56 13 you're the one that has most of the information on their  
11:54:59 14 medical history.

11:55:00 15 MR. BELL: Judge, if the Government would  
11:55:01 16 say we have a good faith reason for doing so. But some  
11:55:06 17 of these doctors they're taking, it would be a stretch  
11:55:10 18 to say that, Judge. That's all I'm saying. And I'm  
11:55:12 19 just saying that -- and I'm not filing a motion about  
11:55:16 20 it, but you have asked us to bring things to your  
11:55:19 21 attention. We're at the beginning of Dr. -- treating  
11:55:23 22 doctors depositions.

11:55:23 23 THE COURT: Right.

11:55:25 24 MR. BELL: We're not even in the first 15 or  
11:55:27 25 20 percent of it. But we're getting ready to get --

11:55:29 1 today at 1:00, we'll get another list of 20 or 30 more  
11:55:33 2 doctors.

11:55:33 3 THE COURT: Are there alternatives to taking  
11:55:35 4 a deposition?

11:55:37 5 MR. BELL: If we were able to determine  
11:55:39 6 which of these cases would be tried first, then I think  
11:55:42 7 we could probably manage that.

11:55:46 8 MR. BAIN: We have a deadline coming up at  
11:55:48 9 mid-June --

11:55:49 10 THE COURT: Yeah.

11:55:50 11 MR. BAIN: -- for fact discovery. So,  
11:55:52 12 that's what we're facing right now.

11:55:57 13 THE COURT: All right. What else? Did you  
11:56:00 14 want to talk about anything else on discovery?

11:56:02 15 MR. BELL: No, Your Honor. I mean,  
11:56:04 16 discovery is going fine. We don't have any major  
11:56:09 17 problems with scheduling. Everything seems to be  
11:56:11 18 working fine. We do have some issues that we're waiting  
11:56:17 19 on discovery issues. The main thing on discovery,  
11:56:22 20 Judge, is the last time we're here, we're going to get  
11:56:26 21 privilege logs and discovery completed toward the end of  
11:56:28 22 April. Now we're into May. And so we're trying. We're  
11:56:34 23 just waiting. We can't wait -- we can't seem to get --  
11:56:38 24 for example, there were 17 boxes we looked at in  
11:56:41 25 January, Judge. That -- at ATSDR in Chamblee, Georgia.

11:56:48 1 We still don't have all of those boxes yet.

11:56:50 2 THE COURT: What is this?

11:56:51 3 MR. BELL: There were 17 boxes we looked at  
11:56:55 4 that are part of a discovery request in January. We  
11:56:58 5 asked for them to be produced and copied. These were  
11:57:00 6 hard-copied files, not electronic. We don't have the  
11:57:07 7 complete discovery yet.

11:57:09 8 MR. BAIN: Some of those documents were  
11:57:10 9 pulled for further privilege review and are being looked  
11:57:13 10 at by the agency and they're being released. I believe  
11:57:16 11 all of the documents that were withheld for privilege  
11:57:19 12 review, except for just a few from the first couple of  
11:57:23 13 boxes, are going to be released to the plaintiffs next  
11:57:25 14 week. These have to do with documents related to the  
11:57:28 15 National Academy of Sciences study. And so they'll have  
11:57:31 16 all of those documents that ATSDR had related to that  
11:57:35 17 within, I think, next week, with the privilege log with  
11:57:38 18 just a couple of documents on it. So there were some  
11:57:40 19 that the agency wanted to pull to review for privilege,  
11:57:43 20 and they're in the process of doing that, and we're  
11:57:45 21 getting those documents to the plaintiffs.

11:57:47 22 THE COURT: So they'll be reviewed and then  
11:57:49 23 produced with a privilege log?

11:57:51 24 MR. BAIN: Yes.

11:57:52 25 MR. BELL: Five months after we looked at

11:57:53 1 them.

11:57:56 2 THE COURT: I'm sorry. What?

11:57:56 3 MR. BELL: Five months --

11:57:57 4 THE COURT: Oh.

11:57:58 5 MR. BELL: -- after we looked at them in  
11:58:00 6 person. We looked at every document in there. Even  
11:58:02 7 those they now may be claiming privilege we looked at.  
11:58:06 8 And so I don't know -- I don't know what -- how the  
11:58:11 9 Government works, Judge. But when we are a little late  
11:58:17 10 on something, the Government demands it be done  
11:58:19 11 immediately. We're not getting that same response.  
11:58:21 12 That's all I'm saying. It's taking too long.

11:58:23 13 THE COURT: Are there ways to speed this up?

11:58:25 14 MR. BAIN: We are. We are asking the agency  
11:58:28 15 to do as much as they can. ATSDR is a small agency with  
11:58:32 16 only a few lawyers. So they have a lot of other things  
11:58:35 17 to do that are critical to their mission. So we pressed  
11:58:39 18 every time we talk to them, which is Monday of every  
11:58:42 19 week, "when is this going to be done?" Get it done. We  
11:58:45 20 are trying to assist them doing it. As I said before,  
11:58:47 21 all our lawyers -- we have all 30 lawyers. We're all  
11:58:49 22 doing privilege review. So we're getting through it.  
11:58:52 23 There's just so much information to go through. It's  
11:58:56 24 taking a lot of time.

11:58:56 25 THE COURT: Well, let's get it produced.

11:59:01 1 Of course, it's all going to a depository, I  
11:59:04 2 guess; is that right?

11:59:04 3 MR. BELL: No, sir. Not really. The  
11:59:06 4 depository is a function of getting the trial files and  
11:59:12 5 materials together so that we can exchange exhibits at  
11:59:17 6 trial time, things like that. So it gives us a place  
11:59:20 7 and a method of keeping track of hundreds of files in a  
11:59:26 8 safe and secure place.

11:59:27 9 THE COURT: So these are -- these are the  
11:59:28 10 plaintiffs' files. The hard evidence that you  
11:59:34 11 described, that will be used at a trial, right?

11:59:37 12 MR. BELL: Yes, Your Honor. I'll give you  
11:59:38 13 an example. We have bound copies of 20 or 30 years of  
11:59:43 14 newspapers from Camp Lejeune. They're in big bound. We  
11:59:47 15 can't put them in a computer. So we would take all of  
11:59:50 16 that -- all of those materials, put them in a room that  
11:59:52 17 the Government can come in and look at when they want  
11:59:54 18 to.

11:59:55 19 THE COURT: Okay. So it's accessible by the  
11:59:59 20 Government as well as all the plaintiffs?

12:00:00 21 MR. BELL: Yes, Your Honor.

12:00:01 22 THE COURT: And it's -- it's in a  
12:00:05 23 brick-and-mortar versus virtual, or is it a little of  
12:00:10 24 both?

12:00:10 25 MR. BELL: No. We would have some virtual,

12:00:12 1 but -- and that would be on the computers in the room.  
12:00:18 2 And the request, according to the order, Your Honor, is  
12:00:21 3 either that our office, my office in Georgetown, also at  
12:00:25 4 Ward and Smith and my office in Raleigh, where they --  
12:00:28 5 once they're completed, they'll be shipped up, and  
12:00:30 6 that's where most everything will be kept.

12:00:33 7 THE COURT: But an attorney who is in this  
12:00:35 8 case in San Francisco would have to come to those  
12:00:41 9 locations, or could she access a computer and go to a  
12:00:44 10 shared site -- secured, of course -- and review  
12:00:49 11 documents?

12:00:49 12 MR. BELL: If that attorney were part of a  
12:00:51 13 plaintiff's group or was representing a claimant, they  
12:00:54 14 would have some computer access. But there's some  
12:00:56 15 documents we can't get in the computers. If they wanted  
12:01:00 16 to see them, they could come in and look at them.

12:01:03 17 THE COURT: Okay. I looked at the manual  
12:01:11 18 for complex litigation. And the proposed order  
12:01:20 19 tracks -- tracks, you know, some of the language from  
12:01:22 20 the model orders. I was curious to know when the Court  
12:01:30 21 will be entering an order requiring -- where is it?  
12:01:41 22 If -- the Court's -- you know, the Court would sign that  
12:01:45 23 order and it would be asking -- or requiring a party to  
12:01:52 24 sign an agreement, I think. The deposit -- paragraph --  
12:02:03 25 it's the last paragraph of the proposal, I think.

12:02:05 1 Counsel appearing for any party in this  
12:02:07 2 litigation and the staffs of the respective  
12:02:10 3 law firms working on these cases seeking  
12:02:12 4 access to the depository must sign the  
12:02:15 5 agreement regarding the rules of usage,  
12:02:18 6 protection of confidential documents, and  
12:02:20 7 payment of fees.

12:02:21 8 What should the Court -- or sign such an  
12:02:24 9 order. What should the Court know about the agreement?  
12:02:30 10 Should the agreement be submitted to the Court for it to  
12:02:33 11 consider it before signing the order?

12:02:35 12 MR. BELL: One, we're not charging fees. So  
12:02:37 13 that's not -- that wouldn't be a part of it. Our  
12:02:41 14 attorneys -- the plaintiff's attorneys, Your Honor, that  
12:02:43 15 are getting access to our databases from the common  
12:02:47 16 benefit work we're doing, they have to sign an agreement  
12:02:52 17 in that respect. We can certainly add to that the  
12:02:57 18 repository and put that in there. We'll be glad to  
12:03:02 19 provide that to the Court for review, if you would like.

12:03:05 20 THE COURT: Yes. That would be great. That  
12:03:06 21 will be helpful.

12:03:07 22 MR. BELL: Thank you, Your Honor.

12:03:09 23 THE COURT: All right. Thank you.

12:03:09 24 MR. FLYNN: Your Honor, if I may, I think  
12:03:10 25 it's -- might be built into the participation agreement



12:03:13 1 that's an exhibit to the common benefit order that's  
12:03:16 2 filed with the Court and the Court has approved.

12:03:19 3 THE COURT: Okay.

12:03:20 4 MR. FLYNN: That's for the common benefit --  
12:03:22 5 that's the common benefit order. I forget the docket  
12:03:24 6 number. But I believe it's there.

12:03:28 7 THE COURT: Well, could the Court just say  
12:03:30 8 those seeking access must agree regarding the usage  
12:03:36 9 protection of confidential information payment of fees?  
12:03:40 10 Can't you just say whoever is using it agrees to follow  
12:03:44 11 the rules?

12:03:44 12 MR. BELL: Yes, Your Honor. But we are not  
12:03:46 13 charging fees, so I don't think that would be  
12:03:48 14 appropriate.

12:03:49 15 THE COURT: All right. Okay. So the Court  
12:03:55 16 has received -- I'm sorry, Mr. Bain. Do you have any  
12:03:59 17 position on the depository?

12:04:01 18 MR. BAIN: We have no opposition to that.

12:04:05 19 THE COURT: The Court has received your  
12:04:07 20 proposals regarding the settlement master and Track 3  
12:04:10 21 diseases. Is there -- is there anything else we should  
12:04:18 22 talk about other than when you want to meet next?

12:04:22 23 MR. BELL: Judge, we have one other area,  
12:04:24 24 but I was going to wait to see what the Government has  
12:04:26 25 to do with the Navy portal. You recall you had the

12:04:31 1 expert from the Navy a couple of --

12:04:34 2 THE COURT: Yeah. That's set up, right?

12:04:36 3 MR. BELL: Yes, sir, but there's some issues  
12:04:38 4 we're concerned about. We just wanted to bring them to  
12:04:40 5 your attention. We think they can be resolved, but  
12:04:43 6 we're concerned about them.

12:04:44 7 THE COURT: Do I have any say so in the  
12:04:46 8 Navy's portal?

12:04:48 9 MR. BAIN: Well, a -- we never say you don't  
12:04:50 10 have jurisdiction over something. But it is an  
12:04:53 11 administrative claims process. It's outside the  
12:04:55 12 litigation. I will say that we did have a call with the  
12:04:59 13 Navy people and people from the plaintiff's leadership  
12:05:03 14 group last week and they brought a number of issues to  
12:05:06 15 the Navy's attention and the Navy is working with them  
12:05:08 16 to try to resolve that issue -- those issues. And I  
12:05:11 17 think that there is a continuing agreement to have these  
12:05:16 18 meetings periodically with the Navy so that things can  
12:05:19 19 be worked out.

12:05:20 20 THE COURT: Well, gosh, yeah, they can --  
12:05:22 21 they can solve a lot of these problems on the front end,  
12:05:26 22 right?

12:05:28 23 MR. FLYNN: Your Honor, they can also create  
12:05:30 24 some problems on the front end. If I may approach just  
12:05:33 25 to show you kind of what we're talking about.

12:05:35 1 THE COURT: Okay. I guess this is  
12:05:37 2 informational, right? I mean, there's no one from the  
12:05:40 3 Navy here.

12:05:40 4 MR. FLYNN: No. Informational.

12:05:48 5 THE COURT: Go ahead.

12:05:48 6 (Document handed to the Court.)

12:05:49 7 THE COURT: All right. This will be  
12:05:50 8 Exhibit 2.

12:05:58 9 MR. FLYNN: Okay, Your Honor. So what  
12:06:00 10 you're looking at there is a compilation of the Navy  
12:06:03 11 documents related to the portal that went live  
12:06:06 12 April 9th. So the first page what we used to have is  
12:06:10 13 the claim form. It's a one-pager. Not much there.  
12:06:14 14 This next section is for the instructions on CSV filing.  
12:06:20 15 It's really important. Because this applies here to CSV  
12:06:24 16 filing but also --

12:06:24 17 THE COURT: What -- CSV is the format of  
12:06:24 18 the --

12:06:27 19 MR. FLYNN: That's correct.

12:06:28 20 THE COURT: -- document?

12:06:28 21 MR. FLYNN: Yes, Your Honor. So if you're a  
12:06:30 22 law firm and you have a sizeable number of cases, you  
12:06:32 23 can upload to the Navy by a CSV file. Not a lot of  
12:06:37 24 firms that have that.

12:06:39 25 And let me start with, you know, I think

12:06:40 1 this is a good development. So these are just, kind of,  
12:06:44 2 tweaks. But what we have, Your Honor -- if you go to  
12:06:47 3 the first tab that I have here.

12:06:50 4 THE COURT: On page 20 --

12:06:51 5 MR. FLYNN: Yes, Your Honor.

12:06:52 6 THE COURT: -- of 21?

12:06:53 7 MR. FLYNN: Yes, Your Honor. The first tab  
12:06:55 8 there is this instruction at the bottom. Right? So if  
12:06:59 9 you see up above at Section 4, it says upload and  
12:07:03 10 submission. So here you have somebody that has uploaded  
12:07:06 11 the documentation and submitted to the document. Right?  
12:07:11 12 If you don't put in all of the document -- all of the  
12:07:16 13 data fields that are on the preceding 19 pages, you  
12:07:19 14 can't upload. Which means you can't submit a claim to  
12:07:24 15 the Navy, period. It kicks it back. You get an error.

12:07:30 16 So if you look at that little template at  
12:07:32 17 the bottom, that little instruction, second paragraph:  
12:07:34 18 "If for any reason your CSV bulk filing is missing any  
12:07:39 19 of the information marked in red or with an asterisk,  
12:07:42 20 you will receive a message indicating your upload has  
12:07:45 21 failed." And then you have to go back.

12:07:48 22 Well, that creates a bar to sending it in.  
12:07:51 23 I think the Navy would agree that some of this stuff is  
12:07:53 24 not necessary for filing. And I don't think that it's  
12:07:56 25 the Navy's position to create this bar. But that's what

12:07:59 1 happens.

12:07:59 2 THE COURT: So what information could be  
12:08:01 3 missing?

12:08:02 4 MR. FLYNN: Well, Your Honor, if you don't  
12:08:03 5 have -- let's see. The residence at Camp Lejeune. If  
12:08:14 6 you don't have the claimant's work. That's Q, page 8.  
12:08:18 7 Q, red letters, which mean individual filings and  
12:08:22 8 asterisks. Same with O. If you look down at R, that's  
12:08:28 9 required. If you look at S, required only if. So  
12:08:31 10 that's a conditional requirement. T, U, V, W, X, Y, Z,  
12:08:40 11 AA. It's a lot.

12:08:42 12 THE COURT: Yeah.

12:08:43 13 MR. FLYNN: Right. So here's the rub, Your  
12:08:45 14 Honor, is that, one, there's -- we've heard from the  
12:08:50 15 Navy -- very senior person at the Navy that that  
12:08:52 16 information is not, in fact, required for presentment.

12:08:54 17 THE COURT: Well, why can't they just put  
12:08:57 18 "NA" and move on? I mean, I would assume this computer  
12:08:59 19 program is just looking for blanks in the code.

12:09:05 20 MR. FLYNN: I understand that.

12:09:06 21 THE COURT: And NA.

12:09:07 22 MR. FLYNN: NA, dash, period.

12:09:09 23 THE COURT: If it's not material to the  
12:09:12 24 claim -- if the Navy is saying it's not material to the  
12:09:14 25 claim.

12:09:15 1 MR. FLYNN: I completely agree with Your  
12:09:17 2 Honor. But that's not the way this is structured. You  
12:09:19 3 have to put in the data in the terms that it is done.

12:09:22 4 So if you look, for example, at page 9.  
12:09:31 5 Right? No, not 9. I'm sorry. O. Page 7, and it  
12:09:38 6 carries over to 8. You have to put the exact -- the  
12:09:42 7 entry for residence at Camp Lejeune must exactly match  
12:09:46 8 the acceptable entries above, including spelling,  
12:09:49 9 capitalization, et cetera.

12:09:51 10 So if you wanted to put a dash, you could  
12:09:55 11 not. You could not put a dash, you could not put a  
12:09:59 12 period --

12:09:59 13 THE COURT: So the Navy is saying that this  
12:10:02 14 information at row O on page 7, that that's not  
12:10:12 15 important, but yet you can't submit your form?

12:10:18 16 MR. FLYNN: Correct. So if you --

12:10:20 17 THE COURT: So if it's not important,  
12:10:22 18 there's got to be some way --

12:10:24 19 MR. FLYNN: I agree.

12:10:24 20 THE COURT: -- to fix it.

12:10:25 21 MR. FLYNN: And, Your Honor, I think what's  
12:10:26 22 happening here is that from a data entry perspective, if  
12:10:31 23 it were just to exist in a vacuum of data entry and data  
12:10:35 24 input, this all makes sense. Right? When we create our  
12:10:38 25 database, we have rules and logs and all of that stuff.

12:10:40 1 That's not really applicable here because there's laws  
12:10:45 2 and precedent as to what is necessary for presentment.  
12:10:48 3 Right? The Navy has already acknowledged that that's  
12:10:50 4 not required. So I think your solution is a good one.

12:10:53 5 THE COURT: "If you need additional  
12:10:54 6 assistance, call Camp Lejeune. Here's the e-mail and  
12:10:57 7 the phone number." There's your solution.

12:11:00 8 MR. FLYNN: That is the solution. You could  
12:11:01 9 call them. I would hesitate to guess at the wait time.  
12:11:05 10 But --

12:11:06 11 THE COURT: Have you been to a DMV?

12:11:08 12 MR. FLYNN: Maybe the federal government is  
12:11:10 13 better.

12:11:11 14 So here's the other problem, though. So  
12:11:13 15 that's the first problem. And I think the Navy, when we  
12:11:16 16 talked to them and I see in the e-mails that they -- I  
12:11:18 17 think they indicate that it's not -- that's not the  
12:11:20 18 intent. Right? So we just need to tweak this. It's  
12:11:23 19 not a wholesale throw all of the portal. It's just a  
12:11:27 20 tweak.

12:11:27 21 The other issue, Your Honor, is that next  
12:11:31 22 line.

12:11:32 23 THE COURT: Wait. I'm sorry. Where are you  
12:11:34 24 now?

12:11:34 25 MR. FLYNN: I'm sorry. I keep skipping

12:11:36 1 around. Page 20, Your Honor. Actually, you know what?

12:11:42 2 I'm sorry. We'll go to page 20 -- 21.

12:11:46 3 Reading from the top. "Please further note  
12:11:48 4 that each claim submitted via CSV bulk filing will  
12:11:53 5 remain in draft form within the portal until the law  
12:11:57 6 firm independently verifies each claim and supporting  
12:12:01 7 documentation is submitted."

12:12:04 8 So skipping to the next document, Your  
12:12:07 9 Honor, this one is called Navigating the Claims  
12:12:09 10 Management Portal, also from the Navy. If you look at  
12:12:14 11 the second tab there, it will show you what "draft"  
12:12:18 12 means.

12:12:18 13 THE COURT: I'm sorry?

12:12:20 14 MR. FLYNN: Page 3 of the next one. So it  
12:12:24 15 should be your second tab on the right.

12:12:27 16 THE COURT: Okay.

12:12:28 17 MR. FLYNN: "So draft is a claimant or  
12:12:30 18 authorized representative has been -- has opened the  
12:12:34 19 claim form and begun populating the required fields.  
12:12:37 20 The claim has not officially been submitted for  
12:12:40 21 processing."

12:12:42 22 So in order to get to draft, you have to  
12:12:45 23 provide all of the information in the 21 pages of  
12:12:48 24 instructions and you're still not done, is what this  
12:12:52 25 says. Only when you get to submit it, that's where the



12:12:56 1 submitted part comes in. Claimant or authorized  
12:12:59 2 representative has populated the fields and filed the  
12:13:03 3 claim. That's when you file your claim. But the Navy  
12:13:07 4 has told us, apparently, that no, no, your claim is  
12:13:11 5 presented. Because, remember, the operative word for  
12:13:15 6 what we're all talking about here under the FTCA is  
12:13:20 7 presentment. Because once a claim is presented, it  
12:13:23 8 becomes -- it starts the clock running for  
12:13:25 9 administrative exhaustion.

12:13:27 10 So there is a great deal of confusion out  
12:13:30 11 there as to whether "draft" means presented or do we  
12:13:35 12 have to do more to get to submit it? And that says  
12:13:39 13 that's when the claim is filed.

12:13:43 14 So, Your Honor, I think this is a vernacular  
12:13:46 15 issue. I would change, maybe, "draft" to "presented,"  
12:13:49 16 and "submitted" to "substantiated" or "validated."

12:13:53 17 So, again, otherwise, people are very  
12:13:56 18 confused. I mean, we've gotten since the 9th, when this  
12:14:00 19 come out, quite a number of e-mails from attorneys that  
12:14:03 20 say we can't file, they don't know what "draft" means.  
12:14:06 21 Draft means it has to go back in. And the Navy,  
12:14:10 22 separately, will say, no, no. When it's submitted, when  
12:14:13 23 it's uploaded, which you should be able to do without  
12:14:16 24 filling out all of the CSV files -- information, then  
12:14:20 25 that is when it's presented and your six months starts

12:14:23 1 then.

12:14:23 2 So, Your Honor, I would just kind of bring  
12:14:25 3 to -- we just want to bring this to the Court's  
12:14:28 4 attention because as we all know, the claims filing  
12:14:32 5 process is so integral to the litigation. And so while  
12:14:35 6 it's not the litigation, it certainly has an incredible  
12:14:39 7 impact on it.

12:14:40 8 THE COURT: Right.

12:14:40 9 MR. FLYNN: And I think the Government is  
12:14:41 10 understanding that and the Navy seems key to do it. But  
12:14:48 11 I'm hesitant to say, you know, another two weeks or  
12:14:53 12 we're going to hold regular meetings. We kind of need  
12:14:56 13 this resolved as quickly as possible because there are  
12:14:58 14 attorneys trying to file claims now that really don't  
12:15:03 15 understand what's going on.

12:15:04 16 And just -- but one more point, Your Honor.  
12:15:06 17 This is all new. So we didn't have this problem before  
12:15:12 18 April 9th. And so it's really a factor of the new  
12:15:16 19 portal that has made this come -- brought this up.

12:15:19 20 THE COURT: So growing pains.

12:15:21 21 MR. FLYNN: Yes, Your Honor. And having set  
12:15:22 22 up a number of these databases for this case, I get it.  
12:15:26 23 But we've just got to work through it and work through  
12:15:28 24 it quickly.

12:15:32 25 THE COURT: What does the Government think

12:15:34 1 about that?

12:15:34 2 MR. BAIN: Your Honor, I would just say,  
12:15:36 3 again, I think it is growing pains. That the Navy hired  
12:15:40 4 Ernest and Young, who is familiar with these type of  
12:15:43 5 systems, to put this in place. And we welcome  
12:15:46 6 plaintiff's feedback. Even before April 9th, we  
12:15:48 7 welcomed -- or the Navy welcomed feedback from some  
12:15:51 8 plaintiff's firms about submission of claims and how the  
12:15:54 9 portal had worked through a pilot program. So, you  
12:15:57 10 know, we're committed to try and get this right.

12:16:00 11 THE COURT: I mean, are they aware of the  
12:16:01 12 deadline here?

12:16:02 13 MR. BAIN: Oh, yeah, they're aware of it.  
12:16:04 14 And working with plaintiff's counsel to resolve these  
12:16:09 15 terminology or form issues, we will do that.

12:16:13 16 THE COURT: It sounds like it stems from  
12:16:15 17 just a coding issue, right, of the form?

12:16:18 18 MR. FLYNN: I agree, Your Honor. We were  
12:16:20 19 not contacted -- I don't know who was contacted to  
12:16:22 20 integrate. But, you're right, it is -- it's as simple  
12:16:26 21 as two things. It's a coding issue to allow you to  
12:16:28 22 submit a form --

12:16:30 23 THE COURT: I mean, if the -- if the form  
12:16:32 24 were not kicked back because there's a missing row, it  
12:16:36 25 wouldn't be an issue.

12:16:38 1 MR. FLYNN: Wouldn't be an issue.

12:16:39 2 And then also, the second one is when it's  
12:16:41 3 submitted, don't call it a draft. Say it's presented.  
12:16:45 4 And then don't say -- change that last word in there  
12:16:49 5 from "your claim has not been filed," to "your claim has  
12:16:52 6 been presented." So there's some vernacular tweaks  
12:16:56 7 here, and some coding tweaks that could make a huge  
12:16:59 8 difference for all --

12:17:01 9 MS. BASH: Your Honor.

12:17:02 10 THE COURT: Yes.

12:17:04 11 MS. BASH: Hi. This is Zina Bash. I have  
12:17:06 12 met with the Navy and with DOJ in my role as the  
12:17:10 13 Government liaison. And I think what Eric is --  
12:17:14 14 Mr. Flynn is saying is right. The Navy committed during  
12:17:18 15 a phone call last Friday to updating the language and to  
12:17:22 16 sending out an update to let everybody know that the  
12:17:27 17 word "draft" shouldn't scare you. It doesn't mean that  
12:17:30 18 you have not, you know, presented it to the Navy. And  
12:17:33 19 again, "presentment" is the operative term.

12:17:36 20 THE COURT: Right.

12:17:37 21 MS. BASH: And filing either before or after  
12:17:39 22 this portal meant presentment. Presentment is a  
12:17:42 23 conclusion that the Government comes to later. But  
12:17:44 24 draft doesn't mean that you aren't filed.

12:17:46 25 And so I just want to say that the

12:17:48 1 Government has committed to us to make that clear. And  
12:17:51 2 Mr. Flynn's point is just we need -- we need that  
12:17:55 3 clarity soon because we are able to communicate with  
12:17:57 4 everybody. But when I tell them something and then you  
12:18:00 5 go to the DON's website and it says something different,  
12:18:03 6 it is hard for them to rely on what we're saying or, you  
12:18:06 7 know, through meetings. And so I think it is a matter  
12:18:08 8 of that. Thank you.

12:18:10 9 THE COURT: Thank you for that. That's very  
12:18:13 10 helpful.

12:18:14 11 Okay. Well, it sounds like a solution is  
12:18:16 12 coming, hopefully in the short-term, to resolve this  
12:18:20 13 problem and clear up the confusion.

12:18:21 14 MR. FLYNN: Yes, Your Honor. That will be  
12:18:23 15 very helpful.

12:18:23 16 THE COURT: Okay. Anything else?

12:18:25 17 MR. BELL: No, Your Honor. I guess --

12:18:30 18 MR. RICE: Your Honor, Joe Rice. If I could  
12:18:33 19 address the Court.

12:18:34 20 THE COURT: Yes, sir.

12:18:34 21 MR. RICE: I was appointed by the Court in  
12:18:36 22 their initial order to the resolution committee. It was  
12:18:40 23 a specific appointment. And it arose from my interview  
12:18:45 24 with the Court when each of the judges expressed  
12:18:49 25 interest in different models of resolution from complex

12:18:52 1 litigation, which I have been doing most of my career.  
12:18:56 2 I also attend the litigation management and case  
12:19:00 3 management meetings that this group is having. And  
12:19:04 4 they're massive. And it's clear that there are a  
12:19:09 5 very -- there are a number of issues that are resulting  
12:19:13 6 in a massive amount of work from the Government and for  
12:19:17 7 the plaintiffs because of uncertainty as to how we're  
12:19:21 8 going to proceed. And we filed a request for a Rule 16  
12:19:26 9 pretrial conference.

12:19:29 10 To give you an example: We've got over 30  
12:19:32 11 years of factual history as to what -- what was  
12:19:36 12 Camp Lejeune. How was life on Camp Lejeune. Where did  
12:19:39 13 the water go for. If you were on the baseball field,  
12:19:42 14 did you get water from the truck or did they have  
12:19:44 15 buggies going around. All of these factual backgrounds.  
12:19:48 16 Do we prepare that for -- and each judge is going to  
12:19:51 17 have to understand that in every case. But do we  
12:19:55 18 prepare that factual history for one big presentation to  
12:19:59 19 the Court, maybe the four judges at the same time, or do  
12:20:03 20 we have to prepare that for every individual trial?  
12:20:07 21 Because it's going to be repeat, repeat, repeat. There  
12:20:13 22 are massive issues on causation, which there's a motion  
12:20:15 23 pending related to.

12:20:17 24 So if we could get a Rule 16 pretrial  
12:20:20 25 conference with the Court, hopefully with all four

12:20:22 1 judges at the same time, so that the parties can have a  
12:20:26 2 better understanding as to what the intent of the Court  
12:20:29 3 is and how they're planning to proceed, I think we can  
12:20:33 4 simplify the discovery process, save a lot of people a  
12:20:36 5 lot of time, and a lot of clients a lot of money. And  
12:20:42 6 substantial inconvenience for a lot of them. Because we  
12:20:44 7 just are having to build a case not knowing how it's  
12:20:49 8 going to be needed to be presented.

12:20:53 9 THE COURT: Okay.

12:20:54 10 MR. RICE: And on the second point is, I  
12:20:56 11 know we -- we submitted additional names on the special  
12:20:59 12 master, but I feel like I'm compelled to say I was given  
12:21:04 13 a resolution role. There is zero discussions taking  
12:21:08 14 place on resolution. There is nothing happening on  
12:21:12 15 resolution as far as the DOJ looking at the big picture,  
12:21:18 16 except for their elective option, which they did on  
12:21:21 17 their own. And after, what? A year plus it's gotten  
12:21:25 18 about 30 settlements. So I just feel that we need some  
12:21:31 19 time with the Court, if at all possible.

12:21:33 20 THE COURT: So this pretrial conference,  
12:21:39 21 other than what you've described as to a factual  
12:21:44 22 background, history of Lejeune, how things work, where  
12:21:49 23 people were relative to water source, and whether or not  
12:21:54 24 you need to prepare that for every single trial or just  
12:21:59 25 do one big presentation, I guess, what other issues

12:22:04 1 would you like to bring to the Court's attention?

12:22:06 2 MR. RICE: Well, we've got experts on, you  
12:22:08 3 know, each of the cancers. Do we present the experts  
12:22:13 4 one time or do we bring them to every trial? Is there a  
12:22:19 5 background -- I don't want to call it science day, but  
12:22:22 6 is there some way that the Court wants us to present  
12:22:27 7 things to them so they can get their handle around it  
12:22:31 8 and then the individual trials would go so much quicker?  
12:22:35 9 I believe in the Rule 16 motion, we listed a number of  
12:22:39 10 things to be discussed.

12:22:41 11 THE COURT: Yeah.

12:22:42 12 MR. RICE: And if the Court would allow us  
12:22:43 13 to sort of provide an agenda for the Rule 16 conference,  
12:22:48 14 we could probably do that. And then that would -- I  
12:22:51 15 don't think that that conference is where we would be  
12:22:54 16 presenting these things. I think the conference is  
12:22:56 17 first to get instruction from the Court as to how they  
12:22:59 18 plan to proceed so we can then decide what we can and  
12:23:03 19 what they want us to present.

12:23:07 20 THE COURT: I remember -- I know that  
12:23:10 21 order -- that motion is -- in the file is a rough agenda  
12:23:13 22 in that -- contained in that motion.

12:23:18 23 MR. RICE: It might have been a request for  
12:23:20 24 Rule 16 by letter. But with your permission, we will  
12:23:23 25 prepare an agenda and get it to you in the short order.



12:23:26 1 THE COURT: A proposed --

12:23:27 2 MR. RICE: Yes, a proposed agenda.

12:23:29 3 THE COURT: -- agenda. Okay. Yes.

12:23:31 4 MR. RICE: Is that acceptable?

12:23:33 5 THE COURT: You can file that.

12:23:35 6 MR. RICE: We'll certainly share it with the

12:23:37 7 DOJ.

12:23:37 8 MR. BAIN: Yes. I would ask it be filed on

12:23:39 9 the docket. Because what the plaintiff submitted was a

12:23:41 10 letter to the Court, so we didn't respond to that. I'm

12:23:45 11 not --

12:23:46 12 THE COURT: Well, I think you have filed a

12:23:48 13 Rule 16 pretrial conference request, right?

12:23:53 14 MR. RICE: I think so.

12:23:54 15 THE COURT: And I think that's been filed.

12:23:56 16 And if -- it sounds like that this is what that is. And

12:24:00 17 I'm just saying maybe if you would like to attach

12:24:05 18 subsequently, I would say, an agenda or other issues or

12:24:11 19 areas that you want to speak to the Court about, that

12:24:13 20 may be helpful.

12:24:15 21 MR. RICE: We will do that.

12:24:16 22 MR. BAIN: I'm not sure that has been filed.

12:24:18 23 Because we would like to see something filed in the

12:24:19 24 docket so that we can respond to it.

12:24:20 25 THE COURT: Right. Of course. I would like

12:24:22 1 you to be able to respond to what the request is.

12:24:24 2 MR. BAIN: We don't have any opposition to  
12:24:27 3 discussing with the Court ways to make this -- this  
12:24:31 4 litigation be efficient and expeditious. But I would  
12:24:37 5 also say that I think we have been having discussions  
12:24:41 6 about global resolution. In fact, we sent a  
12:24:44 7 communication to the plaintiff's leadership this week.  
12:24:50 8 I responded to a letter that they sent to us regarding  
12:24:53 9 ways forward on global resolution. But I think one of  
12:24:57 10 the impasses we have needs the participation of a  
12:25:00 11 settlement master to move forward.

12:25:02 12 THE COURT: Well, you've picked cases,  
12:25:05 13 right? You've selected cases that you want to try,  
12:25:08 14 right? You've selected cases that you want to take  
12:25:15 15 through discovery and into trial.

12:25:19 16 MR. RICE: We've got a hundred but it hadn't  
12:25:21 17 been narrowed down to the ones that are going to go to  
12:25:25 18 trial in 2024.

12:25:26 19 THE COURT: Right. But, I mean -- what I'm  
12:25:26 20 saying is, your weaker cases are not the ones you've  
12:25:30 21 selected. You know, there are some cases where I would  
12:25:32 22 imagine that you have a case and maybe this is not one  
12:25:36 23 that I want to try but I want to settle later when  
12:25:40 24 there's some data points. We're all waiting for data  
12:25:42 25 points on cases that you have selected for trial.

12:25:45 1 MR. RICE: The hundred cases are being --  
12:25:47 2 they're going through discovery. Obviously, there's  
12:25:49 3 going to be a significant range of cases and they're  
12:25:52 4 good, bad, and ugly. They were picked randomly. So --  
12:25:57 5 but we don't know which -- if there's going to be one  
12:26:01 6 trial or if there's going to be five cases in a trial.  
12:26:04 7 We don't know those issues. So we're doing discovery in  
12:26:07 8 a short period of time on a hundred cases, whereas if we  
12:26:10 9 knew that these are the five that are going to go or  
12:26:13 10 these are the ten that are going to go, it would save a  
12:26:16 11 lot of time and money for everybody because you don't  
12:26:20 12 need the same information to discuss resolution as you  
12:26:24 13 do to be completely ready for trial on the case.

12:26:29 14 THE COURT: Okay. I think a Rule 16 request  
12:26:32 15 has been filed. It was earlier in the docket. But it  
12:26:41 16 is -- I think it was filed in relation to --

12:26:49 17 MR. BAIN: Judge Boyle had a hearing.

12:26:50 18 THE COURT: Yes, that's what it was.

12:26:52 19 MR. BAIN: And it was each party filed  
12:26:54 20 something in relation to that hearing right before the  
12:26:56 21 hearing.

12:26:56 22 THE COURT: That's what it was.

12:26:59 23 MR. BELL: Judge, I believe it was a letter  
12:27:01 24 that we discussed with the DOJ. They had no opposition  
12:27:05 25 to the letter, but they did request that the Rule 16

12:27:09 1 conference be on the record versus an in-chambers event.

12:27:13 2 THE COURT: Yeah. Okay. It may be helpful  
12:27:21 3 to get an agenda.

12:27:26 4 MR. RICE: We will do that.

12:27:27 5 And I will join Mr. Bain's comment that the  
12:27:32 6 earliest point the Court can make a decision on whether  
12:27:35 7 they're going to do with a special master what they're  
12:27:37 8 going to do, whatever they decide, that is a vital tool  
12:27:41 9 that the parties need.

12:27:42 10 THE COURT: Okay. All right.

12:27:46 11 MS. BASH: And sorry, one last -- this is  
12:27:49 12 Zina Bash again on the resolution. Both what Mr. Rice  
12:27:52 13 said and Mr. Bain said is right. We had been, you know,  
12:27:56 14 exchanging drafts of what we're calling the  
12:27:59 15 questionnaire that will be submitted in a matrix. And  
12:28:02 16 most recently, last night, DOJ rolled back. But I think  
12:28:05 17 the core of the issue supports what Mr. Rice has said,  
12:28:08 18 which is a lot of it is their saying, you know, well,  
12:28:11 19 we'll need a special master -- a settlement master to  
12:28:14 20 resolve some of these issues that will help us move  
12:28:16 21 forward most quickly.

12:28:18 22 So yes, we have been, you know, having  
12:28:20 23 conversations. But for concrete next steps, it would be  
12:28:23 24 useful to have a settlement master in place while we  
12:28:25 25 continue, I hope, to make progress around the edges for

12:28:30 1 when that happens.

12:28:31 2 THE COURT: Right. Right. Okay. All  
12:28:34 3 right. That's helpful.

12:28:36 4 All right. Anything else substantive?

12:28:42 5 MR. BELL: I think that's it, Your Honor.

12:28:44 6 THE COURT: Mr. Bain.

12:28:45 7 MR. BAIN: Nothing further, Your Honor.

12:28:46 8 THE COURT: All right. Next conference.

12:28:49 9 MR. BELL: Judge, I would love to get back  
12:28:51 10 to the Tuesday. This is my fault we came to the Friday.  
12:28:53 11 But maybe could I suggest two weeks from next Tuesday.  
12:29:00 12 We have a number of motions to file, and the Government  
12:29:03 13 will have five days after we file our motions. So that  
12:29:06 14 should give us time to get that done.

12:29:11 15 THE COURT: 14th. So that would be  
12:29:19 16 April 14. I've got a term of court in New Bern 14, 15;  
12:29:32 17 mediation in Raleigh on the 17th. I can give you -- of  
12:29:36 18 that week, I can give you the 16th, Thursday, or Monday  
12:29:49 19 the 13th.

12:29:54 20 MR. BAIN: Your Honor, I prefer the 16th of  
12:29:57 21 those choices.

12:30:07 22 MR. BELL: 16th is good with us, Your Honor.

12:30:09 23 THE COURT: Okay. We'll set it for May  
12:30:14 24 the 16th. The time work for everybody? 11:00?

12:30:17 25 MR. BELL: Yes, Your Honor.

12:30:18 1 MR. BAIN: Yes, Your Honor.

12:30:18 2 THE COURT: Okay. Okay. May 16th, 11:00  
12:30:25 3 a.m. Thank you very much.

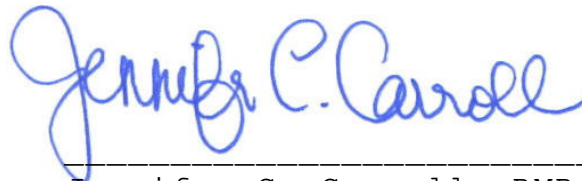
12:30:39 4 (A recess is taken at 12:30 p.m.)

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6  
7 **C E R T I F I C A T E**

8  
9 I certify that the foregoing is a correct  
10 transcript from the record of proceedings in the  
11 above-entitled matter.

12 This the 30th day of April, 2024.

13 

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15 \_\_\_\_\_  
16 Jennifer C. Carroll, RMR, CRR  
17 Official Court Reporter  
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