

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

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

THURSDAY, MAY 16, 2024
STATUS CONFERENCE
BEFORE THE HONORABLE ROBERT B. JONES, JR
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III; Zina Bash; Hugh Overholt; Mona Lisa Wallace; Joe Rice; Michael Dowling; A. Charles Ellis
Jim Roberts and Elizabeth Cabreser via telephone

On Behalf of the Defendant:

Adam Bain; Leah Wolfe; Sara Mirsky; Jennifer Adams; Michael Cromwell; David Ortiz
Bridget Bailey Lipscomb via telephone

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

1 Thursday, May 16, 2024, at 11:04 a.m.

11:04:56 2 **P R O C E E D I N G S**

11:04:57 3 THE COURT: Good morning, everyone.

11:05:12 4 All right. I believe that the parties are
11:05:20 5 awaiting rulings on the following that appear to be
11:05:25 6 ripe: The motion for partial summary judgment regarding
11:05:33 7 causation, the parties -- the plaintiffs' request for a
11:05:39 8 Rule 16 conference, the Government's motion to amend
11:05:46 9 Track 1 to prioritize single-disease plaintiffs, the
11:05:50 10 parties' Track 2 proposals, the plaintiffs' motion to
11:05:56 11 reconsider digitized muster rolls, and the plaintiffs'
11:06:02 12 motion to reconsider the ATSDR water modeling files.

11:06:08 13 Is that -- Mr. Bell, is that accurate?

11:06:14 14 MR. BELL: Your Honor, there are some
11:06:16 15 motions to expedite trials filed at the each individuals
11:06:22 16 judges.

11:06:22 17 THE COURT: That's right.

11:06:27 18 MR. BELL: I think we have a way to manage
11:06:29 19 that today, Your Honor. In our chat, we're going to
11:06:32 20 talk with you. I think that's it, Your Honor.

11:06:43 21 THE COURT: What's the -- what's the status
11:06:45 22 on the muster rolls?

11:06:49 23 MR. BELL: Judge, we have started taking
11:06:51 24 some discovery depositions and learning how all of that
11:06:55 25 happened. We haven't completed that, but we're still

11:06:58 1 working together towards a resolution.

11:07:01 2 THE COURT: So I've got a ripe motion in
11:07:03 3 front of me, don't I?

11:07:04 4 MR. BELL: You do, Your Honor. But we would
11:07:06 5 ask it be held in abeyance until we finish our work.

11:07:09 6 THE COURT: How long do you think that will
11:07:10 7 be?

11:07:10 8 MR. BELL: We're pretty close to finishing
11:07:12 9 that up, Your Honor. Maybe in the next -- by the time
11:07:15 10 we have the next status conference.

11:07:16 11 THE COURT: Okay. Which kind of jumping
11:07:20 12 ahead here. I think we've got that for May the 28th.
11:07:31 13 How would the parties feel about June the 4th?

11:07:35 14 MR. BELL: Your Honor, I'm going to be out
11:07:36 15 of the country for a short family vacation till the 8th
11:07:41 16 of June, starting on the 31st. If we could work around
11:07:46 17 that, my wife would be very appreciative.

11:07:53 18 THE COURT: What does the Government think,
11:07:56 19 pretty flexible, I think.

11:07:56 20 MR. BAIN: The first week in June works for
11:07:58 21 us. The week of June 28th -- I have my son's graduation
11:08:03 22 on the 29th.

11:08:04 23 THE COURT: Wait. May 28th?

11:08:05 24 MR. BAIN: Yeah.

11:08:06 25 THE COURT: Okay.

11:08:09 1 MR. BELL: Would the 29th or 30th work, Your
11:08:11 2 Honor?

11:08:12 3 THE COURT: No. I'm out the week of the
11:08:15 4 27th.

11:08:15 5 MR. BELL: Could we then go to maybe the 9th
11:08:18 6 or 10th?

11:08:19 7 THE COURT: So we've got June 4th
11:08:24 8 tentatively scheduled. That's a Tuesday. I'm available
11:08:28 9 that following Friday, on June the 7th.

11:08:33 10 MR. BELL: How about the following Tuesday,
11:08:34 11 which will be 11th?

11:08:38 12 THE COURT: I think I can do that. I've got
11:08:39 13 some arraignments scheduled. I could figure something
11:08:44 14 out.

11:08:44 15 Is June the 11th good for you? The
11:08:47 16 Government?

11:08:47 17 MR. BAIN: We have a deposition that I'm
11:08:49 18 going to be at June 10th in Maine, so that's going to be
11:08:53 19 difficult, I think. Later that week would be...

11:08:59 20 THE COURT: June 10th week is bad?

11:09:01 21 MR. BAIN: The -- well, the 11th is going to
11:09:04 22 be difficult. I think the 12th through the 13th are
11:09:07 23 possible.

11:09:07 24 THE COURT: How about the 12th, a Wednesday?

11:09:09 25 MR. BELL: Yes, sir, Your Honor.

11:09:09 1 THE COURT: Okay. That's -- our next will
11:09:13 2 be June 12th, Wednesday.

11:09:15 3 So by June 12th, you think that you'll --
11:09:21 4 you'll be in a position on these muster roll --

11:09:27 5 MR. BELL: Yes, Your Honor.

11:09:28 6 THE COURT: Okay. So hold any order in
11:09:30 7 abeyance until 6/12?

11:09:35 8 MR. BELL: Yes, Your Honor.

11:09:40 9 THE COURT: All right. And where are you on
11:09:41 10 the ATSDR water modeling files?

11:09:45 11 MR. BELL: Well, we have good news for you
11:09:47 12 on that, Your Honor. I think we've resolved that.

11:09:50 13 THE COURT: So all of the issues that you've
11:09:52 14 raised to date on the water modeling files, they're no
11:09:55 15 longer issues?

11:09:56 16 MR. BELL: Yes, Your Honor. The one issue I
11:09:58 17 would like to bring up to the Court that's not ripe
11:10:01 18 right now: The information that we've been given, we've
11:10:05 19 been able to reproduce what we believe to be the same
11:10:09 20 model that they've given -- or they have.

11:10:13 21 THE COURT: Right.

11:10:14 22 MR. BELL: If something happens in the
11:10:16 23 future and that model is challenged, the only way we can
11:10:21 24 prove it other than the way we put it together is to
11:10:23 25 compare it. So we're assuming we won't have a

11:10:26 1 challenge, but I didn't want to waive that.

11:10:31 2 MR. BAIN: I have no problem with them
11:10:33 3 preserving the right to make a challenge based on
11:10:35 4 that --

11:10:36 5 MR. BELL: We would be making a challenge,
11:10:38 6 you would be making one on our model, of our
11:10:41 7 reconstruction. So...

11:10:43 8 MR. BAIN: I don't want to forego that
11:10:45 9 right, but I just don't know right now if we would do
11:10:48 10 that.

11:10:50 11 THE COURT: Is this not something the
11:10:52 12 parties can stipulate to?

11:10:54 13 MR. BELL: Your Honor, we don't have a
11:10:55 14 problem with the Government sending a technology person
11:10:59 15 to look at our model to determine its viability. We
11:11:06 16 think we've done the job right, according to the
11:11:10 17 instructions we've gotten from production materials. We
11:11:14 18 got an additional bit of data this week -- or will be
11:11:19 19 getting it -- which I think gives us the final
11:11:21 20 instructions to complete the model.

11:11:24 21 THE COURT: Okay. All right.

11:11:27 22 MR. BELL: That's my only concern, is we
11:11:31 23 don't think there will be a challenge; we think the job
11:11:33 24 has been done well. But if there is, we just want to
11:11:36 25 reserve the right to have that ability to say to the

11:11:41 1 Court, well, if there's a real question, let's compare
11:11:45 2 the two.

11:11:45 3 THE COURT: Okay. All right. Stipulations.
11:11:48 4 Let me ask the parties: Are the parties stipulating to
11:11:56 5 the levels of toxins at certain wells on base at certain
11:12:00 6 times? Is that something that the parties -- I'm
11:12:04 7 interested to see how -- to think about how -- if you're
11:12:06 8 not stipulating to this, how is it going to work out at
11:12:10 9 trial in this case?

11:12:12 10 MR. BAIN: Your Honor, we've been exchanging
11:12:15 11 stipulations, and I think we're going to have a meeting
11:12:18 12 on stipulations fairly soon. Certainly the levels that
11:12:22 13 were detected at Camp Lejeune are something that we
11:12:25 14 would consider stipulating to. I don't think there's
11:12:28 15 any basis for us to challenge the levels that were
11:12:30 16 detected for most of the samples that were taken. So I
11:12:34 17 think that's something that we can stipulate to.

11:12:37 18 There is going to be an issue regarding what
11:12:40 19 the levels were in the past based on the model that was
11:12:44 20 done. I think there are some things there that we might
11:12:46 21 be able to stipulate to, some things we won't be able to
11:12:49 22 stipulate to.

11:12:50 23 THE COURT: Mr. Bell.

11:12:54 24 MR. BELL: It's a curious answer, Your
11:12:56 25 Honor. One that invokes some curiosity as well. If the

11:13:03 1 Government has something in the ATSDR that they are
11:13:06 2 going to challenge, I think it would be nice for them to
11:13:11 3 tell us that, especially before we get our experts who
11:13:14 4 are depending on the model to give all the reports. So
11:13:17 5 I would ask the Court to entertain our verbal motion to
11:13:24 6 require the Government to indicate what parts of the
11:13:29 7 ATSDR they're challenging -- they're attempting or going
11:13:32 8 to challenge. I think that's an appropriate request.

11:13:36 9 THE COURT: At this time?

11:13:37 10 MR. BELL: Well, not today, but I think they
11:13:40 11 should be able to say -- they should know by now, Judge.
11:13:43 12 I mean, clearly, it's their government agency. They're
11:13:46 13 the ones that put it together, and now they say they
11:13:49 14 might challenge the modeling of how the past was
11:13:53 15 considered. That's a surprise.

11:13:57 16 MR. BAIN: Your Honor, the plaintiffs have
11:13:58 17 the burden of proof on this issue, and they have to
11:14:01 18 submit an expert report. And if they want to rely on
11:14:04 19 the ATSDR model, they can do that. And we are having
11:14:08 20 experts look at that as well. And depending on what
11:14:12 21 their experts say -- and they may rely on the ATSDR
11:14:16 22 model -- our experts will respond to that.

11:14:19 23 MR. BELL: That's -- that is completely
11:14:21 24 wrong, Judge. The Government has a model that this
11:14:25 25 statute was based on. They've touted this model.

11:14:30 1 They've written things about it. They've said how good
11:14:33 2 it is everywhere. And now the Government is saying we
11:14:36 3 may challenge our own model and not tell us what areas
11:14:39 4 they're going to challenge? That isn't fair.

11:14:48 5 THE COURT: Okay. Well --

11:14:52 6 MR. BELL: We'll file an interrogatory, Your
11:14:55 7 Honor, and ask those questions.

11:14:57 8 THE COURT: I mean, I was just curious. You
11:14:59 9 know, this case is about water and where it was and
11:15:04 10 when, and it just -- it just seems like that they'd be
11:15:08 11 able --

11:15:09 12 MR. BAIN: The plaintiffs have already
11:15:11 13 served a number of discovery requests, including
11:15:13 14 requests for admission, and we have not answered those
11:15:15 15 yet. So once we answer those, the issues will be
11:15:19 16 narrow.

11:15:19 17 THE COURT: And I don't know what -- other
11:15:22 18 than what you've brought to my attention, I don't know
11:15:24 19 the details of your written discovery in this case.

11:15:26 20 MR. BELL: Mr. Dowling just mentioned that
11:15:28 21 as well, Your Honor.

11:15:29 22 We'll take a look at those questions and see
11:15:31 23 if it covers areas that might have evoked some other
11:15:33 24 interest, and we'll take the necessary steps to cover
11:15:38 25 those bases.

11:15:38 1 THE COURT: All right. Well, I mean, other
11:15:43 2 than that, I've got just what you've put in the status
11:15:46 3 report: the occupant housing records, the manpower
11:15:55 4 data, other items. What do you want to talk about
11:15:59 5 today?

11:16:00 6 MR. BAIN: Your Honor, there's a few other
11:16:02 7 discovery items that have come up recently that I would
11:16:05 8 like to raise.

11:16:06 9 THE COURT: Okay. These are new ones?

11:16:08 10 MR. BAIN: Yes. One has to do with the
11:16:13 11 plaintiffs' request to take a deposition of a former
11:16:15 12 director of ATSDR in Italy. We're concerned because
11:16:19 13 there are specific procedures that have to be followed
11:16:21 14 under the Hague Evidence Convention for taking a foreign
11:16:27 15 deposition, and the U.S. can't participate in
11:16:30 16 depositions unless those procedures are followed.
11:16:34 17 Government lawyers would also need to get business
11:16:37 18 passports to go over for those depositions.

11:16:39 19 We don't understand the need for that
11:16:41 20 deposition given that he was a director of the ATSDR; he
11:16:44 21 didn't have firsthand involvement in doing the studies
11:16:47 22 related to Camp Lejeune. So we would like the
11:16:51 23 plaintiffs to describe to us the need for this
11:16:53 24 deposition because of the grave expense and procedures
11:16:56 25 that would be involved in it. So that's one of a couple

11:17:01 1 of issues I would like to raise.

11:17:02 2 THE COURT: Have y'all talked about this
11:17:04 3 before with the plaintiffs?

11:17:05 4 MR. BAIN: We've exchanged some e-mails
11:17:08 5 about it.

11:17:09 6 THE COURT: Okay.

11:17:10 7 MR. BELL: Our research, Your Honor,
11:17:12 8 indicates that Dr. Portier is a private citizen. He
11:17:16 9 lives in Switzerland. He's currently on the heart
11:17:20 10 transplant list and cannot travel. He's not allowed to
11:17:23 11 give a deposition in Switzerland, so we found a small
11:17:26 12 Italian town that he can travel to and meet his travel
11:17:29 13 requirements and be close to the hospital where his
11:17:33 14 heart transplant will take place. Dr. Portier has been
11:17:37 15 deposed many times because of his position with the
11:17:42 16 ATSDR, and I think -- in the next two weeks, he's being
11:17:46 17 deposed again. We don't think --

11:17:48 18 THE COURT: In this case?

11:17:49 19 MR. BELL: No, sir, not in this case; in
11:17:51 20 another case.

11:17:52 21 We don't think, Your Honor, that the Hague
11:17:55 22 Convention applies to this case -- applies to us. But
11:17:58 23 we do understand the Government has to get some special
11:18:03 24 passport. That's what we're told.

11:18:05 25 THE COURT: Right.

11:18:05 1 MR. BELL: We noticed the deposition for the
11:18:07 2 end of May. We're willing to reschedule to work with
11:18:12 3 the Government. But I'm not aware that the Hague says
11:18:19 4 the Government can't participate if such-and-such isn't
11:18:23 5 done. I would like to see that. We've done the
11:18:24 6 research; we can't find anything that prohibits them
11:18:29 7 from doing that. Although, Italy, does not, as I
11:18:32 8 understand, actually ascribe to that convention.

11:18:37 9 THE COURT: Okay. Well, you've brought it
11:18:38 10 to my attention. It sounds like that if this goes
11:18:41 11 forward, there's going to be a lot of time executing it,
11:18:47 12 with getting passports and things like that. So if
11:18:53 13 y'all can't work this out, then file your motion and
11:18:58 14 I'll look forward to learning all about the Hague
11:19:02 15 Convention on depositions in Italy.

11:19:05 16 MR. BELL: It's riveting, Your Honor.

11:19:07 17 THE COURT: All right. Next.

11:19:09 18 MR. BAIN: Next issue is we have this case
11:19:11 19 *Przenkop versus United States*. It's case
11:19:18 20 number 23-CV-01435. We took the plaintiff's deposition
11:19:24 21 in that case. He's claiming loss of income as a result
11:19:28 22 of the illness he alleges related to Camp Lejeune. At
11:19:33 23 deposition, the witness refused to answer questions
11:19:35 24 about his departure from his job. Apparently there was
11:19:40 25 a lawsuit between the plaintiff and his employer, and as

11:19:46 1 a result of that lawsuit, there was a nondisclosure
11:19:48 2 agreement. So he refused to answer questions based on
11:19:52 3 this nondisclosure. Our research into the law is that a
11:19:59 4 nondisclosure agreement does not shield a witness from
11:20:01 5 answering relevant questions at deposition. And this is
11:20:05 6 clearly relevant to his lost income claim. So I wanted
11:20:11 7 to bring this to the Court's attention because we might
11:20:14 8 have to file a motion to compel. The plaintiffs have
11:20:18 9 said that, you know, we should try to get a waiver from
11:20:20 10 the employer of that nondisclosure agreement, but we
11:20:24 11 don't think it's our burden to go to the plaintiff's
11:20:26 12 employer to get a waiver of the agreement.

11:20:29 13 THE COURT: Is this one of your cases?

11:20:30 14 MR. BELL: Yes, Your Honor. Our client
11:20:32 15 believes that his separation agreement and settlement
11:20:36 16 agreement does not allow him to give any information on
11:20:40 17 that. So he wants to be relieved of that burden -- or
11:20:44 18 that problem. I'm not sure I can relieve him of it. We
11:20:50 19 don't hold a position on whether the Court should issue
11:20:53 20 an order. But I think that -- I think the Court could
11:21:01 21 probably take care of that with an order.

11:21:03 22 THE COURT: Yeah. Are there -- I would
11:21:05 23 assume this NDA, or whatever you call it -- agreement
11:21:10 24 has got some penalties if there's a breach and he's...

11:21:14 25 MR. BELL: I think the lawsuit had to do

11:21:17 1 with some injuries, Judge. And I think the -- and I
11:21:22 2 haven't seen the agreement. But that's my
11:21:24 3 understanding. And I think the need for the Government
11:21:27 4 is to understand what those claims were, see if they
11:21:32 5 might relate to the present claim.

11:21:34 6 THE COURT: All right. Well, let's go ahead
11:21:35 7 and get that going as well.

11:21:36 8 All right. Which else?

11:21:38 9 MR. BAIN: Your Honor, I also have a list of
11:21:41 10 description of injuries for the Camp Lejeune claim
11:21:45 11 submitted to the Department of Navy that I would like to
11:21:48 12 provide to the Court, just for the Court's information.

11:21:52 13 THE COURT: Is that the census -- I guess
11:21:54 14 what we call the census data? Is that what this is?

11:21:58 15 MR. BAIN: This is the data from the Navy's
11:22:00 16 intake portal, what they have so far, as far as their
11:22:03 17 descriptions of injuries there.

11:22:06 18 THE COURT: And that would be helpful to
11:22:08 19 knowing the population of diseases; is that right? Is
11:22:11 20 that what that is?

11:22:11 21 MR. BAIN: Right. For -- potentially for
11:22:13 22 Track 2 or Track 3.

11:22:14 23 THE COURT: Okay.

11:22:15 24 (Document handed to the Court.)

11:22:21 25 MR. BAIN: Your Honor, also, I would like to

11:22:23 1 bring up, the Court recently solicited applications for
11:22:28 2 plaintiff's reappointment for leadership, and the Court
11:22:31 3 asked the plaintiffs to address particular questions
11:22:32 4 regarding how the litigation is going and how the
11:22:37 5 applicants see the litigation going over the next 12
11:22:39 6 months.

11:22:39 7 THE COURT: That's all through the clerk's
11:22:41 8 office; correct?

11:22:43 9 MR. BAIN: I believe so. That was
11:22:45 10 through -- issued through the clerk's office. The
11:22:48 11 United States would just like to offer to provide
11:22:51 12 information. Not with respect to particular applicants,
11:22:54 13 but how the litigation is going and how we see the
11:22:57 14 litigation progressing over the next 12 months if the
11:23:00 15 Court wants that information from the Government.

11:23:06 16 MR. BELL: I think the Rule 16 conference is
11:23:08 17 the perfect place to do that, Your Honor. The Court
11:23:14 18 basically, in its order, is going to have to decide
11:23:18 19 whether to reappoint leadership, and they want to know
11:23:22 20 what, well, I guess our thoughts are, and I think that's
11:23:28 21 part of our selection process.

11:23:29 22 THE COURT: What -- whose thoughts?

11:23:32 23 MR. BELL: I don't want to speak for the
11:23:34 24 Court, but I could see that as part of their review
11:23:37 25 process.

11:23:37 1 THE COURT: Right. Right. From your --
11:23:40 2 Mr. Bain, from your description, I know some direction
11:23:46 3 has gone out about providing information to the clerk's
11:23:53 4 office. That's -- I'm not involved in that aspect of
11:23:56 5 the case. I didn't know whether the Government has been
11:24:00 6 asked for their input.

11:24:03 7 MR. BAIN: No, the Government hasn't been
11:24:04 8 asked for its input. So we're just offering our input
11:24:07 9 if the clerk or the Court wants that input.

11:24:10 10 THE COURT: That's in someone else's
11:24:14 11 responsibility. So I'll convey that or we can convey it
11:24:18 12 here. And if the Court wants it, they'll ask for it.

11:24:21 13 MR. BAIN: Thank you, Your Honor.

11:24:21 14 THE COURT: But thank you for bringing that
11:24:23 15 up.

11:24:24 16 All right. Anything else?

11:24:25 17 MR. BAIN: The last thing, Your Honor. I
11:24:27 18 would like to introduce David Ortiz who is a new
11:24:29 19 attorney who will be in our Raleigh office. So we have
11:24:32 20 now two attorneys who will be stationed in Raleigh.

11:24:35 21 THE COURT: Oh, good.

11:24:35 22 MR. ORTIZ: Good morning, Your Honor.

11:24:36 23 THE COURT: Welcome.

11:24:37 24 MR. ORTIZ: Thank you very much.

11:24:39 25 THE COURT: All right. Mr. Bell.

11:24:42 1 MS. BASH: Your Honor, can I ask something
11:24:44 2 about this list? Are these duplicative so somebody, you
11:24:48 3 know, might have multiple of the injuries on here? Or
11:24:53 4 is this the principal injury that they alleged?

11:24:56 5 MR. BAIN: No, they could have multiple
11:24:58 6 injuries.

11:24:58 7 MS. BASH: Okay.

11:24:59 8 MR. BAIN: That's my understanding.

11:25:08 9 (Mr. Bell and Mr. Bain confer.)

11:25:12 10 THE COURT: Okay.

11:25:24 11 MS. BASH: Your Honor, one question about
11:25:28 12 the settlement master: Do you need any further
11:25:30 13 information from us, or is that process --

11:25:33 14 THE COURT: Not that I know of.

11:25:34 15 MS. BASH: And is there a sense of the
11:25:36 16 timing of when we might --

11:25:37 17 THE COURT: I don't -- I don't have anything
11:25:38 18 on that.

11:25:48 19 What else have you got?

11:25:49 20 MR. BELL: Your Honor, we're currently in a
11:25:52 21 little bit of a conundrum when it comes to our claims
11:25:57 22 filing through the Department of the Navy. You recall
11:26:01 23 several status conferences ago, the gentleman from the
11:26:07 24 Department kind of gave a presentation of what they're
11:26:09 25 doing, how long it would take, things like that. So now

11:26:12 1 they have the system up and running and it's -- I
11:26:17 2 shouldn't use the term "rejecting," but it's not
11:26:20 3 accepting bulk filings or the filings that we used to
11:26:24 4 do. We're trying to get some level of confidence that
11:26:32 5 if we put our claim in the system, while it might not
11:26:36 6 meet the Government's request, we still have filed a
11:26:40 7 proper claim since we're getting ready to meet the
11:26:44 8 August 10th deadline. That -- it concerns us a lot. So
11:26:49 9 I just wanted to give you a heads up we're working with
11:26:51 10 the Government on that. We're going to try to get some
11:26:54 11 affirmation of what we're doing.

11:26:56 12 The statute only requires us to furnish five
11:26:59 13 things to perfect a claim. The Government is now asking
11:27:03 14 for many, many, many things. And if you don't answer
11:27:07 15 every one of their little questions, then it doesn't say
11:27:10 16 you filed your claim. So we're concerned that -- we
11:27:14 17 don't want until after August and they say, "I'm sorry.
11:27:17 18 You didn't file it right."

11:27:19 19 THE COURT: So the statute -- I mean, we're
11:27:21 20 all here because of the statute; right?

11:27:24 21 MR. BELL: Technically --

11:27:25 22 THE COURT: That's why these cases are here.

11:27:27 23 MR. BELL: Technically, Your Honor --

11:27:27 24 THE COURT: So the statute requires you to
11:27:29 25 exhaust; right?

11:27:30 1 MR. BELL: Yes.

11:27:31 2 THE COURT: And what do you -- to what do
11:27:34 3 you need to exhaust?

11:27:34 4 MR. BELL: First, Your Honor, to exhaust is
11:27:36 5 you furnish the Government five pieces of information.
11:27:39 6 You can do that by letter.

11:27:41 7 THE COURT: And that's what's going on?

11:27:42 8 MR. BELL: Well, we were furnishing that
11:27:45 9 plus more in the early times. They've changed the
11:27:49 10 system. And now, for example, if you don't answer
11:27:52 11 this -- and it's all kind of answer it this way. But
11:27:55 12 there are a lot of questions that you can't answer the
11:27:57 13 way they put it up, so it rejects your claim. And so
11:28:04 14 we're concerned about that and we just want the Court to
11:28:06 15 know we're working on it.

11:28:09 16 THE COURT: Okay.

11:28:10 17 MR. BELL: But there may come a time that we
11:28:12 18 need some help, but we don't know yet. But it does
11:28:15 19 concern us a lot.

11:28:15 20 MR. BAIN: So, Your Honor, the Navy's been
11:28:18 21 working with plaintiffs' counsel to try to address these
11:28:20 22 issues. In fact, the Navy provided to plaintiffs'
11:28:25 23 counsel yesterday -- I believe the day before, answers
11:28:28 24 to their questions that many questions have been
11:28:30 25 collected by Government liaison counsel and provided to

11:28:34 1 the Navy. And we've offered to have additional
11:28:37 2 conversations with plaintiffs' counsel as we go forward
11:28:40 3 with any additional issues that arise.

11:28:42 4 THE COURT: So what -- what -- what prompts
11:28:48 5 these claims to be rejected? Is it just a --

11:28:55 6 MS. BASH: Well, I don't think that any have
11:28:57 7 been rejected so far. I think what Mr. Bell is saying
11:29:00 8 is that there's no acknowledgement or no confirmation
11:29:03 9 that, yes, you have properly presented a claim. You
11:29:07 10 submit your information and hope for the best. And I
11:29:09 11 think what Mr. Bell -- the concern he's raising is that
11:29:12 12 with, you know, potential statute of limitations coming
11:29:14 13 up in August, being told the day before, well, you never
11:29:19 14 really properly presented. And they did yesterday, the
11:29:24 15 Navy, sent me and I forwarded on to, you know, as many
11:29:28 16 plaintiff's counsel as I can and put it on the website
11:29:30 17 this Q&A that is very helpful. But there still, it's
11:29:34 18 just hard to know once you filed your claim, you know,
11:29:37 19 to make sure that you complied.

11:29:38 20 THE COURT: Right.

11:29:39 21 MS. BASH: That they agree you complied. So
11:29:42 22 I don't know if the portal -- if that might be a next
11:29:44 23 iteration where you get some kind of approval. You
11:29:48 24 know, before, I think you used to send letters that you
11:29:50 25 properly presented a claim. Kind of in the ordinary

11:29:53 1 course, that's what would happen, you would get a
11:29:55 2 letter --

11:29:55 3 THE COURT: Just kind of in limbo, these
11:29:58 4 folks?

11:30:00 5 MS. BASH: That's how we feel.

11:30:01 6 THE COURT: They don't know the status;
11:30:02 7 right?

11:30:03 8 MS. BASH: Right. That's how we feel on the
11:30:04 9 plaintiff's side. Just kind of sending something out
11:30:07 10 into the ether without knowing if the Government agrees
11:30:10 11 that we have, quote, properly presented and, to your
11:30:12 12 point, met the exhaustion requirement under the -- under
11:30:15 13 the justice act.

11:30:20 14 THE COURT: Anything else?

11:30:20 15 MR. BAIN: Well, the Navy is working through
11:30:22 16 the claims, and --

11:30:23 17 THE COURT: I mean, you know the issue;
11:30:24 18 right?

11:30:24 19 MR. BAIN: I do. And there's really no duty
11:30:26 20 for the Government to, you know, confirm that the claim
11:30:29 21 has been properly presented. But even given that, the
11:30:32 22 Navy is working through the claims, looking to see if
11:30:35 23 there are any of those five pieces of information that
11:30:37 24 are missing and informing claimants if that's the case.

11:30:43 25 You can imagine with the sheer number of

11:30:45 1 claims -- I think it's up to 227,000 now.

11:30:48 2 THE COURT: Well, I imagine as we're getting
11:30:50 3 closer to August, it's going to increase.

11:30:53 4 MR. BAIN: Right. And getting through that
11:30:54 5 log of claims just for the resources. And if the
11:30:57 6 plaintiffs think that the Navy has some duty to tell
11:30:59 7 them whether the claim is properly presented, they have
11:31:04 8 the duty to make the claim with those five pieces of
11:31:08 9 information provided. So they're doing the best they
11:31:12 10 can.

11:31:12 11 THE COURT: Well, it sounds to me like the
11:31:14 12 folks who are presenting the five are having their
11:31:20 13 claims sent back to them, or whenever verbiage you use.

11:31:24 14 MR. BELL: Being accepted, Your Honor.

11:31:26 15 MR. BAIN: No, there's no -- there's no
11:31:27 16 rejection of claims or being sent back to them. I think
11:31:31 17 they want a confirmation that, "Okay, you've met these
11:31:34 18 five requirements." That's not really our obligation to
11:31:37 19 do that.

11:31:38 20 If they've presented a claim with the five
11:31:40 21 requirements and it's set there for six months, they can
11:31:43 22 go to court. They're entitled to go to court. The Navy
11:31:47 23 is trying to be proactive in looking through this --
11:31:50 24 especially with the pro se plaintiffs, looking through
11:31:53 25 their claims and letting them know if they haven't met

11:31:55 1 the five requirements. But just given the sheer number
11:31:58 2 of claims, it's taking them time to go through them all
11:32:02 3 and to do that.

11:32:02 4 MR. BELL: Your Honor, let me see if I can
11:32:05 5 express it a little differently. The statute requires
11:32:09 6 these five primary elements.

11:32:11 7 THE COURT: What are they?

11:32:12 8 MR. BELL: Date of birth, name of plaintiff
11:32:16 9 filing, amount of the claim, type of injury, and who is
11:32:22 10 the representative status.

11:32:22 11 THE COURT: So someone presents those five,
11:32:25 12 right? And what are you saying that's happening?

11:32:29 13 MR. BELL: Well, prior to the new system,
11:32:32 14 the computer would accept the claim. So what our
11:32:37 15 concern is, because they've added dozens of new
11:32:41 16 categories, they want to gather data. Which is fine.
11:32:45 17 We just want -- we want someone to say if you present
11:32:48 18 these five, your claim is perfected. I don't need -- I
11:32:52 19 don't need them to proactively tell me; I just need them
11:32:56 20 to say that if we present those five, according to the
11:32:58 21 statute, we've met our burden. That's all I need.

11:33:01 22 THE COURT: But you're saying something
11:33:05 23 different is happening.

11:33:06 24 MR. BELL: We aren't getting -- we asked
11:33:07 25 those questions and we kind of -- "We'll look into it

11:33:09 1 and we'll do this" --

11:33:10 2 THE COURT: No. You're saying that they
11:33:11 3 present the five, and then what did you say something
11:33:16 4 happens?

11:33:17 5 MR. BELL: In the past we got confirmation
11:33:19 6 by the computer.

11:33:19 7 THE COURT: So that's not happening anymore?

11:33:21 8 MR. BELL: No, sir. And then one of the
11:33:23 9 issues, for example -- and I may say it wrong because
11:33:26 10 I'm not involved in that issue. But there's a question
11:33:29 11 about the person filing and what capacity are you --
11:33:32 12 administrator, executor, or something like that.

11:33:35 13 There's nowhere to put -- because under the current
11:33:41 14 Fourth Circuit law, you don't have to get appointed
11:33:44 15 representative of the estate to file the claim, just a
11:33:47 16 person who could be appointed can file the claim.
11:33:49 17 There's no box to put that in. If you don't fill out
11:33:53 18 that -- now, that is one of the possible five elements.
11:33:56 19 So it concerns us if we say administrator, that's
11:34:01 20 actually misrepresenting. There's nowhere to put the
11:34:04 21 person who could be.

11:34:05 22 THE COURT: You filed a motion like this,
11:34:06 23 didn't you?

11:34:09 24 MR. BELL: Well, there's a motion pending
11:34:11 25 having to do with that.

11:34:12 1 THE COURT: Right.

11:34:14 2 MR. BELL: But it's been Fourth Circuit law
11:34:18 3 for years that way, so...

11:34:18 4 Judge Boyle issued a case in Washington
11:34:22 5 recently, a Fourth Circuit case. That was another case
11:34:25 6 approved that particular kind of issue with the estate.

11:34:30 7 THE COURT: Right.

11:34:31 8 MR. BELL: So we feel pretty comfortable
11:34:33 9 with that. But all of a sudden we have -- we're dealing
11:34:36 10 in today's world with computers and we just -- we want
11:34:40 11 someone -- and I think it's the Government to tell us,
11:34:42 12 not the Department of Navy, to say, yes, if you file
11:34:46 13 these five in the system, but by the way, we're blocking
11:34:50 14 you from filing one of those five, what do we do about
11:34:53 15 that? It's a pretty good question.

11:34:56 16 THE COURT: Yeah.

11:34:59 17 MR. BAIN: I don't think they're being
11:35:01 18 blocked from filing. And some of these answers to these
11:35:02 19 questions go through that. You know, here, if you don't
11:35:05 20 have an answer, just put "NA" or "not applicable."

11:35:08 21 THE COURT: So you forecasted this may be an
11:35:10 22 issue down the road. It sounds like there's something
11:35:13 23 happening to address these issues from the Government.

11:35:20 24 MS. BASH: Yeah. I think -- so now
11:35:24 25 they're -- Mr. Bell has kind of narrowed down on one of

11:35:27 1 the issues that we have not yet, I think, gotten a
11:35:29 2 concrete answer from about representative status.

11:35:32 3 Is that right? You-all are still
11:35:33 4 considering whether you would require that as part of
11:35:37 5 the proper presentment after the new Fourth Circuit.

11:35:41 6 MR. BAIN: I think the Navy has made it
11:35:43 7 pretty clear here what the requirements are. The
11:35:44 8 evidence is not required but the statement of what the
11:35:47 9 status is has always been required.

11:35:54 10 MS. BASH: So we just received this document
11:35:57 11 yesterday. I think we should fully, kind of, analyze it
11:36:00 12 and see what's still -- what questions still remain
11:36:03 13 after it. I think one of the biggest questions is for
11:36:05 14 that checkbox, I understand that you no longer
11:36:08 15 require -- the Navy no longer requires submission of the
11:36:13 16 proof, but do you still require the filer to have the
11:36:18 17 administrator status -- you know, the legal
11:36:21 18 administrator status? So we'll digest this and then
11:36:24 19 maybe come back -- you know, go back to them in the
11:36:27 20 first instance with follow-up questions that we have and
11:36:29 21 then -- and then go from there.

11:36:35 22 THE COURT: All right. Mr. Bell, anything
11:36:37 23 further?

11:36:38 24 MR. BELL: I think that's it, Your Honor.

11:36:39 25 THE COURT: Mr. Bain, I see in the document

11:36:43 1 you provided regarding description of injuries submitted
11:36:48 2 to the Navy, the top category is "other," of 69,678.
11:36:54 3 What does that include?

11:36:57 4 MR. BAIN: I think that includes everything
11:36:58 5 where the number is not greater than 20. So this lists
11:37:03 6 everything where there are 20 -- at least 20, and the
11:37:07 7 "other" category is they're not within east, and there
11:37:14 8 are less than 20 of them. So it's just so it's complete
11:37:17 9 and includes everything that we have at this time. So
11:37:20 10 it could be a variety of things but they're not listed
11:37:24 11 on this -- in this sheet.

11:37:25 12 THE COURT: Okay. All right. Anything
11:37:30 13 else?

11:37:33 14 MR. BELL: No, Your Honor.

11:37:34 15 THE COURT: Did you want to talk about the
11:37:37 16 defense manpower data center or the occupant housing
11:37:40 17 records? Or is that something you're working on?

11:37:56 18 MR. BELL: I think we're still working
11:37:58 19 through that, Your Honor.

11:37:59 20 THE COURT: Okay. All right. Thank you
11:38:04 21 very much.

11:38:16 22 (The proceedings concluded at 11:38 a.m.)

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
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5 CERTIFICATE OF OFFICIAL REPORTER
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7 I, Jennifer C. Carroll, RMR, CRR, CRC,
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