UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

FRANK MOUSSER,	)	
	)	
Plaintiff,	)	Docket No.
	)	7:23-CV-00667-BO-RN
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

****

WEDNESDAY, OCTOBER 28, 2026
TRANSCRIPT OF BENCH TRIAL - DAY 3
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

TAMMY JOHNSON, CVR-CM-M, RVR
Official Court Reporter
United States District Court
Raleigh, North Carolina
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Wednesday, October 28, 2026, 9:56 a.m.

PROCEEDINGS

09:56:22 THE COURT: Good morning.

09:56:23 MR. BAIN: Good morning.

09:56:23 MR. ABRAMS: Good morning, Your Honor.

09:56:23 THE COURT: Do you have any other witnesses?

09:56:28 MR. BAIN: Yes, Your Honor, I think we've reached an agreement that will forgo the need to call one of our witnesses.

09:56:34 The United States and the plaintiff have agreed that certain Exhibit -- United States Exhibit 866, the plaintiff has waived all objections to that exhibit, and that exhibit establishes the past medical costs that the United States has paid for for Mr. Mousser.

09:56:53 So if the plaintiffs have agreed to that, to that number, then we do not need to call this witness to establish that the data that he pulled from the VA system is reliable to reach that number.

09:57:07 THE COURT: Okay.

09:57:08 MR. ABRAMS: So, Your Honor, for the purpose of this case and the next case that's in front of Your Honor, we're agreeing to let this document in so we don't have a big fight over this chart.

09:57:17 At end of the day, what this is, is they say that VA spent $62,000 on health care expenses for Mr. Mousser. At the

09:57:31 end of this, they're going to ask that you reduce any award by
09:57:35 that amount. We're going to ask that you give damages for that
09:57:39 amount so it equals -- it's basically a wash. But in terms of
09:57:43 getting to that number, we don't have any objection to their
09:57:47 62,000-dollar figure.
09:57:48 THE COURT: And this is all tentative on your
09:57:51 prevailing?
09:57:52 MR. ABRAMS: Correct, Your Honor.
09:57:52 THE COURT: Right. Okay.
09:57:54 MR. BAIN: And then, Your Honor, for the next two
09:57:56 witnesses that we have are brief government witnesses. They
09:57:59 will each last 15 to 20 minutes. They will talk about the
09:58:04 future offsets that this Court has allowed under the order that
09:58:07 all four judges have signed onto, but there is a dispute as to
09:58:11 whether those future benefits that Mr. Mousser will be
09:58:15 receiving are reasonably certain. So these two brief witnesses
09:58:18 are going to offer testimony on the certainty of those future
09:58:22 benefits continuing into the future.
09:58:25 THE COURT: And they're a set-aside if they are
09:58:28 recognized?
09:58:28 MR. BAIN: That's right. They're offset by the
09:58:30 statute and by the Court's order.
09:58:32 THE COURT: Okay.
09:58:33 MR. ABRAMS: And, Your Honor, there's a -- there's
09:58:34 two things going on. One is whether they're going to pay for

his future health care, and they've got an amount for that. But there's a -- there's a different issue as to that, is whether he's going to use VA health care. And so he's testified he's not going to go to the VA if he has the money to go private, and so that offset would not apply if Your Honor finds that testimony credible.

But as I understand it, this issue as to future health care, they want to say the VA, if he chooses to go to the VA, will pay a certain amount for his health care. We haven't had time to talk about this enough to get to an agreement, but I'm hoping that can be quick so we can get through that.

MR. BAIN: And then, Your Honor, just to preview what else today, then we have our expert, who's the specific causation expert on kidney cancer, and then our two damages experts, and that will be it for live testimony. Then we want to talk about some depositions that we would like to submit and some other exhibits. So that's what we're going to try to do today.

THE COURT: Okay. And that'll bring the case to a close?

MR. BAIN: Yes.

THE COURT: Okay.

MR. BAIN: We'd like to move in Exhibit 866 pursuant to the parties' stipulation.

09:59:48 THE COURT: All right. It'll be received.
09:59:49 (Defendant's Exhibit Number 866 received.)
09:59:50 MR. BAIN: And then our next witness that we're calling is Heather Ford.
09:59:51 THE COURT: Okay.
09:59:54 THE CLERK: Please place your left hand on the Bible, raise your right hand, and state and spell your name.
09:59:54 THE WITNESS: Heather, H-E-A-T-H-E-R, last name, Ford, F-O-R-D.

HEATHER FORD,

was sworn at 9:59 a.m., and testified as follows:

DIRECT EXAMINATION BY MR. ANTONUCCI:

Q. Good morning. Please state your name for the record.
A. Heather Ford.
Q. What is your current title, Ms. Ford?
A. Chief Financial Officer for the Veterans Health Administration.
Q. Is the Veterans Health Administration a part of the Department of Veterans Affairs?
A. Yes, it is.
Q. How long have you held that position for?
A. Permanently, since January of this year, and I was temporarily within the Chief Financial position July of last year, so about 15 months now, 16 months.
Q. What are your responsibilities in your role as Chief

10:01:26 Financial Officer of the Veterans Health Administration?
10:01:29 A. So my principal responsibilities are to ensure that the
10:01:34 Veterans Health Administration has sufficient funding or
10:01:38 requests sufficient funding from Congress to support health
10:01:42 care delivery for approximately 9 million veterans, as well as
10:01:48 any support programs that the Veterans Health Administration
10:01:53 provides to veterans. So that's the principal job.
10:01:57 We also have oversight of the execution of those funds, so
10:02:03 how those monies are spent. We also ensure that we have
10:02:08 sufficient internal controls to make sure that those funds are
10:02:12 spent appropriately as well. So that's, in a nutshell, what I
10:02:17 do.
10:02:18 Q. Let's take a step back, Ms. Ford. What is the Veterans
10:02:21 Health Administration?
10:02:23 A. So the Veterans Health Administration is the Department of
10:02:27 Veterans Affairs' health care arm. So they are responsible for
10:02:27 approximately 134 VA hospitals. There's also clinics. They
10:02:41 also oversee the community care program, where veterans can be
10:02:46 referred out to the community to receive health care from a
10:02:51 local provider that's within our health care network, and then
10:02:55 they also provide other support programs for veterans.
10:03:00 Q. Ms. Ford, what was your position prior to serving as Chief
10:03:04 Financial Officer of the Veterans Health Administration and
10:03:07 prior to serving as acting Chief Financial Officer?
10:03:10 A. I was the Associate Deputy Assistant Secretary for Budget

10:03:16 within the Office of Budget at VA.
10:03:21 Q. All told, how many years of experience do you have working
10:03:24 with VA programs?
10:03:26 A. I arrived in July of 2019, so I have just over seven
10:03:31 years.
10:03:33 Q. And how many years of experience do you have working in
10:03:36 finance within the federal government?
10:03:39 A. Close to 20 years.
10:03:42 Q. Ms. Ford, in your own words, what is your understanding of
10:03:45 why you're here to testify today?
10:03:47 A. My general understanding is that the plaintiff,
10:03:51 Mr. Mousser, is seeking damages against the Government for
10:03:57 medical conditions that he has that could be related to the
10:04:02 water contamination at Camp Lejeune.
10:04:06 Q. What is your understanding of whether you'll be
10:04:09 compensated for your work in this case apart from your regular
10:04:11 salary?
10:04:12 A. Only travel will be paid for.
10:04:15 Q. And do you know whether your career at VA will be affected
10:04:17 by your work in this case?
10:04:18 A. It will not.
10:04:21 Q. Have you ever testified in court before?
10:04:23 A. No.
10:04:23 Q. Have you ever testified before Congress?
10:04:26 A. I have one time for the GUARD Act, and that was last year.

10:04:32 Q. Please provide the Court with a brief overview of your
10:04:34 formal education.
10:04:36 A. I have a bachelor's in history from Towson University in
10:04:41 Maryland. I also hold a master's in business administration
10:04:46 from Hood College in Frederick, Maryland.
10:04:51 MR. ANTONUCCI: Your Honor, the United States moves
10:04:53 to proffer Ms. Ford as a qualified expert witness in the
10:04:55 Veterans Health Administration and its programs and the scope
10:04:58 and eligibility of care.
10:05:00 THE COURT: The Court will accept the witness as an
10:05:02 expert and allow her to express her opinions.
10:05:06 Q. Ms. Ford, how does a Camp Lejeune veteran qualify for care
10:05:09 from VHA?
10:05:11 A. So as part of several pieces of legislation, they can
10:05:17 qualify for benefits, having served at Camp Lejeune for 30 days
10:05:23 or more from August 1st, 1953, to December 31st, 1987.
10:05:31 Q. Are veterans the only people who receive benefits from
10:05:34 VHA?
10:05:36 A. They are not.
10:05:38 Q. Who else may receive care through VA?
10:05:41 A. Qualified family members may also receive care from VA.
10:05:45 Q. And under what circumstances is that the case?
10:05:49 A. So for this particular case, the piece of -- the
10:05:52 legislation allows for family members to also receive care from
10:05:59 VA. There's other circumstances where family members may also

10:06:03 qualify outside of this particular matter.
10:06:07 Q. And were you referring to the Janey Ensminger Act just
10:06:11 now?
10:06:11 A. Yes.
10:06:12 Q. And is kidney cancer one of the 15 covered illnesses and
10:06:19 conditions that's part of the Janey Ensminger Act?
10:06:21 A. Yes, it is.
10:06:22 Q. Is bladder cancer one of those 15 covered illnesses and
10:06:25 conditions?
10:06:25 A. Yes, it is.
10:06:26 Q. Is renal toxicity one of those 15 covered illnesses and
10:06:30 conditions?
10:06:31 A. Yes, it is also.
10:06:33 Q. So what benefits are available to Camp Lejeune veterans
10:06:36 who are enrolled in VHA?
10:06:38 A. They can receive health care, whether that is at a VA
10:06:43 hospital or clinic. They may -- they may also choose to
10:06:49 receive care through the community, through their best medical
10:06:53 interest, and we also could provide other support to them
10:06:57 through other programs that the VHA offers.
10:07:02 Q. Are veterans who served at Camp Lejeune during the
10:07:05 applicable time period exempt from VA copayment requirements?
10:07:08 A. Yes. They do not have to pay co-pays.
10:07:11 Q. Very generally, how does VHA care work?
10:07:15 A. So typically a veteran enrolls in VHA for health care.

10:07:21 That typically occurs at the time that the veteran seeks
10:07:25 their -- their compensation through the Veterans Benefits
10:07:27 Administration. They then can show up to a VA facility. They
10:07:35 are typically -- that's typically through a primary care
10:07:39 provider, and then they receive health care as anyone else
10:07:42 would through their health insurance.
10:07:45 Q. What types of care are provided by VHA?
10:07:48 A. It's a wide range of care. It's everything from primary
10:07:52 care through specialty care.
10:07:55 Q. And earlier you mentioned the Division of Veterans
10:07:57 Community Care. What is that?
10:08:00 A. So that is a division within the Veterans Health
10:08:05 Administration whose purpose is to oversee the contracts with
10:08:13 outside insurance companies that then pay for the care that is
10:08:19 provided to veterans through community providers that are
10:08:22 within those two networks.
10:08:24 Q. So typically, at what rate are those -- those third party
10:08:32 companies reimbursed for care that's rendered to veterans?
10:08:36 A. Typically it is using the Medicare rates that are
10:08:39 established by the Center for Medicare and Medicaid.
10:08:43 Q. And generally, are those higher or lower than the rates VA
10:08:47 would calculate through managerial cost accounting?
10:08:50 A. Generally, those costs are lower.
10:08:53 Q. Primarily, how is the VHA funded?
10:08:57 A. VHA is funded through the general fund in an annual -- or

10:09:00 at an annual appropriation through Congress.
10:09:04 Q. Does that mean that VHA -- VHA's money comes through
10:09:09 general taxpayer revenues and federal borrowing?
10:09:11 A. Yes, it does.
10:09:13 Q. Has VHA, whether through annual appropriations or
10:09:16 additional funding, always received sufficient funding from
10:09:19 Congress to support the delivery of health care?
10:09:23 A. Yes. Generally, Congress has been extremely supportive of
10:09:27 veterans in ensuring that we have adequate funds to support the
10:09:31 delivery of health care, as well as other programs to veterans.
10:09:35 Q. In the budgeting process, how does VHA forecast how much
10:09:39 money will be needed to meet projected demand?
10:09:42 A. We use an actuarial model called the Enrollee Health Care
10:09:46 Projection Model.
10:09:47 Q. Does VHA use managerial cost accounting to forecast how
10:09:51 much money will be needed to meet projected demand?
10:09:53 A. No, it does not.
10:09:55 Q. Do the complex actuarial models VHA uses to forecast
10:09:59 demand provide costed data on an individual encounter level?
10:10:03 A. No, it does not.
10:10:05 Q. Since you've been employed at VA, has eligibility for VHA
10:10:09 programs generally expanded or contracted?
10:10:12 A. Again, Congress has been very supportive of veterans and
10:10:15 has greatly expanded benefits and services that are available
10:10:20 to veterans.

10:10:21 Q. Could you provide some examples of the expansion you just
10:10:25 mentioned?
10:10:26 A. So there was the MISSION Act, and that made available the
10:10:33 ability for veterans to seek care through community providers,
10:10:36 not always through the VA system, and then there was the
10:10:42 honoring our -- or the PACT Act for short, and that expanded
10:10:47 benefits eligibility for toxic exposures that veterans may have
10:10:52 had.
10:10:53 Q. And did the Janey Ensminger Act also expand the
10:10:56 eligibility for VHA programs?
10:10:59 A. Yes.
10:11:00 Q. Ms. Ford, what is your opinion regarding whether it is
10:11:03 reasonably certain that the VHA will continue to provide health
10:11:06 care to veterans in the future?
10:11:08 A. I have a reasonable level of confidence based upon the
10:11:12 actions of Congress, as well as my time and experience with VA,
10:11:18 that the benefits that are currently available to veterans will
10:11:24 still be available to veterans, and there is a likelihood that
10:11:28 Congress will seek to expand those further.
10:11:31 Q. What is your opinion regarding whether the scope and
10:11:34 care -- the scope of care, excuse me, and eligibility for care
10:11:38 are likely to be significantly constricted in the future?
10:11:41 A. I do not foresee through, again, the acts of Congress that
10:11:47 they would seek to constrict care or eligibility or access.
10:11:53 Q. Have VA's budget requests generally been granted every

year?
A. Yes, they have.
Q. Do you --
THE COURT: I'm sorry, no one can predict what Congress will do tomorrow, much less years from now. So I'll accept a limitation on this testimony. I mean, it's just foolishness to think that you can predict acts -- actions of the House and Senate. I'll take judicial notice of that.
MR. ABRAMS: And, Your Honor, that's the sum of that.
THE COURT: Just sit down.
MR. ABRAMS: Thank you, Your Honor.
THE COURT: I spent six years working on the House and Senate. I'm familiar with it. I have a good background.
Q. (By Mr. Antonucci) Ms. Ford, do you hold all of the opinions you've testified to today to a reasonable degree of certainty?
A. Yes, I do hold them to a reasonable degree of certainty.
MR. ANTONUCCI: We pass witness.
MR. ABRAMS: No questions, Your Honor.
THE COURT: All right. Thank you, ma'am.
THE WITNESS: Thank you.
(The witness exits the witness stand at 10:12 a.m.)
MR. BAIN: Your Honor, our next witness is Jadine Piper.
MR. ORTIZ: Your Honor, David Ortiz on behalf of the

10:13:14 1 United States. Permission to approach and drop an exhibit
10:13:17 2 binder by the witness stand, Your Honor.
10:13:18 3 THE COURT: Sure.
10:13:19 4 MR. ORTIZ: Thank you.
10:13:20 5 THE CLERK: Please place your left hand on the Bible
10:13:20 6 and raise your right hand, and state and spell your name for
10:13:20 7 the record.
10:13:20 8 THE WITNESS: Jadine Piper, J-A-D-I-N-E, Piper,
10:13:20 9 P-I-P-E-R.
10:13:20 10 JADINE PIPER,
10:13:20 11 was sworn at 10:13 a.m., and testified as follows:
10:13:20 12 DIRECT EXAMINATION BY MR. ORTIZ:
10:13:30 13 Q. Good morning, Ms. Piper. Can you state your full name for
10:14:09 14 the record, ma'am?
10:14:11 15 A. Yes. Jadine Piper.
10:14:12 16 Q. And where are you employed?
10:14:13 17 A. I'm employed with the Department of Veterans Affairs,
10:14:16 18 Veterans Benefits Administration, Washington, D.C.
10:14:19 19 Q. Have you ever testified before, ma'am?
10:14:21 20 A. No.
10:14:22 21 Q. And before we discuss your qualifications, in your own
10:14:25 22 words, can you please just tell the Court at a high level why
10:14:29 23 you're here to testify today?
10:14:30 24 A. Yes. I'm here to testify on behalf of the United States
10:14:33 25 about VA disability benefits.

10:14:36 Q. And were you asked to prepare a report?
10:14:38 A. No.
10:14:39 Q. What's your current role at the VA, ma'am?
10:14:42 A. My current role, I am a Management and Program Analyst
10:14:45 with our Executive Review Team.
10:14:47 Q. How long have you been in that role for?
10:14:50 A. Since June of 2026.
10:14:51 Q. And what do you do in that role?
10:14:53 A. In that role, I'm responsible for being a technical
10:14:56 advisor to our executives. I provide briefings, talking
10:15:00 points, high-level presentations and any additional duties
10:15:03 assigned.
10:15:04 Q. And how long have you been at the VA for?
10:15:06 A. For almost 19 years.
10:15:08 Q. And just at a high level, could you summarize for the
10:15:11 Court the different roles that you've held at the VA over those
10:15:14 almost 19 years, ma'am?
10:15:16 A. Yes. I started out as a Legal Administrative Specialist
10:15:19 in Columbia, South Carolina. From there, I was a Veteran
10:15:22 Service Representative, then a Rating Veteran Service
10:15:25 Representative. Then I transferred to Washington, D.C., where
10:15:28 I was a Management Analyst, and then the Chief of Program
10:15:32 Implementation.
10:15:33 Q. And during that time, have you ever had occasion to
10:15:36 adjudicate disability benefits claims at the VA?

10:15:39 A. Yes.
10:15:40 Q. And have you ever had occasion to review appeals of
10:15:44 decisions on VA disability benefits claims at the VA?
10:15:46 A. Yes.
10:15:47 Q. And about how many disability benefits claims would you
10:15:51 estimate that you've adjudicated at the VA during your time?
10:15:55 A. Hundreds to thousands.
10:15:56 Q. And about how many appeals would you estimate you've
10:15:59 reviewed during your time with the VA?
10:16:02 A. Thousands.
10:16:02 Q. And in the course of all that work, have you become
10:16:06 familiar with the laws, regulations and policies at the VA
10:16:10 governing the adjudication of disability benefits?
10:16:13 A. Yes.
10:16:13 Q. And did you apply those laws, regulations and policies at
10:16:16 the VA when you adjudicated disability benefits?
10:16:19 A. Yes.
10:16:20 Q. And have your other roles at the VA also related to
10:16:23 disability benefits in some capacity?
10:16:25 A. Yes.
10:16:25 Q. And that includes your current role?
10:16:27 A. Yes.
10:16:28 Q. Ma'am, if you could open to tab 1 of your exhibit binder
10:16:32 there in front of you, please, and do you see what's been
10:16:39 marked for identification as U.S. Exhibit 1001?

10:16:41 A. Yes.
10:16:42 Q. And do you recognize that document?
10:16:43 A. Yes.
10:16:44 Q. Is that a true and accurate copy of your current
10:16:47 curriculum vitae?
10:16:47 A. Yes.
10:16:48 Q. And does it accurately set out your education, training
10:16:51 and experience?
10:16:52 A. Yes.
10:16:53 MR. ORTIZ: The United States moves U.S. Exhibit 1001
10:16:56 into evidence.
10:16:57 THE COURT: It'll be received.
10:16:58 (Defendant's Exhibit Number 1001 received.)
10:16:58 MR. ORTIZ: And the United States offers Ms. Piper as
10:17:00 an expert in the field of VA disability benefits, and
10:17:04 specifically, the policies and practices of the VA and
10:17:07 adjudicating by disability benefits.
10:17:09 THE COURT: The Court will accept the witness as an
10:17:10 expert in that field and allow her to express her opinions.
10:17:14 MR. ORTIZ: Thank you, Your Honor.
10:17:14 Q. Ms. Piper, I just want to talk for a few minutes about
10:17:18 some basic matters about the VA. What is the mission of the
10:17:22 VA?
10:17:23 A. Yes. The mission of the VA is to provide benefits and
10:17:27 services to those who serve in the military, their families,

caregivers, and survivors.
Q. And what are some of the ways in which the VA assists veterans?
A. Yes, the VA provides disability benefits, health care benefits, educational benefits, vocational rehab, just to name a few.
Q. And about how many veterans would you estimate the VA serves nationally?
A. Millions.
Q. Now, I want to focus on disability benefits. What are disability benefits?
A. Yes. Disability benefits are benefits that VA pays to veterans who served in the military, who incurred injuries.
Q. And is a service-connected condition a requirement for a veteran to receive disability benefits?
A. Yes.
Q. And what is a service-connected condition, ma'am?
A. So a service-connected condition is where a veteran who was in service injured themselves, VA was able to get a positive association from a VA examiner to link the two conditions.
Q. And is that based on medical evidence?
A. Yes, it is.
Q. And what determines the amount of monthly disability benefits that individual veterans receive?

10:18:33 A. That is based off their combined evaluation, based off
10:18:36 their service-connected conditions.
10:18:38 Q. And what is a disability rating?
10:18:41 A. A disability rating is what we assign based off our VA
10:18:45 Schedule of Rating Disabilities. We look at the veteran's
10:18:47 current condition, the level of severity. Based off that
10:18:50 information, we'll determine to provide them with a combined
10:18:53 evaluation.
10:18:54 Q. And is that a percentage between zero and a hundred
10:18:58 percent?
10:18:58 A. Yes, it is.
10:19:01 THE COURT: Is it based on the level of promotion
10:19:05 that the service member had? Like, would a private get more or
10:19:10 less than a captain or an admiral?
10:19:13 THE WITNESS: No, it's based off their medical
10:19:15 evidence.
10:19:15 THE COURT: It's universal?
10:19:16 THE WITNESS: Yes, it's universal.
10:19:18 THE COURT: Okay.
10:19:19 Q. Now, ma'am, what happens if a veteran has multiple
10:19:22 service-connected conditions at the same time? How does the VA
10:19:25 determine their overall disability rating?
10:19:28 A. We have a VA combinator that will combine those
10:19:31 conditions, so it's not like 50 plus 50 equals 10. [sic]
10:19:36 Basically, the veteran starts off whole as 100, and then we

continue to subtract till we get that current level of severity.
Q. And would that combined disability rating be stated on a rating code sheet?
A. Yes.
Q. And what is a rating code sheet?
A. So a rating code sheet is just a snapshot of the veteran's disability, how many claims they filed, if we ever denied a claim. So basically it's like the veteran's claim file from the beginning, but we're just able to put it on one document so someone will be able to look at all historical information.
Q. Thank you, ma'am. I want to talk now about how disability ratings can change. When does the VA generally review a disability rating?
A. Yes. VA generally reviews a disability two times, one if the veteran came in for a claim, and during that time, we were able to determine that that condition may not -- or based off the medical evidence, it shows that that condition is not stable, so we will schedule what's called a routine future examination.
And then the other time is when the veteran files a claim for increase, meaning that condition is already service connected, but the veteran is saying that it's worsened and they would like for VA to look at it again.
Q. And when the VA reviews a rating, what are the possible

outcomes of that review?
A. Yes. When VA reviews a rating, the possible outcomes are we can either increase the condition, decrease or keep it the same.
Q. Depending on what happens with the severity of the condition?
A. Yes.
Q. And generally speaking, what kind of improvement does the VA require in order to reduce a rating?
A. Yes, prior to reducing a rating, VA would like to have what's called sustained improvement, meaning we would look at two VA examinations to ensure that that condition actually stabilizes before we propose to reduce it.
Q. And why does the VA have that policy? Why require two or more sustained improvement?
A. Yes, we want to ensure that we are good fiscal stewards, and also that we're decreasing the burden on the veteran when possible.
Q. Now, if the VA decides that a disability has improved and a rating should be reduced, what happens?
A. We basically will send a veteran a letter where we propose to reduce the rating. We will allow the veteran to request a hearing if they would like, and then just look at the additional evidence before we would reduce if the medical evidence shows that it should be the same.

10:22:07 Q. And in your experience, how often are ratings reduced?
10:22:11 A. During my experience, when I was an adjudicator, I would
10:22:15 have what's called predetermination hearings three to four
10:22:18 times a year.
10:22:20 Q. So not often; is that correct?
10:22:21 A. That's correct.
10:22:22 Q. Okay. Ms. Piper, I just have two documents I want to show
10:22:26 you really quickly, ask you a few questions about each one, and
10:22:28 then we'll wrap up. Could you turn to tab 2 in your exhibit
10:22:31 binder, please? And do you recognize that document, ma'am?
10:22:39 A. Yes.
10:22:40 Q. And what is U.S. Exhibit 932?
10:22:43 A. It's a policy letter.
10:22:44 Q. And what's the date of it?
10:22:47 A. October 7th of 2021.
10:22:48 Q. Who published it?
10:22:49 A. The Veterans Benefits Administration.
10:22:52 Q. And is that a true and accurate copy of that policy
10:22:54 letter?
10:22:55 A. Yes.
10:22:57 Q. And is U.S. Exhibit 932 still in effect?
10:22:59 A. Yes, it is.
10:23:00 MR. ORTIZ: The United States moves U.S. Exhibit 932
10:23:02 into evidence.
10:23:04 THE COURT: It'll be received.

(Defendant's Exhibit Number 932 received.)
Q. At a high level, can you just summarize for the Court what U.S. Exhibit 932 is about?
A. Yes. This is basically instructions to our VA claims processors on scheduling routine future examinations.
Q. Can you turn to the -- to page 2 of U.S. Exhibit 932, and do you see the first paragraph there?
A. Yes.
Q. Can you read that allowed for the Court, ma'am?
A. Yes. "Compensation Service analyzed data on all veterans who had a RFE conducted in fiscal years 2018, 2019 and 2020. The analysis revealed that the majority, 77 percent, of conditions reviewed were confirmed and continued. Only about 10 percent of conditions were reduced, and the remaining 13 percent of conditions were increased."
Q. And an RFE, is that a routine future examination?
A. Yes.
Q. And confirmed and continued, what does that mean?
A. That means we've reviewed the condition and decided to keep the level of severity the same.
Q. Are those statistics concerning routine future examinations consistent with your experience at the VA, ma'am?
A. Yes.
Q. And when a veteran files a claim for increase and there's a re-examination, does that, likewise, result in those cases

10:24:24 and confirming continuing the rating?
10:24:26 A. Yes.
10:24:28 Q. Does the VA have policies concerning when to review
10:24:31 service-connected conditions?
10:24:33 A. Yes.
10:24:33 Q. And are those set out in the M21-1 Adjudication Procedures
10:24:37 Manual?
10:24:38 A. Yes.
10:24:38 Q. And what is that document?
10:24:40 A. That is our governing document for our claims processors.
10:24:44 And so basically when we develop claims, make decisions or send
10:24:49 notification to the veteran, we're supposed to review our
10:24:52 Adjudication Manual to ensure that we're following procedures
10:24:56 correctly.
10:24:57 Q. And who publishes that manual, ma'am?
10:24:59 A. The Compensation Service procedures staff.
10:25:01 Q. And is that a very large document?
10:25:03 A. Yes, it is.
10:25:04 Q. Is it a reliable source concerning the VA's policies for
10:25:08 the adjudication of disability benefits?
10:25:10 A. Yes.
10:25:11 Q. And when you adjudicated claims at the VA, did you rely on
10:25:14 the provisions of the M21-1 Adjudication Procedures Manual?
10:25:19 A. Yes, it was required.
10:25:20 Q. Could you turn to tab 3 of your exhibit binder, ma'am?

10:25:27 And you should see there what's been marked for identification
10:25:29 as U.S. Exhibit 931. Do you recognize that document?
10:25:33 A. Yes, I do.
10:25:34 Q. And is it a true and accurate copy of an excerpt from the
10:25:36 M21-1 Adjudication Procedures Manual?
10:25:40 A. Yes.
10:25:40 Q. And did you apply that excerpt from the M21-1 Adjudication
10:25:45 Procedures Manual when you adjudicated claims?
10:25:48 A. Yes.
10:25:48 MR. ORTIZ: The United States moves U.S. Exhibit 931
10:25:51 into evidence, Your Honor.
10:25:52 THE COURT: It's received.
10:25:52 (Defendant's Exhibit Number 931 received.)
10:25:52 Q. At a high level, can you just summarize for the Court what
10:25:56 U.S. Exhibit 931 is about?
10:25:59 A. Yes. It's an excerpt to assist claims processors with
10:26:02 determining the need to review examinations.
10:26:05 Q. Can you turn to page 2 of U.S. Exhibit 931, please, ma'am?
10:26:10 And in the middle of the page, there's a sentence that begins,
10:26:13 "It is the policy." Could you please read that sentence out
10:26:16 loud to the Court?
10:26:18 A. Yes. "It is the policy of the Veterans Benefits
10:26:20 Administration to request future examinations only when
10:26:25 absolutely necessary, and every effort should be made to limit
10:26:29 cases where future examinations are requested."

10:26:33 Q. Thank you, ma'am. Is that policy consistent with your
10:26:37 experience with the VA?
10:26:38 A. Yes.
10:26:38 Q. All right. Can you turn to page 5, please, ma'am, with
10:26:41 U.S. Exhibit 931? And do you see that there's a series of
10:26:48 bullet points at the top of the page?
10:26:51 A. Yes.
10:26:51 Q. Could you please read the first three or four of those
10:26:53 aloud, please?
10:26:55 A. Yes. "Do not establish a future examination control in
10:26:59 cases where the disability is static, findings and symptoms are
10:27:03 shown to have persisted without material improvement for five
10:27:07 years or more, disability is permanent in character and of such
10:27:12 nature that there is no likelihood of improvement, veteran is
10:27:16 over 55 years of age, except under unusual circumstances or
10:27:21 where required by regulation."
10:27:24 Q. Thank you, ma'am. I want to focus on that first bullet
10:27:27 point. What is a static disability?
10:27:29 A. This is a disability in which VA considers permanent.
10:27:32 Q. And generally, when does the VA review the rating of a
10:27:36 static disability?
10:27:38 A. Only at the request of the veteran.
10:27:40 Q. And in your experience, how likely is a static disability
10:27:43 to be reduced?
10:27:44 A. Not often.

10:27:47 Q. Now, for veterans over age 55, how likely is it that the
10:27:50 VA would review his or her service-connected conditions?
10:27:54 A. Not often, unless there is some type of unusual
10:27:58 circumstance.
10:27:58 Q. And what would be an example of unusual circumstances?
10:28:01 A. Say a veteran has active cancer. Because they are under
10:28:06 active treatment, we are required by regulation to schedule
10:28:09 what's called a routine future examination so we can ensure
10:28:13 that that active treatment did not cause additional residuals.
10:28:17 Q. And if that cancer has then been treated and it's no
10:28:20 longer active, would it then possibly be determined to be
10:28:23 static?
10:28:24 A. Yes.
10:28:25 Q. And if a disability rating remains the same, will the
10:28:28 monthly amount of disability benefits to the veteran also
10:28:31 remain the same?
10:28:33 A. Yes.
10:28:36 Q. What are cost-of-living adjustments?
10:28:38 A. Cost-of-living adjustments is what VA provides to veterans
10:28:41 due to inflation.
10:28:43 Q. And have those typically been provided on an annual basis
10:28:46 during your time at the VA?
10:28:48 A. Yes.
10:28:48 Q. All right. Ma'am, I just have a few final questions to
10:28:51 sort of wrap up and summarize your testimony and opinions. Has

10:28:55 1 the VA continued to provide disability benefits during your
10:28:58 2 time at the VA?
10:28:59 3 A. Yes.
10:29:00 4 Q. And based on your knowledge, training and experience, as
10:29:02 5 well as your testimony today, do you have an opinion as to
10:29:05 6 whether the VA will continue to provide disability benefits in
10:29:08 7 the future?
10:29:09 8 A. Yes.
10:29:10 9 Q. And what's your opinion?
10:29:11 10 A. Based off my experience, that VA will continue to provide
10:29:14 11 benefits in the future.
10:29:15 12 Q. And in your almost 19 years experience at the VA, have
10:29:21 13 disability benefits ever been removed for a disease or an
10:29:24 14 injury?
10:29:24 15 A. No.
10:29:25 16 Q. And so based on your knowledge, training and experience,
10:29:27 17 as well as your testimony today, do you have an opinion as to
10:29:31 18 whether the scope of disability benefits will likely be
10:29:34 19 expanded in the future?
10:29:35 20 A. Yes.
10:29:36 21 Q. And what's your opinion?
10:29:37 22 A. It's my opinion that the disability benefits will continue
10:29:40 23 to expand in the future.
10:29:42 24 Q. And is the Pact Act of 2022 itself an example of that
10:29:46 25 expansion?

10:29:47 A. Yes.
10:29:47 Q. And based on your knowledge, training and experience, as
10:29:50 well as your testimony today, do you have an opinion as to
10:29:53 whether it's likely that a veteran over age 55 with all static
10:29:58 disabilities will continue to receive disability benefits in
10:30:01 approximately the same amount in the future?
10:30:03 A. Yes.
10:30:03 Q. And what's your opinion, ma'am?
10:30:04 A. It's my opinion that a veteran that's 55 years of age with
10:30:08 a static disability will continue to receive the same amount of
10:30:11 benefits in the future.
10:30:13 Q. And do you hold all your opinions to a reasonable degree
10:30:15 of certainty based on your training and experience?
10:30:18 A. Yes.
10:30:18 MR. ORTIZ: The United States passes the witness,
10:30:19 Your Honor.
10:30:21 THE COURT: Any questions?
10:30:24 CROSS-EXAMINATION BY MR. ABRAMS:
10:30:24 Q. Ma'am, are you aware of Mr. Mousser's individual
10:30:27 circumstances?
10:30:27 A. No.
10:30:28 Q. And so you -- but you are a representative of the VA,
10:30:31 right?
10:30:31 A. I am.
10:30:32 Q. And you can't guarantee that he's going to continue to get

10:30:35 the same level of benefits for the rest of his life, can you?
10:30:40 A. I can't guarantee, but it's a good degree of certainty.
10:30:43 Q. Are you aware of the TDIU Reform Act of 2026?
10:30:50 A. Not in its entirety. If I could have a chance to review
10:30:54 it, I would be able to assist.
10:30:55 Q. Well, there's one provision in there that says it's going
10:30:57 to stop paying retirement benefits at age 67, right?
10:31:02 A. I would have to look at it to verify what you're --
10:31:04 Q. Ma'am, so I'll approach, if I may. I'll show it to you on
10:31:08 congress.gov.
10:31:09 MR. ABRAMS: May I approach?
10:31:12 MR. ORTIZ: Objection, Your Honor. There's no copy
10:31:13 for counsel. I haven't seen this before.
10:31:16 MR. ABRAMS: H.R. 9135. It is a bill. You can look
10:31:20 at it real quick.
10:31:22 THE COURT: Overruled. Go ahead and talk to the
10:31:24 witness.
10:31:27 Q. Now, ma'am, this is -- is this a website that says
10:31:31 "congress.gov" at the top?
10:31:33 A. Yes. Yes.
10:31:36 Q. And do you see it says "H.R. 9135"?
10:31:39 A. I see it.
10:31:40 Q. Let me make my screen brighter for you. Apologies. And
10:31:46 if we scroll down here, do you see how it says, "Compensation
10:31:53 under this chapter based on individual unemployability may not

10:31:57 be paid to a veteran age 67 or older"? Do you see that?
10:32:01 A. Yeah, I see that.
10:32:02 Q. And so if this were to pass, then the benefits he's
10:32:05 getting would be cut off at age 67, his retirement benefits,
10:32:08 right? I mean, excuse me, his TDIU.
10:32:12 A. I would have to look at the provisions to see if there's a
10:32:14 change, or if that's something going forward in the future.
10:32:17 MR. ABRAMS: No further questions.
10:32:17 A. Because I don't know the provisions of that entire bill.
10:32:22 THE COURT: Okay. Thank you. You can step down.
10:32:25 THE WITNESS: Okay.
10:32:25 (The witness exits the witness stand at 10:32 a.m.)
10:32:25 MR. BAIN: Your Honor, our next witness is Dr. Walter
10:32:56 Stadler.
10:32:57 MR. SNIDOW: Your Honor, before this witness takes
10:32:58 the stand, we have a motion that's pending that was filed
10:32:59 before the four-judge Court and is pending in front of Your
10:33:04 Honor regarding this witness. May I explain?
10:33:07 THE COURT: Yeah.
10:33:07 MR. SNIDOW: This witness, Dr. Stadler, gives the
10:33:10 opinion that the water can't have caused Mr. Mousser's cancer;
10:33:15 it must have been something else. But Dr. Stadler assumes that
10:33:21 the water can't cause cancer based on the testimony of another
10:33:26 expert, Dr. Goodman, and she's the lady you heard about a lot
10:33:30 yesterday, the one who's been paid $7 million, made the 300

10:33:34 mistakes. And what Dr. Stadler does is, he assumes that the
10:33:38 water couldn't have been the cause because Dr. Goodman told him
10:33:41 that.
10:33:42 Now, Dr. Goodman is not testifying in this trial. We
10:33:47 filed a motion before the four-judge panel to exclude
10:33:50 Dr. Stadler on the basis of essentially bootstrapping,
10:33:54 parroting another expert's opinion. And in response, the
10:33:57 Government said, and I'll quote here, "The United States
10:34:00 intends to call Drs. Goodman, Bailey and LaKind to testify
10:34:05 regarding their conclusions."
10:34:06 THE COURT: So they didn't call Goodman?
10:34:07 MR. SNIDOW: They didn't call Goodman. I can't
10:34:09 cross-examine Goodman. This guy's going to be on the stand
10:34:11 saying, "Dr. Goodman told me something," and I don't have
10:34:13 nothing to do.
10:34:15 THE COURT: Okay. Out of an abundance of caution,
10:34:17 I'll allow the witness to testify.
10:34:18 MR. SNIDOW: Thank you, Your Honor.
10:34:24 MR. LEINICKE: Good morning, Your Honor --
10:34:25 THE COURT: Good morning.
10:34:25 MR. LEINICKE: -- counsel, Madam Court Reporter. My
10:34:28 name is John Leinicke. L-E-I-N-I-C-K-E.
10:34:39 THE CLERK: Please place your left hand on the Bible
10:34:39 and raise your right hand, and state and spell your name for
10:34:39 the record.

10:34:39 THE WITNESS: Walter Stadler, last name, S-T-A-D, as in dog, L-E-R.

10:34:39 WALTER STADLER, M.D., F.A.C.P, F.A.S.C.O.,

10:34:39 was sworn at 10:34 a.m., and testified as follows:

10:35:05 THE COURT: Did you say your name was Dr. Sadler?

10:35:07 THE WITNESS: Stadler.

10:35:09 THE COURT: S-T?

10:35:09 THE WITNESS: S-T-A-D-L-E-R.

10:35:11 THE COURT: Thank you.

10:35:11 THE WITNESS: Sure.

10:35:11 DIRECT EXAMINATION BY MR. LEINICKE:

10:35:11 Q. Dr. Stadler, good morning. Dr. Stadler, you were retained by the Department of Justice to offer expert opinions in this case?

10:35:23 A. I was.

10:35:25 Q. And you prepared a CV for this matter?

10:35:30 A. Yes, I did.

10:35:30 MR. LEINICKE: If I may approach.

10:35:33 THE COURT: Yeah.

10:35:44 MR. LEINICKE: Your Honor, this is Exhibit 936.

10:35:47 Q. Dr. Stadler, is this a copy of your CV that you prepared in this matter?

10:35:53 A. Yes. Yes, it is.

10:35:56 Q. You also prepared an expert report in this matter; is that correct?

10:35:59

10:36:00 A. That is correct.
10:36:01 MR. LEINICKE: If I may approach again one more time.
10:36:04 THE COURT: Yeah.
10:36:06 Q. This is Government's Exhibits 934 and 935. Dr. Stadler,
10:36:24 are these the expert report and supplemental reports that you
10:36:28 prepared in this case?
10:36:29 A. Yes, they are.
10:36:31 MR. LEINICKE: Your Honor, at this time, may I -- I
10:36:33 would like to submit Exhibits 934, 935 and 936 into evidence.
10:36:40 THE COURT: Over objection, they are received.
10:36:41 (Defendant's Exhibit Numbers 934 through 936
10:36:41 received.)
10:36:44 Q. Dr. Stadler, we'll talk about your opinions in just a
10:36:47 moment, but I'd like to ask about your qualifications first.
10:36:52 What is your current occupation?
10:36:54 A. I'm a medical oncologist focused on treatment of patients
10:36:58 with genitourinary malignancies, and I'm a Chief Clinical
10:37:02 Officer for City of Hope in Chicago.
10:37:06 Q. And what is the field of genitourinary oncology?
10:37:11 A. Genitourinary oncology is the treatment of patients with
10:37:16 kidney, bladder, prostate and testicular cancer.
10:37:19 Q. Are you board certified in that field?
10:37:21 A. I'm a board certified medical oncologist.
10:37:24 Q. And how long have you been a treating genitourinary
10:37:29 oncologist?

10:37:30 A. Since 1994.
10:37:32 Q. And so what is your educational background?
10:37:34 A. After completing medical school at Yale in 1988, I did a
10:37:41 general internal medicine rotation training at Michael Reese
10:37:46 Hospital, which at that time, was an affiliate of the
10:37:49 University of Chicago. I then went to the University of
10:37:52 Chicago to complete my fellowship training in medical oncology.
10:37:56 Q. And what type of training did you receive in that field of
10:37:59 medical oncology?
10:38:01 A. A fellowship training in medical oncology focuses on how
10:38:07 to treat and manage patients with a variety of malignancies.
10:38:12 Q. After your fellowship, what did you go on to do?
10:38:15 A. I joined the University of Chicago as a faculty member
10:38:19 focused in this field.
10:38:21 Q. And as a faculty member at the University of Chicago, what
10:38:26 were your responsibilities?
10:38:27 A. So my major responsibility was to continue to treat and
10:38:31 manage patients with these diseases. I also had a significant
10:38:38 research initiative where I helped develop novel treatments for
10:38:44 patients with these diseases.
10:38:46 Q. And in that role of clinical research, what did you
10:38:50 ultimately -- what was your ultimate position there?
10:38:54 A. So in addition to these clinical and research activities,
10:38:59 I had a number of leadership positions. I was also Chief of
10:39:03 Hematology Oncology. I was Deputy Director of the Cancer

10:39:07 Center, and at the end of my tenure there, I was the Associate
10:39:12 Dean for Clinical Research.
10:39:14 Q. What does it mean to be the Associate Dean for Clinical
10:39:17 Research?
10:39:18 A. I had ultimate regulatory and oversight responsibility for
10:39:23 all clinical trials and clinical research at that institution.
10:39:28 Q. After the University of Chicago, what did you go on to do?
10:39:32 A. So about a year and a half ago, I was recruited to the
10:39:34 City of Hope to become the Chief Clinical Officer for their
10:39:38 Chicago location.
10:39:39 Q. And what is the City of Hope and what is your -- what does
10:39:43 your role there entail?
10:39:45 A. The City of Hope is now a national health system for
10:39:50 cancer care and research, and I am the senior clinical officer
10:39:55 responsible for the clinical activities at their Chicago
10:39:58 location.
10:40:01 Q. And are you affiliated with any professional
10:40:04 organizations?
10:40:05 A. I'm affiliated with a number of professional
10:40:07 organizations, probably most prominently is the American
10:40:10 Society of Clinical Oncology, where my contributions have been
10:40:14 recognized as a Fellow of the -- of that organization. I'm
10:40:19 also a member of the American Association of Clinical
10:40:22 Research -- Cancer Research, the American Urologic Association,
10:40:26 and a number of other small organizations.

10:40:28 Q. And do you currently publish scientific research?
10:40:31 A. I continue to publish. I have over 250 peer-reviewed
10:40:35 publications in my field.
10:40:39 Q. And you don't just publish research; you also serve on
10:40:42 several editorial boards; is that correct?
10:40:45 A. Yes. I've served on several editorial boards. Most
10:40:49 prominently is for the journal *Cancer*, which is one of the
10:40:52 leading journals in our field, where I was the section editor
10:40:58 for the genitourinary cancer section.
10:41:01 MR. LEINICKE: Your Honor, I respectfully move to
10:41:03 proffer Dr. Stadler as an expert in the field of genitourinary
10:41:07 oncology.
10:41:09 THE COURT: Yes, Dr. Stadler is recognized by the
10:41:11 Court as an expert in that field and allowed to express his
10:41:15 opinions.
10:41:18 Q. Dr. Stadler, what were you asked to do by the United
10:41:21 States in this matter?
10:41:23 A. I was asked to review Mr. Mousser's case and several other
10:41:29 cases of renal cancer, and to offer an opinion as to the
10:41:37 causation and etiology.
10:41:39 Q. And what methodology did you employ in forming your
10:41:44 opinions?
10:41:45 A. So I reviewed all of the medical records that were
10:41:50 provided to me. I, as well, reviewed some of the testimony of
10:41:58 the plaintiffs and some of the other experts. I did review the

10:42:04 reports for general causations, as mentioned by Drs. Goodman,
10:42:11 Lipscomb, and also the exposure reports from Dr. LaKind and the
10:42:20 risk assessment from Dr. Bailey.
10:42:23 Q. And ultimately, what was the -- this allowed you to form a
10:42:28 differential diagnosis for Mr. Mousser?
10:42:29 A. Yeah, that along with, you know, my general knowledge and
10:42:34 review of the literature allowed me to then come to a
10:42:37 conclusion after conducting a -- what we would call a
10:42:42 differential diagnosis of the known causes of this disease and
10:42:46 how they might apply to Mr. Mousser.
10:42:48 Q. And if you could briefly sketch out, what is a
10:42:51 differential diagnosis?
10:42:53 A. So in the medical field, when a patient comes to us with a
10:42:58 particular problem, we tend to create a differential diagnosis,
10:43:02 so to speak, of the different causes or diagnoses that might
10:43:07 explain that problem. I applied a similar methodology here.
10:43:10 Q. And do you hold your proffered opinions today within a
10:43:13 reasonable degree of medical certainty?
10:43:15 A. Yes, I do.
10:43:16 Q. What does that mean, a reasonable degree of medical
10:43:19 certainty?
10:43:19 A. You know, so in our field, nothing is 100 percent, but I
10:43:26 would say that my opinions are based on a very high degree of
10:43:29 confidence.
10:43:30 Q. So, Dr. Stadler, let's start with the first part of your

10:43:34 opinions. Can you summarize your opinions as to Mr. Mousser's
10:43:40 diagnosis?
10:43:40 A. So Mr. Diagnosis -- sorry. Mr. Mousser has a diagnosis of
10:43:44 an upper tract urothelial cancer.
10:43:48 Q. And what are the opinions that you intend to offer today
10:43:51 as to the origin or etiology of Mr. Mousser's upper tract
10:43:56 urothelial cancer?
10:43:59 A. So if you're asking about the causation, I would -- my
10:44:04 opinion is that the cause of his upper tract urothelial cancer
10:44:08 is most likely due to his underliking -- underlying smoking
10:44:13 habit with potential contributory effects of a -- of an
10:44:20 inflammatory condition of his kidney.
10:44:24 Q. And do you believe that it is likely that his urothelial
10:44:28 cancer is related to his exposure to Camp Lejeune water from
10:44:33 1982 to 1988?
10:44:34 MR. SNIDOW: Objection, Your Honor. He's got no
10:44:36 independent opinion on this.
10:44:37 THE COURT: Well, let's hear from him.
10:44:42 A. I do not believe that his cancer was due to Camp Lejeune
10:44:46 exposure.
10:44:47 Q. And you also offer, or intend to offer an opinion as to
10:44:50 Mr. Mousser's prognosis, correct?
10:44:53 A. That is correct.
10:44:54 Q. All right. We'll get to that towards the end of your --
10:44:55 the end of your testimony. So to understand your opinion

10:45:02 today --
10:45:02 MR. LEINICKE: Your Honor, I'm going to put up a
10:45:06 demonstrative.
10:45:08 THE COURT: So your opinion is that a guy who smoked
10:45:11 a pack of cigarettes a week 30 years before who gets cancer,
10:45:16 that cigarettes caused it? That's preposterous.
10:45:22 THE WITNESS: Your Honor, we will discuss, I think, a
10:45:26 little bit that his smoking history was a little bit more
10:45:30 extensive than that, according to the medical record that I
10:45:33 reviewed. In addition, there is --
10:45:37 THE COURT: I'm a layperson. I don't know medicine.
10:45:40 But if you asked a thousand people if you smoked a pack of
10:45:45 cigarettes a week 35 years before and you got kidney cancer,
10:45:53 would that have caused it, a hundred percent of them would say
10:45:56 no. They're not doctors.
10:46:04 Q. So, Dr. Stadler, just generally speaking, what role do the
10:46:09 kidneys play in the renal and urothelial systems?
10:46:13 A. So the kidney in general filters the blood to excrete
10:46:20 toxins and also helps metabolic regulation.
10:46:25 Q. And how does that -- how does that then run into the
10:46:27 urothelial system?
10:46:28 A. So the kidneys are responsible for doing the work. The
10:46:33 product is urine. That urine is excreted into what we call the
10:46:38 renal pelvis, which is the center of the kidney, as depicted
10:46:43 there. That urine is then excreted through what we call the

10:46:47 ureter, which is the plumbing system from the kidney into the
10:46:53 bladder, and the lining of that renal pelvis, that plumbing,
10:46:59 that tube and the bladder, is what we call urothelial.
10:47:03 Q. Dr. Stadler, much has been made in this trial about
10:47:07 whether a urothelial cancer is best categorized as a kidney
10:47:11 cancer or as a bladder cancer. Perhaps you could shed some
10:47:15 light on that.
10:47:17 A. So in general, a kidney cancer is any cancer that arises
10:47:21 in the kidney itself. There are two major cancers. One is a
10:47:26 renal cancer, which occurs from the body of the kidney, but the
10:47:33 other cancer is called an upper tract urothelial cancer, and
10:47:38 that cancer is much more closely related to a bladder cancer
10:47:43 because it's the same kind of lining than a -- than a renal
10:47:46 cancer.
10:47:47 Q. So what do you mean by it's the same kind of lining?
10:47:51 A. So as I said, when the urine collects in the middle of the
10:47:55 kidney in that renal pelvis and is excreted down those tubes
10:47:58 into the bladder, that entire system is lined by a set of cells
10:48:03 called urothelial.
10:48:04 Q. So these are actually different types of cells than renal
10:48:10 cells, correct?
10:48:10 A. So these are completely different cells than renal cells,
10:48:14 and this is a -- your upper tract urothelial cancer is a
10:48:19 completely different cancer than renal cancer.
10:48:22 Q. And the fact that it's a different kind of cancer, does

10:48:25 that mean that there are different risk factors associated with
10:48:29 urothelial cancer, as opposed to risk factors that are
10:48:33 associated with renal cancer?
10:48:36 A. Correct. The risk factors for urothelial cancer are
10:48:41 different than for renal cancer, although there are some
10:48:44 commonalities between them.
10:48:46 Q. So if this is a Venn diagram, there's some overlap between
10:48:49 the two, but ultimately, they're distinct malignancies?
10:48:51 A. They're completely distinct malignancies.
10:48:54 Q. All right. So what is the process, then, by which an
10:49:02 otherwise healthy urothelial tissue transforms into cancerous
10:49:10 tissue?
10:49:10 A. So for all cancers in general, there is a collection of
10:49:16 mutations that support increased survival and increased
10:49:22 proliferation or growth. In addition, there are immune systems
10:49:29 that help control the cancer in other systems, and those also
10:49:33 tend to go awry over time, and with a combination of a
10:49:37 collection of mutations, as well as suppression of the systems
10:49:41 that control cancer, an overall cancer can grow.
10:49:45 Q. And what is the lifetime risk for men for developing UTUC?
10:49:53 A. So the lifetime risk for any man to develop this disease
10:49:57 is on the order of one to two out of a thousand.
10:50:00 Q. Okay. And how does that compare, for example, to the
10:50:02 lifetime risk for developing a renal cell cancer?
10:50:06 A. So this -- the development of a renal cancer is about 10

times greater, and the risk of developing a renal cancer is about 2 to 3 out of 100, or 2 to 3 percent.

Q. Okay. Now, in the context of your cancer diagnosis, then, what is -- what is an etiology?

A. So etiology in the context of a cancer diagnosis are those things that are likely causative or known to be causative for that particular disease.

Q. And in your professional clinical practice, do you typically conduct investigations into risk factors and etiological factors of your patients?

A. It's not uncommon for patients to ask what caused their disease, and I then use my general knowledge about disease causation to discuss that with them.

Q. And do some of these risk factors actually then have impacts on the course and treatment of the patient's disease?

A. Absolutely. So the most common cause, for example, of upper tract urothelial cancer is smoking. Ongoing smoking can have significant impacts, not only on the prognosis of the cancer, but also on tolerability of therapy.

Q. Well, how strongly linked is smoking to the formation of upper tract urothelial cancer?

A. So over 50 percent of the patients with upper tract urothelial cancer have a smoking history, and so we -- what we have called the population attributable risk is greater than 50 percent.

10:51:47 Q. So to put that into hard numbers, if you had a room full
10:51:51 of 100 patients who are suffering from upper tract urothelial
10:51:55 cancer, you would expect to see more than 50 of them to have a
10:52:01 history or current history of smoking?
10:52:02 A. That is correct.
10:52:08 Q. And in terms of the risk increase of smoking for upper
10:52:17 tract urothelial cancer, what is that?
10:52:21 A. So in general, we talk about a hazard ratio, which is the
10:52:25 increased risk of smokers versus nonsmokers. In general,
10:52:29 that's on the order of three to fourfold. Even for former
10:52:35 smokers, that risk is twofold and does not necessarily go away
10:52:43 after quitting smoking.
10:52:44 Q. So what -- if I understand what you're saying, is that
10:52:48 current smokers are most likely to develop upper tract
10:52:53 urothelial cancer, but if you have smoking in your past, that
10:52:59 decreases your likelihood over time, but it never completely
10:53:01 goes away?
10:53:02 A. It never completely goes away, and it never equals that of
10:53:05 a nonsmoker.
10:53:06 Q. Okay. And are there some other known risk factors for
10:53:12 urothelial cancer that you considered in determining your
10:53:15 differential diagnosis for Mr. Mousser?
10:53:18 A. So the most significant other risk factor that I
10:53:23 considered was chronic inflammation, and there is data that
10:53:27 patients with chronic inflammation, especially those that have

known kidney stones, that that risk factor for developing upper tract urothelial cancer is greater than two as well.

THE COURT: You didn't pay any attention to the chemicals that were in the water on Camp Lejeune?

THE WITNESS: So I -- so I said that that was the most -- that was the most likely thing I considered. I also considered other exposure histories, including exposure to chemicals in Camp Lejeune, or from other sources as well.

Q. So you considered Mr. Mousser's -- all of the possible risk factors for Mr. Mousser's cancer, but were able to ultimately rule them out?

A. That is correct.

THE COURT: So instead of having the Congress enact a law providing for relief from the water at Camp Lejeune, they should have provided for relief from smoking?

THE WITNESS: Well, if we would decrease smoking in this country, we would eliminate close to half the cancers in this country.

THE COURT: But Congress didn't do that, did it?

THE WITNESS: Well, we elect our Congress. I only have so much control.

THE COURT: Yeah. Did Congress enact a law that said you get no rights if you were a smoker?

THE WITNESS: They did not.

THE COURT: I don't know that there's a law that says

that.

THE WITNESS: That is correct. I'm not sure that's completely relevant here, but...

THE COURT: Well, I'll decide what's relevant here.

THE WITNESS: Okay.

THE COURT: Yeah.

THE WITNESS: Yeah.

THE COURT: Okay.

Q. Dr. Stadler, these risk factors have different mechanisms on how they impact the patient's ultimate risk for urothelial cancer, correct?

A. They have slightly different mechanisms; that is correct.

Q. So, for example, how does -- how does ingestion of the carcinogens in smoke change a risk -- change a patient's risk profile as opposed to an inflammatory condition?

A. So inhalation of toxins tend to be excreted in the urine, and those toxins tend to create the mutations that I mentioned earlier that are the initiating factor for cancer. A chronic inflammation can, in essence, suppress the immune system that controls the cancer. So they're different mechanisms.

Q. Okay. Now, when you're saying that his chronic inflammation may have contributed to his -- the development of his urothelial cancer, can you explain that a little bit?

A. So there was some evidence of what we call a chronic nephritis or a chronic inflammation at the time of the kidney

10:56:20 removal. He also had evidence of blood in his urine up to
10:56:25 almost ten years prior to the diagnosis, which we can't
10:56:29 attribute to the cancer itself but must be attributed to
10:56:34 something else, and so it is very -- it's, I would say, very
10:56:40 possible that there was an underlying inflammatory condition,
10:56:44 although we can't be very specific as to what that was.
10:56:48 Q. But you came to that opinion based upon his clinical
10:56:51 presentation?
10:56:51 A. I came to that opinion based on his clinical presentation;
10:56:54 that is correct.
10:56:56 Q. Okay. And as to the specific levels of smoking that you
10:57:02 determined, what did you -- what did you review in order to --
10:57:05 to come to this -- come to this opinion?
10:57:08 A. So I reviewed the plaintiff's testimony, I reviewed the
10:57:14 medical records, and I also reviewed the testimony of some of
10:57:20 his -- of at least one of his coworkers.
10:57:22 Q. Now, again, in this trial, much has been made about the
10:57:26 discrepancy between what Mr. Mousser testified as to his
10:57:30 smoking and what was represented in his medical records. Can
10:57:34 you shed some light on that from based upon your clinical
10:57:37 experience?
10:57:38 A. Sure. It is relatively common for patients to, you know,
10:57:45 minimize their habits, so to speak, at the -- with the
10:57:50 physician. In addition, the level of his smoking, which has
10:57:54 been consistently documented to be on the order of a pack per

10:57:58 week, many patients would consider that to be insignificant.
10:58:03 Q. So but you as a doctor might have a different opinion than
10:58:07 a layperson?
10:58:07 A. That is correct. So even a pack a week smoking would be
10:58:13 considered significant.
10:58:14 Q. And in Mr. Mousser's medical records --
10:58:17 THE COURT: What kind of cigarettes were they? You
10:58:19 don't know?
10:58:20 THE WITNESS: I don't know exactly what kind of
10:58:22 cigarettes.
10:58:22 THE COURT: Okay. So it could have been a Camel, or
10:58:24 it could have been a Tareyton? You don't know? You know, one
10:58:29 has lots of filters; the other has no filter. Okay.
10:58:35 Q. Dr. Stadler, is there any indication in the medical
10:58:38 literature that there's such a thing as a safe cigarette?
10:58:42 A. To our knowledge, there's no such thing as a truly safe
10:58:45 cigarette, unfortunately.
10:58:48 Q. If Mr. Mousser testified in his deposition that he smoked
10:58:54 Pall Malls, would that change your opinion?
10:58:56 A. It would not.
10:59:00 Q. So in addition to -- so Mr. Mousser testified in his
10:59:04 deposition he had an established smoking habit of about a pack
10:59:07 a week. In his medical records, did you -- I'm going to show
10:59:13 you what has been previously marked as Defendant's Exhibit --
10:59:28 THE COURT: This is the first time anybody said what

kind of cigarettes it was. That's entirely significant. Pall Malls were king-size and no filter. Did you know that?

MR. LEINICKE: Your Honor, I --

THE COURT: Did you know that?

MR. LEINICKE: -- I was --

THE COURT: Yes or no?

MR. LEINICKE: No, Your Honor, I was not a smoker.

THE COURT: I didn't ask if you were a smoker. I asked if you knew that Pall Malls were king-size and without a filter.

MR. LEINICKE: No, Your Honor, I did not know that.

THE COURT: Okay, well, I did know that.

Q. I'm going to show you, Dr. --

MR. LEINICKE: May I approach?

THE COURT: Yeah.

Q. I'm going to show you, Dr. Stadler, what has been previously marked as Defense Exhibit 753. We have a demonstrative that's highlighted the relevant -- relevant portion of this medical record. Dr. Stadler, this record is from -- is dated April 6, 2016, correct?

A. That is correct.

Q. Okay. And this is a -- what can you tell us about this record after reviewing it?

A. So this appears to be a record for a follow-up for management of his coronary artery disease, angina and

hypertension.
Q. So it says in October 2012, he had had a critical proximal left anterior descending stenosis?
A. That is correct.
Q. Okay. And this is a follow-up to that. And was there any information contained in this medical record that you used or were aware of that helped you determine whether Mr. Mousser's smoking habit continued through 2012?
A. So this medical record states that he continued to smoke through 2012.
Q. Doctor, I have a second medical record. This is Government's Exhibit 531.
MR. LEINICKE: Your Honor, I move -- I move to admit Government's Exhibit 531 and 753 into the -- into evidence.
THE COURT: It'll be received.
(Defendant's Exhibit Numbers 531 and 753 received.)
Q. Dr. Stadler, as I set up this document, can you tell me what you're looking at?
A. What I am looking at here are notes from a call that Mr. Mousser made to the nurses at the -- I believe this is the VA on 7/30/2020.
Q. So this is a -- this is a phone record that Dr. Stadler -- sorry -- that Mr. Mousser was calling in and spoke to a nurse at the VA?
A. That is correct.

11:02:49 Q. Okay. And to situate this in the time frame, this is from
11:02:53 July of -- July of 2020. And how close in time is this to
11:02:59 Mr. Mousser's cancer diagnosis?
11:03:02 A. So shortly after this phone visit, within a month, he had
11:03:05 a CT scan that demonstrated the mass in the kidney, and shortly
11:03:10 thereafter, he had the surgery that made the diagnosis.
11:03:15 Q. Okay. And were the complaints that Mr. Mousser was
11:03:17 expressing in this record relevant to your -- your opinion?
11:03:23 A. Yes, they were because within this record, there is
11:03:28 documentation of ongoing smoking and an offer from the nurse to
11:03:34 refer him to a smoking cessation program.
11:03:38 Q. Now, does it surprise you that the nurse asked Mr. Mousser
11:03:46 about his current or form- -- his smoking -- his smoking
11:03:50 history?
11:03:51 A. It does not. This would be a routine question as part of
11:03:54 any intake or a nurse phone call.
11:03:58 Q. And did Mr. Mousser give a specific response to the
11:04:02 nurse's questions as to what he did or didn't -- as to what his
11:04:06 smoking status was?
11:04:09 A. Yes. And I'm having a little bit trouble in the -- in the
11:04:11 light here, but he did say that he continues to use tobacco,
11:04:17 and I believe he admitted that it was still approximately a
11:04:22 pack per week.
11:04:27 Q. It says in the record, "States he smokes, quote, 'a little
11:04:31 bit,' close quote, which he describes as one pack per week."

11:04:35 Did I read that correctly?
11:04:37 A. Yes, you did.
11:04:42 Q. And if this was the type of information that you would
11:04:46 receive on a patient as a treating oncologist, how would -- how
11:04:51 would that knowledge affect your -- your treatment decisions?
11:04:55 A. So it would affect it in two ways. One way would be in
11:05:00 terms of any questions that might arise regarding etiology or
11:05:04 cause of his cancer. It is also important and properly a
11:05:09 standard of care in our field to offer smoking cessation to
11:05:14 active cancer patients as part of their treatment.
11:05:17 Q. And so how specifically does the carcinogens and smoke
11:05:24 affect oncogenesis?
11:05:27 A. So as I stated previously, the chemicals in smoke not only
11:05:32 initiate the cancer through the mutations, but it can also
11:05:36 accelerate some of the progression by causing additional
11:05:39 mutations.
11:05:42 Q. And there was a question -- the Court made a question
11:05:45 about, well, if it was just one cigarette versus four or five
11:05:51 cigarettes, how does that affect things. Maybe you can give a
11:05:54 bit of an explanation as to -- to clarify that issue.
11:05:59 A. Sure. So patients who have ongoing what we would call
11:06:06 more heavy smoking, on the order of a pack per day, have what
11:06:11 we call a risk factor; in other words, have an over fourfold
11:06:14 higher chance of developing this cancer. But even patients who
11:06:19 smoke as little as one to ten cigarettes a day have an

11:06:23 increased risk of between two and threefold.
11:06:29 Q. In determining -- in coming to your conclusion that
11:06:34 Mr. Mousser's smoking history was the most likely cause or
11:06:39 origin of his urothelial cancer, were there any risk factors
11:06:44 that you ruled out or found to be less likely?
11:06:50 A. So I considered other exposures, toxic exposures to be
11:06:56 much less likely. I didn't find any evidence for any genetic
11:07:00 causes of his cancer, which are common, and, you know, some of
11:07:05 the other more rare causes, such as phenacetin use or aristo --
11:07:12 aristolochic acid exposure, there was no evidence for those as
11:07:17 causes.
11:07:18 Q. You also ruled out causation -- causative factors like
11:07:21 obesity or chlorinated drinking water?
11:07:23 A. That is correct.
11:07:24 Q. Okay. And did you also come to a conclusion as to
11:07:32 Mr. Mousser's prognosis and future care?
11:07:36 A. Yes, I did.
11:07:37 Q. Okay. So did you speak with a gentleman by the name of
11:07:40 Dr. Shahnasarian?
11:07:42 A. Yes, I had spoken with Dr. Shahnasarian to put together
11:07:44 the more detailed estimates of future cost of care.
11:07:51 Q. And if you could just briefly explain, who is
11:07:53 Dr. Shahnasarian?
11:07:53 A. So my understanding is that he is an expert on future
11:08:00 medical costs and other costs that might be associated with

11:08:05 medical scenarios.
11:08:07 Q. And what future medical care did you recommend for
11:08:11 Mr. Mousser?
11:08:12 A. So when I -- when I looked at the case, there was some
11:08:15 question about whether there would be a need for additional
11:08:23 care on the basis of renal failure, and I advised that his risk
11:08:27 of renal failure, or at least renal failure requiring dialysis
11:08:32 from the cancer itself, is very low. I also advised that his
11:08:39 risk of recurrence of his cancer was extremely low, but that he
11:08:44 would need some additional monitoring.
11:08:47 Q. Did you recommend that Mr. Mousser undergo future
11:08:50 cystoscopies?
11:08:52 A. Yes. So cystoscopies are the process by which a urologist
11:08:58 places a small camera into the bladder to look for recurrence
11:09:01 of the cancer.
11:09:02 Q. And how many cystoscopies -- what was the frequency that
11:09:05 you recommended?
11:09:08 A. So I think, as we know, Mr. Mousser developed a recurrence
11:09:13 of his cancer in the bladder, and I had recommended that the
11:09:19 standard of care would be to do repeat cystoscopies
11:09:23 approximately three months after the diagnosis, then every six
11:09:27 to twelve months for the next approximately two to three years,
11:09:30 and then annually up until about five years.
11:09:32 Q. And did you make any recommendations as to future
11:09:36 screenings or CT scans for Mr. Mousser?

11:09:40 A. So the CT scans that he would require would be CT scans
11:09:45 related to the upper tract, original upper tract cancer, and
11:09:50 not necessarily the bladder recurrence. The chances of
11:09:55 systemic recurrence or metastatic disease drops to almost zero
11:09:59 after approximately three years, and so I recommended CT scans
11:10:03 up till approximately four to five years.
11:10:06 Q. You also recommended that Mr. Mousser receive regular
11:10:09 follow-ups from a urologist?
11:10:11 A. That is correct.
11:10:11 Q. What was the scope and frequency of that?
11:10:15 A. Similar to the scope and frequency of the cystoscopies
11:10:17 that I mentioned.
11:10:19 Q. And were these recommends -- recommendations based upon
11:10:22 your clinical and medical experience?
11:10:24 A. It's based on my clinical medical experiences and
11:10:26 according -- and guidelines that are currently out there.
11:10:31 Q. After providing your recommendations, did Dr. Shahnasarian
11:10:35 prepare a life care plan for Mr. Mousser?
11:10:37 A. Yes, he did.
11:10:39 Q. And were you provided with a copy of that plan for your
11:10:42 review?
11:10:42 A. I looked at that plan and assured that it was consistent
11:10:46 with our conversation.
11:10:48 Q. Okay. And it accurately reflected the medical
11:10:52 recommendations that you made?

11:10:53 A. Yes, it did.
11:10:55 Q. One last question, Dr. Stadler. I incorrectly stated -- earlier I said, "Would it matter as to the type of cigarettes that Mr. Mousser smoked?" In his deposition, I'm being informed, it says that he smoked Newports. Does the fact -- does really the brand of any cigarette that Mr. Mousser smoked affect your opinions that are expressed here today?
11:11:20 A. It does not.
11:11:22 Q. Thank you.
11:11:22 MR. LEINICKE: I pass the witness.
11:11:25 THE COURT: Okay.
11:11:25 MR. SNIDOW: Thank you, Your Honor.
11:11:26 CROSS-EXAMINATION BY MR. SNIDOW:
11:11:26 Q. Dr. Stadler, I've got -- I've got some questions about your methods that I'm going to get to in a second, but I want to start here: You told the Court just now about a number of studies looking at the relationship between smoking and cancer, didn't you?
11:11:38 A. Yes, I did.
11:11:39 Q. And I noticed you did not tell the Court what type of cancer those studies look at, did you?
11:11:43 A. Those studies looked at bladder cancer, and I did say that the -- there is a close relationship between upper tract urothelial cancer and bladder cancer.
11:11:53 Q. Well, here's my question: Did you tell Judge Boyle on

direct that, actually, those studies you were describing look at bladder cancer? Did you tell him that?
A. The studies that I looked at looked at bladder cancer because there are no good epidemiologic studies regarding upper tract urothelial cancer, although the etiologies are considered to be very similar.
Q. Well, the fact is, though, you know that Mr. Mousser had kidney cancer because in your deposition you say that upper tract urothelial cancer is kidney cancer, true?
A. So kidney cancer is a general term for all kinds of cancers that arise in the kidney, and as I've testified, urothelial cancer is a different cancer than renal cancer, which also arises in the kidney, and is much more similar to bladder cancer. We consider those cancers to be very similar.
Q. But when epidemiology authors are writing about the type of cancer that Mr. Mousser had, do they typically classify them as kidney cancer or bladder cancer, Dr. Stadler?
A. So you're mixing up the --
Q. Sir, can you answer my question? Is it bladder or kidney?
MR. LEINICKE: Objection. Please allow the witness to answer.
THE COURT: Well, he can ask the question.
A. Yeah. So kidney cancer is a general term. We're talking renal cancer and upper tract urothelial cancer are two subtypes of kidney cancer. Epidemiology studies do tend to lump the

11:13:18 upper tract urothelial cancers with renal cancers, but that has
11:13:22 to do with the data that's available and not necessarily due to
11:13:26 the biology of what we know about causation.
11:13:28 Q. Okay. I'm going to show you a demonstrative here. I've
11:13:35 written this statement on this board: "There is some increased
11:13:42 risk of kidney cancer for individuals that were stationed at
11:13:47 Camp Lejeune." You see that?
11:13:49 A. I see that.
11:13:49 Q. And the fact is, Dr. Stadler, you agree with that
11:13:54 personally, true?
11:13:56 A. I agree with the general statement, although I've also
11:14:00 reviewed the ATDSR report that looked at cancers in individuals
11:14:07 that were stationed at Camp Lejeune versus Camp Pendleton, and
11:14:10 in that study, they did break out upper tract urothelial
11:14:14 cancers, and there was no difference between those two groups
11:14:17 in terms of upper tract urothelial cancers.
11:14:19 Q. I'm just going to read what you said in your deposition.
11:14:21 "I agree that there is some increased risk of kidney cancer for
11:14:25 individuals that were stationed at Camp Lejeune." You said
11:14:27 that, right?
11:14:27 A. I said that, but the question was about kidney cancer.
11:14:31 We're talking about upper tract urothelial cancer, which is a
11:14:34 subset of kidney cancer, and to be honest, a very minor subset
11:14:38 of kidney cancer.
11:14:40 Q. Yeah. Am I correct that you don't know the details of how

11:14:44 long someone needs to have spent at Camp Lejeune or when they
11:14:48 needed to be there to have their risk of cancer increased? You
11:14:51 don't know that, do you?
11:14:53 A. So what I know is that indust- -- that exposures, toxic
11:14:59 exposures, that lead to increased risk of urothelial cancer
11:15:03 have been clearly demonstrated in patients with very high
11:15:08 exposure of chemicals, such as in the rubber industry, paint
11:15:12 industry or in other industries like that.
11:15:14 Q. All right. Now, you did a differential diagnosis in this
11:15:19 case, right?
11:15:19 A. Yes, I did.
11:15:20 Q. And to do that, you tried to rule in and rule out
11:15:23 potential causes, right?
11:15:25 A. That is correct.
11:15:26 Q. And the first thing you did is made a list of risk factors
11:15:30 for kidney cancer, correct?
11:15:31 A. For upper tract urothelial cancer, to be more exact.
11:15:35 Q. And your list was designed to capture anything that could
11:15:39 possibly cause his cancer, correct?
11:15:41 A. It was designed in that manner.
11:15:43 Q. And even though you think that, you decided not to include
11:15:50 the water at Camp Lejeune on your list; did you not?
11:15:54 A. My differential diagnosis include chemical exposures in
11:15:58 general. Once again, my differential diagnosis was for upper
11:16:01 tract urothelial cancer specifically. What you put up there on

11:16:05 the board is for the more general kidney cancer term, which is
11:16:12 overwhelmingly renal cancer and not necessarily upper tract
11:16:17 urothelial cancer.
11:16:17 Q. Okay. You're affiliated with the Kidney Cancer
11:16:21 Association, right?
11:16:22 A. I am.
11:16:22 Q. And you're on their board, right?
11:16:25 A. I was on their board. I'm no longer on their actual
11:16:28 board.
11:16:29 Q. And you agree they have a reliable, reputable reputation,
11:16:32 right?
11:16:32 A. They have a good reputation; that is correct.
11:16:34 Q. And am I correct on their website, they state that being
11:16:38 at Camp Lejeune increases the risk of kidney cancer?
11:16:41 A. That is my understanding.
11:16:46 Q. You're aware that on their website, this organization that
11:16:49 you're affiliated with, they state that exposures to TCE are
11:16:54 known to cause kidney cancer, right?
11:16:56 A. It is a known cause of renal cancer. When we talk about
11:17:01 upper tract urothelial cancer, the chemicals are actually
11:17:04 different. The chemicals that are associated with upper tract
11:17:07 urothelial cancer are aromatic amines. TCE is not an aromatic
11:17:11 amine.
11:17:12 Q. You're aware that Dr. Bove did a series of studies looking
11:17:16 at people at Camp Lejeune in particular, right?

11:17:17 A. I am aware.
11:17:19 Q. And you agree those studies show that people at Camp
11:17:20 Lejeune had a 20 to 40 percent increased risk of kidney cancer,
11:17:25 right?
11:17:26 A. I'm aware of that data.
11:17:27 Q. You've actually read the Bove 2014 study yourself, right?
11:17:31 A. I did.
11:17:31 Q. Now, you weren't in the courtroom yesterday when
11:17:35 Dr. Shields testified, were you?
11:17:36 A. I was not.
11:17:38 Q. Are you aware that Dr. Shields said that the Bove studies
11:17:41 are not reliable? Are you aware of that?
11:17:43 A. I am not aware of his testimony.
11:17:46 Q. Okay. Fair to say, though, you would disagree because you
11:17:50 think the Bove 2014 study is a reliable and reputable source,
11:17:54 don't you?
11:17:55 A. The Bove study is one of several things that I reviewed in
11:17:59 terms of coming to my conclusions.
11:18:01 Q. I know you don't want to answer the question, so I guess
11:18:03 I'll just read your deposition.
11:18:04 "Do you believe that it's a reputable and reliable
11:18:07 source?"
11:18:07 You said, "I believe it's a reliable and reputable
11:18:09 source."
11:18:10 Is that true?

11:18:11 A. That is true.
11:18:12 Q. Okay. You are also chair of the group from the Kidney --
11:18:16 KCRP called the Programmatic Review Panel, right?
11:18:19 A. That is correct.
11:18:21 Q. And they published on their website something saying that
11:18:26 U.S. Marines and their families stationed at Camp Lejeune,
11:18:29 North Carolina, have a 35 percent higher risk of contracting
11:18:33 kidney cancer than civilians due to contaminated drinking
11:18:35 water; is that right?
11:18:36 A. That is correct.
11:18:38 Q. Okay. And you think they wouldn't have published that if
11:18:41 the Camp Lejeune studies weren't accurate and reliable, true?
11:18:44 A. Those Camp Lejeune studies are accurate and reliable, but
11:18:48 once again, we're -- you're lumping all the kidney cancers.
11:18:50 We're talking specifically here about upper tract urothelial
11:18:53 cancer.
11:18:54 Q. We'll get to that in a second because I think you have
11:18:56 some explaining to do on exactly when you did the analysis
11:18:59 you're talking about, but focus on my question right now, okay?
11:19:01 You did not, for Mr. Mousser, look at how much water he
11:19:06 drank at Camp Lejeune, did you?
11:19:08 A. I did not look at that specifically. I reviewed the
11:19:11 general conclusions of the exposure experts.
11:19:14 Q. So that's a, no, you didn't look at it, correct?
11:19:16 A. I looked at their reports and their general conclusions,

11:19:19 is what I looked at.
11:19:19 Q. Did you yourself look at how much my client here showered
11:19:23 at Camp Lejeune?
11:19:23 A. No, I didn't. Of course not.
11:19:26 Q. Well, you could have read his deposition. Did you look at
11:19:28 the source of the water for the shower?
11:19:30 A. Once again, I was familiar with the general depositions,
11:19:33 but I did not look at all the details of those exposures.
11:19:36 Q. Okay. Did you look at the source of water for any
11:19:38 inhalational exposure?
11:19:39 A. I did not look at the details. I reviewed the general
11:19:45 conclusions.
11:19:45 Q. Okay. Now, you said some stuff, but I want to talk about
11:19:48 the real reason why you did not include the Camp Lejeune
11:19:53 exposures as a potential risk factor, and it's not because you
11:19:57 reviewed the literature. When you did your report, you hadn't
11:20:00 reviewed the literature looking at PCE and kidney cancer at
11:20:03 all, true?
11:20:05 A. I had reviewed -- when I created my report, I had looked
11:20:07 at TCE and kidney cancer. However, there is no relationship
11:20:13 between TCE and upper tract or urothelial cancer. There is a
11:20:17 relationship between aromatic amines and urothelial cancer.
11:20:20 Q. Well, here's your deposition.
11:20:21 "Have you ever reviewed literature of any kind with regard
11:20:24 to PCE and its effect on kidney cancer?"

11:20:26 Answer, "Not to my recollection," correct?
11:20:29 A. I would have to take a look at that.
11:20:31 Q. Okay.
11:20:33 THE COURT: Well, this might be a good time to take a
11:20:35 break.
11:20:35 MR. SNIDOW: That'd be great.
11:20:35 THE COURT: And, Mr. Marshal, could you get some heat
11:20:39 in this room? It's about, you know, 50 degrees here. Let's
11:20:45 go.
11:20:46 (A recess was taken from 11:21 a.m. to 11:32 a.m.)
11:32:20 THE COURT: Go ahead.
11:32:36 MR. SNIDOW: Thank you, Your Honor.
11:32:37 Q. Dr. Stadler, I think before the break, you and I might
11:32:40 have just had a miscommunication and you might have misheard
11:32:43 me. My actual question was you did not review the literature
11:32:47 with regard to PCE and kidney cancer; that's true, right?
11:32:52 A. I don't recall if I specifically looked at PCE and, in
11:32:57 this case, upper tract urothelial cancer.
11:33:00 Q. Same thing for benzene and vinyl chloride; is that
11:33:02 correct?
11:33:03 A. So in terms of benzene, vinyl chloride, I've looked at the
11:33:09 general literature and some of the general reviews on those
11:33:14 topics.
11:33:14 Q. At the time of your expert report and deposition,
11:33:18 Dr. Stadler, am I correct the only epidemiology you actually

11:33:23 looked at were the five Camp Lejeune studies?
11:33:27 A. I would have to review the exact list of references in my
11:33:32 report to be -- you know, to be specific.
11:33:35 Q. Well, or we can just look at your deposition.
11:33:37 "You said to yourself the epidemiology that I need to
11:33:41 review are the five Camp Lejeune studies, ATSDR studies, true?"
11:33:44 And you said, "Correct," right?
11:33:46 A. If that's what you have, then that would be correct.
11:33:50 Q. Okay. And the reason why you chose to look at those
11:33:54 studies is because when you're trying to look for exposures,
11:33:58 you want to look at the exact population at issue because it
11:34:01 provides the best data, correct?
11:34:02 A. That is fair.
11:34:04 Q. That is fair. And that's true of these Camp Lejeune
11:34:07 studies, correct?
11:34:08 A. That would be fair.
11:34:10 Q. That would be fair. And, again, you think these studies
11:34:13 are reliable and reputable, correct?
11:34:17 A. Correct.
11:34:17 Q. Correct. All right. Now, I want to talk a little bit
11:34:21 more about why, even though you personally think that the water
11:34:24 at Camp Lejeune can cause kidney cancer, you didn't put it in
11:34:29 your differential, and it's not because you did some -- you
11:34:33 yourself, you did not do any comparison of Mr. Mousser's
11:34:38 exposure to any of the Camp Lejeune epidemiology, did you?

11:34:42 A. I'm not an expert in exposure.
11:34:44 Q. Right. You yourself did not compare Mr. Mousser's
11:34:48 exposure to any epidemiology on water contamination outside of
11:34:51 Camp Lejeune, correct?
11:34:53 A. Once again, I'm not an exposure expert. I relied on other
11:34:57 experts whose reports I reviewed.
11:35:00 Q. Right, and that's where we're going. So you yourself did
11:35:02 not look at whether any other expert had compared -- from the
11:35:07 plaintiffs, had compared Mr. Mousser's exposure to the Camp
11:35:10 Lejeune epidemiology, true?
11:35:11 A. I was aware that those were there. I did not review those
11:35:15 reports in detail.
11:35:17 Q. You don't know what chemical concentrations were present
11:35:20 on base at Camp Lejeune for any of the plaintiffs, including
11:35:25 Mr. Mousser, correct?
11:35:26 A. Well, since I'm not an exposure expert, no, I do not know
11:35:30 the exact concentrations.
11:35:31 Q. All right. And you yourself did no independent analysis
11:35:35 as to whether Mr. Mousser's exposure would be considered
11:35:38 substantial, true?
11:35:39 A. I did not do that analysis myself, but relied on expert --
11:35:43 the exposure experts that I review -- whose reports I reviewed.
11:35:47 Q. Yep, we're about to get there in a second. What you do
11:35:50 know, though, is if Mr. Mousser did turn out to be in one of
11:35:55 the highest exposure categories in the Camp Lejeune studies,

11:36:00 that would be highly relevant to your opinion, correct?
11:36:04 A. So the --
11:36:06 Q. Could you answer my question? Is that correct?
11:36:09 MR. LEINICKE: Objection, Your Honor. He is
11:36:10 answering the question.
11:36:11 THE COURT: No, he can -- if he does it the right
11:36:13 way, he can force a yes or no.
11:36:16 Q. I'll just read your deposition.
11:36:18 THE COURT: Nobody does it the right way. The right
11:36:20 way is, "Is it not a fact, yes or no?" That's the right way.
11:36:24 Irving Younger, look it up.
11:36:27 MR. SNIDOW: Thank you, Your Honor.
11:36:28 THE COURT: Go ahead.
11:36:30 Q. Dr. Stadler, is it not a fact that if Mr. Mousser did turn
11:36:35 out to be in one of the highest exposure categories in the Camp
11:36:39 Lejeune study, that would be relevant to your opinion?
11:36:42 A. It would be relevant to my opinion if I knew what that
11:36:46 exposure level was and how that compared to other epidemiology
11:36:50 studies.
11:36:50 Q. Okay. Now, the real reason that you decided not to
11:36:59 include the water at Camp Lejeune as a potential risk, even
11:37:03 though you yourself think that the water can increase the risk,
11:37:07 is because you used an assumption from the toxicologist,
11:37:15 Dr. Bailey, that the levels for these plaintiffs weren't
11:37:21 associated with kidney cancer, correct?

11:37:23 A. I relied on the Bailey risk assessment, but I also looked
11:37:27 at the LaKind exposure report.
11:37:30 Q. Anyone else that you just forgot to mention just now?
11:37:35 A. I'm not sure there are any --
11:37:37 Q. I mean, you mentioned two experts. Any other experts that
11:37:40 you relied upon?
11:37:41 A. So I relied on the expert reports that were provided to me
11:37:44 by counsel.
11:37:45 Q. Right. Just any other names come to mind of any experts
11:37:49 that you absolutely relied upon that you're not telling the
11:37:52 judge right now?
11:37:54 A. So as per my report, I looked at the report -- at the
11:37:58 Goodman reports, the --
11:38:00 Q. Oh.
11:38:00 A. -- I'm blanking on their names right now, but the Goodman
11:38:05 reports, the LaKind, the Bailey. Gosh, I'm blanking on the
11:38:10 other name.
11:38:11 Q. Well, you found it. Goodman. You relied on it, right?
11:38:12 A. Yeah.
11:38:14 Q. Okay. And, in fact, it is pretty clear in your deposition
11:38:17 because we asked you, "Which defense epidemiologist reports are
11:38:21 you referring to?"
11:38:23 And, Dr. Stadler, you said, "I'm referring mostly to the
11:38:27 report from Dr. Goodman," right?
11:38:29 A. That was one of the reports I relied on. That is correct.

11:38:33 Q. Okay. And you're aware of Dr. Goodman not testifying in
11:38:36 this trial, right?
11:38:38 A. I have no idea.
11:38:39 Q. In fact, for Dr. Goodman and Dr. Bailey, you yourself
11:38:45 actually have very little specific understanding of their
11:38:48 analysis, true?
11:38:48 A. I've reviewed their general conclusions and reviewed their
11:38:55 reports.
11:38:56 Q. I'm just going to quote you.
11:38:57 "I have some very general understanding, but very little
11:39:00 specific understanding of their analysis," correct?
11:39:04 A. That is fair because I'm not a -- I'm not an exposure
11:39:07 expert; I'm not a toxicology expert.
11:39:09 Q. Okay. So let's talk about Dr. Goodman for a moment. Now,
11:39:25 you believe that even trivial renumerations introduce bias for
11:39:32 the individual scientist, right?
11:39:36 A. I'm not sure that any of us is unbiased.
11:39:38 Q. Well, it's a little more serious than that because you
11:39:40 think there's literature to suggest that what I just said is
11:39:43 true, right?
11:39:44 A. That is correct.
11:39:45 Q. Okay. And but we've talked a lot about Dr. Goodman in
11:39:51 this case. The Court has heard her particulars. My question
11:39:56 is actually a little different.
11:39:57 When the Government told you to take your report and rely

11:40:07 on Dr. Goodman, did they tell you what has been said about her?
11:40:13 A. I know -- do not know Dr. Goodman personally. I know
11:40:16 nothing else about her except for the qualifications that you
11:40:20 noted in her report.
11:40:21 Q. But I'm just asking, like, go back in time to when you're
11:40:24 writing your expert report. At that time, for example, did you
11:40:28 know that Dr. Goodman has been criticized for peddling junk
11:40:33 science? Did you know that Dr. Stadler?
11:40:35 MR. LEINICKE: Objection. Asked and answered.
11:40:36 Hearsay.
11:40:37 THE COURT: Overruled. You can answer.
11:40:38 A. So all I know is from the qualifications that were listed
11:40:45 in her report. That's what I'm aware of.
11:40:47 Q. So that sounds like a no. When you were writing your
11:40:50 report, they did not tell you that Dr. Goodman had -- has been
11:40:56 fairly seriously criticized for peddling junk science. Sounds
11:40:59 like you -- you did not know that when you were -- when you
11:41:02 were writing your report, correct?
11:41:05 A. I don't know what those allegations are about.
11:41:07 Q. Okay. Now, you do know that there's a disagreement
11:41:11 between our experts and their experts about whether the
11:41:16 exposures at Camp Lejeune are sufficient to cause cancer,
11:41:19 correct?
11:41:19 A. Yes.
11:41:20 Q. All right. And you know that their experts have the view

that the water at Camp Lejeune cannot cause any of these five cancers at all, correct? You know that?
A. That's my understanding.
Q. And as our board says, you personally -- and put aside the urothelial -- you certainly agree that with respect to kidney cancer, you disagree with those experts, right?
A. So the -- what we're talking about here is the causation for upper tract urothelial cancer. You keep referring to kidney cancer. I'm not sure that the rare upper tract urothelial cancer fits into that category.
Q. You don't want to answer that question, that's okay. I'll ask you another one. You ultimately decided to go with Dr. Goodman and Dr. Bailey's opinion, correct?
A. I relied on some of those opinions for -- as part of my analysis, correct.
Q. And during your deposition, we asked you why did you choose to believe the defendant's experts over ours, and your answer was, "I had the defendant exposure reports in hand. I didn't have the other expert reports, plaintiff's expert reports, and that's where some of the material was." That was your answer?
A. Yes.
MR. SNIDOW: No further questions.
THE COURT: No further questions?
MR. SNIDOW: Right.

11:43:11 THE COURT: All right. Do you have anything further?
11:43:12 MR. LEINICKE: A very brief redirect, Your Honor.
11:43:14 REDIRECT EXAMINATION BY MR. LEINICKE:
11:43:14 Q. Dr. Stadler, my counsel -- my friend over here made
11:43:20 reference to a study that discussed an increase in the risk of
11:43:25 cancer by about 35 percent. It related to Camp Lejeune
11:43:30 patients. Do you recall that?
11:43:32 A. Yes.
11:43:32 Q. Okay. So how is -- 35 percent, that would be expressed
11:43:38 as, like, a risk ratio of 1.35?
11:43:42 A. That is correct.
11:43:42 Q. Okay. Because we're not statisticians, we're not math,
11:43:45 we're not mathematicians. You were talking in your direct that
11:43:51 smoking has a risk ratio of between 3 and 4, correct?
11:43:56 A. That is correct.
11:43:56 Q. So that would be 400 percent?
11:44:01 A. Well, it's -- yes.
11:44:02 Q. Okay. So not -- so there's 35 percent and there's
11:44:06 400 percent. That's a difference, correct?
11:44:07 A. Correct.
11:44:08 Q. All right. Thank you.
11:44:08 MR. LEINICKE: No further questions, Your Honor.
11:44:10 MR. SNIDOW: Recross, Your Honor, based on that.
11:44:11 THE COURT: All right.
11:44:12 MR. SNIDOW: Thank you.

11:44:13 RECROSS EXAMINATION BY MR. SNIDOW:
11:44:13 Q. Dr. Stadler, on direct and just now, you told the Court
11:44:18 that the risk ratio for smoking is 3 to 4X, correct?
11:44:22 A. Yes.
11:44:24 Q. And then you just went on to compare that risk ratio to
11:44:28 the risk ratios at Camp Lejeune; is that what you did?
11:44:30 A. I looked at the risk ratios that have been reported for
11:44:37 kidney cancer in general in Camp Lejeune.
11:44:41 Q. Okay. Now here's my question: You did not tell Judge
11:44:44 Boyle just now how many pack years are associated with the
11:44:50 three to fourfold risk, right?
11:44:51 A. So the three to fourfold risk is much more closely related
11:44:55 to patients who smoke up to a pack a day. But I've also
11:45:00 testified that there is a twofold risk, even in patients who
11:45:05 only smoke one to nine cigarettes a day.
11:45:08 Q. Did you say a pack a day?
11:45:09 A. A pack a day.
11:45:11 Q. Okay. You didn't mention that to the Court just now,
11:45:14 right?
11:45:16 A. I said that the general epidemiology literature that looks
11:45:19 at smoking and bladder and urothelial cancer, which is what I
11:45:23 was asked, the risk factor is on the order of 3 to 4.
11:45:26 Q. Okay. Now, one other thing, you keep saying a pack a day,
11:45:30 but you're familiar with the quantity of a pack year, correct?
11:45:34 A. That is correct.

11:45:34 Q. Okay. And just to tell Judge Boyle what we're talking
11:45:36 about here, a pack year is you smoke a pack a day for a year?
11:45:40 A. Correct.
11:45:41 Q. Okay. So for someone to have 20 pack years, they need to
11:45:45 smoke a pack of cigarettes every single day of their life for
11:45:49 20 years, correct?
11:45:50 A. That is correct.
11:45:51 Q. And, in fact, the risk for bladder cancer, but urothelial
11:45:56 cancer, if you like, peaks at 50 pack years, correct?
11:46:00 A. It peaks at that, but it doesn't go away even if you quit
11:46:03 smoking.
11:46:03 Q. Okay. You didn't mention any of that to Judge Boyle, did
11:46:05 you?
11:46:08 A. We've talked about the risk of smoking and urothelial
11:46:12 cancer, how that risk decreases with a number of cigarettes,
11:46:17 that it doesn't go away completely.
11:46:19 MR. SNIDOW: No further questions, Your Honor.
11:46:21 THE COURT: All right. Thank you, Doctor. You're
11:46:22 released.
11:46:24 THE WITNESS: Thank you.
11:46:24 THE COURT: Thank you.
11:46:24 (The witness exits the witness stand at 11:46 a.m.)
11:46:24 MR. BAIN: Your Honor, we call as our next witness
11:46:31 Dr. Michael Shahnasarian.
11:46:33 THE CLERK: Please place your left hand on the Bible,

raise your right hand, and state and spell your name for the record.

THE WITNESS: Michael Shahnasarian, M-I-C-H-A-E-L, S-H-A-H-N-A-S-A-R-I-A-N.

MICHAEL SHAHNASARIAN, PH.D.,

was sworn at 11:46 a.m., and testified as follows:

DIRECT EXAMINATION BY MR. TUBIN:

Q. Can you please introduce yourself to the Court?

A. Yes. My name is Michael Shahnasarian.

Q. And what do you do for a living, Dr. Shahnasarian?

A. By my training, I am a rehabilitation psychologist. I have a practice in Tampa, Florida, that I manage. I specialize in different areas of clinical practice, including vocational rehabilitation, life care planning and rehabilitation psychology.

Q. What is vocational rehabilitation?

A. It is a specialty within the field of rehabilitation that has to do with assessing the capacity of people with different types of disabling problems and facilitating their ability to work.

Q. And what is life care planning?

A. Life care planning is another specialty within rehabilitation that has to do with assessing future care needs that a person with a disabling condition will likely require because of their underlying condition, and it can include

things like diagnostic studies, therapies of different sorts. It can include medications that they'll require, office visits. Depending on the nature of the disabling condition, the contents will vary.

Q. And can you tell us what degrees you hold?

A. Yes, I hold three degrees in psychology, an undergraduate from Indiana University. I have a master's degree in clinical psychology from Texas A&M University, and I hold a doctorate, or a Ph.D. degree, from Florida State University in counseling psychology, specializing in rehabilitation psychology. I have gone on to do residency work at Florida State University and also University of Wisconsin-Milwaukee in rehabilitation psychology with subspecialties in vocational rehabilitation and life care planning.

Q. Do you hold any licenses or certifications related to life care planning or rehabilitation consulting?

A. Yes, I do. I'm licensed as a psychologist. I'm also licensed as a mental health counselor. I have board certifications as a rehabilitation counselor, board certification as a vocational evaluator. I am a board certified career counselor. I'm also board certified as a life care planner, and I held a certification that permits me to allow different types of psychological tests.

Q. Do you have any university-level teaching experience?

A. Yes, quite a bit. I have taught both in the classroom and

I've also supervised residents, interns at the master's, doctoral and post-doctoral level for probably 35 years, sir.
Q. Have you published on vocational rehabilitation or life care planning?
A. Yes, I have. I published 13 books. The last book I published was in 2022 by the American Bar Association. It had to do with the topic that I'm here to talk about today, which is the valuation of monetary damages in injury cases. I've published about 70 to 80 peer-reviewed articles, book chapters, monographs on topics related to my specialty areas.
Q. Have you served as a vocational expert for any government agencies?
A. Yes, I have. For about 20 years, I was a vocational expert with the Social Security Administration. In that capacity, I testified in about 400 cases at the request of administrative law judges, who asked me to read a medical file, hear testimony, and then to respond to questions about a person's disabling condition and their ability to work.
Q. Have you served in any official capacity to the State of Florida as a vocational rehabilitation specialist?
A. I have, sir, yes. I've had two appointments by former governors of the State of Florida. I was initially appointed by former Governor Lawton Chiles to the Florida Rehabilitation Council, which is an advisory board to the Governor of Florida on matters pertaining to vocational rehabilitation. And at the

11:51:40 end of my term, I was reappointed by his successor, former
11:51:44 Governor Jeb Bush, to the same position. And then near the end
11:51:49 of my second term, I was elected to be the Chairman of the
11:51:52 Evaluation Committee. So I had responsibility for evaluating
11:51:55 the quality of vocational rehabilitation in Florida.
11:51:58 Q. Have you ever been previously qualified as a vocational
11:52:01 rehabilitation specialist?
11:52:02 A. Many times, sir, yes.
11:52:03 Q. How about as a life care planner?
11:52:05 A. Yes, again, many times.
11:52:08 Q. And how would you say the division of your work is between
11:52:11 plaintiffs and defense?
11:52:12 A. So I've been doing this work since the mid to late
11:52:16 1980s, and it's about half and a half. Fifty percent of the
11:52:18 time I'm retained by plaintiff counsel, 50 percent by defense
11:52:22 counsel.
11:52:22 Q. Were you asked in this case by plaintiffs to be retained
11:52:26 after the U.S. retained you?
11:52:27 A. Yes, I was.
11:52:30 MR. TUBIN: Your Honor, I tender Dr. Shahnasarian as
11:52:32 an expert in vocational rehabilitation and life care planning.
11:52:35 THE COURT: He'll be accepted as an expert and
11:52:37 allowed to express his opinions in those areas.
11:52:41 Q. Dr. Shahnasarian, what were you asked to do for the United
11:52:44 States in this case?

11:52:45 A. I was asked to basically provide opinions in two major
11:52:50 areas. One area had to do with Mr. Mousser's employability and
11:52:54 whether or not his situation with his kidney impaired his
11:52:59 ability to work and earn wages. And then the second area I was
11:53:02 asked to address was his future care needs, and specifically to
11:53:06 respond to a cost analysis that was prepared by Michael Fryar,
11:53:09 who's an expert retained by plaintiff counsel.
11:53:14 Q. Now, did you prepare a report in this case?
11:53:17 A. I prepared three reports, sir.
11:53:21 MR. TUBIN: Your Honor, may I approach?
11:53:22 THE COURT: Yeah.
11:53:22 Q. Dr. Shahnasarian, I've handed you what's been marked as
11:53:39 U.S. Exhibit 900 and 901. Do you recognize these documents?
11:53:44 A. Yes.
11:53:45 Q. What are they?
11:53:46 A. These are reports I prepared. One is titled
11:53:48 "Rehabilitation Evaluation." The other is titled "Update Life
11:53:52 Care Plan."
11:53:53 MR. TUBIN: Your Honor, I move to admit 901 and 900
11:53:57 into evidence.
11:53:57 THE COURT: They're received.
11:54:01 (Defendant's Exhibit Numbers 900 and 901 received.)
11:54:01 Q. Can you tell us about the RAPEL and Earning Capacity
11:54:05 Assessment Theory and how they relate to your opinion in this
11:54:08 case?

11:54:09 A. Yes. Those are both methodologies that are widely
11:54:13 recognized in my profession. They've been peer reviewed, and
11:54:17 those are methodologies that I applied in my analysis.
11:54:21 Q. And in applying those methods in this case, what records
11:54:24 did you review?
11:54:26 A. I reviewed probably 10 -- over 10,000 pages of records.
11:54:31 Categorically, there were a lot of pleadings. There were legal
11:54:33 records. There were answers to interrogatories, complaint.
11:54:37 There were many depositions, Mr. Mousser's deposition. There
11:54:41 were many expert depositions that I read. There were some
11:54:45 treating doctor depositions that I read. There were military
11:54:50 records. There were a lot of treatment records, medical
11:54:53 records. Categorically, they would be -- some of them were
11:54:57 treatments. Some of them were assessments, not only related to
11:55:03 cancer, but also other comorbidities that Mr. Mousser has had.
11:55:07 There were employment records. There were earning records.
11:55:10 There were expert reports, so a voluminous amount of records.
11:55:14 Q. Did you also interview the plaintiff?
11:55:17 A. Yes, I did. I interviewed Mr. Mousser on, I believe it
11:55:20 was, February 28th, 2025. I had a four-hour interview of him.
11:55:26 Q. And why was that important?
11:55:29 A. It's important because I need -- when I'm assessing a
11:55:32 person's capacity to work and assessing a person's future care
11:55:34 needs, I need to understand their perspective on their
11:55:39 presenting problems, how they affect them in terms of what they

can do functionally, bending, lifting, walking, standing. We call those functional capacities. I need to understand things like pain that they may have, other ancillary features. I need to understand how the person has been affected from a mental health status perspective, how they're coping from a disability adjustment perspective, what they can and can't do in their everyday activities, how their maladies have affected their ability to work, what efforts they made to do. All of that is important, and I gather that information through the clinical interview.

Q. Did you also perform any independent research?

A. Yes, I did.

Q. Tell us about that.

A. The research I did was through different standards that people in my profession use. One is by reviewing Department of Labor, U.S. Department of Labor, materials that provide descriptive information of what's required to do different jobs. Also, when I was preparing the life care plan, I performed independent research to determine the fair market value of different rehabilitation interventions that are anticipated for Mr. Mousser.

Q. Did you consult with any physicians in this case?

A. I did, yes. I consulted with two specialists. One was Dr. Stadler, who we just heard from. Dr. Stadler is medical oncologist. I also consulted with Dr. Johnstone, who is a

nephrologist.
Q. And during those consultations, did you review the cost analysis plan of plaintiff?
A. I did, yes.
Q. And were any disagreements discussed?
A. Yes.
Q. Tell us about those.
A. There were some disagreements in terms of what future interventions are more likely than not required for Mr. Mousser. There were disagreements that Dr. Johnstone and Dr. Stadler expressed to me regarding the likelihood of dialysis treatment in the future, and also the likelihood of a need for a kidney transplant in the future.
Q. Now, you told us that part of your assignment in this case was a life care plan. What information is included in a life care plan?
A. A life care plan is a multidisciplinary effort. So I'm not a medical doctor. I'm not qualified to make medical recommendations. So in a life care plan, the standards of practice call for enlisting input from people who are qualified to make those kind of recommendations.
So the life care plan includes rehabilitation interventions that are necessary going forward. It includes treatment protocols that are likely to be implemented in the future, and it also includes cost information.

11:58:18 Q. Does your life care plan include a kidney transplant or
11:58:22 dialysis?
11:58:22 A. It does not because that was not deemed necessary in terms
11:58:26 of probability going forward by either Dr. Johnstone or
11:58:30 Dr. Stadler.
11:58:32 Q. And when discussing the life care plan you prepared, would
11:58:34 it help to have a demonstrative aid?
11:58:37 A. Yes.
11:58:39 MR. TUBIN: Your Honor, permission to set up a
11:58:41 demonstrative.
11:58:41 THE COURT: Go ahead.
11:58:41 MR. TUBIN: Your Honor, permission -- can the doctor
11:59:17 come down and explain his life care plan?
11:59:19 THE COURT: Yes.
11:59:19 MR. TUBIN: Thank you.
11:59:37 Q. So tell us about what Judge Boyle is seeing.
11:59:40 A. Yes. These are pages from my life care plan that identify
11:59:45 the needs that were communicated to me by Dr. Johnstone and
11:59:48 Dr. Stadler in terms of what Mr. Mousser will require going
11:59:53 forward due to his condition as it presents.
11:59:58 Q. Are these prices based off some kind of standard?
12:00:02 A. Yes. They're categorically arranged. What the
12:00:05 information contains here are the type of intervention that's
12:00:09 going to be required in the future for him; what we call the
12:00:13 protocol, which is when it's to be implemented, the timing and

12:00:16 the duration and the frequency; what the cost is; and then who
12:00:20 made the recommendation.
12:00:20 So in this case, the recommendations were initiated by
12:00:24 Dr. Walter Stadler. In the bottom, you'll see footnoted where
12:00:29 the costs were derived from, and in my profession there are
12:00:33 standards of practice that dictate different, let's say,
12:00:36 mandates in terms of how you do the costing in the life care
12:00:40 plan. We use billing codes that are commonly used, CPT codes
12:00:43 that are used universally within the health care profession,
12:00:46 and then there are different databases that are recognized as
12:00:50 being authoritative within the practice of life care planning.
12:00:53 So I have two different medical databases that are very
12:00:57 well respected, in fact, are the same ones that plaintiff's
12:01:01 expert used, Mr. Michael Fryar. One is called FAIR Health.
12:01:05 The other one is called Context 4 Healthcare. And they
12:01:09 actually applied the same metric in terms of the percentile.
12:01:14 We both used the 50th to 75th percentile, so we're consistent
12:01:17 in that terms of methodology, and that's why you'll see a range
12:01:20 for the different interventions.
12:01:21 So in this case, we have a urologist follow-up recommended
12:01:25 by Dr. Stadler. As he testified to this morning, he reviewed
12:01:28 this life care plan and approved it. And then the cost, you'll
12:01:32 see will be $169 to $215 per visit.
12:01:38 Q. And can you tell us what the next part of your life care
12:01:45 plan describes?

12:01:46 A. Yes. Dr. Stadler testified this morning about the
12:01:49 standard of practice going forward with Mr. Mousser's
12:01:52 condition, and that's what I implemented.
12:01:54 Cystoscopies, again, you'll see that they'll have them at
12:01:58 different durations going forward. Year one will require one.
12:02:03 Year two to year 2028 will require one every six to twelve
12:02:09 months. And then from 2029 through 2030, annually. Cost of
12:02:15 the cystoscopy is $590.21 to $631.04. And, again everything is
12:02:24 footnoted here using the methodology in my profession, CPT
12:02:28 codes and the appropriate databases.
12:02:30 The other recommendation under diagnostic testing is a CT
12:02:35 scan of Mr. Mousser's bladder. That will be done one time in
12:02:39 the next year, at a cost of $433 to $885.20.
12:02:46 Q. And did both Dr. Stadler and Johnstone have the
12:02:49 opportunity to review your life care plan?
12:02:51 A. Yes, they did. That's one of the quality control measures
12:02:54 that I implemented. After I'm done assembling the life care
12:02:57 plan, I distribute it to the people who had input into it. I
12:03:00 ask them to review it, make sure I've got the protocols
12:03:03 correctly, and then give them an opportunity to provide any
12:03:06 supplemental information or make any amendments to it. So,
12:03:08 yes, they had that opportunity and they indicated that they
12:03:13 approved of this life care plan.
12:03:15 Q. Thank you, Dr. Shahnasarian. If you could please return
12:03:17 to the stand.

12:03:17 (Brief pause.)
12:03:17 Q. I'd like to shift now and talk about your vocational
12:03:34 rehabilitation opinion. What is your opinion on plaintiff's
12:03:40 lost earning capacity?
12:03:41 A. My opinion on that topic is that basically, there's
12:03:47 insufficient evidence to support a premise that Mr. Mousser's
12:03:51 tenure at Camp Lejeune diminished his earning capacity.
12:03:54 Q. Of all those records you described earlier, did any of the
12:04:00 medical records say that he should stop working?
12:04:02 A. There is not one medical record that advised Mr. Mousser
12:04:07 to quit working. On the contrary, there are several records
12:04:10 from his treating doctors that indicate that he should continue
12:04:13 to work.
12:04:14 Q. Did any of the doctors caring for plaintiff ever tell him
12:04:18 to stop working?
12:04:19 A. No. The question was posed to them under deposition
12:04:23 testimony, namely to his treating urologist, Dr. Rockwood.
12:04:28 Dr. Rockwood said, "No, I would not have told him to quit
12:04:31 working." His treating nephrologist, Dr. Kurt Flood [sic], was
12:04:34 asked the same question. This was approximately August 2024,
12:04:38 after Mr. Mousser quit working, and he provided a very similar
12:04:43 response. Neither of them said that they would have advised
12:04:45 him to quit working. On the contrary, they said they would
12:04:48 encourage him to continue to work, to be as active as possible.
12:04:51 Q. Did you review plaintiff's testimony on what a Dr. Cocke

said?
A. Yes.
Q. And can you tell us about that?
A. Yes. There was testimony that Mr. Mousser said, "You won't find anywhere in the records that any doctor told me to quit working," but he did reference what appeared to be an informal, I'd call it an off-the-cuff discussion he had with Dr. Cocke. Dr. Cocke is a primary care doctor of Mr. Mousser, and he made some statements that I would not consider a medical directive, but something to the -- well, I think you have it there on that -- on that board.
Q. Yeah, it's also page 3 of the demonstrative I've handed out. What's the significance of this testimony on your opinion?
A. Well, there is no -- Mr. Mousser is correct. There is no documented -- there's no documentary evidence and there's no testimonial evidence that any medical doctor advised Mr. Mousser to quit working. It was his decision. And this -- there's a record here that, again, as I said, I would characterize this as an off-the-cuff discussion. It's certainly not a medical directive. So there is a lack of support that Mr. Mousser's decision to quit working and to retire when he did had a medical basis to it.
Q. Now, you mentioned Dr. Andrew Rockwood. Who is he?
A. Dr. Rockwood is someone that Mr. Mousser regards very

12:06:19 highly. He said -- actually, he told me -- he said,
12:06:22 "Dr. Rockwood saved my life." Dr. Rockwood is the treating
12:06:26 neurologist.
12:06:27 Q. And so he provides care and treatment for plaintiff
12:06:30 related to his kidney?
12:06:31 A. Yes.
12:06:32 Q. And did you read -- did you review Dr. Rockwood's medical
12:06:34 records?
12:06:35 A. Yes.
12:06:36 Q. What significance did those medical records have for your
12:06:39 opinion on a lost earning capacity?
12:06:40 A. Well, they're consistent with his testimony, which is he
12:06:44 never told him to quit working. He said, "On the contrary, I
12:06:48 would have told him to continue to work because it's helpful
12:06:51 for him."
12:06:53 Q. Now, is this next excerpt the testimony from Dr. Rockwood
12:06:59 that you're referring to?
12:07:02 A. Yes, it is.
12:07:03 Q. And what significance does this have on your opinion?
12:07:06 A. It's exactly what I just testified to. He said that, "I
12:07:08 would not have told him to quit working. I would have
12:07:10 encouraged him to continue to work. I would have said yes,
12:07:13 work."
12:07:15 Q. And who is Dr. Daniel Flood?
12:07:17 A. Dr. Daniel Flood is a treating nephrologist of

Mr. Mousser's.

Q. And I believe earlier in the case, plaintiff testified that he rarely saw Dr. Flood and that Dr. Flood was not very familiar with plaintiff's condition. Did Dr. Flood, nonetheless, testify under oath about his impression of the plaintiff's condition?

A. He did. He talked about a lot of things. He talked about the diagnostic testing that he prescribed for Mr. Mousser. He talked about his creatinine levels. He talked about how he was doing after the kidney transplant, and he did testify as well.

Q. Did he talk anything about Mr. Mousser's ability to work?

A. Yes. He was asked questions in that regard.

Q. And what does this demonstrative tell us about his responses?

A. Basically it's -- his opinion was consistent with Dr. Rockwood, the urologist, opinion that he would not have encouraged him to continue to work. [sic] On the contrary, he would have said, "I would have encouraged him to continue to work."

Q. Now, how do the opinions of those two doctors who take care of Mr. Mousser compare with the physicians you consulted with?

A. They're almost identical. They're very consistent. Both his treating nephrologist, his treating urologist encouraged him to continue work. They testified that they would not have

told him, "Don't continue to work." And Dr. Stadler and Dr. Johnstone provided basically the same thing to me, which is consistent with my own experience, just the fact that you just have one kidney does not exempt you from the workplace. Many people are born with one kidney. About 1 out of 1,000 people are born with one kidney. Many people are kidney donors and they have one kidney, and they are capable of working.

Q. Now, plaintiff's unemployability determination has come up several times during this trial. Did you review that record in your reviewing materials for this case?

A. Yes, I did.

Q. And how does that factor into your opinion?

A. It doesn't change any of my opinions. There's a disposition page that lists -- I think it's page 2 out of a five-page report -- the evidence that was considered, and the evidence that was considered to render that opinion is very, very, very scant.

Most of it is composed of disability questionnaires and an application that Mr. Mousser submitted, and there's no medical records, there's no testimony that was considered. It's for a very finite period. I believe the first record is December 2023, and then it goes through spring of 2024.

Again, there's no medical input. There is -- one of the documents that was submitted was a plaintiff-retained vocational expert, who's not testifying in this trial, and

that's basically it. The records that are missing are very interesting. My report is not considered, for example. There's no medical records that are considered in that opinion. So I did consider it, and it does not change my opinions.

Q. Does that determination predate the testimony of the two doctors taking care of Mr. Mousser?

A. Yes. I believe the testimony was made in August of 2024.

Q. Now, who is Richard Eugene Mercer?

A. Mr. Mercer is -- he is the president and owner of Mercer Motorcars. He is a long-time friend of Mr. Mousser. Mr. Mousser testified about their friendship. I think he referred to him as his best friend several times. And he was Mr. Mousser's last employer from January through October 2023.

Q. Did Mr. Mercer testify about plaintiff's ability to work?

A. Yes.

Q. And does this reflect the testimony? Can you tell us a little bit about what it says?

A. Yes. Mr. Mercer was asked questions about his observations of Mr. Mousser. He was asked questions whether or not he believed that Mr. Mousser was capable of performing his job from a physical perspective. He asked if he believed Mr. Mousser was capable of performing his job from a mental functioning perspective, and he responded affirmatively to both of those questions.

Q. Now, earlier, plaintiff said depression and anxiety were

12:11:49 contributing to issues at work. You reviewed plaintiff's
12:11:52 employment records?
12:11:55 A. Yes.
12:11:55 Q. Was there any record of issues at work in his employment
12:11:58 records?
12:11:59 A. There were none, no. Mr. Mercer was asked about that.
12:12:04 Mr. Mercer was praiseworthy of Mr. Mousser as an employee. He
12:12:09 said that in their car dealership, Mr. Mousser was responsible
12:12:14 for selling approximately 40 percent of the vehicles per month.
12:12:18 And he -- again, he praised his long-standing knowledge in the
12:12:22 industry. He said not only was he contributing in terms of
12:12:25 sales, but he was also doing things above and beyond his job
12:12:28 description. He was working with the mechanics, getting the
12:12:31 cars ready for sale. So, no, there's no indication that there
12:12:34 was any impairment either physically or let's say from an
12:12:38 emotional perspective.
12:12:39 Q. And did plaintiff see a psychologist for his anxiety and
12:12:43 depression?
12:12:44 A. He had been treating with a Dr. Mueller through the VA.
12:12:47 He had at least ten sessions with her.
12:12:49 Q. Did you review her deposition and her medical records?
12:12:52 A. Yes.
12:12:53 Q. Did she ever recommend plaintiff stop working?
12:12:56 A. She never did. In fact, again, her recommendations were
12:13:00 consistent with the treating nephrologist and the treating

12:13:03 urologist and the two treating specialists with whom I
12:13:06 consulted. She encouraged him to be active, as active as
12:13:10 possible.
12:13:13 Q. During your four-hour interview with Mr. Mousser, did he
12:13:17 have any difficulty concentrating?
12:13:19 A. He did not. In my report, I made some clinical
12:13:23 observations about his memory, his concentration. They were
12:13:26 good. They were within normal limits.
12:13:28 Q. What about his memory?
12:13:30 A. Same. Yeah, memory, concentration, I made some clinical
12:13:34 observations that I documented. Expressive language, receptive
12:13:39 language, his affect, all of those things, again, I commented
12:13:42 on that.
12:13:43 Q. Was he also upset at times during your --
12:13:45 A. Yes. Yes. He had an appropriately -- what I would call
12:13:49 appropriately modulated affect. Affect is your -- how you
12:13:53 present, what you project.
12:13:56 Q. Did he also react positively or come off as personable to
12:13:59 you?
12:14:00 A. Yes, he did. He was emotional, sad, somewhat tearful at
12:14:04 times, at the appropriate times when discussing his condition,
12:14:09 his prognosis, the health problems that he has had, and there
12:14:12 were other times where he was, when we had pleasurable
12:14:16 experiences, pleasurable discussions, very animated and
12:14:20 engaged.

12:14:21 Q. Can you give us an example?
12:14:24 A. Yes. I shared with Mr. Mousser during our discussion my
12:14:27 experience in Texas, that I had been a -- I went to graduate
12:14:30 school at Texas A&M University, and then he lit up. He got
12:14:35 very excited, and he initiated a conversation with me about a
12:14:40 former star athlete, Johnny Manziel, who was a Heisman Trophy
12:14:44 winner. He was a quarterback for Texas A&M University, and
12:14:48 apparently he worked for Mr. Mousser, and they had some
12:14:53 interesting experiences together.
12:14:54 So he got -- in my report, I said it was a jocular type of
12:14:58 conversation. He got very excited, very animated, and he
12:15:01 started telling Johnny Manziel stories. So, again,
12:15:04 appropriately modulated, sad at the appropriate times, and but
12:15:10 when he -- having a pleasant discussion, very animated and
12:15:13 elated, almost.
12:15:15 Q. Are there other -- any other medical problems that could
12:15:19 explain plaintiff's decision to leave work?
12:15:22 A. Yes, sir.
12:15:23 Q. And can you tell us about those?
12:15:26 A. Mr. Mousser has had long-standing lumbar, or low back
12:15:31 problems. He has had -- well, in 1995 he had a car accident.
12:15:37 After that, he had a L-5, S-1 surgery that he underwent. That
12:15:43 did not cure his problems. He's had chronic pain. Chronic
12:15:48 pain is defined as six months or longer of having pain
12:15:51 symptoms.

12:15:51 So from 1995 through present, he has been aggressively
12:15:55 treated through different interventional pain management
12:15:58 modalities, epidural steroid injections, medial branch blocks,
12:16:04 radiofrequency ablations, which is very aggressive, and there's
12:16:07 even been some discussion about pursuing another lumbar
12:16:10 surgery.
12:16:10 So he's had chronic lumbar problems. He's had a lot of
12:16:16 interventional pain management that is continuing to go today,
12:16:19 and he has a lot of limitations associated with that. Just his
12:16:22 lumbar problems, he said that he's limited to lifting, carrying
12:16:25 10 pounds. He has some walking limitations and so forth.
12:16:30 Q. Did Mr. Mousser describe the severity of his back pain to
12:16:33 you during the interview?
12:16:34 A. He did.
12:16:34 Q. And how did he describe it?
12:16:36 A. He said at times, his -- in his words, his back pain is,
12:16:41 quote, "unbearable."
12:16:43 Q. Are there any other health issues that are relevant?
12:16:48 A. He's had significant cardiac problems. He's had a number
12:16:52 of stent -- stents that were implanted. He's had hypertension,
12:16:56 high cholesterol issues. Unfortunately, the stents were not
12:17:00 effective, and in 2015, he went a quad- -- he had a quadruple
12:17:04 bypass, the procedure he underwent.
12:17:06 Q. And how could these conditions impact his abilities at
12:17:10 work?

12:17:11 A. They can affect you in many ways, both physically, as well
12:17:14 as psychologically. They can cause depression. They can cause
12:17:19 anxiety. They can reduce your stress tolerance. From a
12:17:22 physical perspective, what Mr. Mousser was doing, he testified
12:17:26 to this, I believe, the last, well, two days. In his business,
12:17:31 you're in and out of cars, you're exposed to very hot
12:17:35 temperatures. He was telling me some days, 108 degrees in
12:17:38 Seguin, Texas, where he was working. So it's a physical job, a
12:17:43 lot of walking, a lot of standing, and with his impairments,
12:17:46 yes, that could diminish his ability to do this job.
12:17:49 Q. And did you review any records from plaintiff's
12:17:53 psychologists where plaintiff discussed his last job?
12:17:57 A. Yes.
12:17:57 Q. Now, you are a psychologist, are you?
12:17:59 A. Yes.
12:18:00 Q. And in your experience, do patients tell you things they
12:18:05 otherwise would not tell most people?
12:18:08 A. Yes. Patients tend to be more disclosing to a mental
12:18:12 health professional than to other people, for example, people
12:18:15 who they work with, colleagues.
12:18:16 Q. And did you review any records from the psychologist --
12:18:20 her name, I believe, is Dr. Mueller -- where plaintiff
12:18:23 discussed his last job?
12:18:25 A. Yes.
12:18:25 Q. And what significance does that record have for your

opinion?
A. There's a record, I believe, from early December of 2023. Mr. Mousser resigned, and it appears it was somewhat abrupt, according to his former employer's testimony. It was unanticipated. It just happened, and he did not see it coming, according to Mr. Mercer.
Then during the therapy, Mr. Mousser disclosed to Dr. Mueller that he felt very badly about it, that he felt that he kind of walked off the job. And, again, he referred to Mr. Mercer, his last employer, as his best friend, and it had been weighing heavily on him, and it had been contributing to his depression.
Q. Did he describe how his job at Mercer Automotives compared to his prior job?
A. Yes, he indicated that -- and they testified consistent with that. Basically, he had been working with Atkission -- I think it was called Cecil Atkission Motors -- for many years. He had two tenures with them. His last tenure ended in, I believe, was December of 2022, and then he started in January of 2023 with Mercer, the Mercer Automobile Company. And so, yes, he did talk about that, sir.
Q. And did he describe it as a step forward or a step backward? What was his description?
A. Well, he rose through the ranks, so to speak, when he was with the Atkission Motor Vehicle Company. His terminal

position was general sales manager, and he had a lot of responsibility, which I enumerated in my -- my report. He was supervising over 20 people. He had finance responsibilities, and he viewed his transition to his last job, Mercer, as a step down. He felt that he was underemployed as a salesperson, somewhat of a, let's say, step going backward in his career.

Q. Was the job what he expected it was going to be when he moved to Mercer Automotives?

A. He indicated it was not what he expected. It was a disappointment to him, and his former employer, Mr. Mercer, provided similar testimony.

Q. Did plaintiff --

THE COURT: The first thing I would ask is what brand of automobile was it? You know, is it a Ford dealership, a Chevy dealership, a GMC dealership?

THE WITNESS: Mercer is a used car dealership.

THE COURT: And so it's not a new car at all?

THE WITNESS: No.

THE COURT: That was the impression I had all along, was that he was selling new cars, and he was that kind of a salesman. He's selling used cars?

THE WITNESS: He was selling used cars with Mercer, yes.

THE COURT: And it's not a branded employer? It's not like Jeep or --

12:21:15 THE WITNESS: No, not to my knowledge.
12:21:15 THE COURT: -- Chevy or Cadillac?
12:21:16 THE WITNESS: No. It was a small, family-owned --
12:21:19 Mr. Mercer testified there were six, you know, employees.
12:21:22 THE COURT: Yeah, nobody said that before I asked
12:21:24 this question. I mean, I'm thinking it's a big showplace in
12:21:28 Dallas.
12:21:28 Never mind. Set the stage, you know, when you're
12:21:40 doing something. Anyway.
12:21:41 MR. TUBIN: Understood, Your Honor.
12:21:42 Q. (By Mr. Tubin) Did plaintiff give any notice to his friend
12:21:47 and employer, Mr. Mercer, before he left?
12:21:51 A. He did not. As I mentioned, from -- based on, well, all
12:21:55 the evidence, Mr. Mercer's testimony and Mr. Mousser's
12:22:00 statements to his psychologist, no, it was -- it appeared to be
12:22:05 very abrupt. Mr. Mercer testified that he was very surprised
12:22:09 by the announcement. He did not see it coming.
12:22:11 Q. Just a few more questions. In reviewing the cost analysis
12:22:17 that plaintiff's expert, Mr. Fryar, put together, was there any
12:22:22 mental health treatment recommended?
12:22:25 A. No.
12:22:25 Q. No future cost for mental health?
12:22:28 A. Correct.
12:22:29 Q. Are there people with anxiety and depression that go to
12:22:33 work?

12:22:34 A. Very much so, yeah. It's very common.
12:22:35 Q. And can working actually mitigate symptoms of depression
12:22:38 and anxiety?
12:22:39 A. We believe very strongly in rehabilitation, and, again,
12:22:42 that's consistent with the treating doctors, the consulting
12:22:46 doctors and the treating psychologists. Work is therapeutic.
12:22:50 We believe strongly in rehabilitation that work gives you
12:22:54 purpose, it gives you self-worth, self-identity, and so that is
12:22:58 one of the reasons everyone is encouraging Mr. Mousser to be as
12:23:01 productive and work. Again, we feel it's therapeutic.
12:23:06 MR. TUBIN: Pass the witness, Your Honor.
12:23:08 THE COURT: Any cross?
12:23:09 MR. ABRAMS: Yes, Your Honor.
12:23:10 CROSS-EXAMINATION BY MR. ABRAMS:
12:23:10 Q. Dr. Shahnasarian, you charge $925 an hour; is that right?
12:23:14 A. Yes, sir.
12:23:16 Q. And in your report, you listed 238 times you'd testified
12:23:20 in about a year and a half; is that right?
12:23:24 A. In my -- my Rule 22 disclosure? Whatever it says is
12:23:28 what -- whatever it is.
12:23:29 Q. So that's about six times a month you testify?
12:23:33 A. Yes, probably.
12:23:35 Q. And your company is called Career Consultants of America,
12:23:39 Inc.?
12:23:39 A. Yes.

12:23:39 Q. It's based in Florida?
12:23:41 A. Yes.
12:23:43 Q. So I think you were here for -- you've been here for at
12:23:46 least two days, right?
12:23:48 A. Yes.
12:23:49 Q. So eight-hour days, times two, times your rate, and
12:23:54 they're covering -- the Government's covering your costs as
12:23:58 well, right?
12:23:58 A. They're paying for my time.
12:24:00 Q. So if we assume a thousand dollars for that, your
12:24:03 testimony will cost the American taxpayers $15,800 over the
12:24:07 last two days; is that right?
12:24:09 A. Whatever it is, it is, sir.
12:24:10 Q. Okay. And you've billed a total of $584,251.85 before
12:24:18 this trial; is that right?
12:24:20 A. Are you talking about all the work I did in all of these
12:24:22 cases --
12:24:22 Q. Yes.
12:24:23 A. -- or just this case?
12:24:24 Q. All the work.
12:24:27 A. Yeah, I think there's ten cases. I don't know the
12:24:29 numbers, but, you know, again, yes, I've been on this case over
12:24:31 three years with ten different plaintiffs.
12:24:34 Q. Okay. And you have two reports in front of you, right?
12:24:36 A. Yes.

12:24:37 Q. But you have three reports total?
12:24:39 A. Yes.
12:24:40 Q. And one of those reports is not in front of you. That's
12:24:44 the first report that you authored; is that right?
12:24:47 A. The first report I authored is in front of me.
12:24:49 Q. Okay. Let's look at your April 8th life care plan. Do
12:24:54 you have that in front of you?
12:24:55 A. No.
12:24:56 Q. Okay. So that is the first life care plan you authored.
12:25:00 The Government didn't introduce that one, did they?
12:25:03 A. I have two reports in front of me. I don't have that
12:25:05 report.
12:25:06 Q. And you know why they didn't give --
12:25:07 A. Let me finish, please. There's an update to the report
12:25:11 you're referencing. So that could be the reason that there
12:25:14 isn't another report here in front of me.
12:25:16 Q. And it's a fact that the reason there's an update is
12:25:19 because in your initial report, you wrote that he needs one
12:25:23 cystoscopy for the rest of his life; isn't that right?
12:25:27 A. I don't have the report in front of me.
12:25:28 Q. I'll show it to you.
12:25:28 A. I'll look at it if you'd like me to.
12:25:32 Q. I'm approaching you with your first life care plan, and if
12:25:35 we look at page 7, diagnostic tests, cystoscopy; frequency, one
12:25:42 time?

12:25:42 A. Yes.
12:25:42 Q. And you wrote this report and you said you have quality
12:25:48 control measures, and you sent it to the doctors who you're
12:25:51 relying on, including Dr. Stadler, who we just heard from,
12:25:54 right?
12:25:54 A. Yes.
12:25:55 Q. So that doctor reviewed this report and said that this man
12:26:00 needs one check of his bladder for the rest of his life, right?
12:26:05 A. No, sir. That's why it's updated. That's the final
12:26:08 report, is the update report.
12:26:09 Q. Well, this is a final report. It's got your signature on
12:26:12 it, right?
12:26:13 A. It doesn't have my signature on it.
12:26:14 Q. Okay. So your initial report was a draft, but the
12:26:18 Government turned it over to us, you think?
12:26:21 A. I don't know what the Government's process is, but I tell
12:26:24 you what my process is, and I testified to it earlier. After I
12:26:28 elicit the recommendations from the -- I distribute it to the
12:26:32 contributors, and if there's a change in the protocols, I
12:26:34 implement the change. I'm not a medical doctor. I defer to
12:26:36 the medical doctors.
12:26:37 Q. So it's a fact that before you issued the April
12:26:40 8th report, you sent it to the -- to Dr. Stadler to review, and
12:26:44 he checked off on it, isn't it?
12:26:46 A. I don't think he checked off on it. That's why we have an

update report, sir.
Q. So you said you have three reports?
A. Yes.
Q. And your second report he had not looked at; is that right?
A. I believe he did look at it. I don't know for a fact, but it was transmitted --
Q. Okay.
A. -- to the contributors, Dr. Johnstone and Dr. Stadler.
Q. So you wrote a report that says that he needs one cystoscopy for the rest of his life, right?
A. No, the update report doesn't say that. We have the board that shows what it says.
Q. I understand you don't want to talk about your first report, but you just saw it, that you wrote it needed -- he needed one cystoscopy for the rest of his life; is that true? On your April 8th, 2025, report, does it say that he needed one cystoscopy?
A. I'm glad to talk about the first report and all the reports in the proper context. That's what the key is, the proper content.
Q. The proper context is it was wrong, isn't it?
A. No, sir. The proper --
Q. So it's correct, then?
A. -- context -- let me finish. The proper context is that

there are procedures before a final report is completed, and the procedures involve what I described earlier, which is transmitting the document. I'm not a medical doctor. I don't prescribe cystoscopies. Medical doctors do that. That's why we have the quality control that I mentioned. That's why we have the update report.

Q. Okay. So the report, your April 8th report, which you then had to update, didn't go through the quality control measures, correct?

A. Wrong. I just told you they did. That's what triggered this update report, sir.

Q. Well, why do I have a final copy of an April 8th report if it hadn't gone through the quality control measures?

A. Sir, I don't know why you're not understanding me, but I just described the process that's implemented. The report is drafted. It's circulated. If there are changes, then I, of course, will update the report. If there --

Q. So --

A. Let me finish. If there are no changes, then the process stops. In this case, there were changes. That's what triggered the update report.

Q. Okay. So we have this report and it says he needs one cystoscopy for the rest of his life, and you issued that report within three months of this man having a tumor removed from his bladder. You understand that, right?

12:29:06 A. When I saw him, it was 15 days from the time he had the
12:29:10 tumor removed.
12:29:11 Q. Okay. So, now, let's talk about this. This is your
12:29:16 actual now updated opinion, right?
12:29:18 A. The update report that was admitted to evidence is my
12:29:22 opinion, sir.
12:29:24 Q. Well, one of these shows your current belief about what
12:29:30 he's going to need for his future care, right?
12:29:34 A. No, that's not correct. I'm not a medical doctor. I've
12:29:37 mentioned that many times. It's not my belief what he's going
12:29:40 to need. It's what was transmitted to me by Dr. Stadler.
12:29:43 Q. So --
12:29:43 A. What I have -- please.
12:29:45 Q. Please.
12:29:45 A. What I have are the cost information. That's my opinions
12:29:50 that I'm adding. But in terms of the intervention and the
12:29:53 protocol, those are related to me by Dr. Stadler.
12:29:56 Q. Okay. So but you understand because you do this six times
12:29:59 a month, that these numbers go into a total, right?
12:30:03 A. Well, that's a mischaracterization. I testify about six
12:30:05 times a month. I don't write life care plans for testimony six
12:30:09 times a month. The second part of your question is, what, they
12:30:12 go into a total?
12:30:13 Q. Yes.
12:30:13 A. Yes, they get computed by an economist, who forecasts what

12:30:18 the future value is.
12:30:18 Q. Okay. We'll talk about what that total is, but this right
12:30:22 here, you wrote, "Therapeutic needs." This is the rest of his
12:30:25 life, what Dr. Stadler says his therapeutic needs are for the
12:30:29 rest of his life, correct?
12:30:29 A. That's -- that's what Dr. Stadler computed to me.
12:30:32 Q. Okay. So I'm reading this. I'll move a little closer.
12:30:37 This says for the rest of his life, he needs a urology
12:30:40 follow-up appointment one time?
12:30:42 A. That's what Dr. Stadler indicated.
12:30:45 Q. So this man has had two cancers. He just had a tumor
12:30:51 removed from his bladder, and he needs to go to the doctor one
12:30:53 time for the rest of his life?
12:30:54 MR. TUBIN: Objection, Your Honor. This is outside
12:30:55 the scope of this witness's expertise. He's not a medical
12:30:58 doctor.
12:30:59 THE COURT: Overruled. He did the report.
12:31:04 A. The protocol is what Dr. Stadler related to me and what he
12:31:07 signed off on.
12:31:09 Q. And right here it says, "He needs a 20-minute face-to-face
12:31:13 with the -- with the doctor." Doesn't it say that?
12:31:16 A. That's what the CPT code calls for, sir.
12:31:19 Q. Okay. So when the Government presents a total number for
12:31:21 the cost of this man's care for the rest of his life, it's
12:31:24 based on one doctor's appointment and five cystoscopies or

something like that?
A. It's based on what the life care plan contains.
Q. And the life care plan -- you've got it. How many cystoscopies did you say he needs for the rest of his life?
A. One in the next year, and then one to two years 2 through 28, and then annually from year 2029 through year 2030.
Q. Okay. And I'm going to approach you with the summary of economic damages calculation that the Government has put together for, I believe, the next witness. Can you read the total cost of his future care that the Government says he needs based on your life care plan?
A. $4,630.
Q. So that's about half of what you're going to get paid for your testimony today. This man, who's had two cancers, who served his country, he needs 4 -- what was the number?
A. $4,630.
Q. To protect him from his medical care for the rest of his life?
A. That's what was communicated to me.
Q. Okay. So your next opinion, then, is that he's not actually totally disabled based on individual unemployability, right?
A. He's capable of working. He has been capable of working.
Q. And what does TDIU mean?
A. CDIU? I'm not sure I'm familiar with your -- with that

12:33:08 acronym.
12:33:09 Q. So you don't know that the VA is giving him total
12:33:12 disability based on individual unemployability?
12:33:15 A. I read that report. I commented on my direct testimony.
12:33:18 Q. Right. So but you disagree with that assessment?
12:33:21 A. Absolutely.
12:33:22 Q. And so are you aware -- you've been here. You're aware
12:33:24 the Government's position is he is going to certainly get that
12:33:28 for the rest of his life. Do you understand that?
12:33:33 A. I don't know about that, sir. That's not -- I'm not an
12:33:36 expert in that.
12:33:37 Q. Okay.
12:33:37 A. I'm an expert on assessing his ability to work, and I
12:33:41 believe he has been and continues to be able to work. That's
12:33:43 my opinion.
12:33:46 Q. Let's look -- you've got your rehabilitation evaluation
12:33:49 report in front of you. At page -- if you could turn to page
12:33:59 63, there is paragraph that starts, "Functional impact," and I
12:34:09 can show it to you if it's easier for me to just come up there.
12:34:12 A. Just give me a second.
12:34:12 (Brief pause.)
12:34:12 A. Okay.
12:34:27 Q. Tell me if I read this right. It says, "Does the
12:34:31 veteran's kidney condition, including neoplasms, if any, impact
12:34:35 his ability to work?" And it says, "Yes." Did I read that

12:34:39 right?
12:34:39 A. You did.
12:34:40 Q. And then three lines down or so, it says, "He has urinary
12:34:44 frequency reasonably associated with post-operative changes of
12:34:47 the bladder cuff resection." Did I read that right?
12:34:49 A. Yes.
12:34:53 Q. If we go to page 64 under Assessment, it says, "Depression
12:34:58 most likely secondary to the surgery and his diagnosis
12:35:02 compounded by insomnia and sleep deprivation." Did I read that
12:35:05 correctly?
12:35:05 A. Yes.
12:35:07 Q. And so that's -- the first one is by Douglas Jenkins, M.D.
12:35:11 The second one is by Richard Schilling, M.D., right?
12:35:15 A. Yes.
12:35:15 Q. And if we look at page 65, at the bottom of the page under
12:35:22 Functional Impact, you with me?
12:35:25 A. Yes.
12:35:25 Q. Does it say, "Does the veteran's kidney conditions,
12:35:28 including neoplasms, if any, impact his ability to work?
12:35:31 Yes."? Does it say that?
12:35:33 A. You read it right.
12:35:36 Q. Page 69, sir, under Functional Impact, does it say, "Does
12:35:45 the veteran's condition impact his -- of the bladder or urethra
12:35:49 impact his ability to work? Yes."?
12:35:52 A. You read it correct again.

12:35:53 Q. So now we've got two more. We're up to four medical
12:35:56 professionals. Then if you go to page 70, sir, under
12:36:03 Functional Impact, "Do the conditions listed in the diagnosis
12:36:07 section impact his ability to perform any type of occupational
12:36:11 task such as standing, walking, lifting, sitting, et cetera?"
12:36:15 The answer is yes.
12:36:17 A. You read it correct again.
12:36:18 Q. And the next line says, General sales manager"?
12:36:24 A. Yes, that's what it says. I considered all of this.
12:36:28 You're reading from my report. I considered all of these
12:36:30 things, sir.
12:36:31 Q. Page 71, sir, it says, "Problem, veteran got worse news.
12:36:39 His kidney is really failing quickly and likely will be on
12:36:43 dialysis in six months." Does it say that?
12:36:46 A. You read it again correctly.
12:36:50 Q. Page 74, "Problem, veteran discussed his distress about
12:36:59 his recent lab results, which showed decline of functioning and
12:37:03 only -- in his only kidney. He's already gotten his affairs in
12:37:06 order and prepared his family. He is so depressed about the
12:37:10 possibility of a future involving dialysis." Did I read that
12:37:13 correctly?
12:37:14 A. Yes.
12:37:15 Q. Page 75, "Diagnosis, mood disorder due to general medical
12:37:23 condition with major depressive episodes due to kidney cancer
12:37:26 and chronic kidney disease. Occupational and social impact

12:37:30 with deficiencies in most areas such as work." Does it say
12:37:34 that?
12:37:35 A. Yes, sir. You're reading -- you're reading it correctly.
12:37:40 Q. We've got two more, and then I'll ask you a question.
12:37:43 Page 88. We can skip these. Let's go to page 47, and I'm
12:38:01 going to show you this one because it's in the middle of the
12:38:03 page.
12:38:03 This is you in your conclusion section, and you write, "I
12:38:14 am unaware of any evidence that associates a medical basis for
12:38:22 Mr. Mousser being unable to work as an automotive salesperson
12:38:28 manager secondary to his UTUC." Did you write that?
12:38:31 A. Yes.
12:38:32 Q. Any evidence?
12:38:33 A. That's correct because you're -- the statement there has
12:38:36 to do with causal link between different medical problems,
12:38:39 which I acknowledge he has. I wrote this report. You read it
12:38:42 correctly. And exempting him from being an auto salesperson,
12:38:45 that's the thing you're -- again, context is important, sir.
12:38:49 Q. So one of the medical conditions that renders him unable
12:38:52 to work is insomnia, right, according to the medical records?
12:38:58 A. No, I don't agree with the statement the way you pose it.
12:39:00 That's an incorrect question. That does not render him unable
12:39:03 to work, but it is a medical condition that he has had.
12:39:07 That's -- that I would agree with. But does it render him
12:39:09 unable to work? No, that's not a correct statement.

12:39:12 Q. And page 88, "Insomnia as a result of his medical
12:39:17 condition associated with contaminated water while at Camp
12:39:20 Lejeune."
12:39:21 A. Can you just slow down a little? You're skipping around
12:39:23 fast.
12:39:24 Q. Let's just --
12:39:24 A. What page, 88?
12:39:25 Q. Let's just say this: Do you think that your report is
12:39:29 accurate when it says that there is no evidence, no medical
12:39:33 evidence to support --
12:39:35 A. There's medical evidence that indicates he has different
12:39:39 problems, so there's no question about that. That's all well
12:39:43 documented in my report. But is it -- is there a causal link
12:39:45 between that and saying he is exempt from working? No.
12:39:50 And the information that you cited to me just now, much of
12:39:53 it is from 2021, 2022. He proved that he was capable of
12:39:57 working. He went back after 2022 and he worked for ten months.
12:40:02 He did an admirable job. He was the top salesperson in his
12:40:06 dealership, small dealership, and he left for reasons, in his
12:40:11 boss's mind, that were unrelated to any medical problems or
12:40:14 emotional difficulties. That's what the truth is, sir.
12:40:17 THE COURT: All right. We're going to stop at this
12:40:19 point. Are you about finished with him or not? It doesn't
12:40:22 matter. How are we doing? You got another witness?
12:40:26 MR. BAIN: We have one final witness, live witness,

12:40:28 Your Honor.
12:40:29 THE COURT: One more?
12:40:29 MR. BAIN: One more live witness, and then we have some depositions we'd like to submit.
12:40:31
12:40:33 THE COURT: Yeah, we'll look at those. We're going to finish today.
12:40:35
12:40:36 MR. BAIN: Yes.
12:40:39 THE COURT: We'll be in recess until ten of 2:00.
12:40:42 (Luncheon recess taken from 12:40 p.m. to 1:58 p.m.)
01:58:34 THE COURT: Do you have any more cross?
01:58:35 MR. ABRAMS: No, Your Honor.
01:58:36 THE COURT: No?
01:58:36 MR. ABRAMS: No.
01:58:37 THE COURT: Okay. Do you have any --
01:58:38 MR. TUBIN: A handfull of redirect, Your Honor.
01:58:38 THE COURT: What?
01:58:38 MR. TUBIN: A handful of redirect questions.
01:58:38 THE COURT: Go ahead.
01:58:42 MR. TUBIN: First, I would like just to move into evidence the demonstratives that we used during the course of Dr. Shahnasarian's testimony.
01:58:47
01:58:48
01:58:48 THE COURT: Okay. They'll be received.
01:58:48 (Defendant's Exhibit Number 2016 received.)
01:58:48 REDIRECT EXAMINATION BY MR. TUBIN:
01:58:52 Q. Dr. Shahnasarian, did you review a document authored by

01:59:05 plaintiff's life care planner, Michael Fryar, earlier this
01:59:07 month?
01:59:07 A. Yes.
01:59:09 Q. What was that document?
01:59:10 A. I believe it was a supplemental report.
01:59:13 Q. And what did it report on?
01:59:15 A. Basically any change, there -- he indicated there was no
01:59:20 change in his opinions.
01:59:21 Q. Did it summarize any period of medical records?
01:59:24 A. Yes.
01:59:25 Q. What period, if you recall?
01:59:27 A. I don't recall, but I believe it was post-dating his
01:59:30 initial report.
01:59:31 Q. Was it closer to 2024 to 2026 or sometime in the past?
01:59:35 A. No, about that time frame.
01:59:37 Q. And was kidney transplant discussed anywhere in that
01:59:42 summary?
01:59:42 A. No.
01:59:43 Q. What about dialysis?
01:59:45 A. No.
01:59:45 Q. Did the report indicate the stability of plaintiff's --
01:59:53 A. He indicated in that report that Mr. Mousser's condition
01:59:57 was stable.
01:59:57 MR. TUBIN: I have no further questions.
02:00:00 THE COURT: All right. Any cross?

02:00:01 MR. ABRAMS: No, Your Honor. Thank you.
02:00:02 THE COURT: All right. Thank you, sir.
02:00:03 THE WITNESS: Thank you.
02:00:03 THE COURT: You're excused.
02:00:04 (The witness exits the witness stand at 2:00 p.m.)
02:00:04 MR. BAIN: Your Honor, we call as our final live witness Tricia Yount, economist.
02:00:32 MS. KONSTANTOPOULOS: Your Honor, may I approach to provide exhibits that I intend to introduce?
02:00:35 THE COURT: Ma'am?
02:00:35 MS. KONSTANTOPOULOS: May I approach to provide exhibits that I intend to introduce?
02:00:40 THE COURT: Give it to the clerk.
02:00:41 MS. KONSTANTOPOULOS: Thank you, Your Honor.
02:00:41 THE CLERK: Place your left hand on the Bible, raise your right hand, and state and spell your name for the record.
02:00:41 THE WITNESS: Tricia Yount, T-R-I-C-I-A Y-O-U-N-T.

TRICIA YOUNT, CPA, MAFF,

02:00:41 was sworn at 2:00 p.m., and testified as follows:

DIRECT EXAMINATION BY MS. KONSTANTOPOULOS:

02:01:07 Q. Good afternoon, Ms. Yount. Can you please state your full name for the record?
02:01:24 A. Tricia Morris Yount.
02:01:25 Q. What is your occupation, and what do you do?
02:01:28 A. I am a forensic economist. I help attorneys with the

02:01:36 economic and financial aspects of their cases.
02:01:40 Q. How long have you performed this type of analysis for
02:01:43 litigation?
02:01:44 A. I've been doing this for about 22 years.
02:01:47 Q. Can you please tell the Court about your educational
02:01:50 background?
02:01:51 A. I have a bachelor's degree in financial management from
02:01:55 Clemson University. I am a licensed CPA, certified public
02:01:59 accountant, and I have a certification as a master analyst in
02:02:04 financial forensics.
02:02:06 Q. Thank you. And can you please tell the Court about any
02:02:10 associations that you have that you already -- you haven't
02:02:12 already spoken to regarding your profession?
02:02:15 A. Yes, I am a member of the National Association of Forensic
02:02:19 Economists. I'm on their Board of Directors. I just got off
02:02:22 the board of the American Academy of Economic and Financial
02:02:26 Experts. I am also a member of the National Association of
02:02:32 Certified Evaluators and Analysts, and also a member of the
02:02:36 AICPA, the American Institute of Certified Public Accountants.
02:02:40 Q. Can you please summarize your professional experience for
02:02:43 the Court?
02:02:45 A. So I've been doing this work for 22 years. The last two
02:02:48 years I've been working for Yount Forensic Consulting, my own
02:02:52 firm, and I am also currently an independent contractor for
02:02:56 Forvis Mazars. I've been employed with that company for 22

years.
Q. Have you been retained to provide expert testimony prior to today's case?
A. Yes.
Q. How many times?
A. Oh, hundreds.
Q. And what types of cases were you retained in?
A. I primarily work on cases involving personal injury, wrongful death, and wrongful termination cases.
Q. Are you retained primarily by plaintiffs or defendants in your expert work?
A. I mostly work for plaintiffs. That's who's been retaining me. My work load is about 80 percent plaintiff, 20 percent defense.
Q. Have you been qualified as an expert in the field of economic and financial damages before this?
A. Yes.
Q. Have you prepared a CV in this case?
A. Yes.
Q. Pointing your attention to the first document in your folder, which is marked as United States Exhibit 983, does this accurately summarize your education, training and experience?
A. Yes, it does.
MS. KONSTANTOPOULOS: The United States moves Exhibit 983 into evidence.

02:04:02 THE COURT: Yes, it'll be received.
02:04:04 (Defendant's Exhibit Number 983 received.)
02:04:04 MS. KONSTANTOPOULOS: The United States also tenders Tricia Yount as an expert in the field of economic and financial damages.
02:04:10 THE COURT: She'll be recognized as an expert and allowed to express her opinions.
02:04:14 Q. Now, just to be clear for the Court, do you have any opinions concerning whether the plaintiff's alleged exposure to contaminated water at Camp Lejeune caused any of his alleged medical conditions?
02:04:27 A. No.
02:04:28 Q. Do you assume, for purposes of your opinions, that the plaintiffs have met their burden of proof in this case in order to opine on damages?
02:04:35 A. Yes, I do.
02:04:36 Q. Ms. Yount, what were you asked to do in this case?
02:04:41 A. I was asked to evaluate the damages as proposed by the plaintiff's expert, Mr. Staller. I was asked to calculate the present value of future medical care based on Dr. Shahnasarian's life care plan, and I was also asked to calculate the present value of offsets based on government payments on behalf of Mr. Mousser that could be a potential offset in this case.
02:05:10 Q. What documents did you reasonably rely on to form your

02:05:14 opinions?
02:05:15 A. I've got various expert reports for both the plaintiff and
02:05:18 the defense, deposition testimony of the plaintiff and his
02:05:24 wife. I've got a lot of VA documents and other statistical
02:05:30 economic data that I've researched.
02:05:32 Q. And did you prepare an expert report to summarize your
02:05:35 opinions in this case?
02:05:36 A. Yes, I did.
02:05:37 Q. Pointing your attention to the second document in the
02:05:40 folder in front of you, which is marked as United States
02:05:43 Exhibit 1002, is this a copy of the expert report you prepared
02:05:47 in this case?
02:05:48 A. Yes.
02:05:49 MS. KONSTANTOPOULOS: The United States moves Tricia
02:05:50 Yount's expert report dated October 15, 2026, into evidence as
02:05:55 Exhibit 1002.
02:05:57 THE COURT: It's received.
02:05:59 (Defendant's Exhibit Number 1002 received.)
02:05:59 Q. Now, before we get into the details of each category of
02:06:02 damages that you opined on, I'd like to give the Court a high-
02:06:05 level summary of your opinions in Mr. Mousser's case. Have you
02:06:09 prepared any demonstrative exhibits to summarize and illustrate
02:06:13 your opinions?
02:06:14 A. Yes, I have two.
02:06:16 Q. This is also the third document in the folder in front of

02:06:19 you.
02:06:19 MS. KONSTANTOPOULOS: If my colleague could please
02:06:22 place a blow-up of Ms. Yount's demonstrative exhibits on the
02:06:25 easel.
02:06:25 Q. Ms. Yount, using your demonstrative exhibits, can you
02:06:34 please provide a summary of your opinions for the Court?
02:06:40 A. Yes. The left side, the first one on the left, is a
02:06:44 summary of the economic damages for the earnings and the future
02:06:49 medical expense based on Dr. Shahnasarian's report, and on the
02:06:55 right side, these -- this is a summary of all of my -- of the
02:06:57 offset calculations that I've done.
02:06:59 There are three different columns because there's three
02:07:04 different scenarios. We have two different life care plans,
02:07:08 and one of the life care plans has two different options in it,
02:07:11 so I've done an offset calculation for all three of those.
02:07:15 Looking across that chart over there, the first line item,
02:07:21 which I can't see so I have to look at right here, is past VH
02:07:24 medical -- VHA medical costs. That would account for the value
02:07:30 of medical care that Mr. Mousser has received from the
02:07:33 Government to date.
02:07:34 The second line item across, which are the colored ones,
02:07:38 this is labeled "Future VHA Medical Costs." This would be the
02:07:44 value of what the Government will pay for all of the different
02:07:48 items in the life care plans. And Dr. Shahnasarian's report,
02:07:52 that's the blue one. And then Mr. Fryar's reports, those are

02:07:56 the two orange ones. He has an option for a kidney transplant
02:08:00 and then an option for dialysis, so we've got two over there.
02:08:03 The last two items on there are VBA benefits. We've got
02:08:07 past and future. This would be disability benefits that
02:08:10 Mr. Mousser has received to date that are all related to Camp
02:08:13 Lejeune, and then the futures would be what's expected to be
02:08:17 received in the future that are related to Camp Lejeune.
02:08:21 Q. Thank you. And just to clarify, does VHA in your
02:08:24 demonstrative stand for Veterans Health Administration?
02:08:27 A. Yes.
02:08:28 Q. And does VBA stand for Veterans Benefits Administration?
02:08:32 A. Yes.
02:08:33 MS. KONSTANTOPOULOS: And, Your Honor, may I approach
02:08:34 to provide Ms. Yount with a copy of the laser pointer so that
02:08:37 she can identify what she's speaking of?
02:08:39 THE COURT: Yes.
02:08:40 MS. KONSTANTOPOULOS: Thank you.
02:08:53 THE COURT: Okay.
02:09:05 Q. And, Ms. Yount, to be clear again, you're not offering an
02:09:09 opinion on how the Court should deduct offsets from any
02:09:12 potential award in this case, correct?
02:09:13 A. Correct.
02:09:15 Q. You're calculating offsets based on standard methodology
02:09:18 applied in your field, correct?
02:09:19 A. Yes.

02:09:19 MS. KONSTANTOPOULOS: Your Honor, we offer what has
02:09:22 been identified as United States Exhibit 2016 [sic] for
02:09:26 illustrative purposes.
02:09:28 THE COURT: It'll be received.
02:09:30 (Defendant's Exhibit Number 2017 received.)
02:09:30 Q. Now, yesterday, Mr. Staller provided an opinion on loss of
02:09:34 earnings and the present value of future medical expenses.
02:09:38 First, can you tell the Court, what is your assessment of
02:09:42 Mr. Staller's loss-of-earning calculations?
02:09:46 A. I have no issues with his methodologies, his assumptions,
02:09:49 his calculations. The only variance we have is he's basing his
02:09:55 calculations off of a vocational expert, who says Mr. Mousser
02:09:59 is unemployable, and I'm basing my opinions off of a vocational
02:10:03 expert, Dr. Shahnasarian, who says that his Camp Lejeune-
02:10:07 related injuries have not caused a loss-of-earning capacity.
02:10:11 Q. And what is your opinion regarding Mr. Mousser's loss of
02:10:14 earnings using Dr. Shahnasarian's life care plan?
02:10:17 A. It's zero. He says it's not related.
02:10:21 MS. KONSTANTOPOULOS: And, Your Honor, for the
02:10:22 record, Exhibit 2016 that I referenced should actually be 2017.
02:10:29 THE COURT: Zero, what was that an answer to?
02:10:31 THE WITNESS: Let me point here. I don't want to
02:10:34 hurt anyone. Lost earnings right there is zero.
02:10:36 Dr. Shahnasarian says his loss earnings --
02:10:38 THE COURT: Okay.

02:10:38 THE WITNESS: -- it's not related to Camp Lejeune.
02:10:40 THE COURT: Okay. Thank you.
02:10:41 Q. And the final item Mr. Staller testified to was the
02:10:46 present value of future medical care. What is your assessment
02:10:49 of Mr. Staller's opinion regarding the present value of future
02:10:53 medical care?
02:10:55 A. Same as the earnings. I have no issues with his
02:10:57 methodologies, his assumptions, his calculations. He's just
02:11:00 relying on a life care plan from Mr. Fryar, and I'm relying on
02:11:05 a life care plan from Dr. Shahnasarian, so those are our only
02:11:08 differences.
02:11:10 Q. And did you calculate the present value of future medical
02:11:13 care using Dr. Shahnasarian's life care plan?
02:11:15 A. Yes, I did.
02:11:17 MS. KONSTANTOPOULOS: Your Honor, I'm showing you a
02:11:19 blown-up version of Table 1 from Ms. Yount's expert report that
02:11:23 has already been admitted into evidence.
02:11:25 Q. Ms. Yount, using your table, can you please explain to the
02:11:29 Court how you calculated the present value of future medical
02:11:32 care using Dr. Shahnasarian's life care plan?
02:11:35 A. Yes. So this -- these are all the items. There's three
02:11:39 items listed in Dr. Shahnasarian's report, his life care plan,
02:11:43 that he says Mr. Mousser needs. And I've taken the items in
02:11:46 his plan and I have forecasted the increase in the cost of
02:11:50 those items over Mr. Mousser's life expectancy for whenever

02:11:55 Dr. Shahnasarian says it's needed, and I've added all of those
02:11:58 up to get the total amount of medical care, and then I've
02:12:02 discounted it back to present-day value, how much is needed
02:12:05 today. So if it's invested and earns interest each year, we
02:12:08 reach the amount we calculated in the first step.
02:12:11 Q. And just to clarify for the Court, you don't have an
02:12:15 opinion on which life care plan should be selected by the Court
02:12:19 in this case; is that correct?
02:12:21 A. Correct.
02:12:22 Q. And what is your opinion regarding the present value of
02:12:25 future medical care using Dr. Shahnasarian's life care plan?
02:12:29 A. That's right there at the top. I can't read it, though.
02:12:40 $4,630.
02:12:41 Q. Thank you. And did you use the same methodology to
02:12:43 calculate the present value of future medical care that the
02:12:47 plaintiff's forensic economist, Mr. Staller, used?
02:12:50 A. Yes, I did.
02:12:51 Q. Thank you. Now I'm going to direct your attention back to
02:12:54 the second illustrative exhibit, which was your summary of
02:12:58 offsets. What are the total costs of past medical care that
02:13:04 have been provided to the Government to Mr. Mousser?
02:13:07 A. The amount that's been provided by the Government for
02:13:10 Mr. Mousser is $62,854.
02:13:15 MS. KONSTANTOPOULOS: And for the record, Your Honor,
02:13:17 that amount has been stipulated to by the parties.

02:13:20 THE COURT: Okay.
02:13:22 Q. Sticking with that same demonstrative, you included the
02:13:26 value of future medical care that will be provided by the
02:13:29 Government under Dr. Shahnasarian's life care plan and two
02:13:33 options detailed in Mr. Fryar's cost analysis.
02:13:36 Let's start by going through how you calculated future --
02:13:40 the future value of medical care that will be provided by the
02:13:42 Government under Dr. Shahnasarian's life care plan.
02:13:45 MS. KONSTANTOPOULOS: I'm now showing, Your Honor,
02:13:48 what is a blown-up version of Table 2 of Ms. Yount's expert
02:13:51 report.
02:13:59 Q. Ms. Yount, does this table accurately summarize your
02:14:02 calculations?
02:14:03 A. Yes.
02:14:05 Q. Can you please walk us through how you determined future
02:14:08 VHA medical costs using Dr. Shahnasarian's life care plan?
02:14:13 A. So the most important part of this is I have another
02:14:16 expert report by Dr. Miller. Dr. Miller provided a report of
02:14:22 what the Government would pay for all of the specific items in
02:14:26 Dr. Shahnasarian's report.
02:14:28 So I've taken the items just like I did in the life care
02:14:32 plan calculation just a little bit ago. I've taken all of the
02:14:35 items as stated in Dr. Shahnasarian's report, but I've taken
02:14:39 the cost, the item, the payment, the rates from Dr. Miller's
02:14:43 report, and then I have again forecasted the increase in that

02:14:48 over Mr. Mousser's life expectancy to get the total amount of
02:14:53 payments that the Government would pay for all of the care in
02:14:56 Dr. Shahnasarian's report, and then I've discounted it back to
02:14:58 present-day value.
02:15:01 Q. And did Dr. Miller provide the Government rates for all of
02:15:04 the health care costs listed in Dr. Shahnasarian's life care
02:15:06 plan?
02:15:08 A. Yes, he did.
02:15:08 Q. Okay. And do you regularly rely on other experts to
02:15:12 provide inputs to perform your calculations and form opinions?
02:15:16 A. Yes.
02:15:17 Q. Can you please explain to the Court how you calculated the
02:15:21 present value of future care that will be provided by the
02:15:23 Government under Dr. Shahnasarian's life care plan?
02:15:28 A. I just went through that.
02:15:29 Q. Okay.
02:15:30 A. And that's the total right there on that left side.
02:15:32 Q. And what is that total?
02:15:36 A. That total is $1,613.
02:15:41 Q. Thank you. And you also opined on the present value of
02:15:44 future medical care that will be provided to the Government
02:15:47 under Mr. Fryar's cost analysis, so let's get into that. I'm
02:15:50 going to show you a blown-up version of Table 3 of your expert
02:15:54 report. Ms. Yount, can you please tell the Court what this is?
02:16:05 A. So this is a summary of my calculations, what the

02:16:08 Government would pay for all of the items in Michael Fryar's
02:16:13 report, the plaintiff's expert, medical expert.
02:16:18 Q. And do these calculations also rely on the expert reports
02:16:23 of Mr. Fryar and Dr. Miller?
02:16:26 A. Correct. It's the exact same thing I just did for
02:16:28 Dr. Shahnasarian's life care plan. I've done the exact same
02:16:32 thing with Mr. Fryar's plan and using the rates that Dr. Miller
02:16:37 indicates in his report that the Government would pay for all
02:16:40 the specific items in Fryar's report.
02:16:44 Q. And where did you get the information in the first column
02:16:48 entitled "Projected Care"?
02:16:51 A. That is all from Fryar, Michael Fryar's report.
02:16:54 Q. And what about the column entitled "Annual Cost"?
02:16:58 A. The costs, those are from Miller's report. That is what
02:17:00 the Government will pay for each item.
02:17:03 Q. And did Dr. Miller provide a rate for all of the costs in
02:17:06 Mr. Fryar's cost analysis?
02:17:08 A. No, he did not provide for one item.
02:17:12 Q. Okay. And can you please explain why there is no rate for
02:17:14 cleaning services in this chart?
02:17:17 A. Yeah, it's hard to see, but there is one line item on
02:17:20 there that's at zero. It's my understanding that the
02:17:23 Government doesn't pay for those, so he didn't include that.
02:17:27 Q. Other than cleaning services, did Dr. Miller provide a
02:17:30 rate for all of the other medical services in Mr. Fryar's cost

analysis?
A. Yes, he did.
Q. And what is the present value of future VHA medical care that will be provided under the two scenarios listed in Mr. Fryar's cost analysis?
A. Under his option one that is for a transplant, it is $228,147, and under his option two, which is for dialysis, it is $541,306.
Q. Thank you. Now, let's transition to VBA disability benefits. Earlier you indicated that you calculated past and future VBA disability benefits. I'm now going to show you a blown-up version of Table 4 of your expert report. Can you please tell the Court what this chart shows?
A. This is a summary of my calculation of what disability benefits Mr. Mousser has received to date that are related to Camp Lejeune and what he's expected to receive in the future. This is the present-value figure of that.
Q. And let me just stop you right there for a second. How do you know what VBA benefits are related to Camp Lejeune?
A. I was provided a report from Dr. Ji that told me which of his diagnoses are related.
Q. And how do you know what his diagnoses were and what his disability ratings were?
A. I have all those documents from the VA, their letters to him, and I've got copies of those that explain exactly what

they are.
Q. I'm going to show you a blown-up version of your Table 4, which is in your expert report.
THE COURT: Does the VA categorize his benefits as being for Camp Lejeune water exposure?
THE WITNESS: Sometimes I've seen it listed, but not all of them have it listed on there, so I've relied on Dr. Ji to tell me which ones are related.
THE COURT: Okay.
MS. KONSTANTOPOULOS: And, Your Honor, I'm asking -- actually asking for Table 6 to be placed on the easel.
Q. Ms. Yount, could you please tell the Court, what this is?
A. So this is a summary of the information from the VA documents. I have to pull it up here because it's small up there. That bottom section down at the bottom -- I'll use my little pointer here -- those are all of the disability ratings that Mr. Mousser has. It tells us what his diagnoses is, what his disability rating is and when he received it.
And then the top section of that table is his monthly compensation, what he's received based on his disability ratings that are -- I think we heard earlier they combine them. So he has a few different ratings and they combine them to get a total disability rating, and these are his monthly compensation for that.
Q. Thank you, Ms. Yount.

02:21:02 MS. KONSTANTOPOULOS: And for the record, for
02:21:04 opposing counsel, the tables are included in the expert report
02:21:07 that's in front of you that's already been submitted.
02:21:10 MR. ABRAMS: Table 6?
02:21:10 MS. KONSTANTOPOULOS: Correct, yes.
02:21:13 Q. Ms. Yount, what did you do with all of this information?
02:21:17 A. This is what I used to calculate his -- so we've got
02:21:22 his -- to calculate what his excess benefits are that are
02:21:26 related to Camp Lejeune. So I've taken all of these items, the
02:21:30 ones that are -- this is all -- this is all of his ratings, and
02:21:33 these are his total benefits that include Camp Lejeune-related
02:21:38 diagnoses.
02:21:38 And I've compared that to had he not received these
02:21:42 diagnoses, had he only had -- I believe Dr. Ji said there was
02:21:45 just one item on there, is tinnitus, that gave him a 10 percent
02:21:49 disability rating. If that was his only rating he had, what
02:21:52 would his benefits -- what would they have been, and I've
02:21:55 compared the two, and the excess would be what's related to
02:21:58 Camp Lejeune.
02:21:59 Q. Can you please point to the table to show what disability
02:22:04 ratings were related to Camp Lejeune with your pointer, if
02:22:08 possible?
02:22:08 A. Yeah, it's hard to see, but all these at the top, the
02:22:11 very -- there's one on the very bottom that says, "Tinnitus,"
02:22:13 and that's the only one that Dr. Ji said was not related.

02:22:18 Q. And Mr. Mousser testified earlier that he receives $4,600
02:22:23 a month in disability benefits. Is that consistent with your
02:22:26 Table 6?
02:22:28 A. Yes. It's on there at the very top, but it's the -- what
02:22:32 he's currently receiving in monthly benefits, $4,628.12.
02:22:39 Q. Thank you.
02:22:39 MS. KONSTANTOPOULOS: Your Honor, I'm now going to
02:22:40 show the Court a blown-up version of Table 5 of Ms. Yount's
02:22:44 expert report.
02:22:46 THE COURT: Do you know whether he also gets Social
02:22:47 Security?
02:22:50 THE WITNESS: I do not. I don't know.
02:22:52 THE COURT: Could you get both things?
02:22:55 THE WITNESS: Yes. It's my understanding that you
02:22:57 can.
02:22:58 THE COURT: Okay.
02:23:02 Q. Ms. Yount, can you please explain what Table 5 shows?
02:23:07 A. This is my comparison of the monthly compensation
02:23:10 benefits. This "CLJA Rate" section over here on the left,
02:23:14 these are his total benefits, what he is receiving. These are
02:23:18 his disability -- total disability with all diagnoses.
02:23:22 Over here where it says, "No CLJA," this is what his
02:23:26 monthly benefits would have been had he just had the 10 percent
02:23:30 rating, disability rating. And so the variance is just the
02:23:33 difference of those two monthly amounts, and that accounts for

02:23:37 the excess benefits, disability benefits from the VA that he's
02:23:41 getting that are related to Camp Lejeune.
02:23:44 Q. Can you please explain what the effective dates are on
02:23:47 this table?
02:23:48 A. Yes. So right here are effective dates. This would be
02:23:51 any kind of rate change, disability change, cost-of-living
02:23:57 adjustment. That's when the rates would change or there was a
02:24:01 disability change.
02:24:03 Q. Thank you. Now, it looks like most of the dates on this
02:24:05 chart start with the date December 1st, but there's also a
02:24:09 date, March 1st, 2024. Can you please explain what this
02:24:14 March 1st, 2024, date is?
02:24:16 A. Yes. Are you -- can you put Table 6 back up? It might be
02:24:19 easier just to show you really quick --
02:24:20 Q. Yes.
02:24:23 A. -- on that one. It's hard to see, but that very top one
02:24:39 right there, there was a change in his disability rating. It
02:24:43 went down 30 percent for one of his diagnoses on March 1st,
02:24:50 2024, but with all his other combined disability ratings, it
02:24:54 didn't change his monthly compensation. So you'll see on the
02:24:57 other report, the other schedule, that it just showed that
02:25:00 there was a date change, but there was no change in monthly
02:25:03 compensation.
02:25:05 Q. And where did you get the information that there was no
02:25:07 change to his monthly compensation?

02:25:10 A. The VA documents that -- there was a letter to him that
02:25:12 explained that.
02:25:14 Q. Now that we've gone through Tables 5 and 6 to provide
02:25:17 context as to all of the work that you did regarding VBA, let's
02:25:21 go back to Table 4. Ms. Yount, does this accurately summarize
02:25:30 your calculations regarding Mr. Mousser's VBA disability
02:25:35 benefits?
02:25:35 A. Yes, it does.
02:25:36 Q. Using this table, please describe how you calculated past
02:25:40 VBA disability benefits.
02:25:43 A. So that top section, that would be what he has received to
02:25:46 date. Again, we've got the VA benefits with CLJA, so those
02:25:51 would be his total benefits that he has received today. This
02:25:55 would be without CLJA, any diagnoses and ratings that he has
02:26:00 that's related to Camp Lejeune. And then we've got the excess,
02:26:02 so that's just the differential. And this is all calculated on
02:26:06 an annual basis, and so I've added those up. Those are what
02:26:10 he's actually received, and we started at October 2020. That's
02:26:14 when he got his first -- received his first diagnoses that was
02:26:18 considered related to Camp Lejeune.
02:26:21 Q. Okay. And what amount of future -- excuse me -- past VBA
02:26:24 disability benefits has Mr. Mousser received?
02:26:28 A. It is $290,223, and that's summarized on that.
02:26:34 THE COURT: And what's that for?
02:26:35 THE WITNESS: Those are his total disability benefits

that he has received to date that are only related to Camp Lejeune.

THE COURT: Okay.

Q. Now, moving on to future VBA disability benefits relating to Camp Lejeune, how did you calculate that amount?

A. So that is based on what he's currently receiving. And assuming that he has no change in disability ratings and that that will continue for over his life expectancy, there will be an annual cost-of-living adjustment, as he has received historically, and that's calculated over his life expectancy, and then again reduced, assuming he would have the 10 percent disability rating had he not had any of this Camp Lejeune-related diagnoses. And, again, I've just compared those just like I did for the past, and I've calculated that out to his life expectancy, and then I've discounted that back to present-day value.

Q. And in order to calculate present value, did you use the same reduced life expect- -- expectancy that plaintiff's forensic economist, Mr. Chad Staller, used?

A. Yes, I did.

Q. And what is your opinion regarding the present value of future VBA disability benefits that he will receive?

A. The future amount is that $544,008.

Q. Do your calcu- --

THE COURT: Is that the present value?

02:28:00 THE WITNESS: That is the present value. The future
02:28:03 value is about $730,000. So present value is $544,000.
02:28:11 Q. And the present value is less because you applied a
02:28:14 discount rate; is that correct?
02:28:16 A. Correct.
02:28:19 Q. Do your calculations assume any potential changes to
02:28:22 Mr. Mousser's disability ratings in the future?
02:28:25 A. No.
02:28:25 Q. Why not?
02:28:27 A. It's based on the facts and the information that we have
02:28:30 today, what his current disability ratings are, and I haven't
02:28:36 predicted any future changes. I can't do that.
02:28:41 Q. Is absolute certainty required in order to project future
02:28:45 calculations in your field?
02:28:47 A. No.
02:28:48 Q. All right. To sum it up, your VBA benefits that you
02:28:53 calculated, what is your opinion as to the present value of
02:28:56 Mr. Mousser's VBA disability benefits, both past and future,
02:29:01 that are related to Camp Lejeune?
02:29:04 A. The total present value amount is $834,231.
02:29:12 Q. Thank you. I'm going to point or direct your attention
02:29:15 back to the demonstrative exhibit that's on the easel, entitled
02:29:19 "Summary of Offsets."
02:29:20 You had listed three different scenarios for offsets.
02:29:29 What is the total amount of offsets in scenario one, which

would be the scenario where you applied Dr. Shahnasarian's life care plan?

THE COURT: I couldn't understand the question. Say it again.

MS. KONSTANTOPOULOS: Sure.

Q. What is the total amount of offsets under scenario one, which is the scenario using Dr. Shahnasarian's life care plan?

THE COURT: Okay.

A. So the total offsets under that, which is that first column over there, the total is $898,698.

Q. Thank you. And what is the total amount of offsets in this case under scenario two, which is the option that assumes a kidney transplant would be required under Mr. Fryar's cost analysis?

A. So that's that middle column over there, and the total is $1,125,232.

Q. And what is the total amount of offsets in this case under scenario three using the option that assumes dialysis would be required under Mr. Fryar's cost analysis?

A. And that would be the final column to the right on this chart, and the total there is $1,438,391.

Q. Ms. Yount, did Mr. Staller ever offer an opinion in any of his reports challenging or rebutting your offset opinions in any way?

A. No.

02:31:04 Q. Are all of the opinions that you provided in this case to
02:31:07 a reasonable degree of economic certainty?
02:31:10 A. Yes.
02:31:11 Q. Thank you, Ms. Yount.
02:31:11 MS. KONSTANTOPOULOS: I pass the witness.
02:31:14 THE COURT: I'm sorry?
02:31:14 MS. KONSTANTOPOULOS: I said, "Thank you, Ms. Yount.
02:31:16 I pass the witness."
02:31:20 THE COURT: Okay. So, hypothetically, if the
02:31:23 plaintiff got an award in this case, until the award exceeded a
02:31:30 million four, he wouldn't get anything; is that what you're
02:31:35 saying, because of the offset?
02:31:38 THE WITNESS: Well, if that's how you --
02:31:39 THE COURT: If it was the -- which one of the kidney
02:31:43 problems?
02:31:43 THE WITNESS: The scenario -- under -- under -- if
02:31:45 you adopted the Fryar's life care plan with dialysis --
02:31:49 THE COURT: With dialysis.
02:31:50 THE WITNESS: -- that would be --
02:31:51 THE COURT: That's the highest one?
02:31:52 THE WITNESS: Yes, sir.
02:31:53 THE COURT: So it would have a million four before he
02:31:57 got the first dollar? He'd have to -- if there was an award
02:32:03 for anything less than a million four and dialysis was found to
02:32:08 be the future, he would -- he wouldn't get a penny until he

02:32:12 crossed that threshold; is that right?
02:32:15 THE WITNESS: That's -- I guess if that's how you
02:32:17 apply it, yes.
02:32:18 THE COURT: I mean, I don't know. You're the expert.
02:32:20 THE WITNESS: Yeah, I don't know how you'd apply it,
02:32:20 but that -- or I don't have an opinion on the application of
02:32:24 it, but these are all the different categories. So if you did
02:32:28 apply all four of these --
02:32:29 THE COURT: Yeah, but you're testifying that it's an
02:32:32 offset, that it's one of the credible offsets, right?
02:32:35 THE WITNESS: It is. I've calculated if under
02:32:38 Fryar's plan, yes, it would be $1.4 million, correct.
02:32:43 THE COURT: Okay. Thank you.
02:32:44 Cross?
02:32:46 MR. ABRAMS: We don't have any questions.
02:32:47 THE COURT: All right. Thank you, ma'am. Thank you.
02:32:49 You're excused.
02:32:50 (The witness exits the witness stand at 2:32 p.m.)
02:32:52 THE WITNESS: Should I leave these up here? Okay.
02:32:58 THE COURT: And that was your last witness?
02:33:00 MR. BAIN: Yes, Your Honor. We have a handful of
02:33:02 exhibits to offer --
02:33:04 THE COURT: Yeah.
02:33:04 MR. BAIN: -- and a handful of depositions to offer.
02:33:08 So we would like to offer United States Exhibits 61, 62, 63,

64, 65, 67, 69, 82, 83, 91, 118, 237, 903, 908, 951 and 953.

THE COURT: All right. Without objection, they are received.

(Defendant's Exhibit Numbers 61 through 65, 67, 69, 82, 83, 91, 118, 237, 903, 908, 951 and 953 received.)

MR. BAIN: And with respect to depositions, we would like to offer the deposition of Dr. Johnstone as Exhibit 2018; the deposition of Dr. Bove, who you've heard about, who did the ATSDR studies -- there's a deposition from him -- as 2019. And with respect to his deposition in particular, the relevant exhibits which have already been admitted are Plaintiff's Exhibits 72, 80, 79 and 238.

We'd like to offer the depositions of Dr. David Savitz, who did the National Academy of Sciences study on Camp Lejeune contaminants, which you've heard about today and previously, as exhibits -- there's two volumes there -- Exhibits 220 and -- or 2020 and 2021.

And forgive me, Your Honor, I don't think I said an exhibit number for Dr. Bove. That would be 2022.

And we would also offer the exhibits of Mr. Mousser's treating physicians, Dr. Andrew Rockwood and Dr. David Flood, as Exhibits 2023 and 2024.

We would also like to offer the exhibit of Mr. Mousser's employer, who you've heard about, and friend,

Mr. Richard Mercer, as 2025; our deposition designations for Dan Waddill, who was the Navy's water modeling person, as 2026; and finally, the deposition designations for Nicholas Tackaberry and Andrew McIlroy as 2027 and 2028.

And with those, Your Honor, we do have some exhibits, a couple of exhibits that go to Dr. Johnstone's deposition, a new exhibit. That is the demonstratives that were used in Dr. Johnstone's trial deposition, and those are Exhibit -- that would be Exhibit Number 2050, and then the other exhibits that were referenced in Dr. Johnstone's deposition are Exhibit -- U.S. Exhibit 939 and U.S. Exhibit 994. We'd like to offer all those exhibits into evidence.

THE COURT: They'll be received.

(Defendant's Exhibit Numbers 939, 994, 2018 through 2028 and 2050 received.)

MR. QUINN: Your Honor, if I may, are the entire deposition transcripts being offered into evidence that you just read, or just the portions that were designated in the pretrial order?

MR. BAIN: Just the portions that were designated in the pretrial order, Your Honor. They're both designations and counter designations.

MR. QUINN: So then your motion would involve putting transcripts in the record that include both the Government's designations and plaintiff's counter designations?

02:37:27 MR. BAIN: If you want to -- if you want your counter
02:37:29 designations.
02:37:29 MR. QUINN: As long as both the designations and
02:37:32 counter designations come into evidence, we certainly would not
02:37:34 object.
02:37:35 THE COURT: All right.
02:37:37 MR. BAIN: And I should mention there were two other
02:37:40 exhibits related to one deposition that haven't been received
02:37:43 yet, and that's for a Mr. Tackaberry, and that's 876 and 877
02:37:48 that we would like to move into evidence.
02:37:51 THE COURT: All right. That'll be received.
02:37:52 (Defendant's Exhibit Numbers 876 and 877 received.)
02:37:54 MR. ABRAMS: And there were three from the Johnstone
02:37:57 deposition that we put in, Defense Exhibits -- or excuse me,
02:38:01 Plaintiff's Exhibits 201, 202 and 205. We'd admit those in.
02:38:08 THE COURT: All right. Received.
02:38:08 (Plaintiff's Exhibit Numbers 201, 202 and 205
02:38:08 received.)
02:38:08 MR. BAIN: With that, the United States rests its
02:38:10 case.
02:38:10 THE COURT: Is there any rebuttal evidence?
02:38:13 MR. QUINN: Your Honor, before we touch on that, one
02:38:18 housekeeping matter, yesterday during Dr. Lipscomb's testimony,
02:38:21 we identified Exhibit 240. It was a press release issued by
02:38:26 the EPA. We failed to move that into evidence, and so we would

move that into evidence now.

THE COURT: That'll be received.

(Plaintiff's Exhibit Number 240 received.)

MR. QUINN: And no rebuttal, Your Honor.

THE COURT: Okay. No rebuttal evidence?

MR. ABRAMS: No rebuttal.

THE COURT: Okay.

MR. BAIN: Your Honor, we would have some things to discuss regarding the Fancher case. The parties have been discussing that one, which has been scheduled for November 9th. We think we have come up with some procedures to streamline that case to be --

THE COURT: Say that again.

MR. BAIN: With respect to the Fancher case that is set for --

THE COURT: Is that the next case?

MR. BAIN: The next case scheduled for November 9th.

THE COURT: Yeah.

MR. BAIN: We've been discussing that some of this testimony may be stipulated, if the Court is allowable, to be entered into that case, and so we can expedite that case to be much, much shorter than this case.

THE COURT: Well, this was not compellingly long, I mean, as time goes. I mean, it moved at a steady pace, and I would certainly support anything that facilitated that.

02:39:26 MR. BAIN: I think we've agreed that the testimony
02:39:29 related to water modeling and general causation be stipulated
02:39:34 to be entered into that case. And we're in continuing
02:39:39 discussions about some of the other witness testimony so that
02:39:42 we would move right to the issues of specific causation and
02:39:47 damages in that case.
02:39:48 THE COURT: Yeah.
02:39:48 MR. ROBERTS: Your Honor, we anticipate that we'd be
02:39:50 able to put our Fancher case on in half a day, max, probably
02:39:55 before lunch, if the Court is amenable to accepting the water
02:40:00 model and the general causation evidence in the Mousser case
02:40:03 and apply it to the Fancher case.
02:40:05 THE COURT: Okay. I don't want to get ahead of
02:40:10 myself here. We're dealing with this case right now.
02:40:14 MR. ROBERTS: Okay.
02:40:14 MR. BAIN: So should we submit -- submit a
02:40:17 stipulation, Your Honor, for the Fancher case with respect to
02:40:20 that?
02:40:20 THE COURT: For the next case?
02:40:21 MR. BAIN: Submit a stipulation for that.
02:40:25 THE COURT: Yeah.
02:40:25 I was thinking at this point -- I mean, it's a little
02:40:29 odd to have a judge as a fact finder, as we know, but I was
02:40:38 going to take a recess for five or ten minutes and -- or
02:40:42 however long you want, and then let each of you have typical

closing argument. Don't you want that?

MR. BAIN: I'd be happy to do that, Your Honor.

MR. DOWLING: We very much would like the opportunity to plead our case, Your Honor.

THE COURT: Yeah. I mean, and we'll treat it the way we would for any finder of fact. The party with the burden of proof would go first, and then the other side could rebut or speak, and then you can have rebuttal, and then that'll end the trial of this case and put it on the Court to decide it. That that's the way I see it. Is that okay?

MR. BAIN: That's fine with us, Your Honor. Any time limit? Do you have any time limit in mind?

THE COURT: Good judgment. But, I mean, I would think maybe 20 minutes. You wouldn't want to talk much longer than that.

MR. BAIN: I was thinking five minutes, Your Honor.

THE COURT: Okay. I can go with that.

MR. BAIN: Give an opening statement.

THE COURT: Yeah, okay. Well, we'll take a recess for about 10 or 15 minutes.

(A recess was taken from 2:41 p.m. to 2:56 p.m.)

THE COURT: All right. Thank you. For the record, we've reached the conclusion of the evidence in the case, and there are some supplements that'll be received, but at this point in time, we'll hear closing argument from the plaintiff

first and then from the defendant and then rebuttal.

MR. DOWLING: Thank you, Your Honor. Permission to move about the courtroom during my argument, Your Honor.

THE COURT: Yeah.

MR. DOWLING: Your Honor, over the past three days, we have proven that Mr. Mousser was poisoned by the water at Camp Lejeune, that the water caused his kidney cancer and that he suffered enormous harm as a result. My colleague, Mr. Snidow, and I will briefly walk you through the phases of the trial and explain how the evidence overwhelmingly shows that Mr. Mousser is entitled to substantial damages.

First, Your Honor, in the first phase of the case, the water contamination, the ultimate conclusion there, obviously, Your Honor, is the water was highly contaminated. The evidence shows it was highly contaminated with TCE and other solvents.

Mr. Neal, Plaintiff's Exhibit 1, he raised the red flag, 1981, water highly contaminated with other chlorinated hydrocarbons, solvents, and there are other records like this that the ATSDR investigators had at their disposal, Your Honor.

The ATSDR investigators confirmed the red flags that Mr. Neal was sending up. You heard from Morris Maslia. You heard about how professional, how thorough and how reliable their investigation of the historical contamination at Camp Lejeune was.

02:57:47 This was a team of over 20 government scientists,
02:57:53 university researchers, other expert consultants that all came
02:57:56 together to figure out what were the levels of contamination,
02:58:01 TCE and other solvents, in the water at Camp Lejeune. Their
02:58:05 groundbreaking work, he told you it was peer reviewed. It's
02:58:08 award-winning. It's a result of years and years of close
02:58:13 scientific scrutiny and study.
02:58:15 Camp Lejeune, Your Honor, it's a superfund site.
02:58:19 It's a superfund site that's so heavily contaminated, even to
02:58:25 this day, the United States of America acknowledges that
02:58:30 they've paid up to $321 million trying to get this poison out
02:58:36 of the ground, and they're still not done yet, Your Honor.
02:58:39 There was no attempt to rebut Mr. Maslia's testimony,
02:58:49 Your Honor. The cross-examination, with all due respect to my
02:58:53 colleague, was totally ineffective. It raised absolutely no
02:58:59 doubts about the strength of the evidence and the conclusion
02:59:02 that this water was highly contaminated.
02:59:04 Emails, squabbles among scientists about how to do
02:59:10 this or how to do that that are 20 years old, when did Mr. Bell
02:59:13 approach you, none of it, none of it changes the fact that this
02:59:17 is award-winning, groundbreaking, peer-reviewed science, and
02:59:21 this Court certainly can find and base its judgment on that
02:59:26 science. And that science shows, as revealed in Plaintiff's
02:59:29 Exhibit 10, that Mr. Mousser was stationed at Camp Lejeune
02:59:32 during the absolute highest period of this contamination, Your

Honor.

Your Honor, frankly, our burden is preponderance. I believe we've proved beyond any reasonable doubt that the water was highly contaminated with TCE, particularly when this man was there. He was exposed to the water, Your Honor. He was exposed to this toxic substance. The parties have admitted this. This isn't a was-he-there or was-he-not-there kind of situation. He was there from October of 1982 through September 7th of 1986.

And we built on that, Judge. We got granular and we had an expert who came in and she looked at these 40-some-year-old records, and she actually calculated the number of days that he was physically present there and that he wasn't, hundreds of days, 891 days. Five-hundred and seventy-four of them, as reflected on that chart, are at the highest point of TCE contamination. Hundreds of days of drinking, of eating at the chow hall, of showering, of walking through the showers, unventilated, of going into the field, filling up your canteens. It's summer in Onslow County, North Carolina. They are drinking heavily. This man unquestionably was exposed heavily to this toxic substance, Your Honor.

Again, there really is no dispute as to this matter. We've proved this under any legal burden of proof. Now Mr. Snidow, will address the Court as to the issue of causation.

03:01:14 MR. SNIDOW: Thank you, Your Honor. The causation
03:01:16 case in this case is about as straightforward as it comes.
03:01:19 Mr. Mousser was at Camp Lejeune, as Mr. Dowling just said, at
03:01:23 the period of highest contamination and for a long period of
03:01:25 time.
03:01:25 We know for sure there were some people at Camp
03:01:25 Lejeune who had an increased risk of kidney cancer because of
03:01:25 the water, and we know that because their own expert had to
03:01:36 admit it about an hour and a half ago. So if not Mr. Mousser,
03:01:40 then who are we talking about here? He absolutely has one of
03:01:43 the strongest cases for having his increased risk of kidney
03:01:47 cancer.
03:01:47 First, as we established, there's no threshold dose
03:01:53 for TCE. Of course, being exposed to more of it increases your
03:01:57 risk more, but there is no exposure level that is safe. The
03:02:01 United States Government, the EPA, them, has banned TCE, and
03:02:07 when they did it, as we -- as it says in Exhibit 240, they
03:02:11 said, they said, and I quote, "TCE is an extremely toxic
03:02:16 chemical known to cause kidney cancer. These risks are present
03:02:22 even at very small concentrations."
03:02:25 The reason they said that is because that is exactly
03:02:29 what the science shows, and I think we proved conclusively
03:02:33 that, yes, the chemicals in the water at these levels can cause
03:02:37 cancer because, as Your Honor heard, this isn't the first time
03:02:40 that water has been contaminated with these chemicals.

03:02:44 Scientists have looked what happens to people when that kind of
03:02:48 contamination happens, and we know they get more kidney cancer.
03:02:52 Your Honor, scientists have been studying this risk
03:02:54 for years. There's a study called Aschengrau that looked at
03:02:59 people at Cape Cod. When they were exposed to these chemicals
03:03:02 in the water at similar levels to Camp Lejeune, they got more
03:03:06 cancer. There's a study called Moore. Workers in Europe were
03:03:10 exposed to chemicals in their occupations, similar to the
03:03:13 levels at Camp Lejeune. They got more cancer.
03:03:16 The list goes on and on, Your Honor. Dr. Hatten, our
03:03:19 second witness, identified dozens of results in studies showing
03:03:23 that, yes, of course, these chemicals can cause kidney cancer
03:03:28 at the levels of Camp Lejeune.
03:03:29 Third, of course, there's the five-ton elephant in
03:03:34 the room. The Government has studied exactly what happened to
03:03:40 the people at Camp Lejeune. They commissioned those studies.
03:03:44 They looked at whether people at Camp Lejeune got more kidney
03:03:48 cancer than their fellow Marines who happened to be at Camp
03:03:50 Pendleton, and the answer over and over and over again was yes,
03:03:58 every single time.
03:03:59 Now, Your Honor saw I used the coin demonstrative
03:04:02 with Dr. Shields, their witnesses. The point is this: Yes,
03:04:07 some of the results aren't statistically significant. They
03:04:09 seem very focused on that. I'm sure you'll hear more of it.
03:04:12 But when you have one study that's not statistically

03:04:16 significant, you are right to be concerned that maybe it's just
03:04:19 a chance finding, a trick of the light, a margin of error like
03:04:22 in a poll. But when that same result keeps happening over and
03:04:28 over and over again, it's just not realistic to say, well,
03:04:33 maybe it was just chance, maybe it was just bad luck.
03:04:36 The water at Camp Lejeune is not somehow the
03:04:40 unluckiest water in the world. It's, obviously, because it was
03:04:44 contaminated with the exact type of chemicals that cause kidney
03:04:48 cancer.
03:04:48 So what does the Government say in response to this?
03:04:52 And, Your Honor, with deep respect to my colleagues, the
03:04:55 Department of Justice, the scientific presentation you have
03:04:58 heard is disappointing for the United States of America. They
03:05:03 are litigating this case against Marines, who served our
03:05:08 country, as if they're a big tobacco company litigating in the
03:05:12 1970s. They told you they were trying to educate you. With
03:05:16 respect, and I don't say this lightly, I think the witnesses
03:05:19 that you saw were trying mostly to confuse and mislead.
03:05:22 I'll give a few examples. They are trying to tell
03:05:26 you that their own studies that they sponsored are somehow not
03:05:31 reliable. They're trying to tell you that somehow everything
03:05:34 at Camp Lejeune was totally fine, within acceptable ranges, no
03:05:38 health effects at all, even though the taxpayers have spent
03:05:42 hundreds of millions of dollars to clean up the site and
03:05:44 allocated billions to compensate people injured.

03:05:47 And for reasons that I do not understand to this day,
03:05:50 they have decided to pay nearly $10 million to hire the least
03:05:57 credible slate of expert witnesses that I've ever seen. Their
03:06:01 primary expert, Dr. Julie Goodman -- Your Honor can look at the
03:06:04 expert reports -- she's all over them. She is their star
03:06:08 witness. She has been criticized for making, quote, "false
03:06:13 statements," quote, "peddling junk science," quote,
03:06:15 "misrepresenting the science consistently."
03:06:18 The taxpayers paid her nearly $7 million. They had
03:06:22 all their other experts rely on her except for Dr. Shields, and
03:06:26 then they refused to call her. We haven't seen her in this
03:06:29 case. I've never seen this happen before. Their star witness
03:06:31 that they paid $7 million to doesn't appear in the case at all.
03:06:35 I said I don't know why they did that, but, of
03:06:38 course, I sort of do. They found someone who is willing to
03:06:42 look through every single study, every single study, except for
03:06:48 one they liked that had super high exposure levels, and tell
03:06:52 Your Honor, look, all these other studies, unreliable,
03:06:56 unreliable, unreliable, unreliable, unreliable. Don't look at
03:06:59 those. Don't look at the studies we did on Camp Lejeune.
03:07:03 Instead, look at a study out of France published 20 years ago
03:07:07 that just so happened to look at exposures that they knew that
03:07:10 no Marine in the country could meet.
03:07:13 I'd like to end with specific causation, Your Honor.
03:07:19 All the evidence indicates that the water did this to

03:07:22 Mr. Mousser. No family history of cancer, no genetic
03:07:28 predisposition. His smoking, as Your Honor correctly said, was
03:07:32 minimal. Your Honor is exactly correct. Mr. Mousser did not
03:07:36 get lung cancer. Mr. Mousser got kidney cancer.
03:07:39 I think you saw with this last witness, the
03:07:42 Government was again trying to mislead you. They put an expert
03:07:46 on the stand who looked Your Honor in the eye and told you, oh,
03:07:49 no, smoke -- smoking, that's a three to fourfold risk of kidney
03:07:55 cancer.
03:07:55 And then, of course, on cross-examination, I had to
03:07:58 point out what that data is based on, and it is based on people
03:08:02 who smoked for 50 pack years, a pack a day, every day for 50
03:08:10 years.
03:08:10 Your Honor, there is not evidence in this record that
03:08:14 Mr. Mousser has smoked an entire pack of cigarettes on a single
03:08:18 day in his entire life, and they are asking you to use science
03:08:23 that looked at people who smoked a pack a day for 50 years.
03:08:27 Respectfully, for Your Honor, this causation question
03:08:31 is as easy as they come. Of course the water at Camp Lejeune
03:08:35 caused his kidney cancer. Thank you.
03:08:37 THE COURT: How does the burden of proof -- stand up.
03:08:39 MR. SNIDOW: Yes, Your Honor.
03:08:40 THE COURT: How does the burden of proof that the
03:08:42 statute creates affect this case and differ, if at all, from
03:08:49 other burdens of proof in negligence cases?

MR. SNIDOW: Yes, Your Honor. I don't think the burden of proof matters here because I think we've proven it even by a preponderance of the evidence, more likely than not. However, to answer your question directly, it, of course, makes it easier on us. All we actually had to prove is that Mr. Mousser's cancer was at least as likely as not caused by the water at Camp Lejeune, and under that standard, of course, we win. I mean, at least as likely as not, we absolutely proved that, although I think we proved much more.

THE COURT: All right. Thank you.

MR. DOWLING: So that's the causation phase of the case that we got through, and we believe we clearly sustained our burden there, Your Honor.

In the final phase, Your Honor, we proved to you the massive harm that Mr. Mousser has endured. Your Honor, you may recall one of the very last questions that I asked Mr. Mousser on direct. I asked him, point blank, "Did kidney cancer destroy your life?" And he said without hesitation, with conviction and authority that it had, and the evidence of destruction is everywhere in this record. It's in multiple different forms and types.

Let's just review some of the kinds of destruction that we're talking about. Kidney cancer has caused and will continue to cause Mr. Mousser pain, extreme physical pain. You heard about when he learned about this golf ball-sized mass

that was in his kidney.

The catheterization procedure that was separate than the cystoscopies, which are their own difficult procedure, the catheterization procedure, he says, was the most painful experience he ever had in their life -- in his life. They were trying to figure out what this thing was.

There was the pain of recovering from his kidney removal in 2020 with the isolation of COVID. And, obviously, there's the physical pain that's attendant to each of these cystoscopy procedures, which are, frankly, painful and have robbed him of his dignity.

Your Honor, the evidence is overwhelming and compelling that kidney cancer has shattered him emotionally. There's no dispute that he has depression. He's being treated for major depression. There's no dispute about insomnia or anxiety or the endless worry about what's going to happen the next time I go to get a cysto and something shows up. Is that going to be the thing that takes me out? He's constantly ruminating on these things. I think he told you he stays up till 3:00 a.m., and so he's got to sleep in a different room because he can't get his mind off of the worry about what's going to happen to him in the future.

And let me just comment briefly on this mental health evidence, and I say this with all due respect. I believe my colleagues on the other side are people of good faith and they

are trying to do their level best, but the suggestion that Mr. Mousser's depression was caused by the fact that he's from a broken home, or that his sister got run over when she was a little girl, that was utterly without any foundation at all.

Did you see a single medical record where anyone said that he was complaining about those things and that was what caused his depression? There isn't a single one. We've had hundreds of exhibits admitted into this record. That claim -- I understand they have a duty to zealously defend themselves. That claim was utterly without foundation, Your Honor.

The evidence is clear that it is after 2020, when his kidney is removed, when he learns about chronic kidney disease, he's reeling, he's ruminating, he's in a deep, dark hole. That's what caused his depression, not the things that happened in his childhood that he overcome. There's no doubt that this man is a strong man. There's no doubt that this man has been through adversity, but that didn't cause his depression, and there was no basis for that defense, Your Honor.

What else did the destruction do? It destroyed his livelihood. Mr. Mousser tried his best. He was a successful person in the car business. He loved the car business. He loved working with people. He loved meeting people. He loved everything about it.

And I think even Mr. Dr. Shahnasarian very nobly acknowledged that Mr. Mousser, he tried to make a go of getting

back on the -- on the horse after he had his kidney removed, but he just couldn't do it, Your Honor. Headaches, head rushes, he's up all night. The last thing you want when you're up all night is to try to interact with customers, Judge. You're irritable, you're tired, you're worn down, you're constantly falling behind. That's what this man's life was like in those last years of his career, and he ultimately had to leave. And the suggestion that he could get back on there and this was just -- it's -- it's preposterous.

And, again, we're left with the problem where the Government's own documents refute the witnesses that they bring in to testify under oath in this court. The Department of Veterans Affairs has analyzed this man's circumstances in Plaintiff's Exhibit 120 and determined he's unemployable due to the kidney cancer.

What was Dr. Shahnasarian talking about? My colleague, Mr. Abrams, read from his own report, record after record after record showing it was the depression that caused him to have to leave his job. Where was Dr. Shahnasarian? Not reviewing these records, Your Honor.

The destruction continues, Your Honor. It's killed the intimacy between Mr. Mousser and his wife. Now, Heather and Frank, obviously, have a great marriage. They are wonderful people, and they have a stable marriage, but they both testified credibly and poignantly that the physical

03:14:58 intimacy is gone. And this is one of those special mysteries
03:15:01 in life that is unique to husband and wife, Your Honor, and it
03:15:05 has been destroyed by this cancer. That's destruction, Your
03:15:10 Honor.
03:15:11 It continues. There's more destruction. It's robbed
03:15:17 him of a decade of his life. Your Honor will be able to review
03:15:20 the deposition transcript of Dr. Matthew Cooper. This guy is
03:15:25 an expert kidney transplant surgeon. He does over 60
03:15:28 transplants a year. He reviewed the records, and he has
03:15:31 acknowledged both that Mr. Mousser is going to need a kidney
03:15:34 transplant or dialysis, and he should have lived to 85,
03:15:40 statistically speaking, but he's not going to now. This has
03:15:45 shortened his life by ten years. It has destroyed his
03:15:50 longevity.
03:15:51 So the evidence of destruction, it's undeniable and
03:15:56 it's everywhere, Your Honor. It's palpable and it cries out
03:16:00 for justice, and that's why we are here. And so the question
03:16:04 is, what tools do you have, what tools do you have to
03:16:09 compensate Mr. Mousser for that harm that he has suffered?
03:16:11 Your Honor, there's two types of damages that you can
03:16:23 award in this case. You cannot award punitive damages, but you
03:16:29 can award economic damages and you can award non-economic
03:16:34 damages. And on this chart, Judge, I've gone through the two
03:16:39 categories that constitute the damages that are possible in
03:16:42 this case.

03:16:43 Economic damages, category one, past medicals,
03:16:47 $62,854. You saw this morning with Mr. Ortiz and some of my
03:16:53 colleagues on the other side, we did not dispute that the VA
03:16:56 has paid $62,854 with respect to his past care for Camp
03:17:02 Lejeune-related care, Your Honor.
03:17:03 We are including, in all candor and transparency,
03:17:06 this in our damages. It's also included in the offset. The
03:17:10 Government is seeking to eat away at his damages through this
03:17:15 very same figure, and so you'll see in a minute on the other
03:17:17 board that it's going to net out. And we believe that as a
03:17:22 legal matter -- and you're writing on a clean slate, I
03:17:24 believe -- that essentially something akin to the collateral
03:17:28 source rule would apply here. It doesn't matter who paid for
03:17:31 the care. It doesn't matter if they paid for the care. The
03:17:35 care was provided as a result of the harm that he suffered from
03:17:39 his poisoning.
03:17:41 Future medical damages, Your Honor, item two, you saw
03:17:46 a number of scenarios. I believe this reflects their expert's
03:17:50 scenario number two, If I'm not mistaken, but that's a kidney
03:17:53 transplant cost. I've only put up one possibility here.
03:17:57 There's also, I believe, a higher number for just dialysis and
03:18:00 no kidney transplant. But we believe the evidence is clear
03:18:04 that a future kidney transplant is needed. That's going to
03:18:07 cost $802,874.
03:18:11 Why am I including that here? He testified credibly

on direct that he would like to have that type of procedure of that magnitude done at a private institution. He is not required to get his care at the VA. They should not offset the amount related to a kidney transplant or dialysis on the other side of the equation related to this because he does not want to get a dialysis or kidney transplant procedure at the VA, and that's his right.

You know, it's one thing, Judge, to go to the VA, you need a tetanus shot, you need to go in for a checkup or something like that. A kidney transplant, a doctor who's rotating through until they're on to their next assignment, I mean, who would sign up for that, sir? He has a right to be compensated for that future procedure.

And then lost wages, I don't believe there's any variance between our numbers on the lost wages. They assumed that if it was causally connected, that the number is $305,101, Your Honor. Remember the testimony. He's diagnosed at 57. He has the kidney out at 60. He tries to go back to work, but he can't. He loses five years of his work life. The present value of that is $305,101. The total value of economic damages is $1,170,829.

Now, let's turn -- and pardon me for turning as I'm moving around, Your Honor, but let's turn to non-economic damages, Judge. You know, this is kind of an interesting -- this is an interesting thing to think about. It's hard in many

respects, but it's also easy, I would submit to you.

It's hard because we're asking you to put a value on another human being's anguish, on another human being's suffering and physical pain and despair. We're asking you to put a value on the loss of a decade of life. How do you put a price tag on ten lost Christmases, Your Honor? How do you put a price tag on ten years where you don't get to walk around the neighborhood with your wife and just talk about life, a decade lost with your children and your grandchildren? How do you begin to put a price tag on some of the most tender, priceless moments in life? It is very hard, Your Honor.

There is no doubt, but it is done, and in some ways, even though it's hard, I think it's easy, and I think it's easy because we know in this unique case with this defendant, we know how much they're already willing in a voluntary exchange to pay for things that do not come remotely close to the value of Frank Mousser's life. They don't come remotely close to the value of a pain-free, enjoyable life for Frank Mousser.

And so we can look to what the defendant already pays for, and look at what the Government has paid for in this case, Judge. Surely they've paid enormous sums for all these experts to come in here and tell you Congress got it wrong, help us shore this up, nobody gets anything.

Michael Shahnasarian, the doctor who testified this morning, $925 an hour. $925 an hour. This is what he does.

He flies around, testifies six times a year, comes into these courts, has these reports riddled with contrary evidence to his conclusions. Again, Mr. Abrams, we could have been here all day reviewing the medical records showing that he couldn't work, and he submitted that to this Court. He came into this Court and put his hand on the Bible and said, oh, yeah, he's fine. $925 an hour. That's what they're willing to pay, but they won't pay that much for a day of this man's life. That's preposterous.

Peter Shields, the Government's general causation expert who testified yesterday, Your Honor, Peter Shields, he gets $8,300 a day. He earned $8,300 yesterday. Eight hours of testimony, that's over a thousand dollars an hour. So Peter Shields gets paid a thousand dollars an hour to come in here and tell you nobody should recover at all, throw out all the Camp Lejeune studies, it's just chance.

An hour of that man's life is worth more than a day of Frank Mousser's life? I bet you if you walked out onto Main Street right now and you found a hundred people and you said, "Hey, what do you think -- what do you think is worth more, a value -- the value of a combat veteran's life, one day, or the value of an hour of Peter Shields' time to write these reports and try to shut the courthouse door on all these guys," you wouldn't get a single person that would tell you, "Oh, yeah, Dr. Shields, he's so smart, he's so great, that's clearly worth

more than a day of Frank Mousser's life."

And so that's the per diem in this case, Judge. You asked us what's the value of this back at the pretrial conference. It's somewhere between 925 and a thousand dollars a day because that's what they're willing to pay for the people that aren't nearly as valuable as this man.

So what do we multiply it by? He was 57 years old when he was diagnosed and started having to deal with this, when the physical pain started, when the emotional pain started. If they hadn't cut his life short, he'd have lived to 85. If they hadn't stolen a decade, he'd have had 10,000 days, actually, slightly more than 10,000 days between the age of 57 and the age of 85. He's probably not going to make it to 85, Your Honor.

But there's 10,000 days, approximately, in those 28 years that we're trying to value, and we submit to you that the value of each one of those days is somewhere between 925 and a thousand dollars a day. And so the damages on the non-economic damages are between 9.25 and $10 million. You add them to the economic damages, and you'll get 10.1 to $11.1 million total damages.

This is their offset, Judge. It's been held by the judges of this Court that the Government must show that any proposed future offset is sufficiently certain and calculable. It's their burden of proof. We don't have to disprove

anything. They had to come in here with competent evidence that was at least by a preponderance, Judge, and meet that burden of proof.

And we've conceded. We've tried to be reasonable on this. We're not fighting tooth and nail on every single issue on this. The 62,854, again, Judge, it nets out past medical expenses. They're going to eat away at that and eat it up dollar for dollar on the offset. Past VA disability, we've broken it out here, Judge. So we don't contest that the past VA disability benefits that he's received related to the Camp Lejeune Justice Act should be included in the offset.

But here's where we do disagree and where we do start to diverge. This, obviously, has to come off, the future medical, any future medical related to a kidney transplant or kidney dialysis. He doesn't want to have those types of procedures done at the VA, and so they should not get to eat away at his recovery through future medical costs.

And future VA disability, Your Honor, we believe they have not met their burden to show that it's sufficiently certain and calculable. And it is large. It's over a half a million dollars of their projected future VA disability benefits.

You heard the testimony today from one of the VA representatives, the VBA representatives, and, you know, she testified in generality. She testified, "You know, in my

03:27:44 experience, these things don't really change." There's nothing
03:27:49 particularized to my client that suggests the Government should
03:27:52 eat away half a million dollars of that recovery.
03:27:55 You know, she didn't know when Mr. Abrams asked her,
03:27:58 "Did you know that the very thing Mr. Mousser is receiving in
03:28:02 terms of VBA benefits, the 4,600 for total unemployability, did
03:28:06 you know there's a bill pending in Congress to try to reduce
03:28:08 that right now?"
03:28:09 "I didn't know."
03:28:09 That's not sufficiently certain and calculable,
03:28:15 Judge. And if they didn't make it, they didn't prove it, you
03:28:18 shouldn't include it there.
03:28:19 And so you see the divergence. I've only included
03:28:23 one of their scenarios here, but we -- there is a possibility
03:28:28 that if you apply one of their scenarios, this offset is worth
03:28:32 as much as $1.4 million, and it eats away dollar for dollar in
03:28:37 Mr. Mousser's recovery.
03:28:38 And so it's very important, Judge -- you did comment
03:28:43 correctly previously. If you want Mr. Mousser to recover
03:28:48 anything as a result of being poisoned, you're going to have
03:28:52 to -- he's not going to actually net anything until you exceed
03:28:55 whatever value that offset is, and you have to apply the
03:28:57 offset. You have to make a finding on the offset. It's our
03:29:01 contention that that offset is $353,077, and you saw the charts
03:29:06 from their expert, somewhere between 800,000 to $1.4 million.

03:29:10 Your Honor, at the end of the day, Judge, this case
03:29:17 is about life, what's the value of a life, what's the value of
03:29:23 Frank Mousser's life, which the evidence shows completely been
03:29:27 destroyed and which has been shortened by a decade.
03:29:31 Again, I have the utmost respect. We've litigated
03:29:36 hard against many of these guys, but I have a really hard time
03:29:39 understanding the Government's litigating position in this
03:29:42 case, Judge, because every life, in my opinion, certainly
03:29:46 Mr. Mousser's life, is a gift from God. It's irreplaceable.
03:29:51 It's the most precious thing you could possibly have, and the
03:29:54 Government's position just -- it doesn't account for that.
03:29:58 This man is part of the 1 percent of the U.S.
03:30:03 population that's willing to serve their country in the Armed
03:30:06 Forces. This is one of the men who runs to the fight. When
03:30:14 the wolf is at the door, he throws himself at it to protect the
03:30:17 rest of us.
03:30:17 You know, Your Honor, we've come kind of full circle
03:30:22 because he was 20 years old 43 years ago last week, 20 years
03:30:27 old. He'd been at Camp Lejeune, poisoned by the water for
03:30:30 about a year. Two-hundred-fifty of his brothers in arms had
03:30:34 been murdered by terrorists in Beirut, Lebanon, and they
03:30:38 ordered this 20-year-old man onto a ship at the Port of
03:30:41 Morehead City, and he set sail for Beirut to back up his
03:30:45 brothers.
03:30:45 Imagine the courage, Your Honor, to get on that boat.

03:30:55 Imagine the fortitude in those long days and long nights,
03:30:58 wondering am I ever going to be back in America again or am I
03:31:02 going to meet the same fate of my brothers that were just
03:31:04 murdered. Imagine the chaos and the fear of being dropped into
03:31:10 a smoke-filled war zone, rifles cracking, you're 20 years old.
03:31:14 You don't have to imagine it, Judge. You don't have
03:31:20 to imagine it because the man who did those things is sitting
03:31:23 right here. His name is Frank Mousser. His pain, his
03:31:33 suffering and his anguish is absolutely worth more than an hour
03:31:37 of Dr. Shahnasarian and Dr. Peter Shields's time.
03:31:40 So, Your Honor, we would just appreciate the Court
03:31:47 entering an appropriate judgment in this case and apply the
03:31:50 numbers that we've set forth here.
03:31:53 THE COURT: Thank you. I'll hear from the
03:31:55 Government.
03:31:57 MR. BAIN: Thank you, Your Honor. As you stated the
03:32:00 other day, these cases are all about causation. We asked at
03:32:05 the outset that you decide this case based on the law and the
03:32:10 science. We are public servants, and Mr. Mousser has honorably
03:32:16 served his country, and we truly appreciate his service and
03:32:18 what he's done.
03:32:19 But our duty as public servants is to faithfully
03:32:25 execute the law. With respect to the Camp Lejeune Justice Act,
03:32:27 we say we need to be fair to the plaintiffs. We need to be
03:32:34 faithful to the language of the statute, and we need to be

accountable to the taxpayers.

The plaintiffs in this litigation as a whole have sought $335 trillion in claimed damages, so we have to look at these cases very closely and look at the law and look at the science. These cases are about the science. And we appreciate your attention. We balanced your request for expedition with our need to present you with the information that's important for you to decide this case.

Most of us know people who have kidney cancer or who have bladder cancer, and who were never at Camp Lejeune. It is a risk, a risk of life. So I want to show you, first of all, the demonstrative that we showed you earlier in the case.

And I want to take exception to what I heard over and over again, that we do not embrace the epidemiology that the ATSDR did at Camp Lejeune. That is not true at all. This is the most relevant study at Camp Lejeune that was published in 2024. It is a huge study of approximately 150,000 people at Camp Lejeune compared to 150,000 people at Camp Pendleton.

Seven-hundred and twenty-one people at Camp Pendleton got kidney cancer. Seven-hundred-ten people at Camp Lejeune got kidney cancer. Are we to say that everyone who got kidney cancer at Camp Lejeune got it because of the water, but at Camp Pendleton, what caused their kidney cancer? There is a background risk of kidney cancer that everyone is subject to.

So the question here is, does the science support

that Mr. Mousser's kidney cancer was caused by the water at Camp Lejeune? And so under the statute, as we said before, the elements -- and each element needs to be proven -- are exposure, general causation and specific causation.

So for purposes of exposure, what did they do? They bring in the person who put on the water model that was done for Camp Lejeune for purposes of supporting epidemiological studies. On cross-examination, it was pointed out that model did not need to produce accurate results because it was looking at relative risks for different populations over different time periods. The agency itself said do not use the results of this for individual, or to determine whether you or your family suffered health effect from it. That's exactly what the plaintiffs are trying to do with it here, which the agency said you shouldn't do with it. And they didn't bring their own expert in to actually reconstruct what they think Mr. Mousser's situation was. They've tried to fit a square peg in a round hole by using something that wasn't intended for the purpose that they put it to.

You can see the great uncertainty here. This is so uncertain. It could be this low or it could be this high, but they were trying to determine relative levels, like, how does this group compare to this group compared to this group. It did not need to be accurate. It only needed to show different relative levels over different time periods.

We heard Dr. Shields talk about the epidemiology. He did not shy away from the Camp Lejeune reports at all. With respect to general causation, this is what the Court has already said is a necessary threshold to determine general causation, a statistically significant relationship. And this is in an order that all the judge -- or three of the judges in this case signed, and it sets out the requirements, including yourself, Your Honor, that need to be proven under the science to prove general causation and specific causation, and you need to have a statistically significant relationship which exists with an odds ratio, which we heard a lot about, in the 95 percent confidence interval, and that interval does not include an odds ratio of 1.0 or below. That's what it says.

These are the results from that very recent, very robust ATSDR epidemiological Camp Lejeune study that is very reliable. We did not question the reliability of this study at all. None of the results here meet the Court's test for statistical significance. Whether you call the cancer urothelial cancer, urinary bladder cancer or kidney and renal pelvis cancer, they're all very low. As we saw the raw numbers of Camp Lejeune to Camp Pendleton, there is hardly any difference between those populations at all.

As Dr. Shields said, if there was an effect to Camp Lejeune, you would see something really that jumps out at you, but there is no effect here. Something like smoking, as you

can see, this is a dramatic effect that is shown by the -- by urothelial cancer for people who smoke. We do not see that in the Camp Lejeune epidemiological studies at all.

The plaintiffs presented Dr. Hatten in this case. Dr. Hatten threw out a lot of statistics, and they claim that there are some statistically significant results from the Camp Lejeune studies, not this robust study. They have to go to other studies that are further back in time that didn't have as many people in them, or based on a survey and were completely unreliable. All of the results that they cited from the Camp Lejeune studies were either from this 2018 study that was based on a survey that had a very poor response rate or were part of the tables of another study that wasn't even significant or important enough or reliable enough for the author to put it in the body of the article. That's what they rely on. That doesn't meet the Court's standard. It's not a reliable result.

You heard a lot about parts per billion versus parts per million. Parts per billion is what was in the Camp Lejeune water. One part per billion is the equivalent of one drop in an Olympic-sized swimming pool. So the part-per-billion levels that were at Camp Lejeune were minute. They were small. In contrast, a part per million is four drops in a 55-gallon barrel. You know, that's quite a bit more.

The studies where there is an effect from TCE on kidney cancer are studies at the part-per-billion level, which

is like an occupational -- part-per-million level, which is like the occupational studies, not the part-per-billion level, which was at Camp Lejeune. And as you heard in this case over and over and over again -- it's the standard scientific principle -- it's the dose that makes the poison. You have to have a sufficient dose in order to have the effect because the body's own mechanisms are able to take care of smaller doses.

They claim -- they try to confuse things by saying, oh, there's no threshold for TCE, and they cite some agency reports by our own agency, EPA. What the agency is saying there is that we are not going to assume a threshold because we are establishing a regulatory level for drinking water. We want to make sure it's safe to the one-in-a-million risk level. So that's like one additional cancer out of a million people exposed to that level. So we are going to assume there is no threshold for purposes of public policy regulation.

That is not saying what they want you to believe, that there's no threshold at all for TCE. Dr. Shields persuasively explained why there are many studies that looked at different levels of TCE and where there was effect, and there was only an effect at higher occupational levels at the part-per-million level.

So the third factor that needs to be considered is specific causation. That's the differential diagnosis that's done. And we heard from two experts on that, Dr. Del Pizzo and

Dr. Stadler, and that's where you're looking at all the different causes of disease and trying to determine which is more likely based on things like history, exposure level, other factors that you're looking at.

And so the question that the Court needs to consider is, was there a reliable differential diagnosis performed by Dr. Del Pizzo in this case that established that Mr. Mousser's cancer was at least as likely as not, or more likely than not than anything else from the Camp Lejeune water. That's the question.

Well, what did Dr. Del Pizzo do? He came in here and he made that conclusion, but he did two things that were really wrong. First of all, he didn't consider Mr. Mousser's complete smoking history. He had no idea about this record, which was supposedly in the materials-considered list that he was supposed to consider. He had no explanation for it. That's one thing that he didn't do.

We also know that there was a record, as you saw this morning, from 2016, that showed Mr. Mousser was smoking in the mid 2010s. That's not back in the Marine Corps, which Mr. Mousser claimed in his deposition was the limits of his exposure. So he didn't completely consider Mr. Mousser's smoking history in his differential diagnosis.

Additionally, what he did was when he looked at the levels of Camp Lejeune, he relied on Kelly Reynolds's numbers,

and Kelly Reynolds's numbers were completely mistaken because she assumed a month of exposure when there were actually less than a month for Mr. Mousser there. So they were grossly overestimated, and that was the level of exposure that he used for his differential diagnosis. So what does that show? Is that the differential diagnosis that he did was completely unreliable and it should be excluded.

This is a quote that the Court in its recent order on causation, which you, Your Honor, signed, has in two different places. It excluded an oncologist's opinion on specific causation because the oncologist failed to follow the differential etiology methodology -- methodology in his report, and he failed to reliably rule out obesity as a potential cause of plaintiff's cancer. Here, Dr. Del Pizzo completely failed to rule out smoking. He used an improper and error-ridden exposure number to look at Camp Lejeune, and we would submit that he did not reliably do a differential etiology.

THE COURT: Don't you love how you -- when you can have an opportunity to rub my nose into something I've said before?

MR. BAIN: Well, Your Honor, we're just trying to go with the law of the case.

THE COURT: No, no, it's humbling.

MR. BAIN: So I would just -- so this checkbox with the water is highly contaminated, that's completely, completely

unreliable. It's based on the ATSDR's model that was for a purpose entirely different than what the plaintiffs tried to use it for.

Mr. Mousser did have an exposure. We agree with that. This Court used the analysis or the analogy of being in a thunderstorm doesn't mean you're stricken by lightning. You can have an exposure to water that's contaminated, but that doesn't mean you're going to get the illness. And the toxic water didn't cause Mr. Mousser's cancer because they failed both on general causation and specific causation to reliably show that it did. They didn't show any Camp Lejeune study where there was a reliable, statistically significant result in a study that was submitted to a peer-reviewed journal for publication. All the results they rely upon were unreliable.

With respect to damages, we don't dispute that someone who has kidney cancer, it's a terrible thing to have. There's no dispute about that, that it causes damage. But as you saw, at Camp Pendleton, there was a similar number of people with kidney cancer, similar number of people who have circumstances like Mr. Mousser, similar number of people who served their country and got kidney cancer, but that doesn't mean it was caused by the water, unless you can show scientifically that it was.

THE COURT: Why didn't the Congress write a law for Camp Pendleton?

03:47:47 MR. BAIN: Because, Your Honor, people get sick, get
03:47:51 cancer because of everyday life. We all know people who got
03:47:54 sick. It's not because there's any type of chemicals at Camp
03:47:57 Pendleton that caused them to get sick. It's because everybody
03:48:01 has a risk of getting sick.
03:48:02 THE COURT: Okay.
03:48:02 MR. BAIN: And so, Your Honor, you've mentioned
03:48:05 several times, well, why would Congress write this law unless
03:48:09 it intended that people were to get compensated?
03:48:11 THE COURT: I don't think I said that.
03:48:14 MR. BAIN: Well, something along those lines. I
03:48:16 don't want to misquote you. But, you know, you and I both know
03:48:20 that there was a lot of litigation under the Federal Tort
03:48:23 Claims Act many years ago.
03:48:24 THE COURT: Exactly. I mean, I had cases involving
03:48:26 the same thing in the early teens, in '11, '12, '13.
03:48:32 MR. BAIN: Yeah, you might --
03:48:33 THE COURT: It went to the MDL.
03:48:34 MR. BAIN: You might have forgotten, Your Honor, I
03:48:36 argued before you --
03:48:38 THE COURT: Okay.
03:48:38 MR. BAIN: -- about ten years ago.
03:48:40 THE COURT: Yeah.
03:48:40 MR. BAIN: And in those cases --
03:48:41 THE COURT: And it all went to the MDL.

MR. BAIN: It did go to an MDL, and the MDL judge determined that --

THE COURT: That the statute of repose barred it.

MR. BAIN: Statute of repose, the discretionary function exception and the *Feres* bar. So there's three bars to it.

THE COURT: Right.

MR. BAIN: Those are not bars on the merits of the case, of course. Those are sovereign immunity bars, as you know.

THE COURT: Right.

MR. BAIN: The Camp Lejeune Justice Act was passed to open the courtroom door to allow our veterans to have a chance to prove their case. That's what this case is about. They're given the opportunity to present the evidence to prove their case, and that's a good thing for our veterans and they have an opportunity to do that. But that doesn't mean just because they have an opportunity to get in the courthouse door, that that means they're entitled to damages. They still have to show through the science and the facts and the law that they're entitled to compensation, and we don't think that they've met their burden in this particular case to do that.

And so the final thing I'll say, Your Honor, is that, you know, the statute also requires offsets and the principal--

THE COURT: Yeah, I was going to ask you that

question. What do you say about the offsets?

MR. BAIN: The offsets are required to be applied by the statute, and we presented the evidence on the offsets today. And if your court were to rule in Mr. Mousser's favor, the law requires and there's an order also that you signed on this that requires offsets to be applied. We're entitled to offsets for past benefits that the VHA and the VBA provided, which for Mr. Mousser, are in the neighborhood of $300,000. And the Court said that we're entitled to offsets for future benefits that are reasonably certain to be paid by the VA for Mr. Mousser. And you saw there were three different scenarios there that we offered. And so it's at least -- regardless of the outcome of this case, he is going to receive at least $600,000, as we projected, in the future for VA benefits, so that needs to be applied by the Court in this case.

And I don't want to sit down without addressing, just very briefly, some of the things that were said by counsel. There are a lot of things in Mr. Mousser's records, if you take a deep dive into them, that he had significant health issues, significant mental health issues that continued up to right before he was diagnosed with cancer, so that needs to be taken into account. That's simply what we were trying to show by his significant depression, his significant sleep issues, his significant pain. Those things are things that have to be taken into account. As you know, Your Honor, when there's

preexisting conditions, those are things that must be taken into account in damages.

THE COURT: Burden of proof, in a normal negligence case, it's preponderance is more likely so than not so.

MR. BAIN: Right.

THE COURT: Where is it in this case?

MR. BAIN: Well, Your Honor, I know you've done jury cases. The instruction is, like, if there's -- if they're level and there's one --

THE COURT: You have to make the scale tip somewhat.

MR. BAIN: Makes them the same. So it's like the difference between a feather on the scale and no feather on the scale. So it reduces the burden of proof very slightly for the plaintiffs. It goes from 51 percent to, say, 49 percent to 50-50 percent.

THE COURT: Okay. So it's 50-50?

MR. BAIN: Right.

THE COURT: Okay.

MR. BAIN: Do you have any further questions, Your Honor?

THE COURT: No, and thank you for answering them.

MR. BAIN: Thank you, Your Honor.

THE COURT: Do you have rebuttal?

MR. DOWLING: Yeah, just briefly, Your Honor. If I can use some of their documents.

(Brief pause.)

MR. DOWLING: Sorry, Your Honor. I beg the Court's indulgence.

So let me just pull back the curtain a little bit on the role of a zealous defense attorney. It's to try to raise doubt when a plaintiff's lawyer comes with the kind of evidence that we've come into this case. And, Your Honor, I've represented criminal defendants when that can be a really hard thing to do. I've represented civil defendants when that can be a hard thing to do. And sometimes you just got to find whatever you can and latch onto it and ride it till daylight.

And that's what this 5/31/2020 smoking record is all about because they're trying to draw out and draw attention to this smoking issue that isn't really an issue, in the hopes that they'll just toss a bone out in the field and you'll go chase it, in the hopes that they'll somehow raise doubt on this unequivocal record. My client put his hand on the Bible and said, "I've never seen that before."

If my friends would indulge me, could you raise your hand if you work for the United States Department of Justice, please? Come on, guys. I mean, Judge, you see what's going on here, right? Okay, I don't know how many of them they brought, but over the course of several days, two dozen.

Did we ever hear a single shred of testimony from Nurse Donna Marie Eggert? I don't remember that. Did we ever

03:54:51 hear a single shred of testimony from the physician who
03:54:54 supposedly signed off on this, Mr. Schilling? I don't remember
03:54:57 that at all.
03:54:59 The only testimony we heard was from this man, and
03:55:02 you rightly excluded this exhibit when they tried to get it
03:55:05 into evidence because there's absolutely no foundation for it.
03:55:07 But you know what, we want finality here, and so they
03:55:12 ultimately admitted it. But I'm explaining to you, this is the
03:55:15 most powerful party in the legal system. They've brought
03:55:21 dozens of lawyers to this courthouse, but they couldn't bring
03:55:27 one or two other government employees, particularly Donna Marie
03:55:30 Eggert or Mr. Schilling, who worked for the Department of
03:55:31 Veterans Affairs, to say, yeah, you know what, this did happen,
03:55:34 Mr. Mousser's a liar. They didn't do it. And so this is a
03:55:39 bone that they're trying to throw out in the field and hope
03:55:41 you'll latch onto it.
03:55:42 And frankly, Judge, it doesn't even matter. My
03:55:45 colleague, Mr. Snidow, had their specific cause expert on cross
03:55:50 this morning, and he represented to you this massively
03:55:53 increased risk. He didn't tell you what the -- what the actual
03:55:57 trigger was. It was 50 pack years, Judge. Even this doesn't
03:56:01 come close to 50 pack years. But this isn't real. This is an
03:56:06 attempt to sow doubt, and that's your job if you're a defense
03:56:09 attorney. I do not criticize them for that, but it is without
03:56:13 foundation, and it should not be given any weight at all.

03:56:16 Your Honor, the only other thing, in closing, I would
03:56:21 ask you to consider is I don't know how you square the
03:56:25 Government's position in court today with the Camp Lejeune
03:56:30 Justice Act. If Mr. Mousser can't recover, I don't know where
03:56:35 to go from here. He was there at the highest periods of
03:56:39 contamination. He unequivocally was exposed to these solvents,
03:56:42 these things that break down grease and burnt-on
03:56:46 petrochemicals. He had his kidney removed. He's going to need
03:56:50 dialysis and a kidney transplant. His life has been destroyed.
03:56:53 Who else do we have to bring in here before they
03:56:56 finally acknowledge, yes, you're right, we'll stop this because
03:57:01 this has been a long, hard slog, Judge, over the past several
03:57:05 years. We've been on the road together. I've been to Denver,
03:57:08 Colorado. I've been to South Carolina. I've been all over
03:57:10 with these Marines. And it's time that the Court finally
03:57:15 render judgment and say what the evidence shows, and we think
03:57:17 it shows conclusively that Frank Mousser is entitled to
03:57:20 substantial damages.
03:57:21 THE COURT: Can you take this down?
03:57:23 MR. DOWLING: Oh, sorry.
03:57:26 THE COURT: That's fine. Just put it there.
03:57:28 I want to sincerely -- well, do you want to say
03:57:34 anything?
03:57:35 MR. BAIN: The only thing I would say, Your Honor, is
03:57:36 for this document, we stipulated with the plaintiffs to the

admissibility and authenticity of government records. There was no reason for us to call in -- we didn't think somebody would dispute their own medical records, so...

THE COURT: Well, I want to sincerely, and I mean this from the heart, thank the lawyers involved in this case because I didn't think we could try it in three days, but y'all did a great job, and you were thorough and responsible for each of your sides in it.

We're sitting at the point tip of the spear of at least 3,000-plus cases that are in our district, and gosh only knows, another 400,000 that are in the administrative process, and so I think that what you-all -- the effort you've put into this case will be consequential.

And I'll do my best. I have no idea other than to examine the evidence and come up with what I believe to be the correct response and judgment. But I'm very impressed with the way the Government handled it and the way the plaintiffs handled it, and I thank you very much.

MR. BAIN: Your Honor, can we submit post-trial findings?

THE COURT: What's that?

MR. BAIN: Can we submit proposed post-trial findings?

THE COURT: Yeah, you can do that.

MR. BAIN: Thank you, Your Honor.

03:59:15 THE COURT: Okay. Thank you.

03:59:15 (Proceeding concluded at 3:59 a.m.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

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

Dated this 6th day of November, 2026.

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