

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

IN RE: )  
 )  
CAMP LEJEUNE WATER LITIGATION ) Docket No.  
 ) 7:23-CV-897  
 )  
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TUESDAY, DECEMBER 5, 2023  
STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE  
ROBERT B. JONES, JR., MAGISTRATE JUDGE  
In Wilmington, N.C.

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III, James A. Roberts

On Behalf of the Defendant:

J. Adam Bain, Patrick J. Ryan, Sara Mirsky

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

1 (Tuesday, December 5, 2023, at 11:05 a.m.)

10:48:05 2 **P R O C E E D I N G S**

11:05:06 3 THE COURT: Good morning.

11:05:27 4 All right. Thank you for the status report.  
11:05:29 5 That was -- that was very helpful in knowing where the  
11:05:32 6 parties are. I would like to get -- begin by asking if  
11:05:41 7 there is anything that parties are waiting for the Court  
11:05:46 8 to rule on that is ripe. I know there's some things  
11:05:51 9 that have been filed that are not ripe, but are there  
11:05:53 10 any things that -- that are -- that the parties are  
11:05:57 11 waiting on?

11:05:58 12 MR. BELL: Not that I'm aware of, Your  
11:06:00 13 Honor.

11:06:00 14 THE COURT: Okay. Mr. Bain; is that right?

11:06:02 15 MR. BAIN: That's correct, Your Honor.

11:06:03 16 THE COURT: Okay. All right. So at our  
11:06:05 17 last meeting, we talked quite a bit about discovery, and  
11:06:11 18 a lot of that is in the -- in the most recent status  
11:06:14 19 report. And on top of that, a motion to compel was  
11:06:17 20 filed last night. So other than that motion to compel,  
11:06:24 21 the substance of which we discussed at the last  
11:06:26 22 conference, among other things, is there any other  
11:06:31 23 written discovery that is outstanding? Because I want  
11:06:36 24 to get a sense of what I may expect in the way of other  
11:06:42 25 motions to compel that we've already discussed.

11:06:46 1 MR. BELL: Good morning, Your Honor.

11:06:47 2 THE COURT: Good morning.

11:06:47 3 MR. BELL: May it please the Court. We have  
11:06:49 4 five matters we would like to bring to the Court's  
11:06:51 5 attention.

11:06:51 6 THE COURT: Are these new matters or are  
11:06:53 7 they matters we've talked about last time that are in  
11:06:56 8 the current status report?

11:06:57 9 MR. BELL: I think they're new matters, Your  
11:07:01 10 Honor, which we have to bring to the Court's attention  
11:07:04 11 before --

11:07:04 12 THE COURT: Correct.

11:07:05 13 MR. BELL: -- we filed our motions.

11:07:06 14 THE COURT: Okay.

11:07:07 15 MR. BELL: And we've had our  
11:07:08 16 meet-and-confers on all of them.

11:07:10 17 THE COURT: All right. So what's the status  
11:07:11 18 of the stuff we discussed -- that we discussed last  
11:07:19 19 time? This had to do with -- I think you were asking  
11:07:30 20 for some generalized discovery, the Government was  
11:07:32 21 pushing back on that because they needed dates of birth  
11:07:38 22 and Social Security numbers and releases, and then you  
11:07:39 23 said we don't need that stuff because it's not  
11:07:44 24 individualized; it's generalized.

11:07:45 25 MR. BELL: As I understand it -- and

11:07:46 1 Mr. Roberts can address that -- there have been some  
11:07:49 2 ongoing discussions with the Government, and I think  
11:07:51 3 they're making some progress on that.

11:07:53 4 THE COURT: Okay.

11:07:54 5 MR. BELL: Is that correct, Adam?

11:07:56 6 MR. BAIN: Yes. If I can address that, Your  
11:07:58 7 Honor. We're still waiting for that identifying  
11:08:04 8 information for about 90 percent of the plaintiffs in  
11:08:05 9 the litigation. We have it for about 10 percent that  
11:08:08 10 the -- some plaintiff's counsel have provided to us.  
11:08:10 11 And because of that information being provided to us, we  
11:08:13 12 have been able to get records from the various  
11:08:16 13 government agencies with respect to individual  
11:08:18 14 plaintiffs. But we're still waiting for that  
11:08:20 15 information for 90 percent of the plaintiffs. And  
11:08:24 16 because we don't have that information, we can't request  
11:08:27 17 the records. And that's going to hinder our ability to  
11:08:31 18 do the discovery under the short, three-month time  
11:08:33 19 period that we have to do discovery on a hundred  
11:08:36 20 plaintiffs.

11:08:36 21 THE COURT: When does fact discovery close?

11:08:41 22 MR. BAIN: I believe mid-March.

11:08:43 23 THE COURT: Okay. All right.

11:08:44 24 MR. BELL: If I could address that.

11:08:45 25 THE COURT: Well, I don't want to rehash

11:08:47 1 ground we've already talked about. And if we've already  
11:08:50 2 talked about it, then, consistent with our protocol, tee  
11:08:53 3 up your motion to compel and then we'll take it in due  
11:08:56 4 course.

11:08:57 5 MR. BELL: It's a little simpler than that,  
11:08:59 6 Your Honor.

11:08:59 7 THE COURT: Okay.

11:09:01 8 MR. BELL: We have told the Government that  
11:09:03 9 as soon as the Court selects our Track 1 plaintiffs --  
11:09:06 10 which we're going to do today, is our deadline.

11:09:08 11 THE COURT: Right.

11:09:09 12 MR. BELL: -- we'll turn those over for the  
11:09:11 13 hundred plaintiffs. It will be crazy to turn over six  
11:09:14 14 or seven hundred plaintiffs when they're not part of the  
11:09:17 15 discovery pool.

11:09:18 16 THE COURT: Okay.

11:09:18 17 MR. BELL: So we've told them that and told  
11:09:20 18 them that, and I don't know what else I can do. Now,  
11:09:23 19 today, we both exchange our lists and we'll start  
11:09:26 20 providing that information.

11:09:27 21 THE COURT: All right. So that -- that was  
11:09:30 22 my item number 2, is the Track 1 update. You are  
11:09:37 23 selecting your individual plaintiffs today; correct?

11:09:41 24 MR. BELL: Yes, Your Honor.

11:09:41 25 THE COURT: And what? Do you exchange a

11:09:43 1 hundred names?

11:09:45 2 MR. BELL: Fifty each, Your Honor. We'll  
11:09:47 3 then decide if there are any duplicates and figure out a  
11:09:50 4 way to substitute.

11:09:51 5 THE COURT: Okay. Is that right?

11:09:52 6 MR. BAIN: May I address something, Your  
11:09:54 7 Honor? So the difficulty we have is that without  
11:09:56 8 getting the information about the individual plaintiffs,  
11:09:59 9 we can't get the records for them. So we have to wait  
11:10:02 10 for those records to do discovery on those particular  
11:10:05 11 plaintiffs. Additionally, if we don't have the records,  
11:10:08 12 we don't have a basis for suggesting additional  
11:10:11 13 plaintiffs for the additional tracks that are coming  
11:10:13 14 behind Track 1. So it's just simple information: the  
11:10:16 15 date of birth, the Social Security number of the  
11:10:20 16 plaintiffs in the litigation -- there's about 1400 of  
11:10:22 17 them. We don't see why it's that difficult for  
11:10:25 18 plaintiff's counsel to provide that information to us so  
11:10:28 19 that we can get a head start on getting the records. We  
11:10:31 20 have some information which will help us select Track 2  
11:10:34 21 and Track 3 plaintiffs that will assist the Court and  
11:10:37 22 the parties in determining, you know, how this  
11:10:40 23 litigation is going to be resolved.

11:10:42 24 THE COURT: Is this something -- I'm really  
11:10:45 25 sort of getting off track here. But is this something

11:10:48 1 that can be the subject of a motion to compel, or is  
11:10:51 2 this just manifestation of the way that the case has  
11:10:56 3 been set up in the case management order?

11:10:59 4 MR. BELL: Your Honor, if I may, please. We  
11:11:02 5 now have submitted to the Court -- we're waiting on the  
11:11:06 6 Court to decide competing requests for the next diseases  
11:11:12 7 of Track 2.

11:11:12 8 THE COURT: Right.

11:11:13 9 MR. BELL: As soon as the Court decides  
11:11:14 10 those diseases, we'll do our search of the available  
11:11:18 11 plaintiffs and we will turn over that. We've told them  
11:11:21 12 this, Judge. This keeps going on and on. I'm not sure  
11:11:24 13 we can do it until we get that information from the  
11:11:26 14 Court. It would be worthless to turn over people who  
11:11:30 15 have this disease and not even part of the Track 2.

11:11:37 16 THE COURT: Mr. Bain.

11:11:38 17 MR. BAIN: It's very simple information, and  
11:11:40 18 it will help us not only select the Track 2 and Track 3  
11:11:44 19 plaintiffs but get a head start on getting the  
11:11:46 20 information so we can do the discovery within this very  
11:11:49 21 short window that we have to do discovery. Now we're  
11:11:52 22 going to be waiting, you know, for records. You know,  
11:11:54 23 waiting for the agencies to search and produce the  
11:11:57 24 records to us.

11:11:58 25 THE COURT: Why does that information not

11:12:00 1 help the parties get a view as to how these individuals  
11:12:06 2 are -- if they're selected -- it doesn't sound like -- I  
11:12:12 3 mean, he's asking for the information, so he's the one  
11:12:15 4 digging in the files to do the bulk of the work. How  
11:12:18 5 does this not help the parties to understand how the  
11:12:21 6 folks who ultimately are selected are truly  
11:12:25 7 representative of the population?

11:12:37 8 MR. BELL: I understand what you're saying.  
11:12:38 9 But there are 1500 plaintiffs in the pool right now.  
11:12:41 10 Only five more diseases will be selected by the Court.  
11:12:44 11 Out of those five diseases, we can do a quick search and  
11:12:46 12 get that information over to them. But to -- a lot of  
11:12:51 13 these people, as you know, Your Honor, are old -- older.  
11:12:55 14 I shouldn't say "old," but older. Some of them don't  
11:12:57 15 have computers. A lot of this has to be done in person  
11:13:01 16 or on the phone, snail mail, things like that. And to  
11:13:04 17 do all 1500 when we only need a hundred out of that 15,  
11:13:09 18 once the -- the diseases are done, then I think it's --  
11:13:16 19 they're pushing us for this. But, yet, they say this  
11:13:20 20 can take months for them to get us information. It's  
11:13:23 21 just not right, Your Honor.

11:13:24 22 THE COURT: Well, if it's going to take  
11:13:25 23 months to get the information, why not start now?

11:13:27 24 MR. BELL: This isn't the same information  
11:13:29 25 we're talking about.



11:13:30 1 THE COURT: Oh.

11:13:31 2 MR. BELL: And we're -- I mean, we're  
11:13:32 3 turning over medical records immediately when we get our  
11:13:36 4 names out. We will do all of that immediately. And so,  
11:13:39 5 again, today we turn over the -- we've -- we will know  
11:13:43 6 the bellwethers today. Those will be immediately re --  
11:13:47 7 sent out to the Government.

11:13:49 8 Second, when we get the diseases, for  
11:13:51 9 everybody in our pool that has that particular disease,  
11:13:54 10 we will turn that information over. I don't know how we  
11:14:00 11 can go outside of that and be effective or efficient.

11:14:06 12 THE COURT: Well, if it's a matter of a  
11:14:08 13 discovery dispute or altering the structure of the case  
11:14:15 14 management order, I think the parties should file a  
11:14:18 15 motion.

11:14:20 16 Okay. So there is some new discovery that  
11:14:23 17 you want to bring to the Court's attention. Is this in  
11:14:26 18 your -- in the written discovery you've served today?

11:14:30 19 MR. BELL: Yes, sir, Your Honor.

11:14:35 20 Your Honor, first I want to talk about  
11:14:38 21 privilege logs. The Government turned over certain  
11:14:41 22 privilege logs on certain information. We've asked the  
11:14:46 23 Government to update their privilege logs to comply with  
11:14:50 24 the Fourth Circuit requirements of the privilege logs.  
11:14:56 25 We're informed the Government is refusing to change

11:14:59 1 their privilege logs.

11:15:00 2 THE COURT: What's the problem?

11:15:01 3 MR. BELL: We don't have enough information  
11:15:03 4 in the privilege logs to know who the sender was and the  
11:15:05 5 recipient. That's the big issue. But there's --  
11:15:10 6 there's a -- in *Johnson versus Ford* -- I'm sorry, Your  
11:15:13 7 Honor, I don't have the cite in front of me. But it's a  
11:15:18 8 Fourth Circuit case. And it goes through what is  
11:15:20 9 required or allowed under the privilege logs in this  
11:15:23 10 circuit. We believe, Your Honor, these privilege logs  
11:15:26 11 don't comply.

11:15:28 12 I bring this to the Court's attention to ask  
11:15:30 13 the Court if -- to inquire about it and if we need to, I  
11:15:35 14 need permission to file a motion.

11:15:36 15 THE COURT: Sure.

11:15:37 16 Mr. Bain.

11:15:37 17 MR. BAIN: Yes, Your Honor. I would like to  
11:15:39 18 point out two things. First of all, we have -- this is  
11:15:42 19 part of the prior discovery that was produced with  
11:15:45 20 respect to the MDL. So we did produce the same  
11:15:48 21 privilege logs with the same document collections which  
11:15:51 22 were produced previously in the MDL.

11:15:55 23 THE COURT: That was in Georgia?

11:15:58 24 MR. BAIN: Yes.

11:16:01 25 Mr. Bell refers to Fourth Circuit case law;

11:16:05 1 it's actually a district court of Virginia case, in my  
11:16:09 2 understanding.

11:16:10 3 So we don't believe the privilege log is  
11:16:12 4 needing to be updated. We are going to be producing  
11:16:15 5 documents that were withheld under the previous  
11:16:18 6 privilege logs based on deliberative process privilege.

11:16:20 7 But I would also like to point the Court to  
11:16:22 8 the stipulated order that the parties have agreed to,  
11:16:27 9 which states that the parties agree that alternatives to  
11:16:30 10 document-by-document privilege and confidential logs  
11:16:33 11 presumptively meet the requirements of Rule 26(b)(5)(A).  
11:16:38 12 The parties are to confer on the scope and nature of  
11:16:39 13 alternative privilege and confidentiality logs for the  
11:16:42 14 case, including the specific categories of information  
11:16:46 15 that may be excluded from any logging requirements and  
11:16:50 16 alternatives.

11:16:50 17 THE COURT: Where are you? I'm sorry.

11:16:52 18 MR. BAIN: I'm at Document 52, which is the  
11:16:55 19 ESI -- stipulated ESI order, and on page 8 of that  
11:17:00 20 document.

11:17:43 21 (Pause.)

11:17:43 22 THE COURT: This is paragraph 6?

11:17:46 23 MR. BAIN: Yes, Your Honor.

11:18:20 24 (Pause.)

11:18:20 25 THE COURT: Mr. Bell, why doesn't this

11:18:25 1 provision apply?

11:18:25 2 MR. BELL: Well, Your Honor, ESI order  
11:18:27 3 basically requires the parties to meet and confer to try  
11:18:29 4 to figure out a way --

11:18:31 5 THE COURT: Right.

11:18:31 6 MR. BELL: -- to resolve their problems.

11:18:32 7 THE COURT: Right.

11:18:33 8 MR. BELL: There's nothing more important  
11:18:35 9 than a privilege log than knowing who the author of the  
11:18:38 10 document is and who the recipients are. That's missing  
11:18:41 11 in their privilege log. And it will be impossible for  
11:18:46 12 us to challenge the privilege when we don't even know  
11:18:49 13 who the author is. It may be someone we might want to  
11:18:53 14 take a deposition. Or the recipients are.

11:18:56 15 Your Honor, I do have the cite on *Johnson*  
11:18:58 16 *versus Ford*. 309 Federal Rules of Decision 226.

11:19:09 17 MR. BAIN: And Your Honor, if I can cite you  
11:19:11 18 to one of your previous decisions, *Eshelman versus Puma*  
11:19:16 19 *Biotechnology, Inc.*, 2017 U.S. District Lexis 108, 328,  
11:19:22 20 which says that line-by-line privilege logs are not  
11:19:24 21 always required.

11:19:26 22 And so what we're trying to do here, because  
11:19:28 23 of the massive amount of information that's going to be  
11:19:32 24 part of this, is to have alternatives that can meet the  
11:19:36 25 privilege log requirements. In other words, give the

11:19:40 1 plaintiffs an opportunity to challenge the privilege  
11:19:41 2 because it gives them enough information but is  
11:19:44 3 categorical so that it can reduce the burden on the  
11:19:48 4 parties with respect to how the information is described  
11:19:51 5 and not done on a line-by-line basis.

11:20:04 6 THE COURT: All right. Well, do I need to  
11:20:05 7 see the privilege log to make an educated ruling on  
11:20:07 8 this? I mean, if so -- we don't need to take it up  
11:20:16 9 today; you can just include it in a motion to the Court.

11:20:18 10 MR. BELL: Yes, Your Honor.

11:20:19 11 THE COURT: So other than the privilege log  
11:20:21 12 issue, what other issues are there?

11:20:23 13 MR. BELL: Your Honor, we have met and  
11:20:25 14 conferred on our ESI protocol.

11:20:29 15 THE COURT: This is what was entered in  
11:20:31 16 earlier?

11:20:35 17 MR. BELL: There was a motion last night on  
11:20:37 18 another matter.

11:20:38 19 THE COURT: Okay.

11:20:39 20 MR. BELL: So according to our CMO, we're  
11:20:44 21 required to meet and confer to try to come up with an  
11:20:46 22 ESI protocol.

11:20:48 23 THE COURT: Yeah.

11:20:48 24 MR. BELL: For the plaintiff, we're required  
11:20:50 25 to come up with a list of custodians and search terms.

11:20:56 1 THE COURT: Right.

11:20:56 2 MR. BELL: We thought we had a fairly -- a  
11:21:00 3 good list for what we know we're looking for. And  
11:21:05 4 apparently there's not been an agreement as to the  
11:21:07 5 number of custodians or the search terms. So we would  
11:21:10 6 ask the Court for permission to file a motion.

11:21:13 7 THE COURT: So I can -- I can grasp the  
11:21:17 8 significance of search terms, can you explain to me  
11:21:19 9 about the custodian part of that?

11:21:21 10 MR. BELL: Yes, Your Honor. Because we're  
11:21:26 11 dealing with maybe up to eight to ten agencies in the  
11:21:32 12 government, our search terms were -- I mean, our  
11:21:34 13 custodians were, I think, 24. The Government is  
11:21:38 14 proposing four. Now, I do think that our ESI terms  
11:21:45 15 could be reduced some. I agree with that. But we can't  
11:21:49 16 even do that until we agree that -- to the custodians.  
11:21:55 17 And I'll be glad, in the motion, to give the Court a  
11:21:58 18 reason why each custodian is being asked. But then the  
11:22:02 19 Government says, no, no, we want to give you only four.  
11:22:05 20 And they're selecting four.

11:22:06 21 THE COURT: Just generally, what is it --  
11:22:09 22 what is -- what is it -- what is important to know about  
11:22:13 23 a custodian before that person is -- assumes that  
11:22:18 24 position?

11:22:19 25 MR. BELL: For example, Your Honor, in the

11:22:21 1 ATSDR agency --

11:22:23 2 THE COURT: Right.

11:22:23 3 MR. BELL: -- we want to know who was  
11:22:24 4 responsible for or participated in the research for  
11:22:29 5 certain diseases which are part of our Track 1 cases.  
11:22:33 6 We want to know who was part of the overall strategy  
11:22:37 7 for, like, water modeling, things like that. So it's  
11:22:41 8 targeted for what we think we're going to need in our  
11:22:44 9 litigation. We don't want millions of documents that  
11:22:47 10 have to do with liability. We're going directly to  
11:22:51 11 damages.

11:22:51 12 For example, Your Honor, in the request for  
11:22:56 13 studies and information relating to certain diseases, if  
11:23:00 14 they have things in there that relate to leukemia or  
11:23:04 15 Parkinson's disease, we think that's a valid search  
11:23:08 16 term. So it's -- it is targeted toward what we think is  
11:23:12 17 required for us to use in our cases. We think it's  
11:23:15 18 fairly limited.

11:23:17 19 THE COURT: Well, I saw in the joint status  
11:23:19 20 report, on page 8, where it's indicated the parties have  
11:23:24 21 exchanged lists of government custodians for  
11:23:27 22 negotiation. In particular, the plaintiffs propose a  
11:23:29 23 list of over 60 custodians from ATSDR, some of whom do  
11:23:34 24 not appear to be current or former ATSDR employees. I  
11:23:39 25 don't know the significance -- I don't know what that

11:23:40 1 means.

11:23:40 2 MR. BELL: That's --

11:23:41 3 THE COURT: Why is that a big deal?

11:23:43 4 MR. BELL: That's been reduced, Your Honor,  
11:23:44 5 down to 24.

11:23:45 6 THE COURT: But why is it a big deal that  
11:23:47 7 there are so many from ATSDR? Why is it a big deal that  
11:23:52 8 there are only some who do not appear to be current or  
11:23:54 9 former ATSDR employees? Are you selecting people with  
11:23:58 10 specialty in the agency?

11:24:00 11 MR. BELL: We are aware, Your Honor, of the  
11:24:02 12 individuals who were part of the 2017 study. The  
11:24:08 13 Government is now challenging that study. So we want to  
11:24:11 14 see what they have in their files, which is pretty  
11:24:16 15 normal.

11:24:16 16 THE COURT: All right. Mr. Bain.

11:24:17 17 MR. BAIN: Yes, Your Honor. So there's been  
11:24:20 18 ongoing meet-and-confers on this process. There was  
11:24:22 19 one, actually yesterday, with the plaintiff's counsel in  
11:24:27 20 which they reduced their number of custodians from about  
11:24:30 21 80 to 25. However, that's just for the ATSDR. And that  
11:24:35 22 doesn't include what they said they were going to  
11:24:37 23 propose additional custodians with respect to EPA and  
11:24:40 24 the Navy. So we still haven't gotten those custodians  
11:24:44 25 from them yet. We've been offering to meet and confer



11:24:48 1 with them on ESI since before the ESI protocol was  
11:24:52 2 entered. The search terms are very broad and numerous.

11:24:56 3 And so the problem with all of this is that  
11:25:00 4 the amount of custodians and the breadth of the search  
11:25:03 5 terms that they're requesting is going to return a  
11:25:08 6 voluminous amount of information that will have to be  
11:25:11 7 reviewed for privileges where attorney names appear  
11:25:14 8 before it can be produced. So the more custodians and  
11:25:16 9 the broader search terms that are requested by the  
11:25:20 10 plaintiffs, the longer it takes to process and produce  
11:25:23 11 that information. And we have a very short discovery  
11:25:27 12 period that has been imposed upon us. And that's one of  
11:25:31 13 the factors that go into whether or not the requests are  
11:25:36 14 proportional or not.

11:25:37 15 So we requested and we identified those most  
11:25:39 16 important custodians who likely have the relevant  
11:25:42 17 information and provided that to the plaintiffs and the  
11:25:47 18 number that we think we can produce within the  
11:25:51 19 three-month period. The larger the number of custodians  
11:25:55 20 and the broader the search terms, then the amount of  
11:25:58 21 information will just make it impossible to produce it  
11:26:01 22 in the time period. And we know from past experience in  
11:26:04 23 other cases that the type of ESI that the plaintiffs are  
11:26:07 24 requesting would take a year to produce. Even under the  
11:26:10 25 processes that we have going at full speed, maximum

11:26:14 1 capacity. So we only have three months, and that's why  
11:26:16 2 we're asking for targeted custodians, targeted search  
11:26:20 3 terms, to get the most relevant information.

11:26:24 4 MR. BELL: Your Honor, you know, in today's  
11:26:28 5 world, ESI discovery is pretty standard. I've never  
11:26:31 6 heard anybody tell me that you can't go to a computer  
11:26:35 7 and do a search term that's going to take a year. I've  
11:26:38 8 never heard that. I've heard that it's voluminous. And  
11:26:42 9 so there are ways to figure that out. For them to say  
11:26:46 10 today that we can get that done before the discovery is  
11:26:51 11 over is something Mr. Roberts is getting ready to  
11:26:54 12 address with the Court.

11:26:56 13 Judge, if you have custodial engineer or  
11:27:00 14 toxicologists -- Smith -- who is at ATSDR and you go to  
11:27:05 15 his computer and say we've got X number of search terms,  
11:27:09 16 give us a search, our person -- our IT people can get  
11:27:14 17 that done in an hour. Now, why it would take them  
11:27:17 18 longer, I don't know. But I -- while I don't disbelieve  
11:27:21 19 Mr. Bain, this is government bureaucracy that is beyond  
11:27:25 20 the pale.

11:27:27 21 THE COURT: Why is it so time-consuming?

11:27:29 22 MR. BAIN: Well, it's not as simple as  
11:27:31 23 pressing a button. You have to go and collect it from  
11:27:34 24 the agencies. You have to have them harvest the  
11:27:36 25 information. It has to be produced in the format that

11:27:38 1 we've agreed to. Then it has to be searched for  
11:27:40 2 attorney names to make sure that privileged material is  
11:27:43 3 not being produced as part of that production. The hits  
11:27:48 4 that come back for the attorney names then have to be  
11:27:51 5 reviewed with an eyes --

11:27:53 6 THE COURT: Well, there is a clawback.  
11:27:54 7 Isn't there a clawback agreement?

11:27:55 8 MR. BAIN: There is a clawback, but we still  
11:27:58 9 have to do some type of eyes-on review. We're not  
11:28:01 10 reviewing every document, but we're just reviewing the  
11:28:03 11 documents that have attorney names on them.

11:28:04 12 THE COURT: How long does all of that take?

11:28:07 13 MR. BAIN: As I mentioned, we have other  
11:28:10 14 cases in which we've done similar things. For example,  
11:28:12 15 the case we have in Hawaii that I believe one of the  
11:28:14 16 plaintiff's law firms is involved with involving the Red  
11:28:16 17 Hill fuel leak. We limited that to very few custodians,  
11:28:23 18 just going back to, I think --

11:28:24 19 Was it 2020?

11:28:24 20 MS. MIRSKY: 2021.

11:28:26 21 MR. BAIN: 2021. So it's a very short,  
11:28:28 22 three-year time period, and we were able to produce that  
11:28:32 23 in a shorter period. But here we're talking about going  
11:28:36 24 back decades for many, many more custodians. So the  
11:28:39 25 volume is going to be greatly expanded. We can provide

11:28:43 1 that information to the Court as to what our capacity  
11:28:45 2 was for this other case and other cases that we've done.  
11:28:49 3 I just can tell you that we simply cannot do it with a  
11:28:53 4 push of a button or in the short time frame that we have  
11:28:55 5 under the current case management order.

11:29:02 6 THE COURT: All right. Well, I hate to  
11:29:04 7 invite a motion, but if you have exhausted your  
11:29:09 8 meet-and-confer, then you certainly can do that and  
11:29:11 9 provide the Court with any information that I need to  
11:29:14 10 make a decision on, whether you're asking me to select  
11:29:17 11 the number of custodians or search terms or things of  
11:29:22 12 that --

11:29:22 13 MR. BELL: We can do that.

11:29:24 14 MR. BAIN: Your Honor, can I bring up  
11:29:25 15 something with the motion to compel process?

11:29:27 16 THE COURT: Yes, sir.

11:29:28 17 MR. BAIN: Because, frankly, we got this  
11:29:29 18 motion to compel last night, and we were a little  
11:29:31 19 surprised by it given the Court's recent discovery  
11:29:35 20 protocol order. Because we hadn't submitted the letter.  
11:29:39 21 We hadn't had the phone conference with Your Honor. We  
11:29:42 22 haven't provided the declaration from the agency yet  
11:29:44 23 asserting the privilege. So we believe that the motion  
11:29:47 24 to compel that was filed yesterday is premature, and we  
11:29:51 25 haven't gone through the process in Your Honor's order

11:29:54 1 yet.

11:29:54 2 And I just wanted to clarify. We've been  
11:29:56 3 talking about all these different issues. I understand  
11:30:00 4 by Your Honor's order that we need to submit a letter to  
11:30:02 5 you that specifies our positions and have a conference  
11:30:07 6 with Your Honor before filing a formal motion to compel.

11:30:10 7 THE COURT: The way that I'm looking at it  
11:30:13 8 is -- we talked about -- we talked about this report, I  
11:30:21 9 think, last time, two weeks ago. And among others, we  
11:30:25 10 talked about, you know, discovery that's been served --  
11:30:29 11 or was served at that time and was outstanding.

11:30:35 12 So I said, two weeks ago, that everything  
11:30:37 13 that we talked about at that time, y'all can go ahead  
11:30:42 14 and file a motion to compel. I was treating our status  
11:30:46 15 conference as that meet-and-confer with the Court. So I  
11:30:52 16 don't think the motion is premature. And is, in that  
11:30:58 17 respect, appropriately filed. And now I'm looking to  
11:31:01 18 the Government to file a response to that. There will  
11:31:04 19 be no replies, but the -- we'll just, you know, review  
11:31:09 20 it when your response is filed.

11:31:12 21 MR. BAIN: Thank you, Your Honor.

11:31:13 22 So just for clarification, for these issues  
11:31:15 23 that are being brought up today, are you considering  
11:31:19 24 those to have exhausted the --

11:31:21 25 THE COURT: Yeah, I think that is helpful.

11:31:23 1 And again, I'm not inviting -- I'm not inviting motions  
11:31:27 2 to compel. It's great if you can work all of this stuff  
11:31:29 3 out. But as long as we're having a status conference  
11:31:32 4 and talking about other things in the case, if there are  
11:31:35 5 discovery disputes that you are having, that you've met  
11:31:38 6 and conferred, there's no reason for us to end the  
11:31:43 7 status conference and then, 20 minutes later, you try to  
11:31:46 8 get with me about a discovery dispute. Let's just use  
11:31:49 9 the time now to talk about that.

11:31:50 10 And so if we can't resolve it here today,  
11:31:54 11 then you're free to file the motion to compel. If in --  
11:31:58 12 if in seven days' time you discover there's another  
11:32:01 13 dispute, then you are free to -- you're free to meet and  
11:32:08 14 confer and then to call the case manager and say, "Hey,  
11:32:11 15 we've got a dispute." There's no sense in waiting until  
11:32:13 16 the status conference to talk about it; let's go ahead  
11:32:15 17 and get that done now so that we can use this time to --  
11:32:19 18 if we want to file a motion to compel, to go ahead and  
11:32:21 19 do that. I want to use our time as efficiently as  
11:32:23 20 possible to cover as much ground as we can. Again, I'm  
11:32:28 21 not inviting motions to compel, but if -- you know, if  
11:32:35 22 there are issues to be addressed, they need to be  
11:32:36 23 addressed. Does that make sense.

11:32:38 24 MR. BAIN: Yes, Your Honor. Thank you for  
11:32:39 25 the clarification.

11:32:40 1 THE COURT: So we've talked about privilege  
11:32:42 2 log. We've talked about the custodians and search  
11:32:44 3 terms. What else have you got?

11:32:45 4 MR. BELL: Your Honor, there is --

11:32:48 5 THE COURT: Are you agreeing on anything?

11:32:52 6 MR. BELL: I think we've agreed on a lot of  
11:32:54 7 things, actually. Our meet and confers are friendly.  
11:33:01 8 We have disagreements with the Department of Justice  
11:33:07 9 based on timeliness, which is killing us. Mr. Roberts  
11:33:11 10 is going to go through that in a minute. I have one  
11:33:14 11 more matter, Your Honor, that will -- is part of my  
11:33:19 12 work.

11:33:21 13 Judge, there is something called muster  
11:33:24 14 rolls. These are handwritten, typed -- old  
11:33:29 15 typewriter-type things from the '50s all the way up  
11:33:32 16 through the entire period. Some of those muster rolls  
11:33:38 17 have previously been digitized and actually turned over  
11:33:42 18 to ancestry.com. We scrubbed those from Ancestry. We  
11:33:47 19 got those. And then there are others, Your Honor, where  
11:33:50 20 the subject of a contract by the Government with an  
11:33:56 21 outside vendor to digitize the balance. They report  
11:34:00 22 about it in federal reports. They report about it in  
11:34:04 23 public hearings. And so we had asked on our discovery  
11:34:08 24 in September to get that information.

11:34:13 25 The Government answered, in October, that

11:34:18 1 request for production and indicated they were looking  
11:34:21 2 into it. And we've had numerous meet-and-confers, and  
11:34:25 3 we've had a deposition which went into that. At the end  
11:34:30 4 of the deposition, Your Honor, the Government said they  
11:34:32 5 were going to get the vendor this week to try to break  
11:34:37 6 into an old hard drive that might have that information  
11:34:40 7 in it. So that's where we stand on that. I'm looking  
11:34:44 8 to hear from the Government on that. So if we can meet  
11:34:48 9 that.

11:34:48 10 They actually entered into a new contract to  
11:34:51 11 redigitize all of them. It won't be completed until  
11:34:55 12 June of next year. But they're -- these have already  
11:35:00 13 been done and they are super critical to our case.

11:35:05 14 THE COURT: What are they?

11:35:06 15 MR. BELL: They help us determine when our  
11:35:08 16 clients were at the base, what housing they were in,  
11:35:10 17 what the time frames they were in, things like that.

11:35:13 18 THE COURT: Well, there's got to be other  
11:35:15 19 information that shows you that; right?

11:35:16 20 MR. BELL: This is the best information.  
11:35:17 21 And there's other information of when they were at the  
11:35:21 22 base but not necessarily where they were living or where  
11:35:24 23 they worked.

11:35:24 24 So they're called muster rolls. To give you  
11:35:28 25 an example, Your Honor, if someone were to call the base



11:35:30 1 in 1960 trying to get hold of Corporal Jones, they  
11:35:37 2 wouldn't know where to find him unless they -- back  
11:35:40 3 then, they had this file. And so that's why they kept  
11:35:42 4 everybody on what they call their muster rolls. That's  
11:35:45 5 where they can find people. So they had thousands of  
11:35:48 6 people, as you can imagine. And this is voluminous.  
11:35:51 7 It's multimillion documents.

11:35:53 8 Now, they have these on microfilm and  
11:35:58 9 microfiche. They're now being redigitized. But  
11:36:01 10 apparently the government put these in a legacy program  
11:36:05 11 where kind of -- they didn't get the license or  
11:36:08 12 something like that. And they've got the vendor  
11:36:10 13 working, I think this week. I just wanted to let you  
11:36:13 14 know that's ongoing and we'll wait to hear what the  
11:36:16 15 vendor has to say. If the vendor can get in and get  
11:36:19 16 that system working again --

11:36:21 17 THE COURT: But if not, if, like you said,  
11:36:23 18 they're breaking into it -- what if it's irretrievable?

11:36:26 19 MR. BELL: I told the Government I would be  
11:36:28 20 glad to get someone down there to break into it. And  
11:36:30 21 they laughed and said, you know, they aren't going to  
11:36:33 22 let me come break into their system. But we -- the  
11:36:36 23 information is there. And the government either doesn't  
11:36:40 24 have their license any longer to get into the system --  
11:36:44 25 but they have asked the vendor. But that is a pending

11:36:46 1 issue, Your Honor. It's a very important issue.

11:36:50 2 MR. RYAN: Your Honor, if I may, I can  
11:36:51 3 address this.

11:36:52 4 THE COURT: You are Ryan?

11:36:53 5 MR. RYAN: Patrick Ryan, yeah. If it please  
11:36:55 6 the Court.

11:36:56 7 So what Ed Bell -- generally is correct.  
11:37:00 8 It's not necessarily a licensing issue with the muster  
11:37:02 9 rolls. But I'll back up here. There's two requests for  
11:37:05 10 production they asked. One is from 1940 to 1958. That  
11:37:09 11 is the subject of a contract with ancestry.com, which I  
11:37:14 12 can address. But what Mr. Bell was just addressing was  
11:37:17 13 muster rolls between the 1950s through the 1970s.

11:37:21 14 THE COURT: So what is a muster roll?  
11:37:23 15 What's the --

11:37:24 16 MR. RYAN: It's --

11:37:25 17 THE COURT: -- significance of muster?  
11:37:26 18 What's the --

11:37:27 19 MR. RYAN: A brief document. If you've ever  
11:37:29 20 been on a cruise, you do a muster drill so you know  
11:37:32 21 where to go in the event the boat sinks. In the  
11:37:36 22 military, you're mustering. You're reporting for duty.  
11:37:38 23 You go where they tell you. So this would have just  
11:37:39 24 very, very basic information of where someone was on a  
11:37:43 25 military base or otherwise reporting.

11:37:44 1 THE COURT: Who delivers the mail at the  
11:37:47 2 military base?

11:37:48 3 MR. RYAN: I'm assuming it's a military  
11:37:50 4 postal service.

11:37:52 5 THE COURT: So would that be a good source  
11:37:54 6 of this information?

11:37:54 7 MR. RYAN: They are, indeed. Your Honor is  
11:37:55 8 right, there are a wealth of other places where this  
11:37:58 9 information is present. That being said, the  
11:38:01 10 plaintiff's leadership group has expressed their  
11:38:02 11 interest in this and the Government has been more than  
11:38:04 12 willing to accommodate that.

11:38:06 13 So the -- what Mr. Bell said is 2013 to 2015  
11:38:10 14 contract. We've recently found that there is indeed a  
11:38:13 15 server in Quantico on a Marine base that has this. It  
11:38:18 16 was taken off-line for security purposes. And they  
11:38:21 17 are --

11:38:21 18 THE COURT: Would a muster roll only have  
11:38:24 19 those serving in the military?

11:38:25 20 MR. RYAN: Yes. I believe so.

11:38:26 21 THE COURT: Dependents would not be on the  
11:38:29 22 muster roll?

11:38:29 23 MR. RYAN: Defendants?

11:38:29 24 THE COURT: Dependents.

11:38:31 25 MR. BAIN: I don't believe so.

11:38:33 1 MR. RYAN: No, Your Honor.

11:38:34 2 So, we have the contractor -- technical  
11:38:39 3 contractor is coming out this week to address that. And  
11:38:42 4 we're going to keep updates on -- plaintiffs on how that  
11:38:45 5 process is going. That's one avenue we can get these  
11:38:47 6 records. Separate and apart, there is a current -- the  
11:38:50 7 Marine Corps has a current contract to digitize these  
11:38:54 8 records. That is ongoing. We hope to produce, perhaps  
11:38:57 9 on a rolling basis to the extent we can. But that is --  
11:39:00 10 it's like two trains headed to the same station to get  
11:39:04 11 these records.

11:39:05 12 We have also offered to plaintiff's  
11:39:07 13 leadership the opportunity to inspect and copy these  
11:39:09 14 documents where they're being digitized in Alexandria.  
11:39:14 15 And we are currently ongoing to schedule that -- that  
11:39:17 16 inspection.

11:39:19 17 MR. BELL: Your Honor, the question you have  
11:39:21 18 about dependents, what we do is we find out who the  
11:39:24 19 dependent's service member was, like the husband or the  
11:39:28 20 parents or something, then we go to that service member,  
11:39:32 21 go to the muster roll, and that's how we are identifying  
11:39:35 22 where dependents live.

11:39:37 23 I had not known there were other avenues  
11:39:40 24 until right now to get this information. Would have  
11:39:43 25 been nice to have been told that earlier. But I didn't

11:39:47 1 know that.

11:39:47 2 THE COURT: Well, I'm just thinking out  
11:39:49 3 loud. IRS; right? I mean, the IRS can find you.

11:39:52 4 MR. BELL: Well, the IRS finds people but it  
11:39:54 5 doesn't tell you what barracks they lived in. And they  
11:39:57 6 might want to know that back then. But they don't tell  
11:40:00 7 us what barracks or what unit they were training in. So  
11:40:05 8 it is basic information.

11:40:06 9 THE COURT: Because it's not just where they  
11:40:08 10 were living; right? It's where they went; right?

11:40:10 11 MR. BELL: Yes, sir.

11:40:11 12 THE COURT: I mean --

11:40:12 13 MR. BELL: So if they're on the base and  
11:40:13 14 they get shipped out on the sea for three months, that  
11:40:17 15 is in there. We have other records that help us with  
11:40:19 16 that, but the muster rolls are part of this putting  
11:40:23 17 together.

11:40:24 18 Your Honor, we have a lot of people who are  
11:40:26 19 children whose parents died and they don't know.

11:40:29 20 THE COURT: Right.

11:40:30 21 MR. BELL: And that's the reason for all of  
11:40:31 22 this. So one day, the Government's going to say, "Well,  
11:40:34 23 where did Mr. Jones -- Ms. Jones live or work?" And  
11:40:38 24 we're trying to figure that out. So that's the purpose.

11:40:40 25 THE COURT: Okay. All right. Anything else

11:40:43 1 under the discovery update topic?

11:40:48 2 MR. BELL: At this time, Your Honor, that's  
11:40:49 3 all I can think of. Mr. Roberts is going to address  
11:40:52 4 another issue.

11:40:53 5 THE COURT: All right.

11:40:54 6 MR. ROBERTS: Good morning, Your Honor.

11:40:55 7 THE COURT: Good morning.

11:40:56 8 MR. ROBERTS: I get the clear indication  
11:40:58 9 from the Court that you don't want to plow old ground.

11:41:01 10 THE COURT: Yes.

11:41:02 11 MR. ROBERTS: And we have talked about the  
11:41:05 12 defendant's response to our first request for  
11:41:07 13 production. And I'm prepared to go item by item. I  
11:41:09 14 don't think that's necessary unless Your Honor --

11:41:11 15 THE COURT: The one that's been filed?

11:41:13 16 MR. ROBERTS: No, sir. This is our request  
11:41:14 17 for production of documents number 1 that we talked  
11:41:18 18 about at the last hearing. And there's been multiple  
11:41:22 19 meet-and-confers.

11:41:23 20 THE COURT: You're done. The box is  
11:41:25 21 checked. You can file a motion to compel. Unless it's  
11:41:28 22 in the one that's already been filed.

11:41:29 23 MR. ROBERTS: No, sir, Your Honor. I just  
11:41:30 24 want to get the green light on that.

11:41:32 25 THE COURT: Green light.

11:41:33 1 MR. ROBERTS: What we're dealing with here  
11:41:36 2 is -- you know, you heard Mr. Bain say at least three  
11:41:40 3 times we're in a very tort -- a very short time  
11:41:42 4 schedule. I think everybody in the courtroom agrees  
11:41:44 5 with that. The problem with their responses -- and  
11:41:47 6 multiple times in the responses they say, "We'll get it  
11:41:50 7 to you before the close of discovery." I mean, does  
11:41:53 8 that mean two days before the close of discovery? Three  
11:41:55 9 days? I mean, we've got to get it in sufficient time to  
11:41:58 10 use it in preparing the cases. There's other instances  
11:42:01 11 in which they say, "We're going to get you the  
11:42:04 12 document," and we don't get the documents. And it's  
11:42:06 13 replete throughout their responses.

11:42:09 14 So, you know, I understand, Your Honor. We  
11:42:11 15 will prepare our motion to compel. And what I would ask  
11:42:14 16 the Court to do is to give up -- give us a specific --  
11:42:19 17 order the defendant to give us a specific deadline when  
11:42:21 18 we can expect to have the documents that we've requested  
11:42:24 19 produced. Not this open-ended "we'll get it to you by  
11:42:28 20 the end of discovery."

11:42:28 21 And I think I cited to the Court a case out  
11:42:31 22 of the Eastern District. You know, when you respond to  
11:42:34 23 requests to produce, you either object, you agree to  
11:42:37 24 produce them in the time/manner in the request, or you  
11:42:42 25 suggest a specific time in the future. So I don't want

11:42:44 1 to be standing here, you know, end of March when  
11:42:48 2 discovery is closing and we still don't have the stuff.  
11:42:51 3 So we'll be happy to put that in a motion to compel now  
11:42:54 4 that we've got the green light.

11:42:56 5 MR. BAIN: If I can just address that  
11:42:58 6 briefly, Your Honor.

11:42:59 7 THE COURT: Yes, sir.

11:42:59 8 MR. BAIN: So the Rule 34 allows the  
11:43:02 9 producing party to specify a reasonable time when  
11:43:05 10 materials will be produced. Each of plaintiff's  
11:43:08 11 requests for production asks for electronically stored  
11:43:11 12 information, which we're just starting to meet and  
11:43:13 13 confer about. And typically, in these type of cases,  
11:43:17 14 that information is produced on a rolling basis until  
11:43:21 15 the end of fact discovery. That's just the timing under  
11:43:24 16 which that information can be produced. If they were to  
11:43:28 17 ask for a specific document that the Government had, the  
11:43:33 18 Government could give them a date when we will produce  
11:43:35 19 that document. But they are producing -- produce all  
11:43:38 20 information including electronically stored information  
11:43:41 21 that falls under these very broad categories. And for  
11:43:45 22 us to meet that deadline, we have to be able to produce  
11:43:48 23 it on a rolling basis until the end of fact discovery.  
11:43:51 24 That's what we're trying to meet through that response.

11:43:55 25 THE COURT: This discovery that you're



11:43:56 1 asking for, I think you said in the status report is  
11:44:00 2 generalized?

11:44:02 3 MR. BELL: Your Honor, I may -- I don't  
11:44:05 4 remember, and I can look back at our notes whether  
11:44:07 5 Mr. Bain was at the meet-and-confer where we discussed  
11:44:10 6 this. And I specifically excluded ESI from our request  
11:44:15 7 until after we had our meet-and-confers. But I did not  
11:44:20 8 exclude the other information we're asking.

11:44:23 9 For example, we asked for documents,  
11:44:27 10 e-mails, things like that, and ESI. And I  
11:44:31 11 specifically -- I took that away and said I know we have  
11:44:33 12 to meet and confer. That's not what we're wanting, and  
11:44:36 13 that's not what Mr. Roberts was talking about.

11:44:40 14 THE COURT: This discovery, Mr. Roberts, is  
11:44:42 15 this generalized discovery? Y'all seem to draw the  
11:44:45 16 distinction between generalized discovery --

11:44:47 17 MR. ROBERTS: It's generalized discovery,  
11:44:49 18 Your Honor. We represent all the claimants.

11:44:50 19 THE COURT: So what is it? I haven't seen  
11:44:53 20 the request.

11:44:54 21 MR. ROBERTS: There's muster rolls -- if I  
11:44:56 22 might approach, Your Honor?

11:44:57 23 THE COURT: Well, I don't want to drill down  
11:44:58 24 into the weeds here. But just generally, what is it?

11:45:01 25 MR. ROBERTS: Well, it's information like

11:45:02 1 the muster rolls. There's underground tank studies.

11:45:06 2 There's just a lot of information that doesn't have

11:45:08 3 anything to do with the ESI. Now, I agree with

11:45:11 4 Mr. Bain, there may be some overlap --

11:45:13 5 THE COURT: Right.

11:45:13 6 MR. ROBERTS: -- with ESI. But as far as

11:45:15 7 the documents that are the -- our documents that are not

11:45:18 8 ESI, we need a firm date when we can expect to get it.

11:45:22 9 And as I understood what Mr. Bain just said is that

11:45:25 10 they're in a position to give us those documents

11:45:27 11 separate and apart from the ESI. Unless I misunderstood

11:45:31 12 him. So all we're asking, Your Honor, is give us a date

11:45:34 13 when we can expect the documents.

11:45:36 14 MR. BAIN: They can articulate a specific

11:45:38 15 document or collection of hard-copy documents that we

11:45:42 16 have. We can either provide it -- you know, the

11:45:45 17 availability for them to inspect it or produce it. But

11:45:48 18 they haven't amended their discovery responses to

11:45:52 19 exclude ESI, as far as I'm aware. Mr. Bell said he said

11:45:56 20 in the meet-and-confer, "Take away ESI." That's not

11:45:59 21 sufficient for us to say, "Oh, your discovery responses

11:46:02 22 don't include ESI anymore."

11:46:04 23 Each of their discovery responses asked for

11:46:07 24 ESI. A lot of these collections are digitized in ESI.

11:46:13 25 So I think that unless they amend their discovery

11:46:15 1 responses to hone down to specific hard-copy document  
11:46:19 2 collections, asking us to provide a particular date  
11:46:23 3 before the end of fact discovery in which we will  
11:46:25 4 produce it is not a reasonable request.

11:46:28 5 MR. BELL: Your Honor, it is surprising to  
11:46:31 6 me that the Government now -- after agreeing in a  
11:46:35 7 meet-and-confer, now says, "Oh, by the way, send us some  
11:46:38 8 more requests and we'll get to it."

11:46:40 9 That's not what y'all told me at the  
11:46:43 10 meet-and-confer. And please go to y'all's notes. I  
11:46:45 11 specifically said we're not looking for the ESI. Y'all  
11:46:49 12 agreed to that. And you agreed that the other parts of  
11:46:52 13 what we're talking about, ESI would be a part of another  
11:46:55 14 meet-and-confer.

11:46:56 15 Now that is changed. Apparently, they have  
11:46:59 16 not gone along with our agreement.

11:47:01 17 THE COURT: All right. Well, it sounds like  
11:47:02 18 I'm getting another motion, which is fine, and we'll  
11:47:05 19 take that up.

11:47:07 20 Have we exhausted item number 1?

11:47:11 21 MR. BELL: Yes, Your Honor.

11:47:11 22 THE COURT: Okay. Track 1 update. I think  
11:47:16 23 I've learned a little bit about that already.

11:47:17 24 MR. BELL: Yes, sir. We should have those  
11:47:18 25 filed --

11:47:18 1 THE COURT: The parties are on the cusp of  
11:47:21 2 submitting to the Court ten cases per side; right?

11:47:24 3 MR. BELL: We'll file those today, Your  
11:47:26 4 Honor.

11:47:26 5 THE COURT: All right. Track 2 update. I  
11:47:31 6 know that the parties have submitted Track 2 diseases.  
11:47:34 7 Proposals, anyway. Are the parties able to provide the  
11:47:43 8 Court with information on how these proposed diseases  
11:47:51 9 are representative of the cases filed, both here and in  
11:47:56 10 the Navy?

11:47:59 11 MR. BELL: Yes, Your Honor.

11:47:59 12 THE COURT: I mean, we all know the  
11:48:00 13 objective here is to -- is to address representative  
11:48:04 14 cases that are helpful to others in the -- others in  
11:48:07 15 this litigation.

11:48:09 16 MR. BELL: Our particular five diseases,  
11:48:12 17 Your Honor, were --

11:48:13 18 THE COURT: And what I'm asking for -- I'm  
11:48:14 19 not asking for opinion. I'm not asking for argument.  
11:48:17 20 I'm asking for objective evidence. I'm asking for  
11:48:19 21 numbers.

11:48:20 22 MR. BELL: Yes.

11:48:20 23 THE COURT: Is there a way that the parties  
11:48:22 24 can provide this information to the Court?

11:48:25 25 MR. BELL: Yes, Your Honor.

11:48:27 1 THE COURT: Either, I guess, in a notice or  
11:48:32 2 if it's something that should be sealed. But I think --  
11:48:35 3 I think in its review of the proposals, the -- I think  
11:48:42 4 it's fair for the Court to -- I mean, we did it in the  
11:48:47 5 hog farm case. To assess how truly representative --  
11:48:52 6 especially where you diverge on your choice of disease.

11:48:56 7 MR. BELL: A little bit of a twist there,  
11:48:57 8 Your Honor. Remember in the hog cases, everybody filed  
11:49:00 9 their cases and they had their whole thing there. But  
11:49:03 10 now we have those that have already filed and those who  
11:49:07 11 can file under Track 2. We can give you the information  
11:49:12 12 for both of that and we can -- and I can furnish that to  
11:49:16 13 you in a couple of days, Your Honor.

11:49:18 14 THE COURT: What does the Government think  
11:49:19 15 about that?

11:49:20 16 MR. BAIN: We would be interested in seeing  
11:49:22 17 what the plaintiffs provide with respect to the numbers  
11:49:24 18 of diseases. We have some information on it, but we  
11:49:27 19 don't believe it's complete.

11:49:28 20 THE COURT: How do you -- how does the DON  
11:49:33 21 or DOJ get that information?

11:49:36 22 MR. BAIN: Well, it's either something  
11:49:37 23 that's alleged in the complaint if it's a case filed in  
11:49:39 24 litigation -- and a lot of the cases do not allege a  
11:49:43 25 specific disease in the complaint. So that's the

11:49:46 1 problem. The plaintiffs know what the disease is; we  
11:49:48 2 don't. If the person mentioned it to the Department of  
11:49:52 3 the Navy in their administrative claim, then it is  
11:49:54 4 logged in that way, too. But sometimes that's not the  
11:49:56 5 case. So the Navy may have information but it's  
11:50:00 6 incomplete. It's only the plaintiffs who have the  
11:50:03 7 complete information. So we have some information. The  
11:50:07 8 diseases that we selected for Track 2 we believe are  
11:50:10 9 prominent among the entire population.

11:50:14 10 THE COURT: How did you reach that  
11:50:16 11 determination?

11:50:16 12 MR. BAIN: Well, we have a list of the  
11:50:18 13 diseases that we know of, and the numbers of those  
11:50:20 14 diseases.

11:50:21 15 THE COURT: And you know that information  
11:50:22 16 from the administrative filings?

11:50:24 17 MR. BAIN: Or from what's alleged in the  
11:50:26 18 complaints for those who do show their diseases and some  
11:50:29 19 information checking with the Navy. So we know that,  
11:50:33 20 you know -- for example, we know esophageal cancer,  
11:50:36 21 prostate cancer, breast cancer, lung cancer are found in  
11:50:40 22 a lot of the complaints, and so that's why we selected  
11:50:43 23 those particular diseases.

11:50:47 24 THE COURT: Okay. Well, I think that  
11:50:48 25 information will be helpful to the Court.

11:51:00 1 And I think that's a good question going  
11:51:02 2 forward. We're not just going to end this with Track 2.  
11:51:05 3 Could the Court have a way to have the information for  
11:51:08 4 all alleged diseases, both cases in the EDNC and the  
11:51:14 5 Navy, so the Court can use that information in its  
11:51:18 6 assessment of future tracks?

11:51:19 7 MR. BELL: We can get you a -- I hate to  
11:51:23 8 call it a report, but something will give you some  
11:51:25 9 numbers, Your Honor.

11:51:26 10 THE COURT: Okay.

11:51:26 11 MR. BELL: And diseases as well.

11:51:28 12 I might add, Your Honor, that as you have  
11:51:32 13 now learned, this study that's out there --

11:51:37 14 THE COURT: Which -- the one you were asking  
11:51:39 15 me about?

11:51:39 16 MR. BELL: Yes, sir. The author of the  
11:51:41 17 study publicly has said this is a groundbreaking study.  
11:51:46 18 And the Government has access to it, and they know what  
11:51:52 19 diseases are covered; we don't. And it's extremely  
11:51:56 20 important, Your Honor, to -- and there was a report in  
11:52:00 21 the press recently that said they might turn it over in  
11:52:03 22 September of next year, which, of course, is after the  
11:52:07 23 deadline for filing complaint -- or claims with the  
11:52:11 24 Navy. I don't know if that's accurate or not. But the  
11:52:13 25 fact is, we are concerned that when we're selecting

11:52:18 1 bellwethers, and the Government is selecting  
11:52:20 2 bellwethers, that we don't know what the study is going  
11:52:24 3 to show. So we'll get you -- and we selected, Your  
11:52:27 4 Honor, our five that came from the ATSDR that had  
11:52:32 5 already been studied. That's how we selected ours. The  
11:52:35 6 Government selected five that weren't part of the ATSDR,  
11:52:39 7 the 2017 study. So that concerns us greatly.

11:52:46 8 Let's say we go to trial in March on a  
11:52:48 9 prostate cancer and, all of a sudden, the study comes  
11:52:53 10 out and says prostate should be a good disease, and then  
11:52:56 11 here we go.

11:52:57 12 So we're trying to be fair. We think the  
11:53:00 13 Government should be fair. The studies have already  
11:53:01 14 been taken -- they've taken place on our five diseases.  
11:53:05 15 The ATSDR says they are equipoise and above, or  
11:53:10 16 equipoise and/or equipoise and above. And that's why we  
11:53:16 17 selected those five, because that's all we know.

11:53:19 18 MR. BAIN: Your Honor, just to address a  
11:53:20 19 couple of points there.

11:53:20 20 THE COURT: Go ahead.

11:53:22 21 MR. BAIN: Some of the diseases we offered  
11:53:23 22 were part of the 2017 ATSDR study; they just weren't at  
11:53:28 23 the level of equipoise and above. And we think it's  
11:53:30 24 important for the Court to determine whether those  
11:53:33 25 diseases should be part of this litigation or not when



11:53:36 1 there's not sufficient scientific link between those  
11:53:39 2 diseases and the chemicals in the Camp Lejeune water.  
11:53:43 3 And I know we'll file a response to the motion to compel  
11:53:47 4 that's been filed, but I'll just say that the report is  
11:53:50 5 going under a peer-reviewed process that's mandated by  
11:53:54 6 CERCLA. And this is a process that needs protection  
11:53:57 7 under Government policies to allow the full reviewers to  
11:54:00 8 get unfettered opinions about different aspects of the  
11:54:03 9 study.

11:54:04 10 THE COURT: I understand. I'll take that  
11:54:06 11 up.

11:54:06 12 MR. BELL: Just one more thing, Judge. This  
11:54:09 13 is a cancer incident study. It is a number study. It's  
11:54:14 14 not a pure epidemiological study; it's numbers. It's  
11:54:19 15 not something that people -- the EPA has got to say,  
11:54:23 16 "Well, should we take this on the bad list or put it on  
11:54:25 17 the good list?" This is a number study. So what the  
11:54:30 18 Government just told you -- and I'll give you an example  
11:54:32 19 of prostate cancer. In the prostate cancer world, this  
11:54:38 20 study coming up -- the ATSDR did their initial study and  
11:54:44 21 found that it was below equipoise. The Government wants  
11:54:49 22 to try that before the study comes out, before we have  
11:54:52 23 new information. The science has changed a lot since  
11:54:56 24 2010 when this study was going on. And it's -- I  
11:55:05 25 think -- I'm looking forward to the Government answering

11:55:08 1 our motion to compel and letting the Court know why they  
11:55:11 2 chose these diseases when they know a study on those  
11:55:16 3 exact diseases is getting ready to be released but it's  
11:55:19 4 not going to be released in time.

11:55:21 5 THE COURT: Are there -- are there Track 2  
11:55:23 6 diseases -- are there Track 2 diseases implicated in  
11:55:35 7 that study?

11:55:36 8 MR. BELL: Some of them are, Your Honor, and  
11:55:38 9 they're below equipoise. So this -- and understanding  
11:55:41 10 how the study was done, Your Honor, had to do with  
11:55:45 11 numbers.

11:55:45 12 THE COURT: Okay.

11:55:46 13 MR. BELL: And so there are a number of  
11:55:47 14 people in comparing them with others. Now they've  
11:55:50 15 gotten new information.

11:55:50 16 THE COURT: I gotcha. All right. I'll take  
11:55:52 17 that up.

11:55:53 18 MR. BELL: Yes, sir.

11:55:53 19 THE COURT: All right. I want to change  
11:55:56 20 gears a little bit and talk about the management of pro  
11:56:01 21 se cases. And I don't know who the best one to talk  
11:56:04 22 about that is. I would like to know how they're being  
11:56:06 23 managed.

11:56:07 24 MR. BELL: Mr. Ellis is here today, Your  
11:56:09 25 Honor. I actually will call on him.

11:56:13 1 Where's Charles?

11:56:13 2 Mr. Ellis is liaison counsel, Your Honor,  
11:56:16 3 along with General Overholt. And they are -- he can  
11:56:20 4 explain what we're doing with the pro se. And I think  
11:56:24 5 we're doing pretty well with them.

11:56:29 6 But go ahead, Charles.

11:56:29 7 MR. ELLIS: Good morning, Your Honor. I'm  
11:56:31 8 going to answer your specific questions --

11:56:32 9 THE COURT: Well, just generally -- you  
11:56:34 10 know, I'll see an *in forma pauperis* petition, and that's  
11:56:43 11 really my only connection with pro se plaintiffs. Can  
11:56:50 12 you tell me a little bit about --

11:56:52 13 MR. ELLIS: Yes, sir. What we're doing --

11:56:52 14 THE COURT: -- how they come to contact you  
11:56:54 15 and what happens and --

11:56:56 16 MR. ELLIS: We can. They come in -- they  
11:56:59 17 come to us in different ways. But under the original  
11:57:02 18 CMO, we are keeping all the litigants advised of the  
11:57:06 19 status of the litigation. And we do that more than  
11:57:10 20 quarterly by sending out updates to those litigants who  
11:57:15 21 have e-mail, we send them by e-mail. And those  
11:57:19 22 litigants, all of them who are pro se and don't have  
11:57:22 23 e-mail and don't have access to the docket, we send by  
11:57:26 24 regular mail updates every week of every filing that has  
11:57:30 25 been made since the last update. And we also mail other

11:57:34 1 updates to them.

11:57:35 2 We also make them aware of the public  
11:57:39 3 website that we have, Your Honor, established. It's  
11:57:40 4 updated regularly. In fact, Liz Cabreser, who, as you  
11:57:44 5 know, is -- on leadership is doing a fantastic job of  
11:57:48 6 handling the logistics for that. And just updated that  
11:57:53 7 website again yesterday. And that website -- I know  
11:57:57 8 Your Honor has probably looked at it. But it has  
11:58:00 9 different sections, including frequently asked  
11:58:02 10 questions, that are updated based upon the questions  
11:58:05 11 that we get from mostly pro se litigants. And we field,  
11:58:09 12 probably at least daily, Your Honor, an inquiry from a  
11:58:17 13 pro se litigant, some multiple times and -- from the  
11:58:22 14 same pro se litigant.

11:58:26 15 And we try to respond to each and every  
11:58:28 16 question that's posed without giving them specific legal  
11:58:34 17 advice. We try to walk that line. And we reiterate --  
11:58:38 18 and we're glad to see the notice -- the text of the  
11:58:41 19 notice that we do not represent the individual pro se  
11:58:45 20 litigants. And we made that clear before the text  
11:58:51 21 notice to those folks. We try to explain what our role  
11:58:53 22 is. We cite the CMO. We, again, attach the link if  
11:58:57 23 they have e-mail or mail them the actual order itself.

11:59:03 24 That's generally what we're doing, Your  
11:59:06 25 Honor. I don't know if that's --

11:59:07 1 THE COURT: Is it working well?

11:59:09 2 MR. ELLIS: We think it is. In fact, we  
11:59:11 3 have a regular meeting with Statt Moore just to update  
11:59:14 4 him on what the Court -- if we're not doing something as  
11:59:18 5 liaison and the Court feels like we need to do. And we  
11:59:21 6 have gotten some good advice from him. Some good  
11:59:25 7 suggestions from him that we've implemented. For  
11:59:28 8 example, the instructions about the filing the short  
11:59:32 9 form complaints. There was an issue about the Court  
11:59:34 10 receiving them -- or the clerk not -- receiving them not  
11:59:38 11 flattened. So through the help of Mona and her team,  
11:59:41 12 did a fantastic job of laying out directions that we  
11:59:44 13 could put on the website and that we could update the  
11:59:50 14 existing litigants with in the event they would file  
11:59:55 15 other complaints. We've been doing that on a regular  
11:59:57 16 basis. In fact, we met with Statt yesterday just for  
12:00:01 17 our regular updates.

12:00:02 18 THE COURT: Okay.

12:00:03 19 MR. ELLIS: If it's something Your Honor  
12:00:05 20 would like --

12:00:05 21 THE COURT: No. I was just curious as to  
12:00:07 22 how they were -- they were being managed. It's -- you  
12:00:12 23 know, it's an important part of the litigation that the  
12:00:15 24 Court wants addressed. And I was just curious as to how  
12:00:20 25 that process was working.

12:00:22 1 MR. ELLIS: Sure. Thank you, sir.

12:00:25 2 THE COURT: Thank you.

12:00:25 3 My next item is future status conferences.

12:00:31 4 Is what we're doing working and are there are ways to  
12:00:36 5 improve it?

12:00:37 6 MR. BELL: Judge, we think it's working  
12:00:39 7 well. It gives us timely updates, gets things done  
12:00:42 8 quicker.

12:00:42 9 THE COURT: Well, you have to see each  
12:00:43 10 other; right? You have to see each other in person, so  
12:00:46 11 that is an opportunity to work things out, I think.

12:00:48 12 MR. BELL: Unfortunately, Your Honor, the  
12:00:50 13 Government won't let us take them out to eat, enjoy a  
12:00:54 14 little social camaraderie, which is important in the  
12:00:57 15 world we live in. But maybe you could put an order out,  
12:01:02 16 make them meet with us.

12:01:03 17 THE COURT: An incentive for the end when  
12:01:06 18 these cases are concluded, perhaps.

12:01:09 19 MR. BELL: Yes, sir, Your Honor.

12:01:10 20 THE COURT: Are there -- are there ways to  
12:01:13 21 improve our meetings? Timing?

12:01:23 22 MR. BELL: Judge, I've been notified by the  
12:01:24 23 Government that this Friday we have -- and every Friday  
12:01:28 24 -- 11 o'clock meeting on depositions. And I understand  
12:01:32 25 they're going to give us names of people, and I think

12:01:36 1 our initial start was a little slower than I would have  
12:01:39 2 liked. I think it will work out.

12:01:41 3 I would like to ask the Court, because of  
12:01:44 4 the Christmas holidays -- our next meeting is on the --  
12:01:50 5 is it the 19th, maybe? Is that --

12:01:56 6 MR. BAIN: I also think there's one on  
12:01:58 7 January 2nd, too, if I'm correct.

12:02:01 8 THE COURT: So today is the 5th. So our  
12:02:04 9 next one is the 19th. And then the one after that is  
12:02:07 10 the -- is the 2nd. Did y'all want to change those?

12:02:14 11 MR. BELL: Well, we would love to have these  
12:02:16 12 motions to compel heard, possibly, but -- the Government  
12:02:21 13 will have seven days to respond. So if we filed our  
12:02:24 14 motions, maybe by tomorrow, they -- it would have before  
12:02:29 15 the next one. But I can anticipate, because of the  
12:02:34 16 holidays and vacations and things, it may be difficult.  
12:02:38 17 But we can -- we can be here on the 19th and certainly  
12:02:42 18 address that. But I just wanted to suggest to the Court  
12:02:45 19 that might be an issue.

12:02:49 20 THE COURT: What do you think?

12:02:50 21 MR. BAIN: Well, I will say I think some of  
12:02:52 22 the issues, at least the ones on ESI, we're still  
12:02:55 23 meeting and conferring on. I know we have, I believe, a  
12:02:58 24 meeting scheduled for later this week on that.

12:03:00 25 MR. RYAN: For Thursday, Your Honor.

12:03:02 1 THE COURT: Okay. All right. I was just  
12:03:05 2 trying to ask a housekeeping question. I don't  
12:03:08 3 anticipate having hearings on motions to compel. I  
12:03:11 4 might if I see the need for it. But I was hoping just  
12:03:15 5 to be able to resolve those on the papers, as is my  
12:03:18 6 practice.

12:03:19 7 And so what I gather is that the Court  
12:03:24 8 should think about rescheduling from the 19th and the  
12:03:27 9 2nd; is that right?

12:03:29 10 MR. BELL: It's up to the Court, of course.  
12:03:31 11 But that would be --

12:03:33 12 THE COURT: Well, do you have any  
12:03:34 13 suggestions?

12:03:34 14 MR. BELL: That would be the suggestion I  
12:03:36 15 have, Your Honor.

12:03:39 16 THE COURT: Do you have any dates?

12:03:40 17 MR. BELL: Well, I'm saying we can -- the  
12:03:43 18 2nd would be good.

12:03:44 19 MR. BAIN: I would prefer maybe later after  
12:03:46 20 the new year than the 2nd. Later that week or even the  
12:03:49 21 next Tuesday. But we're certainly willing to come down  
12:03:53 22 here and continue to meet with Your Honor. We think  
12:03:55 23 they're useful going forward to keep us moving forward  
12:03:58 24 on certain items.

12:03:59 25 THE COURT: Okay. All right. I'll look at



12:04:03 1 those dates and think about -- think about changing  
12:04:12 2 them.

12:04:12 3 The location is fine with everybody, in  
12:04:15 4 Wilmington?

12:04:16 5 MR. BELL: We love your food down here,  
12:04:18 6 Judge.

12:04:19 7 MR. BAIN: Well, we certainly found out that  
12:04:20 8 there was a direct flight at 5 o'clock from Washington,  
12:04:23 9 which helped. And last time we weren't able to get it,  
12:04:26 10 but it was convenient this time.

12:04:28 11 THE COURT: Okay. All right. Is there --  
12:04:32 12 is there anything else?

12:04:34 13 MR. BELL: Nothing that I'm aware of, Your  
12:04:36 14 Honor.

12:04:36 15 MR. BAIN: Your Honor, I have just a couple  
12:04:38 16 of items to raise. And one is that we propose a  
12:04:42 17 stipulation regarding independent medical examinations,  
12:04:45 18 and that would simply request the plaintiffs give us  
12:04:48 19 notice if they plan to introduce an expert witness with  
12:04:51 20 an IME report so we can consider to do our own. We  
12:04:56 21 offered that to plaintiffs. They would not agree to it.  
12:05:00 22 So that's something that we're looking to do to make it  
12:05:02 23 more efficient. We don't want to take an IME of all 100  
12:05:07 24 plaintiffs. We simply don't have the resources to do  
12:05:09 25 it. But if the plaintiffs are going to do an

12:05:11 1 examination, we would like the opportunity to do one as  
12:05:13 2 well.

12:05:13 3 THE COURT: Okay. All right. So you'll be  
12:05:16 4 asking the Court for that, perhaps, in the future?

12:05:18 5 MR. BAIN: Yes.

12:05:19 6 THE COURT: All right.

12:05:20 7 MR. BAIN: And then I just want to raise  
12:05:22 8 with respect to global settlement negotiations: I think  
12:05:28 9 that we are making some progress, but I do want to  
12:05:31 10 identify that I think there are a couple of issues in  
12:05:34 11 which we might need either Your Honor or some special  
12:05:38 12 master to be involved in helping us to resolve those  
12:05:41 13 issues. And one is that we have proposed a  
12:05:45 14 questionnaire census to be used as part of the global  
12:05:49 15 settlement process. And we've made really good progress  
12:05:52 16 on it, but it seems like we have come to a place where  
12:05:55 17 we can't agree, where we want more specific information  
12:05:58 18 regarding economic damages, and the plaintiffs are  
12:06:01 19 proposing that we use some sort of proxies or that we  
12:06:05 20 waive the offsets, which we're not at this point willing  
12:06:08 21 to do. So that seems to be an issue where we've come to  
12:06:12 22 a stalemate, so to speak.

12:06:14 23 And then the other issue which we believe is  
12:06:16 24 really important is that following the approach of Judge  
12:06:20 25 Hellerstein in the World Trade Center litigation, there

12:06:23 1 needs to be a central database that both parties can  
12:06:26 2 access, and the Court can access, with this plaintiff's  
12:06:29 3 information from the census is going to be fed into it.

12:06:31 4 THE COURT: Wasn't that contemplated  
12:06:34 5 earlier? I thought the parties were making some headway  
12:06:36 6 on that.

12:06:37 7 MR. BELL: We discussed it last time, Your  
12:06:38 8 Honor.

12:06:38 9 THE COURT: Right.

12:06:39 10 MR. BELL: Remember, there's this problem  
12:06:41 11 the Government has with something called "FedRAMP  
12:06:46 12 certified." And so we have engaged a database company  
12:06:50 13 already. They're starting to put in, soon, our  
12:06:53 14 information. We can give that information to the  
12:06:55 15 Government whenever they need it. Let them put it in  
12:06:59 16 their database and can access it. But to have a mutual  
12:07:03 17 database costs millions of dollars. And so we think we  
12:07:06 18 have the ability to do the same thing without spending  
12:07:09 19 that money.

12:07:10 20 THE COURT: These are just fact sheets;  
12:07:12 21 right?

12:07:12 22 MR. BELL: It's data. And I'll say to the  
12:07:16 23 Court --

12:07:16 24 THE COURT: Name, address, DOB, where you  
12:07:19 25 lived, what your job was, where you lived after Lejeune,

12:07:23 1 what you did for a living, were you a smoker, did you  
12:07:26 2 work around asbestos, things like that.

12:07:28 3 MR. BELL: Yes, sir. And I have not been  
12:07:30 4 involved in the questionnaire. I'll invest myself in  
12:07:33 5 that and try to get that resolved.

12:07:36 6 MR. BAIN: But we do need, because it's  
12:07:38 7 going to have that type of personal information on it,  
12:07:39 8 and the Government needs access to it and the plaintiff  
12:07:43 9 needs access to it, we're just trying to follow the same  
12:07:46 10 model under Hellerstein, that we have this  
12:07:50 11 FedRAMP-certified system --

12:07:51 12 THE COURT: Was it a FedRAMP-certified  
12:07:53 13 system in the --

12:07:55 14 MR. BAIN: FedRAMP moderate. So it's not  
12:07:56 15 the highest security levels.

12:07:56 16 THE COURT: Wait a minute. In the World  
12:07:58 17 Trade Center, it wasn't a FedRAMP, was it?

12:08:00 18 MR. BAIN: I don't believe so, because I  
12:08:01 19 don't think the Government -- U.S. Government was  
12:08:03 20 involved. And the security thing -- the security  
12:08:05 21 requirements have changed somewhat in the past few years  
12:08:08 22 because of a data breach at OPM. So any system that the  
12:08:14 23 Government accesses by law has to have this FedRAMP  
12:08:17 24 moderate certification. I don't believe it's in the  
12:08:20 25 millions of dollars as Mr. Bell mentioned. And we've

12:08:23 1 provided some vendors to the plaintiffs that meet these  
12:08:26 2 requirements that have been used before, and we're just  
12:08:29 3 trying to get this process going so that we can get a  
12:08:34 4 vendor that we can agree to.

12:08:36 5 MR. BELL: Judge, again, I hate to keep  
12:08:38 6 repeating myself. But if we do it their way, we have to  
12:08:43 7 pay half the cost. We can transfer our data with the  
12:08:48 8 push of a button to their FedRAMP, and it's exactly the  
12:08:52 9 same benefit that anyone gets. So we don't have to buy  
12:08:58 10 into other database system and charge our clients for  
12:09:01 11 it.

12:09:01 12 THE COURT: Why can't you just use their  
12:09:02 13 information?

12:09:03 14 MR. BAIN: Well, again, we're trying to  
12:09:06 15 follow the Hellerstein model which allows access for  
12:09:09 16 both the Court and the parties, and we can look at the  
12:09:14 17 information, we can analyze it, we can run searches on  
12:09:18 18 it, in order to inform how we might globally settle this  
12:09:23 19 litigation.

12:09:24 20 MR. BELL: We'll give them that information.  
12:09:26 21 And it will be the same thing, but they'll have their  
12:09:28 22 own -- they can do anything -- they can analyze it and  
12:09:31 23 do everything --

12:09:32 24 THE COURT: But it's on the system that  
12:09:34 25 you've developed?

12:09:35 1 MR. BELL: Yes, sir. We're developing that  
12:09:36 2 now.

12:09:36 3 THE COURT: You're saying you can't use that  
12:09:38 4 system?

12:09:39 5 MR. BELL: They can use our data if we give  
12:09:41 6 it to them.

12:09:41 7 THE COURT: But you're saying you can't?

12:09:43 8 MR. BAIN: We can't use their system. No,  
12:09:45 9 we can't.

12:09:45 10 MR. BELL: That's right. So we can download  
12:09:46 11 our data, give it to them, and they can put it on their  
12:09:50 12 FedRAMP model and do anything --

12:09:52 13 THE COURT: Does that work for you?

12:09:53 14 MR. BAIN: I don't believe that works  
12:09:54 15 because we need to be able to have something joint that  
12:09:57 16 we can use together in order to resolve the litigation.

12:09:59 17 THE COURT: Well, it sounds like it is.

12:10:00 18 MR. BELL: We don't have to have joint. If  
12:10:03 19 we have the same -- he has the same data and we have the  
12:10:05 20 same --

12:10:05 21 THE COURT: This comes in when in  
12:10:08 22 settlement? This is for purposes of global settlement?

12:10:10 23 MR. BAIN: That's right, Your Honor.

12:10:11 24 THE COURT: Not for case selection.

12:10:14 25 MR. BAIN: So it can be done, you know, some

12:10:16 1 time down the road; we just want to bring this up now  
12:10:20 2 because we don't want it to be a stumbling block.

12:10:22 3 THE COURT: What do you anticipate the  
12:10:24 4 stumbling blocks being? That they've got a database  
12:10:29 5 full of folks who the information does not include  
12:10:33 6 intervening causes of disease?

12:10:36 7 MR. BAIN: They're --

12:10:37 8 MR. BELL: We put all of the information we  
12:10:39 9 need in our database, then we'll give them all the  
12:10:42 10 information.

12:10:42 11 THE COURT: I mean, you're arguing over the  
12:10:46 12 information that's not as complete as we would like it  
12:10:48 13 because there are issues -- there are areas that are  
12:10:52 14 not -- the questions -- the information is not contained  
12:10:55 15 in the database. Can there be some kind of meeting of  
12:10:58 16 the minds about as to what should be in that database?

12:11:01 17 MR. BELL: We can agree to that. That's not  
12:11:03 18 a problem. What they want is us to have a joint  
12:11:08 19 database. It's their regulation that says they can't --  
12:11:14 20 they can't go to ours. And we're going to have the  
12:11:17 21 exact same information. If they want more, we can sit  
12:11:20 22 down and work that out just like we would if it was  
12:11:23 23 joint. We still have to put it in.

12:11:28 24 MR. BAIN: Yeah, I -- you know, a little bit  
12:11:31 25 over my head about the technical requirements and the

12:11:33 1 procedures. But I've just been told that this is  
12:11:36 2 necessary, that we can't just, you know, rely on, oh,  
12:11:39 3 we're going to just send the information to you and you  
12:11:41 4 have to, you know, trust that we've sent everything to  
12:11:43 5 you in just the right way. If it's fed into a neutral  
12:11:46 6 system that the Court oversees, then there's some  
12:11:50 7 guarantee of trustworthiness to it. And it has to meet  
12:11:53 8 the superior requirements, which aren't that onerous.  
12:11:57 9 And I don't think that it's that big of an ask to have  
12:11:59 10 that. Which is the same process that was used with  
12:12:02 11 Judge Hellerstein.

12:12:03 12 THE COURT: We're -- this is an issue that's  
12:12:05 13 going to be down the road; right?

12:12:07 14 MR. BAIN: I think it can be somewhat down  
12:12:09 15 the road. But I don't -- I just want to raise it now so  
12:12:12 16 we don't, you know, have this stumbling block that we  
12:12:15 17 haven't addressed at some point and it creates a big  
12:12:18 18 problem. I think the first thing is getting the census  
12:12:20 19 agreed to and then coming up with a process to put  
12:12:24 20 information into the system.

12:12:26 21 MR. BELL: Judge, the census which Mr. Bain  
12:12:29 22 mentioned a minute ago that has a couple of issues that  
12:12:32 23 haven't been resolved. That is actually what is put  
12:12:35 24 into the database, those questions in the census. And  
12:12:38 25 when counsel says it has to be trustworthy, it's no



12:12:41 1 different if I put the same information into the joint  
12:12:46 2 database or if I give it to him in a hard drive. They  
12:12:49 3 can check its accuracy. But yet, the list of vendors --  
12:12:53 4 our vendor which is used a lot -- by a lot of people  
12:12:58 5 said it will cost about a million dollars for them to be  
12:13:01 6 FedRAMP certified because of this security issue. It's  
12:13:05 7 not necessary.

12:13:10 8 THE COURT: All right. Well, it sounds like  
12:13:12 9 we'll flesh that out a little bit further down the road.

12:13:14 10 Is there anything else from the parties?

12:13:17 11 MR. BELL: No, Your Honor.

12:13:18 12 MR. BAIN: No, Your Honor. Thank you.

12:13:20 13 THE COURT: All right. Our -- are you -- I  
12:13:26 14 know that there's been notices -- I think it was in the  
12:13:32 15 form of a notice filed with the Court about different  
12:13:34 16 ideas of how Track 1 should be changed and how Track 2  
12:13:39 17 should be changed from the current structure in the CMO.  
12:13:42 18 Are you asking the Court to make those changes, or are  
12:13:47 19 you just opining as to -- what changes should be made?

12:13:50 20 MR. BELL: We're contemplating filing a  
12:13:52 21 motion with the Court, Your Honor.

12:13:53 22 THE COURT: Okay. Good. Because that's  
12:13:55 23 what I was getting to. I didn't want you to be under  
12:13:58 24 the impression that the Court was going to act on the  
12:14:00 25 notice. If you guys want to change the structure of the

12:14:03 1 CMO, that's going to go to the four district judges.

12:14:08 2 MR. BELL: And we'll meet and confer on  
12:14:10 3 that.

12:14:10 4 THE COURT: Is that right, Mr. Bain?

12:14:11 5 MR. BAIN: Yes. Thanks for clarifying that,  
12:14:15 6 Your Honor. Because I thought, under the case  
12:14:16 7 management order number 2, we submit proposed changes so  
12:14:19 8 the Court will consider those. But if you're saying we  
12:14:22 9 need to file something more formal, such as a motion to  
12:14:26 10 amend case management order number 2.

12:14:26 11 THE COURT: Yeah. I think that's  
12:14:27 12 appropriate.

12:14:28 13 Okay. All right. Well, thank you very  
12:14:29 14 much.

12:14:40 15 (The proceedings concluded at 12:14 p.m.)

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
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5 CERTIFICATE OF OFFICIAL REPORTER  
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