

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

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

TUESDAY, JANUARY 9, 2024
STATUS CONFERENCE
BEFORE THE HONORABLE ROBERT B. JONES, JR
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Plaintiff:

J. Edward Bell, III; James A. Roberts

On Behalf of the Defendant:

Adam Bain, Bridget Bailey Lipscomb
Haroon Anwar, Joseph Turner

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

1 (Tuesday, January 9, 2024, at 10:03 a.m.)

2 **P R O C E E D I N G S**

10:03:43 3 THE COURT: All right. Good morning. I
10:03:47 4 thank the parties for the joint status report. I had a
10:03:52 5 few questions I would like to ask counsel, and then
10:03:58 6 after those questions have been answered, I'll be happy
10:04:02 7 to hear from whatever you would like to tell me.

10:04:05 8 The first question I have is what is pending
10:04:11 9 before the Court and currently ripe. I want to make
10:04:15 10 sure that we remain on track with addressing what the
10:04:19 11 parties have filed.

10:04:22 12 MR. BELL: Good morning, Your Honor. There
10:04:25 13 is pending a motion to compel and motion for protective
10:04:29 14 order. The Government and our side has worked very
10:04:33 15 diligently to resolve those matters. We're close, and
10:04:36 16 we would like the Court to hold it in abeyance at this
10:04:38 17 time.

10:04:40 18 THE COURT: And then what other -- I want to
10:04:41 19 open it up to whatever -- whatever else is pending and
10:04:44 20 ripe.

10:04:44 21 MR. BELL: I believe that's it.

10:04:48 22 MR. BAIN: There is the motion to strike the
10:04:49 23 jury trial demand. And there is also a motion for
10:04:55 24 partial summary judgment that the plaintiffs filed
10:04:57 25 regarding representative of an estate in the case. I

10:05:03 1 believe that's all there is -- a motion to amend the
10:05:05 2 case management order, but that's not ripe yet.

10:05:07 3 THE COURT: Okay. On the discovery, my next
10:05:14 4 question was what outstanding discovery responses. And
10:05:18 5 I would like to know those responses to make sure that
10:05:21 6 we're issuing them in order as to what is exactly in
10:05:26 7 dispute. So what outstanding discovery responses remain
10:05:30 8 for the Court to rule on in the motion to compel and the
10:05:35 9 protective order motion?

10:05:36 10 MR. BELL: Your Honor, from the general
10:05:38 11 discovery, the Government has propounded requests for
10:05:42 12 production for all 100 plaintiffs. I anticipate having
10:05:46 13 that on or before the deadline. I think the deadline is
10:05:50 14 tomorrow. We've discussed that with the Government, and
10:05:53 15 I think everybody is on track in that area. We should
10:05:56 16 have most, if not all, of our plaintiffs respond to
10:06:01 17 that. We've made no objections to their requests except
10:06:06 18 for financial records and, if no one is claiming loss of
10:06:10 19 wages, lost wages. But other than that, I think we're
10:06:14 20 on track with that.

10:06:14 21 The PP -- the profile forms are due on the
10:06:19 22 19th. We anticipate having all of those completed and
10:06:21 23 served or prepared for the Government. And the Social
10:06:27 24 Security numbers and date of births, they should be, if
10:06:30 25 not complete, pretty close to complete.

10:06:31 1 THE COURT: Okay. Now -- but there's a
10:06:35 2 motion pending right now -- yours --

10:06:38 3 MR. BELL: Yes, sir.

10:06:38 4 THE COURT: -- to compel; right?

10:06:39 5 MR. BELL: And we're very close, Your Honor.
10:06:42 6 There have been a series of meetings with the attorneys.
10:06:44 7 The Government is looking at a couple of questions we
10:06:46 8 have. And both Mr. Bain and I would ask the Court to
10:06:51 9 hold that in abeyance. We're close to getting it
10:06:53 10 resolved.

10:06:54 11 THE COURT: Okay. But if it's not fully
10:06:56 12 resolved, am I going to find out what exactly remains
10:07:01 13 outstanding so that I can rule accordingly?

10:07:03 14 MR. BELL: Yes, Your Honor.

10:07:03 15 THE COURT: Okay. Is that right?

10:07:04 16 MR. BAIN: Yes, I agree, Your Honor. I
10:07:07 17 think we made some substantial progress. There might be
10:07:09 18 a few things we have to work out. But if there's
10:07:12 19 anything left, we can make that a very discrete issue
10:07:15 20 for your decision.

10:07:16 21 THE COURT: That will be appreciated. I
10:07:17 22 certainly commend y'all for trying to work those out.

10:07:22 23 My next -- next question is apparently the
10:07:26 24 Court is receiving profile forms from plaintiffs who are
10:07:33 25 incarcerated. And I was curious as to how -- why are

10:07:40 1 those being filed? Is there something that can be done
10:07:44 2 through the committee to get in touch --

10:07:48 3 MR. BELL: This is the first I've heard of
10:07:49 4 that. May we get with the clerk's office and check on
10:07:52 5 it?

10:07:53 6 THE COURT: Okay.

10:07:53 7 MR. BELL: We're not aware.

10:07:54 8 THE COURT: I just want to be aware of it
10:07:56 9 and was looking for --

10:07:57 10 MR. BELL: Are they pro se, Your Honor?

10:07:58 11 THE COURT: That's right.

10:08:02 12 MR. ELLIS: Your Honor, first I've heard of
10:08:05 13 it as well. We will look into it, for sure.

10:08:08 14 THE COURT: Okay. Settlement master
10:08:10 15 selection update.

10:08:11 16 MR. BELL: Your Honor, it's going along
10:08:14 17 well. I think right after this hearing, the Government
10:08:17 18 and our side has a meeting to talk about the different
10:08:21 19 proposal we have. Our response to the Court is due, I
10:08:26 20 think, a week from today, and hopefully we can reach an
10:08:30 21 agreement on someone. But we haven't had that in-person
10:08:34 22 meeting yet. But we -- we've interviewed a number of
10:08:38 23 people and brought it down to two folks. I think the
10:08:41 24 Government has one recommendation as well.

10:08:44 25 THE COURT: Is that right?

10:08:45 1 MR. BAIN: That's correct, Your Honor. We
10:08:47 2 had a recommendation from the U.S. Attorney's Office who
10:08:49 3 we're in contact with, and we're going to be discussing
10:08:51 4 that with plaintiffs after this hearing.

10:08:53 5 THE COURT: Okay. Data points. What will
10:08:58 6 be helpful to the Court is, is if the Court had
10:09:03 7 information about what diseases are in the
10:09:09 8 administrative claims process -- the DON -- versus what
10:09:14 9 diseases are in the Eastern District of North Carolina.
10:09:20 10 Diseases by name and numbers. We need numbers and
10:09:25 11 diseases. It's helpful to the Court to have this
10:09:28 12 information to select cases going forward.

10:09:31 13 MR. BELL: Your Honor, so I can explain the
10:09:34 14 little charts we put together in the status report.
10:09:38 15 These are the numbers that we were able to count from
10:09:43 16 some of the larger plaintiff's firms or from other firms
10:09:46 17 that have the larger numbers. We're unable, because we
10:09:50 18 don't have the data from the administrative filings.
10:09:54 19 All we can do is go to our member firms, our leadership,
10:09:58 20 and PEC members. So in the -- in the status report --
10:10:03 21 let me see if I can find it, what page. On page 16.

10:10:06 22 THE COURT: 16.

10:10:09 23 MR. BELL: And we -- I hope I followed the
10:10:12 24 Court's direction. This is -- if you look at the left
10:10:16 25 chart, Your Honor, this is plaintiff's proposed track

10:10:20 1 two.

10:10:21 2 THE COURT: Right.

10:10:22 3 MR. BELL: I guess it's something that is
10:10:23 4 pending before the Court.

10:10:24 5 THE COURT: I think the Court would like the
10:10:26 6 entire universe.

10:10:28 7 MR. BELL: Okay. So we can give you what we
10:10:30 8 know, Your Honor. But I think the Government is going
10:10:34 9 to have to have something from the administration --
10:10:38 10 administrative pool. We don't have access to that.

10:10:41 11 MR. BAIN: So, Your Honor, the Navy is
10:10:43 12 setting up an intake database which is very close to
10:10:46 13 being operational. And I understand that it will
10:10:51 14 include information about diseases. However, if the
10:10:54 15 plaintiff did not indicate a disease on their
10:10:56 16 administrative claim form, then we won't know what the
10:10:59 17 disease is they're claiming. But we can go back to the
10:11:03 18 Navy and see if they can -- you know, where they are in
10:11:06 19 that process and whether there's an ability to enumerate
10:11:13 20 how many claimants have each particular disease, that at
10:11:16 21 least where they have stated so --

10:11:18 22 THE COURT: Right.

10:11:19 23 MR. BAIN: -- in the claim.

10:11:19 24 THE COURT: It will be helpful to the Court.
10:11:22 25 And we've spoken often about the -- I believe it was the

10:11:26 1 World Trade Center case. And I believe that Court had
10:11:29 2 access, as did the parties, to a database that contained
10:11:32 3 the universe of diseases; right? Isn't that correct?

10:11:36 4 MR. BELL: It did, Your Honor. The -- a
10:11:39 5 little difference in that model than ours, because
10:11:42 6 there's no way that we can require those that are in the
10:11:47 7 administrative process, at least from our side --

10:11:49 8 THE COURT: Right.

10:11:50 9 MR. BELL: -- to know -- or to register
10:11:52 10 them. We can poll 40 to 50 firms and get as rough a
10:11:58 11 date as we can. It will be fairly close. It may not be
10:12:01 12 exact, but it will come pretty close --

10:12:03 13 THE COURT: Okay. Well --

10:12:05 14 MR. BELL: -- to that.

10:12:05 15 THE COURT: -- let's try to get as close as
10:12:07 16 we can, both with what's been filed in the -- in the
10:12:11 17 district as well as what's at the Navy.

10:12:42 18 All right. A question regarding the track
10:12:47 19 one pool. Are the parties operating under the
10:12:52 20 assumption that Mr. Foster's clients are in the 100
10:12:56 21 track one pool? I understand the motion is still
10:13:00 22 pending. If you could shed some light on that.

10:13:06 23 MR. BELL: We're uncertain about that, Your
10:13:07 24 Honor, because of the motion. So we're moving forward
10:13:11 25 with the discovery. And I assume that those will be

10:13:15 1 part of the discovery response.

10:13:18 2 THE COURT: Okay. Mr. Bain.

10:13:19 3 MR. BAIN: Your Honor, we've been starting
10:13:21 4 to schedule depositions of the track one plaintiffs, and
10:13:24 5 because of this issue with -- regarding the plaintiffs
10:13:27 6 that are represented by the Foster Law Firm, we've been
10:13:29 7 unable to, through the plaintiff leadership counsel at
10:13:32 8 least, schedule depositions of those particular
10:13:35 9 plaintiffs.

10:13:35 10 THE COURT: Okay. All right.

10:13:39 11 MR. BELL: One other thing, Your Honor.

10:13:40 12 THE COURT: Yes, sir.

10:13:40 13 MR. BELL: I forgot to mention. We started
10:13:42 14 plaintiff's depositions last week. We have maybe almost
10:13:48 15 30 scheduled. We're getting a list of seven to ten
10:13:52 16 every Friday in our regular meeting. We've got a
10:13:56 17 process set up that seems to be working. And we're
10:13:59 18 taking depositions and everything is going smoothly in
10:14:02 19 that regard.

10:14:03 20 THE COURT: All right. So we've gone
10:14:04 21 through my list of questions. What would you like to
10:14:06 22 tell me?

10:14:07 23 MR. BELL: Judge, I think it's safe to say
10:14:10 24 everything is on track.

10:14:11 25 THE COURT: Well, there was something in the

10:14:12 1 status report about location of depositions. Is that
10:14:18 2 still -- is that still an issue?

10:14:20 3 MR. BELL: No, Your Honor.

10:14:26 4 THE COURT: When do you think the Court can
10:14:28 5 receive that information regarding the best number you
10:14:33 6 can get me regarding the universe of claims?

10:14:35 7 MR. BELL: I'll start on it immediately,
10:14:37 8 Your Honor. And maybe give us ten days?

10:14:39 9 THE COURT: Okay. Can you do the same?

10:14:41 10 MR. BAIN: We will contact the Navy this
10:14:43 11 week -- you know, tomorrow to see what they can provide
10:14:47 12 us, and we will provide that information to the
10:14:49 13 plaintiffs so we can submit it jointly.

10:14:51 14 THE COURT: Okay. And then back to the
10:14:54 15 outstanding discovery that y'all are still talking
10:14:58 16 about, when do you think you would reach a conclusion on
10:15:02 17 that?

10:15:04 18 MR. BAIN: We're going to work on it as
10:15:06 19 quickly as we can. I would think within one to two
10:15:09 20 weeks we should be able to see whether there's any
10:15:11 21 outstanding issues on that, by the time of the next
10:15:15 22 hearing.

10:15:15 23 THE COURT: In two weeks' time, the Court
10:15:17 24 can look for some update on those outstanding motions?

10:15:19 25 MR. BELL: Yes, Your Honor.

10:15:19 1 THE COURT: Okay. And then we've sort of
10:15:23 2 changed our meeting schedule here.

10:15:26 3 MR. BELL: That was one of the questions.
10:15:27 4 Are we going to go back -- stay on the same two weeks
10:15:31 5 that we --

10:15:31 6 THE COURT: What would you like to do?

10:15:35 7 MR. BELL: Entirely up to the Court.

10:15:36 8 THE COURT: Happy to hear you from.

10:15:38 9 MR. BELL: We don't have a preference, Your
10:15:40 10 Honor.

10:15:41 11 THE COURT: I guess two weeks will be the
10:15:42 12 23rd; right?

10:15:43 13 MR. BELL: Yes, sir. We got an order last
10:15:47 14 night from Judge Boyle asking for a conference on the
10:15:50 15 24th. And so we were curious as to whether the Court
10:15:54 16 was going to have the next status conference in two
10:15:57 17 weeks or next week. If it's next week, our status
10:16:01 18 report is due today. Quite frankly, I think that what
10:16:06 19 we've given the Court today would be our status report.
10:16:09 20 So...

10:16:09 21 THE COURT: Mr. Bain, what are your
10:16:11 22 thoughts?

10:16:12 23 MR. BAIN: I think that in two weeks, given
10:16:14 24 that Judge Boyle has set a hearing for the 24th, that
10:16:17 25 way we can make one trip down here.

10:16:19 1 THE COURT: Is that here in Raleigh? Where
10:16:21 2 is that hearing?

10:16:22 3 MR. BELL: Right here in Raleigh.

10:16:24 4 THE COURT: It is? Okay.

10:16:39 5 You guys got anything else?

10:16:40 6 MR. BAIN: No.

10:16:41 7 THE COURT: Okay. Thank you very much.

10:16:42 8 MR. BELL: Thank you, Your Honor.

10:16:54 9 (The proceedings concluded at 10:16 a.m.)

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