

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3)
4 CAMP LEJEUNE WATER)
LITIGATION,) DOCKET NO. 7:23-CV-00897-RJ
5)
Plaintiff,)
6 vs.)
7 UNITED STATE OF AMERICA,)
8 Defendant.)

9
10 TRANSCRIPT OF STATUS CONFERENCE
BEFORE MAGISTRATE JUDGE ROBERT B. JONES, JR.
11 FRIDAY, NOVEMBER 14, 2025; 1:04 PM
WILMINGTON, NORTH CAROLINA

12
13 **FOR THE PLAINTIFF:**
Bell Law Firm
By: J. Edward Bell, Esq.
14 P.O. Box 2590
Georgetown, SC 29442
15

16 **FOR THE PLAINTIFF:**
Ward and Smith, P.A.
17 By: A. Charles Ellis, Esq.
Jenna Fruechtenicht Butler, Esq.
18 P.O. Box 33009
Raleigh, NC 27636
19

20 **FOR THE PLAINTIFF:**
Dowling PLLC
21 By: William Michael Dowling, Esq.
P.O. Box 27843
22 Raleigh, NC 27611
23
24
25

1 **FOR THE DEFENDANT:**

DOJ-Civ

2 By: John A. Bain, Esq.
Sara Mirsky, Esq.
3 Michael Cromwell, Esq.
100 L Street, NW
4 Room 3504
Washington, DC 20005

6 **FOR THE DEFENDANT:**

DOJ-Civ

7 By: Joshua G. Carpenito, Esq.
310 New Bern Avenue
8 Suite 302
Raleigh, NC 27601

9 Audio Operator:

CLERK'S OFFICE PERSONNEL

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1 P R O C E E D I N G S

2 THE CLERK: All rise. This Honorable Court is now
3 back in session.

4 THE COURT: Good afternoon.

5 IN UNISON: Good afternoon.

6 THE COURT: All right. Mr. Bell, what do you have
7 for us?

8 MR. BELL: Good morning -- good afternoon, Your
9 Honor.

10 Other than what's in our status report, Your Honor,
11 just a couple of things I'd like to bring to the Court's
12 attention. And I know you're going to hate to hear this.

13 THE COURT: No, no, no.

14 MR. BELL: You remember the muster roll issue?

15 THE COURT: I was going to say if the first word is
16 muster and the second word is roll. Now, we talked about
17 muster rolls at the beginning of this because --

18 MR. BELL: We did.

19 THE COURT: -- it had to do with identifying
20 potential plaintiffs, right?

21 MR. BELL: We had a number of -- I mean, I don't know
22 if they were called hearings, but discussions.

23 THE COURT: Right.

24 MR. BELL: You -- you granted specific discovery on
25 that.

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1 THE COURT: Right.

2 MR. BELL: And so now, Your Honor, we have learned
3 that the muster roll digitization has not been completed. But
4 we've also learned that there may be a third contract, or
5 third chapter, if you will. You recall, Your Honor, and I --
6 forgive me for maybe not the right date, but sometime in the
7 mid-2000s, like maybe '15 or some time, there was a contract
8 entered into by the Marine Corps with a private company to
9 digitize the muster rolls.

10 THE COURT: Um-hum.

11 MR. BELL: We searched and searched and we were never
12 able to find them. The government never produced them. And
13 the way we've managed that or handled that, as the government
14 told you, and told us, that the -- that they were re-
15 digitizing everything and would be finished by midsummer of
16 this year, so a couple of months ago.

17 Last week, Mr. Bain, mentioned he felt that the
18 project had been completed. But now we understand that maybe
19 the project hasn't been completed. And the project, as was
20 described to us a year ago, apparently, has now changed. So
21 the estimate for completion is now 2026.

22 But what's happened has been kind of curious. The
23 government is saying now, and they said several times to the
24 Court, and several times in their answers to discovery, that
25 as soon as the digitization was done, they would turn it over

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1 to us, the plaintiffs. Now they're saying in order for us to
2 get it, we have to pay about a million dollars to get it.

3 So what I would request from the Court, Your Honor,
4 is to ask the government to bring someone who is knowledgeable
5 about all three of those chapters, if you will, so we can
6 figure out what's really going on. Or we could take a
7 deposition or two, but I would not like to have to do that at
8 this stage, but the muster rolls are pretty important, Your
9 Honor.

10 THE COURT: What was the -- what's the utility of the
11 muster rolls?

12 MR. BELL: If you go to Camp Lejeune and you are
13 billeted in for this particular location for three weeks, and
14 then moved to another location for six months, all of that
15 is -- is in these muster rolls.

16 THE COURT: Um-hum.

17 MR. BELL: So it gives you mostly housing data. It
18 gives you other things, unit numbers, things like that. But
19 generally speaking, if you were going on the base and you were
20 looking for Ed Bell, who's a Marine, some clerk would go to
21 their -- all these -- all these cards, these big cards, and
22 find my name and find out where I was. And that's how they
23 did it. That was before computers, of course.

24 Now, the government put those initially on
25 microfilm -- or microfiche. And since the microfiche was

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1 degrading, as you recall, they contracted out to have them all
2 scanned for preservation. And that's what we thought we were
3 going to get a year and a half, two years ago.

4 So now we understand that -- that not only are they
5 doing the Marines, they're doing it system wide --

6 THE COURT: Um-hum.

7 MR. BELL: -- and the -- and I have to compliment
8 Sarah Mirsky, Your Honor. She writes the best letters to
9 anyone I've ever known. But I told her this morning, I said,
10 I can't even understand what you're trying to tell me because
11 it's not my area of expertise. I don't understand what she's
12 saying. But the fact of the matter is, these muster rolls, if
13 we had them, and had them digitized, a tremendous amount of
14 work we're having to do now could be consolidated.

15 THE COURT: What -- what is that work?

16 MR. BELL: Well --

17 THE COURT: Why do you need muster rolls?

18 MR. BELL: -- as -- as you know, in order to even
19 apply for or substantiate for the EO, elective option, we have
20 to substantiate where our clients lived, every place they
21 lived to show they lived ninety days --

22 THE COURT: Okay. So they -- they tell you where
23 that person lived?

24 MR. BELL: And all of that would do that for us. Now
25 we're having to go to all kinds of records to do it that would

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1 be in one place.

2 THE COURT: Aren't there other records that have that
3 information?

4 MR. BELL: If you can get the government to help you
5 find them, yes.

6 THE COURT: Mail -- does mail have that information?

7 MR. BELL: We have actually digitized as many of the
8 phone books we could find for that thirty-something years.
9 And if someone had a number and we've been able to start
10 tracing that number to a housing location, so --

11 THE COURT: But --

12 MR. BELL: -- we're having to work on it. But the
13 muster roll would give us all of this pretty quickly.

14 THE COURT: But you're talking about approximately
15 409,000 people, right?

16 MR. BELL: Yes, sir.

17 THE COURT: Well, something was produced. Wasn't
18 something produced?

19 MR. BELL: Well, Judge, you remember Ancestry.com had
20 a -- had an agreement with the government and they took a
21 certain period of years and they got the muster rolls and they
22 scanned them and now they're available. We scrubbed
23 Ancestry.com, downloaded all of them. So we have -- we have
24 the ones for that five or six year period. I don't remember
25 the -- the dates. We have those.

Colloquy

1 And so we know that if someone digitized or scans
2 those muster rolls, we could do what we did before for those
3 dates. It's not hard. And I've been told by our technology
4 people that if they have already done a bunch of -- bunch of
5 them already, that we can -- our -- our group can take the --
6 the process that Ms. Mirsky says is going to be so difficult,
7 moving things here, and moving things there, we can do that
8 in-house and get it done quickly.

9 THE COURT: Okay.

10 MR. BELL: And I've also been told, Your Honor, that
11 in order to get that data that they've done --

12 THE COURT: Yeah.

13 MR. BELL: -- it's just a push the button, download
14 it to a hard drive, and that's all it takes.

15 THE COURT: Well, from the status report, it sounds
16 like it's --

17 MR. BELL: Well, that's the government speak, Your
18 Honor.

19 THE COURT: -- 13.7 terabytes, estimated to be 30
20 terabytes. That sounds large.

21 MR. BELL: That's what I'm saying, Judge. If they'll
22 give us the terabytes, we'll do the work.

23 THE COURT: Mr. Bain, what do you think about that?
24 Now, this process isn't even done yet, right?

25 MR. BELL: But at least the ones they've gotten done,

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1 Judge, at least give us what they have already.

2 THE COURT: Um-hum.

3 MR. BAIN: Your Honor, Sara Mirsky is going to
4 address the muster roll issues.

5 MS. MIRSKY: Thank you, Your Honor. Good afternoon.

6 THE COURT: Good afternoon.

7 MS. MIRSKY: Just to clarify a few points that Mr.
8 Bell raised. We did produce approximately 676,000 pages from
9 the 2013 to 2015 --

10 THE COURT: What were those pages of?

11 MS. MIRSKY: Of muster rolls. That's from the
12 prior --

13 THE COURT: Of -- of names and addresses, that's what
14 those were?

15 MS. MIRSKY: Those are of the muster rolls that as
16 Mr. Bell was explaining, are rolls of groups of people that
17 are taken every day across the Marines. And there was a prior
18 effort in 2013 to 2015 to digitize those muster rolls. And we
19 produced the 676,000 pages from that project that the Marines
20 were able to identify and turn over to DOJ.

21 In addition, as Mr. Bell indicated, we produced
22 approximately two terabytes of data from NARA, which included
23 all of the Ancestry.com records that they had previously
24 scanned.

25 In addition, for the track 1 bellwether plaintiffs,



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1 we have produced all of the individual service records that
2 were available from NARA, as well as VBA records and VHA
3 records for those individual plaintiffs.

4 As to the current digitization project, the United
5 States has always been clear that this is a project not
6 related to this litigation -- litigation, not related to Camp
7 Lejeune, specifically, but instead is a Marine-wide effort to
8 digitize those records that are deteriorating due to their age
9 and the fact that they are stored on microfiche, microfilm,
10 and paper. And so when we're talking about bulk files like
11 the muster rolls and -- and unit diaries, those are being
12 scanned according to the date of entry in which they occurred
13 across the service.

14 THE COURT: The date of what entry?

15 MS. MIRSKY: When the individual muster roll was
16 created. So every day --

17 THE COURT: And when -- when is it created?

18 MS. MIRSKY: So each day -- or most days, across the
19 Marines, officers will check to see who is in what location
20 and write down their information individually.

21 THE COURT: Okay.

22 MS. MIRSKY: Eventually, it started to be typed. And
23 those were stored together across the Marines. So there is no
24 Camp Lejeune specific set --

25 THE COURT: Right. But you've got a date range?

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1 MS. MIRSKY: We have a date range. They're being
2 stored in individual PDFs based on date.

3 THE COURT: Okay.

4 MS. MIRSKY: So if someone were looking for an
5 individual that they believe were at Camp Lejeune in February
6 1974, they would first have to open up the file for February
7 1st, 1974, scroll through, then February 2nd, 1974, and scroll
8 through and so on. And this is part of the ongoing effort
9 that is scheduled to be completed in -- at the end of January
10 of 2026.

11 As Your Honor noted, they have already scanned
12 approximately 14 terabytes of data.

13 THE COURT: So how far along are they?

14 MS. MIRSKY: They have scanned approximately 14
15 terabytes of data out of --

16 THE COURT: No. How far along in years?

17 MS. MIRSKY: They are not scanning them necessarily
18 in chronological order. I don't have information at this
19 point as to the prioritization because they're also scanning
20 individual personnel files. Because, again, this is a trove
21 of documents that are being held in Alexandria, Virginia. We
22 have offered plaintiffs the opportunity to go and inspect the
23 hard copy documents if they like, that they've never taken us
24 up on that offer. But the project is estimated to be
25 completed at the end of January.

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1 However, as it relates to the utility in this
2 litigation, the United States believes that because of the way
3 the data is stored and collected, the burden of producing this
4 much data will greatly outweigh any particular utility,
5 especially since, as Your Honor mentioned, this information is
6 available through other types of documentation, including
7 through NARA, and the VA, and potentially individuals' own
8 records.

9 So it's the United States' position that the burden
10 that it would take to process, produce 30 terabytes of data
11 outweighs the potential utility for this litigation.

12 If Mr. Bell is interested in discussing these records
13 as they pertain to the EO, we believe that that is outside of
14 the confines of this discussion, but we would be happy to
15 discuss it further in chambers afterwards, if Your Honor would
16 like.

17 MR. BELL: So what they're telling you, Your Honor,
18 is what they told you last summer is not true. They said last
19 summer -- last year, that they would turn this over. They
20 told you that twice that I'm aware of. We started searching
21 the records and the transcripts. So they've told us already,
22 and we relied upon that.

23 Now, with due respect to Ms. Mirsky, I'm not a
24 scientist and I'm not a computer guy. But I know if they have
25 13 terabytes, I can buy a hard drive, take it up there and

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1 they can download it. I don't know how long it takes, but
2 that's not a burden, Judge. We're under a protective order
3 here. We know what we can and what we can't do with these
4 things.

5 But when they say now, because it's part of our EO
6 process they're not going to help us with it, how does that
7 help global resolution? How do -- how do we get there if
8 they're going to put a roadblock up to us every time?

9 THE COURT: The point of getting these muster rolls
10 is to determine where these 409,804 -- 409,889 presumably
11 people were during the thirty years?

12 MR. BELL: As many as we need, Your Honor. You know,
13 a lot of the folks are not -- we're learning now through our
14 process of this questionnaire, there might be a significant
15 number of people that don't have valid claims. So we don't
16 know the exact amount.

17 But the fact of the matter is, Judge, if -- if
18 there's a question, for example, of how much water someone
19 drank, learning who that plaintiff's, I'll call them
20 roommates, but they were in the barracks, barracks mates,
21 those might be potential witnesses. So I don't -- I don't buy
22 what the government's position is.

23 But the fact is, Judge, they represented to the
24 Court, and we delayed trying to get them, because they said
25 when they got finished, they would turn it over.

Colloquy

1 THE COURT: But you got something? Didn't you get
2 some of these?

3 MR. BELL: We got those way back, Judge. We
4 already -- we already had Ancenstry.com. We got that
5 ourselves.

6 THE COURT: Okay.

7 MR. BELL: And the -- the two or three years that had
8 been scanned, we got that. But that's only two out of thirty-
9 three years.

10 THE COURT: So what's left?

11 MR. BELL: Thirty-one years.

12 THE COURT: Ms. Mirsky --

13 MR. BELL: Well, I mean, Ancestry has probably five
14 years.

15 THE COURT: No, but the -- what you're scanning now,
16 is that -- that was different than the Ancestry.com?

17 MR. BELL: We've had that, Your Honor. You knew that
18 back then.

19 THE COURT: This scanning is going to be going on
20 until the end of January?

21 MS. MIRSKY: That's the current estimated date of
22 completion, yes.

23 THE COURT: Um-hum.

24 MS. MIRSKY: And I would note that this data, because
25 it relates to likely many people who were not at Camp Lejeune,

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1 and after 1971, muster rolls started incorporating Social
2 Security numbers, you know, there are additional
3 considerations that we need to make before handing these
4 records over. And --

5 THE COURT: Haven't we already made those sorts of
6 decisions?

7 MS. MIRSKY: Well, for the litigation, you know,
8 there is a protective order in place, but not necessarily for
9 the EO process.

10 THE COURT: Um-hum.

11 MS. MIRSKY: And Mr. Bell previously took a 30(b)(6)
12 of the United States Marine Corps on the digitization project.
13 And in our last discovery responses, the supplemental
14 discovery responses that we served in 2024, we stated that our
15 productions pursuant to that request had been completed. We
16 did say that we would produce the records that the Marines
17 were able to retrieve from the prior 2013 to 2015 digitization
18 project, and we did that.

19 And if the plaintiffs would agree to a fee shifting
20 arrangement, then we can try and work through a way to produce
21 these records. But given the size of the data and the overall
22 unhelpfulness of the data to this specific litigation, it's
23 the United States' position that it would be unduly burdensome
24 for us to undertake at this time.

25 THE COURT: What's the burden in -- I'm not a



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1 computer guy -- stick a -- sticking a thumb drive in a
2 computer and downloading this information on that thumb drive,
3 and then pursuant to an agreement providing it to the
4 plaintiffs.

5 MS. MIRSKY: It's a burden of time and expense. We
6 are still working through what the estimates would be, but in
7 order to securely get that data from the Marines, there may be
8 a time and expense involved in that. We're trying to figure
9 out the most efficient way that we could do that, and then
10 there's a significant time and expense to process and produce
11 these records according to the ESI protocol, which would be
12 particularly important in this instance, given that a large
13 amount of these records are not going to relate to individuals
14 at Camp Lejeune. We need to make sure that these records are
15 accounted for properly. We can't just hand over this data in
16 a native form.

17 MR. BELL: Judge, the ESI program --

18 THE COURT: But you did earlier, right?

19 MR. BELL: The ESI protocol allows --

20 THE COURT: Didn't you hand over --

21 MR. BELL: Yes.

22 THE COURT: -- two terabytes of native records back
23 in March of '24?

24 MS. MIRSKY: That was for the Ancestry.com records.

25 THE COURT: Right. But you still -- it's -- it was a



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1 native record, right?

2 MS. MIRSKY: It was. But that did not contain any
3 PII. And after 1971, the muster rolls contain PII for
4 individuals who are not necessarily claimants or litigants
5 here.

6 THE COURT: Don't we have something in place that
7 deals with that sort of information?

8 MS. MIRSKY: We have a protective order in place for
9 the litigation. But, again, considering that there's the
10 possibility that the majority of these records would have PII
11 for individuals that were not at Camp Lejeune and not in this
12 litigation, the United States believes that it is important to
13 produce those records according to the ESI protocol, with some
14 sort of, you know, tracking information in place.

15 THE COURT: Would you be able to search these
16 records? You're not going to go through each page, but you --
17 you'd have some search engine to go through. And I don't know
18 what your search terms would be, but you're not going to go
19 through --

20 MR. BELL: They're not set --

21 THE COURT: -- 100 terabytes of information.

22 MR. BELL: They're not set up, Your Honor, to be
23 searched. But we can make them searchable. So we can take
24 their scanned PDFs, and our folks tell us that we can make it
25 searchable.

Colloquy

1 THE COURT: And, again, we -- we have a universe of
2 claimants, correct? That's a finite-ish number, right?

3 MR. BELL: Right.

4 THE COURT: And so this -- this is to aid you in
5 pinpointing where those people were?

6 MR. BELL: Yes, Your Honor. Not only that, we have
7 to -- we have tracks 2 and 3 and 4 and 5 coming up. We need
8 to be able to have --

9 THE COURT: Right. I'm talking about everybody
10 who's --

11 MR. BELL: Yes.

12 THE COURT: -- a potential plaintiff in this case, in
13 this filed --

14 MR. BELL: It is directly related to global
15 resolution, Your Honor, and it would certainly help us in
16 that.

17 Judge, I have three quotes from the government. I
18 can forward them to you.

19 THE COURT: Well, I think I've -- I think I've heard
20 enough.

21 MR. BELL: Okay.

22 THE COURT: If y'all can't work something out, then
23 I'm ready to receive a motion on it.

24 MR. BELL: All right, Judge.

25 MS. MIRSKY: Thank you, Your Honor.

Colloquy

1 THE COURT: Okay. What else?

2 MR. BELL: Judge, it's not in the status conference,
3 but on Wednesday, we filed a motion, plaintiffs' leadership
4 group filed a motion to expedite the trials.

5 THE COURT: Yeah.

6 MR. BELL: I don't know if you had a chance to see
7 that yet, Judge, but we have cited a lot of very good
8 authority that Daubert issues require the Court to be a
9 gatekeeper, and -- but when the Court is hearing the cases
10 from the bench, they don't have to be their own gatekeepers.
11 And so we've asked the Court to consider ruling on or making
12 decisions as to admissibility at the time of trial.

13 THE COURT: Um-hum. Is this for the kidney cancer
14 cases?

15 MR. BELL: Well, we suggested that kidney would be a
16 good one to start because kidney is the most relevant, Your
17 Honor, to all of the myriad of forty-one or forty-two diseases
18 that we're seeking compensation for. Parkinson's, of course,
19 is kind of a standalone. Bladder has a lot of issues in
20 bladder that kidney doesn't. And, of course, blood cancers
21 are very unique. They don't apply to a lot of other cases.
22 So the kidney cancer is very relevant to almost all of the
23 other cancers.

24 Now, we could -- all we're saying is we could do that
25 one quickly and we could do the others quickly. We're ready

Colloquy

1 to go forward on all of them. But we believe, Your Honor,
2 that in order for those judges to make a ruling pre-trial,
3 that every judge is going to have to read every one of these
4 motions, every one of these memorandums, and it's just going
5 to be -- judicial efficiency would -- would dictate that the
6 Court hear the -- the cases and decide on admissibility of the
7 evidence at the time of the hearing.

8 THE COURT: Now, since you brought it up -- since you
9 brought up that motion, I had a -- I had a question. Please
10 don't read anything into this. This is just kind of my own
11 curiosity.

12 As it relates to the water contamination, and the
13 Court's ruling on that on a global scale, you know what I
14 mean?

15 MR. BELL: Yes, sir.

16 THE COURT: If kidney cancer cases were to go and
17 this is -- I'm -- don't read anything into this. This is just
18 my own ruminations. If kidney cancers were to go to trial and
19 the Court were to take up on an individual basis, case-by-case
20 basis, the water contamination, and let's say the Court tried
21 Mr. Mauser's (ph.) case first. I don't -- I don't know
22 anything about Mr. Mauser, I'm just using him as an example.
23 If he were at Tarawa -- Tarawa Terrace, say, like in 1975 --
24 again, this is the Court not having decided the water,
25 would -- and the Court made a decision on Mr. Mauser's case as

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1 it relates to water, causation, damages, et cetera, would that
2 be helpful to others, let's say for example, again, these are
3 made up names, Mr. Smith, who was at Tarawa Terrace in 1969,
4 Johnson, who was at Tarawa Terrace in 1980, Bates, who was
5 there in '89, as it relates to the water, you know what I
6 mean?

7 MR. BELL: Yes, sir.

8 THE COURT: So does it make more sense, in your
9 opinion, to decide water on a holistic basis, or is it -- I
10 mean, the point of all this is to -- for the Court to make a
11 decision and that information rain down and be informative in
12 all -- as many cases as we can touch.

13 MR. BELL: Your Honor, could --

14 THE COURT: Could the Court -- could the Court still
15 accomplish that even though Mr. Mauser was at Tarawa Terrace
16 in 1975, and the water may or may not have been different than
17 it was for Smith in '69, Johnson in '80, and Bates in '89 at
18 the same place.

19 MR. BELL: So, Your Honor, the answer to that is yes.
20 And you may recall at the last status conference you asked a
21 curiosity question about the -- about the water issues. Can
22 the Court look at the water modeling and tell how much -- what
23 percentage chemicals are on this particular day or this
24 particular period? And the answer to that, I said yes.

25 One of the things this would show the Court is while

Colloquy

1 the study is massive, and it is massive, we would, as
2 plaintiffs, have to show the Court that particular part of the
3 study that relates to Mr. Mauser and would be able to do that.
4 And, in fact, our specific causation experts have done that
5 already. So we know exactly where -- we know exactly where
6 that is in the study and would bring that up to the Court.

7 The rest of the study wouldn't necessarily apply to
8 Mr. Mauser, but it would apply to him.

9 THE COURT: Um-hum.

10 MR. BELL: That clearly can be done by each
11 individual judge.

12 MR. BAIN: Your Honor, there's a -- a big issue
13 regarding what the levels were in the water over different
14 periods of time. The study that Mr. Bell is referring to is
15 not agreed to by our experts. They don't think that it
16 reliably shows the levels. It was done for a completely
17 different purpose. It doesn't reliably show individual levels
18 at individual places over the historic time frame of Camp
19 Lejeune, and that's why the Court has very methodically set
20 out the phasing, which is to be done, which is the water
21 contamination is to be done before any individual trials, the
22 Court has already stated that in the order. The Court has
23 already stated the general causation is to be decided before
24 any individual trials take place.

25 And that's a very good process to follow in a mass

Colloquy

1 tort like this, where those issues are going to affect the
2 entire 409,000 claims that are out there; to jump start it by
3 putting the cart before the horse, so to speak, by having
4 individual trials before you even decide any of these
5 threshold issues does not make sense for global resolution.

6 THE COURT: Well, I mean, I get it. I think the
7 issue just comes down to how close does your prospective
8 settling plaintiff need to be for you to decide whether to
9 take it to trial or to settle? For example, if we -- if the
10 Court did a -- did a holistic global finding of fact on what
11 was in the -- what was in the water, where and when, and had
12 like a 3-D model of boxes, and so everybody is accounted for
13 in that -- in that model. Then that's very helpful.

14 But does the Court need to go to that great length to
15 decide however many months, or in thirty years -- or does the
16 Court -- could the Court decide in Mr. Mauser's case, he was
17 at this place I can't pronounce, Tarawa Terrace, in '75, for
18 example -- my hypothetical. Even though you may have 200
19 other plaintiffs who were not there at that particular time,
20 is it helpful -- it may be not -- may be not perfect as you
21 would -- might get in a 3-D model, but is it -- is it helpful
22 to have a decision in Mouser's case in 1975 for Smith in '69
23 and, you know, Johnson in '80, whatever.

24 MR. BELL: Judge, just to be clear, the ATSDR study
25 has already done that. The problem the government has with

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1 the study is they don't like their methodology. It has
2 nothing to do with what they found. It's they think that --
3 and the counsel has indicated a couple of times that they've
4 done the study for a different reason. So to elucidate the
5 Court on that term, they are saying because it wasn't done for
6 litigation, it should be disregarded. We think, Your Honor,
7 the fact that they did it and didn't have lawyers overseeing
8 it, that made it even a better study. And we think that
9 because it wasn't done for litigation -- this study has won
10 awards all over the country. This is -- this is touted as
11 being one of the most comprehensive water studies ever done by
12 the United States of America. But yet they -- they object to
13 it because it wasn't done for litigation.

14 So that's -- that's when -- that's what Mr. Bain
15 means by it wasn't done for this purpose. It wasn't done --

16 THE COURT: But you're -- you're -- back to your
17 point that -- initially, that started this conversation, the
18 Daubert motions, you think, the judges can take up
19 individually?

20 MR. BELL: Easily, Judge. They probably would take
21 them up -- they will listen to the experts. They'll indicate
22 at the time the expert talks whether it's -- or testify, is
23 that admissible or not? Is it relevant or not? And they
24 can -- and the judges can disregard that which isn't relevant.
25 That's part of why the -- the beauty of a bench trial is here.

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1 But just so there's no misunderstanding, every one of
2 the plaintiffs can go to the study that's there right now
3 without a modeling expert, without anybody saying, this is
4 what I got this day, this week, this six-month period, this
5 year, it's already there.

6 THE COURT: Okay.

7 MR. BAIN: To address Mr. Bell's last point, as you
8 can see, there's a big dispute about this, that the Court
9 needs to resolve. We -- those studies were done for
10 population-wide epidemiological studies, not for pinpointing
11 an individual's exposure level. And that's the difference,
12 not for litigation versus not for litigation. That's what we
13 mean by it was done for a different purpose. It was done for
14 population based studies.

15 The other point I'd like to make is that it will be
16 very helpful to have these Daubert issues decided, because
17 those will set the parameters for what is admissible
18 scientific evidence for the whole rest of the litigation. And
19 I recall from the hearing that we had in Greenville, Judge
20 Myers, very specifically saying, I want to deal with these
21 Daubert issues before I go to trial.

22 So the Court has set forth a very methodical approach
23 to this. It is designed to get global resolution of this
24 case. And doing these individual trials and expediting
25 them -- and we are going to file a response to Mr. Bell's

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1 motion --

2 THE COURT: Um-hum.

3 MR. BAIN: -- that's not going to be helpful. So --
4 so we will have an opposition to that.

5 And one of the things I wanted to bring up, Your
6 Honor, is this motion, it didn't identify what rule it was
7 filed under. We're assuming, unless you tell us otherwise, we
8 have twenty-one days to file a response to this. But we'd
9 like to get some clarity on that.

10 THE COURT: When was it filed?

11 MR. BELL: Judge, it was filed on Wednesday, but --

12 THE COURT: Friday? Wednesday.

13 MR. BELL: -- we don't have a problem if the
14 government needs some extra time.

15 Judge, you know, way back --

16 THE COURT: Yeah, I think twenty-one days is fine.

17 MR. BELL: -- we decided or worked on these deadlines
18 and phase 1 and phase 2, we thought it was the right way to
19 go. No one could have predicted that the government would
20 attack every single witness we have and filing these massive
21 motions against them. And at the same time, because the
22 government has, for example, several witnesses that actually
23 testify or opine about all five of the diseases. So you've
24 got one witness, let's say, that's talking about all five of
25 the diseases, how does Judge -- one of the judges, how are

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1 they going to -- in other words, the judges, if they do it
2 pre-trial, will have to study every one of the diseases in
3 order to make their rulings.

4 It's massive, Judge. And we may get to trial in '27
5 or not, but if that's what -- if that's what's decided, of
6 course, we'll go along with what the Court says. But we think
7 that that learning lessons and lessons learned as you go down
8 the road, and having looked at what's happened, no one could
9 have predicted this. No one. But now we're there, and now we
10 don't have jury trials, we have bench trials. The necessity
11 of a Daubert motion is -- becomes now minuscule. It can be
12 done by the judges at the time of trial. They do it every
13 day. They know how to do it. It's not hard.

14 Doctor so-and-so will come in and testify, and the
15 judge will say, well, I -- I don't think that's relevant or I
16 think it's relevant. And it's not that hard, Judge. If the
17 methodology of what they do is not good, that's part of cross-
18 examination. The judge will say, I don't like your
19 methodology, I'm kicking it out. But it's done at one time
20 and it can be done quickly. It can be done soon.

21 THE COURT: Mr. Bain, are you proposing that all of
22 these Daubert motions be decided by the entire bench? I mean,
23 why would, for example, Judge Dever, opine on a Daubert motion
24 in a Parkinson's disease case that's -- we -- we all -- we all
25 know and seemingly have accepted that that's -- all those will

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1 be handled by Judge Flanagan for purposes of case management.

2 MR. BAIN: That's correct, Your Honor. And we do not
3 propose that all the Daubert motions be -- be decided by the
4 Court as a whole. There are a couple of motions that go
5 across all the experts --

6 THE COURT: Right.

7 MR. BAIN: -- that have been filed.

8 THE COURT: And so why can't those be taken up in
9 a -- in a -- in a trial before one of the -- one of the
10 judges?

11 MR. BAIN: The ones that are just before the
12 individual judge?

13 THE COURT: Yeah.

14 MR. BAIN: They -- they can be. But the Court has
15 already set out a procedure where general causation is to be
16 decided first. And if the plaintiffs can't meet their burden
17 of admissible evidence and general causation, there would be
18 no need for a trial at all. So why go forward with a trial
19 when the plaintiffs can't put forward evidence of general
20 causation -- or admissible evidence of causation?

21 And just to correct a couple of things that Mr. Bell
22 said. We have not challenged every one of the plaintiffs'
23 experts. One of the plaintiffs' -- their -- their main
24 exposure expert, who determined exposures for all twenty-five
25 of the plaintiffs, we did not challenge that expert. We only

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1 challenged the experts that had problems with the reliability
2 of their methodology or the facts and data that they relied
3 upon.

4 And the reason that there were so many is that the
5 plaintiffs had so many experts, and many of them were
6 duplicative. They were five or six experts discussing the
7 same thing over and over again. So that's why -- and we tried
8 to group our -- our motions in a way that would be easier for
9 the Court to decide than whether -- where there were
10 overlapping issues. Otherwise, we would have had to file like
11 ninety Daubert motions. So we tried to combine them and be
12 efficient in the way that we addressed them.

13 And they do raise important issues that go to the
14 entirety of the litigation. Just to give one example is, you
15 know, whether an expert has to consider idiopathy, or whether
16 there's no known cause of a disease as part of their
17 differential diagnosis. That's a huge issue that goes to the
18 entirety of this litigation that should be decided before we
19 go to any trials.

20 MR. BELL: But -- but that's going to be decided by
21 each judge as those experts come before them. Idiopathy might
22 be relevant in one disease, but not in another.

23 THE COURT: Um-hum.

24 MR. BELL: I -- Judge Dever, in order to read Dr.
25 Goodman -- Dr. Goodman is from this company called Gradient.

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1 Dr. Goodman's report is massive. Her company charged almost
2 seven million dollars for this -- this report. Judge Dever's
3 going to have to read all -- if they're going to do a pre-
4 trial, going to have to read the entire -- and study hundreds
5 and hundreds of studies. It's -- I know the Court set out a
6 procedure, but I'm not aware of any -- any court that when
7 things start looking better doing it a different way, that the
8 Court wouldn't take that -- that better way. And I think that
9 we -- we would recommend and ask the Court to reconsider and
10 rethink how those motions should be heard.

11 Judge, I'll answer any questions, but I have one more
12 thing that's related to this.

13 THE COURT: Okay.

14 MR. BELL: Do you have your status report in front of
15 you, Your Honor?

16 THE COURT: I do.

17 MR. BELL: Page 11 is where I'm going to ask the
18 Court to look.

19 THE COURT: Page 11.

20 MR. BELL: So at the top of the page, Judge --

21 THE COURT: Yes.

22 MR. BELL: -- now, remember, this report was filed
23 Friday night, ten days -- or a week before today's hearing.
24 For the first time, the government says, oh, by the way, we
25 want another schedule, another deadline schedule, so we can

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1 amend our experts' reports.

2 Now, Judge, when I saw that Friday, I was kind of put
3 back. I had no clue what they were talking about until Monday
4 when we got the government's motions. Do you remember, Your
5 Honor, I -- I mentioned the -- the expert Dr. Goodman?

6 THE COURT: Um-hum.

7 MR. BELL: Dr. Goodman, and their response to our
8 motion to exclude Dr. Goodman, made 290 changes in her
9 expert -- in her -- in her report -- or in the attachments to
10 the report. 290. And then Dr. Goodman files an affidavit
11 claiming they were all typos or they were inadvertent. Now,
12 Judge, the law in the Eastern District and the Fourth Circuit
13 is pretty clear that's not allowed. We're going to -- we'll
14 be filing a motion to strike based on that.

15 THE COURT: Okay.

16 MR. BELL: But the reason page 11, that paragraph was
17 put in there, is they knew on Monday that their expert was
18 going to make all of these massive changes; 290 changes in an
19 expert report. Judge, if it -- if I -- if I asked this Court
20 to allow my expert to make that many changes after all of
21 these depositions, after all of this discovery, I think I
22 would probably leave town.

23 THE COURT: Now, wasn't there an earlier discussion
24 of the deadline because of the evolving nature of these
25 diseases? Wasn't there some discussion about -- about that?

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1 MR. BELL: We had a -- we had a scheduling order for
2 that. I believe it was in September, Your Honor. I may have
3 to go back and look at it.

4 THE COURT: No, but I remember the government wanting
5 a deadline by a date certain, by which you will have cabined
6 the -- the -- the -- the damages.

7 MR. BELL: That's on --

8 THE COURT: Maybe it was damages.

9 MR. BELL: That's on the damage part, Your Honor.

10 THE COURT: But -- but -- and there was some pushback
11 by y'all saying, well, these are ever evolving.

12 MR. BELL: We think we might have reached an
13 agreement on that, Judge. And we'll -- we'll notify the
14 Court.

15 THE COURT: But that was as to damages?

16 MR. BELL: But that's just -- you know, because
17 people are having ongoing --

18 THE COURT: Oh, I understand. I just want -- that
19 was to damages?

20 MR. BELL: This has nothing to do with damages.

21 MR. BAIN: Your Honor, this -- this paragraph has
22 been in the status report for many, many months. This is the
23 same paragraph that Your Honor just referred to, which has to
24 do with the plaintiffs amending their reports based on
25 changing and evolving medical conditions, which they have --

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1 which they have refused to agree to.

2 MR. BELL: Well, if this has to do with medical --

3 THE COURT: Okay.

4 MR. BELL: -- and --

5 THE COURT: Well, I'm -- I'm happy to address any
6 motions that you all want to brief up and submit.

7 MR. BELL: Okay. Thank you, Your Honor. That's all
8 I have, Your Honor.

9 THE COURT: Okay. A question before I get to Mr.
10 Bain, and this is a question for Mr. Bain. Are you
11 envisioning a proceeding where the entire bench decides water
12 contaminant levels as a matter of fact for the whole thirty-
13 five year period, and for both; if so, how long would that
14 take?

15 MR. BAIN: Yes, Your Honor. If -- if the plaintiffs
16 have admissible expert testimony on those issues after ruling
17 on the present motions, then there would be a need for fact
18 finding as to what the levels of contamination were, where
19 they were present historically at Camp Lejeune. That would
20 be -- the timing for that would be at the Court's discretion.
21 I think a week or less would be sufficient to be able to have
22 the experts testify and allow the Court then to make a
23 decision on that very important issue.

24 THE COURT: Mr. Bell?

25 MR. BELL: Judge, the -- the only thing the Court

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1 needs to do is determine whether the study was properly
2 performed. The study itself gives the answer that you asked
3 of Mr. Bain. It has all of that data in there. It has all of
4 the -- how much water, how much pollution, how much was that,
5 all of that's in there. The only question that really matters
6 is whether or not this massive study was done appropriately.

7 Now, again, I can see where any judge -- each of the
8 judges, excuse me, could take that information and at the
9 first trial have -- make a determination. The government is
10 trying to make this larger than it is. It's not that
11 difficult. And I assure the Court that it can be done by
12 whoever tries these cases, whether it's bladder cancer or
13 kidney cancer or Parkinson's. If that study was done and
14 the -- and the water is properly studied -- or properly done,
15 then the data, the question, the factual answer is already
16 there. The judges don't need to make a decision on that.

17 THE COURT: And that will be helpful for it -- to
18 others?

19 MR. BELL: Judge, it's help -- the study is the
20 study -- and the study is used by everybody for every disease.
21 So, for example, when we were going through and getting
22 together our list of proposed diseases, we had our
23 epidemiologists look at the levels in the water and whether
24 that was sufficient to cause the particular diseases. And
25 that's how we did it.

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1 So we have relied upon the data at ATSDR. The
2 government has relied upon the data at ATSDR. They're saying,
3 though, that the study was not done properly. And that's
4 really the question. And to be honest with you, Judge, it's
5 a -- it would come -- it would come in under one of the
6 federal rules anyway, even if it wasn't a proper study. So
7 it's --

8 THE COURT: All right.

9 MR. BAIN: I would just say, Your Honor, even if the
10 study is allowed in, there are certain things that our experts
11 will tell the Court, such as the study -- the study relied on
12 this data point, which turns out to be invalid. And so you
13 need to -- you can't rely on this study for the period before,
14 for example, 1975.

15 So I think even if the Court were to consider the
16 study, the Court would want to hear from our experts as to
17 whether certain parts of the study are valid or not, based on
18 the assumptions that were used.

19 THE COURT: Fewer than seven days?

20 MR. BELL: On a --

21 THE COURT: Fewer than seven days?

22 MR. BAIN: Excuse me?

23 THE COURT: You said, I think, fewer than seven days.

24 MR. BAIN: Yeah, fewer -- I think we could get it
25 done in a week.

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1 MR. BELL: I'm not sure, Your Honor.

2 THE COURT: All right. All right. Thank you. Does
3 the government have anything?

4 MR. BAIN: Your Honor, Mr. Cromwell will give you an
5 update on the -- the damages discovery.

6 THE COURT: I would like an update on now that the
7 shutdown is -- is over. What -- what's going on?

8 MR. CROMWELL: Thank you, Your Honor. Michael
9 Cromwell, on behalf of the United States.

10 Just kind of a status update. As you may recall, the
11 depositions that were allowed, and the data that was
12 requested, and the additional damages kind of discovery has
13 been provided. There is an outstanding issue with regards to
14 plaintiffs' request they made in July of this year with
15 regards to plaintiffs' own payment information like co-pays,
16 deductibles, premiums, that they had --

17 THE COURT: Yeah. Right. Right.

18 MR. CROMWELL: -- asked for. We have maintained our
19 objections, and we have corresponded and had a few meet and
20 confers with plaintiffs. Not putting aside our objections, we
21 agreed to inquire with three particular agencies that
22 plaintiffs asked us to inquire with. That was with CMS, or
23 Medicare; it was with Tricare with specific questions; and
24 then it was with the VHA, or the Veterans Health
25 Administration, for any kind of information that they may have

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1 and/or how difficult it would be to obtain that information.

2 We have -- since the shutdown did cause some
3 complications in receiving feedback, we have since heard from
4 the VHA who let us know, and I included it in the joint status
5 report, that they estimated it would take ten to twelve hours
6 per individual to obtain this information. It's not something
7 readily kept. And so we are maintaining our burden --
8 objection on that front.

9 I let Mr. Bell know this morning that we heard from
10 CMS or Medicare today. They don't keep it, nor its
11 contractors have access to beneficiary cost sharing payments,
12 including co-pays, co-insurance, premiums, and deductibles.

13 So the only outstanding issue on our side, Your
14 Honor, is a follow up with regards to Tricare program. That
15 because of the furlough, they had just come off, and reached
16 out this morning asking to meet about the issue. So that's
17 the only outstanding issue on that front.

18 THE COURT: And you're talking about twenty-three
19 people?

20 MR. CROMWELL: We're talking about the twenty-two
21 remaining plaintiffs. Yes, Your Honor.

22 THE COURT: Twenty-two people. Okay. So you're
23 waiting to hear from somebody?

24 MR. CROMWELL: The Tricare program, which is run by
25 the Defense Health Agency under the DoD, Your Honor.

Colloquy

1 THE COURT: All right. Anything else?

2 MR. BAIN: Nothing else, Your Honor. Oh, one other
3 item. Sorry, Your Honor.

4 Ms. Mirsky?

5 MS. MIRSKY: Thank you. Thank you, Your Honor. Sara
6 Mirsky again.

7 I just wanted to provide an update to something that
8 was in the joint status report regarding the Court's December
9 21st, 2023 order, docket entry number 91, which requires each
10 plaintiff who files a short form complaint to provide their
11 complete date of birth and Social Security number to the
12 United States.

13 To date, that information is being collected in the
14 PLG-controlled Rubrus (ph.) database. The United States
15 recently identified over 700 entries where this information
16 appears to be incomplete or missing, and we have reached out
17 to PLG about this and are working with them to ensure that the
18 complete information is included in Rubrus, and we're hoping
19 it can be resolved without any further issue.

20 THE COURT: Okay.

21 MS. MIRSKY: Thank you.

22 THE COURT: Thank you. Anything else?

23 MR. BELL: Your Honor, there's another team in our
24 group that handles the information that Mr. Cromwell
25 mentioned. If we have a response to that, we'll put it --



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1 THE COURT: Okay.

2 MR. BELL: -- in the next week or so.

3 THE COURT: All right. Thank you.

4 Okay. Let's pick our next meeting date. How about
5 the week of December the 1st. I can -- I'm available Monday,
6 the 1st, Wednesday the 3rd, or Thursday the 4th.

7 MR. BELL: Let me check, Your Honor, if you don't
8 mind. That was December the?

9 THE COURT: December 1st, 3rd, or 4th.

10 MR. BAIN: Your Honor, I'll be traveling back on
11 Sunday, so that would make the 1st difficult.

12 THE COURT: Okay.

13 MR. BAIN: But I think the 3rd or the 4th are -- are
14 available.

15 MR. BELL: Either the 3rd or the 4th, Your Honor --
16 excuse me -- would be -- would be fine.

17 THE COURT: Okay. How about the -- is the 3rd okay?

18 MR. BELL: Yes, Your Honor.

19 MR. BAIN: Yes, Your Honor.

20 THE COURT: Okay. All right. Let's do Wednesday,
21 December the 3rd at 11:00 a.m.

22 MR. BELL: Okay.

23 THE COURT: All right. Thank you very much.

24 MR. BELL: Thank you, Your Honor.

25 THE CLERK: All rise. This Honorable Court is now

Colloquy

1 adjourned.

2 (Court is adjourned)

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/s/ Amanda M. Oliver

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