

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

IN RE: Case Number 7:23-CV-897
CAMP LEJEUNE WATER LITIGATION

FEBRUARY 13, 2026
STATUS CONFERENCE AND MOTIONS
BEFORE THE HONORABLE ROBERT B. JONES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

J. Edward Bell, III, Esquire
Eric Flynn, Esquire
Zachary Mandell, Esquire
Avery Halfon, Esquire
A. Charles Ellis, Esquire
Jim Roberts, Esquire
Mona Lisa Wallace, Esquire
Jenna Butler, Esquire (Via Telephone)
Robin Greenwald, Esquire (Via Telephone)
Elizabeth Cabraser, Esquire (Via Telephone)

On Behalf of the Defendant:

J. Adam Bain, Esquire
Joshua Carpenito, Esquire
David Ortiz, Esquire
Giovanni Antonucci, Esquire
Michael Cromwell, Esquire

Bobbie J. Shanfelder, RDR, CRR
Official Court Reporter
Bobbie_Shanfelder@nced.uscourts.gov

01:10:46PM 1 (Friday, February 13, 2026 at 1:30 p.m.)

01:35:29PM 2 THE COURT: Good afternoon, everybody. Status
01:35:44PM 3 report. According to the report, Phase I experts have been
01:35:54PM 4 disclosed and deposed. Phase I motions are closed. Phase II
01:35:59PM 5 experts disclosed and deposed. Motions closed. Phase III
01:36:06PM 6 experts disclosed and deposed except for those related to
01:36:09PM 7 damages and offsets. Same thing with Phase III motions.

01:36:16PM 8 Discovery related to damages and offsets.

01:36:20PM 9 Expert discovery is going to -- well, it closes March 5th but
01:36:26PM 10 two depositions are to be taken by March 13th; is that right?

01:36:30PM 11 MR. BELL: Yes, Your Honor.

01:36:32PM 12 THE COURT: Motions related to damages and
01:36:33PM 13 offsets. What do you all anticipate those types of motions
01:36:38PM 14 being?

01:36:44PM 15 MR. CROMWELL: Good morning, Your Honor.

01:36:46PM 16 Michael Cromwell on behalf of the United States. There are
01:36:49PM 17 two different sets of motions. The one with regards to a
01:36:52PM 18 briefing schedule that we have been working with Plaintiffs
01:36:54PM 19 on. This is set forth --

01:36:57PM 20 THE COURT: No, I've got those dates. 4/25, 26,
01:37:00PM 21 and 6/24. I just want to know what the actual substantive
01:37:05PM 22 motions are going to be.

01:37:06PM 23 MR. CROMWELL: They would be *Daubert* motions.
01:37:07PM 24 So anything to exclude or any kind of motions for summary
01:37:09PM 25 judgment, Your Honor.

01:37:10PM 1 THE COURT: And those are going to be filed in
01:37:13PM 2 the individual cases or you don't know.

01:37:17PM 3 MR. CROMWELL: We have not discussed that.

01:37:18PM 4 Likely it would be very similar to how we did the other Phase
01:37:24PM 5 III experts. We filed *Dauberts* for those.

01:37:28PM 6 THE COURT: Mr. Bell, what do you think?

01:37:30PM 7 MR. BELL: Judge, we do not respectfully agree
01:37:32PM 8 with the Government's position on that.

01:37:33PM 9 THE COURT: On what part?

01:37:34PM 10 MR. BELL: On the schedule they are trying to
01:37:36PM 11 put forward.

01:37:37PM 12 THE COURT: I don't want to talk about the
01:37:38PM 13 schedule yet. I want to talk about the actual motions.

01:37:41PM 14 MR. BELL: We believe, Your Honor, that each
01:37:42PM 15 Judge should decide whether that Judge wants a *Daubert* motion
01:37:48PM 16 or not. As you remember, our position has been very clear
01:37:50PM 17 for a long time that the issue of *Daubert* and the
01:37:54PM 18 admissibility of that expert witness, because we have a bench
01:37:58PM 19 trial, should be decided at one time. And that would be done
01:38:01PM 20 at the trial itself.

01:38:02PM 21 THE COURT: Okay. So you envision it will be a
01:38:04PM 22 *Daubert* motion or a summary judgment motion and it will be
01:38:08PM 23 filed in that individual case.

01:38:11PM 24 MR. BELL: Yes, sir. But I can also envision
01:38:13PM 25 one of the Judges saying I am the gatekeeper; we don't have a

01:38:18PM 1 jury; I will listen to the expert and I will decide whether
01:38:21PM 2 it's relevant or not or whether the methodology is relevant.
01:38:24PM 3 And it would stop us from having to go through literally
01:38:28PM 4 hundreds of different kinds of motions.

01:38:31PM 5 THE COURT: Okay.

01:38:32PM 6 MR. BELL: It's a huge time element, Your Honor,
01:38:37PM 7 and we literally hundreds and hundreds and hundreds of pages.
01:38:42PM 8 You are seeing what you are looking at today. This is just
01:38:45PM 9 two motions.

01:38:46PM 10 So we believe -- and normally if this were not
01:38:50PM 11 this kind of case, the Court would say and if it's like a
01:38:55PM 12 tort claim act the Court would tell you I don't want or I do
01:39:00PM 13 want a *Daubert* motion on this witness or I don't want it, I
01:39:03PM 14 will decide it at the time of trial.

01:39:04PM 15 And we believe that each of the Judges should
01:39:07PM 16 make that decision on their own. And we have said that in
01:39:11PM 17 many, many of the status conferences.

01:39:13PM 18 MR. BAIN: Your Honor, this has been briefed
01:39:15PM 19 before. Our position is it's more efficient for the Court to
01:39:18PM 20 deal with these evidentiary issues regarding expert witnesses
01:39:22PM 21 in advance of trial because it may mean that there is not a
01:39:25PM 22 need for a trial at all depending on how the Court rules.
01:39:30PM 23 And these experts go to the entire litigation in many
01:39:34PM 24 instances, particularly with respect to general causation.

01:39:38PM 25 So we believe -- and we have set this out in

01:39:41PM 1 briefing that's before the Court in response to the
01:39:44PM 2 Plaintiffs' motion to expedite that these should be decided
01:39:47PM 3 in a phased way as the Court has already said it would decide
01:39:51PM 4 these issues and in a pretrial setting so that the parties'
01:39:57PM 5 resources are efficiently allocated.

01:40:00PM 6 And Judge Myers indicated that at one of the
01:40:03PM 7 first hearings that we had. So we have just followed that
01:40:06PM 8 practice.

01:40:07PM 9 MR. BELL: Of course he did, Your Honor, and
01:40:08PM 10 that was before we got into this case and actually learned
01:40:12PM 11 what's happening and how this case has evolved. But we said
01:40:17PM 12 it very clearly in our motions to expedite that judicial
01:40:23PM 13 economy -- I cannot express to the Court anymore than I can.

01:40:29PM 14 THE COURT: You all have fully briefed the
01:40:31PM 15 issue. It's before the Court. I did not want to get -- I
01:40:34PM 16 did not want to back door into that pending motion.

01:40:37PM 17 MR. BELL: I would be remiss, Your Honor, and
01:40:38PM 18 probably slapped by folks in the back if I didn't say it
01:40:42PM 19 would be hundreds of thousands of dollars of legal time to do
01:40:47PM 20 what the Government wants us to do when, in fact, it could be
01:40:50PM 21 done by the Judge without all of this because methodology is
01:40:54PM 22 easy, Judge. You can sit there and listen to this expert and
01:40:57PM 23 does he or she have that right methodology. It doesn't take
01:41:01PM 24 thousands of pages to argue it.

01:41:02PM 25 THE COURT: All right. I was just trying to get

01:41:04PM 1 a view of what you all think those motions would be.

01:41:08PM 2 MR. BAIN: Your Honor, since Mr. Bell raised it,
01:41:10PM 3 there is one thing I would like to raise now and that's from
01:41:13PM 4 the Department of Justice leadership that the United States
01:41:17PM 5 feels very strongly that resolution of Phase I, which is the
01:41:20PM 6 water contamination phase, will greatly assist in moving this
01:41:24PM 7 litigation forward and assist with global resolution. The
01:41:29PM 8 top leadership of the Department of Justice appreciates how
01:41:31PM 9 this litigation has been phased by the Court. They are aware
01:41:34PM 10 of it and is eager to have Phase I resolved.

01:41:39PM 11 We've reached out to the Plaintiffs' Leadership
01:41:43PM 12 Group expressing an interest to discuss with them the
01:41:47PM 13 preparation for a Phase I decision such as exchanging
01:41:52PM 14 demonstrative exhibits that the experts may use, talking
01:41:55PM 15 about witness lists and exhibit lists and other potential
01:41:58PM 16 submissions, and they are not willing to engage with us on
01:42:01PM 17 that.

01:42:02PM 18 THE COURT: Well, it is what it is. The Court
01:42:05PM 19 is going to manage this case how the Court feels is best in
01:42:09PM 20 the interest of justice and all the parties. And it's just
01:42:13PM 21 Rule 16.

01:42:15PM 22 MR. BELL: Thank you, Your Honor.

01:42:17PM 23 THE COURT: However the Court comes down on
01:42:20PM 24 that. I did want to ask you about your motion 806 which is
01:42:26PM 25 the offset motion. When is the Government's response to that

01:42:31PM 1 due?

01:42:31PM 2 MR. CROMWELL: It's due this coming Tuesday.

01:42:34PM 3 THE COURT: Confirm for me, Mr. Bell, that is
01:42:38PM 4 not a motion for protective order; correct?

01:42:41PM 5 MR. BELL: No, sir.

01:42:42PM 6 THE COURT: That's just admission of this
01:42:45PM 7 evidence at trial.

01:42:46PM 8 MR. BELL: More like a motion in limine, Your
01:42:48PM 9 Honor.

01:42:49PM 10 THE COURT: Some of the argument that's been
01:42:54PM 11 described in the status report talks about not being
01:42:57PM 12 relevant. I want to make sure that that discovery is not
01:42:59PM 13 being upheld.

01:43:01PM 14 MR. BELL: It is not, Your Honor.

01:43:03PM 15 THE COURT: You can see my concern is that if a
01:43:05PM 16 decision is reached on that down the road, the prospect of
01:43:10PM 17 having to reopen discovery would not be efficient.

01:43:15PM 18 MR. BELL: I hesitate to say that it's something
01:43:17PM 19 that we have been close on agreeing to. But the fact is if a
01:43:23PM 20 bill is presented as an offset by the Government, that same
01:43:27PM 21 bill should be a damage for the Plaintiff. And it's really a
01:43:30PM 22 wash. And it's a simple --

01:43:33PM 23 THE COURT: I mean, I will -- it's not ripe. I
01:43:36PM 24 will look at it. I want to make sure what the nature of that
01:43:39PM 25 motion was. Moving on in the status report regarding the

01:43:50PM 1 idea of final supplementation of fact discovery and expert
01:43:56PM 2 opinions. I am familiar with the argument pro and con on
01:44:00PM 3 that. What is the nature of that supplementation?

01:44:07PM 4 MR. BELL: Judge, obviously if somebody has a
01:44:12PM 5 new item or something but the way we read the Government's
01:44:15PM 6 request is it would give them the ability to supplement their
01:44:20PM 7 expert opinions, their expert facts, and actually get around
01:44:24PM 8 everything that we would be talking about today. And that's
01:44:26PM 9 not -- that doesn't follow the rules at all. That's outside
01:44:30PM 10 of what the rules would ever anticipate. The federal rules
01:44:35PM 11 tell us how to do this.

01:44:38PM 12 THE COURT: How does this work in the garden
01:44:40PM 13 variety case?

01:44:41PM 14 MR. BELL: I have never seen it like that in my
01:44:42PM 15 entire practice of law that you come up with a different set.
01:44:46PM 16 Now there are some unique issues that somebody has ongoing
01:44:49PM 17 daily medical care. There is a point in time that you got to
01:44:53PM 18 say, okay, this is the last medical treatment. But other
01:44:56PM 19 than that, if those things applied to expert witnesses,
01:44:59PM 20 Judge, we would be here until 2030.

01:45:02PM 21 THE COURT: Mr. Bain?

01:45:04PM 22 MR. BAIN: Mr. Ortiz is going to address that
01:45:06PM 23 issue.

01:45:06PM 24 THE COURT: Mr. Ortiz.

01:45:07PM 25 MR. ORTIZ: Good afternoon, Your Honor. Just

01:45:10PM 1 briefly, Your Honor, I think what our position is, is that it
01:45:12PM 2 would be fruitful to engage in discussions with PLG about
01:45:16PM 3 this issue and try to work out given the scale and complexity
01:45:21PM 4 of this litigation and how many experts there are as Your
01:45:24PM 5 Honor summarized. And as Mr. Bell mentioned, there still are
01:45:31PM 6 records, for example, medical records.

01:45:33PM 7 THE COURT: That's where I am going next.

01:45:35PM 8 MR. ORTIZ: Right. Exactly. That are being
01:45:37PM 9 generated and that will need to be supplemented and
01:45:40PM 10 incorporated into the expert reports that they might impact.

01:45:43PM 11 So what we have proposed is having a discussion
01:45:45PM 12 to do that in an orderly fashion with a goal to maximizing
01:45:51PM 13 efficiency so that we can balance the need for finality in
01:45:56PM 14 the record against giving the Court the most up-to-date
01:46:00PM 15 information at the appropriate time whenever the Court,
01:46:03PM 16 whatever schedule the Court sets out in terms of trials.

01:46:05PM 17 So that's the proposal. And again, they have
01:46:09PM 18 taken the position it's in the JSR that that's premature.
01:46:13PM 19 But we would just reiterate our position that that discussion
01:46:16PM 20 could be fruitful now.

01:46:18PM 21 THE COURT: Do you have an update for the Court
01:46:19PM 22 on the supplementation of Track 1 medical records?

01:46:24PM 23 MR. ORTIZ: On the medical records, we have
01:46:26PM 24 exchanged correspondence on it. Our most recent
01:46:30PM 25 correspondence was on February 6th. And our understanding is

01:46:33PM 1 that PLG has requested or will request the medical records
01:46:36PM 2 that we have asked them to look into. So our understanding
01:46:41PM 3 is that will be provided. Beyond that, I don't have an
01:46:44PM 4 update. I anticipate that that will probably be provided
01:46:46PM 5 soon.

01:46:47PM 6 THE COURT: Mr. Bell?

01:46:49PM 7 MR. BELL: Normally, Your Honor, each Judge has
01:46:51PM 8 his or her own preference. And when you have your pretrial
01:46:55PM 9 meeting, the Court issues a pretrial order. This is when you
01:46:58PM 10 have a deadline to do this, deadline to do that.

01:47:02PM 11 The Government is trying to complicate these
01:47:03PM 12 things beyond which has ever been anticipated by the rules.
01:47:09PM 13 It's Government at its worst, Your Honor. I hate to say it
01:47:14PM 14 that way, Your Honor, but it is.

01:47:17PM 15 THE COURT: Missing Plaintiff identifiers in
01:47:19PM 16 Rubris. What's an update on that?

01:47:21PM 17 MR. BELL: I think I am not the best one to
01:47:24PM 18 respond to that, Your Honor. Maybe Mr. Flynn.

01:47:31PM 19 THE COURT: There were 60 or 90 or so
01:47:34PM 20 outstanding, I think, in the report.

01:47:38PM 21 MR. CARPENITO: Good afternoon, Your Honor.
01:47:39PM 22 Joshua Carpenito for the United States. As it stands now, we
01:47:43PM 23 are just waiting for an update from the Plaintiffs that this
01:47:46PM 24 has been resolved. I don't believe that there are many
01:47:49PM 25 remaining that are unresolved.

01:47:50PM 1 THE COURT: Yes, sir.

01:47:52PM 2 MR. FLYNN: Your Honor, Eric Flynn. I think we

01:47:53PM 3 are down to three or four, if I am not mistaken. And most of

01:47:58PM 4 the time it's just getting the lawyers on the phone and going

01:48:02PM 5 through and keeping up with them. But it should be resolved

01:48:05PM 6 pretty quickly.

01:48:06PM 7 THE COURT: Okay. All right. That's all I had

01:48:08PM 8 on my question list on the status report so whatever you want

01:48:13PM 9 to talk about.

01:48:15PM 10 MR. BELL: Judge, the only thing I have, just

01:48:16PM 11 wanted to highlight is we are still battling over the Muster

01:48:24PM 12 Rolls production. I have chatted with Mr. Bain this morning.

01:48:30PM 13 THE COURT: There was an alternative, a fourth

01:48:32PM 14 alternative; right? That was offered?

01:48:34PM 15 MR. BELL: Judge, I don't want to get into the

01:48:36PM 16 details because I think it might evolve into an all afternoon

01:48:42PM 17 discussion. But the fact of the matter is the Government has

01:48:46PM 18 I believe around 17 terabytes of information which is more

01:48:52PM 19 than I can count.

01:48:54PM 20 And the discussion of how to identify those

01:48:59PM 21 individual documents is there's a discussion. I have not had

01:49:05PM 22 a direct communication. That wasn't an area that I was

01:49:07PM 23 assigned. But I mentioned to Mr. Bain that he and I should

01:49:10PM 24 probably talk this week.

01:49:12PM 25 THE COURT: Mr. Bain?

01:49:13PM 1 MR. BELL: If you don't mind, we will try to
01:49:15PM 2 reach a consensus. But if not, our next status conference we
01:49:20PM 3 can hear that motion.

01:49:21PM 4 THE COURT: Mr. Bain, what do you think?

01:49:25PM 5 MR. BAIN: Your Honor, we are trying to work
01:49:26PM 6 this out. We have offered a number of proposals.

01:49:29PM 7 Mr. Carpenito knows all the different details.

01:49:32PM 8 He's been working on this issue. We are willing to try to
01:49:34PM 9 continue to work it out with the Plaintiffs so you don't have
01:49:36PM 10 to resolve that issue.

01:49:37PM 11 THE COURT: Is this the information they have
01:49:38PM 12 out there in Leavenworth in a depository out there in Kansas?

01:49:47PM 13 MR. BAIN: It was in Quantico and now it's being
01:49:50PM 14 digitized. Do you want to address --

01:49:55PM 15 MR. CARPENITO: By way of a brief background,
01:49:58PM 16 they have finished the scanning portion of the project but
01:50:01PM 17 there are still remaining documents that have to be uploaded
01:50:04PM 18 to the repository. We are in contact with the United States
01:50:08PM 19 Marine Corps.

01:50:09PM 20 We are trying to get a date certain of when that
01:50:11PM 21 will occur, and we don't anticipate it to be many documents
01:50:14PM 22 remaining that need to be uploaded. But this is part of what
01:50:17PM 23 I imagine the discussion with Plaintiffs will entail.

01:50:22PM 24 THE COURT: Does the Government have anything
01:50:24PM 25 you want to present in the status conference?

01:50:26PM 1 MR. BAIN: I don't think we have anything else,
01:50:29PM 2 Your Honor.

01:50:42PM 3 THE COURT: How about our next meeting taking
01:50:44PM 4 place during that first full week of March? What is your
01:50:52PM 5 availability during that? I am pretty open, so pick a day.

01:50:57PM 6 MR. BAIN: That works for us, Your Honor.

01:51:07PM 7 MR. BELL: Other than the 3rd. I could do it
01:51:13PM 8 the morning of the 3rd if I needed to.

01:51:15PM 9 THE COURT: How about the 5th? That's a
01:51:18PM 10 Thursday. March 5th, Thursday.

01:51:25PM 11 MR. BELL: Yes, sir.

01:51:26PM 12 THE COURT: At 11 a.m.

01:51:27PM 13 MR. BELL: That would be fine, Your Honor.

01:51:31PM 14 THE COURT: All right. Why don't we take a
01:51:35PM 15 5-minute break and come back and hear the motions. My
01:51:37PM 16 intention is to hear the motion on Dr. Goodman, both sides,
01:51:46PM 17 and then turn to Dr. Bailey. Thank you.

01:52:01PM 18 (Recess from 1:52 p.m. until 2:02 p.m.)

02:03:02PM 19 THE COURT: Let's hear argument on the Plaintiff
02:03:05PM 20 Leadership Group's motion to strike Dr. Julie Goodman. And
02:03:13PM 21 after I hear argument from you, I've got some prepared
02:03:17PM 22 questions which you may address in your argument. If so,
02:03:24PM 23 there's probably no harm in hearing two responses. Okay.
02:03:27PM 24 Mr. Bell.

02:03:29PM 25 MR. BELL: Your Honor, Zach Mandell will be

02:03:31PM 1 addressing this today.

02:03:32PM 2 THE COURT: All right.

02:03:33PM 3 MR. MANDELL: Good afternoon, Judge.

02:03:34PM 4 THE COURT: Good afternoon.

02:03:35PM 5 MR. MANDELL: My name is Zach Mandell. And
02:03:38PM 6 Judge, we are here because a defense general causation expert
02:03:42PM 7 Julie Goodman has proposed to make approximately 300 changes
02:03:49PM 8 to over 75 different epidemiological studies in direct
02:03:55PM 9 response to a *Daubert* motion to exclude her testimony with
02:03:59PM 10 those as the bases.

02:04:07PM 11 The amendments were attached to the opposition
02:04:11PM 12 to the motion to exclude. You can't do that, Judge. The
02:04:16PM 13 rules do not allow for that. It's as close as you can get to
02:04:22PM 14 a *per se* violation of Rule 26(e). It goes against every rule
02:04:28PM 15 relating to the disclosure of expert testimony in the Court's
02:04:31PM 16 scheduling orders.

02:04:34PM 17 This Court has many times struck expert
02:04:39PM 18 disclosures in the exact same situation. I want to just read
02:04:44PM 19 Your Honor a couple of examples because I think that they are
02:04:48PM 20 really pertinent to the issue we have here.

02:04:50PM 21 *Gallagher versus Southern Source*, Eastern
02:04:54PM 22 District of North Carolina, 2008. Quote. "Here *Southern*
02:04:57PM 23 *Source* did not file the new Mueller report to correct an
02:05:00PM 24 inadvertent error or omission. It filed the new Mueller
02:05:04PM 25 report in order to address the numerous problems in the

02:05:06PM 1 expert report that Plaintiffs discussed in moving for summary
02:05:09PM 2 judgment. Because the new Mueller report is not true
02:05:13PM 3 supplementation, it is not seasonable under the scheduling
02:05:17PM 4 order or timely under the Federal Rules of Civil Procedure."

02:05:20PM 5 *Lightfoot versus Georgia-Pacific, Eastern*
02:05:24PM 6 District of North Carolina, 2018. "Rather, Plaintiffs filed
02:05:27PM 7 the declarations directly in response to arguments raised by
02:05:31PM 8 defense counsel in Defendant's *Daubert* motions. Expert
02:05:34PM 9 declarations made under such circumstances squarely
02:05:39PM 10 contravene the language and purpose of Rule 26(e)."

02:05:43PM 11 The defense in this case, Judge, admits that
02:05:47PM 12 these changes were made as a result of questioning at her
02:05:51PM 13 deposition and the motion to exclude her under *Daubert*.
02:05:55PM 14 Defendants' opposition. Page 8. These changes became
02:05:58PM 15 necessary to ensure consistency among tables after
02:06:02PM 16 Plaintiffs' counsel pointed out some inconsistencies.

02:06:05PM 17 Page 2. At Dr. Goodman's deposition and in
02:06:08PM 18 their motion to exclude the defense expert, Dr. Julie
02:06:12PM 19 Goodman, Plaintiffs made Dr. Goodman aware of the
02:06:15PM 20 inconsistencies in the tables in her reports.

02:06:18PM 21 Judge, you simply cannot supplement response to
02:06:20PM 22 a motion to exclude like this, never mind 300, approximately
02:06:23PM 23 300 changes to 75 studies. The ramifications of that would
02:06:30PM 24 be enormous.

02:06:32PM 25 Parties who are facing *Daubert* motions could

02:06:35PM 1 just supplement their expert reports and get around the
02:06:40PM 2 arguments that are being made in the *Daubert* reports. So
02:06:43PM 3 generally speaking, the ramifications would be enormous. The
02:06:46PM 4 ramifications on this case particular to Dr. Goodman would
02:06:49PM 5 also be enormous.

02:06:52PM 6 Dr. Goodman is the defense general causation
02:06:55PM 7 expert for all five Track 1 diseases. She is not like a
02:06:59PM 8 one-off expert in which you can just take the deposition of
02:07:02PM 9 that person and nobody else has anything to do with it.

02:07:06PM 10 It affects each disease. It certainly affects
02:07:10PM 11 Dr. Goodman. It affects the defense experts relying on
02:07:13PM 12 Dr. Goodman which I will get to in just a minute. And it
02:07:16PM 13 affects Plaintiffs' experts.

02:07:17PM 14 So we are here, Judge, because this attempt at
02:07:21PM 15 this stage of the litigation is just so unfair. The
02:07:26PM 16 magnitude of the changes, 300 changes, and the timing in
02:07:30PM 17 direct response to our motion under *Daubert* as to these exact
02:07:34PM 18 issues. Judge, I can't tell you the amount of time that the
02:07:40PM 19 PLG has spent preparing and I am sure the defense has, too,
02:07:45PM 20 preparing for depositions, fact witnesses, experts, motion
02:07:53PM 21 practice, Judge.

02:07:54PM 22 You have seen the status conference reports. I
02:07:55PM 23 think that there is 12 pages of motions. Now those include
02:08:00PM 24 the motions and the replies and all of that. But there are
02:08:03PM 25 12 pages of reports. We have worked up this entire case so

02:08:07PM 1 far based off of the reports and charts that Dr. Goodman
02:08:11PM 2 originally submitted. And now we are talking about appending
02:08:16PM 3 that entire thing.

02:08:17PM 4 I think the nature of the response that we got
02:08:20PM 5 to the motion to strike tells you, Judge, what you need to
02:08:23PM 6 know about this motion. Dr. Goodman not only attached new
02:08:28PM 7 reports but attached a declaration signed under oath in which
02:08:33PM 8 she said that the approximately 300 changes that she made to
02:08:37PM 9 her charts did not change any analysis or opinion that she
02:08:44PM 10 has in this case.

02:08:45PM 11 How can that possibly be? She testified that
02:08:49PM 12 the charts form the foundation of her reports. The narrative
02:08:54PM 13 parts of her reports. She put in the declaration and in the
02:08:59PM 14 opposition it says that the changes -- the argument is, well,
02:09:03PM 15 the changes are only to the charts and not the narratives;
02:09:07PM 16 therefore, it doesn't affect her actual opinions.

02:09:10PM 17 That doesn't make any sense because we know that
02:09:13PM 18 the charts are the foundation for the narrative. The charts,
02:09:18PM 19 Judge, for context, are where Dr. Goodman goes through all of
02:09:23PM 20 the epidemiological studies and the animals studies, all the
02:09:26PM 21 studies that she looks at. She puts the data in there but
02:09:29PM 22 she also puts the study quality in there.

02:09:31PM 23 So to say that somehow just because you are
02:09:36PM 24 changing the charts doesn't affect the narratives or the
02:09:40PM 25 opinions doesn't seem to make a lot of sense, frankly.

02:09:43PM 1 And then there's the argument of the fact that
02:09:47PM 2 this entails 300 approximately typographical errors or
02:09:54PM 3 inadvertent errors. That also doesn't seem to make very much
02:09:59PM 4 sense, Judge, especially because in the same declaration what
02:10:04PM 5 Dr. Goodman has said as one of the two reasons in her
02:10:06PM 6 declaration for why all of this happened was that she said
02:10:09PM 7 that when she was writing her different disease reports she
02:10:13PM 8 would reread the studies for each disease report.

02:10:17PM 9 And what she says is, well, when I read it for
02:10:19PM 10 let's say bladder cancer, I came away with the interpretation
02:10:24PM 11 A. But when I read it for kidney cancer, I came away -- same
02:10:28PM 12 fact. Same issue. Same study -- with interpretation B.
02:10:33PM 13 That isn't an inadvertent error. That's a methodology flaw.
02:10:37PM 14 That's a problem with the methodology for how you are doing
02:10:39PM 15 it. But what it isn't, Judge, is a typo.

02:10:43PM 16 So I just want to kind of summarize this initial
02:10:46PM 17 part with, Judge, all that we are asking for is to keep the
02:10:51PM 18 status quo. We are ready for trial. We want to get to
02:10:55PM 19 trial.

02:10:55PM 20 Dr. Goodman has her original reports so she can
02:10:59PM 21 absolutely use her reports. And Judge, if she wants to come
02:11:02PM 22 in to trial and explain to the Judges in this Court that she
02:11:07PM 23 made 300 typographical errors of which she was changing
02:11:11PM 24 interpretations of facts from strengths to weaknesses or
02:11:15PM 25 weaknesses to strengths and vice versa, then we very much

02:11:18PM 1 look forward to that.

02:11:19PM 2 But what isn't fair is that you amend a formal
02:11:24PM 3 pleading, a formal report and say in response to that, well,
02:11:31PM 4 you can depose her for a couple hours. That doesn't seem to
02:11:34PM 5 make any sense.

02:11:35PM 6 So I want to give Your Honor just a little
02:11:38PM 7 context for the background of this because it is a little
02:11:41PM 8 complicated. And so I want to just give you a little
02:11:46PM 9 overview of what happened.

02:11:48PM 10 So we get Dr. Goodman's reports in February of
02:11:51PM 11 last year. She has five reports. For each report, there's a
02:11:56PM 12 narrative section and a chart as I just described. The data
02:12:00PM 13 in the chart is the epidemiology, animal, toxicology, that
02:12:05PM 14 type of stuff. She used many of the same studies in the
02:12:09PM 15 different reports and came to 180 degree opposite
02:12:14PM 16 conclusions.

02:12:15PM 17 Judge, we provided made some binders just of the
02:12:18PM 18 exhibits that we had put into our motions and a couple of
02:12:20PM 19 demonstratives that might help Your Honor if you would like
02:12:23PM 20 to see it.

02:12:24PM 21 THE COURT: Is all of that in the briefing?

02:12:27PM 22 MR. MANDELL: Some of it is.

02:12:29PM 23 THE COURT: What is not in the briefing?

02:12:30PM 24 MR. MANDELL: There's a couple of
02:12:32PM 25 demonstratives.

02:12:32 PM 1 THE COURT: Like what?

02:12:34PM 2 MR. MANDELL: Some pictures of the charts and
02:12:35PM 3 the narratives to show Your Honor how it switches to one
02:12:42PM 4 effect to the other. It's just a demonstrative.

02:12:46PM 5 MR. ANTONUCCI: Your Honor, Giovanni Antonucci
02:12:47PM 6 for the United States. I would just like to point out the
02:12:50PM 7 United States has not been made aware of these
02:12:52PM 8 demonstratives.

02:12:52PM 9 THE COURT: I am not going to invite satellite
02:12:56PM 10 investigation on this. What you submitted already, I think,
02:12:58PM 11 is sufficient.

02:13:00PM 12 MR. MANDELL: Fair enough, Judge. So what I was
02:13:04PM 13 going to show to Your Honor is in the exhibits that we have
02:13:08PM 14 given to the Court already, what you can see is that there is
02:13:12PM 15 a fact like, for example, the Bove study 2014 just as an
02:13:17PM 16 example.

02:13:17PM 17 In the bladder cancer report, Dr. Goodman will
02:13:20PM 18 say originally she said, well, that study accounted for
02:13:25PM 19 smoking in its analysis meaning to the extent that there were
02:13:29PM 20 people who smoked and that might be the cause of whatever the
02:13:31PM 21 disease is it accounted for that.

02:13:33PM 22 In her kidney cancer report, she looked at the
02:13:36PM 23 same study and came to an entirely different conclusion. She
02:13:40PM 24 said, actually, I don't think it adequately accounted for
02:13:44PM 25 smoking. And part of the key to this, Judge, is she

02:13:47PM 1 literally had a topic, like a title, strengths and weaknesses
02:13:52PM 2 of study because she was analyzing the reliability of these
02:13:56PM 3 things.

02:13:56PM 4 So in the bladder cancer report, it says it
02:13:59PM 5 adequately accounted for smoking, strength. But in the
02:14:02PM 6 kidney cancer report, it said it didn't adequately account
02:14:05PM 7 for smoking, weakness. 180 degrees different. So we took
02:14:09PM 8 her deposition and at the deposition found out --

02:14:11PM 9 THE COURT: You asked her about all this.

02:14:14PM 10 MR. MANDELL: We did ask her about this, yes.
02:14:16PM 11 The reason why I am telling you, Judge, is because these are
02:14:19PM 12 not typographical errors. These are analysis errors. These
02:14:24PM 13 are errors in the interpretation of studies.

02:14:27PM 14 And this is a situation where we have over 120,
02:14:32PM 15 one of the exhibits to the motion that we gave Your Honor,
02:14:36PM 16 120 examples of where there's a flip from a strength to a
02:14:42PM 17 weakness or a weakness to a strength in the data quality
02:14:45PM 18 study. Judge, if there was --

02:14:48PM 19 THE COURT: There were 120? Is that what you
02:14:49PM 20 said?

02:14:50PM 21 MR. MANDELL: Yeah. It's Exhibit A to the
02:14:59PM 22 motion to exclude.

02:15:01PM 23 THE COURT: What happened to the -- so 120 is
02:15:04PM 24 not 300. So what is 180?

02:15:07PM 25 MR. MANDELL: So I was just giving an example.

02:15:10PM 1 There's different types of changes that she makes. One type
02:15:14PM 2 is she will change like the analysis of a study quality from
02:15:20PM 3 a strength to a weakness and a weakness to a strength. And
02:15:22PM 4 there are other times where she will change other -- there's
02:15:26PM 5 a bunch of different examples, but she will change other
02:15:29PM 6 factors about a study.

02:15:30PM 7 So she will say, well, this study took place
02:15:33PM 8 from this year to this year but turns out actually it was
02:15:36PM 9 different years. And there's maybe 50 to 75 of those. And
02:15:40PM 10 there's different categories of the types of changes that she
02:15:43PM 11 makes. Does that answer your question?

02:15:46PM 12 THE COURT: Yeah.

02:15:48PM 13 MR. MANDELL: So my point though, Judge, was the
02:15:51PM 14 120 are examples of switching a strength to a weakness, a
02:15:55PM 15 weakness to a strength, that can't be considered inadvertent
02:16:00PM 16 typo. That's not an inadvertent mistake. It's according to
02:16:05PM 17 her, she has two different explanations in her declaration
02:16:08PM 18 which are different, I would say, than the examples or the
02:16:13PM 19 explanations she gave at her deposition which is part of the
02:16:16PM 20 problem here.

02:16:17PM 21 But what she says in her declaration, Judge, is
02:16:20PM 22 well, I reread the studies for the different reports and came
02:16:23PM 23 to different conclusions each time I read them as to the
02:16:26PM 24 strength and the weakness, weakness strength.

02:16:28PM 25 The other thing she said was that this was an

02:16:31PM 1 error in transferring data when she or whoever it was did it
02:16:37PM 2 from the studies to the charts. And part of the key here,
02:16:42PM 3 Judge, is part of the issue with the methodology is that when
02:16:46PM 4 we asked her about this at her deposition, she testified that
02:16:50PM 5 the way that they would do this is she would have junior
02:16:55PM 6 staff read the studies and fill in the tables and then they
02:16:59PM 7 would get checked. That's what she said at deposition.

02:17:02PM 8 So not a surprise to us that there might be,
02:17:06PM 9 after hearing that, some inconsistencies because if different
02:17:10PM 10 people were writing different parts of the report, they might
02:17:14PM 11 have different opinions on that. We filed a motion to
02:17:16PM 12 exclude, and that's what started this whole cascade of
02:17:19PM 13 events.

02:17:20PM 14 So we file our motion to exclude on a number of
02:17:23PM 15 grounds but of which was that she had these inconsistencies
02:17:27PM 16 in her reports.

02:17:28PM 17 THE COURT: When was her deposition?

02:17:29PM 18 MR. MANDELL: Her deposition was in April of
02:17:32PM 19 2025.

02:17:32PM 20 THE COURT: When was the motion to exclude
02:17:34PM 21 filed?

02:17:34PM 22 MR. MANDELL: The motion to exclude was
02:17:36PM 23 September. And so in the interim, we didn't hear anything in
02:17:42PM 24 terms of, well, we might need to amend our reports, we might
02:17:46PM 25 need to supplement this. There was an errata sheet.

02:17:49PM 1 THE COURT: There was an errata sheet that was
02:17:50PM 2 submitted in between those two points in time; right?

02:17:53PM 3 MR. MANDELL: Exactly right, Judge. There was
02:17:54PM 4 an errata sheet to her deposition and there were a couple of
02:17:58PM 5 changes that she made as to things not related to this. But
02:18:02PM 6 part of our -- part of the argument here, Judge, and one of
02:18:06PM 7 the *Akeva Southern State* factors is the explanation for the
02:18:09PM 8 delay in letting the other side know.

02:18:15PM 9 And so part of our argument here is this would
02:18:22PM 10 have been a different situation potentially if this had been
02:18:26PM 11 timely told to us. But what happened is, Judge, we took her
02:18:31PM 12 deposition. We get an errata with no changes. We file a
02:18:37PM 13 motion to exclude her under *Daubert* for this exact issue,
02:18:40PM 14 among other things, but one of which was this issue.

02:18:43PM 15 And then we get an opposition to that. And
02:18:48PM 16 attached to the opposition are five new amended charts. And
02:18:53PM 17 for context, Judge, what has happened here that is another
02:18:58PM 18 problem is Dr. Goodman testified that the charts serve as the
02:19:04PM 19 foundation for the reports. And some of the exhibits that we
02:19:08PM 20 showed to you in the motions were how you can see that the
02:19:13PM 21 charts serve as the foundation for the narratives.

02:19:17PM 22 For example, literally language taken directly
02:19:20PM 23 from the charts put into the narratives. Summaries of, well,
02:19:24PM 24 five different epidemiology studies did this and six did
02:19:27PM 25 this. Well, if you count up the numbers in the charts,

02:19:30PM 1 that's where it came from. And Dr. Goodman said that in her
02:19:33PM 2 deposition.

02:19:33PM 3 So the part of the problem that we have here,
02:19:36PM 4 Judge, is that when she made her amendments, she only amended
02:19:41PM 5 the charts and didn't amend the narratives. So we put an
02:19:48PM 6 exhibit into Your Honor with the motion that has a number of
02:19:52PM 7 examples of now where her own narrative is inconsistent with
02:19:56PM 8 her chart. And I can point to the examples if Your Honor
02:20:01PM 9 would like but it's Exhibit C to the motion to exclude reply,
02:20:15PM 10 785-3.

02:20:17PM 11 But the point is, Judge, there's a number of
02:20:19PM 12 those examples. So now we have a situation here where you
02:20:24PM 13 have narratives that were original narratives that in some
02:20:30PM 14 instances were inconsistent with themselves originally
02:20:34PM 15 because they were based off the original charts.

02:20:37PM 16 And then you have a situation where you now have
02:20:40PM 17 amended charts with all the data which are now in instances
02:20:45PM 18 different from the narratives. What it is, Judge, to put it
02:20:50PM 19 mildly is a mess. And it's a mess created by the flawed
02:20:56PM 20 methodology that Dr. Goodman was using.

02:20:59PM 21 And so what we are asking for here, Judge, is
02:21:02PM 22 look, if she wants to come into court with her original
02:21:05PM 23 reports and say each of these 300 changes that she doesn't
02:21:09PM 24 believe that they are legitimate or whatever she wants to
02:21:13PM 25 say, I reread the study different times and came to different

02:21:16PM 1 conclusions, fine. But what they are asking for is a formal
02:21:21PM 2 new amendment to a report.

02:21:24PM 3 And if that happens, then naturally we are going
02:21:27PM 4 to need to do that. And part of the problem is, Judge, that
02:21:32PM 5 she -- this Dr. Goodman is, her opinions permeate.

02:21:37PM 6 THE COURT: Why would you need to do that?

02:21:39PM 7 MR. MANDELL: Well, for example, certainly we
02:21:41PM 8 would want to take her deposition because now she has changed
02:21:45PM 9 300 items in her charts. So that's one. But this is --

02:21:50PM 10 THE COURT: Didn't you ask her about all those?

02:21:52PM 11 MR. MANDELL: No. We asked her a handful. And
02:21:54PM 12 she fought us on some of them and didn't fight on a couple.
02:21:59PM 13 But then at deposition said I don't think that they are going
02:22:02PM 14 to be many more inconsistencies.

02:22:04PM 15 The question was, I basically said to her, if
02:22:07PM 16 there are other inconsistencies out there, would you have the
02:22:10PM 17 same explanation for why those happened as you have given
02:22:13PM 18 here today which is different than her declaration, by the
02:22:16PM 19 way. But having said that, she said I wouldn't expect that
02:22:19PM 20 there would be either any more or very many more, something
02:22:23PM 21 like that.

02:22:24PM 22 And so now we have a situation where she has
02:22:26PM 23 admitted to 300 changes in 75 epidemiology studies. So we
02:22:33PM 24 certainly would want to take her deposition. And that's not
02:22:36PM 25 like a run-of-the-mill deposition. Like I can tell you from

02:22:39PM 1 the first time around, we spent, Judge, hundreds of hours.

02:22:44PM 2 And part of the problem with this --

02:22:46PM 3 THE COURT: At her deposition?

02:22:47PM 4 MR. MANDELL: No, no. Preparing for her

02:22:49PM 5 deposition.

02:22:49PM 6 THE COURT: Well, here it would be focused on

02:22:51PM 7 300 changes; right?

02:22:53PM 8 MR. MANDELL: It would be focused on 300 changes

02:22:56PM 9 in 75 epidemiology studies, and that is not an insignificant

02:23:01PM 10 undertaking. Some of the changes naturally are not strengths

02:23:05PM 11 to weaknesses. Some of them are, well, there was a date and

02:23:09PM 12 she put the wrong date. So okay. Fine. But there are

02:23:12PM 13 hundreds of changes to what we consider to be very

02:23:16PM 14 substantive parts of her charts.

02:23:20PM 15 And then, Judge, we need to ask her about, wait

02:23:23PM 16 a second, so at your deposition what you testified to was the

02:23:28PM 17 most likely explanation for these inconsistencies, she said,

02:23:33PM 18 was that they had a quality control team. QC she called it.

02:23:40PM 19 Quality control check.

02:23:40PM 20 And what she said at deposition was what she

02:23:43PM 21 believed was the most likely was that after the reports were

02:23:46PM 22 done and they were doing her quality control check that

02:23:49PM 23 somebody made the changes and thought, well, actually this

02:23:52PM 24 isn't a strength, this is a weakness and somebody changed it.

02:23:55PM 25 And that's why the majority of these happened.

02:24:00PM 1 Now she's saying in her declaration that she
02:24:03PM 2 filed with these proposed amendments, there's nothing about
02:24:08PM 3 QC in there at all. What it says is, there are two
02:24:11PM 4 explanations. One is that there was a transferring error
02:24:14PM 5 meaning she says that when they were going through the
02:24:18PM 6 studies, there was an error in transferring the information
02:24:21PM 7 from the studies to the charts. And then she says for other
02:24:26PM 8 things it was the reread. She read the same study, same
02:24:30PM 9 fact, came to a different interpretation.

02:24:32PM 10 So I think, Judge, we would have a right to ask
02:24:34PM 11 her about why that happened. I mean that seems like a pretty
02:24:38PM 12 serious problem. And so much so that it led to however many
02:24:45PM 13 hundreds of changes as to those issues. So that's as to her.

02:24:51PM 14 As to her employees, we would like to, if Your
02:24:55PM 15 Honor is inclined to allow this to happen, which we would
02:24:59PM 16 urge the Court not to do this, but this is, again, we don't
02:25:01PM 17 want to do any of this. This is only if they are allowed to
02:25:04PM 18 formally supplement their reports with 300 changes. But if
02:25:09PM 19 that happens, we certainly would want to ask the people at
02:25:11PM 20 Dr. Goodman's business who were doing the QC.

02:25:16PM 21 THE COURT: Why?

02:25:17PM 22 MR. MANDELL: Why?

02:25:19PM 23 THE COURT: They were not deposed initially.

02:25:21PM 24 MR. MANDELL: They were not deposed initially.

02:25:23PM 25 But, Judge, when we initially took her deposition, we had one

02:25:25PM 1 answer under oath from her as to why this happened. Now
02:25:28PM 2 she's changing that in her declaration and saying actually
02:25:30PM 3 here are two other reasons why and not that that's the most
02:25:34PM 4 likely anymore, here are two other reasons why. And so we
02:25:39PM 5 believe we should have the ability to test the veracity of
02:25:42PM 6 that. So she had 60 people work on these, approximately 60
02:25:47PM 7 people on the five disease reports over the course of years.

02:25:53PM 8 They billed the United States Government close
02:25:55PM 9 to 4 and a half million dollars for these reports. They had
02:25:59PM 10 meetings between Dr. Goodman and other defense experts. They
02:26:02PM 11 had meetings between Dr. Goodman and defense counsel. As
02:26:05PM 12 would be expected. But the point is, Judge, these aren't
02:26:09PM 13 typographical errors. These aren't inadvertent that way.

02:26:12PM 14 So we certainly want to test the veracity of why
02:26:15PM 15 this is all happening now. And then, Judge, equally
02:26:20PM 16 importantly -- so Dr. Goodman is the general causation expert
02:26:24PM 17 on all five diseases. There are specific causation experts
02:26:29PM 18 who are relying on Dr. Goodman.

02:26:31PM 19 And this is not a situation, Judge, where this
02:26:35PM 20 is an expert simply saying I am relying on the expert. What
02:26:42PM 21 it is is, in their depositions, specific cause depositions
02:26:45PM 22 for people relying on Dr. Goodman, they actually said they
02:26:49PM 23 are relying on her in part because of her scientific
02:26:54PM 24 accuracy.

02:26:55PM 25 For example, Dr. Max Kates who is a bladder

02:26:58PM 1 cancer specific cause expert testified, "Based on my
02:27:03PM 2 assessment of the reports of Dr. Goodman as well as the PLG
02:27:07PM 3 expert reports, I found Dr. Goodman's reports to be more
02:27:09PM 4 compelling and more thorough and thus agreed with the finding
02:27:13PM 5 of Dr. Goodman's reports."

02:27:16PM 6 Dr. Erba. Another specific causation expert for
02:27:20PM 7 the defense. "Having said that, when I read Dr. Goodman's
02:27:25PM 8 report and read some of the Plaintiffs' reports, there was
02:27:27PM 9 one thing that struck me and that is scientific accuracy."

02:27:31PM 10 So, Judge, we should have a right to question
02:27:35PM 11 these people now that Dr. Goodman has said, actually, I made
02:27:39PM 12 300 changes. Errors. Whether it be typographical. Whether
02:27:44PM 13 it be she reread the thing. Whether it's because it was a
02:27:48PM 14 transferring error. Whether it's because it's QC. This is
02:27:51PM 15 the mess that we are talking about. And --

02:27:54PM 16 THE COURT: Isn't that mess helpful to you?

02:27:57PM 17 MR. MANDELL: Well, Judge, we are not saying
02:28:00PM 18 that this shouldn't be a situation where we go to trial and
02:28:05PM 19 we are not going to use it because we certainly are. But
02:28:08PM 20 what we are talking about is we have worked up this whole
02:28:12PM 21 case to this point based off of her original charts which, by
02:28:16PM 22 the way, are hundreds of pages long. Thousands maybe. I
02:28:20PM 23 don't know. But it's when I tell you I had to fly down to DC
02:28:24PM 24 to take the deposition and we had to ship the stuff down, we
02:28:27PM 25 are talking stacks.

02:28:30PM 1 We have worked up the entire case based off of
02:28:33PM 2 these original charts. We filed motions based off of them.
02:28:37PM 3 So yes, it's helpful to us and we are very -- when I saw
02:28:44PM 4 that, I had to say I was a little shocked because it was the
02:28:47PM 5 last thing I expected to see in response to a motion.

02:28:51PM 6 THE COURT: It was an exhibit?

02:28:52PM 7 MR. MANDELL: We filed our motion to exclude and
02:28:54PM 8 attached as exhibits to the opposition were five new charts,
02:29:02PM 9 one for each disease. There was actually ten. There was a
02:29:06PM 10 clean version and a red line version of each new chart. And
02:29:11PM 11 also a declaration which she signed under oath saying that
02:29:16PM 12 every single one of the 300 or so changes was either a
02:29:22PM 13 typographical error or inadvertent. And then she gave the
02:29:26PM 14 two explanations for why it all happened.

02:29:30PM 15 So it's a mess, Judge. So what we are saying
02:29:34PM 16 is, yes, we can use this at trial and if she wants to come in
02:29:39PM 17 and tell the Trial Judges that when we point out a particular
02:29:42PM 18 study, she made a mistake on it, she can say I made a
02:29:46PM 19 mistake. She can classify it however she wants.

02:29:49PM 20 But what we are suggesting, Judge, is that it
02:29:51PM 21 should be based off of the original charts. It should be
02:29:54PM 22 based off of what she put forward as an expert, did not say
02:29:58PM 23 anything about until we filed a motion to exclude her on,
02:30:03PM 24 among other things, those exact grounds. And then she
02:30:07PM 25 attaches to their opposition new charts.

02:30:11PM 1 The caselaw, Judge, from the Eastern District
02:30:14PM 2 that I have read says you can't do that. There's a whole
02:30:18PM 3 bunch of problems with that. But not the least of which,
02:30:22PM 4 especially in a case like this, is these other problems.
02:30:28PM 5 Because, yeah, we want to depose all these other people.

02:30:30PM 6 The other thing, Judge, not insignificantly, is
02:30:34PM 7 if they are allowed to formally supplement these reports
02:30:37PM 8 then, of course, we are going to want our experts to look at
02:30:40PM 9 them.

02:30:41PM 10 We are going to want our experts to do rebuttal
02:30:43PM 11 reports. We are going to want our experts to do all this
02:30:46PM 12 stuff which is going to take an enormous amount of time
02:30:49PM 13 because we have four or five experts in each disease on
02:30:52PM 14 general causation, maybe more.

02:30:54PM 15 So we would want to be able to have our experts
02:30:57PM 16 say naturally, Judge, yeah, there's a problem with her
02:31:01PM 17 methodology. She made 300 changes and she's given all these
02:31:05PM 18 different explanations for how this happened. So that is an
02:31:08PM 19 enormous undertaking, time, resources. We have already spent
02:31:12PM 20 hundreds of hours and millions of dollars on these experts as
02:31:19PM 21 her reports stand.

02:31:21PM 22 So all we are asking for, Judge, is to keep the
02:31:24PM 23 status quo on that which is let's keep the reports that she
02:31:28PM 24 has.

02:31:28PM 25 Judge, just in brief follow-up to where we were

02:31:38PM 1 before because I think we covered some of it. Rule 26 only
02:31:42PM 2 allows for you to supplement if there is to "correct
02:31:47PM 3 inadvertent errors or if there's new information". There's
02:31:52PM 4 no new information here. The defense has admitted in their
02:31:56PM 5 brief, I believe, that there is no new information.

02:31:58PM 6 At Page 10, they said, unlike the *Pierce*
02:32:02PM 7 experts, Dr. Goodman's corrected tables did not provide any
02:32:05PM 8 new analysis or opinions let alone cite new facts or data.
02:32:08PM 9 So that takes out that part.

02:32:11PM 10 And what I would suggest to Your Honor is,
02:32:14PM 11 Judge, if you look at these changes, we would very strongly
02:32:21PM 12 suggest to you that we do not think these are what should be
02:32:23PM 13 considered to be inadvertent or typographical errors.

02:32:30PM 14 So what we have here -- and Your Honor has said
02:32:32PM 15 this in prior orders in this case. When you are dealing with
02:32:36PM 16 this situation, it's really a two-part test. Look to see if
02:32:39PM 17 there's a violation and then you look at the *Akeva* factors or
02:32:43PM 18 the *Southern State* factors.

02:32:44PM 19 So it's clearly a violation of the scheduling
02:32:47PM 20 order because these expert disclosures were due February of
02:32:51PM 21 2025 and close of expert discovery was in May, I believe. So
02:32:56PM 22 we clearly have that. Supplementing in response to a motion
02:33:00PM 23 to exclude is a violation of Rule 26. And they are clearly
02:33:06PM 24 not inadvertent errors.

02:33:08PM 25 So what I would like to do, Judge, and we have

02:33:10PM 1 already gone over some of it, but in terms of the remedy, in
02:33:15PM 2 terms of that's the second part of the two-part inquiry that
02:33:18PM 3 Your Honor has said should exist in this situation.

02:33:20PM 4 What I would suggest to start, Judge, is that
02:33:25PM 5 there is a District Court case that went up to the Fourth
02:33:28PM 6 Circuit in the Eastern District that is what we believe to be
02:33:31PM 7 very analogous to this situation.

02:33:33PM 8 It's *EEOC versus Freeman*. The District Court
02:33:36PM 9 case is 961 F.Supp.2d 783. District of Maryland from 2013.
02:33:44PM 10 And that case the facts, Judge, are very similar. What you
02:33:49PM 11 had was, to be very brief, *EEOC* filed claims against a
02:33:53PM 12 company for hiring practices they said it lead to some
02:33:57PM 13 disparate impact.

02:33:58PM 14 When you have a case like that, as I have come
02:34:00PM 15 to learn from reading this case, you need an economic expert.
02:34:02PM 16 So *EEOC* filed an economic expert. And when they did that,
02:34:06PM 17 the defense found that there was a number of errors with the
02:34:09PM 18 report, just like we found a number of errors with
02:34:12PM 19 Dr. Goodman's report.

02:34:14PM 20 *EEOC* filed -- when the Defendant moved to
02:34:19PM 21 exclude the expert, *EEOC* responded and in response did the
02:34:23PM 22 same thing as we have here is they filed a supplemental
02:34:27PM 23 report and a declaration.

02:34:27PM 24 And the Court there struck the changes and ruled
02:34:31PM 25 actually they excluded the expert which is what went up on

02:34:35PM 1 appeal to the Fourth Circuit and the Fourth Circuit excluded
02:34:38PM 2 it. But what I would suggest, Your Honor, is we believe this
02:34:41PM 3 case is very analogous of this situation that we have here.
02:34:45PM 4 As is a couple of the cases that we talked about before from
02:34:47PM 5 the Eastern District.

02:34:49PM 6 So just briefly, Judge, to go through these
02:34:54PM 7 *Southern State Akeva* factors, we have read Your Honor's order
02:34:57PM 8 from before and there are different factors for these
02:35:01PM 9 different tests. But Your Honor said that they are very
02:35:04PM 10 similar. So what I intend to do is kind of just go through
02:35:07PM 11 them and mesh them so we don't have to go over them twice.

02:35:11PM 12 The first one, Judge, is the interest in the
02:35:13PM 13 expeditious resolution of the litigation and the Court's need
02:35:17PM 14 to manage the docket. So as we see it, this is the easiest
02:35:21PM 15 one partly because this Court has recognized the need for
02:35:26PM 16 expeditiously adjudicating this case. Plaintiffs are dying.
02:35:31PM 17 There are 400,000 Plaintiffs. The statute was passed in
02:35:34PM 18 2022. We are in Track 1.

02:35:37PM 19 In the decision that Your Honor wrote earlier in
02:35:40PM 20 2025 as to the issue with Remy Hennet and the site visit at
02:35:46PM 21 Camp Lejeune, in that decision, Your Honor said that these
02:35:49PM 22 factors, Factors 5 and 6 of *Akeva*, weighed in favor of the
02:35:52PM 23 remedy of exclusion in that situation. And that was a
02:35:55PM 24 situation where the information was disclosed prior to the
02:36:01PM 25 expert's deposition as I understand it.

02:36:04PM 1 So what I would suggest to you, Judge, if those
02:36:06PM 2 factors weigh in favor of exclusion when the information is
02:36:10PM 3 disclosed prior to the deposition of the expert, then
02:36:13PM 4 certainly they would weigh in favor of that here.

02:36:17PM 5 And the only other thing I would say on this is,
02:36:20PM 6 Judge, the Federal Rules of Civil Procedure in the scheduling
02:36:23PM 7 orders are here for a reason. They serve very important
02:36:27PM 8 purposes.

02:36:27PM 9 And if you look at the precedent that this would
02:36:30PM 10 set, if parties could be allowed to supplement expert reports
02:36:36PM 11 after getting a motion to exclude the expert on the same
02:36:39PM 12 grounds, then parties would just supplement their expert
02:36:43PM 13 reports every time they got a *Daubert* motion.

02:36:46PM 14 We have gotten dozens of *Daubert* motions filed
02:36:49PM 15 against us. So we could just go and even though we don't
02:36:52PM 16 agree with the *Daubert* motion, we can just supplement and
02:36:55PM 17 call it an inadvertent error. And that would cause complete
02:36:59PM 18 chaos.

02:37:00PM 19 So in terms of the next factor, Judge, the
02:37:04PM 20 importance of the opinions, *Southern State Factor 4, Akeva*
02:37:09PM 21 Factor 2, what I would suggest to you, Judge, is that it
02:37:12PM 22 seems like this opposition to our motion is trying to fit a
02:37:17PM 23 square peg into a round hole. And what I mean by that is it
02:37:22PM 24 seems like the defense is having to argue different things in
02:37:24PM 25 different areas.

02:37:26PM 1 For example, what they say, Judge, is that every
02:37:30PM 2 single one of these 300 changes did not affect one analysis
02:37:36PM 3 or opinion that Dr. Goodman has in her narrative reports. I
02:37:40PM 4 already explained why that doesn't make a lot of sense. But
02:37:43PM 5 what it also does is it proves there's no prejudice.

02:37:45PM 6 The importance of that, it's not the importance
02:37:47PM 7 of her opinion; it's the importance of this new change in
02:37:51PM 8 opinion. So if it's really true that not a single one of
02:37:56PM 9 these changes affects any of the opinions that she's going to
02:37:59PM 10 give in a case or any analysis of the opinions, as it says in
02:38:03PM 11 her declaration, then why are we going to allow for these
02:38:07PM 12 massive changes and go through all of the stuff that I was
02:38:10PM 13 just talking about in terms of the need that we would have at
02:38:13PM 14 this point in time.

02:38:14PM 15 Just a couple of additional points on this,
02:38:17PM 16 Judge. It doesn't seem right that a party can claim that
02:38:22PM 17 something is important in response to a *Daubert* motion
02:38:25PM 18 because if that was true it would always be important in
02:38:29PM 19 response to a *Daubert* motion.

02:38:30PM 20 The last thing I will say on this factor is that
02:38:34PM 21 in their response they claim that the remedy that we are
02:38:39PM 22 seeking here is Draconian and that striking is a Draconian
02:38:48PM 23 remedy. But we don't see it that way because what we are
02:38:51PM 24 asking for is just to keep it exactly the way that it is and
02:38:53PM 25 not create all this need to do all this additional stuff.

02:38:57PM 1 We have gone through the ability to cure a
02:38:59PM 2 little bit factor, the significant prejudice ability to cure,
02:39:03PM 3 *Southern State Factor 2, Akeva Factor 3 and 4.* But what I
02:39:07PM 4 would point you to, Judge, is a couple of decisions as well.
02:39:12PM 5 Because I think that the language from those decisions is
02:39:14PM 6 really important here.

02:39:15PM 7 So this is *Gallagher versus Southern Source*,
02:39:18PM 8 Eastern District, 2008. Judge Dever said, Plaintiffs cannot
02:39:23PM 9 -- and he was talking about whether or not to strike an
02:39:26PM 10 expert report, supplemental report in that case.

02:39:29PM 11 He said, "Plaintiffs cannot cure that surprise
02:39:31PM 12 without further delay and further discovery including another
02:39:34PM 13 deposition of Mueller. Discovery, however, closed 15 months
02:39:38PM 14 ago. Although a trial date has not been set, this case has
02:39:42PM 15 been pending since March 2006 and reopening discovery would
02:39:45PM 16 trample the scheduling order and disrupt proceedings in this
02:39:49PM 17 case."

02:39:49PM 18 He says, "Additionally, the new Mueller report
02:39:52PM 19 is not particularly important because Mueller already has a
02:39:55PM 20 report in the record." And then he goes on to get rid of the
02:40:00PM 21 report.

02:40:01PM 22 So again, Judge, I would cite you to other cases
02:40:05PM 23 from Judge Dever. *Pierce versus North Carolina State Board*
02:40:09PM 24 *of Elections*, Eastern District, 2024.

02:40:13PM 25 So the next factor, Judge, is the reasonable

02:40:17PM 1 explanation for this. It's *Southern State Factor 5, Akeva*
02:40:21PM 2 *Factor 1*, and I can't perceive of a reasonable explanation
02:40:27PM 3 for waiting until the opposition to a motion to exclude to
02:40:34PM 4 supplement a report like this.

02:40:36PM 5 What has been said in the declaration and in the
02:40:39PM 6 opposition to the motion to strike is that when Plaintiffs
02:40:44PM 7 pointed out these inconsistencies at her deposition, she went
02:40:48PM 8 back and did a, quote, comprehensive review --

02:40:52PM 9 THE COURT: Let me ask the people that are
02:40:53PM 10 attending this hearing by phone to please put your phone on
02:40:57PM 11 mute. Go ahead.

02:41:02PM 12 MR. MANDELL: Thank you. She said, Judge, that
02:41:07PM 13 when Plaintiffs pointed out these inconsistencies at her
02:41:11PM 14 deposition that she went and did a -- her and her company --
02:41:17PM 15 did a comprehensive review.

02:41:20PM 16 So the question is, is there a reasonable
02:41:24PM 17 explanation for failing to disclose this until the opposition
02:41:30PM 18 to a motion to exclude. And I would just suggest to you,
02:41:33PM 19 Judge, that I don't think that there is.

02:41:35PM 20 And then the last two factors, Your Honor, are
02:41:38PM 21 *Southern State Factor 1* which is a surprise to us from their
02:41:44PM 22 disclosing at this time.

02:41:47PM 23 And what Defendants say is, well, you knew about
02:41:50PM 24 it at the deposition; therefore, how are you going to be
02:41:52PM 25 surprised now. And what I would say to you, Judge, is it

02:41:56PM 1 goes much deeper than that because one is we asked about a
02:41:59PM 2 handful of inconsistencies at the deposition and now they are
02:42:02PM 3 talking about 300 changes of which she is admitting.

02:42:07PM 4 And two, there's a declaration under oath now
02:42:11PM 5 where there's additional explanations for how this happened.
02:42:15PM 6 And that can't be understated, I think, in terms of the
02:42:18PM 7 credibility.

02:42:19PM 8 I would also say, Judge, that in terms of
02:42:21PM 9 surprise, we were in part surprised because we feel pretty
02:42:24PM 10 strongly that the rules don't allow for this. So we were
02:42:27PM 11 certainly not expecting to see this in response to a motion
02:42:32PM 12 to exclude.

02:42:33PM 13 And then the final *Akeva* factor, Judge, is
02:42:35PM 14 public policy favoring disposition of the case on the merits.
02:42:38PM 15 And the only thing I would say to Your Honor about this is I
02:42:41PM 16 think that we, meaning PLG and the defense, have a different
02:42:46PM 17 interpretation of what that means.

02:42:48PM 18 It seems like what the defense is saying is,
02:42:51PM 19 well, she's saying these are inaccurate so you should let her
02:42:55PM 20 change that because that would dispose of the case on the
02:42:57PM 21 merits.

02:42:58PM 22 And what I would suggest to you, Judge, is that
02:43:00PM 23 we look at this a little differently which is we think that
02:43:04PM 24 it's critically important that the Trial Judges be allowed to
02:43:08PM 25 see what has happened here to allow to assess the credibility

02:43:11PM 1 and reliability of what's happened here.

02:43:13PM 2 So by allowing these changes, we are, on some
02:43:17PM 3 level, shielding the Trial Judges from disclosing of the case
02:43:21PM 4 on the merits because if we can't bring up that this happened
02:43:26PM 5 this goes to the heart of her credibility, the heart of her
02:43:29PM 6 reliability, the heart of her opinions in this case which, by
02:43:33PM 7 the way, Judge, are that not a single Plaintiff in Track 1,
02:43:39PM 8 not one, should recover anything from this case.

02:43:45PM 9 Her opinions in this case is that there is not a
02:43:47PM 10 single chemical that was in the water at Camp Lejeune that is
02:43:52PM 11 causally related to any one of the five Track 1 diseases at
02:43:57PM 12 the levels that they were exposed to at Camp Lejeune. So
02:44:00PM 13 that's what we are dealing with here, Judge, and we should
02:44:03PM 14 absolutely be allowed to show this unreliability of her
02:44:09PM 15 testimony.

02:44:10PM 16 I am terribly sorry to have gone on for so long,
02:44:14PM 17 Judge, but this is what tends to happen with Dr. Goodman
02:44:17PM 18 which is it gets very complicated and it takes a little while
02:44:20PM 19 to unravel. If Your Honor has any questions --

02:44:22PM 20 THE COURT: Just briefly, before I turn to the
02:44:25PM 21 Government. You mentioned in Judge Dever's order that he
02:44:27PM 22 remarked on the importance or lack thereof of the proposed
02:44:32PM 23 supplementation in that case. What would you say about it
02:44:34PM 24 here?

02:44:36PM 25 MR. MANDELL: I would say it's the exact same

02:44:38PM 1 thing.

02:44:39PM 2 THE COURT: There was no supplementation. It
02:44:42PM 3 was an expert report, and I think he said it wasn't important
02:44:47PM 4 because there were other experts, I guess, already in the
02:44:51PM 5 case.

02:44:52PM 6 MR. MANDELL: I think what he was trying to say,
02:44:54PM 7 if I know what area you are talking about, Judge, is I think
02:44:57PM 8 what he was trying to say is -- let me see if I can pull it
02:45:00PM 9 up real quick. I think what he was trying to say is that
02:45:04PM 10 because the expert already had a report on the record, that
02:45:08PM 11 meant that the supplements weren't that important.

02:45:12PM 12 And that's exactly what we are trying to say
02:45:14PM 13 here. This motion is not striking Dr. Goodman as an expert.
02:45:18PM 14 This report is not excluding her as an expert or excluding
02:45:20PM 15 her original reports. What this is is not allowing her to
02:45:24PM 16 make 300 changes in response to a motion to exclude.

02:45:27PM 17 THE COURT: Got it. All right. USA.

02:45:34PM 18 MR. ANTONUCCI: Thank you, Your Honor. Giovanni
02:45:36PM 19 Antonucci on behalf of the United States.

02:45:39PM 20 Plaintiffs' motion to strike Dr. Goodman's
02:45:41PM 21 corrected summary tables fails because Dr. Goodman's
02:45:43PM 22 corrections were proper, timely, and necessary under Federal
02:45:46PM 23 Rules of Civil Procedure 26(e). The United States offered a
02:45:49PM 24 limited supplemental deposition along with --

02:45:53PM 25 THE COURT: How were they timely?

02:45:55PM 1 MR. ANTONUCCI: Dr. Goodman's corrections were
02:45:57PM 2 made shortly thereafter she became aware of the issues in her
02:46:01PM 3 report, Your Honor.

02:46:02PM 4 THE COURT: Was it an actual supplementation? I
02:46:05PM 5 don't know that I have seen a supplementation that's included
02:46:08PM 6 as an exhibit in response to a motion.

02:46:10PM 7 MR. ANTONUCCI: Your Honor, Dr. Goodman was made
02:46:12PM 8 aware of some issues with her reports during the deposition
02:46:18PM 9 that the Plaintiffs took, and she was able to explain on the
02:46:22PM 10 record to the Plaintiffs why either they were incorrect about
02:46:25PM 11 that being an inconsistency or why she stood by those, the
02:46:30PM 12 reasons those reports were interpreted differently in
02:46:34PM 13 different contexts.

02:46:36PM 14 Dr. Goodman answered all of those questions
02:46:38PM 15 freely and didn't become aware of the existence of further
02:46:43PM 16 issues until they were raised in Plaintiffs' *Daubert*.

02:46:47PM 17 Dr. Goodman's corrections are proper and
02:46:50PM 18 necessary and, moreover, the United States offered a
02:46:53PM 19 supplemental deposition in line with the remedy that the
02:46:57PM 20 United States and the Plaintiffs have carried out for other
02:47:00PM 21 expert supplementation in this litigation.

02:47:02PM 22 For example, Plaintiffs' exposure expert,
02:47:04PM 23 Dr. Reynolds, who supplemented her exposure calculation
02:47:07PM 24 tables, I believe, six times. Plaintiffs ignored the United
02:47:11PM 25 States' attempt to resolve this issue without Court

02:47:14PM 1 intervention and instead filed the instant motion.

02:47:17PM 2 And it's important, Your Honor, for you to

02:47:19PM 3 understand what Dr. Goodman did here. Dr. Goodman did what

02:47:22PM 4 no other expert did in this litigation. She undertook an

02:47:27PM 5 immense and comprehensive literature review during which she

02:47:31PM 6 evaluated approximately 1,852 scientific studies spanning all

02:47:37PM 7 five Track 1 diseases over the course of over 2 years.

02:47:40PM 8 To assist the Court and to demonstrate the

02:47:43PM 9 breadth of her over 2-year investigation, Dr. Goodman

02:47:45PM 10 appended to her reports tables which provide information on

02:47:49PM 11 the hundreds of studies she weighed as part of her analysis

02:47:51PM 12 and her systematic review.

02:47:53PM 13 Those tables alone are hundreds of pages long.

02:47:57PM 14 In the course of transferring information from the studies,

02:48:00PM 15 she relied on her -- in the course of transferring

02:48:02PM 16 information from the studies she relied on to her summary

02:48:06PM 17 tables, some inadvertent errors were made only affecting

02:48:09PM 18 approximately 75 of the 1,852 studies that she reviewed.

02:48:13PM 19 Dr. Goodman and the United States take full

02:48:16PM 20 responsibility for these errors and, as required by Rule

02:48:20PM 21 26(e), she issued corrections. And again, Your Honor, Rule

02:48:23PM 22 26(e) mandates that an expert correct her disclosure if she

02:48:27PM 23 learns that in some material respect the disclosure is

02:48:28PM 24 incorrect.

02:48:29PM 25 These corrections do not alter Dr. Goodman's

02:48:32PM 1 opinions which are set forth in the body of her reports but
02:48:35PM 2 instead ensure the accuracy of those summaries reflecting an
02:48:39PM 3 exceptionally broad and comprehensive literature review.

02:48:43PM 4 Many of these errors were inadvertent or
02:48:45PM 5 typographical errors. And as Plaintiffs pointed out, only
02:48:48PM 6 approximately 120 of the 300 errors they have cited to
02:48:51PM 7 involve changing a strength to a weakness or a weakness to a
02:48:55PM 8 strength.

02:48:57PM 9 And, Your Honor, that militates against
02:49:01PM 10 Plaintiffs' argument that Dr. Goodman's corrections are
02:49:04PM 11 gamesmanship because, in fact, she has changed weaknesses to
02:49:07PM 12 studies that would otherwise support Plaintiffs' case.

02:49:10PM 13 Your Honor, Plaintiffs today raised the
02:49:15PM 14 correction to Dr. Goodman's summary of Bove 2014. It's an
02:49:20PM 15 epidemiological study. She corrected that to recognize that
02:49:24PM 16 the authors considered smoking using negative control
02:49:28PM 17 diseases. They argued that that contradicts her other
02:49:31PM 18 reports where she wrote that the authors didn't consider or
02:49:33PM 19 control for smoking.

02:49:34PM 20 And while Dr. Goodman didn't make a change to
02:49:36PM 21 correct her opinion in this regard, it's easy to see why this
02:49:39PM 22 correction doesn't impact her overall conclusions. In the
02:49:43PM 23 context of Parkinson's disease, smoking is actually
02:49:46PM 24 protective of this disease.

02:49:47PM 25 And so when evaluating that study in the context

02:49:50PM 1 of Parkinson's disease, the controlling for smoking is going
02:49:54PM 2 to be a very different analysis.

02:49:57PM 3 Your Honor, the text of Dr. Goodman's reports
02:50:00PM 4 contain her synthesis and interpretation of studies and
02:50:04PM 5 separately creating the tables Dr. Goodman tried to closely
02:50:06PM 6 mirror the information in the studies for ease of reference.

02:50:10PM 7 Plaintiffs pointed out that some of the text of
02:50:11PM 8 the tables and the studies are closely track one another and
02:50:16PM 9 that's not surprising given that the studies and the tables
02:50:21PM 10 in Dr. Goodman's reports are interpreting the exact same
02:50:23PM 11 studies. She used similar language to describe the same
02:50:26PM 12 things.

02:50:27PM 13 Plaintiffs' assertion that the corrections to
02:50:30PM 14 Dr. Goodman's tables must change her opinions only views
02:50:34PM 15 those changes in isolation instead of considering the
02:50:37PM 16 totality of the vast amounts of the evidence she considered
02:50:40PM 17 and the explicit purpose of the tables.

02:50:43PM 18 In light of the thousands of data points that
02:50:45PM 19 Dr. Goodman reviewed and relied upon and the fact that the
02:50:48PM 20 tables were never intended to continue. These corrections do
02:50:55PM 21 not change her opinions.

02:50:56PM 22 Plaintiffs have not demonstrated that any of the
02:50:59PM 23 corrections are material to Dr. Goodman's opinions, Your
02:51:02PM 24 Honor, and the United States is prepared to go through all of
02:51:04PM 25 the examples Plaintiffs provided in their reports to answer

02:51:06PM 1 questions that you have although Dr. Goodman --

02:51:08PM 2 THE COURT: All 300 of them?

02:51:11PM 3 MR. ANTONUCCI: Yes, Your Honor. The United

02:51:13PM 4 States is prepared to offer background in context as well as

02:51:20PM 5 information from Dr. Goodman. However, Dr. Goodman would be

02:51:26PM 6 in the best position to explain those things to Plaintiffs

02:51:26PM 7 which is why the United States offered her for supplemental

02:51:29PM 8 deposition.

02:51:30PM 9 Plaintiffs are also free to question Dr. Goodman

02:51:33PM 10 on the corrections to her tables at trial or in the

02:51:36PM 11 deposition the United States offered. The United States does

02:51:38PM 12 not intend to prevent Plaintiffs from doing that in asking

02:51:43PM 13 that Dr. Goodman's corrected tables are not stricken.

02:51:45PM 14 However, the fact of the matter is, Your Honor,

02:51:46PM 15 that Dr. Goodman's reports contain her opinions. The tables

02:51:53PM 16 do not. There are no new opinions. There's no new

02:51:56PM 17 methodology.

02:51:57PM 18 Plaintiffs' motion here is really a second bite

02:52:00PM 19 at the apple of their *Daubert* motion focused on methodology

02:52:04PM 20 which they raised in their reply. This is, frankly, one of

02:52:08PM 21 many reasons why Plaintiffs' motion to strike Dr. Goodman's

02:52:14PM 22 corrected summary tables must fail. Thank you, Your Honor.

02:52:17PM 23 MR. MANDELL: Judge, can I point out?

02:52:18PM 24 THE COURT: Briefly.

02:52:19PM 25 MR. MANDELL: Briefly, Judge. I want to just

02:52:19PM 1 touch on two things. Defense just said -- and kept saying --
02:52:25PM 2 that it doesn't change Dr. Goodman's opinions. And while we
02:52:30PM 3 strongly disagree with that, that's not the standard.

02:52:32PM 4 And Your Honor has said that's not the standard
02:52:34PM 5 in your In Re: Camp Lejeune litigation case 2025 but what you
02:52:40PM 6 cited another case for the proposition but what Your Honor
02:52:42PM 7 said was citing the *Severn Peanut* case you said, "Finding
02:52:48PM 8 additional testimony conducted post disclosure deadline was
02:52:51PM 9 improper bolstering even if the underlying expert's opinions
02:52:54PM 10 had not changed". So that's not the standard, although we
02:52:59PM 11 disagree with it.

02:53:00PM 12 In terms of the different studies and the
02:53:03PM 13 ability to go through each study, Judge, and talk about why
02:53:06PM 14 they think maybe we are wrong and they are right or whatever
02:53:09PM 15 it is, two quick things.

02:53:10PM 16 First, this is not the time to be having a
02:53:13PM 17 semantic discussion. We have done all the expert work. We
02:53:16PM 18 have filed all the expert motions. This is exactly the
02:53:19PM 19 problem with having a semantic discussion at this point in
02:53:23PM 20 time.

02:53:23PM 21 And the only other thing I would say about that,
02:53:27PM 22 Judge, is that the claim about Parkinson's disease doesn't
02:53:33PM 23 make sense because if Your Honor looks --

02:53:35PM 24 THE COURT: Well, they are different diseases.

02:53:37PM 25 MR. MANDELL: No, no. They are different

02:53:39PM 1 diseases, Judge. But if you look at C-1, 95, which is part
02:53:45PM 2 of her now new amended Parkinson's disease report. What she
02:53:51PM 3 did was she originally said for Parkinson's disease, not for
02:53:55PM 4 any of the other diseases but for Parkinson's disease. She
02:53:58PM 5 said, as a weakness originally did not consider or control
02:54:03PM 6 for, among other things, smoking. And she said that was a
02:54:06PM 7 weakness of the study.

02:54:08PM 8 Now she is saying, literally, in red line,
02:54:13PM 9 strength. Considered smoking using negative control
02:54:17PM 10 diseases. They are both for Parkinson's disease. It's a
02:54:20PM 11 change from saying I interpreted the study before as they
02:54:24PM 12 didn't control for it; now I am saying --

02:54:26PM 13 THE COURT: What does all that mean?

02:54:28PM 14 MR. MANDELL: What it means, Judge, is we should
02:54:29PM 15 be dealing with this at trial, frankly. But what it means is
02:54:34PM 16 that Dr. Goodman has, as part of her opinion to say that not
02:54:37PM 17 a single Track 1 Plaintiff --

02:54:38PM 18 THE COURT: No. What does that mean in the
02:54:40PM 19 original and then how is that different in the second?

02:54:43PM 20 MR. MANDELL: In the original, what she's saying
02:54:45PM 21 is, I read the 2014 Bove study and I considered a weakness of
02:54:51PM 22 the study meaning it's not as reliable of a study that they
02:54:53PM 23 did not account for smoking. Meaning when they were
02:54:57PM 24 analyzing the people at Camp Lejeune, they --

02:54:59PM 25 THE COURT: Didn't ask them.

02:55:01PM 1 MR. MANDELL: Didn't ask whether or not people
02:55:02PM 2 smoked and smoking might be a cause for some of these
02:55:04PM 3 diseases. Now she's saying a strength of the study is that
02:55:08PM 4 they did consider smoking using what they call negative
02:55:11PM 5 control diseases.

02:55:12PM 6 THE COURT: Well, that's a new term. What does
02:55:13PM 7 that mean?

02:55:15PM 8 MR. MANDELL: That means that what they did was
02:55:17PM 9 they looked at other diseases. They couldn't ask 200,000
02:55:21PM 10 people or 100,000 people every one of them whether they
02:55:24PM 11 smoked. So what they did was they looked at other diseases
02:55:26PM 12 that are associated with smoking like COPD and some
02:55:29PM 13 cardiovascular stuff. And if the people have those diseases,
02:55:33PM 14 they considered them to have been smokers type of thing.

02:55:35PM 15 THE COURT: So the essence of the corrections is
02:55:40PM 16 what?

02:55:40PM 17 MR. MANDELL: The essence of the correction
02:55:42PM 18 is --

02:55:43PM 19 THE COURT: It's a strength however comma.

02:55:47PM 20 MR. MANDELL: However, we don't know because we
02:55:48PM 21 haven't had a chance to ask her about it, frankly. But what
02:55:52PM 22 I would suggest to you, Judge, is this. Which is the
02:55:54PM 23 critical importance of this.

02:55:57PM 24 Dr. Goodman's opinions in this case are that not
02:56:00PM 25 a single Track 1 Plaintiff should recover in part because she

02:56:05PM 1 discounts entirely every single one of the Camp Lejeune
02:56:10PM 2 studies that was done. The best evidence that we have in
02:56:12PM 3 this case.

02:56:12PM 4 Dr. Goodman's position is that those studies are
02:56:16PM 5 so unreliable that they should not be used for any assessment
02:56:20PM 6 of whether these people who we know were at Camp Lejeune
02:56:23PM 7 should have gotten this disease.

02:56:24PM 8 So the problem here is, if you look at Page C-1,
02:56:29PM 9 she has now changed two critical facts as to one of the key
02:56:33PM 10 studies in this case from weaknesses to strengths. So what
02:56:37PM 11 she was saying was, hey, these were facts that I looked at
02:56:40PM 12 before and considered to be weaknesses of the study.

02:56:46PM 13 The therefore is therefore maybe we shouldn't
02:56:48PM 14 use the study because it's unreliable. Now she has changed
02:56:52PM 15 two key facts to strengths. We have to be able to ask her
02:56:56PM 16 about that at deposition, Judge. This is one of the key
02:56:59PM 17 studies in the case.

02:57:02PM 18 So the last thing that I would say is, Judge, in
02:57:05PM 19 terms of when she made these changes, obviously we haven't
02:57:09PM 20 been able to ask her about that. But what I would tell you
02:57:12PM 21 is these are three quotes from the opposition.

02:57:15PM 22 THE COURT: Well, they said they did offer her
02:57:19PM 23 up.

02:57:20PM 24 MR. MANDELL: No, no, no, no. I don't mean
02:57:21PM 25 that. You mean for deposition right now?

02:57:24PM 1 THE COURT: Yeah.

02:57:24PM 2 MR. MANDELL: Well, in part, Judge, the issue is

02:57:27PM 3 that we needed to figure out like can we take the depositions

02:57:30PM 4 of her employees, can we take the experts that she's relying

02:57:33PM 5 on, can we do all this stuff because the bottom line, Judge,

02:57:37PM 6 is we don't believe that any of these changes should be

02:57:39PM 7 allowed to be made now. And if they aren't allowed to be

02:57:42PM 8 made now, we don't need to take her deposition.

02:57:44PM 9 So all I would say, Judge, in terms of the

02:57:46PM 10 changes and the timing is what she says -- what the defense

02:57:51PM 11 says in their opposition is, "These changes became necessary

02:57:54PM 12 to ensure consistency among tables after Plaintiffs' counsel

02:57:58PM 13 pointed out some inconsistencies".

02:58:02PM 14 "At Dr. Goodman's deposition and in their motion

02:58:05PM 15 to exclude the defense expert Dr. Julie Goodman, Plaintiff

02:58:09PM 16 made Dr. Goodman aware of inconsistencies in her tables of

02:58:12PM 17 her report." "After mistakes in her report were brought to

02:58:16PM 18 her attention, Dr. Goodman performed a comprehensive

02:58:19PM 19 analysis." So they could have told us about this. If they

02:58:23PM 20 had wanted to make these changes. Thank you, Judge.

02:58:27PM 21 THE COURT: I had some questions. Either one of

02:58:33PM 22 you all could answer this. Rule 26(e) only applies when an

02:58:38PM 23 error is material. PLG argues that the changes are

02:58:43PM 24 substantive. Defendant argues that they are not. Is there a

02:58:49PM 25 difference between a substantive change or a material change?

02:58:54PM 1 MR. MANDELL: So I think, Judge, that the
02:58:56PM 2 standard under Rule 26 is whether or not it is being used to
02:59:05PM 3 "correct an inadvertent error or omission or whether there's
02:59:09PM 4 new information".

02:59:10PM 5 So the parallel to that, I think, is if it's a
02:59:15PM 6 substantive change, if it is substantive to her analysis, if
02:59:20PM 7 it is an analysis of a study, it inherently cannot be an
02:59:25PM 8 inadvertent error or omission. So I think that's how I would
02:59:29PM 9 answer that. I don't know if that answers your question.

02:59:31PM 10 THE COURT: What do you think?

02:59:32PM 11 MR. ANTONUCCI: Thank you, Your Honor. The
02:59:34PM 12 Plaintiffs have failed to prove that any of the changes to
02:59:37PM 13 Dr. Goodman's reports are material as required by Rule 26(e).

02:59:42PM 14 And, Your Honor, as Plaintiffs noted, the
02:59:44PM 15 caselaw evaluating these issues under Rule 26(e) have
02:59:49PM 16 evaluated first whether the expert supplementation corrected
02:59:53PM 17 inadvertent errors. Then, if not, whether their
02:59:56PM 18 supplementation constituted gamesmanship.

02:59:58PM 19 And in all of the cases that they cited,
03:00:00PM 20 *Gallagher* and *Lightfoot*, the experts were not correcting
03:00:03PM 21 inadvertent errors but offering new opinions. In *Gallagher*,
03:00:07PM 22 an expert changed a conclusion on lost revenues going down
03:00:11PM 23 from 1.3 million to 887,000. And in *Lightfoot*, the remedy,
03:00:16PM 24 in fact, was a deposition and the correction was not
03:00:19PM 25 stricken.

03:00:20PM 1 Your Honor, the Plaintiffs are unable to show
03:00:23PM 2 that Dr. Goodman's corrections are material and the United
03:00:27PM 3 States remains available to answer further specific points
03:00:31PM 4 that the Plaintiffs have pointed out and as did Dr. Goodman.

03:00:37PM 5 THE COURT: All right. Next question. This is
03:00:40PM 6 the Plaintiffs. The PLG asked this Court to treat all 300
03:00:44PM 7 changes as substantive. How is changing a study period from
03:00:50PM 8 28,690 to 28,630 either substantive or in some respect
03:00:55PM 9 material to Dr. Goodman's disclosure?

03:00:59PM 10 MR. MANDELL: Judge, the way that I would answer
03:01:01PM 11 that is this. The magnitude of the changes is what makes it
03:01:06PM 12 material and what makes it relevant. Meaning this. If there
03:01:12PM 13 was a handful of changes, we would have no problem with it.

03:01:17PM 14 The problem is that you have, I think it's
03:01:20PM 15 somewhere between 50 and 75 of those errors that you are
03:01:24PM 16 talking about, Judge, which, yeah, if that was in isolation,
03:01:29PM 17 we would have no problem with that. That wouldn't be
03:01:31PM 18 substantive.

03:01:32PM 19 But when you get to 50 to 75 of those types of
03:01:35PM 20 changes, that goes beyond, wait, this is an inadvertent
03:01:41PM 21 error. It goes to what was the methodology used to make
03:01:45PM 22 these reports.

03:01:46PM 23 For example, the *EEOC* case that I was referring
03:01:50PM 24 to, the Court referred to in the Fourth Circuit referred to
03:01:56PM 25 it as a mind-boggling number of errors, an alarming number of

03:02:00PM 1 errors.

03:02:01PM 2 What I would say, Judge, is that there are a
03:02:04PM 3 mind-boggling number of errors here. And some of those
03:02:07PM 4 errors include, yes, changing a number from here to there
03:02:11PM 5 which in isolation wouldn't be a problem. But the problem
03:02:15PM 6 here is what makes it material is the methodology as to why
03:02:18PM 7 this all happened.

03:02:21PM 8 THE COURT: Defense. Defendant has stated that
03:02:26PM 9 other corrections including changing strengths and weaknesses
03:02:30PM 10 involved making judgments on borderline factors across
03:02:35PM 11 reports for studies to ensure a consistency among tables
03:02:38PM 12 after Plaintiffs' counsel pointed out some inconsistencies.
03:02:42PM 13 That's at Docket Entry 740.

03:02:46PM 14 Does this mean that the summary tables in the
03:02:49PM 15 original disclosure do not reflect Dr. Goodman's judgment,
03:02:52PM 16 opinion, or basis, reason, data, or facts supporting her
03:02:56PM 17 opinion? I guess that's for Plaintiff.

03:03:01PM 18 MR. MANDELL: Say that again, Judge. The last
03:03:01PM 19 part.

03:03:06PM 20 THE COURT: It's a lot. Does --

03:03:07PM 21 MR. MANDELL: I can try.

03:03:10PM 22 THE COURT: The summary tables in the original
03:03:11PM 23 disclosure -- I guess it's to the defense. The original
03:03:15PM 24 disclosure do not reflect Goodman's judgment, opinion, or
03:03:20PM 25 basis, reason, data, or facts supporting her opinion. I

03:03:23PM 1 think that's for the defense.

03:03:26PM 2 MR. ANTONUCCI: So, Your Honor, Dr. Goodman's
03:03:30PM 3 methodology is laid out very clearly in the body of her
03:03:33PM 4 report. She read every single study that she cited and, in
03:03:37PM 5 fact, read the summaries of the studies that also that were
03:03:44PM 6 created at her direction alongside Dr. Goodman with her input
03:03:48PM 7 and direction.

03:03:55PM 8 The Plaintiffs' insistence on discussing
03:03:58PM 9 Dr. Goodman's methodology highlights that this dispute is
03:04:01PM 10 really a second bite at the apple of their *Daubert* motion
03:04:06PM 11 which, again, is fully briefed. And this issue, as
03:04:08PM 12 Plaintiffs have pointed out, is within it.

03:04:12PM 13 With regard to your point on whether the initial
03:04:20PM 14 summary tables contained Dr. Goodman's analysis, the summary
03:04:25PM 15 tables are simply intended to serve as a reference for the
03:04:31PM 16 Court of the breadth of the literature review that
03:04:35PM 17 Dr. Goodman undertook and to provide an easy reference to the
03:04:40PM 18 many hundreds, if not thousands, of studies that informed
03:04:45PM 19 each analysis for each disease.

03:04:52PM 20 THE COURT: How were Defendants not on notice of
03:04:54PM 21 the potential for other inconsistencies and did Dr. Goodman
03:04:58PM 22 only review her summary tables after the *Daubert* motion?

03:05:03PM 23 MR. ANTONUCCI: Yes, Your Honor. The 1993
03:05:06PM 24 advisory committee notes to Rule 26(e) for the 1993
03:05:11PM 25 amendments state that supplementation is not required where a

03:05:14PM 1 party is otherwise made aware of an error such as through a
03:05:18PM 2 deposition. Dr. Goodman answered all of the Plaintiffs'
03:05:22PM 3 questions about her tables and her reports candidly at
03:05:26PM 4 deposition.

03:05:28PM 5 Dr. Goodman acknowledged during her deposition
03:05:30PM 6 that there was a chance there were more errors. However, she
03:05:34PM 7 did not review that until it was pointed out after the
03:05:37PM 8 Plaintiffs submitted their *Daubert* motion that there were
03:05:40PM 9 further issues at which point she did a more -- a further
03:05:46PM 10 quality control check and determined that there were more
03:05:48PM 11 corrections that needed to be made.

03:05:51PM 12 THE COURT: Should the Court permit the
03:05:52PM 13 corrections that were shown at the deposition since they
03:05:56PM 14 became otherwise known to the PLG?

03:06:00PM 15 MR. MANDELL: Is that a question for me?

03:06:02PM 16 THE COURT: That's for you.

03:06:03PM 17 MR. MANDELL: I guess what I would say, Judge,
03:06:04PM 18 if the question is should Your Honor allow for I think it was
03:06:10PM 19 four or five that were done at the deposition, I think we
03:06:13PM 20 would have no problem with that. But the problem is we
03:06:15PM 21 wouldn't want it to relate to all of the rest of them.

03:06:38PM 22 THE COURT: How is the PLG prejudiced by
03:06:39PM 23 corrections that reflect the errors Goodman admitted did not
03:06:50PM 24 reflect her opinion or analysis at her deposition?

03:06:54PM 25 MR. MANDELL: I missed that last part.

03:06:57PM 1 THE COURT: So your argument on prejudice. What
03:06:59PM 2 is it?

03:06:59PM 3 MR. MANDELL: The argument on prejudice is that
03:07:03PM 4 we fully briefed every *Daubert* motion. Motions for summary
03:07:08PM 5 judgment have been filed. We deposed Dr. Goodman. We spent
03:07:13PM 6 hundreds of hours preparing for that. We spent hundreds and
03:07:16PM 7 hundreds of hours preparing for all the specific cause
03:07:19PM 8 experts who are relying on Dr. Goodman.

03:07:21PM 9 And now we have 300 new changes which, if this
03:07:26PM 10 is allowed, we believe have to take Dr. Goodman's deposition
03:07:31PM 11 again. We would have to take the employees of Gradient, her
03:07:35PM 12 company, to figure out why there's all these inconsistencies
03:07:38PM 13 in terms of the explanation for how this happened.

03:07:42PM 14 We would need to depose the experts relying on
03:07:45PM 15 Dr. Goodman who said at their deposition that they were
03:07:49PM 16 relying on her because she had more scientific accuracy which
03:07:53PM 17 now has been called greatly into question.

03:07:56PM 18 We would need our experts to do rebuttal
03:07:59PM 19 reports, spend hundreds of thousands probably more dollars,
03:08:03PM 20 tens of thousands, hundreds of thousands more dollars to get
03:08:06PM 21 our experts to review.

03:08:07PM 22 I don't know if Your Honor has printed out -- I
03:08:09PM 23 think the DOJ has thousands of pages of these new charts with
03:08:13PM 24 300 changes. So we would need our experts to review those to
03:08:17PM 25 write rebuttal reports. And then I would just say, Judge,

03:08:23PM 1 that it's just fundamentally unfair that a party can do this.
03:08:28PM 2 So that's what I would say.

03:08:29PM 3 THE COURT: What effect would it have on *Daubert*
03:08:31PM 4 on the pending motions?

03:08:33PM 5 MR. MANDELL: I think that the effect would be
03:08:37PM 6 significant because what we are talking about here is if we
03:08:39PM 7 can re-depose Dr. Goodman as to what these changes are, how
03:08:43PM 8 they happened, if we can depose her employees -- what if one
03:08:45PM 9 of her employees, Judge, says yes, I was the QC individual
03:08:50PM 10 and I made changes to these reports as Dr. Goodman said under
03:08:54PM 11 oath at her deposition she thought was the most likely
03:08:58PM 12 situation.

03:08:58PM 13 That would be now put her directly in contrast
03:09:02PM 14 credibility wise with her own employee. It would be a
03:09:05PM 15 factual dispute that we would -- I think it would be very
03:09:12PM 16 relevant for the Trial Court to raise.

03:09:14PM 17 My point is, we don't know what exactly exists
03:09:16PM 18 yet because we haven't taken these depositions. But if we
03:09:19PM 19 take these depositions and stuff comes from that, like the
03:09:22PM 20 example I just gave or we depose one of the experts who is
03:09:25PM 21 relying on Dr. Goodman and they say something, then we would
03:09:28PM 22 certainly want to insert that into *Daubert* motions because it
03:09:32PM 23 then would affect all of those motions, Judge.

03:09:34PM 24 I mean, if we had an employee of Gradient saying
03:09:37PM 25 yeah, I was the QC person and I changed all of these changes,

03:09:42PM 1 substantive changes from strengths to weaknesses, that goes
03:09:45PM 2 directly to her methodology.

03:09:49PM 3 MR. ANTONUCCI: Your Honor, if I may on this
03:09:50PM 4 point?

03:09:51PM 5 THE COURT: Sure.

03:09:52PM 6 MR. ANTONUCCI: Plaintiffs, frankly, can't show
03:09:55PM 7 surprise at Dr. Goodman's corrections as Mr. Mandell stated
03:09:58PM 8 earlier in this argument. Their pleadings demonstrate that
03:10:04PM 9 they were long aware of the inaccuracies, and they
03:10:06PM 10 cross-examined her on them at deposition.

03:10:09PM 11 THE COURT: Sounds like there were 4, not 300.

03:10:12PM 12 MR. ANTONUCCI: Your Honor, Plaintiffs
03:10:13PM 13 demonstrated in their questioning asking Dr. Goodman whether
03:10:18PM 14 there were additional errors that needed to be corrected.
03:10:21PM 15 Plaintiffs clearly had more prepared than they then used in
03:10:26PM 16 their *Daubert* motion against Dr. Goodman. Any prejudice that
03:10:29PM 17 the Plaintiffs face here can be cured by Dr. Goodman's
03:10:33PM 18 deposition.

03:10:34PM 19 THE COURT: So what do you make of this cascade
03:10:36PM 20 of other discovery that's going to have to happen if we go
03:10:43PM 21 down that road?

03:10:44PM 22 MR. ANTONUCCI: Yes, Your Honor.

03:10:45PM 23 THE COURT: You have to redo what? Redo
03:10:47PM 24 discovery and then some motions?

03:10:49PM 25 MR. ANTONUCCI: The United States believes that

03:10:51PM 1 Plaintiffs' argument on that point is completely speculative.

03:10:54PM 2 THE COURT: That's what I am getting at. How do
03:10:57PM 3 you believe that?

03:10:58PM 4 MR. ANTONUCCI: The Plaintiffs' demand to depose
03:11:00PM 5 Dr. Goodman's assistants is, frankly, baseless. Plaintiffs
03:11:04PM 6 did not depose Dr. Goodman's assistants in the first round.
03:11:08PM 7 Neither did the United States depose any of the Plaintiffs'
03:11:09PM 8 expert's assistants. Dr. Goodman signed the reports. She's
03:11:11PM 9 the signatory.

03:11:12PM 10 She was able to answer all of the Plaintiffs'
03:11:14PM 11 questions at deposition about those reports. There's frankly
03:11:17PM 12 no need for the Plaintiffs to waste time and expense deposing
03:11:21PM 13 Dr. Goodman's assistants who were simply following the orders
03:11:24PM 14 of Dr. Goodman as she testified in her initial deposition.

03:11:29PM 15 THE COURT: All right. We will take a break and
03:11:35PM 16 then come back and talk about Dr. Bailey.

03:11:46PM 17 (Recess from 3:11 p.m. until 3:25 p.m.)

03:25:30PM 18 THE COURT: Back to talk about the Plaintiffs'
03:25:32PM 19 Leadership Group's motion to strike Dr. Bailey's untimely
03:25:35PM 20 general causation opinions. I am going to limit you to,
03:25:42PM 21 unless I say otherwise, 10 minutes a side. We've got some
03:25:46PM 22 time constraints.

03:25:47PM 23 Last weekend I participated in the North
03:25:54PM 24 Carolina High School Mock Trial competition. And we had a
03:25:56PM 25 high schooler in the jury box with a time card. I don't have

03:26:00PM 1 a high schooler in the jury box with a time card today, but I
03:26:05PM 2 will hold you to around 10 minutes and rely on you to keep
03:26:08PM 3 that time yourself. I will hear from the Plaintiffs on the
03:26:10PM 4 motion.

03:26:13PM 5 MR. HALFON: Good afternoon, Your Honor. May it
03:26:14PM 6 please the Court? My name is Avery Halfon from Lieff
03:26:20PM 7 Cabraser. I'm here on behalf of Plaintiffs' Leadership Group
03:26:22PM 8 to argue why the Court should grant PLG's motion to strike
03:26:23PM 9 Dr. Bailey's untimely general causation arguments. Will you
03:26:27PM 10 let us know when 10 minutes is up or should I keep my time?

03:26:31PM 11 THE COURT: Keep your time. Just generally.

03:26:45PM 12 MR. HALFON: Your Honor, this is a simple matter
03:26:47PM 13 of applying the Court's orders to Dr. Bailey's expert
03:26:51PM 14 reports. If I may read from the Court's own words?

03:26:54PM 15 On November 10, at Docket 685, the Court said,
03:26:56PM 16 quote, "The 444 order explained permissible and sanctionable
03:27:01PM 17 conduct under the Court's scheduling orders". And later in
03:27:03PM 18 that paragraph, "scheduling orders to which both parties are
03:27:07PM 19 bound".

03:27:07PM 20 That 444 order referred to there was the Court's
03:27:11PM 21 July 22, 2025 order which said, "to the extent Phase III
03:27:16PM 22 experts offer new, independent general causation analyses,
03:27:20PM 23 such as fresh literature reviews, novel threshold
03:27:23PM 24 calculations, or independent application of causation models
03:27:25PM 25 not previously disclosed, those opinions violate the Court's

03:27:29PM 1 scheduling orders". So that is the law of the case here.

03:27:33PM 2 And as the Court said, these phases, they are
03:27:35PM 3 building blocks. General causation is supposed to inform the
03:27:39PM 4 parties' specific causation reports. And that's why there's
03:27:42PM 5 no new general causation methodologies allowed after Phase
03:27:46PM 6 II. But that's exactly what Defendants' Dr. Bailey did.

03:27:49PM 7 Dr. Bailey is one of the Defendants' specific
03:27:52PM 8 causation experts. She wrote her report for every Track 1
03:27:55PM 9 Plaintiff. Like Dr. Goodman, she's from the company Gradient
03:27:59PM 10 that charged millions of dollars to the taxpayers, and both
03:28:01PM 11 of them violated the scheduling orders but in different ways.

03:28:03PM 12 So here is what I would like to talk about today
03:28:05PM 13 and it will be straight forward and hopefully quick. First,
03:28:08PM 14 I would like to emphasize the narrow sections of Dr. Bailey's
03:28:11PM 15 report that this motion is challenging.

03:28:13PM 16 Second, I want to explain how they are new. The
03:28:16PM 17 Defendant did not disclose the analyses in those sections in
03:28:20PM 18 Phase II.

03:28:22PM 19 Third, I will explain why they are general
03:28:22PM 20 causation.

03:28:25PM 21 And finally, remind the Court how it already
03:28:27PM 22 concluded that this kind of Phase III general causation new
03:28:32PM 23 testimony violates the scheduling orders. And the proper
03:28:34PM 24 sanction for that is limited exclusion.

03:28:39PM 25 First the narrow sections talking about today.

03:28:42PM 1 We are not talking about all of the Defendants' experts, and
03:28:44PM 2 we are not talking about the entirety of Dr. Bailey's
03:28:47PM 3 reports. We are talking about the narrow sections that
03:28:50PM 4 offered new general causation testimony.

03:28:53PM 5 For context, Dr. Bailey's reports assessed
03:28:57PM 6 causation in three ways; first, epidemiology, risk
03:29:02PM 7 assessment, and margins of exposure.

03:29:05PM 8 One of those she did correctly according to the
03:29:08PM 9 scheduling orders. For epidemiology, all of her 25 reports
03:29:11PM 10 have a Section 5.1 that rely on Phase II expert Dr. Goodman.
03:29:17PM 11 Plaintiffs don't challenge Section 5.1 where Dr. Bailey
03:29:21PM 12 relied on a Phase II expert to provide the underlying source
03:29:25PM 13 data.

03:29:26PM 14 But for the other two methodologies, risk
03:29:28PM 15 assessment and margins of exposure, Dr. Bailey relied on her
03:29:32PM 16 own new general causation inputs. She did that in the same
03:29:36PM 17 Section 5.2 for all of her reports and for some of them for a
03:29:41PM 18 supporting Appendix E. Specifically we are talking about
03:29:45PM 19 things called toxicity criteria and points of departure.

03:29:46PM 20 And those are -- doesn't really matter what
03:29:49PM 21 those terms are. But in general, they are Dr. Bailey's --
03:29:53PM 22 what Dr. Bailey says is the safe dose for any human, not
03:29:58PM 23 Plaintiff specific, the same in every Plaintiff specific
03:30:01PM 24 causation report. And that's all that's at issue here, the
03:30:04PM 25 toxicity criteria, the points of departure, Section 5.2 and

03:30:09PM 1 sections that rely on it.

03:30:10PM 2 So now I want to talk about why this was new and
03:30:14PM 3 not disclosed in Phase II. So none of Defendants' general
03:30:17PM 4 causation experts offered the toxicity criteria or points of
03:30:21PM 5 departure at Phase II that Dr. Bailey relies on.

03:30:23PM 6 This Court said you can't do novel threshold
03:30:27PM 7 calculations in a Phase III report, and that's exactly what
03:30:31PM 8 Dr. Bailey did. This Court also said that in Phase III you
03:30:34PM 9 can't offer any general causation methodologies that were not
03:30:36PM 10 timely disclosed in Phase II.

03:30:38PM 11 But no Phase II experts for Defendant said that
03:30:44PM 12 Defendants intended to use risk assessment or margins of
03:30:47PM 13 exposure methodologies that Dr. Bailey used. They were
03:30:51PM 14 supposed to inform. The methodologies disclosed in Phase II
03:30:54PM 15 were supposed to inform Phase III, but those methodologies
03:30:56PM 16 were not disclosed.

03:30:56PM 17 In fact, Defendant did the opposite. Defendant
03:30:59PM 18 disclosed to Dr. John Lipscomb who said that this type of
03:31:03PM 19 toxicity criteria that Dr. Bailey relies on can't be used for
03:31:07PM 20 causation. He was the only expert disclosed that talked
03:31:10PM 21 about risk assessment at all. And he said he would not offer
03:31:13PM 22 any opinions on risk assessment for causation.

03:31:16PM 23 So at Phase II, the setup was this methodology
03:31:18PM 24 is bad. Not going to use it. And then Dr. Bailey comes
03:31:21PM 25 along and does use this methodology and uses these new

03:31:24PM 1 criteria never disclosed in Phase II. Toxicity criteria.

03:31:28PM 2 Points of departure. All these in analyses never disclosed.

03:31:31PM 3 To be clear, Defendant does not even dispute, I

03:31:35PM 4 think, that in its motion that these are new. Defendant

03:31:38PM 5 admits that Dr. Bailey did not take these numbers from Phase

03:31:44PM 6 II general causation experts but instead from the EPA and the

03:31:48PM 7 ATSDR. That's enough on its own to find that this is new.

03:31:51PM 8 But to be clear, this is not just EPA numbers

03:31:54PM 9 that Dr. Bailey uses. These are Dr. Bailey's numbers. They

03:31:57PM 10 are not off the shelf from the EPA. She had to make

03:32:00PM 11 complicated choices about which numbers to apply.

03:32:02PM 12 THE COURT: Question. Was ATSDR and EPA studies

03:32:06PM 13 on which Dr. Bailey relied disclosed in Defendants' Phase II

03:32:10PM 14 disclosure?

03:32:12PM 15 MR. HALFON: Certainly those are studies that

03:32:14PM 16 the parties have known about and talked about for a long

03:32:18PM 17 time. What the Defendant never did is have an expert that

03:32:22PM 18 said we are going to rely on this study and these numbers for

03:32:26PM 19 this purpose. And I want to be clear. It's not like there

03:32:31PM 20 are numbers that were in these reports.

03:32:32PM 21 The numbers in Dr. Bailey's reports that are in

03:32:35PM 22 the tables in Section 5.2 were never in any Defendant Phase

03:32:39PM 23 II report.

03:32:40PM 24 And part of that is because Dr. Bailey created

03:32:43PM 25 these numbers on her own. So, for example, the EPA has no

03:32:48PM 1 bladder cancer numbers. There's no toxicity criteria for
03:32:52PM 2 bladder cancer there. So Dr. Bailey had to choose what am I
03:32:55PM 3 going to do, and she chose to use a mix of other cancers.
03:32:58PM 4 Liver. Blood. Kidney.

03:33:00PM 5 And she uses this mix of other numbers that she,
03:33:02PM 6 for the first time, presents this new analysis. I am going
03:33:04PM 7 to say that this is what's the proper toxicity criteria for
03:33:08PM 8 bladder cancer, for example.

03:33:10PM 9 A quote from her reports is I chose to use the
03:33:13PM 10 higher end of the range provided by EPA, for example, just to
03:33:16PM 11 show that she's making choices here that were never disclosed
03:33:19PM 12 at Phase II about what the proper thresholds for a safe dose
03:33:23PM 13 are.

03:33:24PM 14 Defendant admits that she extrapolated and
03:33:27PM 15 modified from what the EPA did in their brief. They use the
03:33:30PM 16 words extrapolate and modify. And that's an understatement.
03:33:33PM 17 She calculated her own.

03:33:34PM 18 If you look at Appendix E, for all the bladder
03:33:37PM 19 reports she says because the EPA does not provide points of
03:33:40PM 20 departure for TCE or vinyl chloride, I have estimated those.
03:33:46PM 21 And then she walks through those new calculations in that
03:33:50PM 22 appendix. These are new calculations of general causation
03:33:53PM 23 data that she's presenting for the first time on Phase III.
03:33:55PM 24 That's new and doesn't explain why they are general causation
03:34:00PM 25 testimony.

03:34:00PM 1 The Fourth Circuit has defined general causation
03:34:02PM 2 as opinions on what levels of exposure are hazardous to human
03:34:06PM 3 beings generally. That's from the *Zellers* case that we
03:34:09PM 4 cited. It's also that case was citing the *Westberry* case,
03:34:13PM 5 one of the foundational cases in the Fourth Circuit.

03:34:15PM 6 Dr. Bailey's toxicity criteria and points of
03:34:16PM 7 departure are exactly that. They are calculations of the
03:34:19PM 8 levels of toxin that may be hazardous to human beings
03:34:23PM 9 generally. Her own definitions include concentrations at or
03:34:28PM 10 below which adverse health effects are not expected. And
03:34:31PM 11 another definition she has in every report is quantitative
03:34:35PM 12 estimates at risk of the adverse health effects associated
03:34:38PM 13 with given chemical exposure.

03:34:42PM 14 These are general causation numbers. They are
03:34:42PM 15 about the levels that can or cannot cause a disease. With
03:34:46PM 16 toxicity criteria, Dr. Bailey is testifying about -- she's
03:34:51PM 17 saying that the hazardous level for any of these toxins is
03:34:55PM 18 above the numbers in the tables in her Section 5.2.

03:34:59PM 19 The clearest sign that these are general
03:35:02PM 20 causation numbers is that they are the same for every report.
03:35:05PM 21 They are not Plaintiff specific. She, in fact, calls them
03:35:08PM 22 chemical specific. That's a quote from her reports.

03:35:11PM 23 You compare the Section 5.2, for example, in all
03:35:14PM 24 of her bladder cancer reports, they are the same. They have
03:35:16PM 25 the same tables with the same numbers. And none of those

03:35:19PM 1 numbers were in any Phase II reports.

03:35:21PM 2 If you compare the Appendix E to all the bladder
03:35:24PM 3 cancer reports. Same calculations. Same tables. Same
03:35:27PM 4 numbers for every Plaintiff. And that's for every other
03:35:29PM 5 disease, too.

03:35:30PM 6 So there will be different numbers between
03:35:32PM 7 bladder cancer and kidney cancer because they are different
03:35:34PM 8 diseases that have different thresholds. But it's Dr. Bailey
03:35:38PM 9 that is providing those numbers for the first time.

03:35:40PM 10 The Defendant argues that these, nonetheless,
03:35:47PM 11 that Dr. Bailey is presenting specific causation evidence
03:35:50PM 12 only for two reasons. They are both wrong.

03:35:51PM 13 The first is that Defendant argues that the risk
03:35:54PM 14 assessments are all Plaintiff specific comparisons. But it's
03:35:58PM 15 not the comparison that's the problem. It's the source data.
03:36:01PM 16 The source data should have come from a general causation
03:36:03PM 17 expert at Phase II.

03:36:04PM 18 What this comparison is in risk assessment is
03:36:07PM 19 Dr. Bailey is comparing Plaintiffs' exposure numbers which
03:36:11PM 20 are specific causation. That's fine. We don't challenge
03:36:13PM 21 those. To a general toxicity level. That is general
03:36:17PM 22 causation.

03:36:18PM 23 And she has a perfect example of how to follow
03:36:21PM 24 the scheduling orders in her reports which is how she treats
03:36:25PM 25 the epidemiology. For the epidemiology approach that she

03:36:29PM 1 uses, that's one of her three approaches, she compares
03:36:32PM 2 Plaintiffs' exposure specific causation numbers to
03:36:35PM 3 epidemiology numbers taken from Dr. Goodman.

03:36:37PM 4 Those were disclosed at Phase II. Those were
03:36:41PM 5 timely. We have no argument about those in this motion. But
03:36:44PM 6 the numbers taken for the comparison for the general toxicity
03:36:50PM 7 level for the other two, they come from Dr. Bailey. She's
03:36:53PM 8 presenting them for the first time. She selected them. She
03:36:55PM 9 calculated them.

03:36:56PM 10 Second, Defendant argues that these aren't
03:36:59PM 11 thresholds at all. And that's a semantic distraction.
03:37:02PM 12 Defendant pretends there's some difference between levels
03:37:05PM 13 saying what levels are not hazardous versus saying what
03:37:08PM 14 levels are hazardous.

03:37:09PM 15 But those are both just about testimony about
03:37:12PM 16 what levels are harmful to humans generally. Neither is
03:37:16PM 17 Plaintiff specific. It's just the difference in the nature
03:37:18PM 18 of what each side has to prove.

03:37:20PM 19 So Plaintiffs present general causation evidence
03:37:22PM 20 of what can cause cancer and Defendants present general
03:37:25PM 21 causation evidence of what cannot cause cancer. But both of
03:37:28PM 22 those are general causation evidence.

03:37:30PM 23 It's wrong anyway for the Defendant to say that
03:37:32PM 24 Dr. Bailey is not testifying about what can cause cancer or
03:37:36PM 25 what is hazardous. She is. Her numbers in her tables are

03:37:39PM 1 opinions about what levels are hazardous because she's saying
03:37:42PM 2 the hazardous levels above each of those numbers in the
03:37:45PM 3 table. That's why she says Plaintiffs' exposure is important
03:37:49PM 4 to her but all below those, none of them are caused by Camp
03:37:53PM 5 Lejeune water, of course.

03:37:53PM 6 These are plainly general causation numbers.

03:37:55PM 7 The toxicity criteria and the points of departure in Section
03:37:59PM 8 5.2 in Appendix E of all of her reports.

03:38:02PM 9 THE COURT: Okay.

03:38:04PM 10 MR. HALFON: The only last point I would make is
03:38:06PM 11 that if that's so, we talked about how we are only talking
03:38:11PM 12 about a narrow thing; that these were not disclosed at Phase
03:38:15PM 13 II and they are general causation, and the Court has already
03:38:18PM 14 analyzed this exact scenario.

03:38:21PM 15 In the Court's Docket 444 order, the Court said
03:38:25PM 16 that new general causation testimony violates the scheduling
03:38:29PM 17 order and a proper sanction for that is limited exclusion.
03:38:32PM 18 In this Court's words, barring new analyses preserves docket
03:38:36PM 19 control and its balanced approach keeps the litigation on its
03:38:38PM 20 current pretrial track which is what Plaintiff supports.

03:38:41PM 21 That's the law of the case. What's good for the
03:38:43PM 22 goose is good for the gander. And to oppose that, Defendant
03:38:47PM 23 has to effectively ask to reconsider the Court's prior order
03:38:50PM 24 which, by the way, granted Defendants' own motion. Here are
03:38:54PM 25 Defendants' words in its motion requesting exclusion of this

03:38:56PM 1 type of testimony.

03:38:57PM 2 THE COURT: Where you say in Docket Entry 787
03:39:03PM 3 that Plaintiffs' Phase III general causation testimony was
03:39:08PM 4 excluded by the July 22 order, what testimony fell within
03:39:13PM 5 that order?

03:39:15PM 6 MR. HALFON: So that order did not specify
03:39:17PM 7 testimony that was excluded. This Court later -- Your Honor
03:39:21PM 8 later characterized that order and said the 444 order
03:39:24PM 9 explained permissible and sanctionable conduct under the
03:39:28PM 10 Court's scheduling orders to which both parties are bound.

03:39:29PM 11 So it sort of set a rule but it didn't specify
03:39:33PM 12 what testimony violated that rule. We are now arguing that
03:39:36PM 13 this testimony from Dr. Bailey violated that rule.

03:39:39PM 14 Defendants -- their motion that this Court partially granted
03:39:44PM 15 in setting that rule listed a number of Plaintiffs' experts.

03:39:51PM 16 But Defendants had presented those experts
03:39:54PM 17 before this Court's order setting the rule, and Defendant has
03:39:59PM 18 sought exclusion of all their -- any general causation
03:40:03PM 19 references is my understanding in Plaintiffs' specific
03:40:05PM 20 causation reports.

03:40:06PM 21 And this Court instead had a balanced approach
03:40:08PM 22 that said you can -- specific causation experts can reference
03:40:11PM 23 general causation in general but you have to rely on Phase II
03:40:15PM 24 disclosures to do so.

03:40:16PM 25 So the answer to your question is, I don't know

03:40:22PM 1 that the parties have fully resolved what how this order, the
03:40:26PM 2 444 order applies to Plaintiffs' experts. There hasn't been
03:40:30PM 3 a specific motion about that or a specific resolution
03:40:33PM 4 pretrial is my understanding.

03:40:35PM 5 But Plaintiffs have now asked to exclude the new
03:40:38PM 6 general causation testimony from Dr. Bailey under that order.
03:40:41PM 7 Same reasoning as that order.

03:40:44PM 8 THE COURT: Okay. Thank you.

03:40:45PM 9 MR. HALFON: Thank you, Your Honor. I
03:40:46PM 10 appreciate it.

03:40:55PM 11 THE COURT: I am going to give -- I think I gave
03:40:56PM 12 you 20 minutes. I will give Defendant 20 minutes. Same two
03:41:03PM 13 questions. Was ATSDR and EPA studies on which Dr. Bailey
03:41:11PM 14 relied on disclosed in Defendants' Phase II disclosure? If
03:41:13PM 15 so, where are they in the record?

03:41:15PM 16 I am going to also ask you the same question as
03:41:17PM 17 to Plaintiffs. What testimony fell within the Court's order?
03:41:21PM 18 And then I have a third question for you. Did any Phase II
03:41:25PM 19 expert discuss points of departure or toxicity criteria in
03:41:30PM 20 Phase II? If so, who and what's the report?

03:41:35PM 21 MR. CARPENITO: Good afternoon, Your Honor.

03:41:37PM 22 Thank you. To your first question, some of the studies are
03:41:41PM 23 disclosed in Phase II. And I will get that information for
03:41:44PM 24 the Court exactly where they are in the record.

03:41:47PM 25 THE COURT: Do you know which studies they were?

03:41:49PM 1 MR. CARPENITO: Do I have the names of those
03:41:51PM 2 studies? I do not, Your Honor.

03:41:53PM 3 To your second question, none of the United
03:41:56PM 4 States Phase II experts disclosed these toxicity criteria.
03:41:59PM 5 And this is really the fundamental dispute here between the
03:42:02PM 6 parties. It's interesting that Plaintiff started their
03:42:04PM 7 argument by saying that it doesn't matter what the toxicity
03:42:07PM 8 criteria are.

03:42:08PM 9 The fundamental dispute here is whether these
03:42:11PM 10 toxicity criteria are general causation material. Or stated
03:42:16PM 11 differently, is a toxicity criteria representative of whether
03:42:20PM 12 a chemical can cause a disease to prove general causation.
03:42:23PM 13 And the answer is no, they are not, because they are set at
03:42:27PM 14 levels much farther below that because these are regulatory
03:42:31PM 15 agency values that are designed to protect public health.

03:42:34PM 16 And if these toxicity criteria were as
03:42:37PM 17 Plaintiffs argue them to be, then the entire line of caselaw
03:42:41PM 18 that says you cannot use regulatory values to prove causation
03:42:45PM 19 would be rendered moot.

03:42:46PM 20 And Judge Flanagan has a decision in *Yates*
03:42:49PM 21 *versus Ford Motor* in which she discusses this. She has a
03:42:52PM 22 footnote, Footnote 7 in that case, in which she collects
03:42:56PM 23 cases that stand for that same proposition.

03:42:58PM 24 Now, the other point is understanding what
03:43:02PM 25 Dr. Bailey did. She did not -- the Court's July 22nd order

03:43:08PM 1 actually defines general causation by way of an example at
03:43:12PM 2 one point. And I will quote here. "What exposure to Benzene
03:43:15PM 3 is sufficient to cause Leukemia?"

03:43:20PM 4 That's not the question that Dr. Bailey
03:43:22PM 5 answered. Dr. Bailey answered a very different Plaintiff
03:43:24PM 6 specific question which is this. Given this individual
03:43:27PM 7 Plaintiff's actual level of exposure, what does risk
03:43:30PM 8 assessment show about that individual Plaintiff's level of
03:43:33PM 9 risk.

03:43:35PM 10 She had to take into account the exposure
03:43:37PM 11 duration, exposure frequency, activities on base, did an
03:43:42PM 12 individual swim in a swimming pool or did they work in the
03:43:45PM 13 mess hall. All Phase III questions.

03:43:48PM 14 What Dr. Bailey did is entirely different from
03:43:51PM 15 the conduct that the United States sought to exclude in their
03:43:54PM 16 June motion of which Your Honor's July 22nd order addressed
03:43:59PM 17 where their own experts in deposition testified that they
03:44:03PM 18 were making their own general causation determinations.

03:44:07PM 19 Dr. Bailey repeatedly testified in deposition
03:44:11PM 20 for everything related to general causation, she was relying
03:44:14PM 21 on Dr. Goodman.

03:44:21PM 22 Now, Your Honor, there are a couple of
03:44:22PM 23 additional points that I would like to go over. Plaintiffs
03:44:27PM 24 say that these are new because Dr. Bailey calculated these
03:44:32PM 25 toxicity criteria herself. She did not. These numbers come

03:44:37PM 1 from the agency, and that is reflected in the tables in
03:44:40PM 2 Section 5 of her report.

03:44:44PM 3 The other important piece here with respect to
03:44:46PM 4 points of departure, respectfully, I disagree with my
03:44:50PM 5 counterpart. It is not an argument over semantics. It is an
03:44:55PM 6 argument over understanding precisely what a point of
03:44:57PM 7 departure is.

03:44:58PM 8 And it is not a threshold dose for determining
03:45:01PM 9 general causation. If it were, all of the Phase III experts
03:45:05PM 10 could have pointed to it. None of them did. None of the
03:45:08PM 11 United States' medical cause experts relied on these toxicity
03:45:12PM 12 criteria for general causation.

03:45:15PM 13 Plaintiffs also made reference to Dr. Bailey
03:45:20PM 14 choosing the upper bound. And I am happy to answer questions
03:45:24PM 15 for the Court about where this comes in, how it fits into the
03:45:27PM 16 opinion.

03:45:27PM 17 But from a high level, Your Honor, everything
03:45:29PM 18 that Dr. Bailey did, including in that situation where she
03:45:32PM 19 chooses the upper bound, is a methodological anchor to ensure
03:45:37PM 20 that she is not underestimating risk.

03:45:39PM 21 She is doing everything from a health protective
03:45:42PM 22 standpoint. She takes these overly conservative toxicity
03:45:48PM 23 criteria and compares them to an individual Plaintiff's
03:45:51PM 24 actual level of exposure. Because Dr. Bailey compares an
03:45:55PM 25 individual level of exposure to levels set far below general

03:45:59PM 1 causation levels does not transform her opinions into general
03:46:02PM 2 causation opinions and it certainly does not transform the
03:46:05PM 3 toxicity criteria into general causation evidence.

03:46:08PM 4 Your Honor, I am happy to answer any questions
03:46:11PM 5 the Court may have, but we respectfully ask that Plaintiffs'
03:46:14PM 6 motion at Docket Entry 787 be denied. Thank you.

03:46:19PM 7 THE COURT: Do you want to be heard in reply?

03:46:22PM 8 MR. HALFON: Very briefly, Your Honor. All I
03:46:24PM 9 will say is there were a lot of admissions. Admissions that
03:46:26PM 10 toxicity criteria were not disclosed in Phase II.

03:46:32PM 11 My colleague stated that Dr. Bailey relied on
03:46:35PM 12 Dr. Goodman. That is not true as to toxicity criteria. That
03:46:40PM 13 is true as to epidemiology. Absolutely. Plaintiffs do not
03:46:43PM 14 challenge Dr. Bailey's reliance on Dr. Goodman for
03:46:47PM 15 epidemiology.

03:46:47PM 16 That is evidence of how she should have done
03:46:49PM 17 this under the scheduling orders for the other methods.
03:46:51PM 18 Instead, there was an admission that these numbers came from
03:46:55PM 19 agencies.

03:46:56PM 20 And I want to be clear. I think that's an
03:46:59PM 21 admission that this is general causation numbers. Did the
03:47:02PM 22 EPA consider Mark Cagiano? Did the EPA consider the other
03:47:06PM 23 Plaintiffs here? Of course not. The agencies are making
03:47:08PM 24 these numbers as they apply generally to humans because these
03:47:12PM 25 are general causation numbers. And they were not disclosed

03:47:14PM 1 as admitted, right today, that they were not disclosed in
03:47:18PM 2 Phase II.

03:47:20PM 3 The only argument seems to be that they are not
03:47:23PM 4 general causation numbers because they are below the level
03:47:25PM 5 required to cause cancer. I think I addressed that but the
03:47:29PM 6 idea is that that is simply Defendants' side of general
03:47:33PM 7 causation.

03:47:34PM 8 It's saying this is what may or may not cause
03:47:38PM 9 cancer in the general population. It's not Plaintiff
03:47:42PM 10 specific. That's why toxicity criteria are general causation
03:47:48PM 11 numbers. They say they are safe levels, but the point is
03:47:50PM 12 that they are numbers. They are levels that are for the
03:47:53PM 13 general population that are being compared to Plaintiff
03:47:56PM 14 specific numbers.

03:47:56PM 15 The Plaintiff specific numbers are fine. And
03:47:58PM 16 the comparison is, in theory, fine if you are taking your
03:48:04PM 17 comparative, your baseline number, from what was supposed to
03:48:07PM 18 be disclosed at Phase II. That was the whole point of the
03:48:09PM 19 phasing. That's my response to that, Your Honor. Thank you.

03:48:20PM 20 MR. CARPENITO: Your Honor, may I briefly? Two
03:48:23PM 21 points. This is from a report that they cite repeatedly in
03:48:26PM 22 their briefing. The aim of US EPA and other public health
03:48:30PM 23 agencies is not precisely to define which effects are
03:48:34PM 24 expected to occur at any given exposure level but to define
03:48:38PM 25 the level at which health effects are unlikely to occur.

03:48:41PM 1 That is an entirely different question than Phase II general
03:48:43PM 2 causation. That's the only point I would like to say.

03:48:47PM 3 THE COURT: Did you cite that *Yates* case in your
03:48:49PM 4 briefing?

03:48:50PM 5 MR. CARPENITO: I did not, Your Honor.

03:48:51PM 6 THE COURT: Do you have a cite for that?

03:48:52PM 7 MR. CARPENITO: I sure do. That is *Yates versus*
03:49:06PM 8 *Ford Motor Company*, 2015. Westlaw 2189774. Decided on May
03:49:13PM 9 11th of 2015.

03:49:20PM 10 THE COURT: Okay. Thank you very much. Well
03:49:22PM 11 briefed. I will get a decision out pretty soon. Have a good
03:49:27PM 12 weekend.

03:49:34PM 13 (The hearing concluded at 3:49 p.m.)

14

15 C E R T I F I C A T I O N

16

17 I certify that the foregoing is a correct
18 transcript from the record of proceedings in the
19 above-entitled matter.

20

21 /s/ Bobbie J. Shanfelder

22 Bobbie J. Shanfelder, RDR, CRR

23 Official Court Reporter

24 Date: February 16, 2026

25