

Feds Can Keep Defenses In Camp Lejeune Water Suits

By **Travis Bland**

Law360 (June 26, 2023, 4:37 PM EDT) -- A North Carolina federal judge ruled Monday that the federal government can keep its affirmative defenses intact to rebut allegations that water from the Camp Lejeune Marine base poisoned people, saying any vagueness in the defenses was only due to vagueness in the complaints themselves.

U.S. District Judge Terrence W. Boyle, who is presiding over the Camp Lejeune water contamination hearings, said in an order that deficiencies in the plaintiffs' complaints led to overpleading of defenses by the government.

"In this posture, and at this stage in the overall Camp Lejeune Justice Act proceedings, the court will not strike any affirmative defenses at this time," Judge Boyle said in the order.

The plaintiffs can ask to scratch the defenses as insufficient later in the litigation, Judge Boyle said.

Monday's order came after **a hearing on Wednesday** concerning motions to strike the government's defenses. At that hearing, the court heard from 122 plaintiffs represented by six attorneys who spoke and called the government's defenses insufficient and suffering from "prominent pitfalls" that were against civil procedure rules.

The government's defenses were general and didn't respond with any degree of specifics to the allegations in the complaints, the plaintiffs argued in their case for tossing the government's responses.

The government asserted that its defenses lack specifics because the complaints also didn't contain details. The complaints were "formulaic" and didn't show when and how the plaintiffs were exposed to the contaminated water, the government said.

The government's argument proved persuasive enough for Judge Boyle.

The government's defenses included claims that the plaintiffs failed to state a claim, that the toxic water was caused by a dry cleaner, that plaintiffs didn't stop consuming the water despite knowing it was poisoned and that it shouldn't be totally financially liable for injuries, among others.

Many of the 122 cases from Wednesday's hearing were filed in March, and the government responded to the complaints in May. The plaintiffs filed requests to have the defenses tossed this month.

The U.S. Department of the Navy, which operates the Marine base, has received tens of thousands of administrative complaints concerning injuries from the water contamination, and more than a thousand lawsuits have been filed in the Eastern District of North Carolina, according to information from the Wednesday hearing.

The cases before Judge Boyle were filed under the Camp Lejeune Justice Act of 2022, authorizing the claims and barring the federal government from asserting immunity as a defense. Those claims allege that people living or working on the base from 1953 through 1987 consumed contaminated water and developed a host of life-altering health conditions.

Previous Camp Lejeune water contamination claims had been consolidated in multidistrict litigation, but they were tossed in 2016 after the Eleventh Circuit ruled North Carolina's 10-year statute of

repose negated the allegations.

Counsel for the plaintiffs did not immediately respond to requests for comment Monday or gave no comment.

Hunter Shkolnik, representing some of the plaintiffs who sought to strike the defense, told Law360 on Monday: "We understand the court's ruling and are comforted that Judge Boyle confirmed the intradistrict mass coordination process that we have been seeking. This motion can be wrapped into discussions related to a master complaint and master answer. While these issues are dealt with, we hopefully can pursue settlement talks."

The plaintiffs were represented at the hearing by Ed Bell of Bell Legal Group, Kevin Dean of Motley Rice LLC, Zina Bash of Keller Postman LLC, Mona Lisa Wallace of Wallace & Graham, Joel Rhine of Rhine Law Firm and Nevin Wisnoski of Napoli Shkolnik PLLC.

Additionally, some of the plaintiffs are represented by Hunter Shkolnik of Napoli Shkolnik PLLC.

The U.S. government is represented by Adam Bain and Haroon Anwar of the U.S. Department of Justice.

The 122 cases against the United States of America are filed in U.S. District Court for the Eastern District of North Carolina.

--Editing by Rich Mills.