IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-CV-897

IN RE: CAMP LEJEUNE WATER LITIGATION	)
	)
This Pleading Relates to:	)
	)
Jefferson Criswell v. USA, 7:23-CV-1482-M	)
Terry F. Dyer v. USA, 7:23-CV-357-M	)
Mark A. Cagiano v. USA, 7:23-CV-569-M	)
Jimmy Laramore v. USA, 7:23-CV-594-M	)
Bruce W. Hill v. USA, 7:23-cv-00028-D	)
Karen Amsler v. USA, 7:23-cv-00284-D	)
Frances Carter v. USA, 7:23-cv-1565-D	)
Robert Kidd v. USA, 7:23-cv-01489-D	)
Scott Keller v. USA, 7:23-cv-01501-D	)

PLAINTIFFS' LEADERSHIP GROUP'S OPPOSITION TO DEFENDANT'S MOTION [D.E. 822] TO RECONSIDER FEBRUARY 27, 2026 ORDER [D.E. 818] AS TO MOTION FOR SUMMARY JUDGMENT FOR LACK OF EXPERT TESTIMONY ON BUT-FOR CAUSATION [D.E. 601]

INTRODUCTION

In another attempt to delay bellwether trials, Defendant asks the Court to partially reconsider its February 27, 2026 Order [D.E. 818] and rule on one of its pending motions [D.E. 601] (the "But-For Causation Motion") before scheduling trials. The Court should deny reconsideration. Defendant's motion does not satisfy the standards for reconsideration under Rules 54(b) or 60(a), and Defendant's framing of its But-For Causation Motion as a "critical question of statutory interpretation" that must be resolved globally before any trials are scheduled fundamentally mischaracterizes both the nature of the But-For Causation Motion and the Court's February 27, 2026 Order. The But-For Causation Motion seeks summary judgment in only seven cases across three of five disease groups pending before two judges, not all four. Resolution of the motion requires the two judges—Chief Judge Myers and Judge Dever—to evaluate the expert testimony offered in each specific case to determine whether that testimony meets the Camp Lejeune Justice Act's causation standard. That is precisely the kind of case-by-case analysis the Court's February 27, 2026 Order contemplated when it held motions in abeyance and empowered each judge to manage their assigned cases through bellwether trials.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 54(b), an interlocutory order "may be revised at any time before the entry of a [final] judgment." Fed. R. Civ. P. 54(b). The discretion to revise interlocutory orders, however, is "not limitless." *Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017). District courts can revise interlocutory orders pursuant to Rule 54(b) in three circumstances: "(1) a subsequent trial produc[es] substantially different evidence; (2) [there is] a change in applicable law; or (3) clear error caus[es] manifest injustice." *Id.* (citation modified).

Federal Rule of Civil Procedure 60(a) permits the court, "on motion or on its own," to "correct a clerical mistake or mistake arising from oversight or omission wherever one is found in

a[n] . . . order." Fed. R. Civ. P. 60(a); *see also* [D.E. 685] at 2.

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. . . . Motions to reconsider are not proper where the motion merely asks the court to rethink what the Court had already thought through rightly or wrongly." *SMD Software, Inc. v. eMove, Inc.,* No. 5:08-CV-403-FL, 2014 WL 1807809, at *1 (E.D.N.C. May 7, 2014) (citation omitted); *see also F.D.I.C. v. Willetts,* 882 F.Supp.2d 859, 867 (E.D.N.C. 2012) (motions to reconsider are limited to the purpose of allowing the court to "correct manifest errors of law or fact or to consider newly discovered evidence," and not to simply ask the court to re-evaluate its decision (citation omitted)).

ARGUMENT

I. Defendant's Motion Does Not Meet the Standards for Reconsideration Under Federal Rules 54(b) or 60(a).

Defendant bases its Motion on Rules 54(b) and 60(a), but neither permits reconsideration here. District courts can reconsider interlocutory orders under Rule 54(b) in only three circumstances: "(1) a subsequent trial produc[es] substantially different evidence; (2) [there is] a change in applicable law; or (3) clear error caus[es] manifest injustice." *Carlson*, 856 F.3d at 325 (citation modified). None of these conditions is satisfied. There is no new evidence, no change in law, and the Court's February 27, 2026 Order made no clear error causing manifest injustice. Defendant has not even attempted to argue the facts here fall into any of these categories. Defendant references efficiency concerns (not a basis for reconsideration), arguing that the But-For Causation Motion should be decided before trials are set because it will "inform what cases and evidence are appropriate for trial." [D.E. 823] at 4. Defendant's argument ignores the fact the Court has already explained why evaluating expert testimony in the context of each individual trial is more efficient. *See* [D.E. 818] at 11. Rule 54(b) offers no basis to reconsider the Court's February

27, 2026 Order.

Rule 60(a) permits courts to correct clerical mistakes, oversights, or omissions. The Court's February 27, 2026 Order was not the product of an omission, oversight, or clerical error. It reflected a deliberate case-management decision grounded in the Court's broad discretion to manage complex litigation and its judgment that bellwether trials provide the most efficient and fair path to global resolution. The February 27, 2026 Order evidences the Court's careful consideration of the parties' arguments—including the very argument Defendant raises now. Plaintiffs' motion to reserve admissibility determinations, though targeted primarily at motions relating to the admissibility of expert testimony, argued that the Court need only decide Phase I motions and the parties' respective motions on the CLJA's "as likely as not" standard before trials. *See* [D.E. 721] at 11-12 (arguing that granting Plaintiffs' motion would leave before trials "as few as two pending Phase II/III motions," referring to [D.E. 539] and [D.E. 567] on "as likely as not"). Defendant's opposition specifically argued that the Court should *also* consider its But-For Causation Motion before trials, describing it as "universally applicable to all cases" and asserting it "would be more efficient for the *en banc* Court to decide these universal motions before trial to avoid the possibility of inconsistent decisions." [D.E. 733] at 14. Since Defendant's original briefing raised the exact same argument it asks this Court to reconsider, there is no basis to conclude the Court's ruling overlooked the But-For Causation Motion.

To the extent Defendant is arguing that the Court based its Order on a mistaken understanding of the But-For Causation Motion as a "summary judgment motion dependent upon Rule 702 determinations" when Defendant claims the motion "seeks summary judgment on independent ground that . . . the opinions of Plaintiffs' specific causation experts (even if admissible) fall short of the CLJA's specific causation requirement," [D.E. 823] at 3, such

argument is a distinction without a difference. At its core, Defendant's But-For Causation Motion challenges the *relevance* of the experts' testimony, because testimony that does not help the Court assess the case under the correct legal standard is irrelevant. Relevance, of course, is one of the two fundamental *Daubert* inquiries. Defendant ignores that the thrust of the Court's Order is to defer consideration of motions that require careful expert-by-expert analysis in individual cases, which is exactly what deciding the But-For Causation Motion would require (as further explained below). Such analysis is best left to the two judges overseeing the seven cases at issue. Defendant fails to show that this Court made any oversight when it included the But-For Causation Motion among those held in abeyance, and therefore Rule 60(a) provides no basis for reconsideration, either.

Because no rule permits reconsideration here, the Court should deny Defendant's motion.

II. The Court Should Not Reconsider Its Order Because the But-For Causation Motion Requires Case-by-Case Analysis in Only Seven Cases Before Two Judges.

The Court correctly held the But-For Causation Motion in abeyance, recognizing that deciding it requires a plaintiff-by-plaintiff, expert-by-expert analysis best left to the individual judge overseeing each case at issue. Defendant argues that the But-For Causation Motion "raises a critical question of statutory interpretation" about whether the language used by Plaintiffs' specific causation experts satisfies the CLJA's causation standard. *See* [D.E. 823] at 1. It is undisputed, however, that Defendant's But-For Causation Motion relates to only seven plaintiffs before two judges. Deciding the But-For Causation Motion requires a close review of the bladder and blood cancer expert reports and an analysis of the facts of each bellwether plaintiff's case. Defendant acknowledged as much when it structured its motion around a plaintiff-by-plaintiff, expert-by-expert analysis of the particular opinions offered in each case. *See* [D.E. 602] at 1–13 (devoting twelve pages to the details of each plaintiff's expert testimony). It makes no sense to ask

four judges to rule now on a Motion that is only properly before two of them. The two judges overseeing these seven cases are fully capable of evaluating the sufficiency of the expert testimony in the cases before them, whether as part of the pretrial process or at trial.

Defendant argues the But-For Causation Motion must be decided before trials are set "because the decision will necessarily inform what cases and evidence are appropriate for trial." [D.E. 823] at 4. This reflects the faulty premise underlying Defendant's But-For Causation Motion, which attempts to impose a heightened causation standard on CLJA claims. The Court has been clear that the "CLJA's causation standard" did not "depart[] from common-law tort default rules," [D.E. 227] at 5. There is no need for additional clarification and the parties can present their evidence in light of that standard. As the PLG explained in its opposition to the But-For Causation Motion, Defendant's argument is fundamentally a red herring that seeks to import a "magic words" requirement into the specific causation analysis. *See* [D.E. 710] at 14-24. Through its reconsideration request, Defendant seems to be asking this Court not to analyze the expert testimony in depth but instead to blindly strike expert testimony using the phrase "substantial contributing factor"—even though that is the standard routinely used by this Court and in this Circuit. *See, e.g.*, [D.E. 227] at 8, 12 (citing *Nix v. Chemours Co. FC*, No. 7:17-CV-189, 2023 WL 6471690, at *8 (E.D.N.C. Oct. 4, 2023); *Rhyne v. U.S. Steel Corp.*, 474 F. Supp. 3d 733, 743 (W.D.N.C. 2020); *In re Lipitor*, 892 F.3d 624, 644 (4th Cir. 2018)); *see also Connor v. Covil Corp.*, 996 F.3d 143, 148 (4th Cir. 2021); *Finch v. Covil Corp*., 972 F.3d 507, 512 (4th Cir. 2020); *Ross v. Wash. Mut. Bank*, 566 F. Supp. 2d 468, 479 (E.D.N.C. 2008), *aff'd sub nom.*, *Ross v. F.D.I.C*., 625 F.3d 808 (4th Cir. 2010); *Foushee v. R.T. Vanderbilt Holding Co.*, 507 F. Supp. 3d 654, 661 (E.D.N.C. 2020), *aff'd*, No. 21-1074, 2023 WL 2888561 (4th Cir. Apr. 11, 2023).

To be clear, should the Court wish to reconsider its approach to the But-For Causation

Motion, it could *deny* Defendant's But-For Causation Motion without conducting a plaintiff-by-plaintiff, expert-by-expert analysis of the particular opinions offered in each case. The denial of Defendant's But-For Causation Motion is fully supported by looking only at the statutory text and case law, and then making clear that there is no heightened causation standard under the CLJA. Any further consideration of the But-For Causation Motion, however, requires a substantive analysis of each case to which it applies. This is because Plaintiffs' Opposition does not only refute Defendant's approach to the causation requirement, but also argues that each expert's case-specific testimony met the CLJA's causation standard. *See* [D.E. 710] at 4-13. Likewise, Defendant's motion asks the Court to evaluate specific expert reports and deposition testimony, determine what those experts meant by phrases like "contributing factor" and "substantial contributing cause," and decide whether those opinions satisfy the CLJA's causation standard as a matter of law. *See* [D.E. 602] at 1–13. Therefore, to *grant* Defendant's motion, the Court would need to engage in a case-by-case, plaintiff-by-plaintiff analysis to see whether the expert testimony demonstrates causation in that instance. The answer could be different based on the evidence presented in each case without necessarily being inconsistent. *Cf.* [D.E. 818] at 16 ("[I]n a bellwether system, varied outcomes from factfinders are not just permissible, but are an expected feature that helps parties gather data to inform global settlement.").

In short, Defendant's But-For Causation Motion argues that Plaintiffs failed to prove causation in seven individual cases before two judges. That question is the point of the bellwether trials. Plaintiffs' Motion to Reserve Admissibility Determinations and Expedite Track 1 Bellwether Trials [D.E. 721] and the Court's February 27 Order both aim to stage these trials as soon as possible, so that Defendant's question can be answered expeditiously, yet with the careful consideration it requires.

CONCLUSION

For the foregoing reasons, Defendant's motion for reconsideration should be denied.

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