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	)	
	)	**ORDER**
THIS DOCUMENT RELATES TO:	)	
	)	
ALL CASES	)	

The United States of America ("defendant") appeals a non-dispositive order ("Order") of United States Magistrate Judge Robert B. Jones, Jr. [D.E. 829]. On December 15, 2025, the Plaintiffs' Leadership Group ("PLG" or "plaintiffs") moved to strike certain of Dr. Lisa Bailey's causation opinions as untimely general causation opinions [D.E. 787]. On March 5, 2026, Magistrate Judge Jones granted the PLG's motion [D.E. 821]. On March 19, 2026, defendant appealed Magistrate Judge Jones's Order [D.E. 829]. On April 2, 2026, the PLG responded in opposition [D.E. 836]. On April 9, 2026, defendant moved for leave to file a reply [D.E. 849] and attached the reply [D.E. 849-1]. As explained below, the court grants defendant's motion for leave to file a reply and affirms Magistrate Judge Jones's Order.

I.

This appeal arises in connection with the Camp Lejeune Justice Act of 2022 ("CLJA"). See Pub. L. No. 117-168, § 804, 136 Stat. 1759, 1802–04. The CLJA authorizes individuals exposed to contaminated water at Marine Corps Base Camp Lejeune between August 1, 1953, and December 31, 1987, to seek appropriate relief. See id. § 804(b).

To promote efficient resolution of this consolidated litigation, the court entered scheduling orders governing phased expert discovery. See generally [D.E. 270, 312, 332, 414, 630]. Expert

discovery has proceeded in three phases: Phase 1 (water contamination), Phase 2 (general causation), and Phase 3 (specific causation, damages, and residual issues). Each phase has deadlines for expert disclosures and expert reports. In relevant part, the court ordered defendant to "disclose its experts relating to the General Causation Phase" by February 7, 2025. [D.E. 312] 1; see id. at 3. On April 8, 2025, defendant designated Dr. Bailey as a Phase 3 expert for all Track 1 plaintiffs. See [D.E. 487-4]. On April 26, 2025, defendant filed Dr. Bailey's specific causation reports. See Bailey Reps. (Bladder Cancer) [D.E. 490-6, 490-9 to 490-12]; (Kidney Cancer) [D.E. 494-6 to 494-10]; (Leukemia) [D.E. 497-1 to 497-5]; (Non-Hodgkin's Lymphoma) [D.E. 490-8, 500-6 to 500-9]; (Parkinson's Disease) [D.E. 503-6 to 503-10].

On December 15, 2025, the PLG moved to strike certain of Dr. Bailey's causation opinions, arguing that Dr. Bailey's reports violated defendant's Phase 2 deadline by introducing a "new general causation analysis" not provided in Phase 2. [D.E. 787] 4; see id. at 5. On March 5, 2026, Magistrate Judge Jones granted the PLG's motion [D.E. 821]. Defendant appealed [D.E. 829].

II.

The court may refer discovery disputes to a United States magistrate judge for resolution. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Local Civ. R. 72.3(b). A party may object to the magistrate judge's order within 14 days after being served with a copy. See Fed. R. Civ. P. 72(a); Local Civ. R. 72.4(a). The court shall "consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). A factual finding is clearly erroneous when the court is "left with the definite and firm conviction that a mistake has been committed." Anderson v. Bessemer City, 470 U.S. 564, 573 (1985) (citation omitted); see United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948); TFWS, Inc. v. Franchot, 572 F.3d 186, 196 (4th Cir. 2009). A magistrate judge's order is contrary to law when "the

magistrate judge has misinterpreted or misapplied applicable law." Cape Fear Pub. Util. Auth. v. Chemours Co. FC, No. 7:17-CV-195, 2025 WL 899327, at *3 (E.D.N.C. Mar. 24, 2025) (unpublished) (citation omitted); see Trudell Med. Int'l v. D R Burton Healthcare, LLC, No. 4:18-CV-9, 2021 WL 684200, at *3 (E.D.N.C. Feb. 22, 2021) (unpublished); Kounelis v. Sherrer, 529 F. Supp. 2d 503, 518 (D.N.J. 2008). "Although the contrary to law standard permits plenary review of legal conclusions, decisions related to discovery disputes and scheduling are accorded greater deference." Cape Fear Pub. Util. Auth., 2025 WL 899327, at *3 (citation omitted); see Trudell, 2021 WL 684200, at *3; Johnson v. City of Fayetteville, No. 5:12-CV-456, 2013 WL 4039418, at *3 (E.D.N.C. Aug. 6, 2013) (unpublished); In re Outsidewall Tire Litig., 267 F.R.D. 466, 470 (E.D. Va. 2010).

III.

Defendant argues that Magistrate Judge Jones's Order is clearly erroneous and contrary to law in its conclusion that Dr. Bailey's reports contain untimely general causation methodologies. See Def.'s App. [D.E. 829] 4–5. Thus, this court reviews the Order by determining whether Dr. Bailey employed a general causation methodology in her reports, and if so, whether the methodology was timely disclosed.

A.

Defendant argues that Dr. Bailey's use of regulatory toxicity criteria and points of departure does not qualify as a general causation methodology. See id. at 4–8. Because causation is a question of law, the court reviews a causation determination under the "contrary to law" standard. See Fed. R. Civ. P. 72(a); Cape Fear Pub. Util. Auth., 2025 WL 899327, at *3; Trudell, 2021 WL 684200, at *3; Kounelis, 529 F. Supp. 2d at 518.

The CLJA requires each plaintiff to establish that it is "at least as likely as not" his or her injury was "caused by exposure to the water at Camp Lejeune." CLJA § 804(b)–(c). To carry that burden of proof, each "plaintiff must demonstrate the levels of exposure [to a specified substance] that are hazardous to human beings generally as well as the plaintiff's actual level of exposure." Westberry v. Gislaved Gummi AB, 178 F.3d 257, 263 (1999) (cleaned up); see also Mitchell v. Gencorp Inc., 165 F.3d 778, 781 (10th Cir. 1999); Wright v. Willamette Indus., Inc., 91 F.3d 1105, 1106 (8th Cir. 1996). In all, CLJA plaintiffs must prove three components of causation: individual exposure, general causation, and specific causation. See In re Camp Lejeune Water Litig., 736 F. Supp. 3d 311, 319 (E.D.N.C. 2024).

Expert witness analyses can help establish these components. In an exposure analysis, an expert opines on the identity and level of toxic substances present at the relevant location. See In re Camp Lejeune Water Litig., No. 7:23-CV-897, 2025 WL 3565850, at *2 (E.D.N.C. Dec. 12, 2025) (unpublished). In a general causation analysis, "an expert demonstrates that a particular type of harm can be caused by the exposure to a degree of scientific certainty." In re Camp Lejeune Water Litig., 736 F. Supp. 3d at 319. In a specific causation analysis, "an expert opines that this plaintiff[']s exposure was a cause in fact of his or her harm." Id.

Defendant designated Dr. Bailey as a specific causation expert for each Track 1 disease. See [D.E. 487-4] 3, 8, 13, 18, 24. Ordinarily in a toxic tort action, a specific causation expert might compare the plaintiff's exposure level to the threshold level that a general causation expert has opined can cause the claimed disease. See David L. Eaton et al., Reference Guide on Toxicology, in Reference Manual on Scientific Evidence 1074–75 (Fed. Jud. Ctr. 4th ed. 2025) ("An expert who opines that exposure to a compound caused a person's disease engages in deductive clinical reasoning. . . . The opinion is based on an assessment of the individual's

exposure . . . . This information is then compared with scientific data on the relationship between exposure and disease."). Dr. Bailey relied on the analysis of Phase 2 general causation expert Dr. Goodman, who opined that the available scientific studies do not support a causal connection between the relevant toxins and Track 1 diseases. See, e.g., Bailey Reps. (Cagiano) (Bladder Cancer) [D.E. 490-6] 13–15, 32–34; (Downs) (Kidney Cancer) [D.E. 494-6] 12–13, 30–32; (Amsler) (Leukemia) [D.E. 497-1] 13–14, 33–35; (Kidd) (Non-Hodgkins Lymphoma) [D.E. 500-8] 13–14, 32–34; (Welch) (Parkinson's Disease) [D.E. 503-10] 13, 29–30. Dr. Bailey then performed regulatory "risk evaluations" or "risk assessments" for each plaintiff. See, e.g., Bailey Rep. (Amsler) [D.E. 497-1] 43–47.

To produce each risk evaluation, Dr. Bailey compared the plaintiff's estimated chemical exposure level to EPA and ATSDR regulatory toxicity criteria and points of departure for those chemicals. See id. As Dr. Bailey explained, toxicity criteria are

> quantitative estimates of risk of the adverse health effects associated with a given chemical exposure level. Toxicity criteria are typically derived from observations of chemical exposures and health effects reported in epidemiology or animal studies, and are conservatively based on the most sensitive endpoint reported in the health effect studies (i.e., the health effect occurring at the lowest exposure level). They are also designed to be protective of the most sensitive populations (e.g., children and the elderly). Therefore, . . . toxicity criteria reflect conservative estimates of the relationship between exposures and health effects (i.e., overly protective assumptions about exposures and health effects), particularly for short exposure durations for healthy individuals in a population.
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> US EPA and ATSDR apply standard risk assessment methodologies to estimate the dose-response relationship between chemical exposures and health effects in epidemiology or animal studies. Then, based on that relationship . . . these regulatory agencies derive an exposure concentration or dose that is predicted to be associated with no (or a very low) response. This exposure concentration or dose is referred to as the point of departure . . . , from which . . . toxicity criteria are typically derived.

Bailey Rep. (Welch) [D.E. 503-10] 11, 18. Thus, instead of only comparing each plaintiff's exposure level to a general causation threshold level demonstrated to cause the claimed disease, Dr. Bailey also compared each plaintiff's exposure levels to the levels that certain agencies report are associated with an "adverse health effect" in the "most sensitive populations." Id.

Defendant correctly observes that regulatory risk assessments and tort causation opinions serve different purposes. Courts have rejected attempts to use regulatory standards, screening levels, or risk-assessment outcomes, without more, to establish causation in toxic tort litigation. See, e.g., Mitchell, 165 F.3d at 783 n.3; In re Johnson & Johnson Talcum Powder Prods. Mktg., No. 3:16-MD-2738, 2026 WL 161184, at *220–22 (D.N.J. Jan. 20, 2026) (unpublished); Yates v. Ford Motor Co., 113 F. Supp. 3d 841, 847 (E.D.N.C. 2015); Yates v. Ford Motor Co., No. 5:12-CV-752, 2015 WL 2189774, at *23 (E.D.N.C. May 11, 2015) (unpublished); Sutera v. Perrier Grp. of Am. Inc., 986 F. Supp. 655, 664–65 (D. Mass. 1997). Regulatory reference values generally are conservative, health-protective values designed for regulatory decision-making, often under uncertainty and with protection of sensitive populations in mind. See Yates, 2015 WL 2189774, at *23. Thus, an exposure above or below a regulatory reference value does not itself establish whether the exposure can cause the disease in humans generally or whether it caused disease in a particular plaintiff.

That distinction does not resolve this appeal. The question is not whether toxicity criteria or points of departure, standing alone, suffice to prove causation at trial. Instead, the court must determine whether Dr. Bailey used those regulatory values as an undisclosed general causation methodology in her Phase 3 reports. The court finds that she did.

Dr. Bailey characterized her role in the litigation as follows: "I have been asked . . . to develop opinions related to whether there is scientific support for the plaintiff[s'] claim[s] that

exposure to chemicals in tap water . . . at Camp Lejeune is causally associated with the plaintiff[s'] . . . diagnos[e]s." Bailey Rep. (Dyer) [D.E. 490-10] 10. To accomplish that directive, Dr. Bailey compared each plaintiff's exposure levels to regulatory toxicity criteria. See id. She explained her rationale for doing so:

> In contrast to risk assessments performed for regulatory or guidance purposes, assessing the likelihood of a chemical exposure causing health effects for an individual requires a risk evaluation specifically for that individual . . . . This type of evaluation can include a risk calculation, using regulatory toxicity criteria, based on the individual's exposure information, as a screening-level conservative first step in a causation analysis. . . . [I]f the conservative regulatory risk estimates fall at or below [the regulatory] acceptable risk range, those results provide strong support for the conclusion that the exposures of concern are not likely to be causally associated with the health effect of concern.

Bailey Rep. (Cagiano) [D.E. 490-6] 28 (emphases added). Thus, Dr. Bailey used regulatory toxicity criteria as more than background scientific literature or plaintiff-specific exposure context. She treated the regulatory comparison as a "first step in a causation analysis" and stated that results falling at or below the regulatory range provide "strong support" that the exposures are "not likely to be causally associated" with the disease at issue. Id. She then used that framework to opine that plaintiffs' modeled exposures were insufficient to support causation for their claimed diseases. See, e.g., Bailey Rep. (Dyer) [D.E. 490-10] 39, 49, 53; Bailey Rep. (Mousser) [D.E. 494-9] 43, 45, 48.

The court recognizes that Dr. Bailey's reports use plaintiff-specific exposure estimates and that she did not conduct an independent epidemiological analysis ordinarily associated with general causation. Indeed, a Phase 3 expert may apply general causation expert opinions to plaintiff-specific exposure facts. But a Phase 3 expert may not introduce a new dose-based framework for deciding whether a class of exposures is causally associated with the alleged disease. Dr. Bailey used EPA and ATSDR toxicity criteria and points of departure to supply such

a framework. Under her analysis, if a plaintiff's modeled exposure fell below those regulatory values, or produced a sufficiently large margin of exposure from the underlying point of departure, it supported that the exposure was not causally associated with the disease. That benchmark addresses the same question that this court assigned to general causation: the level of exposure at which a substance is capable of causing the type of harm alleged. See In re Camp Lejeune Water Litig., 736 F. Supp. 3d at 319. A methodology for ruling out causal capability based on dose is a general causation methodology.

The court does not hold that toxicity criteria and points of departure are categorically unavailable to a Phase 3 expert. Nor does the court hold that every comparison between plaintiff's exposure and a regulatory value constitutes general causation.[1] The court holds only that Dr. Bailey used EPA and ATSDR toxicity criteria and points of departure as a causation rule-out methodology by treating those values as benchmarks for concluding that exposures below them were not likely causally associated with plaintiffs' diseases.[2] Magistrate Judge Jones's

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[1] Courts have permitted experts to use risk assessment, exposure modeling, regulatory values, or related dose-comparison tools in specific causation analyses. See, e.g., In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 793–94 (3d Cir. 1994); Feindt v. United States, No. CV 22-397, 2024 WL 1532747, at *6–8 (D. Haw. Apr. 9, 2024) (unpublished); O'Byrne v. Weyerhaeuser Co., No. 2:19-CV-2493, 2022 WL 4133219, at *10 (S.D. Ohio Sept. 12, 2022) (unpublished); Rhyne v. U.S. Steel Corp., 474 F. Supp. 3d 733, 758–60 (W.D.N.C. 2020); Yates, 113 F. Supp. 3d at 847–48; Bd. of Cnty. Comm'rs v. Brown Grp. Retail, Inc., 768 F. Supp. 2d 1092, 1105 (D. Colo. 2011); In re W.R. Grace & Co., 355 B.R. 462, 491–93 (Bankr. D. Del. 2006). The admissibility of such testimony turns on how the expert uses the materials. Here, the court's holding is limited to the use of undisclosed causation methodologies used to establish general causation thresholds after the deadline has passed for general causation disclosures.

[2] Defendant cites cases holding that regulatory screening levels and standards do not establish actual risk to human health or prove causation. See [D.E. 829] 6 (citing Hall v. ConocoPhillips, 248 F. Supp. 3d 1177, 1186 (W.D. Okla. 2017), aff'd sub nom. 886 F.3d 1308 (10th Cir. 2018); Burst v. Shell Oil Co., No. 14-109, 2015 WL 3755953, at *8 (E.D. La. June 16, 2015) (unpublished), aff'd, 650 F. App'x 170 (5th Cir. 2016) (per curiam) (unpublished); and Bd. of Cnty. Comm'rs, 768 F. Supp. 2d at 1105). The court agrees that regulatory risk assessment and tort causation are distinct. But the disputed issue is not whether such a distinction exists. The court must determine whether Dr. Bailey used EPA and ATSDR toxicity criteria and points of

determination that Dr. Bailey employed a general causation methodology in her Phase 3 reports is not contrary to law.

B.

Having determined that Dr. Bailey employed a general causation methodology in her Phase 3 reports, the court addresses whether defendant timely disclosed that methodology. Because timely disclosure is a scheduling issue, the court accords greater deference to Magistrate Judge Jones's determination and will only overturn if clearly erroneous. See Cape Fear Pub. Util. Auth., 2025 WL 899327, at *3; Trudell, 2021 WL 684200, at *3; Johnson, 2013 WL 4039418, at *3; In re Outsidewall Tire Litig., 267 F.R.D. at 470.

The court has already determined that Phase 3 specific causation experts "may reference general causation evidence, including Phase [2] opinions and published literature, as part of their specific causation methodology." In re Camp Lejeune Water Litig., No. 7:23-CV-897, 2025 WL 2054353, at *4 (E.D.N.C. Jul. 22, 2025) (unpublished). But "Phase [3] experts may not introduce new, independent general causation analyses, including but not limited to fresh literature reviews, novel threshold calculations, or any general causation methodologies that were not timely disclosed" by a Phase 2 general causation expert. Id.

Defendant concedes that none of the Phase 2 general causation experts relied on Dr. Bailey's methodology to conduct their analyses. See Def.'s App. 5. Nevertheless, defendant argues that the methodology was timely disclosed because the basis for it—i.e., regulatory toxicity criteria and points of departure—can be extracted from the same studies disclosed by Phase 2

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departure as a causation rule-out benchmark after the disclosure deadline for general causation methodologies. A regulatory value may be insufficient to prove causation and still function as a general causation methodology when an expert uses it to determine whether a class of exposures is likely causally associated with a disease.

experts Dr. Lipscomb and Dr. Goodman. See id. at 8–9.[3] Magistrate Judge Jones's Order rejected this argument. See [D.E. 812] 73–74 (questioning defendant whether the "ATSDR and EPA studies on which Dr. Bailey relied on [were] disclosed in [d]efendants' Phase [2] disclosure" and whether "any Phase [2] expert discuss[ed] points of departure or toxicity in Phase [2]"); see also Def.'s Notice [D.E. 815] (providing the requested information). Dr. Goodman referenced different portions of one study, and for different reasons than Dr. Bailey. See Goodman Rep. [D.E. 463-14] 28, 45, 66, 69. Dr. Lipscomb only referenced the studies to opine that agency reference values are inappropriate for causation analyses. See Lipscomb Rep. [D.E. 468-12] 12–13, 25–27, 60. Thus, the Phase 2 experts did not cite the same portions of literature as Dr. Bailey, and more importantly, they did not use agency toxicity criteria or points of departure in their methodology or analysis.

The court finds no clear error in Magistrate Judge Jones's determination that Dr. Bailey's general causation methodologies were not timely disclosed in Phase 2. To rule otherwise would frustrate the stated purpose of the court's scheduling orders. See In re Camp Lejeune Water Litig., 2025 WL 2054353, at *3 ("Each Phase informs the next—like building blocks in the parties' cases in chief.").

C.

Because the parties do not dispute the proper sanction for violating a scheduling order, the court does not review the Order's remedy to strike the portions of Dr. Bailey's reports that offer or rely on toxicity criteria or points of departure as a general causation methodology in her Phase 3

[3] The PLG contends that defendant waived this argument by impermissibly filing it as a "Notice of Disclosure." See Pl.'s Resp. [D.E. 836] 9 n.2; Def.'s Notice [D.E. 815]. But counsel for defendant received leave of court to file the requested information as a notice. See [D.E. 812] 73; [D.E. 849-2]. Thus, defendant's notice was properly before Magistrate Judge Jones and defendant's argument is now properly before this court on appeal.

reports. See Pl.'s Resp. [D.E. 836] 11 & n.3; Order [D.E. 821] 4–5 (citing In re Camp Lejeune Water Litig., 2025 WL 2054353, at *2).

IV.

In sum, the court GRANTS defendant's motion for leave to file a reply [D.E. 849] and AFFIRMS Magistrate Judge Jones's Order granting the PLG's motion to strike as untimely Dr. Bailey's general causation methodology in her Phase 3 reports [D.E. 821].

SO ORDERED. This 5 day of June, 2026.

RICHARD E. MYERS II
Chief United States District Judge

TERRENCE W. BOYLE
United States District Judge

LOUISE W. FLANAGAN
United States District Judge

JAMES C. DEVER III
United States District Judge