

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:23-cv-01576

EDGAR ALLEN PETERSON, IV,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant)

PLAINTIFF’S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR EXPEDITED TRIAL

Undersigned counsel for the Plaintiff Edgar Peterson (“Plaintiff”) respectfully requests that the Court grant Plaintiff Edgar Peterson’s Motion for Expedited Trial.

INTRODUCTION

Edgar Peterson served his country as a Judge Advocate General (“JAG”), a military lawyer. He joined the U.S. Marine Corps in 1974 and was sent to Camp Lejeune in 1975. He was at Camp Lejeune for about two years. After his service ended, in 1977, Mr. Peterson moved back to Memphis, Tennessee, where he had grown up. He served as an Assistant District Attorney from 1977 to 2001. In 1983, he married his wife, Lori, and they raised two children in Memphis. What should have been many more healthy years with his family, and eventually a well-deserved retirement, was taken from him. In 2001, Mr. Peterson was diagnosed with Parkinson’s disease, which he alleges was caused by exposure to toxic water at Camp Lejeune. The disease has progressed.

Today, Mr. Peterson can barely communicate. It is sometimes impossible for others to understand him when he talks. Mr. Peterson relies in part on a text-to-speech software called

NaturalReader. Despite his difficulty communicating, Mr. Peterson gave deposition testimony in this case. He attempted to speak himself, but according to the court reporter, was often “unintelligible.” His deposition required frequent breaks. Mr. Peterson attempted to speak not only on behalf of himself, but also to protect and vindicate the thousands of his other fellow Marines, their families, and the decades-spanning community of those who served, lived, and worked at Camp Lejeune.

Before he dies or becomes fully unable to communicate, Mr. Peterson wants to testify before this Court, to tell his story. This testimony would be his final act of service for his country. The Plaintiff respectfully moves this Court to expedite Mr. Peterson’s trial pursuant to Local Rule 40.1(d), Federal Rules of Civil Procedure 1 and 16, and 28 U.S.C. § 1657(a). These rules allow judges to expedite trial for selected cases if there is good cause. Undersigned counsel and the Plaintiffs’ Leadership Group (the “PLG”) can and will present Mr. Peterson’s case at a moment’s notice, will simplify, and streamline the presentation of exposure, causation, diagnosis, and damages evidence accordingly, and requests that the Court set it for trial within 120 days of this Motion.

The relief sought by this motion, as Mr. Peterson would wish and as all Camp Lejeune victims deserve, does not benefit one plaintiff only. Many others also are and will become similarly situated to Mr. Peterson. The exercise of expediting Mr. Peterson’ trial will also serve to provide an opportunity to adopt streamlined trial procedures that will lessen the time to and in trials, and accordingly reduce delay, for all parties and the Court.¹

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

Edgar Peterson enrolled in the military as a JAG in 1974 after his graduation from University of Memphis School of Law. Peterson Deposition., Ex. A (“Peterson Depo.”) at 11:24-

¹ To that end, Mr. Peterson is willing to go to trial before any judge in this District whose schedule could accommodate him. By filing this Motion, neither the PLG nor Mr. Peterson suggests his situation is unique. The need to expedite a trial will apply to many Camp Lejeune litigants given the nature of the claims and the client population. This Motion allows the Court an opportunity to advance the litigation for the benefit of all claimants.

13:1; Peterson Answers to Defendant United States' First Set of Interrogatories, Ex. B ("Interrogatories") at 5-6. He started out at Quantico, a naval base in Newport, Rhode Island. Peterson Depo. at 14:20-24. He was transferred to Camp Lejeune in May of 1975. *Id.* at 13:7-13. He was assigned to the defense section, and defended Marines before general court martials, special court martials, and administrative discharge boards. *Id.* He occasionally did rifle training and inspections in the field at Camp Lejeune. *Id.* at 15:25-16:4. He frequently drank from water buffaloes, whenever he was thirsty, probably more than ten times a day. *Id.* at 16:24-17:4. He exercised, showered, and ate his meals daily at Camp Lejeune. *Id.* at 19:4-6. He drank multiple cups of water with meals and sometimes would have a glass of sweet tea. *Id.* at 19:7-20:12. Mr. Peterson remained at Camp Lejeune for approximately two years until April 1977. *Id.* at 15:21-24.

After brief stints at three other bases, Mr. Peterson completed his service as a JAG in 1977. He moved back to Memphis and became an Assistant District Attorney. Interrogatories at 10. He described the purpose of his role as "to do justice." *Id.* He worked primarily on homicide cases. Peterson Depo. at 28:11-19. Mr. Peterson remained a district attorney for approximately 24 years, until his early fifties. Interrogatories at 10. During this time, he married his wife, and raised two kids. *Id.* at 3. In 2001, he switched jobs to go into private practice at the Hardison Law Firm. Peterson Depo. at 25:21-26:5. His life changed forever when he was diagnosed with Parkinson's disease. *Id.* at 25:4-20.

After his diagnosis in 2001, Mr. Peterson tried to continue working through 2003, but he was terminated from his Associate Attorney position. Interrogatories at 13. He has not worked since, and the disease has progressed. *Id.* After losing his job, Mr. Peterson lost the ability to drive. *Id.* Then he lost the ability to walk, to smell, to write discernably. *Id.*

He has had multiple surgeries to try to survive, including implanting a Deep Brain Simulation device. *Id.* at 14. He experienced a three-month long psychotic episode, which led to ten nights in a behavioral hospital. *Id.* He has fallen on the street in public twice in the past two years and needed assistance from strangers to get back up. *Id.* He fears he may drop his young

grandkids if he picks them up. *Id.*

Now, he has mostly lost the ability to speak coherently. *Id.* at 13. He explains: “At times I am unable to breathe, and I go into hyperventilation, which has taken me to the emergency room. I have been informed that my condition will continue to deteriorate to the point that I may stop breathing.” Peterson Declaration attached hereto as Exhibit C (the “Declaration”), ¶ 14. Mr. Peterson urgently wants to tell his story before it’s too late. Mr. Peterson made it through a difficult deposition, where he struggled to communicate. *Id.* ¶ 12 (“On February 8, 2024, my deposition was taken. Although I utilized the speech software, I was not able to fully participate in answering the questions and I was not able to provide adequate testimony. As my condition continues to deteriorate, I will not be able to effectively provide testimony at all.”). The severity of Mr. Peterson’s condition is most evident in video form. A video of Mr. Peterson is being contemporaneously filed with the Court under seal and is Exhibit D hereto.

At his deposition, Mr. Peterson said, through his speech software: “As hard as this is for you to understand me, you must realize that I am like this every day becamps of the water at Lejeune. I didn't ask to be like be this and but for the actions and inactions of our government, me have of lost so very much.” Peterson Depo. at 18:8-13. He says he is ready to go to trial “today.” *Id.* at 28:20-23. He needs the trial to be soon so that he can still communicate at all.

II. Procedural Background

Mr. Peterson filed an administrative claim with the Department of the Navy on March 21, 2023. He filed a short form complaint in the Eastern District of North Carolina on November 6, 2023, and an amended short form complaint on November 17, 2023. Mr. Peterson was selected as a Track 1 Discovery Plaintiff pursuant to the Court’s Track 1 Order on February 2, 2024. [D.E. 130].

ARGUMENT

I. The Court Has Ample Authority to Expedite This Trial Because Mr. Peterson Will Likely Soon Lose the Ability to Communicate.

It is a fundamental tenet of our legal system that all people “must be given a meaningful

opportunity to be heard.” *See, e.g., Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). In recognition of the importance of having one’s “day in court,” states across the country allow—or mandate—trial preferences for plaintiffs who are sick, elderly, or dying.² Such statutes were enacted to protect litigants’ “substantive right to trial during their lifetime.” *Koch-Ash v. Superior Ct.*, 180 Cal.App.3d 689, 694 (1986). Importantly, these statutes also “prevent parties from pursuing delay tactics to try to outlast and elderly party or to coax out a more favorable settlement.” *See* Josh Hanson, Note, *A Preference for Justice: Protecting the Rights of the Elderly Through Federal Application of State Trial-Preference Statutes*, 20 Elder L. J. 413, 425-426 (discussing Fla. Stat. Ann. § 415.1115).

While there is no corollary federal law requiring a trial preference for patients with Parkinson’s disease, “[d]istrict courts have inherent power to manage their dockets with an eye toward speedy and efficient resolutions.” *United States ex rel. Nicholson v. MedCom Carolinas, Inc.*, 42 F.4th 185, 196 (4th Cir. 2022). This includes an “inherent power to accelerate [a] suit’s trial date” because a plaintiff is injured, ill, or elderly. *Cf. Orlando v. Gov. Emps. Ins. Co.*, No. 2:20-cv-01904-JAD-VCF, 2021 WL 1342521, at *2 (D. Nev. Apr. 9, 2021) (declining to exercise power); *see also Abbit v. ING USA Annuity*, No. 3:13-cv-02310-GPC-WVG, 2017 WL 449149, at *4 (S.D. Cal. Feb. 2, 2017) (expediting pretrial proceedings and setting jury trial for three months away given elderly and sick plaintiffs). Federal Rules of Civil Procedure 1 and 16 grant district courts the ability and impose upon them, and the parties to all civil actions, the duty to ensure “just, speedy, and inexpensive determination” of all actions, including and especially for actions brought

² *See, e.g.,* California – Cal. Code Civ. Proc. § 36(c)(2)(d) (preference to set trial within 120 days for parties who are over 70 or unlikely to survive beyond six months); Colorado – Colo. Rev. Stat. § 13-1-129 (preference to set trial within 119 days for parties who are over 70 or unlikely to survive beyond one year); Connecticut – Conn. Gen. Stat. § 52-192 (trials for parties over 65 years have precedence); Florida – Fla. Stat. § 415.1115 (discretion to advance trial for parties of 65 years); Illinois – 735 Ill. Comp. Stat. 5/2-1007.1 (preference to set trial within 1 year for parties over 67 or with physical hardship); Louisiana – La. Code Civ. Proc. § 1573 (trial preference for parties over 70 or unlikely to survive beyond six months); Massachusetts – Mass. Gen. Laws ch. 231, § 59F (proceedings in which a party is over 65 must be advanced speedily); Nevada – Nev. Stat. 16.025 (preference to set trial within 120 for parties who are over 70 or unlikely to survive beyond six months); New York – N.Y. C.P.L.R. 3403 (trial preference for parties who are over 70 or terminally ill as a result of defendant’s conduct); Rhode Island – R.I. Gen. Laws § 9-2-18 (trial shall be accelerated at the request of a party over 65); Washington – Wash. Rev. Code § 4.44.025 (trial priority to parties who are over 70 or terminally ill).

by plaintiffs facing health issues. *Wakefield v. Glob. Fin. Priv. Cap., LLC*, No. 15CV0451 JM(JMA), 2015 WL 12699870, at *3 (S.D. Cal. Sept. 17, 2015) (quoting Fed. R. Civ. P. 1; citing Fed. R. Civ. P. 16) (granting plaintiff’s request for trial preference given declining health). This Court also has discretion to expedite a case on “his or her own motion or on the motion of any party” under Local Rule 40.1(d).

Additionally, federal law mandates that a court “shall expedite the consideration of any action . . . if good cause therefor is shown” under 28 U.S.C. § 1657(a). The statute explains that “‘good cause’ is shown if a right under . . . a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” *Id.* Here, the Camp Lejeune Justice Act (“CLJA”) is a federal statute that created a right “to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.” CLJA § 804. Given Mr. Peterson’s status as a Track 1 Discovery Plaintiff and his desire to testify before the Court to support his CLJA claim—and potentially the claims of other victims—before his illness takes away his ability to communicate, the Court should expedite his trial.

II. Mr. Peterson Has Demonstrated Just and Good Cause to Schedule His Trial Within 120 Days.

The Court has directed the parties to be prepared to try cases this year. Mr. Peterson’s case should be one of them. This Court may use its authority under the rules and statutes referenced above to expedite Mr. Peterson’s trial. When a plaintiff’s health will “deteriorate” and his testimony is “relevant to the case,” it is “fair, reasonable, and justified” to set an earlier trial date. *Wakefield*, 2015 WL 12699870 at *3. These conditions are satisfied here. As described above, Mr. Peterson’s condition has continued to deteriorate, and he can barely speak at this point. Peterson Depo. at 18:8-13. As a Track 1 Discovery Plaintiff, his testimony is relevant for adjudicating Parkinson’s disease claims. Allowing a case with a ready and willing plaintiff to move to trial will not only allow Mr. Peterson to have his day in court, but will serve the larger common interest in advancing this litigation. These circumstances also constitute good cause to expedite the trial under 28. U.S.C. § 1657(a), because Mr. Peterson will not realize his right to

recover relief under the CLJA if he is unable to communicate or dies before trial.

The Track 1 Order made clear that each judge is responsible for “scheduling procedures for the actions assigned to that judge,” and any individual judge’s decision regarding “timing” on a plaintiff’s docket will control. [D.E. 130, at p. 4]. Given Mr. Peterson’s condition, the Plaintiff and the PLG respectfully request this Court set the trial for within 120 days of this Motion. As next described, this deadline is feasible for the parties given the extensive discovery already completed in this case.

III. Mr. Peterson’s Case Is Ready for Trial and Expediting It Would Not Prejudice the Government.

The Court has already ordered the parties to “be prepared to commence trials for Track 1 Discovery Plaintiffs in 2024.” [D.E. 130, at p. 4]. Mr. Peterson is a Track 1 Plaintiff, and expediting his trial would speed up this process by only a matter of months. Those months may seem inconsequential to counsel, but are everything to Mr. Peterson. The government will not be prejudiced if this trial is expedited.

Unlike cases in which the court denies as premature the motion to expedite because the discovery phase has not begun, *see Buckner v. Shumlin*, No. 1:12-cv-90-jgm, 2013 WL 809590, at *7 (D. Vt. Mar. 5, 2013), significant bellwether discovery has already been conducted. Mr. Peterson has provided the government with ample documentation of his medical conditions and his time at Camp Lejeune. In February, Mr. Peterson sat for an exhausting deposition, where he struggled to communicate and needed multiple breaks, so the government has a strong understanding of his case. Peterson Depo. at 20:22-21:2. The Plaintiff and the PLG are likewise confident that it has obtained sufficient information and documentation from the government to litigate Mr. Peterson’s case. Expediting this trial would not interfere with continued discovery efforts under the Track 1 Order for other Discovery Plaintiffs.

The parties are both also fully capable of naming experts and exchanging reports quickly. The current deadline to disclose experts is only five months away, [D.E. 130, at p. 4], and both parties have been preparing for these issues for past two years. As discussed in the PLG’s Rule

16 Letter, delivered to the Clerk of the Court on March 20, 2024, there are many ways to feasibly expedite this trial. For example, the parties could—and should—stipulate to the admissibility of experts and agree to provide some testimony in written form. As soon as the Court determines the requisite elements of causation under the CLJA, the PLG’s experts will be prepared to testify. If the parties are required to demonstrate that the water at Camp Lejeune was indeed toxic, the government’s agencies have already prepared gold-standard reports on the topic. It is possible to hold these trials now, and the parties should not prevent these veterans from having their day in court just because it may be more work for counsel in the short term.

In the Track 1 Order, the Court made clear that the Court and the parties “shall discuss the selection of certain Track 1 Discovery Plaintiffs for a Bellwether trial or trials” at “the appropriate time.” [D.E. 130, at p. 4]. The Plaintiff and the PLG posit that the appropriate time is now. Mr. Peterson is ready, willing, and able to present his case for trial. He says he is ready to go to trial “today.” Peterson Depo. at 28:20-23. But his window may close very soon.

IV. The Plaintiff’s and the PLG’s Proposed Plan to Expedite Trial

While the specifics of trial will be more fully addressed at a Rule 16 pretrial conference, the Plaintiff and the PLG submit that the CLJA’s statutory proof requirements are streamlined and, accordingly, for Mr. Peterson’s trial would include only two expert witnesses—a medical expert and a damages expert—and require approximately two trial days.

The CLJA is premised on the fact that the water at Camp Lejeune was contaminated for the time period from 1953 to 1987 and that the water caused Marines and their families to contract diseases, including Parkinson’s disease. Mr. Peterson was at Camp Lejeune from 1975 to 1977, and he was exposed to the water at Camp Lejeune that the CLJA deems contaminated. Indeed, the statute is premised on the extensive water modeling conducted by the United States, through the Agency for Toxic Substances and Disease Registry (ATSDR),³ and acknowledges by its very

³ ATSDR, *Water Modeling* (last reviewed Sept. 26, 2019), <https://www.atsdr.cdc.gov/sites/lejeune/Water-Modeling.html>; ATSDR, *Tarawa Terrace Reports* (last reviewed Jan. 16, 2014), <https://www.atsdr.cdc.gov/sites/lejeune/tarawaterrace.html>; ATSDR, *Hadnot Point-Holcomb Boulevard Reports* (last reviewed Jan. 16, 2014), <https://www.atsdr.cdc.gov/sites/lejeune/hadnotpoint.html>.

terms the presence of contaminants in the water at Camp Lejeune during the period of time that Mr. Peterson was stationed at Camp Lejeune.

As stated above, in 2001, Mr. Peterson was diagnosed with Parkinson's disease, a disease that the United States, again through its agency the ATSDR,⁴ admitted as early as 2017, *before* the passage of the CLJA, is a disease that can be caused by the Camp Lejeune water.⁵ Mr. Peterson, therefore, need not prove that the water at Camp Lejeune is capable of causing Parkinson's disease because the United States already concluded that. As a result, as to Mr. Peterson's disease, there is no dispute as to general causation, *i.e.*, whether exposure to the water at Camp Lejeune can cause Parkinson's disease. At trial, therefore, the only expert testimony that Mr. Peterson will have to present to prove his case is a medical causation expert witness⁶ and a damages expert witness.

As to causation, Mr. Peterson will need to call a medical expert to testify about the specific cause of Mr. Peterson's Parkinson's disease, often referred to as a "specific causation." In other

⁴ The ATSDR "is a federal public health agency of the U.S. Department of Health and Human Services" which "protects communities from harmful health effects related to exposure to natural and man-made hazardous substances" by "responding to environmental health emergencies; investigating emerging environmental health threats; conducting research on the health impacts of hazardous waste sites; and building capabilities of and providing actionable guidance to state and local health partners. ATSDR, *Agency for Toxic Substances and Disease Registry* (last reviewed Jan. 22, 2024), <https://www.atsdr.cdc.gov/>. Since 1989, when the U.S. Environmental Protection Agency (EPA) listed U.S. Marine Corps Base Camp Lejeune as a Superfund site and added it to the National Priorities List (NPL), the ATSDR has conducted numerous studies evaluating the contaminated water at Camp Lejeune and its related health effects. Indeed, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund Act), the ATSDR is the "**lead agency** within the Public Health Service for implementing the health-related provisions of CERCLA" and is "charged under the Superfund Act to assess the presence and nature of health hazards at specific Superfund sites, to help prevent or reduce further exposure and the illnesses that result from such exposures, and to expand the knowledge base about health effects from exposure to hazardous substances." *Agency for Toxic Substances and Disease Registry*, FEDERAL REGISTER (last visited Nov. 21, 2023), <https://www.federalregister.gov/agencies/agency-for-toxic-substances-and-disease-registry#:~:text=As%20the%20lead%20Agency%20within%20the%20Public%20Health,about%20health%20effects%20from%20exposure%20to%20hazardous%20substances.>

⁵ *ATSDR Assessment of the Evidence for the Drinking Water Contaminants at Camp Lejeune and Specific Cancers and Other Diseases* (Jan. 13, 2017), https://www.atsdr.cdc.gov/sites/lejeune/docs/atsdr_summary_of_the_evidence_for_causality_tce_pce-508.pdf.

⁶ Plaintiffs contend that the CLJA dispenses with the need to establish what is traditionally referred to as specific causation, and the PLG filed a motion for partial summary judgment on that issue. [D.E. 110]. However, until that motion is decided, Plaintiff Peterson includes a medical causation expert witness as part of his anticipated proof at trial.

words, Mr. Peterson will call a medical expert who will testify that it is “at least as likely as not” that his Parkinson’s disease was caused by Camp Lejeune water. As to economic damage, Mr. Peterson will call an expert who will testify about the economic losses that he has suffered because of his Parkinson’s disease. Together with the plaintiff and family members, the Plaintiff’s case in chief will likely be approximately eight hours of trial time. This is the type of trial that the Judges of this District have contemplated on more than one occasion. *See, e.g.*, D.E. 125 at 24:22-25:8 (Judge Boyle discussing trying two to three cases in a week); D.E. 9 at 19:3-14 (Judge Dever discussing one-day trials). The expedition of Mr Peterson’s trial would show the Court that additional Parkinson’s disease plaintiffs before this Court could be prepared for trial in the same time frame as Mr. Peterson’s case and would promote the just, speedy and inexpensive determination of CLJA cases in accordance with Rule 1 of the Federal Rules.

CONCLUSION

For the foregoing reasons, the Plaintiff requests that the Court grant the present motion.

DATED this 30th day of April, 2024.

/s/ J. Edward Bell, III
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CERTIFICATE OF SERVICE

I, J. Edward Bell, III, hereby certify that the foregoing document was electronically filed on the Court's CM/ECF system on this date, and that all counsel of record will be served with notice of the said filing via the CM/ECF system.

This the 30th day of April, 2024.

*/s/ J. Edward Bell, III*_____

J. Edward Bell, III