

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)	CASE MANAGEMENT ORDER
)	NO. 9
THIS ORDER RELATES TO:)	
ALL CASES)	

In its Case Management Order No. 2, the Court ordered “Lead Counsel, the Government Liaison, counsel for Defendant, or their designees [to] submit to the Court an agreed upon group or competing groups of five additional illnesses for Track 2” trials within 60 days of Case Management Order No. 2 (D.E. 23). The Court directed that Track 2 procedures would “follow similar procedures to those governing Track 1.” *Id.* The Court now adopts rules governing Track 2 trials.

PROCEDURE FOR TRACK 2 TRIALS

- 1. Track 2 Discovery Pool Illnesses.** The Discovery Pool for Track 2 trials shall consist of CLJA actions in which the Plaintiffs allege that the water on Camp Lejeune caused: (1) liver cancer, (2) sclerosis / scleroderma, (3) multiple myeloma, (4) kidney disease (i.e, end-stage renal disease, chronic kidney disease, increased kidney weight, or increased urinary protein tubular toxicity), and (5) aplastic anemia. This selection focuses on illnesses for which early trials will promote an efficient, global resolution for common illnesses.
- 2. Discovery Pool Eligibility.** To be eligible for selection in the Track 2 Discovery Pool, a Plaintiff must file his/her Short Form Complaint within 60 days of this Order.
- 3. Selection of Track 2 Discovery Plaintiffs.** Within 90 days of this Order, for each illness listed above, Plaintiffs’ Leadership and the Defendant will each select 10 Plaintiffs to be

included in the Discovery Pool. If fewer than 20 Plaintiffs for an individual illness are eligible for selection, all Plaintiffs alleging that illness shall be selected. The selected Plaintiffs in the Discovery Pool shall be designated as “Track 2 Discovery Plaintiffs.”

4. Track 2 Discovery.

- a. Fact discovery in every Track 1 Discovery Plaintiff’s action may begin upon selection of the Track 2 Discovery Plaintiffs.
- b. Within 30 days of this Order, the Parties shall submit to the Court any changes they would request be made to the Discovery Pool Profile Form for Track 2 Plaintiffs. This Form will streamline written discovery regarding the Track 2 Discovery Plaintiffs.
- c. Each Track 2 Discovery Plaintiff shall complete the Discovery Pool Profile Form within 45 days of it being finalized or their selection as a Track 2 Discovery Plaintiff, whichever is later.
- d. Absent a showing of good cause or agreement of the Parties, Defendant shall be allowed to take no more than three fact depositions (in addition to treating physicians) for any individual CLJA action.
- e. The parties will complete fact discovery within 120 days of the Track 2 Order. Within 30 days of completion of fact discovery, Plaintiffs shall disclose their expert witnesses. See Fed. R. Civ. P. 26(a)(2)(B) & (C). Within 30 days of Plaintiffs’ disclosure of their expert witnesses, Defendant shall disclose its expert witnesses. See id. Within 15 days of Defendant’s disclosure of its expert witnesses, Plaintiffs shall disclose their rebuttal expert witnesses. Within 45 days of Defendant’s disclosure of its expert witnesses, expert discovery will close.

- f. The parties may take the deposition of any individual disclosed as an expert witness and, depose government employees if they have information thought to be relevant to the pending claims.
 - g. Absent agreement of the Parties or a subsequent Order of this Court, depositions shall be conducted pursuant to the Federal Rules of Civil Procedure. The deposition of a witness may be used for any purpose appropriate under the Federal Rules of Civil Procedure and Federal Rules of Evidence for any Discovery Plaintiff's action.
5. **Motion Practice Specific to Track 2.** At the appropriate time, the Court and the Parties shall discuss the pretrial schedule for submission of dispositive motions and for any other pretrial motions or other matters regarding Track 2 Discovery Plaintiffs.
6. **Track 2 Trials.**
- a. At the appropriate time, the Court and the Parties shall discuss the selection of a Track 2 Discovery Plaintiff or Plaintiffs for Bellwether trials. The Parties should be prepared to commence trials for the Track 2 Discovery Plaintiffs on or after [MONTH] 2024.
 - b. Each member of this Court will be responsible for scheduling procedures for the trials in actions assigned to them. Any decisions regarding trial procedures, selection, structure, timing, or any other issues that are different from or contrary to the provisions of this Order shall supersede this Order.

SO ORDERED this _____ day of _____, 2023.

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