

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Civil Action No.: 7:23-CV-00897

IN RE:)
)
CAMP LEJEUNE WATER LITIGATION)
)
This Pleading Relates to:)
)
ALL CASES.)
)

**PLAINTIFFS' MOTION REQUESTING LEAVE TO FILE SURREPLY TO
DEFENDANT UNITED STATES' REPLY IN SUPPORT OF MOTION TO EXCLUDE
PLG'S PHASE I EXPERT TESTIMONY IN SUPPORT OF USING ATSDR'S WATER
MODELS TO DETERMINE EXPOSURE LEVELS FOR INDIVIDUAL PLAINTIFFS**

On behalf of Plaintiffs, the Plaintiffs' Leadership Group ("PLG") respectfully moves this Court for leave to file a surreply to Defendant United States' Reply in Support of Motion to Exclude PLG's Phase I Expert Testimony in Support of Using ATSDR's Water Models to Determine Exposure Levels for Individual Plaintiffs, D.E. 425, and shows as follows:

1. On April 29, 2025, Defendant United States filed five motions: (1) Motion to Exclude Unreliable and Irrelevant Expert Testimony of Mustafa Aral, D.E. 358 (motion) and 359 (memorandum of law); (2) Motion to Exclude the Opinion Testimony of Mr. R. Jeffrey Davis and Dr. Norman L. Jones, D. E. 356 (motion) and 357 (memorandum of law); (3) Motion to Exclude the Testimony of Dr. Rodney Kyle Longley, D.E. 360 (motion) and 362 (memorandum of law); (4) Motion in Limine to Exclude Vapor Intrusion Evidence and Testimony, D.E. 361 (motion) and 366 (memorandum of law); and (5) Motion to Exclude Plaintiffs' Phase I Expert Testimony in Support of Using ATSDR's Water Models to Determine Exposure Levels for Individual Plaintiffs,

D.E. 367 (motion) and D.E. 368 (memorandum of law). Each of these motions seeks to limit or exclude testimony from PLG's Phase I experts.

2. On July 3, 2025, Defendant filed its reply briefs in support of those motions.

3. PLG seeks leave to file a surreply to only one of the five replies, namely, Reply in Support of Motion to Exclude PLG's Phase I Expert Testimony in Support of Using ATSDR's Water Models to Determine Exposure Levels for Individual Plaintiffs, D.E. 425.

4. D.E. 367 (motion), D.E. 368 (memorandum of law) and D.E. 425 (reply) seek to limit or exclude the opinions of five of the PLG's Phase I experts regarding the ATSDR's water models. The importance of these models to the Plaintiffs' case cannot be overstated.

5. The PLG's proposed surreply is attached to this motion as Exhibit A. As explained in the surreply, the Government made a number of incorrect assertions in its reply brief, D.E. 425, that must not go unanswered. In addition, the Government's reply cites new evidence (five new exhibits plus new citations/quotations from previous exhibits) and makes new arguments. For example, the Government argues for the first time that the data are not sufficient to accurately estimate *daily* levels of contaminants. D.E. 425 at 4. In addition, the Government invokes the ATSDR's Public Health Assessment for the first time as alleged evidence of conservative, health protective assumptions made in ATSDR's modeling. *Id.* at 5, 8 & 10. The Government also (erroneously) argues for the first time that the PLG expert reports do not address error rates, confidence intervals or the results of uncertainty analyses. *Id.* at 1, 7. The Government argues for the first time that the 330 unviable realizations in the Monte Carlo analysis raise "concerns about the accuracy of the model and the representativeness of the input model parameters." *Id.* at 7-8. The Government also argues for the first time that ATSDR epidemiologists did not use the water model results for the 2024 Mortality and Cancer Incidence Study. *Id.* at 8. The Government's new

arguments, citation to new authority, and muddling of the factual record are good cause for filing a surreply. *See Norton v. Rosier*, No. 7:14-CV-00260-FL, 2017 WL 4399194, at *4 (E.D.N.C. Sept. 29, 2017); *Estate of Richard Myers ex rel. Myers v. Wal-Mart Stores, Inc.* No. 5 :09-CV-549-FL, 2011 WL 1366459, at *1 n.1 (E.D.N.C. Apr. 11, 2011).

6. Local Rule 7.2(f) sets 10-page and 2800-word limits on surreplies (when allowed) to motions. PLG's proposed surreply is 7 pages and 2,008 words.

7. A proposed order is attached as Exhibit B.

In light of the importance of the subject matter of this motion to Plaintiffs' cases, the Plaintiffs respectfully request that the Court grant their motion and permit the filing of Exhibit A, PLG's surreply to D.E. 425.

[Signature page to follow.]

DATED this 8th day of July 2025.

/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 8th day of July 2025.

/s/ J. Edward Bell, III _____

J. Edward Bell, III