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:	)
	)
ALL CASES	)

PLAINTIFFS' LEADERSHIP GROUP'S OPPOSITION TO DEFENDANT'S MOTION FOR FINAL SUPPLEMENTATION DEADLINE [D.E. 827]

INTRODUCTION

In its Motion for Final Supplemental Deadline ("Motion for Deadline"), the United States asks the Court to establish pretrial deadlines notwithstanding the absence of a trial date. First, Defendant seeks a cutoff date for "fact discovery" supplementation; second, Defendant asks the Court to allow for supplemental expert reports to encompass anything disclosed since the expert's last report; and, finally, Defendant asks the Court to establish a timeframe for supplemental expert depositions. Each of the foregoing deadlines would be applied across all Track 1 diseases without regard to, and having the effect of delaying, any actual trial dates.

Without speculating that the Defendant's motion might, intentionally or inadvertently, deprive the Plaintiffs of presenting evidence relating to their current medical circumstances by setting an ad hoc discovery cutoff date, or whether the motion is an attempt to make belated supplementation "timely" by establishing a deadline for supplementation, the fact is that the Motion seeks relief that is procedurally unnecessary. It is already governed by applicable law and practice in this court. Granting the Defendant's Motion for Deadline would unreasonably prolong this litigation by creating yet another round of court-sanctioned expert reports, depositions, and motions. The Defendant's Motion for Deadline should be denied, and the applicable Federal Rules of Civil Procedure and Local Civil Rules should continue to govern what supplementation is appropriate, when supplementation is to be made, and the procedure for setting appropriate pretrial deadlines once a trial date is set.

BACKGROUND

"To promote efficient resolution of this consolidated litigation, the court entered and thereafter revised a pretrial scheduling order governing phased expert discovery. *See* [DE-270; DE-312; DE-332; DE-414; DE-630]." [D.E. 825] at 1. *See also* [D.E. 777] at 3. Thus, this Court

established, and the parties have followed, a phased division of pretrial discovery and motions practice whereby expert reports, depositions of the experts providing those reports, and motions practice related to those experts have proceeded with phased deadlines. [D.E. 818] at 12. At this time, all such deadlines have passed with the exception of motions deadlines for Phase IIIb. [D.E. 831].

The United States now seeks to establish a new round of deadlines to be imposed for omnibus fact discovery, expert reports, and expert depositions, proposing that fact discovery be cut off at an ad hoc date at least sixty (60) days before the other deadlines and with no relationship to when trials might occur. Defendant contends such arbitrary deadlines are necessary because expert discovery could be supplemented up until the time the party's pretrial disclosures are due under 26(a)(3), which Defendant contends could be "30 days before trial." [D.E. 828] at 2. Defendant's motion ignores both the Federal Rules of Civil Procedure, which specifically dictate when supplementation of discovery may occur, and the Local Civil Rules, which govern how and when pretrial scheduling is to be conducted.

I. Rule 26 Should Continue to Govern Supplementation of Disclosures and Responses

As this Court has made abundantly clear in recent rulings, Rule 26 of the Federal Rules of Civil Procedure governs discovery disclosures and supplementation, with the important requirement that any supplementation and correction must be timely. *See, e.g.*, [D.E. 825] at 5-6 (emphasizing that Rule 26(e)(1) requires an expert report to be supplemented when the party learns of new information). There is no reason, and Defendant recites none, that Rule 26(e) does not adequately address any true supplementation either party might need to make to its disclosures and responses before trial.

Defendant's motion instead seeks to circumvent the requirement that supplementation be timely by establishing a deadline for all fact supplementation (aimed at cutting off Plaintiffs' presentation of ongoing medical treatments, diagnoses and conditions), and then allowing for supplementation of any and all expert reports thirty (30) days thereafter as long as such supplementation is based on anything disclosed since the expert's last report – regardless of how long ago that report was produced, how long ago supplemental material or corrective information became known, and regardless of the nature of the material that was disclosed[1]. Defendant then seeks to establish a deadline for expert depositions, with a presumption that any expert who supplements or corrects a report is subject to being re-deposed. This requested round of additional depositions circumvents the applicable Federal Rules of Civil Procedure by disregarding the good cause showing for reopening an expert's deposition required by Rule 30(a)(2).

As stated by Judge Flanagan in *Lightfoot v. Georgia-Pacific Wood Products LLC*, "the timeliness of a supplemental disclosure is not keyed solely to the deadline for pretrial disclosures, but rather keyed to the overall requirement that supplementation be made 'in a timely manner.' Fed. R. Civ. P. 26(e)(1)." No. 7:16-CV-244-FL, 2018 WL 4517616, at *7 (E.D.N.C. Sept. 20, 2018) (citations omitted). Further, as noted by Judge Dever, "[a]lthough a party generally may engage in 'true supplementation' at any point before the pretrial disclosure deadline, [Defendant] seeks to contort this sensible rule into the unacceptable rule that a party may permissibly submit a

[1] The Defendant produced Phase I expert reports on December 9, 2024, Phase II expert reports on February 7, 2025, and Phase IIIa expert reports on April 8, 2025. Defendant now seeks to be allowed to supplement *all* of those reports, whether such supplementation is timely or not, pursuant to a new court-ordered deadline in order to address *any* "supplemental materials disclosed after the expert's last report." [D.E. 827] at 1; [D.E. 828] at 1. Thus, under Defendant's proposal, a report produced in 2024 or early 2025 could now be supplemented if it is alleged to be based on material produced a year ago. To allow such supplementation would run contrary to the Rule 26(e) requirement that any supplemental or corrective disclosures must be timely. Fed. R. Civ. P. Rule 26(e)(1)(A). Yet this is what Defendant's motion asks this Court to allow.

new expert report until pretrial disclosures are due or until 30 days before trial so long as the party characterizes the new report as a supplementation." *Gallagher v. Southern Source Packaging, LLC*, 568 F.Supp.2d 624, 631 (E.D.N.C. 2008).

Defendant's Motion for Deadline runs afoul of both of these concepts. As in *Lightfoot*, Defendant seeks to base the propriety of supplementation entirely upon a deadline and the characterization of the event as proper if it addresses something produced since the expert's prior report. Defendant then seeks to add a presumption that reopening of expert depositions must necessarily follow when, in fact, any reopening of depositions also should be governed by the existing rules of civil procedure. In seeking to prematurely cut off Plaintiffs' ability to present up to date medical diagnoses, treatments, and conditions, Defendant asks the Court to forego the more sensible case-specific analysis dictated by the rules of civil procedure and applicable case law. By keying the ability to supplement an expert disclosure solely to a deadline, Defendant asks this Court to characterize something as appropriate in disregard of both Rule 26(a) and Rule 26(e) altogether. The relief sought by the Defendant is unnecessary given the rules that already apply, and Defendant should not be allowed to supplant those rules and the application of those rules as exemplified in case law such as *Lightfoot, Gallagher*, and this Court's Order at [D.E. 825] (Order striking the untimely and improper supplemental report of Defendant's expert Dr. Julie Goodman).

II. The Local Civil Rules Provide the Appropriate Mechanism for Pretrial Scheduling, Which Should Be Based on a Trial Date

Defendant's Motion for Deadline also disregards Local Civil Rule 16.1, which establishes a pretrial procedure for the very purpose of establishing pretrial deadlines premised upon and reasonably related to the date a trial is set to begin. Just as the Federal Rules of Civil Procedure provide applicable and sufficient guidance for the supplementation of discovery, the Local Civil

Rules for the Eastern District of North Carolina provide applicable and sufficient guidance for the setting of pretrial procedures.

Under Local Civil Rule 16.1, a final pretrial conference "shall be scheduled in every civil action" and, in most actions, with "at least 45 days' notice of such conference." L. Civ. R. 16.1(a). Pretrial disclosures required under Fed R. Civ. P. 26(a)(3) are due at least twenty-eight (28) days before the final pretrial conference, with those disclosures, and objections thereto, incorporated into a final pretrial order, which is submitted to the Court in advance of the final pretrial conference. L. Civ. R. 16.1(b). Other Local Rules also set various pretrial deadlines based upon the trial date. *See, e.g.*, L. Civ. R. 39.1 (setting deadlines for motions *in limine* and memoranda of authorities as seven days preceding the first day of the session during which a civil action is set for trial); L. Civ. R. 52.1 (setting the deadline for proposed findings of fact and conclusions of law as five business days preceding the session during the action is set for trial). The Local Civil Rules reflect the practical wisdom that pretrial deadlines are best set once the Court is prepared to try the case and based upon time periods tied to the actual trial date.

In filing its Motion for Deadline, Defendant seeks to bypass these applicable Local Civil Rules. Rather than allow for the usual procedure to apply in due course, Defendant asks this Court prematurely to impose ad hoc deadlines untethered to when trials are set to begin. The PLG opposes Defendant's request, has conferred with the DOJ, and has attempted to work with the Defendant to discuss pretrial deadlines in accordance with the applicable Federal and Local Civil Rules, and based on timeframes tied to a trial date. The United States continues to insist, as it does in its Motion for Deadline, on arbitrary deadlines unrelated to a trial date notwithstanding the fact that the parties do not know if trials will occur in three months, six months, or longer.

The Local Civil Rules establish a procedure and timeframe for pretrial scheduling. There is no reason to disregard those rules and that procedure, which can be instituted by the Court as a whole, or by the individual trial judges based on their own preferences, when the Court and the judges are ready.

III. The Requested Fact Discovery Deadline Could Prevent Plaintiffs From Presenting Timely Medical Developments at Trial

Defendant's refusal to acknowledge that a trial date is a reasonable and necessary data point for the setting of pretrial deadlines suggests that Defendant's motion is aimed at unreasonably cutting off the Plaintiffs' presentation of timely medical developments at trial, while allowing Defendant to supplement expert reports and re-depose witnesses without the application of the rules of civil procedure. Defendant purports to seek final supplementation deadlines in order to be ready for trial, but the imposition of the deadlines Defendant seeks will create an entire additional round of discovery, expert reports, and depositions – thereby needlessly prolonging the progress of the case, interfering with the parties' ability to prepare for trial, and preventing the setting of timely trial dates.

As Defendant notes in its Memorandum, the parties reached an agreement over a year ago that each Plaintiff will submit a final, updated, and verified Discovery Plaintiff Profile Form ("DPPF") within fifteen (15) days of a trial date being set.[2] The PLG is preparing to produce final DPPFs sooner than the parties' agreement, and certainly within fifteen (15) days of the Court's

[2] As set forth in the March 31, 2025 Joint Status Report, the parties' agreement has been that all Track 1 DPPFs would be updated fifteen (15) days after a trial date is set unless the trial date is more than 120 days from the date it is set, in which case the final DPPF would be due 120 days before trial. Thus, it is only if the trials are scheduled later than 120 days from the date of their setting that Plaintiffs would have more than 15 days to verify the DPPFs. This agreement should not be interpreted as a reason for delaying or extending out any of the trial settings. Each of the Track 1 Plaintiffs' DPPFs are being updated and can be verified within fifteen (15) days so any implication by Defendant that trial dates must be set four months out is without merit.

announcement of a trial date. Any implication by the Defendant that trials must be delayed because of this prior agreement is without merit, and the fact this agreement is in place and is based upon the setting of a trial date further demonstrates that the deadlines Defendant seeks in its motion are unnecessary and arbitrary.

For well over a year now, Defendant has been trying to prematurely prevent Plaintiffs from presenting evidence of ongoing medical treatment, new diagnoses, secondary conditions, and worsening medical situations in order to limit Defendant's liability for the toxic water at Camp Lejeune. Defendant acknowledges as much when it refers to the March 10, 2025 JSR at [D.E. 331] and subsequent Joint Status Reports on page 3 of its Memorandum. [D.E. 828] at 3. At all times, Plaintiffs' counsel has opposed Defendants' medical cutoff proposals and strongly disagreed that any limitations should be imposed with respect to ongoing medical treatment and new developments/diagnoses. Given the Track 1 Trial Plaintiffs' serious health issues, it is to be expected that their conditions will continue to worsen, new diagnoses may arise, and medical treatment will be required up through trial. Plaintiffs' counsel contends such issues can and are being addressed through the normal course and in accordance with applicable procedures. *See, e.g.*, April 21, 2025 JSR [D.E. 354] at 5; July 1, 2025 JSR [D.E. 417] at 4-5. The Defendant's request in its Motion for Deadline for the imposition of a fact discovery cutoff is clearly aimed once again at preventing Plaintiffs from presenting up to date evidence of their injuries at trial. The imposition of such a cutoff is without merit, and is particularly unreasonable here given the serious conditions at issue in this case, the age of the plaintiffs, and the length of time they have had to wait since they were first exposed to the toxic chemicals at Camp Lejeune.

Tellingly, in referring to the parties' DPPF agreement in its brief, Defendant fails to mention the other aspect of the parties' agreement: the Plaintiffs' Leadership Group ("PLG") has

been providing agreed upon DPPF supplements to the Defendant every three months since April 10, 2025, and will continue to do so through trial. The PLG also agreed to and is promptly requesting and producing medical records reflecting new medical conditions/providers relevant to the case and notifying the Defendant of any significant medical updates when significant health diagnoses/events occur[3]. Consequently, no supplementation deadline is needed here to force the Plaintiffs to timely supplement medical information. Plaintiffs already have been doing so. The fact that supplementation already is occurring, consistent with the applicable Federal Rules, further suggests that Defendant seeks to impose its requested "fact discovery" deadline to prevent the Plaintiffs from continuing to make timely supplementation with respect to material medical events in order to reduce Defendant's liability at trial.

The Court declined to set Track 1 trial dates in its February 27, 2027 Order granting in part and denying in part the PLG's Motion to Reserve Admissibility Determinations and Expedite Track 1 Bellwether Trials, noting that "[e]ach judge retains the inherent power to manage their assigned Track 1 Trial Plaintiffs subject to determinations made on the Master Docket." [D.E. 818] at 12. The Court also stated, "[a]t the appropriate time, the court will schedule Track 1 bellwether trial dates in a manner consistent with the court's prior Case Management Orders and according to each judge's schedule." *Id.* at 19. It is unknown when the appropriate time will be for the scheduling of Track 1 bellwether trial dates, but it is certain that the Plaintiffs will continue to suffer with the negative health effects of the Camp Lejeune water until that time. The extent to which the Plaintiffs may present evidence of their ongoing medical treatment, diagnoses, and conditions at trial, and the pretrial deadlines that each judge may impose with respect to such evidence, is not something that should be preempted by an arbitrary, across-the-board deadline

[3] *See* email dated March 14, 2025 confirming the parties' DPPF agreement, attached as Exhibit A.

now. Each trial judge retains the inherent power to manage his or her assigned Track 1 Bellwether Trial, and the Plaintiffs suggest that any deadlines related to those trials are better addressed to each trial judge, informed by the timeframe of an actual trial date.

IV. Defendant's Alleged Need for a Supplementation Cutoff Date to Present Additional Offset Data is Contrary to the Offset Provision in the CLJA

Defendant argues it needs a discovery cutoff date so it can "survey multiple agencies to coordinate a final supplementation of records that are responsive to PLG's Requests for Productions." [D.E. 828] at 6. Presumably, Defendant is referring to its desire to run data queries through various governmental agencies in order to increase its claimed offsets for medical care and disability benefits. As argued in Plaintiffs' Memorandum in Support of Motion in Limine to Preclude Inappropriate Offset Evidence [D.E. 805], any such evidence of medical expenses or benefits provided by the VA, Medicare, or Medicaid relating to a Track 1 illness is irrelevant as it will be canceled out dollar for dollar by the corresponding damages that same evidence represents. *See* [D.E. 806] at 15-17; [D.E. 819] at 9-10. Defendant's alleged need for a discovery supplementation cutoff date in order to supplement its claimed offsets is therefore without merit. Proof of amounts provided by or through a CLJA enumerated agency are an admission by the Defendant that the same amount in damages was incurred. Thus, the value of the offset credited to the Defendant for those expenses will be offset by the value of the damages to the Plaintiff for that same benefit, resulting in a net-zero change and no impact on the amounts to be awarded at trial. Accordingly, the evidence the Defendant purportedly seeks a deadline to supplement is irrelevant.

CONCLUSION

The supplementation of discovery disclosures and responses is fully and adequately governed by the applicable rules of civil procedure, and untimely supplementation should not be

deemed "timely" by imposition of a court-imposed deadline. Appropriate pretrial deadlines, including if necessary, for final supplementation of discovery, are best timed to a trial date and established under the pretrial procedure contemplated by the Local Civil Rules. Defendant's Motion for Deadline, which seeks to replace existing rules with ad hoc and arbitrary deadlines without a showing of good cause for such a departure and while providing Defendant an advantage to the detriment of the Plaintiffs, runs contrary to the spirit and purpose of the Federal and Local Rules. For the reasons stated herein, the Defendant's Motion should be denied.

[Signatures appear on the following page]

Dated: April 8, 2026.

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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 8th day of April, 2026.

/s/ J. Edward Bell, III

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Exhibit A

Jenna F. Butler

From: Mirsky, Sara J. (CIV) <Sara.J.Mirsky@usdoj.gov>
Sent: Friday, March 14, 2025 5:10 PM
To: Jenna F. Butler
Cc: J Edward Bell; Zina Bash; Dawn Bell; Lipscomb, Bridget (CIV); Bain, Adam (CIV); Carpenito, Joshua G. (CIV); Gibbons, Hanley W. (CIV); Leslie LaMacchia; Matthew D. Quinn; Ortiz, David R (CIV)
Subject: RE: CLJA - DPPF Updates

Jenna,

Thank you for your email. The United States agrees to this proposal.

Have a good weekend.

Best,
Sara

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From: Jenna F. Butler <JFB@wardandsmith.com>
Sent: Friday, March 14, 2025 2:07 PM
To: Mirsky, Sara J. (CIV) <Sara.J.Mirsky@usdoj.gov>
Cc: J Edward Bell <jeb@belllegalgroup.com>; Zina Bash <zina.bash@kellerpostman.com>; Dawn Bell <DBell@belllegalgroup.com>; Lipscomb, Bridget (CIV) <Bridget.Lipscomb@usdoj.gov>; Bain, Adam (CIV) <Adam.Bain@usdoj.gov>; Carpenito, Joshua G. (CIV) <Joshua.G.Carpenito@usdoj.gov>; Gibbons, Hanley W. (CIV) <Hanley.W.Gibbons@usdoj.gov>; Leslie LaMacchia <llamacchia@belllegalgroup.com>; Matthew D. Quinn <MatthewQuinn@lewis-roberts.com>; Ortiz, David R (CIV) <David.R.Ortiz@usdoj.gov>
Subject: [EXTERNAL] RE: CLJA - DPPF Updates

Sara,

Thank you for your email, and in the same spirit of compromise, please see our response below. I am hopeful this issue can now be considered resolved.

1. PLG will update the spreadsheet, without the TRICARE information, every three months. However, PLG must also produce records for any new medical condition/provider with that update, or else represent that there are no new medical conditions/providers relevant to that plaintiff's case. PLG will therefore take on the primary responsibility for timely investigating and requesting Plaintiffs' updated medical records on a continuous basis.

PLG Response: PLG agrees to update the spreadsheet (minus the Tricare information) every three months starting April 10 (given the passage of time since April 1 was proposed) and every three months thereafter until trial. We will promptly request information when we learn of a new medical condition/provider relevant to the case. However, PLG can only provide those records that we have received. When we update the spreadsheet we will either produce medical records that have been obtained or indicate that medical records have been requested and they will be produced to DOJ upon receipt. PLG may not always know when a new medical visit yields information relevant to the case but will do our best to ascertain relevancy and will err on the side of caution in reporting relevant events.

2. PLG will update the United States about Plaintiffs' significant medical developments (such as Mr. McElhiney's DBS implantation or Mr. Mousser's bladder cancer diagnosis) as soon as is practicably possible.

PLG Response: As noted in #1, it may not always be immediately apparent what medical updates are significant. We will promptly evaluate developments and let the government know of any that are significant as soon as practical, recognizing that PLG needs to be respectful of the plaintiffs when significant health diagnoses/events occur.

3. PLG will submit an updated, verified and final DPPF 120 days before trial or fifteen days after a trial date is set, whichever is later. PLG will then work with the United States on any requests to re-open depositions.

PLG Response: Agreed except I wish to reiterate that there is no presumption or agreement that a Plaintiff may be re-deposed – each request will be considered on a case by case basis at that time.

Sincerely, Jenna

Jenna F. Butler
Attorney

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