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 Document Relates To:

ALL CASES

UNITED STATES' REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE THE DAMAGES OPINIONS OF MARJORIE HACKETT-WALLACE

As the proponents of Marjorie Hackett-Wallace's opinion testimony, Plaintiffs have failed to meet their burden of proving that her opinions meet the requirements of Federal Rule of Evidence 702. The Parties agree that Ms. Hackett-Wallace is not a medical expert. However, Plaintiffs seek to obscure the fact that Ms. Hackett-Wallace exceeded the bounds of her expertise by offering opinions on the medical relatedness of diagnostic procedures and treatments to the injuries claimed in these lawsuits. Plaintiffs also attempt to explain away the utter lack of methodological foundation for Ms. Hackett-Wallace's opinions about the amounts Plaintiffs actually paid for their medical care. Conspicuously absent from Plaintiffs' arguments related to paid medical expenses are citations from Ms. Hackett-Wallace's report or deposition that explain her methodology for calculating paid amounts. This is because Plaintiffs' arguments flatly contradict the sworn testimony of Ms. Hackett-Wallace.

Ms. Hackett-Wallace failed to test her hypotheses on the reliability of the United States' offsets data through examination of case-specific data. She never verified her hypothesis through a correlation of offset data to Plaintiffs' specific medical records as did United States' experts, Dr. Wang Ji and Dr. Syed Hasan. Ms. Hackett-Wallace's opinions on the United States' offset data are therefore entirely unconnected to the facts of this case and are based purely on *ipse dixit* and speculation. Plaintiffs cannot overcome this glaring failure—and in fact, do not even attempt to do so. Rather, they argue that their expert is not required to offer support for her opinions.

Finally, Plaintiffs fail to justify Ms. Hackett-Wallace's improper legal conclusion that damages

and offsets cancel each other out. The Court recently rejected this same legal argument, explaining that this is a matter of proof that cannot be "assumed away." D.E. 885 at 12–13. For all of these reasons, the Court should grant the United States' Motion to exclude Ms. Hackett-Wallace's testimony.

ARGUMENT

I. Ms. Hackett-Wallace's Testimony Must Be Excluded Because Her Damages Calculations Are Premised on Medical Opinions that She Is Not Qualified to Render.

Plaintiffs claim that Ms. Hackett-Wallace does not provide any medical opinions whatsoever, notwithstanding her own admissions that she made medical decisions in reaching her opinions. *Compare* Pls.' Opp'n, D.E. 883, at 1 (arguing that Ms. Hackett-Wallace "does not provide independent opinions on medical causation"), *with* Hackett-Wallace Rep. at 3 (JA Ex. 760, D.E. 840-24) (opining that her methodology produces "a reliable and defensible quantification of past medical expenses ***causally connected to the compensable condition***") (emphasis added). PLG distorts Ms. Hackett-Wallace's opinions in an attempt to conceal the clinical decision-making she made to arrive at her damages calculations. Ms. Hackett-Wallace did not simply "quantify past medical expenses" and "reconcile billing records with medical documentation" as Plaintiffs claim. Pls.' Opp'n, D.E. 883, at 4. Nor did she only rely on "the relatedness assumptions supplied to her by counsel." *Id.* She admits that she did far more: she opined on whether Plaintiffs' medical treatment was related to their Track 1 diseases. Hackett-Wallace Rep. at 10 (JA Ex. 760, D.E. 840-24) ("[A]ll billing entries included in my charts as related are . . . ***a result of and/or related to*** the applicable Track 1 diagnoses for that plaintiff (i.e., kidney cancer, bladder cancer, Parkinson's disease, [n]on-Hodgkin's [l]ymphoma, or leukemia) and those injuries or conditions ***stemming from*** that illness or its treatment.") (emphasis added).

Plaintiffs' reliance on *United States v. Sharp*, 400 F. App'x 741 (4th Cir. 2010), is misguided. Plaintiffs assert that the case stands for the proposition that a coding expert can opine on billed services, and that, in PLG's opinion, "is precisely what Ms. Hackett-Wallace does here." Pls.' Opp'n, D.E. 883, at 5. But Ms. Hackett-Wallace's role is not analogous to that of the coding expert in *Sharp*. *See Sharp*,

400 F. App'x at 746–47. *Sharp* was a health care fraud case where the court permitted the testimony of a coding expert because "clinical decision making" was not at issue. *Id.* at 746. "Instead, the question was whether [a defendant] knowingly used incorrect codes for the services he claimed he provided." *Id.* Here, however, Ms. Hackett-Wallace did not review Plaintiffs' medical bills for coding errors. *See* Hackett-Wallace Dep. Tr at. 89:8–23. (JA Ex. 775, D.E. 841-6) ("Q. And when you reviewed the plaintiffs' private pay insurance records, did you review their medical bills for coding errors? A. No . . . ."). Further, this case, unlike *Sharp*, involves "disputed questions of 'medical necessity,'" regarding which diagnostic procedures and treatments were clinically related to a given Plaintiff's alleged injuries. 400 F. App'x at 747. Therefore, *Sharp* is inapposite, and Ms. Hackett-Wallace's testimony is improper.

A. Ms. Hackett-Wallace Admits That She Independently Made Medical Determinations, Even Though She is Not a Physician.

Ms. Hackett-Wallace repeatedly admitted to making medical decisions throughout her reports and in her deposition testimony; she made medical relatedness decisions to tally up Plaintiffs' past medical expenses as damages for this case. To form her damages opinions, Plaintiffs' counsel "provided medical and billing records for each plaintiff and a list of the Track 1 conditions for each plaintiff and other conditions that [she] was to assume are related to the Track 1 condition or its treatment." Hackett-Wallace Rep. at 3 (JA Ex. 760, D.E. 840-24); *see* **Exhibit 1**, Chart of Related Conditions. Ms. Hackett-Wallace then reviewed the medical records to opine whether the diagnostic procedures and treatments (and related costs) reflected in those records were clinically related to a Plaintiff's Track 1 medical condition. She stated:

> In making relatedness determinations, I then reviewed the available medical records and billing information to confirm that the billing records included charges ***related to*** the Track 1 conditions or its treatment or to the other conditions and/or treatments identified.

Hackett-Wallace Rep. at 3 (JA Ex. 760, D.E. 840-24) (emphasis added). In the same report, she again admitted that she analyzed Plaintiffs' medical records to determine which treatments were related to

the Track 1 diseases and were therefore compensable. She stated:

> The service was rendered for the purpose of evaluating, treating, or managing the compensable condition or a direct secondary consequence of that condition. When multiple diagnoses were present, ***I analyzed the medical documentation to determine whether the compensable condition was the primary clinical driver of the encounter or whether it represented a coincidental or historical diagnosis***.

Id. at 8 (emphasis added). However, Ms. Hackett-Wallace is unqualified to render such medical opinions without medical training. *See* United States' Mem., D.E. 857, at 6–8.

B. Ms. Hackett-Wallace's Improper Medical Opinions Were Contradicted by Medical Doctors.

A number of examples show that Ms. Hackett-Wallace was making medical relatedness decisions and demonstrate Ms. Hackett-Wallace's lack of medical expertise to do so. Ms. Hackett-Wallace reviewed Plaintiff Mark Cagiano's medical bills and records to determine which bills were for diagnostic procedures and treatments related to his Track 1 disease as dictated by the chart provided by Plaintiffs' counsel. Ex. 1. For Mr. Cagiano, Ms. Hackett-Wallace included bills for diagnostic procedures and treatments that she determined were related to "kidney disease, chronic renal insufficiency (CKD3), nephrectomy, kidney disease, [and an] adrenal mass." *Id.* However, Ms. Hackett-Wallace also included in her analysis bills for the diagnostic procedures and treatments related to prostate cancer, an injury not even listed in the chart of "related" conditions provided to her by Plaintiffs' counsel. *Id.*; *see* Hackett-Wallace Dep. Tr. at 134:24–135:16 (JA Ex. 775, D.E. 841-6). The United States' expert physician, Dr. Ji, explained that "treatment related to prostate cancer without concurrent treatment of UTUC are unrelated to the claimed conditions."[1] Ji Rep. at 7 (JA Ex. 653, D.E.

[1] Plaintiffs argue that the United States' "rebuttal process" demonstrates that Ms. Hackett-Wallace did not "independently render medical-relatedness opinions." Pls.' Mem., D.E. 883, at 8. This is presumably because Mr. Greg Russo, an expert economist, quantified the reasonable value of Plaintiffs' past medical expenses using Ms. Hackett-Wallace's spreadsheets. However, unlike Ms. Hackett-Wallace, Mr. Russo explicitly relied on the opinions of Dr. Wang Ji and Dr. Syed Hasan for the relatedness of expenses in Ms. Hackett-Wallace's spreadsheets for his quantification of the reasonable value of those expenses. *See, e.g.*, Russo Rep. (Amsler) at 3 (JA Ex. 671, D.E. 838-11) ("I was specifically asked to . . . [d]etermine the reasonable value of past medical services rendered to Ms. Amsler that are both included in the report of Marjorie Hackett-Wallace and identified as related to

837-17). While Ms. Hackett-Wallace ultimately accepted Dr. Ji's opinion and admitted that her clinical-relatedness opinions were incorrect, this illustrates that Ms. Hackett-Wallace was making clinical determinations outside of her expertise. Hackett-Wallace Dep. Tr. at 134:24–135:16 (JA Ex. 775, D.E. 841-6). Ms. Hackett-Wallace was not, as PLG suggests, simply relying on "the relatedness assumptions supplied to her by counsel." Pls.' Mem., D.E. 883, at 4.[2]

As another example, Ms. Hackett-Wallace opined that Plaintiff Terry Dyer's emergency room visit for gallstones on June 27, 2014, was related to her bladder cancer. Hackett-Wallace Rebuttal (Corrected) at 7 (JA Ex. 764, D.E. 840-28). Gallstones are not listed on the chart Ms. Hackett-Wallace was provided by Plaintiffs' counsel as being related to Ms. Dyer's alleged Track 1 injuries. Ex. 1. Dr. Ji reviewed those same medical records and determined in his professional medical opinion that the emergency room visit for gallstones was clinically unrelated to Ms. Dyer's bladder cancer. Ji Rep. at 20 (JA Ex. 653, D.E. 837-17). Despite her lack of medical expertise, Ms. Hackett-Wallace reached a clinical opinion that was contrary to Dr. Ji's medical assessment. In this instance, Ms. Hackett-Wallace readily admitted that she interpreted medical provider notes and records to offer medical opinions on relatedness. *See, e.g.*, Hackett-Wallace Dep. Tr. at 145:17–147:20 (JA Ex. 755, D.E. 841-6) (admitting she interpreted the medical records created by a clinician to determine the primary driver for an encounter for Ms. Dyer); Hackett-Wallace Rebuttal (Corrected) at 8 (JA Ex. 764, D.E. 840-28)

Ms. Amsler's condition by Dr. Wang Ji.") (emphasis added). The United States' critique of Ms. Hackett-Wallace is that she did not do what Mr. Russo did—she performed the relatedness analysis herself rather than relying on the determination of a physician. By PLG's calculation, Ms. Hackett-Wallace's decision to render her own relatedness opinions resulted in an overall difference of over $100,000 in the value of medical care across the Track 1 Plaintiffs. Pls.' Mem., D.E. 883, at 8–9.

[2] Plaintiffs claim that the relatedness assumptions supplied to Ms. Hackett-Wallace by counsel were supported by physician medical opinions and/or expert reports; however, there has been no evidence provided through discovery or through Ms. Hackett-Wallace's testimony to support this statement. Pls.' Mem., D.E. 883, at 4. Notably, Ms. Hackett-Wallace admitted that she never reviewed any of the specific causation reports in this case. Hackett-Wallace Dep. Tr. at 58:12:16, 169:11–14 (JA Ex. 775, D.E. 841-6). Further, if there were separate determinations of a physician, they were not disclosed as required by Fed. R. Civ. P. 26(a)(2) and the Court's Case Management Orders.

("Additionally, the plaintiff had undergone a gallbladder ultrasound that showed no evidence of cholecystitis, reducing the likelihood that the RUQ pain was biliary in origin.").

Further, Ms. Hackett-Wallace opined that Plaintiff Scott Keller's medical visit for the treatment of influenza—a disease she was not instructed to assume was clinically related to his "compensable conditions"—was related to his kidney disease, a disease that counsel had instructed her to assume was related to Keller's Track 1 disease. Hackett-Wallace Rebuttal (Corrected) at 18 (JA Ex. 764, D.E. 840-28); Ex. 1. Again, Dr. Ji, in his medical judgment, disagreed with Ms. Hackett-Wallace's relatedness opinion, indicating that Mr. Keller's visit for influenza was clinically unrelated to kidney disease. Ji Rep. at 76 (JA Ex. 653, D.E. 837-17). When confronted at deposition, Ms. Hackett-Wallace confirmed that she used her unqualified medical judgment to disagree with Dr. Ji's medical opinion. She stated:

> Q. "The plaintiff's chronic kidney disease was a contributing factor in the provider's medical decision making process." Did I read that correctly?
> A. Yes.
> Q. What do you mean by "contributing factor" here?
> A. The patient was very ill with a fever, apparently dehydrating, which was also creating more kidney issues. His assessment and plan specifically referenced acute kidney injury. The treatment plan included instructions to hydrate gently and to monitor strictly his intakes and outputs, ***which would indicate to me that the kidney function was also impacted by the influenza A.***

Hackett-Wallace Dep. Tr. at 179:24–181:1 (JA Ex. 775, D.E. 841-6) (emphasis added). Ms. Hackett-Wallace asserted her own medical opinion that Mr. Keller's influenza was clinically related to his kidney function based on Plaintiff's treatment plan. Given her lack of qualifications to render such medical relatedness opinions, those opinions are inadmissible. *See* D.E. 886 at 13; *compare* Hackett-Wallace Rebuttal (Corrected) at 18 (JA Ex. 764, D.E. 840-28) (contradicting the testimony of Plaintiffs' own specific causation expert that Mr. Keller's diabetes was related to his non-Hodgkin's lymphoma); *with* Felsher SC Rep. (Keller) at 27 (JA Ex. 482, D.E. 498-1) ("Mr. Keller was diagnosed with diabetes after his diagnosis of NHL, diabetes can be associated with an increased risk of cancer, however, the timing suggest that it is unlikely to be a contributing cause.").

II. Ms. Hackett-Wallace Did Not Actually Quantify Amounts Paid.

After she improperly opined on clinical relatedness without the requisite medical expertise, Ms. Hackett-Wallace purported to quantify the amounts paid by Plaintiffs for past medical expenses—as compared to amounts billed by providers. Hackett-Wallace Rep. at 3 (JA Ex. 760, D.E. 840-24) ("The combination of medical, billing, and insurance data allowed me to reconcile and quantify known billed and paid amounts related to the plaintiffs' care, as well as patient payments to the extent this data was available."). Her calculations of amounts paid do not withstand *Daubert* scrutiny. Plaintiffs concede, as they must, that Ms. Hackett-Wallace did not "personally review or verify the underlying data" which forms the basis of her analysis of amounts paid. Pls.' Mem., D.E. 883, at 16 (quotation omitted).

Plaintiffs' argument that the billing records used by Ms. Hackett-Wallace "expressly identify the . . . amounts paid" is unsupported by any citation to Ms. Hackett-Wallace's reports. *See* Pls.' Mem., D.E. 883, at 15. Indeed, this argument also directly contradicts Ms. Hackett-Wallace's deposition testimony, in which she admitted that she did not attempt to verify how much Plaintiffs paid for billed charges. *Id.* at 15; *see* Hackett-Wallace Dep. Tr. at 96:12–19 (JA Ex. 775, D.E. 841-6) ("Q. So you would agree that you did not do anything to verify that plaintiffs actually made payment on the billed charges; correct? . . . THE WITNESS: I did not validate that they made the payment, no. That was not within my scope."). It follows, therefore, that Ms. Hackett-Wallace failed to identify any methodology—let alone a reliable one—for quantifying past *paid* medical expenses.

III. Ms. Hackett-Wallace Failed to Support Her Opinions on the United States' Offsets Data and Tie Those Opinions to the Facts of this Case.

Plaintiffs' assertion that Ms. Hackett-Wallace was not required to test her hypothesis that the United States' offset datasets are unreliable is tantamount to asking this Court to forego *Daubert* analysis for rebuttal experts. Pls.' Opp'n, D.E. 883, at 13; *see contra Funderburk v. S.C. Elec. & Gas Co.*, 395 F. Supp. 3d 695, 716 (D.S.C. 2019) (rebuttal experts are subject to *Daubert* scrutiny)

(collecting cases). The United States does not move to exclude Ms. Hackett-Wallace on the basis that she failed to provide her own calculations of the payments made to Plaintiffs by the United States through its agencies. Nor does the United States ask this Court to exclude Ms. Hackett-Wallace for failing to "affirmatively establish the [United States'] burden of proof." Pls.' Opp'n, D.E. 883, at 14. Rather, the United States seeks to exclude Ms. Hackett-Wallace's opinions because she failed to offer sufficient facts or data to support her opinions on the United States' offset data in violation of Rule 702(b).

Plaintiffs misstate the United States' reliance on *Sardis v. Overhead Door Corp.*, 10 F.4th 268 (4th Cir. 2021). As Plaintiffs correctly state, the *Sardis* court held that an expert was required to test his hypotheses. Pls. Opp'n, D.E. 883, at 15, *citing Sardis*, 10 F.4th at 275. Absent such testing, a hypothesis is no more than a theory. *Sardis*, 10 F.4th at 291. Whether the expert is an affirmative or rebuttal expert is of little consequence to this analysis—all experts are required to test their hypotheses under Rule 702 by basing their opinions on sufficient facts or data. *See United States v. Ancient Coin Collectors Guild*, 899 F.3d 295, 319 (4th Cir. 2018) (holding rebuttal expert to *Daubert* standards).

Like the affirmative expert in *Sardis*, Ms. Hackett-Wallace's opinions on the reliability of the United States' offset data are based only on untested hypotheses and broad generalizations. When asked if she "review[ed] underlying medical records to verify" the United States' offset data, Ms. Hackett-Wallace testified that she did not. Hackett-Wallace Dep. Tr. at 115:11–15 (JA Ex. 775, D.E. 841-6); *see also* Hackett-Wallace Rebuttal (Corrected) at 4 (JA Ex. 764, D.E. 840-28). Ms. Hackett-Wallace theorizes that the United States' offsets data "lacked the clinical documentation necessary to verify coding accuracy or medical necessity," despite the fact that the United States' experts, Dr. Syed Hasan and Dr. Ji, utilized available medical records to verify the offset data. Hackett-Wallace Rebuttal (Corrected) at 4 (JA Ex. 764, D.E. 840-28); *see generally* Ji Rep. (JA Ex. 653, D.E. 837-17); Hasan Rep. (JA Ex. 651, D.E. 837-15). Accordingly, as with the expert's hypothesis in *Sardis*, Ms. Hackett-Wallace's hypothesis about the validity of the United States' offsets data *could* have been tested by

examining the exact data that she urges the Court to cast aside. *See* 10 F.4th at 291. She declined to do so, which makes her opinions unsupported speculation. *Id.*

Ms. Hackett-Wallace's opinion that the United States' offset data is unreliable appears to be based merely on "publicly available technical and oversight documentation" regarding generic CMS and VA "data architecture and known data quality issues." Hackett-Wallace Rep. at 10 (JA Ex. 760, D.E. 840-24). However, without specifically testing the datasets at issue and tying them to the instant litigation, Ms. Hackett-Wallace's broad, sweeping opinions about the reliability of government data are unsupported by case-specific data, and, thus, are not tailored to the facts of the individual Plaintiffs' cases. *See* D.E. 886 at 7 ("To be helpful, the proposed expert testimony must fit the facts of the case.") (*citing* Fed. R. Evid. 702; *Silicon Knights, Inc. v. Epic Games, Inc.*, No. 5:07-CV-275-D, 2011 WL 6748518, at *6–17 (E.D.N.C. Dec. 22, 2011)). Ms. Hackett-Wallace's generalized concerns about federal agency oversight are an insufficient basis for her opinion that the United States' offsets data for any given Plaintiff are unreliable—particularly where her concerns about issues like duplicative billing could have easily been tested against the Plaintiffs' medical records. *See Silicon Knights*, 2011 WL 6748518, at *10 (finding that an expert calculated damages "based largely on his own subjective conclusions about an industry in which he had no prior knowledge or experience" rather than the facts of the case).

IV. Ms. Hackett-Wallace Offered Impermissible Legal Conclusions on What Constitutes "Damages."

Ms. Hackett-Wallace offered the opinion that any government offset necessarily constitutes proof of a corresponding damage to the Plaintiffs. Hackett-Wallace Rebuttal (Corrected) at 4 (JA Ex. 764, D.E. 840-28). As confirmed by this Court's recent Order which denied Plaintiffs' Motion *in Limine,* this is an improper legal conclusion. *See* D.E. 885 at 12–13; D.E. 806 at 15–17 (Plaintiffs advancing the argument that evidence of offsets necessarily constitutes proof of a corresponding damage to Plaintiffs); D.E. 819 at 9–10 (same). In that Order, the Court held that "[d]amages and

offsets are distinct matters of proof," which the Court declined to "assume away." D.E. 885 at 12–13. Ms. Hackett-Wallace's argument that damages and offsets cancel each other out is not, as Plaintiffs argue, a factual contention. Instead, it is a misguided attempt to "assume away" issues of proof which the Court has rejected. *See id.; see also United States v. McIver*, 470 F.3d 550, 561–62 (4th Cir. 2006) (holding that opinion testimony that applies the law to the facts is generally inadmissible). Ms. Hackett-Wallace's opinion on what constitutes legal proof of damages is a textbook example of a legal conclusion, where "the terms used by the witness have a separate, distinct and specialized meaning in the law different from that present in the vernacular." *Id.* at 562. This opinion should therefore be excluded.

CONCLUSION

For the reasons stated above and in the United States' Memorandum in Support of its Motion to Exclude the Damages Opinions of Marjorie Hackett-Wallace, the United States respectfully requests that this Court exclude Ms. Hackett-Wallace's opinions in their entirety.

Dated: July 1, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2026, I electronically filed the foregoing using the Court's Electronic Case Filing system, which will send notice to all counsel of record.

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