

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

IN RE:

CAMP LEJEUNE WATER LITIGATION

This Document Relates To:

Mousser v. United States, No. 7:23-cv-00667

**MEMORANDUM IN SUPPORT OF
UNITED STATES' MOTION IN LIMINE
TO PRECLUDE DRS. DEL PIZZO AND
SMITH FROM OFFERING GENERAL
CAUSATION OPINIONS**

INTRODUCTION

In order to succeed on his claim under the Camp Lejeune Justice Act, Plaintiff must demonstrate both that upper tract urothelial cancer (“UTUC”) “can be caused by the exposure [to a contaminant] to a degree of scientific certainty (general causation)” and that his “exposure was a cause in fact of [his] harm (specific causation).” *In re Camp Lejeune Water Litig.*, 736 F. Supp. 3d 311, 319 (E.D.N.C. 2024) (citing Restatement (Third) of Torts: Phys. & Emot. Harm § 28 cmt. (c)(1)-(4); *Nix v. Chemours Co. FC*, No. 7:17-CV-189, 2023 WL 6471690, at *8 (E.D.N.C. Oct. 4, 2023) (Dever, J.)).

Plaintiff has listed two experts on his trial witness list who issued reports in the Specific Causation Phase of the litigation: Joseph J. Del Pizzo, M.D. and Armine K. Smith, M.D. These experts, however, included general causation opinions in their Specific Causation Phase reports. These opinions are barred by this Court’s July 22, 2025 Order (“Phase III Order”), which held that “Plaintiffs’ Phase III experts may not introduce new, independent general causation analyses, including but not limited to fresh literature reviews, . . . or any general causation methodologies that were not timely disclosed in Phase II.” *In re Camp Lejeune Water Litig.*, No. 7:23-CV-00897, 2025 WL 2054353, at *4 (E.D.N.C. July 22, 2025). Drs. Del Pizzo and Smith should therefore be precluded from testifying about general causation opinions at trial.

Specifically, Drs. Del Pizzo and Smith stepped outside of their designated lane as specific

causation experts to offer general causation opinions—i.e., that there is a causal relationship between trichloroethylene (“TCE”), perchloroethylene (“PCE”), vinyl chloride (“VC”) and benzene exposure at Camp Lejeune and kidney cancer and/or UTUC. As the Court held in its Phase III Order, Phase III experts may not offer “new, independent general causation analyses, such as fresh literature reviews” 2025 WL 2054353, at *4. This is precisely what Drs. Del Pizzo and Smith have done in their Phase III expert reports. They conducted fresh literature reviews and performed independent general causation analyses; therefore, Drs. Del Pizzo and Smith should be precluded from offering these analyses at trial. *Id.*

BACKGROUND

I. Joseph J. Del Pizzo, M.D.

In his report for Plaintiff, Dr. Del Pizzo evaluated epidemiology literature regarding the relationship between exposure to the chemicals in the Camp Lejeune water and kidney cancer and/or UTUC risk. Del Pizzo Rep. (Mousser) at 6–12 (JA Ex. 386, D.E. [491-10](#)). Although he references Plaintiff’s general causation experts’ reports, Dr. Del Pizzo states that those reports “are consistent with [his] review of the literature and support [his] opinions in this case.” *Id.* at 7; *see also* Del Pizzo Dep. Tr. at 45:17–46:16 (JA Ex. 589, D.E. [507-10](#)) (“I reviewed the literature myself in order to be able to give weight to it in terms of my differential of what I thought was the most relevant literature to apply to the specific plaintiffs, and also ultimately in making my differential, what weight to give the Camp Lejeune water exposure relative to other risk factors that the patient may have.”). Dr. Del Pizzo also evaluated the Bradford Hill factors “to determine whether th[e] association [between exposure to the contaminated Camp Lejeune water system and kidney cancer] with Mr. Mousser is causal, and specifically, whether that it is as likely as not that this exposure was the cause of Mr. Mousser’s kidney cancer.” Del Pizzo Rep. (Mousser) at 18–19 (JA Ex. 386, D.E. [491-10](#)). During his deposition, Dr. Del Pizzo explained that he was “generally

aware of the Bradford Hill criteria, and [he] use[d] them in [his] analysis.” Del Pizzo Dep. Tr. at 71:23–72:2 (JA Ex. 589, D.E. [507-10](#)). Although he acknowledged that he “could have done [his causation] analysis without the Bradford Hill considerations,” he claimed that the criteria gave him “a little bit of context when [he was] forming [his] opinions.” *Id.* at 72:22–73:5. Indeed, Dr. Del Pizzo explains in his own report that the Bradford Hill criteria “helps put weight behind the causal relationship between the water at Camp Lejeune and Mr. Mousser’s kidney cancer *for purposes of the differential diagnosis and causal relationship.*” Del Pizzo Rep. (Mousser) at 20 (JA Ex. 386, D.E. [491-10](#)) (emphasis added).

II. Armine K. Smith, M.D.

In her report for Plaintiff, Dr. Smith offered general causation opinions based on an independent review of toxicologic, mechanistic, and epidemiologic evidence relating to kidney cancer. Smith Rep. (Mousser) at 7–12 (JA Ex. 412, D.E. [493-3](#)). Therein, she evaluated epidemiology literature regarding the relationship between exposure to the chemicals in the Camp Lejeune water and kidney cancer and/or UTUC risk. *Id.* Although she references Plaintiff’s general causation experts’ reports, Dr. Smith states that the “analysis in those reports supports my opinions in this report and finds that the four chemicals in the water at Camp Lejeune are causally related to kidney cancer.” *Id.* at 7. Dr. Smith further states that “it is appropriate to use kidney cancer literature and epidemiology studies to support the causal relationship at issue in this analysis.” *Id.* Dr. Smith concludes by stating that “The data from the Camp Lejeune studies of Bove and ATSDR provide compelling data that exposures of this kind are causally related to kidney cancer.” *Id.* at 12.

LEGAL STANDARD

A district court’s authority to issue rulings in limine stems from its inherent authority to manage the course of trials. *Luce v. United States*, 469 U.S. 38, 41 (1984). Motions in limine are

meant to prevent “injecting into trial matters which are irrelevant, inadmissible, [or unfairly] prejudicial.” *United States v. Jones*, No. 5:15-CR-324-F-1, 2016 WL 5818534, at *1 (E.D.N.C. Oct. 4, 2016) (alteration in original). Evidence is relevant only if (1) “it has any tendency to make a fact more or less probable than it would be without the evidence,” and (2) “the fact is of consequence in determining the action.” Fed. R. Evid. 401. “Irrelevant evidence is not admissible.” Fed. R. Evid. 402. “[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case.” *United States v. Quality Built Constr.*, 358 F. Supp. 2d 487, 490 (E.D.N.C. 2005) (Boyle, J.). Thus, when a court rules before trial that potential evidence is irrelevant, such evidence remains irrelevant at trial and should be excluded. *See id.* (granting motion in limine to preclude evidence at trial based on pretrial ruling, citing the “law of the case” doctrine).

ARGUMENT

Drs. Del Pizzo’s and Smith’s general causation analyses and opinions violate the Court’s Phase III Order; therefore, they should be precluded from testifying about those analyses and opinions at trial. General causation opinions were due during Phase II of this litigation, which concluded on December 9, 2024. *See* 2025 WL 2054353, at *1. Drs. Del Pizzo and Smith did not disclose their general causation opinions until months later. On July 22, 2025, United States Magistrate Judge Robert B. Jones granted in part the United States’ motion to exclude portions of Plaintiffs’ Phase III expert reports. *Id.* Specifically, Judge Jones ruled that Plaintiffs’ Phase III experts “may not introduce new, independent general causation analyses . . . that were not timely disclosed in Phase II.” *Id.* at *4.

Consequently, the proffered general causation analyses and opinions of Drs. Del Pizzo and Smith are precluded by Judge Jones’ application of the Phase III Order. *Id.* Throughout their reports, Drs. Del Pizzo and Smith offered untimely general causation analyses and opinions. *See*,

e.g., Del Pizzo Rep. (Mousser) at 6 (JA Ex. 386, D.E. [491-10](#)) (“[A]vailable evidence has provided a cohesive database supporting TCE as a known kidney carcinogen.”); 7 (“Epidemiologic studies involving PCE exposure demonstrate an association with kidney cancer.”); 8 (“Mechanistically, vinyl chloride is thought to induce kidney cancer via oxidative stress leading to DNA strand breaks and mutations and the formation of DNA adducts. . . . Mechanistically, benzene is thought to induce kidney cancer via its metabolites inducing oxidative stress leading to DNA strand breaks and mutations and the formation of DNA adducts.”); 9 (“In sum, renal pelvis cancer or UTUC has similar risk profiles when considered in the category of kidney cancer or when analyzed separately.”); Smith Rep. (Mousser) at 7 (JA Ex. 412, [493-3](#)) (“I also researched and read the epidemiology, toxicology and mechanistic evidence that exists relating to the toxins at issue in this case and agree that the toxins as they existed in the water at Camp Lejeune are causally related to kidney cancer, including UTUC, under a more likely than not standard, which exceeds the ‘at least as likely as not’ standard in this case.”).

As this Court has recognized, “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Quality Built Constr.*, 358 F. Supp. 2d at 490; *see also United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999) (same) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16 (1988)). Here, the Phase III Order clearly prohibits specific causation experts like Drs. Del Pizzo and Smith from offering general causation analyses and opinions. Accordingly, Drs. Del Pizzo and Smith should be precluded from offering any general causation analyses and opinions at trial.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court preclude Drs. Del Pizzo and Smith from offering general causation opinions at trial.

Dated: October 19, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 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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