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	)	**MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION IN LIMINE TO EXCLUDE EVIDENCE AND ARGUMENT REGARDING NON-TRACK 1 ILLNESSES**
	)	
This Document Relates To:	)	
	)	
Mousser, No. 7:23-CV-00667	)	

INTRODUCTION

In selecting Track 1 Trial Plaintiffs, Plaintiffs' Leadership Group ("PLG") agreed, and the Court ordered, that Track 1 Trial Plaintiffs would consist only of Plaintiffs alleging that they suffered one or more Track 1 illness[1] allegedly caused by exposure to contaminated water at Camp Lejeune. Aside from the Track 1 illness, the Plaintiffs could only seek damages from any injuries or conditions stemming from a Track 1 illness or its treatment (collectively, "Track 1 Illnesses"). PLG specifically agreed, and the Court ordered, that Track 1 Trial Plaintiffs waived their rights to allege that any illnesses or injuries besides Track 1 Illnesses were caused by exposure to contaminated water at Camp Lejeune.

Plaintiff Frank Mousser claims his upper tract urothelial carcinoma ("UTUC")[2] was caused by his exposure to water at Camp Lejeune. Mr. Mouser also claims that his chronic kidney disease ("CKD") and recurrence of urothelial cancer in his bladder stem from his diagnosis or treatment

[1] The Track 1 Illnesses are kidney cancer, bladder cancer, leukemia, Non-Hodgkins' Lymphoma, and Parkinson's Disease.
[2] UTUC is a unique illness and is technically neither kidney cancer nor bladder cancer. Within the context of this litigation, the Parties have disputed whether UTUC is more analogous to bladder cancer or kidney cancer. Because both cancers are Track 1 illnesses, though, the Parties do not disagree that Plaintiff has a qualifying Track 1 illness.

for UTUC. Thus, the only Track 1 illnesses for Mr. Mousser that are properly the subject of this case are his UTUC, CKD, and urothelial cancer recurrence.

Nevertheless, the United States anticipates Mr. Mousser will attempt to offer evidence that additional illnesses and conditions were caused by his exposure to contaminated water at Camp Lejeune. For example, Mr. Mousser continues to maintain that various conditions—such as insomnia; erectile dysfunction; severe obstructive sleep apnea; and diabetes mellitus Type II—were caused by his exposure to Camp Lejeune water. Accordingly, the United States moves *in limine* to exclude any and all evidence relating to claims that conditions besides the Track 1 Illnesses listed above were caused by exposure to contaminated water at Camp Lejeune.[3] Such evidence is irrelevant to the critical question of whether exposure to contaminated water at Camp Lejeune caused Mr. Mousser's Track 1 Illnesses. Mr. Mousser never amended his short form complaint to allege any other illnesses were caused by exposure to Camp Lejeune water or stem from his UTUC, nor did he disclose expert testimony supporting that these unrelated illnesses were caused by exposure to Camp Lejeune water or stem from his UTUC. Moreover, any probative value of evidence relating to conditions other than the Track 1 Illnesses is substantially outweighed by the danger of undue delay and wasting time.

BACKGROUND

I. PLG Agreed that Track 1 Trial Plaintiffs, Including Mr. Mousser, Waived All Conditions or Illnesses not Included within the Definition of a Track 1 Illness.

In selecting Track 1 Trial Plaintiffs, PLG agreed that Track 1 Trial Plaintiffs would consist only of Plaintiffs alleging Track 1 Illnesses and that Track 1 Trial Plaintiffs would waive claims

[3] While the United States moves for exclusion of causation evidence related to the conditions that do not fall within the definition of a Track 1 Illness, it does not move for exclusion of evidence or argument at trial regarding the symptoms or functional impacts of these additional conditions. Such evidence is relevant to the issues in this case.

with respect to all other conditions. In a joint submission for a Case Management Order regarding the Track 1 Trial Plaintiff selection, the Parties stated:

> The Parties have agreed to select Trial Plaintiffs from Plaintiffs who will be alleging only that one or more Track 1 illnesses—kidney cancer, bladder cancer, leukemia, Non-Hodgkins' Lymphoma, or Parkinson's Disease—were caused by the water on Camp Lejeune, along with other injuries or conditions stemming from a Track 1 illness or its treatment ("Trial Plaintiff Pool"). The Track 1 Trial Plaintiffs will be waiving their rights to allege that any other illnesses or injuries besides Track 1 illnesses (and those injuries or conditions stemming from a Track 1 illness or treatment) were caused by the water on Camp Lejeune.

D.E. 220 at 1-2.

Based on the Parties' agreement, the Court entered Case Management Order No. 12 ("CMO 12"), which ordered the Parties to select as Track 1 Trial Plaintiffs only Plaintiffs alleging that Track 1 Illnesses were caused by exposure to contaminated water at Camp Lejeune and were willing to waive claims regarding other conditions. CMO 12 stated:

> ORDERED that the Parties select Track 1 Trial Plaintiffs from among Track 1 Discovery Pool Plaintiffs who will be alleging that only one Track 1 Illness (or multiple Track 1 Illnesses)—kidney cancer, bladder cancer, leukemia, Non-Hodgkin's Lymphoma, or Parkinson's Disease—was (were) caused by the water on Camp Lejeune, along with other injuries or conditions stemming from a Track 1 Illness or its treatment ("Trial Plaintiff Pool"). *See* [D.E. 130] (order setting Track 1 Discovery Pool Plaintiffs). The Track 1 Trial Plaintiffs will be waiving their rights to allege that any other illnesses or injuries besides Track 1 Illnesses (and those injuries or conditions stemming from a Track 1 Illness or its treatment) were caused by the water at Camp Lejeune.

D.E. 232 at 1.

After the Court entered CMO 12, the Parties filed a joint motion for entry of a trial order selecting twenty-five (25) proposed Track 1 Trial Plaintiffs, including Mr. Mousser. D.E. 248 at 1. That joint motion stated that "[t]he Parties have proposed Track 1 Trial Plaintiffs and the PLG have secured necessary waivers." D.E. 248 at 1. The Court granted the joint motion and entered an Order confirming the selection. That Order stated:

> The Court's recent Order Regarding Track I Trial Plaintiff Selection Protocol, [D.E. 232] (Case Management Order No. 12, or "CMO 12"), limited eligibility for selection as a Track I Trial Plaintiff to plaintiffs "waiving their rights to allege that any other illnesses or injuries besides Track I Illnesses (and those injuries or conditions stemming from a Track I Illness or its treatment) were caused by the water at Camp Lejeune." *See* [D. E. 232] I. CMO 12 also required that after the Plaintiffs' Leadership Group ("PLG") obtained waivers from proposed Track I Trial Plaintiffs, the "Defendant shall propose those plaintiffs to the court to proceed to trial[,]" before the Court would confirm designation of the Track I Trial Plaintiffs. *See id.* The Plaintiffs informed the United States on June 25, 2024, that for the plaintiffs proposed as Track I Trial Plaintiffs, they have obtained waivers for non-Track I Illnesses or injuries, and the selected Track I Plaintiffs will proceed only with Track I Illnesses (and injuries or conditions stemming from a Track I Illness or treatment). These waivers have been confirmed in the joint motion.

D.E. 250 at 1-2.

II. Nevertheless, Mr. Mousser Continues to Claim that Injuries or Illnesses Other Than the Track 1 Illnesses Were Caused by Exposure to Contaminated Water at Camp Lejeune.

On November 23, 2023, Mr. Mousser filed a short form complaint identifying only his Track 1 Illnesses as the injury for which he was seeking compensation. *See Mousser v. United States*, No. 7:23-cv-00667-TB-RN, D.E. 11 (Nov. 3, 2023) (identifying only his cancer and non-cancer kidney disease as conditions he claims he suffered as a result of exposure to the Camp Lejeune water). On July 9, 2024, Mr. Mousser was selected as a Track 1 Trial Plaintiff for Kidney Cancer and waived claims related to other injuries or illnesses. D.E. 250 at 2. Nevertheless, Mr. Mousser continues to claim that several additional conditions were caused by his exposure to contaminated water at Camp Lejeune. For example, in his Amended Discovery Pool Profile Form ("DPPF"), Mr. Mousser has listed numerous illnesses and injuries that are unrelated to his Track 1 Illnesses, including mental health issues like depression and adjustment disorder with mixed anxiety and depressed mood; insomnia; erectile dysfunction; severe obstructive sleep apnea; and diabetes mellitus Type II. Exhibit A, First Amended Discovery Pool Profile Form (Mousser) (September 3, 2026). But Mr. Mousser has not submitted an amended short form complaint to

allege these conditions stem from his UTUC, nor do his experts provide any opinions linking them to his UTUC.

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). Evidence is relevant only if (1) "it has a 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. Even relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

ARGUMENT

PLG agreed, and the Court ordered, that Track 1 Trial Plaintiffs would be limited to claims that they suffered one or more Track 1 Illness allegedly caused by exposure to contaminated water at Camp Lejeune and conditions related to those illnesses. D.E. 250 at 1-2. PLG further agreed, and the Court ordered, that Track 1 Trial Plaintiffs would waive their rights to claim that additional conditions that did not fall within the definition of a Track 1 Illness were caused by contaminated water at Camp Lejeune. *Id*.

Mr. Mousser has not filed an amended short form complaint to allege additional conditions are a Track 1 Illness. Evidence about illnesses that are not related to the Track 1 Illnesses does not make any fact more or less probable in determining the critical question of whether exposure to contaminated water at Camp Lejeune caused Mr. Mousser's alleged Track 1 Illnesses. Thus, the

Court should exclude all evidence related to claims that illnesses and injuries other than his Track 1 Illnesses were caused by exposure to contaminated water at Camp Lejeune as irrelevant under Federal Rules of Evidence 401 and 402.

However, even if marginally relevant in some way, any probative value of the evidence is substantially outweighed by the danger of undue delay and wasting time. Presentation of evidence about these conditions would require the United States to cross-examine Plaintiff's witnesses about the conditions and their etiology which, wasting the Court's time hearing this evidence. The United States would also have to question its own witnesses about these conditions to rebut the testimony offered by Plaintiff. Accordingly, this evidence should be excluded under Federal Rule of Evidence 403.

Federal district courts routinely exclude evidence about illnesses or injuries not at issue in litigation. *See*, *e.g.*, *Feamster v. Gaco Western*, *LLC*, No. 18-cv-01327-HSG, 2021 WL 5494277, at *2 (N.D. Cal. Nov. 23, 2021) ("The Court GRANTS Defendant's motion to exclude any reference to or evidence of Plaintiff's medical issues, disabilities, or personal injuries. These topics are not relevant to any issue presented by the sole claim in this case: a claim for property damage. And even if there were some marginal relevance to these topics, that relevance would be substantially outweighed by the prospect of confusion of issues and waste of time."); *Logan v. Westfield Insurance Co.*, No. 17-29, 2020 WL 412207, at *9 (W.D. La. Jan. 24, 2020) ("Evidence of any 'unrelated' injuries is excluded as the parties concede such evidence is not relevant.").

CONCLUSION

The Court should exclude from Mr. Mousser's trial all evidence and argument that injuries or illnesses other than his Track 1 Illnesses were caused by exposure to contaminated water at Camp Lejeune. Mr. Mousser has not updated his short form complaint to include these conditions, so such evidence is irrelevant to his claims that exposure to contaminated water at Camp Lejeune

caused his Track 1 Illnesses. Moreover, any probative value of evidence relating to claims that additional conditions or illnesses were caused by exposure to contaminated water at Camp Lejeune is substantially outweighed by the danger of undue delay and wasting time.

Dated: October 19, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

JONATHAN GUYNN
Deputy Assistant Attorney General
Torts Branch

BRIDGET BAILEY LIPSCOMB
Chief, Camp Lejeune Justice Act Section

ADAM BAIN
Chief Litigation Counsel

HAROON ANWAR
SARA J. MIRSKY
Assistant Director

/s/ Carson M. Garand
CARSON M. GARAND
Trial Attorney
United States Department of Justice
Civil Division, Torts Branch Camp Lejeune Unit
1100 L Street, NW Washington, DC 20005
Phone: (202) 445-0759
Fax: (202) 616-4473
Carson.m.garand@usdoj.gov

Attorneys for Defendant,
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2026, a copy of the foregoing document was served on all counsel of record by operation of the court's electronic filing system and can be accessed through that system.

/s/ Carson M. Garand
CARSON GARAND