IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:22-CV-135-FL

CLAUDIA MCCLARRIN, et al., Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION; 12(b)(1)

INTRODUCTION

Pursuant to Fed. R. Civ. P. 12(b)(1), the United States moves to dismiss Plaintiffs' Complaint brought pursuant to the Camp Lejeune Justice Act of 2022. Plaintiffs have failed to comply with the administrative exhaustion requirement of this law, a mandatory prerequisite to filing a tort claim related to exposure to contaminated Camp Lejeune water in the Eastern District of North Carolina under the statute. Because of this failure, Plaintiffs' Complaint must be dismissed for lack of subject-matter jurisdiction.

NATURE OF THE CASE

Plaintiffs have filed a tort action pursuant to the newly enacted Camp Lejeune Justice Act of 2022, Pub. L. No. 117-168, § 804, 136 Stat. 1802, 1802-04 (2022).

STATEMENT OF FACTS

On August 10, 2022, President Biden signed the Honoring our Promise to Address Comprehensive Toxics Act of 2022 ("PACT Act"), Pub. L. No. 117-168, 136 Stat. 1759 (2022). Section 804 of the PACT Act concerns tort claims related to harm allegedly caused by exposure

to water at Camp Lejeune, North Carolina, entitled the Camp Lejeune Justice Act of 2022 ("CLJA") Pub. L. No. 117-168, § 804, 136 Stat. 1802, 1802-04 (2022). The section provides exclusive venue in this district for such tort claims. The subsection states:

> (b) IN GENERAL.—An individual, including a veteran (as defined in section 101 of title 38, United States Code), or the legal representative of such an individual, who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States may bring an action in the United States District Court for the Eastern District of North Carolina to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.

Id. § 804(b). A separate subsection provides

> (h) DISPOSITION BY FEDERAL AGENCY REQUIRED.— An individual may not bring an action under this section before complying with section 2675 of title 28, United States Code.

Id. § 804(h)

The passage of the CLJA followed years of litigation of Camp Lejeune water injury claims brought under the provisions of the Federal Tort Claims Act ("FTCA"). Many of these cases were consolidated in a Multi-District Litigation ("MDL") in the Northern District of Georgia (MDL No. 2218). Ultimately, the MDL district court dismissed the cases on jurisdictional grounds, finding that the claims were barred by: (1) the North Carolina ten-year statute of repose, N.C. GEN. STAT. § 1-52(16) (2010), which bars injury claims accruing more than ten years after the act or omission giving rise to the action; (2) the discretionary function exception of the FTCA, 28 U.S.C. § 2680(a), which bars tort claims challenging discretionary, policy-based conduct; and (3) the *Feres* doctrine, *Feres v. United States*, 340 U.S. 135 (1950), which bars tort claims incident to military service. *See In re Camp Lejeune N. C. Water Contamination Litig.*, 263 F. Supp. 3d 1318, 1332-60 (N.D. Ga. 2016), *aff'd*, 774 F. App'x 564 (11th Cir. 2019). On appeal, the Eleventh Circuit upheld the dismissal.

In 2019, following this decision, the Navy denied over 4,000 pre-CLJA administrative claims that had been filed pursuant to the administrative claim presentment requirement of 28 U.S.C. § 2675 at a time when the FTCA was the only vehicle for pursuing a tort claim for personal injury or death caused by the negligent, wrongful act, or omission of a federal government employee. Ex. A ¶ 4 (Declaration of Randall Russell). In the letter denying the claims, the Navy stated:

> Your clients' claims were considered under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680. In accordance with the FTCA, the United States can only be held liable under limited circumstances where the negligent acts or omissions of United States employees acting within the scope of their employment proximately caused the alleged injuries.
>
> The government's investigation has determined that your clients' claims do not meet the requirements under the FTCA for compensation. Among the reasons why the claims do not meet the requirements, is that the claims are barred by the North Carolina statute of repose which provides that no claim for personal injury "shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. Section 1-52(16). Because your clients did not file their claims within 10 years of the last act or omission related to contaminated water at Camp Lejeune, their actions are untimely. See In re Camp Lejeune North Carolina Water Contam. Litig., 263 F. Supp. 3d 1318, 1332-40 (N.D. Ga. 2016); appeal docketed 16-17573 (11th Cir.); Bryant v. United States, 768 F.3d 1378 (11th Cir. 2014). Additionally, your clients' claims are barred by the FTCA's discretionary function exception, which provides the United States immunity for tort claims challenging discretionary, policy-based conduct. 28 U.S.C. Section 2680(a). See In re Camp Lejeune, 263 F. Supp. 3d at 1343-60; Snyder v. United States, 504 F. Supp. 2d 136 (S.D. Miss. 2007), aff'd 2008 WL 4601686 (5th Cir. 2008).
>
> If any of your clients were serving in the military and stationed at Camp Lejeune, another independent reason that their claims do not meet the FTCA requirements for compensation is that they were in the service at the time of their stated exposure to contaminated water at Camp Lejeune; therefore, they must pursue an administrative remedy for service-connected injury rather than an FTCA action. See Feres v. United States, 340 U.S. 135 (1950); In re Camp Lejeune, 263 F. Supp. 3d at 1341-43; Gros v. United States, 2005 WL 6459834 (E.D. Tex. Sept. 27, 2005), aff'd 232 Fed. App. 417 (5th Cir. 2007).

Ex. A at Attachment 1. (Navy Denial Letter).

The CLJA was a response to the court decisions finding that the claims related to

exposure to contaminated water at Camp Lejeune were barred by certain provisions of the FTCA, and the Navy's denial of Camp Lejeune claims on that basis. Indeed, the CLJA specifically prohibits the assertion of defenses that are otherwise available under the FTCA and that the Navy cited in its denial letter. First, the CLJA prohibits the assertion of the North Carolina statute of repose in N.C. Gen. Stat. Section 1-52(16). In Subsection (j), the CLJA provides a statute of limitations, which states:

> (2) STATUTE OF LIMITATIONS.—A claim in an action under this section may not be commenced after the later of—
>
> (A) the date that is two years after the date of enactment of this Act; or
>
> (B) the date that is 180 days after the date on which the claim is denied under section 2675 of title 28, United States Code.

CLJA § 804(j)(2). The CLJA then states:

> (3) INAPPLICABILITY OF OTHER LIMITATIONS.—Any applicable statue of repose or statute of limitations, other than under paragraph (2), shall not apply to a claim under this section.

Id. § 804(j)(3). Second, the CLJA specifically prohibits the assertion of the FTCA's discretionary function exception in 28 U.S.C. § 2680(a). The CLJA states:

> (f) IMMUNITY LIMITATION.—The United States may not assert any claim to immunity in an action under this section that would otherwise be available under section 2680(a) of title 28, United States Code.

Id. § 804(f). Third, the CLJA, provides that "a veteran . . . who resided, worked, or was otherwise exposed . . . may bring an action . . ." *Id.* § 804(b).

On August 5, 2022, after the PACT Act passed Congress but before it was signed into law by the President, the Navy denied the last outstanding pre-CLJA administrative claims related to contaminated Camp Lejeune water: approximately 900 claims for which one of two law firms had requested reconsideration from among the over 4,000 denials in 2019. Ex. A ¶ 5. In those letters, the Navy stated that "we have determined the denial of your claims was appropriate under

the FTCA for the reasons given in the original denial letters, including the FTCA's discretionary function exception, the North Carolina statute of repose and the *Feres* doctrine." Ex. A at Attachment 2 (Navy Response to Reconsideration Request). The Navy also stated in the letter,

> Note that your claims have not, and will not, be considered sufficient to meet the requirements of any other statute, including the Camp Lejeune Justice Act. To meet the requirements of the Camp Lejeune Justice Act, you must submit a claim signed and dated after the date of enactment of that statute so that this office can consider the claim under the substantive requirements of that statute.

Id.

On August 10, 2022, the day that President Biden signed the PACT Act, several plaintiffs filed complaints in this district under the CLJA, without first presenting a post-CLJA claim to the Navy and allowing Navy consideration of that claim. Additional plaintiffs filed lawsuits under the CLJA in the subsequent days and weeks, also without first presenting a post-CLJA claim and allowing Navy consideration of the claim. The plaintiffs claim a right to file suit based on the filing of an administrative claim under 28 U.S.C. § 2675, at some point years before enactment of the CLJA.

STANDARD OF REVIEW

The United States files this motion to dismiss for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). The filing of an administrative claim prior to filing a federal lawsuit is a jurisdictional requirement that cannot be waived. *See McNeil v. United States*, 508 U.S. 106, 113 (1993); *Henderson v. United States*, 785 F.2d 121, 123 (4th Cir. 1986). As a threshold matter, the Court must be assured of its jurisdiction at the outset of a lawsuit before proceeding to the merits. *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 93-94 (1998) (jurisdiction is a threshold matter that is inflexible and without exception). When determining jurisdiction, the trial court "may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Velsaco v. Gov't of Indon.*, 370 F.3d

392, 398 (4th Cir. 2004). "In any case in federal court, the plaintiff has the burden of proving that subject matter jurisdiction exists." *Viault v. United States*, 609 F. Supp. 2d 518, 524 (E.D.N.C. 2009) (citing *Richmond, Fredericksburg & Potomac R. Co.*, 945 F.2d 765, 768 (4th Cir. 1991)).

ARGUMENT

The Court should dismiss this complaint under Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction because plaintiffs failed to comply with the administrative presentment requirement of the CLJA. Congress intended that claimants would have to submit claims to the Navy for administrative consideration under the terms of the CLJA before filing actions under the CLJA in federal court. Different legal standards guided the Navy's consideration of pre-CLJA administrative claims, where the FTCA, as it then existed, was the only vehicle for pursuing a tort action against the government. Under the law, plaintiffs must submit claims that can be evaluated by the standards that are presently applicable under the CLJA. The CLJA's administrative presentment requirement provides claimants and the Navy an opportunity to resolve claims under the legal standards of the CLJA before filing suit in district court. Because plaintiffs failed to present administrative claims to the Navy after the CLJA was enacted, the Court lacks subject-matter jurisdiction over their claims.

I. The Language of the CLJA Prohibits a CLJA Action From Being Instituted Unless the Plaintiff First Presents a CLJA Claim to the Department of the Navy.

In interpreting a statute, a court must start with the statutory text. *See Trejo v. Ryman Hosp. Properties, Inc.,* 795 F.3d 442, 446 (4th Cir. 2015). When the statute's language is plain, the court should enforce the statute according to its terms. *Lamie v. United States Tr.,* 540 U.S. 526, 534 (2004). The language of the CLJA clearly requires a party to first file an administrative claim with the appropriate federal agency under the CLJA and allow that agency an opportunity

to act on the CLJA claim before suing in federal court. Section 804(h) of the CLJA is titled "DISPOSITION BY FEDERAL AGENCY REQUIRED" and bars anyone from "bring[ing] an action under this section" without first "complying with section 2675 of title 28, United States Code." CLJA, § 804(h). The administrative presentment requirement of 28 U.S.C. § 2675 provides in relevant part that

> An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency . . .

28 U.S.C. § 2675(a).

The administrative presentment requirement is written in terms of presenting a particular claim to the agency. *Id.* Because the plaintiffs are bringing suit based on the CLJA, under the terms of 28 U.S.C. § 2675, they must first submit that CLJA claim to the agency. The requirement is not satisfied by claims for injuries related to the Camp Lejeune water that plaintiffs submitted to the Navy long before the CLJA was enacted. At that time, the existing standards of the FTCA provided the only vehicle for pursuing a tort action against the government, and the Navy had no chance to consider the claims under the applicable—and very different—legal standards of the CLJA.

Had Congress intended that the prior administrative presentment of an administrative claim years before enactment of the CLJA could satisfy the CLJA's "disposition by federal agency" requirement, it could have easily said so. For example, in 2010, Congress amended the Black Lung Benefits Act to expand benefits eligibility to certain survivors. In doing so, Congress specified that the new eligibility standards would retroactively apply "with respect to claims filed . . . after January 1, 2005, that are pending on or after the date of enactment of this Act [March 23, 2010]." Pub. L. No. 111-148, § 1556(c), 124 Stat. 119, 260 (2010); *see also W.*

Va. CWP Fund v. Stacy, 671 F.3d 378, 381-82 (4th Cir. 2011) (discussing history of the Black Lung Benefits Act). By contrast, in enacting the CLJA, Congress did not give retroactive effect to administrative claims previously filed under the FTCA; rather, Congress preserved the administrative presentment requirement to give the claimant and the agency an opportunity to resolve a claim under the applicable terms for recovery before allowing a plaintiff to file a federal suit pursuant to the CLJA.

II. The Purpose of the CLJA "Disposition by Federal Agency" Requirement Is to Provide the Claimant and the Department of Navy with the Opportunity to Resolve Claims Administratively Under the Standards of the CLJA; Pre-CLJA FTCA Claims Did Not Allow for that Opportunity.

In addition to the statute's plain language, a review of relevant legislative history also supports the United States' position. The CLJA's "Disposition by Federal Agency" requirement references 28 U.S.C. § 2675, and therefore its purpose must be considered in reference to that section, which takes its present form by virtue of a 1966 amendment to the FTCA. Prior to 1966, a claimant could file an action directly in federal district court. See Pub. L. No. 79-601, 60 Stat. 812, 842-47. In 1966, Congress amended the FTCA by changing 28 U.S.C. § 2675, to "require that an administrative claim be filed with the agency or department in each instance prior to filing a court action against the United States." S. Rep. No. 1327, 89th Cong., 2d Sess. Reprinted in 1966 U.S. Code Cong. & Admin. News. 2515, 2521. This amendment was "to ease court congestion and avoid unnecessary litigation, while making it possible for the Government to expedite the fair settlement of tort claims asserted against the United States." *Id.* at 2516. As the Congressional reports explained

> This procedure would make it possible for the claim first to be considered by the agency whose employee's activity allegedly caused the damage. That agency would have the best information concerning the activity which gave rise to the claim. Since it is the one directly concerned, it can be expected that claims which are found to be meritorious can be settled more quickly without the need for filing

suit and possible expensive and time-consuming litigation.

Id. at 2517.

In *McNeil v. United States*, 508 U.S. 106, 112 (1993), the Supreme Court stated that this section of the FTCA indicated that "Congress intended to require complete exhaustion of Executive remedies before invocation of the judicial process." The Court elaborated:

> Every premature filing of an action under the FTCA imposes some burden on the judicial system and on the Department of Justice which must assume the defense of such actions. Although the burden may be slight in an individual case, the statute governs the processing of a vast multitude of claims. The interest in orderly administration of this body of litigation is best served by adherence to the straightforward statutory command.

Id. (footnote omitted). In furtherance of this purpose, courts have held that a claimant must (1) provide the agency with written notice sufficient for the agency to investigate the claim and (2) articulate a "sum certain" value of the claim. *Ahmed v. United States*, 30 F.3d 514, 516-17 (4th Cir. 1994) (citing cases)

In evaluating the adequacy of an administrative claim, the proper focus is on whether the administrative claim affords the United States with adequate notice to properly investigate the underlying incident so that it may assess its liability or competently defend itself. *See id.* at 517. Here, the pre-CLJA administrative claims in no sense led the government to reasonably assess its liability for the claims currently before this Court. To the contrary, the government's assessment of its liability was based entirely on grounds that have been abrogated by the CLJA. The Navy denied the plaintiffs' pre-CLJA claims based on the North Carolina statute of repose, the FTCA's discretionary function exception, and the *Feres* doctrine. Ex. A. ¶ 3. The government thus had no need to evaluate whether administrative claims would be meritorious in the absence of those defenses, particularly because the courts of appeals have consistently upheld the dismissal of complaints based on water contamination at Camp Lejeune on one or more of those threshold grounds. *See, e.g.*, *In re Camp Lejeune Water Contamination Litig.*, 774 F. App'x 564

(11th Cir. 2019) (unpublished) (statute of repose); *Clendening v. United States*, 19 F.4th 421 (4th Cir. 2021) (discretionary function and *Feres* doctrine), *pet. for cert. pending*, No. 21-1410 (S. Ct.); *Gros v. United States*, 232 Fed. App'x 417 (5th Cir. 2007) (unpublished) (*Feres* doctrine).

The CLJA specifically prohibits the assertion of any applicable state statute of repose, CLJA § 804(j), or the discretionary function exception articulated in 28 U.S.C. § 2680(a), CLJA § 804(f). The CLJA also provides that "a veteran . . . who resided, worked, or was otherwise exposed . . . may bring an action," *id.* § 804(b), whereas the *Feres* doctrine prohibits a tort action against the United States based on conduct incident to military service. Thus, the government's prior assessment of liability has little bearing on the claims plaintiffs now bring. Allowing a federal district court action to proceed based on the submission of a claim prior to the enactment of the CLJA—particularly when the claim was denied based on FTCA provisions that are inapplicable in the context of the CLJA—would undermine the congressional purpose in including an administrative presentment requirement in the CLJA. If a federal court action were allowed to proceed based on plaintiffs' pre-CLJA claims, the Navy would never have had the opportunity to consider the claims under the CLJA's terms. The entire purpose of the FTCA's exhaustion requirement, which Congress expressly referenced in the CLJA, would be defeated. *See Wilson v. United States*, Civ. A. No. 92-2212-JWL, 1992 WL 370618, at *4 (D. Kan. Nov. 25, 1992) (where the Missouri Supreme Court recognized a new cause of action after plaintiff filed her administrative claim, the new cause of action was not properly presented because "[t]he government has not been afforded the notice which the administrative complaint was designed to give it").

The Navy made it clear to claimants that the submission of pre-CLJA administrative claims would not be considered sufficient to meet the administrative presentment requirement of

the CLJA when it denied requests to reconsider the denial of approximately 900 pre-CLJA administrative claims before enactment of CLJA. The Navy informed the claimants that these claims would not be "considered sufficient to meet the requirements of any other statute, including the Camp Lejeune Justice Act." Ex. A at Attachment 2. The Navy informed these claimants that to "meet the requirements of the Camp Lejeune Justice Act, you must submit a claim signed and dated after the date of enactment of that statute so that this office can consider the claim under the substantive requirements of that statute." *Id.* Indeed, in the first several weeks since enactment of the CLJA, at least 170 claimants who submitted pre-CLJA claims have submitted new administrative claims, including at least 62 of the 86 individuals who have filed lawsuits in this district. Ex. A ¶ 6. The submission of the new claims shows that those claimants realized that pre-CLJA claims were not sufficient to meet the requirements of the statute. The Navy and those claimants now have an opportunity to administratively resolve the claims under the terms of the CLJA, as Congress intended. Claimants can file suit in federal court only after the final written denial of the claim or the passage of six months since submission of the claim. 28 U.S.C. § 2675. Here, neither of those circumstances have occurred for any of plaintiffs' claims, Ex. A ¶ 6, so the lawsuit is premature and must be dismissed.

III. Plaintiffs' Failure to Exhaust Administrative Remedies Under the CLJA Requires Dismissal of the Cases for Lack of Subject-Matter Jurisdiction.

To bring a CLJA lawsuit against the United States, the plaintiff must first have presented the claim "to the appropriate Federal agency" and the claim must "have been finally denied by the agency in writing" or await the passage of six months and deem the claim denied. CLJA, § 804(h); 28 U.S.C. § 2675(a). This is a jurisdictional requirement and cannot be waived—the administrative claim procedure must be exhausted prior to filing a federal lawsuit. *See McNeil v. United States*, 508 U.S. 106, 113 (1993); *Henderson v. United States*, 785 F.2d 121, 123 (4th

Cir. 1986). Because the CLJA is a waiver of sovereign immunity, a plaintiff must file the action "in careful compliance with its terms." *See Willis v. United States Postal Service*, No. 5:19-CV-16-BO, 2019 WL 1429593, at *1 (E.D.N.C. March 29, 2019) (quoting *Kokotis v. U.S. Postal Service*, 223 F.3d 275, 278 (4th Cir. 2000)). The Fourth Circuit has found the requirement of filing an administrative claim pursuant to 28 U.S.C. § 2675(a) to be a "jurisdictional" requirement that cannot "be waived." *Plyler v. United States*, 900 F.2d 41, 42 (4th Cir. 1990) (noting that jurisdiction could not be maintained by suspending the proceedings); *see Garcia v. United States*, No. 4:15-CV-88-FL, 2016 WL 916432, at *5 (E.D.N.C. March 10, 2016).

As described above, plaintiffs' submission of a pre-CLJA claim cannot satisfy the administrative presentment requirement of the CLJA. To the extent that the plaintiffs have submitted administrative claims since enactment of the CLJA, the Navy has not yet taken action on those claims and they have been pending for less than six months. Ex. A ¶ 6. Because plaintiffs have failed to meet the administrative presentment requirement of CLJA § 804(h), plaintiffs' action must be dismissed for lack of subject-matter jurisdiction.

CONCLUSION

For all the foregoing reasons, the Court must dismiss Plaintiffs' Complaint for lack of subject-matter jurisdiction.

Dated: October 17, 2022

Respectfully Submitted

BRIAN BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

J. PATRICK GLYNN
Director, Torts Branch

BRIDGET BAILEY LIPSCOMB
Assistant Director

/s/ Adam Bain
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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2022, 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/ Adam Bain

ADAM BAIN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

DECLARATION OF RANDALL D. RUSSELL

I, Randall D. Russell, declare as follows:

1. I currently serve as the head of the Torts Claims Branch in the Admiralty and Claims Division of the Office of the Judge Advocate General, Department of the Navy. I have served in this position since 2009.

2. In my position, I have responsibility for the receipt and consideration of tort claims that are filed with the Department of the Navy pursuant to 28 U.S.C. § 2675. In the years prior to the enactment of the Camp Lejeune Justice Act, my office received over 4,000 administrative claims pursuant to 28 U.S.C. § 2675 that claimed personal injury or wrongful death resulting from exposure to contaminated water at Camp Lejeune. These claims were filed under the then existing provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b)(1), 2671-80. Some of these claimants elected to file suit in federal court, and several of these actions were combined in a multi-district litigation (MDL) in the Northern District of Georgia.

3. Ultimately, the MDL district court dismissed the cases on jurisdictional grounds, finding that the claims were barred by: (1) the North Carolina ten-year statute of repose, N.C. GEN. STAT. § 1-52(16) (2010), which bars injury claims accruing more than ten years after the act or omission giving rise to the action; (2) the discretionary function exception of the FTCA, 28 U.S.C. § 2680(a), which bars tort claims challenging discretionary, policy-based conduct; and (3) the *Feres* doctrine, *Feres v. United States*, 340 U.S. 135

(1950), which bars tort claims incident to military service. *See In re Camp Lejeune North Carolina Water Contam. Litig.*, 263 F. Supp. 3d 1318, 1332-60 (N.D. Ga. 2016), *aff'd*, 774 F. App'x. 565 (11th Cir. May 22, 2019). On appeal, the Eleventh Circuit upheld the dismissal.

4. In 2019, following this decision, our office denied all remaining claims pending with the Navy alleging personal injury or death as a result of exposure to contaminated water at Camp Lejeune; this consisted of over 4,000 claims. In the letter denying the claims, we cited the grounds on which the MDL court had relied in dismissing the federal court actions. An example of one of these letters is attached as Exhibit 1 to this Declaration. Given these jurisdictional grounds for dismissal of the actions, we did not consider the substantive merits of whether any claimant had an injury or death related to exposure to contaminated water at Camp Lejeune as part of our consideration of these claims.
5. Subsequently two law firms, representing approximately 900 claimants, requested reconsideration of the Navy's decision to deny the claims of their claimants. On August 5, 2022, our office sent a letter to each of the law firms stating that upon reconsideration of the claims, the claims were appropriately denied for the reasons given in the original denial letters. A copy of one of those letters is attached as Exhibit 2 to this declaration.
6. Since the enactment of the Camp Lejeune Justice Act our office has received several thousand administrative claims pursuant to 28 U.S.C. § 2675. To date, our office has determined that at least 170 individuals who had filed claims before enactment of the Camp Lejeune Justice Act have already resubmitted claims since the passage of the Camp Lejeune Justice Act. This includes at least 62 of the 86 individuals who have filed lawsuits in federal court. Our office has not yet taken action on any claim submitted

since the passage of the Camp Lejeune Justice Act, and no claim has been pending for six months or longer.

I declare that the foregoing is true and correct under penalty of perjury.

Dated: October 13, 2022

Randall D. Russell

RANDALL D. RUSSELL

Exhibit A

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO:

5890
Ser 00CL
January 24, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stack & Associates P.C.
260 Peachtree Street Ste 1200
Atlanta, GA 30303

Dear Sir or Madam:

SUBJECT: CAMP LEJEUNE CONTAMINATED WATER CLAIMS

This responds to your clients' claims submitted for personal injuries and/or wrongful death allegedly resulting from the exposure to contaminated water at Camp Lejeune, North Carolina. Your clients' names are listed on the enclosure to this letter.

Your clients' claims were considered under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680. In accordance with the FTCA, the United States can only be held liable under limited circumstances where the negligent acts or omissions of United States employees acting within the scope of their employment proximately caused the alleged injuries.

The government's investigation has determined that your clients' claims do not meet the requirements under the FTCA for compensation. Among the reasons why the claims do not meet the requirements, is that the claims are barred by the North Carolina statute of repose which provides that no claim for personal injury "shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action" N.C. Gen. Stat. Section 1-52(16). Because your clients did not file their claims within 10 years of the last act or omission related to contaminated water at Camp Lejeune, their actions are untimely. See In re Camp Lejeune North Carolina Water Contam. Litig., 263 F. Supp. 3d 1318, 1332-40 (N.D. Ga. 2016) appeal docketed 16-17573 (11th Cir.); Bryant v. United

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Ser 00CL
January 24, 2019

States, 768 F.3d 1378 (11th Cir. 2014). Additionally, your clients' claims are barred by the FTCA's discretionary function exception, which provides the United States immunity for tort claims challenging discretionary, policy-based conduct. 28 U.S.C. Section 2680(a). See In re Camp Lejeune; 263 F. Supp. 3d at 1343-60; Snyder v. United States, 504 F. Supp. 2d 136 (S.D. Miss. 2007), aff'd 2008 WL 4601686 (5th Cir. 2008).

If any of your clients were serving in the military and stationed at Camp Lejeune, another independent reason that their claims do not meet the FTCA requirements for compensation is that they were in the service at the time of their stated exposure to contaminated water at Camp Lejeune; therefore, they must pursue an administrative remedy for service-connected injury rather than an FTCA action. See Feres v. United States, 340 U.S. 135 (1950); In re Camp Lejeune, 263 F. Supp. 3d at 1341-43; Gros v. United States, 2005 WL 6459834 (E.D. Tex. Sept. 27, 2005), aff'd 232 Fed. App. 417 (5th Cir. 2007).

This notice constitutes final action on your clients' claims. If they are dissatisfied with the action taken they may file suit in the appropriate U.S. District Court no later than six months from the date of the mailing of this letter. By law, failure to comply with this six-month time limit may forever bar them from filing a lawsuit.

Sincerely,

H.H. DRONBERGER
Director
Claims & Tort Litigation

Enclosure

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE, SUITE 3000
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO:

5890
Ser RDR/RF/0042
August 5, 2022

BY E-MAIL/FAX AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EDWARD BELL
LORI K.CROMARTIE
BELL LEGAL GROUP
219 N. Ridge St.
Georgetown, SC 29440

Dear Mr. Bell & Ms. Cromartie:

SUBJECT: CLAIMS FOR WHICH BELL LEGAL GROUP SOUGHT RECONSIDERATION ON JULY 17, 2019 AND JULY 23, 2019

This is in reference to the administrative claims you submitted pursuant to the Federal Tort Claims Act (FTCA) related to contaminated water at Camp Lejeune. Your letters of July 17, 2019 and July 23, 2019 requested reconsideration of the denial of claims for certain claimants. Your request for reconsideration was granted.

We have reviewed the files and related correspondence, the investigation conducted into the matters raised in your claims, and the issues raised in your letter requesting reconsideration. Upon completion of that review, we have determined the denial of your claims was appropriate under the FTCA for the reasons given in the original denial letters, including the FTCA's discretionary function exception, the North Carolina statute of repose and the *Feres* doctrine. Accordingly, upon reconsideration, any and all claims for which you requested reconsideration are denied.

This denial constitutes the final action on these claims. If you choose to file suit under the Federal Tort Claims Act, you must do so in the appropriate United States District Court within six months of the date of the mailing of this letter.

Failure to file suit within the six-month period will result in the claims being forever barred.

Note that your claims have not, and will not, be considered sufficient to meet the requirements of any other statute, including the Camp Lejeune Justice Act. To meet the requirements of the Camp Lejeune Justice Act, you must submit a claim signed and dated after the date of enactment of that statute so that this office can consider the claim under the substantive requirements of that statute.

Sincerely,

Randall D. Russell

Randall D. Russell
Head, Tort Claims Branch
Admiralty & Claims Division