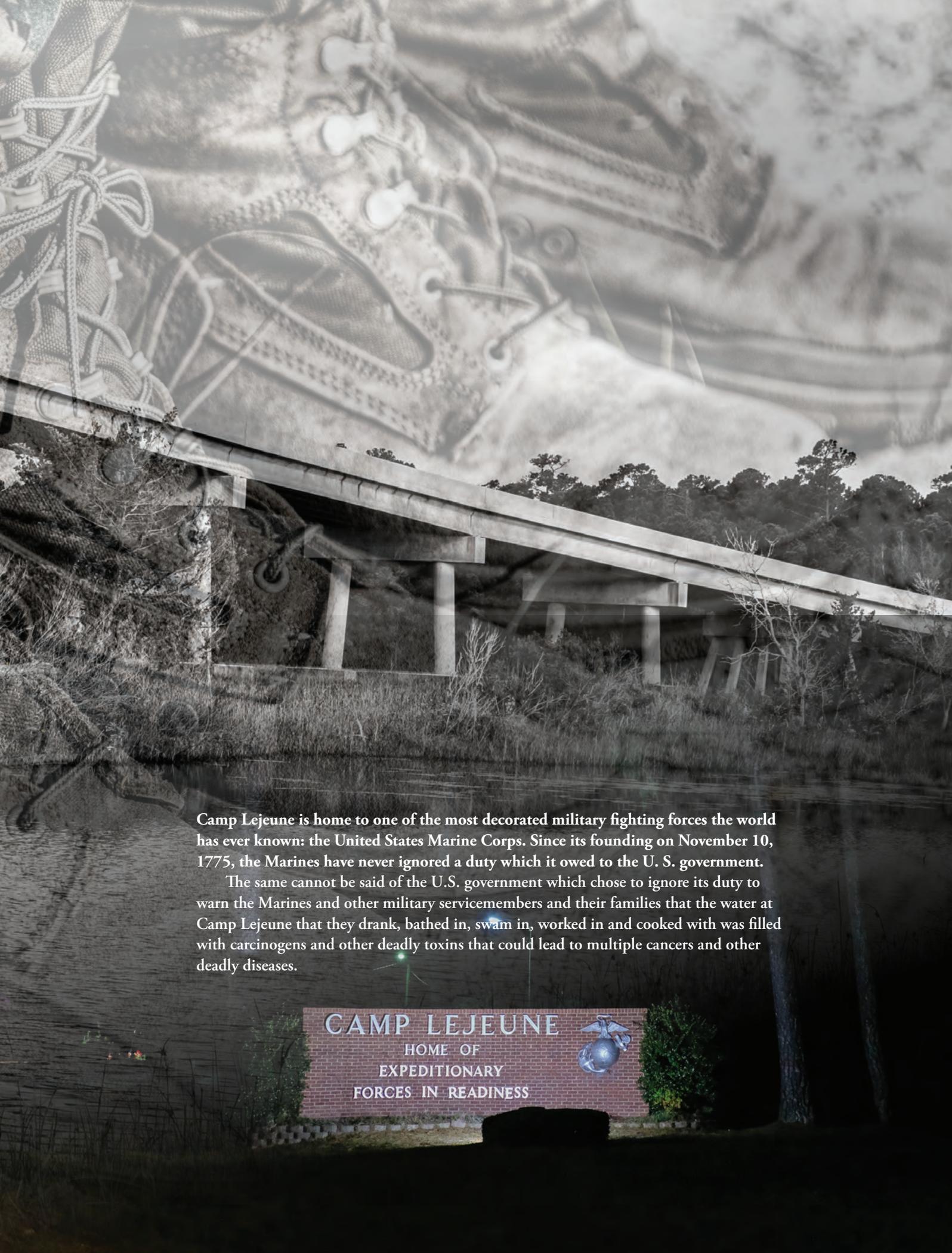


OVERVIEW OF THE CAMP LEJEUNE JUSTICE ACT OF 2022

By Howard L. Nations



Camp Lejeune is home to one of the most decorated military fighting forces the world has ever known: the United States Marine Corps. Since its founding on November 10, 1775, the Marines have never ignored a duty which it owed to the U. S. government.

The same cannot be said of the U.S. government which chose to ignore its duty to warn the Marines and other military servicemembers and their families that the water at Camp Lejeune that they drank, bathed in, swam in, worked in and cooked with was filled with carcinogens and other deadly toxins that could lead to multiple cancers and other deadly diseases.

CAMP LEJEUNE
HOME OF
EXPEDITIONARY
FORCES IN READINESS



The United States Marine Corps Base Camp Lejeune began construction in April 1941 in anticipation of the significant role that the Marines would fulfill during World War II. Today, the base has facilities to accommodate up to 150,000 military servicemembers, families, civilian contractors, and civilian employees. During the 34-year period of exposure to toxins, from 1953 to 1987, an estimated one million individuals were potentially exposed to toxic water at Camp Lejeune.

In 1987, at the culmination of decades of multiple toxic incidents, underground contamination of wells and storage tanks, and reckless disposal of contaminated materials and substances, EPA designated Camp Lejeune as a Superfund site and placed it on EPA's National Priority List for remediation because of the contamination of the water supply at the base.





Estimates of as many as 150,000 to 200,000 military servicemembers, their families and civilians who resided, worked or were otherwise exposed to the toxic and carcinogenic water at The United States Marine Corps Base Camp Lejeune between August 15, 1953 and December 31, 1987, have contracted cancers and other deadly and serious diseases as a result of such exposure, including but not limited to: kidney cancer, bladder cancer, liver cancer, non-Hodgkin's lymphoma, multiple myeloma, systemic sclerosis/scleroderma, leukemia, Parkinson's disease; end stage renal disease; and infant cardiac defects, among numerous others.

These victims fought for decades to receive compensation from the entity that caused this deadly water contamination: the United States Government. The government denied them justice at every turn until the current United States Congress, with strong encouragement from President Joseph R. Biden, provided a pathway to justice by passing the "Honoring our PACT Act of 2022." Veterans are thankful to Congress, who passed this legislation overwhelmingly on a bipartisan basis.

On August 10, 2022, President Biden signed the PACT Act into law. Section 804 of the PACT Act is the "Camp Lejeune Justice Act of 2022" (CLJA) which creates a federal cause of action, as an exclusive remedy for individuals to address the harm done to hundreds of thousands of victims by their exposures to carcinogenic and other dangerous toxins including Benzene, TCE, PCE and Vinyl Chloride, among others, at Camp Lejeune between August 15, 1953, and December 31, 1987.

Who Qualifies for Recovery

CLJA covers a broad spectrum of Camp Lejeune victims who may qualify to prosecute an administrative claim and a federal lawsuit against the United States government:

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. *Section 804 (b)*

This includes families of service members, civilian contractors, and civilian workers on base, who meet the 30-day non-contiguous exposure requirement and who contracted one or more of the multiple known diseases discussed below.

Burden of Proof:

Plaintiff has the burden to show one or more relationships between the water at Camp Lejeune and the harm suffered by plaintiff. To meet this burden of proof, plaintiff shall produce evidence showing that the relationship between exposure to the water at Camp Lejeune and harm suffered by plaintiff is:

- A) sufficient to conclude that a causal relationship exists; or
- B) sufficient to conclude that a causal relationship is at least as likely as not.

Section (B) is a unique standard which is based on the epidemiological standard of equipoise, i.e., it is as least as likely as not that the subject chemical or toxin has a causal relationship to the harm. The epidemiological standards of equipoise in evaluating a causative link between a chemical and a harm are 1) sufficient, 2) equipoise and above, 3) below equipoise, 4) evidence against a causal relationship.

“Sufficient” meet the standard of “more likely than not, while “equipoise and above” is sufficient to show that a causal relationship is as likely as not, which is sufficient to establish causation between exposure to water and the harm to Plaintiff. To meet the burden, it is only necessary to comply with the lesser standard of “at least as likely as not.”

Presumptive Causation

Another unique aspect of this burden of proof are acknowledgments by the Agency for Toxic Substances and Disease Registry (ATSDR), a government agency within the Department of Health and Human Services, that there are sufficient scientific studies in certain diseases to support presumptive causation, i.e., that the causal relationship between the toxic water and the harm may be presumed for certain qualifying diseases.

The Department of Defense in 1997 contacted ATSDR to begin causation studies to determine if there were causal connections between the toxic water and the deaths and multiple diseases. ATSDR conducted six extensive studies and Public Health Assessments (PHA)

which culminated in the 2017 ATSDR Superseding PHA report. The report by this respected Health and Human Services agency concluded that a sufficient scientific causal relationship exists between ten diseases and the contaminants in the Camp Lejeune water supply. It is presumed that it is at least as likely as not that the toxic water was a cause of kidney cancer; non-Hodgkin’s lymphoma; multiple myeloma; leukemia; liver cancer; bladder cancer; Parkinson’s disease; end-stage renal disease; systematic sclerosis/scleroderma; or cardiac birth defects.

Exclusive Jurisdiction and Venue

The United States District Court for the Eastern District of North Carolina has exclusive jurisdiction over any action filed under subsection (b) and shall be the exclusive venue for such an action. Nothing in this subsection shall impair the right of any party to a trial by jury. *Section 804 (b)*

This is obviously a unique provision which allows a jury trial in a lawsuit against the U. S. Government in the Federal Court in North Carolina, where Camp Lejeune is located. We have already begun focus groups in North Carolina to get an early analysis of relevant juror attitudes.

804 (e) (2): Subrogation for Health and Disability Benefits Relating to Water Exposure.

Any award paid under this section shall be offset by the amount of any disability award, payment or benefit provided to the award recipient... under Veterans Affairs programs, Medicare, Medicaid... **in connection with healthcare or a disability relating to exposure to the water at Camp Lejeune.**

Filing a claim or lawsuit under CLJA will not affect ongoing veterans’ benefits as the Veterans’ Administration has no connection to CLJA. However, if a veteran collects healthcare or disability benefits arising out of water exposure at Camp Lejeune, the government provider may have a subrogation interest, but only for healthcare or benefits that they can prove were based on Camp Lejeune water exposure.

804 (h): Administrative Claims Required Before Filing Suit

A prerequisite to filing suit in federal court under the Camp Lejeune Justice Act is to file an administrative claim under Section 2675 of Title 28, United States Code. Navy JAG has posted a website which contains a fillable

form and full instructions for filing the requisite claim: www.jag.navy.mil. This is the starting point for filing the administrative claim.

The Department of the Navy, Office of the Judge Advocate General, Tort Claims Unit Norfolk is processing the administrative claims. The Department of Justice, Environmental and Natural Resources Division will defend the lawsuits in federal court.

The Director of the Camp Lejeune claims processing at Navy JAG, advised that the Navy is acquiring technology to process claims digitally, including batch filing of claims, but the sheer volume of claims will slow that process. It is essential to follow the www.jag.navy.mil website for the latest improvements in handling claims as they are developing modern technologies and procedures regularly.

Navy JAG has contracted the processing of all civil claims to civilian attorneys and has done so for more than a decade. The unwelcome news is that there are only ten civilian attorneys to process the influx of tens of thousands of claims within 180 days. The result is that there will be no time for evaluating claims and negotiating settlements. Navy JAG is trying to simplify and thereby expedite the process, so they are asking that we file no medical records with our claims. They are also accepting DocuSign authorizations and filings from clients and attorneys.

One cautionary warning is that the instructions on the web site indicate that a person who files in a representative capacity, e.g., the Administrator of an Estate, must attach to the claim, proof of their appointed capacity. Have your estate representative appointed before filing a death claim. It is not known whether Navy JAG will reject a claim with no proof of appointment of an administrator or whether they will treat it as a discrepancy, with opportunity for correction.

Attorneys' fees

The basis for the fee in Camp Lejeune Justice Act litigation is the private contract between client and attorney. This is not a Federal Tort Claims Act case and the cap on attorneys' fees under Section 2678 is not applicable to a claim brought under CLJA, which is an exclusive remedy for Camp Lejeune claims.

Filing the Administrative Claim: Specific Amount of the Demand

Navy JAG requires that each claimant make a specific

monetary demand for their claim in precise dollar amounts, separately for personal injury and wrongful death and then totaled. Demand only compensatory damages as there are no punitive damages awards in CLJA cases. If there is no specific demand, the Navy JAG will either declare the claim deficient with the opportunity to amend and cure, or they may reject and deny the claim.

The Pitfall: Do Not Create Your Own Cap.

The amount of the claim in dollars set out in the administrative claim creates a cap on the amount of the client's recovery in federal court. If you claim \$10,000 as the specific amount in dollars for your total claim at the administrative level and you later receive a \$1 million judgment in a federal court trial, the amount of the recovery is capped at \$10,000, unless you can show new evidence that was unavailable at the time of your \$10,000 administrative claim that influenced the jury award. Finally, when you receive a discrepancy letter from Navy JAG, respond to it expeditiously as possible because tolling of the statute of limitations does not occur during the time that we delay our response to a discrepancy letter.

804(j)(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. Any applicable statute of repose or statute of limitations other than under paragraph (2), shall not apply to a claim under this section.

Conclusion: The Camp Lejeune Justice Act of 2022 is a living document that will require multiple interpretations and decisions by Federal Judges and Magistrates, Navy JAG, the Department of Justice, and Plaintiffs and their attorneys. The changes will come swiftly so be certain to keep abreast of decisions in this litigation.

The Camp Lejeune Justice Act of 2022 is unique legislation designed to correct unjust mistakes of the past that have denied Justice to those who deserve it most, the front-line defenders of our Democracy, our freedoms, and our defining concept of Equal Justice Under Law. We are a long way from achieving Equal Justice Under Law, but this legislation brings our deserving veterans closer.