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 Pleading Relates to: ALL CASES.	))))))))	**PLAINTIFF LEADERSHIP GROUP'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO RESERVE ADMISSIBILTY DETERMINATIONS AND EXPEDITE TRACK 1 BELLWETHER TRIALS [D.E. 721]**

I. Defendant fails to offer a viable path to resolution.

The PLG filed its motion to reserve admissibility determinations and expedite Track 1 bellwether trials [D.E. 721] because the PLG wants to resolve the bellwether cases on the merits, and reach global resolution, as quickly and fairly as possible. Defendant apparently does not share this goal—or even this understanding of the purpose of the bellwether tracks. Instead, Defendant asserts that the Track 1 bellwether cases *will not inform the hundreds of thousands of remaining cases*. [D.E. 733] at 1 ("[I]t is highly unlikely that those specific [bellwether] cases alone will provide the type of information that will materially advance global resolution due to the expansive statutory time period and the many different illnesses alleged[.]"), 15 ("[D]ecisions on individual [bellwether] cases will likely provide little, if any, guidance on how the cases and claims should be resolved globally[.]"). If Defendant believes that bellwether trials on the merits will not inform global resolution, why have the parties been vigorously litigating these cases? Why have remaining cases been stayed? Does Defendant intend to litigate hundreds of thousands of claims? Defendant's position undermines the Court's purpose in establishing the bellwether tracks, casts doubt on settlement negotiations, and presents an untenable forecast of interminable litigation for thousands of claimants with terminal illnesses.

Instead of resolution on the merits, Defendant's apparent plan for managing CLJA claims is to assume that this Court will grant all its *Daubert* and summary judgment motions, trials will not be needed at all, and claimants will be forced to accept mass lowball settlements. In other words, Defendant's argument that assessing its motions now is more efficient than expediting trials depends on the assumption that its motions will succeed. But the Court cannot know whether Defendant's motions have merit until it undertakes the massive effort required to assess them, and by then the efficiency is lost. Unless this Court agrees to dismiss every Track 1 case before trial (as Defendant requests),[1] there will be trials, and they will have been significantly delayed. Plus, the PLG explained in its oppositions why Defendant's motions are baseless.

Effectively, Defendant admits that it intends to treat the bellwether outcomes one-sidedly: according to Defendant, dismissal of Track 1 cases before a trial assessing the merits *would* inform global settlement, but trial outcomes on the merits would *not*. This is backwards. If the Court grants any of Defendant's *Daubert* motions, it will not have ruled on whether a toxin caused a plaintiff's disease, but only whether an expert used a reliable methodology. Rulings at trial—for either side—will decide the actual merits questions, including causation. Merits rulings on causation and other issues will significantly inform resolution; pretrial methodological rulings less so. Because the bellwether cases will have bench trials, the trial judges will be able to make such rulings with the benefit of live testimony and cross-examination of the experts.

Defendant admits that "the best path for settling claims for any given disease is by evaluating the science for that given disease," but seems to incorrectly believe that such

[1] The PLG stands corrected: rather than moving to exclude all of the PLG's experts, Defendant moved to exclude opinions of all but one expert. [D.E. 733] at 2. Regardless, Defendant has moved for summary judgment and to dismiss every remaining Track 1 bellwether case, arguing there is not even a dispute of fact as to causation for any of the Track 1 diseases.

scientific evaluation should be done through *Daubert* decisions before trial. [D.E. 733] at 13.[2] Plaintiffs agree that evaluating the science is an essential function of this litigation, under the standards provided by the statute that enabled it. And the Court can do just that, in the best context our adversary system can offer: actual trial. The PLG seeks to get to the trial stage as speedily as possible. Defendant seeks unnecessary delay.

II. Defendant misrepresents the PLG's proposal, which honors the Court's phasing.

The PLG's proposal to reserve certain expert admissibility determinations until trial is consistent with this Court's phased case management plan. First, contrary to Defendant's opposition, the PLG recommended in its motion that the Court prioritize resolving motions relating to Phase I water contamination, as well as motions that bear on the applicable CLJA standards across all cases. *See* [D.E. 721] at 1-12 & n.4. Indeed, the parties largely agree on which motions the Court should prioritize. *See* [D.E. 733] at 14 (recommending the Court prioritize the same motions, plus a couple others). And the PLG agrees with Defendant that it is most efficient for the *en banc* Court to decide the universally applicable motions, before any judge holds individual trials; Defendant is incorrect that the PLG's proposal would require universal motions to be decided only by the judge trying individual kidney cancer cases. *Id.* The Court has already begun issuing Phase I decisions (e.g., [D.E. 777]), and the PLG supports the Court continuing to do so. The Court may continue to issues such orders while also scheduling a trial date for which the parties can prepare. Reserving other admissibility determinations for trial would not interfere with the Court's phasing, either. The Court may still phase trials to consider general causation before specific causation.

[2] *See also, e.g.*, [D.E. 700] at 7-8 (explaining how Defendants' four literature review *Daubert* motions each ask the Court to prematurely assess the merits by weighing the relative value of hundreds of studies).

Defendant also appears to misunderstand the PLG's proposal to schedule one disease group for trial first. *See* [D.E. 733] at 13 & n.5. The PLG does not propose staying any cases. Rather, the PLG simply suggests scheduling one disease group for trials on an expedited basis such that the parties may focus efforts and such that related decisions may inform other cases, which should continue on their current schedules in the meantime. The PLG is not suggesting anything radical here; trials will have to be ordered somehow (Defendant does not appear to suggest all disease groups hold trials simultaneously.). Decisions (whether at or before trial) on pending Phase II and III motions as to one disease will inform the others, because many hinge on legal questions that do not differ by disease, such as whether literature review challenges go to weight not admissibility (particularly at a bench trial), the proper application of the Bradford Hill methodology, and the requirements of an admissible differential etiology. [D.E. 721] at 13-14.

Defendant does not explain why it believes proceeding to trials on one disease first could "hinder" global resolution. [D.E. 733] at 12-13. The first trials will force the parties and the Court to resolve many cross-cutting issues (regarding trial procedures, admissibility, stipulations, etc.), that will significantly inform future trials and global resolution.

III. Rule 702's 2023 amendments do not bar deferring admissibility determinations.

Defendant's reliance on the 2023 amendments to Rule 702 is a red herring. The committee notes on the 2023 amendments explicitly state that "[n]othing in the amendment imposes any new, specific procedures." Fed. R. Evid. 702 Advisory Committee's note to the 2023 amendments. The Supreme Court held as far back as 1987 that expert admissibility determinations are subject to the preponderance standard. *See Bourjaily v. United States*, 483 U.S. 171, 175 (1987); *see also Huddleston v. United States*, 485 U.S. 681, 687 n.5 (1988) ("[P]reliminary factual findings under Rule 104(a) are subject to the preponderance-of-the-evidence standard[.]"). And the committee notes to Rule 702 have specified this since 2000. Fed.

R. Evid. 702 Advisory Committee's note to the 2000 amendments (citing *Bourjaily*, 483 U.S. 171). The 2023 amendments merely took the burden of proof that already applied to admissibility requirements and moved it from the committee notes to the rule's text.

Thus, Defendant is wrong to argue that cases deferring admissibility determinations until trial before the 2023 amendments are irrelevant. Those courts were subject to the exact same standard. Plus, courts have continued to defer admissibility determinations after the rule change. *See, e.g.*, *Close Armstrong LLC v. Trunkline Gas Co., LLC*, No. 3:18-cv-280-DRL, 2024 WL 983764, at *1 (N.D. Ind. Mar. 7, 2024) (recognizing both that "the court 'need not conduct a *Daubert* (or Rule 702) analysis before presentation of the evidence'" at a bench trial and that "the proponent of the expert testimony must establish its admissibility by a preponderance of the evidence"); *see also Balakrishnan v. TTEC Digital LLC*, No. 1:23-cv-01204-CNS-NRN, 2025 WL 414445, at *5 (D. Colo. Feb. 6, 2025); *Duke v. Hamm*, No. 4:14-cv-01952-RDP, 2025 WL 296594, at *2-3 (N.D. Ala. Jan. 24, 2025); *Scilex Pharmaceuticals Inc. v. Aveva Drug Delivery Sys., Inc.*, No. 0:22-cv-61192-WPD, 2024 WL 2834399, at *2 (S.D. Fl. May 15, 2024).

Substantively, the 2023 amendments do not relate to *when* a court considers admissibility at all, and Defendant does not cite a single case saying so.[3] The amendments relate to the burden of proof for admissibility. The PLG's motion to reserve admissibility determinations does not argue that any lesser burden of proof should be applied for *Daubert* requirements. At trial, the Court will still need to decide that testimony is admissible before considering it, with the benefit of hearing live testimony from the experts.[4] The PLG's motion should be granted.

[3] The cases Defendant cites relate to the importance of gatekeeping before *jury* trials. [D.E. 733] at 5 n.1.
[4] Defendant's unrelated attack on Drs. Hu and Mallon, [D.E. 733] at 11 n.2, is unfounded. Defendant isolates one paragraph from their 40+-page reports, ignoring each's extensive analysis of the scientific literature. Both experts prepared their reports independently and without assistance. Hu GC Dep Tr. 35:8-13 (JA Ex. 162, D.E. 470-1); Mallon GC Dep Tr. 43:22-44:20, 255:7-9 (JA Ex. 151, D.E. 469-5). Because of the substantial overlap between the NHL and leukemia literature, they relied on some common sources.

Dated: December 19, 2025.

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CERTIFICATE OF SERVICE

I, J. Edward Bell, III, hereby certify that the foregoing document was electronically filed on the Court's CM/ECF system on this date, and that all counsel of record will be served with notice of the said filing via the CM/ECF system.

Dated: December 19, 2025.

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