

Navigating a Camp Lejeune Legal Claim

By Jason E. Johns and Matthew P. Legg

11.0 – Veterans’ Claims

14.0 – Tort Claims involving service members and military families

In 1941, Camp Lejeune was established by the United States Marine Corps near Jacksonville, North Carolina. It is now known to be the site of an environmental and public health disaster. From 1953 until 1987, chemicals from leaking underground fuel storage tanks, indiscriminate industrial, hazardous, and solid waste disposal, dry cleaning chemicals, dumping of waste cleaning solvents, spreading of motor oil on gravel roads, insecticides, and pesticides. This resulted in the contamination of the shallow aquifer drinking water with numerous toxic chemicals, including benzene, trichloroethylene (TCE), perchloroethylene (PCE), vinyl chloride (VC), and DDT, among others. These pollutants are scientifically known to cause in-excess of two dozen health conditions, including cancers, cardiac and neurological issues, miscarriages, infertility, and deadly birth defects.

The harm to those who lived at Camp Lejeune during this time is shocking and tragic, affecting not only servicemembers but their families as well. Beginning in the late 1950s, babies born on the base began dying within days of delivery. Some were born without craniums, parts of their brain, open spinal columns, missing lungs, and irreversible heart defects. Throughout the next 30 years, hundreds of these babies were buried in a city of Jacksonville cemetery in what became known as “Baby Heaven.” Many children who survived beyond days of their birth developed leukemia, neurological issues, and cardiac issues, never reaching adulthood.

Throughout the decades, residents of the base complained to leadership of “foul smelling” water, and they often had to mix their water with Kool-Aid and other additives to drink it. Some took to boiling the water to “make it safe for drinking.” However, boiling contaminated water vaporizes the chemicals, putting them in the air for breathing and likely compounding the effects of exposure. This was especially true for base hospital and maintenance personnel who regularly washed their hands with hot water.

Base environmental personnel regularly expressed to Marine Corps leadership the concerns they had regarding the numerous chemicals present in the water and the higher than

¹ We invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

acceptable levels for human ingestion. These concerns were ignored by base officials, the USMC, and the Department of the Navy. One base commander was made aware that 1,500 gallons of diesel fuel per month was leaking from a faulty underground pipe directly into the water yet made the determination that it would cost too much money to repair it and remained silent.

In 2009, claims stemming from groundwater contamination at Camp Lejeune were filed, but ultimately rejected, due to federal government immunity and North Carolina's 10-year statute of limitations on bringing personal injury claims. Fortunately, on August 10th, 2022, thanks to the tireless efforts of veteran service organizations like ROA, the PACT Act was signed into law. Included within this landmark legislation was language from the Camp Lejeune Justice Act bill wherein Congress waived legal immunity of the U.S. Government, accepted liability, and set forth the following:

- (a) Declared that any individual who resided, worked, or was otherwise exposed to the toxic water at Lejeune (including in utero), for 30 days or more (cumulatively, not consecutively); and
- (b) These 30 days occurred between August 1, 1953 and December 31, 1987; and
- (c) Established the burden of proof for the individual to prevail on their claim involves:
 - (i) Production of evidence showing that the relationship between exposure to the water and their harm is sufficient to show a causal relationship, and that this causal relationship is "at least as likely as not" the cause of their injury, condition, or illness.

As a result of this new legal avenue for veterans and their families to seek justice, many attorneys have begun advertising their services – some of it significantly misleading. Therefore, to avoid being taken advantage of or your current benefits being negatively impacted, it's important to understand the basics of this law and the factors to consider when carefully choosing your next steps.

The following are several key considerations for anyone contemplating filing a claim related to Camp Lejeune.

1. A law firm's qualifications to represent veterans in these cases.

To ensure you receive the best possible outcome, it is vital that the legal team you hire has relevant expertise, a strong team of experts (i.e., veterans, medical/science experts) working alongside them, and a leading role in the litigation. An endorsement or recommendation of the firm from an organization you trust, and that has veterans' best interest at heart, is an important factor.

2. Up-front cost and contingency fees.

To state it plainly, you should not have to pay any up-front costs or fees to file a claim. If an attorney is demanding a fee up-front, you should look elsewhere for representation.

Most, if not all, attorneys are paid through contingency fees, meaning that they will receive a percentage of any obtained monetary compensation. While some attorneys are charging upwards of 50%, firms committed to doing right by those who have served our country are offering a much lower percentage in line with, and sometimes below, fair industry standards.

3. Impact on existing benefits.

There is still a lot of grey area when it comes to the exact impact of a Camp Lejeune claim on existing VA, Medicare, Medicaid, and Social security benefits. To avoid a negative impact down the road, it is vital to hire an attorney who is committed to working with you on your specific case and ensuring you receive all benefits for which you may be eligible. This includes determining how the offset required by the law may impact your VA benefits due to acceptance of an award granted under a Camp Lejeune Justice Act claim. The attorney you choose should commit to assessing the impact any award may have on your specific benefits and discussing this with you prior to accepting any award on your behalf.

4. Potential gain vs. potential loss.

There is no downside to filing a Camp Lejeune claim and if you have not yet done so, you should simultaneously file for any Camp Lejeune VA benefits you are eligible for. Filing a claim does not cost you anything and ultimately, you decide whether to accept any award granted. If it does not improve your situation, you do not have to accept the award, and nothing changes.

5. Timeline.

The PACT Act sets a deadline of August 10, 2024, to file your claim or you lose the right to do so. While you have time to carefully consider your options, also be sure not to miss out on the opportunity to obtain well-deserved compensation simply because you waited too long to file a claim or are concerned as to how it may impact your VA or other federal benefits. As noted above, before you accept any award a reputable attorney will walk you through any impact the award may have.

While those considerations are some of the most important, veterans and their loved ones will likely face others as well. We are glad to help address any questions or concerns. Please do not hesitate to reach out to our team by visiting www.camplejeunegroundwater.com or calling (410) 927-1697.

Jason E. Johns is a ROA member, Past State Commander for the VFW Department of Wisconsin, and serves on the VFW's National Legislative Committee. He is an Iraq War veteran (Army), Purple Heart recipient, and was awarded the Combat Action Badge. He has dedicated his civilian career to advocating for his fellow veterans in the legislative, legal, and nonprofit realms. He is a former deputy secretary for the Wisconsin Department of Veterans Affairs, National Judge Advocate for the Military Order of the Purple Heart, and President of the U.S. Court of Appeals for Veterans Claims Bar Association.

Matthew P. Legg is an attorney at BMBFC representing clients in a variety of mass tort and class action matters. He has worked in critical roles on behalf of individuals exposed to toxic chemicals from groundwater pollution, including in the \$205 million settlement for people harmed by chicken processing plant, Mountaire. A rising star in litigation, Matthew has been named a Super Lawyers' Rising Star for the past two years and to the National Trial Lawyer's top 40 under 40 list for three years in a row.

Please join or support ROA

This article is one of 2,300-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is more than a century old—it was established on 10/1/1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's eight² uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002³

² Congress recently established the United States Space Force as the 8th uniformed service.

³ You can also contribute on-line at www.roa.org.