

## Attys Blast 'Barebone' Defenses In Camp Lejeune Water Suits

By **Travis Bland**

Law360 (June 21, 2023, 7:56 PM EDT) -- The U.S. government gave deficient and formulaic answers to claims in lawsuits alleging people were poisoned by the water at Camp Lejeune Marine base, a group of plaintiffs told a North Carolina federal court Wednesday in a bid to have the defenses dumped.

In a hearing on motions to strike the defenses, more than 120 plaintiffs represented by six attorneys who spoke at the hearing told the court the government's answers to the lawsuit have "prominent pitfalls" and should be thrown out.

Attorney Joel Rhine of Rhine Law Firm said the government's defenses are like "a fish hook without bait."

"Barebone affirmative defenses have always been deficient," he told the court.

To show the government's apathetic response to the lawsuits, the plaintiffs pointed to its negligence defenses. The plaintiffs told the court these aren't negligence cases; they're cases based on statutory claims.

Civil procedure rules bar "formulaic, boilerplate defenses," said attorney Zina Bash of Keller Postman LLC. She said the defenses are inefficient, immaterial and need "more precision."

The government is dealing in speculation in some of its answers, and speculation cannot be an affirmative defense, Nevin Wisnoski of Napoli Shkolnik PLLC told the court.

Many of the 122 cases from Wednesday's hearing were filed in March, and the government responded to the complaints in May.

The government's defenses included claims that the plaintiffs failed to state a claim, the toxic water was caused by a dry cleaner, plaintiffs didn't stop consuming the water despite knowing it was poisoned and it shouldn't be totally financially liable for injuries, among others.

The plaintiffs filed requests to have the defenses tossed in June.

Backing its defenses at the hearing, the government said the claims in the lawsuits are bereft of details, forcing it to give undetailed responses.

Many of the claims "are so formulaic themselves" and don't show when and how the plaintiffs were exposed to the water, government attorney Adam Bain told the court, and some simply recited the Camp Lejeune Justice Act.

All the government's defenses "have a basis in law," Bain said, arguing against the plaintiffs' assertion the answers contain such prominent pitfalls that they're legally unviable.

The cases before U.S. District Judge Terrence W. Boyle were filed under the Camp Lejeune Justice Act of 2022, authorizing the claims and barring the federal government from asserting immunity as a defense.

Previous Camp Lejeune water contamination claims had been consolidated in multidistrict litigation, but were tossed in 2016 after the Eleventh Circuit ruled North Carolina's 10-year statute of repose negated the allegations, which accrued over three decades from 1953 through 1987.

The plaintiffs were represented at the hearing by Ed Bell of Bell Legal Group, Kevin Dean of Motley Rice LLC, Zina Bash of Keller Postman LLC, Mona Lisa Wallace of Wallace & Graham, Joel Rhine of Rhine Law Firm and Nevin Wisnoski of Napoli Shkolnik PLLC.

The U.S. government was represented by Adam Bain and Haroon Anwar of the U.S. Department of Justice.

The 122 cases against the United States of America are filed in U.S. District Court for the Eastern District of North Carolina.

--Editing by Caitlin Wolper.