



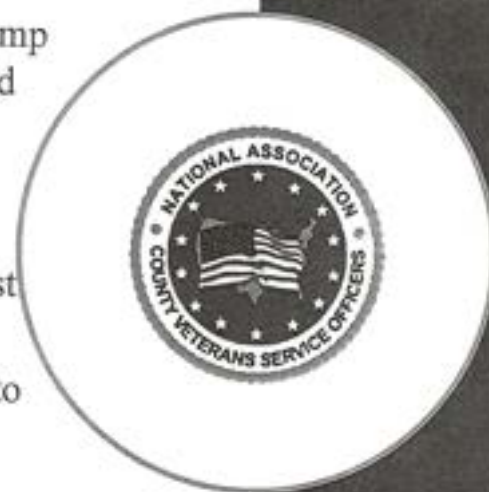
Camp Lejeune Justice Act

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Background

- On August 10th of this year, President Biden signed into law PACT Act of 2022 which granted broad relief to veterans suffering the effects of exposure to toxic chemicals from a range of sources including burn pits.
- Also contained in the PACT Act, Section 804, was a provision entitled the Camp Lejeune Justice Act of 2022 which will have a profound effect on veterans and their dependents who suffered ill effects caused by the contaminated water at Camp Lejeune.
- The threshold requirement is the individual had to be exposed to the water at Camp Lejeune for a period of not less than 30 days at anytime between August 1, 1953 and December 31, 1987.
- This unprecedented piece of legislation allows veterans and their dependents to directly sue the United States for damages caused by the contaminated water. Until this Act was passed, veterans could not sue the U.S. based on the *Feres Doctrine* which blocked any such suit from proceeding.
- The Act also waived the *sovereign immunity* of the United States for such suits and waives the applicable statutes of limitation.



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Background (Cont.)

- There is a limited period of time when such a suit may be filed and requires all potential litigants to seek relief through an administrative claim process prior to filing the suit
- An administrative claim must first be filed the Department of the Navy, Office of the Judge Advocate General, Tort Claims Unit
- OJAG has six months to either settle or deny the claim. If no answer after six months, can file lawsuit against US Government
- All lawsuits must be filed in the US District Court for the Eastern District of North Carolina within six months of the denial of the claim by OJAG or two years after the Act's passage (August 10, 2024) whichever is later



Some Current Issues Facing VSO's

Advising Clients as to:

- Dealing with onslaught of nationwide feeding frenzy of lawyer advertising and the likely path actions under the Camp Lejeune Act will follow
- Interplay between VA administered health and disability compensation programs and proceedings under the Camp Lejeune Justice Act
- The role of the VSO under the Camp Lejeune Justice Act



Advising Veterans on Lawyer Related Issues

- VSO's should not be put in a position where they are recommending or not recommending hiring any particular lawyer or law firm. A veteran or dependent decision to hire or not hire counsel and whom to choose is a personal one and it is wholly theirs to make.
- It is inevitable, though, that veterans will come to their VSO for guidance so I am providing some general considerations that could be shared with veteran clients.
- There are a great many lawyers and firms across the country who are competent to handle cases filed under the new Camp Lejeune Justice Act – but there are a great many more who are not.
- While the litigation that the Camp Lejeune Justice Act created is in many ways unique, it is similar enough to other types of litigation to form a starting point in evaluating an appropriate law firm



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Advising Veterans on Lawyer Related Issues

- The many thousands of cases that will be filed in the Eastern District of North Carolina Federal Court will most likely be aggregated and handled as other mass tort cases have been. So as a starting point, the attorney and the firm should have significant experience in mass tort and multidistrict litigation in federal court.
- There are similarities between the Camp Lejeune Act cases and cases filed under the Federal Tort Claims Act so prior experience of the lawyer in this area would be preferred.
- There is a requirement to first file an administrative claim with the Office of the Judge Advocate General of the US Navy and familiarity with those types of claims is a plus.

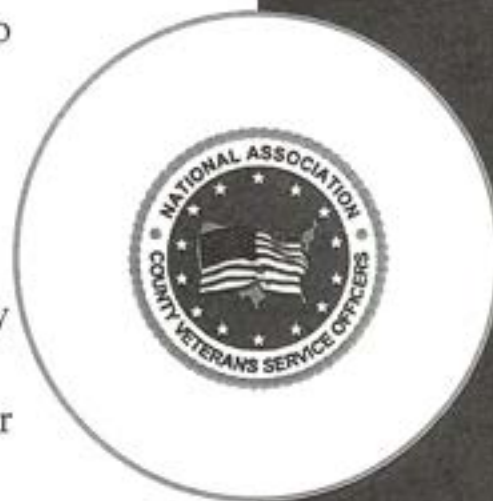


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- It is important to pick a firm that is large enough and well capitalized enough to handle these claims. The law firm will be required to front all litigation expenses and will not receive any payment until settlement or judgement is reached which is most probably many years away. They need to be able to operate effectively for those years without compensation.
- The veteran and/or his family will be dealing with the firm they select for many years. It is important that the firm chosen is easy to reach, responsive to inquiries, and will vigorously pursue the case. It is advisable that the veteran or his family speak directly with the attorney who would be handling their case about their particular situation BEFORE any representation or retainer agreement is signed



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- Every law firm will have the client sign some form of retainer/representation agreement which will define roles and responsibilities and the financial structure of the relationship.
- There are no “standard” agreements, and all are or should be negotiable. If the firm will not negotiate an agreement that is unacceptable to the client – find another firm.
- Virtually all such arrangements will be on what is called a 'contingent fee' basis which fundamentally means that the attorney only gets paid if he/she is successful in obtaining either a settlement or judgement for the client.
- Every agreement will address both the legal fees and the expenses of the litigation.



Advising Veterans on Lawyer Related Issues

- The legal fees will be expressed as a percentage of the judgement or settlement. Firms will ask for fees as high as 40% but this is negotiable. Consider a sliding scale – X% if case is settled at the administrative claim stage, Y% if settled before trial, and Z% if cases is taken all the way through trial to judgement. Each stage of the litigation involves significantly different risk and level of effort, and it is logical to compensate the firm in that manner.
- In other mass tort cases the presiding judges have reduced legal fees depending on the outcome and if these cases are treated similar to Federal Tort Claims Act cases the maximum fee could be 25%. It is too early to know how that will come out, so it is essential to sign an agreement with terms that are acceptable without any other intervention.
- Most agreements will have the client pay all litigation expenses out of their share of the proceeds. Make sure that the client clearly understands what those expenses are and how much they are expected to be. The Camp Lejeune Act statute further provides that any award will be reduced by benefits already received from the VA, Medicare, Medicaid or other sources including third party health care providers. How the math on all this will work is not yet clear, as well as how future benefits would be treated. (See following slides)



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Advising Veterans on Lawyer Related Issues

- Additionally, it is unclear if under the Camp Lejeune statute as written, whether certain third-party health payers might also have a right of subrogation for benefits provided. Make sure these issues are fully discussed and understood with the firm as to what these costs are likely to be and how they are to be handled. This is a complex area, and it is not yet fully known how all these provisions would work.
- **Given the potential uncertainties involving costs, offsets and other issues potentially impacting the case, it must be clear in the retainer agreement that:**
 - (1) it is solely up to the client as to whether to accept any settlement award and
 - (2) the client can withdraw without cost or penalty if it appears that the case will not be resolved in a way that is beneficial to him/her.



Interplay Between the Act and Other VA Benefits

- This has been the most controversial area to date. There are many “experts” out there pontificating on how this will all work, but, in reality, no one really knows yet.
- Problem stems from section (e) (2) of the Act “*Any award made to an individual ... under this section shall be offset by the amount of any disability award, payment, or benefit provided to the individual*” from the VA, Medicare, Medicaid or other health care or disability related to exposure to the water at Camp Lejeune
- Clearly the amount of the award is reduced but by how much? What is the value of health care provided by the VA for such illness? What about private health care providers – do they lose their right of subrogation?
- A major question concerns the impact on *future* VA disability payments as the statute does not directly address that. The current VA regulations allow the VA to offset their future payments in the event of a successful claim of malpractice against the VA and the VA may seek to apply that logic to regulations allowing the same offset against this award.



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Interplay Between the Act and Other VA Benefits

- The VA has specifically addressed benefits for Camp Lejeune victims ten years ago in the *Caring for Camp Lejeune Families Act of 2012*
- The Act calls for free medical treatment to veterans exposed to Camp Lejeune water for **15** presumptive conditions and medical care – subject to co-pays for all other conditions (except dental)
- It allows for repayment of dependents out of pocket medical expenses
- It provides Disability Compensation to veterans with one of **8** presumptive conditions
- Clearly such benefits, along with others, would be “offset” against any award and offset of future payments may come into play – again – how such benefits are to be valued is not clear.



Practical Advice for VSO's

- Given everything just seen, advising any veteran client on the whether to, when to or how to file a claim under the Camp Lejeune Justice Act is a tough thing to do.
- You are not in any position to say how much a federal court jury might award on any given case nor what any settlement offer might be.
- You cannot currently figure out what offset requirements (both past and future) will be.
- You do not know what the litigation expenses might be.

In short - you can't be sure whether it makes sense to file or not for any veteran.

So don't do it.

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Practical Advice for VSO's

- Advise the veteran about the content of the Act with an honest assessment of what is currently known or unknown.
- While advising them of the two-year window for filing make sure they understand they have many months to make a decision
- Give the veteran some discussion on the type of lawyer they should be looking for in the event they decide to file.
- Advise the veteran of the importance of picking a good lawyer they can deal with and the critical importance of the content of their retainer agreement.
- **DO NOT FILE THE ADMINISTRATIVE CLAIM WITH OJAG**
 - It forms the basis of a federal lawsuit that cannot be changed once it is acted on

Submit any question you have to NACVSO and we will be providing periodic answers to questions as well as updates as the situation unfolds

