

**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
IMPLEMENTATION OF THE SERGEANT FIRST CLASS HEATH ROBINSON
HONORING OUR PACT ACT OF 2022**

NOVEMBER 16, 2022

Chairman Tester, Ranking Member Moran, and distinguished members of the Committee, on behalf of our 1.6 million members, The American Legion thanks you for the opportunity to offer this statement on implementation of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (Robinson PACT Act). This historic piece of legislation is the greatest expansion of access to Department of Veterans Affairs (VA) healthcare and benefits since the Servicemen's Readjustment Act of 1944. While this legislation impacts a broad range of issues and exposures, the focus of this statement will be on the implementation of Section 804, better known as the Camp Lejeune Justice Act.

Contaminated Drinking Water at Marine Corps Base Camp Lejeune

From August 1953 to December 1987, servicemembers and their families were exposed to contaminated drinking water at Marine Corps Base Camp Lejeune, North Carolina (CLNC). For at least 34 years, servicemen and women, their families, and on-base staff drank, bathed and cooked with water containing known carcinogens, up to 280 times the standard safety limits.²

During the 112th Congress, H.R. 1627, *the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012*, was signed into law (Public Law 112-154), and thereby established presumptive conditions for those exposed to contaminated drinking water to include the following conditions: esophageal cancer; lung cancer; breast cancer; bladder cancer; kidney cancer; leukemia; multiple myeloma; myelodysplastic syndromes; renal toxicity; hepatic steatosis; female infertility; miscarriage; scleroderma; neurobehavioral effects; and non-Hodgkin's lymphoma.¹

Presumptive conditions shift the burden of proof away from the veteran, which streamlines and simplifies the disability claims process for those exposed to toxic drinking water at CLNC. The bill also requires VA to provide healthcare for family members who resided at CLNC during the specified timeframe and VA has since implemented the Camp Lejeune Family Member Program, by which VA will reimburse a family member's healthcare costs if they are diagnosed with one of the 15 presumptive conditions listed above.²

¹ "H.R.1627 - 112th Congress (2011-2012): Honoring America's Veterans and ..." Accessed November 14, 2022. <https://www.congress.gov/bill/112th-congress/house-bill/1627>.

² "Veterans Affairs." Go to VA.gov, January 30, 2015.

<https://www.va.gov/COMMUNITYCARE/programs/dependents/CLFMP.asp>.

Camp Lejeune Justice Act

While the establishment of presumptive conditions for those exposed to contaminated drinking water at CLNC provides access to healthcare and benefits, it does not address the entirety of the harm suffered by veterans and their families. The Camp Lejeune Justice Act seeks to provide another means of recourse for veterans and their families by allowing those, “*who resided, worked, or were 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 to 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.*”³

While the passage of this historic legislation was a watershed moment for the veteran community, bad actors have emerged to take advantage of veterans and their access to new benefits. Predatory law firms charging exorbitant fees have engaged in aggressive advertising to include, but not limited to, television, radio, and social media digital marketing campaigns targeting veterans through sponsored content. Veterans and families across our nation have been inundated with traditional television and marketing advertisements along with a much more targeted social media advertising campaign based on data mining and analytics by law firms attempting to get what the Congressional Budget Office assess will be approximately \$6 billion dollars of payments from the federal government over the next ten years.⁴

These firms have not only have engaged in aggressive marketing campaigns and attempted to get veterans to agree to exorbitant fees while promising large pay-outs, but also failed to inform them of the exclusive remedy clause which requires the award be offset by the amount of benefits received through programs at VA, Medicare, and Medicaid. Section 804 (e) (2) states:

“Any award made to an individual, or legal representative of an individual, under this section shall be offset by the amount of any disability award, payment, or benefit provided to the individual, or legal representative—

(A) under--

(i) any program under the laws administered by the Secretary of Veterans Affairs;

(ii) the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

(iii) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

*(B) in connection with health care or a disability relating to exposure to the water at Camp Lejeune.”*⁵

³ “Text - S.3373 - 117th Congress (2021-2022): Honoring Our Pact Act of ...” Accessed November 14, 2022. <https://www.congress.gov/bill/117th-congress/senate-bill/3373/text>.

⁴ “Congressional Budget Office Cost Estimate.” Accessed November 14, 2022. https://www.cbo.gov/system/files/2022-02/HR3967_RCP.pdf.

⁵ “Text - S.3373 - 117th Congress (2021-2022): Honoring Our Pact Act of ...” Accessed November 14, 2022. <https://www.congress.gov/bill/117th-congress/senate-bill/3373/text>.

Failure to educate potential clients on this clause may result in them agreeing to fees that they would not otherwise agree to. While firms have promised veterans awards in the millions of dollars, they have declined to inform them that even one of these offsets, depending on the interpretation, could result in the veteran having to forfeit their award.

Camp Lejeune Justice Act: The Path Forward

The American Legion has long been supportive of the CLJA and was encouraged to see its inclusion in the Robinson PACT Act earlier this year. Notwithstanding that support, we believe it is necessary to make modifications to the language to streamline implementation and protect veterans from the actions of unscrupulous actors. It is in keeping with the intent of Resolution No. 15: *Oversight of Camp Lejeune Justice Act* that we make the following recommendations:⁶

Limit Legal Fees

VA regulations require VA-accredited law firms charge “reasonable fees” when representing veterans before the Board of Veteran Appeals (BVA). Under 38 CFR § 14.636, 20 percent or less is presumed to be reasonable while fees that exceed 33.3 percent are presumed to be excessive.⁷ Furthermore, under the Federal Tort Claims Act attorneys may not charge a contingency fee in excess of 25 percent.⁸ While protections against excessive legal fees exist in other areas, none of the aforementioned statutes or regulations apply to those seeking a cause of action under the CLJA.

Eliminate vague, impractical, and unrelated offsets

The offsets required by Section 804 (e) (2) are at times vague, impractical, and overly expansive. Medicare and Medicaid are benefits that veterans, and their civilian counterparts, would be entitled to regardless of their exposure to contaminated toxic water at CLNC. It would be an unnecessary injustice to penalize veterans for utilizing a benefit that is available to all other American’s and has limited direct connection with their exposure to toxins at CLNC. Additionally, to offset the award by, “any program under the laws administered by the Secretary of Veteran Affairs,” could potentially penalize veterans for utilizing VA benefits they have rightfully earned and have no connection with the CLJA.

Furthermore, non-disability compensation offsets, particularly healthcare, would be extraordinarily difficult to calculate at the individual level. It would be extremely challenging to determine what healthcare was required exclusively for a veteran's Camp Lejeune-related disabilities. For instance, Bladder Cancer, Lung Cancer, Leukemia, Multiple Myeloma, and Non-Hodgkin’s Lymphoma are all presumptive conditions associated with exposure to both agent orange exposure and contaminated drinking water at CLNC. It was not uncommon for veterans to have served in Vietnam and other designated locations with a concession to exposure to agent

⁶ Committee, American Legion. National Executive. “Resolution No. 15: Oversight of Camp Lejeune Justice Act.”

⁷ “38 CFR § 14.636 - Payment of Fees for Representation by Agents and Attorneys in Proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.” Legal Information Institute. Legal Information Institute. Accessed November 13, 2022. <https://www.law.cornell.edu/cfr/text/38/14.636>.

⁸ “28 U.S. Code § 2678 - Attorney Fees; Penalty.” Legal Information Institute. Legal Information Institute. Accessed November 13, 2022. <https://www.law.cornell.edu/uscode/text/28/2678>.

orange from 1962-1975 and also have served at CLNC from 1953-1987. With 13 years of overlap between these two exposures and five shared presumptive conditions it would be difficult for VA to determine the exact source of the veteran's condition. Not only would it be nearly impossible to determine the source in these situations, but it would also be challenging to assign a dollar value to the treatment of said conditions. Given these complexities, we believe there should be no offsets whatsoever for healthcare veterans have received from VA.

Ensure that no veteran loses access to healthcare or disability benefit payments

Deference should be shown to the veteran in the application off any remaining offset and under no circumstances should any award jeopardize their access to VA healthcare or future disability payments.

The American Legion Acts

In response to the overwhelming marketing campaigns, misleading information, and excessive fees, the National Executive Committee of The American Legion passed Resolution No. 15: Oversight of Camp Lejeune Justice Act, which urges Congress, *“to provide the necessary oversight during the implementation of the Camp Lejeune Justice Act to ensure veterans receive fair consideration of their lawsuits and protections against predatory law firms.”*⁹

The American Legion has also signed a memorandum of understanding with a VA-accredited law firm, Bergman & Moore, to assist veterans and potential plaintiffs in navigating legal action associated with the CLJA.¹⁰ The intent is to provide veterans with a trustworthy and vetted firm to prevent them from being preyed upon by unscrupulous actors and ensure they have access to representation with reasonable fees. Each veteran will be provided an initial consultation to determine if it is in their best interest to pursue legal action or apply for traditional VA disability benefits. Bergman & Moore currently also assists The American Legion with training service officers and representing veterans before BVA.

Conclusion

Chairman Tester, Ranking Member Moran, and distinguished members of the Committee, The American Legion thanks you for your efforts to ensure veterans receive the benefits and care they rightfully deserve. We are grateful for the opportunity to voice the perspective of our nearly 1.6 million members on this critical matter and look forward to continuing to work with you to take care of our nation's veterans. Please contact Mr. Lawrence Montreuil, Legislative Director, at lmontreuil@legion.org for additional information or questions regarding this testimony.

⁹ Committee, American Legion. National Executive. “Resolution No. 15: Oversight of Camp Lejeune Justice Act.” Home, October 1, 2022. <https://archive.legion.org/handle/20.500.12203/15091>.

¹⁰ The American Legion. “Legion Inks MOU on Camp Lejeune Justice Act.” The American Legion, October 25, 2022. <https://www.legion.org/veteransbenefits/257191/legion-inks-mou-camp-lejeune-justice-act>.