



MASS TORTS UPDATE

Developments in Camp Lejeune, Mallinckrodt and Boy Scouts Cases

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From 1953 to 1987, there was large-scale water contamination at Marine Corps Base Camp Lejeune. Camp Lejeune is a U.S. military training facility in Jacksonville, N.C. Trichloroethylene (TCE), perchloroethylene (PCE), benzene, vinyl chloride and other compounds were released into the ground water, potentially exposing hundreds of thousands of military service members and civilians who lived or worked on base. Studies show that exposure to those chemicals can cause illnesses including bladder cancer, kidney cancer, liver cancer, multiple myeloma, Parkinson's disease, Non-Hodgkin's Lymphoma, myelodysplastic syndromes, leukemia, aplastic anemia and others.

On Aug. 10, 2022, President Biden signed the Camp Lejeune Justice Act of 2022. The Act provides a powerful

statutory cause of action for individuals who experienced harm as a result of exposure to contaminated water at Camp Lejeune in North Carolina for 30 days or more between Aug. 1, 1953, and Dec. 31, 1987. Why is this action such a big deal? First, the Act creates a new statute of limitations, requiring that claims must be filed

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within two years of the Act's enactment, as opposed to North Carolina's state statute of limitations or the statute of limitations under the Federal Tort Claims Act. This new statute of limitations gives a fresh opportunity to harmed veterans and civilians whose claims were otherwise time barred. Second, the Act prohibits the government from asserting the defenses of sovereign immunity and the Feres Doctrine. Simply put, the Act

removes legal roadblocks that had for years thwarted the efforts for justice of those injured at Camp Lejeune. The Act also includes an administrative exhaustion requirement that all claimants must file an administrative claim with the Department of the Navy. Once claimants exhaust their administrative remedy, they can file a lawsuit in U.S. District Court for the Eastern District of North Carolina, which has exclusive jurisdiction over all cases brought under the Act.

The Camp Lejeune Justice Act of 2022 is part of a broader law, titled the Sergeant First Class Heath Robinson Honoring Our Promise To Address Comprehensive Toxics (PACT) Act of 2022, also referred to as Honoring Our PACT Act of 2022. The PACT Act was a historic and bipartisan legislation that was introduced by U.S. Senators Jerry Moran (R.-Kan.) and Jon Tester (D.-Mont.) of the Senate Veterans' Affairs Committee.

The PACT Act enhances health care and disability claims for veterans that were exposed to toxic burn pits and certain other toxic substances during military service. The PACT Act includes components such as:

(1) expanding Veteran Affairs (VA) health care eligibility to post 9/11 combat veterans; (2) including an additional 23 burn pit and toxic-exposure related conditions to the VA's list of service presumptions; (3) expanding service presumptions related to Agent Orange exposure; (4) bolstering federal research on toxic exposure; (5) improving VA resources and training related to toxic exposed veterans; and (6) investing in VA claims processing, workforce and health care facilities.

The fight for justice for those injured by the contaminated water at Camp Lejeune will continue long after the passage of the Camp Lejeune Justice Act. That said, the passage of the PACT Act and the Camp Lejeune Justice Act of 2022, which were both signed into law on Aug. 10, 2022, is a momentous occasion. The historic passage of these Acts brings our country one step closer to the promise of providing justice and resources to injured veterans.

Mallinckrodt Bankruptcy Update

Mallinckrodt's plan of reorganization includes roughly \$1.7 billion to be set aside for victims of opioid abuse and their family members and for state and municipal governments. The U.S. Bankruptcy Court for the District of Delaware confirmed Mallinckrodt's plan on Feb. 3, 2022. Because Mallinckrodt is headquartered in Ireland, the company also had to go through receivership proceedings there. The High Court of Ireland made an order confirming Mallinckrodt's scheme of

arrangement on April 27, 2022. The Mallinckrodt trustee is currently accepting and processing claims for damages from creditors who were injured by Mallinckrodt's opioids.

The bankruptcy case is *In re: Mallinckrodt PLC*, No. 20-12522-JTD (Bankr. D. Del.). The bankruptcy case is being decided by Judge John T. Dorsey. The receivership case is *Mallinckrodt PLC v. Companies Act, 2014*, No. 2022/25COS (Ir. High Court).

Boy Scouts of America Bankruptcy Update

The U.S. Bankruptcy Court for the District of Delaware held solicitation periods for the Boy Scouts of America (BSA)'s plan of reorganization from October to December 2021 and then February to March 2022. Roughly 56,000 creditors voted, with 86% of voters voting in favor of plan confirmation. The plan included roughly \$2.7 billion set aside for survivors of sexual abuse in Scouting. Funds for the plan came from multiple sources, with BSA and its local councils contributing \$820 million; insurance companies Century Indemnity Company contributing \$800 million and The Hartford contributing \$787 million; as well as charter organizations, including \$30 million from the Methodist Church and \$250 million from the Church of Jesus Christ of Latter-day Saints. The contributions from the third parties were contingent on releases of liability stemming from scouting-related sexual abuse.

The bankruptcy court rejected the Church of Jesus Christ of Latter-day Saints contribution and release,

finding that it was too broad and released the Church from liability for sexual abuse which was too loosely related to scouting. The bankruptcy court ultimately confirmed BSA's plan of reorganization on Sept. 8, 2022.

Plan opponents including Certain Insurance Companies began appealing the bankruptcy court's order to the District Court for the District of Delaware in September 2022. Parties are currently submitting briefing to the District of Delaware. The District of Delaware is expected to hold oral arguments in early 2023.

The bankruptcy case is *In re Boy Scouts of America and Delaware BSA*, No. 20-10343-LSS (Bankr. D. Del.). The bankruptcy case is being decided by Judge Laurie Selber Silverstein. The lead appellate case is *National Union Fire Insurance Co. of Pittsburgh PA et al. v. Boy Scouts of America & Delaware BSA*, No. 1:22-cv-01237-RGA (D. Del.). The lead appellate case is being decided by Judge Richard Gibson Andrews.