

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
OF NORTH CAROLINA, SOUTHERN DIVISION

No. 7:23-MC-3-M

CHARLES HARTFIELD)
)
)
Petitioner,)
)
)
VS.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)
_____)

FILED

MAR 09 2023

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY AMA DEP CLK

UNOPPOSED VERIFIED PETITION FOR DEPOSITIONS
TO PERPETUATE TESTIMONY WITH REGARD TO
PROSPECTIVE CAUSES OF ACTION UNDER THE
CAMP LEJEUNE JUSTICE ACT

The Petitioner, Charles Hartfield, through counsel, and pursuant to Rule 27 of the Federal Rules of Civil Procedure, hereby files the instant verified petition seeking the entry of an order authorizing the pre-suit deposition of Mr. Charles Hartfield,¹ to perpetuate his respective testimony, and respectfully shows as follows:

1. Petitioner Charles Hartfield is a citizen and resident of Hattiesburg, Mississippi, in Forrest County. His residential address is 31 Shoemake Drive, Hattiesburg, Mississippi 39402.
2. The respondent herein is the United States of America.
3. This Court has subject matter jurisdiction with regard to this petition and/or with regard to the prospective cause of action under Fed. R. Civ. P. 27, 28 U.S.C. § 1331 and under the

¹ See, e.g., *Obalon Therapeutics, Inc. v. Polyzen, Inc.*, 321 F.R.D. 245, 249-250 (E/D/M/C/ 2017) (after reviewing description of witness's health condition in petition, court found that petitioner alleged facts demonstrating immediate need for deposition to perpetuate testimony).

Camp Lejeune Justice Act of 2022 (“CLJA”) § 804(d), because this matter arises under and/or the prospective future merits causes of action arise under the Constitution and laws of the United States.

4. This Court has venue with regard to this petition and/or with regard to the prospective causes of action under Fed. R. Civ. P. 27, and CLJA § 804(b) and (d).

5. Pursuant to Fed. R. Civ. P. 27(a)(1)(A), the Petitioner shows that Petitioner expects to be a party Plaintiff to an action cognizable in a United States Court, specifically, the instant District Court, but he cannot presently bring his merits claim or cause it to be brought due to certain administrative requirements. Specifically, Petitioner was during the pertinent times a military servicemember who asserts and states for the purposes of this Verified Petition, and will in due course allege in his prospective merits claim, that he was stationed in relevant areas at Camp Lejeune, was exposed to contaminated water at Camp Lejeune during relevant times, that he has since been diagnosed with relevant illness(es), and that he otherwise intends to allege merits claims under the CLJA in due course upon the appropriate exhaustion of the administrative pursuit claims process that is now commenced or is shortly to commence for said servicemember Petitioner herein. However, Petitioner cannot bring such merits claims against the United States Respondent in Court at this time, due to the requirement under the CLJA with regard to first exhausting the pre-suit administrative claims process. *See* CLJA § 804(h). That pre-suit process has not yet been exhausted.

6. Pursuant to Fed. R. Civ. P. 27(a)(1)(B), the Petitioner shows that the subject matter of the expected action is expected in due course to consist of merits claim, brought by Petitioner Mr. Hartfield on his own behalf and/or by his Estate. His claim is contemplated to consist of a claim for appropriate relief for harm that was allegedly caused by exposure to the water at Camp

Lejeune, to be alleged in the form of subsequent Lawsuit Complaint filing in this Court alleging the pertinent substantive elements of the cause of action provided for under the CLJA. The Petitioner's interest in the claim consists of the fact that Petitioner Mr. Hartfield plans to allege (or, in the event of his death, his respective spouse and/or Estate representatives plan to allege on his behalf) a claim for relief under the CLJA. Unfortunately, the Petitioner has been diagnosed with an illness and medical condition that has made his health precarious and is likely to lead to his death in the near future.

7. More specifically, Petitioner Charles Hartfield suffers from terminal bladder cancer. Mr. Hartfield enlisted in the United States Marine Corps in active duty from June 1, 1977, to January 25, 1978. He was stationed at Camp Lejeune for a period of more than thirty (30) days. On or about December 28, 2020, Mr. Hartfield was diagnosed with bladder cancer via a fluorescence in situ hybridization (FISH) exam. On January 11, 2021, a sample from Mr. Hartfield was sent to Forrest General Hospital's lab, in Hattiesburg, Mississippi, where doctors confirmed that he has transitional cell carcinoma. Thereafter, he was informed by his doctor that he had a three-to-five-year life expectancy *if* he underwent a clinical trial for Bacillus Calmette-Guerin (BCG) treatment, although admittedly that would be a best-case scenario. On February 1, 2021, Mr. Hartfield received his first BCG treatment. Despite best efforts though, the remaining and needed trials were postponed and delayed due to other medical concerns. Mr. Hartfield's bladder cancer remains terminal, and his condition continues to rapidly deteriorate. Likewise, as of the date of this Petition, all attempts to effect a cure to his bladder cancer have failed and, importantly, his condition continues worsen daily. Sadly, Mr. Hartfield's prognosis is grim.

8. Petitioner desires to effectuate the prompt preservation of his testimony for the record and for evidentiary purposes with regard to his foreseen future CLJA claim.

9. Pursuant to Fed. R. Civ. P. 27(a)(1)(C), the Petitioner shows as follows with regard to the facts that the Petitioner wants to establish by the proposed testimony and the reasons to perpetuate it:

- a. Petitioner Hartfield wants to establish by his proposed testimony his facts and personal testimony with regard to his personal and family background; his career of military service; his relevant periods of time that were spent at Camp Lejeune for not less than 30 days during the period beginning on August 1, 1953, and ending December 31, 1987; the facts to the best of his personal recollection with regard to his exposure to the water at Camp Lejeune during his time there; his own lay testimony as to his understanding of his medical history and his pertinent medical conditions and illness diagnoses; and his own lay testimony with regard to his allegations of harm, injury and damages caused by his relevant water exposure at Camp Lejeune. The reasons why he desires to have his testimony perpetuated is so that his claim is supported and evidenced to the maximum extent possible under the law and so that the extent it is ultimately found and determined that there is liability and that damages and other appropriate relief is to be awarded, that he, or in the event of his likely death, his surviving spouse and relevant family members and his Estate, may benefit from any appropriate outcome and recovery.

10. Pursuant to Fed. R. Civ. P. 27(a)(1)(D), the Petitioner shows as follows with regard to the names or a description of the persons whom the Petitioner expects to be adverse parties and their addresses, so far as known: under the CLJA, the sole adverse party is expected to be the United States, i.e., the Respondent herein.

11. Pursuant to Fed. R. Civ. P. 27(a)(1)(E), the petitioner shows as follows with regard to the name, address, and expected substance of the testimony of each deponent: As to names and addresses, please see paragraph 1 above. As to the expected substance of the testimony, please see paragraph 9(a) above.

12. Pursuant to Fed. R. Civ. P. 27(a)(2), the Petitioner shows that he intends to serve the United States with the instant Petition and duly coordinate with counsel for the Respondent so as to ensure that any necessary hearing date with regard to this Petition is duly and timely requested.

13. Petitioner has met and conferred with counsel for the Respondent and has provided to the Respondent's counsel a draft copy of this Petition. Petitioner is authorized to represent that Respondent does not oppose the instant Petition as meeting the standards of Fed. R. Civ. P. 27 but anticipates numerous such requests under the CLJA that may require court management. In not opposing the instant Petition, Respondent obviously does not concede to any of the prospective merits allegations of the Petitioners, nor does Respondent intend to waive any applicable defenses on the merits under the CLJA.

Wherefore the Petitioner herein respectfully rests that the court enter an order granting their instant petition and request to perpetuate testimony and that orders as follows pursuant to Fed. R. Civ. P. 27(a)(3):

1. That the person to be deposed is Mr. Charles Hartfield.
2. That the subject matter of the examination shall consist of the scope of subject matter outlined by the instant Petition, inclusive of all deposition topics that the Petitioner, or the Respondent, deem to be relevant for purposes of the prospective CLJA claims; and
3. That the deposition shall be taken orally at a mutually agreeable time.

Dated: February 27, 2023.

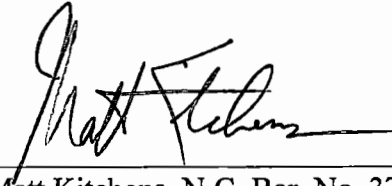

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CERTIFICATE OF SERVICE

I, Matt Kitchens, do hereby certify that I have served via electronic mail a true and correct copy of the foregoing to:

Tim Walthall, Esq.
United States Department of Justice
Walthall, Timothy (CIV) Timothy.Walthall@usdoj.gov

This the 27th day of February, 2023.

A handwritten signature in black ink that reads "Matt Kitchens". The signature is written in a cursive style with a horizontal line extending to the right.

Matt Kitchens, N.C. Bar. No. 37818