APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17573
Non-Argument Calendar

D.C. Docket No. 1:11-md-02218-TWT

[Filed May 22, 2019]

In Re: CAMP LEJEUNE, NORTH CAROLINA WATER CONTAMINATION LITIGATION.

LEANDRO PEREZ, et al.,
Plaintiffs,

ANDREW STRAW,
JAMES NATHANIEL DOUSE,
ERICA Y. BRYANT,
ROBERT BURNS,
DANIEL J. GROSS, II,
ROBERT PARK,
SHARON KAY BOLING,
LINDA JONES,
ESTELLE RIVERA,
Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,)
DEPARTMENT OF THE NAVY,)
United States of America,)
ADMINISTRATOR OF THE)
ENVIRONMENTAL PROTECTION AGENCY,)
DIVISION DIRECTOR, DEPARTMENT OF)
ENVIRONMENTAL PROTECTION AGENCY,)
DEPARTMENT OF DEFENSE, SECRETARY)
OF THE NAVY,)
Defendants-Appellees.)
)

Appeal from the United States District Court
for the Northern District of Georgia

(May 22, 2019)

Before TJOFLAT, MARTIN and NEWSOM, Circuit Judges.

PER CURIAM:

Andrew Straw, James Douse, Erica Bryant, Robert Burns, Daniel Gross, Robert Park, Sharon Boling, Linda Jones, and Estelle Rivera (collectively, "Plaintiffs") appeal the District Court's dismissal of their actions alleging that the Government negligently injured them by providing contaminated water while they inhabited Marine Corps Base Camp Lejeune in the 1970s and 1980s.

On appeal, Plaintiffs argue that the District Court committed four errors. First, they argue that the District Court erred in determining that their claims are barred by the discretionary-function exception to the Federal Tort Claims Act ("the FTCA"), 28 U.S.C.

§ 2680(a). Second, they argue that the District Court erred in determining that North Carolina's ten-year statute of repose bars their claims. Third, they argue that the District Court erred in determining that the *Feres*[1] doctrine bars their claims, as their injuries were not incidental to their military service. Fourth and finally, Plaintiff Straw argues that the District Court abused its discretion by denying his motion for default judgment because the Government failed to respond to his pleading.

Because we hold that North Carolina's ten-year statute of repose applies to and bars Plaintiffs' claims, we affirm the District Court's judgment without reaching the FTCA, *Feres* doctrine, and default judgment issues.

I.

We review *de novo* the District Court's granting of a motion to dismiss. *See Zelaya v. United* States, 781 F.3d 1315, 1321 (11th Cir. 2015).

In this case's prior interlocutory appeal, we held that "North Carolina's statute of repose, N.C. Gen. Stat. § 1-52(16) (2010), applies to the plaintiffs' claims, and it does not contain an exception for latent diseases." *Bryant v. United States*, 768 F.3d 1378, 1385 (11th Cir. 2014). Plaintiffs now argue that this Court clearly erred in deciding *Bryant*. Even if Plaintiffs are correct—which they are not[2]—it is axiomatic that "a

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[1] *Feres v. United States*, 340 U.S. 135, 71 S. Ct. 153 (1950).

[2] In *Stahle v. CTS Corp.*, 817 F.3d 96 (4th Cir. 2016), the Fourth Circuit addressed the same question we confronted in *Bryant*.

prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." *In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015) (per curiam) (quoting *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008)). Neither the Supreme Court nor this Court sitting *en banc* has overruled *Bryant*, so its holding remains good law.

In addition to arguing squarely against precedent, Plaintiffs now contend that a six-year statute of repose—that is, *not* the ten-year "statute of repose that has been at issue for the entirety of this litigation,"[3] but another one—applies to their claims. The new statute of repose provides that "[n]o action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. § 1-50(a)(5)(a). Plaintiffs would rather be subject to the six-year statute of repose because it contains an exception for

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Though the Fourth Circuit reached a different conclusion, one member of the panel went out of her way to note that "[t]he Supreme Court of North Carolina itself has sent mixed signals about the scope of § 1-52(16)." *Id.* at 114 (Thacker, J., concurring). What's more, the four federal circuit courts that have interpreted § 1-52(16) have expressed "different views of the statute's scope." *Id.* (collecting cases). Given the difficulty of this question and the diversity of interpretations it has produced, Plaintiffs' suggestion that we plainly erred in *Bryant* is plainly misguided.

[3] *In re Camp Lejeune N.C. Water Contamination Litig.*, 263 F. Supp. 3d 1318, 1336 (N.D. Ga. 2016).

defendants who are "in actual possession or control . . . of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the [plaintiff's injury]." *Id.* § 1-50(a)(5)(d).

Plaintiff Rivera[4] contends that this six-year statute of repose applies because she "alleged that [her] injuries arose out of the defective and unsafe conditions of improvement to real property" at Camp Lejeune. Rivera Br. at 9–10. The problem with this argument is that Rivera's allegations are conclusory, and "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).

Section 1-50(a)(5), the six-year statute of repose, "deals expressly with claims arising out of defects in improvement to realty caused by the performance of specialized services of designers and builders." *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.*, 328 S.E.2d 274, 279–80 (N.C. 1985). "In order for this statute to apply, . . . the party sued must have been involved in the designing, planning, or construction of the defective or unsafe improvement." *Feibus & Co. v. Godley Constr. Co.*, 271 S.E.2d 385, 391 (N.C. 1980). It is, "in essence, an architect's and builder's malpractice statute." *Trs. of Rowan Tech. Coll.*, 328 S.E.2d at 280. So to be subject to this statute of repose rather than

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[4] Three Plaintiffs—Bryant, Wright, and Rivera—argue that the causes of action pleaded in their complaints subject their claims to the six-year statute of repose. None of them is correct, but Plaintiff Rivera advances the strongest argument, so we use it as an example.

the ten-year statute of repose, Plaintiffs were required to allege defects in the design or construction of the wells at Camp Lejeune. Bryant and Wright do not do so. And—though she advances the strongest argument—neither does Rivera. The closest Rivera comes to alleging a construction defect is when she claims that over-pumping of the base's water wells, in addition to deficient maintenance and inspection, caused the wells to become "defective and unsafe." Rivera Br. at 17. But this is conduct that allegedly occurred *after* the construction of the wells, and thus cannot support a claim that the wells were defectively designed or constructed.

II.

As we held five years ago, Plaintiffs' claims are subject to the ten-year statute of repose under N.C. Gen. Stat. § 1-52(16). The wells at issue in this case were taken out of use in 1987, and the earliest claim by a Plaintiff was made in 1999—two years after the statute of repose had cut off Defendants' liability.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MULTIDISTRICT LITIGATION
NO. 1:11-MD-2218-TWT

[Filed December 5, 2016]

IN RE CAMP LEJEUNE NORTH CAROLINA WATER CONTAMINATION LITIGATION	)

OPINION AND ORDER

[pp.1-2]

This matter is before the Court on the Government's motion for order relating to the preservation of documents and electronically stored information [37]; the Government's motion to dismiss [61]; the Government's motion to dismiss for lack of subject-matter jurisdiction [62]; the Plaintiffs' motion for oral argument [72]; Plaintiff Bryant's motion to amend complaint [77]; the Plaintiffs' motion for extension of time to complete discovery and to stay [83]; Plaintiff Johnston's pro se motion to amend [97]; Plaintiff Douse's pro se motion for reconsideration [117]; Plaintiff Straw's pro se motion for clerk's entry of default [121]; Plaintiff Douse's pro se motion to amend [123]; Plaintiff Wright's motion to amend complaint

[126]; the Government's motion to dismiss all cases based on North Carolina statute of repose [127]; Plaintiff Douse's pro se motion for punitive and exemplary damages [143]; the Government's motion to strike [152]; Plaintiff Douse's pro se motion for additional award of damages, for relief based on Bivens, and for a protective order [156]; Plaintiff Bryant's supplemental motion to amend [164]; Plaintiff Straw's pro se motion for permanent injunction [165]; Plaintiff Straw's pro se fourth motion for clerk's entry of default [169]; the Government's motion for protective order [172]; the Plaintiffs' motion to transfer pursuant to 28 U.S.C. § 1631 or motion for conditional suggestion of remand [176]; Plaintiff Straw's pro se first motion for clerk's entry of default [178]; the Plaintiffs' motion for a hearing [188]; and Plaintiff Straw's pro se motion for refund and further relief [192].

* * *

[pp.86-96]

Plaintiffs' claims cannot go forward, the court DENIES AS MOOT Plaintiff Johnston's motion to amend [97].

Mr. James Douse filed a complaint in the Northern District of Georgia. On August 8, 2012, the court transferred that complaint to the Multidistrict Litigation.[231] On August 19, 2015, the court denied Mr. Douse's "motion for an indicative ruling" as the issues referenced by Mr. Douse in that motion at that time were pending on appeal before the Eleventh Circuit.[232] Mr. Douse filed a motion for reconsideration of that

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[231] See Doc. No. [86].

[232] See Doc. No. [116].

order. In his motion for reconsideration, Mr. Douse references the injuries suffered by him and his family allegedly due to water contamination at Camp Lejeune. Mr. Douse's motion for reconsideration addresses several of the same arguments made by other Plaintiffs as to the statute of repose and the issue of negligence under the Federal Tort Claims Act. For the same reasons as the court has given above, the court DENIES Mr. Douse's motion for reconsideration [117].

Mr. Douse also filed a motion to amend his complaint. In that motion, Mr. Douse states he wishes to amend his complaint to add the statement of Secretary of the Department of Veterans Affairs Bob McDonald concerning the ATSDR report on contamination of drinking water at Camp Lejeune, as well as several points of procedural history in the litigation. Mr. Douse also alleges that the Government committed "fraud" by hiding the contamination of the drinking water at Camp Lejeune. He also adds arguments similar to those he raised in his motion for reconsideration. For the same reasons as given above, the court DENIES AS MOOT Mr. Douse's motion to amend complaint [123].

Mr. Douse files a motion for punitive and exemplary damages due to the fact that the Government attached Mr. Douse's administrative complaint to the Government's opposition to Mr. Douse's motion to amend. Mr. Douse claims the attachment of the administrative file is a violation of the Health Insurance Portability and Accountability Act ("HIPAA") and thus he is entitled to punitive and exemplary damages. The Government responds that

the attachment of the entire file was inadvertent. The Government also notes that it requested that the Clerk's Office place Mr. Douse's administrative complaint under seal and this has been done. The court finds that any exposure of information was inadvertent and for only a brief period of time. Therefore, the court DENIES Plaintiff Douse's motion for punitive and exemplary damages [143]; and DENIES Plaintiff Douse's motion for additional award of damages, for relief based on Bivens, and for a protective order [156].

Mr. Andrew Straw has filed several motions for default judgment contending that the Government has not answered his complaint. However, as the court explained above, when this Multidistrict Litigation case was opened, the court made several procedural rulings to streamline the litigation. Significant to Mr. Straw's motions, the court directed the Government's obligation to answer the Plaintiffs' complaints was stayed until the court resolved the threshold legal issues discussed in this order. The court also limited discovery to only two issues – the Feres doctrine and the discretionary function exception. No other discovery was permitted until the court resolved the threshold issues it addressed above. Under the terms of the Case Management Order, the Government is not required to answer any Requests for Admission propounded by any Plaintiff. For this reason, the court DENIES Plaintiff Straw's motion for clerk's entry of default [121]; DENIES Plaintiff Straw's fourth motion for clerk's entry of default [169]; GRANTS the Government's motion for a protective order [172]; and DENIES Plaintiff Straw's first motion for clerk's entry of default [178].

Mr. Straw also filed a motion for permanent injunction, but this motion appears to address current conditions at Camp Lejeune and Mr. Straw is not a current resident. Thus, he does not have standing to seek any relief with respect to current conditions at Camp Lejeune. The court DENIES Plaintiff Straw's motion for permanent injunction [165]. Finally, Mr. Straw asks that the court refund his $400 filing fee in this case because he has not received any justice.[233] But Mr. Straw did not originally file this suit in the Northern District of Georgia; he filed it in the District Court for the Northern District of Illinois. Moreover, he also states that courts have denied him in forma pauperis status and have determined that the cases he has filed are frivolous. Dissatisfaction with the rulings of the court is not a sufficient basis for seeking refund of a filing fee. The court DENIES Plaintiff Straw's motion for refund and further relief [192].

F. Summary

The court has determined that it must follow the binding precedent of Bryant and concludes that the Plaintiffs' claims are barred by the ten-year statute of repose under North Carolina law. Even if the claims were not barred by the statute of repose, the court also finds that any claims by service members that accrued during their time as service members are barred by the Feres doctrine. Finally, the court also finds that there were no mandatory specific directives in the form of federal statute or regulations which removed discretion from government actors regarding the water supply at Camp Lejeune, and decisions relating to the disposal of

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[233] See Doc. No. [192].

contaminants, the provision of water on the base, and whether any base inhabitant should be warned are policy based decisions and the discretionary function exception applies, barring the Plaintiffs' claims.

Plaintiff Rivera contends that none of these rulings applies to his case because it was not transferred to the MDL until February 4, 2016, after the Government filed its latest motion to dismiss.[234] The court notes that in its first Case Management Order, it stated that the order would "govern the practice and procedure in any tagalong actions transferred to this court by the Judicial Panel on Multidistrict Litigation."[235] But the court did not make any specific order as to whether substantive rulings on common issues would also control the tagalong cases.

Under the present circumstances, however, the court finds that the rulings it made here do apply to Plaintiff Rivera. As an initial matter, Plaintiff Rivera is represented by the same counsel that represents Plaintiff Wright; and Plaintiff Rivera adopted the arguments of Plaintiff Wright in response to the Government's most recent motions. Accordingly, Plaintiff Rivera did have an opportunity to respond. Furthermore, much of what the court has ordered here is a reflection of binding authority rendered by the United States Supreme Court and the Eleventh Circuit. Nothing Plaintiff Rivera argues now can change that binding precedent. The court rejected above an argument that allegations of fraud and

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[234] See Doc. No. [159].

[235] See Doc. No. [16], at 1.

concealment would toll the statute of repose. As to the discretionary function and Feres rulings, the court ordered a specific discovery period and directed that the period of discovery would not be re-opened for later filed tagalong cases.[236] Thus, there cannot be new information from Plaintiff Rivera that would alter the court's conclusions as to the Feres doctrine and the discretionary function exception.

Although the court grants the Government's motions to dismiss, the court must also address the manner in which the cases should be dismissed. A dismissal with prejudice applies to all claims disposed of under North Carolina's statute of repose, as well as the Feres doctrine. The dismissal under the discretionary function exception requires more detailed discussion. When the discretionary function exception applies, the court is without subject matter jurisdiction. The Eleventh Circuit has held that a "dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice."[237] The Ninth Circuit, however, has recognized that the discretionary function exception has its roots in the sovereign

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[236] See Doc. No. [24], ¶ 2.

[237] See, e.g., Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc., 524 F.3d 1229 (11th Cir. 2008); Stanley v. Central Intelligence Agency, 639 F.2d 1146, 1157 (5th Cir. 1981) (internal citations omitted) ("[w]hen a court must dismiss a case for lack of jurisdiction, the court should not adjudicate the merits of the claim"); see also Ashford v. United States, 463 F. App'x 387, 395-96 (5th Cir. 2012) (holding that dismissal under discretionary function exception of FTCA on jurisdictional grounds and therefore is without prejudice and not judgment on merits); Hart v. United States, 630 F.3d 1085, 1091 (8th Cir. 2011) (same).

immunity of the United States Government. Therefore, in Frigard v. United States,[238] the court held that "[o]rdinarily, a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert his claims in a competent court, . . . however, the bar of sovereign immunity is absolute: no other court has the power to hear the case, nor can the [plaintiffs] redraft their claims to avoid the exceptions to the FTCA. Thus, the district court did not abuse its discretion in dismissing the action with prejudice."[239] The Eleventh Circuit touched on this issue in Zelaya, where it noted that the court has always considered issues of § 2680 to be jurisdictional, but noted as well that "we also recognize that in its recent jurisprudence, the Supreme Court has become more reluctant, when sanctioning the dismissal of some claims, to base its rejection on jurisdictional grounds, as opposed to a deficiency in the merits of the claim."[240] But the viability of this theory might be in some doubt as a result of Simmons v. Himmelreich.[241]

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[238] 862 F.2d 201 (9th Cir. 1988).

[239] Id. at 204 (citation omitted).

[240] 781 F.3d at 1339; see also Parrott v. United States, 536 F.3d 629, 634 (7th Cir. 2008) (holding exceptions to United States' waiver of sovereign immunity, found in § 2680(a)-(n), "limit the breadth of the Government's waiver of sovereign immunity, but they do not accomplish this task by withdrawing subject-matter jurisdiction from the federal courts").

[241] ___ U.S. ___, 136 S. Ct. 1843 (2016) (holding FTCA's judgment bar does not apply to cases decided under discretionary function exception).

There are additional concerns in this case that are unique. As the court explained above, this Multidistrict Litigation was established to handle all complaints filed concerning contamination of the water supply at Camp Lejeune. The court determined that certain threshold legal issues had to be addressed before proceeding to any extensive discovery or further development of the merits of the cases. Various courts have taken over five years to address those threshold issues and have reached the conclusion that CERCLA's statute of limitations period does not preempt North Carolina's statute of repose and that the statute of repose does not contain an exception for latent disease claims. Now, this court has also held that to the extent any claims remain after those rulings, the Government's actions with respect to the water supply at Camp Lejeune are covered by the discretionary function exception to the Federal Tort Claims Act. As explained above, the resulting lack of subject matter jurisdiction is a consequence of sovereign immunity and is not a situation where another court would potentially have subject-matter jurisdiction over the Plaintiffs' claims. Furthermore, the court has already considered all of the allegations raised by the Plaintiffs in their latest proposed amendments. Thus, there is no further amendment to the Plaintiffs' complaints that would potentially allow this court – or any other – to exercise subject matter jurisdiction over the Plaintiffs' claims. Thus, although the court dismisses without prejudice under the discretionary function exception due to Eleventh Circuit precedent, for all practical purposes, there is no other forum where the Plaintiffs could bring these claims without meeting the same

sovereign immunity obstacle under the discretionary function exception.

The court must now determine what remains to be done in this Multidistrict Litigation. The Government argues that once the court has determined it does not have subject matter jurisdiction over the Plaintiffs' claims, the court should dismiss the pending cases. The Plaintiffs respond that the appropriate action is remand of the cases back to the transferor courts.[242]

Under § 1407, "[e]ach action so transferred shall be remanded by the panel at or before the conclusion of such proceedings to the district from which it was transferred unless it shall have been previously terminated."[243] The court has terminated the causes of action and therefore, there is no need to recommend to the Judicial Panel that the cases be sent back to the originating districts. The rules of the Judicial Panel state that:

> Where the transferee district court terminates an action by valid order, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation, the transferee district court clerk shall transmit a copy of that order to the Clerk of the Panel. The terminated action shall not be remanded to the transferor court and the transferee court shall retain the original files and records unless the

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[242] This transfer is distinguished from the Plaintiffs' prior argument that the court should engage in a jurisdictional or venue-based transfer – an argument the court rejected above.

[243] 28 U.S.C. § 1407.

> transferee judge or the Panel directs otherwise.[244]

Accordingly, the court terminates this action without a suggestion of remand.

III. Conclusion

The court **DENIES AS MOOT** the Government's motion for order relating to the preservation of documents and electronically stored information [37]; **GRANTS** the Government's motion to dismiss [61]; **GRANTS** the Government's motion to dismiss for lack of subject-matter jurisdiction [62]; **DENIES AS MOOT** the Plaintiffs' motion for oral argument [72]; **DENIES AS MOOT** Plaintiff Bryant's motion to amend complaint [77]; **DENIES AS MOOT** the Plaintiffs' motion for extension of time to complete discovery and to stay [83]; **DENIES AS MOOT** Plaintiff Johnston's pro se motion to amend [97]; **DENIES** Plaintiff Douse's pro se motion for reconsideration [117]; **DENIES** Plaintiff Straw's pro se motion for clerk's entry of default [121]; **DENIES AS MOOT** Plaintiff Douse's pro se motion to amend [123]; **DENIES AS MOOT** Plaintiff Wright's motion to amend complaint [126]; **GRANTS** the Government's motion to dismiss all cases based on North Carolina statute of repose [127]; **DENIES** Plaintiff Douse's pro se motion for punitive and exemplary damages [143]; **DENIES AS MOOT** the Government's motion to strike [152]; **DENIES** Plaintiff Douse's pro se motion for additional award of damages, for relief based on Bivens, and for a protective order [156]; **DENIES AS MOOT** Plaintiff

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[244] See Panel Rule 10.1(a).

Bryant's supplemental motion to amend [164]; **DENIES** Plaintiff Straw's pro se motion for permanent injunction [165]; **DENIES** Plaintiff Straw's pro se fourth motion for clerk's entry of default [169]; **GRANTS** the Government's motion for protective order [172]; **DENIES** the Plaintiffs' motion to transfer pursuant to 28 U.S.C. § 1631 or motion for conditional suggestion of remand [176]; **DENIES** Plaintiff Straw's pro se first motion for clerk's entry of default [178]; **DENIES AS MOOT** the Plaintiffs' motion for a hearing [188]; and **DENIES** Plaintiff Straw's pro se motion for refund and further relief [192].

The Clerk of the Court is DIRECTED to DISMISS this action.

SO ORDERED, this 5 day of December, 2016.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

APPENDIX C

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 12-15424
D.C. Docket No. 1:11-md-02218-JOF

[Filed October 14, 2014]

ERICA Y. BRYANT,
LEANDRO PEREZ,
INGRID PEREZ JACIR,
JOHN EDWARDS, as Father and next friend of his daughter, decedent Jennifer Edwards,
CONNIE EDWARDS, as Mother and next friend of her daughter, decedent Jennifer Edwards, et al.,
Plaintiffs – Appellees, Cross Appellants,

JAMES NATHANIEL DOUSE,
Plaintiff – Appellee,

versus

UNITED STATES OF AMERICA,
Defendant – Appellant, Cross Appellee.

Appeals from the United States District Court
for the Northern District of Georgia

(October 14, 2014)

Before TJOFLAT and WILSON, Circuit Judges, and BUCKLEW,* District Judge.

TJOFLAT, Circuit Judge:

This appeal arises out of a multi-district litigation, in which multiple plaintiffs and their family members allege that they experienced various health problems after being exposed to toxic substances in the drinking water while living at Camp Lejeune, a military base in North Carolina. The plaintiffs brought this action against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680. The United States moved to dismiss the case, arguing that the North Carolina statute of repose, which provided that "no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action," N.C. Gen. Stat. § 1-52(16) (2010), precluded the plaintiffs from bringing this case.[1]

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* Honorable Susan C. Bucklew, United States District Judge for the Middle District of Florida, sitting by designation.

[1] The Government also sought to dismiss the plaintiffs' complaints on the grounds that their claims are barred by the Feres doctrine and that any post-discharge failure-to-warn claims are barred by the discretionary-function exception to the Federal Tort Claims Act. The District Court only addressed and certified the statute-of-repose issue to this court. Consequently, we do not discuss, and we express no opinion on, the Government's other asserted defenses.

The District Court disagreed, concluding that a provision of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9568,[2] preempted North Carolina's statute of repose. The court separately ruled that North Carolina's statute of repose does not contain an exception for latent diseases.

The District Court then certified two questions for interlocutory appeal,[3] and this court permitted the

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[2] The relevant provision of CERCLA, 42 U.S.C. § 9568(a)(1), provides:

> In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

"The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) of this section may be brought." Id. § 9568(b)(2). "The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period." Id. § 9568(b)(3). "[T]he term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) of this section were caused or contributed to by the hazardous substance or pollutant or contaminant concerned." Id. § 9658(b)(4)(A).

[3] 28 U.S.C. § 1292(b) provides that in a civil action, a district court may certify a question of law to a court of appeals if the district

appeal. The two questions presented are (I) whether CERCLA preempts the North Carolina statute of repose, and (II) whether the North Carolina statute of repose contains an exception for latent diseases. We address each question in turn.

I.

After the parties briefed this case, but before oral argument, the Supreme Court granted a petition for a writ of certiorari in a separate case out of the Fourth Circuit, which presented the question of whether CERCLA preempts North Carolina's statute of repose.[4] On June 9, 2014, the Court determined that CERCLA, specifically 42 U.S.C. § 9658, does not preempt North Carolina's statute of repose. See generally CTS Corp. v. Waldburger, ___ U.S. ___, 134 S. Ct. 2175, 189 L. Ed. 2d 62 (2014). Thus, we have the answer to the first question presented in this interlocutory appeal. CERCLA does not preempt North Carolina's statute of repose.

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court concludes that an order not otherwise appealable "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."

[4] The Fourth Circuit decided that CERLCA preempted the statute of repose. See Waldburger v. CTS Corp., 723 F.3d 434, 444–45 (4th Cir. 2013), rev'd, ___ U.S. ___, 134 S. Ct. 2175, 189 L. Ed. 2d 62 (2014). Because the plaintiffs in the case brought a nuisance action, the court did not address the issue of whether the North Carolina statute of repose contained an exception for latent diseases.

II.

We must, therefore, turn to the second question presented in this appeal, whether the North Carolina statute of repose includes an exception for latent diseases. At the time the plaintiffs brought this action, the statute of repose provided:

> Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action . . . shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

N.C. Gen. Stat. § 1-52(16) (2010). On its face, the text of the statute contains no exception for latent diseases, and no other North Carolina statute excepts latent diseases from the statute of repose. The plain text of the statute is unambiguous.[5]

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[5] The plaintiffs rely on Jones v. United States, 751 F. Supp. 2d 835 (E.D.N.C. 2010), to support their contention that the statute of repose was ambiguous as to whether it contained a latent-disease exception. Although the District Court in that case held that the statute of repose did not apply to latent diseases, it reached that conclusion by bypassing the statutory text entirely. See id. at 836 ("The Court finds that § 1-52(16)'s statute of repose has an exception for latent diseases. The Court bases this decision on the statute's legislative history, case law, and state public policy."). In an order denying the defendant's motion for reconsideration, the court confirmed that the statute's text did not provide an exception

Shortly after the Supreme Court decided Waldburger, however, the Governor of North Carolina approved Session Law 2014-17, which amended the statute of repose. The General Assembly also passed, and the Governor signed, Session Law 2014-44, which made several technical amendments to Session Law 2014-17.[6] We then requested supplemental briefing

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for latent diseases; it ignored the text, however, because, according to the court, "[a]dopting § 1-52(16)'s literal meaning would lead to absurd results." Jones v. United States, No. 7:09-CV-106, 2011 WL 386955, at *2 (E.D.N.C. Feb. 3, 2011).

The absurd result, according to the court, was that potential claimants would be denied an opportunity to seek relief before they became aware that they were ill. But that is the point of a statute of repose; it "bar[s] any suit that is brought after a specified time since the defendant acted . . . , even if the period ends before the plaintiff has suffered a resulting injury." Black's Law Dictionary 1546 (9th ed. 2009). "Statutes of repose effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time." CTS Corp. v. Waldburger, ___ U.S. ___, ___, 134 S. Ct. 2175, 2183, 189 L. Ed. 2d 62 (2014) (quotation marks omitted).

"When the words of a statute are unambiguous . . . judicial inquiry is complete." Merritt v. Dillard Paper Co., 120 F.3d 1181, 1186 (11th Cir. 1997) (internal quotation marks omitted); see also Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 518, 597 S.E.2d 717, 722 (2004) ("Where the statutory language is clear and unambiguous, the Court does not engage in judicial construction but must apply the statute to give effect to the plain and definite meaning of the language." (internal quotation marks omitted)). Here, the statutory language is plain. We therefore decline to follow Jones in conjuring an exception where the plain text of the statute of repose provides none.

[6] Session Law 2014-44 is titled "An Act to Make Technical Amendments to Session Law 2014-17." However, one of the amendments, which removed a sunset provision that set Session

from the parties on the following question: Whether, in light of the enactment of N.C. Session Laws 2014-17 and 2014-44, the plaintiffs' actions are barred by North Carolina's statute of repose (N.C. Gen. Stat. § 1-52(16))?[7]

> The statute of repose now reads:
>
> Unless otherwise provided by law, for personal injury or physical damage to claimant's property, the cause of action . . . shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Except as provided in G.S. 130A-26.3, no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

N.C. Gen. Stat. Ann. § 1-52(16) (West 2014) (emphasis added). The session law added a new section to the North Carolina General Statutes, § 130A-26.3, which provides: "The 10-year period set forth in G.S. 1-52(16) shall not be construed to bar an action for personal injury, or property damages caused or contributed to by . . . the consumption, exposure, or use of water

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Law 2014-17 to expire on June 19, 2023, seems more substantive than technical. For ease of discussion, we refer to Session Law 2014-44 except where specifically noted.

[7] Even if we were so inclined, we are unable to certify this question to the North Carolina Supreme Court because "North Carolina currently has no mechanism for us to certify questions of state law to its Supreme Court." Town of Nags Head v. Toloczko, 728 F.3d 391, 398 (4th Cir. 2013).

supplied from groundwater contaminated by a hazardous substance, pollutant, or contaminant." N.C. Gen. Stat. Ann. § 130A-26.3.[8]

The General Assembly expressly made Session Law 2014-44 apply to actions "filed, arising, or pending" on or after June 20, 2014, the statute's effective date. N.C. Sess. L. 2014-44, § 1(c) (amending N.C. Sess. L. 2014-17, § 4). Under the law, an action is pending "if there has been no final disposition with prejudice and mandate issued against that plaintiff issued by the highest court of competent jurisdiction where the claim was timely filed or appealed as to all the plaintiff's claims for relief to which this act otherwise applies." Id. In this case, the United States Supreme Court is the highest court of competent jurisdiction, and it has not issued a final disposition with prejudice, nor has a mandate issued from that Court. As such, the amended statute of repose would appear to apply to the instant appeal.

The Government disagrees. It contends that the North Carolina General Assembly is without authority to revive the plaintiffs' claims after the repose period has passed. Under North Carolina law, a statute may be applied retroactively "only insofar as it does not impinge upon a right which is otherwise secured, established, and immune from further legal

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[8] "For purposes of this section, 'contaminated by a hazardous substance, pollutant, or contaminant' means the concentration of the hazardous substance, pollutant, or contaminant exceeds a groundwater quality standard set forth in 15A NCAC 2L .0202." N.C. Gen. Stat. Ann. § 130A-26.3 (West 2014).

metamorphosis." Gardner v. Gardner, 300 N.C. 715, 719, 268 S.E.2d 468, 471 (1980).

The Government directs us to McCrater v. Stone & Webster Engineering Corp., 248 N.C. 707, 104 S.E.2d 858 (1958), in which the North Carolina Supreme Court considered whether a statute extending the time limitation to file a workmen's compensation claim from one year to two years could be applied retroactively to claims filed more than one year but less than two years from the date of the accident. In other words, if the amendment applied retroactively, the claim would be timely; if not, the claim would be untimely. According to the North Carolina Supreme Court, the time limit to file a workmen's compensation claim was a condition precedent rather than a procedural statute of limitations. Id. at 708, 104 S.E.2d at 860. The court then held that the statute could not apply retroactively because the limitation period was "a part of the plaintiff's substantive right of recovery, [and] could not be enlarged by subsequent statute." Id. at 709–10, 104 S.E.2d at 860. The reason, the court explained, was that any attempt to revive an expired claim "would . . . deprive the defendants of vested rights." Id. at 710, 104 S.E.2d at 860.[9]

Like the time limitation in McCrater, North Carolina's statute of repose is a substantive limit on a

[9] The North Carolina Supreme Court has also held that "[a] right or remedy, once barred by a statute of limitations, may not be revived by an Act of the General Assembly," Waldrop v. Hodges, 230 N.C. 370, 373, 53 S.E.2d 263, 265 (1949), because doing so "takes away vested rights of defendants," Wilkes Cnty. v. Forester, 204 N.C. 163, 170, 167 S.E. 691, 695 (1933).

plaintiff's right to file an action. See Boudreau v. Baughman, 322 N.C. 331, 340, 368 S.E.2d 849, 857 (1988) ("Ordinary statutes of limitation are clearly procedural, affecting only the remedy directly and not the right to recover. The statute of repose, on the other hand, acts as a condition precedent to the action itself." (citations omitted)). As a result, the repose limitation "is an inseparable part of the plaintiff's substantive right of action." McCrater, 248 N.C. at 710, 104 S.E.2d at 861. And like the limitations period in McCrater, the General Assembly may not enlarge the plaintiffs' claim by statute because to do so would be to divest the Government of a vested right.

The plaintiffs argue that McCrater is inapposite because here it was unclear whether the original statute of repose's reference to "personal injury" encompassed claims for diseases. According to the plaintiffs, Session Law 2014-44 merely clarified the scope of the statute of repose. Whether the statute clarified or altered the statute of repose is relevant because under North Carolina law, clarifying amendments apply retroactively, whereas altering amendments do not. See Ray v. N.C. Dep't of Transp., 366 N.C. 1, 9, 727 S.E.2d 675, 681 (2012). The Government does not have a vested right in the interpretation of the statute of repose, the plaintiffs contend, because there is no final judgment. And to hold that the Government has a vested right would be inconsistent with the rule that a clarifying amendment "does not change the substance of the law but instead gives further insight into the way in which the

legislature intended the law to apply from its original enactment." Id.[10]

At the outset, we disagree that the original statute of repose was ambiguous with respect to a latent-disease exception. See supra at 5. However, we hesitate to dismiss out of hand the plaintiffs' argument that Session Law 2014-44 clarifies, rather than substantively amends, the statute of repose. Session Law 2014-17 is titled "An Act Clarifying that Certain

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[10] To support their claim that the Government does not have a vested right, the plaintiffs cite Bowen v. Mabry, 154 N.C. App. 734, 572 S.E.2d 809 (2002), which considered whether a statutory amendment providing that a pending action for equitable distribution does not abate upon the death of a party could apply retroactively to a claim that was pending when the amendment was enacted. The North Carolina Court of Appeals determined that the amendment was clarifying, and that the defendant did not have a vested right because "[t]here ha[d] been no judgment dismissing Plaintiff's claim prior to the effective date of the Act, and the abatement of an action is not a right 'immune from . . . legal metamorphosis.'" Id. at 737, 572 S.E.2d at 811 (last alteration in original) (quoting Gardner v. Gardner, 300 N.C. 715, 719, 268 S.E.2d 468, 471 (1980)).

The lack of an order dismissing the claim is not dispositive, for in McCarter there had been no dismissal prior to the statutory amendment. Similarly, in Waldrop and Wilkes County, the defendants' rights did not vest because of an order of dismissal; they vested when the limitations period expired. As in all three cases, the statute of repose at issue in this case creates a vested right ten years after the last act or omission giving rise to the cause of action. And while the abatement of an action may not be a right immune from legal metamorphosis, the right not to be sued after the relevant limitations period has passed certainly is, regardless of whether the time limitation is substantive or procedural. See McCrater, 248 N.C. at 709–10, 104 S.E.2d at 860; Waldrop, 230 N.C. at 373, 53 S.E.2d at 265.

Civil Actions Relating to Groundwater Contamination Are Not Subject to the Ten-Year Statute of Repose Set Forth in G.S. 1-52," and the title of a law provides some evidence of legislative intent. Cf. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 812, 517 S.E.2d 874, 879 (1999) (explaining that even when the text of a statute is plain, "the title of an act should be considered in ascertaining the intent of the legislature").

Moreover, in § 1 of the session law, the General Assembly found that prior to the Supreme Court's decision in Waldburger, "there was ambiguity and uncertainty regarding the effect of federal law on the North Carolina statute of repose in certain environmental cases." N.C. Sess. L. 2014-44, § 1.[11] The legislature also found that "it was the intent of the General Assembly to maximize under federal law the amount of time a claimant had to bring a claim predicated on exposure to a contaminant regulated by federal or State law." Id. Furthermore, the General Assembly found the Supreme Court's decision in Waldburger to be "inconsistent with the General Assembly's intentions and the General Assembly's understanding of federal law" and that "it never intended the statute of repose in G.S. 1-52(16) to apply

[11] It is not clear what sort of ambiguity the General Assembly was referring to because the federal law at issue in Waldburger was enacted seven years after North Carolina enacted its statute of repose in 1979. See Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, § 203, 100 Stat. 1613, 1695 (adding 42 U.S.C. § 9658). In other words, at the time the statute of repose was enacted, the federal law at issue in Waldburger would have had no effect on the statute of repose.

to claims for latent disease caused or contributed to by groundwater contamination, or to claims for any latent harm caused or contributed to by groundwater contamination." Id. Finally, there is the fact that the General Assembly expressly made the statute retroactive. Although inclusion of an effective date, standing alone, may not prove that an amendment is intended to be clarifying or altering, see Ray, 366 N.C. at 9–10, 727 S.E.2d at 682, the fact that the General Assembly expressly made Session Law 2014-44 retroactive lends further support to the conclusion that the amendment is clarifying and that it applies to the plaintiffs' claims.[12]

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[12] Beyond the text, the law's legislative history also demonstrates that the General Assembly sought to clarify the scope of the statute of repose. While the House of Representatives discussed Senate Bill 574, which would ultimately become Session Law 2014-17, one representative exclaimed that "the action we will take . . . is strictly one of clarifying the intent of this body, in regards to how that statute of repose can be interpreted moving forward and how it should have been interpreted since its inception." N.C. H. Rep. Discussion of S.B. Bill 574, at 4 (June 13, 2014) (statement of Rep. Glazer) (emphasis added). Summarizing the Supreme Court's decision in Waldburger, that same representative explained it "was never our intent" to limit people exposed to contaminated groundwater to a maximum of ten years to file a claim. Id. at 3. In the Senate, a senator explained:

> What we're doing today is we're just making sure that we as the General Assembly clarify the text of the statute in order to protect the original intent of the 1979 Act's drafters. And what we're dealing with in a couple parts of the state are groundwater contamination claims. And what separates them from the original intent of this – of the bill that was passed in 1979, is that groundwater contamination claims, unlike product liability claims, arise from unknown exposures – well, by unknown elements at

"To determine whether the amendment clarifies the prior law or alters it requires a careful comparison of the original and amended statutes." Ferrell v. Dep't of Transp., 334 N.C. 650, 659, 435 S.E.2d 309, 315 (1993). "If the statute initially 'fails expressly to address a particular point' but addresses it after the amendment, 'the amendment is more likely to be clarifying than altering.'" Ray, 366 N.C. at 10, 727 S.E.2d at 682 (quoting Ferrell, 334 N.C. at 659, 435 S.E.2d at 315). However, "it is logical to conclude that an amendment to an unambiguous statute indicates the intent to change the law." Childers v. Parker's, Inc., 274 N.C. 256, 260, 162 S.E.2d 481, 484 (1968).

Comparing the two statutes, it is clear that the amended statute of repose contains a brand new exception for groundwater claims. This is not a case where the General Assembly merely failed to address a particular point—whether groundwater contamination claims fall under the statute of repose—only to address it later. In Ferrell, the North Carolina Supreme Court held that a statute setting out the manner of determining the price at which the Department of Transportation would sell a parcel of property was clarifying because the original statute directing the Department to sell parcels provided no

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> unknown times, and so they have latency periods that can be decades long, unlike products. And that the intent of the original bill back in 1979 was to deal with products. They never conceived they would be dealing with groundwater contamination claims. And all we're doing is clarifying that for anyone who might look at our law.

N.C. S. Discussion of S.B. 574, at 3–4 (June 18, 2014) (statement of Sen. Goolsby) (emphasis added).

express guidance as to selling price. Ferrell, 334 N.C. at 659, 435 S.E.2d at 315. In other words, the clarifying statute filled a hole left by the original statute. Here, by contrast, the General Assembly created a substantively distinct exception from whole cloth. That the legislature saw itself as clarifying the scope of the statute of repose is not irrelevant. But just because the General Assembly said it was clarifying the scope of the statute of repose does not make it so. "It is this Court's job to determine whether an amendment is clarifying or altering." Ray, 366 N.C. at 9, 727 S.E.2d at 681. In this case, the original statute of repose was unambiguous, and it gave no indication that an exception existed for latent diseases. Thus, it is reasonable to conclude the subsequent amendment was substantive. See Childers, 274 N.C. at 260, 162 S.E.2d 484. Session Law 2014-44 did not adopt the plaintiffs' proposed distinction between latent diseases and other types of claims; instead, it created one for groundwater contamination claims generally, and there is no question that this exception is new.

Session Laws 2014-17 and 2014-44 substantively amended the statute of repose to create an exception for groundwater contamination and, as a result, can only apply prospectively, lest they divest the Government of a vested right. See McCrater, 248 N.C. at 709–10, 104 S.E.2d at 860.

***

We therefore have the answer to both questions presented in this interlocutory appeal. First, CERCLA, 42 U.S.C. § 9658, does not preempt statutes of repose. See generally CTS Corp. v. Waldburger, ___ U.S. ___,

134 S. Ct. 2175, 189 L. Ed. 2d 62 (2014). Second, North Carolina's statute of repose, N.C. Gen. Stat. § 1-52(16) (2010), applies to the plaintiffs' claims, and it does not contain an exception for latent diseases.[13]

This case is REMANDED for further proceedings consistent with this opinion.

SO ORDERED.

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[13] In their supplemental brief to this court, the plaintiffs contend that genuine issues of material fact exist as to whether the Government's last act or omission occurred within ten years. We did not authorize the appeal of that question and thus do not address it.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 16-17573-GG

[Filed September 5, 2019]

In Re: CAMP LEJEUNE, NORTH CAROLINA WATER CONTAMINATION LITIGATION.

LEANDRO PEREZ, et al.,
Plaintiffs,

ANDREW STRAW,
JAMES NATHANIEL DOUSE,
ERICA Y. BRYANT,
ROBERT BURNS,
DANIEL J. GROSS, II,
ROBERT PARK,
SHARON KAY BOLING,
LINDA JONES,
ESTELLE RIVERA,
Plaintiffs - Appellants,

versus

UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY,
United States of America,
ADMINISTRATOR OF THE

ENVIRONMENTAL PROTECTION AGENCY,)
DIVISION DIRECTOR, DEPARTMENT OF)
ENVIRONMENTAL PROTECTION AGENCY,)
DEPARTMENT OF DEFENSE, SECRETARY)
OF THE NAVY,)
Defendants - Appellees.)
)

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, MARTIN and NEWSOM, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petitions for Panel Rehearing are also denied. (FRAP 40)

ENTERED FOR THE COURT:

s/_____
UNITED STATES CIRCUIT JUDGE

ORD-46

APPENDIX E

PLAINTIFF MOTION FILED IN FULTON COUNTY COURT RE: HIPAA VIOLATION LITIGATION (NOVEMBER 23, 2016)

IN THE STATE OF GEORGIA FULTON COUNTY STATE COURT ATLANTA DIVISION

JAMES NATHANIEL DOUSE)
Plaintiff, Pro Se)
)
v.)
)
ADAM BAIN,)
Defendant(s))
)

Case number: 16EV004542

HIPPA VIOLATION LITIGATION

Plaintiff Motion For a Final Judgment in this Defaulted civil action

Plaintiff Motion for Interest and Costs.

Plaintiff Motion for Relief from Final Judgment which is Constitutional and within the Law and to Enter Final Judgement and Dispose of Case

GA Code § 51-12-14 (2015)

"Interest after 30 days

(a) Where a claimant has given written notice by registered or certified mail or statutory overnight delivery to a person against whom claim is made of a demand for an amount of unliquidated damages in a tort action and the person against whom such claim is made fails to pay such amount within 30 days from the mailing or delivering of the notice, the claimant shall be entitled to receive interest on the amount demanded if, upon trial of the case in which the claim is made, the judgment is for an amount not less than the amount demanded."

O.C.G.A. 9-11-55 (2010) 9-11-55. Default judgment

(a) "When case in default; opening as matter of right; judgment. If in any case an answer has not been filed within the time required by this chapter, the case shall automatically become in default unless the time for filing the answer has been extended as provided by law. The default may be opened as a matter of right by the filing of such defenses within 15 days of the day of default, upon the payment of costs. If the case is still in default after the expiration of the period of 15 days, the plaintiff at any time thereafter shall be entitled to verdict and judgment by default, in open court or in chambers, as if every item and paragraph of the complaint or other original pleading were supported by proper evidence, without the intervention of a jury, unless the action is one ex delicto or involves unliquidated damages, in which event the plaintiff

> shall be required to introduce evidence and establish the amount of damages before the court without a jury, with the right of the defendant to introduce evidence as to damages and the right of either to move for a new trial in respect of such damages; provided, however, in the event a defendant, though in default, has placed damages in issue by filing a pleading raising such issue, either party shall be entitled, upon demand, to a jury trial of the issue as to damages. An action based upon open account shall not be considered one for unliquidated damages within the meaning of this Code section."

"It should be noted that other than the fifteen (15) day grace period provided by O.C.G.A. § 9-11-55(a), the Court is not required to grant motions to open default."

Defense 15 days Began November 08, 2016 and expired on November 22, 2016

"The party seeking entry of a default judgment in any action shall certify to the court the date and type of service effected and that no defensive pleading has been filed by the defendant as shown by court records. This certificate shall be in writing and must be attached to the proposed default judgment when presented to the judge for signature."

Federal Rules of Civil Procedure >
TITLE VII. JUDGMENT

"Rule 55. Default; Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to

plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

(b) Entering a Default Judgment.

"(1) By the Clerk. If the plaintiffs claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiffs request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person."

"(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:"

(A) conduct an accounting;
(B) determine the amount of damages;
(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter.

In Conclusion,

HIPAA Enforcement

"HMS' Office for Civil Rights is responsible for enforcing the Privacy and Security Rules. Enforcement of the Privacy Rule began April 14, 2003 for most HIPAA covered entities. Since 2003, OCR's enforcement activities have obtained significant results that have improved the privacy practices of covered entities. The corrective actions obtained by OCR from covered entities have resulted in systemic change that has improved the privacy protection of health information for all individuals they serve."

"Preemption. In general, State laws that are contrary to the Privacy Rule are preempted by the federal requirements, which means that the federal requirements will apply.85 "Contrary" means that it would be impossible for a covered entity to comply with both the State and federal requirements, or that the provision of State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA.86 The Privacy Rule provides exceptions to the general rule of federal preemption for contrary State laws that (1) relate to the privacy of individually identifiable health information and provide"

"greater privacy protections or privacy rights with respect to such information, (2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or (3) require certain health plan reporting, such as for management or financial audits."

"Protected Health Information. The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)." "Individually identifiable health information" is information, including demographic data."

1). Wherefore The Combines causes of Action in this State Complaint, Plaintiff demands Judgment against Defendant for: $20,000,000.00 (Twenty Million Dollars).

1a). Plus Interest. . . . .Plus Costs

1b). Plaintiff Demand Punitive Damages $250,000.00 and or two to three times this amount. . . . .is the norm for Civil cases as this Court allows.

1c). Plaintiff Demands Trial by Jury

2). Plaintiff Demanding Permanent Injunctional Relief (Witness Protection Program);

Provided Plaintiff with New Personal Demographics By and through the U.S. Marshal's Office.
The Defense having Damaged Plaintiffs current Demographics and is not Repairable or Irretrievable.

Transferring Funds Instructions and Demands:

3). STEP FIVE: Transferring of Funds

Transferring Funds Instructions and Demands:

Within ten (10) days after receiving the Complainants' signed releases, Defendant will: send Bank Wiring (Instructions) to the Plaintiff for wiring of funds of

$20,000,000.00 (Twenty Million Dollars) Plus Punitive Damages

4). Or send check(s) made out to the Plaintiff in Lump sum in the amount of $20,000,000.00 (Twenty Million Dollars) Plus

4b). Punitive Damages of $250,000.00 (Two Hundred Fifty Thousand or More)

This Wiring of Funds or check(s) send is for compensation to the Complainant pursuant to 42 U.S.C. § 12133.

The check(s) will be mailed ***Certified Mail*** or ***Overnight Delivery*** Payable to:
James Nathaniel Douse
718 Thompson Lane
Bldg 108 Unit 124
Nashville, TN. 37204

5). Defendant will not Withhold Taxes Defendant will not withhold taxes from the monetary award and the Complainant will accept full responsibility for taxes due and owing, if any, on such funds. Defendant will issue to the Complainant an IRS Form 1099 reflecting the amount paid to the Complainant.

6). Retaliatory and or Coercion
Regarding Retaliation and or Coercion, The Defendant shall not retaliate against or coerce in any way against the Complainant.

Accordingly, All of Plaintiff Request and Instructions should be Granted. So certified this 23th day of November 2016.

Respectfully,

/s/ James Nathaniel Douse, Sr.

615-848-4415
718 Thompson Lane
Bldg 108 Unit 124
Nashville, TN. 37204

APPENDIX F

MISAPPLICATION OF LAW BY ELEVENTH CIRCUIT COURT OF APPEALS MAY 22, 2019 RULING [UNPUBLISHED] NOTED

1). THE 11TH CIRCUIT COURT OF APPEALS MISAPPLICATION OF CASE LAW:

"In accordance with the Supreme Court's decision in Berkovitz by Berkovitz v. United States, 486 U.S. 531, 535, 108 S.Ct. 1954, 1958, 100 L.Ed.2d 531 (1988), this court utilizes a two-step test to determine whether the FTCA discretionary function exception applies in a given case. See Kennewick Irrigation District v. United States, 880 F.2d 1018, 1025 (9th Cir. 1989). We must consider first whether the challenged action is a matter of choice for the acting employees: "[T]he discretionary function exception will not apply when a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow"

** THE 11TH CIRCUIT COURT OF APPEALS MISAPPLICATION OF NORTH CAROLINA Gen. Stat. § 1-52(16) (2010) 10-year Statute of Repose and Feris Doctrine and Discretionary Function Exception.

** THE 11TH CIRCUIT COURT OF APPEALS MISAPPLICATION OF 28 U.S.C. § 2674; see also § 1346(b)(1) (the United States may be held liable)

2). THE 11TH CIRCUIT COURT OF APPEALS MISAPPLICATION OF North Carolina General

Statutes Chapter 99B: Products Liability. § 99B5(a)(1) and § 99B-5(a)(2): Claims based on inadequate warning or instruction

3). THE 11TH CIRCUIT COURT OF APPEALS MISAPPLICATION OF NORTH CAROLINA'S MANDATORY DISABILITY DIRECTIVES

North Carolina Disability § 1-19;
North Carolina Disability § 1-20;
North Carolina Disability § 1-17 AND
. . . and North Carolina Disability Definitions 35A-1101(7) and (8)

APPENDIX G

N.C. DISABILITY STATUTES

** North Carolina Disability Statutes is a MANDATORY DIRECTIVE

** This court has entered a decision in conflict with the decision of another United States court of appeals AND a State Court on the same important matter; SEE: DECEMBER 20,2016 NORTH CAROLINA COURT OF APPEALS COA-16-481 DELVON R. GOODWIN. see Page 6 highlighted vs. FOUR COUNTY ELECTRIC CARE TRUST, INC NORTH CAROLINA TEN-YEAR STATUTE OF REPOSE

** In support of Petitioner is the United Stated Supreme Court holding "In accordance with the Supreme Court's decision in Berkovitz by Berkovitz v. United States, 486 U.S. 531, 535, 108 S.Ct. 1954, 1958, 100 L.Ed.2d 531 (1988), this court utilizes a two-step test to determine whether the FTCA discretionary function exception applies in a given case. See Kennewick Irrigation District v. United States, 880 F.2d 1018, 1025 (9th Cir. 1989). We must consider first whether the challenged action is a matter of choice for the acting employees: "[T]he discretionary function exception will not apply when a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow"

** Failure to Warn Post Discharge as a Private Citizen:

G.S. 99B-6 § 99B-6. Claims based on inadequate design or formulation.

G.S. 99B-5 § 99B-5. Claims based on inadequate warning or instruction. §99B-5(a)(1) and §99B-5(a)(2).

NC General Statutes -Chapter 1 Article 3
Subchapter II. Limitations
Article 3. Limitations, General Provisions

*** §1-17. Disabilities**
(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.
For the purpose of this section, a person is under a disability if the person meets one or more of the following conditions:
(1) The person is within the age of 18 years.
(2) The person is insane.
(3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

(a1) For those persons under a disability on January 1, 1976, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal

offense, the statute of limitations shall commence to run and no longer be tolled from January 1, 1976.

(b) Notwithstanding the provisions of subsection (a) of this section, and except as otherwise provided in subsection (c) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years.

(c) Notwithstanding the provisions of subsection (a) and (b) of this section, an action on behalf of a minor for injuries alleged to have resulted from malpractice arising out of a health care provider's performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except as follows:

(1) If the time limitations specified in G.S. 1-15(c) expire before the minor attains the full age of 10 years, the action may be brought any time before the minor attains the full age of 10 years.

(2) If the time limitations in G.S. 1-15(c) have expired and before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of Chapter 7B of the General Statutes finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the medical malpractice action shall be commenced within three years from the date of such judgment or consent order,

or before the minor attains the full age of 10 years, whichever is later.

(3) If the time limitations in G.S. 1-15(c) have expired and a minor is in legal custody of the State, a county, or an approved child placing agency as defined in G.S. 131D-10.2, the medical malpractice action shall be commenced within one year after the minor is no longer in such legal custody, or before the minor attains the full age of 10 years, whichever is later. (C.C.P., ss. 27, 142; Code, ss. 148, 163; 1899, c. 78; Rev., s. 362; C.S., s. 407; 1971, c. 1231, s. 1; 1975, c. 252, ss. 1, 3; 1975, 2nd Sess., c. 977, s. 3; 1987, c. 798; 2001-487, s. 1; 2011-400, s. 9.)

*** § 1-19. Cumulative Disabilities**

When two or more disabilities coexist at the time the right of action accrues, or when one disability supervenes an existing one, the limitation does not attach until they all are removed. (C.C.P., ss. 28, 49; Code, ss. 149, 170; Rev., s. 364; C.S., s. 409.)

*** § 1-20. Disability Must Exist When Right of Action Accrues**

No person may avail himself of a disability except as authorized in G.S. 1-19, unless it existed when his right of action accrued. (C.C.P., s. 48; Code, s. 169; Rev., s. 365; C.S., s. 410.)

Chapter 35A.—Incompetency and Guardianship.
Subchapter I. Proceedings to Determine Incompetence.

Article 1. Determination of Incompetence

* **§ 35A-1101. Definitions** When used in this Subchapter:

(7) "Incompetent adult" means an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

(8) "Incompetent child" means a minor who is at least 17 1/2 years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition.

*** § 99B-5. Claims Based on Inadequate Warning or Instruction**

(a) No manufacturer or seller of a product shall be held liable in any product liability action for a claim based upon inadequate warning or instruction

unless the claimant proves that the manufacturer or seller acted unreasonably in failing to provide such warning or instruction, that the failure to provide adequate warning or instruction was a proximate cause of the harm for which damages are sought, and also proves one of the following:

(1) At the time the product left the control of the manufacturer or seller, the product, without an adequate warning or instruction, created an unreasonably dangerous condition that the manufacturer or seller knew, or in the exercise of ordinary care should have known, posed a substantial risk of harm to a reasonably foreseeable claimant.

(2) After the product left the control of the manufacturer or seller, the manufacturer or seller became aware of or in the exercise of ordinary care should have known that the product posed a substantial risk of harm to a reasonably foreseeable user or consumer and failed to take reasonable steps to give adequate warning or instruction or to take other reasonable action under the circumstances.

APPENDIX H

Camp Lejuene Toxic Water Map