

TOXIC AND HAZARDOUS SUBSTANCES LITIGATION

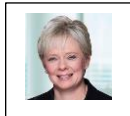
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Six years after a series of events set into motion what became known as the Flint Water Crisis, many of the defendants have reached an initial settlement with the Flint residents and businesses. This article provides a summary of the proposed settlement.

The Flint Water Crisis – is \$600 Million Enough?

ABOUT THE AUTHOR

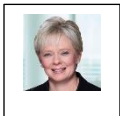


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ABOUT THE COMMITTEE

Member participation is the focus and objective of the Toxic and Hazardous Substances Litigation Committee, whether through a monthly newsletter, committee Web page, e-mail inquiries and contacts regarding tactics, experts and the business of the committee, semi-annual committee meetings to discuss issues and business, Journal articles and other scholarship, our outreach program to welcome new members and members waiting to get involved, or networking and CLE presentations significant to the experienced trial lawyer defending toxic tort and related cases.

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On August 20, 2020, Flint residents and businesses reached an initial agreement for a \$600 million settlement with multiple governmental defendants, including the State of Michigan, Michigan Department of Environmental Quality (DEQ), and individual defendants, including former Governor Rick Snyder, in the Flint Water Crisis Litigation, affecting over 90,000 Flint residents and businesses.¹

Case Background

In 2014, in an effort to save money, the City of Flint switched its water supply to water drawn from the highly contaminated Flint River. That change allegedly set into motion a series of events that ended with many of the City's nearly 8,000 small children permanently harmed by lead poisoning, and over 30,000 of the City's many housing units rendered nearly worthless because of corroded, unsafe pipes and appliances.

On March 31, 2016, an initial lawsuit was filed in federal court on behalf of Flint residents against two corporations and multiple government entities. According to the complaint, engineering firms Lockwood, Andrews & Newnam (LAN) and Veolia, both major professional companies with experience in water systems, gave the City

disastrously bad advice about the switch to Flint River water.

According to the complaint, when Flint's citizens complained about the new water's bad smell, color, and taste—and later, when the City suffered an outbreak of deadly Legionnaires' disease—the engineering companies failed to identify corroding pipes as the root cause of the City's problems. The lawsuit further alleged that had the engineering firms taken the most basic steps required of professional engineers, they would have discovered that Flint River water was eight times more corrosive than the City's previous water source, and they would have taken steps to prevent the leaching of dangerous lead into residents' water supply.

Subsequent class action complaints were later filed against LAN, Veolia, Governor Rick Snyder, the State of Michigan, the City of Flint, and city personnel in their individual and official capacities. These complaints alleged that, as a result, lead concentrations in Flint water reached astonishingly high levels—in one case, as much as 880 times the EPA's legal limit. The toxic lead made its way into residents' water, and then their blood.²

The lawsuits also alleged that Flint's corrosive water caused devastating damages

¹ Litigation will continue against other defendants, including two private engineering firms, Veolia North America and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence. Additionally, separate litigation against the U.S. Environmental Protection Agency will also continue.

² Lead poisoning is known to cause serious damage to children's central and peripheral nervous systems, stunt growth, reduce IQ, and cause serious behavioral problems. The effects of these symptoms can continue throughout a child's entire lifespan.

to residents' property. The water permanently corroded pipes and appliances connected to the Flint water system. Because of the damages to residents' pipes, the homes of Flint residents were no longer appraised at sufficient value to serve as collateral for the loans required to perform the needed repairs. The lawsuits also alleged that senior officials at the Michigan Department of Environmental Quality ("DEQ"), the state agency responsible for overseeing the supply of drinking water statewide, failed to comply with state and federal laws, as well as departmental policies.

The Proposed Settlement

Under the proposed settlement, Flint residents would be eligible for hundreds of millions of dollars in payments from a court-monitored victim compensation fund. Approximately 80% of the settlement will go to individuals who were minors when first exposed to contaminated water, including 65% for kids 6 and younger, 10% for children aged 7 to 11 and 5% for youth ages 12 to 17. While all minors will get a share of the settlement, some will get a greater amount depending on the extent of their injuries.

Of the remaining roughly 20% of the settlement, 15% will go to adults with injuries sustained in the crisis, 3% for adults with property damage, 0.5% for economic losses to businesses and 2% for special education services. About \$35 million will be set aside in a trust fund for "forgotten

children," those in foster care or others who may not have an opportunity to apply for compensation. Those individuals can apply for compensation from the fund when they reach the age of 19. Each resident will need to submit a claim, so the specific amount to be paid to a resident is not defined in the settlement and will depend upon how many filed claims and whether the claim is verified. Parties to the settlement would include "multiple governmental defendants," including the state of Michigan, the Michigan Department of Environmental Quality and all individual state defendants, including former Michigan Gov. Rick Snyder, who left office at the end of 2018. The state would also create a dedicated fund to provide special education for students who suffer long-term health and behavioral damage from lead poisoning.

Litigation would continue against the U.S. Environmental Protection Agency and private firms that were involved in the switch of Flint's drinking water source from Lake Huron to the Flint River. Those firms include environmental consultant Veolia North America and engineering firm Lockwood, Andrews & Newman.

This is a proposed settlement, the terms of which require court approval, which is expected within 45 days.

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