

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases.

Judith E. Levy
United States District Judge

_____ /

This Order Relates To:

ALL CASES

_____ /

**OPINION AND ORDER GRANTING PLAINTIFFS' MOTION TO
ESTABLISH SETTLEMENT CLAIMS PROCEDURES AND
ALLOCATION AND FOR PRELIMINARY APPROVAL OF CLASS
SETTLEMENT COMPONENTS [1318] AND GRANTING
PLAINTIFFS' MOTION FOR AN ORDER ADOPTING THE
PROPOSED MOTION FOR APPROVAL OF WRONGFUL DEATH
SETTLEMENT [1334]**

Before the Court is Plaintiffs' motion to establish settlement claims procedures and allocation and for preliminary approval of class settlement components (ECF No. 1318) and Individual Plaintiffs' motion for an order adopting the proposed motion for approval of wrongful death settlement. (ECF No. 1334).

Plaintiffs are thousands of children, adults, property owners, and business owners who allege they were exposed to lead, *legionella*, and other contaminants from the City of Flint's municipal water supply. The

events that resulted in this large-scale municipal water contamination are now known as the Flint Water Crisis. In their lawsuits, both the putative class members and Individual Plaintiffs allege that Defendants caused, prolonged, concealed, ignored, or downplayed the risks of Plaintiffs' exposure to the City's water, which injured Plaintiffs and damaged their property and commercial interests.

The settlement before the Court is a partial settlement and therefore does not represent the end of the Flint Water Crisis litigation. It would allow recovery of monetary awards for persons (children and adults) exposed to Flint water during a specified exposure period, along with property owners, renters, and business owners. Specifically, the settlement provides the opportunity for monetary awards for every person exposed while a minor child; every adult exposed with a resultant injury; every residential property owner, renter, or person responsible for paying Flint water bills; and certain business owners impacted during the relevant time period.

The proposed settlement creates a comprehensive settlement program that will address all individually represented persons and all

Minors¹ (both represented and unrepresented). It also provides a ‘class action’ resolution for those adults who have not hired their own lawyer. The compensation process and timeline are the same for every person—and the amount of money that a claimant will receive is based on objective factors such as age, exposure to the water, test results, specific identified injuries, property ownership or lease, payment of water bills, and commercial losses. Significantly, the compensation will be the same for similarly situated individuals and entities—regardless of whether they are represented, unrepresented, or are a member of the ‘class.’

This motion is Plaintiffs’ first step towards resolving their claims against the “Settling Defendants”: the State of Michigan and its

¹ “Minor” is defined in the Master Settlement Agreement (the “MSA”) as “any Claimant participating in the Settlement program that will be less than eighteen (18) years of age at the time an election is made by a Next Friend from the options on how a Monetary Award should be distributed as set forth in Paragraph 21.28 [of the MSA].” (ECF No. 1319-1, PageID.40340.) Notably, there are some individuals who were legal minors at the time of exposure, but either have already turned eighteen before registering (and therefore register as adults), or are legal minors at the time of registration, but will turn eighteen before the time that they elect the form by which to receive a monetary award. Those persons are no longer “Minors” at the election time and, under the MSA, control their own claim. The Court will distinguish between “Minors” under the MSA and legal “minors” with appropriate capitalization in this Opinion.

individual officials;² the City of Flint, three Emergency Managers, and several City employees;³ the “McLaren Defendants,” which are McLaren Health Care Corporation, McLaren Regional Medical Center, and McLaren Flint Hospital; and Rowe Professional Services Company (“Rowe”). It does not resolve all of the Flint Water Cases, and the first round of bellwether trials against the non-settling Defendants are currently set for June 4, 2021.⁴

² These are collectively referred to as the “State Defendants” and include: the State of Michigan, the Michigan Department of Environmental Quality (now the Michigan Department of Environment, Great Lakes, and Energy), the Michigan Department of Health and Human Services, the Michigan Department of Treasury, former Governor Richard D. Snyder, current Governor Gretchen Whitmer, the Flint Receivership Transition Advisory Board, Liane Shekter Smith, Daniel Wyant, Stephen Busch, Kevin Clinton, Patrick Cook, Linda Dykema, Michael Prysby, Bradley Wurfel, Eden Wells, Nick Lyon, Dennis Muchmore, Nancy Peeler, Robert Scott, Adam Rosenthal, and Andy Dillon.

³ These are collectively referred to as the “City Defendants” and include the City of Flint, Darnell Earley, Howard Croft, Michael Glasgow, Gerald Ambrose, Edward Kurtz, Michael Brown, Dayne Walling, and Daugherty Johnson.

⁴ The Settling Defendants do *not* include private engineering firm Defendants Veolia Water North America Operating Services, LLC; Veolia North America, LLC; Veolia North America, Inc.; Veolia Environment, S.A.; Lockwood Andrews & Newnam, P.C.; Lockwood Andrews & Newnam, Inc.; Leo A. Daly Company; United States of America; and United States Environmental Protection Agency and their affiliates. Accordingly, even if the proposed settlement receives final approval, the litigation against these Defendants continues.

The Court's role at the preliminary approval stage is circumscribed. The Court may not rewrite the settlement but may only reject it or grant it preliminary approval. Generally, a settlement between an adult plaintiff and a defendant does not require court approval. But because this settlement presents a hybrid structure that includes a class component for unrepresented adults—and involves a substantial number of potential claims of Minors—preliminary approval of certain aspects of the proposed settlement is both appropriate and necessary.

For the reasons set forth below, the Court grants preliminary approval of this settlement. This approval will trigger a period of time in which minors, adults, property owners/renters, and commercial entities may decide whether to participate in the settlement. If a qualifying person or entity chooses to register as a participant, they may then formally object to aspects of the settlement and set forth any reasons why it should not be afforded final approval. Participants may also proceed with their litigation against the non-settling Defendants and, if summary judgment is sought and denied, be heard in front of a jury.⁵

⁵ Those who are members of any class have the additional choice to opt out of this settlement entirely and proceed with their individual litigation against the Settling Defendants.

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