

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re Flint Water Cases,

No.: 5:16-cv-10444-JEL-MKM
(consolidated)

Hon. Judith E. Levy

Magistrate Mona K. Majzoub

**CO-LIAISON COUNSEL’S BRIEF IN SUPPORT OF FINAL APPROVAL
OF THE PROPOSED SETTLEMENT**

Co-Liaison Counsel hereby submit this memorandum of law in support of Plaintiffs’ Motion for Final Approval of Settlement, and in response to certain “objections¹” to the extent they address issues related to the individual non-class claimants and that portion of the settlement. As explained more thoroughly herein, Co-Liaison Counsel respectfully requests that the Court enter a final order approving the Settlement and for such other and further relief the Court deems just and proper.

Dated: May 27, 2021

Respectfully submitted,

¹ Article XX of the Amended Master Settlement Agreement (AMSA) allows eligible claimants to file objections to the AMSA, however the AMSA provides only one option to those voicing objections *i.e.*, to not register. *See* Article XX.

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PRELIMINARY STATEMENT

Co-Liaison Counsel hereby submit this memorandum of law in support of Plaintiffs' Motion for Final Approval of the Settlement. As signatories to the AMSA Co-Liaison Counsel, firmly believe the settlement is fair, reasonable, and equitable. This Court should approve all aspects of this landmark settlement that closes a chapter in the Flint Water Crisis. The undersigned consider it important to separately address certain issues that are not class related. This brief focuses on the individual components of the proposed Settlement and various filed objections.

Under the terms of the AMSA, the only basis to deny approve of the individual component of the settlement, *which accounts for 85%* of the total monies available under the AMSA, is if a Settling Defendant is able to exercise it's "walkaway rights". *See generally* Section 18. These "walkaway rights" can be exercised by the State of Michigan and the other Settling Defendants if there was a failure to meet various "Registration" thresholds. *Id.* Upon information and belief, and after extensive interaction with the Special Master and the Settlement Administrator, that except for the Legionella portion of the settlement as limited to Settling Defendant McLaren Hospital, the registration numbers far surpassed the required the walkaway trigger and, therefore, the non-class portion of the Settlement should be approved and become binding as to the remaining Settling Defendants.²

² As of this filing, ARCHER Systems, LLC has not completed its review of the registered claimant information as it pertains to persons listed on Exhibit 12 of the AMSA – those who have

FACTUAL BACKGROUND

The Master Settlement Agreement (“MSA”) was filed on November 17, 2020. ECF No. 1319-1. The Amended Master Settlement Agreement (“AMSA”) was filed on January 15, 2021. ECF No. 1393-2. The Settlement Agreement is the product of the extensive mediation efforts in numerous sessions and communications over a period of more than two years. These efforts facilitated a prudent, fair, and reasonable resolution of vigorously litigated, factually, and legally complicated disputes, in the best interest of all individual plaintiffs.

The proposed Settlement establishes a hybrid structure that includes both a Class Action component and an individual (“non-class”) traditional mass tort settlement that is triggered by a participation rate methodology. As this Court stated in the Opinion and Order Granting Preliminary Approval (ECF NO. 1399) (hereinafter the “Preliminary Approval Order”), “[t]he proposed settlement creates a comprehensive settlement program that will address all individually represented persons and all Minors (both represented and unrepresented.)” Preliminary Approval Order, ECF No. 1399, PageID.54400.

Final approval of an adult claimants’ non-class personal injury lawsuit typically does not require final approval. However, due to the hybrid structure of the

submitted a notice of intention to file a claim under the Michigan Court of Claims Act, Mich. Comp. Laws § 600.6431. *See* MSA ¶ 18.1.2.

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