

Managing Complex Mass Litigation – Wading Through the Flint Water Crisis

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2:00 – 3:15 PM



The Flint Water Crisis and the litigation have been the subject of extensive media, public, and political attention over the past several years. By any measure, these cases have presented significant challenges to the litigants, the affected residents, and, importantly, the court system. Tens of thousands of cases, including class actions, have been filed in both state and federal courts. The defendants include State and City officials, private engineering firms who were hired to consult on water treatment and quality, and local hospitals. The plaintiffs assert that the governmental defendants violated the plaintiffs' rights to bodily integrity under the substantive due process clause of the 14th Amendment. The plaintiffs assert that the engineering firms are liable for professional negligence. Briefly, as described in the excerpt from one of the 6th Circuit decisions, the City of Flint determined to change its source of water from the Detroit system to a new system called KWA. Because KWA was still under construction, Flint relied on the Flint River as a water source during the interim period between leaving the Detroit system and joining the KWA. The Flint River water was corrosive and resulted in corrosion of various pipes and fixtures in the Flint water treatment and distribution system. As a result, the water became contaminated with lead and other toxins at levels higher than the federal action level.

Cases have been filed primarily in three courts: US District Court for the Eastern District of Michigan; Genesee County Circuit Court (State court) and the Michigan Court of Claims (where suits against the State may be brought.) Federal court cases are consolidated before Judge Judith E. Levy – and the federal court action is the primary locus of litigation. At this point, there are approximately 20,000 individual cases and a separate class action that has been certified on liability issues only. Discovery has been coordinated among the courts – and nearly 200 depositions have been taken. The governmental defendants (State of Michigan, City of Flint) have reached a settlement, and two private defendants have joined that settlement. The remaining defendants are two of the engineering firms that advised the City, and the United States EPA. The first bellwether trial – involving claims of 4 children who were 6 years old or younger at the time of the exposure to the water – commenced on February 15, 2022. As of the end of June, that trial was ongoing. The next trial will be an 'issues class' – involving only adult residents of Flint. The claims in the first bellwether case are that the lack of corrosion control in the water treatment caused lead to leach from pipes which in turn caused neurological injury to the children. The plaintiffs allege that the defendants (two engineering firms) breached their duty because they failed to advise the City that the switch to the Flint River without addressing corrosion control would cause harm to the health and safety of the residents. In addition to personal injury claims, there are thousands of claims of property damage. The partial settlement provides compensation based on the nature of risk or injury. There are separate compensation categories for children and adults and for personal injury and property damage. Claimants must provide some information about their location

and their alleged injuries to recover. The settlement is being implemented currently and the claims administrator has received approximately 40,000 claims.

Overview of Issues Pertinent to Management of complex mass litigation cases.

- Multiple parties
- Large numbers of plaintiffs
- Appointing leadership
- Structuring the litigation process
- Structuring discovery
- Conflicts issues

Effective use of Special Masters and Mediators – can be a key component

Data – claim census – why and how

- Informs process
- Enables development of useful discovery
- Facilitates settlement efforts

Media/Communications/High Profile Matters

Bellwether process

- Daubert/science

Class action device

Creative management

Speakers:

Hon. Judith E. Levy, Trial Judge, United States District Court for the Eastern District of Michigan



Judith E. Levy is a United States District Court for the Eastern District of Michigan. She was nominated for the position by President Barack Obama and the U.S. Senate confirmed her nomination on March 12, 2014. She previously served as an Assistant U.S. Attorney in the Eastern District of Michigan since 2000, and she was the Civil Rights Unit Chief for the last three years. Prior to that role, she was a trial attorney with the U.S. Equal Employment Opportunity Commission in Detroit. From 1996-1999, she served as a law clerk for Judge Bernard A. Friedman, United States District Judge for the Eastern District of Michigan. Judge Levy has taught seminars

on fair housing and policing at the University of Michigan Law School since 2002.

Deborah Greenspan, Special Master



Deborah Greenspan is a leading advisor on mass claims strategy and resolution. Her practice includes both client representations and service as a neutral. She has served as a Special Master appointed by courts and government institutions in multiple matters. She was appointed as Special Master by Judge Jack B. Weinstein to assist in the development and to implement a settlement distribution program for more than 100,000 Vietnam veterans. She served as the Deputy Special Master for the September 11th Victim Compensation Fund of 2001, responsible for developing regulations, establishing policies for and facilitating the

distribution of more than \$9 billion to victims of the September 11th attacks. Deborah currently serves as the Special Master in the *Flint Water Cases* litigation and the *Flint Water Cases FTCA* litigation. Deborah has been appointed by numerous judges to analyze and evaluate claims filed by hundreds of victims of terrorist attacks. Deborah is a member of the board and current treasurer of the Academy of Court Appointed Masters.

Deborah has extensive experience in class actions, mass tort bankruptcy cases (serving as counsel to debtors and parent companies in multiple mass tort bankruptcy cases), mass products liability matters, analysis of damages and future liability exposure, insurance recovery, alternative dispute resolution, claims evaluation and dispute analysis, settlement distribution design and implementation, claims management and risk analysis. Deborah also has substantial experience in private mediation and is currently serving as the Chair of the Dispute Resolution Committee of the Tort Trial & Insurance Practice Section of the American Bar Association.

Hon. Pamela R. Harwood (retired), Mediator – Moderator



Pamela R. Harwood was appointed to the 36th District Court in Detroit and reappointed in 1989 to the Wayne County Circuit Court bench where she served as Chief Judge Pro Tem before leaving the bench in 2004. She was a nationally recognized expert in caseload management in trial courts for her work implementing improvements in court operations, teaching the subject at the Michigan Judicial Institute, National Judicial College, the Conference of Chief Justices and consulting to courts around the country.

After leaving the bench, she formed Law Offices Pamela R. Harwood PLLC and provided mediating, arbitrating and consulting services to attorneys and courts.

In 2014, she was appointed as the Appeals Judge for the global Dow Corning Settlement Facility that processes claims for silicone exposure; a position she continues to hold. In 2018, she and retired Senator Carl M. Levin were appointed mediators for the claims arising out of the Flint Water Crisis which they successful resolved against multiple defendants for \$642M.

She currently serves on the Michigan Federal Court Merit Selection Committee. In 2014, she received the Lifetime Judicial Achievement Award from American Board of Trial Advocates-Michigan Chapter.

A member of NAWJ since 1985, she represented WLAM in founding the National Conference of Women's Bar Associations ("NCWBA") and served as President of the NCWBA Foundation.