

July 26, 2017

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FLINT WATER CASES Case No. 16-10444

_____ /

STATUS CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

JULY 26, 2017

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July 26, 2017

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July 26, 2017

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July 26, 2017

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I N D E X

MISCELLANY

Proceedings.....9
Certificate.....99

July 26, 2017

9

P R O C E E D I N G S

1
2 THE COURT: This is the date and time that was set
3 for a status conference in the pending Flint water cases.
4 What I'd like to do is I was not entirely expecting this many
5 people, although I knew we'd have quite a group.

6 I would be interested in appearances. Not because I
7 think we need them for the record, but at least to know
8 generally for those who I have not met so far. Some of you've
9 I've met in the Guertin case and in other cases.

10 So why don't we at least begin with that in just a
11 moment. But before doing that, I wanted to just make some
12 introductory remarks so that it's clear what we're doing here
13 today and why we're here.

14 First of all, I want to thank all of you for being
15 here on a beautiful summer afternoon. And I'd like to thank
16 you for the submissions that you each provided through counsel
17 or through a leader of your group in anticipation of this
18 conference.

19 What I'd like to do is begin our conference on the
20 record. But if we proceed to a point where we're looking at
21 dates for various events to take place, I'd rather do that off
22 the record, spare Jeseca's wrists and hands for that. But at
23 least at the beginning of this time, I'd like to begin on the
24 record even though it is a status conference and not
25 necessarily a hearing on substantive issues.

July 26, 2017

10

1 I want to say something about how this case came to
2 me. As a result of the random assignment of cases, I was
3 assigned to the Guertin case and the Village Shores case and I
4 think there may have been one other individual damages case in
5 there.

6 At the time that those cases came into the court, I
7 decided as provided for in the local rules that the Eastern
8 District of Michigan bench has adopted that I would not
9 reassign those cases under the companion case rule.

10 As I understand it, Judge O'Meara, who is my
11 colleague upstairs, was randomly assigned the lowest case
12 number. And a good many of the cases pending in the Eastern
13 District of Michigan were, in deed, reassigned to him under
14 the companion case rule. He proceeded to handle those cases
15 for a period of time.

16 And as I think you all know, because I've read your
17 briefs throughout many of the filings that weren't specific to
18 this conference but are pending in the cases, Judge O'Meara
19 decided in large part that the federal district courts did not
20 have jurisdiction either because of the doctrine of preemption
21 with respect to the Safe Drinking Water Act or under various
22 principles set forth in the Class Action Fairness Act.

23 So while some of those issues were still pending on
24 appeal, Judge O'Meara decided to recuse himself. And that is
25 for reasons that are not known to me. He may have discussed

1 those reasons with some of you who are counsel on those cases
2 and he may not have. You would know that and I do not know
3 that.

4 But in any event, his lowest number case after he
5 made a decision to recuse himself was placed back in the
6 Eastern District of Michigan's case assignment wheel, now a
7 computer, and were eventually assigned to me through that
8 process because I had -- still had the Guertin, Village
9 Shores, and some other of the cases.

10 So here we are at this time with approximately ten
11 class actions. And I say approximately because I've read
12 everything up until 10 minutes ago. But I did not refresh
13 CM/ECF at that point. And over 50 individual actions.

14 Now, I'm going to go on a small detour for just a
15 moment. I had Professor Kent Syverud as my 1L civil procedure
16 law professor at the University of Michigan. And he would be
17 very happy, I think, today to hear that I actually like civil
18 procedure. And he -- he was a phenomenal professor because I
19 think many, many law students don't know what's going on and
20 don't care to know at that point what civil procedure is all
21 about.

22 But my work, subsequent work after law school, was in
23 civil litigation. And I've done some teaching at the
24 University of Michigan Law School where in the course of the
25 teaching, I encourage my students to focus on procedure. And

July 26, 2017

12

1 I tell them that I think that's where cases are won, their
2 cases are bungled up. And the person who knows the procedure
3 has a phenomenal advantage over everyone else, including the
4 judge.

5 So that said, this case is -- these cases are
6 something of a procedural nightmare even for someone who
7 peculiarly likes procedure. But I can in the course of
8 beginning my work on these cases commit to each of you that I
9 will keep the rule book close at hand. It's with me, the
10 civil procedure rule book and the complex litigation manual,
11 the fourth edition is here with me.

12 I also have the hardcopy volumes of Wright and
13 Miller. It's the only set of books that I told the Court
14 librarian that I would make use of as a judge and it's the
15 only one that I keep up to date. So I keep those books at
16 hand by my desk on the third floor. I'm not afraid to use
17 these books because I -- there is so much still to be learned
18 about procedure. And I'm also not afraid to ask for your help
19 and further briefing if it would be helpful to me.

20 The second general comment I want to make that has
21 still nothing to do with the substance of these cases is that
22 some of you have had cases with me already. And I believe in
23 active case management. I learned in the course of my own
24 litigation as a civil litigator that despite our best efforts
25 as lawyers in complex cases, input and involvement from the

1 judge can go a very long way for those -- for all parties and
2 especially parties that do not have unlimited resources to
3 litigate the location of the deposition, requests for
4 additional pages.

5 But even more importantly than those issues is
6 sometimes there's a need for preliminary rulings on
7 substantive issues that if we can get past one issue, get one
8 issue decided even though the local rules say only one summary
9 judgment only at this time and those sorts of things.

10 My approach that I have been working on developing
11 and that I believe strongly in is that active involvement from
12 the judge can assist in resolving complex issues and problem
13 solving, which I think is what we are all here to do.

14 Finally, while there are a number of important issues
15 on appeal in some of these cases that results in this Court
16 not having jurisdiction over those particular issues and those
17 particular cases, there are many other issues that I do have
18 jurisdiction over or parties that are not in the cases that
19 are on appeal.

20 So with that in mind, I will do my best to stay on
21 top of what those issues are, how the pending issues can be
22 adjudicated fairly with an eye to the rights of all of the
23 parties. These cases, as all of us in this room know, were
24 filed as a result of a serious set of allegations that have
25 brought national and even international attention to the City

1 of Flint, its residences, businesses, and homes.

2 And while this attention will not guide my work --
3 and I presume it will not guide your work in a certain way, it
4 is a reminder that there will be attention paid to how we do
5 our work together. It's my hope that our work will be
6 respectful and thoughtful and, as I said a moment ago, with an
7 eye towards problem solving at each step of the way.

8 So having said those just preliminary remarks, I'd
9 like to know who's in the room. So I will introduce -- I've
10 introduced Jeseca. Shawna is working as my case manager.
11 Shawna Burns. Jesse Taylor is a career law clerk with me.

12 And then in the front row is Tiffany Henton, who's
13 about to be a 2L law student at Wayne State. Nathan Stout,
14 who is an undergrad at the University of Michigan interested
15 in -- we might deter him today from this. But he's interested
16 in considering law school in the future. And he's doing a
17 wonderful job.

18 Daniel Woofter is soon to be departing after two
19 years of working as a law clerk here and just doing a
20 spectacular job. And Sinead Redmond, who's a JD/PhD student
21 at the University of Michigan. So that's all of us.

22 And why don't we start in the jury box. And if we
23 could at least work our way through everyone in front of the
24 bar there.

25 MR. BERG: Rick Berg for the City of Flint. And

July 26, 2017

15

1 thank you for that wonderful introduction.

2 THE COURT: Thank you.

3 MR. CONNORS: Good afternoon, your Honor. Jordan
4 Connors from the law firm Susman Godfrey. And I represent,
5 with a number of other people in the room, plaintiffs in the
6 Village Shores case.

7 THE COURT: Okay. Thanks.

8 MR. LARSEN: Good afternoon, your Honor. Zach
9 Larsen, Assistant Attorney General representing the State
10 defendants.

11 THE COURT: Okay.

12 MR. GAMBILL: Nathan Gambill, also an Assistant
13 Attorney General, also representing the State defendants.

14 MR. WITUS: Morley Witus -- Barris, Sott, Denn &
15 Driker -- representing Governor Snyder.

16 MR. STEVEN HART: Good afternoon, your Honor. Steven
17 Hart, Hart Law Chicago on behalf of the Guertin plaintiffs.

18 THE COURT: Okay. And we've met before.

19 MR. STEVEN HART: Yes.

20 MR. DAVID HART: Good afternoon, your Honor. David
21 Hart from Maddin Hauser on behalf of the Guertin plaintiffs.

22 THE COURT: Thank you.

23 MR. MEYERS: Good afternoon, your Honor. Evan Meyers
24 of McGuire Law on behalf of the Guertin plaintiffs.

25 MR. SAWIN: Good afternoon. John Sawin on behalf of

July 26, 2017

16

1 the Guertin plaintiffs.

2 THE COURT: Thank you.

3 MR. GESKE: Good afternoon, your Honor. Paul Geske
4 of McGuire Law also on behalf of the Guertin plaintiffs.

5 THE COURT: Okay. I don't know how we're going to
6 pronounce it Guertin or Guertin. But we'll sort that out.

7 MR. STERN: Your Honor, Corey Stern. I represent
8 2,027 individual plaintiffs who are children and 986 adults.
9 Over 31 cases that have been sent to your Honor.

10 THE COURT: Okay. Thank you, very much.

11 MR. SHKOLNIK: Good afternoon, your Honor. Hunter
12 Shkolnik from Napoli Shkolnik. I'm one of the counsel for the
13 Waid family as well as approximately 2,500 other families.
14 And we have a number of the individual cases. And I think the
15 one individual case that was sent to you was our case as well,
16 I believe.

17 THE COURT: Okay.

18 MR. PITT: Good afternoon. Michael Pitt, your Honor.
19 Nice to see you. I'm representing the Mays team. And here
20 today in the courtroom with me is Julie Hurwitz, Paul Novak,
21 Peggy Pitt, Deb LaBelle, Bill Goodman, and Cary McGehee. And
22 we are also part of the Village Shores group. We are handling
23 the Mays case, which is on appeal to the Sixth Circuit on that
24 preemption issue.

25 THE COURT: Thank you, very much.

July 26, 2017

17

1 MR. LEOPOLD: Good afternoon, your Honor. Ted
2 Leopold with the law firm of Sellers & Toll. And along with
3 my partner, Emmy Levens, we represent the Waid and Village
4 Shores class action litigations.

5 THE COURT: Thank you.

6 MR. GRASHOFF: Good afternoon, your Honor. Phil
7 Grashoff. I represent Stephen Busch. I'm with Kotz Sangster.
8 You've met my partner, Dennis Egan, in the past.

9 THE COURT: Yes.

10 MR. GRASHOFF: Mr. Busch is one of the MDEQ
11 defendants involved in, I believe, all of the cases that were
12 cited for this status conference.

13 THE COURT: Okay. Thank you.

14 MR. PATTWELL: Good afternoon, your Honor. Mike
15 Pattwell with the Clark Hill law firm. We represent the
16 former director of the Michigan Department of Environmental
17 Quality, Dan Wyant, and the former communications director for
18 MDEQ, Brad Wurfel.

19 THE COURT: Okay. Thank you.

20 MS. BETTENHAUSEN: Good afternoon, your Honor.
21 Margaret Bettenhausen, Assistant Attorney General, here on
22 behalf of the State defendants.

23 THE COURT: Thank you, very much.

24 MR. MENDEL: Your Honor, Todd Mendel also from Barris
25 Sott Denn and Driker representing Governor Snyder.

July 26, 2017

18

1 MR. KIM: Your Honor, Assistant City Attorney William
2 Kim representing the City of Flint as well as former Mayor
3 Dayne Walling and former emergency manager, Michael Brown.

4 THE COURT: Thank you.

5 MR. KLEIN: Your Honor, Sheldon Klein of Butzel Long
6 for the City of Flint also.

7 MS. BEREZOFSKY: Your Honor, good afternoon. Esther
8 Berezofsky. I represent the plaintiffs in the Lowery class
9 complaint and also the plaintiffs in the Gulla complaint,
10 which is on behalf of approximately 90 plaintiffs in addition
11 to approximately 3,000 additional individual plaintiffs in the
12 City of Flint.

13 THE COURT: Okay. Thank you. And let's go back.
14 I'm not sure we finished over here.

15 MR. BARBIERI: Charles Barbieri. I represent MDEQ
16 employee defendants Michael Prysby, Patrick Cook, and Adam
17 Rosenthal.

18 MR. MORGAN: Good afternoon, your Honor. Thaddeus
19 Morgan on behalf of Liane Shekter Smith, who is also a former
20 MDEQ employee.

21 THE COURT: Thank you. Now, have the rest of you
22 been -- has someone from your teams in any way -- I see Ms.
23 Branch.

24 MS. BRANCH: Hi, Judge. Good to see you here.
25 Nikkiya Branch with my colleague, Jim McGinnis. We're here on

July 26, 2017

19

1 behalf of Darnell Earley.

2 THE COURT: Okay. Thank you. Yeah. Anyone whose
3 clients have not already been represented by someone? We'll
4 just start down -- this is like when I ask the jurors do any
5 of you have a prepaid vacation. Go ahead.

6 MR. BERN: Good afternoon, your Honor. Marc Bern
7 from New York and with Ari Kresch and several others here. We
8 represent individuals in the Washington cases and
9 approximately 4,970 plaintiffs.

10 THE COURT: Thank you.

11 MS. DIALLO: Good afternoon, Judge. Lillian Diallo,
12 Legal Warriors. I'm here with Larry Polk. We represent -- we
13 represent Gist. We represent the Kirkland Carradine family,
14 which is about eight or nine people, and we also represent
15 Savage. These are individuals, Judge. Thank you.

16 THE COURT: Yes. Thank you. I've seen your cases.
17 Thank you.

18 MR. SANDERS: Good afternoon, your Honor. Herb
19 Sanders. We represent plaintiffs in Troy Alexander, et al.
20 With me are attorneys Shayla Fletcher and attorney Karen
21 Brooks.

22 THE COURT: Okay. Thank you, Mr. Sanders.

23 MR. WASHINGTON: Good afternoon, Valdemar Washington.
24 I'm local counsel on behalf of the Gulla and Lowery cases.
25 But I also have Joel Lee v the City of Flint, one individual

July 26, 2017

20

1 who's not a Flint resident.

2 THE COURT: Okay. Thank you.

3 MR. MASON: Your Honor, my name is Wayne Mason. I
4 represent one of the engineering defendants, Lockwood,
5 Andrews, humbly referred to as LAN.

6 THE COURT: Yes.

7 MR. MASON: And along with my co-counsel, Phil
8 Erickson. We also are actively involved in the state court.
9 To the extent that the Court has any questions, we're lead
10 counsel for the defense in the state court action.

11 THE COURT: Okay. Thank you.

12 MR. CAMPBELL: Good afternoon, your Honor. My name
13 is James Campbell. I'm with Campbell Campbell Edwards &
14 Conroy. And I represent the three Veolia North American
15 entities and I'm with my partner John Grunert. Thank you, so
16 much.

17 MS. CHARTIER: Good afternoon, your Honor. Mary
18 Chartier on behalf of the MDHHS staff member Robert Scott.

19 THE COURT: Thank you.

20 MS. CHARTIER: Thank you.

21 MR. GALVIN: Good afternoon, your Honor. Joseph
22 Galvin. I'm here on behalf of the lonesome defendant Jeff
23 Wright, the Genesee County Drain Commissioner.

24 THE COURT: Okay.

25 MR. ZEINEH: Good afternoon, your Honor. Edward

July 26, 2017

21

1 Zeineh on behalf of Daugherty Johnson, who's the former
2 utility supervisor for the City of Flint. We represent him
3 along with myself and David Meyers in his individual capacity.

4 THE COURT: Thank you.

5 MR. RUSEK: Good afternoon, your Honor. My name is
6 Alexander Rusek. I represent Howard Croft. He's the former
7 Director of Public Works in the City of Flint. I also
8 represent him in his criminal matters and state court.

9 THE COURT: Oh, okay. Thank you.

10 MR. WISE: Good afternoon, Judge. Matt Wise. I'm
11 also here on behalf of the lone defendant, as Mr. Galvin is,
12 Jeff Wright, the Genesee Drain Commissioner.

13 THE COURT: Okay. Good.

14 MR. WOLF: Good afternoon, your Honor. Barry Wolf on
15 behalf of former EM Gerald Ambrose.

16 THE COURT: Thank you.

17 MR. MEYER: Good afternoon, your Honor. Brett Meyer
18 here appearing on behalf of former City of Flint employee
19 Michael Glasgow.

20 MS. MORAN: Good afternoon. Jennifer Moran appearing
21 of behalf of defendant Rowe Professional Service Company.

22 MR. MCALPINE: Good afternoon, your Honor. Mark
23 McAlpine and Jason Blake on behalf of the Mason class action
24 plaintiffs in the state case.

25 MR. CAFFERTY: Wow, I'm the last man standing.

July 26, 2017

22

1 THE COURT: Yes.

2 MR. CAFFERTY: Your Honor, I'm Mike Cafferty. I
3 represent Nancy Peeler. She's an employee of the Michigan
4 Department of Health and Human Services. She's a defendant in
5 most but not all of the cases you mentioned.

6 THE COURT: Okay. And I will say that I am somewhat
7 of a fan of the Venn diagram. But trying to create a Venn
8 diagram of who's in what case and which case is on appeal and
9 which claims are against, didn't work.

10 So I will say that I appreciate the submissions that
11 attempted to summarize what all of the cases are that are both
12 here and in state court. Because ultimately what this is is a
13 problem that needs a solution of one sort or another. And so
14 it is helpful to know what the universe of litigation is both
15 civil and in some ways criminal because that's a factor in all
16 of this in terms of how it proceeds.

17 So I did prepare an agenda. I'm an old time sort of
18 community organizer type and I just sort of believe that it's
19 helpful to know what it is we're going to talk about. And I
20 received from many of you proposed items for discussion today.
21 And I have read everything that was submitted in that regard.
22 I've also read the entirety of the briefing on the motions to
23 consolidate the motions to stay.

24 There are a few other random motions in anticipation
25 of this conference today.

1 So if there's something that is not incorporated in
2 this list now that those of you who are here think must be
3 discussed today if this case is to be -- is to move forward,
4 I'd be interested in knowing that at this point.

5 MR. LEOPOLD: Your Honor, good afternoon. Again, Ted
6 Leopold. The only issue that's not on here that may warrant
7 some conversation while we're all here is lead counsel or
8 interim lead counsel related issues.

9 THE COURT: Yes. And I'm assuming that that will be
10 under the motions to consolidate, discuss the appointment of
11 interim lead and co-lead counsel. And I appreciate, Mr.
12 Leopold, that you identified yourself. Because as phenomenal
13 as Jeseca is, I do not expect that she knows who each of you
14 are already. So that will be discussed.

15 MR. SHKOLNIK: Excuse me, your Honor. Hunter
16 Shkolnik. The other issue was I think it's hand in hand with
17 the co-lead or interim lead counsel is the interim or the
18 liaison counsel for individual cases.

19 THE COURT: Yes.

20 MR. SHKOLNIK: Which I assume would be lumped in
21 together.

22 THE COURT: Yes. So I'm assuming that that is item
23 -- the next item on the agenda, all of the issues that were
24 raised by those two motions to consolidate the responses and
25 the replies. Yes.

1 MR. GALVIN: Joseph Galvin, your Honor. I'd like to
2 hear the Court and counsel discuss the need for preliminary
3 motions before the institution of any kind of discovery.

4 THE COURT: Absolutely. That's item 6 on the agenda.
5 Okay. Well, seeing no more hands, why don't we move to item
6 3. And what I put here is discussion of the motions to
7 consolidate.

8 What I would like is a brief argument on the motions
9 to consolidate. I did not notice this as an oral argument,
10 but I found that the motions which are printed off back to
11 back in this binder and I have read were remarkably and
12 helpfully detailed. They were exactly what I thought that I
13 needed in terms of the motions and the responses and the
14 replies. I think that I could handle those without the
15 benefit of oral argument.

16 So I'm not here to ask somebody on the spot to
17 suddenly decide to argue a motion that you did not come
18 prepared or refresh yourself on. But I think it makes sense
19 to begin with the Waid case and the motion to consolidate
20 there.

21 And I can tell you that having read both of those,
22 the pending motions as well as the responses and replies and
23 all of the attachments, I found that the strengths of the Waid
24 motion, the individuals that were identified as potentially
25 co-lead counsel and liaison counsel or to participate in an

1 executive committee to be a very, very strong motion.

2 And so my inclination is that there is the level of
3 expertise and potential funding. And both expertise in terms
4 of legal expertise but experience on cases of this nature. So
5 my inclination is that I think that is the stronger motion and
6 my inclination is to grant it.

7 But that is with some caveats. Because the motion
8 suggests a particular path for the litigation that I don't
9 think we're quite at, as was just pointed out, yet in terms of
10 what the schedule, itself, would look like.

11 But I found the arguments set forth there for
12 combining the class action litigation, even though the
13 defendants argued very forcefully, thoughtfully, and carefully
14 that consolidate -- having a master class action filed would
15 create extra work for them in terms of adjusting the pending
16 motions to dismiss, I think it would ultimately result in
17 efficiencies for everybody.

18 And I can tell you the one efficiency that I'm the
19 least concerned about is my own. I have a phenomenal team of
20 people to work. I have the luxury of a caseload in the
21 Eastern District of Michigan that's relatively low compared to
22 my colleagues around the country. So I'm not concerned about
23 my workload. But I'm concerned generally that the litigation
24 proceed in an orderly fashion for everyone involved.

25 And having one universe of class action complaint to

1 respond to as things proceed I think makes a great deal of
2 sense. So having started with the cart way before the horse,
3 I would be very interested in hearing any further argument
4 that those who filed, whether it's Mr. Pitt, Mr. Shkolnik -- I
5 don't know who would wish to -- Mr. Stern -- who would wish to
6 argue. Okay.

7 MR. LEOPOLD: Mr. Leopold, your Honor.

8 THE COURT: Yes.

9 MR. LEOPOLD: Would the Court prefer me, at least for
10 the court reporter, be by the microphone?

11 THE COURT: I think the microphone might be helpful.

12 MR. LEOPOLD: Thank you, again, your Honor. For the
13 record, Ted Leopold. Your Honor, I have not much further to
14 add than what's in our papers. If the Court wishes to inquire
15 any further about any specific issues, certainly more than
16 happy to respond.

17 I think our papers are quite sufficient in outlining
18 the reasons for the consolidation. As the Court has already
19 indicated, because of the nature of the litigation and the
20 breadth and scope of the litigation, having one consolidated
21 complaint on the class aspects I think would be quite
22 important.

23 I'd like to have Mr. Shkolnik and/or Mr. Stern
24 address how -- maybe how the Court would wish and/or perhaps
25 the best way to streamline consolidation, if you will, on the

1 personal injury aspects. Because I think that lends itself to
2 having -- although coexisting for discovery and procedural
3 matters, there are nuances on the individual plaintiffs' cases
4 that I think other than the class action that they can,
5 perhaps, streamline for the Court and for the defendants to
6 help unify both lines of discovery as they proceed forward.

7 So from that aspect, I'll let them address that as
8 liaison counsel for the PI cases. But other than that, I
9 think the Court has already indicated, which we certainly
10 would piggyback on in regards to the importance of these
11 consolidation related matters.

12 THE COURT: Okay. And I should also note that each
13 of the response briefs indicated no preference in terms of who
14 fills these roles in terms of the interim co-lead counsel.
15 And to put any of the defendants who have any level of unease
16 or concern, I understand the difference between class --
17 having certified a case for class action and this early stage
18 before anything is certified.

19 There was some discussion in the response briefs to
20 make sure I understood that this is the interim phase. And I
21 wish to put you at ease on that. I do understand that this is
22 an interim appointment during a period of determining how
23 these cases will proceed.

24 I also understand that a master class action that
25 would be filed would be facing a set of motions to dismiss.

1 You've previewed those for me. I think they're important,
2 obviously important and must be adjudicated before the cases
3 proceed. So I do want to put that out there.

4 The one other thing I'll say about the -- I've been
5 saying Guertin so I'll continue to pronounce it that way. The
6 Guertin case is largely on appeal. We've got Veolia and LAN
7 have some issues that are not on appeal. But in terms of this
8 Court's jurisdiction even to entertain the motion to -- I
9 don't believe I can entertain the motion to amend that to be a
10 class action in the first place.

11 I don't think I have that jurisdiction at this time.
12 So that was one concern I had for that case and the strengths
13 of the motion to consolidate.

14 In terms of a response, Mr. Egan?

15 MR. EGAN: I had just one issue.

16 THE COURT: Okay.

17 MR. EGAN: Dennis Egan appearing on behalf of Stephen
18 Busch. As we have put in our briefs, there's a number of
19 completed motions to dismiss that would not require a new set
20 of briefs. In the Washington case, which has a Rico claim, we
21 have filed our entire motion. But I understand what the Court
22 wants to do with a consolidate class action complaint.

23 If they're going to essentially file a consolidated
24 class action complaint -- and for example in the Washington
25 what I call the federal case, the original one, they've

1 already filed an original complaint and then two amendments.
2 A number of times we have filed motions to dismiss and the
3 response is to then file an amendment to the complaint which
4 requires us to essentially have to deal with it.

5 If they're going to file a consolidated amended
6 complaint to which we then have to file motions to dismiss,
7 are they going to be, once again, allowed to amend? Because
8 for some of these cases it's going to be more than once to
9 have an amended complaint.

10 And at some point the amendments have to stop so that
11 we're not dealing with a moving target in terms of these
12 motions which are -- these are long complaints and the motions
13 are complicated.

14 THE COURT: I did read that in your submission. And
15 what I think should be done is a master amended or a master
16 class action that consolidates the pending class actions, and
17 if in the course of putting that together there is something
18 that you would consider an amendment in that it raises a claim
19 in a different way or it incorporates facts that you didn't
20 see in the others, I think at this stage that that would be
21 the plaintiffs' opportunity to file their -- it would be
22 called an amended master class action.

23 And that would be the one that each of the defendants
24 could either resubmit pending motions to dismiss. And I am
25 capable of substituting as I read. So if you don't wish to do

1 anything other than change the case caption, that's okay with
2 me. I'm looking for the substance. I'm not looking for the
3 details.

4 MR. EGAN: Maybe you might misunderstand. My issue
5 isn't so much what the amended class action, consolidated
6 class action complaint is going to be. My point is to some
7 degree we are expecting to see some differences versus what
8 was filed before as part of the consolidation process.

9 But are they -- once they file this and we then do
10 the work to bring motions to dismiss, are they going to be
11 allowed to now amend the consolidated class action
12 complaint --

13 THE COURT: I understand.

14 MR. EGAN: -- to try to get around our motion again?

15 THE COURT: Well, that would just revert to the rules
16 regarding amending complaints and the body of case law. It
17 seems to me that it would be unlikely that a motion to amend
18 would be granted if they're given this giant bite at the apple
19 and choose to take a small bite, well then they may have to
20 live with that. But I can't rule on that now not knowing what
21 the issue is.

22 If the issue is something that was a typographical
23 error or something of that nature, I'm going to say yes --

24 MR. EGAN: I just wanted this point on the record.
25 So that's fine.

July 26, 2017

31

1 THE COURT: No. I think you made it in your briefs
2 and you made it well.

3 MR. EGAN: Okay.

4 THE COURT: And any motion to amend the consolidated
5 master class action would have to be pretty compelling.

6 MR. EGAN: And they would have to do it by leave not
7 as of right?

8 THE COURT: By leave and not as of right.

9 MR. EGAN: Thank you, your Honor.

10 THE COURT: Thank you, Mr. Egan.

11 MR. GRASHOFF: Your Honor, Phil Grashoff representing
12 Mr. Busch, again. Just so we're on the same page, on behalf
13 of the State, the City, MDEQ defendants, we filed -- obviously
14 you've read it -- an opposition document to the motion to
15 consolidate master complaint so forth and so on.

16 THE COURT: Yes.

17 MR. GRASHOFF: And we basically took our hands off on
18 appointment of counsel. But I want to point out to the Court
19 that one of our major themes is that we think all of this is
20 premature.

21 THE COURT: I know you do.

22 MR. GRASHOFF: And I want to point out to the Court
23 that whether it was good luck or good planning or what have
24 you, we've developed a rapport with most, if not all, of
25 plaintiffs' counsel. And we don't think liaison counsel to

1 deal with what's going on now is necessary.

2 Mr. Pitts' office has acted as the conduit to most of
3 the plaintiffs' counsel. And we can get a resolution of an
4 issue back within literally a day, if not hours. And you saw
5 what we attached to our statement, this Exhibit A. That was
6 put together cooperatively by Allison Collins of the Foster
7 Swift firm.

8 THE COURT: Yeah.

9 MR. GRASHOFF: And I'm sorry, Deborah LaBelle.

10 THE COURT: I saw that.

11 MR. GRASHOFF: And they worked diligently and hard to
12 get that thing done. And it was a monumental task and we did
13 it. So my point is I don't see any real compelling reason why
14 we need to have all of these defense, or excuse me, plaintiff
15 liaison folks.

16 THE COURT: Mr. Grashoff, what you're saying has in
17 an odd way convinced me that we need the liaison counsel. You
18 have told me basically that you have the liaison counsel and
19 it's working.

20 MR. GRASHOFF: We do. Between Mr. Pitt and me and
21 Legal Warriors.

22 THE COURT: Yeah.

23 MR. GRASHOFF: We talk and we get things resolved.
24 We don't need anybody formally or officially.

25 THE COURT: Well, and I'm not looking at this as the

1 only way to -- it's not going to be ex parte communication. I
2 need more detail on the role of the interim -- or on the role
3 of the liaison counsel. And that's one of the things that
4 still needs to be fleshed out.

5 But it seems to me you're describing exactly what I
6 thought the person would do, which is communicate and get back
7 efficiently with you.

8 MR. GRASHOFF: It's there.

9 THE COURT: Okay. And what you're saying, it's
10 already there.

11 MR. GRASHOFF: It's in place.

12 THE COURT: Okay. And the other thing is in terms of
13 all of the defendants weighed in the same regard and said
14 you're not interested in whether it's the Guertin counsel or
15 the Waid counsel, I have -- although this is absolutely not
16 the appointment of class counsel, we don't have a class at
17 this point, etcetera, it would have been helpful to me to hear
18 your responses and what your experiences have been.

19 Because I hear that at the class level, when I'm
20 appointing class counsel, I've heard defendants say so and so
21 was charged in an attorney grievance. We can't have so and
22 so. He doesn't return calls. You know, things like that. So
23 I was looking for that in your responses.

24 I understand that it's really not your decision or
25 you don't wish to weigh in at this point. But that left me

1 with looking at the briefing, looking at -- I read the briefs
2 at the Court of Appeals. I did a number of things to try to
3 understand what the plaintiffs' counsel -- what the merits
4 were of each of the individuals.

5 But in terms of -- I think what I would ask is for
6 Mr. Leopold or Mr. Stern to describe for me what the liaison
7 would do.

8 MR. GRASHOFF: Thank you, your Honor.

9 THE COURT: But thank you, very much, Mr. Grashoff.

10 MR. LEOPOLD: Thank you, your Honor. Ted Leopold for
11 the record. Your Honor, I do think that they're -- in what
12 counsel was just referencing, it's a little bit merged in
13 terms of what he's talking about. Let me be -- let me try to
14 be crystal clear in terms of what the roles and the scopes
15 are.

16 As indicated in our papers, both Mr. Pitt and myself
17 as interim lead counsel would continue to fill the spot. And
18 Mr. Pitt, as being local and certainly many years of great
19 respect here in the local community as well as in Michigan
20 throughout the state, will continue in that role.

21 But what is somewhat different in this case, as the
22 Court is well aware, is the dramatic number of individual
23 personal injury cases of which Mr. Shkolnik and Mr. Stern have
24 really stepped up and taken the lead on those cases.

25 So in terms of how we're using or designating liaison

1 counsel, it's not your normal nomenclature of somebody local
2 handling communications. Here is liaison communicating and
3 working side by side with class interim counsel and the
4 defendants on the tremendous number of personal injury cases
5 which they, themselves, are greatly entrenched in.

6 And they can help fulfill the communication between
7 the other plaintiffs' counsels who have personal injury cases,
8 garner that information, funnel it to their group so that we
9 all coordinate together and also can help facilitate the
10 communication process through Mr. Pitt and others with the
11 defendants.

12 THE COURT: Okay.

13 MR. LEOPOLD: That's the goal of that.

14 THE COURT: Yeah. And that's what I understood it in
15 principle. And makes sense to me. I also would not be
16 surprised if there are additional plaintiffs' counsel who make
17 appearances in cases and as things go on. So it seems that
18 having someone who has the duty to make sure a response is
19 provided in a timely way.

20 And also should these cases progress to the point of
21 discovery, they would most certainly need to be communication
22 and coordination of who is going to be at depositions and
23 those sorts of things. But thank you, very much. Are there
24 other --

25 MR. SHKOLNIK: If I may respond to your question,

1 your Honor.

2 THE COURT: Okay.

3 MR. SHKOLNIK: I don't mean to -- thank you. Your
4 Honor, Hunter Shkolnik again. I thank you for the opportunity
5 to address your question. Under the provisions of the
6 complex, the amended complex litigation, it's in this type of
7 a monster of a case, that this is certainly one that's going
8 to rival some of the biggest mass or MDL cases, which don't
9 have the MDL, but it's basically the same type of procedure.

10 A liaison for the individual cases as well as interim
11 lead counsel is contemplated and it's exactly as the Court has
12 suggested. You need to have someone who can disseminate
13 information to the plaintiffs' group. There's a large group
14 of plaintiffs' attorneys.

15 And having been in this position in other MDL's, it
16 is something to help facilitate the Court in working with the
17 plaintiffs in terms of discovery as well as coordinating with
18 interim class counsel for the various discovery steps along
19 the way, whether it's depositions, non duplication of written
20 discovery, as well as coordinating with the state court case,
21 which we think is a very important factor as well. And Mr.
22 Stern, who is liaison in the state court will help that
23 facilitation.

24 So to answer your question, the manual lays out the
25 roles of a liaison, and its exactly as the Court had said.

July 26, 2017

37

1 Thank you.

2 THE COURT: Thank you, very much.

3 MS. BETTENHAUSEN: Ms. Bettenhausen for the State
4 defendants.

5 THE COURT: Okay.

6 MS. BETTENHAUSEN: I just had a quick point. I
7 wanted to go back to one of the points that Mr. Egan was
8 making regarding a master complaint.

9 The State defendants had put together more of a
10 two-phase approach to this. So that in phase one, the motions
11 to dismiss that are already pending before the Court or soon
12 to be pending before the Court would be addressed and would
13 resolve some of the threshold issues. And I think this would
14 kind of address Mr. Egan's concern about how many amended
15 master complaints that we have.

16 So what we've done, State defendants have done, we've
17 actually put together a list of the cases that would address
18 the claims that were not addressed in Guertin or Guertin. So
19 I wanted -- we were unable to submit that to the Court. But I
20 do have that today. If I could hand --

21 THE COURT: Some of that was, I believe, in your
22 response.

23 MS. BETTENHAUSEN: There is a Exhibit A to the
24 agenda.

25 THE COURT: Yeah.

1 MS. BETTENHAUSEN: It had all of the cases. This is
2 very specific. It boils down to if you want to address the
3 federal law claims that were not addressed, you could do that
4 in Village Shores, Alexander, Washington. To get the State
5 law claims, you could do that in Gulla, Walters, McMillian.

6 If you did those six, you'd touch on just about
7 everything. And then maybe it would be time to talk about a
8 master complaint. And that was kind of our phase one
9 approach.

10 And then maybe phase two is to go to discovery, which
11 I realize we're going to talk about a little bit later. But I
12 did want to get a copy of this to the Court.

13 THE COURT: I certainly will take that.

14 MS. BETTENHAUSEN: There's a little bit more
15 explanation on this page. And I did bring copies for anybody
16 else that would like a copy.

17 THE COURT: Thank you.

18 MS. BETTENHAUSEN: If it's okay, your Honor, I'll
19 just hand them out.

20 THE COURT: Yes, please.

21 MS. BETTENHAUSEN: Thank you, your Honor.

22 THE COURT: This is the Venn diagram I've been trying
23 to create for the remaining claims.

24 MS. BETTENHAUSEN: I made a bunch of copies, but I'm
25 still not sure --

1 THE COURT: These are the outstanding claims. And
2 then the overlay is that there are different defendants in
3 these cases. Not all of them have a complete overlap of
4 defendants.

5 Are there any other defendants who wish to respond to
6 what Mr. Leopold, Mr. Shkolnik have said so far? Okay. And
7 let me turn to Mister -- to the Hart team on the Guertin
8 docket entry 165, your motions to consolidate, and just give
9 you an opportunity to speak if you wish to add anything to
10 your papers.

11 MR. STEVEN HART: Thank you, your Honor.

12 THE COURT: Thank you. Or you're welcome.

13 MR. STEVEN HART: Steven Hart -- Hart, McLaughlin &
14 Eldridge -- for the Guertin plaintiffs.

15 Your Honor seems to suggest that our amended
16 complaint is not ripe or properly before the Court for lack of
17 jurisdiction I think, if I understood you correctly.

18 THE COURT: In part, the amended complaint. I have
19 lost jurisdiction over many of the portions of the Guertin
20 case. Yes.

21 MR. STEVEN HART: I understand. And we filed papers
22 on that and will stand on those papers with respect to that
23 issue. Obviously we argued that the Court does have
24 jurisdiction and certainly could grant the motion to amend.

25 But setting that aside for a second, the issues with

1 respect to the Guertin case, which were fully presented to
2 your Honor, motions to dismiss specifically addressing 1983
3 actions are certainly ones that are on appeal. But they will
4 be the same issues that will need to be litigated in the
5 master amended consolidated complaint for which defendants are
6 apparently going to have an opportunity to file a motion to
7 dismiss and --

8 THE COURT: Well, not just apparently. The rules
9 provide for it.

10 MR. STEVEN HART: But I think that they will probably
11 file a motion versus an answer.

12 THE COURT: Okay. I see.

13 MR. STEVEN HART: As they have done in every case
14 consistently. Unless they have a change of heart or the Sixth
15 Circuit rules on that issue, which is before them now.

16 So I would suggest that under 10.224 of the complex
17 manual, that the Court certainly can engage in an analysis on
18 lead and liaison counsel that would be a collaborative effort
19 between the two parties and the two plaintiff actions.

20 I have had the very good fortunate of working with
21 all of the attorneys on the other side of the plaintiffs'
22 petitions for consolidation and Mr. Leopold, Mr. Shkolnik.
23 And I'm certain that based on past experiences we would work
24 very well together. And that it's certainly within the
25 Court's right to expand the leadership that would include

July 26, 2017

41

1 someone from our part and maintain the leadership structure
2 that the Court, I think, has in mind.

3 Not only have I worked as liaison counsel and do in
4 1983 actions in the stop and frisk case in Chicago right now
5 pending before Judge St. Eve, but also as lead counsel in the
6 poultry matter, which is a multi-defendant party jurisdiction
7 case. And so we have I think --

8 THE COURT: Multidistrict litigation or multi
9 defendant?

10 MR. STEVEN HART: It was consolidated before Judge
11 Durkin in the Northern District of Illinois, In Re Poultry.

12 THE COURT: Okay.

13 MR. STEVEN HART: So we have ample experience in this
14 respect. Both with respect to the other proposed lead
15 plaintiff counsels and cases of these type and functioning in
16 these roles.

17 Mr. Shkolnik, quite appropriately, articulated the
18 sheer size of this case. It is a massive case. Hotly
19 contested on every single issue. And I would suggest that it
20 requires the associated structure on the plaintiffs' side that
21 could afford an opportunity for someone on our side to be
22 incorporated into a lead position as well. And as I suggested
23 to the Court under 10.224 of a complex manual revised 4, that
24 certainly the Court could do such a thing.

25 And so what we're asking for at a minimum is for the

1 Court to at least address that possibility, recognizing both
2 the size and massive undertaking in this case and our ability
3 to function in those roles. And that's all I wanted to add,
4 your Honor.

5 THE COURT: Thank you, very much, Mr. Hart. 10.224
6 relates to the Court's responsibility where there is intense
7 competition for appointment by the court as designated
8 counsel, an appointment that may implicitly promise large fees
9 and a prominent role in the litigation. And I appreciate your
10 attention -- bringing my attention back to that.

11 Because this is an interim appointment. But I think
12 you're absolutely correct that this is such a case -- it's a
13 large case. Obviously it's an important case. And there
14 obviously is some competition for who will lead this endeavor.
15 And so the effort that -- I have reviewed that in the effort
16 that I am attempting to put forth is to identify counsel who
17 will be able to do that in an efficient and highly qualified
18 way.

19 And I think undoubtedly what the motions all
20 contemplate and what the manual contemplates is having some
21 sort of executive team that advises as the cases proceed and
22 there are no recommendations yet about the entire compliment
23 of lawyers who will serve on that team. So it seems
24 appropriate that you will be considered as someone who would
25 participate in a leadership role in that way.

1 So I am in no way suggesting what the entire
2 leadership complement should be at this time. But I'm looking
3 at the role of co-lead counsel and some sort of liaison to the
4 individual personal injury cases, so.

5 MR. STEVEN HART: Understood, your Honor.

6 THE COURT: Yes. Thank you, very much. And I will
7 say that at the time of the oral argument in the many motions
8 to dismiss, it was worrisome to me that you did not know who
9 one of your plaintiffs was, the Diogenis Muse.

10 When I said who is this -- because your complaint
11 didn't tell me who one of your plaintiffs was. And I
12 understand cutting and pasting. I have cut and pasted and
13 I've made errors. But the case had proceeded to the point of
14 an oral argument on motions to dismiss. And it was still no
15 information for me about who one of the plaintiffs was and why
16 that plaintiff wasn't identified in the body of the complaint.

17 And there was also a mention in the body of the
18 complaint of an FTCA claim against the department -- the
19 United States -- representatives of the United States. And
20 when asked about that, you were unable to tell me whether you
21 had such an FTCA complaint or not.

22 I've learned in the course of the litigation that
23 there is such a complaint that those involved with the Waid
24 case have filed. And I suppose it's proceeding on its own
25 administrative task.

July 26, 2017

44

1 So I just -- I do not say this in any way to be
2 critical. But it raised concerns for me about the intense
3 degree of attention and care that this process will require.
4 And so I just -- I say it only because I think it's important
5 for the reasons to be set forth as to how these motions are
6 being evaluated and how the decision is being made.

7 But is there any -- Mr. Sanders?

8 MR. SANDERS: I seek some point of clarification,
9 your Honor, if I might?

10 THE COURT: Okay. We're going by Robert's Rules now
11 apparently.

12 MR. SANDERS: I received this document entitled
13 outstanding claims to address in which my case Alexander is
14 listed.

15 THE COURT: Oh.

16 MR. SANDERS: I believe that was prepared by the
17 State. And I just received the Guertin motion yesterday. So
18 my point of clarification is is the Court considering
19 combining nonclass action cases with class action cases? Or
20 this is suggesting that there would be some type of overall
21 ruling made by the Court that addresses class action as well
22 as nonclass actions. I do not have a class action suit.

23 THE COURT: Okay.

24 MR. SANDERS: Is the Court considering combining my
25 case with someone else?

1 THE COURT: What I understand this list to be is
2 simply a list to inform me and in the interest of not having
3 ex parte communication of any sort, I think it was provided to
4 everyone else. But this is just summarizing all of the claims
5 that have not yet been adjudicated in the Guertin case that
6 exists in general. That there is a Rico claim out there.

7 There are equal protection based on race and wealth
8 and it was a recommendation that the Court address these
9 issues first before even getting to the appointment of co-lead
10 counsel. And I am not in any way suggesting that all of -- I
11 don't have the authority to combine all of the cases at this
12 point I don't think or the inclination.

13 So it's not indicating that at this point anything
14 that has been -- I have this item 5 on the agenda, the impact
15 of the Court's decision in Guertin on the other cases. But
16 it's in no way a decision to combine everything.

17 MR. SANDERS: Thank you, your Honor.

18 MS. BETTENHAUSEN: Your Honor, I just wanted to add,
19 that is correct. We were just trying to give a list where you
20 can find all the different type of claims. It was not an
21 implication of which ones are class action versus individual
22 and how to deal with them moving forward.

23 THE COURT: Thank you.

24 MADAM COURT REPORTER: Excuse me. Can everyone
25 continue to state their names, please?

July 26, 2017

46

1 MS. BETTENHAUSEN: Sorry. Ms. Bettenhausen.

2 MADAM COURT REPORTER: Thank you.

3 MR. GRASHOFF: Your Honor, Phil Grashoff, again.

4 THE COURT: Okay.

5 MR. GRASHOFF: This list that the State has compared
6 and given to you has much more significance than merely a list
7 of cases. And I want to be absolutely crystal clear that it's
8 the position of the State and the City and the MDEQ defendants
9 that these cases -- Village Shores, Alexander, Washington,
10 Gulla, Walters, and McMillian -- should be decided before
11 anything else happens.

12 THE COURT: I understand that. Yes.

13 MR. GRASHOFF: And it's even been suggested that most
14 of these cases have been briefed or they're in the final
15 throws of being briefed except for the Washington case. We
16 need a response to that. And these cases can be ready for
17 argument by September, October.

18 THE COURT: Okay.

19 MR. GRASHOFF: And decisions made on all of these
20 issues that are outstanding by this Court that will clear the
21 decks as to what is or is not a valid -- viable, excuse me,
22 cause of action. So it's our position that these cases be
23 scheduled for argument as quickly as possible so that we can
24 get these issues addressed.

25 THE COURT: Thank you, Mr. Grashoff. I will

1 certainly take that into consideration. It's a helpful
2 recommendation and I appreciate it very much.

3 MR. GRASHOFF: Thank you, your Honor.

4 MR. KLEIN: Your Honor, Sheldon Klein for the City of
5 Flint. Two very brief things. One, the list of cases you
6 have there is not all class actions. And it's not clear to me
7 from your ruling, which I'm not going to argue with, that the
8 class action should be consolidated and a master amended
9 complaint filed, whether the expectation is we would proceed
10 with briefing in the individual actions. In particular those
11 key cases that will resolve outstanding issues. I would
12 certainly urge that we will be allowed to continue with that
13 briefing to get to issue as quickly as possible.

14 The other thing is I sympathize with your desire to
15 -- for a Venn diagram. I get dizzy myself trying to keep
16 track of this. We have prepared a, I guess, table. This is
17 strictly for the cases involving the City defendants, the City
18 of Flint and various defendant's representatives.

19 And if the Court would like to -- it's probably a
20 little more complicated for you to absorb on the fly. But in
21 substance, it identifies all of the Flint parties, all of the
22 claims, all of the cases, and identifies which claims are
23 against which party in which case. If that will be helpful to
24 you.

25 THE COURT: Certainly. I had one of my interns,

1 Tiffany Henton, trying to help me do that from our end, which
2 I appreciate.

3 MR. KLEIN: I have about 14 copies, which obviously
4 isn't sufficient. I'm not sure I could have carried enough
5 copies for everyone in the courtroom. But I'll share them for
6 others to share.

7 THE COURT: Okay. Thank you, very much.

8 MR. KLEIN: And if you'd like, I can explain it
9 further. But I think it's complex but reasonably self
10 explanatory.

11 THE COURT: Okay. Mr. Leopold?

12 MR. LEOPOLD: Yes, your Honor. Just one issue. I
13 want to just briefly address the issue of Mr. Grashoff. The
14 essential argument --

15 THE COURT: Can you speak into the microphone?

16 MR. LEOPOLD: The essential argument that he was
17 making sort of runs contrary to the whole issue of
18 consolidation that we've been talking about and creates much
19 more work on behalf of the Court to have multiple separate
20 hearings, oral arguments on a variety of various complaints as
21 opposed to getting one master consolidated complaint, having
22 all of these issues in one consolidated complaint briefed
23 based upon one oral argument that covers the gambit of all
24 these issues.

25 So I just wanted to be clear that that is certainly

1 our position and I understood that the Court is sort of
2 focusing on at this point.

3 THE COURT: Yeah. Thank you, very much. And Mr.
4 Grashoff, there's something you said earlier that you
5 mentioned that you didn't know if it was good luck or whatever
6 that you'd been communicating and working efficiently. And I
7 would suggest that it's far more than good luck. But it's
8 good lawyering. And it's appreciated a great deal generally
9 by the bench in the Eastern District of Michigan and by me in
10 particular.

11 Well, I think at this point having had some
12 discussion or argument on the motions to consolidate, I will
13 officially take them under advisement, which is where they
14 were at the beginning of this hearing. But having heard the
15 responses from the various State entities and lawyers as well
16 as further detail from the various lawyers, I think that the
17 team that the Waid case has set forth in terms of co-lead
18 counsel and liaison counsel makes a great deal of sense to me
19 as a way to begin the process of handling these cases in an
20 efficient manner.

21 What I will do is issue a very -- what I think will
22 be a very brief written opinion that would indicate that and
23 would primarily say for the reasons set forth on the record
24 what we have been discussing.

25 But what it would do is not appoint the executive

1 committee at all. And I want to make that clear to the Hart
2 group as well as any other lawyers here. But it will just
3 begin with the co-lead counsel, the filing of a master
4 complaint, amended class action complaint.

5 And in terms of timing for that, there have been
6 various submissions about how soon that could be prepared.
7 Mr. Leopold.

8 MR. LEOPOLD: I'm sorry, your Honor.

9 THE COURT: I'm interested in how much additional
10 time would be needed for filing a master amended class action
11 complaint.

12 MR. LEOPOLD: Yes, your Honor. Ted Leopold. We
13 estimate we would like 60 days from today to file the master
14 complaint. That would give us time to coordinate with
15 everyone and get a final document served and filed with the
16 Court.

17 THE COURT: Okay. And I will say in terms of the
18 State defendants seeking the efficient and speedy resolution
19 of issues, that conflicts in its intention with the various
20 motions to stay that have been filed. And I think those are
21 important motions, particularly the Fifth Amendment issues
22 raise important issues that I am focused on and concerned
23 about.

24 So to the extent there is some degree of delay in
25 this process, it seems to be what you're seeking generally in

July 26, 2017

51

1 the litigation as an entire stay, a complete delay, so it at
2 least doesn't harm your interest in the stay if it takes 60
3 additional days to file the complaint.

4 So then in terms of a response in light of the work
5 that's been undertaken, is a month adequate for a response, a
6 motion to dismiss or answer, in an amended class action?

7 MR. KLEIN: Your Honor, Sheldon Klein again for the
8 City of Flint and I speak only for the City of Flint. It is
9 part of the agenda submission -- I forgot what we called it --
10 that you received the other day from the Government
11 defendants. We suggested that the parties should be
12 encouraged to collaborate and file a single brief on common
13 issues when feasible.

14 Now different defendant groups have sharply
15 conflicting interests. So that's not always going to be
16 possible. Part of collaboration is it takes time with the
17 number of attorneys, the number of parties, etcetera.

18 So notwithstanding that some of the issues have been
19 briefed in other cases already, I would ask for 60 days to
20 respond with the intention that to the extent we can we file a
21 limited number of responses rather than six or eight or
22 however many different briefs.

23 THE COURT: Yes, Mr. Grashoff.

24 MR. GRASHOFF: Your Honor, Phil Grashoff. I just
25 took a vote.

July 26, 2017

52

1 THE COURT: Okay. This guy gets things done.

2 MR. GRASHOFF: The State, the City, and the MDEQ
3 defendants think 60 days after they file it should be
4 sufficient with one caveat.

5 THE COURT: Okay.

6 MR. GRASHOFF: And that caveat is if we get something
7 in that creates issues on timing, we would like to have -- and
8 I know you would give it to us --

9 THE COURT: Yes.

10 MR. GRASHOFF: -- the opportunity for extensions
11 beyond that 60-day period, if necessary.

12 THE COURT: Certainly. And I would anticipate that
13 during this time period, the Court of Appeals will most likely
14 inform all of us on a couple of issues. I think you have an
15 argument August 2nd.

16 MR. GRASHOFF: August 2, yes.

17 THE COURT: There have already been arguments on the
18 Safe Drinking Water Act, so this could provide in some ways
19 relief for the defendants that you're seeking in your motions
20 to stay. Even though you'll continue to work on these
21 motions, it does seem like it's somewhat of a compromise. And
22 I don't have any problem with that.

23 MR. GRASHOFF: Quite honestly, your Honor, I'm going
24 to have to go back and look at my diagram that we've been
25 working on literally everyday that shows what responses are

1 due, who's going to be filing them -- on both sides. And when
2 they're due. And what's been adjourned and what hasn't been
3 adjourned.

4 And I have a list here and I'd be happy to produce it
5 for the Court, but I didn't bring extra copies. But we have
6 an up-to-date list and I'm just going to have to take a look
7 at that and see how all of this fits together. Because this
8 is just a management problem at this point.

9 THE COURT: I understand. And it's a far more
10 frightening and daunting one for all of you because I don't
11 have the same timelines, which is an incredible luxury. So I
12 try to enforce the timelines that you have, but the hammer
13 does not drop on me in the say way, so.

14 MR. GRASHOFF: Most of our timelines have been made
15 by stipulation. I want to --

16 THE COURT: I've seen that.

17 MR. GRASHOFF: And by agreement of counsel.

18 THE COURT: Okay.

19 MR. GRASHOFF: So 60 days is fine with that caveat.

20 THE COURT: Okay. Thank you.

21 MR. STERN: Your Honor, if I may?

22 THE COURT: Yes. Mr. Stern.

23 MR. STERN: Corey Stern on behalf of a number of
24 individual plaintiffs. Your Honor, Mr. Mason earlier said
25 that he was lead counsel in state court. And I've somehow

1 become lead counsel for the plaintiffs in state court as well.

2 THE COURT: Okay.

3 MR. STERN: And one of the things that has been very
4 beneficial for us, although the fruits of the efforts haven't
5 yet shown itself on either side, is that as to the individual
6 plaintiffs' cases in state court, we have filed a master
7 complaint on behalf of all of the individuals at the urging
8 and order of Judge Yuille.

9 We believe also that in addition to the filing of a
10 master class complaint, which really doesn't have much to do
11 with us, that it would be an effort towards efficiency and the
12 ability for defendants to respond in a more succinct
13 meaningful way to file a master complaint on behalf of the
14 individuals as we did in state court.

15 It comes with some issues. There's nuances
16 associated with it that -- not to go too far into the weeds.
17 But how do you deal with cases that have already been filed
18 which have been briefed? And what do you do about cases that
19 haven't yet been filed and people's abilities to make new
20 claims that may not be included in the master?

21 But generally speaking, it's something that we
22 believe would be in the best interest of judicial economy. It
23 would be in line with the filing of a master file complaint
24 and we just think it's in the best interest of the litigation.

25 THE COURT: And that issue, unless I missed it, has

1 not -- I saw Judge Yuille's case management order that was
2 submitted as an exhibit. And I looked at that. But I did not
3 see this issue briefed filing a combined master personal
4 injury or damages complaint.

5 So I'd like to give the State an opportunity to brief
6 that. Because it seems difficult to -- at 2:14 in the
7 afternoon to hear about that. Was that request in your
8 papers?

9 MR. STERN: It was not, your Honor.

10 THE COURT: Okay. And it's a good thing to hear
11 about at this point. But I'm not prepared to say anything
12 thoughtful about it. Mr. Egan?

13 MR. EGAN: The only thing I'd say is it would be
14 handy if he filed a motion stating what he would like, then
15 we'll know what to brief.

16 THE COURT: Okay. That's what we'll do.

17 MR. KLEIN: I don't know if you want me to go to the
18 podium every time?

19 THE COURT: Yeah. Just a minute, Mr. Klein.

20 MR. KLEIN: I'm sorry.

21 THE COURT: I just want to let Mr. Stern tell me what
22 he wants to.

23 MR. STERN: We'd be happy to file a motion in the
24 next ten days and have them respond to it as quickly as
25 possible.

1 THE COURT: Okay.

2 MR. STERN: Just so we could be in line with the
3 other cases.

4 THE COURT: That would be helpful to me, because
5 conceptually I would like to understand whether it in any way
6 disadvantages anyone of the plaintiffs who wouldn't wish to do
7 that or whether it creates any conflict or -- by conflict, I
8 don't mean conflict of interest. But any problems for the
9 defendants that I wouldn't be thinking about.

10 MR. STERN: No problem.

11 THE COURT: Okay. So that will be included that a
12 motion with respect to consolidating the individual damages
13 cases would be filed within ten days of today.

14 MR. STERN: Yes.

15 MR. KLEIN: Your Honor, Sheldon Klein again for the
16 City of Flint. I -- frankly it slipped by me that the CMO
17 from Genesee had been submitted to the Court. And lord knows
18 I don't want to drag you into the controversies going on
19 there.

20 But I do want to note that there have been -- there
21 are pending challenges and core due process challenges filed
22 by the City and some of the other defendants to that CMO. So
23 not that I think you would just cut and paste from that CMO.
24 But I wanted to let you know that we have very serious
25 concerns about that.

1 THE COURT: Thank you for bringing that up. I wasn't
2 going to do that. I got the drift of that from what I read,
3 but I don't know the details of it. And it's not my intention
4 to use a case management order to mess with anybody or their
5 rights. Just to use a legal term.

6 So what I'd like to do is just touch upon the motions
7 to stay that were filed in the Guertin case. There were three
8 different motions to stay as well as the Fifth Amendment issue
9 being particularly focused on by Nick Lyon and Wells in the
10 reply brief, which was docket entry 199.

11 And I don't think -- this is not the time -- I have
12 not set this as an oral argument for this issue either. But I
13 want to acknowledge that that exists and I've done some
14 initial research on what district courts are directed to do by
15 the Court of Appeals in terms of staying cases that where
16 many, if not almost all of the defendants, individual
17 defendants are facing criminal charges.

18 I understand that the Sixth Circuit has set forth a
19 multipart test. And what I'm learning so far as a judge is
20 that the more parts to the test, the greater discretion.
21 That's all I can conclude so far. And this one is a six-part
22 test.

23 And so it indicates to me that in general, the
24 district court has discretion on this issue of a stay. But
25 yet and still there are some constitutional rights of the

1 defendants at issue. And those are critically important to
2 all of us that those be observed, acknowledged, and protected.

3 Factor one is whether the extent to which the issues
4 in the criminal case overlap with those presented in the civil
5 case. Two is the status of the case, including whether the
6 defendants have been indicted -- and of course this comes from
7 the federal law -- but charged. The private interests of the
8 plaintiffs and proceeding in an expeditious way, weighed
9 against the prejudice to plaintiffs caused by the delay.
10 Private interest of and burden on the defendants, interest of
11 the court. I don't understand what that could be but -- and
12 the public interest.

13 So those are the general factors that are set forth
14 by the Sixth Circuit and articulated in a number of cases.
15 But specifically I'm looking at the FTC v EMA Nationwide, Inc.
16 case. So I'll take a close look at that.

17 But saying that, there is a great deal of work that
18 can be done on this case, including everything we're talking
19 about now, which is getting past one way or another the motion
20 to dismiss phase of this case that would in no way implicate
21 the constitutional rights of individual defendants who are
22 criminally charged.

23 Because we are at this stage of the proceeding, as
24 the law students know at a stage where we're relying on the
25 allegations as set forth in the complaint and not on

1 statements or depositions or anything that would be required
2 of the individual defendants.

3 So it's my intention at this point to continue to
4 proceed with the case through the motion to dismiss stage and
5 then to evaluate at that point where the criminal cases stand.
6 And but perhaps more importantly what can be accomplished
7 while protecting the interests of the individuals who are
8 criminally charged.

9 And that could be some variety of controlled
10 discovery where there are documents that are exchanged. There
11 are depositions that are taken of non criminally charged
12 defendants.

13 There are a variety of things that I can imagine
14 could be effectively accomplished without compromising their
15 rights to remain silent, have their counsel in their criminal
16 cases advise them on that. Yes. Mr. Leopold?

17 MR. LEOPOLD: Thank you, your Honor. Your Honor, I
18 did want to comment on what the Court was just relaying to all
19 of us in that clearly based upon the FTC case and Sixth
20 Circuit law is ultimately one of an issue of discretion by the
21 Court.

22 That said, there are a number of the issues that are
23 set forth that I think weigh in terms of this Court allowing
24 us to proceed forward and I understand about the motion to
25 dismiss stage. However, I would like to comment on what the

1 Court was just stating as relates to some limited discovery
2 that clearly and hopefully would never infringe on Fifth
3 Amendment related matters.

4 With that said, there is certainly Rule 26 type of
5 disclosures, document production. There are limited
6 depositions that won't infringe that I'm sure we can cooperate
7 with defendants.

8 There is requests for a production and
9 interrogatories that have not really been propounded yet that
10 can be done in a unified systematic way so that appropriate
11 discovery can get on the right track so that when the Court
12 does ultimately rule on the motion to dismiss, we will then be
13 up and being able to run with substantive discovery at that
14 point in time with document production, Rule 26 production.
15 Maybe prior to then some limited depositions to get things
16 moving.

17 We would certainly -- on the plaintiffs' side this
18 case is -- no fault to anyone, but has been in litigation for
19 quite some time. We would like to really move the train
20 forward on actual discovery at this point in time.

21 THE COURT: So you're suggesting that Rule 26 initial
22 disclosures would be appropriate? At this point we don't have
23 the amended complaint. But at what point are you suggesting
24 it would be appropriate?

25 MR. LEOPOLD: Well, I mean, there are -- I know the

1 Government has produced thousands, if not hundreds of
2 thousands, of documents in some litigation. I'm sure we can
3 coordinate with all of the attorneys that have those. But we
4 want to make sure that any new documents that haven't been
5 voluntarily produced that should, under a Rule 26 type of
6 comprehensive discovery, is produced.

7 I don't think there's any harm in doing that, unless
8 for whatever reason the defendants want to wait to do that.
9 But I think if three years down the road or two and a half
10 years down the road we can get that, those voluntary
11 documents, that should be disclosed. We would like to
12 propound a unified request for production that we would
13 internally work on first and then propound.

14 So the defendants only get one request. Similarly
15 perhaps some interrogatories. And again, some limited
16 depositions on nonparty defendants that would be affected by
17 Fifth Amendment related issues. That wouldn't be duplicative
18 but can be streamlined uniformly for depositions.

19 MR. GRASHOFF: We have various responses to this,
20 your Honor.

21 MS. BETTENHAUSEN: If you don't mind, since you've
22 been mentioning the Fifth Amendment issues with Director Lyon
23 and Dr. Wells.

24 THE COURT: Yes.

25 MS. BETTENHAUSEN: I just wanted to address those

1 real quickly. Because they do -- I'm sorry. Ms. Bettenhausen
2 for State defendants. As you mentioned, our reply does
3 indicate that -- I mean, we feel very strongly that any type
4 of interrogatories, even limited depositions, you're going to
5 run right up against the Fifth Amendment issues.

6 THE COURT: Well, what about limited depositions --
7 well, what about depositions, not limited depositions, but
8 depositions of non criminally charged individuals?

9 MS. BETTENHAUSEN: Perhaps. I don't know -- I think
10 I just wanted to address the issues with the Fifth Amendment.

11 THE COURT: Okay.

12 MS. BETTENHAUSEN: I'm sorry. Go ahead.

13 THE COURT: Well, I think I might understand the
14 issues.

15 MS. BETTENHAUSEN: Well, I think Mr. Leopold did
16 point out we are engaged already in fairly comprehensive
17 informal discovery. The State defendants have produced --
18 it's over 700,000 pages of documents out there. They've been
19 provided already to the Mays plaintiff, Department of Justice,
20 Office of Special Counsel, and many others.

21 Certainly we can arrange to -- this is not a small
22 amount of discovery. This is a lot of discovery. And so I
23 did -- I just wanted to speak specifically with the criminal
24 charged individual defendants. And then perhaps -- and what
25 we've already received in return, Mr. Sterns' firm has been

1 providing a facts sheet to defendants on a very limited basis.

2 Perhaps that could be expanded. And that would keep
3 the discovery ball rolling while the motions to dismiss were
4 pending or, excuse me, were being resolved. And as that -- as
5 the Court suggested, maybe as that process comes to a close,
6 then we could have another status conference to see if more
7 discovery could be developed that would not -- you know, maybe
8 at that time it would be more appropriate to be able to move
9 forward with things such as depositions, interrogatories,
10 requests for production and request for admissions.

11 THE COURT: Thank you. I just would like to note
12 that -- I believe that the period to appeal following my
13 decision on Veolia and LANs motion, well placed motion to
14 reconsider, I don't think the appeal period has run on that or
15 if there even is an appeal at this point that can be taken.

16 But there is at least a portion of this case that is
17 potentially ripe to get an answer at the appropriate time and
18 proceed regardless of the other parts that we're discussing
19 now. But go ahead.

20 MR. LEOPOLD: Your Honor, Ted Leopold. I make two
21 quick comments only -- and one of which is from a very, very
22 recent personal experience that this can be done related to
23 Fifth Amendment issues and can be done very effectively.

24 I was involved at one of the ground breaking Takata
25 litigations. Now in the Takata litigations there was multiple

July 26, 2017

64

1 criminal federal investigations pleading -- pled out type of
2 issues where they -- I actually took multiple high executive
3 depositions. Most of them took the Fifth Amendment, but it
4 didn't stay the litigation.

5 THE COURT: Right.

6 MR. LEOPOLD: There was multiple avenues of
7 litigation that transpired in that case with a federal MDL,
8 hundreds of individual cases, etcetera. Very similar to this
9 litigation. So it can be done. It can be managed. And it
10 can be done fruitfully.

11 Secondly, I would say twofold. One is perhaps the
12 best way maybe to move at least a step forward on this issue,
13 is now that the Court has signed off on interim lead counsel,
14 maybe the best prospect is a meeting with counsel, meet and
15 confer to see what discovery can, without objection, if
16 possible, proceed forward. And if not, bring those issues to
17 the Court.

18 And along those lines, I would highly recommend in my
19 experience what really helps keep these types of litigations
20 on track is a regular, very regular status conference,
21 discovery conference with the Court. Whether it's, you know,
22 once a month or twice a month. Something that at least at the
23 beginning that really keeps us on track.

24 So when there are disputes that may arise without
25 no -- nefarious conduct on either side, but the Court can help

1 us get it to the next level.

2 THE COURT: I appreciate that recommendation and it
3 is my hope and my plan to adopt such a course of action. I've
4 done that in complex criminal cases to make sure that things
5 are proceeding.

6 What I want to do is take a very short break right
7 now and then I would imagine five to ten minutes.

8 (Brief Recess)

9 MR. GRASHOFF: Your Honor, we were all vying for your
10 attention on the Fifth Amendment issue.

11 THE COURT: Yes. Mr. Grashoff -- or who wants to go
12 next?

13 MR. KIM: Your Honor, City Attorney William Kim
14 representing the City, Dayne Walling, and Michael Brown. I
15 just wanted to disagree with my colleague in the most -- in
16 the strongest terms on that it's appropriate to move forward
17 with discovery here.

18 I think that the Court was exactly right when you
19 said earlier that we're going to have -- we're going to be
20 directed to -- plaintiffs will be directed to file an amended
21 consolidated class action complaint, to which we, as the
22 defendants, will almost certainly be filing motions to
23 dismiss.

24 And once those motions to dismiss are resolved, that
25 would be the appropriate time in which to proceed with

1 discovery and determination of what's appropriate then.

2 As governmental defendants, we are certainly going to
3 be advocating for various forms of immunity for which all of
4 the case law clearly says that one of the benefits of immunity
5 is not just freedom from, you know, judgment or trial, but
6 freedom from discovery itself.

7 And so resolution of what immunity claims are valid
8 and what's not will inform the scope of what is part of
9 discovery here.

10 Furthermore, I think that the plaintiffs are
11 definitely jumping the gun as well in that they seem to be
12 assuming that we should be proceeding straight forward to
13 merits discovery whereas we have essentially class discovery
14 that needs to precede that which also determines what the
15 scope of the merits discovery will be.

16 And finally, I think one critical issue that's not --
17 that's basically being assumed by the plaintiffs here is that
18 we can kind of proceed willy-nilly with discovery here whereas
19 I think --

20 THE COURT: Well, I wouldn't say willy-nilly has been
21 suggested.

22 MR. KIM: Not willy-nilly. But you know, proceed
23 with discovery here without really keeping an eye on what is
24 also occurring in the State cases. And I think that while
25 each court is obviously independent, that coordination of

July 26, 2017

67

1 discovery between State and federal proceedings is absolutely
2 necessary here.

3 THE COURT: I think so, too, at the appropriate time.
4 And I think we've got -- Mr. Sterns has indicated -- well, one
5 of the qualifications that assisted me in making the decision
6 regarding appointment of co-lead counsel and liaison counsel
7 as between the Hart team and Leopold, Shkolnik, Pitt, Stern
8 team was the ability to coordinate with the State cases.

9 So I think that's critical because no one needs to do
10 work that doesn't need to be done or duplicate efforts or do
11 them on a timeline that's three days off of the other
12 timeline. I have no interest in that. So I appreciate your
13 bringing everyone's attention to it.

14 MR. KIM: Thank you, your Honor.

15 MR. ZEINEH: Good afternoon, your Honor. Edwar
16 Zeineh on behalf of Dougherty Johnson. Zeineh.

17 THE COURT: That's right. Okay.

18 MR. ZEINEH: Z-E-I-N-E-H. I represent Dougherty
19 Johnson in his individual capacity on multiple matters. But I
20 also represent him at the state level at the criminal
21 prosecution.

22 I don't think anybody's more situated to speak on the
23 current status of the criminal cases other than the criminal
24 defense attorneys. And I think it's imperative that we bring
25 it to your attention that these matters involve intense amount

1 of discovery and ongoing criminal investigations. We're not
2 even at the preliminary exam phase yet.

3 Frankly put, this past week I think we got over
4 600,000 documents separate and apart from what we've already
5 received. But I express substantial concerns with any form or
6 fashion of discovery for individuals. Not just Mr. Lyon or
7 Wells, but others like Mr. Johnson. I believe there's other
8 counsel that's identified themselves who are co-defendant
9 counsels in the pending criminal case.

10 The problem that we have is even if we're not sitting
11 for a deposition, what if we -- there's other documents that
12 could cause harm or cause -- could impair his ability to
13 provide a complete defense at the state level. My bigger
14 concern is that there's likely more coming in some form or
15 fashion, not necessarily to my client but to those other
16 clients.

17 I think we all have an ethical duty to identify
18 someone's Fifth Amendment right. And absent having specific
19 knowledge of the current investigations, it's going to be
20 difficult to articulate that. If we have an individual who
21 sits down who may be just a lay witness who maybe observed
22 something in some form or fashion, they can subject themselves
23 to potential criminal consequences.

24 THE COURT: Well, they will undoubtedly be
25 represented by counsel. And I think that's true in, I don't

1 know, 50, 60 percent of civil litigation is that depending on
2 someone's answer, they could expose themselves to criminal
3 liability. And they either choose to have a lawyer who can
4 advise them of that or they don't choose to have a lawyer who
5 can advise them of that.

6 But I wouldn't suggest or agree that the remote
7 possibility that a third party witness or someone whose
8 deposition is being taken who's, to the best of that person's
9 knowledge, not the target of a criminal investigation at the
10 time, that we would stay the entire case for the purpose of
11 avoiding potential criminal liability.

12 MR. ZEINEH: And then I would just ask the Court to
13 kind of consider potentially at least to the extent discovery
14 for named criminal defendants consider an order staying to
15 those individuals. Both request for productions,
16 interrogatories, and obviously depositions.

17 I would say that I understand the Court's discretion
18 in this. I understand that these matters obviously overlap.
19 In other cases, probably 50, 60 percent of time. This is the
20 City of Flint, the, quote, unquote, Flint Water Crisis, and I
21 think the statistics are substantially increased given the
22 nature and the course that this case has taken in the criminal
23 realm.

24 I would also say that if we're ever forced to invoke
25 Fifth Amendment on behalf of our client --

1 MADAM COURT REPORTER: Excuse me. Can you slow down,
2 please?

3 THE COURT: Yes.

4 MR. ZEINEH: I can.

5 MADAM COURT REPORTER: Thank you.

6 MR. ZEINEH: If we're ever forced in the public
7 setting or public forum to invoke a Fifth Amendment right,
8 that may impair our ability to, at trial, get a fair and
9 impartial jury. And I'm sure this Court has experience with
10 that given there's been studies done in this case where we
11 would need to go. It's already impacted. But to take it to
12 that next level, that would have serious consequences on a
13 named defendant.

14 THE COURT: Again, we're not actually arguing the
15 motion to stay at this point. I appreciate your focus on your
16 clients and their rights and I wish to assure you that those
17 are my concerns as well.

18 MR. ZEINEH: I appreciate that, your Honor. Thank
19 you.

20 MR. PATTWELL: Good afternoon, your Honor. Michael
21 Pattwell on behalf of he Dan Wyant and Brad Wurfel of the DEQ.
22 And I think when I speak, I'm speaking on behalf of my
23 colleagues, counsel for the other DEQ defendants. And I've
24 also consulted with the State of Michigan and the City of
25 Flint.

1 So I'm a very type A personality. I like order. And
2 one of the things that we did before coming here today was to
3 look at a number of the -- even though this is a status
4 conference, not a scheduling conference -- a number of the
5 scheduling orders that the Court has entered. And we really
6 liked the way that they were structured.

7 For a case of this size with the number of different
8 issues out there, I think we wouldn't want to lose focus of
9 how -- what substantive issues are going to be the subject of
10 discovery to have those resolved now before we start. It's
11 fine to talk about discovery and how we would structure it.
12 But before that actually happens, to have those issues
13 resolved.

14 We had sort of outlined from our position that as a
15 matter of course first and foremost to get some clarity from
16 the Sixth Circuit on federal officer removal issue.

17 THE COURT: Right.

18 MR. PATTWELL: The Eleventh Amendment immunity issue,
19 Safe Drinking Water Act preclusion, the qualified immunity
20 issue in the Guertin case, other immunity type issues, and
21 then the matters that are presently pending before the Court.
22 We have numerous motions to dismiss that have already been
23 briefed.

24 And I think what my colleague, Ms. Bettenhausen, was
25 getting at here with her email, we call them "The Big Six".

1 Village Shores, Alexander, Washington, Gulla, Walters, and
2 McMillian.

3 These cases are largely briefed and they involve
4 substantive legal issues that if we could have a ruling from
5 the Court on those prior to getting into discovery and, in
6 fact, prior to the plaintiffs filing a consolidated amended
7 class action complaint, I think it would really in the long
8 run streamline this entire process to have those issues
9 resolved.

10 Substantively have your amended class action
11 complaint. However, the proposal by Mr. Stern ends up being
12 resolved, have that occur. Discovery, now to talk about it,
13 we haven't filed answers. We don't have --

14 THE COURT: I understand.

15 MR. PATTWELL: We haven't listed affirmative
16 defenses. It's really, really early. We'd like to talk about
17 it. And we've got a lot of ideas once we get to that stage
18 that we hope would be beneficial and embraced by plaintiffs'
19 counsel and the Court. But right now, plaintiffs' counsels'
20 eagerness to jump immediately into fact discovery.

21 Several of the Court's past orders from the Eastern
22 District, we've seen there's some class discovery before fact
23 discovery. So we'd just like a real ordered process. And
24 with that, a couple of housekeeping questions for the room or
25 for the Court.

1 THE COURT: Okay.

2 MR. PATTWELL: If there's going to be an order from
3 the Court, presumably it would list all of the class actions
4 that will be consolidated and then will be subject to this
5 amended class action complaint. Presumably if the Court is
6 not inclined to rule on The Big Six first, what happens to the
7 existing motions to dismiss that are fully briefed for class
8 action complaints?

9 Are those complaints inoperable? Are the motions
10 that have already at considerable time and expense been
11 prepared and are ready to be adjudicated, are those just moot?
12 Would there be an order mooting them? So these are questions
13 that were discussed here on the break and I just wanted to
14 take the time to bring that up.

15 And I think my colleague, Mr. Kim, did point out with
16 respect to the Fifth Amendment issue that the Attorney General
17 and Special Prosecutor, Todd Flood, have made very public and
18 very clear that the investigation's not over. There are
19 several targets.

20 So the Fifth Amendment concerns, I would urge the
21 Court to consider not only those who have been charged but
22 those who are the targets of the investigation. Thank you,
23 your Honor.

24 THE COURT: Okay. Thank you, very much.

25 MR. MASON: Good afternoon, your Honor. Wayne Mason

1 representing LAN engineering defendants. I just wanted to
2 weigh in on a few things. One is the issue of this challenge
3 that we have with moving the case forward and yet the balance
4 between Mr. Kim. And I understand his position and also Mr.
5 Leopold.

6 And I may sound very un-defense lawyer like, but I
7 really am willing to consider those issues that we can move
8 this case forward. I think the good news to report to the
9 Court is that there are some things we'll have disagreements
10 with respect to when discovery begins and what issues are
11 appropriate for discovery.

12 But there are many things that are in the complex
13 litigation manual that you referenced that I think we can
14 easily dispose of with respect to preservation and
15 confidentiality and protective orders.

16 And ESI, I can report to the Court that we have an
17 ESI agreement in the Genesee County litigation. It's very
18 detailed and people have weighed in on it. And so I'm not
19 trying to bind anybody here, but there's been a lot of work
20 done there.

21 There's been exchange of insurance information
22 already with respect to some of those issues. And so I think
23 that's good news. And there are things that we can carve out
24 and work together.

25 I know the Court pointed out that we did not comment

1 on the selection of lawyers. We just didn't feel like that
2 was appropriate. But I can now say because I've been in a
3 role where I've dealt with counsel for -- and I don't know the
4 Hart folks just because I haven't had that pleasure yet. I'll
5 look forward to working with them.

6 But we've worked together this other -- you know, the
7 group that you've appointed, for quite some time now. And
8 there is an ability to sit down and hash these things out. I
9 would suggest to your Honor that it would be appropriate for
10 us to go and work on some of these things and come back to you
11 if we're going to do it on a regular basis rather than try and
12 come up with a schedule today or the like.

13 And I think that, in fact, we spoke with Mr. Leopold
14 beforehand, but again, didn't want to disrespect the Hart
15 folks.

16 THE COURT: Absolutely.

17 MR. MASON: And didn't want to come, you know, with
18 some prepackaged situation when we weren't sure what your
19 Honor would do.

20 THE COURT: And I saw that in your brief. But the
21 fact that concurrence was not received, everybody informed me,
22 well, we couldn't agree because we didn't know which group we
23 were in negotiation with and agreeing with. And those -- I
24 understand that. So thank you.

25 MR. MASON: But I -- we look forward to working with

1 them and we think that that can be done.

2 There are ramifications to the discovery issue. One
3 of them is just a realization that there's some prejudice to
4 us and to our clients to the extent that discovery goes
5 forward with the City or the governmental folks that are
6 taking the Fifth.

7 We want to offer part of the coordination
8 consolidation complex cases as your Honor knows is offering a
9 witness once, if possible. But if they're not going to be
10 participating in discovery and we run forward with that, it
11 inevitably might mean doing everything twice. And those are
12 the kind of things we need to flush out, talk about, and I
13 think matters.

14 The other point that I would make is the hearing that
15 was mentioned I think is a really productive idea. We meet
16 every Wednesday once a month, the first Wednesday of the month
17 with Judge Yuille. And I feel comfortable reporting to you
18 that sometimes we wonder, he's got that litigation. Is there
19 a feeling like, well, I don't care what the federal judge
20 does, I'm doing this or whatever. You know, I've encountered
21 that in cases around the country.

22 I'm pleased to report to you that Judge Yuille is
23 very interested in and would like to coordinate with this
24 Court and asked yesterday when we met with him to report back
25 what happened and how it went and how it would impact what

1 we're doing in state court.

2 We're in the process of -- you know, there's one CMO
3 in place. And I would not rely on that other than as a
4 reference point. The governmental folks have appropriately
5 pointed out some very fair comments that they're concerned
6 about. For instance, I don't speak for them and can't as a
7 governmental entity. Those are very fair things.

8 We're addressing those things and working
9 collaboratively together as on the defense side. And then
10 Judge Yuille is going to have a hearing with respect to
11 anything that we can't necessarily agree on.

12 But I would suggest, just as a suggestion, that we
13 try and coordinate perhaps a monthly meeting here that
14 coincides on the front or the back -- you know, one day on the
15 front or the back with Judge Yuille so that we can keep that
16 communication open, collaboration open, and that that might be
17 a worthwhile thing to consider.

18 THE COURT: Well, thank you, very much. Does Judge
19 Yuille do those in person or does he do that over an 800
20 conference call.

21 MR. MASON: No, he does it in person. And it is just
22 at this point with lead counsel and his law clerk and it's a
23 status conference. It's not a hearing, per se. And so that's
24 the way he's chosen to do it.

25 THE COURT: Okay. And I have among my many notes on

1 this brief was call Judge Yuille. So but I did not get to it
2 because there was too much to read. So that was my intention
3 was to just get a better understanding of what his approach is
4 and how and why. I don't know him at all. I've never met
5 him. I Googled him. So that's as far as I got.

6 MR. MASON: Thank you.

7 THE COURT: So I think we have Mr. Pitt and then Mr.
8 Egan.

9 MR. EGAN: I'm a little closer. Your Honor, I'll be
10 very quick.

11 MADAM COURT REPORTER: Can you state your name,
12 again?

13 MR. EGAN: Dennis Egan. I understood that we were
14 discussing the stay issue. Mr. Leopold then raised the issue
15 of essentially when and how to open discovery. And I'm
16 wondering in what because we had a discussion earlier about a
17 consolidated class action complaint.

18 THE COURT: Yes. I was aware of that. So I have an
19 approach that I'm considering and would appreciate your
20 response to, which is the things that I know for sure right
21 now, I can list those. And then I'll let you know the things
22 that I do not know for sure, but the approach that I wish to
23 take.

24 First is -- and this doesn't just relate to what we
25 were just talking about. I think the name of these cases

July 26, 2017

79

1 should be In Re Flint Water Cases. So we'll take the word
2 crisis out of the case name. I plan to create a master case
3 number so that everybody can track all of the filings. And
4 we've discussed the amendment, a master amended class
5 complaint to be filed by September 29th with the either answer
6 or motions to dismiss by December 1st. It gives you a few
7 extra days. It doesn't fall on the holiday.

8 The granting of the Waid motion for consolidation and
9 appointment of co-lead counsel. But I will carefully discern
10 whether there are portions of the motion that are not yet
11 ripe. I want to review it one more time to determine whether
12 I'm granting it in part or in full.

13 Flowing from that, I would like to receive protocols
14 from that team for their definition in the context of this
15 case of what the duties of the co-lead counsel are, what the
16 duties of the liaison will be. And proposed executive team
17 members or how they would be selected.

18 So I will look to them in a moment for how much time
19 would be needed to provide that. To the other side I think it
20 should be provided so that the defendants can say this will
21 not possibly work in this context. And there can be some
22 negotiation over that.

23 But then I do think it would be very helpful -- oh,
24 we also had a motion to consolidate the individual damages
25 cases that I think Mr. Stern said could be filed in 10 days.

1 MR. SHKOLNIK: Your Honor, instead of phrasing it as
2 motion to consolidate, it would be a motion for a master
3 complaint and a corresponding adoption complaint that would be
4 making the motion for, your Honor.

5 THE COURT: Thank you.

6 MADAM COURT REPORTER: Can you state your name again?

7 MR. SHKOLNIK: I'm sorry. Hunter Shkolnik.

8 THE COURT: So that would be filed in ten days.

9 MR. SHKOLNIK: Yes, your Honor.

10 THE COURT: And then I would just rely on the local
11 rules for responsive briefing. And if additional time is
12 needed, I would encourage a stipulated order to be filed.

13 MR. EGAN: That would be fine.

14 MR. SHKOLNIK: Yes, your Honor.

15 THE COURT: Now, what -- here we get to what we were
16 just talking about with the discovery. I don't believe that
17 the local -- that the Federal Rules of Civil Procedure
18 ordinarily under generally -- the usual course permit
19 discovery where there's not yet an answer to a -- the
20 fundamentals of discovery, the basic things.

21 However, under Rule 23, determining class discovery
22 may be permissible and probably is -- and I believe is
23 permissible at this stage. So we're in a hybrid situation in
24 this case, and I think many are like this.

25 So what would be helpful to me is for a meet and

July 26, 2017

81

1 confer among the parties now that we have co-lead counsel and
2 it seems as we were sort of operating with that anyway. But
3 now that that's become formalized is to meet and confer and
4 inform the Court within -- I don't know if this is too soon,
5 but just 30 days as to whether an agreement can be reached
6 about some initial discovery focused on class certification.

7 I know the plaintiffs submitted to me that class
8 certification in this case overlaps a great deal with the
9 underlying claims. And I don't know enough about that yet. I
10 read it. I understood what you were saying. But I would
11 benefit from some details of why you think that there's that
12 great of an overlap.

13 So that can be addressed. And what I'm interested in
14 knowing now is whether 30 days is long enough to meet and
15 confer and present a joint agreement about what can be done
16 now or tell me we need to brief it.

17 MR. EGAN: Well, I at least have a question.

18 THE COURT: Okay.

19 MR. EGAN: I was anticipating getting this
20 consolidated class action complaint, doing the motions to
21 dismiss to see what portions of it, if any, survived, then
22 deal with class identification, which as part of that you
23 would have class certification related discovery which would
24 be driven heavily by what portions of this consolidated class
25 action complaint still survive.

1 So is the Court wanting to start the class discovery
2 process before the motions to dismiss are even resolved?

3 THE COURT: I think it would be advisable to begin
4 what can be agreed upon to begin. And if it can't be agreed
5 upon, to present your best arguments to me for me to
6 adjudicate whether it's appropriate or not. And I'm not
7 prepared to do it today.

8 MR. EGAN: Oh.

9 THE COURT: I heard your arguments in general, but I
10 didn't notice this as an opportunity to make that decision.

11 MR. EGAN: Oh, and I'm not expecting that. I just
12 wanted to make sure that we weren't getting into turning this
13 into a scheduling conference.

14 THE COURT: No.

15 MR. EGAN: And everything I've heard so far I can
16 live with.

17 THE COURT: Okay. Great.

18 MR. GRASHOFF: Your Honor?

19 THE COURT: Yes.

20 MR. GRASHOFF: Your Honor, Phil Grashoff again. Mr.
21 Mason's presentation to you about Flint CMO process, we are
22 all not in agreement that that process is working well at all.

23 THE COURT: Right.

24 MR. GRASHOFF: And we have filed objections to the
25 current first amended CMO. And we have serious problems with

1 it. But I also sense the flavor of Mr. Mason's conversation
2 with the Court was that there will be some kind of liaison
3 from the defendants' side. And we don't have a liaison in de
4 facto for most of these things, but we really don't. We are
5 not all aligned. Let me put it that way.

6 THE COURT: I understand that.

7 MR. GRASHOFF: And if the Court would like, we can
8 get our heads together, at least between the State and the
9 MDEQ defendants and the City and have an internal meet and
10 confer on how we might participate in a meaningful fashion in
11 a meet and confer with the plaintiffs' grouping. But right
12 now, it would be a misunderstanding to understand that we have
13 liaison. We don't.

14 THE COURT: Okay. I discerned that from reading all
15 of the briefs, but it's helpful to have it clearly stated.
16 Yes.

17 MR. MASON: Just to be clear, your Honor -- this is
18 Wayne Mason -- I did not mean to imply that no one's filed for
19 defense liaison or lead counsel, and I don't think it's
20 necessary. And that's why it wasn't done.

21 The governmental folks have a mind of their own and
22 the issues of their own. And I still think that it can -- we
23 can work together with them when they get together as a group
24 and then work with the engineering folks. And we can then
25 work with the plaintiffs.

July 26, 2017

84

1 So I do want to be clear there was an implication
2 that I was somehow suggesting some role in this. And I am
3 not.

4 THE COURT: Okay.

5 MR. MASON: And we have our disagreements in the CMO
6 and state court and we're working through them.

7 THE COURT: Thank you. Mr. Pitt? And then I'll get
8 back to you, Mr. Kim.

9 MR. PITT: Michael Pitt for the plaintiffs on Waid
10 and Village Shores. Your Honor, we are -- will be able to
11 provide the Court with the proposed duties of lead counsel and
12 recommendations for liaison and executive committee issues in
13 30 days, if that's all right with the Court.

14 THE COURT: Yeah.

15 MR. PITT: And we also believe that the meet and
16 confer that the Court had referred to should take place within
17 30 days and that we should give a report to the Court if we
18 need court intervention at that point, if that's all right
19 with the Court.

20 THE COURT: Yes. From what I'm hearing, there will
21 be significant resistance to any sort of class discovery or
22 any other discovery other than preservation of documents.

23 MR. PITT: And let me make an additional request. So
24 I think we all agree that the crisis is not over. It's still
25 unfolding. And we now have the obligation to shape this

1 master class complaint.

2 And there are new developments that are reported in
3 the media almost weekly. I mean, for instance, there was a
4 report of a dramatic uptick in stillbirths in Flint which may
5 be related to the contaminated water. We don't have any data
6 on that at this point. But certainly we have clients, we have
7 families that have experienced that trauma. And we're kind of
8 waiting to see how it develops.

9 So as we shape this master class complaint, we would
10 like to be able to tap into available State data that would
11 deal with the current issues. And we can make that as part of
12 the meet and confer obligation. We can send a letter, make a
13 call, and say what do you have in connection with the
14 stillbirths, and can you share that with us? That would help
15 us shape the complaint in a meaningful way.

16 So we'd like to have the order indicate that in
17 addition to class definition discovery, we'll call it maybe
18 current affairs or current development discovery, things that
19 unfold. And we, as lead counsel, would need to have that
20 information to protect the interest of the class, punitive
21 class.

22 THE COURT: Okay. Well, I think that would be
23 appropriate to have as a topic of discussion in the meet and
24 confer and then to inform me if it cannot be agreed upon. And
25 then I can permit briefing and decide what to do. Mr. Kim?

1 MR. KIM: Thank you, your Honor. William Kim, city
2 attorney here.

3 Again, I just think that the plaintiffs are jumping
4 the gun here. If we're to be providing with certain class
5 discovery disclosures or something at this point when they're
6 going to be filing an amended class action complaint which
7 will presumably include class allegations, it's going to be
8 difficult for us to determine what's relevant, what's not as
9 to what specific, you know, class allegations they're going to
10 make.

11 It would seem to be more appropriate for them to file
12 their --

13 THE COURT: I understand that. I think that you will
14 have some clues to what will be in the master amended class
15 complaint. And those clues are present in each of the ten
16 pending class complaints.

17 I would recommend reviewing those as just a preview
18 of what they're likely to file in an amended complaint as well
19 as The Big Six being listed here in terms of all sort of any
20 issues that have not already been addressed by this Court
21 being listed on this handout.

22 MR. KIM: Which leads into kind of my other concern
23 that's come to light as the plaintiffs' counsels are been
24 making their presentations. Specifically related to the
25 consolidated -- well, not consolidated complaint, but the

1 master complaint through the nonclass action cases.

2 THE COURT: Right.

3 MR. KIM: I guess my main question would be how
4 should we, as defense counsel, deal with the fact that we also
5 currently have in all the individual, the nonclass cases,
6 there's a number of stipulations as to response dates, reply
7 deadlines, all those sorts of things. Are we going to
8 essentially throw those out the window and wait for the
9 consolidated complaint to be resolved and then --

10 THE COURT: That's a good question. Mr. Shkolnik?

11 MR. SHKOLNIK: Your Honor, I was -- Hunter Shkolnik.
12 When all of the discussions were done, I was going to ask to
13 come up and approach on that issue and ask that the deadlines
14 for those briefing be held in abeyance while the motion for
15 the master individual complaint is considered by the Court.

16 This way -- because there's been a lot of concern
17 about the resources of the defendants not having resources or
18 enough resources, why keep briefing while we're going to brief
19 something as important as the master complaint. And I was
20 going to request that. And we could include that in our brief
21 on the motion, if that's necessary.

22 THE COURT: Mr. Grashoff?

23 MR. GRASHOFF: Your Honor, Phil Grashoff again. I
24 have sunk to the depths of research to my little chart that
25 tells me what's going on here. And I am concerned about the

July 26, 2017

88

1 timeline the Court's thinking about.

2 THE COURT: Okay.

3 MR. GRASHOFF: Because 30 days from now, between now
4 and 30 days, we have motions to dismiss in Kirkland, oral
5 argument in Mays in the Sixth Circuit. We have motions to
6 dismiss in Savage, in Gist. We have a tentative motion
7 hearing in Genesee County on this master complaint that we're
8 --

9 THE COURT: But I think that Mr. Shkolnik is
10 suggesting is at least -- I don't have any control over the
11 Sixth Circuit. Let me be very clear about that. And I have
12 nothing that I can say or do --

13 MR. GRASHOFF: Could have fooled me, your Honor.

14 THE COURT: Yeah -- with respect to Genesee County.
15 But in terms of his recommendation that we stay for now the
16 schedule in the cases pending before me in order to see this
17 motion for a master complaint in the individual cases.

18 MR. GRASHOFF: There's a real easy answer to this.

19 THE COURT: Oh, what is it?

20 MR. GRASHOFF: The easy answer is that we have a stay
21 already in place in all of the Corey Stern cases.

22 MR. STERN: We did.

23 THE COURT: I saw that.

24 MR. GRASHOFF: That goes completely out. And Mr.
25 Leopold -- excuse me. Not Mr. Leopold. Mr. Shkolnik's firm

1 has several cases that have been filed but not served. And we
2 haven't been able to have any communication with his office
3 about a delayed date for filing those.

4 We'd like to put them on the same schedule that we
5 have with Mr. Stern's cases which will be an answer or
6 otherwise -- to answer, otherwise plead, until after the
7 decisions are made in the Sixth Circuit on the cases that are
8 pending there.

9 We would like to put all of those off and you cannot
10 be concerned about the private causes of action and staying
11 them. They're already, for the most part, done.

12 THE COURT: Okay.

13 MR. STERN: Your Honor?

14 THE COURT: Yes.

15 MR. STERN: Corey Stern, for the record. I agree
16 with what Mr. Grashoff just said about certain cases being
17 stayed. But there's language in each of those stay orders and
18 there's context to when they were entered.

19 THE COURT: Right.

20 MR. STERN: At the time that we agreed to stay 31
21 cases for 2,000 children, Judge O'Meara had some cases, your
22 Honor had some cases. Judge O'Meara had dismissed claims
23 based on preemption and your Honor had indicated at a hearing
24 that I attended that you were not inclined to do so.

25 In an effort to not push the defendants to file

1 pleadings that had already been filed and adjudicated in one
2 court while another court was hearing cases on the very same
3 issue, we decided to stay the proceedings.

4 It was before any of the cases were transferred to
5 your Honor. It was before there was ever an issue about
6 consolidating cases and appointing counsel. And now that
7 we're here today, there's language in each of those stay
8 orders that say or until further order by the Court, or until
9 further agreement.

10 And so while there's nothing inaccurate whatsoever
11 about what Mr. Grashoff just said, context matters.

12 THE COURT: Yes. I think I picked up on the context
13 from looking at what the cases were. But I appreciate the
14 clarity. So here's what we'll do is in terms of any -- but
15 you're indicating to me it's in the class cases. It's not in
16 the individual cases.

17 MR. GRASHOFF: It's in the class cases and we've got
18 a lot of work to do between now and the midpart of September.

19 THE COURT: Then what I think we need to do is stay
20 the briefing in that pending the master --

21 MR. GRASHOFF: In what that?

22 THE COURT: In those class cases that you're
23 referencing that have dates for filing of motions to dismiss
24 or an answer, responses and so on.

25 MR. GRASHOFF: Those would be Kirkland, Gist, Savage

July 26, 2017

91

1 -- they are not class actions. They're individual actions.

2 THE COURT: Those are individuals.

3 MR. GRASHOFF: But we have them --

4 THE COURT: Mr. Shkolnik had the recommendation that
5 that be stayed. That the pending briefing -- the dates that
6 would ordinarily come due between now and the filing of a
7 master class action and the motion for a master case and
8 individual cases be stayed until those are resolved. So I --
9 seeing no objection, that's what we'll do.

10 MR. LEOPOLD: And your Honor -- Mr. Leopold.

11 THE COURT: Just a minute, Mr. Sanders. Just one
12 second.

13 MR. GRASHOFF: Excuse me. May I confer with my
14 co-counsel about this?

15 THE COURT: Certainly.

16 MR. LEOPOLD: Just to be --

17 THE COURT: It's not going to necessarily be a vote,
18 but please.

19 MR. LEOPOLD: Just to be clear, I heard several
20 things that counsel was eluding to --

21 MADAM COURT REPORTER: I'm sorry. It's too loud. I
22 can't hear.

23 MR. LEOPOLD: As recommended by Mr. Shkolnik, PI
24 cases are going to be stayed in terms of responses. But the
25 30 days that Mr. Pitt was talking about is for us to attempt

1 to meet and confer.

2 THE COURT: Yes.

3 MR. LEOPOLD: Provide our papers by the -- within 30
4 days after the meet and confer and about interim lead counsel
5 on roles and things of that sort. And then I'm assuming
6 shortly thereafter the Court will have a hearing where we can
7 address all of these issues and try and filter through how we
8 will proceed after that.

9 THE COURT: Yes. And in light of the recommendation
10 for follow-up status conferences, which I think is an
11 excellent recommendation, we can set such a date at the
12 conclusion of this hearing.

13 MR. GRASHOFF: Your Honor, we're fine with the
14 staying of everything.

15 THE COURT: Okay. All right. Now, I think that
16 we've covered the issues that I came here to discuss today. I
17 hesitate to ask if there's anyone who wants to say anything.
18 I have a tendency to ask that and I don't regret it, but okay.

19 Oh, let me say one other thing that was on my list
20 from the manual, which is we have on the case -- we have Judge
21 Majzoub as the magistrate on Guertin, I believe. And as the
22 cases are coming in now, they're being assigned to me and
23 Judge Majzoub. But there are other magistrate judges on many
24 of the other cases that I think remain randomly assigned.

25 It's my intention to handle all of the substantive

1 issues here. And wherever possible to handle the discovery
2 related disputes, should we get to full blown discovery and
3 that sort of thing. I do that in my other cases and I think
4 this is -- they're all important. So there's no reason I
5 would deviate from that for this.

6 However, there could potentially be a role for
7 someone, for either a special master or a magistrate judge.
8 In looking at the dockets in the Eastern District of Michigan
9 that are weighing on our magistrate judges at this particular
10 time, it does not seem to me to be effective to use one of --
11 I don't know if the word is fair to the magistrate, to ask one
12 of our magistrate judges to serve in a role that could assist
13 me in resolving disputes that come up if I'm in trial, if for
14 any reason there are issues that I can't work on.

15 And so that's my thought. And if -- we have an
16 incredibly strong core of magistrate judges and I'm prepared
17 to be convinced otherwise. But I would like each of the
18 parties to consider the use of a special master in this case
19 who could have some defined duties to assist in making sure
20 that things are handled in a fair and expeditious way.

21 So I would just ask that you consider that and
22 include that, your response to that in the submission in 30
23 days. And we don't have to get to the point of selecting
24 someone or defining the duties but just whether you think the
25 assistance of a special master would be helpful.

1 MR. GRASHOFF: I can only respond -- sorry, your
2 Honor. Phil Grashoff again. I'm wearing a pad back and
3 forth. I can only respond myself to your suggestion. I think
4 we all view you as a very activist judge in this case --

5 THE COURT: We'll say active. That means something
6 different.

7 MR. GRASHOFF: I stand corrected.

8 THE COURT: Okay.

9 MR. GRASHOFF: I don't see personally -- and I've not
10 talked to any of my colleagues on this. But I don't see the
11 appointment of a special master or some other entity, a
12 magistrate judge, necessary at this time. Because we don't
13 know how this liaison is going to work.

14 We know that we're going to be back in front of you
15 at least on a monthly basis. And if we have an issue that we
16 feel is significant enough, we'll file a motion or give some
17 kind of notification to you at these status conferences and
18 we'll deal with them there.

19 THE COURT: Okay. And it's fine with me if someone's
20 appointed and does nothing, if they're the Maytag repair
21 person.

22 MR. GRASHOFF: That's okay.

23 THE COURT: And they sit and wait for there to be
24 something. But one of the benefits of the special master is
25 you can set it up where that individual can receive ex parte

1 communication, which would be more difficult to set up with
2 the trial judge. So there are certain benefits to doing it
3 that I think the parties should consider.

4 MR. GRASHOFF: I understand. I see no point in doing
5 it now. I think Mr. Pattwell wants to reply in writing to
6 this suggestion which I think is within our rights to do if we
7 could file something.

8 THE COURT: Yeah. Well, what I was suggesting was
9 adding that to your meet and confer and letting me know in 30
10 days whether there's agreement or interest in it.

11 MR. GRASHOFF: Fine. Fine.

12 MR. KLEIN: Your Honor, Sheldon Klein for the City.
13 And I do understand that you're simply asking us to talk about
14 it, so I'll be very brief.

15 THE COURT: Yeah.

16 MR. KLEIN: And you know, speak from experience. I'm
17 involved in The Auto Parts antitrust litigation in front of
18 Judge Battani, which from your look you realize has even more
19 lawyers and more claims and more cases than this.

20 THE COURT: Well, can I say she also gets an extra
21 law clerk.

22 MR. KLEIN: If you want a recommendation from me for
23 an extra law clerk, I'll be glad to give it. And the reason I
24 mention that is there is a special master that was appointed
25 there. And without exception, anything the special master

1 decides gets appealed anyway's. And I'm not predicting that
2 here. I'm sure the other side is much more reasonable than
3 the unreasonable folks in that case.

4 THE COURT: Okay.

5 MR. KLEIN: But sometimes it sounds better and more
6 efficient than it really is, I guess my point. And I don't
7 expect you to decide anything now, but that is my experience.

8 THE COURT: Okay. Thank you, Mr. Klein. Ms. Hurwitz
9 has something.

10 MS. HURWITZ: I was going to hand a note to Mr. Pitt,
11 but I can just mention it, your Honor. Julie Hurwitz on
12 behalf of the Mays team. There is a matter pending before
13 this Court currently on a motion to remand from removal that
14 the LAN defendant filed that was -- we filed the motion in
15 April, I believe. And we're just sort of bringing it to the
16 Court's attention as something that should be resolved.

17 THE COURT: And that is -- do you know the --

18 MS. HURWITZ: That was a CAFA issue. And I've got
19 the case number, your Honor. 17-10996, I believe. It's Mays
20 versus everyone. Including -- it's the case -- no, it's the
21 case involving the engineering defendants, I believe. So it's
22 Mays versus LAN -- or has it been consolidated?

23 MR. STERN: Your Honor, it was an amended complaint
24 that was originally filed in Genesee County. They amended the
25 complaint to add the engineering folks. It was then removed

1 by the engineering folks to your Honor. But it actually
2 started out with Judge O'Meara and then was transferred to
3 your Honor.

4 MR. GRASHOFF: And it's on appeal to the Sixth
5 Circuit.

6 THE COURT: I thought that I didn't have jurisdiction
7 in Mays, which is why I'm not -- okay. My able law clerk has
8 helped me clarify which Mays. There was a -- okay. If I
9 understand in the motion to consolidate, this case is one of
10 those. Is this case one of the ones that would be potentially
11 consolidated as a class case?

12 MS. HURWITZ: No, Your Honor. This case originated
13 in Genesee County Circuit Court. So it's not part of the
14 bundle of cases that was originally filed in federal court.
15 And so the issue before this Court is whether it's even
16 properly in federal court.

17 THE COURT: I see. Okay. Then what I'll do is take
18 a look at it. Thank you.

19 MS. HURWITZ: Thank you, your Honor.

20 MR. PITT: But to clarify, your Honor -- Michael
21 Pitt.

22 THE COURT: Yeah.

23 MR. PITT: The Mays '15 case, that oral argument was
24 held in June. If that case is remanded, it will come back and
25 be part of the consolidated cases.

1 THE COURT: Yes. That's what I was assuming. Mr.
2 Kim?

3 MR. KIM: Yes, your Honor. As we just appear to be
4 discussing what other pending issues are in this case, I just
5 want to bring to the Court's attention I believe there are
6 several other cases in which remand motions are pending.

7 And also one case in which prior to its removal from
8 the Genesee Circuit Court, the City had filed a motion for
9 reconsideration that is technically I believe still pending in
10 that case as well. That would be the Genesee -- it was
11 originally the Genesee Circuit Court Waid case. In this
12 court, I believe the case number for that would be 16-13519.

13 THE COURT: Okay.

14 MR. LEOPOLD: And your Honor, could I just ask one
15 housekeeping matter?

16 THE COURT: Yes, Mr. Leopold.

17 MR. LEOPOLD: For purposes of the meet and confer,
18 since there are, as we can tell, multiple defense attorneys,
19 could we have one designated person we can contact and perhaps
20 they internally can come up with a date where we can have a
21 good meeting as opposed to us calling many, many different
22 people?

23 THE COURT: I think that Mr. Grashoff has indicated
24 that there are some disagreements among the defendants and
25 some competing interests. So he suggested he would have a

1 meet and confer among his side of the aisle or the V. And
2 that he will let you know.

3 MR. LEOPOLD: Perfect. Thank you.

4 THE COURT: And if that can't be achieved, then it
5 can't be achieved. And --

6 MR. LEOPOLD: We'll meet separately.

7 THE COURT: Yeah. Or you can meet on a conference
8 call at the same time with multiple people. Okay. Well then
9 in light of that, we will adjourn. And I will set a follow-up
10 conference that's beyond the 30 days for letting me know about
11 the discovery and so on.

12 MR. LEOPOLD: Thank you for your time, your Honor.

13 (Proceedings Concluded)

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15 CERTIFICATE OF OFFICIAL COURT REPORTER

16 I, Jeseca C. Eddington, Federal Official Court
17 Reporter, in and for the United States District Court Eastern
18 District of Michigan, appointed pursuant to provisions of Title
19 28, United States Code, Section 753, do hereby certify the
20 foregoing 97 pages are a true and correct transcript of the
21 proceedings had in the matter of IN RE FLINT WATER CASES, Case
22 No. 16-10444 held on July 26, 2017.

23
24 /s/ JESECA C. EDDINGTON
25 Jeseca C. Eddington, RDR, RMR, CRR, FCRR
Federal Official Court Reporter

8/14/2017
Date