

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

Sherrod, Teed, Vanderhagen, and Case No. 5:17-cv-10164-JEL-
Ware, KGA

Plaintiffs,

Hon. Judith E. Levy

v.

Flint Water Cases Bellwether I

VNA and LAN,

Defendants.

_____ /

**ORDER SETTING FORTH PROCESS FOR TESTIMONY OF
PLAINTIFFS' WITNESS GERALD AMBROSE**

Before the Court is Plaintiffs' second request to play the video deposition of Gerald Ambrose. Plaintiffs' request is granted subject to the procedure outlined in this order.

On March 21, 2022, the Court entered an order denying motions to quash filed by Governor Snyder (ECF No. 712), Gerald Ambrose, Howard Croft and Darnell Early (ECF No. 715), and Richard Baird (ECF No. 718). *Sherrod, Teed, Vanderhagen, and Ware v. VNA and LAN*, No. 5:17-cv-10164, 2022 WL 834009 (E.D. Mich., March 21, 2022) (“*Motions to Quash Order*”). Governor Snyder sought permission to file an interlocutory

appeal, which the Court granted on April 1, 2022. (ECF No. 762), and the other witnesses joined in that request. (ECF No. 754, No. 755, No. 756 and No. 758.)

At the close of proceedings on April 7, 2022, Plaintiffs requested permission to play the video deposition of Gerald Ambrose. According to Plaintiffs, it would be beneficial to the jury to hear Mr. Ambrose's testimony before the testimony of Rob Nicholas. Defendants argued that they would be prejudiced by not having Mr. Ambrose appear in person. In anticipation of possible action by the Sixth Circuit, the Court denied Plaintiffs' request.

Also on April 7, 2022, Governor Snyder filed his request for permission for leave to appeal with the Sixth Circuit (Case No. 22-0104). On April 11, Ambrose, Croft, Early and Baird filed a request for permission for leave to appeal, and on April 14, Ambrose filed a motion for expedited review. (Sixth Circuit Case No. 22-0108, Doc. 6) To this date, no action has been taken on these requests or the motion to expedite.

During the pendency of Governor Snyder's appeal with the Sixth Circuit, Plaintiffs have continued to put on their case with witnesses

presented out of their preferred order. The Court will not continue to require Plaintiffs to do so. Instead, Plaintiffs may present the recorded video deposition of Mr. Ambrose, subject to the following procedure:

On Tuesday, April 19, 2022, Plaintiffs may call Mr. Ambrose to the witness stand outside the presence of the jury at 8:30 am. The Court will confirm that Mr. Ambrose still intends to assert his Fifth Amendment right against self-incrimination as to every question. If Mr. Ambrose confirms that he intends to do so, the Court will find him unavailable under Federal Rule of Civil Procedure 804(a)(2). Plaintiffs may then play Mr. Ambrose's video deposition for the jury.

If the Sixth Circuit denies Mr. Snyder's motion for leave to appeal, Defendants will be permitted to recall Mr. Ambrose to the stand in person, at which time he may either assert his Fifth Amendment rights or answer questions within the scope the Court will set forth. If the Sixth Circuit grants permission for leave to appeal and affirms this Court's order, Defendants will be permitted to recall Mr. Ambrose to the stand in person and ask questions within the scope set forth by the Court.

If the Sixth Circuit reverses this Court's order, Defendants will also be permitted to recall Mr. Ambrose to the stand in person so that the jury

can hear Mr. Ambrose's intention to assert his Fifth Amendment right against self-incrimination. In any event, Defendants will not be deprived of having Mr. Ambrose testify or assert his Fifth Amendment right against self-incrimination in front of the jury.

IT IS SO ORDERED.

Dated: April 18, 2022
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 18, 2022.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager