

February 1, 2018

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

*In re* Flint Water Cases Case No. 16-10444

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TELEPHONIC CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

FEBRUARY 1, 2018

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*(Appearances continued)*

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P R O C E E D I N G S

THE COURT: This is in re Flint Water, case 16-10444. And before we have appearances for the record, I'm going to put you on hold.

(Pause In Proceedings)

THE COURT: Counsel? All right. So before we have appearances, the first thing I want to ask everyone to do is if you're not speaking, please place your phone on mute. Second is to state your name before you're speaking. It might come at a surprise to you that we can't tell who you are from your voices, especially when almost every single speaker in this case is a man, other than myself. So please state your name before speaking even if you've just spoken.

Speak loudly and clearly and slowly. And then this will come as a surprise, speak one at a time. And what I'm going to do is ask Jeseca to please speak up if she can't hear or understand what you're saying. So listen for her. And as soon as she starts speaking, just everyone stop. And I'll also -- if I start speaking, just please stop so that we can get things clearly on the record. So those will be the basic rules for participating today.

So could we have appearances for the plaintiffs?

MR. WASHINGTON: Val Washington appearing on behalf of plaintiff Joel Lee and the Anderson plaintiffs and as local counsel for the Gulla plaintiffs.

1 THE COURT: Thank you.

2 MR. LEOPOLD: Ted Leopold, co-lead counsel for the  
3 class.

4 THE COURT: Thank you.

5 MS. WEINER: Jessica Weiner, also counsel for the  
6 class plaintiff.

7 THE COURT: Thank you.

8 MR. SHEA: David Shea, counsel for class plaintiffs.

9 THE COURT: Okay. So that concludes the appearances  
10 for the plaintiffs? Or did anybody speak while the phone was  
11 on mute? Okay. So then I think this call relates primarily  
12 to Veolia. So appearances for Veolia, please.

13 MR. CAMPBELL: Sure, your Honor. This is James  
14 Campbell. And I represent the three VNA defendants named in  
15 the case.

16 THE COURT: Thank you.

17 MR. GRUNERT: Your Honor, this is John Grunert.  
18 That's G-R-U-N-E-R-T. I represent the three VNA defendants  
19 along with Mr. Campbell.

20 THE COURT: Okay. Thank you, so much. Any other --  
21 counsel, just a minute. The dog started chewing on a bone,  
22 and that's too distracting for hearing everybody, so we had to  
23 stop that. Okay. Any other counsel present?

24 MR. CAMPBELL: Philip Erickson for the LAN  
25 defendants.

1 THE COURT: Okay.

2 MR. KLEIN: Sheldon Klein for the City defendants.

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

5 THE COURT: Thank you. Anyone else? Okay.  
6 Fantastic.

7 So thank you, all, very much, for reading the  
8 practice guidelines and noting that if there is a discovery  
9 dispute, a non-dispositive dispute that arises between  
10 hearings and so on that you're required to call chambers,  
11 notify my case manager or law clerk, and we will attempt to  
12 set up telephone calls such as this one and see if the issue  
13 can be resolved without the need for written briefs and so on.

14 And just so you know how the process works, what we  
15 do is attempt to set up a time for the phone call when  
16 everyone is available. It's not a blind siding type thing of  
17 trying to find some time. You know, we do our best to make  
18 sure everyone can be present. But still to do it in an  
19 efficient timeframe so that the case can continue on the  
20 schedule that it's on. So that's the purpose of this.

21 And if it doesn't work in this case because there are  
22 too many lawyers and so on, then what we'll do is just try to  
23 schedule these issues for the next status conference. But in  
24 the event we can get the issue resolved today, I think it's  
25 worth trying to.

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7

1           So what I understand is there's a discovery dispute I  
2 believe relating to the jurisdictional discovery that's going  
3 on with VNA.

4           MR. LEOPOLD: Yes, your Honor. This is Ted Leopold  
5 on behalf of class counsel.

6           THE COURT: Okay.

7           MR. LEOPOLD: It was our discovery that was  
8 propounded to Veolia. And this goes to jurisdictional issues  
9 solely. It was both the request for production as well as a  
10 30(b)(6) witness. It is almost identical type of discovery  
11 that your Honor may recall that we did at your Honor's  
12 approval as relates to LAN, which that discovery was taken.

13           Parties worked everything out. We took the  
14 deposition. And we have proceeded forward moving  
15 expeditiously on that issue. And we wish to do the same thing  
16 here as it relates to Veolia only focusing on the U.S. entity  
17 because the parent is a french corporation and we think as  
18 opposed to doing nonparty discovery through the Hague and  
19 things of that sort, we would first go through Veolia USA who  
20 is a party defendant in this matter.

21           THE COURT: Okay.

22           MR. CAMPBELL: Your Honor, this is James Campbell.

23           THE COURT: Yes.

24           MR. CAMPBELL: And thank you, so much, for arranging  
25 this. We were the -- we called the Court and asked that this

1 be put on for this type of hearing after having read your  
2 practice guideline.

3 So before I get to what I'd like to say to start out  
4 with, I do have something that may come up during the call and  
5 it relates somewhat to your dog chewing on the bone.

6 THE COURT: Okay.

7 MR. CAMPBELL: I'm working from home and I also have  
8 a dog and I'm expecting an electrician to come to my house to  
9 do some work. When that happens, I expect the dog is going to  
10 go berserk. So I hope I'm not speaking when that happens.

11 THE COURT: Okay.

12 MR. CAMPBELL: So if you hear a dog, that's what's  
13 happened.

14 THE COURT: I appreciate knowing that.

15 MR. CAMPBELL: Thank you. So we put -- we asked that  
16 this be set up for the telephone conference based upon your  
17 Honor's guideline. And it was really done out of somewhat of  
18 an abundance of caution because you will recall at the very  
19 end of the January 11th status conference, this issue came up  
20 when Mr. Leopold advised that the plaintiffs wanted to take  
21 this type of discovery from my clients VNA, regarding personal  
22 jurisdictional jurisdiction issues related to -- I'm going to  
23 say the name of the company incorrectly, but Veolia  
24 Environnement. And it's VE I'll reference it as.

25 THE COURT: Okay.



1 MR. CAMPBELL: A nonparty to the case. VE is not a  
2 party to the case or any of the litigation at this point to my  
3 knowledge. And the distinction with the LAN and LAD, Leo A  
4 Daly, discovery is that Leo A Daly was named in the complaint  
5 and filed motions as to personal jurisdiction, raised that  
6 issue, and by agreement of the LAN and LAD parties and the  
7 plaintiffs, they agreed to the personal -- to discovery a  
8 deposition. And I think perhaps some document requests or  
9 other discovery related to that issue.

10 So there's a very important distinction between the  
11 two situations. VE is not a party to this litigation at this  
12 point, again to my knowledge. And I say that because I don't  
13 represent VE and there might be some case out there where  
14 they're named and I just don't know it.

15 THE COURT: Can you -- let me ask Mr. Leopold right  
16 now if he knows if VE is a party in any of the cases that he's  
17 aware of.

18 MR. LEOPOLD: Your Honor, VE --

19 THE COURT: This is the part where you say this is  
20 Ted Leopold.

21 MR. LEOPOLD: I'm sorry. This is Ted Leopold.

22 THE COURT: That's okay.

23 MR. LEOPOLD: Your Honor was asking me and I just  
24 assumed. I apologize. My fault. This is Ted Leopold. VE is  
25 not a party to the consolidated master complaint. However, it

1 is my understanding and Ms. Weiner, who's on the call, can  
2 correct me if I'm wrong, but I believe they were a party to  
3 one of the other class complaints early on and there was a  
4 tolling agreement that was entered into with the french  
5 company that ends in 2018 in relation to the tolling  
6 agreement.

7 And that tolling agreement was signed on behalf of  
8 the french company's counsel out of Chicago, Mark Ter Molen --  
9 that's T-E-R space capital M-O-L-E-N -- on their behalf. So  
10 we do have a tolling agreement. They were in the earlier  
11 suit. They knew early on that this was going to be an issue  
12 that we agreed would be fleshed out through jurisdictional  
13 type of discovery which we are attempting to do at this point  
14 in time.

15 THE COURT: Okay. So Mr. Campbell, do you want to  
16 continue? I just wanted to get that clarified.

17 MR. CAMPBELL: Yes, your Honor. This is James  
18 Campbell. Thank you. I will continue.

19 Although I know because I know that the tolling  
20 agreement has been put in place, I don't know if the terms of  
21 that tolling agreement are and I certainly don't know -- I  
22 cannot speak to what Mr. Leopold just said about anticipating  
23 jurisdictional discovery in the future following that tolling  
24 agreement. But I believe the importance of the issue is  
25 actually in the consolidated master or consolidated class

1 action complaint. VE is referenced as a nonparty to the  
2 litigation.

3 So I think it's quite clear that VE is not a party to  
4 the litigation. And despite whatever tolling agreement might  
5 be in place and whatever terms that is in place, I think the  
6 proper avenue here is for the plaintiff to name or seek to  
7 name VE so that VE has an opportunity to address these issues  
8 directly rather than to address them through my client for  
9 jurisdictional issues regarding a nonparty.

10 And here's the thing that I was going to request,  
11 Judge, with this hearing. The issue is sufficiently important  
12 and sufficiently complex that I would request as we talked  
13 about at the end of the July 11th status conference and having  
14 reviewed that, I think what was contemplated was this was to  
15 be put on the agenda for the February 20th status conference.

16 And your Honor had asked that the issue be I think  
17 teed up or ready for discussion at that point after  
18 appropriate briefing, legal analysis, and, you know,  
19 consideration by the parties. I do not believe that the issue  
20 is one that can or should be addressed or resolved in a  
21 proceeding like this one where we're talking about the issues,  
22 squaring up the issues. But neither side has an opportunity  
23 to put to your Honor in writing in a way that you can  
24 consider for the hearing.

25 THE COURT: Okay.

1 MR. CAMPBELL: So that's really what I wanted to put  
2 forth and to reiterate what we discussed at the status  
3 conference that we will be filing a motion -- I don't know how  
4 it would be styled -- to strike this discovery or to challenge  
5 its appropriateness.

6 There's a second aspect to this, your Honor --

7 THE COURT: Let me stop there just for a minute. So  
8 the issue now that you wish to brief and we can figure out  
9 whether it's a motion to quash or just what it is, but is  
10 whether this discovery regarding jurisdiction over VE is  
11 appropriate to be done as a nonparty or whether it should be  
12 conducted through a party, the current VNA defendants.

13 It will get done one way or another. We all know  
14 that. So is your question just which route it gets done?  
15 Does it go through the Hague and all of that as a nonparty or  
16 does it go through Veolia of North America? Is that it? I  
17 just want to make sure I understand part one of the issue.

18 MR. CAMPBELL: Sure. Your Honor, this is James  
19 Campbell and I followed your instruction, could you put it on  
20 mute, and I started discussing it on mute.

21 THE COURT: Okay. Thank you.

22 MR. CAMPBELL: So this is still James Campbell.

23 THE COURT: Thank you.

24 MR. CAMPBELL: And I think, your Honor, that is not  
25 fully correct. And this is why. I believe that the process

1 if it goes forth now is just going to be repeated when and if  
2 the plaintiffs seek to name VE. Because VE is not a party.  
3 Whatever is discovered now is going to be, I would imagine,  
4 challenged by the french company. And they're not a party.

5 So what takes place now is I would suggest going to  
6 be duplicated and is not going to achieve the goal that on  
7 some form of sufficiency that the plaintiffs are putting  
8 forth. But more importantly, the process, the procedure that  
9 needs to be put in place or should be put in place is this  
10 type of jurisdictional discovery. And we can -- this was part  
11 of the briefing that we'd like to do for your Honor, is really  
12 irrelevant to a nonparty. It doesn't go to anything that is a  
13 fact in issue because VE is not a party.

14 The procedure would be to add the party. VE could  
15 then file whatever motion that it chooses to filed. And I  
16 would anticipate I think in the circumstances they didn't have  
17 anything to do with Flint, to file their jurisdictional motion  
18 and some type of attack on the pleadings pursuant to the rules  
19 in the procedure. It would be that point that jurisdictional  
20 discovery may be controlling.

21 The Hague Convention issue is both a discovery  
22 convention or treaty as well as a process treaty. So I'm  
23 taking the discovery of VE and naming it as a party. I don't  
24 know -- I can't speak to whether or not that's appropriate.  
25 But adding them to the case, the process, the knowing process

1 is through The Hague Convention. So those would be the major  
2 points that I put on to it that this is -- it's inappropriate  
3 as against VNA because it's just going to get redone.

4 If the plaintiffs truly would seek to add VE, they  
5 should do that pursuant to whatever terms are in place on the  
6 tolling agreement, allow VE the opportunity to address it  
7 procedurally pursuant to the rules and the procedure, and at  
8 that point whatever jurisdictional discovery might be  
9 appropriate would be then in play. But it's well ahead of  
10 anything that is relevant at this point.

11 The other issue -- and let me just stop there.

12 THE COURT: Okay.

13 MR. CAMPBELL: That's the first issue, but there is  
14 something to get clear with your Honor.

15 THE COURT: Well, let me let Mr. Leopold respond to  
16 that argument.

17 MR. LEOPOLD: Thank you, your Honor. This is Ted  
18 Leopold. Yes. I have several comments. First on the  
19 procedural issue of this hearing, respectfully I'm a little  
20 confused. Because your rules call for this being sort of a  
21 hearing to obviate the necessity of filing papers and moving  
22 forward.

23 So I understood that we would be having essentially  
24 an oral argument on the baseline of these issues. That's just  
25 a procedural issue so I'm a little confused about Mr. Campbell

1 on that issue.

2 THE COURT: Let me respond to that. Mr. Campbell's  
3 absolutely right which is that the purpose of this is to see  
4 if we can obviate the need for further proceedings in writing  
5 or any other way. But if the issue cannot be resolved on the  
6 telephone either to both side's satisfaction or equal  
7 dissatisfaction sometimes, then I absolutely permit people to  
8 request leave to file a written motion. And I'll deny that  
9 request if it would be basically ridiculous to do that.

10 But and I haven't reached a decision yet about that.  
11 But I'd say 98 percent of the time we can resolve things on  
12 these phone calls, but not every time. And so I always leave  
13 open the possibility that they'll be briefing on a complicated  
14 or new kind of issue that I haven't addressed before and so  
15 on.

16 MR. LEOPOLD: Okay. Thank you, your Honor. I  
17 understand. And I understand the difference -- this is Mr.  
18 Leopold. Excuse me. Understand the differences and the  
19 appropriateness of needing to file some briefs to learn about  
20 the issues and/or educate all of us in the court. So I  
21 understand that.

22 THE COURT: Okay.

23 MR. LEOPOLD: In my view, this is a pretty  
24 straightforward issue. One of the things that I am also  
25 confused about, throughout Mr. Campbell's argument, he's

1 essentially -- although he is not counsel for the french  
2 company, he is arguing on behalf of the french company saying  
3 all the various things that we should do in order for the  
4 french company to come in and, quote, defend themselves.

5 If we were to -- I venture to say if we were to go  
6 right to the french company and begin to serve them, bring  
7 them into the suit and take discovery, we would be hearing the  
8 same things but on the opposite side saying we should have  
9 gone through the company that was in the case at the time, the  
10 American company, and taken some initial jurisdictional  
11 discovery first before going and suing the parent company.  
12 That's number one.

13 Number two, all this discovery is doing is  
14 jurisdictional discovery of the U.S. entity that is a named  
15 defendant in this case just as earlier the french company was  
16 a named defendant in another class case but we agreed to do a  
17 tolling agreement up until 2018 on all of these same issues  
18 about the nexus between the french company, the U.S. company,  
19 and their involvement in the Flint matter.

20 So this comes as nothing new. We only want to take  
21 discovery of the U.S. company as to and specifically of the  
22 documents and relationships and communications and involvement  
23 of the U.S. company working with and/or being controlled by or  
24 being directed by the french company. And that goes to roles  
25 and responsibilities, officers and directors, communication,



1 all the things the U.S. company had with the french company,  
2 which would be a baseline that we would need to establish  
3 anyway.

4 And I don't see the necessity of going through The  
5 Hague Convention waiting several, several months to get  
6 everything translated, going through all of that nonsense when  
7 we would have to go first through the U.S. company anyway to  
8 do the baseline jurisdictional discovery.

9 THE COURT: Okay. Thank you. So Mr. Campbell, I  
10 think I now know what issue number one is. You said there's  
11 issue number two.

12 MR. CAMPBELL: Sure. If I may, Judge, a brief  
13 rebuttal on that statement or no?

14 THE COURT: Sure. Go ahead.

15 MR. CAMPBELL: Okay. This is, I'm sorry, the last  
16 statement.

17 THE COURT: Okay.

18 MR. CAMPBELL: And the statement is from James  
19 Campbell. Thank you, your Honor. It's just not accurate to  
20 suggest that jurisdictional discovery of VE or any party or  
21 any entity in this situation, in a situation like this would  
22 have to go through the subsidiary company that are in the  
23 nature that are in the position of the VNA defendants here.  
24 That's just not accurate.

25 THE COURT: Mr. Campbell.

1 MR. CAMPBELL: And if I may -- yes.

2 THE COURT: What I heard is not that it must go this  
3 particular route, but that this is the route that Mr. Leopold  
4 and his clients wish to go, which is there is a current  
5 defendant, VNA, and he can ask questions that would relate to  
6 the relationship of your client to its parent. So I didn't  
7 hear him say this is a must sort of thing, but that this is  
8 the route that they wish to take.

9 But go ahead.

10 MR. CAMPBELL: I believe perhaps I misheard. That's  
11 what I heard the argument to be. And if it is as you put it,  
12 your Honor, then the need for the briefing that we're talking  
13 about to establish that that is irrelevant discovery for a  
14 nonparty in the like. And just one comment about The Hague  
15 Convention, whether or not any of this happened, The Hague  
16 Convention is going to be in place since VE would have to be  
17 served through the Hague.

18 And in terms of the timing of all of this, apparently  
19 the plaintiffs chose to enter into a tolling agreement with VE  
20 to delay or to not do anything about this until now. So  
21 visiting that decision on my client doesn't seem appropriate  
22 since it was the plaintiffs however long ago thought it to  
23 toll with VE. So that's all I wanted to say there, your  
24 Honor.

25 THE COURT: Okay.

1 MR. CAMPBELL: If I can continue?

2 THE COURT: Certainly.

3 MR. CAMPBELL: One of the reasons why I wanted to  
4 have this conference is to raise the issue, a separate issue  
5 regarding the discovery requests themselves. The issue of  
6 whether or not this should happen at all and some form of  
7 protective order or motion to strike or what we've talked  
8 about thus far would be the first step.

9 But there's also the second step of what these  
10 requests say, how the terms are defined, how those definitions  
11 relate to the scope of the discovery. And I simply disagree  
12 and would -- we need to have the opportunity, your Honor, to  
13 put to you or to meet and confer with the plaintiffs about the  
14 scope of this discovery, because it is simply not limited to  
15 the issues that are how Mr. Leopold described them.

16 And the type of discovery that was described in this  
17 hearing and at the January 11th conference, it goes well  
18 beyond that and goes into substantive type issues that are not  
19 limited to jurisdiction.

20 So on that score, we have not addressed that with the  
21 plaintiffs to try to make sure we are on the same page in a  
22 meet and confer type of situation on the discovery. If we  
23 can't reach an agreement regarding those issues, there would  
24 be a need to have one of these conferences regarding the  
25 actual request. And I suggest, your Honor, that that cannot

1 happen here because your Honor would have to have the  
2 discovery in front of her and to consider that if we brought  
3 to that point. And we're not to that point.

4 So what I wanted to do here and hoping to achieve is  
5 to make sure that the distinction between whether or not your  
6 Honor allows this discovery to go forth at all versus the  
7 actual scope of what has been put to us are two separate  
8 things. And you know, we have a serious concern about the  
9 scope. Thank you.

10 THE COURT: Thank you, Mr. Campbell. I agree that  
11 those are two separate issues. And what I'd like to do is  
12 take a short break and then I'm going to address the first  
13 issue. The second issue absolutely I think needs to start  
14 with what you're suggesting, a meet and confer between  
15 yourself and plaintiffs' counsel. And then if the scope of  
16 the discovery cannot be agreed upon, then I would certainly  
17 get involved with that.

18 But perhaps once we address the first issue, I can  
19 set forth my perspective on what the general, the big picture  
20 scope should be, which I think would be very limited to the  
21 jurisdictional personal jurisdiction and any -- I think part  
22 of the problem is any connection to this case, I don't think  
23 you even need to get there. It's just the relationship that  
24 your client might have with its parent.

25 So let me put you on hold. I want to look at the

1 rule a little bit more carefully and then I'll be right back  
2 with you.

3 (Pause In Proceedings)

4 THE COURT: Counsel, let me ask Mr. Leopold a  
5 question to clarify. As I understood this at the beginning,  
6 you indicated that there's a request for production and a  
7 30(b)(6) deposition notice. Now that -- those are directly to  
8 VNA, right?

9 MR. LEOPOLD: This is Mr. Leopold. That is correct  
10 to the existing Veolia defendant, the U.S. entity.

11 THE COURT: Okay. Now, are you thinking of Viola  
12 Lewis? I think it's Veolia.

13 MR. LEOPOLD: Veolia. I'm sorry.

14 THE COURT: Okay. All right. That's all right.

15 MR. LEOPOLD: I've known a lot of Violas. Veolia.  
16 Correct.

17 THE COURT: Okay. Here's what I think can be done in  
18 today's call. If I look at Rule 11, I am reminded that a  
19 plaintiff can't name a defendant without an inquiry reasonable  
20 under the circumstances. And I don't know why VE is not  
21 currently a defendant. But it occurs to me that one reason  
22 may be there's some question or doubt about personal  
23 jurisdiction or about the Court's jurisdiction over this  
24 defendant. And a reasonable inquiry must be undertaken in  
25 order to satisfy the requirements of Rule 11 of the Rules of

1 Civil Procedure.

2 And what I'm hearing in this call is that the inquiry  
3 that's being requested is of a current defendant, VNA, and it  
4 relates to that defendant's relationship with its parent  
5 company, VE. That's what I had understood in court in  
6 January. And that's what is being confirmed today. And I  
7 think that is very reasonable, should take place, and is not a  
8 complicated legal issue that requires briefing for a decision  
9 to be made.

10 Now, if what's, in deed, being requested is that the  
11 discovery is directly of a nonparty that where there is a  
12 tolling agreement, where there is counsel in Chicago that has  
13 not had notice of this or so on, then it would be up to that  
14 VE to file some motion to quash if it had been served with a  
15 deposition notice.

16 So I simply don't think that this requires further  
17 briefing. And it certainly wouldn't be the standard I set  
18 forth before Mr. Campbell. I don't want to imply that this  
19 would be a ridiculous thing to brief. It doesn't get to that  
20 level by any means. But I'm failing to see how I could be  
21 further informed by a brief on this issue. But I'll give you  
22 one chance to say to me whether I've gotten something wrong  
23 about this.

24 MR. GRUNERT: Your Honor, this is John Grunert.

25 THE COURT: Okay.

1 MR. GRUNERT: May I interject a comment or two? And  
2 I had an e-mail from Mr. Campbell encouraging me to feel free  
3 to do that.

4 THE COURT: Okay.

5 MR. GRUNERT: So I'm not talking over him. So long  
6 as you have no objection to hearing from a second lawyer for  
7 the VNA defendants.

8 THE COURT: No. I frequently hear from two or three  
9 or four or more plaintiffs' counsel on a particular issue. So  
10 there's no problem at all.

11 MR. GRUNERT: I guess I have two comments. First of  
12 all, this really is a legal issue that I think is answered not  
13 by Rule 11 but by the language of Rule 26B itself. That  
14 language as it was amended in 2015 specifically says that the  
15 scope of discovery is that parties may attain discovery  
16 regarding any non privileged matter that is relevant to,  
17 quote, any party's claim or defense and proportional to the  
18 needs of the case.

19 And that language just a couple of years ago  
20 eliminated the broader language saying a court, in its  
21 discretion, could permit discovery related to the subject  
22 matter of the litigation generally.

23 And beyond that, there's the language in Rule  
24 26(b) (2) that says on motion or its own, the court must limit  
25 the frequency or the extent of discovery proposed if it

1 determines that, quote, the proposed discovery is outside the  
2 scope permitted by Rule 26(b)(1). And that language was added  
3 to the rule because the drafters of the rule perceived the  
4 need to emphasize the need for limiting discovery to the scope  
5 defined in Rule 26(b)(1).

6 So there is no defense at this time in the case based  
7 on personal jurisdiction.

8 THE COURT: You know what, Mr. Grunert, you make a  
9 very good point. So let me ask Mr. Leopold -- if you don't  
10 mind me cutting you off. Because that sort of sharpens the  
11 focus of this conversation to an existing party's claim or  
12 defense.

13 Mr. Leopold, how does this relate to a party's claim  
14 or defense? I guess it's your claim, but you don't have a  
15 claim against a party in this discovery dispute.

16 MR. LEOPOLD: That's correct, your Honor. This  
17 discovery -- well, I think -- this is Mr. Leopold. I'm sorry.

18 THE COURT: Yes.

19 MR. LEOPOLD: So I think we have now dovetailed into  
20 -- the road has sort of separated a little bit. I believe now  
21 we are talking -- which I think would have been the  
22 appropriate avenue to talk initially through a meet and confer  
23 about the scope of the discovery. And then if parties  
24 couldn't agree, we would come to the Court. I think if I  
25 understand what counsel is referring to Rule 26.



1 THE COURT: I don't think that's what he's saying. I  
2 think he's saying that there is not -- I don't have the  
3 authority under the Rules of Civil Procedure to order  
4 discovery that doesn't relate to a party's claim or defense.

5 MR. LEOPOLD: Correct. And that may very well be  
6 true. But we are not -- we are not looking to bootstrap the  
7 VE discovery through the U.S. entity of Veolia. We are  
8 seeking direct discovery against Veolia for the actions or  
9 inactions, communications, etcetera, that Veolia U.S. had  
10 and/or didn't have with its parent.

11 And we believe that we have the right to take party  
12 discovery on a limited issue related to the nexus between  
13 those two entities to then, depending on the outcome of that  
14 discovery, make appropriate claims of either piercing the  
15 corporate veil, whatever it may be, against the parent for the  
16 actions that were directly aligned with overseeing the U.S.  
17 entity's actions as relates to the Flint matter.

18 THE COURT: Can you --

19 MR. LEOPOLD: So I don't see how there can be any  
20 dispute that we do not have a right to take a party's  
21 discovery about its actions or inactions it had with its  
22 parent and its alleged bad acts of the incident in question.

23 THE COURT: Can you just identify to me the claim or  
24 defense that this discovery would go to?

25 MR. LEOPOLD: The claim or defense would be that the

1 U.S. entity worked hand in hand or alongside with its parent  
2 company in making bad decisions that led to problems in the  
3 Flint matter.

4 THE COURT: And is that in --

5 MR. LEOPOLD: And that these decisions were made in  
6 either connection with or solely by the french parent.

7 THE COURT: Is that alleged in the complaint?

8 MR. LEOPOLD: It is at this point because I believe  
9 acting in good faith we needed to build a foundation for those  
10 claims, which is what we're attempting to do.

11 THE COURT: I understand that.

12 MR. GRUNERT: May I respond?

13 MR. LEOPOLD: Excuse me. This is Mr. Leopold. And  
14 again they're saying had we come out of the box and made all  
15 these claims, we would have a difficult time without doing the  
16 discovery and/or acting in good faith to broach these issues  
17 in a complaint.

18 THE COURT: Yeah. Mr. Grunert, I'll give you a  
19 chance in just a moment. But when you speak, can you address  
20 the following, which is that I think Mr. Leopold is having a  
21 difficult time setting forth an existing claim or defense that  
22 this discovery would go to.

23 But that said, if this case -- you know, when we're  
24 further along down the road and there's a 30(b)(6) deposition  
25 of VNA, wouldn't it be appropriate for Mr. Leopold to ask

1 questions regarding your client's relationship to its company  
2 if your client has a defense of the parent is responsible, not  
3 us, or something of that nature?

4 MR. GRUNERT: This is John Grunert speaking. I don't  
5 think that there is any question that when merits based  
6 discovery against parties to the case perceives that if there  
7 are contentions by the defendant that they did what they did  
8 because they were directed to do it or if there are issues  
9 related to what the party to the case did and why they did it,  
10 that there can be full questioning about it.

11 But when Mr. Leopold raised this issue on January  
12 11th and when he started off discussing the issue today, he  
13 said it was strictly jurisdictional discovery. And now he is  
14 no longer talking about jurisdictional discovery. He is  
15 talking about merits based discovery related to the existing  
16 defendants. And that is not what you indicated at the status  
17 conference he was permitted to do.

18 You indicated that he could serve narrowly tailored  
19 discovery focused on jurisdiction. So I return to the  
20 proposition that if what he is talking about is taking  
21 jurisdictional discovery, then it does not relate to any claim  
22 or defense in the case. And --

23 THE COURT: Then let me ask you this, let me ask you  
24 this, which is one thing I'm contemplating right now is  
25 permitting five pages from both sides on whether the Court has

1 discretion to do this. And but let me ask you whether -- what  
2 will happen is that Mr. Leopold will then go through The Hague  
3 Convention to get the testimony he's seeking. He'll also be  
4 able to ask these questions later in this case.

5 So this is going to get done one way or another. And  
6 so my question is if the purpose of this endeavor on behalf of  
7 VNA is to simply slow that process down, you have every right  
8 to do that. You're representing your client zealously and  
9 that's how it works.

10 But if you can see your way through to agreeing to  
11 some limited inquiry on this jurisdictional question, which I  
12 think you pointed out is not related to an existing claim or  
13 defense, then that would surely be a positive development if  
14 that's something that your client can agree to do knowing full  
15 well that you're not setting aside your duty of zealous  
16 representation because it's going to get done one way or  
17 another. It's just a matter of when. Yeah. Mr. Grunert?

18 MR. GRUNERT: It's John Grunert again. First of all,  
19 I certainly agree that there should have been discussions with  
20 Mr. Leopold to try to reach a resolution on this subject as  
21 well as the more granular subject that you have deferred for  
22 now. I agree with that.

23 I don't know what agreement would transpire from  
24 those discussions because they haven't occurred. But I do  
25 want to say that the position we're taking, the position VNA

1 is taking now is not reflective of a desire to slow things  
2 down. I think that if you review the filings we've made over  
3 time, that is not a position we have taken.

4 We have taken, frankly, just the opposite position  
5 that we want to get things moving. But we want to get things  
6 moving in a fair way that permits orderly discovery taken by  
7 both sides against both sides. And that's not what's  
8 happening here.

9 Mr. Leopold is talking about taking discovery that  
10 investigates our clients in a way that is going to end up  
11 being abusive for us because we're going to need to produce  
12 witnesses to testify on a limited subject, that witnesses will  
13 then have to come back for further depositions.

14 If what Mr. Leopold really wants to investigate is  
15 what the VNA defendants did and why they did it, then that  
16 should be part of the general discovery that I think you are  
17 going to permit to begin quite soon.

18 THE COURT: I understand that.

19 MR. LEOPOLD: Your Honor, this is Ted Leopold.

20 THE COURT: Yes.

21 MR. LEOPOLD: Can I just make one minor -- or  
22 substantive but minor comment? As the Court asked me earlier  
23 about the allegations, and I'm reminded by Ms. Weiner, that in  
24 paragraphs 45 through 49 of our consolidated amended  
25 complaint, we specifically talk about the nexus and

1 connections between the parent and the U.S. entity. So those  
2 claims are in that complaint as well.

3 THE COURT: Oh, okay. I'm going to look at that.  
4 Because that could change the whole outcome here. I'm going  
5 to put you all on hold while we pull up the complaint.

6 MR. LEOPOLD: Sure. Again, it's paragraph 45 through  
7 49.

8 THE COURT: Thank you.

9 (Pause In Proceedings)

10 THE COURT: Counsel? Okay. I've read paragraphs 45  
11 through 49. And those paragraphs identify VE as having a  
12 relationship with VNA and control and so on. But what I don't  
13 see -- that's in the factual background. And I don't see  
14 actual claims regarding that relationship having led to the  
15 conduct that's being disputed in the complaint.

16 So what I'm going to do is permit briefs up to ten  
17 pages on whether the Court has jurisdiction to order limited  
18 discovery of a current party that may hold information  
19 regarding the role of a nonparty that is identified in the  
20 complaint.

21 MR. GRUNERT: Thank you, your Honor. This is John  
22 Grunert. Thank you, your Honor.

23 THE COURT: Sure. And so what you'll notice about  
24 what's being permitted here is that it's simply limited  
25 discovery of a current party. And but it's related to whether

1 that party has information regarding the role of a nonparty  
2 that's identified in the complaint. And I think it probably  
3 has to go further than just whether VNA has information but  
4 whether that information can be the subject of discovery  
5 that's ordered by the Court.

6 MR. LEOPOLD: Your Honor, this is Mr. Leopold. Can I  
7 ask the Court one inquiry, whether the Court wants any  
8 briefing on the issue, is counsel made the, I guess, argument  
9 that it was a quote, merits discovery. And as we've talked  
10 about at several of the hearings, often times, clearly in this  
11 case, merits and class discovery are going to sort of lay on  
12 top of each other.

13 Does the Court need briefing on that issue? Or if  
14 the Court rules that it has the discretion to make this  
15 ruling, we'll be allowed to, with appropriate agreement and/or  
16 court intervention, be able to pursue the discovery that we  
17 proposed?

18 THE COURT: This will be just the step one issue, the  
19 first issue identified here. And then what I will request is  
20 if the discovery is ordered that there be a meet and confer to  
21 determine whether there are any appropriate limitations. So  
22 we'll deal with that next if needed.

23 MR. LEOPOLD: Okay. That's fine. Thank you, your  
24 Honor.

25 MR. GRUNERT: Thank you, your Honor.

1 MR. CAMPBELL: Your Honor, this is James Campbell.  
2 When would you like these briefs and will they be presented  
3 and argued at the February 20th status conference?

4 THE COURT: Okay. Good question. I would like these  
5 briefs by Friday -- well, let's go Monday, February 12th. And  
6 the way I am thinking about it, you would just both submit  
7 them. But if you want to -- so we'll just do it Monday,  
8 February 12th. And then we'll have argument on it at the  
9 20th. So any reply and response can be provided orally on the  
10 20th.

11 MR. CAMPBELL: Your Honor, James Campbell. Thank  
12 you, very much.

13 THE COURT: You're welcome. And I'll look forward to  
14 seeing everybody again on the 20th.

15 MR. WASHINGTON: Judge, this is Val Washington.

16 THE COURT: Yes.

17 MR. WASHINGTON: I've been waiting patiently for the  
18 last hour listening back and forth and I'm not sure why I'm on  
19 this call. I want to be sure that I'm not expected to do  
20 anything moving forward on this narrow issue. This clearly  
21 applies to class counsel, which is great, as well as Veolia  
22 VNA as well as Veolia VE. I'm just --

23 THE COURT: Mr. Washington?

24 MR. WASHINGTON: Yes, Judge.

25 THE COURT: The reason you're on the call is because



1 you dialed into the call. And I just say it because what the  
 2 docket was -- what we attempted to communicate in the terms  
 3 the only sort of way we have to do it is to put sort of things  
 4 in red with double -- with bold and so on to try to indicate  
 5 that this is a limited issue to Veolia and so on.

6 But no, you're not -- but in answer to your question,  
 7 there's no expectation that you participate in this briefing  
 8 if you have not also sent the same discovery to VNA.

9 MR. WASHINGTON: Val Washington again, Judge. I have  
 10 not. I will not. Thank you for the clarification.

11 THE COURT: Sure. Thank you. So if there's nothing  
 12 further, then we'll conclude the call and see you all on the  
 13 20th.

14 (Proceedings Concluded)

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 17 CERTIFICATE OF OFFICIAL COURT REPORTER

18 I, Jeseca C. Eddington, Federal Official Court  
 19 Reporter, do hereby certify the foregoing 33 pages are a true  
 20 and correct transcript of the above entitled proceedings.

21 /s/ JESECA C. EDDINGTON  
 22 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

2/12/18  
 Date

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