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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FLINT WATER CASES Case No. 5:16-cv-10444-JEL
(Consolidated)

_____ /

STATUS CONFERENCE
BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE
Detroit, Michigan - Tuesday, December 10, 2019

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25 (Proceedings reported by mechanical stenography;
transcript produced on a CAT system.)

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1 Tuesday, December 10, 2019

2 2:21 p.m.

3 -- --- --

4 THE CLERK OF THE COURT: All rise. The United States
5 District Court for the Eastern District of Michigan is now in
6 session. The Honorable Judith E. Levy presiding.

7 Now calling the Flint Water Cases.

8 THE COURT: Welcome. Please be seated.

9 We are now waiting for my computer to configure. So
10 that may take just a moment. But during the time that my
11 computer is logging on, why don't we start with appearances,
12 beginning in the jury box.

13 MS. GREENSPAN: Deborah Greenspan, Special Master.

14 MR. WASHINGTON: May it please the Court. Val
15 Washington on behalf of Plaintiff Lee and the Anderson
16 plaintiffs.

17 MR. BLAKE: Good afternoon. Jason Blake liaison to
18 the state court class action plaintiffs.

19 MS. BINGMAN: Teresa Bingman representing putative
20 class plaintiffs.

21 THE COURT: Thank you.

22 MS. HANSEL: Sarah Hansel also representing the
23 putative class plaintiffs.

24 MR. CONNORS: Jordan Connors from Susman Godfrey for
25 putative class plaintiffs.

1 MR. GOODMAN: Bill Goodman on behalf of the class
2 plaintiffs and local counsel for the Marble family. And, Your
3 Honor, I have the lead counsel with the marble case with me.

4 THE COURT: Oh, good.

5 MS. TSAI: Good afternoon, Your Honor. Cindy Tsai,
6 T-s-a-i, on behalf of the Marble family.

7 MS. LINDSEY: Good afternoon, Your Honor. Cynthia M.
8 Lindsey on behalf of punitive class plaintiffs.

9 THE COURT: Thank you.

10 MR. STERN: Your Honor, Cory Stern as liaison counsel
11 for individual counsel.

12 MR. SHKOLNIK: Good afternoon. Hunter Shkolnik on
13 behalf of -- liaison on behalf of individual plaintiffs as
14 well.

15 MR. PITT: Michael Pitt for class plaintiffs.

16 MR. LEOPOLD: Good afternoon. Ted Leopold, punitive
17 class counsel.

18 MR. KIM: Your Honor, assistant state attorney,
19 Bill Kim, for the city of Flint.

20 THE COURT: Thank you.

21 MR. BERG: Your Honor, Rick Berg also for the city of
22 Flint.

23 THE COURT: Okay. Thank you.

24 MR. RUSEK: Good afternoon, Your Honor. Alexander
25 Rusek on behalf of Howard Croft.

1 MS. WEINER: Good afternoon. Jessica Weiner on behalf
2 of the class plaintiffs.

3 MR. LANCIOTTI: Good afternoon, Your Honor. Patrick
4 Lanciotti for individual plaintiffs.

5 MS. DEVINE: Alaina Devine for the VNA defendants.

6 MR. MASON: Wayne Mason on behalf of the LAN and LAD
7 defendants.

8 MR. ERICKSON: Philip Erickson on behalf of the LAN
9 and LAD defendants.

10 MR. MASON: Good afternoon, Your Honor. James Mason
11 for the Washington plaintiffs.

12 THE COURT: Okay. Thank you.

13 MR. THOMPSON: Good afternoon, Your Honor. Craig
14 Thompson on behalf of the defendant, Rowe Professional.

15 MR. MacDONALD: Brian McDonald on behalf of Defendant
16 McLaren.

17 MR. KLEIN: Sheldon Klein for the City of Flint.

18 MR. BARBIERI: Charles Barbieri for Patrick Cook and
19 Michael Prysby.

20 MR. WILDER: Marvin Wilder on behalf of the individual
21 plaintiffs, Savage, Kirkland and Gist.

22 THE COURT: Thank you.

23 MR. KUHL: Richard Kuhl on behalf of State defendants.

24 MR. JENSEN: Larry Jensen on behalf of Hurley Medical
25 Center, Nora Birchmeier and Ann Newell.

1 MR. MARKER: Good afternoon, Your Honor. Christopher
2 Marker here on behalf of Defendant Michael Glasgow.

3 MR. ZEINEH: Good afternoon, Your Honor. Edwar Zeineh
4 on behalf of Daugherty Johnson.

5 MR. DAWSON: Good afternoon, Your Honor. Don Dawson
6 on behalf of plaintiffs, Brown and Rogers as well as individual
7 plaintiffs. State action.

8 MR. WOLF: Good afternoon, Your Honor. Barry Wolf on
9 behalf of Gerald Ambrose.

10 MR. GALVIN: Good afternoon, Your Honor. Joseph
11 Galvin on behalf of Defendant Jeff Wright.

12 MR. WISE: Good afternoon, Your Honor. Matt Wise also
13 on behalf of Jeff Wright.

14 MR. FAJEN: James Fajen on behalf of Adam Rosenthal.

15 MR. MARTINEZ: Good afternoon, Your Honor. Cirilo
16 Martinez on behalf of the class.

17 MR. MATEO: Good afternoon, Your Honor. T. Santino
18 Mateo on behalf of Darnell Earley.

19 MR. PERKINS: Good afternoon, Your Honor. And good
20 afternoon to your staff. May it please this Honorable Court
21 My name is Todd Russell Perkins appearing on behalf of
22 Mr. Earley also.

23 MR. SEGARS: Darryl Segars on behalf of the Alexander
24 plaintiffs.

25 MR. SANDERS: Good afternoon. Herb Sanders on behalf

1 of the Alexander plaintiffs.

2 MS. FLETCHER: Good afternoon, Your Honor. Shayla
3 Fletcher on behalf of Alexander plaintiffs.

4 MS. SHEA: Ashley Shea on behalf of the class.

5 THE COURT: Thank you. Okay.

6 Well, welcome to everybody and I would like to
7 especially thank Darlene May who is filling in now that Jessica
8 is preparing for her baby's arrival.

9 So, thank you, Darlene.

10 And in light of the fact that this is the first Flint
11 Water in-court conference that Darlene is taking down, I ask
12 that you pay special attention to coming forward to speak from
13 the microphone, state your name and your client before you
14 start speaking so that we can have a -- that the record be
15 accurate.

16 We have one or two or three people on the telephone.

17 THE CLERK OF THE COURT: That might be just one.

18 THE COURT: And here's the situation for the
19 telephone, as Bill tries to help us with that.

20 Which is that it is my absolute preference not to have
21 people in court on the telephone in that we don't -- I can't
22 see when you want to speak. So it's just untenable with a
23 hearing of this size to have a telephone participation. But
24 there were two sort of more or less emergencies that came up
25 today with a special request from counsel to appear by

1 telephone. I informed them that they could make an appearance,
2 listen, but not speak during the hearing.

3 But we'll find out if that's going to work at all.

4 (Pause to connect telephone conference.)

5 THE COURT: This is time well spent because I'm still
6 trying to log on to my computer.

7 (Call not connected.)

8 THE COURT: Well, we'll just have to keep going.

9 We're trying to get them on the court's telephone.
10 The electronic system here is not what one might hope for.

11 But I do want to welcome everyone to the status
12 conference. And I think it's worth noting that at this point
13 these cases, although it may seem to an outside observer that
14 things are limping along at a very slow pace because it is now
15 about to be the year 2020 and we haven't had a trial, we don't
16 have a jury, we don't have a judgment in the case, I think it
17 is worth noting that counsel on all sides of these cases are
18 working, most likely, day and night and weekends and holidays
19 to ensure that the case is going forward, discovery is in full
20 tilt with depositions going all day, almost every business day.
21 I don't know about weekends and holidays for the depositions.

22 That although these conferences are about every five
23 or six weeks, there's some way in which I'm working on this
24 case reading motions, doing the research required to make
25 decisions. But, undoubtedly, everybody in this room is working

1 far harder than I am on it in that the case is incredibly
2 complicated and it's going on many levels at one time. So I
3 just want to acknowledge that and let you know that I
4 appreciate the work that's going into it. And I think it will
5 all pay off that the work is thorough and careful. So that
6 ultimately when we do get to whether -- however, the cases get
7 resolved, that the resolution is fair to everyone involved.

8 So with that, we do have an agenda set. And the first
9 issue was one that I believe has been resolved, but I still
10 want to ensure that. And it was a request from the VNA, Veolia
11 North America defendants, to discuss scheduling specifically of
12 depositions related to Mr. Cook and Mr. Prysby.

13 And I think Ms. Devine, we had -- for those who were
14 not here earlier, we had a conference in chambers to try to do
15 some problem solving and working out of smaller issues in the
16 case. And this is one thing that Ms. Devine informed me was
17 probably resolved.

18 MS. DEVINE: Thank you very much, Your Honor. Good
19 afternoon again. That is correct. I have been conferring with
20 Attorney Barbieri.

21 THE COURT: Alaina Devine on behalf of ...

22 MS. DEVINE: On behalf of the VNA defendants. I
23 apologize.

24 THE COURT: Okay.

25 MS. DEVINE: I have been conferring with Attorney

1 Barbieri on this issue and I believe it is one that is going to
2 be resolved short of bringing it before Your Honor.

3 THE COURT: Okay. And Mr. Barbieri, that's your
4 understanding as well?

5 MR. BARBIERI: Your Honor, Charles Barbieri for
6 Patrick Cook and Michael Prysby. Counsel's correct in
7 representing that we are trying to resolve it. And I think if
8 we do not, we are of the understanding that it could be brought
9 to the status conference -- or the next discovery conference
10 next Friday.

11 THE COURT: Correct. So what you mean by that is that
12 you would inform me by Friday that it's needed. The next
13 discovery telephone conference call is set for Wednesday of
14 next week, which is the 18th, at 2:00 p.m.

15 MR. BARBIERI: That's what I have down, Your Honor.

16 THE COURT: Okay. Thank you.

17 Okay. So the next issue on here is just a general
18 discovery coordination. There's a couple of things I want to
19 say there. And one is that the state court litigation; that
20 is, Flint Water state court litigation, that had been
21 previously assigned to Judge Ewell is now reassigned. He is
22 planning his retirement in just a couple of weeks and it has
23 been reassigned to Judge Farah. F-a-r-a-h, I believe.

24 I've had an opportunity to meet with Judge Farah for a
25 couple of hours last week and he plans to be here for the next

1 Flint Water status conference and to assist in adjudicating any
2 issues that he has in his case that are also here in this case.
3 So that that can be done in a cooperative and consistent
4 manner. So it's my expectation that there will be in the
5 future more closer coordination between the federal and state
6 litigation that could assist in keeping these cases on track
7 and keeping them moving productively.

8 The other issue with discovery coordination is it was
9 reported to me in our conference in chambers that there is some
10 need for some additional time at some of the depositions. We
11 currently have a deposition protocol that was carefully
12 negotiated, but it was negotiated before the first deposition
13 really took place. So experience with those depositions has
14 proven that it may need to be tweaked. So for those
15 depositions that are scheduled before December 20th, if needed,
16 there will be an additional hour allocated to plaintiffs and an
17 additional hour allocated to defendants.

18 And there will be a briefing schedule for how to
19 address individual witnesses where one side or the other needs
20 more time. And it was the Veolia defendants who are seeking
21 this in the first instance. So their brief will be due Monday,
22 December 23rd and any responsive briefs due the 30th. The
23 expectation is that I will make a decision before the next
24 deposition after that, which is Monday, January 6th.

25 But in thinking about it in the elevator coming down

1 here, I would just say to the parties that this may not need to
2 happen for all witnesses. It may be that there are some
3 witnesses that you can tell looking ahead as you review the
4 documents, Answers to Interrogatories, anything else you're
5 doing to prepare for the deposition, that you know you won't
6 have enough time. And so I would just suggest that whatever
7 resolution you propose, Ms. Devine, in your side of this or
8 those who respond, that you try to focus on the narrow
9 situations where you're going to need more time than is already
10 allocated. And if at all possible, I beg of all of you to try
11 to come to an agreement on how this can be handled.

12 And to the extent it helps to have guidance from the
13 Court, my perspective is that you can't exhaust these witnesses
14 to the point where they can't think and can't answer honestly
15 and accurately. But on the other hand, they can rest up before
16 they get there and try to get through this. And it's my -- I
17 believe it will be more helpful to the process to have answers
18 rather than to not to have answers to questions.

19 So to the extent you're trying to decide does Levy, is
20 she ever going to agree to a third day of depositions, if you
21 all can agree on it, I think that's the best approach and I
22 would certainly agree to a third day to amend the protocol for
23 a limited number of witnesses. Because what we're after, after
24 all, is the truth of what these witnesses have to say. And if
25 it's going into the night, they're exhausted, they can't answer

1 questions accurately, I would just rather have another day of
2 depositions and get it done properly.

3 So is there anything else on that issue?

4 Okay.

5 All right. Now what we're up to is I have motions to
6 dismiss in Alexander versus Flint and Chapman versus Snyder.
7 And I want to take Chapman first because it's my understanding
8 that in the Chapman case that Veolia and LAN reached agreement
9 with plaintiff's counsel to dismiss the RICO count. Do I have
10 that correct?

11 MR. ERICKSON: Yes, Your Honor.

12 THE COURT: That's Mr. Erickson on behalf of LAN.

13 Who is here for Chapman plaintiffs? Is it Mr. Cuker?
14 I didn't recall him saying he was here. Is anyone here for the
15 Chapman Plaintiffs?

16 (No response.)

17 THE COURT: Well, then, Mr. Erickson or Ms. Devine, I
18 received stipulations that the plaintiffs were -- and they're
19 taken care of.

20 MR. ERICKSON: Philip Erickson for the LAN defendants.

21 Your Honor, just very briefly, we reached an agreement
22 with Mr. Cuker and he agreed to dismiss the claims of RICO
23 against us and then we agreed not to impose a motion for leave
24 to amend. And he has filed an amended complaint. So I don't
25 know whether that's been filed by the court or received on the

1 docket, but our intent is to file either an answer or a renewed
2 motion, if there are other counts that we have to address by
3 next Monday, December 16th.

4 THE COURT: Okay. Let's assume that in this unusual
5 circumstance, the complaint is being shrunk instead of
6 expanded. And if the complaint were adding counts -- at least
7 that's how I understand it. If the complaint were adding
8 counts, certainly there would need to be leave of court to do
9 that.

10 To the extent that what it's doing is sort of
11 perfecting the complaint so that it is suing specific
12 individuals or defendants over a more limited set of claims, I
13 don't have a problem with that being filed. So I'll need to
14 check the docket. I'm not on the docket right now.

15 MR. ERICKSON: And we'd be happy to rely on our prior
16 briefing, but I do need to take a look at the amended complaint
17 to make sure that there is nothing new that was changed. I
18 don't think there is.

19 THE COURT: I'm happy for you to rely on the existing
20 brief, but if you would file a one-pager telling me that that's
21 what you're doing.

22 MR. ERICKSON: Then that's what we'll do, if that's
23 what we decide to do.

24 THE COURT: Okay. And the issue was whether they had
25 sued the real party in interest. That's what the remaining

1 issue is?

2 MR. ERICKSON: Yes. We had argued that they hadn't
3 properly pled the real party in interest in their original
4 complaint.

5 THE COURT: Correct.

6 MR. ERICKSON: And they have sought to cure that in
7 the amendment. And, again, I haven't done a thorough review of
8 the amended complaint yet, but we will be doing that before
9 next Monday.

10 THE COURT: Okay. So what I understand is that the
11 Chapman plaintiffs filed the complaint, but they didn't do it
12 with a motion telling us what they were doing and why they were
13 doing it.

14 So, Mr. Stern or Mr. Shkolnik, can you let the Chapman
15 plaintiffs know? I need a motion to amend. I can't just
16 suddenly have new complaints show up, new amended complaints at
17 this stage of the litigation without some signaling of what is
18 the purpose here, what's being done and why.

19 MR. SHKOLNIK: Your Honor, Hunter Shkolnik. We'll be
20 in contact with Mr. Cuker and relay your thoughts and get this
21 corrected.

22 THE COURT: Okay.

23 MR. SHKOLNIK: And report back by Friday. We'll make
24 sure he takes proper steps.

25 THE COURT: Okay.

1 MR. SHKOLNIK: Thank you.

2 THE COURT: Okay. Thank you.

3 Ms. Devine?

4 MS. DEVINE: Alaina Devine for the VNA defendants.

5 Your Honor, a similar situation --

6 THE COURT: Talk a little more slowly please.

7 MS. DEVINE: We did reach out to Attorney Cuker on
8 this issue and he did confirm that the only allegation against
9 the VNA defendants that remains is one for professional
10 negligence. We have not filed a stipulation to the Court to
11 that effect. It's our intention, if the Court accepts the
12 amended complaint, that we would answer that complaint.

13 THE COURT: Okay. Thank you.

14 MS. DEVINE: Thank you, Your Honor.

15 MR. SHKOLNIK: Your Honor, before we move on, would it
16 be appropriate if we had Mr. Cuker and the defendants enter
17 their stipulations so ordered by the Court to avoid a motion to
18 accept the amended complaint or is it deemed accepted now?

19 THE COURT: What I understood from Mr. Erickson is
20 that he didn't want to stipulate to the amended complaint. He
21 wasn't going to oppose it. So let's just get a --

22 MR. SHKOLNIK: Okay. I'll tell him motion's on file.

23 THE COURT: Yeah.

24 MR. PERKINS: May I?

25 THE COURT: Certainly.

1 MR. PERKINS: Good morning, Your Honor. May it
2 please the Court. Todd Russell Perkins appearing on behalf of
3 Mr. Earley. I did speak with Mr. Ambrose's attorney, who is
4 present in the courtroom, and we have a similar request for a
5 briefing as it relates to this issue. And so I'm asking the
6 Court what the Court would allow or permit as far as allowing
7 us some time to brief this complaint.

8 THE COURT: To brief what specific issue in the
9 complaint?

10 MR. PERKINS: The dismissal. Or the ...

11 THE COURT: So Mr. Ambrose has a motion to dismiss
12 Chapman that is in some way different from the content of
13 Walters and Ciros (ph)?

14 MR. PERKINS: I do anticipate that. This is with the
15 RICO issue.

16 THE COURT: Oh, I see. That's right. Because he did
17 not dismiss RICO. Did you contact Mr. Cuker to ask for a
18 stipulation? He seemed open to the other defendants to dismiss
19 the RICO.

20 MR. PERKINS: Perhaps, if I may. And I can't speak
21 for brother counsel. I would assume he'll come forward if I
22 say something different than what he would.

23 What we would ask for is some period of time that we
24 will reach out to him. I know that Santino Mateo or Juan Mateo
25 may have reached plaintiff counsel in that regard. I can't say

1 that right now. But what I'm asking for is an avid amount of
2 time. If we can come to that agreement, then we wouldn't
3 necessarily need to inundate your docket. But if we cannot,
4 then how would the Court guide us in that?

5 THE COURT: If there is no stipulation regarding the
6 RICO count, stipulation meaning to dismiss it voluntarily, then
7 you're welcome to file a motion to dismiss.

8 MR. PERKINS: Okay.

9 THE COURT: And it's been pending for a while. So I
10 would assume, looking at the calendar, I'll set a briefing
11 schedule.

12 MR. PERKINS: Thank you.

13 THE COURT: Can you file that by January 10th?

14 MR. PERKINS: Yes.

15 THE COURT: Okay. So it will be filed by January 10th
16 and the response will be according to Local Rules.

17 MR. PERKINS: To the extent necessary. And we will
18 enlighten the Court through our conversations with plaintiff's
19 counsel.

20 THE COURT: Good. Okay. Thank you.

21 MR. PERKINS: Thank you, Your Honor.

22 THE COURT: Sure.

23 Anyone else on the Chapman case?

24 Then what we have is an argument on Alexander versus
25 Flint. And there what we have is a motion dismiss by the

1 Veolia North America.

2 And hold on, Ms. Devine, just a minute.

3 And as I understand it, the issue here is the fraud
4 count; that the Alexander plaintiffs have alleged fraud
5 involving the VNA defendants. And VNA argues that the
6 plaintiffs did not allege reliance upon a false statement with
7 particularity, which fraud requires to be pled, and that it
8 should be dismissed for the same reasons the similar
9 allegations, almost identical wording, were dismissed in
10 *Carthan*.

11 In *Carthan*, the complaint said upon information -- I
12 believe the Veolia defendants -- made the representations,
13 meaning the false representations, with the intention that
14 plaintiffs would act and rely on them, comma, which plaintiffs
15 did.

16 And in Alexander it says the very same thing. Which
17 they did instead of which plaintiffs did.

18 And the way I read the response is that -- Mr. Segars?

19 MR. SEGARS: Yes.

20 THE COURT: I want to make sure I had you right. Is
21 that you're saying, well, to the extent we didn't plead that
22 with particularity, we would like to amend our complaint?

23 MR. SEGARS: Correct.

24 THE COURT: Okay. Is there any other argument,
25 Ms. Devine?

1 MS. DEVINE: There was one, Your Honor, with respect
2 to punitive damages.

3 THE COURT: Oh, correct.

4 MR. SEGARS: And we'll stipulate to the relief
5 requested with respect to punitive damages.

6 THE COURT: That's good. Because punitive damages is
7 not a separate count and so on. We know that now.

8 And that is not to say for anybody listening that
9 punitive damages might not be obtainable in this case. It's
10 just that it wasn't put in the lawsuit in the correct manner
11 with respect to the counts where punitive damages are
12 available.

13 So in terms of what -- and with the complaint that is
14 on file, Mr. Segars, I think the VNA defendants are correct,
15 that you did not plead anything other than what was pled in
16 *Carthan*, which was unsuccessful on the fraud count.

17 Then what I've got was your motion of yesterday that
18 is to amend your complaint. And in that motion, which I was
19 able to read this morning, I did not note any particularity
20 that you intend to put in your complaint; any specific
21 plaintiff, a date or a time of who, what, when, where of how
22 they relied on the false statement.

23 MR. SEGARS: That is not in that motion, correct, Your
24 Honor. We have asked the Court to indulge us to give us 45
25 days to go meet with our clients to then amend the complaint to

1 present it to you properly.

2 THE COURT: And here's the problem, Mr. Segars, which
3 is that the Local Rules require when you file a motion to amend
4 that you file the proposed complaint. Because I can't test the
5 proposed complaint without knowing what's in it. And
6 the concern -- here's the concern that I have, which somewhat
7 relates to the remarks that I made as we were trying to get
8 the computer -- as we were trying to get started today.

9 Which is that the original complaint filed by the
10 Alexander plaintiffs was filed September 21st of 2016. It was
11 amended on February 10th of 2017 without this count being pled
12 with particularity.

13 There was a second amended complaint on March 27th of
14 2017 where defendant specifically filed motions and raised
15 issues about this issue, pleading fraud. Well, they had done
16 that in the Walter -- or in *Carthan*. All of the parties in
17 this case have seen my written decisions in the past cases.

18 And, for example, on May 8th of 2017, the City
19 defendants argued that plaintiffs had failed to plead fraud
20 with particularity because there was only a single allegation
21 about reliance.

22 But then there was a third amended complaint February
23 21st of 2018. And that's where the short form complaint was
24 used. And the short form complaint, which I printed out -- I
25 mean, you know what it says. It says on there that fraud must

1 be plead with particularity.

2 MR. SEGARS: There's the specs for it.

3 THE COURT: So notice -- to the extent you need a
4 notice. And I know you know the body of law. It was certainly
5 written in your lawsuits that you filed that you were going to
6 need that.

7 Then August 1st I ruled -- of 2018. I ruled in
8 *Carthan* that plaintiffs' fraud complaint could not go forward.
9 And I said, specifically, in there to communicate with all of
10 you, because that's how the Court communicates. I communicate
11 through written orders when I'm not sitting here talking into
12 the microphone. So I communicated through that written order
13 that the fraud count was being dismissed in *Carthan*. But to
14 the extent a different plaintiff had -- could show me reliance,
15 I would certainly consider that.

16 And following the August 1st, 2018 sort of
17 instruction, let's say, on November 6th of 2018, the -- you
18 filed a fourth amended complaint and it's not there.

19 And so then what I'm left with is the motion to
20 dismiss. Which, again, was further notice with a response
21 saying I'd like to file a motion to amend.

22 But I know that you know that law in the Sixth Circuit
23 doesn't permit a motion to be filed in a responsive brief and
24 there's all kinds of reasons for that.

25 So at that point you certainly knew. But now, as of

1 yesterday, I have a motion to amend that's not properly filed
2 because you don't have the complaint, but it's asking for 45
3 more days.

4 So here's -- I think I have no choice but to deny --
5 to grant the motion and to deny your motion to -- it says
6 plaintiff's first motion to amend the complaint, but it would
7 be your fifth amended complaint, I think.

8 MR. SEGARS: And that's ...

9 THE COURT: Is that correct?

10 MR. SEGARS: No.

11 THE COURT: No. Where am I wrong?

12 MR. SEGARS: I don't know if that's another plaintiff
13 that you're talking about amended complaints, but I'm not aware
14 of any amended complaint. It was a master complaint and it was
15 a short form complaint and then we're asking now for the first
16 amended complaint. That's one issue.

17 And the other issue -- and I raised this with your
18 staff before. I do not get, personally, the documents from the
19 Court as it relates to the overall case.

20 THE COURT: Are you -- did you file an appearance on
21 your role?

22 MR. SEGARS: I have.

23 THE COURT: Then why aren't you getting them, then?

24 MR. SEGARS: I don't know. I do get notices on the
25 Alexander case, specifically. But on the, the ...

1 THE COURT: On the *Carthan*?

2 MR. SEGARS: Yes. I do not get anything.

3 THE COURT: And you filed an appearance?

4 MR. SEGARS: Sometimes I will get the minute order
5 entry after these hearings and that's the only thing I ever
6 get.

7 THE COURT: But if you're getting that, you're on the
8 CM/ECF system.

9 MR. SEGARS: You would think.

10 THE COURT: I'm going to go on the docket right now.

11 (Pause.)

12 THE COURT: So what you're saying is that you get --
13 but you certainly know it exists, the docket, the CM/ECF
14 system?

15 MR. SEGARS: Yes, I do. And as I said, I usually get
16 entries from the court after these hearings saying there was a
17 hearing today. And that's the only thing I ever get. And I do
18 get filings with the Alexander case.

19 THE COURT: Okay. Are you S-e-g-a-r?

20 MR. SEGARS: A-r-s, yes.

21 THE COURT: Yeah. You're listed here.

22 You're listed here as an interested party, but I don't
23 see you with an E-mail.

24 I think you should refile your appearances on the
25 docket entry, docket number 16-10444.

1 MR. SEGARS: I will.

2 THE COURT: I would ask that you do that by the close
3 of business today just to make sure it's there and from here on
4 out you have notice of everything.

5 Here's where the docket numbers are: It's ECF number
6 one -- these are the amended complaints -- 39, 51, 93 and 122
7 in your lawsuit.

8 MR. SEGARS: Okay.

9 THE COURT: So those are the amended complaints that
10 have been filed.

11 So can you -- what you're saying is that -- sitting
12 here today if you summarize, if you just summarize -- could you
13 just summarize for me what you're going to put in your amended
14 complaint, if I were to grant an opportunity to file it.

15 MR. SEGARS: I'm going to indicate, specifically, the
16 when, where and how.

17 THE COURT: Well, what is the when, where and how for
18 one of your plaintiffs?

19 MR. SEGARS: It all depends on when they heard it and
20 what they heard.

21 THE COURT: That's what I want to know. What I want
22 to know is throughout the course of this proceeding, you have
23 undertaken that endeavor to locate that information so that
24 it's -- I can't permit an amendment to a complaint that would
25 be futile. And if you don't know now with all of this notice

1 that you need to plead this --

2 MR. SEGARS: It may be that our clients cannot plead
3 with particularity. But I'm not going to sit here and,
4 essentially, put words in my client's mouth. But what I will
5 do is do some due diligence to find out how, in fact, they
6 relied on and when they heard it. And that's all we're asking,
7 Judge.

8 And if they didn't hear it and didn't rely on it,
9 then, of course, that would be a claim we'll withdraw on behalf
10 of the client.

11 THE COURT: How many clients do you have in this case?
12 I don't know.

13 MR. SEGARS: A total of 37 or 38.

14 THE COURT: Okay. Well, let me hear from Ms. Devine.
15 Do you have any response?

16 MS. DEVINE: Just briefly, Your Honor. Alaina Devine
17 on behalf of the VNA defendants.

18 I think Your Honor set forth the history of this case
19 as it relates to the allegations brought by the Alexander
20 plaintiffs and the failure to plead particularity on the
21 specific reliance portions that's required. And Your Honor
22 just pointed out that futility of the amendment is one of the
23 reasons why a court may deny a motion to amend a complaint.
24 And, respectfully, as Attorney Segars stands here today, he's
25 essentially admitting to the Court that he does not know

1 whether he has a viable amendment to the complaint to add
2 sufficient allegations to stand up against the motion to
3 dismiss.

4 Given the history of the case, Your Honor's clear
5 rulings with respect to the fraud count against the VNA
6 defendants in this case, I would ask that it be dismissed, that
7 the motion to amend be denied and that it be done with
8 prejudice.

9 THE COURT: And see, Mr. Segars, as I read your motion
10 that you filed yesterday to amend.

11 MR. SEGARS: Yes.

12 THE COURT: It seemed to me that you were under the
13 misapprehension that you could not get full relief for your
14 clients without this amendment. That is certainly not needed.
15 There are other viable counts that go forward. Fraud is at a
16 heightened level of pleading and -- is that your -- is that why
17 you wrote the brief in this particular manner?

18 MR. SEGARS: No.

19 THE COURT: Are you thinking there's some relief that
20 you can only get with a fraud count?

21 MR. SEGARS: No, Your Honor.

22 THE COURT: Okay. All right. I was just not
23 following that particular argument. So I was interested in
24 that.

25 Well, what I will do is I'll take this under

1 advisement. But with respect to the existing complaint, the
2 motion is granted because, as you concede in your briefing and
3 I think today, you have not pled reliance by your clients. And
4 in fact, as of today, you don't know if they relied; is that
5 fair?

6 MR. SEGARS: That's fair.

7 THE COURT: Okay. And then I'll take under advisement
8 your motion to amend your complaint. I do not need any
9 responsive briefing and I'll make that decision in the next
10 24 hours. Because I'm concerned that sitting here today having
11 had all of this notice of the reliance issue, including an
12 August 1st, 2018 written decision, that specifically directs
13 any other plaintiff who wants to put out some reliance let me
14 know about it.

15 And so I think that delay is, in fact, prejudicial.
16 Depositions are underway. Things are moving along. So I'm
17 just foreshadowing some of the thought process that I'm
18 experiencing.

19 MR. SEGARS: Okay.

20 THE COURT: Okay. But thank you for being here and
21 for arguing your motion.

22 MR. SEGARS: Thank you.

23 MS. DEVINE: Thank you.

24 THE COURT: Sure.

25 Then we hit the bellwether selection process and that

1 is where we are trying to select the next round of cases to be
2 developed in the individual cases. And I was informed by
3 Mr. Erickson for LAN in chambers that the process is taking
4 just a little longer than anticipated. And what I asked then
5 is to have a proposal before the next status conference. The
6 next status conference will be here in this courtroom on
7 Wednesday, January 22nd at 2:00 p.m. and I asked Mr. Erickson
8 if the group that is working on this could get that proposal to
9 me by January 15th.

10 So that's what we'll do with that.

11 We are now up to a report from the Special Master,
12 Deborah Greenspan.

13 MS. GREENSPAN: Good afternoon, Your Honor. I am
14 going to report on the work that we've been doing with respect
15 to collecting and evaluating the data that plaintiffs' firms
16 have provided to us consistently since we started this process
17 regarding the individual claimants who have retained counsel or
18 who have contacted counsel and provided information to them and
19 are reflected in counsels' data.

20 So I was last here at the last status conference. I
21 gave a brief update at that time. Since that time we have
22 continued to receive additional submissions from counsel. We
23 actually have one firm that had not previously reported that
24 has now reported some case information.

25 The updated submissions include new claimants,

1 identified new individuals or entities, and also updates on
2 previously recorded individuals and entities. So counsel are
3 constantly giving us updated data and then that has to be
4 reflected in the entire database we're maintaining.

5 So as of today there is an increase in the total
6 records, that's what we call injured-party records. We are up
7 814 from the November report that I gave. We are up 2,167 from
8 the September report that was filed with the Court.

9 We will shortly be filing another written report so
10 that all of this data will be easier to follow and understand.
11 The total injured party records: 33,115.

12 There are still some duplicates and I want to clarify
13 that every time we get a new submission from counsel we have to
14 go back and review because there's often another duplicate that
15 is created when those filings occur. So that process is
16 ongoing and it's never static. It's a constantly moving
17 target.

18 In the current -- in the new submissions that we
19 received since the last time I reported from the September
20 written report, we have an additional 769 minors and we have an
21 additional 1,047 adult injured parties. This doesn't add up to
22 the total increase because some people did not provide their
23 dates of birth or because some of those individuals are
24 entities. They're not actually individual claimants.

25 We have in this group, with respect to the personal

1 injury claims that have been submitted, the individuals had
2 reported -- 96.9 percent report a lead-related injury; 81.8
3 percent report a nonlead-related injury. Now, we've asked the
4 parties -- the counsel to tell us, you know, what injuries they
5 have and also whether they believe they are caused by lead
6 exposure or some other exposure.

7 I will give you just a couple of key numbers on the
8 types of injuries that people have reported. In our database
9 of -- and this is restricted to those individuals who have
10 formal retention agreements with their -- with lawyers. We
11 have 13 percent say they have a child with lead-related
12 injuries; 85 percent say they have a child or somebody else
13 with a lead-related injury; 35 percent say they have cognitive
14 deficit injuries; 35 percent say they have skin rash injuries.

15 And I'm only giving you a couple of the different
16 numbers.

17 THE COURT: Yeah.

18 MS. GREENSPAN: 18 percent say they have digestive or
19 gastrointestinal types of injuries. We have four percent say
20 they have kidney disease; 17 percent, high blood pressure;
21 67 percent, emotional injuries. We also have 20 percent say
22 that they have exposure to chloroform bacteria and we have a
23 very small number that have reported miscarriages. It's a
24 tenth of a percent. And pneumonia half a percent have reported
25 those injuries.

1 So all of this information will be contained in an
2 undated written report that we'll file shortly so it will be
3 much easier for everyone to understand the nuances of these
4 figures.

5 That's the current status.

6 THE COURT: Thank you very much.

7 MS. GREENSPAN: Thank you.

8 THE COURT: There are two other issues that were not
9 on the agenda for today that I want to mention briefly and one
10 of them is just getting into the blades of grass. We're not
11 even at the weeds. We're way at a tiny blade. But it's not a
12 small blade for those individuals impacted.

13 This has to do with the fact that there are, I
14 believe, four defendants who were dismissed outright either by
15 action taken by the Sixth Circuit Court of Appeals or by my own
16 decisions. And correct me, someone, if I'm wrong. But those
17 are Mr. Walling, Mr. Wyant, Mr. Wright and Ms. Wells.

18 And they continue to exist on the docket on the
19 individual short form complaints. What I need to try to pull
20 together is whether there are any allegations against those
21 defendants that were not addressed already. Either by the
22 Court of Appeals or by myself. So my inclination, which was a
23 proposal, and as we were discussing it upstairs, is to issue a
24 show cause order that would require the plaintiffs to let me
25 know if there is a reason they should not be dismissed. I

1 don't need responsive pleadings from them if they're simply not
2 in the case anymore.

3 And you can preserve your right to appeal, but
4 what -- I don't want to be adjudicating unnecessary motions if
5 there's -- if the previous decisions apply for all of the same
6 reasons in your case.

7 So Mr. Stern or Shkolnik, is that -- do you think that
8 will address the issue?

9 MR. SHKOLNIK: Yes, Your Honor. We think that's a
10 very good way to handle it. This way each plaintiff has the
11 obligation to look at their complaint and take the appropriate
12 steps to notify the Court or take action with respect to where
13 the claims were dismissed.

14 THE COURT: Okay. And I'll do a careful read to make
15 sure I've got the right four -- the correct four defendants.
16 Since one of them is named Wright, I don't mean to use the name
17 Wright -- before doing that.

18 The other issue that came to my attention was whether
19 there's a discovery sort of protocol problem in the Marble and
20 Brown cases. I'm currently turning my attention with a laser
21 focus on those two cases so that I can adjudicate the pending
22 motions, dispositive motions there. And in the meantime, the
23 second amended case management order applies to those cases.

24 Counsel for those cases can certainly be at any of
25 those depositions that are filed, but I'm not at this point

1 putting them on a separate track. I'm going to turn my
2 attention to those dispositive motions and get that decided as
3 soon as possible.

4 Mr. Kim?

5 MR. KIM: Yes, Your Honor. William Kim for the City
6 and for Dan Walling. I just want to clarify. You're going to
7 be issuing a show cause order for the plaintiffs to file some
8 sort of cause if they're not to be dismissed. Will
9 responses -- if they do argue that their situations are
10 different, that one of the four should not be dismissed as a
11 party to their case, will responses be provided for in that
12 order?

13 THE COURT: That's a good question. Because if they
14 say, for instance, that I've got a different cause of action
15 against Mr. Wyant or against one of your clients, then the
16 appropriate response might be just a motion to dismiss.

17 Did you have something?

18 MR. KIM: Yes. My co-counsel, Ed Kurtz.

19 THE COURT: Should Mr. Kurtz be in there also?

20 MR. KIM: On that also.

21 THE COURT: Okay. That's what I was hoping to hear.
22 I want to make sure my list is correct.

23 Let me think about it. Because, really, the
24 appropriate thing, if a plaintiff says I have a unique
25 allegation that is not covered by any of these things, it would

1 probably be a motion to dismiss and then it's fully briefed.
2 So I'll give it some thought. Do you have a position you think
3 is appropriate?

4 MR. KIM: Nothing specific at this time, Your Honor.
5 I just wanted to raise the issue and determine how you want to
6 proceed.

7 THE COURT: Yeah. That's hopeful. So I'll give it
8 some thought, but I think what I would do is anticipate an
9 answer or a motion.

10 Well, I think that concludes the hearing. The next
11 status conference will be Wednesday, January 22nd and the
12 proposed agenda items would be submitted by January 8th and
13 I'll issue an agenda by the 15th of January.

14 And I will -- we will be having a discovery conference
15 call two o'clock on Wednesday and at that time I'll let you
16 know further dates that will be set aside if needed for other
17 discovery disputes.

18 Thank you.

19 THE CLERK OF THE COURT: All rise.

20 Court is adjourned.

21 (At 3:13 p.m., matter concluded.)

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C E R T I F I C A T E

I, Darlene K. May, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

January 1, 2020
Date

/s/ Darlene K. May
Darlene K. May, CSR, RPR, CRR, RMR
Federal Official Court Reporter
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