

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

In re Flint Water Cases.

Judith E. Levy
United States District Judge

_____ /

This Order Relates To:

ALL CASES

_____ /

AGENDA FOR FEBRUARY 20, 2018 STATUS CONFERENCE

The Court will hold a status conference in these cases on February 20, 2018 at 11:00 A.M. in Ann Arbor, Michigan. The agenda will be as follows, although the Court may adjust the agenda prior to the conference, if necessary:

A. Administrative Issues

Termination of Pending Dispositive Motions in Individual Cases

The Court has ordered all individual non-class-action plaintiffs to adopt the short-form complaint by **February 22, 2018**. (Case No. 16-cv-10444, Dkt. 347.) All pending dispositive motions in those cases will be terminated once the amended complaints are filed, with the exception of

any motions filed by the Leo A. Daly Company to dismiss for lack of personal jurisdiction. The Court will establish a briefing schedule for individual cases as set forth in the order requiring the use of the short-form individual complaint. (Case No. 16-cv-10444, Dkt. 347 at 4-5.)

Dispositive Briefing and Amendment Following Amended Master Complaint

On January 25, 2018, consolidated class-action plaintiffs filed an amended complaint removing specific allegations against two defendants related to criminal charges those defendants were facing. (Dkt. 349.) The MDEQ and MDHHS defendants seek to discuss “[w]hether new briefing is required with amendment to master class complaint to delete and update criminal charges.” (Case No. 16-cv-10444, Dkt. 360 at 1.) Unless the allegations related to criminal charges in the newly amended complaint were inaccurate at the time the complaint was filed, the Court will not require amendment.

The State defendants seek to have the Court “clarify if it would like defendants to re-file their motions to dismiss, or if the Court has an alternative procedure that it would like defendants to follow.” (Case No. 16-cv-10444, Dkt. 361 at 2.) The amendment to the complaint deleted inaccurate references to pending criminal charges against two individual

defendants, but those deletions do not otherwise change the substantive claims asserted or the remainder of the allegations against the defendants. The Court will proceed with the currently filed motions to dismiss.

Future Amendment of Non-Class Individual Complaints

The State defendants request an order “establishing that any further amendments of any complaint require[] leave of Court.” (*Id.*) Because Fed. R. Civ. P. 15(a)(2) establishes the standard for amendment of complaints in all federal litigation, and would require either the opposing party’s written consent or the Court’s leave to amend a complaint, the Court will not enter the requested order.

Inclusion of Marble v. Snyder, Case No. 17-cv-12942 in Order Requiring Adoption of Short-Form Complaint; Coordination of Legionella Cases

At the January 11, 2018 status conference, the Court discussed whether *Marble v. Snyder*, a non-class individual case asserting claims arising from exposure to *legionella* bacteria (*see generally* Case No. 17-cv-12942, Dkt. 1), should be required to adopt the individual short-form complaint. The Court has reviewed both the master individual complaint

and the short-form complaint, and notes that they permit filing claims seeking damages related to *legionella*, but neither permit the filing of claims against McLaren Regional Medical Center. (See Case No. 17-cv-10164, Dkts. 115, 116.)

Individual liaison counsel do not address this issue in their proposed agenda items, but do ask that the *legionella* cases be coordinated on a separate schedule for adjudication. (Case No. 16-cv-10444, Dkt. 364.) Individual liaison counsel is directed to provide the Court a list of all pending individual cases asserting a *legionella* claim via e-mail, copied to all members of the defense executive committee, on or before **February 16, 2018**.

At the status conference, the Court will hear from with counsel in individual cases asserting *legionella* claims whether the master and short-form individual complaints can accommodate their claims, then determine whether these cases are required to adopt the short-form complaint.

The Court will then discuss whether the *legionella* cases require a different briefing schedule, particularly as *legionella* claims are not at issue in the *Walters* and *Sirls* cases. If the Court determines that a

different schedule is necessary, it will require counsel in the *legionella* cases to confer with defense counsel on such a schedule.

Master Individual Complaint and Briefing Schedule in Walters and Sirls

Individual liaison counsel has requested time to update the Court on the adoption and briefing schedule in the first two cases to have adopted the short-form complaint. Individual liaison counsel are invited to do so.

Time and Expense/Common Benefit Orders

The Court will discuss the necessity of and procedure for the adoption of time and expense and common benefit orders with counsel.

Motion to Stay in Guertin v. State of Michigan, Case No. 16-cv-12412

Plaintiffs in *Guertin* have filed a motion to stay the requirement to file a short-form individual complaint in their case, given both the status of their case on appeal, and their pending motion to amend their case to become a class action. (Case No. 16-cv-10444, Dkt. 353; Case No. 16-cv-12412, Dkt. 225.) The *Guertin* plaintiffs have a pending motion to amend their complaint to become a class-action suit, which would mean the case would no longer be subject to the order requiring adoption of the short-

form complaint in individual cases. A grant of that motion to amend would require the Court to consolidate *Guertin* with the consolidated class action. Because of the unique circumstances of *Guertin*, the motion to stay is GRANTED.

Insurance Disclosures for the Michigan Department of Environmental Quality

At the previous status conference, the Court ordered counsel for the Michigan Department of Environmental Quality (“MDEQ”) to determine whether it had any additional insurance policies not disclosed to consolidated class plaintiffs, and to provide a certification that MDEQ did not have any additional policies if none existed. Interim co-lead class counsel agreed that such a certification would suffice. Counsel for MDEQ provided that certification, and nothing further is required on this matter.

B. Discovery Issues

City of Flint and Individual Responses to Consolidated Class Plaintiffs’ First Discovery Requests

The Court has considered the filings and arguments regarding whether the City of Flint and the individual defendants must respond to consolidated class plaintiffs’ first discovery requests for documents

already produced to various agencies. The Court will require these parties to do so on or before **March 6, 2018**, unless the parties agree to a different date and submit a stipulated order to the Court on or before that date. The Court will set forth the reasons for this decision on the record at the February 20, 2018 status conference.

Adoption of Electronically Stored Information (“ESI”) Protocol

The Court has adopted a stipulated order regarding an ESI protocol governing the consolidated class action. (Case No. 16-cv-10444, Dkt. 373.)

Jurisdictional Discovery Related to Veolia Environnement, S.A.

The Court will review the submissions addressing jurisdictional discovery related to the parent company of the Veolia defendants. If needed, the Court will hold brief oral argument.

The Veolia Defendants’ Rule 34 Discovery Request

The Veolia defendants have propounded a discovery request to consolidated class plaintiffs. Although this request was mentioned in both the Veolia and Lockwood, Andrews & Newnam (“LAN”) defendants’ proposed agenda items, it is unclear what those parties wish to discuss

in relation to these requests. The Veolia defendants are ordered to submit to the Court via e-mail, copied to interim co-lead class counsel, a brief explanation of the issue or issues they wish to discuss in relation to this request. This explanation is due on or before **February 16, 2018**. The Court will then determine whether this matter will be discussed at the status conference, or at a separate telephonic conference.

Comprehensive Preliminary Discovery Plan

The LAN and Veolia defendants have also each requested time to discuss a comprehensive preliminary discovery plan, including a briefing schedule and a hearing on such a plan. So that the parties and the Court's time is used efficiently at the status conference, these defendants are ordered to file a joint submission on Case No. 16-cv-10444 detailing what they wish to discuss, including the general nature and scope of this preliminary discovery plan. This submission is due on or before **February 16, 2018**. The Court will review the submission and determine whether to discuss this matter at the status conference.

Dated: February 13, 2018
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 February 13, 2018.

s/Shawna Burns
SHAWNA BURNS
Case Manager