

Flint lawsuits could cost Michigan taxpayers millions

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Prominent lawyers including Fieger are suing over crisis



(Photo: Ryan Garza, Detroit Free Press)

Flint's water crisis has unleashed a tsunami of lawsuits that could cost Michigan taxpayers hundreds of millions of dollars in damages.

"The only deep pocket in the vicinity of Flint is the State of Michigan," said Wayne State University law professor Peter Henning, a former federal prosecutor. "This could be a tax liability on the citizens of Michigan. This is the worst nightmare when a bureaucracy goes completely off the rails and makes decisions that cause widespread harm."

At least a dozen lawsuits have been filed in local, state and federal courts on behalf of Flint residents who drank lead-tainted water for nearly two years. The complaints name a long list of state and local agencies and officials, from Gov. Rick Snyder to Flint city employees.



Some of the suits seek to hold Snyder and others personally liable for damages. They could also face criminal charges as state and federal prosecutors investigate how Flint's water was poisoned.

Lawyers in two cases say they're seeking multimillion-dollar awards. One seeks \$100 million from a Flint hospital for victims of Legionnaires' disease and the other seeks at least \$500 million from an engineering company Flint hired to put its water treatment plant into operation using Flint River water. The suit, which states the company was aware the water would be dangerous without proper anticorrosive treatment, seeks damages for diminished property values.

The remaining suits seek everything from replacement of the pipes

that leached lead into Flint's water supply to long-term medical monitoring and health care, a court-ordered monitor to oversee the city's water operations, cancellation of all water bills since April 2014, when lawyers argue Flint's water supply became unfit to drink, and punitive damages against the state and other defendants.

Noah Hall, a Wayne State law professor who specializes in environmental law and is following the litigation closely, said the best solution for the state would be to do what BP did after the Deepwater Horizon oil rig exploded in 2010: finance a victims' compensation fund.

The largest oil spill in U.S. waters, the disaster in the Gulf of Mexico killed 11 crew members, leaked millions of barrels of crude, and coated hundreds of miles of shoreline with oil.

Like the businesses and people hurt by the oil spill, Hall said Flint residents need help, too: Pay them damages, monitor their health, cover their medical expenses. From the state's perspective, a fund could have the added benefit of keeping damaging revelations from coming to light in a lengthy legal fight, he said.

Washington-based attorney Kenneth Feinberg designed the BP fund and during the 18 months he managed it, it paid out \$6.5 billion and processed \$1.2 billion in claims for economic damages from businesses and individuals. Feinberg also administered the victims compensation fund Congress created after the Sept. 11, 2001, terrorist attacks.

According to Rich Henke, law professor at Western Michigan University's Cooley Law School, 98% of those who were eligible joined the fund and were compensated. Awards in death cases ranged from \$250,000 to \$7.1 million, while personal-injury claims ranged from \$500 to \$8.6 million.

The original fund, which closed in 2004, paid more than \$7 billion to survivors of the dead and those who were injured in the attacks or rescue efforts immediately after. A second, \$2.77-billion fund was opened in 2011 to help additional individuals who were injured or died as a result of the attacks.

"The state is better off accepting responsibility and moving the focus to how are we going to fix this, compensate the victims and prevent future damage from happening," Hall said. "The worst strategy is for the state to fight — the state shouldn't be spending its resources fighting residents who are seeking compensation for the harm they suffered. It should facilitate them getting compensation."

Hall said victims' funds may not prevent all lawsuits but could persuade some victims to drop suits, allowing them to avoid lengthy litigation and be compensated more quickly.

"These are not frivolous lawsuits, they are well-plead suits," Hall said. "If the allegations in these lawsuits can be proved, the defendants are going to be facing a world of liability."

Flint switched from water drawn from Lake Huron by the Detroit Water and Sewerage Department to water drawn from the Flint River in 2014 while it waited for the new Karegnondi Water Authority in Genesee County to come online later this year. The switch, designed to save the city money, was done without adding corrosion controls to the water, allowing lead to leach into residents' tap water.

The Michigan Department of Environmental Quality has said it made a mistake: It believed federal rules allowed the city to complete two rounds of testing for lead more than a year before deciding on the need for corrosion controls. The U.S. Environmental Protection Agency is also under fire for waiting months to get a legal opinion on whether corrosion control was required, even when it was aware of high lead levels in the city's water.

The crisis has been a magnet for high-profile personal-injury lawyers such as Geoffrey Fieger and Ven Johnson, and prominent civil rights lawyers Bill Goodman and Julie Hurwitz, whose team includes Erin Brockovich, the consumer advocate who became famous when Julia Roberts portrayed her in a movie about her legal fight against a California utility over contaminated water.

The lawsuits claim Flint's water damaged property values and household appliances; caused a variety of physical ailments, including rashes and hair loss, and psychological problems such

as depression and chronic anxiety.

Some of the lawsuits seek to hold Snyder and other state and local officials personally liable for damages. While government officials typically have immunity from damages, there are exceptions, said Royal Oak lawyer Michael Pitt, who is working with Goodman and Hurwitz on cases filed in federal, state and Genesee County courts. In each case, Pitt and his team, which includes more than 50 law students from Wayne State, University of Michigan and University of Detroit Mercy, cite exceptions to governmental immunity laws to hold state and local officials personally responsible.

Pitt said some government officials can be sued in federal and state courts for damages if there's been a constitutional violation. In his federal case, for example, the suit says state and local officials violated Flint residents' rights under the U.S. Constitution in that they deprived them of life, liberty and property when they took from plaintiffs — without due process of law — their "safe drinking water and replaced it with what they knew to be a highly toxic alternative solely for fiscal purposes."

Pitt's suit against DEQ and City of Flint employees in Genesee County Circuit Court says they are liable because they were grossly negligent. Pitt said employees could be considered grossly negligent if they failed to require corrosion controls when Flint switched water sources or if they knew there were no corrosion controls in place and did nothing about it.

A Snyder spokesman, Dave Murray, said Friday that "it would be inappropriate for the governor's office to discuss pending litigation." Some of those named in the lawsuits could also face federal or state criminal charges as the FBI, the U.S. Attorney's Office in Detroit and Michigan Attorney General Bill Schuette are investigating. Henning said prosecutors could bring federal charges if someone was part of a cover-up, such as covering up lead sampling results, or made false statements to a federal agency such as the EPA.

The state could charge state and local employees with misconduct in office, a common-law crime that focuses on an official's actions and decisions, Henning said. For example, state or local employees could

be charged if they knew about lead in the water and failed to act, or if they authorized the switch to the Flint River water knowing the threat it posed without corrosion controls.

"We don't know if the smoking gun will emerge," he said. One lawsuit does not seek monetary damages. The case filed in U.S. District Court by Concerned Pastors for Social Action, a group of Flint's religious leaders; Melissa Mays, a Flint mother; the American Civil Liberties Union of Michigan and the Natural Resources Defense Council asks the court instead to force the owners and operators of Flint's water system to comply with the Safe Drinking Water Act, said Dimple Chaudhary, senior attorney with the NRDC and lead litigator in the case.

Chaudhary said the lawsuit seeks to get the system's operators to "treat the water to minimize the amount of lead leaching from its pipes; properly monitor for lead in household tap water by targeting homes at the highest risk for lead contamination, to notify residents of the results of tap water sampling conducted at their homes, and to report the water system's activities to monitor and control for lead to state and federal authorities."

The suit also wants the lead service lines in Flint to be replaced. The city has approximately 33,000 service line connections, and at least 15,000 are lead service lines, according to the suit. Replacing those lines could cost as much as \$60 million.

As part of his recent budget proposal, Snyder is asking the Legislature to set aside \$25 million to remove and replace pipes in Flint. And he's signed a bill that sets aside \$500,000 to identify pipes that need replacing.

The NRDC lawsuit also seeks medical and health remedies to address the impacts of lead exposure.

"We think they're very reasonable requests given the magnitude of the harm that's been suffered here and given the nature of the violations," Chaudhary said. "What we're looking for here is a remedy that will help everybody in the community, and hopefully put other water systems on notice to clean up these practices."

Mays, a mother of three sons and a plaintiff in that case and three others, said she hopes the lawsuits help her and other Flint residents replace household appliances damaged by corrosive water, including water heaters, dishwashers and washing machines; ensure lifelong health care and medical monitoring; and provide therapy, tutoring and other assistance. She also wants to see those responsible for the crisis held personally liable for damages.

"We've had to lose so much of our lives because of the actions and inactions of those people. They were supposed to protect us and they haven't and they still haven't. Our suffering should stop and they should be held accountable in every possible way." She said she hopes that whatever money and help the lawsuits bring her family, "we can ensure the rest of our lives are not as miserable as we are now."

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The Flint lawsuits

Of the dozen lawsuits that have been filed, two sets of plaintiffs have filed claims in three separate courts. Here's a look at the cases.

First case to seek class-action status

Plaintiffs: Melissa Mays and several other Flint residents

Key defendants: Gov. Rick Snyder, former state-appointed emergency managers Darnell Earley and Gerald Ambrose, several current and former employees of the Michigan Department of Environmental Quality and the City of Flint.

Damages: Unspecified. Seeks class-action certification and a variety of remedies including damages for pain and suffering, punitive damages, a medical monitoring fund, and a court-ordered monitor to oversee Flint's water operations.

What the suit says: Attorneys for Mays and the other plaintiffs have filed lawsuits in federal, state and Genesee County courts. Their

federal case, filed last year, was the first to seek class-action certification. Attorneys include Bill Goodman, Julie Hurwitz and Michael Pitt. The federal suit claims state and local officials failed to properly monitor and sample the water and delayed "notifying the public of serious safety and health risks in a knowing and deliberate effort to conceal the truth from those who were being poisoned. The deliberately false denials about the safety of the Flint River water was as deadly as it was arrogant." The suits seek damages from individual defendants.

Parents of 2-year-old sue

Plaintiffs: Luke Waid and Michelle Rodriguez, parents of a two-year-old daughter

Key defendants: Gov. Rick Snyder, several current and former DEQ employees, Earley and Ambrose, several Flint officials

Damages: Unspecified. Seeks medical care, compensation for damages to their property, an order compelling the defendants to take specific actions to clean up the contamination, and punitive damages from individual defendants.

What the suit says: Filed in federal court, Detroit lawyer Brian McKeen said the suit seeks to "hold those responsible for this disaster accountable for the injuries to this child." He said she suffers from irritability, hyperactivity and is inconsolable at times and her father worries whether she will have "an impaired ability to learn, impaired ability to concentrate and focus. Is she going to be able to live independently, grow up and be strong and independent and self-sufficient?" McKeen has filed similar lawsuits in state and Genesee County courts.

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Engineering company targeted

Plaintiffs: Several Flint residents

Defendant: An engineering firm, Lockwood, Andrews & Newnam (LAN) hired by the city

Damages: Potentially \$500 million or more. Seeks class action certification and damages for lost property values, personal injury and property repairs.

What the suit says: Filed in Genesee County Circuit Court

by Auburn Hills lawyer Mark McAlpine, the suit alleges LAN, which is based in Houston and has offices in Flint and around the country, was professionally negligent. According to the suit, Flint officials commissioned the company to determine whether the river could be safely used as a primary source of drinking water in 2011 and that LAN was well aware that without anticorrosive treatment, using the Flint River as a source of drinking water would create dangerous conditions. In 2013, the suit says, LAN got a contract to put the Flint water plant into operation using Flint River water as its primary source. "Our lawsuit attempts to put blame and draw the dollars from the private party that caused the problem ... We're not asking taxpayers to pony up for the damages. ... LAN is a very large company, it is a wholly owned subsidiary of an even larger international company and may very well have the financial resources, depending on the ultimate size of the award." LAN released this statement Friday, referring to this case and a second lawsuit that names the company: "We believe that these lawsuits have no merit and will vigorously defend our position in court."

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Suit to have water bills refunded, canceled

Plaintiff: Erma Lee Vale

Defendant: City of Flint

Damages: Unspecified. Seeks class-action certification

What the suit says: Filed in Genesee County Circuit Court by Bingham Farms lawyer Steven Goren, the suit says Flint residents have paid or been billed for unsafe water since April 25, 2014. It seeks refunds for residents who paid the city those bills, and cancellation of outstanding bills.

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Hospital targeted in Legionnaires' diseases

Plaintiffs: Troy Kidd, whose mother died of Legionnaires' disease, and three others who got Legionnaires'

Defendants: McLaren Regional Medical Center, six current or former DEQ employees.

Damages: \$100 million.

What the suit says: Filed in Genesee County Circuit Court by the law firm of prominent Southfield lawyer Geoffrey Fieger, the suit claims the plaintiffs got Legionnaires after being treated at McLaren's Flint hospital. Since spring 2014, the state reported 87 cases of Legionnaires', including nine deaths. Fieger said he believes those cases are "the tip of the iceberg. This is an epidemic of untold proportions. ... This is a crisis and a cover-up that needs to be addressed immediately." Kidd said he wants answers and accountability and Fieger said he would get both "faster than anyone else."

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Mother of three files case

Plaintiff: Angela McIntosh, a mother of three

Key defendants: State of Michigan, Ambrose and Earley, several current and former DEQ employees, Flint workers

Damages: Unspecified. Seeks class-action certification.

What the suit says: Filed by Detroit lawyer Ven Johnson and others in federal court, the lawsuit seeks punitive and compensatory damages, and seeks to hold officials personally liable for damages. It names more than a dozen defendants. The suit alleges the DEQ misled the EPA, conducted improper and illegal sampling of Flint's water, lied to the public about the safety of the water and attempted to publicly discredit outsiders who had evidence the water was contaminated.

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Pastor, Flint business among those suing

Plaintiffs: Pastor Edwin Anderson and wife Alline Anderson, Epcoco Sales, resident Beatrice Boler,

Key defendants: Earley, Ambrose and Snyder

Damages: Unspecified. Seeks class-action certification.

What the suit says: Filed in federal court by Flint lawyer Valdemar Washington, the suit seeks compensatory and punitive damages. It alleges the defendants "knowingly, recklessly and callously exposed plaintiffs to toxic and contaminated water unfit for human use and consumption." It seeks to hold Snyder and the other defendants personally liable for damages.

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Suit wants Flint water system run correctly

Plaintiffs: Concerned Pastors for Social Action, Melissa Mays, American Civil Liberties Union of Michigan, Natural Resources Defense Council

Key defendants: City of Flint, State Treasurer Nick Khouri, members of the Flint Receivership Transition Advisory Board

Damages: None sought; suit instead seeks compliance

What the suit says: Filed in federal court, the suit seeks to force the owners and operators of Flint's water system to comply with the Safe Drinking Water Act, including treating the water to minimize the amount of lead leaching from its pipes; properly monitoring for lead in household tap water by targeting homes at the highest risk for lead contamination, and reporting the water system's activities in monitoring and controlling for lead to state and federal authorities.