

# The Flint Water Crisis Litigation Update

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Pitt McGehee Palmer & Rivers, P.C.

Goodman, Hurwitz & James, P.C.

Trachelle C. Young & Associates

Weitz & Luxenburg, P.C.

Law Offices of Deborah Labelle

Cynthia M. Lindsey & Associates

McKeen & Associates, P.C.

Law Offices of Teresa A. Bingman

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(248) 658-0020

1176 Robert T. Longway Blvd., Flint, MI 48503

## APRIL 2019 LITIGATION UPDATE

Dear Flint Citizens:

Since our last communication with you, there have been some very important court decisions, which move this complex case toward a just resolution for the people of Flint who were injured or killed as a result of Flint Water Crisis. Here are our summaries of these cases.

### **I. Federal Judge Levy Reinstated Case Against Former Governor Snyder**

On August 1, 2018, Federal Judge Levy ruled in *Carthan v Snyder* that the proposed class action filed in 2016 could go forward on many claims. However, Judge Levy dismissed Governor Snyder from the case because the allegations in the Complaint did not clearly establish that he either participated in causing, prolonging, or covering up the Crisis once public disclosure was required.

The Court made its August 1<sup>st</sup> decision based on a Complaint we drafted in 2016. Using facts developed after 2016, we asked the Court to review the allegations in a Complaint that included the new information. On April 1, 2019, Judge Levy reinstated the case against Governor Snyder. In doing so, she said this about the allegations regarding Governor Snyder's responsibility for the Flint Water Crisis:

“....Governor Snyder knew of facts from which he could infer that plaintiffs faced a substantial risk of serious harm. As early as March 2014, members of the Governor's administration were warning that transitioning to the Flint River could lead to a potential disaster. Initial warning signs included an outbreak of Legionnaires' disease in the Flint area. And by October 2014, senior staff, including the Governor's Chief of Staff, were discussing the need to return to DWSD water because of a growing awareness that the treated Flint River water did not meet established quality standards.....*As a result, the Governor possessed sufficient facts from which he could have deduced that plaintiffs faced a substantial risk of serious harm from the Flint River.....* In January 2015, the Governor met with other government officials to discuss the ongoing threat to public health posed by legionella bacteria in the Flint River water. A

couple of months later, the Governor and his staff discussed whether to distribute water filters to Flint residents as a form of mitigation against possible contamination. At the same time, the Governor's Chief of Staff informed the Governor that the water issue in Flint continued to be "a danger flag" and was something that needed addressing sooner rather than later. And in the summer, a senior member of the administration spoke with Governor Snyder about the fear that Flint's residents were being exposed to toxic levels of lead through the Flint River water.

*Initially, the Governor was indifferent because instead of mitigating the risk of harm caused by the contaminated water, **he covered it up.*** In private, he worried about the need to return Flint to DWSD water and the political implications of the crisis. But in public, he denied all knowledge, despite being aware of the developing crisis. As a result, plaintiffs were lured into a false sense of security. They could have taken protective measures, if only they had known what the Governor knew. Instead, the Governor misled them into assuming that nothing was wrong. Governor Snyder's administration even encouraged them to continue to drink and bathe in the water..... Viewed as a whole, the allegations plausibly describe "*conscience shocking*" conduct. Governor Snyder's actions were deliberately indifference and exhibited a callous disregard for plaintiffs' right to bodily integrity."

Judge Levy did a thorough job analyzing the evidence that we presented to her. We believe her opinion will be sustained on appeal.

You can read more about Judge Levy's opinion and the thoughts of some of the attorneys working on this case here:

- <https://www.michiganradio.org/post/former-gov-rick-snyder-again-defendant-flint-water-class-action-lawsuit>
- <https://sputniknews.com/us/201904041073840062-Judge-Rules-Flint-Residents-Can-Sue-Snyder/>
- <https://www.courthousenews.com/judge-pares-down-consolidated-flint-water-case/>
- <https://www.wxyz.com/1cbd12f1556046979d9ca5a0153dc2c8>
- <https://www.abc12.com/content/news/Attorney-Gov-Snyders-personal-wealth-at-risk-in-Flint-water-crisis-lawsuit-507966731.html>
- <https://www.detroitnews.com/story/news/michigan/flint-water-crisis/2019/04/01/federal-judge-flint-suit-against-snyder-can-advance/3332102002/>

## **II. The Sixth Circuit Court of Appeals Ruled That Public Officials Can Be Held Accountable for Causing the Flint Water Crisis**

On January 4, 2019, the Federal Sixth Circuit Court of Appeals issued its decision in *Guertin v State of Michigan*. The Court was asked to review Judge Levy's ruling that the Emergency Managers and City and State employees could be held responsible for creating and prolonging the Flint Water Crisis. In a sharply worded opinion, the Court said the Emergency Managers and City and State employees should be held accountable for the harm they caused. Here is a sample of what the Court said about the allegations against City and State employees:

“As with the Flint defendants, these MDEQ defendants created the Flint Water environmental disaster and then intentionally attempted to cover-up their grievous decision. Their actions shock our conscience. It is alleged that these defendants acted with deliberate indifference to the plaintiffs' constitutional right to bodily integrity and at a minimum were plainly incompetent.”

You can read more about the Sixth Circuit's decision and the thoughts of some of the attorneys working on the case here:

- <https://www.courthousenews.com/sixth-circuit-denies-immunity-to-flint-officials-in-water-crisis/>
- <https://www.natlawreview.com/article/sixth-circuit-halts-qualified-immunity-claims-bodily-integrity-flint-residents>
- <https://www.mlive.com/news/flint/2019/01/flint-water-crisis-lawsuit-allowed-to-move-forward-after-appeal.html>

## **III Major Victory in Case against EPA**

On April 18, 2019, Judge Linda Parker issued her opinion denying the EPA's motion to dismiss the *Burgess* case. Jan Burgess and nearly 5,000 other Flint residents have sued the EPA for its role in causing what the court said was “infamously known as the Flint Water Crisis.” Judge Parker said that “[a]t issue here is an obvious danger imperiling a city's nearly 100,000 residents.” In response to the EPA's argument that it should be excused for its honest mistakes in administrating public policy, Judge Parker said that “[t]his court...cannot conceive of a public policy consideration that could be legitimately balanced against the need to warn and protect an entire community from involuntary and continued poisoning.” Judge Parker condemned the EPA for its “failure to warn Flint residents of the severe health risks the City's water supply posed to them...the EPA was well aware that the Flint River was highly corrosive and posed a significant danger of lead leaching out of the City's lead-based service lines at alarming rates into residents homes [and] was well aware of the health risks posed by lead exposure, particularly to children and pregnant women.”

Nearly 5,000 residents have sued the EPA. We are optimistic that this development will move the case toward resolution. We believe that this ruling will shake up the EPA, which has refused to accept responsibility for its role in this catastrophe. The EPA is mandated by Congress to be the watchdog over state environmental operations and is required by law to take over drinking water systems when a significant public health risk becomes apparent. The EPA failed miserably in its role as watchdog over the MDEQ and now will be held accountable to the tens of thousands of residents who were harmed by its negligence. This ruling is a tremendous victory for the people of Flint.

You can read more about Judge Parker's decision here:

- <https://abcnews.go.com/US/wireStory/judge-us-government-sued-flint-water-crisis-62509213>
- <https://www.detroitnews.com/story/news/michigan/flint-water-crisis/2019/04/19/ruling-epa-flint-water-crisis-lawsuit/3516388002/>
- [https://www.washingtonpost.com/national/energy-environment/judge-says-us-government-can-be-sued-for-flint-water-crisis/2019/04/19/86ba887a-62b4-11e9-bf24-db4b9fb62aa2\\_story.html?noredirect=on&utm\\_term=.ec95043f2122](https://www.washingtonpost.com/national/energy-environment/judge-says-us-government-can-be-sued-for-flint-water-crisis/2019/04/19/86ba887a-62b4-11e9-bf24-db4b9fb62aa2_story.html?noredirect=on&utm_term=.ec95043f2122)

#### **IV Updates on State Court Flint Water Crisis Cases**

In January 2018, the Michigan Court of Appeals issued in *Mays v Snyder* a comprehensive opinion holding the State of Michigan and the Emergency Managers accountable under Michigan law. The State and the Emergency Managers have asked the Michigan Supreme Court to review that decision. The Supreme Court has not acted on the request for an appeal. We hope to receive a decision from the Supreme Court shortly.

#### **V Updates on Mediation**

Judge Levy has appointed Retired Wayne County Circuit Court Judge Pamela Harwood and Senator Carl Levin as the official mediators. Judge Levy has also appointed Deborah Greenspan as Special Master. The Mediators and Special Master have met with us more than a dozen times since our last update to you. Governor Whitmer and Attorney General Nessel have been fully engaged in the discussions. The case is complex and there are many important factual and legal issues that make resolution challenging. However, we are making progress.

#### **VI Related Criminal Cases**

##### **1. MDEQ: Stephen Busch, Liane Shekter-Smith, and Michael Prysby**

On January 7, 2019 Liane Shekter-Smith accepted a plea deal for her involvement in the Water Crisis. She has agreed to plead no contest to a misdemeanor and to cooperate with the Special Counsel and General Counsel of the Prosecutor's Office. The plea is subject to withdrawal if she

fails to cooperate or if at any point she obstructs or misleads the Special Counsel and/or General Counsel. Michael Prysby and Stephen Busch have also accepted pleas in exchange for their cooperation with Special Counsel.

## **2. Former Emergency Manager Darnell Early and Former Department of Public Works Director Howard Croft**

Probable cause hearings have begun. Early is facing charges of false pretenses, conspiracy to commit false pretenses, willful neglect of duty, and misconduct in office. Croft is facing charges of false pretenses and conspiracy to commit false pretenses. The new Solicitor General Fadwa Hammoud is reviewing the criminal cases against Croft and Early and court is scheduled to resume in May.

### **You can read more about the related criminal cases here:**

- <https://www.mlive.com/news/flint/2019/04/criminal-flint-water-cases-postponed-again-for-former-em-dpw-director.html>
- <https://www.detroitnews.com/story/news/local/michigan/2019/01/07/deq-flint-water-switch-official-plea-deal/2501476002/>

## **VII Community Activities**

On Thursday April 25, 2019 at 10 AM there will be a Press Conference, Rally, and Bus Trip in recognition of the fifth anniversary of the beginning of the Water Crisis. We will meet in front of the Flint Water Treatment Plant to take a free bus trip to Lansing for a Rally. Buses will be boarding at 11:30AM at First Trinity Missionary Baptist Church on 1226 Beach St, Michigan 48502. Buses leave at noon sharp, and seating is limited so call 810-282-5077, 810-882-1177, or 810-691-9398 to reserve a spot.

On Saturday April 27 at 11AM members of your legal team, including Michael Pitt, will hold a meeting to provide lawsuit updates and answer your questions. The meeting will be at UAW-Local 659, 4549 VanSlyke Road, Flint, MI 48507. We hope to see you there.

## **VIII Final Thoughts**

- This communication is intended for Flint residents who consider themselves part of the proposed class action.<sup>1</sup>
- Currently, there is no immediate deadline for Flint citizens to sign retainer agreements with a lawyer.

However, if you have a friend or family member who is interested in learning more about this process or getting regular updates, they should call our hotline at (248) 658-0020 or email us at [flintwaterclassaction@pittlawpc.com](mailto:flintwaterclassaction@pittlawpc.com).

If you have questions about this process or the litigation, you should feel to contact us by:

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<sup>1</sup> If you do not wish to receive these types of communications in the future, please contact Emily Michel at 248.398.9800.

- Leaving a voicemail on our hotline at (248) 658-0020;
- Filling out a questionnaire on our website: [www.flintwaterclassaction.com](http://www.flintwaterclassaction.com); or
- Coming to our Flint office and speaking with a representative from our Legal Team.

The Flint office is located at the following address:

**1176 Robert T. Longway Boulevard, Flint, MI 48503**

**Hours: Mondays and Thursdays, 9am-5pm**

Remember to save any relevant documents such as blood lead level test results or water lead test results. A list of additional documents to save can be found [here](#).

All future updates will also be featured on our website: [www.flintwaterclassaction.com](http://www.flintwaterclassaction.com). Additional information regarding our legal actions can be accessed at the noted website as well.

*Peace and Solidarity,*

Pitt McGehee Palmer & Rivers, P.C.  
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