

Former Sen. Carl Levin to mediate class-action Flint water lawsuit

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ANN ARBOR, MI - More than 50 attorneys packed a federal courthouse in downtown Ann Arbor Thursday, Jan. 11, for just one case - a class-action lawsuit stemming from the Flint water crisis.

The large-scale Flint water debacle has now prompted a large-scale legal event - a sprawling, consolidated federal lawsuit that could potentially include thousands of residents and other parties as plaintiffs.

They are suing the state of Michigan, the city of Flint and various other entities with claims the defendants distributed lead-tainted water, causing a public health crisis, including alleged fatal cases of Legionnaires.

U.S. Eastern District Court Judge Judith Levy presided over the crowded status conference, which mostly addressed logistical issues on how to proceed with such an unwieldy case.

"Nothing about this is easy," Levy said at one point.

Levy vowed to "make this an efficient process."

Her most decisive moves were to officially push the numerous parties into mediation and appoint former U.S. Senator Carl Levin and former Wayne County Chief Judge Pro Tem Pamela Harwood as the facilitators.

There were no objections to the appointments.

The rest of Thursday's hearing covered a broad range of issues that may arise.

One issue discussed was how to manage the numerous complaints. While there is a broad, generic complaint filed in many of the cases, individuals who are suing may have specific concerns.

Levy and attorneys discussed how short-form complaints detailing individual cases would work, and a timeframe for them to be filed. Though the judge made no decisions at the hearing, 30-day and 60-day deadlines were discussed.

The defendants in the case - the Department of Environmental Quality and the city of Flint, to name a few - said they expect to file motions to dismiss the complaints.

"We will very shortly be filing hundreds of cases," said Hunter Shkolnik, a New York-based attorney representing a group of plaintiffs.

The plaintiffs are being represented by dozens of attorneys, many of whom, like Shkolnik, flew in from elsewhere.

Philip Grashoff, a Bloomfield Hills-based attorney representing Stephan Busch, supervisor of the DEQ's Office of Drinking Water, expressed concerns about the sheer volume of paperwork that the case might entail.

"This is going to be an avalanche of cases," he said, lobbying for a longer timeframe.

There was also discussion on "bellwether cases," example cases that could lead to similar rulings. Attorneys for the defendants were wary of establishing such cases this early in the process.

"The bellwether cases are a source of concern and confusion for me," said Sheldon Klein, an attorney for the city of Flint.

Shkolnik agreed.

"The bellwether (cases) may be something we want to sit and talk about," he said.

The concern is establishing too rigid a pattern for dealing with lead cases, Legionnaires cases and property damage cases if they're all based on a bellwether or test case.

Insurance policies were also part of the discussion. Attorneys for the plaintiffs had been trying to determine whether former state employees such

as Busch, Liane Shekter-Smith and Michael Prysby were covered by policies that would pay out for their alleged actions.

Grashoff and other attorneys for former state officials like Dan Wyant, who was the head of the DEQ during the Flint water crisis, said their clients were only covered by standard home and auto insurance policies.

On Tuesday, the state Court of Appeals [held a hearing](#) on a separate class-action lawsuit in Lansing where the status of emergency managers - whether they're state employees - was argued.

The intent at that hearing was to determine if former Flint emergency managers Jerry Ambrose and Darnell Earley were civilly liable.

A similar argument played out Thursday in the federal courtroom for a different reason, to determine if emergency managers receive the same level of immunity as state officials.

"The city of Flint was commandeered by the state," Klein said. "We have the same level of immunity."

Attorneys for the plaintiffs, who are attempting to get information and documents through the discovery process, claim the emergency managers are not protected under the same laws as state officials.

Judge Levy said that in previous cases she has determined emergency managers are not state officials and ordered the release of certain documents when it comes down to it.

The argument was part of a broader discussion about the discovery process - where both sides share documents and other evidence with the other side.

There was an agreement to begin the process of limited discovery, but any further discussion on the topic will take place at the next hearing, scheduled for Feb. 20 at the Ann Arbor federal courthouse.

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