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## Mich. Judge Adds Residents To Flint Lead Water Case

By **Michael Phillis**

Law360 (March 4, 2020, 9:46 PM EST) -- A Michigan federal judge has added the claims of hundreds more plaintiffs to a group of Flint, Michigan, residents who are seeking billions of dollars from the federal government, which they say acted negligently during the lead water crisis.

U.S. District Judge Linda V. Parker on Tuesday agreed to add about 350 plaintiffs to a larger Federal Tort Claims Act suit that says the U.S. Environmental Protection Agency was negligent in its response to the water crisis.

Judge Parker is still considering whether to hand off the FTCA allegations against the federal government to U.S. District Judge Judith E. Levy, who is presiding over related but separate Flint water litigation. A group of Flint residents who have brought non-FTCA claims against public and private entities and people they blame for the Flint water crisis want Judge Levy to hear the cases. The federal government is not a defendant in the cases pending before Judge Levy.

The Flint plaintiffs who asked for consolidation of the cases, led by name plaintiff LeeAnne Walters, told Judge Parker the FTCA and non-FTCA cases have a lot in common and combining them under Judge Levy would save judicial resources.

But some of the FTCA plaintiffs were supportive.

"The standard would normally be, you do consolidate them because you are duplicating efforts," said Hunter Shkolnik of Napoli Shkolnik PLLC, who represents plaintiffs in Flint cases before both judges. "Judicial economy would support consolidation before Levy."

The federal government opposes the idea, saying the Walters plaintiffs are trying to "disrupt the status quo." The government argued that there are sovereign immunity issues in the FTCA cases not present in the cases before Judge Levy.

In October, Judge Parker **refused** to let the federal government go to the Sixth Circuit to argue that it had immunity from Flint residents' claims that the EPA had acted negligently. Judge Parker had decided **earlier** that the EPA's failure to warn residents "cannot be justified by any permissible exercise of policy judgment," refusing to give the government immunity.

The government added that the two cases had progressed to different stages, that discovery coordination orders will ensure that judicial economy will be preserved and that it would be harmful to the government if the suits were consolidated. Consolidation would force the government to face an October bellwether trial, it said. An attorney for a different set of plaintiffs in the FTCA litigation agreed with the government and opposed consolidation.

The Walters plaintiffs asked for consolidation after the federal government pushed to add a different group of FTCA plaintiffs to the FTCA litigation before Judge Parker.

Earlier this week, Judge Parker issued an order that said a bellwether process "is the most efficient, fair and practical method" for resolving claims by the thousands of residents pursuing FTCA claims. She also set out directions for discovery so that the process wouldn't interfere with Judge Levy's case.

The cases at issue are among several legal actions related to the crisis triggered by officials' 2014 decision to obtain their water from the Flint River rather than from Lake Huron. Residents and experts claim the corrosive Flint River water wasn't properly treated, which caused poison from the lead pipes to travel into residents' homes.

The plaintiffs are collectively represented by Michael L. Pitt, Cary S. McGehee and Beth M. Rivers of Pitt McGehee Palmer & Rivers PC; and Hunter J. Shkolnik and Paul J. Napoli of Napoli Shkolnik PLLC.

The government is represented by J. Patrick Glynn and Christina, Michael L. Williams, Jason T. Cohen and Eric A. Rey of the DOJ's Torts Branch.

The case is In re FTCA Flint Water Cases, case number 4:17-cv-11218, in the U.S. District Court for the Eastern District of Michigan, Southern Division.

--Additional reporting by Juan Carlos Rodriguez. Editing by Peter Rozovsky.

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