

Manufacturer of device used in Flint, Michigan bone lead tests declares it unfit for use on humans

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The manufacturer of the handheld radiation-emitting scanner used to test for lead in the bones of Flint, Michigan, residents notified the primary law firm involved in the \$641.25 million Flint Water settlement that it is unfit for use on humans.

The May 12 letter was made public June 3 on Facebook and published in part by the *Detroit Free Press*. The manufacturer, Thermo Fisher Scientific, sent a letter to Napoli-Shkolnik of New York, the lead law firm in the civil litigation case, warning that the XL3t Niton (X-ray fluorescence) analyzer has never been marketed for use on living organisms, “including without limitation, any such use to measure bone lead levels in living persons, nor have we sought or obtained FDA approval for such use.”

The lead bone scanner is only available at the Flint offices of the Napoli law firm—for a \$500 fee if they are not represented by Napoli. The official language in the settlement proposal contends the bone test is “voluntary” or “optional,” but in order for residents to get more than a maximum of \$1,000 per household compensation, they must show proof of lead in their bodies. Lead, a dangerous neurotoxin, dissipates in the blood after a few weeks but can remain in the bones for decades.

Flint’s population, poisoned with lead in water seven years ago, is once again being victimized by “voluntarily” subjecting themselves, including children and pregnant women, to a radiation-emitting bone scan. The Flint water crisis caused dozens of deaths, lifelong health and developmental problems in both children and adults, as well as plummeting home values. Now Flint residents are being mistreated and further victimized.

The Napoli law firm was appointed by US District Judge Judith Levy as the co-liaison counsel in the settlement and because it is the only firm with access to the bone scanner, has the majority of clients. It appears the registration for the settlement has had very little oversight as 85,584 people have registered but 13,315 of those appear to be duplicates.

More than 21,600 of the total cannot yet be determined to be unique registrants. It is also not known how many people Napoli has scanned but estimates range in the thousands.

According to information on the Thermo Fisher Scientific website, the analyzer the law firm has been using is designed not for measuring lead inside the bones of live persons, but for use in “mining and exploration” and for “scrap metal recycling,” among other industrial uses.

Chloe Hansen-Toone, Thermo Fisher’s vice president and general manager, acknowledged in the letter to Napoli that the company was aware that the device was used in academic research projects with Institutional Review Board (IRB) oversight, “but your use of the XL3t does not appear to arise in the context of academic research, and we are not aware of any IRB approval for your activities.”

Thermo Fisher’s letter to Napoli is explicit about how the analyzer cannot be used. “As you are aware in your rental agreement with Thermo Fisher, Napoli agreed to be solely responsible for the prudent operation of the XL3t.” The safety instructions state, “to never point the analyzer to yourself or another person when the shutter is open. We further advise you that Thermo Fisher has not validated the safety of the XL3t when used in a manner inconsistent with its safety instructions.”

This is a staggering refutation of the claims made by the Napoli law firm since at least as early as the summer of 2018. Aaron Specht, frequently cited as a “medical expert,” is the Harvard University research associate who was hired by Napoli to modify the XRF scanner, and asserted it was safe.

Moreover, Thermo Fisher’s letter is a validation of objections to the use of the bone scanner by Flint doctors, including Dr. Mona Hanna-Attisha and Dr. Lawrence Reynolds.

In February of this year Dr. Reynolds, a Flint pediatrician, filed an objection to the use of the scanner on the grounds that it was not approved for use on humans and was being

used as a condition for compensation.

Dr. Reynolds told the WSWS this week, “The voices of Flint residents were ignored again. Residents are not given access [to information], nor credibility, so here we are again. How is it possible that Napoli has operated since August 2019, using the device on thousands of people and no one knows? It’s mind boggling.

“As far as I’m concerned, many parties turned a blind eye or had deaf ears when complaints were brought forward. US District Judge Judith Levy, who is presiding over the settlement, Attorney General Dana Nessel, who is a party to the settlement representing the defendants, and Special Master Deborah Greenspan, have all failed to stop the use of the scanners.”

Reynolds’ objection was filed February 26, 2021, but has not yet been ruled on. The filing was submitted to Judge Levy and copies were sent to the Michigan attorney general’s office and the Michigan Licensing and Regulatory Agency.

Although, Reynolds’ filing was covered in the local press at the time, the more widely known case is that of Amber Stebbins, a 23-year-old in her 28th week of pregnancy who had the bone lead test done at the end of April without any protective shield.

Around March of this year, Thermo Fisher was contacted by the law firm of Leopold and Pitt, who wanted to purchase the device for their own bone scan operation, and was turned down. A letter similar to the one sent to Napoli was also sent to Leopold and Pitt on May 21.

Since May 12, 2021, when the letter from Thermo Fisher was received by Napoli, the law firm has submitted numerous sworn declarations—not from scientists or medical doctors authenticating the safety of the device, but from affiliated lawyers and carefully-selected clients.

The declaration submitted May 26 from Ari Kresch, a Michigan attorney with thousands of Flint clients in the settlement who works with Napoli, asserts that the bone scanner is “... a state-of-the-art program to accurately measure the presence of lead ingestion in one’s body while being cost-effective and safe. ...What my research has also confirmed, is the reliability in the bone scans as a safe and efficient way of securing the highest possible amount of compensation.”

Declarations from Napoli’s clients followed a script that typically contains the following: “I was told this is not a requirement to participate in the proposed settlement... I do not feel unsafe in receiving the bone lead test. I have faith in the Bone Lead Testing Program as an accurate and safe means of measuring long-term exposure and I am not concerned over the safety of this procedure... I have faith that Napoli Shkolnik would not expose their clients or others in

the community to risk of harm. The purpose of the Bone Lead Testing Program is to ensure we are fairly compensated for our injuries and to understand the true damage of the Flint Water Crisis.”

This is from the declaration of Claudia Perkins-Milton who was tested for lead on September 20, 2019, at Napoli’s Flint law office although the settlement was not approved by Judge Levy until January 2021.

In another attempt to combat the damning exposure and possible illegality involved in using the scanner, a Napoli-Shkolnik newsletter announced support for the Flint bone lead testing program from attorney Ben Crump on May 18. Crump is known nationally and internationally for representing the families of African American men and women brutalized and killed by the police.

Crump, along with his legal associates, attended rallies in Flint in December 2019 which he hosted with Napoli dedicated to specifically promoting the free bone lead test.

Also giving the stamp of approval to Napoli and the bone scans is Dana Nessel, the Michigan attorney general. A spokesperson for Nessel told the *Detroit Free Press* that plaintiffs were permitted to obtain a bone scan to support their claims. They were not required to get one, but “could voluntarily undergo that process based upon the advice of their lawyers.”

The Democratic administration of Governor Gretchen Whitmer is a participant in the rotten and paltry settlement and is complicit as much as former Republican Governor Snyder, who faces charges that are less than a slap on the wrist—misdemeanors for “neglect of duty” which will result in a \$1,000 fine and/or a year in jail.

The latest scandal over the bone scans makes clear that there will be no justice for Flint residents outside of the independent political mobilization of the working class against the capitalist system, its courts and the entire political establishment. The Flint water crisis which endures to this day is the product of a bipartisan attack on the working class by corporate interests and its resolution requires the fight for a socialist society based on social need, not private profit.



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