

Flint, Michigan pediatrician files opposition to including bone scan lead tests in water crisis settlement

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Dr. Lawrence Reynolds, a Flint, Michigan pediatrician and former president of the Mott Children's Health Center, filed a brief last week opposing provisions in the proposed Water Settlement Agreement that include the use of bone scan tests for determining payments until there is a review by a neutral expert and an evidentiary hearing to determine the safety and efficacy of the devices.

A portable X-ray Fluorescent (XRF) device has been used by the Napoli Shkolnik law firm based in New York and their affiliated firms to scan thousands of children and adults in Flint, Michigan, to test for lead exposure as a means of obtaining compensation higher than the \$1,000 household cap. The device is a handheld radiation-emitting scanner manufactured by Thermo Fisher Scientific, which has warned that it is not to be used on humans.

The brief filed July 20 by Dr. Reynolds is a supplement to the misnamed Fairness Hearing held before U.S. 6th District Judge Judith Levy which concluded last week. The three-day public hearing was held online and attracted no more than 135 participants, the majority of whom were lawyers that are overseeing the settlement.

The stated purpose of the hearing was to determine if the partially amended Master Settlement Agreement (MSA) is "fair, reasonable and adequate." Judge Levy is expected to rule within the next few weeks whether it goes forward as is, or with modifications, or the very unlikely option of rejecting the settlement and going to trial.

The state of Michigan is the main defendant in the case. Until the pandemic, Flint's predominantly working-class population suffered the largest modern public health crisis in the United States.

The catastrophe was set into motion during the previous

administration of Republican Governor Rick Snyder together with the Democratic Party at the city, state and federal levels. In April 2014, state and city public officials authorized the switch to the toxic Flint River, pending the completion of the KWA pipeline, which was a money-making scheme. No corrosion controls were added, causing lead to leach from the city's lead water pipes. The entire political establishment is responsible for the social crime which endures today.

Dr. Reynolds' brief opposing the inclusion of bone scans in the settlement states in part, "Members of the settlement class [Flint residents impacted by the poisoning of their water with lead] are thus left with an impossible choice: accept a nominal settlement amount that does not even begin to fully compensate them for the pain and suffering they sustained at the hands of defendants who contributed to them using and ingesting contaminated water for years **or** subject themselves to risky, invasive bone lead testing in order to prove that they are entitled to an amount of money that could not possibly make them whole—but would entitle them to additional compensation.

"There is no justice or fairness in impliedly forcing residents who have already been subjected to unknown health risks due to contaminated water to further subject themselves to unknown health risks to prove that they deserve compensation for the risks they were subjected to in the first instance."

Dr. Reynolds told the WSWS, "They can't get away with this because if this is allowed, it means such devices will be used on workers in the plants, on sanitation and recycling workers, and public safety workers. We've got to stop these kinds of practices." While he pursues his exposure of the bone scan device, he said the attitude of the legal system and the political establishment can be summed up as, "Wrap it up, fold the tents and get out of

town.”

It is notable that Dr. Reynolds’ statements given at the Fairness Hearing, as well as the brief he filed a few days later, represent the only major challenge to the unsubstantiated claims of safety and efficacy made by the Napoli Shkolnik attorneys at the hearing. The firm has been using the device to scan men, women and children in Flint since October 2019. The device has not been approved by the Food and Drug Administration nor was it registered with the state of Michigan until March 2021.

Last week’s court proceedings provide a picture of how the legal system works under capitalism. “Fairness” is not determined by what is needed to address and rectify the damage done to the victims, including the long-term impact. In fact, the victims must not only prove they were harmed but also quantify to what degree they were harmed.

The hearing was mainly dominated by arguments over the distribution of the 33 percent of the settlement, which will be divided among the lawyers and the firms appointed to administer the claims. The approximately 55,000 residents, who have registered for the settlement, will be last in line to receive what remains of any compensation.

Only a fraction of the hearing was devoted to challenging Napoli’s assertions—made without proof—of the safety and efficacy of the bone scanner. There was more discussion about the lack of access to the devices from lawyers not part of the “inner circle” than whether they are safe to be used on their clients. There is a monetary incentive built into the present proposed settlement to have bone lead testing, for both the lawyers and the residents. The claim by Democratic Governor Whitmer and Attorney-General Dana Nessel that the bone tests are “voluntary” is absurd.

This pamphlet presents a selection from the record of the WSWS as the crisis unfolded.

Michigan state officials were alerted in February 2021 that the bone scanning device had never even been registered, which resulted in an investigation of Napoli’s Flint law offices, where the tests were being administered. Margaret Bettenhausen spoke at the hearing on behalf of the Michigan Attorney General’s office and reported that some signage had been changed on the premises. Incredibly, she said that it is not the job of the Michigan Occupational, Safety and Health Administration (MIOSHA) or the Radiation Safety Office to decide whether or not the bone scanners are safe.

The settlement’s woefully inadequate compensation

was never challenged by any of the lawyers. The \$641.25 million proposed partial settlement is a paltry sum representing less than 1 percent of the State of Michigan’s annual \$67.1 billion annual budget. By the time legal fees and liens are deducted, the victims of the water poisoning will get slightly more than one-half of 1 percent of the state’s budget.

Litigation cases are based on the injured having to prove they were damaged. Lead exposure in blood is difficult to prove because it dissipates from the blood after 30 days. Less than one-third of residents were tested for blood lead levels between 2014 and 2016 because city and state officials lyingly claimed the water was safe. It was not until 18 months after the switch to the toxic Flint River was made that lead advisories were issued. Residents were advised to boil their water—which actually made it more toxic.

Even if lead is detected in the bones years after the initial exposure, it does not provide the data that shows the full extent of damage, including stunting mental and emotional development as well as numerous lifelong health illnesses in both children and adults.

An exchange during the hearing between Dr. Reynolds and attorney Corey Stern, co-counsel and one of the defenders of the settlement, gives a small glimpse of some more fundamental issues at stake.

Stern interrupted Dr. Reynolds, who was explaining that the difficulty of proving damage from lead poisoning does not justify the use of unsafe devices. Stern asked, “So what’s your alternative, Dr. Reynolds? Do you want us to get the name and address of every single person in Flint?” implying that would be a catastrophe if everyone were to be compensated. Dr. Reynolds countered, “That would be a good start. If you lived in Flint, worked in Flint or used day care facilities, you drank poisoned water, and everyone should be made whole.”



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