Flint, Michigan water poisoning settlement may include liens against Medicaid and Medicare benefits

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More than half the population of Flint, Michigan, has signed up to be part of the proposed settlement offered by the state to those affected by the poisoning of the city's water system beginning in 2014.

Not known to most of the residents, however, is the fact that benefits that were paid by Medicaid, Medicare and other health insurance entities may be deducted from their settlement payments. This deduction would come on top of the 33 percent that goes for administrative and lawyers' fees.

In addition to dozens of lawyers, numerous administrators will also be compensated from the settlement. For example, in July 2018, Judge Levy appointed Deborah Greenspan as a special master, at a rate of $600 an hour, plus reimbursement for expenses such as accountants, auditors and clerical help. Her primary job was tracking attorney fees and expenses.

Relatively little compensation will be left for the men, women and children, who ingested lead and other harmful contaminants causing deaths, miscarriages, and life-long medical and developmental harm or otherwise had their lives disrupted by the water crisis.

A federal judge has not yet ruled on the entirely inadequate $641.25 million water settlement after hearing arguments presented at the misnamed "fairness hearing" on July 12-15. Judge Judith Levy will rule whether it goes forward as is, or with modifications, or the very unlikely option of rejecting the settlement and going to trial. Based on previous litigation it is likely the deduction of Medicaid and Medicare payments will remain in the approved settlement.

The discussion in the last 10 minutes of the final day of the fairness hearing earlier this month gives a glimpse of how the legal system works under capitalism.

Greenspan directed her closing remarks to the issue of legal fees and other deductions. In a "by-the-way" moment, she reminded the lawyers attending the online hearing that in addition to legal and administrative fees, there will be the imposition of liens on Medicare, Medicaid and other health insurance, which will also be deducted before the residents receive any compensation. There were no comments, objections or any discussion from any lawyer regarding the liens.

Since the hearing, Cynthia Lindsay, an attorney working with the Pitt Legal Teams, one of the firms working in the settlement, posted on a Facebook group where many residents were angered to hear about these deductions: "I know the State of Michigan is going to waive all liens as part of the Settlement. Don't know if private entities such as hospital; physicians will. We are trying to get clarity on this." Whether the liens will be implemented remains to be seen.

The proposed settlement states that residents must reimburse "Medicare, Medicaid, the Michigan Department of Health and Human Services, all third-party public or private payors that have paid for and/or reimbursed the Claimant [Flint resident] for medical expenses, pharmacy expenses, disability benefits, or any other costs and expenses incurred due to or arising out of injuries alleged."

For those unschooled in the workings of the law, this may come as a revelation. How could Flint residents have to pay back the state of Michigan for medical services and treatments that would never have been required if the state had not contaminated their water in the first place? Why was there not a single objection to Greenspan's description of the liens, that are detailed in the proposed settlement?

The harsh reality is that such liens are a normal and common feature of all litigation suits. The legal system

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under capitalism generally protects the interests of corporations, financial institutions and capitalist politicians and shields them from any legal liability. In the case of Flint, no one has been convicted or imprisoned, including former Governor Rick Snyder, who faces only two counts of willful neglect of duty—misdemeanors with potential sentences of one year each and/or a $1,000 fine. His case has not yet gone to trial. Clearly, the well-connected are not bound by the same laws that apply to the working class.

Flint workers and their families who were harmed by the actions carried out by both Democratic and Republican politicians are legitimately outraged by the current state of affairs. The settlement is millions of miles away from making the residents whole. When all the proceedings finish winding through the labyrinthine legal system, what remains for the victims of one of the largest public health crises in US history before the coronavirus pandemic will be a pittance.

Many have lost their jobs due to the pandemic or to having to care for a child, who now has behavioral and developmental problems. The measly $1,000 cap per household ignores plummeting home values and the loss of appliances that were damaged by the contaminated water, as well as the cost of replacing lead pipes in the home.

The "voluntary" test for lead in the bones administered with a portable XRF device, which emits radiation and is not to be used on humans, is a monetary incentive to win higher compensation at the expense of safety and health.

It is very likely that most of those who registered for the settlement were not informed by their lawyers that receiving an award may cause a resident to become ineligible for Medicaid or any assistance that is based on income. While money received in a settlement cannot be taxed, it does appear in one's overall income.

"Each Claimant acknowledges and agrees that the Michigan Department of Health and Human Services will continue to determine eligibility for the Medicaid program and that receiving a Monetary Award may affect a Claimant's eligibility for Medicaid," the settlement declares.

Flint is one of the poorest cities in the US, having suffered from decades of de-industrialization at the hands of General Motors and abetted by the United Auto Workers. It was a major center of auto production until the late 1980s. Next to Detroit, the city had one of the highest standards of living in the country. At its height, over 80,000 people worked at GM, with decent-paying jobs and benefits. Less than 8,000 are employed at GM today. The population has sunk to 95,000 from 200,000 in the 1960s.

Today an estimated 40 percent of the population live below the poverty level. In 2016, Medicaid was expanded for a period of five years to low-income children up to age 21 (increased from 18) and pregnant women served by the Flint water system who otherwise would have been ineligible for the program. A substantial number of adults in the city are also dependent on Medicaid.

By the time deductions are made, Flint residents will most likely not even receive an award that would compensate them for paying some of the highest water bills in the nation. It is not unusual for a household to be billed $80-$150 per month for water which residents still do not drink. A conservative estimate of total water bills paid per household from 2014 to the present is at least $6,000.

Justice for the people of Flint will not be secured through the capitalist courts or by appealing to the politicians from either capitalist party. The last seven years have proven the futility of directing any appeals to the Democrats or Republicans. They are all beholden and accountable to the financial oligarchs.

The vast resources of society must be marshaled to meet the needs of Flint residents as part of a united fight by autoworkers, teachers, health care workers and logistics workers in the US and internationally. A political struggle by the working class against the capitalist system for socialism is necessary. Flint residents must receive full and adequate compensation without having to further risk and jeopardize their health, lifetime health care and full educational support and resources for their children.

We urge those who agree with these demands to form an independent Flint Workers Action Committee, which will be affiliated with the International Workers Alliance of Rank-and-File Committees and will fight for what all Flint residents need to be made whole.

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