

Federal judge gives final approval of derisory settlement for Flint, Michigan residents

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12 November 2021

After months of deliberation, US District Judge Judith Levy, calling it a “remarkable achievement,” issued her final ruling on the settlement for Flint residents, allowing \$626.25 million to be paid out. Over three-quarters of a decade after state and local officials disconnected the city of 100,000 from its safe source of treated drinking water and switched to the toxic and improperly treated water from the Flint River, the final approval from the judge is being touted as a “historic settlement” by Michigan Attorney General Dana Nessel.

It is nothing of the kind. While it is one of the largest monetary settlements that the state of Michigan has had to make, the class issues that emerge from the experience of the population of Flint over the last decade show that nothing is settled.

While \$626.25 million may, on its face, sound like a sizable sum, simple math will put it in a realistic perspective. The city had a population of 100,000 in 2014 when the water switch was made and lead began to leach into water flowing through residents’ taps. This averages out to a paltry \$6,262.50 per resident for the resulting deaths, countless miscarriages, loss of income and home values as well as life-long illnesses for adults and children. Since the settlement represented only 50,000 residents, presumably because many decided to pursue their own individual lawsuits, that ballpark calculation would theoretically be doubled.

The legal process is defined as a mass-tort settlement, in which monetary awards go to innumerable claimants. The suit itself is the product of multiple lawsuits which were combined by the court into a single class suit. The \$626.25 million settlement includes \$600 million to be paid by the State of Michigan, \$20 million by the City of Flint, \$5 million by McLaren Health and \$1.25 million by Engineering firm Rowe Professional Services.

Thousands of hours were spent by legal professionals from the different sides in negotiating the settlement.

Wednesday’s ruling gives them the occasion to pat themselves on the back.

The “final approval” issued yesterday did not include the unknown millions that will be subtracted for legal and other fees. Legal fees will eat a significant, as yet undecided amount from the total. In March, plaintiff’s attorneys requested \$202.8 million, nearly one third of the settlement, to be awarded out of the settlement. Several more millions in various other fees will have to be paid out. In addition, there is inflation. Just over the past year, the price of goods and services used by US households increased 6.2 percent, so whatever awards will be made to residents will be significantly eroded in real value.

Nonetheless, Deborah Greenspan, the special master—the person appointed by the court to officiate over the amounts to be awarded to the various parties involved—said of the settlement, “I think that the process was one that reflects exactly what you want to have in a settlement negotiation. It was arm’s length. It was hard-fought. And everyone made appropriate compromises in order to achieve what everyone believed was a correct, reasonable and fair goal.”

In capitalist society, the court system is the only avenue that workers can take to be recompensed for their losses, even though it is stacked against them from the get-go.

To illustrate: just last week, Michigan’s head of drinking water during the Flint water crisis, Liane Shekter Smith, was awarded \$300,000 by the State of Michigan for being unlawfully fired—\$100,200 more than the full back pay and compensation ruled by a mediator weeks earlier. Shekter Smith was originally seeking \$900,000, with the clause that she would not get her job back.

Her firing was largely a result of her declaration in an August 2015 conversation with residents who demanded the truth on the state of Flint’s drinking water, that the report by Region 5 EPA field technician Miguel Del Toral that the legally-required corrosion control treatment was

not being administered to the city's water, would be quashed and Del Toral silenced.

The cash awarded to her more than five years later was based on the fact that she was among a cohort of officials in the Michigan Department of Environmental Quality (MDEQ) who were not only not fired, but were suspended with full compensation and later were allowed to quietly return to their jobs:

- Adam Rosenthal, the other MDEQ official in the meeting with the residents, called Del Toral a “rogue employee.” He had previously ordered the collection of falsified water samples to show that the city met federally mandated drinking water standards.

- District Engineer Michael Prysby, the official who gave the order to Flint Water Treatment Plant functionaries to run the plant without applying legally required corrosion control treatment.

- Stephen Busch, District 8 Water Supervisor, falsely reported to other agencies that corrosion control treatment was being applied in Flint's water.

The mediator in Shekter Smith's case ruled that because she was the only one fired, she was being “politically scapegoated” and entitled to be generously rewarded. Her criminal role in the poisoning of an entire population was not to be held against her. While most people would agree that as one of the perpetrators of this crime, Shekter Smith, as well as Rosenthal, Prysby, Busch and others deserve to be prosecuted, instead she is made restitution for the destruction of her reputation.

While workers are compelled to enter into civil litigation in an effort to receive restitution, they need not share the exultation of the lawyers in reaching a settlement. The court system delivers a completely upside-down process. The victims, instead of being first, come last. After all the claims of lawyers and functionaries are paid off, what remains is meted out in whatever proportion that the judicial officials decide. The amended settlement subdivides the recipients into different categories, based on damages that must be proved by the residents themselves.

Children represent a greater portion of the awards since it is known that growing bodies are more vulnerable to the toxic results of lead in the bloodstream. Yet the settlement makes it incumbent on the parents to provide nearly impossible proof of poisoning. Lead remains in the bloodstream for only 90 days, after which it replaces calcium, taking root in organs and bones.

Unscrupulous lawyers have taken advantage of the situation by utilizing unsafe non-medical x-ray scanning

machines on children to give their clients an advantage in getting a larger award. The pediatrician who stood beside Dr. Mona Hanna-Attisha in 2015 when she documented the spike in blood lead levels due to the Flint River water, Dr. Lawrence Reynolds, filed an opposition to the settlement's inclusion of these test results as evidence.

Reynolds' objection, along with over 100 others, was overruled by the court. Much of the 178-page legal opinion filed by Levy is devoted to listing the objections to the terms of the settlement filed by claimants and the court's reason for denying them.

Officials from Michigan Democratic Governor Gretchen Whitmer on down are singing the praises of the settlement. Flint Mayor Sheldon Neeley called the final approval “a path to resolve years of suffering for the residents of Flint.”

When the preliminary settlement was announced 15 months ago, the Socialist Equality Party candidate for President, Joseph Kishore, outlined what is really needed by the people of Flint:

- Lifetime guaranteed medical care for all children and adults free of charge and on a completely equal basis.

- Lifetime educational and social programs to provide for special needs children.

- Full replacement—not simply of the lead service lines, but of the entire water infrastructure system.

- Full compensation for declining home values, loss of income and as well as compensation for six years of paying high water bills for water that residents do not drink.

- All those responsible for the water poisoning and its cover-up must be criminally prosecuted.

In the six years since the poisoning has been brought to light, largely through the determined efforts of Flint residents themselves, it has been made clear that the government, whether run by Democrats or Republicans, will not even attempt to implement any of these demands, and instead is working to cover up the immense social crime which has been committed.



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