

Flint Michigan Lead-Tainted Water Class Action Allowed to Continue

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The US Supreme Court has [denied review](#) of a July 2017 Sixth Circuit [ruling](#) that revived two federal class action lawsuits seeking redress for plaintiffs alleging injury as a result of the lead-tainted water crises in Flint, Michigan. In addition to ensuring that the Flint, Michigan water crises remains active in the national conversation, the Supreme Court's decision leaving in place the Sixth Circuit's reasoning paves the way for drinking water claims that might otherwise be preempted by the Safe Water Drinking Act (SWDA). Practically, the decision may result in additional monetary relief for Flint residents.

The Crises

In April 2014, Flint's emergency manager switched the source of the city's drinking water to the Flint River. The switch—which eventually [resulted](#) in charges of criminal negligence against some officials—caused many residents to complain about the water's quality. After receiving complaints for months, officials acknowledged E. coli and total coliform bacteria in the water but [maintained](#) that additional chlorine fixed the issue.

Eventually, officials also revealed that the water supply contained lead at 13,200 ppb. (Lead is hazardous waste at 5,000 ppb.) Although the water supply has since been switched back, the fallout and litigation from the crises continues.

Preemption

In terms of monetary exposure and scope, the US Supreme Court's recent certiorari denial implicates some of the most consequential litigation still winding its way through the courts. The Supreme Court left in place the Sixth Circuit's holding that two groups of plaintiffs' constitutional claims were not preempted by the Safe Water Drinking Act (SWDA), and that their constitutional law claims against Michigan government entities could proceed. The plaintiffs, Flint residents and water users, allege race and wealth-based discrimination, state-created danger, racially-motivated conspiracy, due process violations, and various contract, tort, and equitable claims.

The Sixth Circuit held that the SDWA did not satisfy the three requirements to find claims preempted. First, it held that no clear legislative intent by Congress precluded section 1983 claims under the SWDA. Second, SDWA's remedial scheme was not so broad as to fully redress the harms suffered by the Flint residents and water users. Finally, the Sixth Circuit held that the rights protected by federal law provided greater remedies, and were different than, the rights protected by the SWDA.

By denying certiorari, the Supreme Court allowed the litigation to continue in the Eastern District of Michigan. The district court is probably several years away from reaching the merits of the case, but this threshold victory allows plaintiffs to press forward and seek additional relevant information about the causes of the crises.

Implications

The continuation of the underlying class action lawsuits may provide additional relief to Flint residents. That relief will likely redress injuries caused by the contaminated water rather than focus on remediation efforts—which



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were largely addressed in a separate [settlement](#) between nonprofit groups, including the Natural Resources Defense Council, Inc., and the Michigan and Flint governments (and related officials). Specifically, that separate settlement will require Michigan to pay \$87 million for the City of Flint to identify and replace at least 18,000 unsafe water lines by 2020. In contrast, the ongoing litigation could result in damages for Flint residents and water users harmed by the unsafe drinking water.

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