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Judge Considers Whether To Release Discovery Material In Flint Water Lawsuits

A federal District Court judge is considering the scope of discovery material that could be released in the consolidated Flint water action lawsuit arising out of the 2014 water crisis.

U.S. District Judge Judith E. **LEVY** in Detroit said Wednesday that she wanted to make a "reasoned decision" without trampling on the Fifth Amendment rights of some defendants -- whom also face criminal charges. The Fifth Amendment provides protection against self-incrimination.

That could be a difficult road as attorneys representing some of the accused told Levy that there is a gag order in the Genesee County cases that strictly prohibits the release of discovery material as it relates to the criminal cases.

Levy asked the attorneys to provide supplemental briefs on how their clients could be affected. She also ordered the attorneys representing upwards of 100,000 Flint residents, including children, and the defendants' attorneys to meet and draft recommendations on a repository for all documents and related evidence as well as how to preserve potential evidence from third parties, such as the lead pipes that delivered the toxic water to residents' homes.

The case was continued to Nov. 15.

Levy's comments came during a status conference for the class action lawsuit that had an estimated 60 lawyers crowding Levy's Detroit courtroom.

In opening comments, Levy said she recently traveled internationally and was asked by someone about the Flint water crisis. She said it was a good reminder that it "is being watched not just by Flint . . . but people around the globe."

The day's agenda included procedural decisions, including protecting evidence. The discussion, however, centered primarily around whether the parties are releasing needed discovery, including documents or emails related to the water crisis, to one another.

Lansing attorney Charles **BARBIERI**, who represents Michigan Department of Environmental Quality employees, expressed concern about protecting his clients' Fifth Amendment rights. Five of Barbieri's MDEQ clients are among the 15 facing criminal charges in connection with the water and legionella outbreak crises.

Barbieri did not object, however, to releasing documents that have already popped up on Flint water-related websites.

Sheldon **KLEIN**, who represents the city of Flint, also objected to the release of discovery materials.

Assistant Attorney General Margaret **BETTENHAUSEN**, who represents the state and Gov. Rick **SNYDER**, told the court that there is an issue of qualified governmental immunity -- meaning some defendants are protected from civil suits. She argued release of discovery material is not appropriate if someone is dismissed from the case due to governmental immunity.

"The state's position is it has no role in federal proceedings until the issue of immunity is resolved," she said.

Bettenhausen noted that her office is also fielding requests to depose the Governor and his aid, Harvey **HOLLINS**, who testified in a separate preliminary exam for the state's top health director, Nick **LYON**, who is charged with manslaughter in connection with the legionella outbreak. (See ["Snyder 'Stands By' Flint Timeline In Letter To Congress,"](#) 10/12/17; and ["Snyder Aide Contradicts Boss' Congressional Testimony On Legionnaires,"](#) 10/6/17.)

"We're getting pushed to something and I don't know the end game," she said, adding that some positions in government "are not allowed to be deposed."

Theodore **LEOPOLD**, a Palm Beach Gardens, Florida, attorney who represents some of the plaintiffs, said the defendants "want information from us, but we also need information from them."

"It's fundamentally, fundamentally inequitable," agreed Corey **STERN**, a New York-based attorney representing about 3,500 Flint residents, including 2,400 children.



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