

Bond Case Briefs

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Flint Residents Sue Investment Banks, Accuse Them of Helping Create Water Crisis.

Flint residents seeking damages from the water crisis are accusing three investment banks of aiding in the exposure of tens of thousands of residents to toxic water when the city switched its water source more than six years ago.

Filed on behalf of 2,600 children in federal court in Detroit on Wednesday, the lawsuit against JPMorgan Chase & Co., Wells Fargo, and Stifel, Nicolaus & Co. claims that by financing the city of Flint's participation in a \$220 million municipal bond sale for the construction of a new water pipeline, the banks knowingly put Flint on a path to rely on the corrosive Flint River as a temporary water source and an ill-equipped water plant to treat the water.

"All three knew 100% that if they participated in the bond sale, children would get hurt, children would be brain damaged and people's lives would forever be changed," said Corey Stern, a lawyer at Levy Konigsberg LLP who filed the lawsuit.

The EPA determined in 2016 that Flint's water distribution system was too large and its treatment plant was inadequately staffed, operated and administered.

"But rather than doing the right thing, the ethical thing, the moral thing, they participated with government defendants in creating that situation for the kids in Flint because of the money that they stood to earn."

The plaintiffs are seeking monetary damages, a potential award that Stern values could be worth at least \$2 billion.

Wednesday's filing comes after Flint residents joined several other water crisis lawsuits that brought pressure and led to a \$600 million settlement two months ago with the state of Michigan for its role in the public health disaster that potentially exposed thousands of children to toxic levels of lead.

According to Stern, the case is centered on children younger than age 19 due to the level of damage he believes children incurred and because of statute of limitations laws in Michigan that allow minors to file claims that accrued when they were children until they reach the age of 19.

JPMorgan Chase declined to comment. Wells Fargo and Stifel, Nicolaus & Co. couldn't be immediately reached for comment Wednesday.

Flint's water crisis began in April 2014 when the city began using the Flint River as a temporary water source in order to cut costs so that it could upgrade its water treatment plant and connect to the new water pipeline once it was built. For decades, the city purchased already treated water from the Detroit Water and Sewerage Department, but it terminated the relationship in April 2013 after deciding to enter into a long-term customer contract with the Karegnondi Water Authority.

The bonds at the center of the lawsuit were issued in spring 2014 by the KWA, backed by Genesee

County and Flint, to pay for the construction of a \$300 million pipeline from Lake Huron in Sanilac County that would carry water 70-miles inland to Genesee County and the city of Flint. The water authority was formed by officials in Genesee, Sanilac and Lapeer Counties several years prior with the intent of providing a new water supply alternative from Detroit's water system.

At the time, the city was at its debt limit, as regulated by the state constitution, and could not afford to participate in the sale of bonds. As a workaround, the bond counsel for Flint and the KWA, an outside environmental lawyer and the Michigan Department of Environmental Quality worked out an environmental consent order to remediate a toxic sludge pit tied to the water treatment plant.

The order allowed the city to access additional funding and also included a stipulation regarding the city's participation in the KWA project as part of the compliance program for the violation. The order allowed Flint to participate in the securities offering and was included in the bond's official statement, which allowed the bond sale to move forward as designed in April 2014. This provided financing for the pipeline project in time for construction season that year, but the money was used to pay for the KWA, not to help Flint pay to remediate the sludge pit.

Flint's total share of the project amounted to roughly \$85 million, and within weeks of the initial bond issuance, the city sought to quickly bring its water treatment plant online to start distributing Flint River water.

But the plant was not ready to dispense drinking water to residents, a Genesee County drain official testified at a criminal preliminary hearing of four Michigan Department of Environmental Quality employees in 2016. David Jansen, the senior assistant director of the Genesee County Drain Commission, said at the time that the water wasn't treated with corrosion control chemicals and resulted in lead leaching from aging pipelines into the city's drinking water.

According to the lawsuit, were it not for JPMorgan Chase, Wells Fargo and Stifel, Nicolaus & Co. underwriting the bond sale, the city would have been forced to continue buying water from Detroit, as it did not have the funds to pay to upgrade the plant once the pipeline was built or to use the Flint River in the interim.

"JP Morgan Chase, Wells Fargo and Stifel locked arms with the city of Flint. They locked arms with the Treasury Department. They locked arms with the DEQ. They locked arms so tight that it was impossible to tell one from the other," Stern said. "And in doing so, they violated every citizen of Flint's right to bodily integrity."

Christine Chung, an Albany Law School professor, said typically in municipal bond or bankruptcy cases, residents do not have standing in proceedings, with elected officials or municipal managers representing those interests.

But she did note the effort of federal Judge Steven Rhodes, a retired federal judge who oversaw Detroit's bankruptcy, to hear from the city's residents during the bankruptcy proceedings.

"That's where this is new," said Chung, who serves as the co-director for the law school's Institute for Financial Market Regulation. "That's just sort of a sad and defining characteristic of these cases, that where is the place for the voice of the residents in legal proceedings involving these matters of public finance and public governance?"

LeeAnne Walters, a Flint resident and mother who is one of the named plaintiffs in the case on behalf of her children, said she was cautiously optimistic about the lawsuit and believes bringing claims against the banks is an important step.

“All the players have been involved, need to be held accountable,” said Walters, one of the earliest whistleblowers during the water crisis and now an environmental activist, on Wednesday. “The banks that put profit over safety need to be held to the same standard as everybody else and they deserve to pay for the lives of lives that they have devastated.

Walters, whose twin children were three at the time of the crisis, says she sees the emotional and physical toll of the water crisis reflected in her kids every day from issues with hand-eye coordination to speech impairments and a continued refusal to drink water from a tap.

“It’s taken some time, but good things come to those who wait,” she said. “Hopefully as we go forward on this, the good guys keep being the good guys and the bad guys learn that it’s not OK to be bad guys.”

Arthur Woodson of Flint uses a bullhorn to chant with the crowd outside the Capitol as part of a Flint water crisis protest in 2016.

Upon learning about the lawsuit on Wednesday, Flint community activist Arthur Woodson was taken aback by the news and felt like it would bring a welcome spotlight to the six-year-long saga.

“I’m ecstatic because they’re bringing more attention now and show people it was about them making money, not saving money,” Woodson said of the lawsuit.

Woodson said the addition of the financial institutions feels like the start of a new phase in the water crisis litigation. “For them to go after the bank, that’s for real, you’re getting ready to fight,” he said.

The Detroit News

by Kayla Ruble

Oct 7, 2020