

Why A Judge Put The Brakes On Flint Atty's Opt-Out Mailings

By **Andrew Strickler**

Law360 (February 12, 2021, 11:58 AM EST) -- The Flint, Michigan, lawyer hit with an injunction for sending misleading letters to city residents about a \$641 million water crisis settlement has been involved in other lead-related litigation, a fact that likely raised the court's anxiety about his solicitations throwing a monkey wrench into a hard-fought deal.

Hunter Shkolnik, one of the plaintiffs' lawyers who raised a red flag about the letters, said attorney Loyst Fletcher Jr.'s role in other lead-water matters hadn't been made clear before a recent hearing that resulted in an injunction and restraining order.

But with "confusing" letters appearing in Flint mailboxes in recent weeks and at the court, Shkolnik's said the judge's reaction — an order barring Fletcher from sending any more such letters — was restrained relative to the potential harm to the settlement. The historic deal, the first major step to resolving litigation stemming from a yearslong health crisis, got a preliminary approval just **three weeks ago**.

If the federal judge "got a big wave of these so-called 'opt-outs,' she could have ended up making a final decision on the settlement thinking they were based on the real settlement notice," said Shkolnik, a co-liaison plaintiffs' counsel.

"That really gets at the heart of the court's jurisdiction, so I think the injunction was actually tempered," he told Law360.

Last week, the Michigan judge overseeing the case, U.S. District Judge Judith Levy, held an unusual hearing regarding a stream of letters bearing Fletcher's letterhead that had begun arriving in the mailboxes of Flint residents.

The communications appeared tied to the court's preliminary approval of the \$641 million settlement with the state over lead poisoning from the city's water supply. Most of the money will go to those who were 18 years or younger at the time of the crisis.

In an official-looking letter bearing Fletcher's letterhead, the lawyer said it was "imperative" that the recipient send it to Judge Levy. The mailer included a preaddressed letter to Judge Levy's chamber that calls the deal "totally unfair," mentions a "\$1,000 maximum limit" in the settlement, and declares they opt out in favor of "the 2% relief as filed by my attorney Loyst Fletcher Jr."

Included in the mailing was a two-page retainer agreement with Fletcher.

In a Jan. 3 injunction motion, plaintiffs' lawyers called Fletcher's mailings a "deceptive maneuver" designed to confuse people, a threat to the agreement itself, and a violation of state ethics rules, including the prohibition on unauthorized contact with represented parties. According to the motion, the opt-out letter inaccurately suggested that people covered by the agreement can choose between compensation from settlement or via the "2% relief" — a mechanism not reflected in the settlement deal itself.

"Those plaintiffs who act on the information provided in Mr. Fletcher's communication could end up without any remuneration or even the ability to bring their own claim," the filing states.

Following a Feb. 5 hearing attended by Fletcher, Judge Levy granted the motion and barred Fletcher from contacting any putative or current class members with "information that is incorrect, misleading, or improper" about the case or the settlement.



U.S. District Judge Judith Levy

Fletcher estimated at the hearing that he'd sent more than 200 such mailings, Shkolnik said, and told the court he was representing multiple clients with lead-related claims. Those cases were not recorded in a special master-led census of cases triggered by the Flint crisis.

Hassan Zavareei, a partner at Tycko & Zavareei LLP who has worked as both defense and plaintiffs counsel in class actions, noted that the judge issued a narrow order that still allowed Fletcher to contact would-be clients not already represented in the case.

While Judge Levy's order didn't fully explain her thinking, Zavareei said she may have been animated by concern that a single local lawyer could spread enough confusion in Flint to undermine years of work that went into reaching the complex settlement.

"Courts are very sensitive to their obligations to look after class members ... and it may be there was even more concern and sensitivity because of the stage of this, and because the case does involve such important issues," he said.

James Bogan, who heads a class action group at Kilpatrick Townsend & Stockton LLP, said Fletcher's murky relationship with water crisis cases likely wasn't as relevant to the court's reaction as the misleading letter itself.

"You're never allowed as a lawyer to provide misleading information to anyone, especially a nonclient in a solicitation, and apparently the court came to the conclusion that's what happened," he said.

--Additional reporting by Emily Field and Michael Phillis. Editing by Katherine Rautenberg.