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Flint Michigan: Time to Expand the Exceptions to Sovereign Immunity for Mass Torts Vol. 2, Issue No. 1 (2016)

As new revelations each day are being disclosed by both state and federal government agencies regarding the burgeoning contaminated public water supply in Flint Michigan, occurring primarily as a result of the City [switching](#) “from Detroit’s water supply to the Flint River in 2014, in part to save money [where] the city did not use corrosion control to prevent lead from entering the water,” the substantive question remains as to whether or not the City of Flint, the State of Michigan, in particular the Department of Environmental Protection Quality (DEQ), and government agencies seemingly responsible for the water crisis in Flint will be able to assert sovereign immunity. A recent [article](#) highlights the significant legal challenges to the residents of Flint, where the U.S. Courts, in particular the U.S. Supreme Court has generally determined that “if you’re suing an official [or government agency] and want to get money damages from them, they’re going to be immune from liability unless you can show that they clearly violated an established law that a reasonable person would have known about.” The Flint Michigan case represents a unique situation where official government conduct or decision-making, has arguably impacted or has the potential to impact the nearly [estimated](#) 99,000 (est. 2015) to reside in the City. This is further understood in light of new [reports](#) that “at least six Environmental Protection Agency officials discussed in late March Genesee County’s Legionnaires’ disease outbreak and a suspected link to Flint’s change in water sources” and it has recently [been](#) “announced [that] the number of cases of Legionnaires’ disease has spiked in Genesee County in the two years since Flint switched its water supply from the Great Lakes to the Flint River.”

As such, the Courts will now be faced with whether or not official government conduct, that lends itself to public health situations such as Flint Michigan and impacting from a mass tort perspective, thousands of individuals, should still be afforded

sovereign immunity, and in particular, whether there should be a recognized [“mass tort” exception to sovereign immunity](#) where such conduct involves a *“policy that constitutes mass and systematic violation of constitutional rights”* (emphasis added).

About Us

Robert N. Wilkey, Esq. is the Principal Attorney of Wilkey Legal Consultants, LLC (“WLC”) located in Exton, PA, with over a decade of class action, mass tort, and complex civil commercial litigation experience, including claims involving Federal and State laws involving environmental and regulatory matters; unfair trade practices and consumer protection; banking and lending standards, credit services and truth in lending regulations, breach of good faith and dealing claims, and breach of fiduciary duties. Mr. Wilkey is an advocate for Asian-American based domestic and international issues. He holds a BA/MPP from Brigham Young University and a JD from the University of Iowa College of Law, and currently provides regulatory, legal, and consultation and litigation services to individuals, corporations, industry, non-profits, school districts, and government entities.

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