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# Judge Reinstates Ex-Michigan Gov. Rick Snyder as Defendant in Class Action Over Flint Water

Snyder "should pay" for the water contamination crisis in Flint, Michigan, says Michael Pitt, co-lead counsel in the class action.

By Amanda Bronstad | April 04, 2019

A plaintiffs attorney pursuing the consolidated class action over the water contamination crisis in Flint, Michigan, is aiming for former Gov. Rick Snyder's pocketbook now that a federal judge has reinstated him as a defendant in the case.

Earlier this week U.S. District Judge Judith Levy, in Ann Arbor, Michigan, reversed her own [Aug. 1 order dismissing Snyder from the case](https://www.law.com/nationallawjournal/2018/08/01/governor-state-of-michigan-tossed-from-flint-water-class-action/) (<https://www.law.com/nationallawjournal/2018/08/01/governor-state-of-michigan-tossed-from-flint-water-class-action/>), which was brought on behalf of Flint residents with health problems and businesses suffering diminished property values after government officials switched the source of their drinking water.

That means that Snyder, who left the governor's office this year due to term limits, could be held personally liable, said Michael Pitt, co-lead counsel in the class action.



“I don’t know the size of his wallet, but his net worth is in the millions, and I think he needs to be held

**(<https://images.law.com/contrib/content/uploads/sites/292/2019/04/Gov-Rick-Snyder-Article-201904042157.jpg>) Former Michigan Gov. Rick Snyder. Photo by Sgt. 1st Class Jim Greenhill/U.S. Army National Guard**

accountable,” said Pitt, of Pitt McGehee Palmer and Rivers in Royal Oak, Michigan. “And if he has to pay part of the judgment, he should pay part of the judgment.”

In allowing the plaintiffs to amend their complaint, Levy concluded that Snyder was indifferent to the harm occurring in Flint because he denied knowledge of the problem while, in private, discussed what to do about it. Even after acknowledging the crisis, she wrote, he waited several months to declare a state of emergency.

“These two ways of showing indifference represent a continuum of actions, more powerful combined than when viewed in isolation,” Levy wrote in her 128-page ruling (<https://images.law.com/contrib/content/uploads/documents/292/43305/Flint-Governor-Order.pdf>). “They depict indifference in the form of deception, from the

governor's unwillingness to admit the crisis, to his downplaying of its severity once it became public knowledge. Viewed as a whole, the allegations plausibly describe 'conscience shocking' conduct."

Dan Olsen, a spokesman for the Michigan attorney general's office, which has been defending the governor's office, now occupied by Gretchen Whitmer, called it "premature for us to comment until we've had a chance to thoroughly review the 128-page review decision by Judge Levy."

It's unclear whether Snyder, now in the private sector, has retained separate counsel in the case. When asked whether the attorney general's office continued to represent Snyder, Olsen said: "That's being evaluated."

Snyder, who identified his current job on LinkedIn as "helper" at [RPAAction LLC](https://www.crainsdetroit.com/politics/former-gov-snyder-laying-groundwork-his-next-act) (<https://www.crainsdetroit.com/politics/former-gov-snyder-laying-groundwork-his-next-act>), did not respond to a message sent to him via the social media site.

Snyder was the chairman of computer manufacturer Gateway Inc. and founder of a venture capital firm based in Ann Arbor before taking office as governor in 2011. He was re-elected in November 2014, just as the Flint water crisis had begun to unfold.

In April 2014, state officials decided to shift Flint's water supply from Lake Huron to the Flint River, despite studies warning the corrosive nature of the river could risk lead getting into the drinking water.

Snyder testified before Congress in 2016. But Rep. Elijah Cummings of Maryland, then the ranking Democrat on the U.S. House Committee on Oversight and Government Reform, has pushed for years to subpoena Snyder for additional documents relating to the Flint crisis. Cummings is now chairman of that panel.

As the consolidated class action has languished under procedural hurdles, preventing any type of discovery to go forward, those documents became essential, said Pitt, who is leading the class action with Ted Leopold, a partner at Cohen Milstein Sellers & Toll in

Palm Beach Gardens, Florida.

“After we suffered the loss of the governor [as a defendant] in the Aug. 1 decision, the strategy was to refresh the complaint with the new information,” Pitt said. “And so, after the judge made a ruling, we went back, and we brought forth the additional information that we felt the judge needed in order to have her take a second look at the culpability of the governor.”

Levy reversed on the claim that government officials, including Snyder, had violated the rights of Flint residents to bodily integrity, as protected under the due process clause of the Fourteenth Amendment.

In her new order, Levy said plaintiffs could plausibly allege Snyder knew that plaintiffs “faced a substantial risk of serious harm,” noting that members of his senior staff, including his chief of staff, had raised concerns about the water by October 2014 and that a public outcry had ensued by 2015.

“Considering the seriousness of the potential problem, the widespread reports, and the seniority of the government staff involved, it is reasonable to infer from plaintiffs’ allegations that Gov. Snyder was aware of this information,” Levy wrote.

By April 2015, Snyder and his staff were discussing whether to provide water filters to Flint residents, with his chief of staff calling the issue a “danger flag,” she wrote. Snyder acted “indifferently,” with a “callous disregard,” she wrote, because he “covered it up.”

Pitt noted that Snyder, in public statements, denied any knowledge that lead was in Flint’s drinking water before October 2015. But emails and other new evidence showed that, in March 2015, his emergency manager “was bombarded with complaints” by Flint’s city council about the water, Pitt said, and that, in mid-2015, Snyder’s former legal affairs director, Michael Gadola, was complaining about possible contamination exposure to his mother, who lived in Flint.

“All this new information was laid out to the judge, so there was a strong case that he was aware of the dangerous and contaminated water before he said he was aware of it,” Pitt said of Snyder.

In her new order, the judge did not change her decision dismissing conspiracy claims, punitive damages or alleged violations of the 14th Amendment’s substantive due process clause against a “state-created danger.”

Levy also refused to reinstate constitutional claims. Plaintiffs had alleged government officials violated the 14th Amendment’s equal protection claims and Michigan’s civil rights act by shifting the water supply for Flint residents, who are predominantly poor African-Americans—but not for the more affluent white residents of Genesee County. Levy, however, pointed out that more than 40 percent of Flint residents were white.

She also, once again, dismissed some negligence claims against two engineering firms—Lockwood, Andrews & Newnam and Veoliabut—allowed professional negligence allegations to go forward.

Pitt called the reinstatement of Snyder “key” to the case.

“At this stage in the proceedings, it’s plausible we can establish that he possessed the same knowledge that his closest staff members possessed,” Pitt said. “The governor really was in a control position from the beginning to the very end of this saga.”

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