

SPOTLIGHT

Fighting for the children of Flint

How the Firm won a groundbreaking settlement for the children of Flint.



Life in the city of Flint, Michigan, changed forever in 2014 when its water supply was poisoned by lead.

An unelected emergency manager in Flint had switched the city's water source from Lake Huron to the Flint River in an ill-conceived attempt to save money.

Unknown to the population, the river water was so polluted and acidic that it corroded the lead pipes in Flint, leaching lead into the drinking water.

By the time officials identified the problem and switched the water source after scientific studies showed that children's blood lead levels were elevated, around 100,000 people had been poisoned with lead, 12 fatally with Legionnaire's Disease.

Among the victims were 30,000 children whose exposure to the toxic water has been devastating and has done irreparable harm. Many suffer from stunted physical growth, impaired brain development and behavioral issues as a result of the tragedy.

The Flint water crisis attracted worldwide attention. The Firm became involved through its existing relationship with public interest not-for-profit, the Education Law Center, which invited White & Case to join them in teaming up with the American Civil Liberties Union of Michigan (ACLU) to file a class action complaint on behalf of the Flint children affected by the poisoning.

We first won a partial settlement arising from a preliminary injunction in 2017 that resulted in a new \$4 million Neurodevelopmental Center of Excellence in Flint.

The center offers universal screening and in-depth neuropsychological assessments to all children impacted by the crisis.

We followed it up by winning a historic \$14.8 million settlement in the remainder of the case for the schools to provide the programs and services that the testing indicates are needed.

The settlement was reached in August 2020 and is subject to court approval.

Associate Lindsay Heck, who worked on the case from the beginning, explains: "New York retired Partner Greg Little brought the case to the Firm from the Education Law Center in the spring of 2016 and asked if I would help lead the team.

"I'd only just started my legal career, so it was a daunting responsibility, but I was passionate about the cause and felt privileged to be involved.

"At the time, there was public outcry about the poisoning across the country, but the legal response had focused solely on replacing the lead pipes and on personal injury lawsuits.

"We decided to instead focus on filing a class action lawsuit aimed at addressing the surging special education needs of the children of Flint, so they would have renewed hope, despite the injustice they'd suffered."




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LINDSAY HECK, ASSOCIATE



The Firm formed a team of lawyers led by partner Greg Starner and associates Lindsay, Mike Jaoude, Lindsey Cherner, Andrew Gershenfeld, Lauren Kuehn-Pelletier, Ivan Navedo, Kareem Ramadan, James-Paul Cumming, Renee Phillip, Connor Fuchs, Joshua Koenig, Abbey MacDonald, Adam Nasser, Angela Scicluna and Kyla Taylor, and Legal Assistant Marina Dolgova.

Mike Jaoude, Lindsey Cherner, Andrew Gershenfeld, Lauren Kuehn-Pelletier, and Ivan Navedo were prepared to take depositions of key witnesses in the case.



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Within months, the team had gathered extensive evidence showing how the poisoning was hurting the children of Flint and filed a class action lawsuit against the Michigan Department of Education (MDE), Genesee Intermediate School District (GISD) and Flint Community Schools (FCS).

Lindsay, who took a leading role in the case when Greg Little left the Firm at the end of 2016, says: “We discovered that around 28 per cent of children in Flint had special education needs and behavioral problems by 2019 – up from approximately 13 per cent before the poisoning.

“These children had been denied the basic special education services that they were entitled to by law. In fact, the evidence suggested that, rather than providing the interventions and services that the children needed, the schools had disciplined students for behavioral manifestations of their disabilities, without taking into account the root cause of their problems.

“In fact, the vast majority of the plaintiffs we represented at the start of the case had been pushed out of the public schools in Flint by the time the settlement was reached. Many were repeatedly suspended or expelled.”

“Having spent significant time in Flint meeting the families and researching the case, I couldn’t help but become invested in the cause and to want to make a lasting difference for people who have been so unfairly treated.”

The groundbreaking settlement includes \$12.8 million from the State of Michigan to establish the Flint Water Crisis Special Education Fund, which will be used to strengthen the services and supports that students with disabilities receive in school.

A further \$2 million will be provided from Genesee County’s Intermediate School District to Flint Community Schools to fund staff and services and to pay for county-wide transport for special education services where needed.

In addition, the region will benefit from a comprehensive review of its preschool programs and county-wide special education program plan.

Lindsay says: “The feeling of pride we had when the settlement was reached was amazing. It’s a model that will not only transform the educational system for Flint children, but that establishes a framework for underfunded school districts in urban communities with deteriorating infrastructures that serve predominantly

Black and Brown children.

“Having spent significant time in Flint meeting the families and researching the case, I couldn’t help but become invested in the cause and to want to make a lasting difference for people who have been so unfairly treated.

“The unwillingness of the authorities to acknowledge that there was lead in the water or to take accountability for this tragedy was appalling, but I think one of the children we represented, who was six at the time, summed it up when journalists asked him what he wanted the final outcome to be.

“He simply said ‘just make the water good’, which is really all the people of Flint ever asked or expected. But they were failed by officials who were indifferent to the impact of their actions, and poisoned an entire community.

“I’m just happy that, through the hard work of the team and the experts who provided detailed reports, we were able to deliver justice to the children of Flint in this groundbreaking case.

“The challenge now is for us to ensure the money is distributed and delivered in a way that brings new hope to a devastated community.”



