UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases	No. 5:16-cv-10444-JEL-MKM Hon. Judith Levy Mag. Mona K. Majzoub

DECLARATION OF M. FRANK BEDNARZ IN SUPPORT OF REPLY

I, M. Frank Bednarz, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. Hamilton Lincoln Law Institute and its attorneys, including myself, represent class members Raymond Hall, Robert Hempel, and Ashley Jankowiak ("Hall Objectors") in this matter.

The Michael Pitt Letters

3. I first became aware that Michael Pitt recently wrote two letters to the Court on the evening of May 25, 2021, after downloading Liaison Counsel's filing in opposition to the *Washington* and *Chapman* objectors' motions to extend.[1]

4. Prior to this date, neither the Court nor any other party sent me a copy of these letters or intimated to their contents.

[1] The *Washington* and *Chapman* plaintiffs filed motions to extend deadlines of distinct provisions of Exhibit 8 (the "Grid") of the Master Settlement Agreement ("Settlement"). *See* ECF Nos. 1714 (to extend XRF bone test deadline), 1717 (to extend medical causation report deadline). The Hall Objectors take no position on these.

5. While it is conceivable that a settling party could have provided me with the letter had I specifically requested it, I would have no way of knowing about the letters with specificity to know to ask, and settling counsel have repeatedly refused to provide information for my clients. *See* ECF No. 1548-7, PageID.60281-83. As discussed below, the settling parties have refused to inform me of even the dates of any other *ex parte* communications that are not on the record.

6. Liaison Counsel's May 25 filing included a declaration signed by Ari Kresh originally docketed as ECF No. 1786-5, where he declares among other things that he "recently read Class Counsel Michael Pitt's letter to Judge Levy … See Exhibit A." As originally filed on May 25, this Exhibit was the May 5, 2021 letter from Michael Pitt ("May 5 Letter.").

7. I have attached a true and correct copy of the May 5 Letter as it was filed on May 25 to my declaration as Exhibit A.

8. The May 25 filings also included the Declaration of Paul Napoli dated May 25, 2021 and originally docketed as ECF No. 1786-7. The declaration made reference to a Pitt letter "dated May 13, 2021 letter to Judge Levy" ("May 13 Letter") which was supposed to be attached as Exhibit B, but no such attachment existed on the filing.

9. I first obtained the May 13 Letter from Mark Cuker on May 26, 2021, who forwarded an email where he had asked Hunter Shkolnik for a copy of the letter and shortly thereafter received a copy of it.

10. The Pitt Letters are themselves *ex parte* communications inasmuch as they exclude objectors whose motions and filings the letters pertain to. "*Ex parte* communication" means "communication between counsel or a party and the court when opposing counsel or party is not present." *Ex parte communication*, BLACK'S LAW DICTIONARY 337 (10th ed. 2014).

11. While the Court denied that the Pitt letters were themselves *ex parte* communication or suggested additional *ex parte* communication (Tr. PageID.64651), it shortly thereafter revealed that the May 5 Pitt letter ***was*** in fact submitted *ex parte*, and apparently at the Court's own instruction. Tr. PageID.64653. The Court did not deny that Mr. Pitt was instructed to submit the letter to the Court as he claimed, but instead responded "under no circumstances do I communicate one-on-one. I mean, that's a basic. That's 101 of our Rules of Professional Conduct." *Id.*

12. The Court said that it "corrected it immediately and sent [the letter] out to all the other counsel" (*id.*), but this is not true. I am counsel in this case. I did not get a copy of the letter, and as far as I can tell no other objectors' counsel did either, even though both Pitt Letters (and expressly the May 13 Letter) were written in response to objections. Thus these *ex parte* communication were not actually corrected until Liaison Counsel inadvertently filed the May 5 Letter on May 24.

13. No explanation of the May 13 letter exists in the record. Unlike the May 5 letter, it does not reference a conference or any other impetus for Michael Pitt to have woken up that day and responded to certain objector arguments. The Court summarized what it believes to be the essential subject of the Pitt Letters: "You [Pitt] believe bone scans are safe and you have done the research with experts to determine that portable bone scans are safe and that's what you told me." Tr. PageID.64647. Indeed, both letters cover this ground, which raises the question of why Mr. Pitt would find it necessary to draft a second letter covering these topics. Other changes between the letters have been correctly noticed by the press: "The May 13 letter makes no mention of Pitt signing onto the settlement 'with reservations'" and Pitt "softened his concerns about access to the portable scanners." Paul Egan, *Flint water crisis lawyer's 'off-the-record' talks with federal judge raise concerns*, DETROIT FREE PRESS (May 27, 2021) a true and accurate copy of this article is attached as Exhibit B. One thing did *not* change: the May 13 Letter, like the May 5 Letter, does not indicate it was initially sent to anyone but

the Court. Whether the Court later circulated it to select attorneys as it apparently did the May 5 Letter is unclear, but the failure to add "CCs" to the letter, if indeed others were copied, might suggest that the Court was not clear about its instructions. Whatever transpired, I never got a copy of either until the Liaison Counsel mistakenly filed the May 5 Letter on May 24.

14. Taken together, the two letters and suggest an additional substantive *ex parte* communication that must have occurred between May 5 and 13. Upon information and belief, the Court, in receipt of the first Pitt letter, directed him to draft a new letter to omit reference to his longstanding "reservations" over the limited availability of bone lead testing and all reference to the May 3 conference, which of course was a primary topic of the Hall Objectors' Motion. The May 13 letter, assuming it was sent on that date, was received by the Court three days after the Hall Objectors filed their Motion, and the Court apparently solicited its drafting to avoid providing record support to either the Hall Objectors' Motion or the pending Motion to Extend Bone Lead Testing. ECF No. 1714.

15. The common topics of both letters, namely the safety, reliability, and availability of bone lead testing, are the core topics of numerous pending objections and motions filed by and against objectors. *See* ECF Nos. 1436, 1463, 1471, 1478-79, 1484-85, 1488-89, 1492-93, 1506-15, 1534, 1536-38 (objections); 1562 (fee objection); 1710 (discovery motion);[2] 1714 (motion to extend).

The Extraordinary Sealing of the Pitt Letters

16. Following Liaison Counsel's filing of ECF No. 1786, which included the May 5 Letter, between about 11:06am and noon on May 26, the entire filing disappeared from the public record without note or explanation. I know this because I had to re-

[2] Hall Objectors joined the parts of this motion pertaining to discovery of bone lead testing issues, as explained in their Motion. ECF No. 1736, PageID.62817.

download a copy of the Bithony Declaration from the filing, a 34MB behemoth of a file which is not machine-searchable and has dimensions of 26.33 x 33.67 inches, which did not print to pdf on my first attempt to save a more manageable file. Anyhow, my re-download occurred at 10:06AM (11:06AM EDT) based on the file properties saved on my computer. My PACER transaction report shows I next checked the docket at 12:22PM EDT, at which time I noticed ECF No. 1786 was entirely gone.

17. I thought to check the docket at 12:22PM EDT after being forwarded an email from Hunter Shkolnik to Mark Cuker that said: "The Court has sealed the filing and we are awaiting further instructions as it relates to that [May 13] letter and other portions of the opposition to your motion."

18. Later, I was forwarded subsequent email in response to Mr. Cuker advising he had already shared the May 13 letter. Shkolnik wrote "Who ever received it from you must not use it and should destroy it until further notice."

19. Notably Shkolnik reported that the "Court" sealed the filing, not the docket clerks or anyone else, suggesting a further *ex parte* communication. The district's Electronic Filing Procedures say that "If a paper is filed in error, the filing user must seek appropriate relief from the Court." Yet not motion or docket entry of any kind documented the request from Liaison Counsel. In fact, nothing at all explained the disappearance of ECF No. 1786 until the May 26 hearing, where Mr. Shkolnik reported "we may have filed something that should have been under seal and we're dealing with it. That's all." Tr. PageID.64650.

20. Following the hearing, the Court granted leave to refile the items (ECF No. 1788), which said:

> On May 25, 2021, Co-Liaison Counsel for Individual Plaintiffs filed a response to the motion to extend deadlines for scans and causation reports, which contained a filing error. Accordingly, the erroneous docket entry has been sealed, and the Court grants leave

to Co-Liaison Counsel to re-file a corrected version of their document.

21. The documents were refiled later on May 26 at ECF No. 1789.

22. I downloaded the files and converted the ones without searchable text into text so that I could compare each and every filing with the original. I noticed only these changes between ECF No. 1786 and re-filed version:

a. The dates in the response to the motion itself (ECF No. 1789) were changed to read "May 26."

b. The Kresch Declaration (refiled as ECF No. 1789-5) no longer attaches the May 5 Letter, but instead attaches the May 13 Letter.

c. The order of the Napoli and Speights-Beaugard Declarations (refiled as ECF Nos. 178-7 and -6, respectively) was reversed to match their lettering as exhibits to the response.

d. The Napoli Declaration now attaches the originally-omitted May 13 Letter.

23. The scant difference between the filings reveals that the only "filing error" that Liaison Counsel believes it made on May 25 was attaching the May 5 Letter.

24. Upon information and belief, had Liaison Counsel not mistakenly attached the May 5 Letter, I would have learned about its existence, nor the substantive nature of the *ex parte* communications (both on May 3 and between May 5 and May 13) implied by this letter. Likely I would have never learned that the Court instructed a party to draft a letter in response to concerns raised by adversaries.

25. Prior to Liaison Counsel's filing error, the Court never filed or intimated the existence of the May 5 Letter.

26. When asked why neither letter was filed, the Court answered "there's no reason. No particular reason. I can send it out. Or I can docket it." Tr. PageID.64649. Therefore, in spite of Liaison Counsel's suggestion that ECF No. 1786 contained

information that should have been sealed, the Court has already found "no reason" to not file the May 5 Letter, and so I have reintroduced it to the public docket by attaching it as Exhibit A.

27. I find both the Court's directive to write the letter and the subsequent failure to disclose any of this activity disturbing. Doubly so in a case with such profound public interest involving the rights of tens of thousands of Flint residents. Flint claimants were under a short and poorly-noticed deadline to obtain XRF bone testing, which was were limited simultaneously by (1) Liaison Counsel's conduct, (2) alleged misinformation about XRF tests, and (3) the historic wave of COVID-19 infections and deaths that coincided with the limited dates that residents had access to the tests.

28. The secrecy around these letters raises disquieting questions: If the Court would conceal such directives under these circumstances, what else is concealed?

29. One obvious candidate for another undisclosed court-directed missive is the letter sent by email from Liaison Counsel to the Court March 5, 2021 "to address the public allegations made regarding the safety and use of portable x-ray fluorescence." ECF No. 1454-1, PageID.57123. Perhaps this letter, which the Court chose to file, originated from another un-memorialized directive.

30. I believe the Court earnestly believes it had good reasons to conduct the case this way, and perhaps it does. However, the only way to correct the systematic exclusion of settlement skeptics from proceedings that directly concerned them is to order a full accounting of these proceedings from all participants. Otherwise, the objectors cannot know what was said about their arguments, so cannot rebut arguments raised by their opponents or concerns raised by the Court. This handicaps those parties outside the room when it happens, like the Hall Objectors, and prevents the "level the playing field among all lawyers and pro se individuals." Tr. PageID.64642.

Correspondence Suggesting Additional *Ex Parte* Conferences

31. Shortly after filing the Motion on May 11, I became concerned additional unrecorded conferences may be shortly scheduled. On May 13, I emailed the Court and all counsel to inquire "whether any additional unrecorded conferences with settling parties have recently occurred or are presently scheduled." A true and correct copy of this email is attached as Exhibit C.

32. No response to the email in Exhibit C was ever received from the Court or from settling counsel.

33. On May 18, I sent an inquiry to all counsel. A true and correct copy of the email and the first response to it is attached as Exhibit D. This email was copied to the Court's clerk, and stands and the second and currently the last email the undersigned has ever sent to the Court. In relevant part I asked:

> Please confirm by [close of business] today, May 18, whether only two conferences with the court and settling counsel have taken place off-the-record (March 1 and May 3) since the filing of the Reynolds Objection (ECF No. 1436). If not, please identify the dates of any other such off-the-record hearings or conferences that occurred since February 26, 2021.

34. Corey Stern responded "I am under absolutely no obligation to answer to you. If you want a substantive response - feel free to file a proposed order to show cause." *Id.*

35. Hunter Shkolnik then answered "Your repeated demand to respond to you emails by close of business every time you chose to send out an email is just unreasonable and burden on lawyers who are actually working litigating cases. To the extent you seek a response within an 8 hour time setting, I decline to act accordingly." A true and accurate copy of this response is attached as Exhibit E.

36. Later that day, the Court's clerk sent me an email copying settling parties but none of the other objectors' counsel I'd copied. A true and correct copy of this email is attached as Exhibit F. It advised that "Judge Levy has asked me to send this message to you requesting that you refrain from sending email to the Court."

37. I am unaware if any other counsel is subject to a similar prohibition. Fortunately, other objectors' attorneys have asked on my behalf for links to attend the conferences via Zoom, which I would not have otherwise been invited to. The Court has never sent me a link for any sort of conference without an attorney asking for one on my clients' behalf.

38. Based on Mr. Shkolnik's response in Exhibit E that it would be burdensome to list within one day all the conferences with settling parties that have occurred since February 26, 2021, I infer that several such conferences have occurred. Liaison Counsel's answers would be unnecessary if no other *ex parte* conferences occurred: counsel could simply and quickly answer there were no others.

39. My inference is supported by Liaison Counsel's response to the Motion, which is twelve pages in length, yet says there is "no reason to burden the parties…with undertaking a laborious and time-wasting effort of chronicling the entirely administrative conferences to date." ECF No. 1799, PageID.64605.

Ex Parte Conferences Not Adequately Disclosed

40. State Defendants and Liaison Counsel do not argue that the *ex parte* conferences have been adequately disclosed, but the Court may decide the Motion on this premise because it opined "I think we've covered what happened on May 3rd." Tr. PageID.64652.

41. The record refutes the suggestion. Moments after the Court uttered these words, Michael Pitt revealed that he gave a (1) "somewhat lengthy" explanation of the sharing of the Specht transcripts, (2) was asked whether he was in full support of the

settlement, which he was, and (3) that the letter was a product of this discussion. *Id.* at PageID.64652-53. The Court then stated that Pitt made an "error" by sending the letter *ex parte*, but Michael Pitt stated that he followed the Court asked "to send it for your review." *Id.* PageID.64653. None of this was previously in the record that the Court said was already "covered," and the substance of the Court's unrecorded instructions remains somewhat ambiguous.

42. Hall Objectors carefully considered the problems with an incomplete record in their Motion. Multiple parties' recollections will be necessary to reconstruct lengthy *ex parte* conferences, and the Court itself cannot ethically be both a witness to these proceedings and decide motions made by parties excluded from them. The Court cannot itself unilaterally decide what facts and arguments pertain to objectors' interests, and the best and only solution at this time is to require discovery from all parties to any *ex parte* communication from which objectors were excluded.

State Defendants' Contention That I Misstated the Record

43. The state defendants claim that "counsel for the Hall Objectors misstated to the Court that the Motion was unopposed." ECF No. 1798, PageID.64589. I did not, as the official record of the proceedings shows. In fact, I asked a question: "I would like to confirm that the motion was unopposed." ECF No. 1800, PageID.64620. Had I known these would be the only ten words I could say about the Motion, I would have chosen them more carefully. I had intended to confirm that the defendants (among other parties) had *forfeited* their response to the Motion by failing to abide with this Court's crystal-clear instructions that any response must be filed "on or before Monday, May 24, 2021." ECF No. 1774.[3]

[3] The Court extended the deadline for all parties because of Liaison Counsel's excuse of, among other things, "conflating them with the other motions by accident."

44. That said, I empathize with the State Defendants' baseless worry that the Court would be misled by an extemporaneous remark in a hearing. Imagine if the State Defendants had no record to confirm what was said. Imagine if they had not been invited at all and therefore could not possibly know what misleading statements had been aired. That's the predicament my clients are in.

45. It's unfortunate that the State Defendants who negligently poisoned Flint residents oppose more transparency in these proceedings.

Liaison Counsel's *Ad Hominem* Attacks Against Me

46. I find it disappointing, bizarre, but not surprising that Liaison Counsel devotes pages of their opposition to the Motion attacking me. Extraordinarily, they cite not one scrap of evidence to support their various accusations.

47. The claims are honestly so bizarre that I address them here in a style much more conversational than I'd normally use in a declaration to make clear I have good humor about it. I'm not angry because more than anything else, the attacks are just *weird*.

48. Liaison Counsel says that "Mr. Bednarz could surely have submitted an amicus brief while the motion for preliminary approval of the settlement was pending." PageID.64596. While this is hypothetically true, it's irrelevant in several illuminating ways.

49. First, I am not a party to these proceedings. The objection is brought not on my behalf, but on behalf of Flint residents who have standing to object. No client retained me prior to preliminary approval, so why would I raise an *amicus* objection to a fee application with objectionable elements that wouldn't be filed for three more months? The objection is based on the *fee application*.

ECF No. 1800, PageID.64621. I trust these parties and the Court will accommodate any future imperfections in my clients' filings, if they arise.

50. Second, parties can't dictate the legal strategy of their adversaries. Liaison Counsel could have written a brief with more law than bizarre *ad hominem* attacks. They chose not to, but this is no reason for the Court to disregard their actual arguments. While I hypothetically could have filed an *amicus* years ago in this case, Liaison Counsel appears to misunderstand my clients' objection. People tend to sell short the arguments and views of others. This is why lawyers exist, and why everyone who believes they have conflicting interests is entitled to zealous advocacy by their own attorney. This is also why adversaries cannot dictate the strategy of their opponents. Nor should they be allowed to limit the information provided to their opponents.

51. True, my clients did not participate in these judicial proceedings over the last few years. Guilty as charged. But in their defense, upon information and belief they were busy doing other stuff like working the overnight shift at a parts plant, having their wages garnished by creditors, scraping together a living on disability, and raising four kids, sometimes as a single mother.

52. I (and my clients) only appeared recently for a very important reason: my clients' objection is just recently ripe. The fee motion was only filed on March 8, and it disclosed for the first time that Messers. Stern and Shkolnik should be awarded thousands of dollars from my clients. It also asserted that my clients would not be given detailed billing, nor the allocation among firms, which Liaison Counsel itself told this Court was essential three years ago. In fact, the fee motion said that my clients should pay an even larger Special Assessment of attorneys' fees than most represented individuals (half of which is contracted to go to Liaison Counsel) just because my clients had not retained an attorney earlier. Neither the motion, nor Plaintiffs' recent reply in support of the fee request cites a single example of such a penalty for unrepresented or late-represented class members. This Special Assessment penalty alone, if approved, will likely cost my clients thousands of dollars. Levy Konigsberg did not even provide the deficient billing information other firms did, which is truly inexplicable. Thirty other

firms had no problem doing so, why are even the names of Levy Konigsberg's billers a state secret? And the declaration in support of Napoli Shkolnik's fee request contains literal perjury, falsely claiming that scores of temporary contract attorneys are in fact "associates" with an enormously above-market rate of $500 an hour. Liaison Counsel seeks millions of dollars from Flint residents who are of mostly of modest means, and without providing any detail, which any corporation would be given. Why should my clients deserve less?

53. I found the fee application unfair.

54. Therefore, I first undertook to represent my clients *pro bono* in April 2021. They had no cause to objection to the fee request before it was filed. The timing of my appearance isn't suspicious nor does it evidence of some sort of character flaw—class members simply can't object to things that haven't happened, so Liaison Counsel's list of things that have happened in the last several years (PageID.64594-95) is as pointless as it is whimsical.

55. While I don't fully know the history of the plaintiffs who have joined the Motion, I don't see fault in their alleged non-participation in the proceedings either. The Court excluded non-appointed attorneys from negotiating the settlement and authorized Class and Liaison Counsel to designate common benefit work. If Liaison Counsel would not ask certain private plaintiffs' counsel to perform authorized common benefit work, there's simply no reason for them to work on tasks without any chance of recouping their time. These incentives are an unremarkable side effect of the appointment and billing orders (ECF Nos. 234 & 507): only Liaison Counsel and firms they support will work toward the individual cases, so it's unsurprising that plaintiffs disfavored by Liaison Counsel have been tasked with little or no common benefit work.

56. On that note, Liaison Counsel oddly complained that *I* don't respond to "*Daubert* motions related to…bellwether trials." ECF No. 1799, PageID.64597. The contempt dripping from every mention of my name suggests that Liaison Counsel is

not in fact authorizing me to perform common benefit work in the case. In any event, I believe that the Motion, if granted, *does* provide class-wide benefit, for the reasons explained in the opening brief. "Secrecy not only hurts the process, it can injure the public at large." ECF No. 1736, PageID.62802. Unrepresented claimants only had access bone testing during the height of Michigan's second coronavirus epidemic, and could do so without the confidence of a complete record explaining *why* Class Counsel's seemingly well-founded motion was ordered withdrawn. Clearly Liaison Counsel has different interests and strategy than the Hall Objectors. An attorney's failure to act in a way that opposing counsel would like them to act proves nothing but this.

57. In any event, over the last five years it just so happens that I focus in a specific area of law, as most lawyers do. I represent objectors to unfair class action settlements and fee requests. One court remarked that my contributions in this area were "not only helpful to the court, it also contributed to a decision by the court that provided an additional almost $15,000,000 for the benefit of the class." *Ark. Teacher Ret. Sys. v. State St. Bank & Tr. Co.*, No. 11-10230-MLW, 2021 U.S. Dist. LEXIS 9826, at *18 (D. Mass. Jan. 19, 2021). In its history, the Center for Class Action Fairness has won more than $200 million for class members. *See* Declaration of Theodore H. Frank, ECF No. 1548-6, PageID.60266.

58. Liaison Counsel says repeatedly, falsely, that I am trying to destroy the settlement. My personal favorite of these weird accusations is: "Mr. Bednarz is attempting to conjure reasons to destroy that landmark win (silently and shamelessly) in the name of Federalism." PageID.64597.[4] I honestly have no idea what they believe

[4] Other examples include:

- "Like a wolf in sheep's clothing, Mr. Bednarz is attempting to derail the very settlement he claims should better benefit his clients." PageID.64597.
- Calling me "a man who has the audacity to accuse both plaintiffs' and defense counsel of a conspiracy to commit a settlement." PageID.64597.

my views on capital-F "Federalism" are, nor how they relate in any way to my clients' fee objection. These remarks are simply wacky given that my clients do not even oppose the underlying settlement. The Hall Objection is aimed squarely at the fee request and not the settlement itself. As the Court has noted during both recent conferences, I will not be speaking on my clients' behalf during the first day of the fairness hearing because my clients do not seek the disapproval of the entire settlement agreement. That Liaison Counsel equates a Motion for transparency with an attempt to "derail" the settlement is… interesting.

59. Liaison Counsel then asserts without citation that I supposedly believe in various things that in fact bear no relation to my views, work, character, or history:

a. "Mr. Bednarz masquerades as a 'consumer protection' advocate, when the real mission is to deprive most injured people of a day in court altogether." PageID.64596.

b. "…a purely ideological goal of an organization dedicated to changing laws across the country to make it harder for injured people (like the three Flint citizens Mr. Bednarz purports to represent) to come together in one way or another and vindicate their rights." *Id.*

c. "Make no mistake, he is playing what he sees as a game of tort-reform wherever he can across the United States, irrespective of the real human beings (including his clients) left in his ideological wake." *Id.*

d. "It bears recalling that Mr. Bednarz and his organization is devoted to an extreme manner of tort reform at any cost. *Cf. Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) (Posner, J.)."[5] PageID.64603.

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[5] Liaison Counsel apparently cites this case—which no one at the Hamilton Lincoln Law Institute (HLLI) had any involvement with—for the observation that "the more claimants there are, the more likely a class action is to yield substantial economies in litigation. It would hardly be an improvement to have in lieu of this single class

60. Once again, these unsupported *ad hominem* accusation bears no relevance to the Motion, which is brought on behalf of *my clients*. That said, I find it strange that attorneys would assert so many things with so little basis as Liaison Counsel do here. Does this comport with this District's Civility Principles ("We will not, absent good cause, attribute bad motives of improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety") or even Rule 11? I don't mind personally and don't think it would help my clients to pursue the matter, but it's slightly surreal seeing wildly off-the-mark and totally unsupported accusations it in print with attorney signatures beneath it.

61. To the extent my personal views matter (spoiler: they don't!), it's all false. The short version of my views is that Courts should ensure that class members are the

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17 million suits each seeking damages of $15 to $30.... The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30." *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013). The point being that removing the class action device, or making class certification impossible, makes ordinary consumers worse off.

In fact, I absolutely agree! The Motion says nothing contrary.

Moreover, I am a fan of Judge Posner's perceptive class action jurisprudence. *See*, *e.g.*, *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (reversing final approval of settlement, while noting the "acute conflict of interest between class counsel, whose pecuniary interest is in their fees, and class members, whose pecuniary interest is in the award to the class.") (Posner, J.). HLLI's Center for Class Action Fairness (CCAF) represented the objector in *Pearson*, and the reversal of the fee-driven settlement resulted in a fair settlement that provided millions more to class members. The Flint MSA uses a straightforward common fund and not gimmicks as in *Pearson*, so it need not be rejected entirely, but the conflict between class and counsel remains acute at the fee-setting stage.

Given this citation, it's odd that Liaison Counsel argues in the same brief that the remedy for settlement unfairness is to have my three clients opt out (PageID.64604), which Judge Posner correctly said was not a "realistic alternative." My clients remain in the settlement because they want to improve it for all class members. And for the umpteenth time, the objection is directed to the fee request!

primary beneficiaries to class action settlements, and that by objecting to bad settlements and excessive fee requests, better settlements can be struck.

62. In fact, my proudest accomplishment at the CCAF has been successfully arguing for a precedent which was favorably cited by the well-known plaintiffs' firm Lieff Cabraser Heimann & Bernstein, LLP. *See Pearson v. Target Corp.*, 968 F.3d 827 (7th Cir. 2020); *In re Wells Fargo & Co. S'holder Derivative Litig.*, No. 16-cv-05541-JST, 2021 U.S. Dist. LEXIS 48593, at *27 (N.D. Cal. Mar. 4, 2021) ("*Pearson* is an elegant, well-reasoned contribution to the class-action jurisprudence," but declining class counsel Lieff Cabraser's motion to apply it in that case because of jurisdictional questions). *Pearson* helps good faith plaintiffs' attorneys (and therefore consumers) by making it harder for them to be extorted by cynical "professional objectors" who demand "objector blackmail," which is a kind of private tax on successful settlements. Some attorneys and individuals serially object to class action settlements in hopes that settling parties pay them off to dismiss their appeals. HLLI does not engage in such cynical litigation. *See* Frank Decl., ECF No. 1548-6, PageID.60267.

63. *Pearson* is therefore an unambiguously pro-plaintiff precedent that I personally argued and won. I wrote a multimedia Twitter thread about it, and a tweet relevant to my (irrelevant!) personal views is copied below:

https://twitter.com/FrankBednarz/status/1293278338941952003.[6]

64. In short, I believe Consumers benefit when plaintiffs' counsel cannot sell out class members for their own benefit. If the Court remains curious about my (irrelevant!) views, I encourage reading the Twitter thread above and watching the linked video of dynamic plaintiffs' attorney Jay Edelson praising CCAF's work.

65. Alternatively, the Court can simply ignore Liaison Counsel's baseless *ad hominems*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed on June 1, 2021, in Chicago, Illinois.

/s/ *M. Frank Bednarz*
M. Frank Bednarz

[6] As another irrelevant factoid: the image I use as a Twitter avatar is a picture of me with my former client Eric Caine on the day he was released after 25 years of wrongful imprisonment on the basis of a confession tortured from him at the direction of the notoriously corrupt Chicago Police Commander Jon Burge. https://www.sent-trib.com/news/how-chicago-racked-up-a-662-million-police-misconduct-bill/article_3bda7e58-ee33-11e5-a510-fb5ccc34709d.html.