



Michigan Private Attorney General Sues PFAS Manufacturers

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Michigan Attorney General Dana Nessel filed suit against 17 chemical manufacturers Tuesday, Jan. 14, in Washtenaw County Circuit Court in Ann Arbor. The complaint alleges under a number of theories that the defendants are responsible for environmental contamination and personal injuries that Michigan attributes to PFAS compounds the defendants manufactured or are otherwise allegedly responsible for. The complaint alleges fraudulent corporate restructuring and unjust enrichment, tort (negligence, trespass, and nuisance), and state environmental statutory claims.

The complaint seeks compensatory damages that the state has incurred and will incur to address PFAS contamination (including at approximately 3 dozen sites identified in the complaint); natural resources damages; injunctive relief to abate the alleged nuisance and trespass; punitive damages; civil penalties; and further relief including attorneys' fees. The potential issues and liability related to this action are anticipated to expand beyond the current claims and parties in this complaint.

The filing of this lawsuit follows a private attorney general process that began in May 2019 with a request for proposals from law firms to undertake this PFAS litigation solely on a contingency fee basis. Fifteen law firms submitted proposals, including some law firms traditionally considered corporate business lawyers. The lawyers selected through this process to become "special assistant attorneys general" are a combination of lawyers from

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Washington, D.C., Cincinnati, Ohio, and Chicago, Illinois, called “The Fields Team.” The fee arrangement is a contingency with payment from the recovery of damages paid by the defendants, as well as out-of-pocket court costs and expenses. The contingency fee percentages are roughly 20 percent of the first \$100 million, declining incrementally to 10 percent for recovery over \$500 million.

Although none of the private attorney general lawyers selected are based in Michigan, which was somewhat controversial, the stated litigation strategy is to pursue recoveries in state court and to structure the lawsuit to avoid potential federal court removal and possible consolidation with an anticipated multi-jurisdiction PFAS court proceeding. Similar lawsuits have been filed in other states, including Minnesota’s 2018 PFAS settlement of approximately \$850 million. Defendants’ answers or other responsive pleadings have not yet been filed, but initial press releases from some defendants deny liability.