

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GORDON BERRY and ILYA PEYSIN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

No. 2016-CH-02292

Hon. Rodolfo Garcia

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs, GORDON BERRY and ILYA PEYSIN, individually and on behalf of all others similarly situated through their undersigned attorneys, complain as follows:

I. INTRODUCTION

1. The City of Chicago (the “City” or “Defendant”) has known for years that the work it is undertaking to replace water mains and meters, including the partial replacement of the lead service line that runs between the water main and a resident’s home, is causing elevated and unsafe lead levels in the water to travel through lead service pipes that pour directly into residents’ homes. The City has also known that when the City replaces sections of the lead service pipe with copper, but not the whole lead service pipe, it causes the remaining portion of the lead service pipe to corrode more quickly than if the City had left it alone, causing the release of additional unsafe levels of lead into residents’ water over time.

2. Despite its knowledge, the City has failed to warn Plaintiffs and the Class of the dangers of drinking or cooking with City water after the City has completed its work and, further, failed to provide accurate directions to Plaintiffs and the Class of how to reduce the risk

of lead contamination in the water from their taps. The City has also failed to advise Plaintiffs and the Class of its intention to only partially, rather than fully, replace their lead service pipes at the time of construction and the resulting increased risk of lead exposure over time as a result of the City's work.

3. As a result of Defendant's negligent and reckless conduct, Plaintiffs, their children, grandchildren, and the Class are at a significantly increased risk of exposure to a known hazardous substance and lead poisoning. Tests of water in Plaintiffs' homes have revealed significant levels of lead that are not the result of plumbing in the homes, but the result of lead from the lead service lines that were the subject of the City's work and/or the City's water supply following work. Moreover, at least one child who lived in a Plaintiff's home has already tested for high levels of lead in her blood following work performed by the City and will require ongoing monitoring. Accordingly, Plaintiffs seek to recover the costs of diagnostic testing necessary to detect lead poisoning to them, their children, and the Class resulting from Defendant's actions over time.

4. Plaintiffs also seek to require the City to replace their service lines in full, given that the City has interfered with their private property, partially replaced their lead service lines in a manner that has caused ongoing and will cause future lead exposure, and caused damage that cannot be reversed.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 735 ILCS 5/2-209, because the City regularly transacts business within the State and has committed tortious acts within the State.

6. Venue is appropriate in the Circuit Court of Cook County under 735 ILCS 5/2-101, *et seq.*, and 735 ILCS 5/2-103, because the City of Chicago is located within Cook County

and because the transactions or some part thereof occurred in Cook County, out of which the causes of action arose.

III. PARTIES

7. Plaintiff, Gordon Berry, is a citizen of Illinois and resident of Chicago. Berry, along with his family, resides at 5411 S. Harper Ave., Chicago, Illinois 60615, in a home that receives its water from a lead service line. Berry and his family lived at this address during the periods when the City replaced the water main and meter. The City did not warn Berry of the risks of lead contamination at the time the work was performed. On three occasions, subsequent testing revealed dangerous levels of lead contamination in the home's water supply, including as high as 30.8 ppb,¹ which is considered an extremely "serious" level according to experts.

8. Berry's granddaughter, together with her parents, lived with Berry after the City completed its work. When Berry's granddaughter was two years old and living with him, blood lead testing revealed lead levels in her blood to be elevated at 3.0 ppb. "EPA and the Centers for Disease Control and Prevention (CDC) agree that there is no known safe level of lead in a child's blood."²

9. Plaintiff, Ilya Peysin, is a citizen of Illinois and resident of Chicago. Peysin, along with his family, resides at 6529 N. Albany Avenue, Chicago, Illinois 60645, in a home that receives its water from a lead service line. Peysin and his family lived at this address during the period when the City replaced the water main along his street. Peysin received a handout from the City at the time the work was performed, but the handout failed to warn Peysin and his

¹ Lead content can be expressed either in parts per billion (ppb) or micrograms per liter ($\mu\text{g/L}$), which are equivalent units of measurement.

² "Basic Information About Lead in Drinking Water," EPA.gov, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water#regs> (last visited Jan. 3, 2017).

family of the potential for lead poisoning as a result of the work and failed to provide accurate information to minimize the risks of ingesting lead. Testing performed on Peysin’s drinking water since the construction has revealed “significant” lead levels of 9.5 ppb. As a result of the City’s project, Peysin and his family are now at an increased risk for problems associated with ingesting lead.

10. Defendant, City of Chicago, is a municipal corporation and political subdivision of the State of Illinois.

IV. FACTUAL ALLEGATIONS

A. Overview of Lead Exposure

11. Lead is considered a “brain drain” chemical.³ Lead is a dangerous environmental contaminant that is highly poisonous to humans and whose adverse health effects have been well documented.⁴ Lead is persistent and bioaccumulates in the body over time.⁵

12. Generally, lead exposure harms an individual’s nervous system. This can result in a number of medical afflictions, including neuropathy, motor nerve dysfunction, weakened immunity to disease, renal failure, gout, hypertension, muscle and joint pain, memory and concentration problems, and infertility. Lead exposure has also been identified as a probable cause of cancer.⁶

³ “The Problem,” Healthy Babies Bright Futures, <https://hbbf.org/problem> (last visited Jan. 3, 2017).

⁴ Mary Jean Brown & Stephen Margolis, *Lead in Drinking Water and Human Blood Lead Levels in the United States*, 61 MORBIDITY & MORTALITY WKLY. REP. (SUPP.) 1, 1 (August 10, 2012), available at <http://www.cdc.gov/mmwr/pdf/other/su6104.pdf>.

⁵ “Basic Information About Lead in Drinking Water,” EPA.gov, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water#regs> (last visited Jan. 3, 2017).

⁶ Brown & Margolis, *supra* note 4, at 2; World Health Organization, *Lead in Drinking-water: Background document for development of WHO Guidelines for Drinking-water Quality*, 5–8 (2011), available at http://www.who.int/water_sanitation_health/dwq/chemicals/lead.pdf; see also “What expert agencies say,” LEAD - CANCER.ORG, <http://www.cancer.org/cancer/cancercauses/othercarcinogens/athome/lead> (last visited Jan. 9, 2017).

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 5 of 30

13. For a child, however, the effects of lead poisoning can be far more dramatic. Lead stunts brain development, reduces IQ, and intensifies aggression and other behavior problems later in life.⁷ According to the EPA, low levels of lead exposure to children have been linked to damage to the central and peripheral nervous system, learning disabilities, shorter stature, impaired hearing, and impaired formation and function of blood cells.⁸

14. Pediatric lead poisoning can also result in attention deficit disorder, hyperactivity, behavioral problems, and delinquency.⁹

15. Even the slightest amount of lead in a child’s blood stream is dangerous; “no safe blood lead threshold for the adverse effects of lead on infant or child neurodevelopment has been identified.”¹⁰

16. These symptoms in children can result in more serious consequences, not just to the individuals themselves, but to the communities in which they live. Scholars and experts consistently link lead exposure with violent crime, finding “the weight of the evidence suggests that cities’ use of lead water pipes considerably increased their homicide rates.”¹¹

⁷ “The Problem,” Healthy Babies Bright Futures, <https://hbbf.org/problem> (last visited Jan. 3, 2017).

⁸ “Basic Information About Lead in Drinking Water,” EPA.gov, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water#regs> (last visited Jan. 3, 2017).

⁹ Committee on Environmental Health, *Lead Exposure in Children: Prevention, Detection, and Management*, 116 PEDIATRICS 1036, 1037–38, 1041 (2005) (“Pediatrics”), available at <http://pediatrics.aappublications.org/content/pediatrics/116/4/1036.full.pdf>.

¹⁰ Brown & Margolis, *supra* note 4, at 2.

¹¹ James J. Feigenbaum and Christopher Muller, *Lead Exposure and Violent Crime in the Early Twentieth Century* (March 22, 2016), available at http://scholar.harvard.edu/files/jfeigenbaum/files/feigenbaum_muller_lead_crime.pdf; see also Rick Nevin, *Understanding International Crime Trends: The Legacy of Preschool Lead Exposure*, 104 ENVTL. RESEARCH 315, 333 (2007) (“This analysis adds to mounting evidence that preschool lead exposure affects the risk of criminal behavior later in life The hypothesis that murder rates are especially affected by severe lead poisoning is consistent with international and racial contrasts and a cross-sectional analysis of average 1985–1994 USA city murder rates.”); Janet L. Lauritsen, et al., *When Choice of Data Matters: Analyses of U.S. Crime Trends, 1973–2012*, 32 J. QUANTITATIVE CRIMINOLOGY 335, 336 (Dec. 2015) (“As we will show below, only [lead exposure] is significantly related to [the Uniform Crime Reports] violence trends”).

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 6 of 30

17. Moreover, lead is a cumulative poison; that is, your body does not change lead into any other form, allowing it to accrue in the body. Shortly after lead is introduced to the body, it travels via the blood stream to soft tissue and organs, where it may remain for years. Much of the lead, however, ultimately settles in one’s bones and teeth, where it can potentially remain for decades.¹²

18. Consequently, the effects of lead poisoning on children can be “long lasting,” if not “permanent.”¹³

19. Indeed, children exposed to lead may not experience any issues until they are adults and certain events occur. For example, when a woman gets pregnant, the lead may begin to leach from her bones where it previously lay dormant and pass through the placenta and umbilical cord to the baby, causing the baby to be born with increased lead blood levels.¹⁴ Similarly, in the case of a woman going through menopause, the lead may leach from her bones and then begin to cause a number of health issues, including increased blood pressure, nerve disorders, muscle and joint pain, and problems with memory or concentration.¹⁵

20. With such health problems come massive financial costs. The annual costs of environmentally attributable diseases in American children total \$54.9 billion, of which the vast

¹² U.S. Department of Health & Human Services, *Toxicological profile for lead-update*, 7–8 (Aug. 2007), available at <http://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

¹³ Pediatrics, *supra* note 9, at 1038.

¹⁴ Centers for Disease Control and Prevention, Guidelines for the Identification and Management of Lead Exposure in Pregnant and Lactating Women, 30–31 (Nov. 2010), available at <http://www.cdc.gov/nceh/lead/publications/leadandpregnancy2010.pdf>.

¹⁵ Dana Lintea, “Lead Poisoning and Menopause: How Similar Are They? Does Lead Make Menopause Worse?,” Global Lead Advice & Support Service, 1 (July 2010), available at https://www.lead.org.au/fs/Lintea_Lead_poisoning_and_menopause_20100728.pdf.

majority arises from lead poisoning; it is estimated that the total cost of lead poisoning in the U.S. each year is \$43.4 billion.¹⁶

21. One such cost is associated with a blood test, a universally recognized method for testing lead levels. The reliability of blood lead testing comes from, in part, the capability of comparing blood lead test results, especially for children, to the published standard of 10 µg/dL, established by the Center for Disease Control.

22. Blood lead testing is also useful in signaling a need for further medical examinations, which can lead to a more definite diagnosis.

23. Lead poisoning is, of course, entirely preventable, but hundreds of thousands of children in the U.S. become poisoned regardless. And Chicago remains one the most affected cities nationwide; the incidence of lead poisoning in Chicago children residing in homes built before 1950 (where lead paint is most likely to exist) is 400 to 500 percent higher than those of children living in similar homes in other cities.¹⁷

B. The City of Chicago's Vast Network of Lead Service Lines

24. In 1986, President Ronald Reagan signed into law an amendment to the "Safe Drinking Water Act." The amendment, which sought to increase protections on the nation's drinking water, imposed a ban on the use of lead piping in public water systems.¹⁸ This

¹⁶ See Philip J. Landrigan et al., *Environmental Pollutants and Disease in American Children: Estimates of Morbidity, Mortality, and Costs for Lead Poisoning, Asthma, Cancer, and Developmental Disabilities*, 110 ENVTL. HEALTH PERSPECTIVES 721, 726 (July 2002), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240919/pdf/ehp0110-000721.pdf>.

¹⁷ Marc Edwards, "Elevated Lead in Water as a Public Health Concern," Invited Presentation to the Center for Disease Control and Prevention Advisory Committee on Childhood Lead Poisoning Prevention (Nov. 18, 2010).

¹⁸ Press Release, Environmental Protection Agency, President Signs Safe Drinking Water Act Amendments (June 20, 1986), available at <https://archive.epa.gov/epa/aboutepa/president-signs-safe-drinking-water-act-amendments.html>; 42 U.S.C. § 300g-6.

amendment did not, however, mark the moment at which the public and municipalities became aware of the dangers of lead service lines.

25. As early as the mid-1800's, public health officials and medical journals warned of the dangers of lead to humans and openly questioned the use of lead. By the late-1800's, some states had begun advising "cities and towns to avoid the use of lead pipes" altogether, as "there was little doubt in the public health community that lead water pipes were to be avoided." Consequently, many cities had already begun banning their use as of the 1920's, "conclud[ing] that the engineering advantages of lead were outweighed by the public health risks" ¹⁹

26. Chicago did not ban the use of lead in plumbing and public water systems. In fact, Chicago did the opposite: up until the federal ban in 1986, the City actually *required* residents to install lead service lines, ²⁰ even in the face of all the public health warnings over the past century.

27. Due to its own building code, the City thus contains "a legacy of millions" of lead service lines throughout the city and not surprisingly has more than any other U.S. municipality, such that nearly 80 percent of the properties in Chicago receive their drinking water via lead pipes. Unfortunately, these older pipes can corrode, "result[ing] in the transfer of dissolved or particulate lead into the drinking water." ²¹

¹⁹ Richard Rabin, *The Lead Industry and Lead Water Pipes, "A Modest Campaign,"* 98 AM. J. PUB. HEALTH 1584, 1585 (Sep. 2008).

²⁰ *See id.*; see also Chapters of the Municipal Code of Chicago Relating to Plumbing, with Amendments to October 19, 1978.

²¹ Miguel Del Toral et al., *Detection and Evaluation of Elevated Lead Release from Service Lines: A Field Study*, 47 ENVTL. SCI. & TECH. 9300, 9300 (2013); Michael Hawthorne, *City Fails to Warn Chicagoans About Lead Risks in Tap Water*, CHI. TRIB., Feb. 8, 2016, available at <http://www.chicagotribune.com/news/watchdog/ct-chicago-lead-water-risk-met-20160207-story.html>.

28. According to EPA estimates, “10 to 20 percent of lead exposure in young children may come from drinking water, and infants raised on mixed formula can receive 40 to 60 percent of their exposure from drinking water.”²²

29. To minimize this risk, Chicago treats the water supply with a chemical—specifically, “Blended Polyphosphate.” This treatment causes a chemical reaction that causes a white coating to form on the interior of the water mains, house services, and plumbing in an attempt to prevent the pipes from corroding and lead leaching into the drinking water.²³

C. The Dangers of City Construction Projects and Partial Lead Service Line Replacements

30. The polyphosphate chemical treatment is not, however, 100 percent effective. The anti-corrosion treatment can fail for a number of reasons, especially from construction or street work, water and sewer main replacement, meter installation or replacement, or plumbing repairs.²⁴

31. During water main and meter replacement projects, the City disturbs the interior polyphosphate coating in a number of ways. Drilling, digging, as well as moving or bending the pipes can all cause the interior coating to flake off and the polyphosphate protection to fail. Additionally, when the City turns back on a resident’s water after any construction or repair, the violent rush of water into the pipes disrupts the protective coating and put the residents at risk.

²² American Water Works Association, *Communicating About Lead Service Lines: A Guide for Water Systems Addressing Service Line Repair and Replacement*, 2 (2014), *available at* <http://www.awwa.org/Portals/0/files/resources/publicaffairs/pdfs/FINALLeadServiceLineCommGuide.pdf>.

²³ Water Treatment, CITY OF CHICAGO.ORG, http://www.cityofchicago.org/city/en/depts/water/supp_info/education/water_treatment.html; Lead and Copper Rule, DPWC.ORG, <http://www.dpwc.org/lead-and-copper-rule/> (last visited Feb. 10, 2016); Del Toral, *supra* note 21, at 9300.

²⁴ *See generally* Del Toral, *supra* note 21.

32. Further, during water main projects, the City has to reconnect the lead service lines (*i.e.*, the pipes connecting to the residence) to the water mains after they are replaced. During this process, the City performs what is known as a partial lead service line replacement. This practice involves the City replacing a portion of the lead service line with copper when reconnecting the lead service line to the main.

33. While it may seem logical that removing part of the lead service line would result in less lead contamination, municipalities and water experts know that the opposite is true. The problem with partial lead service line replacements is twofold.

34. First, these projects severely disrupt the polyphosphate coating that protects the service lines and allow “alarming levels of lead to leach from service lines” into the nearby residents’ water supply.²⁵ Studies have shown that when lead service lines are disturbed, they can release unsafe levels of lead for weeks or months after the disturbance.²⁶

35. Second, when the City replaces sections of the lead pipe with copper, “[it] creates a galvanic cell (*i.e.*, a battery) . . . [that] can cause release of lead into the water as the lead pipe corrodes” over time.²⁷

36. In 2008, Washington, D.C. stopped its accelerated lead service line replacement program due to the dangers associated with partial lead service line replacements.²⁸ Both before and since that time, these risks have been continuously documented and cities have taken action to address those risks unlike the City of Chicago.

²⁵ Hawthorne, *supra* note 21; Del Toral, *supra* note 21, at 9304.
²⁶ American Water Works Association, *supra* note 22, at 2; *see* Del Toral, *supra* note 21, at 9304.
²⁷ Letter from American Academy of Pediatrics to Aaron Yeow of EPA (March 22, 2011).
²⁸ Michael E. Ruane, *WASA Backs Off Lead Pipe Program*, WASHINGTON POST, Sep. 5, 2008, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2008/09/04/AR2008090403613_2.html.

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 11 of 30

37. For example, in September of 2011, the EPA’s Science Advisory Board found that the available data indicate that partial lead service line replacement “may pose a risk to the population, due to the short-term elevations in drinking water lead concentrations.”²⁹

38. Likewise, the American Academy of Pediatrics recommended a moratorium on the partial lead service line replacements because “[t]here is considerable evidence that, under certain conditions, partial lead service line replacements cause persistent, often intermittent, elevated water lead levels.”³⁰

39. Both the CDC’s Advisory Committee on Childhood Lead Poisoning Prevention and the EPA’s Children’s Health Protection Advisory Committee have also expressed concerns about elevated lead concentrations in drinking water from partial lead service line replacements.

40. The EPA’s National Drinking Water Advisory Council indicated that elevated lead levels were a concern from both full and partial lead service line replacement.³¹

41. Research has shown that, at least in the short-term, partial lead service line replacements are not effective in reducing lead from entering the water system.³² Moreover, according to the American Water Works Association, “[e]ven after a full service line replacement, flushing of the service line is required, and may create lead deposits that could persist for weeks or months.”³³

²⁹ Letter from EPA and SAB to Hon. Lisa P. Jackson re: SAB Evaluation of the Effectiveness of Partial Lead Service Line Replacements (Sep. 28, 2011), *available at* http://www.epa.gov/sites/production/files/2015-09/documents/sab_evaluation_partial_lead_service_lines_epa-sab-11-015.pdf.

³⁰ Letter from American Academy of Pediatrics to Aaron Yeow of EPA (March 22, 2011).

³¹ *See* Important update: Lead-based Water Lines, CDC.GOV, <http://www.cdc.gov/nceh/lead/waterlines.htm>; American Water Works Association, *supra* note 22, at 5.

³² Letter from EPA and SAB to Hon. Lisa P. Jackson re: SAB Evaluation of the Effectiveness of Partial Lead Service Line Replacements (Sep. 28, 2011).

³³ American Water Works Association, *supra* note 22, at 7.

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 12 of 30

42. In Boston, the Water Department has ceased performing partial lead service line replacements because, “as [it] know[s] now, [partial lead service line replacements are] very bad for the occupants of the home.” In fact, Boston gives interest-free loans to its residents who wish to remove their lead service lines and, as a condition to receiving those loans, the resident must agree to *fully* replace the service line; partial lead service line replacements will not be allowed.³⁴

43. Madison, Wisconsin became the first major city in the country to launch a full Lead Service Replacement Program in 2001. Since then, the Madison Water Utility has worked to replace all known lead water service lines in the city—more than 8,000 in all—with much safer copper. Madison also continues to offer a rebate to residents who discover they have a lead service line covering half the cost of replacement up to \$1,000.

44. Lansing, Michigan began a 12-year campaign in 2004 to replace all 12,000 lead service lines in the City, completing the project on December 13, 2016.

D. Defendant Knew Its Work Would Cause the City’s Water Supply to Be at Risk for Being Contaminated with Lead

1. The City’s Construction Projects Place Significant Trauma on the Lead Service Lines and Their Polyphosphate Coating, Causing Lead to Contaminate Plaintiffs’ Drinking Water

45. Between 2005 and 2011, water experts for the Environmental Protection Agency conducted a study, testing water sampled from homes connected to lead service lines in Chicago. The goal of the study was to determine whether the “Lead and Copper Rule,” the existing federal

³⁴ John Sullivan, during Q&A Session to “Lead Service Line Replacement: Vital Tips from Leading Utility Managers,” American Water Works Ass’n (May 3, 2016), *available at* https://www.youtube.com/watch?v=4viqO_RWM0Q (last accessed Jan. 4, 2017).

regulation for the sampling of water,³⁵ was sufficient, or if it “systematically missed” high lead levels in the water supply, risking “human exposure.”³⁶

46. The Lead and Copper Rule seeks to manage lead levels in drinking water by setting a “lead action level.” Currently, under the rule, the “lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period . . . is greater than 0.015 mg/L.” In such a scenario, a municipality will be required to take certain steps to resolve the issue, such as informing the public and/or replacing lead service lines.³⁷

47. To determine the efficacy of the Lead and Copper Rule, the study, among other things, compared samples from homes in various parts of the City. Of the 13 sites where there had been a recently documented physical disturbance (*i.e.*, construction, plumbing repairs, etc.), virtually all of them produced samples that exceeded the lead action level under the Lead and Copper Rule—results in stark contrast to those produced by samples collected from undisturbed sites. In other words, City projects have been contaminating residents’ drinking water with lead and the City has been doing nothing to address the problem.³⁸

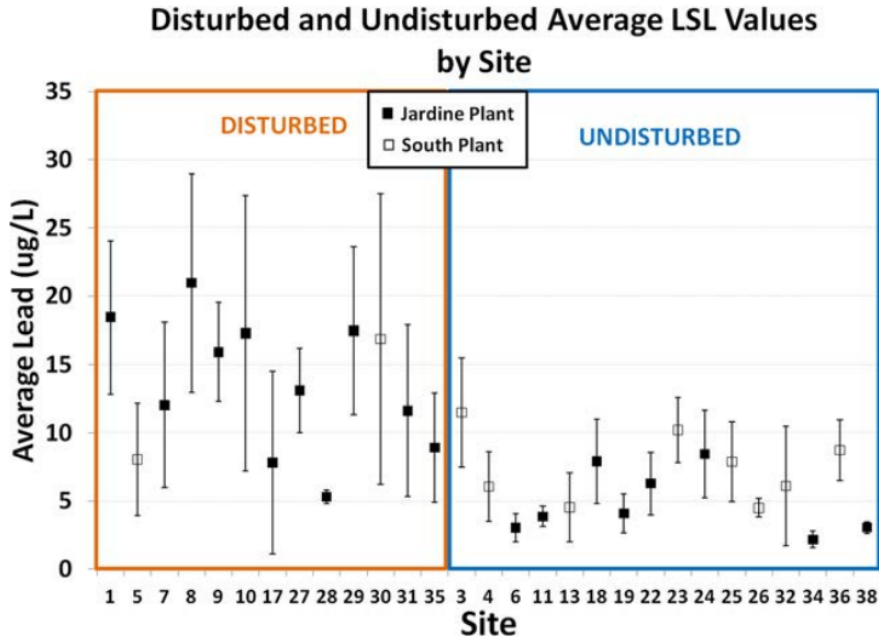
ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 13 of 30

³⁵ See 40 C.F.R. § 141.80.

³⁶ Del Toral, *supra* note 21, at 9300.

³⁷ See 40 C.F.R. §§ 141.81–.85.

³⁸ Del Toral, *supra* note 21, at 9304.



ELECTRONICALLY FILED
 1/9/2017 5:45 PM
 2016-CH-02292
 PAGE 14 of 30

48. In October 2013, Thomas Powers, then-Commissioner of the Chicago Department of Water Management, wrote a letter to aldermen addressing the concerns raised in the study. Instead of taking steps to remedy the release of lead into the water supply, follow up on the EPA study, or at least warn the residents of Chicago about safety measures they can take, the City simply insisted that the water is “absolutely safe to drink.”³⁹

49. In fact, Powers made that statement despite the City’s own records contradicting it.

50. In 2012, the City studied the effect of water meter replacement projects on lead levels and noted that meter replacements that required a sawzall resulted in more vibrations during the cutting process, more disturbances to the lead, and thus a greater increase in post-construction lead levels in the water.⁴⁰

³⁹ Hawthorne, *supra* note 21.

⁴⁰ Andrea Putz, Alan E. Stark, et al., City of Chicago Dept. of Water Management, Watercon 2014, “The Impact of Drinking Water Lead Levels on Chicago Children” (Mar. 19, 2014).

51. Further, in September 2013, the City replaced water mains on the 1300 block of W. Rosedale Ave. and the 1400 block of W. Thorndale Ave. The City tested homes on both blocks following their construction and both homes had significant lead contamination in their drinking water. The home tested on the 1300 block of W. Rosedale showed lead levels of 18.9 ppb, in excess of the EPA's lead action level. The home tested on the 1400 block of W. Thorndale Ave. revealed lead levels of 50.8 ppb in the water supply, *more than triple* the EPA's lead action level.

2. Partial Lead Service Line Replacements Result in Galvanic Corrosion That Damages the Service Line and Results in Significant Lead Release over Time

52. City construction projects also contaminate residents' drinking water via a reaction called galvanic corrosion.

53. Galvanic corrosion occurs when two dissimilar metals come in contact with each other in the presence of electrolyte (in this case, water). The water provides a "pathway" for metallic ions to move from one metal (the anode) to the other (the cathode), resulting in the anode experiencing an accelerated rate of corrosion.⁴¹

54. The City typically uses copper to reconnect any lead service lines to the water mains or meters, even though "galvanic connections between lead pipe (either new or old) and copper pipe increase[s] lead release into the water, compared to a full length of lead pipe alone."⁴² This same reaction occurs between lead and galvanized iron, which the City may also use to reconnect lead service lines to water meters.

⁴¹ Water Research Foundation, "Galvanic Corrosion Following Partial Lead Service Line Replacement," 49 (2013), *available at* <http://www.waterrf.org/PublicReportLibrary/4349.pdf> (last visited Jan. 4, 2017).

⁴² Jonathan Cuppett, Water Research Foundation, Lead and Copper Corrosion: An Overview of WRF Research, 17 (Oct. 2016).

55. The City has known for years of this effect. In 1989, the Illinois Environmental Protection Agency provided the City's Water Department with materials describing galvanic corrosion as "vigorous in new piping" and causing "lead levels [to] be extremely high."⁴³

E. Despite Its Knowledge, the City Pursued Construction Projects That Disturbed the Lead Pipes and Caused Galvanic Corrosion Supplying Contaminated Water to Chicago Residents without Taking Proper Precautions

56. Since 2008, the City of Chicago has been modernizing its water system, replacing water meters and water mains that date to the 1800s. The Emanuel Administration has stepped up that effort, vowing to replace 900 miles of water mains over 10 years.⁴⁴ The City has also been aggressively replacing water meters that connect to the residences under its Meter Save Program implemented in 2009.⁴⁵ This process regularly disturbs and partially destroys the lead service pipes supplying water to Chicago residents.

1. The City's Gives Inadequate Warnings to Residents Regarding the Lead Contamination Following Water Main Replacement

57. According to the City, it has conducted more than 1,600 water main and sewer replacement projects since January 1, 2009 that directly affect the water supply to Chicago residents, including but may not be limited to 13 in 2009, 12 in 2010, 100 in 2011, 418 in 2012, 436 in 2013, 425 in 2014, and at least 251 in 2015.⁴⁶

58. When replacing water mains, the City advises residents that their water may be shut off "a couple of times," but the City does not advise residents of the effects of the water

⁴³ Office of Drinking Water (U.S. EPA), *Lead in School Drinking Water: A Manual for School Officials to Detect, Reduce, or Eliminate Lead in School Drinking Water* (1989).

⁴⁴ Megan Cottrell, "Why experts say Chicago parents should worry about the drinking water," CHI. PARENT, available at <http://www.chicagoparent.com/magazines/chicago-parent/2014-april/lead>.

⁴⁵ METERSAVE.ORG, <https://www.metersave.org/MeterSave.aspx> (last visited Jan. 4, 2017).

⁴⁶ DWM Construction Projects, CITY OF CHICAGO.ORG, http://www.cityofchicago.org/city/en/depts/water/supp_info/dwm_constructionprojects.html (last visited Feb. 12, 2016).

main replacements, the partial lead service pipe replacements or precautions the residents should take as a result when water service resumed in 2009, 2010, 2011, or 2012.⁴⁷

59. It was not until September 2013 that the City started advising residents:

After your old water main has been replaced and you have been connected to your new water main, please open all your water faucets and hose taps and flush your water for 3 to 5 minutes. Sediment and metals can collect in the aerator screen located at the tip of your faucets. These screens should be removed prior to flushing. This flushing will help maintain optimum water quality by removing sediment, rust, or any lead particulates that may have come loose from your property's water service line as a result of the water main replacement. If you have any questions or concerns about your water quality, please call us at 312-744-8190.⁴⁸

60. In fact, this was the *only* warning the City gave to its residents and was buried in the handouts sent to homeowners when their water mains were replaced. Furthermore, that warning no longer even contains any reference to lead as of October 2015, according to the Chicago Tribune;⁴⁹ similar letters regarding construction projects to residents sent after September 2015 are no longer available on the City's website.⁵⁰

61. Moreover, the buried warning the City did give residents fell far short of providing advice that would actually protect residents, according to leading experts in the field. The warning fails to acknowledge the long-term potential of lead leaching resulting from

⁴⁷ S. Hoyne Avenue, from W. 69th Street to W. 69th Place, and in W. 69th Place, from S. Hamilton Avenue to S. Damen Avenue New Water Main Project Frequently Asked Questions (October 27, 2009), *available at* http://www.cityofchicago.org/content/dam/city/depts/water/supp_info/arcConRpt/2009/wd17dp.PDF (last visited February 11, 2016).

⁴⁸ Customer Notice Infrastructure Renewal Program for residents living on N. Seeley Avenue, from W. Irving Park Road to W. Grace Street (September 5, 2013), *available at* http://www.cityofchicago.org/content/dam/city/depts/water/supp_info/arcConRpt/2013construction/09Sep/20130905_Seeley_47w.pdf (last visited Feb. 11, 2013).

⁴⁹ Hawthorne, *supra* note 21.

⁵⁰ See 2015 Water and Sewer Main Projects, CITY OF CHICAGO.ORG, *available at* http://www.cityofchicago.org/city/en/depts/water/supp_info/archived_constructionreports/2015_water_and_sewer_projects.html (last visited Feb. 12, 2016).

physical disturbance or galvanic corrosion, which can last from weeks to years. One leading expert has even called the City’s actions “criminal.” Removing the aerator and running the water for 3 to 5 minutes will not eliminate all of the lead in the system, according to the EPA.⁵¹

62. According to the American Water Works Association, immediately following a lead service line replacement, cold water should be run for at least 30 minutes at full flow after removing the faucet aerator. The purpose of this flush is to remove any debris resulting from the replacement process that might contain lead. Residents should also flush the interior plumbing after a lead service line replacement. Beginning in the lowest level of the home, they should remove faucet aerators and fully open the cold water taps throughout the home, letting the water run for at least 30 minutes. Then they should turn off each tap starting with the taps in the highest level of the home.⁵²

63. According to the EPA, any household with a lead service line should flush pipes for three to five minutes any time water hasn’t been used for several hours—not just one time after street work or plumbing repairs as the City advises in handouts to homeowners.⁵³

64. Additionally, residents should be warned that they should not consume tap water, open hot water faucets, or use an icemaker or filtered water dispenser until after flushing is complete.⁵⁴

65. According to expert Marc Edwards,⁵⁵ drinking the tap water in Chicago, particularly where the City has conducted a water main replacement project, is “like a game of Russian roulette.”⁵⁶

⁵¹ Cottrell, *supra* note 44.

⁵² American Water Works Association, *supra* note 22, at 15.

⁵³ Hawthorne, *supra* note 21.

⁵⁴ American Water Works Association, *supra* note 22, at 15.

2. The City Gives No Warning to Residents Regarding Risks Following Water Meter Replacements

66. On its Meter Save website, the City asks residents to volunteer to sign up to have their water meter replaced.

67. However, despite its own studies that indicate these replacement projects can result in elevated lead levels in the water,⁵⁷ the City does not issue any warning on that website whatsoever.⁵⁸

F. The City's Water Main and Meter Replacement Projects Have In Fact Elevated Lead in the Water Supply of Plaintiffs and the Class

1. Plaintiff Gordon Berry's Experience

68. During two separate projects, the City replaced the water main on Gordon Berry's block in 1998 and the water meter at his home in 2009 at 5411 S. Harper Ave., Chicago, Illinois 60615.

69. Berry's water meter is located outside the front of his property, in a well (known as a "buffalo box") between the sidewalk and street. In replacing the meter, the City's work wrestled, moved, and disturbed the lead service lines running to his home, causing the interior coating of the service line to be compromised. Further, the violent flushing of water back into the service line after the water had been shut off, caused more damage to the interior coating of the lead service line. The City reconnected Berry's water meter to his lead service line using galvanized iron pipes, placing his family at further risk of lead contamination through their

⁵⁵ Edwards is a professor of environmental and civil engineering at Virginia Tech and a 2008 MacArthur genius grant winner. Edwards spent 10 years uncovering a massive spike in lead levels in Washington, D.C.'s tap water, which was linked to hundreds, if not, thousands of children being poisoned and a substantial rise in the local miscarriage rate. *See* Cottrell, *supra* note 44.

⁵⁶ Cottrell, *supra* note 44.

⁵⁷ *See* Putz, et al., *supra* note 40.

⁵⁸ *See generally* METERSAVE.ORG, <https://www.metersave.org/MeterSave.aspx> (last visited Jan. 4, 2017).

drinking water. The City did not warn Berry of the potential risks associated with the water meter replacement, galvanic corrosion, or his lead service line.

70. In January 2016, a routine checkup showed high levels of lead present in the blood of Berry's two-year-old granddaughter who lived with him, his wife, and his son and his wife. Berry immediately requested that the City test his home's water supply for lead content.

71. The City first collected three samples for testing on February 11, 2016. The testing showed Berry's drinking water to contain lead in the amount of 17.2 ppb, but the City did not inform Berry of the specific lead levels in his water. Instead, the City contacted him and indicated the results were such that it would need to test the water again.

72. On March 4, 2016, the City collected another 10 samples of Berry's drinking water for lead testing. Test results revealed dangerous lead levels reaching as high as 22.8 ppb. However, approximately two months passed and the City did not inform Berry of these results.

73. In early-May 2016, an investigative reporter showed up at Berry's front door and informed Berry that his address appeared on a list she obtained from the City through a Freedom of Information Act request. That list revealed Berry's water supply had tested for significant lead content. She showed him the test results, which was the first time Berry was informed of the significant lead levels in his water.

74. Around that same time, the reporter interviewed Water Department Commissioner Barrett Murphy. Only after this interview did the City contact Berry regarding his test results and agree to test the water again.

75. On May 13, 2016, Gary Litherland, the Freedom of Information Act Officer for the Chicago Water Department, accompanied water department employees to Berry's house for additional water testing. Litherland apologized to Berry for not disclosing the lead testing results

for his home, explaining that the letter had been delayed by executives at the Water Department. Litherland assured Berry that the City had nothing to do with the lead contamination.

76. During this visit, the City tested Berry's water for the third time. The testing yet again revealed a dangerous amount of lead contamination far in excess of the EPA's lead action level. The first 10 samples indicated the following lead levels: 9.8, 29.3, 30.8, 27.3, 16.2, 13.1, 7.6, 12.1, 11.2, and 9.43 ppb. Samples collected after three and five minutes still revealed significant lead levels of 5.91 and 5.33 ppb, respectively.

77. Since that time, Berry's granddaughter (together with her parents) have moved out of Berry's home. Berry has installed water filters in an attempt to decrease his family's exposure to the lead in his water.

78. Several plumbers have inspected Berry's service line and confirmed that it is lead. He has also obtained at least three quotes to replace the remaining portion of the lead service line left behind by the City in amounts ranging from \$14,000 to \$19,000. At least one of the quotes includes the permit fee to the City of \$3,500.00.

79. Berry and his family have thus been injured in their person and property, and will continue to be exposed to lead in their water as a result of the City's water main and meter replacement and partial lead service line replacement to his home.

2. Plaintiff Ilya Peysin

80. In April 2015, Peysin, along with his wife and children, resided at 6529 N. Albany Avenue, Chicago, Illinois, 60645. On April 27, 2015, the City sent Plaintiff Peysin a letter informing him that crews would "soon be installing 2,536 feet of 8-inch water main in N.

Albany Avenue, from W. Albion Avenue to W. Granville Avenue,”⁵⁹ which included the water main in front of Peysin’s home. The letter was silent as to the partial lead service line replacement that would occur at the same time.

81. The City’s letter did not warn Plaintiff Peysin of the long-term potential for lead exposure as a result of the physical disturbances, partial lead service line replacement and galvanic corrosion caused by the construction.⁶⁰ The April 27th letter only advised Plaintiff Peysin to “open all [his] water faucets and hose taps and flush [his] water for 3 to 5 minutes” in order to remove “sediment, rust, or any lead particulates that may have come loose from your property’s water service line as a result of the water main replacement.”

82. On October 28, 2016, water was collected at Peysin’s home to be tested for lead. The first draw was collected at 5:30 a.m., when no water had been used since the evening before. The second draw was collected after a 45-second flush. The third draw was collected after a five-minute flush.

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 22 of 30

⁵⁹ Customer Notice Infrastructure Renewal Program for residents living on N. Albany Avenue, from W. Albion Avenue to W. Granville Avenue (Apr. 27, 2015), http://www.cityofchicago.org/content/dam/city/depts/water/supp_info/arcConRpt/2015construction/April%202015/20150427_Albany_50w.pdf.

⁶⁰ *Id.*

83. Peysin received the results of the water tests on or about November 29, 2016. The results of the water tests at Peysin’s home are as follows:

YOUR LEAD IN WATER TEST RESULTS & ACTION STEPS		
YOUR TEST RESULTS		
Bottle	Lead level in your water	Lead concentration, parts per billion (ppb)
Bottle #1: "First draw" sample, no water use for 6+ hours	Significant	9.5
Bottle #2: Collected after a 45 second flush	Significant	9.2
Bottle #3: Collected after a 5 minute flush	Significant	5.8

Lead levels - parts per billion (ppb). The symbol ">" means greater than.

Not detected.....Below 0.2
 Very low>0.2 - 1
 Low>1 - 2
 Moderate>2 - 5
 Significant.....>5 - 10
 Serious>10

ELECTRONICALLY FILED
 1/9/2017 5:45 PM
 2016-CH-02292
 PAGE 23 of 30

84. Because the results reflected “significant” levels of lead in Peysin’s water even after flushing, the report he received advised him that his “home plumbing does not appear to be a significant source of lead in your tap water,” but that “[l]ead may be leaching into your tap water from your service line (the pipe that leads from the road into your home).”

85. The report explained:

In many single family homes, Bottle #2 reflects lead levels in water from your service line – the pipe that runs through your yard from the utility’s main pipe at the street. It detects lead that leached from the pipe over the 6+ hours before you sampled. Based on the lead level in your Bottle #2 sample, we recommend that you check if you have a lead service line.

86. A plumber inspected Peysin’s service line and confirmed that it is lead.

87. The report further stated: “Levels indicate that there may also be lead in the water supply, before it reaches your home. Contact your utility to learn about any plans to reduce the

lead levels, especially if your Bottle #3 result is above 5 ppb.” Here, Peysin’s test result from Bottle #3 was 5.8 ppb.

88. Moreover, despite the fact that the City’s notice had advised Peysin that he only needed to flush his pipes for three to five minutes on one occasion after the City’s work was completed, the report he received with his water test results explained that this type of flushing would not resolve the lead levels in his water:

In some homes, running the water (“flushing”) for a minute or more before using it for drinking and cooking can help reduce exposures to lead. Unfortunately, this will not work in your case. Your lead level was “Significant” or “Serious” after prolonged flushing.

89. Peysin and his family have thus been injured in their person and property, and will continue to be exposed to lead in their water as a result of the City’s water main replacement and partial lead service line replacement to his home.

90. As a result of Defendant’s negligent and reckless conduct, Plaintiffs, their families, and the Class have been significantly exposed to a known hazardous substance and, consequently, are at an increased risk of lead poisoning. Accordingly, Plaintiffs seek to recover the costs of diagnostic testing necessary to detect lead poisoning to them, their families, and the Class resulting from Defendant’s actions.

91. Plaintiffs also seek to require the City to replace their service lines in full, given that the City has interfered with their private property and caused damage that cannot be reversed.

V. CLASS ALLEGATIONS

92. Plaintiffs seek certification of the following Class pursuant to 735 ILCS 5/2-801:

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 24 of 30

All residents of the City of Chicago who have resided in an area where the City has replaced the water mains or meters (including, but not limited to, those areas defined in attached Exhibit A) between January 1, 2008, and the present.

93. Illinois law provides that an action may be maintained as a class action if:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
- (3) The representative parties will fairly and adequately protect the interest of the class.
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.⁶¹

A. Numerosity

94. Pursuant to Section 2-801(1), Class members are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown to Plaintiff, but the number of people residing in the more than 1,600 areas where the City has undertaken water infrastructure projects greatly exceeds the number considered in this judicial district to make joinder impossible.

B. Common Questions of Fact or Law

95. Pursuant to Section 2-801(2), questions of fact and law, except as to the amount of damages each member of the Class sustained, are common to the Class. Common questions of law and fact predominate over the questions affecting only individual Class members. Some of the common legal and factual questions, without limitation, include:

- a. Whether Defendant's construction, street work, meter installation or replacement, and plumbing repairs have caused and will cause lead to

⁶¹ 735 ILCS 5/2-801.

leach into Plaintiffs' and Class members' water supply, putting them at risk of lead poisoning now and into the future;

- b. Whether Defendant owed a duty to Plaintiffs and Class members to disclose the dangers of their drinking water;
- c. Whether Defendant intentionally misrepresented, and continues to misrepresent, the safety of the Plaintiffs' and Class members' drinking water to them and the public; and
- d. The nature and extent of damages and other remedies to which Defendant's conduct entitles Plaintiffs and the Class members.

C. Typicality

96. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs, like other members of the Class, have been exposed to same dangers of lead poisoning after the City failed to take adequate measures to protect and warn those affected by City projects that leaked lead into the water supply. Plaintiffs were subject to, and were financially harmed by, a common policy and practice applied by Defendant to all Class members.

D. Adequacy

97. Pursuant to Section 2-801(3), Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are familiar with the basic facts that form the bases of the Class members' claims. Plaintiffs' interests do not conflict with the interests of the other Class members that they seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to prosecute this action vigorously.

E. Superiority

98. Pursuant to Section 2-801(4), a class action is an appropriate method for the fair and efficient adjudication of this controversy because joinder of all Class members are impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendant, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action would achieve substantial economies of time, effort, and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness.

VI. CLAIMS ALLEGED

A. Count I – Negligence

99. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here.

100. Defendant owed Plaintiffs a duty to exercise reasonable care in providing safe drinking water, free from dangerous contaminants such as lead that would expose them to the unnecessary health risks documented herein.

101. Defendant failed to exercise reasonable care when, despite knowingly contaminating the water supply of Plaintiffs and Class members with lead, it did not take any measures to warn or protect Plaintiffs and Class members from lead exposure and, instead, covered up any contamination by misrepresenting the safety of the water.

102. Defendant knew or should have known that Plaintiffs and the Class members would foreseeably suffer injury from lead exposure as a result of Defendant's failure to exercise ordinary care.

103. Defendant's negligence proximately caused Plaintiffs' and the Class members' damages and their increased risk of harm as documented herein.

104. Plaintiffs and Class members are therefore entitled to the establishment of a medical monitoring program that includes, among other things:

- (1) Establishing a trust fund, in an amount to be determined, to pay for the medical monitoring of all Class members; and
- (2) Notifying all Class members in writing that they may require frequent medical monitoring necessary to diagnose lead poisoning.

B. Count II – Inverse Condemnation

105. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here.

106. Plaintiffs and Class members own or reside at properties that adjacent to construction or street work, meter installation or replacement, or plumbing repairs conducted by Defendant.

107. During these water main and meter replacement projects, the City irreversibly damages the service lines of Plaintiffs and the class by making them more dangerous. The City uses copper to reconnect the lead service lines owned by Plaintiffs and the Class to the water mains or meters after they are replaced.

108. This practice creates a reaction that causes the release of lead into Plaintiffs' drinking water over time as the lead pipe corrodes more aggressively than it would under normal circumstances. Plaintiffs' property is thus damaged insofar as it is more dangerous than before.

109. Plaintiffs and Class members are entitled to compensation for the damage to their lead service lines caused by the City's work and seek amounts necessary to fully replace their lead service lines with copper piping.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter an order or judgment against Defendant including the following:

- a. Certification of the proposed Class pursuant to 735 ILCS 5/2-801;
- b. Designation of Plaintiffs as representative of the proposed Class and designation of Plaintiffs' counsel as Class counsel;
- c. The establishment of a medical monitoring program that includes, among other things:
 - (1) Establishing a trust fund, in an amount to be determined, to pay for the medical monitoring of all Class members; and
 - (2) Notifying all Class members in writing that they may require frequent medical monitoring necessary to diagnose lead poisoning;
- d. Compensatory damages, including an amount sufficient to fully replace existing lead service pipes with copper pipes or other appropriate lines and repair accompanying damage;
- e. The costs of bringing this suit, including reasonable attorneys' fees; and
- f. All other relief to which Plaintiffs may be entitled at law or in equity.

VIII. JURY DEMAND

Plaintiffs demand a jury trial on all issues and claims that can be so tried.

Dated: January 9, 2017

Respectfully Submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP
[Firm No. 41580]

By: /s/ Elizabeth A. Fegan
Elizabeth A. Fegan
Mark T. Vazquez
455 Cityfront Plaza Drive, Suite 2410
Chicago, IL 60611
Telephone: (708) 628-4949
Facsimile: (708) 628-4950
E-mail: beth@hbsslaw.com
E-mail: markv@hbsslaw.com

Steve W. Berman
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
E-mail: steve@hbsslaw.com

Philip H. Corboy, Jr.
CORBOY & DEMETRIO, P.C.
33 North Dearborn Street, 21st Floor
Chicago, IL 60602
Telephone: (312) 346-3191
Email: FHC@corboydemetrio.com
[Firm I.D. No. 02329]

David Freydin
Timothy A. Scott
FREYDIN LAW FIRM LLP
8707 Skokie Blvd # 305
Skokie, IL 60077
Telephone: (847) 972-6157

*Attorneys for Plaintiffs, Individually and on Behalf
of All Others Similarly Situated*

ELECTRONICALLY FILED
1/9/2017 5:45 PM
2016-CH-02292
PAGE 30 of 30