

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

***In re* FLINT WATER CASES**

**Civil Action No. 5:16-cv-10444-JEL-  
(consolidated)**

**Hon. Judith E. Levy**

**REPORT AND RECOMMENDATION OF THE SPECIAL MASTER  
REGARDING CLARIFICATION OF THE BASIS FOR  
COMPENSATION UNDER THE RESIDENTIAL PROPERTY  
DAMAGE CLAIM OPTION IN THE SETTLEMENT – CATEGORY 28**

This Report and Recommendation is provided to clarify the nature of the property damage payments being distributed under the terms of the Amended Master Settlement Agreement (“ASA”).

On January 21, 2021, the Court issued its *Opinion and Order Granting Plaintiffs’ Motion to Establish Settlement Claims Procedures and Allocation and for Preliminary Approval of Class Settlement Components [1318] and Granting Plaintiffs’ Motion for an Order Adopting the Proposed Motion for Approval of Wrongful Death Settlement [1334]*, ECF No. 1399.<sup>1</sup> On November 10, 2021, the Court issued its *Opinion and Order Granting Final Approval of a Partial Settlement, Granting Certification of a Settlement Class, Granting Appointment*

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<sup>1</sup> All capitalized terms herein have the same meaning set forth in the Amended Settlement Agreement.

*of Settlement Class Counsel [1794], Denying Objections, and Adopting the Report and Recommendation [2006], ECF No. 2008.*

The ASA provides compensation for 30 separate categories of claims. Of those 30 categories, 27 are designated for injury claims of children and adults. Of the remaining three, one category – Category 28 – covers residential property damage claims, and the other two categories cover business loss claims. The residential property damage category covers anyone who owned, leased, or was legally responsible for the water bill at a residential property that received water from the Flint Water Treatment Plant between April 25, 2014 and July 31, 2016. *See, e.g., Amended Settlement Agreement, ECF No. 1319-1, § 1.57; Flint Water Cases (FWC) Qualified Settlement Fund Categories, Monetary Awards, and Required Proofs Grid (11/11/20), ECF No. 1319-2, PageID.40827.* The residential property damage category compensates eligible claimants for loss in value of property, damage to pipes or fixtures at the property, costs of repair and for alternative sources of water, and the cost of water bills during the period of time when the water was deemed to contain contaminants. In the motions to approve the settlement, and in the complaints, the Court was informed that “[m]ore than 30,000 single- and multi-family residential properties and more than 5,000 multi-family units were impacted by the Water Crisis and require remediation.” (ECF No. 1318, p. 39). The Court certified a Property Damage Subclass, and the Class Representatives who were found to be appropriate class

representatives alleged that “they owned homes in Flint during the relevant time period”, “received water from the Flint Treatment Water Plant,” and that they “suffered diminished property and appliance values as a result of [the] Settling Defendants’ actions.” *See* ECF No. 1318, PageID.40305–40306; ECF No. 2008, PageID.69622-69623. Plaintiffs further raised complaints about the cost of paying for water that was not suitable and the cost of obtaining alternative sources of water. Lessees of residential properties generally were responsible for water bills either directly as the legally responsible person or indirectly through inclusion in their rental payments.

The maximum payment under the settlement for property damage claims is \$1000 per residential parcel. No claimant can receive more than this amount for a particular property and, in fact, many claimants will receive a smaller amount where multiple persons meet the requirements for the same parcel. The Compensation Schedule provides that: “Only one award per owned or leased parcel of residential real property. No recovery shall exceed \$1,000 per parcel of residential real property. If the owner or lessee of such parcel of property changed during the period of April 25, 2014 through July 31, 2016, and as a result there is more than one Claimant for such parcel, then one PX award will be split pro rata by all who were owners or lessees during the period April 25, 2014 through July 31, 2016.” (ECF No. 1319-2, PageID.40826)

The purpose and intent of the residential property damage payment is to

provide modest reimbursement for any and all losses and damage that the claimant incurred as a result of the provision of Flint water to the particular residence in which the claimant lived or for which the claimant was responsible. Given the modest maximum dollar amount of the payment, it was not cost effective to require a detailed submission and computation of the precise valuation of damages – which include damages to pipes, fixtures, and home value as well as the out of pocket costs incurred for the purchase of bottled water and to install water filters. Accordingly, claimants were not required to show the specific costs incurred in remediating damaged property or to document a loss in assessed value of the home as a result of any damage to pipes or fixtures, and were not required to show the aggregate amount paid for water during the relevant time period. The claimants are, however, required to *assert* a claim for property damage (defined in the settlement) on the claim forms or in a subsequent appeal.

Third party reporting for property damage claims typically depends on whether the payment constitutes “fixed or determinable income” for the recipient. (26 U.S.C. § 6041). The Distribution Administrator is required by law to distribute certain 1099 forms to all persons who received a property damage payment in 2025. Claimants will need to address the receipt of these payments in their personal tax filings in 2026. Settlement payments for damage to property can result in a tax obligation only if the payment is actually *income* to the recipient.

The tax consequences of recovered damages in litigation “must be

determined by examining their nature and what they were intended to compensate.” *Gilbertz v. United States*, 808 F.2d 1374, 1378 (10th Cir. 1987) (citing *Raytheon Prod. Corp. v. C.I.R.*, 144 F.2d 110 (1st Cir. 1944)). Compensation for injury to a capital asset is not taxed as income. *See Freda v. Comm’r*, 98 T.C.M. (CCH) 120 (T.C. 2009), *aff’d*, 656 F.3d 570 (7th Cir. 2011) (distinguishing between recovered “damages for lost profits,” which is taxable as ordinary income, and recovered “damages for injury to, or destruction of, a capital asset,” which is taxable as a capital gain only to the extent that the recovery exceeds the owner’s remaining tax investment in the asset). Here, the premise of the property damages settlement category, and the basis for approval of the settlement compensation category, is to reimburse losses and expenditures experienced by claimants as explained above.<sup>2</sup> I note further that some of the

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<sup>2</sup> Under similar circumstances, following the Gulf Oil Spill in 2010, the IRS provided the following guidance on tax obligations related to compensation for property damage or destruction: “A taxpayer is not required to include in gross income payments the taxpayer receives for property damage or destruction if the payments do not exceed the taxpayer’s adjusted basis in the damaged or destroyed property. . . . A taxpayer may be able to claim a casualty loss deduction if the payments . . . the taxpayer receives, or reasonably expects to receive, are less than the taxpayer’s adjusted basis in the property.” (“Gulf Oil Spill Questions and Answers,” Internal Revenue Service, Pub. No. 4873-A (Rev. 7-2011), Cat. 55384T, available at: <https://www.irs.gov/newsroom/gulf-oil-spill-questions-and-answers>). “[P]roperty settlements for loss in value of property that are less than the adjusted basis of the property are not taxable. If the property settlement exceeds your adjusted basis in the property, the excess is income.” (“Settlements – Taxability,” Internal Revenue Service, Pub. No. 4345 (Rev. 9-2023), Cat. 38586D, available at: <https://www.irs.gov/pub/irs-pdf/p4345.pdf>).

claimants are now deceased and the payment for the claim will therefore be issued to the legal representative of the estate of the deceased individual. Those persons are required by law to distribute payments made to the estate to the lawful heirs of the deceased claimant. In such cases, the legal representative will receive the 1099 form but may not actually receive any of the funds or may receive only a portion of the funds. Again, such payments are for the benefit of the estate of the deceased individual but of course may be issued only to the lawful representative of the estate.

Considering the stated purpose of the residential property damage compensation category and the potential that claimants will need to address this payment in tax filings, I recommend that the Court issue an order, in the form attached to this report, that explains the nature of these payments. Claimants would then be able to utilize the order in discussing the tax issues with any advisors or in preparing returns.

Date: February 2, 2026

Respectfully submitted,

*/s/ Deborah E. Greenspan*

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**CERTIFICATE OF SERVICE**

I certify that on February 2, 2026, I electronically filed the foregoing document with the Clerk of the Court using the Court's ECF system, which will send notification of such filing to attorneys of record.

Date: February 2, 2026

Respectfully submitted,

*/s/ Deborah E. Greenspan*

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