

DAILY REPORT

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Matt Cook (clockwise from top left), Nathan Nicholson, Kate Cook and Josh Bearden of the Cook Law Group In Gainesville, GA

In-House Lawyers Targeted in Poultry Plant Litigation's Latest Conduct-Related Motion

"We did not know originally how extensive the misconduct was, meaning we didn't know pervasive and how many people were actually involved in the original deceit," lead plaintiff attorney Matt Cook said.

Attorneys representing the daughter of one of the workers who died in a 2021 Georgia poultry plant incident have again filed a conduct-related motion against the company accused of causing it—and this time they're targeting four of its lawyers, including two in-house lawyers.

On Feb. 23, the plaintiffs suing Messer filed a [motion to compel](#) production of documents related to alleged crimes and frauds, and motion to revoke admission, based on additional evidence found during discovery for the suit that involved three of the survivors.

The motion targets Messer chief legal officer Greg Scheutz and senior counsel for litigation Richard Lingg, plus two Messer outside counsel attorneys with the Dykema Gossett firm: members Derrick Whitefield of its Los Angeles office and Gavin Hill of its Dallas office.

The incident happened Jan. 28, 2021, when a Messer-owned immersion freezer at Gainesville's Foundation Food Group (FFG) poultry plant had an allegedly defective bubbler tube that allowed an overflow of liquid nitrogen in a freezer tank, sucking all the oxygen out of the air and causing the workers in the room to asphyxiate. Six employees died, and nearly 50 other employees were injured.

"We did not know originally how extensive the misconduct was, meaning we didn't know [how] pervasive and how many people were actually involved in the original deceit," plaintiffs' attorney Matt Cook said in an interview, referring only to the four lawyers listed in the motion. "We now know that."

Latest Motion

Messer, a German-based company, is part of Messer Group, the world's largest privately owned industrial gases business.

The lawsuit tied to the latest motion—the fifth conduct-related motion in the case—was filed on behalf of Ximena Sophia Vera, who was 4 when the incident occurred, and her mother, Nelly Gisel Perez-Rafael, who died in the incident.

It is one of six wrongful-death suits filed on behalf of the employees who died. All six settled, but the Vera settlement is being contested by a team of attorneys led by Cook, a partner with the Cook Law Group in Gainesville, and that case is before Gwinnett State Court Judge Veronica Cope.

Also, five personal injury cases were filed on behalf of the employees who survived, with three others being settled. One of those cases, which involved three survivors also represented by Cook, was settled Feb. 13 in Gwinnett County State Court before Judge Emily Brantley.

Lawyers in this case and others still pending allege the bubbler tube at the Gainesville plant was supposed to have two brackets on it to keep it from getting bent so nitrogen won't overflow but had only one.

During one wrongful-death lawsuit's discovery phase, plaintiffs attorneys learned another Messer-made bubbler tube at the Crider Foods plant about 180 miles southeast in Stillmore also was bent "in the normal course of operation," according to court documents.

Brantley granted the plaintiffs' motion for the third sanctions order after Messer was accused of failing "to provide a proper privilege log and for the Defendants' false discovery responses by way of omissions and concealment of a witness statement," according to the sanctions order.

'Additional Misrepresentations'

The latest conduct-related motion claims: "In response to that Motion, Defense counsel made several additional misrepresentations to this Court that Plaintiffs have only recently learned were false and contradicted by Messer's own evidence."

Cook (who is teaming with Cook Law Group managing partner Kate Cook and associate attorneys Josh Bearden and Nathan Nicholson and Ruben Cruz with Cruz & Associates in Atlanta) said "the reason we filed it is twofold: One, we have a duty as lawyers to bring this kind of misconduct to the court's attention; and two, the public and future trial courts will encounter these lawyers. They need to be advised of who they're dealing with, because people who are capable of engaging in this kind of conduct in a case of this magnitude have no boundaries. In other words, they're capable of anything."

In response, the day after the motion to compel was filed, Messer's attorneys filed a notice of withdrawal in an attempt to remove Whitefield and Hill from the motion.

The plaintiff attorneys responded March 1 by filing an objection, saying the notice of withdrawal "is nothing but an attempt to escape the consequences of their actions." Their motion is one of two that are still pending, with judges approving the first three.

Timing ‘Raises Some Concern’

In an emailed statement, Messer spokeswoman Amy Ficon said the company “has cooperated and complied with all orders of the court.”

“The timing of the latest motion and its release to media from Mr. Cook’s office, raises some concern, since this issue has already been considered and ruled upon by the court,” she said. “In fact, the subject matter is not new and relates to events that allegedly occurred nearly two years ago, in 2021.”

Ficon then pointed to the Vera settlement agreement that is being contested.

“These allegations have been briefed extensively and were known to counsel before the case involving Ximena was settled at mediation more than 15 months ago,” she said. “Given that a separate motion to enforce the settlement is pending and is under consideration by the court, we do not feel it is appropriate to comment beyond what we have already said: Messer negotiated at arm’s length and settled this case before an experienced mediator, Rex Smith, in November 2021—seven months before Mr. Cook, who settled other cases at the same mediation for different clients, was hired by the plaintiff in this case.”

Scott Masterson, managing partner at Lewis Brisbois Bisgaard & Smith’s Atlanta office, also represents Messer in the case. In an email, Masterson said Cook’s timing on the latest conduct-related motion is curious.

“I am not going to comment beyond that I think that what he is doing is disrespectful to Judge Cope,” he said. “The court heard argument on the motion to enforce settlement. It is still pending and undecided, and the hearing is not over. The motion he sent the Daily Report today was filed the night before the motion to enforce settlement was to be argued. It probably doesn’t take a genius to figure out Mr. Cook’s agenda regarding that timing of the motion.

“The court told Mr. Cook and I at the hearing [Feb. 24] that the motion he sent you that you asked me about would not be considered (and did not need to be

responded to) until after the motion to enforce is ruled upon. An agenda that includes making comments in the press about the motion in that posture might also be transparent to some.”

A voicemail message left with a Dykema spokeswoman seeking comment on the latest motion was not immediately returned.

This article was updated at 3:49 p.m. March 6 with corrected information on the motion to motion to compel production of documents related to alleged crimes and frauds, and motion to revoke admission.