

DAILY REPORT

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(l-r) Matt Cook, Nathan Nicholson and Josh Bearden of the Cook Law Group in Gainesville, Georgia.

Attorneys Contesting One of Messer's Settlements in Ga. Poultry Plant Incident

Matt Cook, one of the plaintiff attorneys in the case, said the settlement agreement was "patently unfair."

Plaintiff attorneys representing the daughter of two individuals who died in a Georgia poultry plant incident in which six workers died and nearly 50 other employees were injured are contesting a settlement agreement reached in a wrongful-death lawsuit.

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



Kate Cook is the managing partner of Cook Law Group

Matt Cook, a partner with the Cook Law Group in Gainesville, filed the lawsuit on behalf of Stephen Berk, serving as conservator for Ximena Sophia Vera on behalf of her late

mother, Nelly Gisel Perez-Rafael. The firm's managing partner, Kate Cook, and two of its associate attorneys, Nathan Nicholson and Josh Bearden, have assisted Cook on the case. Six wrongful-death suits were filed on behalf of each of the victims who died in the incident.

Vera was 4 when both her parents died in the incident. Cook is contesting Messer's motion to enforce and approve the settlement agreement regarding Vera's mother, Nelly Gisel Perez-Rafael, claiming it was unjust. Because Vera is a minor, the agreement requires a judge's approval.

A separate wrongful-death suit filed on behalf of Vera's father, Edgar Vera-Garcia, was settled along with the three others.

Matt Cook was hired to represent Vera on behalf of her mother after Richard Taylor, the lawyer who originally represented her, had some health problems that forced him to quit practicing law.

"We in turn hired a conservator and guardian ad litem, who upon reviewing the offer, concluded it was patently unfair," he said, adding a hearing is scheduled for Feb. 24 for Gwinnett State Court Judge Veronica Cope to rule on the motion. The amount of the settlement agreement regarding Perez-Rafael was not disclosed to the public.

Matt Cook said Messer has refused to disclose the amounts it paid in the other settled wrongful-death cases, including the one involving Vera's father.

"It's our position given that these deaths arose on the same day from the same event with the same fact pattern, that the only way to evaluate the fairness of the offer to Ximena's mother is for the court to consider what was paid to settle the other four death cases, which includes Ximena's father," he said. "Our position is there was never a settlement for Ximena's mother. There was an offer ... but it was never finalized because it's a minor and all minor settlements require court approval."

Messer spokeswoman Amy Ficon said the company insists that the settlement agreement for Vera's mother is legitimate.

“Messer and Ximena’s representatives, including her counsel, agreed in writing to settle both of her cases at a mediation led by an experienced mediator, on November 15-16, 2021,” she said.

Scott Masterson, managing partner at Lewis Brisbois Bisgaard & Smith’s Atlanta office, and Derek Whitefield, a member at Dykema’s Los Angeles office, represent Messer in the case. Masterson declined to comment on the settlement agreement.

But the Daily Report has learned that Messer plans to argue in court that the settlement agreement was legal because Taylor was, indeed, competent to represent Vera, and her aunt, Alma Perez, was listed as Vera’s next friend, meaning she was designated to appear in court on behalf of her minor niece.

In a follow-up interview, Matt Cook pointed to the court document filed in response to Messer’s motion to enforce and approve the settlement, which said Taylor filed a motion for continuance in Fulton County State Court on Dec. 6, 2021, and it was signed by the court. In that motion, Taylor said that around at the time the settlement agreement was reached, his mother died, his son was undergoing treatment for colon cancer, and he had his own share of physical and mental health problems.

“That includes prostate cancer, elevated cerebrospinal fluid pressure of the brain,” he said. “It causes confusion and cognitive difficulties. ... [I suffer] from bipolar disorder. ... [I am] at present physically, mentally, and emotionally unable to try this case.”

Matt Cook also argued that Perez “is a nonnative English speaker who’s never been involved in any litigation prior to her sister’s death.”

“But the fundamental point is not whether Richard or [Vera’s] aunt was competent or incompetent, sophisticated or unsophisticated [respectively],” he said. “But the fundamental issue is was the settlement fair, reasonable and in the best interest of Ximena? And the only person authorized to make that conclusion is the sitting judge. That’s the truth for any minor. There can never be a settlement until the judge considers all the facts surrounding a proposed settlement and concludes the proposed settlement of the minor child.”