

# DAILY REPORT

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Six killed in liquid nitrogen leak at Foundation Food Group in Gainesville, Georgia. (Photo: Scott Rogers/The Gainesville Times)

## Messer Settles Suit Involving Poultry Plant Incident Survivors

Lead plaintiff attorney Matt Cook said the settlement was reached “just a few hours” before a hearing regarding Judge Emily Brantley’s order for Messer to show cause and rule nisi on why the court shouldn’t sanction Messer for a fourth time based on its alleged behavior in the case, including what the judge called possible “discovery abuses.”

A settlement has been reached in a lawsuit filed on behalf of three survivors of a Georgia poultry plant incident in which six workers died and nearly 50 other employees were injured. But the evidence recently disclosed in that case will be used in another related one, the lead plaintiff attorney said.

The Gwinnett County State Court case was settled Monday, though details of the agreement were not disclosed.

The incident happened Jan. 28, 2021, when a Messer-owned immersion freezer at Gainesville’s Foundation Food Group 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.



Matt Cook (from left), Nathan Nicholson and Josh Bearden of with the Cook Law Group in Gainesville. (Courtesy photos)

Matt Cook, a partner with the Cook Law Group in Gainesville, filed the lawsuit on behalf of survivors Jason Adams, Cristian Faur and Ryan Cook. (Matt Cook said Ryan Cook is not related to him). Cook Law managing partner Kate Cook and associates Nathan Nicholson and Josh Bearden have assisted him on the case.



Kate Cook is managing partner of the Cook Law Group in Gainesville. (Courtesy photo)

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.

In an interview Tuesday, Matt Cook said the settlement was reached "just a few hours" before a hearing regarding Judge Emily Brantley's order for Messer to show cause and rule nisi on why the court shouldn't sanction Messer for a fourth time, based on its alleged behavior in the case, including what the judge called possible "discovery abuses."

"[At the hearing], both lawyers and the company were going to have to answer questions from the court about the crimes and frauds that were evident they had committed both on the court and the victims," Matt Cook said.

## Eleven Suits Filed

This lawsuit is one of five personal injury cases filed on behalf of the employees who survived, with two others previously being settled, he said. Also, six wrongful-death suits were filed on behalf of relatives of the workers who died, with all six being settled, though one of those settlements is being contested.

Jeff Shiver and Scott Campbell, partners with Shiver Hamilton Campbell in Atlanta, filed a wrongful-death suit against Messer on behalf of one of the workers who died. They, along with Matt Cook, allege the bubbler tube at the Gainesville plant was supposed to have two brackets on it to keep it from getting bent, so nitrogen couldn't overflow, but had only one.

Shiver said Messer claimed "the employees bent the tube to keep the machine operating."

During the lawsuit's discovery phase, plaintiff 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. Also, the judge granted "an order requiring Messer to produce to the court a copy of all documents and communications pertaining to the destroyed Crider tube," Matt Cook said.

## Contested Settlement

The contested settlement involves a suit Matt Cook filed on behalf of Stephen Berk, serving as conservator for Ximena Sophia Vera, who was 4 years old at the time of the incident, on behalf of her late mother, Nelly Gisela Perez-Rafael.

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



Scott Masterson of Lewis Brisbois Bisgaard & Smith, Atlanta. (Courtesy photo)

“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 Cope to rule on the motion.

Regarding Monday’s settlement, Matt Cook said, “We continued to push forward in the Adams case and the Perez case. What we were pushing for was who knew about the destroyed evidence, when they knew it and who participated in giving the false responses. What that work produced was this: 21,000 new pages of documents ... that had not been produced in the two years earlier, [when] they produced 42,000; substantial revisions to their prior privilege logs and a brand new privilege log pertaining to all the communications about the destroyed evidence; and, most importantly, 600 pages of emails and communications within the company and between the lawyers about the destroyed evidence and the false discovery responses before they made the false discovery responses.”

Matt Cook noted that his team plans to use the evidence attained in the Adams case to file motions for more sanctions against Messer in the Perez suit, which is being overseen by Gwinnett State Court Judge Veronica Cope.

“This same fraud and contemptuous conduct has occurred in her courtroom, and we now know more about the extent of what happened,” he said. “The duty of candor to the court needs to be taken seriously, and it’s high time that the profession gets cleaned up. That’s only going to happen if the matter is brought to the attention of trial judges.”

Matt Cook said that, while the three previous sanctions filed against Messer will stand, the motion for the fourth one won’t be argued, with the Adams case now being settled.

### **‘Amicable Resolution’**

In an emailed statement, Messer spokeswoman Amy Ficon said, “Messer has reached an amicable resolution with regards to *Jason Adams, Christian Faur and Ryan Cook v. Messer*. Messer is committed to the shared goal of finding the causes of this incident and doing its part to prevent such an incident from ever happening again.”

In an emailed statement, Masterson added, “I can confirm that Mr. Cook and I settled the case amicably. Despite recent press releases from Mr. Cook to the contrary, my client has now amicably resolved all lawsuits arising out of this tragedy other than two alleged injury cases that were filed right at the expiration of the statute of limitations last month.”

Masterson also talked about Messer’s stance on the Perez case settlement being contested.

“I was surprised to read the article last week relating to the Perez case given that I was there and settled the case with the young lady’s aunt, guardian and next friend at a mediation with Rex Smith and Winter Wheeler as mediators,” he said. “Mr. Cook seems to now claim, at once, that Richard Taylor and his current co-counsel, Reuben Cruz, were incompetent in the representation of Ms. Perez and that Georgia plaintiff lawyers and their clients cannot agree to a fair settlement amount at mediation, meaning no case can be settled for a minor at mediation. That would seem to ignore the thousands of settlements that have been reached between counsel and clients and mediation and later approved by the Court in Georgia.

“Ms. Perez’s lawyers made a demand of choosing presumably with their client’s approval. My client negotiated in good faith to a fair resolution and a settlement agreement was signed by the parties who had authority to

do so. Rather than seek court approval as was contracted to, Mr. Cook, who wasn't there at the mediation for Ms. Perez, instead has substituted his judgment for the Court's and decided to just declare the settlement reached unsettled or not enough and has even suggested that my clients are somehow responsible for the plaintiff agreeing to a number. I've never seen anything like it."

Masterson added that he doesn't believe the case would have been settled if there were any issues with plaintiff counsel at that time. He said, "I didn't make anyone agree to a number they didn't want to at mediation and I'm pretty sure Rex Smith wouldn't let parties with incompetent or incapacitated lawyers enter into a settlement at Miles Mediation."

In response to Masterson's comment regarding Cruz, Matt Cook said he never said Cruz was incompetent, adding he did not attend the mediation.

"What we have said is that the conservator and guardian ad litem believe the proposed settlement that Messer and its insurer want to impose on our 4-year-old client is grossly unfair," he added. "That is evidenced by the fact that Messer refuses to disclose to the court what it paid to settle the other cases for the other victims which it has hidden from the public with NDAs (non-disclosure agreements) which, as you know have been routinely abused by powerful defendants like Harvey Weinstein and others. Those issues of whether the amounts paid in the other cases should be disclosed to the court and whether the unfair settlement should be imposed on Ximena will be heard at the February 24 hearing."

In response to Matt Cook's comment, Masterson said, "My client did not impose anything on anyone. We simply made an offer to the next friend, who was represented by Mr. Cruz and Mr. Taylor, and they voluntarily chose to accept it and signed the settlement agreement. I can also confirm that Harvey Weinstein has nothing to do with this."