

Late Worker's Family In 'Dickensian' Fight To Revive Spill Suit

By **Matthew Santoni**

Law360 (March 18, 2020, 9:12 PM EDT) -- The often-cited Dickens novel "Bleak House" played a prominent role in a bid to revive a flooring company worker's wrongful death suit, with the family arguing in Pennsylvania Superior Court on Tuesday that a county improperly decided their suit was frivolous, but nevertheless dragged it out in "Dickensian" fashion.

Attorneys for Sandra Cooper, the wife and administratrix of late worker Gene Cooper, said the trial court judge had tossed the case on the grounds that it fell outside the statute of limitations, but also pushed off his final rulings for nearly two years to order Pittsburgh-area attorney George P. Chada to pay chemical supplier Brenntag \$101,000 for its legal bills. The judge ultimately kicked Chada off the case while comparing the delays the lawyer allegedly caused to the decades-long court battle in Charles Dickens' "Bleak House."

"Notwithstanding[] the trial judge's literary concerns, it was he who wrote the added chapters of Bleak House onto the end of this case by failing to enter final judgement[sic] and close the case for two years after the entry of summary judgment on the statute of limitations," the appeal brief said. "It has been 13 years since the now deceased Mr. Cooper filed his workers' compensation claim. It has been almost two decades since he was called to help clean up a toxic waste spill at his employer's facility. How many more attorneys and judges need be born into this case before it comes to a halt?"

Sandra Cooper asked the appellate court to overturn the Lancaster County Court of Common Pleas' summary judgment in Brenntag's favor and its sanctions award against and order disqualifying Chada from acting as the Coopers' attorney.

The underlying lawsuit claimed that Gene Cooper had been exposed to harmful chemicals such as trichloroethylene, or TCE, while working for flooring manufacturer Armstrong World Industries Inc., particularly during a 2003 spill at its Lancaster manufacturing plant. The chemicals permanently affected his brain and mood, eventually leading to his incapacitation and death in 2014, the suit said.

Gene Cooper launched his workers' compensation suit in 2007 against Armstrong as well as a civil suit against several chemical makers, including Brenntag, claiming they put TCE in the industrial solvents Gene Cooper was exposed to through their use at the flooring plant, which allegedly led to his injuries.

As his workers' compensation case slowly progressed, the civil suit went through the appellate process and was transferred from Philadelphia to Lancaster County, where the trial court judge concluded in October 2017 that the statute of limitations had expired on the Coopers' claims and tossed the case.

The court then sanctioned Chada in January 2018 and ordered he pay Brenntag's legal fees because the company had claimed its predecessor hadn't manufactured or distributed the TCE-containing solvent since 1991.

The trial judge's order disqualifying Chada came in September of that year, and he did not make the sanction final until Chada paid Brenntag from the Coopers' appeal bond in August 2019.

The appeal brief filed Tuesday argued that the trial judge was wrong to conclude there was nothing backing the Coopers' claims against Brenntag, pointing to Armstrong's safety data sheets indicating it bought the solvents from Brenntag or its predecessor, R.W. Eaken Inc., as late as 1999.

"This document demonstrates that when it answered interrogatories, Eaken/Brenntag misrepresented the dates of its sales ... The assertion made by Brenntag in its motion for sanctions that 'BNE did not manufacture and sell Safety Solvent' can only be characterized as a 'big lie,'" the brief said. "The trial judge's concern about such a picayune matter — i.e., whether the records said 'Eaken' and not 'Brenntag' — demonstrates his single-minded agenda to sanction attorney Chada, no matter the merits of Brenntag's application."

The Coopers also cited a November 2018 Pennsylvania Commonwealth Court ruling that upheld various workers' compensation judges and appeal boards' findings that the solvent in question was present at the plant at the time of the 2003 spill.

"The trial judge should have granted Sandra Cooper's request for reconsideration because any questions concerning the presence of safety solvent in the Armstrong plant should have been put to rest by the Commonwealth Court's decision, which held that there was sufficient evidence that Mr. Cooper was exposed to TCE ... over the course of his 30-year career," the brief said.

Instead, the judge had granted summary judgment on the grounds that the statute of limitations had expired, then concluded on his own that the lawsuit was frivolous, the Coopers said.

"The law provides that a court should impose sanctions only if it is patently clear that a claim has absolutely no chance of success and the factual allegations are utterly lacking in support," the brief said. "The trial judge below imposed sanctions after making his own findings as to the credibility of the evidence. However, there was no full record before him, and no jury had made any findings of fact. Indeed, appellants were denied any discovery. This court should, therefore, overturn the award of sanctions."

The sanction forcing Chada to pay Brenntag's attorneys' fees also was not the "least severe" possible penalty to deter his alleged wrongdoing, and the judge's order removing him from the case was improper because it crossed a line and stepped on the Supreme Court of Pennsylvania's sole discretion to discipline attorneys, the brief said.

In seeking a reversal and remand of the summary judgment, the Coopers pointed to prior appeals in the case since it first came to the Superior Court and was remanded in 2013 over a similar question of whether the "discovery rule" **stopped the statute of limitations** until the Coopers could connect Gene Cooper's mental decline to his chemical exposure and the defendants' supposed negligence. The judge had erred by tossing the case again on the same grounds, the brief said.

"We believe the trial court committed a number of errors in this case, both as they relate substantively to the law ... as well as procedural errors, which led to the improper imposition of six-figure, \$100,000 sanctions and the disqualification of plaintiff's counsel, years after the case had already been dismissed," said David S. Senoff of First Law Strategy Group, representing the Coopers. "All in all, we think there are a lot of errors that need correcting by the Superior Court."

Counsel for Brenntag did not immediately respond to requests for comment Wednesday.

The Coopers are represented by David S. Senoff and Hillary B. Weinstein of First Law Strategy Group LLC, and Theodore C. Forrence Jr.

Brenntag is represented by Ronald E. Hurst of Montgomery McCracken Walker & Rhoads LLP.

The case is Cooper v. Brenntag Northeast, case number 1462 MDA 2019, in the Superior Court of Pennsylvania.

--Editing by Adam LoBelia.