

Sterilization Co. Hit With 150 Chemical Injury Suits In Ga.

By **Rosie Manins**

Law360 (July 20, 2021, 8:28 PM EDT) -- Long-term residents of a Georgia city near Atlanta are filing between 150 and 200 chemical exposure lawsuits this week against a sterilization company that has allegedly used and emitted a carcinogen for decades.

The plaintiffs, who have lived for years in Covington, Georgia, blame their cancer on Becton Dickinson & Co., which has had a facility in the neighborhood since 1967 that sterilizes medical equipment with ethylene oxide, case filings show. More than 50 related lawsuits were docketed Monday and Tuesday against BD and others in a Georgia state court, and an attorney for the plaintiffs told Law360 Tuesday that between 150 and 200 cases will be filed in total by the end of the week.

Darren W. Penn of Penn Law LLC, counsel for the plaintiffs, said the majority are cancer patients who have lived a long time in Covington, where they believe they were exposed to dangerous levels of ethylene oxide that caused their cancer. Some plaintiffs are representing Covington residents who have died from cancer, and others have also worked for BD, Penn said.

"They all have had repeated and substantial exposure over a number of years, in close proximity to the BD facilities," Penn said Tuesday. "Our claims focus on the effects of the exposure during their time as residents in the community and not as employees."

A subset of plaintiffs live in a Covington neighborhood called Settlers Grove and say they have been further subjected to the release of another chemical called trichloroethylene by a different company, SRG Global Inc., according to Penn. BD and SRG, an auto parts maker, operate facilities right next to each other near Settlers Grove and BD has a large distribution center about a mile away, he said.

BD, a New Jersey company, and others that use ethylene oxide in Georgia have faced public outrage and court cases since mid-2019 when the alleged exposure of the chemical and its link to cancer was widely publicized in the state.

Penn said he knows of about 50 other related cases soon to be filed by Georgia residents.

The defendants in his firm's cases include BD subsidiary C.R. Bard Inc., Georgia companies that own a warehouse facility where BD allegedly stored products treated with ethylene oxide, and the individuals allegedly responsible for ensuring BD's Covington facility and its sterilization with ethylene oxide were safe.

Plaintiffs claim BD and its Covington facility managers repeatedly underreported and masked the dangers associated with ethylene oxide use and tried to keep secret or downplay chemical leaks. One ethylene oxide leak at the facility lasted eight days, the plaintiffs say.

BD came under fire in recent years from the Georgia governor and attorney general over its ethylene oxide use, at one time having its operations suspended, per the complaints.

The defendants face counts of negligence, public and private nuisance under Georgia law, ultrahazardous activity and strict liability, racketeering, and aiding tortious acts.

Penn said he wanted each plaintiff to have their individual cases heard, which is why he did not

condense them into one lawsuit. He hopes the cases will be assigned to the same judge for efficiency of litigation.

BD spokesperson Troy Kirkpatrick told Law360 the company denies all of the allegations in the Covington suits and will vigorously defend itself in court. BD has continuously implemented technology over the past two decades to control ethylene oxide emissions at its Covington and other plants, "as part of our commitment to employees and the communities we call home," Kirkpatrick said.

Air monitoring in metropolitan Atlanta shows the ethylene oxide levels in Covington are about the same or less than in surrounding areas, the company contends. And ethylene oxide levels in Covington are consistent with typical "background" levels identified statewide by the Georgia Environmental Protection Division and nationwide by the U.S. Environmental Protection Agency, Kirkpatrick said.

"The data also shows that average [ethylene oxide] concentrations across the greater Atlanta area are about the same in areas where [ethylene oxide] sterilization facilities operate and areas where they do not," he said.

Other defendants could not immediately be contacted Tuesday.

The plaintiffs are represented by Darren W. Penn, William L. Ballard, Alexandra "Sachi" Cole and Kevin M. Ketner of Penn Law LLC.

Counsel information for the defendants was not immediately available.

The cases are in the State Court of Gwinnett County, Georgia.

--Editing by Janice Carter Brown.

Update: This story has been updated with comment from BD.