



# B. Braun Pushes For Dismissal In PA Cancer Emissions Cases

By Matt Fair

Law360 (June 25, 2021, 6:53 PM EDT) -- B. Braun Medical Inc. has asked a Pennsylvania state judge to throw out claims in more than a dozen lawsuits alleging that toxic emissions from a company plant in Lehigh County caused neighbors to develop sometimes fatal cancer cases.

B. Braun argued in preliminary objections that the 16 complaints filed in the Philadelphia County Court of Common Pleas last month had failed to plead with required detail exactly when and where the plant's neighbors were allegedly exposed to the ethylene oxide emissions they say caused their cancers.

"The complaint does not identify any of the places where she lived, worked or shopped where she claims to have been exposed to ethylene oxide," the company argued in one of the nearly identical sets of preliminary objections it filed in the cases on Thursday. "B. Braun is entitled to know where and when plaintiff claims to have been exposed, and the rules require that the complaint plead the where and when."

According to the complaints, which are substantially similar, B. Braun has been using ethylene oxide at the plant since at least the late 1980s to sterilize medical equipment and devices.

In the years after the chemical began being used at the plant, however, the complaints said that the International Agency for Research on Cancer declared ethylene oxide a human carcinogen. The chemical went on to receive similar designations from the U.S. Department of Health and Human Services in 2000 and the U.S. Environmental Protection Agency in 2016.

Despite the growing consensus surrounding the chemical's health risks, B. Braun continued to use it while ignoring other viable options to effectively and more safely sterilize equipment and devices, the complaints said.

Meanwhile, the residents allege that B. Braun's use of ethylene oxide at the Hanover plant has only grown over the years.

Pointing to EPA data, the complaints said that the facility had recently been named the 12th-largest emitter of ethylene oxide in the country and that it accounted for 92% of all ethylene oxide emitted into the air in Pennsylvania in 2014.

B. Braun finally committed in November 2019 to substantially lowering its emissions of ethylene oxide, but by then, the complaint said that the damage for many nearby residents had already been done.

But B. Braun said in its preliminary objections Thursday that allegations that the residents were exposed where they "worked, lived and shopped" were insufficient to be allowed to move forward.

Instead, the company said that the complaints had simply identified the plaintiffs' current homes without saying how long they'd lived there and without providing any additional details about their exposure histories.

The company suggested in its preliminary objections that the plaintiffs should be required to attach their medical records to potential amended complaints in the case in order to better verify the nature and extent of their injuries.

The company also pushed for dismissal of nuisance claims leveled in the complaints given that the residents admitted that they had no idea they were being exposed to the toxin.

"Since plaintiff admittedly was not even aware that she were breathing ethylene oxide, the claimed emissions could not have interfered with her use and enjoyment of her property," the company argued in one of the sets of preliminary objections.

The company also asked the court to strip claims for punitive damages out of the cases based on arguments that the residents hadn't pled the kind of "willful, wanton, and reckless" conduct required to support such an award.

Shanin Specter, an attorney with Kline & Specter PC representing the residents, slammed the company's objections in a statement to Law360 on Friday afternoon.

"The preliminary objections range from the laughable — such as the alleged need for the plaintiff to attach their medical records to the complaint — to the disgusting — such as the idea that knowingly emitting a huge quantity of known carcinogens over many years does not justify the imposition of punitive damages," he said. "The Braun defendants can run but they can't hide. Their judgment is coming, and it's coming soon."

An attorney for Braun did not immediately return a message seeking comment.

B. Braun Medical is represented by Neil Witkes, Nicole Moshang and Kathleen Campbell of Manko Gold Katcher & Fox LLP.

The residents are represented by Shanin Specter, Thomas Bosworth and Aaron Dunbar of Kline & Specter PC.

The cases are Melissa Pina v. B. Braun Medical Inc. et al., case number 210500325; Luzmila Godinez et al. v. B. Braun Medical Inc. et al., case number 210500313; Christopher Glass et al. v. B. Braun Medical Inc. et al., case number 210500315; Carmen Rodriguez v. B. Braun Medical Inc. et al., case number

210500330; Bonnie Downing v. B. Braun Medical Inc. et al., case number 210500310; Jose Otero et al. v. B. Braun Medical Inc. et al., case number 210500324; Sherry Luvender et al. v. B. Braun Medical Inc. et al., case number 210500307; Lisa Olivieri et al. v. B. Braun Medical Inc. et al., case number 210500322; Tonia Mitchell v. B. Braun Medical Inc. et al., case number 210500319; Brett Stuckel et al. v. B. Braun Medical Inc. et al., case number 210500334; Luz Colon v. B. Braun Medical Inc. et al., case number 210500303; Mary Ann Miller v. B. Braun Medical Inc. et al., case number 210500317; Janene Rabenold v. B. Braun Medical Inc. et al., case number 210500327; Evelyn Hottenstein v. B. Braun Medical Inc. et al., case number 210500316; Christina Bertha v. B. Braun Medical Inc. et al., case number 210500302; and LaTanya Williams v. B. Braun Medical Inc. et al., case number 210500332; all before the Philadelphia County Court of Common Pleas.