



OHIO COURT DISQUALIFIES PLAINTIFFS' COUNSEL FOR MISCONDUCT

In a decision with potentially far-reaching implications, an Ohio trial court has revoked the privileges of a California personal injury law firm along with its lead trial counsel in a case involving the death of Harry Kananian from mesothelioma in 2000. *Kananian v. Lorillard Tobacco Co.*, No. 442750 (Court of Common Pleas, Cuyahoga County, Ohio, [order](#) entered January 18, 2007). The motion to disqualify opposing counsel for fraud, obstruction of discovery, perjury, and other misconduct was filed by Shook, Hardy & Bacon Partners **David Thorne** and **Terry Sexton**.

The decision generated widespread media coverage, including articles in *The Wall Street Journal* and *Forbes*, as the defense bar praised the court for taking on an all-too-common practice whereby plaintiffs recover from bankruptcy trust funds for their injuries and then seek additional damages from more solvent defendants, oftentimes on the basis of inconsistent claims.

"The judicial hammer finally came down last week on the California law firm of Brayton Purcell, one of the giants of the asbestos bar. All the firm had done was file a false claim, lie in court and obstruct discovery. But hey, everyone has a bad day once in a while," reported *The Wall Street Journal* (Jan. 22, 2007).

In a 19-page opinion discussing the reasons for its noteworthy action, the court outlines specific occasions on which Kananian's counsel, Brayton Purcell's Christopher Andreas, lied to the court, obstructed discovery, conducted unauthorized unilateral destructive testing, and submitted false claims with the Johns-Manville Trust. Kananian received compensation for alleged workplace asbestos exposure from the Trust and from a lawsuit filed in California, and then his heirs filed claims against Lorillard in Ohio. The court made a specific finding that Brayton Purcell institutionally and Andreas individually failed to abide by Ohio court rules.

"[Mr. Andreas] apparently never expected that the Court would order him to produce the e-mails that exposed his deceit."

Judge Hanna
Slip op. at 9

"[R]ather than admit that he rashly supported his firm's original claim form even though he was aware of its impending amendment, [plaintiffs' counsel] chose to weave a seemingly endless web of deceit. What a shame! He jeopardized his client's case and his own reputation because he would not admit to a little bravado in the heat of the moment."

Judge Hanna
Slip op. at 17

In the prior litigation in California and in the claims filed with bankruptcy trusts, Brayton Purcell alleged that Kananian's death was caused by his exposure to asbestos while working in shipyards in California, Japan and the Philippines during World War II. The firm also claimed that Kananian was occupationally exposed to asbestos in factories where he worked both before and after the war.

Andreas tried to tell a different story in Judge Harry Hanna's Cleveland courtroom. Andreas downplayed the ship and shipyard exposures and made arguments in the Ohio court that were inconsistent with the claims made to the California and bankruptcy courts so as to persuade the jury that Lorillard was responsible for Kananian's death. When Judge Hanna ruled that estoppel applied, plaintiffs would not be able to make inconsistent claims to multiple courts and Lorillard would be allowed to show Kananian's earlier claims to the jury, Andreas backtracked and described the prior claims as "rife with outright fabrications" and "the most misleading information" he had seen.

Disturbed by this reversal on claims that had been submitted under penalty of perjury and fully paid nearly six years earlier, the court launched a nine-month inquiry into the law firm's conduct. Several of its lawyers and staff underwent multiple depositions, and Brayton Purcell was forced to produce dozens of internal e-mails among plaintiffs' counsel, many of which repudiated statements Andreas had made in open court.

"The lessons learned from Kananian are far reaching and apply to all types of products liability claims," stated David Thorne. "Defendants should aggressively pursue potential misconduct by opposing counsel and use subpoenas and other forms of discovery to establish inconsistent claims made by plaintiffs against other entities for the same injury."

Even if a product manufacturer is not involved in asbestos litigation, the case provides important lessons, including:

- Report all fraudulent conduct directed at clients, courts and bankruptcy trusts;
- Establish waiver of the attorney-client and work product privileges in cases involving misconduct and inconsistent claims;
- Request internal e-mails written by opposing plaintiffs' counsel when warranted;
- Request depositions of opposing plaintiffs' counsel to expose inconsistencies in claims and statements made in open court;
- Take meticulous notes, always send confirming letters and request daily copy from all hearings to uncover inconsistent statements to court and counsel;
- Use subpoenas and discovery to obtain complete information about prior claims made by plaintiffs for the same injuries;

"In a harshly worded opinion... Judge Harry Hanna listed more than a dozen instances where [plaintiffs' attorneys] either lied to the court, intentionally withheld key discovery materials, or distorted the degree of asbestos exposure alleged."
The Wall Street Journal, Jan. 20, 2007.

"In my 45 years of practicing law, I never expected to see lawyers lie like this. It was lies upon lies upon lies." Plain Dealer Reporter, Jan. 25, 2007 (quoting Judge Hanna).

"Defendants should aggressively pursue potential misconduct by opposing counsel and use subpoenas and other forms of discovery to establish inconsistent claims made by plaintiffs against other entities for the same injury."

- Establish the admissibility of prior claims made against bankruptcy trusts and other defendants;
- Uncover false and incomplete privilege logs regarding e-discovery;
- Do not let opposing counsel get away with unethical behavior;
- Use judicial and collateral estoppel to prevent inconsistent claims for the same injuries.

Despite detailed findings that Andreas lied to the court, testified falsely under oath at his depositions, obstructed discovery, and destroyed evidence, he appealed the court's decision.

The trial court dismissed the appeal as moot, and Andreas has since filed an application for reconsideration. In his supporting memorandum, dated March 5, 2007, Andreas claims that he has been subject to "an incredible onslaught of negative and, in many instances, terribly inaccurate descriptions" in the press and may face disciplinary prosecution in Ohio and California. According to Andreas, the law in other jurisdictions supports his claim that *pro hac vice* status issues are not mooted when the underlying litigation concludes. Brayton Purcell has filed a separate motion to appeal.

Shook, Hardy & Bacon's Products Liability Division can help you with your defense needs in complex, mass-tort and class action litigation. Please contact **David Thorne** or **Terry Sexton**, (816-474-6550, dthorne@shb.com, tsexton@shb.com), if you would like to discuss this opinion and how our SHB team can meet the needs of your company or client.

ABOUT SHB

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