

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA

v.

TPC GROUP LLC

§
§
§
§
§
§
§

No. 1:24-CR-39

**MOTION TO INTERVENE FOR CERTAIN CRIME VICTIMS IN ORDER TO ASSERT
THEIR RIGHTS PURSUANT TO 18 USC 3771 (CVRA) AND 18 USC 3663A (CVRA)**

Come now Joseph C. Hawthorn, Mark Sparks, Jane Leger, and Mitchell A. Toups, and file this their *Motion To Intervene For Certain Victims To Assert their Rights Pursuant to 18 USC 3771 (CVRA) and 18 USC 3663A (MVRA)*, and in support of their motion, would respectfully show this Honorable Court:

INTRODUCTION

On November 27, 2019, at least two explosions ripped through South Unit of the TPC PNO facility in Pt. Neches, Texas. As a direct and proximate result of the explosions residents in the vicinity suffered damages including personal injuries, property damages, evacuation expenses, lost wages and other miscellaneous expenses. According to the Information in this case, “[a]s a result of the explosions, mandatory evacuations were ordered for residents within four-mile radius from the facility, voluntary shelter-in-place orders were issued for residents in the surrounding area, and local schools were closed for multiple days to allow buildings to be cleaned, repaired, and inspected.” Information §2. According to the Joint Factual Statement, the explosion and resulting chemical releases resulted “...in the evacuation of approximately 50,000 people, offsite property

damage of approximately \$133 million,¹ and the release of 11,337,920 pounds of extremely hazardous substances, among other damages to human health and the environment. Four employees and one contractor suffered injuries including concussions, burns, perforated eardrums, tinnitus, and cracked teeth.”² Joint Factual Statement §5.

The cause of the explosions was the uninhibited acceleration of “popcorn polymer” in a piping system at the TPC facility. TPC, through its officers employees and agents, was well aware of the possible catastrophic results of the uninhibited acceleration of “popcorn polymer” and had hired a company named Nalco to work with TPC’s employees to monitor and control such build-ups. On November 27, 2019, TPC, its officers, employees, and agents and Nalco’s employees were aware of the build-up of the “popcorn polymer” in TPC’s piping system. However, they both failed to control the development of popcorn polymer.

MOVANTS’ CLIENTS ARE “CRIME VICTIMS” IN THIS CASE AND HAVE THE RIGHT TO COUNSEL TO ADVISE THEM AND ASSERT THEIR RIGHTS

The Crime Victim’s Right’s Act (CVRA), defines a crime victim as any “...person directly and proximately harmed as a result of the commission of a Federal offense.” 18 USC 3771(e)(2). Therefore, the persons suffering damages as a result of the explosions as described in the Information and Agreed Factual Statement are crime victims under the CVRA.

After the explosions injured citizens retained counsel and filed suit against TPC, its contractor Nalco Co., LLC (“Nalco”),³ and others to recover their damages; ultimately, the JPML consolidated all those cases in an MDL in Orange County’s 128th Judicial District Court, Cause

¹ This number for offsite property damage of \$133 million is disputed by these victims. Indeed, the General Unsecured Creditor Trustee, Ed Gentle, appointed by the Delaware federal bankruptcy court overseeing the disbursement of bankruptcy proceeds, estimated all damages, including property damage and personal injuries, at over \$650 million.

² This recitation omits the several death cases that, victims allege, were proximately caused by TPC’s explosions.

³ TPC hired Nalco, specifically, to handle its popcorn polymer problems.

No. A2020-0236-MDL. Movants, including liaison counsel appointed by that MDL court, seek leave here to represent those MDL Plaintiffs here to assert their rights under the various crime victims' rights acts.

Wherefore Premises Considered, Movants pray their motion be granted and Movants be permitted to appear on behalf of the aforementioned victims to assert their rights as crime victims.

Respectfully submitted,

/s/ Joseph C. Hawthorn
Joseph C. Hawthorn, P.C.
1025 22nd St
Beaumont, Texas 77706
T: (409) 284-4026
Texas Bar No. 092580000
Email: lumh@aol.com

Mark C. Sparks,
Texas Bar No. 24000273
Email:
mark@thefergusonlawfirm.com
Jane S. Leger
Texas Bar No. 00788814
Email: jleger@thefergusonlawfirm.com
THE FERGUSON LAW FIRM, LLP
3155 Executive Boulevard
Beaumont, Texas 77705
T: (409) 832-9700
F: (409) 832-9708

Mitchell A. Toups
MITCHELL A. TOUPS, LTD. OF
WELLER, GREEN, TOUPS & TERRELL, L.L.P.
2615 Calder Ave., Suite 400
Beaumont, Texas 77702
T : (409) 838-0101
F: (409) 832-8577
Email: matoups@wgttlaw.com

CERTIFICATE OF CONFERENCE

On July 15, 2024, Movant's counsel sent a draft of this motion to the U.S. Attorney's office. Counsel for the U.S. Attorney stated they "took no position" on this motion at this time, but instead would wait for Movant's motion to unseal the indictment.

On July 15, 2024, Movant's counsel sent a draft of this motion to TPC Group LLC's counsel. Counsel for TPC Group LLC stated that TPC "is unopposed" to the appearance of counsel on behalf of their clients as authorized by the CVRA, but do not concede that any, or all, of the unnamed plaintiffs are actually crime victims.

/s/ Joseph C. Hawthorn
Joseph C. Hawthorn