

Court: BP explosion victims were wronged

Monday, 12 May 2008

By Mark Collette
The Daily News

TEXAS CITY — An appeals court ruled Wednesday that the U.S. government violated the rights of victims in the explosions at the BP America refinery in Texas City because the government reached a plea bargain with BP without consulting the victims.

The ruling was only a partial victory for the victims, however.

While the 5th U.S. Circuit Court of Appeals said the government violated the Crime Victims Rights Act, it sent the case back to a lower court to accept or reject the plea deal.

“The problem is that now we’ve got to try to undo a deal that’s already been done,” said Paul Cassell, one of a team of attorneys representing the victims.

Twelve victims showed up to protest the plea deal in court once it became public; Cassell also is representing at least 148 victims who so far have had no say in court.

The appeals court said the Crime Victims Rights Act, enacted in 2005 and therefore only sparsely interpreted by the courts, allows victims to confer with the government during plea negotiations.

Instead, in this case, the government got a federal judge to approve exclusive negotiations between the government and BP on the grounds that consulting 160 victims wasn’t practical and that media coverage could impair the process and prejudice BP, the appeals court said.

“The government filed the criminal information under seal on October 22,” the appeals court noted in its ruling. “Two days later, the government and BP signed the plea agreement. The next day, the information was unsealed, and the plea agreement was announced.”

The appeals court said the proceedings that excluded victims “have no precedent, as far as we can determine.”

Only after the deal was reached and announced were victims invited to participate in further proceedings — after the government and BP agreed upon a \$50 million fine and three years of probation.

A spokesman for U.S. Attorney Don DeGabielle in Houston said his office was preparing a statement about the 5th Circuit ruling. Asked whether DeGabielle would reconsider the terms of the plea deal, spokeswoman Angela Dodge said she was unsure.

Victims’ attorneys say the fine is far too lenient and probation, without a court-ordered safety monitoring program, isn’t enough to prevent another disaster. The government has said the fine is the maximum amount it could prove BP should pay under federal law.

The explosions in 2005 killed 15 people and injured more than 170. In pleading guilty to the criminal information, BP acknowledged that safety lapses led to the explosions.

The U.S. Chemical Safety and Hazard Investigation Board has said any one of numerous measures, such as installing modern equipment, repairing alarms, keeping proper log books and ensuring proper worker supervision could have averted disaster.

The appeals court sent the case back to U.S. District Judge Lee Rosenthal to “fully consider the victims’ objections and concerns...”

David Perry, another victims’ attorney, said he’s confident the lower court will ultimately reject the “sweetheart plea bargain.”

The 5th Circuit also said victims “do have reason to believe that their impact on the eventual sentence is substantially less where, as here, their input is received after the parties have reached a tentative deal.”

That has Cassell and Perry considering whether to appeal to either a full panel of the 5th Circuit or to the U.S. Supreme Court. Cassell said there is a larger issue at stake that higher courts should decide: whether crime victims have the same rights on appeal as those afforded to criminals.

“We’re not going to rest with this ruling,” Cassell said.

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