

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHRISTY GRAVES, et al.

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Plaintiffs,

§

§

vs.

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CIVIL ACTION NO: 4:17-CV-03068

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ARKEMA, INC.; RICHARD RENNARD;
RICHARD P. ROWE; ANDREW
BURDETT; and BUREAU VERITAS
NORTH AMERICA, INC.;

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Defendants.

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MEMORANDUM OF LAW IN SUPPORT

OF PLAINTIFF-INTERVENORS' MOTION TO INTERVENE

F.R.C.P. 24(a)(2) provides that parties may intervene as of right in an action when they claim

an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest unless existing parties adequately represent that interest.

F.R.C.P. 24(b)(1)(B) grants permissive interventions to parties having "a claim or defense that shares with the main action a common question of law or fact."

Plaintiff-intervenors submit that they may intervene as a matter of right under Rule 24(a)(2), or, in the alternative, should be granted leave to intervene under the liberal standards of Rule 24(b)(1)(B).

A. Plaintiff-intervenors meet the elements of the test for intervention as of right.

Courts use a four-part test in evaluating motions under Rule 24(a):

(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests.

SEC v. Prudential Sec. Inc., 136 F.3d 153, 156 (D.C. Cir. 1998).

In the present case, applicants satisfy each of the elements of this test.

First, plaintiff-intervenors' motion is timely. The Graves case is in its infancy. The Third Amended Complaint was filed on May 15, 2018, and, to date, no responsive pleadings have been filed. Defendant has served initial requests for production of documents [to which *Abbott, et al.* would respond in due course], and no depositions have been taken. Thus, the intervention proposed herein meets the most heavily weighed factor in Rule 24's timeliness determination: only a brief time has elapsed since the inception of the suit, and intervention would work no prejudice to any party.

Second, plaintiff-intervenors propose to assert obviously legally protected interests – indeed, the same interests asserted by original plaintiffs, including claims for damages arising from the allegedly tortious conduct of a principal defendant.

Third, while these interests are identical in kind to those claimed by original plaintiffs, they differ in quantum and other respects, and, like all damages, are personal to the plaintiff-intervenors, and cannot be asserted or protected by original plaintiffs.

Fourth, as a practical matter, plaintiff-intervenors' ability to assert their own claims would be impaired if they are forced to litigate them in a separate action, with all the inefficiencies, duplication of effort and added expense that would follow.

B. Even if plaintiff-intervenors are held not to meet the criteria of Rule 24(a), they should be granted leave to intervene under Rule 24(b)(1)(B).

Obviously, plaintiff intervenors assert claims involving the same legal and factual questions presented herein. These include, but are not limited to factual questions regarding Arkema's management of its Crosby facility, its preparedness for and response to Hurricane Harvey, the causal relationship between Arkema's conduct and plaintiffs' damages and the nature of plaintiffs' damages. Common legal questions include the cognizability of plaintiffs' damages, the legal obligations and standard of care to be imposed on Arkema, and the types of damages and other relief available under Texas law.

All of these legal and factual questions would be most efficiently and fairly litigated in the same case, in the same forum. Such practical consideration is the essential determinant in determining whether a motion to intervene should be granted. See, SEC v. Prudential, supra; see also, U.S. v. British American Tobacco Australia Serv., 437 F.3d 1235, 1238 (D.C. Cir. 2006).

Because the intervention sought herein serves the interests of justice and judicial economy protected by Rule 24, the Court should grant it.

DATE: June 26, 2018

Respectfully submitted,

/s/ Lance N. Walters
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CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 26th day of June, 2018 that a copy of the foregoing document was served upon counsel of record via the Court's eFiling system.

/s/ Lance N. Walters
LANCE N. WALTERS