

TEXAS LAWYER

An **ALM** Publication

texaslawyer.com | April 5, 2018

Appellate Lawyer of the Week: Houston Attorney Helps Protect a Small Part of Tony Buzbee's Huge Verdict

David George was brought in on appeal of a stunning \$159 million jury verdict for a group of six laborers severely burned, and one of them killed, in a 2012 explosion at a Valero refinery.

BY JOHN COUNCIL

After well-known plaintiff attorney Tony Buzbee won a stunning \$159 million jury verdict for a group of six laborers severely burned, and one of them killed, in a 2012 explosion at a Valero refinery, he turned to Houston lawyer David George to protect the victory on appeal.

Technically, all George had to do was defend 6 percent of the verdict on appeal for it to be considered a win.

But successfully defending a little slice of a big verdict that was directed at a single party in a multi-defendant case wasn't a simple task, as George found out.

"Even though a small percentage resulted in the judgment, we had to support the entire amount of damages," said George, a partner in Houston's Baker Wotring. "And Tony did a fantastic job at trial getting testimony from the men and their families and the

doctors to give some idea of the horror they went through and the unbelievable suffering that they experienced."

That slice of the verdict George defended involved Critical Path Resources, a defendant contractor that the Harris County jury had determined was 6 percent responsible for the disaster at the Memphis, Tennessee, refinery.

Critical Path handled the scheduling of the Valero refinery's "turn around"—a period of time during which a refinery is shut down for repairs and maintenance. And the company was one of seven defendants the plaintiffs sued for their alleged role in the explosion.

Specifically, Critical Path was accused of failing to schedule



David George, partner with Baker Wotring.

the cleaning of a gas flare line at the refinery. And while all of the other defendants in the case settled with the plaintiffs, Critical Path stood firm, arguing at trial that the negligence leading to the explosion occurred after their work at the refinery had concluded.

While Critical Path was ultimately deemed negligent by the jury, they were found to be only 6 percent at fault for the explosion. However Valero—who'd wisely chose to settle with the plaintiffs before trial, along with five other defendants—was assigned 70 percent responsibility for the explosion.

Critical Path was ultimately assessed \$8.4 in damages in a judgment they appealed to Houston's 14th Court of Appeals, arguing that their alleged acts and omissions did not contribute to the plant's explosion.

But George argued for the plaintiffs there was plenty of evidence tying the cause of the explosion to Critical Path's negligence—specifically because they failed to execute a plan to clean the flare line at the refinery.

"We agree that they had a smaller role than others. You don't have a catastrophic explosion at a refinery unless a number of steps are missed," George said. "And our position was, and the jury's findings were, that Critical Path was a cause of the explosion—but it wasn't the only cause. The main thing they did was, a Critical Path scheduler failed to schedule the cleaning of explosive gases before a line was worked on. And that led to the refinery workers having to scramble to come up with a plan, which failed, and these men were killed and burned."

The 14th Court recently agreed with George's arguments, concluding there was enough evidence to support the jury's negligence findings against Critical Path.

"A reasonable jury could find that the dangerous situation created by Critical Path's negligent failure to request plans and schedule tasks to isolate and decontaminate the line was that flammable substances remained without sufficient time to plan and execute their safe removal before the job began," Justice Brett Busby wrote in the March 29 opinion. "The failures ... to abate this danger show that Critical Path's negligence did not 'come to rest' before the explosion."

Justice Kevin Jewell filed a dissenting opinion in the case, noting he would have reversed the judgment because there was no causal link between Critical Path's negligence and the explosion.

Busby's 77-page majority opinion also went into excruciating detail about the injuries the men suffered in the explosion, noting how the heat from the combustion melted their fire-retardant clothing and breathing masks into their skin, and how doctors explained to the mother of the most severely burned worker that it was "better if he were to die" because his burns were so painful. That worker eventually perished from his injuries. The

majority decision upheld most of the damage awards.

But in a usual twist to the decision, the 14th Court "suggested" that the damages for the loss of companionship and mental anguish awards to some of the plaintiffs in the case should be reduced by a \$1 million remittitur—giving George's clients the option of accepting a lower damage award or having their case remanded for a new trial.

George said his client will accept the \$1 million remittitur instead of opting for a new trial—a deal he notes is rarely offered by Texas appellate courts.

"It's pretty rare, and everybody had to look up the rules with them because they don't come up every day," George said of the remittitur. "But I think it shows the attention to detail the court used. They examined everything, as you can see in the appeal. They were not just rubber-stamping the jury verdict."

Russell Hollenbeck, a partner in Houston's Wright Close & Barger who represents Critical Path on appeal, did not return a call for comment.

Buzbee said he often engages George to defend large verdicts because he's confident in the appellate lawyer's ability.

"This particular case, as you can see, was very fact intensive," Buzbee said. "David dove right in and did an incredible job. I'm very proud of the work we all did in this important case."