SUPREME COURT OF LOUISIANA

98-C-0942

CRAIG DUCOTE, ET AL.

versus

KOCH PIPELINE CO., L.P., ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF AVOYELLES

TRAYLOR, Justice*

FACTS

Gulf Central Pipeline Company (Gulf Central), a wholly owned subsidiary of Koch Industries, Inc., owns and operates an ammonia transmission line which runs through part of Avoyelles Parish. On May 25, 1995, Gulf Central contracted with Stan Delancy (Delancy), d/b/a Delancy Enterprises, to cut the grass on the right-of-way along the pipeline. In the written contract, Delancy agreed to defend, protect, indemnify and hold Gulf Central harmless from and against all claims arising out of the work of Delancy or its subcontractors. The contract further required Delancy to obtain liability insurance for Gulf Central and other Koch Pipeline subsidiaries.

Delancy purchased a comprehensive general liability policy from American Central Insurance Company (American Central), a Commercial Union Company, through the assistance of Troy & Nichols Insurance Agency. On June 7, 1995, an employee of Troy & Nichols Insurance Agency sent Delancy a letter with an endorsement specifically stating that Gulf Central had been added as an additional named insured. On July 7, 1995, a certificate of insurance was issued in favor of Koch Pipeline, through its former subsidiaries, stating that the Commercial Union policy was no more restrictive than that provided by standard coverage. After Gulf Central merged into Koch Pipeline, L.P. on July 31, 1995, Koch Pipeline, L.P. assumed all of the assets, liabilities, and contractual obligations of Gulf Central. Delancy later subcontracted the grass mowing work to Alexander & Ainsworth Contractors, which was insured by First Financial Indemnity Company (First Financial).

On September 11, 1995, an employee of Alexander & Ainsworth was cutting the grass with a tree cutter tractor when the tractor overturned and the tractor's bushhog blade struck the

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* Lemmon, J., not on panel. See Rule IV, Part 2, § 3.

pipeline, releasing anhydrous ammonia into the atmosphere. Craig and Ramona Ducote subsequently filed suit alleging that Ramona Ducote sustained personal injuries as a result of the ammonia exposure. The pipeline operator, Koch Pipeline, L.P., filed a cross-claim and third party demand against Delancy, Alexander & Ainsworth, First Financial, American Central, Commercial Union Insurance Company (Commercial Union), and Troy & Nichols Insurance Agency seeking indemnification or contribution for all damages arising out of the incident. First Financial, American Central, and Commercial Union denied coverage based upon their policies' pollution exclusions, which preclude coverage with respect to:

> Bodily injury or property damage which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
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> Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

After all parties were joined, multiple motions for summary judgment were filed concerning insurance coverage.

On July 15, 1997, the trial court granted partial summary judgment in favor of Delancy and Koch Pipeline, L.P. holding that the total pollution exclusion endorsement contained in both the American Central and First Financial policies did not exclude coverage for the claims alleged. The Third Circuit Court of Appeal affirmed, reasoning that pollution exclusions do not apply to accidental releases of pollutants by businesses which are not active industrial polluters. We reverse.

LAW

An insurance policy is an agreement between the parties and should be interpreted by using the general rules of contact interpretation as set forth in the Louisiana Civil Code. *Ledbetter v. Concord Gen. Corp.*, 95-0809 (La. 1/6/96); 665 So. 2d 1166, 1169; *Smith v. Matthews*, 611 So. 2d 1377, 1379 (La. 1993); *Crabtree v. State Farm Ins. Co.*, 93-0509 (La. 2/28/94); 632 So. 2d 736. The judicial responsibility in interpreting insurance contracts is to determine the parties' common intent. *Louisiana Ins. Guar. v. Interstate Fire*, 93-0911 (La. 1/14/94); 630 So. 2d 759, 763. The parties' intent, as reflected by the words of the policy, determines the extent of coverage. La. Civ. Code art. 2045; *Ledbetter v. Concord Gen. Corp.*,

665 So. 2d at 1169; *Reynolds v. Select Properties, Ltd.*, 93-1480 (La. 4/11/94); 634 So.2d 1180. However, when the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. Civ. Code art. 2046. Such intent is to be determined in accordance with the general, ordinary, plain and popular meaning of the words used in the policy, unless the words have acquired a technical meaning. La. Civ. Code art. 2047; *Ledbetter v. Concord Gen. Corp.*, 665 So. 2d at 1169 *citing Louisiana Ins .Guar. v. Interstate Fire*, 630 So. 2d at 763; *Reynolds v. Select Properties, Ltd.*, 634 So. 2d at 1183. If the policy wording at issue is clear and expresses the intent of the parties, the agreement must be enforced as written. *Ledbetter v. Concord Gen. Corp.*, 665 So. 2d at 1169 *citing Pareti v. Sentry Indem. Co.*, 536 So.2d 417, 420 (La. 1988); *Reynolds v. Select Properties, Ltd.*, 634 So. 2d at 1183. Courts lack the authority to change or alter the terms of an insurance policy under the guise of interpretation. *Louisiana Ins. Guar. v. Interstate Fire*, 630 So. 2d at 764.

An insurance policy should not be interpreted in an unreasonable or a strained manner so as to enlarge or to restrict its provisions beyond what is reasonably contemplated by its terms or so as to achieve an absurd conclusion. *Reynolds v. Select Properties, Ltd.*, 634 So. 2d at 1183; *Louisiana Ins. Guar. v. Interstate Fire*, 630 So. 2d at 763. Absent a conflict with statutory provisions or public policy, insurers, like other individuals, are entitled to limit their liability and to impose and to enforce reasonable conditions upon the policy obligations they contractually assume. As this court has stated in *Muse v. Metropolitan Life Ins. Co.*, 193 La. 605, 192 So. 72 (1939), *Commercial Union Ins. Co. v. Advance Coating Co.*, 351 So. 2d 1183, 1185 (La. 1977), and *Reynolds v. Select Properties, Ltd.*, 634 So. 2d at 1183:

> The rule of strict construction does not authorize a perversion of language, or the exercise of inventive powers for the purpose of creating an ambiguity where none exists, nor does it authorize the court to make a new contract for the parties or disregard the evidence as expressed, or to refine away terms of a contract expressed with sufficient clearness to convey the plain meaning of the parties . . . .

DISCUSSION

Guided by the language of the pollution exclusion clause and the basic principles as set forth in the Louisiana Civil Code, we conclude that coverage for damage resulting from the

release of anhydrous ammonia is excluded under the commercial general liability policy.[1] Our decision regarding the reasonable scope of a pollution exclusion, in the absence of ambiguity, must be tied to the language of the policy. The clear terms of the pollution exclusion at issue explicitly preclude coverage of liability arising from "the discharge, dispersal, seepage, migration, release and escape" of "pollutants," defined as "any . . . gaseous . . . irritant or contaminant, including . . . vapor, . . . fumes, . . . [and] chemicals ." As a court, we cannot place limitations upon the plain language of a policy exclusion simply because we may think it should have been written that way. Neither can we construe insurance policies based upon a determination as to whether the insured's subjective expectations are reasonable, as such guesswork can only lead to uncertainty and unnecessary litigation. Applying the policies' language to the context of the claim does not produce an uncertain or ambiguous result, but leads to one reasonable conclusion: the alleged damage was caused by the release of anhydrous ammonia, a substance which is clearly a "pollutant" for which coverage is precluded under the policies' language.

We find that the court of appeal erred in concluding that the pollution exclusion clause in this case "excludes coverage only for 'active industrial polluters, when businesses knowingly emit[ted] pollutants over extended periods of time.'" *Thompson v. Temple*, 580 So. 2d 1133, 1134 (La. App. 4 Cir. 1991). This interpretation finds no support in the policy language. Nowhere does the pollution exclusion clause state that it excludes coverage only for active industrial polluters or businesses which knowingly emit pollutants over extended periods of time. Rather, the plain language of the insurance contract precludes coverage for bodily injury or property damage arising from a polluting discharge. This means that it applies *regardless* of whether the release was intentional or accidental, a one-time event or part of an on-going pattern of pollution.

We see no reason to address what might be the holding under certain hypothetical situations if we interpret the pollution exclusion clause as it is written because none of those facts

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[1] This court's holding in *South Cent. Bell Tel. Co. v. Ka-Jon Food Stores of Louisiana, Inc.*, 93-2926 (La. 5/24/94); 644 So. 2d 357, was vacated by the later decision of *South Cent. Bell Tel. Co. v. Ka-Jon Food Stores of Louisiana, Inc.*, 93-2926 (La. 9/15/94); 644 So. 2d 368, and therefore lacks any precedential value. However, other jurisdictions have held that the pollution exclusion is applicable to ammonia leaks and spills which injure persons exposed to ammonia fumes. *Deni Assoc. v. State Farm Ins.*, 711 So. 2d 1135 (Fla. 1998); *Bituminous Cas. Corp. v. RPS Co.*, 915 F. Supp. 882 (W.D. Ky. 1996); *American States Ins. Co. v. F.H.S., Inc.*, 843 F. Supp. 187 (S.D. Miss. 1994).

are before us. Suffice it to say that insurance policies will not be construed to reach absurd results. Applying the unambiguous language of the pollution exclusion clause to the facts of this case, it is clear that the incident at issue is excluded from coverage under the insurance policy. *See, Deni Associates v. State Farm Ins.*, 89-115, 89-300 (Fla. 1/29/98); 711 So. 2d 1135.

Individuals and businesses expect that courts will enforce the plain language of contracts and conduct their affairs based upon such expectations. Judicial fidelity to the basic principles of contract interpretation is therefore vital to retain the confidence of both the public at large and the business community. Insurers underwrite contracts only for specific risks and, thus, provide explicit exclusions therein to clarify the scope of coverage provided. Without adherence to policy language, parties could elect not to purchase pollution coverage and thereby pass the cost onto their insurers, which would affect all other policy holders via an increase in premiums. The consequences of failing to give effect to the language of the contract may have potentially far-reaching results which are contrary to Louisiana's policy of individual responsibility. *See,* La. Rev. Stat. Ann. § 30:2271(B) (West 1998).

CONCLUSION

When a contract can be construed from the four corners of the instrument without looking to extrinsic evidence, the question of contractual interpretation is answered as a matter of law and summary judgment is appropriate. *Brown v. Drillers, Inc.*, 93-1019 (La. 1/14/94); 630 So. 2d 741.[2] Because this court finds the pollution exclusion facially unambiguous, the decision of the trial court and the Third Circuit Court of Appeal is reversed and summary judgment is granted in favor of Commercial Union Insurance Company and First Financial Indemnity Company.

REVERSED.

[2] Under La. Code Civ. Proc. art. 966, a motion for summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue as to material fact and mover is entitled to judgment as a matter of law. *Guillory v. Interstate Gas Station*, 94-1767 (La. 3/30/95); 653 So. 2d 1152.