

SUPREME COURT OF LOUISIANA

98-C-1981 C/W 98-C-2024

HOUSTON R. WILLIAMS, ET AL.

Versus

CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE, ET AL.

Knoll, J., dissenting in part.

For the following reasons, I respectfully dissent from the majority's reduction in mental anguish damages and its determination that the actions of the City/Parish are excluded from the excess coverage provided in the Chicago Fire Insurance Company policy.

It is evident that the trial court and the appellate court reviewed the mental anguish damages in light of the *particular* injuries to the *particular* plaintiffs under the *particular* circumstances presented. *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257, 1261 (La. 1993), *cert. denied*, 510 U.S. 1114 (1994). On the basis of the facts detailed in the appellate court decision, *Williams v. City of Baton Rouge*, 96-0675 (La.App. 1 Cir. 4/30/98), 715 So.2d 15, 31-32, I cannot say that the trial court abused its great discretion in making these particularized awards.

I likewise find that the Chicago policy provides excess liability insurance for the City/Parish and coverage is not excluded under the policy's "intentional act" exclusion. In *Breland v. Schilling*, 550 So.2d 609, 610 (La. 1993), we found that not all injuries resulting from an intentional act will be excluded, but only those injuries that were intended. Although the City/Parish knew that property damage would occur, there has been no showing that it intended to inflict severe mental anguish damages. Rather, as the trial court found "although [the City/Parish's] actions in attempting to cure the drainage problem was done intentionally, there was no intention to cause emotional damage to the plaintiff[s]." On this basis, I do not find coverage is excluded under Chicago's "intentional act" exclusion.