

COPY
SUPREME COURT OF LOUISIANA

DOCKET NUMBER 98-C-0942

98 C 0942

CRAIG DUCOTE, SR. AND RAMONA DUCOTE,
INDIVIDUALLY, AND ON BEHALF OF THEIR MINOR SON,
CRAIG DUCOTE, JR.

versus

KOCH PIPELINE COMPANY, L.L.P., STAN DELANCY, D/B/A DELANCY
ENTERPRISES, ALEXANDER AND AINSWORTH CONTRACTORS,
MARVIN EUGENE CALVITT, FIRST FINANCIAL INSURANCE COMPANY,
AMERICAN CENTRAL INSURANCE COMPANY, COMMERCIAL UNION
INSURANCE COMPANY, AND TROY & NICHOLS INSURANCE AGENCY,
INC., D/B/A TROY & MONTGOMERY INSURANCE

ORIGINAL AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS
IN SUPPORT OF RESPONDENT/THIRD PARTY PLAINTIFF,
KOCH PIPELINE COMPANY, L.P.

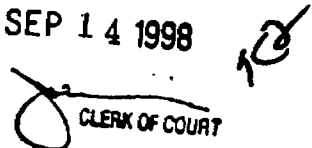
John A. MacDonald
PA ID #47892
ANDERSON, KILL & OLICK, P.C.
1600 Market Street, 32nd Fl.
Philadelphia, PA 19103
(215) 568-4702

Amy Bach, Esquire
United Policyholders
110 Pacific Avenue, No. 262
San Francisco, CA 94111
(415) 343-9990

ATTORNEYS FOR AMICUS CURIAE,
UNITED POLICYHOLDERS

SUPREME COURT OF LOUISIANA

FILED SEP 14 1998


CLERK OF COURT

INTEREST OF AMICUS CURIAE

United Policyholders is a public interest organization formed in 1991. United Policyholders is incorporated as a not-for-profit educational organization and has tax exempt status under §501(c)(3) of the Internal Revenue Code. United Policyholders is funded by donations and grants, and has received thousands of donations from individuals and businesses, most of which range between \$25 and \$100. The fee for a basic membership in United Policyholders is \$35.00.

United Policyholders' mission is to educate the public, legislators and the courts on insurance issues and consumer rights, and to assist policyholders in securing prompt and fair insurance settlements. United Policyholders provides educational materials, provides speakers at community and government forums, organizes meetings in disaster areas, and acts as a clearing house for information on insurance issues.

To this end, after a disastrous 1991 firestorm that destroyed over three thousand structures in Oakland and Berkeley Hills, California, United Policyholders sponsored meetings, workshops, and seminars for the victims, and worked with local officials, insurers and relief agencies to facilitate claim settlements. United Policyholders has repeated this process in Florida for victims of Hurricane Andrew, in Texas for victims of the Northridge Earthquake, and in Northern California for victims of a wildfire.

United Policyholders also publishes a newsletter for insurance consumers, entitled What's UP, which is devoted to matters of general interest to insurance consumers. The newsletter is mailed to thousands of interested parties. Information obtained

from accompanying surveys to United Policyholders' members is provided to legislators, courts, and other consumer groups.

United Policyholders also files amicus curiae briefs across the country on matters of great importance to the general policyholding-public. United Policyholders' amicus curiae activities depend upon donated labor and services and its brief herein has been prepared for pro bono. United Policyholders' amicus curiae briefs have been accepted by courts throughout the country. See e.g., Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Farmland Mut. Ins. Co., 568 N.W.2d 815 (Iowa 1997); Guaranty Nat'l Ins. Co. v. George, 953 S.W.2d 946 (Ky. 1997); Western Alliance Ins. Co. v. Gill, 686 N.E.2d 997 (Mass. 1997); Town of Harrison v. National Union Fire Ins. Co., 675 N.E.2d 829 (N.Y. 1996).

United Policyholders is so highly regarded that the California Court of Appeals recently specifically solicited United Policyholders to file an amicus curiae brief and then to participate in an insurance coverage case with important public policy considerations. The Court of Appeals then invited United Policyholders to participate in oral argument. The Downey Venture v. LMI Ins. Co., 2 Civ. B106304 (Cal. Ct. App. 1998).

United Policyholders has a vital interest in the outcome of this litigation as it will potentially affect numerous policyholders in Louisiana, including members of United Policyholders. United Policyholders also believes that its brief will be of assistance to this Court as it brings to the Court's attention substantial law not addressed by the parties.

STATEMENT OF THE CASE

Amicus Curiae United Policyholders respectfully adopts the Statement of the Case of Respondent/Third-Party Plaintiff, Koch Pipeline Company, LP.

ARGUMENT

I. ANY REVIEW OF THE "ABSOLUTE" POLLUTION EXCLUSION OR ITS PROGENY, THE "TOTAL" POLLUTION EXCLUSION PROPERLY BEGINS WITH THIS COURT'S WELL-REASONED OPINION IN KA-JON

This is not the first time that this Court has had to wrestle with the questions of how to interpret a standard-form, industry-wide pollution exclusion or whether public policy requires that the words of the exclusion not be interpreted so as to yield overbroad, unintended, or absurd restrictions on insurance coverage. Nor is it the first time that this Court has had to address the question of whether the overbroad and potentially absurd restrictions on commonly-provided and commonly-expected insurance themselves reveal that the exclusion is ambiguous. All of these questions have been thoroughly addressed and decided in this Court's decision in South Central Bell Telephone Co. v. Ka-Jon Food Stores of Louisiana, 644 So.2d 357 (La. 1994) ("Ka-Jon").

The insurance industry advocates in this case spend much time arguing about the precedential value of the Ka-Jon decision. Amicus curiae does not presume to be in a position to tell this Court as to the intended precedential value of this Court's opinions. It is clear, however, precedential or not, this Court's decision in Ka-Jon was detailed, well-reasoned, and applicable herein. Contrary to the position taken in the insurance industry briefs, the decision is also supported by numerous other thoughtful judicial opinions in state and federal courts. Thus, amicus curia-