

NOTICE OF REASONS FOR JUDGMENT

TODD EVERETT BAUMANN et al

23RD JUDICIAL DISTRICT COURT

VERSUS

PARISH OF ASCENSION

D & J FILL INC et al

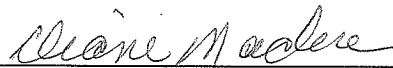
STATE OF LOUISIANA

DOCKET NUMBER: 00082488D

TO: STEPHEN IRVING

You are hereby notified that on the 27TH day of MARCH, 2007 REASONS FOR Judgment was signed in the above numbered and entitled matter, a certified copy of said REASONS FOR JUDGMENT being annexed hereto and made a part hereof.

Issued by the Clerk of Court this 28TH day of MARCH, 2007.


Deputy Clerk of Court for
Kermit "Hart" Bourque, Clerk of Court

CERTIFIED COPIES:
RICHARD DODSON
VINCENT SOTILE JR
KENNETH HOOKS
ETHEL GRAHAM
MATTHEW UNGARINO
ALBERT GIRAUD
DENNIS PENNINGTON
DONALD R SMITH
BRENT STEIR
JENNIFER WALL
WILLIAM LOWERY
BARBARA MESSINA
ERIN WILDER DOOMES

File #: 1187 Date R: 3/29 Date S: 3/30

Scanned by: CSL Scan #: 272

Saved as: Reasons for Judgment

Copies to: File: WH KL

TODD E. BAUMANN

VS. NO. 82,488 DIV. "D"

D&J FILL, INC.

FILED: _____

RECEIVED AND FILED 3RD JUDICIAL DISTRICT
KERMIT HART BOURQUE
CLERK OF COURT

PARISH OF ASCENSION

2007 MAR 27 P 3: 54

STATE OF LOUISIANA

BY Joe Blanchard
CLERK & RECORDER
ASCENSION PARISH, LA

DEPUTY CLERK OF COURT

03/27/07 3:54 PM

REASONS FOR JUDGMENT

THIS MATTER was heard on March 5, 2007, on a Motion for Summary Judgment on Insurance Coverage, filed by the plaintiff, Todd Baumann and joined by the defendant, D&J Fill.

This case concerns a landfill which is operated in Ascension Parish. Plaintiffs allege in their petition that on numerous occasions the landfill has emitted fumes and odors which have caused damage to the surrounding subdivisions. Further, there is documentation that on a number of occasions there have been uncontrolled subterranean fires that developed in the landfill. The defendant, Everest, is denying coverage based upon the Total Pollution Exclusion clause contained in the insurance policy. This motion puts before the Court the interpretation of the insurance policy and whether the policy provides coverage for damage arising from the fires discussed above.

The determination of coverage and/or the interpretation of an insurance contract is a legal question which may properly be resolved by a motion for summary judgment. *Miller v. Superior Shipyard and Fabrication, Inc.*, 2001-2907 (La. App. 1 Cir. 8/20/03) 859 So. 2d 159. The defendant, Everest, has stated in its opposition that it has not had an opportunity to conduct the necessary discovery for the court to properly make a determination as to coverage. However, discovery is not necessary nor is it required for the court to make a determination on the legal issue of insurance coverage.

Both plaintiffs and Everest have set forth interpretations of relevant policy language both supporting and denying coverage, respectively. Both base their interpretations on the same policy provisions. The interpretation of an insurance contract is nothing more than the determination of the common intent of the parties. *Doerr v. Mobile Oil Corp.*, 2000-0947 (La. 12/19/00) 774 So. 2d 119, 124. When a provision in a policy is susceptible to more than one reasonable interpretation, it is ambiguous and must be construed in favor of coverage. *Smith v. Reliance Insurance Co. of Illinois*, 01-888 (La App. 5 Cir. 1/15/02) 807 So. 2d 1010.

The issue before this Court is whether the Total Pollution Exclusion endorsement of the policy unambiguously excludes coverage for bodily injury and property damage caused by fumes and odors emitted from fires at the D&J facility. The Total Exclusion clause endorsement is a complete rewrite of exclusion F of the CGL policy. Exclusion F as originally written unambiguously does not exclude coverage for fumes from an unintentional fire at the D&J facility. Therefore, the issue becomes whether the rewrite of Exclusion F in the Total Pollution Exclusion changes the policy to exclude fumes and odors from the fires. The term pollutant as used in the policy form is used as follows:

“Pollutants” mean 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.

There is no testimony from any plaintiff that smoke was present at any location outside the D&J facility. Repeated efforts to test for the presence of identifiable chemical contaminants from the D&J facility done by the Louisiana Department of Environmental Quality has been negative. There have therefore been no detectable contaminants or pollutants in the odors that cause the problem to the Plaintiff class. In order for the Pollution Exclusion clause to become an issue, Everest must first demonstrate the presence of a pollutant as that term is defined in the policy.

The Total Exclusion clause, as a rewrite of Coverage Exclusion F is also subject to the limitations placed upon Exclusion F, contained in other portions of the CGL policy form. Of particular interest is a separate clause at the end of all the exclusions listed in the original policy, which states:

“Exclusions C. through N. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with the permission of the owner (Emphasis added)”.

This provision, hereinafter referred to as the “Fire Clause” exempts fire damage from the provisions of both the original and amended Pollution Exclusion clauses, since both appear as Exclusions between “C” and “N”, as long as the fire occurs on leased property.

Thus, the Court agrees with plaintiffs that the site occupied by D&J is leased. The site therefore qualifies as a premises rented to D&J. It is this premises which is on fire on the

occasions cited by the Plaintiffs. When the premises leased by D&J is on fire, any resulting damage is unambiguously not subject to the Total Pollution Exclusion Clause.

Based on the oral arguments and the memorandum, this Court finds that the insurance policy does afford coverage for the claims made in the plaintiffs petition for the fires. Thus, the plaintiffs Motion for Summary Judgment is granted.

READ, RENDERED AND SIGNED this 27 day of March, 2007, in Chambers in Donaldsonville, Louisiana.



PEGRAM J. MIRE, JR., JUDGE
23RD JUDICIAL DISTRICT COURT
DIVISION "D"

A TRUE COPY
Alexie Madere
Deputy Clerk & Recorder
AS ORS. ON PARISH 03-28-07

03/28/07 08:44:49