

**SUPREME COURT OF LOUISIANA**

**98-C-0942**

**CRAIG DUCOTE, ET AL.**

**versus**

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

**ON REHEARING**

PER CURIAM\*

Koch Pipeline, L.P. filed an application for rehearing, requesting modification of the opinion in this matter rendered on January 20, 1999. We grant rehearing on the following issues, modify the opinion as discussed below, and deny all other contentions raised on rehearing.

In its first assignment of error, Koch Pipeline, L.P. points out that Commercial Union Insurance Company moved for a dismissal of their appeal to the third circuit as it related to the pollution exclusion and Delancy's entitlement to a defense. Because this motion was granted by the third circuit, Commercial Union Insurance Company was not before this court and summary judgment is proper only as to First Financial.

Second, Koch Pipeline, L.P. contends that the court, by granting summary judgment in favor of First Financial, dismissed all claims alleged by Koch Pipeline, L.P. It remains this court's contention to rule simply on the applicability of the pollution exclusion. As noted in our earlier decision, damage resulting from the release of anhydrous ammonia is excluded under the commercial general liability policy. The court recognizes that its holding does not dispose of all issues, and therefore remands the case to the Twelfth Judicial District Court for further proceedings consistent with the views expressed in the court's opinion.

Finally, Koch Pipeline, L.P. asserts that the court's interpretation of the pollution exclusion clause does not consider the common intention of the parties or the nature of the contract. As this assignment of error deals directly with the merits of the case, it is denied.

The judgment of the court dated January 20, 1999 is amended to recognize the above modifications. In all other respects, the rehearing is denied.

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