SUPREME COURT OF LOUISIANA

98-C-0942

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

versus

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

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

CALOGERO, Chief Justice, dissenting

I find no reason to stray from this Court's previous reasoning in *South Central Bell Telephone Co. v. Ka-Jon Food Stores of Louisiana, Inc.*, 644 So.2d 357, *vacated and remanded*, 644 So.2d 368 (La. 1994) (vacated and remanded for evidentiary hearings on whether the pollution exclusion clause at issue was actually a policy endorsement). Although *Ka-Jon* lacks precedential value, its reasoning remains persuasive. Interpreting a similar pollution exclusion clause to a general liability policy, *Ka-Jon* reasoned that the insured and insurer never intended a literal and limitless interpretation of the pollution exclusion clause, as such an interpretation would eviscerate the primary purpose of a general liability policy — "protecting against fortuitous accidents and incidental business risks." *Id*. at 364. Thus, the clause was ambiguous, and led to absurd consequences. *Id*.

Ka-Jon then reasoned that an absolute pollution exclusion clause "is not applicable to fortuitous occurrences which involve only *incidental* pollution, i.e., accidents where pollution is inconsequential to the damages sustained." *Id.* at 365. However, the pollution exclusion clause does apply "to all damages resulting from intentional pollution or environmentally hostile conduct." *Id*. If a fortuitous event results in "partial to comprehensive *environmental* damage," then only those environmental pollution damages are excluded. *Id*.

In the instant case, plaintiffs personal injury damages arose from a fortuitous grass cutting accident. Applying the reasoning of *Ka-Jon*, plaintiffs are not precluded from recovering these damages. Accordingly, I respectfully dissent.