

GAYLORD CONTAINER CORPORATION
GAYLORD CHEMICAL CORPORATION

Versus

CNA INSURANCE COMPANIES, et al.

Number 73,381 Div. "C"

22ND JUDICIAL DISTRICT COURT
PARISH OF WASHINGTON
STATE OF LOUISIANA

OPINION OF TIM RYLES, Ph.D.

1. My name is Tim Ryles, I am *sui juris*, competent to give testimony, and I base my opinions in this case upon my personal knowledge, experience as Commissioner of Insurance, Safety Fire, and Industrial Loans for the State of Georgia for the term beginning January, 1991 and ending in January of 1995, and my experiences as an expert witness and insurance consultant.
2. Attached hereto is a copy of my Curriculum Vitae, which summarizes my education, experience, professional background, and qualifications.
3. I have personally reviewed Gaylord Container Corporation's and Gaylord Chemical Corporation's 1994 - 1995 insurance policies; the depositions of Messrs. Ingham, Nolan, Crowe, McCarley, Kelley, and Kula and the exhibits attached thereto; the affidavit of Dr. Andrew Armstrong; Louisiana Commissioner of Insurance Jim Brown's June 4, 1995 Advisory Letter No. 97-01; Gaylord's October 10, 1997 Motion In Opposition to Summary Judgment; and Commissioner Jim Brown's May 29, 1998 Motion For Leave To File Amicus Curiae. It is my understanding that discovery in this case is ongoing and any opinions expressed herein are subject to modification in light of new evidence which may be presented and made available for my review later.
4. I am prepared to assert the following opinions in this case based upon review of the aforementioned documents, my experiences, and professional qualifications referenced in paragraphs (1) and (2) above.

5. Departments of Insurance, such as the Louisiana Department, fulfill a critical role in reviewing, approving, and monitoring the implementation of insurance contracts, forms, and rate filings. This essential government function exists because insurance is a business clothed with the public interest and conditioned by the parameters of public policy set by governmental authorities. Moreover, insurance contracts are typically viewed as contracts of adhesion and this factor further lends support to the critical role of regulatory officials.
6. In the process of securing approval of forms and rates, insurers and their support organizations, such as the Insurance Services Office, make representations about their forms and rates that regulators and policyholders must be able to rely upon. These representations, *inter alia*, include matters pertaining to coverage and claims handling.
7. Insurance regulators are vested with great authority and discretion to establish the terms and conditions for conducting the business of insurance within the borders of their respective states. This authority is exercised through rules, regulations, examination authority, licensing powers, financial solvency standards, market conduct standards, claims handling standards, and authority to issue directives or advisories to insurers. Accordingly, it is my opinion that Commissioner Brown's June 4, 1995 Advisory Letter No. 97-01 represents the standard of conduct to which insurers conducting business in Louisiana are to be held.
8. Likewise, I agree with Commissioner Brown that for the insurers to bar coverage based on the "pollution exclusion" for the alleged bodily injury and property damage claims resulting from accidents such as the October 23, 1995 chemical explosion at Gaylord Chemical's Bogalusa, Louisiana plant is unjustified. I am also of the opinion that the so-called "toxic and foreign matter" exclusion is inapplicable to the October 23, 1995 Bogalusa accident.
9. The language reviewed in Gaylord's policy is commonly referred to as the "absolute pollution exclusion" in Commercial General Liability (CGL) policies, although it is neither absolute nor does it unambiguously identify "pollutant." Indeed, if literally applied, the exclusion would eviscerate the essential purpose of the CGL policy, which is to provide coverages for unintended occurrences.
10. The State Supreme Courts in Louisiana, Illinois, Massachusetts, Wisconsin, and New Hampshire have recognized the ambiguity and overly broad nature of the exclusion. Commissioner Brown's concerns about the restrictive insurer interpretation given to the exclusion by insurers and his expression of Louisiana public policy are reflected in his 1995 Advisory. Insureds, such as Gaylord, have a reasonable expectation that insurers will comply with the Commissioner's expectations.

11. Insurance contracts are contracts of utmost good faith, consummated when issued, but never really fulfilled from an insured's perspective until a claim is filed. In handling claims, insurers have at least a quasi-fiduciary duty toward the insured and must not place their interests above of those of the insured. Both the National Association of Insurance Commissioners Model Unfair Claims Settlement Practices Act and common law principles require timely and thorough investigation of claims and a duty to keep the insured informed at all times of the status of claims processing.
12. With these criteria in mind, I maintain that insurers have not conducted a good faith investigation of Gaylord's claim arising from the October 23, 1995 accident, nor have they offered a justifiable basis for denying the claim in the event that Gaylord is found liable for the alleged damages caused by the accident.

Submitted this 30th day of July 1998.

Tim Ryles