

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 2009-CA-0677

John Allen Ricks and Rita Jane Ricks Individually and on
Behalf of Their Minor Child, Jennifer B. Ricks

-- Versus --

Kentwood Oil Company, Inc., Wade and Wanda Royals,
Caryn Diddon, Jimmy Tate, Mitchell McIntyre and Gerald
L. Davis

21st Judicial District Court
Case #: 2001002260
Tangipahoa Parish

Consolidated with the following:

2009 - CA - 0678

Leo Ricks

versus

Kentwood Oil Company, Inc., Wade and Wanda Royals, Caryn Diddon, Jimmy Tate, Mitchell
McIntyre and Gerald L. Davis

On Application for Rehearing filed 03/08/2010

Rehearing

denied.

Carter, Burrell J., CJ would grant the rehearing

Burrell J. Carter

*J. E. Kuhn, J would GRANT FOR THE REASONS
ASSIGNED.*

James E. Kuhn

John M. Guidry

John M. Guidry

John T. Pettigrew

John T. Pettigrew

Jefferson D. Hughes

Jefferson D. Hughes

Filed

JUN 25 2010

Christine L. Crow
Christine L. Crow, Clerk

**JOHN ALLEN RICKS AND
AND RITA JANE RICKS,
INDIVIDUALLY AND ON
BEHALF OF THEIR
MINOR CHILD,
JENNIFER B. RICKS**

FIRST CIRCUIT

COURT OF APPEAL


VERSUS

**KENTWOOD OIL COMPANY, INC.,
WADE AND WANDA ROYALS,
CARYN DIDDON, JIMMY TATE,
MITCHELL MCINTYRE, AND
GERALD DAVIS**

**STATE OF LOUISIANA
NUMBER 2009 CA 0677
C/W
NUMBER 2009 CA 0678**

ON REHEARING

JUN 25 2010

 KUHNS, J., would grant the rehearing for the following reasons:

I disagree with the majority's decision to deny a rehearing. A rehearing is mandated in this case by both the jurisprudence of this court and our own internal rule. To protect litigants within the jurisdiction of the First Circuit from rogue panels issuing legally conflicting opinions, Rule 2.1 requires that a prior decision of this court be reversed by an en banc panel. As pointed out by the dissent in the original opinion, the majority has indeed created "new insurance law" by crafting a non-written exclusion onto the policy. In doing so, the majority has ignored and reversed the law of this circuit but without invoking the requisite en banc determination to do so.

Consistency and compliance with the law are extraordinarily important in the rendition of appellate court opinions. No panel of an intermediate appellate court is vested with the power to ignore the law and render an opinion without conforming to its own rules of operation. Both the Louisiana Supreme Court, in *Bonnette v. Conoco, Inc.*, 2001-2767, p. 24 (La. 1/28/03), 837 So.2d 1219, 1235, and this court, in *Wisner v. Illinois Cent. Gulf R.R.*, 537 So.2d 740, 748 (La. App. 1st Cir.), *writ denied*, 540 So.2d 342 (La. 1989), have recognized that fear of contracting cancer is a cognizable personal injury giving rise to a claim for

damages, which is to be resolved by the courts. The majority has abandoned this rule of law without either legal justification or authority and implicitly “overruled” years of jurisprudence.

The effect of the majority’s conclusion will certainly be chaos. After all, one may ask, “What is the law of the First Circuit Court of Appeal of Louisiana as to whether emotional distress is recoverable?” Who knows?