SUPREME COURT OF LOUISIANA

No. 98-C-1755

DOUGLAS WISNER

VERSUS

PROFESSIONAL DIVERS OF NEW ORLEANS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF PLAQUEMINES

Calogero, C. J. concurring.

I concur because I believe that this plaintiff is a Jones Act seaman. His job as a commercial diver continuously subjects him to the perils of the sea, and I say this notwithstanding that his employer is neither the owner nor charterer of the vessels on which he performs his work.

The requirement that a Jones Act seaman have a substantial connection with a vessel is "to separate the sea-based maritime employees who are entitled to Jones Act protection from those land-based workers who have only a transitory or sporadic connection with a vessel in navigation, and therefore whose employment does not regularly expose them to the perils of the sea." *Harbor Tug & Barge Co. v. Papai*, 117 S. Ct. 1535, 1540 (1997). *Papai*'s focus on common ownership with regard to an identifiable group of vessels arose out of the fact that the *Papai* plaintiff's employment did not include any seagoing activity; he was hired for one day to paint a vessel, dockside. The Court specifically left for another day consideration of the case where an employee was hired to perform seagoing work during the employment in question. *Id*. at 1542. Consequently, *Papai* is not controlling for purposes of the instant case.

The Fifth Circuit Court of Appeals in *Bertrand v. International Mooring & Marine Inc.*, 700 F.2d 240, 245 (5th Cir. 1983), however, has rejected the proposition that an employee who is continuously subjected to the perils of the sea should be denied Jones Act protection merely because the several vessels upon which he works are not under his employer's common ownership or control. In so holding, the court recognized that the "group of vessels" concept has been used to expand coverage under the Jones Act, not to restrict it. *Id*. In the instant case, the plaintiff's work as a commercial diver placed him on vessels for ninety percent of his work life with his employer, during which time he slept and ate on the vessels and was routinely exposed to the perils of the sea. As the majority notes, it is the inherent maritime nature of his work which renders him properly classified as a Jones Act seamen. The fact that his employer did not have a

relationship of ownership or control regarding the vessels on which he worked does not deprive him of that status.