

SUPREME COURT OF LOUISIANA

NO. 95-C-1830

ROGER KIRKLAND

versus

RIVERWOOD INTERNATIONAL USA, INC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, STATE OF LOUISIANA

VICTORY, J., dissenting.

I dissent for the reasons assigned by Justice Kimball and the reasons given in *Moore v. Crystal Oil Co.*, 626 So. 2d 792 (La. App. 2 Cir. 1993), *reversed*, 93-3103 (La. 2/25/94), 632 So. 2d 758.

In my view the majority's test will produce the same result in almost every case as if the *Berry* test were applied, a result the Legislature was clearly attempting to change.