

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**

KNOLL, JUSTICE, concurring

I concur to note that neither *Harbor Tug & Barge Co. v. Papai*, 117 S. Ct. 1535 (U.S. 1997) nor *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986) are controlling for purpose of the case *sub judice*. Instead, this case involves what the *Papai* Court (“This is not a case where the employee was hired to perform seagoing work during the employment in question, however brief, and we need not consider here the consequences of such an employment.”) and the *Barrett* court (“we do not decide whether the same principle governs the crew member status of the maritime worker who spends virtually all of his time performing traditional seaman’s duties — work closely related to the movements of vessels — but does his work on short voyages aboard a large number of vessels”) left for another day: Whether an employee hired to perform seamen duties aboard a number of vessels during the employment in question qualifies for seamen status. *Papai* and *Barrett* were concerned with preventing employees hired to perform traditionally land-based activities, whose transitory and sporadic connection to a vessel only occasionally exposed them to the dangers of the sea, from gaining seaman status. The distinction is that in those cases, the duties of the worker were not necessarily or inherently maritime in nature such that his presence on the vessel may be fortuitous. Whereas in the case before us, the plaintiff’s duties are inherently maritime in nature and therefore routinely and necessarily exposed him to the perils of the sea. Accordingly, those cases are not controlling as to whether plaintiff has seamen’s status.

When we look at the nature of the plaintiff’s duties, where he performed them, and the extent to which he was exposed to maritime hazards, he easily satisfies the requirements of seaman status because he performed a substantial part of his work on a vessel, which work contributed to the function of the vessel. Plaintiff worked 90% of his time from vessels, and when he was on the vessels he would live there making them his home where he ate and slept. As a diver, the nature of his duties

had to be spent offshore at sea as these cannot be performed on land. His work involved the installing of anodes on platforms and repairing pipelines. Thus, when he was on the vessels, the diving services were essential to the completion of the vessel's operation and its movement from one spot to the next. It is the nature and location of their tasks and not any fortuity of their tenure on a vessel that makes divers, like the plaintiff, seamen.