SUPREME COURT OF LOUISIANA

NO. 99-C-0494

J.W. BARTLETT ET AL.

versus

BROWNING FERRIS INDUSTRIES CHEMICAL SERVICES, INC., ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF CALCASIEU**

JOHNSON, J., Dissenting

Recalling the writ as improvidently granted maintains the status quo, and I believe the actions of the lower courts should be reversed and this matter certified as a class action. The lower courts' reliance on Ford v. Murphy Oil U.S.A., Inc., 96-2913, 96-2917, 96-2929 (La. 9/9/97), 703 So. 2d 542 was misplaced. The refusal to certify the class in Ford was based on the fact that recovery was sought from four separate entities operating four separate sources of pollutants. The plaintiffs averred that the pollutants, both individually and in combination, were the cause of their damages. Thus, class certification was denied.

In my view, this case is distinguishable from Ford. Here we are dealing with one source of pollution rather than four, and the lower courts erred in using Ford as the basis for vacating class certification. This case is more closely akin to McCastle v. Rollins Environmental Services of Louisiana, Inc., 456 So. 2d 612 (La. 1984). While the plaintiffs in McCastle sought varying degrees of damages, the Court stated that "individual questions of quantum do not preclude a class action when predominant liability issues are common to the class. Id. at 620. Similarly, while there is some diversity in damages in the present matter, the plaintiffs should not be precluded from going forward to determine liability.

Further, while the number of plaintiffs has decreased to approximately 270, the same dangers of inconsistent determinations and of earlier separate adjudications with prejudicial effect still exist. I believe the plaintiffs have met the requisites for class certification, and I respectfully dissent.