

MAYER, BROWN, ROWE & MAW LLP'S
SUPREME COURT DOCKET REPORT
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Today the Supreme Court granted certiorari in one case of potential interest to the business community. Amicus briefs in support of the petitioner are due on Thursday, April 8, 2004, and amicus briefs in support of the respondent are due on Thursday, May 13, 2004. Any questions about this case should be directed to Miriam Nemetz (202-263-3253) in our Washington office.

Admiralty Law — Jones Act — Application To Workers On Special Purpose Watercraft. The Jones Act, 46 U.S.C. App. § 688, provides tort remedies to “seamen” who suffer work-related injuries. To qualify as a “seaman,” an individual must have an “employment-related connection to a vessel in navigation.” *Chandris, Inc. v. Latsis*, 515 U.S. 347, 357 (1995). There is a conflict among the circuits regarding what types of watercraft are “vessels in navigation.”

The Supreme Court granted certiorari in *Stewart v. Dutra Construction Co.*, No. 03-814, to determine whether a dredge engaged in excavating a harbor tunnel is a “vessel in navigation.” The First Circuit answered that question in the negative, ruling that “if a barge [] or other float’s purpose or primary business is *not* navigation or commerce, then workers assigned thereto for its shore enterprise are to be considered seamen [for Jones Act purposes] only when it is in actual navigation or transit.” 230 F.3d 461, 467 (2000) (quoting *DiGiovanni v. Traylor Bros., Inc.*, 959 F.3d 1119, 1123 (1st Cir. 1992) (emphasis in original)). Accordingly, it held that an employee who was injured while working on a dredge stationed in Boston Harbor was not entitled to the protection of the Jones Act.

The Court’s decision should be important to all businesses that operate special purpose watercraft such as drilling barges, dredging barges, and crane barges.

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On January 26, 2004, the Supreme Court requested the views of the Solicitor General in the following case of interest to the business community:

Andrx Pharmaceuticals Inc. v. Kroger Co., No. 03-779: The question presented is whether the interim settlement of patent infringement litigation, in which the alleged infringer agrees to keep its product off the market until the claim of infringement is resolved, constitutes a *per se* violation of the Sherman Act.

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