IN THE SUPREME COURT

OF FLORIDA

CASE NO. 64,223

MILDRED K. MEISTER and ABRAHAM MEISTER, her husband,

vs.

PAUL FISHER, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

PETITIONERS' REPLY BRIEF

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This proceeding presents an important policy question for resolution by the Court. To us, the answer is both simple and clear -- commercial lessors of golf carts should be liable for their negligent operation. If they wish, these same commercial lessors may pass the added cost of insurance on to their lessees in the form of a small additional rental charge. This way, the injured can be compensated for negligently inflicted injuries and the commercial lessor has the option of paying for insurance himself or passing the cost on to the lessee.

DANIELS AND HICKS, ATTORNEYS AT LAW, 1414 DuPONT BUILDING, MIAMI, FLORIDA 33131 - (305) 374-8171

Thousands of golf carts flood our golf courses everyday, especially on weekends and holidays. Their uninsured operation should not be permitted and only the lessor can make sure that all lessees are insured. Respondents' claim that golf carts are too light and slow to cause much harm has no evidence to support it. The only evidence in the record is an expert's affidavit that the:

> ...the types of accidents caused by the operation of the carts are due to the particular design features of the carts and are identical to many of those involving other motor vehicle accidents. Additionally, the enviornment of use has contributed to accident causation and resulting injuries. (R. 635-636).

Surely golf carts are heavier than some of the other motor vehicles covered by the dangerous instrumentality doctrine -- mopeds, motorcycles, etc. They are faster than some as well. Indeed, the frequent use of golf carts in Florida has prompted new legislation by the 1983 Legislature. F. S. (1983) 316.003(70) now provides:

> (70) "Golf cart" means a motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.

In addition, F. S. (1983) 316.212 now prohibits operation of golf carts on the public roads and streets unless they are used within a one mile radius of a golf course to transfer the operator to and from his home and the golf course. Such carts must have certain safety equipment when so used and can only be

operated by those with a valid driver's license. If golf carts are so harmless, we wonder why this latter requirement has been imposed by the Legislature.

F. S. (1983), Sections 320.01(29) and 320.105 were also enacted this year providing that carts need not be registered and need not display a license tag if operated in accordance with F.S. 316.212. All this legislation shows the Legislature's increasing concern over the operation of golf carts in Florida -- a concern which would not exist if golf carts were as harmless as respondents would have us believe.[1]

Respectfully submitted,

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[1] It should be noted that the less the risk of harm is from golf cart operators, the lower the insurance premium will be.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th, day of November, 1983, a true copy of the foregoing Petitioners' Reply Brief was mailed to: CONRAD, SCHERER & JAMES, P. O. Box 14723, Fort Lauderdale, FL 33302; JOHN E. DONAHOE, ESQUIRE, P. O. Box 21746, Fort Lauderdale, FL 33335; and LARRY KLEIN, ESQUIRE, 201 Flagler Center, 501 South Flagler Drive, West Palm Beach, FL 33401.

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