Case No. SC18-657
Lower Tribunal Case Nos. 1D17-2065, 242014CA000051CAAXMX

IN THE

Supreme Court of Florida

CHARLES A. LIEUPO,

Petitioner,

v.

SIMON'S TRUCKING, INC.,

Respondent.

On Discretionary Review from a Decision of
the First District Court of Appeal

RESPONDENT'S ANSWER BRIEF

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INTRODUCTION

This appeal presents a purely legal question of statutory interpretation: whether personal injury damages are recoverable under section 376.313(3), Florida Statutes (2011).[1] This Court has already answered that question in the negative.

In *Curd v. Mosaic Fertilizer, LLC*, this Court held that section 376.313(3) provides a private cause of action to persons who can "demonstrate damages as defined [in section 376.031(5)]." 39 So. 3d 1216, 1222 (Fla. 2010). Section 376.031(5) in turn excludes injuries to human beings (*i.e.*, personal injuries) from the statutory definition of the term "damages." As a result, personal injury claims under section 376.313(3), including the sole claim at issue in this case, are non-cognizable as a matter of law. The First District Court of Appeal agreed, holding that "the case should never have gone to trial" because section 376.313(3) precludes recovery for personal injuries. *Simon's Trucking, Inc. v. Lieupo*, 244 So. 3d 370, 371 (Fla. 1st DCA 2018). This Court should affirm.

STATEMENT OF THE CASE AND FACTS

Because the certified question is a straightforward question of law, a detailed recitation of the underlying facts is unnecessary. But several facts omitted from Petitioner Charles Lieupo's initial brief demonstrate the wisdom of the

[1] Unless stated otherwise, for purposes of this brief, Respondent Simon's Trucking, Inc. relies on the 2011 version of chapter 376 of the Florida Statutes—*i.e.*, the year in which the underlying accident occurred.

Legislature's decision in defining the damages recoverable under chapter 376 to exclude claims for personal injury and to require instead that such claims be brought under common-law theories of negligence, subject to defenses such as assumption of risk and contributory negligence.

I. FACTUAL BACKGROUND

Simon's Trucking is a family-owned trucking company based in Iowa. (R. 306.) In 2011, it was hired by Exide Technologies ("Exide"), a Georgia-based batteries manufacturer, to pick up an order of motor vehicle batteries from Exide's plant in Kansas for delivery to a customer, Robert Bosch, LLC ("Bosch"), in Miami. (R. 308; 1715-17; 2882; 9078.)

On August 1, 2011, shortly after midnight, a tractor-trailer carrying those batteries crashed and burned on Interstate 75 near Jasper, after its driver—a Simon's Trucking employee—suffered a fatal heart attack. (R. 308; 1706; 6246; 9394.) The tractor-trailer, which had been traveling southbound on Interstate 75, veered off the highway and crashed into several trees on the shoulder of the highway. (R. 6247; 9808.) The tractor-trailer burst into flames, setting fire to a nearby wooded area. (R. 6246; 9412; 9808; 9812.) In addition, the force of the accident caused several hundred batteries to be thrown from the cab of the tractor-trailer into the tree line and woods. (R. 6246-47; 9126; 9132.) Some of those

batteries broke, leading to the release of a mixture of water and sulphuric acid—a hazardous material. (R. 2882; 9121; 9163; 9171-72.)

Numerous first responders, including Florida Highway Patrol, fire, and emergency personnel, arrived at the scene within fifteen minutes of the accident. (R. 308; 6294; 9807.) For the next several hours, they worked to investigate the accident and put out the fires. (R. 6295; 9808-09.)

Lieupo, then a 55 year-old tow-truck driver employed by Dennis's Garage, in Jennings, Florida, learned of the accident while listening to a sheriff's department radio. (R. 9290-91; 9299.) Along with four other Dennis's Garage employees, Lieupo arrived at the scene to remove the disabled tractor-trailer at approximately 2:00 a.m. (R. 9302-04; 9403.) At the scene, however, Florida Highway Patrol officers advised the crew that they could not begin to clear the wreckage until the first responders completed their work and until the accident site posed no safety risk from hazardous materials spilled during the accident. (R. 9124-25; 9305; 9380; 9394-95; 9759-60.) Recognizing that the cleanup might not begin for several hours, Lieupo decided to lay down on the shoulder of the highway to take a nap. (R. 9310-11; 9396.) Lieupo remained sleeping on the highway adjacent to an active accident site until a Florida Highway Patrol officer sensibly woke him up and admonished him to get off the road. (R. 9396-97.)

At around 6:30 a.m., the tow-truck crew received clearance to begin working. (R. 9394-95; 9745.) Lieupo, acting as crew chief, operated the winch on the tow truck which was parked on the pavement of the highway. (R. 9408-10.) During the removal of the tractor-trailer, Lieupo wore khaki pants and work boots that extended six inches high over his ankles and calves. (R. 9398-99.) Other members of the tow-truck crew wore similar attire, and Lieupo's employer, Brice Dennis, participated in the cleanup efforts while wearing shorts and Crocs. (R. 9398-99; 9748-49; 9754.) Lieupo later informed Mr. Dennis and treating physicians that, during the cleanup, he had stood in a bed of fire ants and "was complet[ly] covered by fire ants at one point." (R. 9389; 9750-51.) He for some reason "used starter fluid to get them off him." (R. 9391-92.) The crew took three separate trips from the scene to the tow-truck shop to remove the tractor-trailer and finished their work at approximately 3:00 p.m. (R. 9317; 9410.)

The following day Lieupo noticed small "red spots" on both of his ankles. (R. 9425-26.) No other member of the tow-truck crew (including Mr. Dennis) suffered similar injuries, despite wearing similar or less protective attire as Lieupo and working in the same areas as him.[2] (R. 9398-99; 9425; 9748-49; 9754.) None

[2] At trial, Simon's Trucking was precluded from presenting evidence that none of the first responders to the accident who worked at the site claimed to have suffered chemical burns, (R. 3074), even though they wore only their standard work gear, and not any special protective clothing. (R. 9397; 9819.)

of the crew (other than Lieupo) reported being completely covered in fire ants, either.

Although Lieupo testified that he immediately knew the spots on his legs were caused by exposure to battery acid,[3] he did not seek medical treatment until thirty-seven days after the accident—despite encouragement from friends and family members to do so sooner. (R. 9322-23; 9426-27.) Rather, he decided to take his treatment into his own hands, using Epsom salt, Neosporin, and "horse salve" to treat the spots on his legs. (R. 9321-22.)

When he finally sought medical attention, he did not even mention battery acid as a potential cause of his injuries. To the contrary, he consistently informed treating medical personnel, including his personal physician, that he had been bitten by fire ants at the accident scene and that the sores from those bites had become infected. (R. 9325-32.) For instance, in the months following the accident, Lieupo advised medical personnel that: (i) he had "ulcers on both feet following insect bite[s]," (R. 9328; 9386-87); (ii) "he was working as a tow truck driver and actually stood in the ant bed during the rainstorm and was completely covered by

[3] Lieupo's purported immediate identification of the cause of his injuries is difficult to reconcile with his position that he did not know at the time of the cleanup that the crash site was an active hazmat site. (R. 9378.) It is also inconsistent with his conduct and statements after the accident, as explained above.

fire ants at one point," (R. 9389); and (iii) he "had ants all over [him]self. . . . all in [his] breeches and stuff and [] the rest of the day they were stinging," (R. 9390-91).

A wound-care specialist who had treated Lieupo testified at trial that Lieupo's injuries were caused by a preexisting medical condition known as venuous stasis insufficiency—not battery acid exposure—which became aggravated by the fire-ant bites.[4] (R. 9548-50; 9555-59; 9664.) Lieupo's injuries ultimately healed significantly after he received compression therapy on his ankles—a clinically recommended treatment for venous stasis insufficiency. (R. 9349-51; 9362; 9715; 9726; 9892.)

Given these facts, it is little wonder, as set forth below, that Lieupo withdrew his claim for negligence.

II. PROCEDURAL BACKGROUND

Years later, Lieupo brought suit against various entities—including Simon's Trucking, the Florida Highway Patrol, Bosch, and Exide—asserting claims for negligence and strict liability under section 376.313(3), Florida Statutes. (R. 306.)

[4] Venous stasis insufficiency is a blood circulatory condition that prevents the veins from properly delivering blood from the foot and leg back to the heart, causing blood to pool in the lower extremities. (R. 9895-99.) The condition can result in sores and ulcers. (*Id.*)

The trial court dismissed all of Lieupo's claims against the other defendants,[5] (R. 525; 1927; 2105-34), but rejected Simon's Trucking's consistently raised argument that section 376.313(3) does not provide a cause of action to recover damages for personal injuries.[6] (R. 2217-18.) Lieupo voluntarily withdrew his negligence claim against Simon's Trucking, (R. 1929), proceeding to trial in March 2017 on the theory that he was entitled to recovery on a strict liability basis under section 376.313(3) because he was exposed to hazardous materials at the accident site.

The jury returned a verdict in Lieupo's favor.[7] (R. 8229-30.) In a post-verdict motion, Simon's Trucking challenged the verdict, arguing once again that, as a matter of law, section 376.313(3) does not permit recovery for Lieupo's personal injuries. The trial court denied Simon's Trucking's motion, without a written decision. (R. 8718.)

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[5] The trial court dismissed Exide from the case after Exide filed for bankruptcy. Lieupo voluntarily dismissed his claim against Bosch. And the trial court granted summary judgment in the Florida Highway Patrol's favor.

[6] Simon's Trucking raised this argument in a motion to dismiss, a motion for summary judgment, a motion for directed verdict, and a motion for judgment notwithstanding the verdict. *Simon's Trucking, Inc. v. Lieupo*, 244 So. 3d 370, 371 n.2 (Fla. 1st DCA 2018).

[7] In particular, the jury awarded Lieupo $5,211,500 in personal injury damages (R. 8229-30), which breaks down as follows: $730,000 for past medical expenses; $1,500 for future medical expenses; $200,000 for lost earnings; $280,000 for loss of future earning capacity; $3,000,000 for past pain and suffering; and $1,000,000 for future pain and suffering. (R. 8229.) All of his medical expenses have been covered by Worker's Compensation. (R. 9754-55.)

Simon's Trucking appealed that ruling to the First District Court of Appeal, arguing that the jury's verdict must be vacated because Lieupo's section 376.313(3) claim for personal injury damages is non-cognizable as a matter of law. Such a conclusion, Simon's Trucking argued, was mandated by this Court's decision in *Curd v. Mosaic Fertilizer, LLC*, which held that section 376.313(3) permits recovery for damages as defined in section 376.031(5)—a definition that excludes injury to "human beings." 39 So. 3d 1216, 1222 (Fla. 2010). A unanimous panel at the First District agreed with Simon's Trucking that this case "should never have gone to trial" because, under this Court's holding in *Curd*, section 376.313(3) "precludes personal injury claims." *Simon's Trucking, Inc. v. Lieupo*, 244 So. 3d 370, 371 (Fla. 1st DCA 2018).

The First District therefore vacated the jury's verdict and certified to this Court the following question: "Does the private cause of action contained in section 376.313(3), Florida Statutes, permit recovery for personal injury?" *Id.* at 374.

SUMMARY OF ARGUMENT

Because this Court has already answered the certified question in the negative, it should either decline to exercise its discretionary review jurisdiction or, in the alternative, review the case on the merits and hold that personal injury damages are not recoverable under section 376.313(3).

Section 376.313(3) creates a private strict liability cause of action allowing a plaintiff to recover damages caused by pollution covered by the Water Quality Assurance Act ("WQAA"), §§ 376.30-376.317, Fla. Stat. *See Aramark Uniform & Career Apparel, Inc. v. Easton*, 894 So. 2d 20, 28 (Fla. 2004). In *Curd*, this Court had to determine the scope of "damages" recoverable for plaintiffs pursuing a claim under section 376.313(3). In resolving that issue, this Court held, in no uncertain terms, that section 376.313(3) permits a plaintiff to recover all "damages as defined" in the WQAA's companion statute, the Pollutant Discharge Prevention and Control Act ("PDPCA"), §§ 376.011-376.21, Fla. Stat. *See Curd*, 39 So. 3d at 1222. The PDPCA in turn defines "damages" in a limited manner: The statutory definition of "damages" encompasses only the loss of real or personal property and the destruction of the environment and natural resources, but explicitly excludes personal injuries. *See* § 376.031(5), Fla. Stat. Because *Curd* establishes that personal injury damages are not recoverable under section 376.313(3), the First District properly held that Lieupo's section 376.313(3) claim "should never have gone to trial." *Simon's Trucking, Inc.*, 244 So. 3d at 371.

Lieupo contends here, as he did below, that this Court's holding in *Curd* regarding the scope of damages recoverable under section 376.313(3) should be viewed as mere dicta. That argument was rejected by the First District, as it should be by this Court. As the First District correctly recognized, "[i]n order for the *Curd*

Court to answer the central question in that case . . . the court first had to decide what scope of damages was available under the act." *Simon's Trucking, Inc.*, 244 So. 3d at 374. Accordingly, the First District held, "We find the court's application of the definition of 'damages' from the 1970 act was part of the court's holding and not dicta." *Id.*

Lieupo's further arguments, also made below, that barring personal injury claims under section 376.313(3) would have required the *Curd* court to overlook unambiguous statutory language and fundamental rules of statutory construction is also without merit. As set forth *infra*, prior to this Court's holding in *Curd,* the lower courts struggled to discern what damages were recoverable under section 376.313(3). *See, e.g.*, *Curd v. Mosaic Fertilizer, LLC*, 993 So. 2d 1078, 1084 (Fla. 2d DCA 2008); *Kaplan v. Peterson,* 674 So. 2d 201, 206 n.2 (Fla. 5th DCA 1996) (Griffin, J. concurring in part and dissenting in part). With its holding in *Curd*, this Court resolved that interpretive ambiguity for the lower courts. And it did so not by ignoring a fundamental rule of statutory construction, as Lieupo contends, but by employing the *in pari materia* canon of statutory construction to harmonize the damages recoverable in private rights of actions under chapter 376.

Far from "leading to an absurd result," as Lieupo argues, the holding in *Curd* avoids an absurd result by implicitly rejecting the notion that the Legislature deliberately decided to provide different private rights of action under chapter 376

based on geography or to impose liability based on the fortuity of where a spill happened to occur.

Lieupo's final request, that this Court, in the alternative, now "retreat" from its holding in *Curd*, fares no better than his other arguments. Lieupo does not even address the legal standard that must be met for this Court to overrule a prior precedent. *See Brown v. Nagelhout*, 84 So. 3d 304, 309 (Fla. 2012) ("Stare decisis does not yield based on a conclusion that a precedent is merely erroneous."); *Strand v. Escambia Cty.*, 992 So. 2d 150, 159 (Fla. 2008). Nor is there any reason for the Court to "retreat" from its prior ruling given the silence with which the Legislature has greeted the decision. If, in the eight years since *Curd* was decided, the Florida Legislature believed that *Curd* had been wrongly decided and its intent misconstrued, or believed that amending the statute to legislatively reverse *Curd* was a matter of great public importance, it easily could have done so. The Court is entitled to presume, after eight years, that the Legislature accepted this Court's determination in *Curd* that personal injury damages are not recoverable under section 376.313(3), and should defer to the Legislature to amend the statute if it believes, as a matter of public policy, that it should do so. *See, e.g.*, *Goldenberg v. Sawczak*, 791 So. 2d 1078, 1081 (Fla. 2001).

For these reasons, this Court should answer the certified question in the negative, hold that section 376.313(3) does not permit recovery for personal injuries, and affirm the First District's ruling vacating the jury's verdict.

STANDARD OF REVIEW

The certified question is a pure question of law that this Court reviews de novo. *See, e.g.*, *Hardee Cty. v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017) ("This Court reviews statutory interpretation de novo."); *Simon's Trucking, Inc.*, 244 So. 3d at 371.

ARGUMENT

I. THE COURT SHOULD DECLINE TO EXERCISE ITS REVIEW JURISDICTION AND DISMISS THE PETITION AS IMPROVIDENTLY GRANTED

The Florida Constitution provides that the Court "[m]ay" review a district court decision, which passes on a question certified "to be of great public importance." Art. V, § 3(b)(4), Fla. Const. But the question certified here is not one of great public importance, and the Court should dismiss this petition as improvidently granted.

This case involves a single issue of statutory interpretation that was previously decided by this Court in *Curd*—where the majority held that damages recoverable under section 376.313(3) are those defined in section 376.031(5), a definition that explicitly excludes injury to "human beings." *See Wilson-Watson v.*

Dax Arthritis Clinic, Inc., 815 So. 2d 636 (Fla. 2002) (declining jurisdiction as improvidently granted where prior precedent of this Court controlled the outcome of the appeal). The First District correctly applied this Court's holding in *Curd* to the facts of this case to determine that Lieupo's claim for personal injury damages under section 376.313(3) is barred as a matter of law.

The issue in this case is not of constitutional magnitude and has not been frequently raised in any Florida court. In the eight years since this Court's decision in *Curd*, no plaintiff, other than Lieupo, has even claimed a right to personal injury damages under section 376.313(3), or disputed that the holding in *Curd* bars such a claim.[8] *See, e.g.*, *Bradley v. State*, 615 So. 2d 854, 855 (Fla. 1st DCA 1993). Nor has the Florida Legislature sought to abrogate this Court's holding in *Curd* by amending the statutory language at issue here. As such, the issue Lieupo seeks to raise in this appeal does not warrant this Court's review. *See, e.g.*, *Goldenberg*, 791 So. 2d at 1081 ("Long-term legislative inaction after a court construes a statute amounts to legislative acceptance or approval of that judicial construction.").

Even if this Court were inclined to find that the question is one of "great public importance," the principles of stare decisis, and the Legislature's silence in

[8] Nor is there any conflict among the district courts regarding the certified question, as four Justices of this Court recognized in its order accepting jurisdiction. *See, e.g., Stine v. Jain*, 873 So. 2d 326 (Fla. 2004) (declining jurisdiction as improvidently granted where there was no conflict among the district courts on the certified question).

the years since *Curd* was decided, weigh heavily in favor of deferring to the Legislature to address the issue after weighing the public policy issues involved rather than this Court.

Accordingly, for the foregoing reasons, and consistent with its long-standing jurisprudence that the district courts, rather than this Court, should serve as "courts primarily of final appellate jurisdiction," this Court should decline jurisdiction and allow the First District's faithful application of *Curd* to stand. *Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958) (observing that treating district courts like intermediate appellate courts "would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy").

II. SECTION 376.313(3) DOES NOT PERMIT RECOVERY FOR PERSONAL INJURY

Section 376.313(3) creates a private cause of action allowing any person to recover "all damages resulting from a discharge or other condition of pollution" regulated by the statute. § 376.313(3), Fla. Stat.; *see Aramark*, 894 So. 2d at 28. Although Lieupo relies entirely on the ostensibly broad term "all damages," this Court has already unequivocally held that the phrase "all damages" means only all "damages *as defined*" in section 376.031(5). *Curd*, 39 So. 3d at 1222 (emphasis added). Section 376.031(5) in turn explicitly excludes personal injury damages

from the definition of "damages." *Id.* Because section 376.313(3) incorporates the statutory definition of the term "damages," as this Court held in *Curd*, the provision precludes Lieupo from pursuing recovery for personal injuries. Relying on this Court's holding in *Curd*, the First District concluded that Lieupo's personal injury claim under section 376.313(3) is not viable as a matter of law. For the reasons set forth below, this Court should affirm.

A. Legal Framework for Private Civil Actions under Chapter 376

The Florida Legislature has enacted two closely related statutes regulating environmental discharge and contamination: (i) the Pollutants Discharge and Control Act ("PDPCA"), §§ 376.011-376.21, Fla. Stat.; and (ii) the Water Quality Assurance Act ("WQAA"), §§ 376.30-376.317, Fla. Stat. Both acts appear in chapter 376, which regulates the discharge and removal of pollution in Florida.

In 1970, the Florida Legislature enacted the PDPCA—originally titled the Oil Spill Prevention and Pollution Control Act—which prohibits the discharge of pollutants into or upon Florida's coastal waters and adjoining lands. §§ 376.011, 376.041, Fla. Stat.; *see Simon's Trucking, Inc.*, 244 So. 3d at 372 (explaining that the PDPCA was enacted "to protect coastal waters and adjoining lands"). In 1983, the Florida Legislature enacted the WQAA (the statute at issue here) as a companion to the PDPCA. Patterned after the PDPCA, the WQAA prohibits the discharge of pollutants or hazardous substances into or upon Florida's *inland*

surface or ground waters. *See* §§ 376.30(2)(b), § 376.302(1)(a), Fla. Stat.; *see also* Ch. 83-310, Laws of Fla., preamble, at 1825-26 ("designating ss. [376.011-376.21], as part I of chapter 376" and "creating part II of chapter 376"). Together the PDPCA and the WQAA comprise "a far-reaching statutory scheme aimed at remedying, preventing, and removing the discharge of pollutants from Florida's waters and lands."[9] *Curd*, 39 So. 3d at 1222.

The statutory scheme achieves this goal through public and private enforcement mechanisms, only the latter of which are at issue here.[10] Each statute creates a private cause of action allowing a plaintiff to recover "damages" caused by prohibited discharges of pollutants. §§ 376.205, 376.313(3), Fla. Stat.; *see Aramark*, 894 So. 2d at 28 (holding that the actions sound in strict liability). Section 376.205, the PDPCA's private cause of action provision, provides in relevant part that "any person" may bring an action "for damages, as defined in s[ection] 376.031" of the PDPCA "resulting from a discharge or other condition of pollution covered by" the statute. § 376.205, Fla. Stat. The PDPCA in turn defines "damages" as the "loss of any real or personal property" and the "destruction of the

[9] Consistent with these environmental-remediation objectives, Simon's Trucking cleaned up the environmental damage stemming from the accident, without the need for litigation. (*See, e.g.*, R. 6244-50.)

[10] Each statute vests the Florida Department of Environmental Protection with significant regulatory authority and enforcement powers, including the authority "to sue polluters and force the cleanup of contaminated sites." *Aramark*, 894 So. 2d at 22; *see, e.g.*, §§ 376.09(1), 376.051(5), 376.303(1)(j), 376.305(1), Fla. Stat.

environment and natural resources, including all living things *except human beings*." § 376.031(5), Fla. Stat. (emphasis added). In other words, the statutory definition of damages in the PDPCA explicitly excludes personal injuries from the purview of recoverable damages. It is therefore undisputed that, as a matter of law, the private cause of action under the PDPCA does not permit recovery for personal injury.

By contrast, the WQAA contains a similarly worded cause of action—section 376.313(3), the cause of action at issue in this appeal—that was modeled after its counterpart in the PDPCA.[11] Under the WQAA, "any person" can bring a strict liability cause of action "for all damages resulting from . . . pollution covered by" the WQAA. § 376.313(3), Fla. Stat. Although the WQAA contains its own definitional provision, § 376.301, Fla. Stat., that provision does not define the term "damages."

[11] As enacted, the two causes of action were effectively identical. But in 1996 the Florida Legislature enacted a clarifying amendment to section 376.205. Ch. 96-263, § 13, Laws of Fla.; *see also* Amicus Br. of Gen. Dynamics Corp. & Gen. Dynamics Land Sys., Inc. at 5-6, 10, *Curd v. Mosaic Fertilizer, LLC*, Case No. SC08-1920 (Fla. 2009) (discussing the history of the clarifying amendment to the PDPCA). At the time, Florida courts recognized that the amendment merely "constitutes a clarification" and not "a fundamental change to" the PDPCA. *See, e.g., Dotsie Dev., Inc. v. Artic Peace Shipping, Co.*, 1996 WL 186619, at *2 n.2 (M.D. Fla. Aug. 14, 1996).

B. This Court's Decision in *Curd* Establishes that Section 376.313(3) Does Not Permit Recovery for Personal Injury Damages

In *Curd* this Court held that damages recoverable under section 376.313(3) are those "damages as defined" in section 376.031(5)—*i.e.*, destruction to or loss of real or personal property and destruction of the environment and natural resources. 39 So. 3d at 1222. Because *Curd* establishes that section 376.313(3)—much like its companion section 376.205—does not permit recovery for personal injury damages, a straightforward application of *Curd* resolves the issue in this case and forecloses Lieupo's claim for personal injury damages as a matter of law.

As background, in *Curd*, a group of commercial fishermen filed suit against a phosphate plant under section 376.313(3), alleging that wastewater from the plant spilled into the Tampa Bay and harmed the Bay's marine life. *See id.* at 1218. The fishermen sought lost income damages for the "damage to the reputation of the fishery products the fishermen [we]re able to catch and attempt to sell." *Id.* at 1219. The trial court dismissed the claim, and the Second District Court of Appeal affirmed. The Second District concluded that recovery for damages under section 376.313(3) is not permitted "when the party seeking the damages does not own or have a possessory interest in the property damaged by the pollution." *Id.*

This Court rejected that interpretation of section 376.313(3), and conducted an independent examination of the statutory language used in that provision.

Resolving the appeal required the Court to answer two unsettled questions, identified by the lower court, regarding the meaning and scope of section 376.313(3): (i) whether the fishermen were entitled to bring a claim under section 376.313(3); and, if so, (ii) what type of damages could they recover under section 376.313(3). *See Curd*, 993 So. 2d at 1084 (Fla. 2d DCA 2008). As to the question of *who* had standing to assert a claim under section 376.313(3), the Court declared that the provision was "clear and unambiguous": It allows "any person" to bring such a claim, including the commercial fisherman involved in that case. 39 So. 3d at 1221 ("The language of the statute allows any person to recover for damages suffered as a result of pollution."). But less clear to the Court was the question of *what* types of damages those plaintiffs could recover under section 376.313(3).

To resolve that uncertainty, this Court employed the *in pari materia* canon of statutory construction and held that the damages recoverable under section 376.313(3) of the WQAA are only those "damages as defined" in section 376.031(5) of the PDPCA. *Id.* at 1220-22.[12]

[12] The First District certified the question to this Court because it found certain aspects of *Curd* confusing—namely, this Court's statement that it relied solely on the plain language of the statute and its ostensibly inconsistent invocation of the *in pari materia* cannon of construction. *Simon's Trucking, Inc.*, 244 So. 3d at 373-74. No such confusion or inconsistency exists. This Court invoked the plain language of the statute to resolve the threshold issue of *who* could bring a claim under section 376.313(3), while resorting to canons of construction to discern *what* forms of damages were recoverable under that provision.

Relying on this definition, which explicitly excludes personal injury damages, this Court concluded that the fishermen's lack of a possessory interest in the contaminated marine life did not preclude them from bringing a claim for lost income under section 376.313(3) because "one can also recover for damages to 'natural resources, including all living things'" except human beings. *Id.* at 1222 (quoting § 376.031(5), Fla. Stat.). In other words, under section 376.313(3), a plaintiff cannot recover for damages to human beings. *Id.* In short, *Curd* resolved prior uncertainty regarding the types of damages that are recoverable under section 376.313(3). When faced with such questions, courts need only consult the definition of damages in section 376.031(5): If the definition encompasses the types of damages sought by the plaintiff, the plaintiff can seek to recover those damages under section 376.313(3); if not, the cause of action does not permit recovery of such damages.[13]

[13] Writing separately, Justice Polston agreed that the fishermen's claims were viable but disagreed with the majority's limited construction of the statute. *Curd*, 39 So. 3d at 1229-30 (Polston, J., concurring in part and dissenting in part). He reasoned that the Court should not look beyond the literal meaning of the phrase "all damages" in section 376.313(3) to determine the type of damages that are recoverable. *Id.* at 1230. Although Lieupo raises the same argument here, the majority in *Curd* clearly considered alternative interpretations and chose to apply the statutory definition contained within chapter 376. The majority's interpretation of the statutory text at issue constitutes an authoritative statement of the meaning of the term "all damages" in section 376.313(3).

Curd's definitive interpretation of section 376.313(3) resolves the question presented here. In this action, Lieupo sought recovery *only* for personal injuries pursuant to section 376.313(3). Section 376.313(3), as interpreted by this Court in *Curd*, permits recovery *only* for damages to property interests, the environment, or natural resources. It does not permit recovery for personal injuries. § 376.031(5), Fla. Stat. Lieupo is therefore precluded from seeking recovery for personal injuries under section 376.313(3). The First District reached the same conclusion and vacated the jury's verdict. Because the First District's decision is faithful to this Court's interpretation of section 376.313(3) in *Curd*, this Court should affirm.

C. Lieupo's Attempts to Overcome or Cabin the Holding in *Curd* Are Without Merit

Recognizing that *Curd* is dispositive here, Lieupo offers several arguments to distinguish, undermine, or overturn its holding. None of these arguments are convincing.

Lieupo begins by asking this Court to resolve the case on a blank slate. He asks this Court to ignore *Curd* and broadly construe the term "all damages" in section 376.313(3) to mean any and all conceivable damages, including personal injury damages. But this Court is not writing on a blank slate. As explained above, this Court has already interpreted the term "all damages" to mean all "damages as defined [in section 376.031(5).]" 39 So. 3d at 1222. It is axiomatic that this Court's

prior interpretation of statutory language at issue here is controlling. *See, e.g.*, *Rotemi Realty, Inc. v. Act Realty Co.*, 911 So. 2d 1181, 1188 (Fla. 2005) (explaining that the "doctrine of stare decisis counsels us to follow our precedent" in all but limited circumstances); *Forman v. Fla. Land Holding Corp.*, 102 So. 2d 596, 598 (Fla. 1958) (explaining that stare decisis generally requires that a "decision of a court of controlling jurisdiction will be followed in other cases involving similar situations"). Lieupo cannot overcome this Court's controlling interpretation of Florida law simply by offering a contrary construction of the statute that he believes is more persuasive.

Next, Lieupo argues that *Curd* is not controlling because it did not involve claims for personal injury. Initial Br. at 13. That does not matter. The question is not whether the plaintiff in *Curd* sought the same form of damages that Lieupo seeks here, but rather whether this Court in *Curd* interpreted the term "damages" for purposes of section 376.313(3). It plainly did. *See Curd*, 39 So. 3d at 1221-22.

Lieupo does not dispute that this Court in *Curd* looked to the limited definition of the term "damages" in section 376.031(5) to discern the meaning of the term "all damages" in section 376.313(3). Instead, he argues that this Court looked to the definition only for "guidance." Initial Br. at 13. But the language this Court employed in *Curd* shows precisely the opposite. *See, e.g.*, *Curd*, 39 So. 3d at 1221 ("'Damage,' *as used in chapter 376, is defined as* 'the documented extent of

any destruction to or loss of any real or personal property, or the documented extent, pursuant to s. 376.121, of any destruction of the environment and natural resources, including all living things *except human beings*, as the direct result of the discharge of a pollutant." (quoting § 376.031(5), Fla. Stat. (emphasis added)); *id.* at 1222 (noting that section 376.313(3) creates a cause of action "to any person who can demonstrate *damages as defined under*" the PDPCA (emphasis added)). It makes no sense that the term "all damages" would mean one thing in *Curd*, yet something completely different in this case. There is no support in the law for Lieupo's argument that this Court's prior, authoritative interpretation of the statutory language at issue here does not supply the meaning of that very same language in this case.

Moreover, this Court's conclusion in *Curd* that section 376.031(5)'s definition of damages applies to claims under section 376.313(3) was an essential aspect of this Court's holding, not dicta, as the First District correctly recognized. *Simon's Trucking, Inc.*, 244 So. 3d at 374; *see State ex rel. Biscayne Kennel Club v. Bd. of Bus. Reg.*, 276 So. 2d 823, 826 (Fla. 1973) (explaining that dicta are statements of a court that are "not essential to the decision of that court"). To resolve the issue presented in *Curd*—whether section 376.313(3) "allows commercial fishermen to recover damages for their loss of income despite the fact that the fishermen do not own any property damaged by the pollution," *Curd*, 39

So. 3d at 1220—the Court had to "determine what scope of damages was available" under the WQAA. *Simon's Trucking, Inc.*, 244 So. 3d at 374. Answering that question required this Court to discern the meaning of the term "damages," as used in section 376.313(3). This Court answered that question by holding that the PDPCA's definition of "damages" applies with equal force to claims brought under the PDPCA and the WQAA. *See Curd*, 39 So. 3d at 1221-22.

Although Lieupo stresses that this Court in *Curd* "*was not asked* to decide whether *only* those items of damages listed in section 376.031(5) were recoverable," Initial Br. at 23 (emphasis in original), that too is irrelevant. The Court's holding is controlled by this Court's decision, not the parties' arguments. Lieupo further argues that it is "inconceivable" that the Court intended to foreclose personal injury recovery, *id.* at 27, but in actuality it is inconceivable that the Court was unaware that it was interpreting the term "all damages" in section 376.313(3). As noted *supra*, Justice Polston specifically argued that the majority was adopting an unduly narrow interpretation of the term "all damages" and instead should have applied the PDPCA's definition of "damages" to only section 376.205 claims, not section 376.313(3) claims. 39 So. 3d at 1230 (Polston, J., concurring in part and dissenting in part) (arguing that "the 'all damages' language of the 1983 enactment applies in this case, not the more restrictive definition of the 1970 enactment.").

The majority declined this approach in favor of the more limited construction of the term "all damages."

This Court in *Curd* surely could have said that it was cabining its holding to claims seeking recovery for economic injuries, but it did not. This Court surely could have said that it was looking to section 376.031(5) only for interpretive guidance, but it did not. And the Court surely could have adopted Justice Polston's view that a literal reading of the term "all damages"—untethered from the definition in section 376.031(5)—was alone sufficient to resolve the appeal. But once again, it did not. Instead, this Court held that damages recoverable under section 376.313(3) are the same as those recoverable under section 376.205—*i.e.*, injuries to real property, the environment, and natural resources, but not human beings. *Id.* at 1221-22 (quoting § 376.031(5), Fla. Stat.). Lieupo may think it was "not necessary" for the Court to do so in order to resolve the dispute in *Curd*, Initial Br. at 23, but the Court's interpretation of the term "all damages" was an essential aspect of its holding. Although Lieupo may not like that aspect of *Curd*'s holding, it remains this Court's holding nonetheless.

Lieupo further asks this Court to read *Curd* so narrowly that it applies only to the precise claims at issue in that case. But that reading of *Curd*'s precedential value is myopic, unduly restrictive, and not the way the common law works. As an example, in *Aramark*—a case in which a landowner sued an adjacent landowner

for groundwater contamination—this Court held that section 376.313(3) creates a private, strict liability cause of action for damages. 894 So. 2d at 28. That is an authoritative interpretation of section 376.313(3), even if Simon's Trucking were to disagree with it. It would therefore be absurd for Simon's Trucking to use this case to re-litigate the question of whether section 376.313(3) even creates a private cause of action by arguing that the *Aramark* court merely approved a cause of action "for the prior and ongoing migration of contaminated groundwater onto [an adjacent] property." *Id.* at 22. But that is precisely what Lieupo attempts to do—*i.e.*, cabin *Curd*'s interpretation of the term all damages to cases involving claims for economic loss by fisherman without a possessory interest in the underlying natural resources on which their claim is predicated. This Court in *Curd* did not cabin its holding to the precise claims at issue in the case; nor should this Court when applying *Curd*'s holding in subsequent cases.

Lieupo then spends less than one page arguing that this Court should retreat from its long-standing interpretation of the term "all damages" in section 376.313(3). The only justification Lieupo offers for doing so is his belief that *Curd* was wrongly decided. Initial Br. at 28-29. But the "presumption in favor of stare decisis is strong," and "[s]tare decisis does not yield based on a conclusion that a precedent is merely erroneous." *Brown*, 84 So. 3d at 309 (citation and internal quotation marks omitted); *see Puryear v. State*, 810 So. 2d 901, 905 (Fla. 2002)

("Stare decisis provides stability to the law and to the society governed by that law." (citation and internal quotation marks omitted)). Rather, this Court has stated that it must address several questions before overruling a prior precedent:

> (1) Has the prior decision proved unworkable due to reliance on an impractical legal "fiction"? (2) Can the rule of law announced in the decision be reversed without serious injustice to those who have relied on it and without serious disruption in the stability of the law? And (3) have the factual premises underlying the decision changed so drastically as to leave the decision's central holding utterly without legal justification?

N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 637-38 (Fla. 2003); *Strand*, 992 So. 2d at 159 (same).

Lieupo tellingly urges this Court to overturn its interpretation of section 376.313(3) in *Curd* without even addressing these considerations. None supports receding from *Curd*. First, limiting damages under section 376.313(3) to those defined in section 376.031(5) provides a clear and workable rule. Second, expanding the cause of action in section 376.313(3) to allow recovery for personal injuries, on the other hand, would disrupt settled expectations and create new personal injury claims without any administrable principle that would impose an outward limit on liability or the forms of permissible recovery. And third, no material changes to the factual or legal underpinnings of *Curd* have arisen in the intervening decade that would justify retreating from its holding. This Court should decline Lieupo's invitation to overturn *Curd*'s interpretation of section 376.313(3).

Taking his argument one step further, Lieupo implies that this Court's decision in *Curd* and the First District's reading of *Curd* are unconstitutional. Initial Br. at 27-28. Specifically, he argues without support that if this Court in *Curd* incorporated the PDPCA's definition of damages into the WQAA, such an interpretation would raise "a serious separation of powers issue given the clear and unambiguous language used by the legislature in the pertinent statute." *Id.* at 27. This Court's authority to interpret the meaning of a Florida Statute is beyond dispute, regardless of whether Lieupo agrees with that interpretation. *See, e.g.*, *Locke v. Hawkes*, 595 So. 2d 32, 36 (Fla. 1992) ("As the supreme court of the judicial branch, one of our primary judicial functions is to interpret statutes and constitutional provisions."). In any event, there is nothing atextual (let alone unconstitutional) about defining the term "damages" in the WQAA by way of reference to the definition of that term in a closely related statute. *See, e.g.*, *State v. Fuchs*, 769 So. 2d 1006, 1009 (Fla. 2000) ("In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term[.]").

Finally, the fact that the Florida Legislature could abrogate this Court's interpretation of section 376.313(3) with a stroke of the pen further weighs against overturning *Curd*. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2411 (2014) ("The principle of *stare decisis* has special force in respect to

statutory interpretation because Congress remains free to alter what we have done." (citation and quotation marks omitted)). More than eight years have passed since this Court's decision in *Curd*. In that time, the Florida Legislature has not amended section 376.313(3) or section 376.031(5) to overrule the Court's decision regarding the types of damages recoverable in a private cause of action under the WQAA. The Legislature's silence in the face of *Curd* indicates its acceptance of the Court's construction of the statute. *See, e.g.*, *Goldenberg*, 791 So. 2d at 1081 ("Long-term legislative inaction after a court construes a statute amounts to legislative acceptance or approval of that judicial construction."). As a result, the law is currently settled: Section 376.313(3) does not permit personal injury recovery. Lieupo's suggestion that this is bad policy should be raised with the Legislature, not this Court, because it is now the policy prerogative of the Legislature to revise the statute if it intends to permit recovery for personal injuries caused by pollution on a strict liability basis.

* * * * *

In *Curd*, this Court said what it meant, and meant what it said. Section 376.313(3) permits recovery for only those "damages as defined" in the PDPCA. The PDPCA explicitly excludes injuries to human beings from its definition of "damages." As a result, Lieupo cannot recover for his injuries under section 376.313(3) as a matter of law.

D. As a Matter of Interpretation, Section 376.313(3) Does Not Permit Recovery for Personal Injuries

Even if one were to assume that *Curd* were not controlling in this case (and one should not), the interpretive principles and canons of construction on which *Curd* relied establish independently that section 376.313(3) precludes personal injury recovery.

As explained above, the WQAA and the PDPCA create separate but closely related private causes of action permitting recovery for the discharge of pollution on a strict liability basis. §§ 376.205, 376.313(3), Fla. Stat.; *Aramark*, 894 So. 2d at 22. Both causes of action appear in chapter 376, which regulates the discharge of pollutants. Section 376.205 permits a plaintiff to bring a cause of action for "damages, as defined in s. 376.031, resulting from a discharge or other condition of pollution covered by" the PDPCA. Because the PDPCA excludes personal injuries from the statutory definition of damages, section 376.205 plainly does not permit recovery for personal injuries. Section 376.313(3) likewise allows a plaintiff to bring a claim for a discharge of pollution covered by the WQAA, but the WQAA does contain a definition of "damages."

While Lieupo argues that the term "all damages" is clear and unambiguous, that was not the understanding of the lower courts prior to this Court's decision *Curd*. In *Kaplan,* Judge Griffin of the Fifth District noted "how courts have to keep

supplying the missing pieces of this new cause of action [under section 376.313], *such as what are recoverable damages*." 674 So. 2d at 206 n.2 (Griffin, J., concurring in part and dissenting in part). Or, as the Second District succinctly put it, section 376.313 "is less than a model of clarity." *Mostoufi v. Presto Food Stores, Inc.*, 618 So. 2d 1372, 1376 (Fla. 2d DCA 1993). Most significantly, the Second District in *Curd* explicitly recognized this uncertainty, explaining that "[t]he *question that remains unsettled*, both *in the statute* and the case law, is *what type of damages are recoverable under the statute* and by whom." 993 So. 2d at 1083 (emphasis added). "Where there is uncertainty in the meaning to be given the words employed in a statute, the Court must resort to canons of statutory construction in order to derive the proper meaning." *See, e.g.*, *Reform Party v. Black*, 855 So. 2d 303, 312 (Fla. 2004).

The interpretive cannon of *in pari materia* (*i.e.*, on the same subject or matter) requires "courts to construe related statutes together so that they illuminate each other and are harmonized." *McGhee v. Volusia Cty.*, 679 So. 2d 729, 730 n.1 (Fla. 1996); *see E.A.R. v. State*, 4 So. 3d 614, 629 (Fla. 2009) ("The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." (quoting *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005)). Both the WQAA and the PDPCA are

part of a "far-reaching statutory scheme aimed at remedying, preventing, and removing the discharge of pollutants from Florida's waters and lands." *Curd*, 39 So. 3d at 1222. This Court has also held that, in the absence of a statutory definition of a particular term, courts should interpret an undefined term by looking to "related statutory provisions which define the term." *Fuchs*, 769 So. 2d at 1009 (citation omitted); *see also Martin*, 916 So. 2d at 768. In light of the close linguistic and substantive relationship between the PDPCA and WQAA, this Court should harmonize the statutes (and in fact already harmonized them in *Curd*) by applying the PDPCA's definition of the term "damages" when interpreting the meaning of the term "all damages" in section 376.313(3) of the WQAA.[14]

[14] As an interpretive matter, nothing about a discrete provision in the WQAA addressing third-party liability insurance coverage for bodily injuries, § 376.3079, Fla. Stat., remotely suggests that section 376.313(3) provides a cause of action to recover for such injuries, as Lieupo suggests. *See* Initial Br. at 27. Quite to the contrary, that provision applies only to operators of dry cleaning or wholesale supply facilities. § 376.3079, Fla. Stat. Under the WQAA, such operators are exempt from liability under section 376.313(3) "if it can be proven that, at the time of the discharge the alleged damages resulted solely from a discharge from a drycleaning facility or wholesale supply facility that was in compliance with department rules regulating drycleaning facilities or wholesale supply facilities." § 376.313(5)(a), Fla. Stat.; *id.* § 376.313(5)(b) ("Any person bringing such an action must prove negligence in order to recover damages under this subsection."). It therefore makes sense that the Legislature, which subjected drycleaning and wholesale supply facilities to less stringent forms of liability for pollution than other potential polluters, would seek to ensure that operators of such facilities had ready access to third-party liability coverage, including coverage for liability for bodily injuries. Indeed, a plaintiff harmed by such pollution could still pursue a personal injury claim under common law, thus triggering the need for such liability

Lieupo does not seriously address these canons of construction, arguing instead that "all damages" necessarily means any and all conceivable damages resulting from pollution. Such an interpretation does not contain a limiting or workable principle. Entities such as Simon's Trucking, whose non-negligent conduct led to the discharge of pollution, would be subjected to limitless liability, regardless of whether the pollution actually contaminated any property, destroyed the environment, or harmed existing natural resources. As the Second District persuasively explained in *Curd*, this Court should be reluctant "to assume, in the absence of express language stating such intent, that the legislature intends the courts to use such an expansive method to measure recoverable damages under this statutory action." 993 So. 2d at 1084.[15]

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insurance. At bottom, the third-party liability insurance provision of the WQAA has absolutely no bearing on the meaning of the term "all damages" in section 376.313(3).

[15] Lieupo argues that the PDPCA's definition of damages cannot apply to section 376.313(3) because the PDPCA's definitional section applies "[w]hen used in ss. 376.011-376.21, unless the context clearly requires otherwise." § 376.031, Fla. Stat. That is a red herring. Nothing in the text of either statute precludes the statutory definitions in one statute from applying to the other. Indeed, the Legislature's clarification that the definitions may not apply if "context clearly requires otherwise" establishes an intent to afford this Court flexibility when construing statutory terms. Moreover, there is no reason to assume the definitions must apply *only* to the provisions of the PDPCA, as it is common practice for this Court to interpret undefined statutory terms by examining "related statutory provisions which define the term." *Fuchs*, 769 So. 2d at 1009. And finally, the limiting language in section 376.031(5) simply reflects the fact that the PDPCA was enacted *before* the WQAA. The Legislature therefore could not possibly have

By contrast, interpreting section 376.313(3) in harmony with section 376.205 would avoid absurd, unintended results. There is no basis for this Court to assume, as Lieupo's argument implies, that the Legislature intended to compensate people for bodily injuries caused by pollution affecting Florida's *inland* waters, while denying those people a remedy for otherwise identical bodily injuries caused by pollution affecting Florida's *coastal* waters. But that is the natural consequence of Lieupo's boundless view regarding the scope of recoverable damages under section 376.313(3). Treating closely related causes of action in such a disparate manner would render a plaintiff's ability to recover for personal injury arbitrary and wholly contingent on the fortuitousness of where the pollution occurred.

Taking the facts of this case as an example, Lieupo's ability to recover for his injuries would depend entirely on where the driver's heart attack and the ensuing accident occurred in Florida. If the accident occurred on Interstate 10 while the driver was passing over the Escambia Bay Bridge, a short stretch of Interstate 10 crossing Escambia Bay near Pensacola, the PDPCA would apply and Lieupo would be *unable* to recover for his injuries. But in the event the accident occurred virtually anywhere else on Interstate 10, which crosses the whole length of the state for some 360 miles inland from Jacksonville to the Alabama border, the

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extended the definition of damages to section 376.313(3) at the time it enacted the PDPCA.

WQAA would apply and Lieupo would be *able* to recover for his injuries. This Court should avoid an interpretation of section 376.313(3) that would yield such absurd and arbitrary results. *See, e.g.*, *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) ("[A] literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion.").

As a matter of policy, it makes sense that the same definition of damages apply to claims brought under the PDPCA and the WQAA. That definition, which limits the meaning of damages to harm to property interests, the environment, and natural resources, imposes liability in a manner that achieves the statutory purpose of "remedying, preventing, and removing the discharge of pollutants from Florida's waters and lands." *Curd*, 39 So. 3d at 1222. By so limiting the statutory definition of damages, the Legislature (and this Court) ensured that polluters are strictly liable for harm their pollution causes to property, the environment, and natural resources, regardless of whether that harm occurs on coast or inland waters.

It should be for the Legislature, not for the courts, to decide whether to expand the strict liability provisions of section 376.313 to personal injury cases, and to strip away common-law defenses such as assumption of the risk, contributory negligence, and the like in cases such as this where a plaintiff, for example, lays down near a toxic spill or fails to seek proper medical treatment regardless of the cause of his damages. In short, Lieupo's proposal that this Court

carve out an exception from the holding in *Curd*, or "retreat" from *Curd*, after more than eight years of settled law and in the absence of any action by the Legislature disclaiming the result reached, raises serious issues of public policy that are properly addressed by the Legislature, rather than a reversal or cabining of this Court's prior holding and settled law.

CONCLUSION

For the foregoing reasons, Simon Trucking's respectfully urges this Court to decline to review this case and allow the First District's well-reasoned decision to stand. If this Court decides to review the case on the merits, however, Simon's Trucking respectfully submits that this Court should answer the certified question in the negative, hold that section 376.313(3) does not permit recovery for personal injuries, and affirm the First District's decision.

Respectfully submitted,

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The undersigned certifies that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.

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