

**IN THE SUPREME COURT OF FLORIDA**

Case No. SC18-657

L.T. Case Nos. 1D17-2065; 242014CA000051CAAXMX

**CHARLES A. LIEUPO,**

Petitioner,

v.

**SIMON'S TRUCKING, INC.,**

Respondent.

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## STATEMENT OF THE CASE AND FACTS

The First District Court of Appeal succinctly described the facts and procedural history of this case as follows:

Lieupo filed a complaint against Simon's Trucking, alleging it was strictly liable for injuries he suffered after one of its tractor-trailers was involved in an accident while transporting batteries, spilling battery acid onto the highway. Lieupo alleged he responded to the scene to tow away the truck and came into contact with the battery acid, which caused him serious personal injuries. He filed his complaint under section 376.313(3), Florida Statutes, which imposes strict liability for the discharge of certain types of pollutants.

Simon's Trucking argued that Lieupo could not seek recovery under section 376.313(3) because that statute did not permit recovery for personal injury. The trial court rejected this argument, and the case proceeded to trial.<sup>1</sup> The jury found the battery acid caused Lieupo's injuries and awarded him a total of \$5,211,500 in damages. . . .

FN1: Simon's Trucking raised this issue through a motion to dismiss, a motion for summary judgment, a motion for directed verdict, and a motion for judgment notwithstanding the verdict, all of which were denied by the trial court.

The sole issue before [the First District was] whether section 376.313(3) permits recovery for personal injury.<sup>2</sup>

FN2: During the trial, Simon's Trucking argued that Lieupo's injuries were caused by ant bites rather than battery acid and that his medical expenses were paid for by workers' compensation coverage. However, the narrow issue raised by Simon's Trucking on appeal d[id] not pertain to these arguments. . . .

*Simon's Trucking, Inc. v. Lieupo*, 43 Fla. L. Weekly D805, at \*1 (Fla. 1st DCA Apr. 18, 2018).

Chapter 376, Florida Statutes, regulates the discharge and removal of certain types of pollution in Florida. *Id.* The Pollutant Discharge Prevention and Control Act of 1970, codified in sections 376.011-376.21 (“1970 Act”), protects coastal waters and adjoining lands, and the Water Quality Assurance Act of 1983, codified in sections 376.30-376.317 (“1983 Act”), protects inland surface and ground waters. *Id.*

Under the 1970 Act, “any person” may bring a cause of action for “damages,” which are defined in section 376.031(5) as the “loss of any real or personal property, or . . . destruction of the environment and natural resources, including all living things *except human beings.*” *Id.* at \*2 (quoting §§ 376.205 & 376.031(5), Fla. Stat.). The 1983 Act also contains a private cause of action in section 376.313(3) for “all damages” resulting from pollution regulated by the act. *Id.* The term “damages” in section 376.313(3) is not defined in the 1983 Act. *Id.* However, in *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216 (Fla. 2010), this Court construed these provisions of chapter 376 *in pari materia* so as to harmonize and give meaning to each, holding that the type of damages recoverable in an action brought under section 376.313(3) is governed by the definition of damages in section 376.031(5) of the 1970 Act. *Id.* at \*2-3.

Relying on *Curd*, the First District concluded that plaintiffs are precluded from bringing claims for personal injury damages under the cause of action in section 376.313(3). *Id.* at \*1. The First District explained its reasoning as follows:

In order for the *Curd* court to answer the central question in that case of whether the [plaintiffs'] claims could be brought under the 1983 act, the court first had to determine what scope of damages was available under that act. The court found this scope of damages was defined by the 1970 act. The majority was clearly aware that the 1970 act's definition of damages stated that it was only applicable to that act, because Justice Polston pointed it out in his concurrence. Justice Polston also suggested that the majority could have proceeded by solely considering the plain meaning of the "all damages" language from the 1983 act. However, the majority did not follow that approach and instead found that the 1970 act's definition of damages was applicable to causes of action brought under the 1983 act. Thus, we cannot find that application was dicta.

*Id.* at \*4.

The First District rejected Petitioner's argument that the construction of section 376.313(3) in *Curd* was dicta, and held that it was "required to apply the 1970 act's definition of damages here." *Id.* Accordingly, the court reversed the \$5.2 million verdict entered in favor of Petitioner. *Id.* The First District also certified the following question as one of great public importance: "Does the private cause of action contained in section 376.313(3), Florida Statutes, permit recovery for personal injury?" *Id.*

## **SUMMARY OF THE ARGUMENT**

This Court should decline to exercise its discretion to review the question certified by the First District because it is not one of “great public importance.” The single issue of statutory interpretation raised in this case does not rise to the level of constitutional magnitude. Nor is it an issue that has been frequently raised in any Florida court. In the eight years since this Court’s decision in *Curd* no plaintiff, other than Petitioner, 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. As such, there is no confusion amongst the bar, nor is there any conflict between the district courts, about the application of *Curd*.

This Court should also decline to review the First District’s decision because it is not in express and direct conflict with the decision in *Curd*. In *Curd*, the majority held that damages recoverable under section 376.313(3) are those defined in section 376.031(5), a definition that expressly excludes injury to “human beings.” The First District rejected Petitioner’s argument that this holding was dicta and faithfully applied it to the facts of this case to determine that Petitioner’s claim for personal injury damages under section 376.313(3) was barred as a matter of law. The fact that the First District may be confused by, or disagree with, the reasoning used by the majority in *Curd* is not grounds for this Court to exercise its discretionary review based on express and direct conflict.

## ARGUMENT

### **I. THE CERTIFIED QUESTION IS NOT ONE OF GREAT PUBLIC IMPORTANCE.**

Undisputedly, this Court has the authority to exercise its discretion to review a district court decision that “passes upon a question certified by it to be of great public importance.” Art. V, § 3(b)(4), Fla. Const. An attempt to invoke review under this provision raises two questions—does the Court have the power to review the decision (i.e., does the Court have jurisdiction); and should the Court exercise its discretion to accept jurisdiction. *See generally Fla. Star v. B.J.F.*, 530 So. 2d 286, 288-89 (Fla. 1988) (explaining the distinction between jurisdiction and discretion). Petitioner is correct that the answer to the first question is yes.<sup>1</sup> However, Petitioner is wrong that the certified question is actually one of “great public importance.”

Questions of great public importance have been described as ones of “constitutional magnitude” and ones that are “frequently raised but with inconsistent results in the lower tribunals.” *E.g., Bradley v. State*, 615 So. 2d 854,

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<sup>1</sup> Indeed, the First District’s decision satisfies the mandatory prerequisites for this court’s discretionary review under article V, section 3(b)(4)—the court passed on the question it certified in a unanimous panel decision and the question was unanimously certified by the panel. *See Floridians For A Level Playing Field v. Floridians Against Expanded Gambling*, 967 So. 2d 832, 833 (Fla. 2007); *see also Fla. Dep’t of Highway Safety & Motor Vehicles v. Robinson*, 112 So. 3d 83, 84 (Fla. 2013) (recognizing that “the threshold issue of whether the question certified has been passed upon is jurisdictional”).

855 (Fla. 1st DCA 1993). Put another way, a question of great public importance is one that “will affect a large segment of the public and the extant decisional law may not coalesce around a single answer to the question posed.” *Star Cas. v. U.S.A. Diagnostics, Inc.*, 855 So. 2d 251, 252 (Fla. 4th DCA 2003); *see also Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958) (explaining that this Court should exercise its discretionary review only in “certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice”). None of these elements exist here.

In this case, the single issue raised in the First District was one of statutory interpretation—i.e., what is the meaning of “all damages” in section 376.313(3)—not one of constitutional magnitude. *Cf. Bradley*, 615 So. 2d at 855 (reviewing question of whether prosecution of a criminal offense was barred by double jeopardy in certain circumstances). And since this Court’s decision in *Curd*, the question about the scope of damages recoverable under section 376.313(3) has not been raised frequently in any Florida court nor has it “affect[ed] a large segment of the public.” *Star Cas.*, 855 So. 2d at 252.

In fact, in the eight years since *Curd* was decided, no one has questioned the decision or how to apply it. And no plaintiff, other than Petitioner, has apparently even claimed a right to personal injury damages under section 376.313(3), or disputed that the holding in *Curd* bars such a claim. As such, there is no confusion

amongst the bar, nor is there any conflict between the district courts, about the application of *Curd*. Petitioner is free to disagree with this Court’s construction of section 376.313(3) in *Curd*, as he apparently does, but that is a matter for the Legislature to resolve, not this Court. *See generally 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)). Indeed, since the decision in *Curd*, the Legislature has not altered the pertinent statutory language of chapter 376 to change what this Court held regarding the types of damages recoverable in private causes of action brought under section 376.313(3).

Furthermore, this case is really nothing more than a simple negligence case dressed up as a statutory claim for strict liability. While the First District’s application of *Curd* bars plaintiffs such as Petitioner from bringing claims for personal injury damages under chapter 376, it does not foreclose individuals from seeking such relief under traditional principles of common law tort.

Finally, the fact that the First District certified a question to this Court regarding its decision in *Curd* does not turn this case into one of great public importance sufficient to warrant granting jurisdiction. Since the creation of the district courts of appeal in 1957, this Court has characterized them as “courts primarily of final appellate jurisdiction.” *Ansin*, 101 So. 2d at 810. Here, the First

District faithfully followed the holding in *Curd*, as it was bound to do, when it reversed the judgment below. In doing so, it fulfilled its constitutional role of final appellate jurisdiction. To accept the certified question in this case would relegate the First District to an intermediate appellate court, which it was never intended to be. *See id.* (explaining 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”). Accordingly, this Court should decline to exercise its discretion to review the First District’s decision in this case.

## **II. THE FIRST DISTRICT’S DECISION IS NOT IN EXPRESS AND DIRECT CONFLICT WITH A DECISION FROM THIS COURT.**

The First District’s decision in this case is not in express and direct conflict with this Court’s decision in *Curd*. *See* art. V, § 3(b)(3), Fla. Const. (granting this Court jurisdiction to review district court decisions that “expressly and directly conflict[]” with a decision of this Court). Petitioner’s attempt to invoke this Court’s discretionary conflict jurisdiction is nothing more than an attempt to reargue his position that the *Curd* court’s construction of section 376.313(3) was dicta, an argument that was flatly rejected by the First District.

The overarching legal issue in *Curd*, just as in this case, was what types of damages are recoverable under section 376.313(3). In deciding that issue, the majority in *Curd* held that damages recoverable under section 376.313(3) are those

defined in section 376.031(5), a definition that expressly excludes injury to “human beings.” 39 So. 3d at 1221. The First District determined this conclusion was not dicta, but instead was essential to the Court’s ultimate holding. *See Simon’s Trucking*, at \*3-4. This was not a “misreading” or “misapplication” of *Curd* as Petitioner contends. Therefore, this Court does not have jurisdiction to review the First District’s decision. *See Fla. Star*, 832 So. 2d at 289 (explaining that conflict review is not available “where the opinion below establishes no point of law contrary to a decision of this Court or another district court”).

As the First District pointed out, “[t]he majority was clearly aware that the 1970 act’s definition of damages stated that it was only applicable to that act, because Justice Polston pointed it out in his concurrence.” *Simon’s Trucking* at \*4. “Justice Polston also suggested that the majority could have proceeded by solely considering the plain meaning of the ‘all damages’ language from the 1983 act.” *Id.* By deciding not to follow Justice Polston’s approach to interpreting section 376.313(3), the majority in *Curd* clearly chose to apply the definition of damages in section 376.031(5) in the 1970 Act to the private cause of action in the 1983 Act. Nothing in *Curd* suggests that definition applies only to some private causes of action under section 376.313(3) and not to others.

While the First District may have been confused about how exactly the majority in *Curd* arrived at its ultimate conclusion, such confusion clearly did not

affect the First District's ability to discern the binding holding in *Curd*. Once the First District determined that the majority in *Curd* held that claims brought under section 376.313(3) are governed by the definition of damages in section 376.031(5), the court dutifully applied that holding to the facts of this case as it was required to do. The fact that the First District may disagree with the reasoning used by the majority in *Curd*, or even be confused by it, is not grounds for this Court to exercise its discretionary jurisdiction based on express and direct conflict.

### **CONCLUSION**

For these reasons, Simon's Trucking respectfully requests this Court deny Petitioner's petition and decline to exercise its discretionary jurisdiction to review this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.100(l) because it was prepared using Times New Roman 14-point font.

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