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IN THE FLORIDA SUPREME COURT

BRUCE KYLE EMERSON,

Petitioner,

v.

KYLE MICHAEL LAMBERT, et al.,

Respondents.

_______________________________________/

Case No.: SC20-1311

L.T. Case Nos.: 2D18-1872, 2D18-4103, 15-CA-4089

ON REVIEW FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, STATE OF FLORIDA

RESPONDENTS' ANSWER BRIEF

Sarah Lahlou-Amine, Esquire
Florida Bar No.: 0022709
E-mail: service-slahlou@bankerlopez.com
Chris W. Altenbernd, Esquire
Florida Bar No.: 0197394
Email: service-caltenbernd@bankerlopez.com
Banker Lopez Gassler P.A.
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602
813-384-3994
813-222-3066 (fax)
Attorneys for Respondents, Kyle Michael Lambert, Keith M. Lambert, and Debbie Lambert

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STATEMENT OF THE CASE AND FACTS

I. Nature of the Case

This case addresses the scope of vicarious liability under the dangerous instrumentality doctrine. Petitioner asks this Court to take an expansive view of the doctrine to impose unlimited vicarious liability upon a non-owner wife in addition to the vicarious liability imposed upon the owner husband for the alleged negligent operation of the subject vehicle by their son. Petitioner asks this Court to deem the facts that the wife was the predominant user of the family vehicle and that she happened to be the one who was home when her son asked to use it on the evening of the accident sufficient to trigger the doctrine and support a $19 million judgment against her.

The corresponding question certified by the Second District as a question of great public importance is:

> UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE, CAN ONE FAMILY MEMBER WHO IS A BAILEE OF A CAR BE HELD VICARIOUSLY LIABLE WHEN THE CAR'S ACKNOWLEDGED TITLE OWNER IS ANOTHER FAMILY MEMBER WHO IS ALSO VICARIOUSLY LIABLE UNDER THE DOCTRINE?

Lambert v. Emerson, 304 So. 3d 364, 374 (Fla. 2d DCA 2020), review granted, SC20-1311, 2021 WL 1661247 (Fla. Apr. 28, 2021).

Petitioner proposes a framework that would impose vicarious liability on multiple family members for the same permissive use of a household vehicle depending on various fact questions pertaining to individual family dynamics and issues of permission and control. This Court is being asked to decide whether answers to such fact questions should give rise to additional sources of liability within the same household, and indeed the same marriage, or whether it would be improper, as the Second District suggested, "to use the fiat of common law to expand a form of vicarious tort liability that the legislature has repeatedly curtailed." *Id.* at 373.

II. The trial court subjects Mrs. Lambert to unlimited vicarious liability.

On the evening of January 5, 2015, Petitioner Bruce Emerson was involved in a tragic motorcycle accident. (R. 20-21).[1] Kyle Lambert was operating the other vehicle, a 2011 Hyundai Sonata owned by his father. (T. 656, 894). Petitioner sued Kyle and, pursuant to Florida's dangerous instrumentality doctrine, named his father, Keith Lambert, as a co-defendant

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[1] For the sake of consistency, this brief uses the same conventions for referencing record materials as specified in Petitioner's initial brief on the merits, p. 3 n.3. This brief also cites the trial exhibits, which are contained in a separate pdf document and referenced herein with the abbreviation "T.E," followed by the applicable pdf page number(s). In addition, Petitioner's initial brief on the merits and the Florida Justice Association's amicus brief are referenced with the abbreviations "IB" and "Am. B.," respectively, followed by the applicable page number(s) as indicated in the briefs.

vicariously liable as the vehicle's owner. (R. 20-22). Petitioner also named Kyle's mother, Debbie Lambert, claiming she, too, was vicariously liable under the dangerous instrumentality doctrine based on "entrust[ment]," although he recognized Mrs. Lambert did not own the vehicle. (R. 22).

Mrs. Lambert sought dismissal based on Petitioner's admission that she did not own the vehicle. (R. 28). Dismissal was denied, and the Lamberts proceeded to summary judgment on the issue. (R. 53-61). In those proceedings, the Lamberts asserted that this Court's ruling in *Aurbach v. Gallina*, 753 So. 2d 60 (Fla. 2000), precluded the application of the dangerous instrumentality doctrine to Mrs. Lambert. (R. 54-61). The trial court denied summary judgment and ruled against the Lamberts on a related motion in limine, and the matter proceeded to trial. (R. 360, 582, 1610).

The evidence presented on this issue at trial was undisputed. Specifically, the evidence showed that on the date of the accident, 22-year-old Kyle was staying with friends and did not own a vehicle. (T. 654-55, 899; T.E. 32). He came to his parents' home and, finding the other family vehicle gone, used the Hyundai Sonata, which was predominantly driven by Mrs. Lambert. (T. 659, 897-98). He used the vehicle to go out to dinner with his girlfriend, Vilia Simias, who, along with their son, lived with Mr. and Mrs. Lambert. (T. 659, 692-93, 884-85).

The Hyundai Sonata was one of two vehicles at the Lambert household owned by Mr. Lambert. (T. 659, 894). As the other vehicle was not at the house when Kyle came over, Kyle took the Hyundai Sonata with the blanket permission of his parents, as well as the permission of his mother on the day of the accident. (T. 894-95, 915-16). Mr. Lambert testified as follows in this regard:

> Q Okay. So did you speak at your home that day with your son, Kyle Lambert?
>
> A I don't recall. I may have, but I don't recall.
>
> Q So considering you don't recall whether you spoke with Kyle, you cannot definitively say today that you're the guy that said, yeah, Kyle, you can take the car? Would you agree?
>
> A Well, anybody in my family could use the car, but I may have not given him -- my wife did that day, I do believe.
>
> Q Yes, sir. It wouldn't have been permission given by you that day, right?
>
> A No, sir.
>
> Q Okay. So you are the owner of this car in question?
>
> A Yes, sir, I am.
>
> Q The Sonata, correct?
>
> A Yes.
>
> Q You called the car Debbie's car, right?
>
> A It's a family car, but yes, my wife drove it most of the time. It was mainly her daily driver.

> Q It was her daily driver, and you called it her car, right?
>
> A Yes.
>
> Q Okay. She's the one that took care of it? If it needed to go to the mechanic, she took it to the Hyundai dealership, right?
>
> A Yes, sir.
>
> Q She controlled it enough where she was able to give permission to people to use it, right?
>
> A Yes, sir.

(T. 886-88). Mr. Lambert testified further:

> Q I'll be real short, Mr. Lambert. At the time of the accident your son Kyle was driving a 2011 Hyundai Sonata, correct?
>
> A Yes, sir.
>
> Q That was your vehicle, correct?
>
> A Yes, sir.
>
> Q You were the title owner of that vehicle?
>
> A Yes, sir, I was.
>
> Q No one else was a title owner of that vehicle?
>
> A No, sir.
>
> Q Kyle Lambert, your son, had your permission to drive that vehicle that night?
>
> A Yes, sir.
>
> Q If that vehicle was at the house, could Kyle take that vehicle without actually calling you up?

> A Yes, sir.
>
> Q He had your permission?
>
> A Yes, sir.
>
> Q When he was driving that night he had your permission to use your vehicle?
>
> A Yes, sir.
>
> Q Other people besides your wife and Kyle used the vehicle as well, correct?
>
> A Yes, sir.
>
> Q Who else used the vehicle?
>
> A My mother-in-law's driven it. My father-in-law's driven it. I've driven it. My sister-in-law drove it.

(T. 894-95).

Mrs. Lambert likewise testified:

> Q Again, real short, Ms. Lambert. The vehicle Kyle was driving at the time of the accident, 2011 Hyundai Sonata, your husband Keith Lambert was the title owner of that vehicle, correct?
>
> A Yes, sir.
>
> Q You were not a title owner of that vehicle, correct?
>
> A Yes, sir. No, I was not.
>
> Q Okay. And you drove the vehicle on occasion, correct?
>
> A Yes, sir.
>
> Q But others in the home, they drove the vehicle as well?

> A Yes, sir.
>
> Q Your mother drove the vehicle?
>
> A Yes.
>
> Q Your father drove the vehicle?
>
> A Yes.
>
> Q Kyle drove the vehicle?
>
> A Yes.
>
> Q Keith Lambert your husband drove the vehicle?
>
> A Yes.
>
> Q It wasn't uncommon for people to drive that vehicle other than you, correct?
>
> A Correct.
>
> Q The people that I just mentioned, the other people that would have occasion to drive that vehicle, would they need to seek permission from Keith Lambert, or could they just take the vehicle if they wanted to take it?
>
> A They could just take the vehicle. There was always an extra key hanging.

(T. 915-16). In response to pointed questions posed by Petitioner's counsel, Mrs. Lambert responded affirmatively that she referred to the subject vehicle as hers, drove it for her personal use, used it to go back and forth from work, and controlled it such that she could give others permission to use it. (T. 897).

Petitioner's counsel was unsuccessful in his attempts to suggest any exclusivity in Mrs. Lambert's use of the vehicle. For example, Petitioner's counsel asked, "while your family chose to perhaps put [the car] in your husband's name, it was all along going to be yours, right?" (T. 897). Mrs. Lambert responded, "My husband drove the car as well. It's not just technically my car. But we're married. I drove the car, yes." (T. 897). In response to the question as to whether she maintained the vehicle, Mrs. Lambert stated, "Yes. My husband works a lot of hours." (T. 897).

Over the Lamberts' objections, the matter of vicarious liability by way of bailment was submitted to the jury. (T. 1480-86, 1732-46, 1775-80). The jury was instructed to decide "[w]hether Debbie Lambert was the bailee of the vehicle driven by Kyle Lambert and whether Kyle Lambert was operating the vehicle with the express or implied consent of Debbie Lambert." (T. 2111). The instruction provided that "[a] person who is the bailee of a vehicle and who expressly or impliedly consents to another's use of it is responsible for its operation." (T. 2111-12). The jury was further instructed that "[a] bailee of a vehicle is one to whom the vehicle has been furnished or delivered by its owner for a particular purpose, with the understanding that it will be returned." (T. 2112).

The Lamberts objected to the jury instructions, maintaining that a bailment triggering dangerous instrumentality liability could not exist in this family context. (T. 1480-86, 1732-46, 1775-80). Having rejected the Lamberts' legal arguments in this regard, the trial court overruled their objections. (T. 1480-86, 1732-46, 1775-80). It should be noted that Petitioner oversimplifies the Lamberts' arguments on this issue, suggesting the Lamberts simply argued that Mrs. Lambert "had no responsibility even if she were a bailee because she did not hold title to the car." (IB at 4). In the trial court and the District Court, the Lamberts objected to Mrs. Lambert's purported status as a bailee, and they further, more broadly disputed that she could be considered the sort of bailee who could be vicariously liable under Florida's dangerous instrumentality doctrine. (T. 1480-86, 1732-46, 1775-80; A. 18-19, 88-101).

Mrs. Lambert's liability was debated once again on the Lamberts' motion for directed verdict. (T. 1732-46). The motion was denied, and the jury returned a verdict awarding over $27 million in damages and finding Mrs. Lambert was a bailee who expressly or impliedly consented to her son's use of the vehicle. (T. 1732-46; R. 1729-32). With respect to liability, the jury assessed comparative fault, attributing 25% fault to Petitioner and 75% fault to Kyle Lambert. (T. 2165; R. 1730).

After the applicable post-trial reductions, the trial court entered:

- an $18,906,429.19 judgment against Kyle;
- a $600,000.00 judgment against Mr. Lambert (pursuant to the statutory limit on owners' vicarious liability under the dangerous instrumentality doctrine); and
- an $18,906,429.19 judgment against Mrs. Lambert as a bailee under the dangerous instrumentality doctrine.

(R. 1737-38, 1998, 2951-52).

As the trial court held, based on Mr. Lambert's status as title owner and the limits of the insurance policy Mr. and Mrs. Lambert maintained for their household vehicles, Mr. Lambert's liability was capped by Section 324.021(9), Florida Statutes, at $600,000.00. (R. 2331-33). While the trial court understandably declined to extend that statutory protection for title owners to Mrs. Lambert, it could not help but to acknowledge the "enormous disparity" in the resulting judgment amounts against this husband and wife. (R. 2332).

The Lamberts renewed their motion for directed verdict on Mrs. Lambert's liability and sought a new trial on grounds including a juror's concealment of litigation history. (R. 1748-1997). The trial court denied the Lamberts' renewed motion for directed verdict. (R. 2326-28). The court

conducted a juror interview but ultimately denied the remaining requests for a new trial. (R. 2325-30, 2929-47).

III. The Second District reverses for entry of a judgment for Mrs. Lambert and certifies a question of great public importance.

The Lamberts appealed the denial of their motion for directed verdict and the denial of their new trial motion based on juror concealment. (A. 7-9, 37-40, 61-119). The Second District reversed the denial of a directed verdict for Mrs. Lambert. *Lambert*, 304 So. 3d at 365. It affirmed the denial of a new trial based on juror concealment without comment. *Id.*

In its reversal of the judgment against Mrs. Lambert, the Second District discussed the history of the dangerous instrumentality doctrine as it informs this case—from its judicial creation in 1920 through its expansion to lessors by this Court in the 1950s through its substantial curtailment by the state and federal legislatures in the decades that followed. *Id.* at 367-72. In that discussion, the court noted this Court's extension of the doctrine to a bailee for hire in *Frankel v. Fleming*, 69 So. 2d 887, 888 (1954), a case heavily relied upon by Petitioner in the Second District and this Court. *Id.* at 369.

The Second District then reached this Court's decision in *Aurbach v. Gallina*, 753 So. 2d 60 (Fla. 2000) (*Aurbach II*), in which this Court affirmed in part the Fourth District's rejection of an attempt to extend the dangerous

instrumentality doctrine to a non-owner spouse, 721 So. 2d 756 (Fla. 4th DCA 1998) (*Aurbach I*). Addressing Petitioner's argument that *Aurbach II* permits vicarious liability against both owner and non-owner-spouses on a bailment theory based on facts surrounding permission and control, the Second District noted *Aurbach II*'s express limitation in this regard:

> Contrary to petitioners' position, the concept of beneficial ownership in Florida law has not been an expansive one that extends to hold vicariously liable anyone with a theoretical right to control a motor vehicle. Rather, the concept of beneficial ownership has been narrowly used in cases where the legal title owner is attempting to deny liability.

Lambert, 304 So. 3d at 372 (quoting *Aurbach II*, 753 So. 2d at 66 (internal citations omitted)).

Based on the judicial and legislative history surveyed by the Second District, the court "synthesize[d] the current state of the dangerous instrumentality doctrine as follows":

> **[I]f title owners of a car entrust their car to a family member who, in turn, causes injury, the title owners may be held vicariously liable for that tort.** *See Christensen v. Bowen*, 140 So. 3d 498, 504 (Fla. 2014) ("The underlying rationale of the doctrine is that if a vehicle owner, who has control over the use of the vehicle, exercises his or her control by granting custody of the vehicle to another, the owner commits himself or herself to the judgment of that driver and accepts the potential liability for his or her torts." (citing *S. Cotton Oil*, 86 So. at 634)); *Aurbach*, 753 So. 2d at 62 ("The most common application of

> the dangerous instrumentality doctrine is where the legal title holder is held vicariously liable. ...”). **If a family member has an identifiable property interest in a car (whether a bailment or some other recognized property interest) and entrusts their car to another who, in turn, causes injury, that family member can be held vicariously liable for the tort if the title owner denies vicarious liability for that entrustment.** *Aurbach*, 753 So. 2d at 65. **But we do not believe there is a sound basis in the law to hold both the acknowledged title owner and a family member bailee liable for the bailee’s entrustment of a car under the dangerous instrumentality doctrine. To expand vicarious liability to that degree ignores the precautions *Aurbach* repeated about this facet of the common law—that it is not expansive and is narrowly implicated outside of its “most common” application to title owners.** *Aurbach*, 753 So. 2d at 62-63. **And with families, expanding the doctrine’s reach beyond vicariously liable title owners to add spouses, children, step-children, siblings, and other relatives who may use a proverbial “family car” in varying ways under varying circumstances, would require courts to taxonomize the precise property rights among relatives whose use of a car may be so loose and vacillating as to be indiscernible.** *Cf. Aurbach*, 721 So. 2d at 759 (“To analyze family dynamics to determine all the ‘beneficial’ owners of a car is to impose a fuzzy legal standard that will encourage litigation and potentially expand liability beyond that which is justified by the rationale for the rule.”).

Id. at 373 (emphasis added). In terms of the role of the judiciary against this backdrop, the Second District concluded:

> **Finally, it seems odd and certainly at cross-purposes to use the fiat of common law to expand a form of vicarious tort liability that the legislature has repeatedly curtailed.** See § 324.021(9); *cf. Futch v. Head*, 511 So. 2d 314, 321 (Fla. 1st DCA 1987) ("[W]e are aware that the legislature often enacts legislation for the purpose of amending the common law."). **Indeed, the very imposition of a statutory cap on this form of vicarious liability to a singular entity (defining "owner" as a person who holds the legal title of a motor vehicle "; or" a conditional vendee, or lessee, or mortgagor) suggests that the legislature viewed the state of dangerous instrumentality law in the same way we have.** *See, e.g., Adler-Built Indus., Inc. v. Metro. Dade County*, 231 So. 2d 197, 199 (Fla. 1970) ("The [l]egislature is presumed to be acquainted with judicial decisions on the subject concerning which it subsequently enacts a statute.").

Id. (emphasis added).

Applying this framework to the facts of this case, the Second District held that the trial court erred in denying Mrs. Lambert's renewed motion for directed verdict. *Id.* at 374. With respect to Mrs. Lambert's purported "bailee" status, the court held, "that is not a basis upon which vicarious liability can be applied under the dangerous instrumentality doctrine since Mr. Lambert, the undisputed title owner, has also been found vicariously liable for what is, essentially, the same entrustment of the same vehicle." *Id.*

Recognizing that "[m]any hands have shaped the dangerous instrumentality doctrine over the past century, and [the court's] attempt to lay

hold of its form and application to this case necessarily draws a demarcation that could affect many similarly situated cases," the Second District certified the following as a question of great public importance:

> UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE, CAN ONE FAMILY MEMBER WHO IS A BAILEE OF A CAR BE HELD VICARIOUSLY LIABLE WHEN THE CAR'S ACKNOWLEDGED TITLE OWNER IS ANOTHER FAMILY MEMBER WHO IS ALSO VICARIOUSLY LIABLE UNDER THE DOCTRINE?

Id. at 374.

Petitioner moved for rehearing and rehearing *en banc*. (A. 421-38). Following the denial of those motions, Petitioner timely filed a notice to invoke this Court's jurisdiction for discretionary review, and this Court accepted jurisdiction.[2] (A. 489, 492-93, 519-20).

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[2] Petitioner sought review on the certified basis and also on the basis of a purported express and direct conflict. (A. 492-93). This Court's Order accepting jurisdiction does not specify whether jurisdiction was accepted on one or both grounds. (A. 519-20).

SUMMARY OF ARGUMENT

Petitioner has recovered a judgment against the operator of the vehicle in this case, Kyle Lambert, as well as Kyle's father, Keith Lambert, based on Keith's ownership of the subject vehicle under the dangerous instrumentality doctrine. The matter before this Court arises from Petitioner's effort to secure a further, nearly $19 million judgment against Keith's wife, Debbie Lambert, for use of the vehicle by their son.

I. The dangerous instrumentality doctrine has never been expanded to allow separate recoveries against owner and non-owner spouses, whether on a theory of bailment—as Petitioner urges here—or otherwise. In *Aurbach II*, this Court precluded such an expansion. While this Court recognized that title ownership is not the sole basis for imposing dangerous instrumentality liability, the case it cited for this proposition, *Frankel v. Fleming*, is legally and factually distinct. Specifically, *Frankel* involved the imposition of vicarious liability in a bailment-for-hire, non-household context. The case before this Court much more closely resembles, and is legally encompassed by, *Aurbach II*.

II. The Second District's decision is consistent with *Aurbach II* and does not contravene *Frankel*. (A). In Petitioner's strained interpretation of this Court's approval of the Fourth District's affirmance of a judgment entered

for the non-owner, non-operator spouse in *Aurbach II*, he posits that this Court's decision turned on a technicality. He argues that if the non-owner spouse's relationship to the vehicle had simply been labeled a bailment in *Aurbach II*, this Court would have reached the opposite result. There is no statement to that effect in this Court's opinion. If this Court's ruling and guidance to citizens in this state had hung by such a tenuous thread in terms of pleadings, labels, and essentially form over substance in *Aurbach II*, it presumably would have said so.

(B). With respect to Petitioner's reference to the Second District's discussion on beneficial ownership and parents' liability for their children's use of vehicles as "straw men," he attempts to sidestep these important concepts altogether, refusing to acknowledge how they tie into the issues before this Court. Aspects of liability and protections under the dangerous instrumentality doctrine must not be viewed in isolation from the many strands that compose this unique fabric of liability in Florida law. At this level of review, full consideration of these interwoven concepts is all the more necessary to ensure a common-sense policy that serves the dual interests of providing financial responsibility for injured plaintiffs and protecting Florida families against the arbitrary imputation of unlimited vicarious liability. Where, as here, financial responsibility is already imposed upon the owner

spouse to the extent permitted by the legislature, there is no sound basis to expand the doctrine to subject the non-owner spouse to unlimited vicarious liability.

III. Petitioner presents his entire argument through a novel lens, suggesting that unlimited exposure to non-owner, non-operator spouses has been obvious to all Floridians, Florida courts, and the Florida legislature at least since *Frankel* was decided in 1954. (A). Petitioner takes this argument so far as to suggest that the legislature's enactment of protections for owners reflects an intent for non-owner spouses to "remain" infinitely liable for the use of household vehicles. It is this slanted view that likewise forms the basis for Petitioner's repeated claim that the Second District improperly "fashioned an exception" to *Frankel*. (IB at 1, 15, 20). The Second District did no such thing. It ruled consistent with this Court's opinion in *Aurbach II* and reconciled *Frankel* in doing so.

(B). Petitioner goes to great lengths to suggest that this Court lacks authority to "overrule any of its precedents." The Florida Justice Association (FJA), as amicus supporting Petitioner, likewise expresses concern over the possibility of this Court revisiting the dangerous instrumentality doctrine the Court created over a century ago, along with the precedents that have developed that doctrine over the years.

The Lamberts believe this Court has full authority to make the rulings it deems fit with respect to this judicial doctrine. But the Lamberts' position in no way depends upon the large-scale changes to the doctrine the Petitioner and the FJA seem to be especially concerned about. The Lamberts simply seek to protect Debbie Lambert from an unprecedented expansion of liability that would hurt countless Florida families like hers if adopted by this Court.

Nevertheless, given that at least one trial court has been persuaded that *Frankel* and *Aurbach II* have left open a loophole of sorts (the trial court below), the Lamberts respectfully submit that resolving this matter by answering the question certified by the Second District in the negative would promote clarity and sound public policy for Floridians.

The Lamberts thus respectfully request that this Court approve the Second District's decision reversing for the entry of judgment for Mrs. Lambert and answer the certified question in the negative.

ARGUMENT

Florida law does not support the extension of vicarious liability under the dangerous instrumentality doctrine to a non-owner spouse on a theory of bailment where vicarious liability under the doctrine undisputedly exists as to the owner spouse for use of the vehicle by the couple's son.

Standard of Review: The trial court's denial of a directed verdict for Mrs. Lambert and the Second District's reversal of that ruling are premised on issues of law regarding the scope of Florida's dangerous instrumentality doctrine and are reviewed *de novo*. *See Rippy v. Shepard*, 80 So. 3d 305, 306 (Fla. 2012).

Comment on Jurisdiction: Petitioner seems to suggest that this Court has accepted jurisdiction based on both (1) the certified question of great public importance and (2) Petitioner's argument that an express and direct conflict exists between the Second District's opinion and this Court's rulings in *Frankel* and *Aurbach II*. (IB at 2, 14). This Court's Order accepting jurisdiction, however, does not indicate the grounds on which jurisdiction was accepted.

As for Petitioner's argument that an express and direct conflict exists, this is an essential but faulty premise of Petitioner's position on the merits. As the Lamberts respectfully submit, there is no conflict, as the Second

District's ruling is consistent with *Aurbach II* and is readily reconciled with *Frankel*, which involved a bailment-for-hire rather than a household vehicle shared among family members. Despite the lack of a preliminary determination by this Court that an express and direct conflict exists, Petitioner proceeds to present his entire argument through this presumptuous lens.

I. Petitioner's expansive view of the dangerous instrumentality doctrine to impose unlimited liability on Mrs. Lambert finds no support in this Court's 1954 decision in *Frankel*.

"The dangerous instrumentality doctrine serves to ensure financial recourse to members of the public who are injured by the negligent operation of a motor vehicle by imposing strict vicarious liability on those with an identifiable property ownership interest in the vehicle." *Christensen v. Bowen,* 140 So. 3d 498, 501 (Fla. 2014); *see also Aurbach II,* 753 So. 2d at 62. Here, it is undisputed that Keith Lambert was the sole owner of the Hyundai Sonata that his son, Kyle Lambert, was operating at the time of the accident.

With a direct negligence claim against Kyle and a well-established vicarious liability claim against Keith as the owner of the vehicle, Petitioner additionally sought to target Kyle's mother and Keith's wife, Debbie Lambert, on the grounds that she used the family car the most (although it was

routinely used by other family members as well), and the car was considered her "daily driver."

Petitioner also relied on the fact that Mrs. Lambert happened to be the one to have told Kyle that he could use the vehicle on the evening of the accident. The undisputed facts show, however, that this was just a matter of happenstance. It just so happened that the other family vehicle was not at the house when Kyle came over that evening and that his mother and not his father happened to be there to give him the casual "ok" to use the Sonata. With respect to permission in terms of authorized use, it is undisputed that Kyle had blanket permission from both his parents to use the car.

Vicarious liability should not turn on happenstance. Leaving a nearly $19 million judgment to the fate of who happened to be home one evening or to the ranking of various family members' use of a household vehicle (at a given point in time) despite undisputed title ownership by one of them is bad public policy that has never been remotely suggested by this Court.

This Court's 1954 opinion in *Frankel v. Fleming*, 69 So. 2d at 887, cannot be read to promote such a policy. The facts of *Frankel* are largely set forth in the companion opinion, *Fleming v. Alter*, 69 So. 2d 185, 186 (Fla. 1953), and are incorporated into *Frankel* by reference, 69 So. 2d at 887-88. Specifically, *Frankel* and *Fleming* involved a man married in another state

who rented a vehicle from a "South Florida U-Drive" car rental company through his hotel during a trip to Florida. *Fleming*, 69 So. 2d at 186. At the end of his trip, he permitted a woman with whom he had been staying at the hotel to use the rental vehicle. *Id.* Thus, his property interest sounding in bailment arose from a commercial transaction (not title ownership within a household) between him and the rental car company. *Frankel*, 69 So. 2d at 888.

The woman proceeded to use the car all night, apparently drinking and driving until 8:00 a.m. the following morning when she "ran down" and seriously injured the plaintiff. *Fleming*, 69 So. 2d at 186. In the trial that ensued, the jury returned a verdict for the plaintiff, but the trial court entered a judgment notwithstanding the verdict for the renter and the lessor/owner. *Id.* at 185-86; *Frankel*, 69 So. 2d at 888. In *Fleming*, this Court deemed the lessor/owner liable based on the facts at issue, emphasizing that one who is "in the business of entrusting vehicles . . . to another for a price" with no contractual exception for others' use of the vehicle should remain responsible for such use. 69 So. 2d at 186-87.

With respect to the renter's liability, this Court considered the question of whether "the doctrine of dangerous instrumentality [is] limited in scope to the owner . . . rather than to include a ***bailee [] for hire*** who in turn delivers

possession to another person[.]" *Frankel*, 69 So. 2d at 888 (emphasis added). Petitioner consistently glosses over the "bailee for hire" aspect of *Frankel* despite that it is expressly incorporated into the question this Court considered and answered in that case. *See id.* Based on existing precedent for lessees' liability, this Court affirmed the judgment against the renter. *Id.*

Petitioner notes that in *Frankel*, this Court referred to the renter and the woman to whom he lent the vehicle as having been married "for all intents and purposes." (IB at 17). This does not make *Frankel* analogous as Petitioner seems to suggest. As a factual matter, the relationship at issue in *Frankel* was not a marriage, the case did not involve a household vehicle owned by one spouse and used by the other, and the accident did not involve use of the shared vehicle by the couple's child. Moreover, this Court's observation in *Frankel* as to the closeness of the relationship between the renter and the woman to whom he lent the vehicle appeared to be in the context of demonstrating permissive use by someone purportedly held out as the renter's wife, where the rental contract contained no provisions precluding such use. Thus, Petitioner's imprecise attempt to transpose the relationship between the operator and the bailee-renter in *Frankel* to the alleged non-operator-bailee and owner here mixes apples and oranges.

With no authority emanating from *Frankel* for the vicarious liability of family members within the same household as the owner (much less the owner's spouse), a proposal to expand liability in this fashion did not make its way into an appellate opinion until nearly fifty years later in *Aurbach*, where it was squarely rejected by the Fourth District (*Aurbach I*) and this Court (*Aurbach II*).

II. This Court precluded a non-owner, non-operator spouse's liability under the dangerous instrumentality doctrine where the owner spouse is vicariously liable in *Aurbach II*.

This Court decided *Aurbach II* in 2000. There, an 18-year-old driver was operating a vehicle owned by her mother when she got into an accident. *Id.* at 61. The injured plaintiff sued the driver for negligence and sued the mother as the vicariously liable owner of the vehicle pursuant to the dangerous instrumentality doctrine. *Id.* However, the plaintiff also sued the driver's father, alleging that he, too, was vicariously liable pursuant to the dangerous instrumentality doctrine because he maintained control over the vehicle. *Id.*

The case proceeded through trial against all three defendants. *Id.* Evidence was presented that the vehicle was titled solely in the mother's name and that it was kept at the marital home. *Id.* The couple had test driven the vehicle together and had purchased it with marital funds for the

primary use of their other daughter, although both children were permitted to use it. *Id.* With respect to permission, there was evidence that the father did not restrict the daughter's use of the vehicle and that the mother had given permission to use the vehicle on the date of the accident. *Id.* at 65-66 n.3. Following the presentation of this evidence, the jury reached a verdict finding that the father "owned or had the right to control the vehicle" and that he had given express or implied consent for his daughter to drive it. *Id.* at 61, 65-66.

After the jury entered a verdict against the father based on his purported vicarious liability for his daughter's operation of the vehicle, the trial court granted the father's renewed motion for directed verdict. *Id.* at 61. The Fourth District affirmed, and this Court granted review and approved the Fourth District's decision. *Id.* at 61-62.

In describing the scope of *Aurbach II*, Petitioner appears to misunderstand the conflict on which this Court's jurisdiction was based. (IB at 11). Petitioner claims "the jurisdictional holding in *Aurbach II* was that a district court decision creating an intra-family exception expressly and directly conflicts with *Frankel*." (IB at 11). In reality, this Court indicated the conflict arose from the Fourth District's broad ruling in *Aurbach I* that dangerous instrumentality liability must always follow title ownership in the

family context. *Id.* at 66. This broad statement in *Aurbach I* was not limited to the household context, a marriage, a vehicle owned by another family member, or any of the other more narrowly implicated factors in *Aurbach II*. This Court thus disapproved that aspect of the Fourth District's decision only to the "extent it could be construed to mean that legal title is the only basis for imposing vicarious liability in a family relationship," citing the distinct case of *Frankel* as an example to the contrary.

In rejecting the *Aurbach* plaintiff's argument to expand the dangerous instrumentality doctrine, this Court unequivocally held:

> We agree with the Fourth District that family dynamics and the parent-child relationship cannot be used as an independent basis for holding parents vicariously liable as beneficial owners of vehicles purchased for their children. *See Aurbach*, 721 So. 2d at 759. **In the absence of common law or statutory authority, we hold that a parent who holds neither legal title nor an identifiable property interest in a motor vehicle should not be held vicariously liable for his or her child's negligent operation of the vehicle under the dangerous instrumentality doctrine.**

Id. at 66 (emphasis added). Zeroing in solely on this Court's reference to *Frankel*, however, Petitioner disregards this clear pronouncement.

The case before this Court is encompassed by *Aurbach II*. As in *Aurbach II*, Keith and Debbie Lambert both purchased and maintained the subject Hyundai Sonata, and while Mrs. Lambert used it the most, it was

used by a number of other family members as well. The testimony at trial was consistent that whenever the car was available and someone in the family wanted to use it, whether that person was Kyle or one of his parents or grandparents, that person simply took the keys and drove the car. Also similar to *Aurbach*, the jury heard evidence that Kyle had both of his parents' blanket permission to use the vehicle on the date of the accident.

These facts cannot be meaningfully distinguished from those in *Aurbach II* and, as a matter of law, do not establish a bailment that triggers dangerous instrumentality liability. Claiming to have "coin[ed] the term 'intermediate bailee'" as a category of vicariously liable parties that a plaintiff may target within the same household or even, as here, within the same marriage, Petitioner erroneously contends that this liability has always existed in Florida.

If this category did exist within households and marriages, it would be so well-established and frequently litigated that it would not require Petitioner to coin a term for it in 2021, over a century after the dangerous instrumentality doctrine was judicially created. The doctrine itself remains an extreme outlier in American jurisprudence, and this case warrants the same rejection of a troublesome pitch to extend it as in *Aurbach II*. *See Christensen*, 140 So. 3d at 502 (recognizing that in *Aurbach II*, "this Court

held that the ability of the father to exert some dominion and control over the vehicle did not constitute a basis for vicarious liability under the dangerous instrumentality doctrine").

It is worth noting that Petitioner's argument, taken to its logical conclusion, could have resulted in the imposition of liability on the non-owner, non-operator *daughter* in *Aurbach II*, given that the vehicle was primarily intended for her use in the household (although, as in this case, other members of her family used it as well and had blanket permission to do so). Of course, the imposition of unlimited liability against the non-owner, non-operator daughter in addition to the title owner mother in *Aurbach II* would have been absurd, and this Court did not remotely suggest such an extension of liability.

A. *Aurbach II* did not turn on a technicality.

Petitioner suggests that this Court's opinion in *Aurbach II* turned on a technicality, implying that had the *Aurbach* plaintiff simply re-labeled and presented stronger evidence of the same allegations at issue under the guise of a bailment, this Court would have reached the opposite result. (IB at 20). This Court's ruling in *Aurbach II* was not so limited. Considering the undisputed facts at issue, this Court held that the record provided no support for the notion that the father possessed any identifiable property interest that

would have justified extending the dangerous instrumentality doctrine to him as a non-owner. *Aurbach II*, 753 So. 2d at 66.

In approving the Fourth District's affirmance, this Court conducted a review of the history of the dangerous instrumentality doctrine in Florida. *Id.* at 62-65. This Court examined the doctrine's origins in *Southern Cotton Oil Co. v.* Anderson, 80 Fla. 441, 468, 86 So. 629, 637 (1920), which arose in the context of a company-owned vehicle driven by an employee. *Id.* at 62. This was a time when most families did not own motor vehicles. The analysis in *Southern Cotton Oil* supporting the imposition of liability on owners is thus heavily premised on principles governing a "master and servant" relationship. 80 Fla. 441, 86 So. 629.

With the proliferation of motor vehicles on the road over the decades that followed, this Court noted the doctrine's expansion to lessors and lessees. *See Aurbach II*, 753 So. 2d at 63; *Frankel*, 69 So. 2d at 888; *Susco Car Rental Sys. v. Leonard*, 112 So. 2d 832, 835-36 (Fla. 1959)*; Lynch v. Walker*, 159 Fla. 188, 31 So. 2d 268, 271 (1947), overruled in part on other grounds by *Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984)*; Brown v. Goldberg, Rubenstein & Buckley, P.A.*, 455 So. 2d 487, 488 (Fla. 2d DCA 1984).

Recognizing in *Aurbach II* that the facts before this Court implicated the unique question of a non-owner, non-operator parent's liability, this Court held:

> Petitioners admit that no prior case in Florida has extended the dangerous instrumentality doctrine to hold a parent liable for a child's negligent operation of a motor vehicle where the vehicle was not titled in the parent's name and where there was no indication that the parent was the intended owner of the vehicle.

Id. at 65. In fact, this Court noted that the only reported case generally addressing the matter had ruled in the parent's favor. *Id.* (citing *Wilsen v. Lesser*, 434 So. 2d 1033, 1033 (Fla. 3d DCA 1983) (holding father not liable for negligence of daughter's friend while driving car he purchased for daughter and titled in her name)).

Contrary to Petitioner's argument, this context makes clear that the rule announced in *Aurbach II* is about more than labels and technicalities. It is about circumstances that exist in countless Florida homes where a vehicle is owned by a spouse but is used by a non-owner spouse and other family members. Those common facts should not serve as a basis for pitting family members against each other in personal injury lawsuits and threatening familial livelihoods by imputing vicarious liability to additional family members who undisputedly, themselves, have done nothing wrong.

B. This Court's and the Second District's discussions regarding beneficial ownership are not the irrelevant matters Petitioner suggests.

As this Court recognized in *Aurbach II*, concepts of "beneficial ownership" have typically been used by title owners seeking to avoid dangerous instrumentality liability—not to extend liability to others where the title owner's vicarious liability is already admitted and established. *Id.* at 63-65. Petitioner attempts to escape any discussion regarding beneficial ownership, referring to it as a "straw man" theory of liability he has not pursued. (IB at 12, 25). Petitioner misses the point.

This Court in *Aurbach II* and the Second District below discussed beneficial ownership not because it is an applicable theory of vicarious liability in this context. Indeed, this Court and the Second District addressed it for the opposite reason—to illustrate that beneficial ownership analyses are typically conducted when a title owner seeks to establish that he or she had "bare legal title" and that the vehicle was actually "beneficially owned" by someone else so as to excuse the title owner from vicarious liability. *Aurbach II*, 753 So. 2d at 65; *Lambert*, 304 So. 3d at 372 n.7. No Florida court has turned concepts of beneficial ownership on their head to impose vicarious liability on *both* the title owner and non-title-owner/user of the vehicle alike, as Petitioner asks this Court to do here. This is the reality

Petitioner does not wish to confront in his dismissive treatment of these integral components of dangerous instrumentality law.

In his statement of the case and facts, Petitioner suggests that the Second District previously held a non-owner spouse could be liable in such circumstances. (IB at 6, 9 (citing *Stanford v. Chagnon*, 86 So. 3d 565 (Fla. 2d DCA 2012)). The *dicta* on which Petitioner relies for this proposition arose in the distinct context of an owner stepfather who was attempting to disclaim dangerous instrumentality liability on the basis that the non-owner mother allowed her daughter to use his truck without permission. *Id.* at 566-67.

The record contained evidence that the stepfather was protective of his truck and that the mother had allowed the daughter to use it behind his back. *Id.* at 567. Nevertheless, because there was some conflicting evidence in the record suggesting the possibility of permissive use (for example, the stepfather left his keys hanging on the wall), the Second District reversed the entry of summary judgment for the stepfather. In doing so, the court commented on the possibility of the mother's liability as bailee. *Id.* at 568. But that comment was *dicta*, as (1) it was not based on an issue actually decided, (2) it was not based on the facts of the case (the mother was not even a party to the lawsuit), and (3) it did not lead to the judgment at issue. *See State v. Johnson*, 295 So. 3d 710, 715 (Fla. 2020) (applying the three-

part test for identifying *dicta* set forth in *State v. Yule*, 905 So. 2d 251, 259 n.10 (Fla. 2d DCA 2005) (Canady, J., specially concurring)).

Notwithstanding that the statement from *Stanford* on which Petitioner previously relied is *dicta*, the facts and legal issues there were completely distinct from those at issue here. In this case, Keith Lambert, the title owner of the vehicle, is not claiming abscondment of his family car. He admitted vicarious liability as the title owner, and a judgment has been entered against him.

Nor is there any question regarding permissive use in this case. In the context of a household vehicle, permissive use is commonly a given. This further illustrates why bailment concepts are such a poor fit within a family and certainly a marriage. They assume far more clear and discrete lines of permission, purpose, scope, and control than one will ever find with spouses and family members who share one or more household vehicles. Absent the unusual circumstances of an owner seeking to avoid liability based on an alleged conversion or unauthorized use of the vehicle, Florida law does not support examining the degree of use or control exhibited by other family members to subject them to liability above and beyond that of the owner. *See id.*; *Metzel v. Robinson*, 102 So. 2d 385, 386 (Fla. 1958) (analyzing

nature of title owner's relationship to vehicle in context of owner's attempt to avoid vicarious liability).

To hold otherwise would be to promote routine and invasive fishing expeditions into the private affairs of Florida families. As a policy matter, there is no justification on balance where the Florida legislature has already deemed recourse in the capped amount against the title owner to be a sufficient measure of financial responsibility. *See* § 324.021(9)(b)3., Fla. Stat. Such recourse and responsibility are the original and enduring purposes for imposing vicarious liability under the dangerous instrumentality doctrine. *See S. Cotton Oil*, 80 Fla. 441, 86 So. 629.

Of course, the doctrine was implemented at a time when auto insurance did not exist. Auto insurance has since developed into a highly regulated system of financial responsibility, and, as reflected in Section 324.021(9), Florida Statutes, it is the backdrop against which the legislature has imposed capped financial responsibility on lessors and title owners. With respect to title owners who are natural persons, the liability of the owner who is a natural person may be capped at either $100,000.00 or up to $600,000.00. *See* § 324.021(9)(b)3., Fla. Stat. The $600,000.00 cap applied to Mr. Lambert here based on the $50,000.00/$100,000.00 limits of the Lamberts' insurance policy. (R. 1928).

In this environment, expanding dangerous instrumentality liability to expose a non-owner spouse to unlimited responsibility where that spouse shares a home, a livelihood, one or more vehicles, and an auto insurance policy with the owner spouse would be contrary to legislative action in this arena and deeply out of step with modern day realities.

As the Second District recognized, "[W]ith families, expanding the doctrine's reach beyond vicariously liable title owners to add spouses, children, step-children, siblings, and other relatives who may use a proverbial 'family car' in varying ways under varying circumstances, would require courts to taxonomize the precise property rights among relatives whose use of a car may be so loose and vacillating as to be indiscernible." *Lambert*, 304 So. 3d at 373.

This is true indeed. While this Court considered it appropriate to maintain vicarious liability in circumstances like in *Frankel*, which involved a commercial transaction resulting in a bailment for hire, it distinguished the facts of *Aurbach II* from those circumstances. This promoted sound public policy by striking the proper balance between important competing interests of financial responsibility and protection from arbitrary liability (in effect, due process). This Court's ruling also prevented a host of largely unworkable evidentiary issues that would be sure to arise from a routine application of

vicarious liability by bailment in a true household vehicle arrangement as in *Aurbach II* and here.

III. The Lamberts agree that *Aurbach II* remains good law; they disagree as to Petitioner's novel interpretation of it.

Petitioner's argument that approval of the Second District's opinion would require this Court to overrule its precedents (and that the Second District's opinion itself conflicts with those precedents) is yet another example of Petitioner's bold and unreasonable position that the law has always imposed liability upon the many Florida citizens in Mrs. Lambert's shoes. In fact, Petitioner's and the FJA's lengthy analyses on the importance of adhering to precedents support approval of the Second District's decision and strongly counsel against the expansive construction of precedents Petitioner and the FJA promote.

The Lamberts disagree, however, with Petitioner's position that even if this Court were to find "clearly erroneous" any aspect of the century-long experiment that has been Florida's dangerous instrumentality doctrine, it is powerless to correct the doctrine's course in Florida jurisprudence. (IB at 40). Even the FJA, which focuses its presentation on adherence to precedents, does not go this far. (Am. B. at 10). Citing *Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020), and *Wilsonart, LLC v. Lopez*, 308 So. 3d 961, 964 (Fla. 2020), it acknowledges that a departure from

precedents is warranted where this Court determines that such precedents or the assumed judicial authority on which they are based are "clearly erroneous." (Am. B. at 10).

This Court certainly has authority over the judicial dangerous instrumentality doctrine and should exercise that authority in the manner that best protects and balances the competing rights and interests of Florida citizens consistent with existing law. However, approval of the Second District's ruling as to Mrs. Lambert does not necessitate any such changes, as that ruling maintains the necessary balance among these interests and is consistent with *Frankel* and *Aurbach II*.

A. Petitioner's argument that the Florida legislature intended to subject non-owner spouses to unlimited vicarious liability is patently unreasonable.

Petitioner seems to recognize that it is a necessary corollary of his argument to claim that the Florida legislature intended to substantially curtail the vicarious liability of owner spouses while "retaining" (as though it ever existed) the unlimited vicarious liability of non-owner spouses. He casts this purported unlimited liability in an almost punitive light, suggesting the legislature "intend[ed] to keep full liability for those with harder-to-prove property interests who put the subject vehicle in the control of a negligent

driver" and attempting to justify the disparate exposure to Mrs. Lambert by suggesting she was more "culpable" than her husband. (IB at 13, 37 n.6).

To be clear, there is no theory of direct liability against Mrs. Lambert. She simply appeared to be the most frequent user of the family vehicle and happened to be the one who gave her son permission to use the car to drive his girlfriend to dinner on the evening of the accident. As in *Aurbach II*, this "permission" was not permission in the sense of legal authority to use the vehicle. That already existed as a blanket matter from both parents for Kyle and other family members. Rather, the permission on which Petitioner premises his purported right to a nearly $19 million judgment against Mrs. Lambert was a matter of happenstance; she simply happened to be the one who was home that evening, and the Hyundai Sonata simply happened to be the car that was available.

If Petitioner's proposed theory of liability were to become the law, the result would be a markedly increased multiplicity of defendants in auto accident cases. The many resulting fact questions would complicate the possibility of presuit settlement without plenary discovery on family members and their respective uses of the subject vehicle. Of course, those dynamics are family-specific and are often ever-changing. In the course of discovery

on these issues, family members would be pitted against one another, resulting in a variety of conflicts.

The law from the past century has made clear to Floridians that title owners are vicariously liable. Thus, Floridians understand that by titling a vehicle in the name of a spouse who primarily uses it, if that spouse becomes liable for auto negligence while using the vehicle, only that spouse will be responsible. This is because that spouse is both the operator and the title owner of the vehicle (liability would not be capped in this instance because the individual would be directly liable). If, however, a non-title-owner spouse becomes liable for auto negligence while using the vehicle, that spouse will be liable for his or her use, and the title owner spouse will be vicariously liable up to the statutory limit ($600,000.00 at most). *See* § 324.021(9)(b)3., Fla. Stat.

Floridians are on notice of this risk. They are not on notice of the novel notion that titling a family vehicle in one spouse's name could trigger both (1) vicarious liability of up to $600,000.00 for the owner spouse and (2) *unlimited vicarious liability* for the non-owner, non-operator spouse for the negligence of a permissive user (in addition to the permissive user's direct liability). The FJA attempts to conflate these two "risks" (Am. B. at 15), but only the first is a real, perceived risk that is well-understood by Floridians based on existing

Florida law. The other is a fiction that Petitioner and the FJA seek to convince this Court is the status quo.

In examining the enactment of Section 324.021(9)(b)3., Florida Statutes, the Second District noted that the legislature's "imposition of a statutory cap on this form of vicarious liability to a singular entity (defining 'owner' as a person who holds the legal title of a motor vehicle '; or' a conditional vendee, or lessee, or mortgagor) suggests that the legislature viewed the state of dangerous instrumentality law in the same way we have." *Lambert*, 304 So. 3d at 373. Indeed. Viewing the breadth of the law in this arena in its full historical context, this is the only reasonable construction.

B. Approving the reversal of a judgment for Mrs. Lambert does not require overturning this Court's precedents, as those precedents support such relief.

No less than six times in his initial brief on the merits, Petitioner states that both parties and the Second District agree that this Court should not make any "changes" to the dangerous instrumentality doctrine and that the legislature alone now occupies this territory. (IB at 2, 10-11, 13, 14, 29, 41). As noted above, the importance of adhering to precedents is also the focus of the FJA's amicus brief filed in support of Petitioner.

This argument is a red herring. It is an effort to underscore Petitioner's position that the law is and has always been as he says it is, imposing

unlimited vicarious liability on non-owner spouses. Petitioner's claim that holding otherwise would depart from this Court's precedents is based on his stated belief that this Court's precedents expanded liability for non-owner spouses to such an unlimited extent. They did not.

Petitioner's characterizations reflect an overbroad and unreasonable view that the dangerous instrumentality doctrine operates as an unbridled source of liability securing financial responsibility in as many vicariously liable parties as possible. The law has never been this way, and now is certainly not the time to expand it. As the Second District explained, "it seems odd and certainly at cross-purposes to use the fiat of common law to expand a form of vicarious tort liability that the legislature has repeatedly curtailed." *Id.* (citations omitted).

The special danger of broadly construing a judicial doctrine of liability like the dangerous instrumentality doctrine is that it runs the risk of placing the law at a stalemate. This is the effect of Petitioner's argument in that he asks this Court to apply an unreasonably broad construction of the doctrine and leave it to the legislature to identify each and every category of Floridians who could possibly be considered liable thereunder, carving them out one by one. Respectfully, that is a backward approach.

When such an approach is implemented and a novel argument like Petitioner's comes along, which would give the doctrine a new and unprecedented reach, the default will be the imposition of liability because the legislative process is not suited for carving out such novelties. This has due process implications, and it is yet another reason why the imposition and expansion of liability should come from the legislature and not the courts. This is especially the case where, as here, the liability imposed is merely technical or derivative in nature and is not based on actual fault arising from wrongful conduct.

But there is a middle ground. So long as the dangerous instrumentality doctrine continues to exist, it must be given a reasonable construction that does not expand its reach to an extent never previously recognized by Florida law. That is all the Lamberts seek here—protection for Debbie Lambert, the non-owner, non-operator wife and mother whose husband owned and is therefore vicariously liable for their son's use of the Hyundai Sonata. That protection is consistent with ideals the FJA claims to uphold, as Mrs. Lambert is not a "wrongdoer[]" who must be "held accountable," and she and the many Floridians in her shoes are likewise entitled to justice in our state's courts. (Am. Br. at 1).

CONCLUSION

The balance struck in *Aurbach II* is a careful and necessary one, and it should not be disturbed by the unwieldly expansion of liability Petitioner proposes here. The Lamberts thus respectfully request that this Court approve the decision of the Second District for entry of judgment for Mrs. Lambert, answer the certified question in the negative, and issue any further relief deemed just and appropriate.

Respectfully submitted,

s/ Sarah Lahlou-Amine
Sarah Lahlou-Amine, Esquire
Florida Bar No.: 0022709
E-mail: service-slahlou@bankerlopez.com
Chris W. Altenbernd, Esquire
Florida Bar No.: 0197394
Email: service-caltenbernd@bankerlopez.com
Banker Lopez Gassler P.A.
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602
813-384-3994
813-222-3066 (fax)
Attorneys for Respondents, Kyle Michael Lambert, Keith M. Lambert, and Debbie Lambert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida E-Filing Portal upon: **John S. Mills, Esquire, Courtney Brewer, Esquire, and Jonathan Martin, Esquire,** *Counsel for Petitioner,* THE MILLS FIRM, P.A., 325 North Calhoun Street, Tallahassee, FL 32301 at jmills@mills-appeals.com; cbrewer@mills-appeals.com; service@mills-appeals.com; **Bryan S. Gowdy, Esq.**, *Counsel for Amicus Curiae Florida Justice Association,* 865 May Street, Jacksonville, FL 32204 at bgowdy@appellate-firm.com; filings@appellate-firm.com; **Elaine D. Walter, Esq.**, *Counsel for Amicus Curiae Florida Defense Lawyers,* BOYD RICHARDS PARKER COLONNELLI, 100 S.E. 2nd St., Suite 2600, Miami, FL 33131 at ewalter@boydlawgroup.com; on this 1st day of October, 2021.

s/ Sarah Lahlou-Amine
Sarah Lahlou-Amine, Esquire
Florida Bar No.: 0022709
Chris W. Altenbernd, Esquire
Florida Bar No.: 0197394
Email: service-caltenbernd@bankerlopez.com
Banker Lopez Gassler P.A.
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602
813-384-3994
813-222-3066 (fax)
Attorneys for Respondents, Kyle Michael Lambert, Keith M. Lambert, and Debbie Lambert

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limit requirements of Rule 9.210(a)(2).

*s/ Sarah Lahlou-Amine*__________
Sarah Lahlou-Amine, Esquire
Florida Bar No.: 0022709
E-mail: service-slahlou@bankerlopez.com
Chris W. Altenbernd, Esquire
Florida Bar No.: 0197394
Email: service-caltenbernd@bankerlopez.com
Banker Lopez Gassler P.A.
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602
813-384-3994
813-222-3066 (fax)
Attorneys for Respondents, Kyle Michael Lambert, Keith M. Lambert, and Debbie Lambert