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Christopher Morrison v. Eleonora Bianca Roos

SC05-2170

PLEASE RISE.

HERE YE, HERE YE, HERE YE.

SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

DRAW NEAR.

GIVE ATTENTION.

AND YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,

THIS GREAT STATE OF FLORIDA,

AND THIS HONORABLE COURT.

GOOD MORNING.

GOOD MORNING.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

GOOD MORNING FRIENDS AND

WELCOME TO THE FLORIDA

SUPREME COURT.

THE ORAL ARGUMENT CALENDAR

FOR THURSDAY, NOVEMBER 2nd.

THE FIRST CASE ON OUR

CALENDAR IS MORRISON VERSUS

ROOS.

MAY IT PLEASE THE COURT,

ELIZABETH RUSSO ON BEHALF OF

PETITIONER CHRISTOPHER

MORRISON.

THIS PETITION MOTOR VEHICLE

PASSENGER LIFRNLTL DRIVER'S

ACCIDENTS.

THE FACT IN BRIEF ARE THAT

THE RESPONDENT ELEONORA ROOS

WAS INJURED WHEN SHE WAS A

PASSENGER IN A MOTOR VEHICLE

WHEN AN SUV STOPPED IN FRONT

OF HER, STOPPED IN TRAFFIC

BACK UNDER TO THE MOIK.

THIS IS MS. ROOS SUIT AGAIN

THE PASSENGER IN THE S,

VUSHGS THAT BACKINIZE TO THE

MOTOR VEHICLE.

THE PASSENGER WAS MY CLIENT

CHRISTOPHER MORRISON AND HE

WAS PASSENGER IN THE BACK

SEAT OF THE SUV.

THE RESPONDENT ALLEGED IN

HER COMPLAINT IN THE ALTERNATIVE THAT EITHER THE DRIVER ASKED MR. MORRISON TO TURN AROUND AND CHECK WHETHER HE COULD BACK UP INTO -- WHETHER IT WAS CLEAR BEHIND HIM AND HE COULD BACK UP OR ALTERNATIVELY THAT MR. MORRISON DECIDED TO LOOK AND SEE WHETHER IT WAS CLEAR TO BACK UP.

MS. , ROOS GO ON TO ALLEGE THAT MR. MORRISON TOLD THE DRIVER --

IS THAT MATERIAL REALLY IF -- FOR THE QUESTION WE NEED TO DECIDE WHETHER THERE IS A REQUEST TO DO SO OR WHETHER THERE IS JUST, A VOLUNTEER STATUS TO DIRECT TRAFFIC?

IS THAT A CRITICAL DISTINCTION WE NEED TO -- I DON'T THINK -- I THINK IT'S NOT A DISTINCTION FOR THE PASSENGER'S DUTIES. THAT'S JUST THE WAY IT WAS ALLEGED IN THE ALTERNATIVE. WELL COULD IT BE IMPORTANT BECAUSE THERE IS THE PRINCE PELG OF GRATUITOUS UNDERTAKING THAT YOU KNOW WHEN WE TALK ABOUT HOW BROAD OR NARROW THIS CASE IS, DOESN'T THAT MAKE A DIFFERENCE WHETHER HE DOES IT VOLUNTARILY OR SAYS LOOK, I'LL HELP YOU OUT, SO TO SPEAK?

I STILL DON'T THINK THAT IT WOULD MAKE A DIFFERENCE BECAUSE WE ARE GOING TO HAVE TO ADDRESS WHETHER THE UNDERTAKING IS AN IN THE TAKING OF A DUTY TO PEOPLE OUTSIDE THE VEHICLE OR MERELY GIVING ADVICE TO A DRIVER.

BUT WHETHER THE DRIVER'S REQUESTING IT, THE DRIVER COULD REQUEST IT AND THE PASSENGER HAS NO DUTY TO ANSWER.

IS IT BECAUSE IT'S GIVING

ADVICE TO THE DRIVER BECAUSE
THERE'S NO DUTY?

BECAUSE I'M THINKING OF CASE
WHERE'S WE HAVE DRIVERS ALL
THE TIME WHERE THERE IS
PEOPLE OUTSIDE DIRECTING
TRAFFIC AND TELLING YOU TO
GO OR STOP AND, AND SAY
SOMEONE SOMEONE AT A
CONSTRUCTION SITE SO THEY'RE
OUTSIDE AND THEY'RE TELL
AGDRIVER TO DO SOMETHING.
THE DRIVER, THERE MAY BHE A
CAUSE OF ACTION IN THOSE
SITUATIONS IF THEY DO THAT
NEGLIGENTLY.

IT WOULD BE POSSIBLE THEY
WOULD BECAUSE UNDER THOSE
CIRCUMSTANCES IT'S
UNDERSTOOD CONTROL OF SOME
TYPE AS TO WHICH WAY THE
DRIVER IS GOING TO BE MOVING
THE VEHICLE HAS BEEN SHARED
WITH ANOTHER, WITH SOMEONE
WHO'S OUTSIDE THE VEHICLE
AND IS SPLITTING THAT
RESPONSIBILITY.

WELL, ISN'T THIS TOO
EARLY, ISN'T THIS TOO EARLY
IN THE CASE TO REALLY KNOW
BECAUSE IF THE, THIS IS ON A
MOTION TO DISMISS A
COMPLAINT, CORRECT?
RIGHT.

SO WHAT IN THE DRIVER
SAYS, I WOULDN'T HAVE BACKED
UP MR. MORRISON HADN'T TOLD
ME.

I WAS RELYING ON HIM.

I COULDN'T SEE.

I WOULDN'T HAVE DONE
ANYTHING BUT FOR THIS.

SO DOESN'T SOME MORE FACTUAL
DEVELOPMENT NEED TO BE HAD
TO REALLY UNDERSTAND WHETHER
THIS, WHAT THE RELATIONSHIP
WAS AT THAT TIME BETWEEN
MR. MORRISON AND THE DRIVER?

WELL, THE PETITIONER
DOESN'T BELIEVE SO.

THE PETITIONER BELIEVES THIS
IS A QUESTION OF DUTY THAT
SHOULD BE DECIDED BY THE
COURT WHICH IS GOING TO BE A

POLICY QUESTION.

AND WE WOULD SUBMIT THAT DRIVERS ALONE ARE THE ONES WHO SHOULD BE RESPONSIBLE AND REMAIN RESPONSIBLE FOR OPERATION OF A VEHICLE. THEY'VE HAD TO QUALIFY FOR IT.

THEY'VE HAD TO BE LISBSED FOR T. THEY HAD TO GO THROUGH WHATEVER THE REQUIREMENTS ARE VISION WISE, ABILITY WISE, KNOWLEDGE OF RULES OF THE ROAD AND THEY HAVE ALWAYS HAD THE RESPONSIBILITY SOLEY FOR OPERATING THE VEHICLE SO THAT, SO TO ANSWER THE QUESTION, I BELIEVE THAT THE COURT HAS TO DECIDE WHETHER TO DIFFUSE THAT DUTY AMONGST MEMBERS OF THE COURT.

MR. RUSSO IN MY READING OF WHAT JUDGE WOLF WROTE IN THE FIRST DISTRICT, HE, HIS OPINION AROUND ROOS'S AMENDED COMPLAINT ALLEGED THAT MORRISON AGREED TO SEE IF IT WAS CLEAR FOR HIS DRIVER.

NOW, THAT IS A, AN INTERPRETATION THAT SEEMS TO ME TO, THAT, THE DUTY REALLY HERE, THOUGH THEY TALK ABOUT McCAIN, DOESN'T ARISE OUT OF McCAIN ACCORDING TO THAT T. ARISES OUT OF AN AGREEMENT TO UNDERTAKE TO PERFORM SOME OBLIGATION, SOMETHING FOR THE DRIVER.

AND ABSENT THE AGREEMENT, MAYBE YOU'D HAVE A DIFFERENT SITUATION.

I, I STILL THINK THAT IT WILL COME BACK TO WHETHER THE COURT WANTS TO DIFFUSE THE DUTY OF THE DRIVER TO ALLOWING PASSENGERS TO BY SAYING, HEY, LITTLE JOEY, AGE 3, CAN YOU LOOK OUT THE BACK WINDOW FOR ME. SURE, MOM.

IT'S GOING TO IN EACH INSTANCE, A PASSENGER MAY

MAY AGREE TO, TO TAKE A LOOK
AT ONE CONDITION OR ANOTHER

--

WHAT ABOUT THE OPPOSITE
SIDE OF THAT, THAT IS THE,
THE POSSIBLE CATCH-22, THAT
IS THAT IF WE DON'T
RECOGNIZE SOME OBLIGATION ON
THE PART OF SOMEBODY THAT
TAKES ON THIS DUTY AS, AS AT
LEAST AS PARENTLY ALLEGED,
THAT THE DRIVER CAN NOW
AVOID RESPONSIBILITY.

BY ASSERTING THAT WELL, I
HAD SOMEBODY THAT WAS ANE
MUCH BETTER POSITION THAN I
TO DETERMINE WHETHER THERE
WAS ANYONE BEHIND US OR
WHATEVER AND THEREFORE I, I
PERFORMED MY DUTY AND
REASONABLE CARE.

AND THEN WE END UP IN A
CATCH-22 THAT YOU CAN'T HOLD
THE DRIVER RESPONSIBLE
BECAUSE THE DRIVER ACTED
WITH REASONABLE CARE IN
HAVING SOMEBODY THAT WAS ANE
BETTER POSITION AND YOU
CAN'T HOLD THE PERSON THAT
WAS IN THE BETTER POSITION
RESPONSIBLE.

AND SO THE PERSON THAT WAS
INJURED THEN, YOU KNOW, BY
THIS MANEUVER ENDS UP WITH
NO ONE RESPONSIBLE.

NO, I DON'T THINK THE
CATCH-22 ARISES UNLESS YOU
AGREE THAT THERE'S GOING TO
BE A DUTY ON THE PASSENGER.
AND THE REASON THAT WE'RE
SUBMITTING THAT THERE SHOULD
NOT BE A DUTY ON THE
PASSENGER, AND IT REMAIN
WITH THE DRIVER SOLEY, THE
DRIVER SHOULD NOT BE ABLE TO
RAISE THAT AS A DEFENSE
BECAUSE ALL THAT ANY
PASSENGER CAN DO IS GIVE HIM
SOME BIT OF INFORMATION.
THE ULTIMATE DECISION AS TO
WHAT TO DO WITH, WITH THE
VEHICLE, HE MAY PERCEIVE
THAT SOMEONE IN THE BACK
SEAT HAS A BETTER VANTAGE

POINT.

BUT THAT SHOULD NOT BE THE BASIS FOR HIS DECISION TO BACK UP OR NOT BACK UP.

I MEAN, THIS IS THE CASE.

WHY NOT?

LET'S ASSUME THAT, THAT THE BASIS OF HIS DECISION IS TO LOOK IN A REARVIEW MIRROR, AN OUTSIDE REARVIEW MIRROR, BUT THAT AT THE TIME -- WELL, THAT'S EXACTLY.

YEAH, WELL, WHAT'S THE DIFFERENCE.

THAT'S EXACTLY WHAUS HE'S -- WHAT'S HES SUPPOSED TO DO.

WHAT'S THE DIFFERENCE RELYING ON SOMEBODY IN THIS POSITION WITH TWO GOOD EYES THAN RELYING ON THE MIRROR? BECAUSE HE IS THE ONE THAT HAS TO DUTY TO MAKE THE DECISION OF DO I HAVE ENOUGH INFORMATION ALL THINGS CONSIDERED TO MAKE THIS, TO MAKE THIS -- TO DO A BACKING MANEUVER, FOR EXAMPLE.

AND YOU KNOW, THERE'S SPECIFIC -- FLORIDA STATUTES COVER BACKING MANEUVERS.

YES, YOUR HONOR?

JUSTICE CANTERO.

IF THE DRIVER RELIES ON SOMEONE ELSE TO BE HIS EYES SAY ON LITTLE JOEY IN YOUR EXAMPLE WHO'S 3 YEARS OLD, YOU WOULD AGREE THAT THAT FACT WOULD GO TO A DETERMINATION OF THE DRIVER'S NEGLIGENCE.

I THINK ALL OF THIS GOES TO THE DRIVER'S NEGLIGENCE.

IF THE DRIVER -- THE DRIVER AS YOU SAID IS ULTIMATELY RESPONSIBLE FOR DRIVING THE VEHICLE.

SO IF HE RELIES ON SOMEONE, IT'S ALMOST HE ASSUMES THE RISK THAT THAT SOMEONE IS GOING TO WRONGLY ADVISE HIM, OF, OF WHAT'S GOING ON BEHIND HIM.

RIGHT.

OR HE STILL HAS TO PROCESS
ALL INFORMATION TO DECIDE IS
IT SAFE?
BECAUSE I'M THE ONE WHO HAS
THIS DANGEROUS
INSTRUMENTALITY IN MY HANDS
AND MAYBE THE PERSON I'M
ASKING THE PASSENGER HAS
ENOUGH INFORMATION.
MAYBE THEY DON'T.
I MEAN IN THIS CASE FOR
EXAMPLE, PRESUMABLY,
MR. MORRISON DIDN'T ACTUALLY
SEE THE MOTOR VEHICLE -- THE
MOIK, AND SAY, OKAY, BACK UP
ANYWAY Y. MEAN, THERE'S NO
ALLEGATION OF THAT.
WHETHER THE PASSENGER SAY
STAYS IN THE VEHICLE OR
EXITS THE VEHICLE, FOR
INSTANCE, IN THIS INSTANCE
IF THE PASSENGER SAYS, LET
ME GET OUT AND ASSIST YOU
AND HE GETS OUT.
YOU KNOW?
AND 93 HE, HE SAYS, YOU KNOW,
ALL RIGHT.
COME ON, COME ON BACK.
YOU KNOW, DOES THAT MAKE A
DIFFERENCE?
I CAN SEE THAT MAKE
AGDIFFERENCE IN THE
DISTINCTION THAT I SEE IS,
IS THE ISSUE OF CONTROL.
AND THAT IS, IS THERE
SOMETHING ABOUT WHAT THE
PASSENGER -- IF SOMEONE'S
OUTSIDE OF A CAR SIGNALING
TO IT, THERE IS BASICALLY AN
ACKNOWLEDGMENT BETWEEN
DRIVER AND SIGNALER THAT,
THAT THE, THE SIGNALER IS
GOING TO BE --
ISN'T THAT AN ARTIFICIAL
--
CONTROLLING THE WAY --
ISN'T THAT AN ARTIFICIAL
DISTINCTION IS IN.
I DON'T THINK SO.
THE PASSENGER TURNS AROUND
INSIDE THE VEHICLE AND
CLAIMS TO HAVE A FULL VIEW,
YOU KNOW, BEHIND, AND SAYS,
ALL RIGHT, YOU KNOW, BACK UP

SIX FEET.

ALL RIGHT.

PULL IT TO THE LEFT A LITTLE
BIT.

AND IS DOING THAT, YOU KNOW,
FROM INSIDE THE VEHICLE.

WHAT'S THE DIFFERENCE
BETWEEN DOING THAT INSIDE
THE VEHICLE AND IF THE
PASSENGER WAS OUTSIDE AND
GAVE LITERALLY THE SAME KIND
OF INSTRUCTIONS?

WELL, WHAT I THINK THE
DIFFERENCE IS IS THAT WITH
-- IF YOU LEAVE THE DUTY
WHERE IT SITS WITH THE
DRIVER, HE HAS THE
RESPONSIBILITY FOR AND CAN'T
TO LOOK TO PEOPLE WITHIN THE
CAR OTHER THAN FOR WHATEVER
BITS OF INFORMATION THEY CAN
PROVIDE.

IT'S DIFFERENT IF THERE'S AN
ACKNOWLEDGMENT THAT, ALL
RIGHT, SITTING WITHIN THE
CAR, DRIVING AND GETTING THE
INFORMATION I CAN GET FROM
WITHIN THE CAR AND FROM MY
OWN EYES AND FROM MY OWN
REARVIEW MIRRORS AND SO
FORTH, I CAN'T BE SURE THAT
IT'S SAFE TO BACK UP.

OR I CAN'T I CAN'T BE SURE
THAT IT'S SAFE TO MAKE THE
MANEUVER THEN SIT STILL.
DON'T DO IT.

WHAT ABOUT THE SITUATION
WHERE, YOU KNOW, SO OFTEN
THERE'S A WHOLE LINE OF
TRAFFIC.

THERE'S SOMEONE TRYING TO
GET OUT OF, SAY, A STORE.

AND I'M IN, IN THE CAR JUST
BEFORE THE DRIVEWAY.

AND TRAFFIC'S COMING.

THIS GUY WANTS TO PULL OUT
Y. TELL HIM, YEAH, IT'S SAFE
TO PULL OUT.

HAVE WE DEALT WITH ANY
SITUATIONS AS TO WHETHER OR
NOT I WOULD HAVE ANY KIND OF
LIABILITY BECAUSE I WAS
TELLING THE DRIVER COMING
OUT OF THE STORE THAT IT WAS

SAFE FOR HIM TO GO AND YET HE RUNS INTO SOMEONE ELSE? IT'S IN THIS COURT'S DECISION THAT IT WAS DEALT WITH AND IT WAS DETERMINED THAT THERE COULD BE A FACT QUESTION ABOUT THAT. AND IT SEEMS TO HAVE HINGED IN THE CASES FROM FLORIDA SO FAR THAT HAVE DEALT WITH IT ON WHAT THE VANTAGE POINT OF THE PARTICULAR DRIVER, DRIVER IS. OR DRIVER TO DRIVER SIGNALING. I MEAN WHY WOULD THIS BE DIFFERENT? I'M SUBMITTING THAT AS A MATTER OF POLICY YOU SHOULD NOT ALLOW DRIVERS TO DIFFUSE THEIR RESPONSIBILITY TO PASSENGERS. DRIVERS TO DRIVERS SIGNAL TO EACH OTHER ALL THE TIME. SIGNALING FROM DRIVERS TO DRIVERS IS EXPECTED AND INDEED REQUIRED. YOUR LEFT-HAND TURN SIGNAL, YOUR RIGHT-HAND TURN SIGNAL IF THEY'RE BROKEN, THE ARM OUT THE WINDOW AND DEALING WITH EACH OTHER IN TRAFFIC SITUATIONS. FOR EXAMPLE, ONE OF THE SITUATIONS WHERE IT WAS ALLOWEDDANE BIG COCA COLA TRUCK OR SOMETHING WHERE SINCE THE DRIVER OF THE COCA COLA TRUCK WAS MOTIONING PRESUMABLY UNDER THE CIRCUMSTANCES COULD WITH HIS REARVIEW MIRRORS AND HIS HIGHER VANTAGE POINT HAVE MORE INFORMATION OR ANOTHER DRIVER --

[INAUDIBLE]

YOU'VE ALREADY SAID THAT A DRIVER CAN --

[INAUDIBLE]

AL

[INAUDIBLE]

I'M CERTAINLY SAYING IT SHOULDN'T.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

YES, I SEE A VERY CLEAR
DISTINCTION IN POLICY
REASONS FOR MAINTAINING THAT
DISTINCTION.

AND IT IS BECAUSE OF THE
RESPONSIBILITY OF A DRIVER
AND BECAUSE AS I SAY I DON'T
THINK IT SHOULD BE DIFFUSED.
WELL, LET'S --

[INAUDIBLE]

[INAUDIBLE]

YES, AND THE FIRST
DISTRICT RAISED THAT.
I THINK THAT'S ONE OF THE
REASONS THEY CERTIFIED IT TO
THIS COURT.

DRIVERS ARE REQUIRED TO
CARRY CERTAIN INSURANCE.
IT'S SUCH AN AMORPHOUS
CATEGORY HERE WITH ANY
PASSENGER THAT PROVIDES ANY
INFORMATION TO THE DRIVER.
DOWN TO THE LEGAL
CONCEPTS AND IT SEEMS TO ME
THAT YOU ARE PRIMARILY
SAYING BECAUSE OF THE DUTY
THAT'S ON THE SHOULDERS OF
THE OPERATOR OF THE
EQUIPMENT THAT THAT'S NOT A
DUTY THAT CAN BE SHIFTED IN
ANYWAY ANY WAY TO A
PASSENGER.

SOMETHING ALONG THOSE LINES.
YES.

WE HAVE AN AREA OF THE
LAW IT SEEMS TO ME AN
INHERENTLY DANGEROUS
OPERATIONS AND WE TALK IN
TERMS OF THAT'S NONDELEGABLE
DUTY.

NOW, THAT'S NOT WHAT'S BEEN
DESCRIBED AS INHERENTLY
DANGEROUS BUT IT'S A
DANGEROUS INSTRUMENTALITY.
DO WE HAVE ANY CASE LAW OR
DOES THIS STATE HAVE ANY
LIEU THE DELEGATED DUTY
THAT'S NOT DELEGABLE IS
IMMUNE FROM RESPONSIBILITY
OR DOES NOT HAVE A SIMILAR

DUTY?

I --

DO YOU UNDERSTAND MY
QUESTION?

I DO, AND HAVING READ ALL
OF THE CASES, ON THIS
THROUGHOUT THE COUNTRY, NO
ONE HAS EVER DISCUSSED IT IN
TERMS OF A NONDELEGABLE
DUTY.

IT HAS BEEN DISCUSSED MERELY
IN TERMS OF --

THAT SEEMS TO BE WHAT YOU
ARE SAYING THAT THE
OPERATION OF THE VEHICLE IS
LICENSED, TESTED, AND
THEREFORE YOU CAN'T -- YOU
CAN'T SHIFT THE DUTY TO
SOMEBODY ELSE IS TEAMS -- IT
SEEMS TO BE WHAT YOU ARE
ARGUING THIS MORNING.

I'M ARGUING THAT WE KNOW
KNOWERATORS DRIVER'S DUTY
AND WE KNOW WHY.

AND THERE HAVE BEEN DUTIES
CREATED -- ACKNOWLEDGED FOR
PASSENGERS IN THE PAST IN
LIMITED CATEGORIES FOR, FOR
EXAMPLE, A PASSENGER HAS A
DUTY FOR HIS OWN SAFETY.

WEAR A SEAT BELT IS THE
CASES WHERE THAT COMES UP A
LOT.

AND MOST OF THOSE CASE AROSE
WHEN A PASSENGER GETS
INJURED AND WANTS TO SUE THE
DRIVER AND IT TURNS OUT THAT
THEIR INJURIES WERE CAUSED
IN PART BY NOT HAVE AGSEAT
BELT ON.

SO THEY HAVE A DUTY OF CARE
FOR THEIR OWN SAFETY.

THERE IS A DUTY NOT TO
INTERFERE WITH A DRIVER.

I THINK THERE WAS SOME CASE
WHERE A PASSENGER WAS
HITTING THE DRIVER ON THE
HEAD AND MAKING THE DRIVER
TURN HIS HEAD AROUND.

CLEARLY, THAT HAS NOW
INTERFERED WITH THE DRIVER'S
ABILITY TO DO WHAT HE'S
SUPPOSED TO BE DOING.

OR THERE HAS BEEN A DUTY

ALLOWED WHERE THERE'S SOME,
SOME JOINT CONTROL OVER THE
CAR.

FOR EXAMPLE, THE DRIVING
INSTRUCTORS WHERE THEY HAVE
THEIR OWN STEERING WHEEL OR
THEY'RE THERE TO INSTRUCT
THE DRIVER OR IN STATES
WHERE A LEARNING PERMIT --
YOU'RE INTO YOUR REBUT.

I'M SORRY?

YOU'RE INTO REBUTTAL USE
YOUR TIME AS YOU WISH.

IN CASE WHERE'S THERE'S
BEEN A DUTY FOR COURTS
RECOGNIZE FOR PASSENGERS
MAKING SENSE IN THE CONTEXT.

I'M SAYING TO, TO, TO,
YOU'RE REALLY DRIESING HERE
AS THE FIRST DISTRICT HAS
POINTED OUT A CASE OF FIRST
IMPRESSION AND IT IS DO YOU
WANT TO SAY THAT ALL
PASSENGERS WHO ARE IN A CAR
WHETHER THEY VOLUNTEER
INFORMATION ABOUT WHATEVER
IT IS THEY CAN SEE OR
PERCEIVE OR WHETHER THEY'RE
ASKED FOR INFORMATION FROM
THE DRIVER THAT THAT CREATES
A DUTY ON THEIR PART FOR
WHATEVER THE DRIVER CAUSES
WITH HIS DECISION, HIS
ULTIMATE DECISION THAT
CAUSES THE ACCIDENT.

AND WE SUBMIT THAT THAT'S
TAKING TOO LARGE OF A STEP
IN CREATING PASSENGER
DUTIES.

IT'S GOING TOO AMORPHOUS
WITH ALL THE TYPES OF
PASSENGERS WHAT THEY CAN SEE
AND THAT THE BETTER, THE
BETTER POLICY DECISION IS TO
LEAVE THE RESPONSIBILITY
WITH THE DRIVER.

FORTUNATELY FOR INSURANCE
PURPOSE BUT ALSO THAT'S WHO
SHOULD BE OPERATING IT AND
YOU DON'T WANT EVERY TIME
THERE'S A LAWSUIT AND THE
DRIVER'S BEEN SUED HIM TO BE
ABLE TO SAY, OH, WELL, I
ASKED JIMMY TO TELL ME SUCH

AND SO SO HE SHOULD BE A
FABRE DEFENDANT.

AND.

WE'RE ASKING YOU TO KEEP IT
CLEAN -- AND SHOULDN'T THE
CONCEPT OF FABRE DEFENDANTS
CONTROL OUR BASING COMMON
LAW AND VIEW OF DUTY.

SHOULD IT?

YEAH.

YEAH.

IN PART.

IN PART.

IN PART YES BECAUSE YOU'RE
LOOKING AT, WHO IS IT THAT
WHO SHOULD BE HELD LIABLE
FOR THINGS?

AND WE ALREADY WANT THE
RESPONSIBILITY TO LIE?

AND WHAT KIND OF LITIGATION
ARE YOU GOING --

ANY POLICY DECISION

TAKINIZE TO ACCOUNT TO SOME
EXTENT WHAT KIND OF

LITIGATION ARE YOU GOING TO

CAUSE AND IS IT FOR A GOOD

RES SNN IF IT'S FOR A GOOD

REASON BUT WE SAY IT'S

BETTER ONE.

THANK YOU I WILL SAVE

WHATEVER I HAVE LEFT FOR

REBUTTAL.

THANK YOU, COURT.

MY NAME IS TOMER EW, JR. AND

I HAVE THE PLEASURE OF

REPRESENTING.

AREN'T WE HEADED DOWN AN

UNCHARTED PATH HERE?

I MEAN IS IT A SHOULD'VE

KNOWN.

WOULD THAT BE A

RESPONSIBILITY OF THE

DRIVER?

THE DRIVER SAYS LOOK AND SEE

IF THE GUY IS THERE OR LOOK

AND SEE IF THE INTERSECTION

IS CLEAR?

AND THE DRIVER AND THE

PASSENGER DOESN'T SEE THAT

THERE'S A VEHICLE COMING.

IS THE PASSENGER COMPARATIVELY

NEGLIGENT?

IF IT IS UNDER THESE

SPECIFIC UNIQUE FACTS.

AND WHAT I'D LIKE TO STRESS
IS UNIQUENESS --
WELL ANSWER MY QUESTION.
IS A DRIVER -- IS A
PASSENGER IN A VEHICLE
BECAUSE OF THIS DUTY THAT,
THAT, DRIVER ASKING THE
PASSENGER ABOUT THE TRAFFIC
CONDITIONS, KA PASSENGER BE
COMPARATIVELY NEGLIGENT
BECAUSE THE PASSENGER
DOESN'T SEE A VEHICLE COMING
INTO THE INTERSECTION?
I HAVE TO ADD SOME FACTS
TO THAT HYPOTHETICAL TO KNOW
DID THE DRIVER VOLUNTARILY
ASSUME THE DUTY TO DO SO?

--

CAN HE VOLUNTARILY ASSUME
IT BY SILENCE?

NO.

THERE IS AN OUT OF STATE
CASE.

THE GANDY CASE, WHERE THE
DRIVER ASKS THE PASSENGER
IT'S A SITUATION WHERE, I
BELIEVE A TRACTOR TRAILSER
BACKING OVER TRAIN TRACKS
AND HE ASKS THE PASSENGER TO
LOOK OUT.

AND THE PASSENGER --
WHAT FLORIDA CASES HAVE
PUT A DUTY ON THE DRIVER?
ON THE PASSENGER --
ON THE PASSENGER.

THE CASES THAT PLACE
DUTIES ON PASSENGERS, THERE
HASN'T -- THIS IS A CASE OF
FIRST IMPRESSION.

THERE'S BEEN CASES WHERE
THEY'VE PUT THE DUTY ON
PASSENGER IF HE KNOWS HIS
OWN DRIVER IS ACTING
DANGEROUSLY AND COULD HURT
HIMSELF AS AT THE TIME AND
OPPORTUNITY TO PROTEST HE
MUST PROTEST OR HE'S FOUND
TO BE COMPARATIVELY
NEGLIGENT. IF YOU'RE ACTIVELY
NEGLIGENT -- WHAT WE'RE
SAYING IN THIS CASE IS IS A
PASSENGER DOESN'T GAIN
IMMUNITIES BY STEP NOTHING
TO A CAR.

-- STEPPING INTO A CAR.
AND NO CASE SAYS THAT.
SO YOU WOULD DRAW A
DISTINCTION BETWEEN ACTIVE
NEGLIGENCE AND PASSIVE
NEGLIGENCE?
YES.
AND --
DOES THAT MEAN THAT THE,
THAT THE DRIVER WOULD HAVE A
RIGHT OF INDEMNITY AGAINST
THE PASSENGER?
I'M NOT -- I DON'T DO
INDEMNITY OR INSURANCE
DEFENSE.
PEOPLE SAY INDEMNITY, I
DON'T KNOW.
MY CONCERN IN THIS CASE
IS UNDERLYING AUTONEGLIGENCE
LAW IS THE CONCEPT OF
INSURANCE.
WE HAVE NO FAULT LAW.
ALL DRIVERS ARE REQUIRED TO
CARRY INSURANCE.
A LOT OF THESE, THIS
LITIGATION IS CONDUCTED
WITHIN THE CONTEXT OF
INSURANCE.
AND NOW YOU ARE IMPOSING
LIABILITY ON A NONINSURED
INDIVIDUAL.
ARE WE NOW GOING TO HAVE
PASSENGERS EITHER REQUIRED
OR PURNLTED TO CARRY
INSURANCE FOR THEIR
NEGLIGENCE WHEN THEY JUST
STEP INTO A CAR?
WELL, FIRST, JUDGE,
FLORIDA DOESN'T REQUIRE THIS
DRIVER TO HAVE ANY BODILY
INJURY LIABILITY COVERAGE
THAT WOULD HELP OUT MY
CLIENT.
M PROPERTY DAMAGE.
THE OTHER ASPECT OF OF IT,
IN FACT THE FIRST QUESTION
FROM THE FIRST DCA TO ME WAS
THE PASSENGER HAVE INSURANCE
AND I THOUGHT TO MYSELF I
HOPE SO BECAUSE IF HE DIDN'T
I WOULDN'T BE HERE.
WELL EVEN IF HE DID WOULD
IT COVER --
IT DEPENDS ON HOMEOWNERS

INSURANCE AND AUTOMOBILE
POLICY BUT I DON'T THINK WE
SHOULD BE PLACING WHETHER
THERE IS INSURANCE OR NOT ON
WHETHER SOMEBODY HAS A DUTY

--

WELL, WE ALREADY HAVE --
I THINK THAT'S CERTAINLY A
CONSIDERATION FOR THIS COURT
IN TERMS OF WHERE TO IMPOSE
THE DUTY.

THE DUTY IS ALREADY IN
IMPOSED ON THE DRIVER.
EVEN IF THE PASSENGER
PASSENGER IS NOT LIABLE
HERE, THE DRIVER WILL BE
BECAUSE THE DRIVER IS THE
ONE THAT CAUSED THE
ACCIDENT.

SO WHY DO WE NEED TO EITHER
SHIFT OR ADD RESPONSIBILITY
ON TO ANOTHER INDIVIDUAL
WHEN WE ALREADY HAVE A
RESPONSIBLE PARTY?

WE AREN'T SHIFTING ANY OF
THE DRIVER'S RESPONSIBILITY
ON TO THE PASSENGER.

YOU KNOW, THEY LIKE TO --
THEY'VE CHARACTERIZED IT
IMPUTING THE DRIVER'S
NEGLIGENCE TO THE PASSENGER.
WE'RE NOT -- THERE ARE TWO
SEPARATE DUTIES HERE.

THE DRIVER HAS HIS OWN DUTY
AND IF I VOLUNTARILY ASSUME
TO UNDERTAKE A TASK, I HAVE
TO DO IT REASONABLY.

[INAUDIBLE]

IT'S --

[INAUDIBLE]

[INAUDIBLE]

THE CRITERIA THEY HAVE TO
BE SATISFIED IS THAT THE
PASSENGER HAS TO ASSUME THE
TASK.

[INAUDIBLE]

IT HAS TO BE -- IT'S A
GRATUITOUS UNDERTAKING AND
THAT'S CURFOOT.

CURFOOT IS A GRATUITOUS
UNDERTAKING.

DRIVERS.

--.

[INAUDIBLE]
AND RIGHT.
AND THEY HAVE TO BE IN A
POSITION SUPERIOR TO THE
DRIVER TO SEE THE DRIVER'S
PATH OF TRAVEL, WHICH --

[INAUDIBLE]
[INAUDIBLE]
[INAUDIBLE]
I --, I WOULD THINK THE
DRIVER WOULD ALWAYS BE ON
THE VERDICT FORM.
AND WE'VE, HAVE NEVER
ALLEGED THAT THERE'S
ABSOLUTELY NO NEGLIGENCE --

[INAUDIBLE]
WHETHER THEY WOULD BE
COMPLETELY LIABLE OR NOT
WOULD BE APPORTIONING OF
RESPONSIBILITY WHEN THEY
HEAR THE RESPECTIVE DUTIES
AND ACTS OF THE DRIVER AND
PASSENGER --
NOBBLE
[INAUDIBLE]
[INAUDIBLE]
OR --

[INAUDIBLE]
I THINK THE CONCERN WOULD
BE WHAT JUSTICE ANSTEAD
RAISICIDE THAT THE DRIVER
COULD CONTEND IN THAT --

[INAUDIBLE]
I THINK WE WOULD BE AT
ODDS WITH THE ESTABLISHED
CASE LAW THAT IF YOU
UNDERTAKE A TASK YOU HAVE TO
EXERCISE REASONABLE CARE AND
WE ARE GOING TO GIVE
IMMUNITY TO SOMEBODY -- WE
ARE GOING TO CARVE OUT AN
EXCEPTION TO THE VOLUNTARILY
UNDERTAKING CASE --
WELL, I TAKE ISSUE WITH
THAT BECAUSE WE'VE NEVER
APPLIED THE UNDERTAKER CASE
TO A PASSENGER IN AN
AUTOMOBILE.
-, CORRECT BUT WHAT THE
FIRST CCA IS CER FOOT IS A

VOLUNTARILY UNDERTAKING CASE
IS DRIVER --
THAT WAS AN ACTION --
DRIVERS --
EXCUSE ME.
GO AHEAD.
DRIVER'S HAVE NO
OBLIGATION.
THE DRIVER SAYS SHE HAS
SIGNALING RESPONSIBILITY BUT
PASSENGERS DON'T.
DRIVERS HAVE SIGNALING
RESPONSIBILITY OVER WHAT
THEY DO, TURNING, STOPPING,
PUTTING ON FLASHERS.
THEY HAVE NO OBLIGATION TO
SIGNAL TO ANOTHER DRIVER
WHAT TO DO.
YEAH.
NEITHER DOES THE
PASSENGER.
HERE IS THE PROBLEM I AM
HAVING AND I WOULD LIKE YOU
TO -- I MEAN, SPEAK TO THIS,
THAT IF, WE HELD -- IF WE
WENT ALONG WITH THE FIRST
AND SAID, OKAY, IF THERE IS
AN AGREEMENT, THEN YOU GET
INTO A LOT OF, OF
MISINATIONS AS TO WHAT'S AN
AGREEMENT.
IS IT AN AGREEMENT WHERE THE
DRIVER IS GOING TO SAY I
LOOKED BACK AT THE PASSENGER,
I ASKED THE PASSENGER IF THERE
WAS ANYBODY BEHIND ME, AND I
LOOKED BACK AT THE
PASSENGER, AND THE PASSENGER
NODDED HIS HEAD.
IS THAT ENOUGH?
OR DOES A PASSENGER HAVE TO
SAY EXPRESSLY THERE IS NO
ONE BEHIND ME.
I MEAN, YOU END UP WITH ALL
THOSE --
WELL,, I MEAN, I THINK IT
WOULD GET INTO THE FACTS.
WOULD A NOD, IF IT WAS AN
AMBIGUOUS TASK THAT THE JURY
MAKE A FACTUAL DECISION AS
TO WHETHER HE VOLUNTARILY
ASSUMED THE TASK.
THE THING WHY THIS IS SUCH A
STRONGER CASE THAN THE

CURFOOT CASE IS THAT YOU HAD THE, THE ISSUES IN THOSE CASES WHICH GOT OPENED UP AND I'M SURE FLOOD GATES WAS ARGUED IN THOSE CASES AND THERE'S BEEN AFTER CURFOOT THERE'S BEEN TWO CASES THAT HAVE CONSTRUED CURFOOT IN THOSE CASES.

THERE WAS ALWAYS ALWAYS A QUESTION OF WHAT DID THAT WEIGHT MEAN.

DOES THAT MEAN YOU CAN COME IN MY LANE BUT I AM NOT TELLING YOU ANYTHING OVER HERE OR DOES THAT WAVE ME YOU CAN COME IN MY LANE AND I'VE ALREADY LOOKED AND IT'S CLEAR AND YOU CAN GO? AREN'T WE TALKING ABOUT SOMETHING FAR MORE EXPANSIVE, THAT IS, IF THERE IS A SITUATION AROUND WHERE A COUPLE OR TWO PEOPLE, YOU KNOW, WITH A RIGHT FRONT SEAT PASSENGER THAT THE DRIVER DOESN'T SAY IS A IS IT CLEAR TO THE RIGHT --

I DON'T THINK ANY -- SO THE PASSENGER, NOW HOW IN THE WORLD WOULD YOU NOT EXTEND THE RULE THAT COMES OUT OF THIS CASE TO IS IT CLEAR TO THE RIGHT?

WELL, I DON'T THINK -- I DON'T THINK ANY FRONT SEAT PASSENGER COULD EVER BE FOUND AT FAULT BECAUSE THEY ARE NEVER GOING TO BE IN A SUPERIOR POSITION TO THE DRIVER.

YOU MEAN THE FRONT SEAT PASSENGER ON THE RIGHT-HAND SIDE ON TRAFFIC COMING DOWN THE ROAD IN THE --

NO.

THEY'RE NOT IN A SUPERIOR POSITION TO THE DRIVER? JUST BECAUSE THEY'RE ANE TWO FEET CLOSER -- WHY DOES THE DRIVER ASK THAT PERSON THEN, YOU KNOW TOO, CLEAR THEM TO THE RIGHT?

WELL, I DON'T -- I DON'T
KNOW, BUT I WOULDN'T -- I
DON'T THINK THAT THE UNIQUENESS
OF THIS CASE --

THIS IS ONE OF THE THINGS
THAT WE HAVE TO CONSIDER
THAT WHERE DOES THIS GO
AFTER WE, YOU KNOW,
DETERMINE A CASE LIKE THIS,
ARE WE NOW GOING TO BE
TALKING ABOUT FAMILY
LIABILITY, THAT IS, THAT THE
FAMILY GOES OFF ON A
VACATION TRIP AND THEY'VE
GOT THE CHILDREN IN THE CAR
AND THEY SAY, ALL RIGHT,
MOLLY, YOU KNOW, YOU'RE
GOING TO LOOK OUT, YOU KNOW,
WHEN DAD PASSES, AND, ALL
RIGHT, SAMMY, DO I HAVE
ENOUGH ROOM TO GET AROUND
OVER HERE ON THIS SIDE?
AND MY GOODNESS.

AREN'T WE NOW SORT OF
MAKING LIKE A TEAM CONCEPT
IN THE VEHICLE BECAUSE
THERE'S HARDLY A TIME WHEN
THERE'S MORE THAN ONE PERSON
IN AN AUDIBLE THAT SOMEBODY
ELSE IN THE AUTOMOBILE PLAYS
A ROLE IN, IN THE MANEUVERS
OF THE MOVEMENTS OF THE CAR.
SO WHERE, YOU KNOW, IS THAT
WHERE WE'RE GOING?

WELL, NO, ALL I'M SAYING
-- I'M NOT CAN ASKING ANYONE
TO PASS LAW I'M JUST SAYING
MY FOUR CORNERS OF THE
COMPLAINT STATE CAUSE OF
ACTION OF THIS PASSENGER
UNDER THESE UNBELIEVABLY
UNIQUE CIRCUMSTANCES.
WEAVE ARE HAD MOTOR VEHICLE
ACCIDENTS IN COURTHOUSES IN
FLORIDA FOR MANY DECADES.
THIS IS THE FIRST TIME THIS
HAS EVER COME BEFORE A
COURT.

THERE ARE THE OUT OF STATE
CASES, MOYA AND THE FLORIDA,
THE FEDERAL CASE, HULINDA
WHICH TALK ABOUT A FRONT
SEAT PASSENGER.
IN AND IN THOSE CASES THEY

SAY THERE IS NO LIABILITY
BECAUSE THERE IS NO SUPERIOR
POSITION.

IN PARAGRAPH 10 OF THE
AMENDED COMPLAINT THAT THE
DRIVER COULD NOT SEE HIS
INTENDED PATH OF TRAVEL.
THEREFORE, NO FRONT SEAT
PASSENGER UNDER THAT
SITUATION IS, YOU KNOW, WHEN
THE COURT TALKED ABOUT
SUPERIOR POSITION, I DON'T
KNOW IF YOU WANT TO LIMIT
THIS AND NARROW THIS THING
DOWN AS TO CAA CASE WHERE
THE DRIVER CANNOT SEE HIS
INTENDED PATH OF TRAVEL
BECAUSE THAT'S A SITUATION
THE GUY IN THE COKE TRUCK
WAY UP AND THE WOMAN TRYING
TO MAKE A LEFT HAND TURN AND
IN WED THEY WERE QUESTIONING
THE ALIGNMENT AND SIDE VIEW
MERER AND WHETHER HE COULD
SEE DOWN THERE AND IN THAT
SITUATION THERE WAS FOUND NO
FAULT.

JUSTICE BELL HAS A
QUESTION.

WELL THE CERTIFIED
QUESTION THAT WAS PRESENTED
HERE SEEMS TO BE APPLICABLE
TO ANY PASSENGER SO ARE YOU
SUGGESTING THAT THE
CERTIFIED QUESTION SHOULD BE
LIMITED TO JUST REARVIEW,
PASSENGERS IN THE REAR?
IS THAT WHAT YOUR ARGUMENT
IS HERE?

WELL MY ARGUMENT IS JUST
MY FOUR CORNERS OF THE
COMPLAINT.

I DON'T CARE ABOUT ANYBODY'S
ELSE'S ACCIDENT, I JUST CARE
ABOUT MS. ROOS.

THAT'S NOT WHY WE'RE
HERE.

WE DON'T CASES JUST BECAUSE
OF THE --

I KNOW THAT -- I KNOW
THAT.

BUT IN LOUISIANA A NUMBER OF
YEARS AGO THEY WERE FACED
WITH THE SAME QUESTION AND

TALKED ABOUT POLICY ISSUES
AND TALKED ABOUT FLOOD GATE
AND THAT WAS -- I CAN'T
PRONOUNCE THE FIRST NAME
YAGNO VERSUS LOUISIANA.
THEY WERE WORRIED EVERYBODY
WAS GOING TO GET SUED AND
BLAMED AND IF YOU LOOK AT
YAGNO TODAY AND IT IS THE
FIRST DISTRICT CASE IN ROOS.
SO YOU ARE REALLY SIMPLY
ASKING THE COURT TO SAY THAT
IF YOU UNDERTAKE TO DO THIS,
YOU HAVE A DUTY AND
THEREFORE, YOUR COMPLAINT
STATES THE CAUSE OF ACTION.
YES.

AND YOU ONLY, YOU ONLY HAVE
THERE DUTY AND ARE LIABLE IF
YOU SEE THE DRIVER'S PATH OF
TRAVEL.

HE CAN'T.

HE KNOWS YOU CAN.

YOU KNOW HE CAN'T.

YOU AFFIRMATIVELY TELL HIM
IT'S CHRIR.

HE RELIED ON THAT WHICH IS A
FORESEEABLE ACT.

HE BLACK -- BACKS UP AND
SOMEBODY IN THE ZONE OF
DANGER IS INJURED.

SO THE DRIVER HAS TO
REASONABLY RELY AND DEPEND
BASICALLY EXCLUSIVELY UPON
THAT -- OR WHAT ARE THE
PARAMETERS?

THAT'S MY CONCERN.

HOW REASONABLE DOES THE
DRIVER'S RELIANCE HAS TO BE?
HOW BLIND DOES THE SPOT HAVE
TO BE?

I THINK THERE HAS TO BE
REASONABLE RELIANCE ON THE
DRIVER.

IF IT IS A 3-YEAR-OLD, I'M
THINKING, I DON'T KNOW IF
REASONABLE RELIANCE COULD BE
ESTABLISHED ON THE STATEMENT
OF SOMEBODY OF SUCH TENDER
YEARS.

IF THEY WERE ALL DRUNK IN A
CAR, YOU KNOW, I DON'T THINK
THE DRIVER OR IF THE
DRIVER'S YOU KNOW SOBER AND

HIS PASSENGER IS INEBRIATED
AND THE PASSENGER SAYS, YEAH,
GO.
IF THERE'S AN IMMEDIATE
RESPONSE WITHOUT SOME ACTION
WHERE HE KNOWS THE BACK SEAT
DRIVER HAS LOOKED.
I MEAN THOSE ARE THE FACTS
THAT THE JURY WOULD
DETERMINE IN DECIDING WHAT
REALLY HAPPENED HERE.
AND IN THIS CASE, WHAT
REALLY HAPPENED HERE IS THAT
THE DRIVER WOULDN'T HAVE
BACKED UP IF THE PASSENGER
IN THE BACK DIDN'T TELL HIM
ITS CLEAR.
BECAUSE HE COULDN'T SEE IT.
AND THAT'S HOW MY CLIENT GOT
HURT.

[INAUDIBLE]

[INAUDIBLE]

WELL, THE CASES THAT COME
AFTER CURFOOT TALK ABOUT THE
FACTORS THAT WOULD BECAUSE
CURFOOT SAYS THIS DOES NOT
MEAN, I MEAN THE LAST THING
THAT THE CURFOOT CASE CASE
SAYS THAT UNDER ALL
CIRCUMSTANCES THAT A
PASSENGER WHO PROVIDES IT
BITES -- I'M SORRY.

YEAH, WOULD CURFOOT SAID IS
YEAH UNDER ALL CASES THAT A
DRIVER -- YEAH, I'M SORRY.
WHO PROVIDES INFORMATION TO
ANOTHER DRIVER ABOUT THEIR
PATH OF TRAVEL WOULD IN NO
WAY BE RESPONSIBLE FOR
THOSE.

SO I THINK CURFOOT WAS JUST
LIMITED TO ITS FACT WHERE
THEY COULDN'T ESTABLISH THE
AMBIGUITY OR THE
NONAMBIGUITY OF THE WAVE.
THIS COURT ACTUALLY LEFT
TO ANOTHER DAY THE, EVEN THE
ISSUE IN CURFOOT WHETHER TO
THERE WTED BE A -- WOULD BE
A DUTY UNDER ANY FACT BUT
SAID IT WOULDN'T DECIDE IT,
RIGHT?
YES.

AND THEN TWO SEPARATE DCAs
HAVE LOOKED AT CURFOOT AND
LOOKS AT THE FACTS AND SAY
IF YOU ESTABLISH UNAMBIG WS
SIGNAL THAT SAYS YOUR PATH
OF TRAVEL IS CLEAR, THAT
PERSON HAS THE ABILITY TO
SEE IT.

THE OTHER DRIVER DOESN'T.
THE OTHER DRIVER REASONABLY
RELIES ON THIS.

THE SIGNALER FAILS TO
EXERCISE THE REASONABLE CARE
NEEDED WHEN YOU VOLUNTARILY
UNDERTAKE SUCH A TASK IN AN
ACCIDENT HAPPENS THE
DRIVER'S IN WED AND
TALEECHIA.

I THINK ONE WAS REVERSAL OF
DIRECTED VERDICT.

I JUST THINK THE CONCERN
HERE ON, ON PUBLIC POLICY OR
OPENING THE FLOOD GATES IS
CURED BY THE UNIQUENESS OF
THESE FACTS.

MOST ACCIDENTS HAPPEN GOING
STRAIGHT AHEAD.

I DON'T THINK ANY FRONT SEAT
PAESHLG.

I DON'T THINK A FRONT SEAT
PASSENGER IS EVEREVER IN A
POSITION TO SEE WHAT'S GOING
ON.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

I THINK THIS HOLDING OR
YOUR DECISION NEEDS TO BE
NARROW AS TO THE FACTS
PRESENTED BY MY COMPLAINT.

[INAUDIBLE]

I WOULD BE CONCERNED WHEN
YOU USE THE TERM BROADLY IN
YOUR DEFINITION IF, YOU KNOW,
YOU'RE ONLY GOING TO DECIDE
IT BASED UPON FACTS THAT
COME UP AND I HAVE FAITH IN
THE COURTS THAT IF ALL THE
SUDDEN WHICH THERE HASN'T
BEEN ANY SHOWING SINCE

SEPTEMBER OF 05 THAT THERE'S BEEN THIS MOUNTAIN OF FABRE PASSENGERS GETTING ADDED TO VERDICT FORMS OR THAT THERE'S BEEN ONE SINGLE COMPLAINT IN FLORIDA FILED SINCE LAST SEPTEMBER THAT IS ALLEGING THAT A PASSENGER IS LIABLE UNDER THESE CIRCUMSTANCES.

SO IF YOU USE THE TERM BROADLY, I'D BE CONCERNED. IF YOU MAKE THE RULING THAT THE FIRST DCA DID, IT'S NARROWED TO A VERY, VERY UNIQUE SET OF FACTS.

WITH YOUR QUESTIONING, YOU HAVE FULLY EXHAUSTED YOUR TIME.

THANK YOU.

THANK YOU VERY MUCH.

MS. RUSSO, YOU HAVE LITTLE OVER A MINUTE.

JUST BRIEFLY, I THINK THAT THE SUGGEST, IF I'M UNDERSTANDING RESPONDANT'S SUGGESTION THIS COULD BE MADE NARROW ENOUGH BASED ON WHAT THE FIRST DISTRICT HAS DONE OR SAID BUT THE PARAMETERS IF I UNDERSTAND THE NARROWING THAT THE PASSENGER BE IN A SUPERIOR VANTAGE POINT IN THE CERTIFIED QUESTION AND I'LL ASK IN JUST AS WELL THAT IT WAS AN AGREEMENT BY THE PASSENGER TO UNDERTAKE THIS DUTY BUT I DON'T SEE HOW THAT CAN BE NARROWED FOLLOWED UP BY WHAT JUDGE ANSTEAD SAID.

IMAGINE THE TRIP WHERE I'M GOING TO WITH MY 10-YEAR-OLD SON JOHNNY WE'RE GOING TO TAKE GRANDMA AND GRANDPATO THE EYE DOCTOR.

NOW GRANDPA, YOU'LL BE IN THE BACKNO CARRIERRINGCONNECT 57600

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