

>> PLEASE RISE.  
>> FLORIDA SUPREME COURT IS NOW  
IN SESSION.  
>> THE NEXT CASE ON OUR DOCKET  
IS RIPPY V. SHEPARD.  
>> GOOD MORNING, YOUR HONOR.  
MAY IT PLEASE THE COURT, I'M  
STEVE BRANNICK HERE REPRESENTING  
THE PETITIONER, MR. RIPPY, WHO  
IS THE PLAINTIFF BELOW.  
THE QUESTION BEFORE THE COURT IS  
WHETHER A FARM TRACTOR IS A  
DANGEROUS INSTRUMENTALITY UNDER  
FLORIDA LAW THE SAME WAY OTHER  
MOTOR VEHICLES LIKE AUTOMOBILES,  
GOLF CARTS, CONSTRUCTION  
EQUIPMENT --  
>> LET ME STOP YOU FOR A SECOND.  
>> SURE.  
>> I'M A LITTLE CONCERNED ABOUT  
THE PROCEDURE POSTURE.  
THIS CASE WAS DISMISSED IN A  
MOTION TO DISMISS HEARING, AM I  
CORRECT?  
>> RIGHT.  
WE HAVE VIRTUALLY NO --  
>> THERE'S NO EVIDENCE.  
SO THE ONLY THING WE KNOW ABOUT,  
I MEAN, WE ALL KNOW WHAT A  
TRACTOR IS.  
WE'VE SEEN ONE IN OUR LIFETIME,  
BUT WE KNOW FROM A RECORD  
STANDPOINT ABOUT WHAT THE  
TRACTOR IS WHAT WAS IN THE  
AMENDED COMPLAINT, AM I CORRECT?  
>> THAT'S CORRECT.  
>> AND IT SEEMS LIKE WE LOOK AT  
THE HISTORY OF THIS JUDGE  
CREATED DANGEROUS  
INSTRUMENTALITY DOCTRINE, EACH  
COURT SEEMED TO HAVE USED  
CERTAIN FACTORS TO COME TO THAT  
CONCLUSION.  
BUT ONE OF THEM RECENTLY STRUCK  
ME, AND IT WAS THE FOURTH DCA

RECENTLY CONSIDERED WHETHER AN  
ATV, ALL-TERRAIN VEHICLES --  
THOSE FORD THINGS -- I MEAN,  
JUST LOOKING AT IT, IT SEEMS TO  
ME LIKE IT'S DANGEROUS.

BUT THEY CONSIDERED THAT.

AND THEY COULDN'T ARRIVE AT A  
CONCLUSION THAT IT WAS A  
DANGEROUS INSTRUMENTALITY  
BECAUSE THERE WASN'T A FACTUAL  
BASIS FOR IT.

SO HERE WE HAVE NO FACTUAL  
FINDINGS.

HOW ARE WE TO DETERMINE, ARE YOU  
ASKING US TO JUST ARBITRARILY  
CONSIDER ANYTHING THAT IS A  
MOTOR VEHICLE, WHICH IS A  
TRACTOR, TO BE A DANGEROUS  
INSTRUMENTALITY?

>> WELL, THAT'S REALLY ONE OF  
OUR ARGUMENTS IS THAT, PERHAPS,  
THE MOST IMPORTANT FACTOR IN THE  
CASE IS WHETHER IT IS, IN FACT,  
A MOTOR VEHICLE.

BECAUSE COURTS HAVE GOING BACK  
ALL THE WAY TO THE SOUTHERN  
COTTON DECISION BACK IN 1920,  
COURTS HAVE DETERMINED THAT  
MOTOR VEHICLES, WHEN THEY ARE IN  
USE, PRESENT CERTAIN DANGER.  
THEY'RE BIG, AND THEY HURT  
PEOPLE WHEN THEY'RE USED  
IMPROPERLY.

AND SO IN THE SOUTHERN COTTON  
DECISION, THE COURT BASED ON  
COMMON EXPERIENCE AND BASED ON  
ITS OWN EXAMINATION OF A SERIES  
OF STATISTICS, AND THERE WAS NO  
SHOWING THOSE STATISTICS WERE  
EVEN PART OF THE RECORD IN THAT  
CASE, THE COURT'S OWN RESEARCH,  
DETERMINED THAT BASED ON  
STATISTICS THAT AUTOMOBILES  
WERE, IN FACT, DANGEROUS  
INSTRUMENTALITY.

AND SINCE THEN IN A NUMBER OF

CASES COURTS HAVE CONSISTENTLY  
FOUND --

>> BUT DON'T YOU THINK THAT THE  
MOST REASONABLE WAY TO  
UNDERSTAND WHAT THE COURT WAS  
DOING THERE IS LOOKING TO THOSE  
STATISTICS AS EVIDENCE OF WHAT  
WAS COMMON KNOWLEDGE AND COMMON  
EXPERIENCE?

>> RIGHT.

YEAH, AND ONE OF OUR PRIME  
POINTS IS THAT COMMON KNOWLEDGE  
AND COMMON EXPERIENCE WHEN  
APPLIED TO A 4,000-POUND FARM  
TRACTOR LIKE A GOLF CART, LIKE A  
FORKLIFT, LIKE A CONSTRUCTION  
CRANE LEADS YOU TO EXACTLY THE  
SAME CONCLUSION, THAT --

>> WELL, YOU'RE ACTUALLY  
SAYING -- AND THIS IS IF YOU  
TAKE GOLF CARTS AS BEING THE LOW  
END OF MOTOR VEHICLES -- THAT IF  
YOU TAKE, IF WE FOUND A GOLF  
CART TO BE A DANGEROUS  
INSTRUMENTALITY WHICH WAS A 4-3  
DECISION, THEN A CRANE WHICH HAS  
BEEN FOUND TO BE A DANGEROUS  
INSTRUMENTALITY, THE TRACTOR  
GETS UP THERE.

IS THERE, YOU MENTIONED IT'S A  
4,000-POUND TRACTOR, AND, YOU  
KNOW, I'LL SAY THAT, YOU KNOW, I  
GOOGLED YESTERDAY TO SEE WHAT  
TRACTORS LOOK LIKE, AND YOU GO  
ON JOHN DEERE, AND THERE'S  
EVERYTHING FROM THE LITTLE KIDS'  
TRACTOR --

>> RIGHT.

>> TO THESE HUGE TRACTORS THAT  
ARE USED IN THE MIDWEST THAT  
ARE, I'M SURE, FAR MORE THAN  
4,000 POUNDS.

DOES IT MATTER WHAT THE SIZE AND  
THE WEIGHT OF THE TRACTOR IS?

>> WELL, HERE WE'RE TALKING  
SPECIFICALLY ABOUT FARM

TRACTORS, AND FARM TRACTORS ARE DEFINED AS MOTOR VEHICLES. NO ADDITIONAL STATISTICS ABOUT WHAT EXACTLY MAKES A FARM TRACTOR, BUT I THINK THERE'S A CLEAR INTENT TO DISTINGUISH THE TYPE OF TRACTOR THAT YOU WOULD SEE TYPICALLY IN AN AGRICULTURAL OPERATION AS OPPOSED TO THE LITTLE TINY LAWN TRACTOR THAT ONE PERSON MIGHT USE TO MOW THEIR LAWN.

>> WOULD AN ATV FIT INTO THE DEFINITION OF A MOTOR VEHICLE FOR THE DANGEROUS INSTRUMENTALITY DOCTRINE?

>> I THINK THAT IT WOULD. IT'S A, IT'S A VEHICLE THAT MOVES, IT'S NOT WITHIN THE EXCEPTIONS WHICH ARE BICYCLES AND MOPEDS AND --

>> SO YOU WOULD SAY SALISBURY REALLY IN SAYING THERE HAD TO BE A FACTUAL DEVELOPMENT IS NOT CONSISTENT WITH OTHER OPINIONS?

>> I WOULD SAY THAT THERE IS ENOUGH EVIDENCE THAT --

>> WELL, THERE'S NO EVIDENCE, AS JUSTICE LABARGA POINTED OUT. THERE'S NO EVIDENCE.

>> I WAS JUST GOING TO SAY ENOUGH EVIDENCE BASED ON PERSONAL KNOWLEDGE AND EXPERIENCE THAT BECAUSE AN ATV IS A MOTOR VEHICLE WITHIN THE STATUTE THAT IT IS A DANGEROUS INSTRUMENTALITY.

WE HAVE THE ADDITIONAL ADVANTAGE THAT FARM TRACTORS ARE SPECIFICALLY DEFINED AS MOTOR VEHICLES IN THE STATUTE.

>> IF WE DON'T ACCEPT YOUR ARGUMENT THAT BECAUSE IT'S A MOTOR VEHICLE IT SHOULD BE A DANGEROUS INSTRUMENTALITY, WHAT OTHER FACTORS?

I MEAN, WE COULD CONSIDER THE FACT THAT IT IS A MOTOR VEHICLE ONE OF THE FACTORS THAT YOU CONSIDER IN DETERMINING WHETHER IT'S A DANGEROUS INSTRUMENTALITY, AND IF THAT'S THE ROUTE THAT WE DECIDE TO TAKE, WHAT OTHER FACTORS SHOULD WE CONSIDER WHEN LOOKING AT A TRACTOR?

>> WELL, I THINK THE FIRST FACTOR, AND THIS IS WHERE THE FIRST DCA LOST ITS WAY, IS WHETHER IT'S DANGEROUS.

IN THAT WE HAVE THE DECISIONS OF MANY CASES OF THIS COURT GOING BACK TO 1920 THAT RAILROAD CARS, GOLF CARTS, FORKLIFTS -- THAT'S A DECISION OF THE SECOND DCA -- CONSTRUCTION EQUIPMENT, YOU LOOK TO SEE WHETHER THE VEHICLE FITS WITHIN THE SORT OF CLASS OF VEHICLES THAT HAVE BEEN DEFINED AS BEING INHERENTLY DANGEROUS.

>> I THINK YOU'VE USED THE WRONG -- BUT I THINK YOU GET, CROSS THE LINE WHEN YOU USE "INHERENTLY DANGEROUS." IT'S REALLY NOT INHERENTLY DANGEROUS.

IT'S DANGEROUS WHEN USED IMPROPERLY.

>> ABSOLUTELY RIGHT.

>> AND YOU, IN YOUR BRIEF, YOU USED "INHERENTLY DANGEROUS" THROUGHOUT, AND THE WHOLE IDEA IS THAT IT'S NOT AN INHERENTLY DANGEROUS INSTRUMENTALITY, IT'S DANGEROUS WHEN IT'S USED IMPROPERLY.

>> ABSOLUTELY.

INHERENTLY DANGEROUS WHILE IN USE, PECULIARLY DANGEROUS WHICH IS ANOTHER WORD --

>> SO WE HAVE OUR NEXT CASE IS AN AIRPLANE, AND I DON'T THINK

ANYBODY WOULD ARGUE THAT AN AIRPLANE WHEN USED IMPROPERLY COULD CAUSE GREAT HARM.

SO WE'VE GOT THAT.

HAS A MOTORCYCLE BEEN FOUND TO BE A DANGEROUS INSTRUMENTALITY?

>> YES.

IN THE WESTERN UNION CASE IN 1935.

>> SO WHAT YOU'RE ARGUING FOR, REALLY, IS SOME CONSISTENCY IN HOW THIS ISSUE IS APPROACHED AS OPPOSED TO AN EVIDENTIARY-BASED ARGUMENT, BUT YOUR FALLBACK IS AT LEAST WANT TO GO BACK FOR EVIDENTIARY DEVELOPMENT.

>> ABSOLUTELY.

I MEAN, I THINK IF YOU USE WHETHER SOMETHING'S A MOTOR VEHICLE AS THE PRIME TEST, YOU RESOLVE 95% OR MORE OF THE CASES.

IF YOU LOOK BACK THROUGH THE CASES THAT HAVE BEEN DECIDED BY THIS COURT AND THE OTHER DCA SINCE 1920, IT FITS EVERY SINGLE CASE.

GOLF CARTS, FORKLIFTS, CONSTRUCTION CRANES, TOW MOTORS, TRUCKS, RAILROADS, STREETCARS, AIRPLANES, MOTORCYCLES, THEY'VE ALL BEEN DETERMINED TO BE DANGEROUS INSTRUMENTALITIES, AND THEY FIT WITHIN THE DEFINITION OF MOTOR VEHICLES.

TRAILERS --

>> ACTUALLY THE LOW END OF MOTOR VEHICLES, NOT THE GOLF CART, IS A GO-KART.

>> RIGHT.

>> AND THE FOURTH DISTRICT FOUND THAT IT WAS NOT A DANGEROUS INSTRUMENTALITY, AND THERE WAS EXPERT TESTIMONY THAT TESTIFIED --

>> RIGHT.

>> -- TESTIMONY ABOUT HOW FAST THEY CAN GO, HOW QUICKLY THEY CAN FLIP OVER.

I MEAN, IF I EVER SAW A MOTOR VEHICLE -- IF YOU WANT TO CALL A GO-KART A MOTOR VEHICLE -- THAT I WOULD CONSIDER TO BE DANGEROUS WOULD BE A GO-KART GOING 45, 50 MILES AN HOUR.

>> I WAS ACTUALLY SURPRISED BY THE RESULT OF THAT CASE, AND I WAS ABOUT TO SAY THE ONLY CASE THAT DOESN'T NEATLY FIT INTO MY ARGUMENT IS THE GO-KART CASE. ALL OF THE OTHER CASES FIT, THEY HAVE BEEN FOUND TO BE DANGEROUS INSTRUMENTALITIES.

>> I WAS READING I THINK IT WAS JUDGE LETTS THAT HAD WRITTEN IN THE GOLF CART CASE, YOU DO GOLF CARTS, THE NEXT THING WE'RE GOING TO HAVE ARE MOTORIZED WHEELCHAIRS.

I THINK MY QUESTION IS IN TERMS OF TESTIMONY.

WHEN YOU LOOK AT THESE TESTS, WHAT WE'RE REALLY LOOKING AT IS AN ISSUE OF SHIFTING RESPONSIBILITY FROM VICARIOUS LIABILITY.

>> RIGHT.

>> AND IT SEEMS THAT THE COURT WHEN WE'RE DOING THAT, WE'RE STRAYING INTO MAKING POLICY DECISIONS THAT MIGHT BE BETTER LEFT TO THE LEGISLATURE.

WHAT IS YOUR ARGUMENT REGARDING THAT?

IN OTHER WORDS, THIS IS SORT OF LIKE DEVELOPMENT OF STRICT LIABILITY, THAT IT'S THE MANUFACTURER CAN BEAR THE BURDEN.

IS IT HERE THAT WE'RE CONCERNED THAT WHEN WE GIVE THESE WHETHER IT'S, AGAIN, A TRACTOR,

AUTOMOBILE, A PLANE, YOU KNOW, A TRAIN, THAT SOMEONE ELSE IS USING IT, THAT IT'S AS A MATTER OF POLICY IT'S BECAUSE THEY CAN CAUSE GREAT BODILY HARM, IT IS A, THE RIGHT THING FROM A COMMON LAW PERSPECTIVE TO IMPOSE VICARIOUS LIABILITY?

>> RIGHT.

AND IT'S THE COMMON LAW DOCTRINE DEVELOPED IN THIS COURT GOING BACK TO 1920, AND THE LEGISLATURE HAS NOW HAD 85 YEARS IF THEY HAD SO CHOSEN TO OVERTURN THAT.

YOU MENTIONED THE POWERED WHEELCHAIRS.

THE LEGISLATURE EXCLUDED THEM FROM THE DEFINITION OF MOTOR VEHICLES IN THE STATUTE.

SO THE LEGISLATURE CERTAINLY CAN STEP IN --

>> LET ME, LET ME ASK YOU THIS, IF I COULD.

IS IT CORRECT THAT FLORIDA IS THE ONLY STATE WHICH HAS JUDICIALLY ADOPTED THE, AND/OR APPLIED THE DANGEROUS INSTRUMENTALITY DOCTRINE TO MOTOR VEHICLES TO IMPOSE VICARIOUS LIABILITY ON THE OWNER OF A VEHICLE FOR THE NEGLIGENCE OF A THIRD PARTY OPERATING THE VEHICLE?

>> RIGHT.

AS FAR AS I KNOW, IT IS THE ONLY COURT TO HAVE DONE THAT BY THE COMMON LAW.

THERE ARE OTHER STATES THAT DO THAT BY STATUTE --

>> A NUMBER OF OTHER STATES THAT HAVE DONE THAT BY STATUTE?

>> RIGHT.

>> DO YOU KNOW THE ANSWER?

>> FIVE OR SIX THE LAST TIME I LOOKED.

>> BUT IN TERMS OF JUDICIAL  
CREATION OR IMPOSITION OF THIS  
SORT OF VICARIOUS LIABILITY,  
LIABILITY WITHOUT FAULT --

>> UH-HUH.

>> -- ON THE OWNER OF A MOTOR  
VEHICLE, FLORIDA REALLY STANDS  
ALONE.

>> RIGHT.

AND --

>> WOULDN'T THAT CIRCUMSTANCE  
KIND OF COUNSEL THAT EVEN THOUGH  
WE MIGHT NOT REPEAL THAT --

>> RIGHT.

>> -- BASED ON THE LEGISLATURE'S  
INACTION IN THAT REGARD, THAT'S  
AN ARGUMENT YOU'VE MADE, BUT  
WOULDN'T THAT KIND OF COUNSEL  
AGAINST EXPANDING THIS KIND OF  
DOCTRINE TO, AND, YOU KNOW,  
PUSHING THE SCOPE OF IT FURTHER  
THAN ITS ORIGINAL, THAN ITS  
ORIGINAL RATIONALE?

IT SEEMS TO ME IF WE GO BACK  
OVER THE WAY THIS WAS ORIGINALLY  
ADOPTED, THIS IS ABOUT SAFETY ON  
THE HIGHWAYS.

AND THAT'S THE CLEAR FOCUS IN  
THAT OPINION BACK IN THE '20s,  
ISN'T THAT CORRECT?

>> THAT'S TRUE.

AND I THINK, AS YOUR HONOR HAS  
NOTED, IF WE WERE JUST STANDING  
HERE TODAY WITHOUT THE DOCTRINE  
IN PLACE, I THINK THERE WOULD BE  
A VERY DIFFERENT ANALYSIS AS TO  
WHETHER IT SHOULD BE IN PLAY OR  
NOT.

BUT THIS IS A DOCTRINE THAT'S  
BEEN IN PLACE SINCE 1920.  
THE LEGISLATURE'S HAD 85 YEARS  
TO TINKER WITH IT, AND THE  
DOCTRINE HAS BEEN CONSISTENTLY  
APPLIED TO ALL TYPES OF MOTOR  
VEHICLES, SO I WOULD SUGGEST  
THERE'D BE NO EXPANSION OF THE

DOCTRINE IN THIS CASE.

A FARM TRACTOR IS SQUARELY  
DEFINED AS A MOTOR VEHICLE.

>> LET ME ASK YOU --

>> -- PRESENTS THE SAME SORT  
OF -- I'M SORRY.

>> THE HIGHWAY USE.

THE LEGISLATURE HAS SOME  
REGULATIONS DEALING WITH  
TRACTORS ON HIGHWAYS, BUT NOT AS  
THEY'RE USED IN THE FIELD ON A  
FARM.

DOES IT DEPEND ON WHERE IT IS AS  
TO WHETHER THE INSTRUMENTALITY  
SHOULD COME INTO PLAY OR NOT?

>> IT NEVER HAS.

IN THIS COURT'S DECISION IN THE  
MEISTER CASE, THE GOLF CART  
CASE, THE COURT SPECIFICALLY  
SAID IT DOESN'T MATTER THE  
INJURY IN THAT CASE TOOK PLACE  
ON THE GOLF COURSE.

THE FACT WAS THAT GOLF CARTS ARE  
OPERATED AROUND PEOPLE, THEY CAN  
CAUSE INJURY, AND THAT'S WHY  
DESPITE --

>> IF YOU HAVE ONE USED BY A  
FARMER JUST TO LOOK AT HIS COWS  
ON THE BACK 40 SOMEWHERE, ON A  
GOLF CART, THAT'S STILL A  
DANGEROUS INSTRUMENTALITY?

>> THAT'S THE IMAGE THEY'D LIKE  
YOU TO PICTURE, BUT THE FACT OF  
THE MATTER IS WE SEE TRACTORS ON  
THE HIGHWAY --

>> BUT THAT'S NOT THE FACTS OF  
THE INJURY IN THIS CASE.

>> THAT'S NOT THE --

>> IT WAS IN A FIELD, RIGHT?

>> PARDON ME?

>> IT WAS IN A FIELD?

>> IT WAS PRIVATE PROPERTY, HE'D  
DRIVEN FOUR AND A HALF MILES TO  
GET THERE.

>> THAT'S ONE OF THE FACTORS,  
FOR EXAMPLE, IF YOU DRIVE ON THE

INTERSTATE OR THE TURNPIKE,  
YOU'RE GOING TO SEE TRACTORS  
MOWING THE YARD IN THE MIDDLE  
WITH THOSE PUSH THINGS ON THE  
SIDE.

>> ABSOLUTELY.

>> SO THEY COULD ENTER THE ROAD  
AND HIT SOMEBODY AND INJURE  
SOMEONE AS OPPOSED TO BEING IN A  
BACK 40.

>> RIGHT.

>> LET ME GO BACK.

DID YOU HANDLE THIS CASE DOWN  
BELOW?

>> NO.

>> ALL RIGHT.

THE MOTION TO DISMISS, I'M STILL  
STUCK ON THAT.

DID THE JUDGE GRANT THE MOTION  
TO DISMISS BECAUSE, WELL, THE  
SUPREME COURT HASN'T DECIDED  
THAT A TRACTOR IS A DANGEROUS  
INSTRUMENTALITY?

NONETHELESS, THEREFORE, I'M  
GOING TO GRANT IT.

>> THAT'S, BASICALLY, THE JUDGE  
AS AN EXPANSION OF THE  
DOCTRINE --

>> SO UNLESS WE HAVE A  
CASE-BY-CASE WAY OF DECIDING  
THESE THINGS, THEN EVERY JUDGE  
IS GOING TO HAVE TO WAIT FOR US  
TO DECIDE ON EACH PARTICULAR  
INSTRUMENTALITY BEFORE IT CAN BE  
CLASSIFIED AS SUCH, IS THAT  
CORRECT?

>> WHICH IS WHY I THINK IT MAKES  
SENSE TO LOOK AT THE DEFINITION  
OF MOTOR VEHICLES, AND THAT FITS  
PERFECTLY WITH EVERY CASE EXCEPT  
FOR THE GOLF CART CASE.

IN YOU LOOK AT THE WAY THIS  
COURT HAS DECIDED THIS ISSUE  
OVER THE PAST 85 YEARS, IT HAS  
BEEN VEHICLE BY VEHICLE.

THEY DECIDED THAT TRUCKS ARE

DANGEROUS INSTRUMENTALITY, A  
MOTORCYCLE'S A DANGEROUS  
INSTRUMENTALITY.

IT HASN'T BEEN SITUATION BY  
SITUATION.

SO WE DON'T HAVE A CASE SAYING  
MOTORCYCLE, DANGEROUS  
INSTRUMENTALITY IF IT'S ON THE  
ROAD; MOTORCYCLE NOT A DANGEROUS  
INSTRUMENTALITY IF IT'S ON A  
DRIVEWAY.

WE DON'T HAVE -- THAT'S NOT THE  
WAY THE --

>> SO WHERE DO YOU LOOK AT,  
WHERE IT'S PREDOMINANTLY USED?  
IS THAT WHAT YOU HAVE TO  
EVALUATE?

>> I THINK THAT --

>> WOULD YOU LOOK AT TRACTORS  
GENERALLY OR THIS PARTICULAR  
TRACTOR?

>> I THINK THE QUESTION IS  
WHETHER FARM TRACTORS PRESENT A  
DANGER TO THE PUBLIC.

THEY DO BECAUSE THEY'RE OFTEN  
DRIVEN ON PUBLIC ROADWAYS.  
EVEN WHEN THEY'RE USED IN A  
FIELD AT HARVEST TIME OR AT THE  
TIME OF SEEDING THE FIELD,  
THEY'RE SURROUNDED BY FARM  
WORKERS JUST LIKE THE GOLF CART  
ON THE GOLF COURSE IS SURROUNDED  
BY GOLFERS.

THE TRACTOR ON A FARM PROPERTY  
IS OFTEN SURROUNDED BY FOLKS  
THAT IT CAN INJURE.

HERE, OF COURSE, IT HAPPENED TO  
BE PULLING A BUSH HOG, WHICH IS  
A MOWING DEVICE --

>> THAT WAS THE INSTRUMENTALITY  
THAT ACTUALLY INFLECTED THE  
DAMAGE HERE, RIGHT?

>> THAT'S CORRECT.

IT WAS A COMBINATION OF THE  
TRACTOR AND THE BUSH HOG.

>> DO WE KNOW FROM THE

ALLEGATIONS, HOW DID THIS ACCIDENT HAPPEN?

>> DON'T KNOW.

>> SO AT LEAST, I MEAN, AND THE QUESTION -- AND WHAT YOU WOULD ARGUE IS THAT IF WE WENT BACK TO FIND OUT HOW THE ACCIDENT HAPPENED AND WHERE IT HAPPENED AND DID THAT, THEN YOU'D HAVE ONE SITUATION WHERE IT WOULD BE A DANGEROUS INSTRUMENTALITY AND THE OTHER WHERE IT WOULDN'T.

>> I WOULD THINK IT WOULD BE AN ENORMOUSLY COMPLICATED THING THEN IF YOU HAD TO LOOK AT EVERY CASE WHERE THE ACCIDENT OCCURRED, THE EXACT SIZE OF THE VEHICLE, AND THAT REALLY HASN'T BEEN HOW THE LAW'S DEVELOPED. IT'S DEVELOPED BY LOOKING AT PARTICULAR TYPES OF VEHICLES AND THEN MAKING --

>> BUT IT WOULD BE EASIER IF YOU HAD THIS CASE, AND THIS CASE -- WHAT'S THE LARGEST TRACTOR THAT THERE IS?

DO YOU KNOW HOW MANY POUNDS?

>> OH, HEAVENS.

I MEAN, SOME OF THEM STAND A COUPLE STORIES TALL.

>> SO CERTAINLY MORE THAN 4,000. AND IT WAS ON THE ROAD, AND IT, YOU KNOW, RAN OVER A CHILD WHO WAS, YOU KNOW, IN THE WAY. YOU'D SORT OF HAVE A DANGEROUS IMAGE, A SCENARIO OF, OF COURSE IT'S MORE DANGEROUS THAN A VEHICLE, AND THAT'S REALLY THE DILEMMA IS YOU CAN ENVISION OR WE CAN ENVISION MANY WAYS A TRACTOR, THEY ROLL OVER, THEY -- PEOPLE CAN, YOU KNOW, GET IN AND AROUND THEM.

THEY'RE VERY DANGEROUS.

>> AND I THINK THAT'S WHY THE TRIAL COURT AND HOW THE DCA WENT

WRONG HERE IS THAT THEY, THEY  
LOOKED -- THEY FOCUSED TOO MUCH  
ON THE FACT THAT THIS PARTICULAR  
INJURY HAPPENED TO OCCUR ON A  
PRIVATE PIECE OF PROPERTY  
WITHOUT REALIZING THAT THEY'RE  
MAKING THE LAW FOR FARM TRACTORS  
HENCEFORTH, AND THE NEXT FARM  
TRACTOR ACCIDENT MIGHT BE THAT  
HUGE TWO-STORY HARVESTER THAT'S  
DRIVING DOWN A ROAD AND, YOU  
KNOW, HAS A HEAD-ON COLLISION.

>> WHAT EXACTLY IS A BUSH HOG?

>> IT'S A MOWING DEVICE.

A COUPLE OF BLADES IN THE BACK.

>> TO CUT THE GRASS, THAT'S WHAT  
IT'S CALLED, A BUSH HOG?

>> THAT'S ACTUALLY THE BRAND  
NAME, BUT MOST PEOPLE CALL IT A  
BUSH HOG.

I HAPPEN TO HAVE ONE MYSELF.

>> YOU'RE NOW DOWN TO ABOUT TWO  
MINUTES.

>> IF I I MAY, I'D LIKE TO  
RESERVE THE REST OF MY TIME.

>> YOU MAY.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY  
NAME'S JENNIFER LESTER, AND I  
REPRESENT JAMES SHEPARD.

AS YOU KNOW, THE PLAINTIFF IN  
THIS CASE IS SEEKING TO EXTEND  
THE DOCTRINE OF STRICT VICARIOUS  
LIABILITY ON OWNERS OF FARM  
TRACTORS WHICH IS NOT PREVIOUSLY  
BEEN DONE, AND I THINK THAT THE  
IMPORTANT FACTOR TO --

>> THERE'S NOT A DECISION THAT  
SAYS THAT THERE'S NOT.

>> CORRECT.

>> OKAY.

SO WE HAVE CASES THAT TALK IN  
TERMS OF MOTOR VEHICLES.

>> YES.

>> CORRECT?

AND THAT'S HOW IT DEVELOPED.

IT DIDN'T SAY, WELL, THIS IS A CAR, IT SAYS THIS IS A MOTOR VEHICLE.

>> WELL, THERE ARE MANY CASES THAT INTERPRET THE DANGEROUS INSTRUMENTALITY DOCTRINE AS IT WAS ENUNCIATED BY THIS COURT IN THE SOUTHERN COTTON ORAL LINE OF CASES, BUT --

>> BUT USED IT IN TERMS OF MOTOR VEHICLE.

>> AND THERE ARE MOTOR VEHICLES WHICH ARE DANGEROUS INSTRUMENTALITIES AND THOSE THAT ARE NOT LIKE THE GO-KART AND THE TRAILER IN THE EDWARDS V. ABC --

>> WELL, A TRAILER'S NOT MOTORIZED.

>> CORRECT.

BUT IT IS DEFINED AS A MOTOR VEHICLE.

>> FOR SERVICER PROSPECTS AND THOSE KINDS OF THINGS, BUT THAT WASN'T ADDRESSING THE ISSUE OF WHETHER IT WAS A DANGEROUS INSTRUMENTALITY.

>> THERE ARE CASES WHICH HOLD THAT THE TRAILER PART OF A TRACTOR-TRAILER --

>> RIGHT.

BECAUSE IT'S NOT MOTORIZED.

>> CORRECT.

>> OKAY.

>> AND IT DOES NOT POSE A SIGNIFICANT DANGER TO THE PUBLIC, AND THAT'S THE POINT THAT'S IMPORTANT TO THIS COURT IN THE MEISTER DECISION AND WAS --

>> I NEVER SAW THAT AS A TEST, AND IT'S NOT A SUFFICIENT DANGER.

I THOUGHT THE TEST WAS THAT IF IT WAS, WHEN USED IMPROPERLY, IT IS DANGEROUS, CAPABLE OF CAUSING SERIOUS INJURY.

>> THAT DOES NOT APPEAR TO BE THE TEST UNDER THE MEISTER CASE OR THE FESTIVAL FUN CASE.

>> SO IT'S, WHETHER IT'S A SUFFICIENT RISK TO THE PUBLIC?

>> THAT IS THE TEST ENUNCIATED IN MEISTER.

IF YOU LOOK AT THE MEISTER DECISION, THE COURT LOOKS AT REALLY MAINLY TWO FACTORS, AND THEY'RE INTERRELATED.

IT'S THE RISK TO THE GENERAL PUBLIC.

THIS COURT LOOKED AT THE STATUTORY REGULATION OF GOLF CARTS AND NOTED THAT GIVEN THE EXTENSIVE NATURE OF REGULATIONS REGARDING GOLF CARTS, IT WAS CLEAR THAT THE LEGISLATURE FOUND THAT GOLF CARTS POSED A SUFFICIENT DANGER TO THE PUBLIC, THAT THEY SHOULD BE CONSIDERED DANGEROUS INSTRUMENTALITY --

>> THAT ALMOST SOUNDS LIKE A PRODUCTS LIABILITY, STRICT LIABILITY KIND OF THING.

YOU'RE NOT SUGGESTING THERE'S A RISK/BENEFIT TEST FOR THESE, THE AUTOMOBILE OR THE TRUCK?

>> WELL, THE PLAINTIFF IS SEEKING TO IMPOSE STRICT VICARIOUS LIABILITY ON AN OWNER WITHOUT FAULT.

SO THAT, I BELIEVE, IS WHY --

>> WAIT A MINUTE, STRICT LIABILITY IN THIS CONTEXT IS DIFFERENT.

THIS IS THAT THE OWNER IS -- IF THERE'S FAULT ON THE PART OF THE OPERATOR.

SO IT'S NOT STRICT LIABILITY IN THE PRODUCT LIABILITY SENSE.

>> WELL, THIS COURT DID POINT OUT IN THE KRAMER CASE WHICH I THINK IS A VERY IMPORTANT CASE TO THE ANALYSIS OF WHAT IS A

DANGEROUS INSTRUMENTALITY THAT  
THE DANGEROUS INSTRUMENTALITY  
LAW AS IT HAS DEVELOPED IN THE  
STATE OF FLORIDA IMPOSES STRICT  
VICARIOUS LIABILITY ON AN OWNER  
WITHOUT FAULT --

>> WE'RE TALKING PAST EACH  
OTHER.

IT IMPOSES VICARIOUS LIABILITY  
BUT THERE IS NONE ON THE ABSENCE  
OF THE FAULT OF THE --

>> CORRECT.

>> THAT'S MY POINT.

YOU START THROWING AROUND STRICT  
LIABILITY, THAT'S A DIFFERENT  
CONCEPT, DO YOU AGREE WITH THAT?

>> YES, YOUR HONOR, IT IS.

>> AND I'M MISSING SOMETHING  
HERE BECAUSE, UNFORTUNATELY,  
SINCE COMING TO THIS JOB I'VE  
BEEN OUT ON THE HIGHWAYS MORE  
THAN I EVER THOUGHT POSSIBLE OR  
MORE THAN I EVER WANTED TO DO.  
BUT I CAN'T GO ANYWHERE WITHOUT  
SEEING TRACTORS PULLING THESE  
CUTTERS ALL OVER.

I MEAN, I -- AND I'M ON THE  
ROAD, UNFORTUNATELY, VIRTUALLY  
EVERY WEEK.

AND THEY'RE EVERYWHERE.

>> AND THE QUESTION IS WHETHER  
THOSE TRACTORS POSE A SUFFICIENT  
DANGER TO THE GENERAL PUBLIC  
THAT IN POSITION OF VICARIOUS --

>> WELL, THEY'RE OUT ON THE  
ROADWAY MORE OFTEN THAN  
FORKLIFTS, THE FORKLIFT  
SITUATION.

>> HOWEVER, THERE ARE --

>> AND ALSO THE TOW TRUCK.

>> I'M SORRY?

>> THE FORKLIFT, TOW TRUCK.

>> THE FORKLIFT IN THE HARDING  
CASE?

>> RIGHT.

>> THE HARDING CASE IS LIMITED,

IF YOU READ THE OPINION, WAS LIMITED TO THE FACTS OF THIS CASE, AND THE COURT SAID IN THE HARDING CASE UNDER THE FACTS OF CASE A FORKLIFT IS A DANGEROUS INSTRUMENTALITY BECAUSE --

>> AND THAT'S BECAUSE IT'S OUT ON THE ROADWAY, RIGHT?

>> JUST EXACTLY --

>> OKAY.

>> AS AN AUTOMOBILE WOULD ON THE ROADWAY.

>> THE FIRST DISTRICT IN FINDING THAT TRACTORS ARE NOT DANGEROUS INSTRUMENTALITIES, THEY CONCENTRATED ON THE FACT THAT IT IS NOT USED AS A MODE OF TRANSPORTATION BY PEOPLE AND THAT IT'S NOT ROUTINELY OPERATED IN PUBLIC PLACES.

BUT I THINK, I MEAN -- AND THEY'D RELIED ON SOUTHERN OR COTTON WHICH BASICALLY DEALT WITH THE PUBLIC HIGHWAY WHICH IS HOW THIS WHOLE DOCTRINE STARTED.

>> AND THERE ARE SEVERAL COURTS THAT HAVE ADDRESSED THE FACT THAT IF A VEHICLE IS USED AS A MODE OF TRANSPORTATION TO TRANSPORT PEOPLE OR LOADS ACROSS PUBLIC HIGHWAYS, THEN THAT MAY WEIGH IN FAVOR OF FINDING IT A DANGEROUS INSTRUMENTALITY.

WITH TRACTORS THEY ONLY USE PUBLIC HIGHWAYS FOR THE PURPOSES OF GETTING FROM ONE PLACE TO ANOTHER AND NOT NECESSARILY TRANSPORT LOADS OR PEOPLE, BUT THE PRIME FUNCTION OF A TRACTOR, OF A FARM TRACTOR IN PARTICULAR AND OF THE FARM TRACTOR IN THIS CASE WAS TO MOW, ESSENTIALLY, MOW MR. SHEPARD'S YARD.

THE ACCIDENT, ACCORDING TO THE ALLEGATION IN THE COMPLAINT, IS THAT THIS OCCURRED ON PRIVATE

PROPERTY AT MR. SHEPARD'S  
RESIDENCE, AND --

>> BUT YOU WOULD HAVE TO AGREE,  
WOULDN'T YOU, THAT THIS MOTOR  
VEHICLE BY ITS SHEER SIZE IF  
USED IMPROPERLY AND THERE'S SOME  
FAULT ON THE PART OF A PERSON  
WHO'S OPERATING THIS REALLY  
POSES A DANGER TO ANY PEOPLE WHO  
MIGHT BE AROUND IT.

>> AND THAT CAN'T BE THE TEST,  
JUSTICE QUINCE, BECAUSE THERE  
ARE ALMOST -- ALMOST ANY  
IMPLEMENT USED ON A FARM, IF  
USED IMPROPERLY, A PITCHFORK, A  
HAMMER, A LAWNMOWER, COULD CAUSE  
INJURY TO SOMEONE ELSE --

>> WELL, THEY'RE NOT MOTORIZED.

>> WE'RE TALKING ABOUT MOTOR.  
YOU SAID HARDING WAS RESTRICTED  
TO THE FACTS OF THE CASE.

LOOKING AT IT -- WE'RE TALKING  
ABOUT A FORKLIFT NOT EXACTLY  
FITTING INTO A MOTOR VEHICLE IN  
THE STATUTE, BUT IT SAYS FOR THE  
PURPOSES OF CHAPTER 316 IT'S  
STILL, UNQUESTIONABLY, A LARGE  
VEHICLE POWERED BY MOTOR.

SO I DON'T THINK WE'RE, AS  
JUSTICE LEWIS SAID, A TRAILER IS  
NOT POWERED BY MOTOR AND  
REQUIRING SKILLED OPERATION.

THAT IS, A CRANE DOESN'T  
NORMALLY GO ON THE ROAD, BUT A  
CRANE HAS BEEN HELD TO BE A  
DANGEROUS INSTRUMENTALITY.

IT'S NOT QUITE LIKE PORNOGRAPHY,  
BUT IT'S, IT IS A SITUATION  
WHERE THIS COURT HAS THE ABILITY  
TO TAKE JUDICIAL NOTICE NOT ONLY  
OF THE STATUTES, BUT THAT A  
TRACTOR LIKE A CRANE, LIKE A,  
LIKE THE OTHER TYPES OF  
MOTORIZED VEHICLES HAS THE  
CAPACITY TO CAUSE INJURY WHEN  
OPERATED INAPPROPRIATELY OR

IMPROPERLY.

>> AND THE CRANE LINE OF CASES IS VERY RELEVANT TO THIS. THERE ARE COURTS THAT HAVE FOUND THAT OPERATION OF A CRANE ON A PUBLIC HIGHWAY CREATES A SITUATION WHERE THE CRANE IS A DANGEROUS INSTRUMENTALITY. IN THE NORTHERN TRUST CASE, THE THIRD DISTRICT FOUND THAT A CRANE WHILE ITS POSTS WERE EXTENDED AND OPERATING ON A CONSTRUCTION SITE -- I BELIEVE THE COURT SAID GENERALLY BEHIND FENCES AND NOT USED TO TRANSPORT -- WAS NOT A DANGEROUS INSTRUMENTALITY.

>> BUT THAT WAS SOMEBODY DIRECTING THAT CRANE. THAT'S HOW IT WAS USED, CORRECT?

>> YES, YOUR HONOR.

>> I THINK THE PROBLEM WITH SOMETHING THAT IT WAS LIKE A PLACE BY PLACE AS OPPOSED TO VEHICLE BY VEHICLE, I DON'T KNOW, AND WE DON'T KNOW IN THIS CASE WHETHER IT'S INSURANCE FOR MR. SHEPARD.

THE ASSUMPTION IF YOU'RE TALKING ABOUT FINANCIAL RESPONSIBILITY IS THAT, CERTAINLY, MOTOR VEHICLES WE KNOW OWNERS HAVE INSURANCE FOR THE OWNERSHIP OF THE VEHICLE IS THAT FOR THE PEOPLE THAT ARE OWNERS OF THESE VEHICLES WHO WANT TO HAVE INSURANCE TO COVER IT, THE IDEA THAT SOMETIMES INSURANCE WOULD COVER IT BUT OTHER TIMES IT MIGHT NOT BE COVERED, ISN'T THAT -- IT JUST SEEMS TO ME IT DECREASES THE STABILITY IN THIS RULE OF LAW AND UNCERTAINTY WHICH JUST ISN'T A GOOD THING. IF WE PUT SO MANY FACTORS IN TO SAY, WELL, IN THIS CASE BECAUSE

IT'S ON PUBLIC HIGHWAY AND IT, YOU KNOW, WAS OPERATED BY SOMEBODY WHO'S UNDERAGE, AND IT WAS, YOU KNOW, DOING THIS ACTIVITY THAT IT ISN'T -- IT IS A MOTOR VEHICLE, BUT WHEN IT'S OPERATED HERE, IT'S NOT A -- OR IT'S NOT A DANGEROUS INSTRUMENTALITY.

>> WELL, YOUR HONOR --

>> -- OF CONCERN.

>> PART OF THE PROBLEM WITH THE PLAINTIFF'S ANALYSIS BY TYING THE TRACTOR DEFINITION OF MOTOR VEHICLE TO THE DETERMINATION OF WHETHER SOMETHING IS A DANGEROUS INSTRUMENTALITY, THE STATUTES THEMSELVES ARE IN CONFLICT UNDER THE FINANCIAL RESPONSIBILITY LAWS.

A TRACTOR IS NOT DEFINED AS A MOTOR VEHICLE.

IN FACT, IT'S EXEMPT.

AND IF YOU LOOK AT THE STATUTORY FRAMEWORK FOR TRACTORS, IT IS SO VERY DIFFERENT THAN THE STATUTORY FRAMEWORK FOR AUTOMOBILES OR FOR GOLF CARTS. IT GIVES AN INDICATION THAT THE LEGISLATURE DID NOT FIND THAT TRACTORS WERE SUFFICIENTLY DANGEROUS TO QUALIFY AS A DANGEROUS INSTRUMENTALITY, AND LOOKING AT MEISTER AND CERTAINLY THE KRAMER CASE IN WHICH THIS COURT STATED THAT THE PURPOSE OF THE DANGEROUS INSTRUMENTALITY LAW IN IMPOSING VICARIOUS LIABILITY ON OWNERS WITHOUT FAULT WAS TO PAY FOR THE CARNAGE ON THE ROADS.

YOU SIMPLY DON'T HAVE A RECORD TO SUPPORT THAT FINDING WITH RESPECT TO TRACTORS.

>> IT'S JUST THAT THE ONE -- IN THE LOOKING AT ALL THE CASES,

AND I THINK I READ EVERY CASE INVOLVING DANGEROUS INSTRUMENTALITY DOCTRINE, THERE'S ONE COMMON DENOMINATOR, IT'S THE FACT THAT ALL VEHICLES INVOLVED BEING MOTORIZED.

AND I'M TRYING TO THINK BACK AS TO WHAT'S THE SMALLEST POSSIBLE MOTORIZED VEHICLE AND THE ONE THING THAT CAME TO MIND WAS A MOTORIZED SKATEBOARDS.

A LITTLE IN MY NEIGHBORHOOD THAT HAS ONE, AND IT'S A DANGEROUS INSTRUMENTALITY.

[LAUGHTER]

BUT IF YOU THINK ABOUT IT FOR A SECOND, A MOTORIZED SKATEBOARD, THAT SEEMS TO BE PRETTY DANGEROUS, AND WHY WOULD IT, WHY NOT USE A MOTORIZED VEHICLE AS A STARTING POINT IN DETERMINING IF SOMETHING'S DANGEROUS OR NOT?

>> THAT WOULD COMPLETELY CHANGE THE PRECEDENT OF FLORIDA LAW INTERPRETING THE DANGEROUS INSTRUMENTALITY DOCTRINE OVER THE PAST 90 YEARS.

>> BUT IT WOULD NOT IF IT WAS A MOTOR VEHICLE.

>> THAT HAS NOT BEEN THE ANALYSIS --

>> NO, YOU -- HE SUGGESTED MOTORIZED VEHICLE, AND YOU SAID THAT'S CONTRARY TO ALL LAW OVER, WHATEVER, SINCE 1920.

I ASKED YOU IF IT'S A MOTOR VEHICLE.

THAT'S NOT CONTRARY TO LAW ANYWHERE.

>> WELL, IT'S --

>> IS IT?

>> IT WOULD BE CONTRARY TO THE FESTIVAL FUN CASE.

>> WELL, ONE CASE.

OKAY.

>> AND FROM THE RECENT FOURTH

DISTRICT CASE.

NOW, THIS GO-KART, THOUGH,  
PROBABLY PRESENTS A WHOLE OTHER  
ISSUE.

WAS THAT A GO-KART IN ONE OF  
THESE INDOOR TRACKS OR  
SOMETHING?

>> I DON'T KNOW IF IT WAS AN  
INDOOR TRACK, IT WAS AN  
AMUSEMENT PARK --

>> NO ONE HAS SUGGESTED, I DON'T  
THINK, IN DISNEY WORLD PEOPLE  
GET ON THOSE LITTLE VEHICLES --

>> BUMPER CARS.

>> ISN'T IT, I MEAN, WE HAVE,  
PERHAPS, A SITUATION WITH THE  
GO-KART THAT MIGHT PUT IT IN A  
DIFFERENT THING.

BUT OTHER THAN A GO-KART, CAN  
YOU TELL US WHERE ELSE IT'S BEEN  
FOUND THAT SOMETHING THAT IS A  
MOTOR VEHICLE IS NOT, DOES NOT  
QUALIFY AS A DANGEROUS  
INSTRUMENTALITY?

>> THERE HAVE NOT BEEN THAT MANY  
CASES DECIDED.

WE'RE REALLY LOOKING AT  
FORKLIFTS, CRANES, AUTOMOBILES  
OR TRUCKS.

>> WELL, SEE, YOU KNOW, BECAUSE  
WHEN YOU'RE SAYING 90 YEARS AND  
WE'VE GOT, IF WE SAY SOMETHING  
LIKE IT'S A MOTOR VEHICLE UNLESS  
THERE'S OTHER CIRCUMSTANCES,  
IT'S A DANGEROUS  
INSTRUMENTALITY, YOU'RE SOUNDING  
LIKE WE'RE GOING TO UPEND THE  
LAW IN THIS AREA.

INSTEAD, IT LOOKS -- I DID THE  
SAME THING JUSTICE LABARGA DID,  
I READ EVERY CASE, AND IT LOOKS  
LIKE WE COULD BRING SOME  
CERTAINTY TO THIS AREA OF THE  
LAW AS OPPOSED TO UPENDING IT.

>> THAT SIMPLY HASN'T BEEN THE  
PRECEDENT.

THE PRECEDENT AT THIS POINT IS TO LOOK AT THE DANGER TO THE GENERAL PUBLIC.

AND IF YOU LOOK AT THAT WITH RESPECT TO TRACTORS, THE EVIDENCE IS SIMPLY NOT THERE. THE STATUTORY FRAMEWORK DOESN'T EXIST TO THE SAME EXTENT AS IT IS WITH RESPECT TO GOLF CARTS WHICH IS THE MOST DRAMATIC EXPANSION OF THE DANGEROUS INSTRUMENTALITY DOCTRINE.

AND THE RISK TO TO THE GENERAL PUBLIC OF A TRACTOR CAUSING INJURY SIMPLY IS NOT THERE, AND IT'S NOT CONTAINED WITHIN THIS RECORD EITHER.

>> WELL, THAT'S BECAUSE, THAT'S HIS FALLBACK POSITION.

SO WHAT ABOUT HIS FALLBACK POSITION WHICH IS THAT THERE WAS NO RECORD, THE JUDGE DID WHAT JUSTICE LABARGA SAID.

IT'S NOT ON MY LIST, SO I'M DENYING -- I'M GRANTING THE MOTION TO DISMISS.

WHAT ABOUT THE FACT THAT THERE HAS TO BE AN EVIDENTIARY DEVELOPMENT TO AT LEAST GET THESE FACTORS IN THIS RECORD?

>> WHAT THE SALISBURY CASE SAYS IS SOMEONE WHO IS SEEKING TO EXTEND THE DOCTRINE OF DANGEROUS INSTRUMENTALITY, THEN THEY NEED TO SEEK AN EVIDENTIARY HEARING. THAT WAS WAIVED BY THE PLAINTIFF IN THIS CASE.

THE CASE WENT TO THE COURT ON A MOTION TO DISMISS.

THERE WAS NEVER A REQUEST FOR AN EVIDENTIARY HEARING THAT WAS NOT BRIEFED TO THE TRIAL COURT, IT WAS NOT BRIEFED TO THE FIRST DISTRICT COURT OF APPEALS, AND WE WOULD SAY UNDER THIS COURT'S DECISION IN DOBER, THAT

ARGUMENT --

>> WELL, THAT MIGHT BE, SO WE WOULD TO DECIDE -- YOU KNOW, I ACTUALLY VOTED NOT TO TAKE THIS CASE BECAUSE AFTER THE GOLF CART CASES, I THOUGHT, YOU KNOW, WHAT ARE WE DOING WITH THIS DOCTRINE? BUT IT WOULD BE, SORT OF WOULDN'T IT BE A MISCARRIAGE OF JUSTICE IF WE WERE TO SAY A TRACTOR IS NOT A DANGEROUS INSTRUMENTALITY AS OPPOSED TO, IN THIS CASE, THEY WAIVE THEIR RIGHT TO AN EVIDENTIARY HEARING, BUT THE NEXT CASE YOU COULD HAVE AN EVIDENTIARY HEARING.

WOULDN'T WE HAVE TO SAY THAT THEN AS OPPOSED TO SAYING IT'S NOT A DANGEROUS INSTRUMENTALITY?

>> YOU COULD ALSO SAY THIS CASE DOES NOT CONFLICT WITH MEISTER OR HARDING BECAUSE THE FIRST DISTRICT COURT IN THIS CASE CLEARLY APPLIED THE FACTORS THAT THIS COURT ENUNCIATED IN MEISTER AND THAT THE COURT DID IN THE HARDING CASE AND ON A DIFFERENT SET OF FACTS CAME UP WITH A DIFFERENT RESOLUTION.

>> I THINK --

>> HOW COULD THEY HAVE USED THESE FACTORS ON A MOTION TO DISMISS IF WE DON'T HAVE --

>> THEY TOOK --

>> -- ANY REAL RECORD OF THOSE KINDS OF FACTORS IN THIS RECORD?

>> WELL, ON THE FACTS OF THIS CASE YOU'RE RELYING ON THE ALLEGATIONS IN THE COMPLAINT, AND THE ALLEGATIONS IN THE COMPLAINT ARE THAT IT WAS A 12-FOOT, 4,000-POUND TRACTOR THAT WENT NO MORE THAN 15 MILES AN HOUR AND WAS OPERATING ON PRIVATE PROPERTY.

>> DID THE TRIAL JUDGE ACTUALLY

DO THAT, OR DID THE TRIAL JUDGE SAY THAT THE COURT HAS NEVER SAID THAT A TRACTOR IS A DANGEROUS INSTRUMENTALITY, SO WE'RE SAYING IT'S NOT?

>> THE COURT LOOKED AT THOSE FACTORS AS WELL.

>> WE DECIDED MEISTER IN 1984, THE GOLF CART CASE.

AND WE CONCLUDED YOU CAN ACTUALLY HAVE A GOLF CART BE A DANGEROUS INSTRUMENTALITY IN THIS PRIVATE PROPERTY.

AND LATER ON, LATER ON THE SECOND DCA DECIDED HARDING IN THE YEAR 1990, AND THAT WAS THE FORKLIFT CASE.

AND IN DECIDING HARDING, THE SECOND DISTRICT SAID, WELL, YOU KNOW, IF SUPREME COURT SAYS A GOLF CART IS A DANGEROUS INSTRUMENTALITY, HOW CAN WE SAY THAT A BIG -- IT WAS, I BELIEVE, A 16,000-POUND FORKLIFT IS NOT DANGEROUS INSTRUMENTALITY?

NOW USING THAT RATIONALE, IF WE DECIDED IN 1984 THAT A GOLF CART WHICH IS, BASICALLY, ELECTRICAL/GOLF COURSE IS A DANGEROUS INSTRUMENTALITY, HOW CAN WE SAY THAT A TRACTOR IS NOT A DANGEROUS INSTRUMENTALITY?

>> WELL, THE CRITICAL FACTOR IN MEISTER WAS NOT THE FACT THAT IT WAS ON PRIVATE PROPERTY, BUT THAT GOLF CARTS WERE OPERATED IN THE PUBLIC DOMAIN.

THE COURT NOTED, REALLY, THAT A GOLF COURSE IS A MICROCOSM OF A PUBLIC ROAD.

YOU HAVE INTERSECTING AREAS THAT ARE PUBLIC, THAT ARE PEDESTRIAN, THAT ARE OTHER GOLF CARTS AND, IN FACT, THE ACCIDENT THAT OCCURRED IN THE MEISTER CASE WAS JUST EXACTLY LIKE A TRACTOR

ACCIDENT, IT WAS, ESSENTIALLY, A REAR END ACCIDENT.

SO THE COURT NOTED THAT THE TREMENDOUS TOURIST AND RETIREMENT COMMUNITIES OPERATED VERY MUCH LIKE A PUBLIC ROAD, AND EVEN THOUGH THE GOLF COURSE ITSELF MIGHT BE PRIVATE, THE PUBLIC NATURE AND THE RISK TO THE GENERAL PUBLIC ON A GOLF COURSE WAS EXACTLY LIKE THOSE WHICH WOULD OCCUR ON A PUBLIC HIGHWAY WITH AUTOMOBILE TRAFFIC, AND THAT'S WHY THE DOCTRINE WAS EXTENDED, BECAUSE THE RISK TO THE GENERAL PUBLIC WITH A GOLF CART WAS SO EXTENSIVE.

>> LET ME ASK YOU THIS: IS THE QUESTION OF WHETHER A PARTICULAR MECHANISM IS A DANGEROUS INSTRUMENTALITY A QUESTION OF FACT, A QUESTION OF LAW, OR A MIXED QUESTION OF FACT AND LAW?

>> UP UNTIL THIS POINT IT APPEARS THAT THE COURTS AND THIS COURT IN PARTICULAR HAVE DECIDED THE QUESTION DANGEROUS INSTRUMENTALITY AS A MATTER OF LAW, BUT, OF COURSE, YOU HAVE TO APPLY THE FACTS TO THE LAW. AND YOU CAN DO THAT IN THIS CASE BY LOOKING AT THE LOCATION OF THE ACCIDENT AND THE TYPE OF INSTRUMENTALITY THAT WAS USED IN THE ALLEGATIONS OF THE COMPLAINT.

>> BUT IF WE DECIDE THIS CASE ONE WAY OR THE OTHER, WE'RE NOT JUST DECIDING THIS CASE.

WE'RE GOING TO BE ARTICULATING SOME RULE OF LAW THAT WILL HAVE IMPLICATIONS BEYOND THIS CASE, ISN'T THAT CORRECT?

>> YES, YOUR HONOR.

>> BUT BACK TO THE QUESTION, WE HAVE, WE HAVE NEVER REQUIRED

THAT THERE BE A FACTUAL DETERMINATION IN THE CASES THAT HAVE COME TO US ON THIS DOCTRINE.

WE'VE, WE HAVE LOOKED AT, BASICALLY, COMMON EXPERIENCE AND WHAT ARE WE SAYING COMMON KNOWLEDGE AND COMMON EXPERIENCE AS THE BASIS FOR MAKING THE LEGAL DETERMINATION THAT WE'VE MADE IN THE PAST CASES.

AND ALSO THE STATUTORY FRAMEWORK THAT CAME INTO PLAY, ISN'T THAT CORRECT?

>> THAT'S EXACTLY RIGHT.

THE, THE COURTS HAVE LOOKED AT THE STATUTORY FRAMEWORK FOR THE INSTRUMENTALITY IN QUESTION AND THE COMMON EXPERIENCE OF WHERE THOSE ARE USED AND THE RISK THAT'S CREATED TO THE GENERAL PUBLIC BY THEIR MISUSE.

>> THANK YOU.

>> GIVEN THAT, WE WOULD STATE THAT THE, THAT THE TRACTOR IN THIS CASE WHEN ANALYZED UNDER THIS COURT'S ANALYSIS IN MEISTER AND IN THE KRAMER CASE DOES NOT POSE A SUFFICIENT THREAT TO THE GENERAL PUBLIC TO QUALIFY AS A DANGEROUS INSTRUMENTALITY.

THE LEGISLATURE HAS NOT INDICATED THAT THE TRACTOR, A FARM TRACTOR AS USED IN THIS CASE, SHOULD BE SUBJECT TO SUCH REGULATION AS AUTOMOBILES AND GOLF CARTS HAVE BEEN AND, THEREFORE, THAT'S ANOTHER INDICATION THAT TRACTORS DON'T POSE A DANGER TO THE GENERAL PUBLIC SUCH THAT THIS COURT SHOULD EXTEND THE DOCTRINE OF VICARIOUS LIABILITY ON OWNERS WITHOUT FAULT TO IMPOSE LIABILITY FOR USE OF TRACTORS AS A DANGEROUS INSTRUMENTALITY.

THANK YOU, AND WE WOULD  
RESPECTFULLY REQUEST THAT YOU  
AFFIRM THE FIRST DISTRICT.

>> YOUR HONORS, I THINK THE  
PRIME QUESTION THAT SHOULD BE  
ASKED IN THESE QUESTIONS IS,  
DOES THE IMPLEMENT IN QUESTION  
PRESENT THE SAME SORT OF DANGERS  
TO THE PUBLIC AS OTHER MOTOR  
VEHICLES?

AND YOU CAN EASILY ANSWER THAT  
QUESTION IN THIS CASE BASED ON  
COMMON EXPERIENCE AND COMMON  
SENSE.

TRACTORS, WE'VE ALL BEEN BEHIND  
THEM --

>> BUT ISN'T IT THE CASE THAT  
TRACTORS ARE PRIMARILY DESIGNED  
NOT TO OPERATE ON HIGHWAYS?  
THEY DO, WE KNOW THEY OPERATE ON  
HIGHWAYS, AND WE KNOW THAT'S NOT  
AN UNCOMMON OCCURRENCE --

>> RIGHT.

>> BUT THEIR PRIMARY USE IS NOT  
FOR OPERATION ON THE PUBLIC  
HIGHWAYS LIKE AUTOMOBILES, ISN'T  
THAT CORRECT?

>> NO DOUBT ABOUT THAT.  
BUT WHEN THEY'RE USED IN THEIR  
PRIMARY USE, THEY ARE OFTEN  
SURROUNDED BY INDIVIDUALS.  
SO THEY PRESENT THE SAME DANGER  
TO THE PUBLIC WHETHER THEY'RE ON  
THE PRIVATE PROPERTY OR ON  
ROADWAYS, JUST LIKE CONSTRUCTION  
CRANES WHICH HAVE BEEN DECIDED  
TO BE DANGEROUS  
INSTRUMENTALITIES PRESENT THOSE  
SORTS OF DANGERS BECAUSE THEY'RE  
SURROUNDED BY CONSTRUCTION  
WORKERS --

>> AND HAVEN'T WE ALREADY  
CROSSED THAT ISSUE IN MEISTER?  
BECAUSE IN MEISTER WE SAID VERY  
CLEARLY THAT THE VEHICLES BEING  
OPERATED ON THE PUBLIC HIGHWAYS

IS NOT REQUIRED.

>> RIGHT.

>> AND IN THAT CASE WE EVEN WANTED TO DISCUSS THAT EVEN IF IT'S OPERATED, A MOTOR VEHICLE ON PRIVATE PROPERTY, THEN THAT DOESN'T MEAN THAT IT'S NOT.

>> RIGHT.

AND THAT'S WHERE WE THINK THE FIRST DISTRICT GOT IT WRONG HERE IS THEY PUT WAY TOO MUCH FOCUS ON WHERE THE INJURY OCCURRED, AND THEY PUT WAY TOO MUCH FOCUS ON PARSING THE STATUTORY REGULATORY FRAMEWORK OF COMPARING THE REGULATORY FRAMEWORK FOR GOLF CARTS TO TRACTORS.

I THINK, INTERESTINGLY, THERE IS NO REGULATORY FRAMEWORK THAT APPLIES TO GOLF CARTS THAT ARE ON GOLF COURSES.

THAT REGULATORY FRAMEWORK IS ALL RELATED TO GOLF CARTS THAT ARE DRIVING IN SUBDIVISION, DRIVING ON PUBLIC ROADS.

THERE'S NO REGULATION OF GOLF CARTS AT ALL ON GOLF COURSES.

THIS COURT STILL HAD NO DIFFICULTY --

>> WELL, IT MUST HAVE HAD SOME DIFFICULTY, IT WAS A 4-3 DECISION.

NOW, THE DISSENT DIDN'T ARTICULATE ITS REASONING.

I MEAN, I GUESS THERE WAS NO DIFFICULTY, BUT THERE MUST HAVE BEEN A DIFFERENT VIEW BY THE THREE DISSENTERS.

>> BUT THAT ESTABLISHED THE LAW THAT REGARDLESS OF THE FACT THERE WAS NO REGULATION APPLIED TO GOLF CARTS ON GOLF COURSES -- I THINK OUR CASE IS A FAR EASIER CASE WHEN YOU'RE TALKING ABOUT BIG FARM TRACTORS --

>> WOULDN'T WE DO VIOLATION TO THE LAW IF WE WOULD DISCUSS CIRCUMSTANCES WHEN THE PARTICULAR VEHICLE, IN THIS CASE A TRACTOR, IS EITHER ON THE HIGHWAY OR PLOWING A FIELD?

>> I THINK THAT THOSE, THOSE PRACTICAL REALITIES CAN HELP INFORM THE COURT'S DECISION ABOUT MAKING THE BROAD CLASS WIDE --

>> NOT TO DRAW A DISTINCTION, IT IS MAYBE IN ONE TIME AND NOT IN ANOTHER?

>> THEN I THINK YOU ARE -- THAT'S CERTAINLY NOT WHAT THE COURTS HAVE DONE FOR THE PAST 90 YEARS, AND I THINK YOU'RE OPENING UP A HUGE PANDORA'S BOX IF YOU GO THAT DIRECTION.

>> THEN THAT CASE FROM THE FOURTH DISTRICT, THE GO-KART CASE, REALLY DID SOMETHING THAT IS NOT WHAT YOU WOULD RECOMMEND BE DONE WHICH IS DEVELOP IT FOR SPECIFIC EVIDENTIARY FACT FINDING?

THAT THAT'S NOT A GOOD IDEA?

>> WELL, I THINK THAT'S -- THE GOLF CART CASE IS A TOUGHER --

>> THE GO-KART.

>> THE GO-KART CASE IS A TOUGHER CASE BECAUSE YOU HAVE MOTOR VEHICLES BEING DEFINED AS AUTOMOBILES, TRUCKS, BUSES, THINGS LIKE THAT.

BUT ALSO TAKING OUT OF THE DEFINITION MOTOR VEHICLES BICYCLES AND MOPEDS, AND SO, YOU KNOW, GOLF CART -- DOES A GO-KART FIT, YOU KNOW, CLOSER TO A MOPED?

DOES IT FIT CLOSER TO, YOU KNOW, THE AUTOMOBILE SIDE?

I THINK THAT IS A TOUGHER DECISION.

AND THE STATUTORY FRAMEWORK WAS  
A BIT AMBIGUOUS IN THAT CASE IN  
TERMS OF THE DEFINITION OF A  
GO-KART.

AND THERE DID HAPPEN TO BE SOME  
TESTIMONY IN THAT CASE  
SUGGESTING THAT GO-KARTS DIDN'T  
PRESENT THE TYPICAL DANGERS THAT  
OTHER MOTOR VEHICLES -- THERE  
ARE SOME RATIONALES BEHIND IT.  
I THINK THE CLEANER WAY TO  
DECIDE THESE CASES IS WHETHER  
SOMETHING IS MOTORIZED, AND FOR  
THOSE REASONS WE THINK THE  
DECISION BELOW SHOULD BE  
QUASHED.

>> THANK YOU.

WE THANK BOTH SIDES FOR YOUR  
ARGUMENT.

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