

>> ALL RISE.
HERE YE HEAR YE HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
GOD SAVE THE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA, PLEASE BE
SEATED.
>> GOOD MORNING, WELCOME TO THE
FLORIDA SUPREME COURT.
BEFORE WE BEGIN, WE HAVE WITH US
TODAY THE LAKELAND CHRISTIAN
SCHOOL.
PLEASE STAND.
OKAY.
LET'S HAVE THE ONE GRADE, ARE
WE?
I AM SORRY?
UPPERCLASSMAN.
ALL RIGHT, THANK YOU.
LET'S LEAVE THE TEACHERS
STANDING SO WE KNOW WHO THEY
ARE.
HOPE YOU ENJOYED THE ORGANIST
TODAY.
THE FIRST CASE IS ANTHONY NEWTON
V. CATERPILLAR FINANCIAL
SERVICES CORPORATION, ET AL..
>> GOOD MORNING, YOUR HONOR'S.
MAY IT PLEASE THE COURT, THOMAS
SEIDER FOR THE PETITIONER, MR.
NEWTON.
NEARLY EVERY MOTORIZED VEHICLE
TO BE CONSIDERED BY FLORIDA
APPELLATE COURT HAS BEEN DEEMED
A DANGEROUS INSTRUMENTALITY
UNDER THE LAW.
THE SECOND DISTRICT DECISION
HERE, A MULTI-TRAIN LOADER IS
NOT A DANGEROUS INSTRUMENT,
SIMPLY CANNOT BE SQUARED WITH
THAT PREEXISTING PRECEDENT.
>> LET ME ASK YOU THIS.
IS THIS PARTICULAR BOBCAT A
MOTOR VEHICLE UNDER FLORIDA LAW
AS DEFINED BY FLORIDA STATUTE?
>> YES IT IS.
FLORIDA STATUTES DEFINE MOTOR
VEHICLE IS ANY VEHICLE THAT IS
SELF-PROPELLED, VEHICLE IS

DEFINED AS ANY INSTRUMENT THAT
MAY OR CAN BE DRAWN DOWN THE
ROAD OF THE STATE.

THE LOADER FIXED THAT
DEFINITION.

>> IS THE DEFINED FOR USE ON
PUBLIC ROADS?

>> THAT IS NOT ITS PRIMARY
DESIGN.

YOU COULD SAY THE SAME THING
ABOUT GOLF CARTS OR TRACTORS OR
ANY TYPE OF INSTRUCTION --
CONSTRUCTION EQUIPMENT.

AND ALL THOSE INSTANCES THE USE
ON ROADS IS A SORT OF INCIDENTAL
NON-PRIMARY USE BUT THE DOCTRINE
HAS BEEN EXTENDED TO THOSE
VEHICLE THAT THOSE VEHICLES HAVE
BEEN DEFINED AS MOTOR VEHICLES
UNDER THE DOCTRINE.

>> DO YOU WANT TO ADDRESS THE
ARGUMENT THAT YOU WAIVED YOUR
ARGUMENT THAT THIS IS A MOTOR
VEHICLE UNDER FLORIDA LAW,
FLORIDA STATUTES, BY CONCEDED
THAT IT WAS NOT A MOTOR VEHICLE
IN ORDER TO AVOID THE EFFECT OF
THE GRAVES AMENDMENT.

>> THE GRAVES AMENDMENT HAS
NEVER BEEN A CONCERN IN THIS
CASE, IT DEFINES MOTOR VEHICLE
VERY NARROWLY AS AN INSTRUMENT
THAT IS PRIMARILY OPERATED ON
ROADS.

WHAT WE ARGUED AT THE TRIAL
COURT IS THE LOADER IF DEFINED
AS SPECIAL MOBILE EQUIPMENT IS
NONETHELESS A DANGEROUS
INSTRUMENTALITY AND WE MADE THAT
ARGUMENT BECAUSE IT IS WHAT WAS
SAID IN THE HARDING DECISION,
INSTRUMENTALITY NEARLY IDENTICAL
TO THE INSTRUMENTALITY HERE AT
EVEN IF IT IS SPECIAL MOBILE
EQUIPMENT IT IS A DANGEROUS
INSTRUMENTALITY.

THAT IS THE ARGUMENT, A PIECE OF
SPECIAL MOBILE EQUIPMENT BUT
STILL A MOTOR VEHICLE, A
DANGEROUS INSTRUMENTALITY AND
SPECIAL MOBILE EQUIPMENT AND
MOTOR VEHICLE, THEY ARE NOT

MUTUALLY EXCLUSIVE TERMS, YOU HAVE SOMETHING VIA SPECIAL MOTOR RECOMMITTED BE A MOTOR VEHICLE, TRACTORS ARE SPECIAL MOBILE AGREEMENT AND SO IS ANY TYPE OF CONSTRUCTION.

>> I WAS LOOKING AT THE CASES INVOLVING CRANES WHICH ARE PRIMARILY A CRANE IS DESIGNED TO BE OPERATED ON PUBLIC HIGHWAYS. IT SEEMS LIKE EARLY ON THIS COURT SAID THEY USED THE WORD INHERENTLY DANGEROUS. COMING FROM A LIABILITY BACKGROUND, WONDERING IF WE HAVE BEEN IN PRECISE IN USING DANGEROUS INSTRUMENTALITY, INHERENTLY DANGEROUS, IN ANY CASE IT IS A STATEMENT THAT THE OWNER OF THE EQUIPMENT OUGHT TO BE LIABLE FOR THE ACTIONS OF THE OPERATOR, THAT IS WHAT WE ARE LOOKING AT, CORRECT?

>> YES.

>> HOW INHERENTLY DANGEROUS, DANGEROUS INSTRUMENTALITY, WORK TOGETHER OR ARE THEY TWO SEPARATE DOCTRINES?

>> THEY ARE DISTINCT DOCTRINES. EVERY CASE INVOLVES DANGEROUS INSTRUMENTALITY AND NOT THIS DISCUSSION OF INHERENTLY DANGEROUS.

THEY ARE VERY RELATED CONFLICTS. THAT SPEAKS TO THE CENTRAL INQUIRY UNDER THE DOCTRINE WHICH IS WHETHER A MOTOR VEHICLE IS PECULIARLY DANGEROUS WHEN USED IMPROPERLY.

INHERENTLY DANGEROUS IS A DIFFERENT DOCTRINE, LIABILITY MAY BE IMPOSED IN DIFFERENT SCENARIOS WOULD UNDER THE DANGEROUS AND TO MENTALITY DOCTRINE YOU NEED TO HAVE NEGLIGENCE WHILE THE VEHICLE IS BEING OPERATED.

THAT IS THE DOCTRINE AND THE FRAMEWORK WE ARE APPLYING HERE. CRANES ARE DANGEROUS INSTRUMENTALITY USE, AND GOLF CARTS, AND IMPROPERLY.

>> YOU ARE SAYING THIS IS A MOTOR VEHICLE BUT IS IT NECESSARY TO BE A MOTOR VEHICLE TO BE A DANGEROUS INSTRUMENTALITY?

I THINK WE LOOK AT THE STATUTE EVEN THOUGH 316 DEFINES AND GOES THROUGH THE DEFINITIONS OF MOTOR VEHICLES AND I THINK A LOADER MIGHT BE INCLUDED UNDER THAT SPECIAL MOBILE EQUIPMENT DEFINITION AND DOES THAT NEGATE IT BEING A MOTOR VEHICLE?

>> THEY ARE NOT MUTUALLY EXCLUSIVE.

>> A MOTOR VEHICLE SEEMS TO ME ANYTHING THAT IS SELF-PROPELLED WITH A MOTOR.

>> EXACTLY.

THAT IS THE COMMON SENSE DEFINITION OF THE TERM AND THAT IS HOW IT IS ALWAYS BEEN APPLIED.

IF YOU USE THAT DEFINITION IT FITS.

>> IN THE INQUIRY, IF WE SAY THIS IS A MOTOR VEHICLE, DOESN'T IT HAVE TO HAVE SOME OTHER PROPERTIES WE SHOULD CONSIDER IN FINDING AND DETERMINING WHETHER IT IS A DANGEROUS INSTRUMENTALITY?

>> THE MOTOR VEHICLE IS THE FIRST STEP.

>> WE WILL ACCEPT IT IS A MOTOR VEHICLE BUT WHAT ELSE DO WE LOOK AT TO DETERMINE IF IT IS A DANGEROUS AND TO MENTALITY?

>> WHETHER IT IS PECULIARLY DANGEROUS WHEN USED IMPROPERLY OR NEGLIGENTLY.

WE HAVE A MULTITRAIN LOADER THE WAY 4 TIMES, IT CAN LIVE THOUSANDS OF POUNDS IN THE AIR, IT IS OPERATED IN THE SAME SETTING AS OTHER EQUALLY DAMN TRACTORS AND TRACTORS ARE DANGEROUS TO THE PUBLIC WHEN OPERATED IN CONSTRUCTION SETTINGS AND ROAD RIGHT-OF-WAY MAINTENANCE AND COMMERCIAL LANDSCAPING JOBS.

>> IN THIS CASE THIS IS BEING OPERATED BY PRIVATE PROPERTY BUT NEAR A ROADWAY, CORRECT?

AND A RESIDENTIAL AREA.

DOES THAT MATTER AT ALL?

>> IT DOES NOT MATTER, SPECIFIC FACTS OF THIS CASE CAN BE HELPFUL IN DETERMINING WHETHER AN INSTRUMENTALITY IS DANGEROUS BUT THIS COURT HAS NEVER EXTENDED OR NOT EXTENDED DOCTRINE BASED ON THE OPERATION OF A GIVEN CASE AND THE COURT SAID SPECIFICALLY THE DOCTRINE SHOULD NOT BE EXTENDED OR NOT EXTENDED BASED ON WHETHER IT IS OPERATED ON PUBLIC ROAD OR PRIVATE PROPERTY AND THAT IS WHAT THE SECOND DCA DID, THEY SAID -

>> DIDN'T WE EMPHASIZE REGARDLESS OF WHERE THE TRACTOR AND PARTICULAR CASE WAS BEING OFFERED THAT FARM TRACTORS FREQUENTLY OPERATE ON STATE ROADS AND OTHER PUBLIC AREAS SUBJECTING THE PUBLIC TO THE DANGER.

WASN'T THAT A CRITICAL PART OF OUR ANALYSIS?

>> I THINK IT WAS AND THAT ILLUSTRATES THE WAYS IN WHICH THE TRACTOR WAS DANGEROUS TO THE PUBLIC.

IT WAS MORE DIFFICULT QUESTION BECAUSE TRACTORS ARE OPERATED IN REMOTE FARMLAND.

>> WHAT WE SAID WAS FARM TRACTORS FREQUENTLY OPERATE LONG STATE ROADS INTO PUBLIC AREAS AND IT SEEMS LIKE IN THE ANALYSIS WE ARE COMING TO THE CONCLUSION WHEN THE MAJORITY WAS COMING TO THIS CONCLUSION, THAT WAS A CENTRAL PART OF THE ANALYSIS, WE GO FROM THAT STATEMENT OF THE FARM TRACTORS FREQUENTLY BEING OPERATED LONG STATE ROADS AND THEREBY SUBJECTING THE PUBLIC TO THE DANGER OF INJURY TO OUR CONCLUSION THAT THEREFORE A

TRACTOR IS A DANGEROUS
INSTRUMENTALITY AND WHY WOULDN'T
THIS BE ENTIRELY DISTINGUISHABLE
FROM THAT CASE?

EVEN THOUGH THESE BOBCATS CAN BE
ON THE ROAD, THEY ARE DANGEROUS
JUST TO HAVE 1 ON THE ROAD IS
DANGEROUS NO MATTER HOW IT IS
OPERATED SO IT IS NOT SOMETHING,
VERY DIFFERENT THAN A FARM
TRACTOR FROM ONE FIELD TO
ANOTHER AND THAT IS NOT AN
UNCOMMON SORT OF THING.

IT MAY NOT BE THE PRIMARY USE
BUT AS WE SAID, FARM TRACTORS
FREQUENTLY OPERATE A LONG STATE
HIGHWAYS.

>> THE SAME COULD BE SAID ABOUT
MULTI-TRAIN LOADERS WHICH THEY
WILL BE USED BY THE SIDE OF
ROADS.

>> WOULDN'T THE RESULT BE
DIFFERENT?

>> I DON'T THINK IT WOULD BE
BECAUSE WHAT THE COURT SAID WAS
TRACTORS AND GOLF COURTS NO
MATTER WHERE THEY OPERATE ARE
DANGEROUS TO THE PEOPLE AROUND
THEM AND THAT IS TRUE HERE.
THE COURT NEVER DEFINED THE
PUBLIC SUMMARILY IS JUST THE
TRAVELING PUBLIC.

>> WE DID ORIGINALLY.

>> IN AUTOMOBILE CASES IT WAS
AUTOMOBILES ARE OPERATED ON
PUBLIC ROADS SO IT WAS THE
TRAVELING PUBLIC.

>> THAT WAS THE WHOLE FOCUS OF
THE DOCTRINE ORIGINALLY.

>> IT HAS BEEN EXPANDED TO GOLF
CARTS OPERATING ON PRIVATE GOLF
COURSES AND TRACTORS ON PRIVATE
FARMLAND AND THE INQUIRY HAS
CHANGED TO JUST WHETHER IT IS
DANGEROUS TO THE PEOPLE AROUND
IT.

THIS COURT SAID --

>> I AM NOT SEEING THAT.

WHAT I'M READING IN THE TEXT IN
THE OPINION AND EVEN IN A MORE
CURSORY ANALYSIS, EVEN THERE,
ISN'T IT TRUE THAT WE EMPHASIZE

THAT THE TYPES OF ACCIDENTS
CAUSED BY THE OPERATION OF GOLF
CARTS ARE IDENTICAL TO THOSE
INVOLVING OTHER MOTOR VEHICLE
ACCIDENTS.

ISN'T THAT PART OF WHAT WE
EMPHASIZE IN THAT CASE?

AGAIN, AS PART OF OUR EMPHASIS
ON THE DANGERS OF GOLF CARTS.

>> THAT WAS THE FOCUS IN THE
GOLF CART CASE BECAUSE THOSE ARE
THE DANGERS POSED BY GOLF CART
SIMILAR TO AUTOMOBILES BUT I
DON'T THINK THIS COURT MEANT TO
SAY IT HAS TO BE AUTOMOBILE LIKE
IN TERMS OF THE ACTS CAUSED AND
THE DOCTRINE IS APPLIED TO
CONSTRUCTION CRANES AND
INSTRUMENTALITIES NOT NORMALLY
OPERATED ON ROADS.

THIS COURT APPLIED IT TO
AUTOMOBILES, MOTORCYCLES,
TRACTOR AND GOLF CART, THOSE ARE
THE MAIN CASES.

>> THOSE OTHER THINGS I THINGS
WE HAVE NOT SPECIFICALLY
ADDRESSED.

>> THIS COURT RECOGNIZED
HOMEOWNERS ARE DANGEROUS.

>> AND JEFFREY VERSUS LIVINGSTON
I THOUGHT THAT WAS WHERE WE
TALKED ABOUT CRANES.

THE SECOND DISTRICT SPECIFICALLY
CITES TO A FIFTH DISTRICT CASE.

IF YOU GO BACK, NOT WITH A LOT
OF ANALYSIS, WHAT I FOUND GOES
BACK TO HOW WE LOOK AT THIS.

THE SECOND DISTRICT OPINION SAYS
IT IS TRUE THAT INSTRUMENTALITY
LIKE A CRANE THAT LIFT HEAVY
OBJECTS COULD BE CONSIDERED A
DANGEROUS INSTRUMENTALITY AND
THAT IS CITED WITHOUT ANYBODY
QUESTIONING IT.

BUT THE LOADERS 9 FOOT LIFTING
CAPACITY IS FAR SHY OF THAT OF
THE CRANE.

AT THAT POINT WE ARE SUPPOSED TO
BE LOOKING AT A QUESTION OF LAW
AND IT LOOKS TO ME LIKE THIS
OPINION SOUGHT TWO DIFFERENT
AFFIDAVITS.

ONE FOR TALKED ABOUT THE DANGERS OF THE BOBCAT AND WENT TO SAY IT IS NOT AS BIG AS A CRANE BUT ALSO OCCURRED ON A PRIVATE LOT. THAT IS MY CONCERN, IF THAT IS GOING TO BE AS BIG AS A CRANE OR DANGEROUS AS AN AUTOMOBILE VERSUS, THIS IS WHAT I WAS GETTING BACK TO, A JUDGMENT THAT THE LEGISLATURE CAN OVERRULE, WHEN THESE BOBCATS ARE LEAST WHICH IS WHAT HAPPENED HERE, THE LESSOR IS GOING TO BE, THE OWNER IS VICARIOUSLY LIABLE.

THEY UNDERSTAND THEY COULD SHIFT THE BURDEN BY REQUIRING INSURANCE OF A CERTAIN AMOUNT THAT ISN'T THAT WHAT WE ARE TALKING ABOUT AS OPPOSED TO PRODUCT LIABILITY WHERE THE VERY DESIGN IS UNSAFE?

>> THAT IS A KEY DISTINCTION. CATERPILLAR IS NOT HERE BECAUSE THE MANUFACTURER OF THE LOADER BUT THEY ARE THE OWNER OF THE LOADER AND ARE VICARIOUSLY LIABLE FOR THE NEGLIGENT OPERATION OF IT SO THIS COURT HAVE ALWAYS APPLIED THE DOCTRINE CATEGORICALLY 2 DIFFERENT TYPES OF VEHICLES AND GIVEN IT PREDICTABILITY AND CONSISTENCY AND WITH THE SECOND DISTRICT DECISION ROB THE DOCTRINE, BUT FACT SPECIFIC AND CASE SPECIFIC ANALYSIS.

>> WHAT ABOUT THE CANAL CASE? IT WAS A CRANE I BELIEVE.
>> OPERATED ON PRIVATE PROPERTY. THE COURT SAID THAT WAS NOT A DANGEROUS INSTRUMENTALITY BUT IN OTHER CIRCUMSTANCES IT HAD BEEN. THAT ARGUES AGAINST THE PREDICTABILITY.

IT SEEMS TO ME THAT WAS THE SAME KIND OF INSTRUMENT THAT HAD BEEN FOUND TO BE A DANGEROUS INSTRUMENTALITY BUT IN THAT SITUATION BECAUSE OF THE VERY LOCATION.

>> THE FIRST DCA DECISION USED A SIMILAR ANALYSIS.

THAT FRAMEWORK HAS BEEN
DISCLAIMED BY THIS COURT SINCE
THEN AND APPLIED THE DOCTRINE
CATEGORICALLY WITH NO RECORD
EVIDENCE WHATSOEVER SO WHAT THIS
COURT DID SHIFTED THE FOCUS AWAY
FROM PARTICULAR CASE SPECIFIC
FACTS AND WARINESS TO
MENTALITIES OPERATED IN ONE CASE
VERSUS ANOTHER AND CHANGED IT TO
A CATEGORICAL DECISION.

THE TRACTOR IF IT IS ON A
PRIVATE FARM IS A DANGEROUS
INSTRUMENT AND ALSO A DANGEROUS
INCIDENT ON A PUBLIC ROAD AND
DANGEROUS NO MATTER WHAT IT
DOES.

EFFECTIVE SERVER AND CRUSHES
SOMEONE OR RUNS SOMEONE OVER.

>> A LOT OF EXCAVATION EQUIPMENT
AND OTHER EQUIPMENT, PILE
DRIVERS, DRILL RIGS THAT HAVE NO
MOBILITY WHATSOEVER.

THEY ARE ALWAYS DRIVEN TO THE
SITES, SET UP WITH FEET AND THEY
WAY MULTIPLE THE AMOUNT OF TENS
AS THIS PIECE OF EQUIPMENT,
EXTRAORDINARILY DANGEROUS, THEY
HAVE MOTION AND IF NOT SET UP
RIGHT THEY CAN FALL OVER AND
CRUSH PEOPLE AND HAVE.

THERE ARE MANY CASES ABOUT THAT.
WOULD THESE BE A DANGEROUS
INSTRUMENT ALLEY?

>> IT DOES NOT SOUND LIKE IT.

IT IS NOT OPERATED BY A DRIVER
AND DOES SOUND LIKE IT IS
MOTORIZED FORWARDS AND
BACKWARDS, DOESN'T HAVE
TRADITIONAL ATTRIBUTES OF A
MOTOR VEHICLE.

IT IS A MUCH CLOSER CASE WHEN
THE ONLY MOTION YOU ARE TALKING
ABOUT IS UP AND DOWN VERSUS
FORWARDS AND BACKWARDS.

>> THAT EQUIPMENT WOULD BE
CAPABLE OF THE EXACT KIND OF
HARM THAT HAPPENED HERE.

IT WASN'T THE MOTION OF THE
VEHICLE THAT CAUSED THE HARM.

>> THAT INTO MENTALITY COULD BE
DANGEROUS OR INHERENTLY

DANGEROUS BUT WOULD NOT FALL UNDER THE PARTICULAR STRAIN.
>> IS AND THAT BECAUSE THE LINK ON THE PUBLIC HIGHWAY AND MOTION WAS THE CRITICAL FACTOR IN THIS DOCTRINE THAT MADE IT PREDICTABLE?

THE FACT THAT YOU WERE UNLEASHING SOMETHING ON THE PUBLIC THAT WAS MOBILE, BIG, FAST, COULD CAUSE INJURY EASILY IN THE PUBLIC ARENA.

IS THAT THE TIE, THE LINK THAT USE ON PUBLIC HIGHWAYS AND MOBILITY WITH THE DOCTRINE?

>> THAT IS WHERE THE DOCTRINE STARTED AND WHAT YOU SAID WOULD APPLY.

>> IF YOU APPLY IT TO A PIECE OF EQUIPMENT THAT HAS A TRACK ON IT, A STEEL RUBBER TRACK SO THAT IT CAN GET AROUND THE CONSTRUCTION SITE, NOT AT ALL DESIGNED FOR USE IN THE PUBLIC HIGHWAY.

HAVEN'T YOU TETHERED THE DOCTRINE FROM ITS ORIGINAL IDEA OF CONNECT ABILITY OF MOBILITY IS IMPORTANT BECAUSE IT'S USE ON PUBLIC HIGHWAY PUT IT AT EXTREME RISK?

>> THE LOADER MOVES IN PUBLIC AREAS THE SAME WAY THAT A TRACTOR DOES.

>> MANY, IN RURAL AREAS, THESE THINGS ARE CARRIED, THE RECORD EVIDENCE IS THEY ARE CARRIED TO THE LOCATION, THEY HAVE A MOBILITY TO GET AROUND THE SITE.

>> MULTI-TRAIN LOADERS AND VERY QUICKLY, THE LITTER IN THIS CASE USED AROUND THE PUBLIC.

AND ON A PUBLIC RD. MISTER NEWTON IN THIS CASE WAS STANDING IN A TRAILER ON A PUBLIC ROAD TO THE NOTION THAT THEY ARE NOT ANYWHERE NEAR THE TRAVELING PUBLIC IS BELIED EVEN BY THE FACTS OF THIS CASE WHICH WERE NOT LIMITING OR EMBLEMATIC OF THE DANGERS.

>> DID YOU NOTICE ALL OF THE

MULTITENANT PILEDRIVER IS AROUND
I FOR IN THE PUBLIC
RIGHT-OF-WAY?

>> WE TOOK THAT UP.

I WILL SAVE THE BALANCE OF MY
TIME.

>> YOU HAVE 59 SECONDS LEFT.

>> IF IT MAY PLEASE THE COURT,
MY NAME IS HALA SANDRIDGE AND I
REPRESENT CATERPILLAR FINANCIAL
SERVICES.

>> MOVE THE MICROPHONE CLOSER TO
YOU.

>> DOES THAT HELP?

I WOULD FIRST LIKE TO START WITH
THE PUBLIC POLICY ISSUE RIGHT
AND I THINK A LOT HAS BEEN
TOUCHED ON ALREADY TODAY BUT I
WOULD LIKE TO PUT IT IN CONTEXT
OF WHAT WAS SAID SO OBVIOUSLY IT
WAS REFINED WITH THE ADVENT OF
THE AUTOMOBILE AND IT WAS MEANT
TO PROTECT UNSUSPECTING MEMBERS
OF THE TRAVELING PUBLIC FROM A
SPEEDING OBJECT THAT IS GOING
INTO A PUBLIC PLACE AND WHEN
THAT HAPPENS, WHAT THE COURT
DECIDED IN SOUTHERN COTTON OIL
IS WE WERE GOING TO PLACE
FINANCIAL RESPONSIBILITY ON THE
OWNER OF A VEHICLE WHO INJECTED
INTO PUBLIC DOMAIN.

THAT RATIONALE OF PROTECTING THE
PUBLIC HAS NOT CHANGED SINCE ITS
INCEPTION.

THE PUBLIC HAS A RIGHT TO TRAVEL
THE HIGHWAY WITHOUT BEING
SUBJECTED TO UNDUE DANGERS OF
INJURY BY OTHERS.

THIS COURT SAID IN SUMMARIZING
ITS DECISION THERE CAN BE NO
QUESTION THAT A FARM TRACTOR IS
AN INSTRUMENTALITY THAT
MATERIALLY INCREASES THE HAZARDS
OF TRAVEL.

NOTHING HAS CHANGED IN ALL OF
THIS TIME. GO.

WHY IS IT IMPORTANT THAT IT BE A
MOTOR VEHICLE?

WHY CAN'T IT BE JUST A MACHINE
WITH A MOTOR?

LET'S SAY A CHAINSAW OR A

PILEDRIVER?

WE SUBMIT THAT A MOTOR VEHICLE
EQUALS MOBILITY AND IT IS THE
MOBILITY WE ARE CONCERNED ABOUT
INJECTING INTO THE PUBLIC SPACE.

>> THIS LOADER, LOADERS COME
WITH EITHER WHEELS OR TREADS AND
THEY ALL HAVE MOTORS AND THEY
CAN MOVE WITHOUT, YOU TURN THEM
ON AND THEY CAN MOVE SO THEY
HAVE MOBILITY.

>> LET'S DEFINE THE DIFFERENCE
BETWEEN THOSE SPECIFIC VEHICLES
WAS ONE IS A SKID SKIER.
IT HAS WHEELS.

THAT CAN TRAVEL A ROAD.
WHAT WE ARE TALKING ABOUT IS A
MULTI-TERRAIN LOADER.

THE NAME SPEAKS FOR ITSELF.
IT IS NOT ON PUBLIC ROADS, NOT
WHERE THE PUBLIC IS BUT IS
DESIGNED TO DO JUST THE
OPPOSITE, TO GO WHERE A SKID
STEER CAN'T GO WHICH IS ON
PUBLIC ROADS.

>> THEY DON'T TRAVEL AS FAST AS
SOME OF THESE OTHER VEHICLES BUT
YOU CAN IN FACT MOVE THEM ON A
PUBLIC HIGHWAY, CAN'T YOU?

>> THIS ONE AS I UNDERSTOOD EVEN
WHEN IT WAS FIRST OFFLOADED WAS
OFFLOADED ON A PUBLIC HIGHWAY
AND MOVED ON TO THE PROPERTY.

>> IT CANNOT TRAVEL ROADS.
THAT TRACK CANNOT BE USED TO
TRAVEL ROADS.

IS IT MOBILE BECAUSE IT CAN
DRIVE OFF THE TRAILER ONTO THE
PROPERTY?

ABSOLUTELY.

THAT IS TRUE.

>> ON YOUR PUBLIC POLICY
ARGUMENT IS THAT YOUR POSITION
THE DANGEROUS INSTRUMENTALITY
DOCTRINE CAN BE APPLIED?

THE VEHICLE HAS TO BE DESIGNED
TO TRAVEL ON PUBLIC ROADS.

>> KNOW.

NOT DESIGNED.

IT IS USED ON PUBLIC ROADS.

IT IS MOBILE AND INJECTED.

>> WHEN I THINK OF A BOBCAT,

EACH TIME I SEE ONE IN ACTION IT HAS BEEN LANDSCAPING, MOVING DIRT AROUND FROM ONE SIDE OF THE YARD TO ANOTHER AND IN DOING SO THE BOBCATS INTO THE YARD AND BACK INTO THE ROAD WHERE CARS ARE TRAVELING AND WHATEVER ELSE. IT MAY NOT HAVE BEEN DESIGNED, I CAN'T IMAGINE SEEING A BOBCAT TRAVELING ON I-95, AT 90 MILES AN HOUR BUT I CAN SEE A BOBCAT GOING IN AND OUT OF TRAFFIC ON A PUBLIC ROAD FOR ITS INTENDED PURPOSE TO BE USED.

>> THEY ARE NOT INTENDED AND NOT USED THAT WAY.

A SKID STEER MIGHT BE BUT THIS RUBBER TRACK IS NOT MEANT, A TIRE IS BUILT TO GO ON A ROAD. YOU CAN'T USE A RUBBER TREAD.

>> ARE YOU SUGGESTING TRACK VEHICLES DO NOT OPERATE UNDER ANY CIRCUMSTANCES ON PUBLIC ROADWAYS?

ARE WE TALKING A TRACK VEHICLE? YOU ARE NOT SUGGESTING THAT?

>> NOT SUGGESTING --

>> THEY CAN AND DO OPERATE.

>> AND WE KNOW IT DID IN THIS CASE, WENT OFF THE RAMP.

>> YOUR ARGUMENT THEY CANNOT AND DO NOT OPERATE ON PUBLIC ROADS IS NOT SUPPORTED BY COMMON SENSE.

>> THEY ARE NOT MEANT TO BE.

>> THAT IS NOT THEIR PRIMARY PURPOSE BUT THEY CAN AND DO OPERATE OVER PAVED ROADWAYS.

IS THAT CORRECT?

IT IS NOT CORRECT.

YOU HAVE NEVER SEEN A TRACKED VEHICLE TRAVELING DOWN THE HIGHWAY?

I WONDER HOW THOSE PUBLIC ROADWAYS HAVE THOSE TRACKED CUTS IN THEM.

HOW DO YOU IMAGINE THOSE CAME TO BE?

>> I WANTED TO GO TO THE WORD OPERATE.

THEY DON'T OPERATE ON THE ROADS. WHAT THEY DO IS THEY MIGHT TOUCH

THE ROADS.

>> DON'T NEED TO PLAY
SUPERCILIOUS ROAD GAMES, THE
DECISION NEEDS TO BE MADE, WHEN
YOU START GETTING INTO WHAT
OPERATE MEANS, THIS IS GOING TO
MISS THE POINT OF WHAT WE ARE
TRYING TO ACCOMPLISH.

>> WE ARE TRYING TO PROTECT THE
PUBLIC.

>> WE ARE ATTEMPTING TO
ACCOMPLISH DEFINING WHAT THE LAW
IS AND WHAT IT HAS BEEN IN
FLORIDA.

WHATEVER ELSE GOES WITH THAT
GOES WITH THAT.

>> MY WHOLE POINT AND THIS IS
WHERE I WANTED TO END UP
DISCUSSING MOBILITY.

IF SOMETHING IS NOT MOBILE IN
THE SENSE THAT IT IS MOBILE AND
INJECTED INTO THE PUBLIC DOMAIN
WE BELIEVE IT IS OUR POSITION
THAT IT DOESN'T FALL IN THE
DANGEROUS INSTRUMENTALITY
DOCTRINE.

>> THEN YOU WOULD REALLY WANT US
TO RECEDE FROM CASES THAT
EXTENDS TO GOLF CARTS, AND THE
CRANE CASES.

THIS IS WHERE WE GO BACK TO
PUBLIC POLICY BECAUSE MR. NEWTON
WAS, AND AGAIN, I DON'T KNOW IF
THIS GOT TO THE POINT WHERE WE
KNOW WHETHER THERE WAS
NEGLIGENCE ON THE PART OF THE
OPERATOR HAS THAT ALREADY BEEN
CONCEDED?

IF THE OPERATOR ISN'T NEGLIGENT
THERE IS CATERPILLAR FINANCIAL
SERVICES DOESN'T HAVE TO WORRY.

>> THAT WOULD BE THE CASE.

>> TALKING ABOUT THE POLICY OF
HOLDING, AND THE DANGEROUS
INSTRUMENTALITY AND IN THIS DAY
AND AGE USUALLY THAT
RESPONSIBILITY IS PASSED ON
BECAUSE THERE IS INSURANCE.

>> I WOULD LIKE TO TOUCH ON
THAT.

>> IF WE START TO SAY A CRANE IS
BUT A BOBCAT ISN'T, I DON'T HAVE

THE SAME EXPERIENCE WITH THIS EQUIPMENT, WE ARE GOING TO START TO PUT FOR COURT'S DIFFICULTY AND I STILL SAY THE LEGISLATURE COULD MAKE A DECISION, NONE OF THIS IS RIGHT, WE ARE TO JOIN THE OTHER STATED NOT HAVE DANGEROUS AND THE MENTALITY FOR AUTOMOBILES.

TELL ME AGAIN HOW THIS IS SO DISSIMILAR FROM A CRANE OR OTHER CONSTRUCTION TYPE EQUIPMENT THAT WE OUGHT TO AFFIRM OR APPROVE THE SECOND DISTRICT?

>> I WOULD LIKE TO SAY WHAT WE ARE SAYING HERE CAN BE COMPLETELY RECONCILED WITH THE GOLF CART CASES.

THE GOLF CARTS ARE USED WHERE THE PUBLIC GOES, TO GOLF COURSES, THIS IS EASILY RECONCILABLE AND CONSISTENT WITH WHAT WE ARE SAYING WHICH IS THE GENESIS OF THE DOCTRINE IS TO PREVENT UNSUSPECTING PEOPLE OF HAVING SOMETHING MOBILE INJECTED ON THEM IN AN UNSUSPECTING WAY.

>> THIS ACCIDENT HAD OCCURRED WHERE THE BOBCAT WAS PULLING OFF INTO THE ROAD IN AN UNSUSPECTING PEDESTRIAN WAS INJURED OR KILLED WOULD YOU SAY THE SAME THING, THAT THERE WOULD BE NO VICARIOUS LIABILITY?

>> IT CAN BE.

>> IT CAN'T BE FACT DEPENDENT OR WE WOULD HAVE A JURY DECIDING THE ISSUE OF VICARIOUS LIABILITY.

>> IT HAS TO LOOK AT FACTS OF THE SPECIFIC PIECE OF EQUIPMENT. WE LOOKED AT STATISTICS, GOLF CARTS TO MAKE THE DETERMINATION ABOUT THEIR DANGEROUS PROPENSITY.

THE SUPREME COURT DID THAT IN SOUTHERN COTTON OIL WHEN IT LOOKED AT STATISTICS WITH RESPECT TO AUTOMOBILES AND IT IS THE SAME HERE.

STATISTICALLY IT IS NEVER INJURING INDIVIDUALS AND IT HAS

THIS ONE SITUATION WHERE IT DOES BECAUSE IT GOES OFF ONTO THE PUBLIC ROADWAY, THEN WE MIGHT BE ARGUING NO.

IT IS STILL NOT A DANGEROUS INSTRUMENTALITY.

>> NEW NEXT EXPERT -- NEWTON'S EXPERT, 8000 POUNDS, IT WAS CAPABLE OF LIFTING 2300 POUNDS THAT ACCORDING TO CRAMER, THE EXPERT, RESTRICTED THE OPERATOR'S VISIBILITY AND THE LOADER'S ROTATIONAL SPEED IMPOSED A DANGER TO BYSTANDERS IN THE VICINITY.

DO WE JUST DISCOUNT THAT STATEMENT THAT SEEMS TO BE PRETTY ACCURATE?

>> THAT POINT DOESN'T UNDERMINE WHAT WE ARE TRYING TO SAY.

IF YOU ARE OPERATING IN THE MIDDLE OF THE FIELD, THIS PARTICULAR PIECE OF AGREEMENT, THIS MULTI-TERRAIN LOADER AND SOMEONE LIES ON THE GROUND AND IS RUN OVER THEY WILL BE SERIOUSLY INJURED.

THAT IS TRUE.

>> THERE IS NOT GOING TO BE LIABILITY.

>> HERE IS OUR POINT.

OUR POINT IS NOT THAT IT CAN DO HARM.

IT CAN DO HARM.

WE DON'T DISAGREE IT CAN DO HARM.

OUR POINT IS IT NOT A DANGEROUS ANSWER MENTALITY COULD IS NOT INJECTED INTO THE PUBLIC DOMAIN WHERE THE PUBLIC CAN BE INJURED AND THAT IS THE BASIS OF THE DOCTRINE AND HERE'S THE PUBLIC POLICY ISSUE THIS COURT HAS TO DECIDE TODAY, WHETHER IT WANTS TO EXTEND THE DOCTRINE AND APPLY IT TO ANY COMMERCIAL SETTING SUCH AS A JOB SITE, A WAREHOUSE, A MANUFACTURING PLANT WHERE THE PUBLIC ISN'T, BUT WHERE THERE MIGHT EXIST LARGE PIECES OF EQUIPMENT THAT ARE MOBILE AND HAVE MOTORS.

>> I HATE TO GO BACK TO THE CRANE ANALOGY BECAUSE THE CRANE SEEMS TO ME AFTER IT WAS ESTABLISHED AND THAT IT WAS A DANGEROUS INSTRUMENTALITY MOST OF THE CASES DEAL WITH WORKER'S COMP. IMMUNITY, WHO YOU COULD SUE ON THE JOB SITE.

>> I WOULD LIKE TO ADDRESS THAT CASE, GLAD YOU BROUGHT IT UP. I WANTED TO TALK ABOUT THE CASE THAT SAID THAT CRANES ARE DANGEROUS INSTRUMENTALITIES BUT IT IS A LOOSE DISCUSSION IN THE DISCUSSION IS CITING CASES THAT DEAL WITH INHERENTLY DANGEROUS ACTIVITY CASES, DANGEROUS PER SE, IF I HAD TO SAY THERE IS A CASE I CAN'T RECONCILE IT IS THE SCOTT CASE, IT JUST DOESN'T FIT WITHIN THE DOCTRINE BECAUSE THE CRANE ISN'T BEING OPERATED ON THE ROADS.

IT IS NOT MOBILE.

IT IS NOT A VEHICLE.

IT IS CLEARLY AN INSTRUMENT THAT CAN CAUSE GREAT INJURY IN THE CASES THAT IT CITED INCLUDING CASES FROM THIS COURT HELD THAT THE ACTIVITY ITSELF IS INHERENTLY DANGEROUS.

THAT IS A DIFFERENT DOCTRINE.

WHAT I WOULD SUGGEST TO THIS COURT IS ALL THE CASES CAN BE RECONCILED UNDER THE ARGUMENT WE ARE MAKING BUT THE CRANE CASE, WHICH I THINK IS AN ABERRATION.

I WOULD LIKE TO GO BACK TO A COUPLE QUESTIONS.

>> CAN I ASK YOU A QUESTION HERE?

WE HAVE TALKED ALL ABOUT USING FIELDS AND STUFF.

AM I CORRECT IN UNDERSTANDING THAT THIS TRAILER OR VAN IN WHICH THE MATERIAL WAS BEING PLACED WAS ON A PUBLIC STREET?

>> THE TRAILER WAS.

>> WHATEVER YOU WANT TO CALL IT. WHAT IF THIS TRAILER IS NOT VERY?

THEY ARE DUMPING STUFF ON THE

EDGE OF THE STREET FOR TO BE
PICKED UP BY SOMEONE ELSE.
WHAT IS THAT?

>> SOMEBODY IS INJURED BY IT?

>> DURING THE PROCESS, DUMPED ON
TOP OF THEM.

>> OUR ARGUMENT WOULD STILL BE
THAT THIS IS NOT FALLING --

>> DANGEROUS INSTRUMENTALITY AND
YOUR ARGUMENT WOULD BE IT DOES
NOT AFFECT ANY ACTIVITY ON THE
PUBLIC ROADWAY WHEN SOMEONE IS
QUICKLY ON THE PUBLIC ROADWAY.

>> OUR POSITION IS THAT WOULD
NOT FALL UNDER DANGEROUS INSULIN
TALLY DOCTRINE BECAUSE IT IS NOT
MEANT TO BE USED.

>> IT WAS BEING DUMPED ON THE
PUBLIC ROADWAY.

>> NOT THE SPECIFIC FACTS OF THE
CASE, TO DETERMINE WHAT THAT
PIECE OF AGREEMENT ITSELF DOES.

>> EXAMPLES OF WHAT THESE THINGS
DO, OPERATING AS WELL.

THEY DON'T STAY ON THE PROPERTY
ALL THE TIME, THEY GO BACK AND
IN AND AROUND AND THEY ARE
MOBILE.

>> THEY ARE HURTING PEOPLE.

>> TWO DIFFERENT THINGS.

ARE THEY PECULIARLY DANGEROUS?
THAT IS THE LANGUAGE AND OUR
POINT IS IF THERE IS NO EVIDENCE
THESE PARTICULAR MULTI-TERRAIN
LOADER'S ROUTINELY CAUSE INJURY
TO PEOPLE.

>> EACH CASE DECIDED ON
STATISTICS AND HOW MANY
ACCIDENTS A ROADWAY HAS THAT IS
WHERE WE ARE TO GO.

>> THIS COURT HAD SAID IT UP.

>> IN EACH CASE AND THE COMMON
SENSE WITH THE EQUIPMENT.

>> DEPENDS WHAT PEOPLE KNOW OR
DON'T KNOW.

THE TRIAL JUDGE NEEDED A SUMMARY
JUDGMENT TO UNDERSTAND WHAT THE
ELEMENTS AND PROPENSITIES AND
DANGEROUS WERE OF A
MULTI-TERRAIN LOADER.

THE TRIAL ATTORNEY GOT CONFUSED

>> THE FIFTH DISTRICT, YOU SAY THAT WAS WRONGLY DECIDED. THAT WENT TO THE SUPREME COURT IN 1990 AND UNANIMOUS COURT WITHOUT ANALYZING THE ISSUE JUST SAID IT IS PRESUMED ASSUMED IT IS A DANGEROUS INSTRUMENTALITY FOR WHICH THE OWNER WOULD BE RESPONSIBLE FOR THE ACTIONS. WE WOULD HAVE TO RESEED FROM THAT CASE, WOULDN'T WE?

>> THAT WAS A WORKER'S COMP. ISSUE.

>> YOU ARE SAYING A CRANE IS NOT UNDER THE SAME CONSTRUCT YOU WOULD HAVE US USE, CRANE IS NOT A DANGEROUS INSTRUMENTALITY. I HAVE TO RESEED FROM ALL THOSE CASES.

THE STABILITY VERSUS INSTABILITY, PREDICTABLE RULE VERSUS ONE THAT IS GOING TO GET TRIAL JUDGES AND LIABILITY CARRIERS SCRATCHING THEIR HEADS AND THE INSURER WOULD BE HAPPY TO KNOW THE ACCIDENT FREQUENCY IS LESS THEN MORE IN TERMS OF WHAT THEY CHARGE FOR INSURANCE.

>> IT IS OUR BELIEF THERE CANNOT BE ANY PREDICTABILITY IN THIS DOCTRINE AND THAT IS BECAUSE ON MULTIFACTOR TEST WHETHER IT IS A MOTOR VEHICLE AND WE ANALYZE A SPECIFIC PIECE OF EQUIPMENT, AND THAT IS THE PRIMARY ISSUE AND PROPENSITIES.

>> DON'T WANT TO GET INTO CONSTRUCTION EQUIPMENT BUT IF THERE PIECES OF CONSTRUCTION EQUIPMENT THAT DO NOT MOVE THAT IS DIFFERENT THAN THOSE THAT MOVE.

IF THEY ARE ABLE TO MOVE AND CAUSE DANGER TO THOSE AROUND THEM, BY THE LAW WE ESTABLISHED LOOKS LIKE A DANGEROUS INSTRUMENTALITY FOR WHICH THE OWNER OUT TO UNDERSTAND THEY WOULD BE VICARIOUSLY LIABLE.

>> HERE IS THE QUESTION, FROM THE CRANE CASES I SUGGESTED OR IT DOES NOT SAY THAT.

A FARM TRACTOR IS
INSTRUMENTALITY THAT MATERIALLY
INCREASES HAZARDS OF TRAVEL.
ITS FOCUS WAS ON THE PUBLIC,
IT'S FOCUS WAS ON TRAVEL.
I GO BACK AND CONCLUDE THIS
POINT WHICH THIS COURT, TO A
DIFFERENT LEVEL, THE DOCTRINE
ITSELF AND APPLY IT TO SOMETHING
OTHER THAN PROTECTING THE
PUBLIC.

>> IN THE 17 SECONDS YOU HAVE
LEFT, THE TRIAL COURT GRANTED
SUMMARY JUDGMENT, IS THAT
CORRECT?

>> YES.

>>'S SUMMARY JUDGMENT
APPROPRIATE, AN ISSUE THAT IS SO
FACTUALLY INTENSE, YOU MAKE
CERTAIN FACTUAL FINDINGS BEFORE
ONE CAN DETERMINE IT IS A
DANGEROUS INSTRUMENTALITY.
HOW CAN THAT BE DONE IN SUMMARY
JUDGMENT?

>> THE COURT DID, THE PARTIES
PROVIDE AFFIDAVITS IN ANY
SUMMARY JUDGMENT PROCEEDING,
THIS IS A MOTION TO DISMISS
WHETHER SOMETHING IS A DANGEROUS
INSTRUMENTALITY AND SO IN OUR
POSITION, OUR WORLD, BRINGING
FORWARD FACTS TO SHOW WHETHER OR
NOT IT ACTUALLY IS, MAKES THAT
DECISION AND EVEN STRONGER ONE.
SO IN THIS SITUATION WHERE WE
HAVE A TRIAL JUDGE WHO IS UNSURE
ABOUT THE DANGEROUSNESS OF THE
SPECIFIC MULTI-TERRAIN LOADER
WHERE THE FACTS ARE UNDISPUTED.

>> THANK YOU, COUNSEL.

>> I WOULD LIKE TO QUICKLY TRY
TO GET ON TWO POINTS WAS THE
FIRST IS THIS NOTION THAT MR.
NEWTON AND WORKERS GENERALLY ARE
NOT MEMBERS OF THE PUBLIC, THAT
HE WAS NOT AN UNSUSPECTING
MEMBER OF THE PUBLIC.
MR. NOON WAS IN FACT
UNSUSPECTING AND IS ENTITLED TO
PROTECTION JUST AS MUCH AS A
GOLFER PLAYING GOLF ON A COUNTRY
CLUB GOLF COURSE WHICH WAS THE

CASE IN MEISTER AND THIS COURT WAS DEALING WITH A WORKER ON PRIVATE FARMLAND AND THE DOCTRINE WAS EXTENDED TO HIM. THE IDEA THAT THE PUBLIC SHOULD BE SPLIT INTO DIFFERENT CATEGORIES AND SOME NUMBERS OF THE PUBLIC TO THEIR PROTECTION AND OTHERS DON'T HAS NEVER BEEN THE CASE UNDER THE DOCTRINE HISTORICALLY, AND BY DOING SO, YOU ARE INJECTING EVEN MORE UNCERTAINTY IN THE DOCTRINE, CONSISTENTLY APPLIED.

>> YOUR THEORY IS WHETHER IT IS USED OR COULD BE USED ON A ROADWAY IS IRRELEVANT.

IF IT CAN MOVE AROUND THE CONSTRUCTION SITE, IT IS MOBILE AND THE CONSTRUCTION SITE.

>> WHAT MATTERS IS WHETHER IT IS DANGEROUS TO PEOPLE, BEING USED ON A CONSTRUCTION SITE WHICH IS CRAWLING WITH PEOPLE, AND WHEN IT IS USED NEGLIGENTLY IT CAN HARM THOSE PEOPLE, COULD BE DEEMED DANGEROUS INSTRUMENTALITY.

WE ASK THE COURT QUASH THAT ARGUMENT.

>> THANK YOU FOR YOUR ARGUMENTS.