WE NOW MOVED TO THE SECOND CASE
ON TODAY'S DOCKET.
LUPO VERSUS SIMON STROKING
INCORPORATED.
SIMON'S TRUCKING, INC..
>> MAY IT PLEASE THE COURT,
PETER WEBSTER FOR THE
PETITIONER, CHARLES LUPO.
I WILL TRY TO SAVE 5 MINUTES OF
MY TIME FOR REBUTTAL.
THIS CASE PRESENTS A VERY EASY
QUESTION OF STATUTORY
CONSTRUCTION MADE MORE
DIFFICULT, THE IN PRECISE
LANGUAGE, OCCURRED VERSUS
MOSAIC --
>> MISTER WEBSTER, BEFORE WE
GET TO THE MERITS AND STATUTORY
INTERPRETATION, WITH THE IF I
AGREE WITH YOUR INTERPRETATION.
HOW IS THIS OF GREAT PUBLIC
IMPORTANCE?
THAT IS HOW IS BEFORE THE
COURT?
>> THAT IS.
AND THIS CASE IS UNDER THE
STATUTE NOT ARISEN WITH GREAT
FREQUENCY, DOESN'T NECESSARILY
MAKE IT.
NOT A QUESTION OF PUBLIC
IMPORTANCE.
IT IS LIKELY THE REASON THE
CASES HAVE NOT COME UP MORE
FREQUENTLY, PEOPLE, INCLUDING
LAWYERS ARE NOT FAMILIAR WITH
THIS STATUTE.
IN 1980, WHEN THE PHRASE A
QUESTION OF GREAT PUBLIC
INTEREST WAS CHANGED TO A
QUESTION OF GREAT PUBLIC
IMPORTANCE, THE COURT INDICATED
THAT IT WAS DOING THAT BECAUSE
SOME LEGAL ISSUES MAY BE OF
GREAT PUBLIC IMPORTANCE BUT NOT
SUFFICIENTLY KNOWN BY THE
PUBLIC TO BE OF GREAT PUBLIC
INTEREST.
WHETHER SECTION 3763133 DOES OR
DOES NOT CREATE A PRIVATE CAUSE
OF ACTION FOR DAMAGES IT SEEMS

TO ME OUT TO BE A QUESTION OF GREAT PUBLIC IMPORTANCE TO EVERYONE IN FLORIDA AND I THINK IF THE PEOPLE OF THIS STATE WERE PROPERLY EDUCATED REGARDING THE STATUTE, THEY WOULD MOST CERTAINLY AGREE IT IS A QUESTION OF GREAT PUBLIC IMPORTANCE AND THIS COURT THOUGHT THE QUESTION THAT WAS CERTIFIED INCURRED WAS OF GREAT PUBLIC IMPORTANCE.
>> ISN'T THE LACK OF CLAIMS INDICATIVE OF THE FACT THAT PEOPLE ARE BEING COMPENSATED OUTSIDE OF THE STATUTE FOR WHATEVER INJURIES THEY MAY HAVE?
AT THEIR DISPOSAL ON BEHALF OF THEIR CLIENTS?
>> IT IS EQUALLY POSSIBLE LAWYERS IN THIS STATE BELIEVE THE COURT DID HOLD PERSONAL INJURY DAMAGES ARE PRECLUDED.
>> WHAT ABOUT 1983-2010?
>> THERE HAVE BEEN A SERIES OF CASES INVOLVING 376313, THE FIRST WAS PROBABLY THE CUNNINGHAM CASE IN WHICH THE FIRST DCA CONCLUDED A COMPLAINT ALLEGING PERSONAL INJURIES RESULTING FROM COVERED ACT OF POLLUTION STATED THE CAUSE OF ACTION, THERE WERE A NUMBER OF CASES THE DISTRICT COURTS OF APPEAL GRAPPLED WITH THE QUESTION OF WHETHER SECTION 376313 CREATED A PRIVATE CAUSE OF ACTION.
>> WHAT SEPARATES THIS PARTICULAR CAUSE OF ACTION AND THIS LINE OF INQUIRIES FOR ENVIRONMENTAL STATUTE, CLEAN WATER STATUTE FROM THE RUN-OF-THE-MILL CASES THAT ARE PENDING IN DISTRICT COURT'S?
>> HOW CAN WE SAY THE QUESTION OF WHETHER YOU CAN RECOVER PERSONAL INJURIES UNDER THE STATUTE IS ANY LESS IMPORTANT

THAN WHETHER FISHERMEN WHO OWN
NO INTEREST IN MARINE LIFE CAN
BRING A CAUSE OF ACTION FOR
DAMAGES IN THE FORM OF LOST
PROFITS.
>> NOT SAY I WOULD HAVE TAKEN
THE CASE INCURRED.
>> I'M NOT SAYING I WOULD
EITHER.
>> THAT'S THE POINT.
WE SHOULDN'T HAVE TAKEN IT
INCURRED WHY WE MAKE THE
SAME MISTAKE HERE?
>> ON TOP OF EVERYTHING ELSE WE
HAVE THE ISSUE OF WHETHER WHAT
OCCURRED IS PALPABLY WRONG.
>> EVEN IF IT IS PALPABLY WRONG
AND LET'S ASSUME I AGREE THAT
IT IS PALPABLY WRONG, UNDER THE
DOCTRINE OF A CONSTITUTIONAL
QUESTION, THE DOCTRINE IS AT
ITS WEAKEST IN THE
CONSTITUTIONAL CONTEXT WHERE
THE COURT CAN CORRECT THE ERROR
WHERE THERE'S A CONSTITUTIONAL
AMENDMENT, THIS IS A STATUTORY
INTERPRETATION IT ASSUMING THE
COURT GOT IT WRONG THERE ARE
ECONOMIC RELIANCE INTERESTS
BASED ON THAT OPINION.
WHY SHOULD THE DOCTRINE NOT
HOLD?
>> IF THERE ARE ECONOMIC
RELIANCE INTERESTS I DON'T KNOW
WHAT THEY ARE.
THIS COURT IN BROWN VERSUS
NAGELHUD IN 2012.
>> I'M FAMILIAR WITH IT.
>> AND SEVERAL OTHER CASES WE
CITED IN OUR REPLY BRIEF, THE
COURT HAS REPEATEDLY RECEDED
FROM PRIOR PRECEDENT WHEN IT
CONCLUDED THE PRIOR PRECEDENT
AND THE LANGUAGE FROM BROWN
CONSTITUTED A SERIOUS
INTERPRETIVE ERROR THAT
RESULTED IN AN OUTCOME THAT WAS
UNSOUND IN PRINCIPLE.
IN BROWN, THE COURT RECEDED
FROM A PRIOR STATUTORY

CONSTRUCTION FOR THAT REASON.
IN BROWN, THE COURT SAID IT WAS IMPLAUSIBLE THAT THERE WERE ANY PEOPLE RELYING ON THE STATUTE TO DECIDE WHEN AND WHERE TO VIOLATE CONTRACTS OR COMMIT TORTS.
>> THE COURT SAID IT WAS AN EXTRA STATUTORY RESTRICTION ON THE PLAINTIFF'S RIGHT TO SELECT BENNY.
>> BROWN INVOLVED TWO ASPECTS WITH REGARD TO OVERRULING THE PRESIDENT.
IN ROUGH TO AND, THE COURT IN 2016 RECEDED FROM A PRIOR PRECEDENT FOR THE SAME REASON SAYING WHERE THERE HAS BEEN AN ERROR IN LEGAL ANALYSIS, INCITING BROWN IN A SERIOUS INTERPRETIVE ERROR RESULTING IN AN OUTCOME THAT IS UNSOUND IN PRINCIPLE JUST LAST NOVEMBER, THIS COURT IN SHEPARD VERSUS STATE RECEDED FROM A PRIOR PRECEDENT BECAUSE IT CONCLUDED THE PRIOR PRECEDENT'S INTERPRETATION OF THE PERTINENT STATUTE WAS CONTRARY TO THE STATUTE'S PLAIN LANGUAGE.
>> WHAT IF ERROR MARK WAS WRONG, WHAT DOES THAT DO TO YOUR CASE.
>> IF ERROR MARK WAS WRONG, EVERYBODY WAS IN POSITION TO CONSIDER ON ITS OWN TODAY AND WAS A UNANIMOUS DECISION, IF IT WAS WRONG THERE IS NO PRIVATE CAUSE OF ACTION.
>> WHAT DO YOU THINK ON THE MERITS OF THAT?
DO YOU THINK THE STATUTE THAT SAYS NOTHING PROHIBITS ANY PERSON FROM BRINGING A CAUSE OF ACTION DOES THAT SOUND LIKE SOMETHING THAT CREATED A CAUSE OF ACTION?
>> WAY BACK IN 1996, WHETHER THE STATUTE CREATED PRIVATE CAUSE OF ACTION GOT IT EXACTLY

RIGHT, THEY CONCLUDED IT DID
AND THEY CONCLUDED IT DID
BECAUSE THE FEDERAL ACT ON
WHICH IT WAS MODELED DID NOT
PROVIDE ANY RIGHT TO SUE FOR
DAMAGES.
WHEREAS THIS STATUTE IN
SUBSECTION 3 EXPRESSLY SAYS
THAT NOTHING CONTAINED IN THE
ACT PROHIBITS ANYONE FROM
BRINGING ANY ACTION THEY MIGHT
HAVE FOR VIOLATION.
>> IS THAT LANGUAGE IN CONTRAST
TO THE LANGUAGE FROM THE 1970
ACT THAT STATES A PERSON MAY
BRING A PRIVATE CAUSE OF ACTION
UNDER THAT LAW?
>> THE 1970 ACT WAS AMENDED TO
SAY THAT IN 1996, AND THE
RESPONDENTS SITE A CASE FOR
FEDERAL DECISION, FOR THE
PROPOSITION WHERE ALL THAT
CHANGE IN LANGUAGE WAS INTENDED
TO CLARIFY WHAT THE STATUTE'S
INTENT HAD BEEN ALL ALONG.
FRANKLY, YOU WOULDN'T, YOU
WOULDN'T LIMIT THE DEFENSES
THAT WERE AVAILABLE.
>> IT IS CLEAR IT OBVIOUSLY WAS
DOING SOMETHING IN TERMS OF THE
STANDARD OF CARE, PREEXISTING
CAUSES OF ACTION.
IF YOU WERE WRITING A STATUTE
TO CREATE A PRIVATE CAUSE OF
ACTION YOU WOULD NEVER BEGIN BY
SAYING NOTHING PROHIBITS YOU.
>> IF THE COURT IN PROPER CASE
WANTS TO GO BACK AND
RECONSIDER, THEY COULD DO THAT.
THAT IS NOT THIS CASE.
IT HAS NOT BEEN RAISED AS AN
ISSUE HERE.
THE ONLY ISSUE RAISED IS
WHETHER THE WORDS ALL DAMAGES
IN THE STATUTE MEAN ALL DAMAGES
OR THEY MEAN ALL DAMAGES EXCEPT
PERSONAL INJURY DAMAGE.
>> YOU SUGGEST IN YOUR REPLY
BRIEF OUR ANSWER TO THAT
QUESTION HAS SOMETHING TO DO

WITH POLITICAL PHILOSOPHY.
CAN YOU EXPLAIN THAT?
>> I DON'T SUGGEST THAT IT HAS SOMETHING TO DO.
I SUGGEST --
>> WHAT YOU WROTE IS THAT IF WE DON'T AGREE WITH YOUR READING OF THE STATUTE THAT IT WOULD SUGGEST OUR INTERPRETATION IS BASED ON A POLITICAL PHILOSOPHY.
>> THAT IS NOT WHAT I SAID.
MY EXACT WORDS WERE, AND THIS IS AT THE BOTTOM OF PAGE 1 AND THE TOP OF PAGE 2, ASCRIBING MEANING TO THE LANGUAGE OTHER THAN THAT COMMONLY UNDERSTOOD GIVEN THE WORDS USED WOULD HAVE AN HEROES OF AFFECT ON RESPECT FOR RULE OF LAW BECAUSE IT WOULD SUGGEST SIT INTERPRETATION OF STATUTES IS NOT BASED ON IMPARTIAL READING OF THE TEXT BUT INSTEAD IS BASED ON THE INTERPRETING COURT'S POLITICAL PHILOSOPHY.
THAT IS JUSTICE SCALIA AND BRIAN GARNER.
>> YOU ARE STARTING THE SENTENCE, WHAT LED UP TO THAT, YOU ARE SAYING WHAT YOU ADVOCATE IS THE MEANING OF THE LANGUAGE THAT IS COMMONLY UNDERSTOOD AND IF WE DON'T AGREE WITH THAT, IT MUST BE BASED ON COULD LEAD A REASONABLE OBSERVER TO THINK IT IS BASED ON OUR POLITICAL PHILOSOPHY.
>> THAT IS CORRECT.
ARRIVING AT CONSTRUCTION OF THE WORDS USED THAT IS NOT CONSISTENT WITH THE PLAIN MEANING OF THOSE WORDS WOULD SUGGEST SOMETHING IS GOING ON OTHER THAN AN IMPARTIAL RESOLUTION OF THE CASE.
>> YOU AGREE WE ARE AT THIS MOMENT THE CURRENT STATE OF THE LAW?

>> I DON'T AGREE WITH THAT BECAUSE WE DON'T THINK THE COURT HELD PRIVATE CAUSE OF ACTION FOR PERSONAL INJURY DAMAGES IS PRECLUDED BY SECTION --
>> HOW CAN YOU NOT -- LET ME REPHRASE.
JUSTICE PAULSON WROTE A CONCURRENCE IN THAT CASE AND SPECIFICALLY POINTED OUT THE MAJORITY WAS MISREADING THE STATUTE SO HOW CAN WE THEN NOT SAY THAT THE MAJORITY WHEN THAT OPINION OR DECISION WENT OUT HAD UNDER FULL CONSIDERATION THAT ARGUMENT?
>> JUSTICE PAULSON DID NOT INDICATE OR EVEN SO MUCH AS SUGGEST THE INTERPRETATION OF THE MAJORITY WAS USING MIGHT PRECLUDE A CAUSE OF ACTION FOR DAMAGES FOR PERSONAL INJURIES. THAT WAS NOT DISCUSSED AT ALL IN THE CASE.
>> THE DEFINITION OF DAMAGES WAS.
>> THE DEFINITION OF DAMAGES WAS DISCUSSED.
>> HOW IS THAT NOT A HOLDING OF THE COURT DEFINING WHAT DAMAGES IS.
THE IMPLICATIONS MAY NOT HAVE BEEN THOUGHT THROUGH, BUT THE DEFINITION ITSELF WAS VERY MUCH THOUGHT THROUGH, WAS IT NOT?
>> WELL, THAT IS OPEN TO SOME QUESTIONS AND THE COURT RELIED ON A DEFINITIONAL SECTION IN WHICH BY ITS EXPRESS LANGUAGE SAYS IT DOESN'T APPLY.
>> I'M NOT SAYING THE COURT IS RIGHT OR NOT, JUST THE ISSUE, THAT ISSUE, THE DEFINITION OF DAMAGES WAS AT ISSUE IN THE CASE.
>> IT WAS.
>> THEN HOW CAN IT BE --
>> IF THE COURT CONCLUDES IT WASN'T DICK THE --DICTA --

>> CAN I ASK YOU SOMETHING?
5 JUSTICES AGREED WITH THAT DEFINITION, ACTING AS POLITICAL ACTORS OR BASED ON THEIR POLITICAL PHILOSOPHY WHEN THEY MADE THE DECISION INCLUDING SOME PEOPLE CURRENTLY SITTING HERE RIGHT NOW?
>> I THINK THE INTERPRETATION THAT WAS APPLIED IN OCCURRED -- OCCURRED --CURD WAS ALLOWED FOR RECOVERY OF CONSEQUENTIAL DAMAGES UNDER THE ACT.
WHETHER OR NOT THE JUSTICES INTENDED TO DO ANYTHING MORE THAN THAT, THE FACT OF THE MATTER IS FOUR OF THOSE FIVE JUSTICES VOTED TO HEAR THIS CASE ON MERITS.
THE FIFTH HAD PREVIOUSLY RETIRED.
TO ME, THAT SUGGESTS SOMETHING.
TO GO BACK TO THE ISSUE, IF YOU DO THINK THAT WAS THE HOLDING IN CURD IT IS AS CLEAR AS IT CAN BE THAT IF THAT WAS AN INTENDED HOLDING, PERSONAL INJURY DAMAGES ARE NOT RECOVERABLE UNDER THIS SECTION, THAT WAS A SERIOUS INTERPRETIVE ERROR THAT RESULTED IN A DECISION THAT IS UNSOUND IN PRINCIPLE.
IT CANNOT ENTER ANY STRETCH OF THE IMAGINATION BE, ONE, RECONCILED WITH PLAIN LANGUAGE OF THE STATUTE, OR 2, RECONCILED WITH THE OVERWHELMING WEIGHT OF THE RESULT OF CONSTRUING THE STATUTE.
THE REAL PROBLEM HERE IS IF YOU THINK THAT IS WHAT CURD HELD, THEY RESORTED TO INCURRING MATERIAL IN A SITUATION WHERE THERE IS NO CALL TO DO IT BECAUSE THEY SAID THEY WERE RELYING ON PLAIN LANGUAGE OF THE STATUTE.
IF YOU ARE RELYING ON THE PLAIN

LANGUAGE OF THE STATUTE YOU
DON'T RESORT TO THAT MATERIAL
BECAUSE THAT IS A OF
CONSTRUCTION.
AND THEY ALSO MISTAKENLY SAID
THE DEFINITION OF DAMAGE ON
SECTION 376-0315 APPLIED TO ALL
OF CHAPTER 376 AND THAT IS JUST
FLAT WRONG.
I JUST CAN'T CONCEIVE THAT ANY
COURT, THE JOB OF COURTS IS TO
CORRECTLY INTERPRET THE LAW AND
I CAN'T CONCEIVE THAT ANY COURT
WOULD INTENTIONALLY DEPRIVE THE
CITIZENS OF THIS STATE OF
REMEDY THAT THE LEGISLATURE
INTENDED THEM TO HAVE, BECAUSE
OF A SERIOUS INTERPRETIVE ERROR
IN A PRIOR DECISION.
>> WHEN A COURT MISINTERPRETS A
STATUTE, IT IS UP TO THE
LEGISLATURE TO CORRECT THE
ERROR.
>> I DON'T THINK SO,
RESPECTFULLY.
>> ARE IN THEIR COUNTLESS
CASES, THE COURT INTERPRETED
THE STATUTE AND IF WE GOT IT
WRONG CONGRESS/THE LEGISLATURE
CAN FIX IT?
>> NOT ONE OF THE CASES WE
CITED IN OUR REPLY BRIEF, ALL
OF WHICH REVERSED PRIOR
PRECEDENT BECAUSE THE PRECEDENT
WAS FLATLY INCONSISTENT WITH
PLAIN READING OF THE STATUTE.
AND NONE OF THOSE DID THE
COURSE MENTION LEGISLATIVE
INACTION EVEN THOUGH IN MANY OF
THOSE CASES THERE HAD BEEN IN
ACTION FOR A MUCH LONGER TIME.
PLACING RELIANCE ON LEGISLATED
SILENCE, A DANGEROUS THING TO
DO.
>> I AM SYMPATHETIC TO THAT
POINT OF VIEW BUT YOU HAVE TO
AGREE COURTS DON'T JUST LOOK AT
DID THE PRIOR COURT GET IT
WRONG IN STATUTORY
INTERPRETATION AND IF THE

ANSWER IS YES, THEY CHANGE
COURSE, YOU AGREE WITH THAT.
DO YOU AGREE WITH THAT?
>> I DON'T.
>> THE QUESTION IS WHETHER IT
IS RIGHT OR WRONG.
>> I DON'T THINK THAT IS RIGHT.
>> WHAT IS RIGHT?
>> WHAT IS RIGHT ACCORDING TO
BROWN VERSUS NAGELHUD, IS
NUMBER ONE, YOU LOOK TO
DETERMINE WHETHER THERE HAS
BEEN A SERIOUS ERROR IN
CONSTRUCTION OF THE STATUTE.
>> NOT ANY ERROR.
IT HAS TO INVOLVE LOOKING AT
THE GRAVITY OF THE ERROR.
>> IT HAS TO RESULT IN
CONSTRUCTION THAT IS UNSOUND IN
PRINCIPLE.
>> MISTER WEBSTER, SORRY TO
INTRUDE.
THE QUESTION I HAVE IS EVEN
ASSUMING I AGREED THAT YOUR
INTERPRETATION IS CORRECT, THE
PUBLIC IMPORTANT QUESTION.
>> SURE.
>> THAT IS THE JURISDICTIONAL
QUESTION.
THERE IS NO QUESTION ABOUT
THAT.
I DON'T KNOW WHAT TO SAY.
>> I UNDERSTAND BUT WE HAVE TO
WRITE AN OPINION.
>> THE REMAINDER OF THE
QUESTION, THE LAST QUESTION YOU
ASK IS NOT JUST A WRONG
CONSTRUCTION THAT RESULTS IN
UNSOUND DECISION IN PRINCIPLE.
YOU ALSO ACCORDING TO BROWN
LOOK AT WHETHER THERE IS A
SIGNIFICANT RELIANCE INTEREST
THAT WILL BE DAMAGED BY
RECEDING FROM THE PRECEDENT.
THOSE ARE THE THINGS BROWN
SAID.
AS IN BROWN IT IS INCONCEIVABLE
HERE PEOPLE WILL DECIDE WHEN
AND WHERE TO POLLUTE WHETHER
YOU HAVE A PRIVATE CAUSE OF

ACTION FOR DAMAGES UNDER THE
STATUTE.
THERE JUST IS NO REASONABLE
RELIANCE INTEREST.
>> IN TERMS OF THE LIABILITY
PROTECTION YOU MIGHT GET FOR
YOURSELF THAT WOULD BE A
RELIANCE INTEREST DEPENDING ON
THE SCOPE OF YOUR EXPOSURE.
>> PERHAPS.
PERHAPS.
>> THE GUY DIDN'T DECIDE TO
HAVE A HEART ATTACK AND DIE
WHEN HE WAS DRIVING HIS TRUCK
BUT THE COMPANY LOOKED OUT OF
THE SCOPE OF ITS EXPOSURE AND
MAY HAVE TAKEN LAW INTO
ACCOUNT.
>> THE STATUTE EXPRESSLY SAYS
AND THIS COURT HELD THAT --
>> ESPECIALLY HELD IN THE
CURRENT CASE THE DAMAGES DIDN'T
INCLUDE --
>> AARON LOCKE IS NOT BEFORE
THE COURT TODAY.
THE QUESTION BEFORE THIS COURT,
THE ONLY QUESTION IS --
>> THE COMMENT IS THERE COULD
HAVE BEEN A RELIANCE ON THE
DECISION IN KURT AND THE
HOLDING OF THE USE OF THAT
DEFINITION.
WE HELP YOU USE UP YOUR RESERVE
TIME PLUS A LITTLE MORE.
I WILL GIVE YOU BRIEF MINUTES.
>> MAY IT PLEASE THE COURT,
GOING BACK TO THE THRESHOLD
JURISDICTION QUESTION, THIS
ISN'T A MATTER OF GREAT PUBLIC
IMPORTANT, THE FIRST ISSUE WAS
THE EXAMPLES THIS COURT HAS
GIVEN ABOUT THE ISSUE COMING TO
COURT WITH GREAT FREQUENCY.
THIS ISSUE HAS ONLY COME UP ONE
TIME IN THE 36 YEAR HISTORY OF
THE WATER QUALITY ASSURANCE ACT
SO THAT IS THE OPPOSITE OF
FREQUENT.
IT CERTAINLY DOESN'T MEET THAT
STANDARD.

>> COULD IT BE BECAUSE OF
OCCURRED DECISION?
>> IT COULD BE.
>> NOT FROM 1983 UNTIL 2010.
>> NOT SINCE 1983.
>> THE LANGUAGE WAS AS CLEAR AS
DAY, THEN THEY WOULD HAVE
BROUGHT THESE CLAIMS FOR THE --
MY MATH IS TERRIBLE, THE YEARS
WE HAVEN'T DECIDED THE ISSUE.
>> CORRECT.
>> THERE IS NO REPORTED CASES
ON THAT.
>> NONE.
THIS IS SIMILAR TO THE OTHER
EXAMPLE THE COURT GAVE OF GREAT
PUBLIC IMPORTANCE IF IT
INVOLVES EXTENT DECISION,
LEADING LOWER COURTS TO LOTS OF
DIFFERENT ANSWERS RATHER THAN
ONE SINGLE ANSWER AND THAT IS
CERTAINLY NOT THE CASE HERE.
IF YOU DISCHARGE JURISDICTION
THERE IS ONE SINGLE ANSWER TO
THIS QUESTION FROM CURD AND THE
SIMON TRUCKING FIRST DCA
DECISION AND IT IS NOT A MATTER
OF CONSTITUTIONAL MAGNITUDE.
IT IS ABOUT THE INTERPRETATION
OF THE TYPE OF DAMAGES, TYPES
OF CLAIMS THAT CAN BE BROUGHT
UNDER A VERY NARROW EXTREME
FORM OF STRICT LIABILITY AND
STATUTORY CAUSE OF ACTION THAT
ONLY ENCOMPASSES CERTAIN
SPECIFIC TYPES OF CLAIMS AT A
SPECIFIC DISCHARGE, HAS GOT TO
BE A DEFINED HAZARDOUS
SUBSTANCE.
THIS IS NARROW AND NOT COMING
TO THE COURT WITH FREQUENCY OR
A MATTER OF GREAT PUBLIC
IMPORTANT AND NOT A CASE, YOU
WANT TO EXERCISE JURISDICTION
IN WHERE YOU HAVE A TRIAL COURT
NOT FOLLOWING BINDING SUPREME
COURT PRECEDENT.
THERE MAY BE MANY
OPPORTUNITIES, THERE WILL BE
MANY OPPORTUNITIES FOR THE

COURT TO REVISIT PRIOR
DECISIONS THAT MAY HAVE BEEN
WRONGLY DECIDED BUT YOU DON'T
WANT TO IGNORE PRECEDENT WHEN
THE FIRST DCA SAID UNANIMOUSLY
THIS ISSUE, THE OCCURRED
DECISION WAS BROUGHT BEFORE THE
TRIAL COURT.
IT IS NOT DICTA, THIS TYPE OF
CLAIM COULD NOT BE ALLOWED IN
THE TRIAL COURT DID NOT FOLLOW
THAT PRECEDENT.
THE WAY THESE CASES COME UP, IF
THE TRIAL COURT SHOULD PRESERVE
THE ISSUE THE TRIAL COURT NEEDS
TO FOLLOW THE BINDING SUPREME
COURT PRECEDENT AND THE SAME
HAPPENS AT THE DISTRICT COURT
OF APPEAL'S BUT YOU DON'T ONE
984 LOWER COURT JUDGES THINKING
IT IS APPROPRIATE TO REVIEW
SUPREME COURT MAJORITY OPINIONS
AND PICK AND CHOOSE WHICH ONES
TO FOLLOW.
THERE IS AN APPROPRIATE WAY AS
JUSTICE CLARENCE THOMAS SAYS,
TO BRING UP ISSUES AND REQUEST
TO RECEIPT FROM BINDING
PRECEDENT AND JUSTICE CLARENCE
THOMAS WILL OFTEN SAY GO GET
THE APPROPRIATE CASE AND COME
BACK TO US, THIS IS NOT THE
APPROPRIATE CASE.
>> ARE TO INTERRUPT.
IF WE IGNORE CURD FOR A SECOND
DO YOU AGREE WITH OPPOSING
COUNSEL'S INTERPRETATION OF THE
TERM DAMAGES IN THE STATUTE
THAT IS RELEVANT, TO THE EXTENT
THEY WERE ADDRESSING IT AND
TAKING THE 1970 ACT'S
DEFINITION OF DAMAGES THAT WAS
A MISTAKE?
>> I THINK WHETHER WE ARE UNDER
THE MAJORITY OR JUSTICE
PAULSON'S WRITTEN CONCURRENCE
OR IF CURD DIDN'T EVEN EXIST,
PERSONAL INJURY CLAIMS ARE NOT
ALLOWED UNDER THE WATER QUALITY
ASSURANCE ACT AND THEY TALKED A

LOT IN THEIR BRIEF.
>> IS THAT BECAUSE ARAMARK WAS INCORRECT OR ANY DAMAGES WOULD NOT INCLUDE PERSONAL INJURY DAMAGES?
>> ALL DAMAGES WOULD NOT INCLUDE PERSONAL INJURY EVEN IF THERE MARK WAS CORRECT.
HERE'S THE REASON.
THEY HAVE TAKEN THE WORDS ALL DAMAGES, PULLED THEM OUT OF THE TEXT, READ THEM IN ISOLATION, WHAT I WOULD LIKE TO DO IS PUT THEM BACK INTO THE STATUTE, INTO THE SENTENCE AND THE SECTION.
WHEN YOU DO THAT YOU LOOK AT 376.313 SUB PARAGRAPH 3 AND IT IS ALL DAMAGES.
YOU CAN RECOVER ALL DAMAGES RESULTING FROM THE PROHIBITED ACTS IN THE WATER QUALITY ASSURANCE ACT, THE PROHIBITED DISCHARGE DEFINED IN THE WATER QUALITY ASSURANCE ACT SO YOU GO RIGHT UP TO 376302 AND ITS IS THE PROHIBITED ACT IS A DISCHARGE ON THE SURFACE AND GROUNDWATER.
IT DAMAGES THE NATURAL RESOURCE THAT IT STOPS RIGHT THERE.
THAT HAPPENED BEFORE MISTER LUPO SHOWED UP AT THE SCENE.
THAT IS ALL THAT IS REQUIRED IN STRICT LIABILITY IN THE STATUTE.
WE ALL KNOW THAT IN SUBSEQUENT ACTS HUMAN BEINGS SOMETIMES COME TO THE PROPERTY UNDER CONTAMINATION, IN CONTACT WITH CONTAMINATION AND GET INJURED.
TOWARD THEORIES OF LIABILITY HAVE DEVELOPED OVER HUNDREDS OF YEARS TO PROVIDE CONCEPTS LIKE FORESEEABILITY TO EXTEND LIABILITY TO THOSE MORE REMOTE INJURIES THAT MAY OCCUR BUT YOU HAVE TO SET THOSE COMMON-LAW CONCEPTS ASIDE AND LOOK AT WHAT THIS TEXT IS ADDRESSING.

ALL OF THEM HAVE REMEDIES
RELATED TO THE PROHIBITED ACT,
THE LEGISLATURE COULD HAVE
ADDED THE ACT AND SIT IN THE
EVENT OF THE PROHIBITED
DISCHARGE UNDER SECTION 1 AND,
WHOEVER HAS OWNERSHIP CUSTODY
OR CONTROL OF THE CONTAMINATED
PROPERTY MUST TAKE ALL
NECESSARY STEPS TO PROHIBIT
HUMAN BEINGS FROM COMING ONTO
THE PROPERTY AND INTERACTING
WITH THE CONTAMINATION AND IF
THEY DON'T IT WILL BE A
VIOLATION OF THIS CHAPTER.
YOU HAVE TO STICK TO THE TEXT.
OTHERWISE WE HAVE A NATURAL
TENDENCY WHEN WE SEE PHRASES
LIKE ALL DAMAGES WE HAVE A
TENDENCY TO UNDERSTAND THOSE
WORDS, DRAWING ON OUR
UNDERSTANDING OF COMMON-LAW
TOWARD THEORIES OF LIABILITY
AND PROXIMATE CAUSE TO EXTEND
THE LIABILITY.
IT HAS NO PLACE IN THE TEXT OF
THE STATUTORY CAUSE.
>> WITH THIS BE INCONSISTENT
WITH CURD?
>> UNDER THE OCCURRED MAJORITY
OR CONCURRENCE OR IF CURD
DIDN'T EXIST THE WATER QUALITY
ASSURANCE ACT TEXT DOES NOT
ALLOW FOR IT.
CURD WAS ADDRESSING DAMAGE FROM
THE DISCHARGE, DAMAGING THE
NATURAL RESOURCE, GOING TO
SUBSEQUENT ACTS LIKE MISTER
LUPO, HOURS AFTER THE
DISCHARGE.
THE FACTS OF THIS CASE GIVE A
PERFECT EXAMPLE OF THIS
DISTINCTION BETWEEN THE PRIMARY
ACT THIS TEXT ADDRESSES,
DAMAGING THE NATURAL RESOURCE
AND A SECONDARY ACTS.
AFTER THE PRIMARY DAMAGE THE
TEXT ADDRESSES HAS HAPPENED,
HOURS LATER HE COMES TO THE
SITE AND LAYS DOWN AND TAKES A

NAP IN THE DIRT FOR 45 MINUTES
ADJACENT TO THE SITE WHERE THE
HAZMAT TEAM HASN'T CLEARED IT.
THAT IS A TOTALLY SEPARATE ACT,
A SUBSEQUENT SEPARATE ACT, NOT
ADDRESSED IN THE WATER QUALITY
ASSURANCE ACT AND THESE FACTS,
HE GOES ON TO SPRAY STARTER
FLUID ON HIS LEGS TO GET HIS
HAND OFF HIS LEGS AND TREAT
HIMSELF, THESE WERE ALL THINGS
THAT IN THE REALM OF COMMON-LAW
NEGLIGENCE WHICH WAS THE CLAIM
THEY BROUGHT INITIALLY, PAGE 54
OF THE RECORD WE WOULD HAVE
COMMENSURATE COMMON-LAW
DEFENSES SUCH AS COMPARATIVE
NEGLIGENCE TO ADDRESS
SUBSEQUENT ACTS WITH THE WATER
QUALITY ASSURANCE ACT ONLY
ADDRESSES IN STRICT LIABILITY
CLAIM THE DAMAGE TO THE NATURAL
RESOURCE AND WHEN I SAY IT IS
THE MOST EXTREME FORM OF STRICT
LIABILITY, THE COMMON-LAW
NEGLIGENCE PER SE, STRICT
LIABILITY 60 YEARS AGO AND IT
EXCUSES THE PLAINTIFF FROM
PROVEN DUTY AND BREACH.
THIS TEXT SAYS WE DON'T HAVE TO
PROVE DUTY OR REACH OR
CAUSATION.
IT IS MORE EXTREME THAN THAT
BECAUSE THE TEXT SAYS NO
DEFENSES CAN BE BROUGHT OTHER
THAN THOSE IN 376.308 WHICH ARE
ALL NARROW DEFENSES THAT DON'T
APPLY HERE.
THE POINT OF ALL THAT IS STRICT
LIABILITY.
THE COURT HAS GOT TO STICK TO
THE TEXT.
YOU DON'T HAVE TO IMPORT WHAT
THEY ARE DOING, UNCONSCIOUSLY
IMPORT THOSE COMMON-LAW TOWARD
THEORIES OF LIABILITY, CONCEPTS
LIKE FORESEEABILITY THAT WOULD
EXTEND THE LIABILITY.
>> IF THERE ARE NO FURTHER
QUESTIONS, THANK YOU.

>> I'M NOT SURE WHAT THE RESPONDENT IS ARGUING, ARGUING YOU HAVE TO LOOK AT THE TEXT THAT APPARENTLY HAVE TO IGNORE THE MODIFIER ALL IN FRONT OF THE DAMAGES.
I DO KNOW IN UNITED STATES VERSUS JAMES WHICH WE CITE IN PAGE 3 OF THE REPLY BRIEF.
THE UNITED STATES SUPREME COURT REJECTED PRECISELY THE ARGUMENT ABOUT WHAT CONSTITUTES DAMAGES THAT RESPOND -- THE RESPONDENT HAS MADE HERE.
THEY SAID THE COMMONLY UNDERSTOOD MEANING OF DAMAGES INCLUDES INJURIES TO PROPERTY AND INJURIES TO PEOPLE.
>> I UNDERSTAND IN NAME THAT WOULD BE RIGHT BUT THE STATUTE MODIFIES IT TO LIMIT IT TO WHAT IS IN THE ACT AND THE ACT ITSELF IN ANOTHER SECTION REFERS TO THOSE THINGS THAT AFFECT THE ENVIRONMENT, THAT IS THE ARGUMENT HE IS MAKING BUT IT IS NOT JUST FOCUSED ON THE WORD ALL AND DAMAGES.
>> THE 1983 ACT WAS INTENDED TO PROTECT FLORIDA'S POTABLE WATER SUPPLY.
THE 1970 ACT WAS INTENDED TO PROTECT THE COASTAL ENVIRONMENT BECAUSE THE 83 ACT WAS INTENDED TO PROTECT THE POTABLE WATER SUPPLY.
IT MAKES PERFECT SENSE THAT THE LEGISLATURE WOULD WANT TO PROTECT CITIZENS FROM PERSONAL INJURIES THEY MIGHT RECEIVE FROM CONTAMINATED WATER SUCH AS IN LOVE CANAL.
YOUR HONOR BROUGHT UP THE QUESTION OF WHY HAVEN'T THERE BEEN MORE CASES SINCE 1983.
ONE REASON MIGHT WELL BE THAT UNTIL 2004 WHEN THIS COURT DECIDED ARAMARK, THERE WAS A DISPUTE AMONG THE DISTRICT COURT OF APPEAL AS TO WHETHER A

PRIVATE CAUSE OF ACTION EXISTED
UNDER THE STATUTE.
YOU SAW SOME CASES, CUNNINGHAM
WAS ONE, BUT BECAUSE OF THAT
DISPUTE THAT COULD EASILY
EXPLAIN WHY THERE WEREN'T MORE
CASES AND THE REASON MIGHT WELL
BE IT IS READ AS PRECLUDING IT
ALTHOUGH I DON'T SEE THAT, ALL
DAMAGES COULD NOT BE CLEARER.
WE ASKED THE COURT TO SAY ALL
DAMAGES IN THE STATUTE MEANS
PRECISELY WHAT THE PLAIN
MEANING OF THE WORDS SAY, AND
TO HOLD THAT ANYONE INJURED BY
A COVERED ACT OF POLLUTION IS
ENTITLED TO ALL DAMAGES
INCLUDING THOSE FOR SERIOUS
PERSONAL INJURIES AND WE ASK
THE COURT TO ANSWER THE
CERTIFIED QUESTION IN THE
AFFIRMATIVE, TO QUASH THE
DECISION OF THE FIRST DISTRICT
COURT OF APPEAL AND RE-MANNED
WITH DIRECTIONS THAT THE
JUDGMENT IN MISTER LUPO'S FAVOR
BE RESTATED.
>> THANK YOU BOTH FOR YOUR
ARGUMENTS.
COURT IS NOW ADJOURNED.