IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SIMON'S TRUCKING, INC.,

Appellant,

Case No. 1D17-2065
L.T. Case No. 2015-CA-0051

v.

CHARLES A. LIEUPO,

Appellee.
_____/

FLORIDA JUSTICE REFORM INSTITUTE'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF APPELLANT

Pursuant to Florida Rule of Appellate Procedure 9.370, The Florida Justice Reform Institute ("Institute") moves for leave to appear as amicus curiae in support of Appellant and states:

1. **Interest of Amicus Curiae**: The Institute is Florida's leading organization of concerned citizens, business owners, business leaders, and lawyers, who work toward the common goal of promoting predictability in Florida's civil justice system through the elimination of wasteful civil litigation and the promotion of fair and equitable legal practices. The Institute's members have a strong interest in appropriate interpretation of statutes imposing strict liability, and in ensuring the uniform application of Florida Supreme Court precedent to such interpretations.

2. **Issues Amicus Curiae Will Address**: In this action, the Plaintiff/Appellee Charles A. Lieupo filed a claim for personal injury damages against the Defendant/Appellant Simon's Trucking, Inc. under the strict liability private cause of action in section 376.313(3), Florida Statutes. In the final judgment on review, Simon's Trucking was found by a jury to be strictly liable for Mr. Lieupo's injuries, and Mr. Lieupo was awarded $5.2 million in damages, including $4 million for past and future pain and suffering.

3. The question presented here is 'does section 376.313(3) authorize a strict liability cause of action for personal injury damages?' The answer is 'no.' The purpose of chapter 376 is to prevent and mitigate the pollution of Florida's coastal and inland waters. Nothing in chapter 376 provides that a plaintiff is entitled to recover personal injury damages that may stem from such pollution. And binding Florida Supreme Court precedent interpreting section 376.313(3) supports this position—precedent the trial court chose to ignore. Affirming the final judgment in this case would dramatically expand the scope of chapter 376 beyond its intended purpose.

4. The Institute will address the importance of preventing a judicially created expansion of liability under chapter 376 and maintaining predictability in all civil actions in this state. Construing section 376.313(3) to allow recovery of personal injury damages would create a conflict within chapter 376 and would

violate well-established principles of statutory construction. Furthermore, such a construction would contravene the legislative direction that chapter 376 must be construed consistent with the federal legislation upon which it is modeled, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA—which provides private strict liability causes of action similar to those in chapter 376—is uniformly interpreted to exclude personal injury damages.

5. Plaintiffs with injuries like Mr. Lieupo's may have a remedy at common law, but, as it stands now, defendants are not liable for personal injury damages under chapter 376. Accordingly, the Institute will advocate that this Court reverse the final judgment on review, and hold that damages for personal injuries are not recoverable via the private right of action in section 376.313(3).

6. **How Amicus Curiae Can Assist This Court**: The Institute will explain why violations of regulatory statutes should not form the basis for personal injury awards when the text of the statute does not expressly permit such a recovery. Construing section 376.313(3) to allow recovery of personal injury damages in a tort setting such as the one in this case would create a 'super-strict' liability cause of action with no defenses. Absent express statutory authority, the judiciary is not empowered to eliminate traditional common law defenses to garden-variety tort claims. The Institute will provide this Court with the

perspective of its members who are most concerned with the social and economic costs of the type of litigation at issue in this case.

7. A copy of the proposed amicus brief the Institute will submit is attached as **Exhibit A**.

8. **Certificate of Consultation**. The undersigned has consulted with counsel for Appellee, and is authorized to represent that Appellee will file a response in opposition to this motion.

WHEREFORE, the Institute respectfully requests this Court grant its motion for leave to appear as an amicus curiae in this proceeding.

Respectfully submitted,

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I HEREBY CERTIFY that on this 26th day of October, 2017, a true and correct copy of the foregoing was furnished by e-mail to all parties listed below.

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EXHIBIT A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIRST DISTRICT

Case No.: 1D17-2065

L.T. No. 2014-CA-000051

SIMON'S TRUCKING, INC.,

Appellant/Defendant,

v.

CHARLES A. LIEUPO,

Appellee/Plaintiff.

BRIEF OF AMICUS CURIAE – FLORIDA JUSTICE REFORM INSTITUTE

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PREFACE

Amicus Curiae The Florida Justice Reform Institute is referred to as "the Institute." Appellant/Defendant Simon's Trucking, Inc., is referred to as "Defendant." Appellee/Plaintiff Charles A. Lieupo is referred to as "Plaintiff." Citations to the Record on Appeal, which includes the trial transcript in a single PDF file, appear as R.__ (PDF page number). With respect to quoted material, unless otherwise indicated, emphasis is supplied and citations and internal quotations are omitted.

IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

The Institute is Florida's leading organization of concerned citizens, business owners, business leaders, and lawyers, who share the common goal of promoting predictability in Florida's civil justice system by eliminating wasteful civil litigation and promoting fair and equitable legal practices. The Institute's members have a strong interest in appropriate interpretation of statutes imposing strict liability, and in ensuring the uniform application of Florida Supreme Court precedent to such interpretations.

OVERVIEW AND SUMMARY OF THE ARGUMENT

Defendant owned a tractor-trailer that crashed on Interstate 75 in Hamilton County, Florida after the driver suffered a fatal heart attack. The tractor-trailer was carrying a cargo of batteries to a business in South Florida. Many of the batteries were ejected from the trailer on impact and broke open, releasing battery acid over the accident site. Plaintiff—a tow truck driver employed by the towing company that removed the disabled tractor-trailer—sued Defendant and others[1], alleging personal injury resulting from contact with battery acid. Plaintiff asserted but later abandoned a negligence claim, choosing to proceed solely on a strict liability claim under the Florida Water Quality and Assurance Act (the "WQAA")—the stated purpose of which is to protect and preserve Florida's surface and ground waters.

[1] Plaintiff's claims against the other defendants were dismissed before trial. R. 306; 525; 1927; 2105-34.

See § 376.30(1), Fla. Stat. (2011).[2] Judgment was entered for the Plaintiff in a sum of over $5.2 million on a jury verdict that included $4 million for past and future pain and suffering.

The issue in the case is whether section 376.313(3) authorizes a strict liability cause of action for personal injury damages. The Institute submits the answer should be "no." In *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216 (Fla. 2010), the Florida Supreme Court held that the types of damages recoverable in an action under section 376.313(3) are those specified in section 376.031(5). That section provides **only** for recovery of damages for loss of property or destruction of the environment and natural resources. Construing section 376.313(3) to allow recovery of personal injury damages would create a conflict within Chapter 376 and would violate well-established principles of statutory construction. Furthermore, such a construction would contravene the direction that the WQAA must be construed consistent with the federal legislation upon which it is modeled, the Comprehensive Environmental Response, Compensation and Liability Act[3] (CERCLA). CERCLA, which provides private strict liability causes of action

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[2] Because the accident occurred in August 2011, the version of section 376.313(3), Florida Statutes, in effect in 2011 applies in this case. *See Larson & Larson, P.A. v. TSE Indus., Inc.*, 22 So. 3d 36, 42 (Fla. 2009) (explaining that, in personal injury cases, the cause of action accrues from the time the injury was alleged to have been first inflicted).

[3] 42 U.S.C. § 9601, *et seq.*

similar to those in the WQAA, is uniformly interpreted to exclude personal injury damages.

Even more, construing section 376.313(3) to allow recovery of personal injury damages in a tort setting such as this would create a strict liability cause of action with no defenses. Absent express statutory authority—which is lacking here—the Institute submits that the judiciary is not empowered to eliminate traditional common law defenses to garden-variety tort claims. In short, this case presents a judicially-created form of 'super-strict' liability that is unsupported by the statutory text, is inconsistent with the stated purpose of the WQAA, and contradicts Florida Supreme Court precedent.

ARGUMENT

I. PERSONAL INJURY DAMAGES ARE NOT RECOVERABLE IN A STRICT LIABILITY ACTION UNDER THE WQAA.

Chapter 376, Florida Statutes regulates pollution in Florida. In 1970, the Legislature enacted what is now called the Pollutant Discharge Prevention and Control Act, codified in sections 376.011-376.21, Florida Statutes (the "1970 Act"). The 1970 Act aims to protect coastal waters and adjoining lands from dangers occasioned by transfers of pollutants among marine vessels and offshore/onshore facilities. *See* § 376.021(1)-(3), Fla. Stat.

In 1983, the Legislature enacted the WQAA, codified in sections 376.30-376.317, Florida Statutes, as Part II of Chapter 376. *See* Laws of Fla., Ch. 83-310,

preamble, at 1825-26 ("designating [the 1970 Act] as part I of chapter 376" and "creating part II of chapter 376"). The WQAA is intended to preserve and maintain the quality of Florida's surface and ground waters, which "provide the primary source for potable water in this state." *See* § 376.30(1)(b)-(c) & (4), Fla. Stat. More specifically, the WQAA's purpose is to protect Florida's environment and citizens from—and to remedy harm resulting from—discharges of "pollutants, drycleaning solvents, and hazardous substances that occur" in connection with "the storage, transportation and disposal of such products." *See* § 376.30(2)(b)-(c), (3), Fla. Stat.

The 1970 Act and the WQAA each provide a private strict liability cause of action for damages resulting from a discharge of pollution, and the operative language of the relevant provisions is virtually identical. *See and compare* §§ 376.205 and 376.313, Fla. Stat. In construing these statutes, Florida courts have grappled with the question of what types of damages are recoverable and by whom. *Curd v. Mosaic Fertilizer, LLC*, 993 So. 2d 1078, 1084 (Fla. 2d DCA 2008), *quashed*, 39 So. 3d 1216 (Fla. 2010); *see also Kaplan v. Peterson*, 674 So. 2d 201, 206 (Fla. 5th DCA 1996) (referring to a "can of worms in terms of who can sue … and for what") (Griffin, J., concurring in part and dissenting in part).

This case raises the question whether personal injury damages are recoverable on a strict liability claim under section 376.313(3)—a question that the Florida Supreme Court answered in *Curd*, by holding that damages recoverable in

such an action are those defined in section 376.031(5), Florida Statutes. *See Curd*, 39 So. 3d at 1221-22.[4] Section 376.031(5) defines "damage" as:

> the documented extent of any destruction to or **loss of any real or personal property, or** the documented extent, pursuant to s. 376.121, of any **destruction of the environment and natural resources, including all living things except human beings**, as the direct result of the discharge of a pollutant.

Id.[5] The foregoing statutory text is disjunctive and makes plain that recoverable damages are limited to those resulting from property loss **or** destruction of natural resources, including "all living things **except human beings**." So there is no room for debate as to personal injury damages—they are not in either category under **any** principle of statutory construction.

Plaintiff may rely on Justice Polston's concurring opinion in *Curd* to argue that the phrase "all damages" in section 376.313(3) includes personal injury

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[4] *Curd* interpreted the 2004 version of Chapter 376; between 2004 and 2011, there were no material amendments to the relevant provisions of Chapter 376.

[5] *Curd* held that commercial fishermen could state a strict liability cause of action under section 376.313(3) for economic losses resulting from destruction of marine and plant life when wastewater was discharged from a phosphate plant, even though the fishermen owned no property damaged by the discharge. 39 So. 3d at 1218, 1221-22. The *Curd* majority reasoned that section 376.031(5) provides for recovery of "damages to natural resources, including all living things" and that section 376.313(3) does not "specifically list the lack of property ownership as a defense."

damages.[6] Nothing in Justice Polston's concurrence suggests that section 376.313(3) includes personal injury damages; indeed, he noted that the fishermen "suffered no personal injury." 39 So. 3d at 1232. Importantly, his conclusion that section 376.313(3) should be read to include the fishermen's economic losses did **not** create a conflict within Chapter 376 because the fishermen sought damages resulting from destruction of marine life, a matter expressly specified in section 376.031(5).

Interpreting section 376.313(3) to include personal injury damages when section 376.031(5) excludes personal injury damages **would create a conflict within Chapter 376**. "Courts faced with conflicting statutes must attempt to adopt an interpretation that harmonizes the related statutes while giving effect to each." *Gen. Dynamics Corp. v. Brottem*, 53 So. 3d 334, 337 (Fla. 5th DCA 2010) (resolving "apparent conflict" between worker's compensation immunity and section 376.313(3)'s limitations on defenses; holding that immunity defense barred plaintiffs' WQAA claims for personal injury damages) (Lawson, J.). The *Curd* majority properly read the related provisions of Chapter 376 together and

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[6] Justice Polston agreed that the commercial fisherman could state a strict liability cause of action for economic damages under section 376.313(3), but disagreed with the majority's approach to construing the statute. Justice Polston argued that because the WQAA lacks a damages definition, the Court should not look to the damage definition in the 1970 Act. 39 So. 3d at 1229-30 (Polston, J., concurring in part, dissenting in part). Justice Polston opined that the "plain meaning of 'all damages' [in section 376.313(3)] includes economic damages." *Id.* at 1230.

harmonized section 376.031(5) with section 376.313(3). *See, e.g.*, *Horowitz v. Plant'n Gen. Hosp. Ltd. P'ship*, 959 So. 2d 176, 182 (Fla. 2007) ("[I]t is axiomatic that all parts of a statute must be read *together* in order to achieve a consistent whole.") (italics in original); *Palm Harbor Spec. Fire Control Dist. v. Kelly*, 516 So. 2d 249, 249 (Fla. 1987) (courts should "adopt an interpretation that harmonizes two related, if conflicting, statutes while giving effect to both"); *see also State v. Fuchs*, 769 So. 2d 1006, 1009 (Fla. 2000) (absent "a statutory definition, resort may be had to case law or related statutory provisions which define the term[.]").

The strict liability action in section 376.205 for the discharge of pollutants to coastal waters and lands limits the type of damages recoverable to those specified in section 376.031(5); it is followed by the general phrase "all damages" in section 376.313(3), which authorizes a strict liability action for the discharge of pollutants to inland waters and lands. Nothing suggests that—despite specifically limiting the types of damages recoverable for pollution to coastal waters—the Legislature intended to provide no limitations whatsoever on the types of damages recoverable for pollution to inland waters.

The *Curd* majority's interpretation is consistent with "the canon of statutory construction *ejusdem generis*, which states that when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed." *Brottem*, 53 So. 3d at 337, n.3. This canon applies to

avoid contradictions within legal text "by giving the enumeration the effect of limiting the general phrase (while still not giving the general phrase a meaning it will not bear)." Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, § 32 at 200 (2012 ed.). Moreover, in the seven years since the *Curd* and *Brottem*[7] decisions issued, the Legislature has not amended section 376.313(3), thereby confirming its approval of those decisions' construction of section 376.313(3). *Goldenberg v. Sawczak*, 791 So. 2d 1078, 1081 (Fla. 2001) ("Long-term legislative inaction after a court construes a statute amounts to legislative acceptance or approval of that judicial construction."). In sum, neither the statutory text nor Florida Supreme Court precedent interpreting it authorize recovery of personal injury damages in a strict liability action under the WQAA.

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[7] *Brottem* certified conflict with this Court's decision in *Cunningham v. Anchor Hocking Corporation*, 558 So. 2d 93, 97, 98 n.2 (Fla. 1st DCA 1990) (holding that workers' compensation immunity did not bar plaintiffs' claims for intentional torts "outside the scope of worker's compensation"; noting that worker's compensation immunity would not be a defense to a WQAA claim). General Dynamics sought review in the Florida Supreme Court, but the petition was dismissed before a merits decision issued. 75 So. 3d 1243 (Fla. 2011). In any event, the *Cunningham* decision does not control this case. The issues presented to the Court in that case were whether the alleged pollutants were gaseous and whether the alleged events occurred prior to the effective date of section 376.313(3). 558 So. 2d at 99. *Cunningham* did not expressly decide the issue of whether personal injury damages are recoverable under section 376.313(3); to the extent the decision could be read to support an argument that they are, it has been abrogated by the Florida Supreme Court's subsequent decision in *Curd*.

II. CONSTRUING THE WQAA TO PERMIT RECOVERY OF PERSONAL INJURY DAMAGES IS INCONSISTENT WITH THE WQAA'S PURPOSE AND WITH CERCLA.

Sections 376.313(3), 376.205, and 376.031(5) are codified in the same statutory chapter and were enacted as part of the same "far-reaching statutory scheme aimed at remedying, preventing, and removing the discharge of pollutants from Florida's waters and lands." *Curd*, 39 So. 3d at 1222. Because the WQAA is modeled on CERCLA, the WQAA "should be interpreted in the same manner as CERCLA." *State, Dep't of Envt'l Prot. v. Allied Scrap Processors, Inc.*, 724 So. 2d 151, 153 (Fla. 1st DCA 1998); *accord Brottem*, 53 So. 3d at 337, n.4; *see also* § 376.30(5), Fla. Stat. (the WQAA is intended "to support and complement applicable provisions of the Federal Water Pollution Control Act")[8]; § 376.301(21), Fla. Stat. (for purposes of the WQAA, "hazardous substances" mean "those substances defined as hazardous substances in [CERCLA]").

CERCLA was enacted in 1980

> as a legislative response to the growing problem of toxic wastes, many of which were disposed of before their dangers were widely known and had contaminated precious land and water resources. The statute attempts to create a coherent answer to two related problems: the emergency abatement of releases of hazardous substances into the environment and the response, both short- and long-term, to the presence of hazardous wastes in existing disposal sites.

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[8] CERCLA's liability standard is based on the Federal Water Pollution Control Act. *See U.S. v. Miami Drum Servs., Inc.*, 1986 WL 15327, * 3 (S.D. Fla. 1986).

Artesian Water Co. v. Gov't of New Castle Cnty., 659 F. Supp. 1269, 1276 (D. Del. 1987), *aff'd,* 851 F.2d 643 (3d Cir. 1988); *see also Prisco v. State of N.Y.*, 902 F. Supp. 400, 405 (S.D. N.Y. 1995) (CERCLA was "designed, generally, to ensure that the persons who bore the fruits of hazardous waste disposal also bear the costs of cleaning it up.").

To that end—and like the WQAA—CERCLA authorizes private parties and the government to sue for damages resulting from a hazardous substance discharge; like the WQAA, CERCLA imposes strict liability and limits defenses to acts of God, war, and third parties. 42 U.S.C. § 9607(a), (b); *see also New York v. Shore Realty Corp.*, 759 F.2d 1032, 1042 (2d Cir. 1985) (discussing legislative history relative to strict liability under CERCLA). Like the WQAA, CERCLA is "construed broadly in order to accomplish Congressional intent." *Prisco*, 902 F. Supp. at 405; *Curd*, 39 So. 3d at 1221 (the WQAA "shall be liberally construed to effect the purposes set forth [therein] and the Federal Water Pollution Control Act") (quoting § 376.315, Fla. Stat.)).[9]

Also like the WQAA, CERCLA specifies that recoverable damages include removal and response costs incurred by the government and private parties. *See* 42

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[9] For a comprehensive discussion of section 376.313(3) and analysis of its interplay with CERCLA, *see* Sidney F. Ansbacher, Robert D. Fingar, and Adam G. Schwartz, *Strictly Speaking, Does F.S. § 376.313(3) Create Duty to Everybody, Everywhere?* (Parts I & II), Fla. Bar. J. Vol. 84, Nos. 8, 9 (September/October 2010 & November 2010).

U.S.C. 9607(a)(4)(A), (B); §§ 376.307, 376.3071, Fla. Stat. As does the WQAA, CERCLA authorizes recovery of damages for "injury to, destruction of, or loss of natural resources." 42 U.S.C. § 9607(a)(4); § 376.031(5), Fla. Stat. Most relevant to the instant analysis, **CERCLA does not authorize a private party to recover personal injury damages**. *New Mexico v. Gen. Elec. Co.*, 467 F.3d 1223, 1246 n.34 ("Although some unsuccessful bills proposed to do so, CERCLA as enacted provides no private right of action for personal or economic injury caused by the release of hazardous substances."); *see also Prisco*, 902 F. Supp. at 411 (same); *Artesian Water Co.*, 659 F. Supp. at 1285 (same).

Since the WQAA is modeled on CERCLA and the Legislature expressly directed that it be construed consistent with CERCLA, this Court should give the WQAA the "same construction" as federal courts have given CERCLA. *Allied Scrap Processors, Inc.*, 724 So. 2d at 152; *accord Brottem*, 53 So. 3d at 337, n.4. Accordingly, damages recoverable under section 376.313(3) do not include personal injury damages, but instead are limited to those specified in section 376.031(5)—damages resulting from property loss or destruction of the environment. In fact, section 376.031(5) is even clearer than CERCLA in this regard. Both statutes authorize recovery of damages resulting from destruction of natural resources, but section 376.031(5) is more specifically limited, expressly stating that it applies to damages for destruction of "natural resources, including all

living things **except human beings**." *Id.*; *compare with* 42 U.S.C. § 9607(4)(C) (authorizing recovery of "damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury").

CERCLA and the WQAA were enacted in response to environmental threats caused by discharge of hazardous substances and are principally designed to establish remediation procedures and allocation of liability among property owners and users. CERCLA is silent regarding personal injury damages and federal courts uniformly interpret CERCLA to exclude them. The statutory chapter containing WQAA specifically defines damages to exclude personal injury damages, and the Florida Supreme Court has explicitly held that definition applicable to strict liability causes of action under the WQAA.

Given the text and stated purpose of the WQAA, the only reasonable interpretation in this context is that the Legislature did not provide a strict liability cause of action for personal injury damages resulting from a pollutant discharge on inland waters or adjoining lands, particularly given its preclusion of personal injury damages resulting from a pollutant discharge on coastal waters or adjoining lands. *See, e.g., Horowitz*, 959 So. 2d at 182 (relying on "text, context and purpose" of physician financial responsibility statute to hold that it does not create a cause of action against hospital for failure to ensure compliance therewith by its physician staff members).

III. THE JUDICIARY CANNOT ABROGATE TRADITIONAL TORT LIABILITY DEFENSES WITHOUT EXPRESS STATUTORY AUTHORIZATION.

Allowing the instant judgment to stand effectively will eliminate traditional tort liability defenses in **any** setting where a pollutant was discharged, regardless of causation and regardless of the degree of attenuation between the pollutant discharge and the claimant's injuries. Consider the hypothetical 'next case': a manicurist driving away from a beauty supply store collides with another automobile, as a result of which her passenger—who is holding a bottle of nail polish remover (acetone)—is ejected from the automobile; the bottle of nail polish remover breaks open on impact, splashes into the passenger's eyes (and onto the ground) and blinds the passenger. Are the manicurist and/or the other motorist strictly liable for the passenger's blindness because it was a consequence of the discharge of a pollutant? The answer under the present construct is obvious—and improvident. If this Court affirms the judgment on review, it will ratify **strict liability with no defenses**[10] for all garden-variety negligence claims that happen to cross paths with a pollutant. *Compare West v. Caterpillar Tractor Co.*, 336 So. 2d 80, 86, 90 (Fla. 1976) (adopting strict tort liability for manufacturers of defective

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[10] Section 376.313(3) states that "the only defenses" are specified in section 376.308. Section 376.308(2) requires a defendant to prove that the "occurrence was solely the result of" an act of God, the sovereign, war, or third parties unrelated to the defendant. *Id.*

products and noting that "ordinary rules of causation and the defenses applicable to negligence" remain available in such actions).

Absent clear and unambiguous statutory text authorizing such a departure from common law, courts are "not free to ascribe such a presumptuous legislative intent." *N. Mia. Med. Ctr., Ltd. v. Miller*, 896 So. 2d 886, 890 (Fla. 3d DCA 2005). This is particularly true where—as here—neither the text, the purpose nor the context of the legislation support such an outcome. *Id.* (refusing to "judicially engraft" a rule of "super-strict" liability onto physician financial responsibility statute where the "chief purpose" of the legislation was to increase availability of healthcare providers).

It is telling that Plaintiff abandoned his negligence claim against Defendant after it became apparent that the cause of action was unavailable as a matter of law because the pollutant discharge was caused by the driver's fatal heart attack, not by Defendant's negligence. *See* R. 1629-1635; R. 1929. Simply put, the trial court disregarded directly applicable Supreme Court precedent to permit Plaintiff to hijack a limited strict liability provision in an environmental clean-up statute to achieve a multi-million dollar jury verdict on a legally insufficient negligence claim. The release of battery acid in this case had about the same relevance to Plaintiff's injuries as did the conductors' assistance to the passenger that dropped

the package containing fireworks in the famous case of *Palsgraf v. Long Isl. R. Co.*, 248 N.Y. 339 (Ct. App. N.Y. 1928).

The unprecedented expansion of traditional tort liability concepts in this case contravenes applicable Florida Supreme Court precedent and is inconsistent with the text, statutory framework and purpose of the WQAA. The Institute respectfully submits that, consistent with the holding of *Curd*, damages recoverable in a strict liability action under section 376.313(3) should be limited to those defined in section 376.031(5) and do not include personal injury damages.

CONCLUSION

For these reasons, the Institute respectfully submits that this Court should reverse the judgment on review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 because it was prepared using Times New Roman 14-point font.

/s/ Frank A. Shepherd
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