

PUBLICATION

***Charles L. Lieupo v. Simon's Trucking, Inc.* Supreme Court of Florida, No. SC18-657**

January 23, 2020

On December 19, 2019, the Supreme Court of Florida decided the most significant environmental law case in recent years with its opinion in *Charles L. Lieupo v. Simon's Trucking, Inc.*, No. SC18-657. The case came to the Court from the First District Court of Appeal on a question of great public importance: Does the private cause of action contained in Section 376.313(3), Florida Statutes permit recovery for personal injury? Until now, the answer was "no" based on the Court's opinion in *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216 (Fla. 2010). As background, Lieupo filed a complaint against Simon's Trucking alleging strict liability under Section 376.313(3), for injuries he suffered after one of its tractor trailers was involved in an accident while transporting batteries, which resulted in battery acid spilling onto the highway and subsequently injuring Lieupo. Pursuant to *Curd*, Florida courts have applied the 1970 Pollution Discharge Prevention and Control Act's (Sections 376.011-376.21) definition of "damage" to claims brought under the 1983 Water Quality Assurance Act (Sections 376.30-376.317), which does not contain a definition of the term "damage." This matters because the Pollution Discharge Prevention and Control Act's definition of "damage" specifically exempts damages to human beings. However, the Court receded from its precedent in *Curd* and explained that Section 376.031 plainly specifies that the definition of "damages" only applies to the Pollution Discharge Prevention and Control Act – therefore it does not also apply to the Water Quality Assurance Act, under which Lieupo filed his complaint. Thus, Lieupo's claim for personal injuries was not precluded. The consequences of this opinion are far-reaching. Businesses, industries, individuals, and even local governments, which heretofore were facing potential liability for property damage only, will now likely be forced to deal with claims for personal injury. This was not a result intended by the statute's drafters. Therefore, as the Supreme Court suggests, this anomaly should be addressed by the Legislature. The Florida 202 legislative session began on January 14 and there are already proposed bills addressing this.